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APPRAISAL OF BANK'S LIABILITY ON AUTOMATED TELLER MACHINE (ATM) DEBIT-WITHOUT-DISPENSING TRANSACTION UNDER NIGERIAN LAW: *JWAN V. ECOBANK & ANOR.* IN PERSPECTIVE

D. T.-A. EYONGNDI, F. R. ADEGBITE

David Tarh-Akong Eyongndi[1], Folasade Rose Adegbite[2]
[1]College of Law, Bowen University, Iwo, Osun State, Nigeria
https://orcid.org/0000-0003-0072-1812, E-mail: eyongndidavid@gmail.com
[2] University of Lagos: Akoka, Lagos, Nigeria
https://orcid.org/0000-0002-2411-7348, E-mail: folasadeadegbite@yahoo.com

Abstract: *Technological advancement has been adopted in the banking sector through the use of ATM and ATM cards issued by banks to ease saving and withdrawal of money by customers. Once a customer's account is liquid, the insertion of an ATM card in an ATM and following the procedure, should lead to cash dispensation. However, there are instances where a customer's account is debited but the money is not dispensed. This is an ATM debit-without-dispensing quagmire. Recently, the Nigerian Court of Appeal in Jwan v. Ecobank & Anor held that an ATM card is akin to a cheque, where it is inserted into an ATM by a customer whose account is funded, a debit-without-dispensing transaction equals to a dishonoured cheque which is breach of banker's duty to the customer. This conclusion was reached based on the doctrine of res ipsa loquitur. This paper adopts doctrinal method in examining the propriety of making an ATM card akin to a cheque. It attenuates the nuances of the decision with particular reference to the ambit of banker's duty of care. It seeks to evaluate whether the decision took cognisance of the vagaries of technological glitches in technology driven transaction like the ATM. It discusses the impact of the decision on Nigeria's banker-customer jurisprudence. It makes vital recommendations as way-forward.*

Keywords: ATM, Banker, Customer, Cheque, *Res ipsa loquitur*

1. INTRODUCTION

One of the incursions in the 21st century, is technological revolution which has permeated all spheres of human endeavours with its concomitant effect (Okafor & Ezeani, 2021:18-33). No aspect of human life has been spared the disruptive and sometimes destructive intrusion of technology (Ahaiwe, 2011:96-107). Within the banking subsector of Nigeria's economy, it was not unusual to see a banking hall crowded by customers who have come either to deposit or withdraw money over the counter (Agboola, 2009: 6). However, this appalling scenario of the traditionally over the counter transaction of saving and withdrawal of money is been increasingly reduced through the introduction and used of ATM and ATM cards by all banks in Nigeria (Fanawopo, 2022). The banker is obligated to exercise extreme care in handling the account and transactions of the customer to avoid being liable in damages for injury suffered due to its negligence or recklessness as was held in *Balogun v. National Bank of Nigeria* (1978).

Thus, where a bank installs an ATM either within or outside its business premises, it is an invitation to the general public to use same subject to terms and conditions as was decided by the English court in *Carlill v Carbolic Smoke Ball Company* [1892]. Similarly, where a bank issues an ATM card to its customer, it undertakes that so long as the account is funded, whenever the card is

inserted into a functioning ATM and the requisite procedure followed, an amount debited, will be dispensed. However, despite the practicability of technologically driven operations, the possibility of technical glitches which are beyond the control of the user cannot be denied. Thus, it is not uncommon to experience an ATM debiting the account of a customer and fail to dispense the amount debited as expected.

In *Jwan v. Ecobank & Anor* (2021) the Nigerian Court of Appeal dealt with the legal implications of debit-without-dispensing in banker-customer relationship and held that whenever a bank issues an ATM card to its customer, it undertakes that once the customer's account is funded, anytime the card is inserted into an ATM and the stipulated instructions are adhered to, the ATM card being in the similitude of a cheque, the amount debited by the AMT, must be dispensed. Failure to so dispense the money after the debit, amounts to a breach of the banker's to the customer. What is the propriety of placing an ATM card in the same position as a cheque book considering that the ATM is solely technologically operated while the latter is by man? Does the decision take cognizance of the operation of technological glitches which is usually without prejudice to the operator? What is the legal impact of this decision on Nigeria's banker-customer jurisprudence particularly the banker's duty of care? When will the conduct of a banker absolve liability in the event of a debit-without-dispensing transaction? These issues form the fulcrum of this paper.

The analysis and arguments in this article are framed and structured as follows: section one contains the introduction which gives a background to the work. Section two is an examination of the Banker's duty of care in banker-customer relationship. Section three exegesis the doctrine of *res ipsa loquitur* and its applicability to banker-customer relationship with particular emphasis on the case under review. Section four concentrates on the court's decision in *Jwan's case* wherein the facts of the case are graphically highlighted, the impact of the decision on Nigeria's banker-customer jurisprudence, the aptness of equating an ATM to a bank cheque, and the propriety of the decision in light of susceptibility of technological development to glitches, and whether if situation exists when a debit-without-dispensing misadventure will be legally excused. Section five contains the conclusion and recommendations which are based on the findings and as contribution to knowledge.

2. Explicating the Duty of Care in Banker-Customer Relationship

In banker-customer relationship, the bank is a servant to its customer. The relationship is based and built on trust with the customer expecting the bank to be prudent and faithful in handling his/her affairs (Abugu, 2007:549). The relationship creates rights and obligations between the parties and one of the duties the bank owes the customer is duty of care as was held in *Diamond Bank Ltd. v. Partnership Investment Company Limited & Anor* (2009). This duty is expansive and almost inelastic as it permeates all spheres of the relationship and it is the bedrock upon which the relationship is laid and the lubricant that lubricates it as determined by the Supreme Court of Nigeria in *UBN Plc v. Mr. N.M. Okpara Chimaeze* (2014). The bank has the duty to exercise reasonable care and skill in handling the affairs its customer as was decided in *Afribank Nig. Plc v. A. I. Investment Ltd.* (2002). By this requirement, the bank is expected to take necessary precautionary measures, due diligence and all that is reasonable and practicable to ensure that the customer's instructions or affairs are handles in a way and manner that he/she is not exposed to preventable loss/injury *Guaranty Trust Bank v. Chief Dotun Oyewole & Anor* (2013). This duty is imposed as the bank by their characteristic nature, must be taken to have represented itself to their customers that they are professionals capable of keeping their money and other valuables safe and secured which may be kept with them thus, the law holds them in this regard not to renege from this position they have held forth as was held in *Ndoma-Egba v. A.C.B.* (2005).

The nuances of this duty entails keeping proper and updated record of their customers' transactions. In *Odulate v. First Bank Nigeria Limited* (2019) the Court of Appeal held that the law holds them to that promise (i.e. the promise of safe and secure custody of customers' money and valuables deposited with them) and also expects banks to promptly comply with lawful instructions of their customers with regards to money kept in their custody as in *UBN Plc v. Chimaeze* (2014). The Banker's duty to exercise reasonable care and skills stretches over the whole range of banking business within the ambit of the contract with the customer *Linton Industries. Trading CO. (Nig) Ltd v. C.B.N.* (2015). This duty applies to interpreting, ascertaining and acting in accordance with the instruction of the customer *N.N.B. Ltd v. Odiase* (1993); *First Bank of Nigeria Ltd v. African Petroleum Ltd* (1996). This duty requires that where the customer's account is funded, cheques issued by him/her after due diligence, will be honoured. Failure to honour such a cheques exposes the customer to ridicule as it brings his financial worthiness to question. In fact, it is a defamation of his character to the beneficiary whom the cheque was issued. Thus, the bank must take reasonable care to ensure that such unpalatable occurrence is prevented. Also, where a debit is to be carried on a customer's account, confirmation must be sought and gotten from the customer (Abe, 2017:37).

Where the bank fails in this duty and a customer suffers injury, the bank will be held to have breach its implied duty and liable to damages for negligence *Agbanelo* v. *UBN Ltd* (2000). Where for instance, a cheque presented for payment looks irregular on the face, the bank, pursuant to this duty, has the duty to postpone its payment until verification from the customer who issued it as in *Babalola* v *Union Bank of Nigeria ltd*. [1980]. Where the banks fails to take this precautionary step and the customer is exposed to injury, it has failed in this onerous duty therefore entitling the injured customer to award of damages for its negligence as was held in *Selangor United Rubber Estates Ltd. v. Cradock* [1968]. The banker is also require to ensure the privacy and confidentiality in the treatment of the customer's affairs (Oshio, 2002:57). The statement of the account of the customer are matters that must remain private and within the knowledge of both parties except where the banker is by an order of the court authorised to disclose same to third parties such as security agencies or the likes as was held in *Tournier v National provincial bank* [1924]. This is akin to the provisions of section 37 of the Constitution of the Federal Republic of Nigeria which guarantees privacy rights.

3. The Province of *Res Ipsa Loquitur* Determined

This section of the paper is a synopsis on the nuances of the defence of *res ipsa loquitur*. It discusses its meaning, when it can be raised and the effect of it being successfully raised especially under the circumstance of the case being reviewed. Lunney and Oliphant (2008:204) have opined that the maxim *res ipsa loquitur* (meaning 'the thing speaks for itself' or more loosely, 'the accident tells its own story') allows the claimant to succeed in an action for negligence even where there is no evidence as to what caused the accident and, therefore, whether it was attributable to negligence on the part of the defendant. Generally, negligence is the breach of a legal duty to take care owed by the defendant, which results in damage to the claimant *Ivory Papers Mills Ltd. v. Bureau Veritas B.S.* [2002]. Thus, for a claimant to succeed in the tort of negligence, he/she must prove that the defendant owed a duty of care; that the duty of care so owed has been breach, and injury has been suffered as a result of the breach *Royal Ade Ltd. v. National Oil And Chemical Marketing Company Plc* (2004). Hence, the claimant is obligated to prove specific acts/omission (s) by the defendant that will qualify as negligent conduct that caused him/her harm *Nigeria Bottling Plc v. Mr. Jokotade A. Ibrahim* (2016). Failure of the claimant to satisfy these requirements mutually inclusive, will lead to the court dismissing a claim of damages predicated on negligence of the defendant *Strabag Construction (Nig.) Ltd. v. Ogarekpe* (1991).

The above notwithstanding, sometimes, the circumstances of a particular case may warrant the court drawing inference of negligence against the defendant without hearing detailed evidence of what

he did or did not do. In this case, the inference connotes that the absence of explanation by the defendant, the claimant has discharged the initial burden of proof laid on him *Akintola v. Guffanti & Co. Ltd.* (1974). The foregoing alludes to the doctrine of *res ipsa loquitur.* Erle CJ in *Scott v. London and St. Katherine Docks Co.* (1865) lucidly and fluidly adumbrated the doctrine as follows;

> There must be reasonable evidence of negligence. But where the thing is shown to be under the management of the defendant or his servant, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by then defendants, that the accident arose from want of care.

From the above, for *res ipsa loquitur* to avail a claimant, it must be proved that the thing is under the absolute control of the defendant or his/her servants and that the accident that the occurrence that took place, in the ordinary course of business would not occurred save that there is want of care on the part of the defendant or his servants who are in control of the thing as was held in *Odebunmi & Ors. v. Abdullahi* (1997). The prerequisite are mutually inclusive as was decided in *Onwuka v. Omogu* (1991). According to Abdullahi (2022:121-138) the doctrine is pleaded or raised in one of two ways. First, it may be pleaded or raised by expressly reciting the doctrine itself. Secondly, it may alternatively be pleaded or raised to the effect that the plaintiff intends to rely upon the occurrence of the wrong or injury itself as evidence of negligence *Emirate Airline v Tochukwu Aforka & Anor* (2014).

The successful plea of the doctrine, entitles the party who has pleaded it to the judgment of the court unless the adverse party can rebut the inference and exonerate himself by showing firstly how the event complained of happened, and that its occurrence, was not due to want of care from him or his servant (s) for whom he is responsible as in the cases of *Chukwu Vertical Co. Ltd. v. Ifesinachi Industries (Nig.) Ltd. & Anor.* (2018); and *Woods v. Duncan* (1946). Unless this is done by the defendant, the requirement to prove by direct and cogent evidence the claims made by the claimant will be dispensed with once *res ipsa loquitur* is adjudged applicable. In fact, circumstances where same will be countenance is as glaring and convincing as the facts relied upon are usually matters within the exclusive knowledge and control of the person against who it is being raised. Take for instance, where a person is bitten by a dog that scaled over the defendant's fence. It is only the defendant who can explain how that occur and there is a prima facie case of negligence by the defendant or its agent without which, it is impracticable for a dog to be loose.

4. Contextualising *Jwan v. Ecobank & Anor.*

This section of the paper explicates the facts of the case encapsulating the arguments of the parties, the decision of the court and the propriety of the decision. The appellant was the customer of the 1st defendant which issued him an ATM card to enable him have access to his account to make withdrawals. The appellant used his ATM card on the 2nd respondent's ATM to withdraw the sum of ₦ 10, 000 and the machine indicated that he will be charged the sum of ₦ 100 as service charge. He agreed to this, punch in his pin. The ATM directed that he should wait as the transaction was processing and the machine kept making sounds synonymous to that of money notes being counted. However, no money came out for him to retrieve despite his account having been debited of the sum of ₦ 10, 000. Sequel to this, he lodged a complaint with the respondents but the officers of the respondents dismissed the complaint and absolved themselves of any liability. The 1st respondent claimed that their record showed that the sum requested by the appellant was dispensed. The appellant argued that he could not explain how his account could be debited by the 2nd respondent ATM yet, the debited amount was not dispensed, he raised and relied on the defence of *res ipsa loquitur.* At the end of trial, the trial court

came to the conclusion that the appellant as claimant, failed to prove his case and was therefore, not entitled to judgment.

Being dissatisfied with the trial court's decision, the appellant lodged an appeal at the Court of Appeal. Several issues were raised but our focused is limited to issues 2 and 3 which are whether *res ipsa loquitur* was inapplicable and whether the respondents were negligent in handling the appellants account. On the applicability or otherwise of *res ipsa loquitur*, the appellant argued that while the law is that the person who allege (usually the claimant), has the obligation to prove contingent on section 133(1) of the Evidence Act, 2011, however, where there is presumption in favour of the claimant as to the existence of the alleged facts based on the pleadings, the initial burden shifts to the defendant. He argued that the failure of the respondents ATM to dispense the money debited from his account is something that only they can explain aside the fact that it is not an occurrence that could have occurred in the ordinary course of business. This situation requires and justified his plea of *res ipsa loquitur.* He relied on *S.P.D.C. Ltd. v. Anaro* [2015] in arguing that the trial court was wrong to hold that his plea of *res ipsa loquitur* was inapplicable especially as his account was under the control and management of the respondents making them squarely responsible to explain what happened since it was not normal in the course of business for such to occur. Hence, it was incumbent on the respondent to prove that the failure to dispense after the debit was not due to their negligence but an accident. By this, the appellant contends that the trial court wrongly placed the initial burden of proof on it instead on the respondents and by the authority of *Adedeji v. Oloso* [2007] there was miscarriage of justice.

On the trial court's finding that the respondents were not negligent in handling the appellant's account, the appellant argued that since he was the one who alleged negatively that he was debited but was not paid, the respondents who alleged the positive that the debited amount was paid, ought to have proved what they alleged. Their failure to prove what happened, is conclusive evidence of negligence. The tendering of his account statement, only shows that the money was debited which is not in issue between the parties. Nevertheless, that does not explain why the debited sum was not dispensed especially when the two witness of the respondents had testified that it is possible for an ATM to debit without dispensing. He relied on the case of *Habib (Nig.) Bank Ltd. v. Gifts Unique (Nig.) Ltd* [2005] to argue that a statement of account is not a sufficient proof of a customer's debit and lodgements therein. He therefore contended that despite their failure to prove that the debited amount was dispensed, the court wrongly believed them.

The respondents jointly and severally argued that the trial court was correct in holding that the appellant failed to prove his case and as such, was not entitled to the reliefs sought. They argued that the appellant failed to prove that the debited sum was not paid to him by the ATM which proof of the non-payment, would have entitled him to the trial court's judgment. They contended that the statement of account showing that he was indeed paid as well as the journal indicating the success of transaction was conclusive proof of their defence against the appellant. Thus, on the preponderance of evidence, the appellant was not entitled to judgment as the trial court rightly held. They further argued that the defence of *res ipsa loquitur* was not available to the appellant who has failed to prove the material facts of the negligence he alleged against the respondents and assuming but not conceding that same was available to him, the evidence of their witnesses and documents tendered in evidence, had explained what transpired making the defence legally unsustainable placing reliance on the decision of *Abi v. C.B.N.* [2012] They therefore urged the Court of Appeal to dismissed the appeal and affirmed the decision of the trial court which dismissed the appellant's case.

After a careful review of the facts, evidence and arguments of the parties, on the issue bothering on whether the trial court was right to have held that the doctrine of *res ipsa loquitur* raised and relied on by the appellant which the trial court held was unavailable was rightly discountenanced. The Court of Appeal found that the complaint of debit without dispensing by the appellant was one that in the ordinary course of business, would not happen and where it does, only the owner of the ATM could

explain. The respondents having failed to explained what transpired and show that they were not negligent, *res ipsa loquitur* raised by the appellant avails him hence, the trial court who had rightly found that the appellant presented a case of negligence and pleaded *res ipsa* was wrong to have discountenance it in the circumstances of the case. The court in holding that the respondents had breach the duty of care owed the appellant held as follows:

> The ATM card issued a bank being akin to a cheque, which must be honoured on request once there is enough funds in the customer's account, failure to do that will mean the banker is in breach of the duty of care owed to its customer… the issuance of the ATM Cards by the banks to its customers carry with it the duty to ensure that both the cards and the ATMs work as they care meant to and where there is failure of these services to a customer, the banks are duty bound to explain what happened. This is quiet common since the ATM and their operators are under the control and management at the banks.

By the above reasoning, the Court of Appeal has equated an ATM card to an analogue bank cheque. This reasoning raises a number of genuine concerns. An ATM is a technological enabled machine which is subjected to the vicissitudes of technological shortcomings/glitches while a bank cheque, is wholly managed by human beings. The probability of error in the operations/management of the two is not the same. Also, at what point will a bank be liable for failed ATM transactions? How can the contending interest (i.e. the interest of safeguarding the funds of customers by making seamless withdrawal via ATM and refraining damning banks for technological glitches) in this judgment be balanced? These are some of the issues arising from this decision. The preceding section focuses on these issues.

5. Matters Arising from *Jwan v. Ecobank & Anor.*

What is the implication of the position taken by the Court in this decision under review particularly the liking of an ATM card to a cheque? When will a bank be liable for debit without dispensing transaction? Will this decision not open a floodgate of litigation against banks owing to the fact that ATM operations are digitally enabled and susceptible to technological glitches? With regards to the issue of whether this decision has not opened a floodgate of litigation against banks for every "debit but failed to dispense" ATM transaction, the answer is negative. The doctrine of *res ipsa loquitur* which the court availed the appellant is not at large. Where it is raised, it only exculpate the claimant of the duty to prove an alleged act of negligence based on the facts of the case while requiring the defendant to proffer explanation for the negligent act/omission. Thus, where a defendant, explains the reason for the alleged negligence demonstrating that neither him/her nor those under their control acted negligently which led to the complaint of the claimant, the presumption of negligence will fail. Once this is the case, *res ipsa loquitur* will become inapplicable. Thus, where a bank can satisfactorily show that a debit but failed to dispense ATM transaction occurred without their negligence, the decision reached in the case will not be inapplicable. In fact, the Court of Appeal as an impartial arbiter, is only reaffirming and directing the attention of banks to the crucial and enormous duty placed on them in relation to the money of its customers to the extent that they must like Caesar's wife, be above board in its management. A customer's fund in the custody of a bank is synonymous to the life of the customer which must be jealously guarded and released whenever requested. The decision has only placed a high standard of care on operators of ATM to ensure that the machines are functioning properly at all times and where there is any failure, it is not one which due diligence on the part of the bank would have detected and prevented.

As to the propriety of equating an ATM card to a bank cheque as held by the court, it is argued that while it is laudable to place a high standard of care on the part of banks to ensure that their ATMs are functioning properly, the court failed to take into cognisance, the peculiarity of an ATM and ATM card. An ATM does not function the same way a bank cheque does. The process of clearing a bank cheque is totally handled by humans and as such, the propensity of error is greatly limited unlike an ATM with the ATM card which is mainly technologically enabled. Thus, errors which may occur from ATM operations, may not in cheques transactions. While the court had held that where the bank satisfactorily explains the cause of a debit without dispensing transaction, and it is not negligent, the bank is absolved of liability, making an ATM card akin to a bank cheque, fails to take cognisance of the peculiarities of both. Despite the foregoing, the decision is a welcome development as it will keep banks on their toes to ensure that their ATMs are functioning properly and customers are not exposed to avoidable hardship. One way banks could avoid damages that could arise from "debit without dispensing" transactions is to take proactive steps to address complaints from customers. If the respondents had been meticulous and proactive with the appellant's compliant, same would have resolved amicably thereby forestalling litigation.

6. Conclusions and Recommendations

Extrapolating from the analysis above, the introduction of ATM in Nigeria's banking sector was meant to ease the burden of deposit and withdrawal of cash by customers and it has been embraced by all. Today, there is hardly anyone having a bank account without an ATM card. The issuance of an ATM card by a bank to its customer, comes with an implied duty that where the account is funded, whenever a withdrawal request is made by the customer on an ATM, the money debited will be dispensed. However, experience has been there several instances, the ATM, after a customer has gone through the preliminary steps, would debit without dispensing. Thus, the Court of Appeal have held that where this occurs, the bank is under an obligation to explain why and where it is unable to do so showing that it was not due to its negligence, the customer is entitled to compensation for the inconvenience occasioned to him/her by the failed transaction. Thus, banks in Nigeria operating ATMs are therefore expected to ensure that necessary precaution is taken to guarantee the seamless functioning of their machines and where same will malfunction, it is not due to their negligence. The decision is a welcomed development which has not opened a floodgate of litigation against banks but mere reaffirmed and emphasised their duty of care to their customers.

One way banks can absolve liability that may arise from debit without dispensing transactions or prevent it from escalating to litigation, is to put in place a responsive customer service reporting mechanism where such complaints are lodged and with alacrity, are resolved. Aside ensuring that if their ATM will malfunction at all, it is something that is beyond human control or ordinarily expected of them) prompt and efficient customer's complaint resolution will forestall the option of litigation.

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THE CONCEPT OF NETWORK NEUTRALITY

Y. FATOKI, O. D. AKINTOYE

Yewande Fatoki[1], Olariyike Damola Akintoye[2]
[1] [2]Lead City University, Ibadan, Nigeria
[1] https://orcid.org/0000-0002-9984-286X, E-mail: fatoki.yewande@lcu.edu.ng
[2] https://orcid.org/0009-0009-3019-0371, E-mail: oolariyike.akintoye@kwasu.edu.ng

Abstract: *Technology is meant to give people a platform to express themselves. Therefore, network neutrality is a creation for platform where contents, applications, services are to move on the internet without any form of restrictions. It is worrisome to some that internet providers are beginning to give unfair advantage to some data streams thereby making it almost difficult for smaller content creators and to grow. Network neutrality is the principle that internet provider and the Government should treat internet traffic the same. It connotes putting policy and regulatory measures in place to ensure open access and fair treatment of all internet users. This paper discusses the concept of network neutrality according to Tim Wu. It also considers the advantages and disadvantages of network neutrality. It discusses network neutrality in the United States and also the provisions of the Draft code released by the Nigerian Communication Commission in 2017. Hence, a doctrinal methodology was adopted using primary and secondary sources*

Keywords: *Technology, Network Neutrality, Internet providers, Tim Wu, Draft Code*

Introduction

According to Wu& Yoo (2007), the internet has introduced a lot of possibilities that many years ago was unimaginable. This is as a result of advancement in technology and the free hand that many (Madhvapaty & Goyal, 2014). This is the principle of network neutrality which focuses on treating all internet contents the same way (Wu & Yoo, 2007) Madhvapaty & Goyal (2014) further stated that net neutrality encourages the concept of a free, open and equal internet service for everybody regardless of the type of device, application or platform used and content consumed. For a while now, network neutrality has been basis of debate concerning internet regulation. Supporters of network neutrality believe that all businesses, including internet service providers (ISPs), ought to handle consumers' data and the internet in a same manner (EDRi, 2024). They should not restrict access, slow down access speeds or block content for some users for their own benefits. Special arrangement is also not to be made by ISPs with any company in order for such company to benefit from improved network speeds or access ((Madhvapaty & Goyal, 2014)).

By way of limited regulations, a number of ISPs are beginning to introduce bandwidth limits (data cap) into their plans (EDRi, 2024). There are mainly two opinions regarding network neutrality. Those for it and those against it. Network neutrality has to do with whether the internet should be regulated or not, this paper discusses regulation of the internet and reasons for regulations. This paper thereafter focuses on the concept of net neutrality using Tim Wu's paper as background study. It also discusses its advantages and disadvantages as stated

by pro net neutrality and anti-net neutrality advocates. The paper also considers the positions of some nations regarding net neutrality with focus on the United States of America and Nigeria.

Internet Service Regulation

The Telecommunications Act (1996) was the first formal legislation to establish internet usage regulations. 'Censorship' is one aspect of internet governance that varies by nation. The primary goal of regulation is to keep individuals from viewing offensive or delicate content (Poetker, 2024). She also stated that, it prevents access to copyrighted information, monitors the large number of people who use the internet every day, and controls cybercrimes, among other things. The Government of each nation regulates its internet. For example, the United States has various agencies that regulate their internet- Federal Trade Commission (FTC), Federal Communications Commission (FCC) and National Highway Traffic Security Administration (NHTSA) etc.

Regulation ensures control of what a person say, comments he makes or post he uploads on the internet. When a person violates any of such regulations e.g., when a person makes derogatory comments about another or portrays an act of racism, such a person may be banned. Regulations to safeguard data may be enacted when it is created and uploaded online. Certain content kinds will be restricted and won't be posted online if they don't adhere to the necessary standards (Samples, 2019).

The content will be removed or the concerned person will receive a direct warning from the platform's system after it has accessed the content (Poetker, 2024). There are times also when access to certain websites may be blocked. For example, there are some applications that parents may use to hinder their children/wards from gaining access to certain internet contents. The government may also hinder its citizens from having access to certain information on the internet as well. The government may also regulate information that others outside of its jurisdiction can have access to regarding its country (Zheng, 2013). E.g., Iran, China and North Korea.

Wheeler (year) pointed out that in China, even though the internet is available everywhere, there are still some services that are restricted e.g., Google, Facebook, Twitter, Netflix, Instagram, YouTube, TikTok (even though it was developed by a Chinese company) as they are censored and blocked and individuals would need to install Virtual Private Network (VPN) to access them. He also made it known that whatsApp is also not allowed in China because Facebook the owner of WhatsApp refused to give the Chinese government access to control and censor messages on it. In North Korea, the internet service is not accessible except to few high-level officials, some academic institutions and foreigners and it is with special authorization. The national intranet known as Kwangmyong is what is accessible to the citizens (Bansal, 2021). The Nigerian government was not left out as well. At a time during the recent Endsars protest, the Nigeria Government also banned the use of twitter by its citizens (Akinwotu, 2022).

Reasons for Regulation

There are some contents that are not good for human consumption on the internet. This includes contents that could endanger a person's life and many others that are committed to

illicit activities such as child porn, sex or drug trafficking (Adeoye, 2020, pg. 1-6) etc. Another problem faced when the internet is not regulated is the circulation of false news. False communication, false adverts and misinformation is guided against when there is regulation (Segura-Serano, 2006). This is one of the reasons why some countries censor posts that are uploaded online especially on Facebook. Identity theft is also a major problem that internet users battle with (Adeoye, 2020, pg. 1-6) on the internet.

The Concept of Network Neutrality as propounded by Tim Wu

The concept of network neutrality was introduced in 2002 by a Columbia University law professor Tim Wu in his paper "A Proposal for Network Neutrality" (2002) In that paper and a subsequent paper titled, "Network Neutrality, Broadband Discrimination" (2003), he clarified that the rise in popularity of Wi-Fi in homes had given rise to a challenging new regulatory challenge. He believed that in order for cable and DSL providers to effectively manage their networks and maximise user productivity, they should not be allowed to discriminate against specific internet applications or users in order to further their own financial interests. That would amount to "market distortion" which would become deleterious to public interests, it will restrict innovation and also cause harm to companies prevented from participation.

Wu's stand for network neutrality is that it is a system that promotes innovation and healthy competition amongst application developers and this is one reason why the network should be made neutral to maintain a valuable and quality competition. He is of the belief that network neutrality would yield to a satisfactory "internet communication policy. According to Wu, open access is a remedy to network neutrality as open access is a set standard that would restrict "broadband operators from bundling broadband service with internet access from in-house ISPs".

Other proponents of network neutrality include Jerome Saltzer, Larry Lessig, and Mark Lemley, who have convincingly demonstrated a link between maintaining network neutrality and controlling open access. In their argument, cable operators if allowed to bundle ISPs with cable services would lead to the possibility of bringing down network neutrality by shutting out competition amongst internet application developers (Wu, 2002). He however state that critics such as Phil Weiser and Jim Speta do not support the argument. Wu (2003) clarified, though, that the idea of network neutrality is more complicated than some had thought. According to him, network neutrality is highly selective and contingent upon the selection of subjects one wishes to be impartial on. In contrast to open access, which is a structural solution, the primary goal of his research was to find a method of addressing the idea of network neutrality via the notion of broadband bias.

For instance, according to Finley (2017) there was a period in the United States of America when AT&T forbade customers from utilising Wi-Fi routers and Comcast, an ISP, prohibited home internet users from accessing virtual private networks (VPNs). Wu became concerned about this and proposed anti-discrimination laws to control internet services because he believed that broadband providers might stifle innovation in the long term by impeding the development of new technologies (Finley, 2017). He is not saying that internet service should not be regulated. Rather, regulation in this regard means giving access to free flow of contents passing through their cables and cell towers. ISPs won't be able to restrict, thwart, or

deny access to particular websites or services thanks to network neutrality. They won't have the ability to designate a "fast lane" whereby content preferred by the ISP loads more quickly than other content. It has paved way of accessibility for new websites and internet applications (Lee, 2015) and also allows an individual to be in charge of what he sees and does online. i.e., your internet provider does not control, cannot regulate what you can access on the internet.

By provision of law, in applicable countries internet service providers are to treat all the internet traffics and contents that they have on their network equally. The internet provider is not to block nor discriminate between the internet traffic on its network except for security, legal or emergency reasons (Wu, 2003). There are no strong network neutrality protections in place, then it becomes difficult to prevent ISPs from blocking or throttling lawful internet traffic or setting up contractual arrangements which makes them prioritize some traffic above others (Net Neutrality, 2011). For example in America, lack of net neutrality gives entities who can afford to pay more certain control over what information every American can access which in a way put other traffics in 'slow lanes.'(Shapero, 2024)

Nevertheless, Tim Wu urged librarians to maintain the fight to bring back net neutrality, which was put to a stop by the F.C.C. in December of 2017 under the Trump's administration. In his word, he stated that 'If we do one thing over the next few years,' he said, 'it must be to restore net neutrality. It must be to restore our informational freedoms' (Albanese, 2018). He went further to state it is the desire of cable companies and other large companies to have control over information on the internet, 'to prioritize and discriminate against other contents especially content that threatens their models' To him, net neutrality had been in existence before the Trump's administration and before its adoption by FCC under the Obama administration. The internet at the time was popular, non-partisan and flourishing. He further stated that during that period, blogs was birthed, people were able to share their video on YouTube, Wikipedia came into existence, and the social media platform grew. Even though some of these apps were not perfect at the time, it was the beautiful handiwork of some individuals. Skype offered free phone calls and Netflix became a challenge and threat to television stations and cinemas. In his criticism of Trump repealing network neutrality, he stated that just like Russia and China who also do not respect network neutrality, they are oppressive regimes with purpose of preventing free flow of information and for that they stand against net neutrality.

Net neutrality is a controversial concept that has had its highs and lows. The regulation of ISPs bets on what the ISPs deal with. If it has to do with Information services, the Federal Trade Commission (FTC) will regulate by virtue of Title I of the Communications Act (1934). If it has to do with utility, the Federal Communications Commission (FCC) will regulate by the authority of Title II of the Communications Act (1934). Network neutrality advocates many of which include the public, human rights and non-governmental organizations, advocates of consumer rights, a number of software and technology developers and other well established internet companies are of the position that the internet should be free, accessible and unbiased as this is important for a free flow of ideas and knowledge, ethical business activities, healthy competition and growing innovation (Madhvapaty & Goyal, 2014) That being said, internet service providers have a business strategy that enables them to charge a higher price for applications that have prime positioning and faster performance. As a result, they can legitimately establish internet "fast lanes" that provide VIP treatment to certain businesses so

they can advertise their services to the advantage of their clients, earning the ISPs more revenue (Jitsuzumi, 2010). ISPs also engage in zero-rating which is a practice that enables them provide internet access without monetary cost. This practice has been criticized as a practice that hinder free access and makes room for contents to be censored which contradicts network neutrality (Jitsuzumi, 2010). While advocates are of the opinion that it allows consumers the opportunity to access more data and online services i.e., access to more traffic.

The United State and Network Neutrality

Pre-Network Neutrality Era

According to Wu (2003), net neutrality in the United States has been an ongoing battle for a while. Way before the term network neutrality was introduced, the Federal Communications Commission (FCC) has made efforts to promote open networks. To stop them from undermining competition in the rapidly expanding computer networking industry, the FCC regulated phone companies in the 1970s and 1980s. The development of dial-up internet service was aided by one of the regulations, which guaranteed customers' ability to use modems on their phone lines (Finley, 2017) the re-enactment of the telecoms statute by Congress in 1996, the FCC under the Bill Clinton Administration required incumbent phone companies to grant access to rivals seeking to offer DSL service—broadband internet access via phone networks. The FCC wanted to encourage a market that was competitive for high-speed internet access (Mccabe, 2016). The Bush administration stopped that strategy in 2005 with an order from the Supreme Court, which prompted proponents of an open internet to begin advocating for network neutrality laws (Finley, 2017).

Post Network Neutrality Era

In a policy statement released in 2005, President Bush's administration through Federal Communications Commission (FCC) took a first pass at anti-discrimination rules for the internet (Hart, 2011). It forbade internet service providers from obstructing access to legitimate content or making it difficult for users to connect their preferred devices to their internet connections. In 2008, the FCC issued an order to Comcast stating that it would no longer slow down connections made using BitTorrent, a peer-to-peer file-sharing programme that has legal purposes in addition to being exploited for digital infringement. Comcast filed a lawsuit against the FCC, claiming that it had overreached itself (Bansal, 2021). A federal court determined that the FCC had not proven that it was authorised to implement the 2005 policy statement. Following multiple tries, the Obama administration's net neutrality order was finally passed in 2015. In order to control internet access, the FCC established network neutrality regulations. It operated under Title II of the Telecommunications Act (1996), regulating the internet as a common carrier, the same classification as telephone service. Internet service providers were not allowed by FCC regulations to prioritise, ban, slow down, or charge customers more to access particular websites (Hanna, 2018). Despite the Republicans in Congress opposing this step because they believed it would result in overly restrictive internet regulations. Broadband internet service is now considered a "telecommunications service," a legal classification that indicates it would be governed similarly to public utilities, according to the 2015 network neutrality guidelines that the FCC approved. While network neutrality is not explicitly protected, this only offers a new, more

robust legal basis for regulations governing it. The FCC also did not enforce certain public-utility regulations, such as price regulations (Hanna, 2018). Additionally, the FCC created strict guidelines for network neutrality. These regulations made it illegal for service providers to obstruct applications or content that is legitimately available online or to favour some content over others. Both wireless internet access via smartphones and residential Wi-Fi services were covered by these.

In retrospect, it appears that the FCC's enacted regulations go beyond the basic guidelines governing network neutrality. Network neutrality remains unlawful notwithstanding reclassification, which also creates additional legal obligations (Hanna, 2018). Requiring Wi-Fi providers to act in a fair and reasonable manner is among the most significant. For service providers, it would be unclear what constitutes just and reasonable in this context since it would have to be decided case-by-case. Netflix, for instance, had to sever private agreements with ISPs in 2014. To make sure Netflix videos run without hiccups on Comcast and Verizon networks, it paid them a small sum of money. Netflix made these agreements because its users were having trouble with poor speeds and it would be losing out to competitors if it didn't speed up its content. Customers of Netflix saw an over 70% increase in their average connection speed following the agreement (Ramachandran, 2014).

In 2017, network neutrality was reversed by President Trump’s administration with the FCC officially implementing the removal in 2018 (Kenton, 2023). In the same 2018, California passed a network neutrality law and was immediately sued by the Trump Administration Justice Department. However, in 2021, the Biden administration Justice Department withdrew the lawsuit against California, and now support has been shown by the FCC Acting Chairperson Jessica Rosenworcel in reinstating network neutrality laws. As of March 2021, the network neutrality laws have been adopted by “seven states (California, Colorado, Maine, New Jersey, Oregon, Vermont, and Washington), and several other states such as Connecticut, Kentucky, Missouri, New York, and South Carolina have introduced some form of net neutrality legislation during their 2021 legislative session. The FCC's new rules would change the positions of the service providers as common-carrier and also restricts any form of blocking or throttling of content. In place of those restrictions, the new rules will require that ISPs disclose information about their network-management practices (Ohlhausen, Vol. 67, Pg. 205-237). The responsibility to protect consumers from net neutrality violations rests on the Federal Trade Commission (FTC) which is an enforcement agency. Complete blocking of a competitor may become an antitrust violation, but creating fast lanes for companies that pay extra for special treatment might not be (Zheng, 2013). A company who feels a broadband provider is behaving unreasonably in the interconnection market will lodge its complaints before the FCC, which will intervene if the company's actions are not ‘just and reasonable’.

Some Net Neutrality Cases

Some ISPs such as Cox and Comcast, banned some customers from using virtual private networks (VPNs) and asked users to upgrade to professional or business accounts if they wanted access. The practice was not for long but it promoted net neutrality (Gadsden, 2022).

The FCC in 2005 fined Madison River, an ISP in North Carolina, ordering it to stop blocking phone calls over the internet (McCullagh, 2005).
In 2008, the FCC ordered Comcast to stop slowing down BitTorrent connections on its network.

Comcast denied doing so but said it has the right to set connection speeds as it sees fit. A federal court later sided with Comcast, saying the FCC had not proved it could legally enforce its policy (Gross, 2010).

From 2007–2009, Apple at a time on the request of AT&T blocked iPhone users from making Skype calls but for pressure from the FCC, they had to stop it. The Google Voice app also had a similar encounter with AT&T when it came on the scene in 2009 (Hansell, 2009).
In 2010, Windstream Communications, a DSL provider for over 1 million customers back then, hijacked the search engine by using the Google toolbar within Firefox. Users who thought they were on a search engine of their choice got redirected to Windstream's search engine and results (Karr, 2021). Other cases include MetroPCS in 2011 made public its plan to hinder users from streaming videos over 4G network from other sources except YouTube. Also, AT&T, Sprint and Verizon blocked Google Wallet, a mobile-payment system that competed with a similar service called Isis, which all three companies had a stake in developing (Feiner, 2021). In 2012, the FCC discovered that Verizon Wireless violated net neutrality by blocking people from using tethering applications on their phones. Between the year 2013 and early 2014, users experienced slower speeds they connect to some websites and applications such as Netflix. Others were unable to get access to video-conference sites and voice calls over the internet became almost impossible. The main reason was because their ISPs failed to provide sufficient capacity for traffic to make it to their networks (Marsden). The "intentional policies by some of the nation's largest communications companies, which led to significant, months-long degradation of a consumer product for millions of people" was discovered by an Open Technology Institute who investigated the matter (Karr, 2021). It was an intentional act by ISPs, and other major players to limit the capacity at interconnection points, thereby throttling the delivery of internet service to various American businesses and residential customers across the country.

Arguments against Network Neutrality

The inability to charge for data usage is one of the drawbacks of net neutrality. Requiring networks to handle all traffic equally has drawn criticism since it may deter network owners from coming up with useful innovations (Madhyastha, 2017). For instance, certain apps are more vulnerable to data delivery delays, such as online gaming and voice calls. Companies paying a charge to guarantee that their latency-sensitive applications receive priority might potentially benefit internet users (Peha et al, 2007). However, stringent network neutrality regulations may prevent ISPs from testing this type of service. Regulations may deter investment in network infrastructure, which is another prevalent worry. New fibre optic networks, which can reach speeds of up to 1 gigabit per second—roughly 50 times faster than normal networks today—have been installed in various parts of the nation by corporations like Google and Verizon. The construction of these networks is highly costly. These businesses' investments would be impacted if network neutrality regulations reduced network profitability. Opponents of network neutrality fear that implementing regulations will be excessively

challenging. The internet is dynamic and complicated. They worry that rules might become out of date practically immediately after they are created. Without truly protecting the open and free internet, that might result in lawyers having a lot of work to do (Shepherd, 2022). Another disadvantage for net neutrality is the unregulated aspect of the Internet. Because of freedom of speech and the internet's freedom of expression, almost anything can be posted on it. Many people have argued that this leads to offensive and thoughtless content that is easily accessible to anyone. Another argument for the lack of network neutrality laws is that internet service providers naturally have an interest to keep the internet running smoothly (Isberto, 2018). Ultimately, the increased availability of cutting-edge online services makes internet connection increasingly lucrative. Net neutrality regulations are unnecessary because the internet developed amazingly well in their absence ((Ohlhausen, Vol. 67, Pg. 205-237). Net neutrality reduces investment in internet services resulting in less access and higher costs for consumers.

Arguments in Support of Net Neutrality

Net neutrality is seen as generally successful despite the disparities in its evolution. Those who embrace it believe the idea is a cornerstone of a number of ideals, such as:

Freedom and access to information: Idea sharing and free speech are encouraged by net neutrality. Internet service providers won't be able to control or forbid what their users can view, access, or read online thanks to regulations protecting net neutrality. By outlawing content restriction by internet service providers, it promotes free speech on the internet. If rules protecting the free and open internet are not established, internet service providers (ISPs) such as Comcast would essentially control what content consumers could access, when they could access it, and how much more they would have to pay to access it. Information will no longer flow equally if the internet is not allowed to stay open and free. Similar to how cable channels are managed, repackaged, and premium bundles are set (Isberto, 2018).

Business freedom and consumer choice: ISPs can extort extra money from companies by threatening to limit access to particular websites and content. In the competitive customer service arena, those who cannot afford preferred service agreements are at a disadvantage. By preventing big, wealthy businesses from unfairly benefiting from paying ISPs extra for unfettered consumer access to their goods or services, net neutrality aims to level the playing field. By forbidding ISPs from charging higher rates, slowing down, or being in favour of certain internet content over others, net neutrality safeguards customers. Regarding customer choice, net neutrality is important. Customers as well as several small and large enterprises will be impacted if ISPs have the ability to determine which websites are viewed and at what times. Customers won't have an option other than to rely on their ISPs if the internet isn't free and open.

Greater innovation: Net neutrality would be undermined, and smaller businesses would find it more difficult to survive. New businesses and innovations may never be allowed to expand if ISPs choose their favourites. Net neutrality provides growth and expansion chances for new businesses. Many bloggers have also been able to share their content and so have large audiences, thanks to content marketing, which has helped numerous businesses fulfil the needs of their clients by customising their content to match specific needs. Allowing ISPs and big telecoms to have their way will make this impossible (Shepherd, 2022).

Prevention of erratic rise in charges. By ensuring network neutrality, ISPs will not be able to make erratic charges on certain services or higher speeds. With net neutrality laws, contents will be treated equally preventing discrimination and throttle against higher fees in order to grant "fast lanes". It will also prevent ISPs from charging consumers based on the services they use the most just because they know consumers will not want to lose the services (Samples, 2019).

Net Neutrality in Nigeria

Until recently when the Nigerian Communications Commission (the Commission) published the draft code for the Establishment of Internet Industry Code of Practice (The Code), there was no particular network neutrality law in existence. The Code does not only encourage and promote open internet but also seeks to address topical internet governance issues such as net neutrality and (discriminatory) traffic management practices by internet access service providers (IASPs) (Akapo, 2018).

The draft is not limited to internet access service providers but extends to the provision of internet access services within Nigeria. It also includes provisions for consumer rights with reference to a free and open internet. It guarantees the ability to use and share information and material freely, as well as to use and supply apps and services and the appropriate terminal equipment of their choosing (Draft Code, Para 2). It prohibits the blocking of legal contents, applications or services. An internet service provider is expected to be transparent about its practices and services available to end users (Draft Code, Para 3).

The Draft Code

The Nigeria Communication Commission (NCC) published the Draft Code in 2017, which includes the following clauses.

Application of the Code

Internet access services and IASPs in Nigeria will be covered by the Code. According to Section 1.4, an IASP is

> *Any entity licensed by the Nigerian Communications Commission, engaged in the provision of an Internet Access Service, irrespective of the network technology or terminal equipment used, or the license held,*
>
> While Internet Access Services is defined as
>
> *A publicly available electronic communications service, irrespective of the network technology or terminal equipment used, that provides access to data communications to or from Network Termination Points with IP addresses that are assigned through delegation from the Internet Assigned Numbers Authority*

Right of Consumers to Open Internet Access is provided for in Section 2 (Draft Code) and it lays out ways by which the right of the consumer is protected and it grants access to lawful content, applications or services without restriction from an IASP. IASPs are also to be transparent in their obligations to consumers.

Section 3 (Draft Code) laid down the standards for open internet access. The standards include:

Transparency

Section 3.1 (Draft Code) requires IASPs to be transparent about the features, functionality, and financial terms of their internet access services so that users can make educated decisions about how best to use them. This clause provides for disclosure to end users/consumers as well. In all service agreements with the IASP and on the IASP website, this disclosure ought to be made obvious. The minimal information that an IASP must reveal when performing any network management procedure is also specified by it.

No discrimination

According to Section 3.2 (Draft Code), the IASPs are required to handle all traffic identically, without hindrance, discrimination, or interference, regardless of the sender or recipient, content, application, or service, or terminal hardware involved. Equality is crucial regardless of where anything comes from or ends up. A consumer's right to unrestricted internet access, as stipulated in Draft Code Sections 2(a) and (c), would be violated by an IASP that practices discrimination.

No blocking

Except for the purpose of reasonable network management, Section 3.3 (Draft Code) forbids IASPs from blocking online content that is lawful. Network techniques intended to improve or safeguard end users' quality of experience while adhering to net-neutrality principles and standards are referred to as reasonable network management in section 1.4 (Draft Code). This shows that illegal information will be restricted on the internet, including pornographic articles and content that violates copyright or trademarks.

No throttling

With the exception of appropriate network management, Section 3.4 (Draft Code) forbids IASPs from deteriorating or obstructing legitimate internet traffic. Network methods where data upload and download rates for particular services are internationally controlled are referred to as throttling in section 1.4 (Draft Code).

No preferential data prioritization

Preferential data prioritisation is prohibited by Section 3.5 (Draft Code) for IASPs. Section 1.4 of the Draft Code describes preferable data prioritisation as "*the practice of granting preferential treatment to selected network data within the same service category based on the data's origin, business agreements between IASPs and other entities, other commercial considerations, or any other consideration that do not qualify as reasonable network management*". This provision prohibits the IASP from accepting monetary consideration from a third-party or any affiliated body to manage its network in a manner that favours its content or services.

Zero-Rating

Zero-rating according to section 1.4 (Draft Code) is *"[w]hen an IASP applies the price of zero to the data traffic associated with a particular application or a class of applications (and the data does not count towards any data cap in place on the internet access service*". In compliance with the Competition Practice Regulations (2007), an IASP may provide zero-rated services under this provision, provided that the services further the goals of the Communications Act in Section 1 (c) and the universal access policy objectives found in the National Information and Communications Technology Policy (2012) and the Nigeria ICT Roadmap (2017–2020). The Commission's approval is required for this to happen.

Acceptable Traffic Management Practices

In Section 3.7 (Draft Code), the conditions under which appropriate network management procedures should be used are outlined. It is highlighted here that the no-blocking and no-throttling guidelines outlined in Draft Code Sections 3.3 and 3.4 are not applicable to appropriate network management. According to whether the foundation for its execution complies with the specifications given in Section 3.7 (Draft Code), this position would be deemed "reasonable." The Draft Code's net-neutrality provisions, however, are in accordance with worldwide standards for net-neutrality regulations that have been enacted in other legal systems, demonstrating the Commission's extensive work. However, because the Draft Code does not yet have legal weight behind it, it is not now relevant. As the Draft Code focuses on ensuring access to an open internet, it is the Commission's duty to guarantee that its requirements are followed after it enters into force. Because international standards must be met and technology is always evolving, the commission should not hesitate to alter the net-neutrality regulations as needed.

Despite the provisions of the draft code, some critics such as Ubochioma has stated that due to certain factors such as competition among ISPs, structural peculiarities, amongst others Nigeria is not set for the use of the Draft code. He stated that the US broadband market where ISPs sell speed differs from that of Nigeria as many Nigeria ISPs make use of the “user-pay model” which is a plan that allows subscribers to pay certain amount for the use of a specific plan (Akapo, 2018). That it is a baseless assertion to say that ISPs will be involved in throttling in Nigeria. This he said is impossible as ISPs in Nigeria make use of the “volumetric pricing system” where subscribers have access to the internet by payment for a fixed and allowed data usage of the ISP (Akapo, 2018). If consumers are discriminated against, there is a risk of losing such consumer to another ISP. There is also large competition in the Nigeria internet service market and no ISP would want to risk losing its end-user to another. Also, the service of an ISP can extend to all geographical areas of Nigeria as long as it has the financial capacity to invest adequate broadband base and this leads to competition amongst ISPs and it also prevents them from blocking, throttling or degrading content (Akapo, 2018).

Conclusions

There is no gainsaying that, the future of net neutrality is in the hands of leaders and politicians who are responsible for creating rules that would benefit the society as a whole**.** There are no specific general ways to regulate the internet, rather, what is mainly available is idea of what the network neutrality rules do for internet users. Regulating the internet and avoiding discrimination fosters fairness and equality. But then, in whatever way the internet will be regulated, it should not lead to exploitation of consumers.

The concept of net neutrality will remain a contemporary issue that needs to be addressed according to each jurisdiction and legal system. The Joe Biden administration is on the verge of fully resuscitating network neutrality in the US (Feiner, 2021). The UK since it is no more a part of the EU has started a new review of the UK network neutrality rules (Lindsay, 2013). China does not give room for network neutrality as the government controls and regulates access to open internet (Zheng, 2013). North Korea only grants access to the internet to very few officials and it has to be with permission. What the citizens have access to is controlled by the government as well. India, has enjoyed the net neutrality rules since 2018 (Bansal, 2021).

It is hopeful that someday, the draft code will become applicable in Nigeria as the draft code is a good development that has placed the Commission on the path of growing development in the international internet and telecommunications industry. In conclusion, the Commission when enacting the Code must ensure a balance of interests in order to bring about a free and accessible internet.

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THE ELECTRONIC CONTRACT - A MODERN VERSION OF THE CLASSIC CONTRACT

R. GH. FLORIAN

Radu Gheorghe Florian
Faculty of Juridical and Administrative Sciences, Agora University of Oradea, Romania
https://orcid.org/0000-0002-2404-9744, E-mail: avraduflorian@gmail.com

Abstract: *The electronic contract is assimilated to the classic contract from the point of view of its validity and the effects produced, being legally qualified as a distance contract, but there is an additional condition regarding the veracity of the existence of this type of contract, namely the electronic signature.*

Keywords: *electronic, contract, parties, agreement.*

Introduction

The institution of contract has been of crucial importance in the history of mankind, because from the very beginning, the need for people to enter into agreements, to formulate covenants, to contract has been the evolutionary impulse that has guided them to the present stage of their development. This evolution has been brought about by the fusion of values, knowledge, skills that people have acquired throughout history and, above all, their desire to exchange with each other all this knowledge, customs, beliefs and, not least, goods.

Unbeknownst to them, when these exchanges of information and goods took place, they were in contact with what today is called trade, and at its core is the contract, which shows that the institution of contract is a concept that transcends any cultural, economic or geographical barriers. The speed and complexity of commercial transactions in market economies have necessitated the establishment or standardisation of rules and procedures governing the conclusion of contracts, which is still an expanding field.

We note therefore that the establishment of contracts guided the path of human development, forming the basis of the social engine of evolution, strengthening and diversifying social relations of exchange, governance and even family. The complete rationale of our analytical approach is based on the view that the main feature of human society today is social dependence on electronic means, especially the Internet, and this dependence manifests itself in interpersonal, informational, cultural and ultimately contractual aspects.

Legal conditions for the conclusion of a civil contract

The issue of electronic contracts and their particular characteristics requires clarification in general law of the basic conditions for their valid conclusion, including when and where they should take place, which are essential elements in achieving the legal effect of a contract.

The establishment of the parties' agreement on the terms of the contract determines the conclusion of the contract, at which point the mutual intentions of the parties involved are embodied in the content of the contract (Stătescu, 2008:19).

The will to contract comprises the two initially distinct sides, offer and acceptance, which by coming together form the contract, coming together in what is called the agreement of will, the quintessence of the contractual agreement (Pop, 2006:25).

However, the positive intention to acquire rights or obligations by contract is not sufficient to prove the validity of the contract, which is why the legislator has laid down certain mandatory conditions for the valid conclusion of any contract, for obvious reasons of public policy. Thus, according to Article 1179 of the Civil Code, the essential conditions are the capacity to contract, the consent of the parties, a specific and lawful object and a lawful and moral cause. This general concept of the capacity to contract takes into account both meanings of capacity to use, which implies the capacity of a person to hold rights and obligations, and capacity to exercise, which is the capacity to conclude civil legal acts.

Therefore, from the point of view of the validity of a contract, it is important that the agreement of will is expressed by a natural or legal person who has the legal capacity to conclude legal acts.

Consent is of particular interest in the case of parties where one or more obligations arise, as opposed to synallagmatic contracts where obligations arise for both contracting parties. It is important to note that it is not enough for a legal person to take the decision to accept the binding nature of a contract, this internal decision must be made explicit externally in order to create legal effects.

Moreover, this contractual expression of will must correspond to the internal will, the two being inextricably linked, and if they differ, a defect of consent may arise.The conclusion of a contract must not be arbitrary and must express the will of the parties to achieve certain objectives agreed in advance, being "that element of the civil legal act which consists in the objective pursued in concluding such an act" (Beleiu, 2007:173). This purpose must be within the limits of the law and must not violate the general moral rules of social coexistence.

On the other hand, the subject-matter is the conduct of the parties established by the contract, representing the nucleus of actions or inactions to which the parties are entitled or to which they are bound, and like the cause, the subject-matter must be lawful, moral and also determined in the sense that its content must be clearly specified and/or quantified.

The time and place of the conclusion of the contract are also of particular importance, because the time of conclusion determines the possibility of revocation, the lapse of the offer, the existence of grounds for nullity or voidability, the determination of the current price on the day of the contract, the calculation of limitation periods, and the place of conclusion of the contract helps to determine the law applicable in the event of conflict of laws in the area and to determine, from a territorial point of view, the jurisdiction of the court.

According to the legal provisions of Article 1186 of the Civil Code, the moment of conclusion of the contract is the moment when the acceptance meets the offer, but this moment is influenced by the location of the offeror and the acceptor, which in the case of electronic contracting can raise a number of problems arising from the spatial and temporal freedom offered by the online environment and have a particular impact on the time and place where contracts are awarded.

Time and place of conclusion of electronic contracts

Law No 365/2002 on electronic commerce addresses for the first time the situation of the conclusion of the contract by electronic means, which only applies the classical theory, namely that of information, given the moment when the acceptance of the offer to contract has reached the knowledge of the offeror. The same law also provides for the situation in which the conclusion of the contract requires immediate performance, for which reason the debtor of the obligation must begin performance, unless the tenderer has requested prior communication of acceptance, in accordance with Article 9(9)(a). 2 of Law No 365/2002.

An essential element in the conclusion of contracts by electronic means is the acknowledgement of receipt of the offer or, where appropriate, of acceptance of the offer, and according to the provisions of Art. 9 para. (4) of the same act, they are deemed to have been received when the parties to whom they are addressed are able to access them.

The technical procedure known as the time stamp is also relevant for determining the moment of conclusion of an electronic contract, in order to show the precise moment of receipt or dispatch of the acceptance of the offer (Bleoanca, 2010:110).

A timestamp is an irreversible, digitally signed confirmation from a timestamping service provider, including the fingerprint of a document or transaction data and an electronic timestamp, using an officially recognised trusted source providing accurate details of the date and time that the transaction was made.

Act 451/2004 defines a time stamp as: 'a collection of data in electronic form, uniquely attached to an electronic document; it certifies that certain data in electronic form was presented at a specified point in time to the time stamp service provider'.

So anyone interested in obtaining a legal means of proving when a document was written or sent electronically can put a timestamp on it through service providers. A certificate is granted by the provider for the timestamp, demonstrating that its information can be presented in an easy-to-understand format that includes the time, the timestamp provider and the sequence numbers in the timestamp provider's register.

As we can see, depending on the moment of the conclusion of the contract, we can also identify the place of its conclusion, which will determine the law applicable to the legal relationship arising from the contract, which we will discuss later in this paper.

According to the common law provisions of Article 1186 of the Civil Code, the place of conclusion of the contract is the place where the acceptance of the offer meets the offer, i.e. the place where the offeror is located, and by exception, the place of conclusion of the contract is the place where the acceptor is located when the contract can be concluded without the acceptor's notification of the offeror, through the latter's performance of a conclusive act or fact, if acceptance in this manner is possible according to the content of the offer, the practices established between the parties, custom or the nature of the business.

Giving effect to the traditional rules by applying the common law provisions expressed above, we can conclude that in the case of contracts concluded by electronic mail, in the case of contracting from a website or when the choice of place of conclusion of the contract has not been determined, the place of conclusion of the contract in these circumstances is the place where the tenderer is located (Tudorache, 2013:70).

In the case of the instantaneous means of communication which are so relevant today, we can no longer speak of the conclusion of a contract at a distance, since this operation is

regarded as having taken place in the presence of the parties, so the place of conclusion will be the place where the offeror is located, but only in exceptional cases will it be the place where the acceptor is located.

Electronic signature

Electronic contracts, as outlined above, are distance contracts concluded by computer, and as far as its effects are concerned, electronic contracts will create the same recognised effects as validly signed traditional contracts.

We can therefore conclude that from the point of view of the legal regime, electronic contracts do not have any new characteristics, but the fundamental differences are revealed precisely by the current legislation.

Starting again from the subject matter of electronic contracts, which is contained in Law No 365 of 7 June 2002 on electronic commerce, we point out that the provisions of this law state in paragraph 1(a) that the law on electronic commerce is not applicable to contracts concluded by electronic means. (3) of Art. 7 that: "Proof of the conclusion of contracts by electronic means and of the obligations arising from these contracts is subject to the provisions of common law on evidence and the provisions of Law No 455/2001 on electronic signature".

The novelty element that actually outlines the difference in the matter of evidence in the case of electronic contracts is given by the existence of the electronic signature, in the sense explained by Law 455/2001, which regulates its legal-technical regime.

In the event of a dispute, at first sight it may appear difficult to prove such a contract due to the absence of paper as a durable medium, but they can be used as evidence in court, in compliance with the general rules on the matter, but also taking into account the provisions of the special law on electronic signatures.

From a legal point of view, the electronic signature is defined in the law which is also the subject matter of this new legal instrument, Law No 455/2001.

In the 2nd section, which is devoted to definitions, in Art. 4 para. (3), electronic signature is defined as a set of "data in electronic form, which are attached to or logically associated with other data in electronic form and which serve as a method of identification".

It is necessary to explain certain terms used in the definition mentioned above, in order to remove the obvious ambiguity of the legislator, namely the notion of "data in electronic form" which are nothing more than representations of information in a conventional form suitable for creating, processing, sending, receiving or storing it by electronic means, and as regards the 'electronic form' of the record, this refers to a collection of data between which there are logical and functional relationships and which represent letters, figures or any other characters with an intelligible meaning intended to be read by means of a computer program or other similar process.

Within the meaning of Law 455/2001 there are two types of electronic signatures, namely: electronic signature and extended electronic signature. The legal effects of the application of the simple electronic signature can be associated with the legal effects of the classic signature applied on paper, but under the condition that it is recognised by the party to whom it is opposed.

On the other hand, an extended electronic signature generated with the help of a secure electronic signature creation device and based on a qualified certificate which is not suspended or revoked at the time, can be assimilated without any problems to the legal conditions and effects of a privately signed document.

The legal provisions of Law No 455/2001 provide for additional conditions which the extended electronic signature must cumulatively fulfil in order to qualify as an extended signature and not a simple one. Thus, it must be uniquely linked to the signatory, ensure the identification of the signatory, be created by means exclusively controlled by the signatory and be linked to the data in electronic form to which it relates in such a way that any subsequent change to it is identifiable. Therefore, by the power of this law, the attachment of an extended electronic signature to an electronic document confers probative force and contractual legitimacy, and in the event of a dispute, the party called upon to prove such an electronic signature must show that it meets all the legal conditions mentioned above.

Contracts which cannot be concluded electronically

Yes, there are exceptions to the rule that any type of contract can be concluded by computer. These exceptions include contracts for which the law requires a solemn form, i.e. those which must be notarised. These contracts usually include legal acts of great importance or with significant legal implications, where notarial authentication is mandatory to ensure their validity and enforceability against third parties.

Contracts requiring notarial authentication include: contracts for the sale and purchase of immovable property - such as land, buildings and flats, mortgage contracts - required to secure loans by establishing a guarantee on immovable property, wills and partition deeds.

These contracts must be concluded in authentic form, which implies the physical presence of the parties before a notary public to certify the identity of the parties, their consent and the content of the act.

This requirement is intended to provide an additional level of legal certainty and protection, preventing fraud and ensuring that the parties have freely understood and consented to the terms of the contract.

In conclusion, although technology allows many contracts to be concluded by electronic means, there are specific categories of legal acts for which the law requires notarial authentication to ensure their validity.

It should be noted, however, that there are developments in notarial practice which allow notarial activities to be carried out by means of the electronic notary, in accordance with the provisions of Law No 589/2004 on the legal regime of electronic notarial activity. This law regulates the way in which certain notarial acts can also be carried out by electronic means, offering a modern and efficient alternative for carrying out these formalities.

Law 589/2004 allows notaries public to use electronic means to authenticate documents, subject to specific requirements and procedures. These requirements include the use of a qualified electronic signature, which has the same legal value as a holographic signature. The electronic notary must also ensure the secure identification of the parties and maintain an electronic register of notarial acts.

Electronic notarial activities may include: authentication of documents by qualified electronic signature thus ensuring the legal validity of documents in electronic format,

electronic transmission and archiving of notarial documents, a procedure which allows easy storage and access to documents and, last but not least, consultation and use of the electronic notarial register ensuring transparency and access to relevant notarial information.

In the field of commerce, especially in the context of international trade, the use of electronic means to conclude contracts is becoming increasingly common. This is due to several factors, such as: speed and efficiency of processes, cost savings and accessibility.

In international trade, sales contracts, letters of credit, transport contracts and other commercial documents are often concluded and managed electronically. Electronic platforms and blockchain technologies are increasingly used to ensure transparency, security and authenticity of transactions.

In conclusion, although there are certain legal acts which still require notarial authentication in the traditional form, technological developments and specific regulations allow notarial activity to be carried out by electronic means. This brings significant benefits, particularly in the commercial field, where speed and efficiency are essential. Law 589/2004 is an important step in this direction, facilitating adaptation to new technological and economic realities (Derșidan, 2006).

Conclusions

The advent of electronic contracts has brought significant changes in civil law doctrine, similar to when the first contracts were concluded by telephone, but with much wider and more complex implications. This development has made it necessary for the legislator to regulate this new form of contract in order to ensure their validity, legal relevance, probative force and security.

The rules on electronic signatures, time stamps, electronic notarial activity and the legal regime for electronic records have helped to establish a regulatory framework for e-commerce. However, there are still significant challenges in practice, such as legislative confusion, regulatory gaps and users' vulnerabilities to online fraud. These issues continue to raise questions about the legal regime for electronic contracts.

Although significant progress has been made in regulating electronic contracts, there are still significant challenges in practice. To address these challenges, it is essential to harmonise regulations internationally, educate users and implement strict cyber security measures. This is the only way to ensure a robust and effective legal regime for electronic contracts in the digital age.

Electronic contracts are a natural development in the digital age, but they pose complex challenges for legislators. Regulations need to keep pace with technological advances to ensure that these contracts are valid, secure and enforceable. Civil law doctrine must continue to evolve, adequately addressing the new legal and technical issues that arise.

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THE PARTICULARITIES OF THE APPLICATION OF SPECIAL KNOWLEDGE IN PSYCHO-CRIMINALISTICS

A. LUNGU

Andrei Lungu
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs, Republic of Moldova
E-mail: andrei.lungu@mai.gov.md

Abstract: *In this article we propose to make an analysis and evaluation of some aspects related to the application of the polygraph to the investigation of crimes. Attention will be paid to the professional skills and competences of the polygraph examiner, as well as the need to know the special procedures that can be applied during the testing. We will establish criteria for classifying the profile of the criminal under psycho-criminological and criminological aspects.The circumstances to be elucidated by applying the polygraph to the investigation of acts of terrorism. We will analyze the psycho-criminological profile of the victim, witnesses and other categories of people to be tested by applying the polygraph. We will focus on the manner and methodology of conducting the polygraph examination and make recommendations for further research in the field of polygraph application.*

Keywords: *polygraph, lie detection, stages of polygraph testing, application of polygraph to criminal investigation.*

Introduction

Forensic science, like other sciences, is constantly developing, improving its subject, object, methods and research tasks. Different methods, procedures and theories are accepted and rejected over time, as a result of the integration of knowledge from different fields of research in forensics.

Forensics as a science is constantly dynamic, progressing through new theses, doctrines, scientific opinions, recommendations, as well as the research of new social phenomena, such as: crime, delinquency, the person of the criminal, etc.

Univ. Prof. Dr. Emilian Stancu, defines forensics as a judicial science, with an autonomous and unitary character, which sums up a set of knowledge about the methods, technical means and tactical procedures, intended for the discovery and investigation of crimes, the identification of the persons involved in their commission and the prevention of antisocial acts " (Stancu, 2010:28).

Literature review

Referring to the forensic investigation, we believe that this is a process that aims to restore the event that took place in the past.

Doctor of law, university professor Mihai Gheorghiță believes that the most important element, determinant, of the organizational and psychological structure of the activity of the criminal investigation officer consists in the accumulation and study of the most diverse

factual elements, circumstances, data on the basis of which he will completely restore the event produced in the past, the correlations of the different people involved in that event, as well as the personality of the subject who committed the crime (Gheorghiță, 2015).

More than that, the knowledge activity carried out by the criminal investigation officer consists in the realization of simpler or more complicated thinking operations, in the elaboration of the problem-solving strategy, in the creative approach to situations that require such knowledge activity . The simpler tasks are carried out according to an algorithm, by following some known research rules. For example, the detection and collection of physical evidence and its procedural confirmation is an example of a simple algorithmic task. And the performance of more complicated tasks requires a creative heuristic search for the solution in various problematic situations, including conflict (Chufarovsky, 1997).

In this vein, we believe that forensic psychology has a special role in complementing forensic science, effectively integrating into forensics, facilitating the accomplishment of tasks aimed at combating the criminal phenomenon, as well as helping to prevent and investigate antisocial activities.

In this context, we want to highlight the fact that forensic psychology enriches forensics from a scientific and applied point of view, coming up with valuable studies and analyzes of human behavior in situations related to criminal activity.

It should be noted that psychology developed as a science about the essence, traits, qualitative and quantitative characteristics of mental processes and phenomena, their influence on the formation, transformation of human behavior.

However, the development process of forensic psychology determined the emergence and development of independent fields of psychology, caused by the study and analysis of psychological reactions to different situations, attitudes that affect the formation of behavior in general and criminal behavior in particular.

Prof. Ioan Buș from the Faculty of Psychology of Babeș-Bolyai University Cluj-Napoca defines the object of study of psychocriminology as: judicial investigation, types of investigators, the qualities of investigators, methods of investigating personality in the judicial field, investigating simulated behavior through the technique polygraph, mass media and criminal behavior, mental disorders (Buș, 2016).

We believe that psychocriminology mainly studies the criminal act, the activity of the criminal, his mode of operation, the forms and modalities of criminal actions/inactions, as well as the psycho -criminological and forensic characteristics of the perpetrator and other participants in the commission of the crime.

We also agree with Professor Ioan Buș's position regarding the object of study of psychocriminology, as being related to profiling and the investigation of simulated behavior through the application of the polygraph.

The purpose of the study. The authors propose to make an analysis of the theoretical-applicative aspects of psychocriminological mechanisms in the application of the polygraph in the investigation of crimes.

Applied methods and materials. The research is carried out by capitalizing on the research method specific to legal theory and doctrine, such as: logical method, comparative analysis method, systemic analysis, description, deduction, historical method. The materials

used to carry out the study are the publications of researchers in the field, analytical materials of practitioners, as well as the relevant legislation. Also, the scientific basis of the research is constituted by various studies contained in collections of conference materials, scientific articles, application comments, etc.

Results obtained and discussion

The development of scientific research, focused on the psychological side, allowed the development of directions related to personality research, behavioral analysis, which in turn contributed to the narrowing of the field of research in forensic psychology and allowed the appearance of studies related to the psychology of the criminal, the psychology of crime, And so on

In this sense, things have evolved and allowed the creation of new scientific approaches and methods adapted to the forensic sciences, aimed at implementing recommendations and provisions in order to investigate crimes and criminals.

Analyzing the aspects that are targeted by psychocriminology, we deduce that they mainly refer to the understanding of criminal behavior, the analysis of intention, the identification of the motivational force of the criminal, the attitude towards the act of the perpetrator.

Criminal psychology performs an analysis of the "inner world" of the criminal, looking for clues that would explain the fraudulent behavior of the person. The causal link between the person's actions and deeds and his/her cognitive process is analyzed.

In this context, the object of study of psychocriminology is not only the mental and cognitive processes of the person, but also their connection with the criminal actions/inactions. A qualitative analysis of criminal behavior will provide us with information about the psyche of the criminal.

The interpretation of criminal behavior is based on some clues, which were obtained as a result of many scientific researches carried out by empirical methods.

Criminal behavior, in essence, is intentional behavior that consists of actions/inactions provided by the Criminal Code. These actions do not happen by chance, but have a deliberate character. Only if a person is aware of the criminal nature of his deed will he be held accountable.

If we were to refer to the scientific research in psychocriminology, we find that they were carried out by:

- Analysis and observation in the natural environment.

In the early stages of any scientific investigation, often the most informative way is to observe the phenomenon as it actually happens in real life. This method is observing how animals and humans behave in their natural environment.

If we want to understand a child's aggression and the causes that gave rise to this phenomenon, we can visit their playground and watch what happens before and after one child hits or pushes another.

- Case Study.

A case study is an in-depth study of a particular person. It differs from observation in that it usually focuses on a single person and does not take place in a natural environment. In

fact, case studies may not involve direct observation of behavior at all, but may rely on interviews with the individual and/or those close to them.

- The survey.

This includes a questionnaire or interview - subjects are asked to describe their behaviour, feelings or thoughts on certain topics. Survey results summarize the opinions, beliefs and behavior of large groups of people.

From our point of view the disadvantage of surveys is that it is difficult to obtain an unbiased sample. However, surveys have a number of significant advantages: they allow researchers to study phenomena that are difficult or impossible to study by other methods.

We believe that a special place belongs to the experiment-research method that allows changes to the experimental variables in order to obtain conclusions regarding the behavior of the person.

An example of this would be Solomon Asch 's experiment and group conformity. This experiment gave rise to several forms of behavioral approaches and interpretations. (Asch, 1987).

As in any scientific and applied branch of knowledge, in psychocriminology there are certain methods of studying the personality of a criminal in the process of prevention, discovery, research, investigation of crimes.

The methods of knowing the personality of a criminal in relation to crimes and the investigation/research process have a certain structure, which forms a system of methods in forensic psychology.

Considering the aspects mentioned above, we will analyze the contribution of psychocriminology to the process and the method of detecting simulated behavior-procedure applied to the investigation of crimes.

Lying is a ubiquitous phenomenon in all spheres and directions of society. If a lie has no serious consequences, it is treated with condescension or even ignored. Things are different when a lie can play a fatal role in a person's life. We refer to the presence of untruth in the investigation of crimes and the consequences that may arise.

The detection of simulated behavior is of particular importance in the process of investigating/researching crimes, a fact that is conditioned by a multitude of legal and psychological aspects.

Referring to the detection of simulated behavior by applying the polygraph, we specify that this instrument does not detect lies, it is only a device that amplifies and records the psycho-physiological reactions of a person, which appear as a result of an emotion.

These emotions are provoked by the questions of the polygraph specialist and which are built into batteries/sets of questions, made according to certain special rules.

In the case of investigating a person's criminal activity, reactions to stimulus questions are most often caused by fear.

Fear of being discovered, accompanied by the person's understanding of a perspective related to constraints, restrictions, isolation, etc. creates strong emotions of fear.

In our opinion, fear is the driving force that creates the psycho-physiological reactions recorded by the polygraph and interpreted by the polygraphist, but we must also take into account other emotions that are present during the testing.

We also find that the analysis and interpretation of psycho-physiological reactions allows us to understand the reasons for committing the crime. Establishing the motivational force in crime investigation is an extremely important element.

The theory of the formation of lies reported, especially in the investigation of crimes, requires a knowledge of the scientific basis of the formation of psycho-physiological reactions.

In the Explanatory Dictionary of С.И.Ожегова , a lie is defined as "a deliberate distortion of the truth" (Ozhegov, 2007).

A lie, according to J. Masip , is a deliberate attempt to hide factual and/or emotional information and/or manipulate it by verbal and/or non-verbal means to create or maintain in another (or others) a belief that the communicator himself considers false (Masip et al., 2004).

O. Fry defines a lie as an intentional successful or unsuccessful attempt, made without warning, to form a belief in another person that the communicator considers incorrect (Fry, 2006).

According to De-Paulo, lying is a very common communicative phenomenon in everyday life, which includes a variety of situations and tactics (de Paulo et al., 1998).

A definition of lying, which we consider to be very explicit, is that of Paul Ekman - an American scientist and researcher considered one of the most important figures in the psychology of the 21st century. He is famous for being the first person to study the innate nature of emotions with a series of cross-cultural investigations.

Paul Ekman's research was based on the idea that some human characteristics, such as emotions or body language, have a biological origin instead of being purely cultural as previously thought. In this way, Ekman believed that they were universal and tried to prove it with his studies.

Paul Ekman defines a lie as an action by which a person misleads another person, doing it intentionally, without a prior warning of his intention (Ekman, 2010).

A thorough analysis of existing criminal files on certain types of crimes, especially those related to various types of violence, as well as those committed for material interest, allows us **to note** the following trend in the discovery and investigation of crimes.

Carrying out actions to collect evidence (hearing/interviewing witnesses, suspects, victims, etc.), as well as special investigative activities are always accompanied by the production of emotions in these people.

In turn, these emotional states are dictated by the behavioral line and the option chosen by the person to be honest.

In this sense, depending on the behavioral model chosen by the person, the first conclusions can be made in order to elaborate the forensic versions, establish the reason for committing the act, the mode of operation-sources of information for the restoration of the criminal event that happened in the past.

In order to do a good crime investigation, it is quite important to take into account the relationship between emotions, lies and behavioral analysis and assessment of people.

Generalizing the above, we find that in order to ensure an investigation of the crime in the best conditions, it is advisable to use technical-criminological means, including the polygraph, from the very beginning of the activities.

The polygraph is an extremely accurate instrument, with an accuracy of up to 98%. The polygraph specialist has at his disposal several methods that can be applied, depending on the tasks drawn.

Situations in which polygraph examinations would be most effective :

- Obtaining information is possible through traditional police methods and means, but this is associated with exaggerated material costs or involves a large period of time, or the involvement of significant forces;
- It is necessary to obtain the information promptly (within 1-2 days), and traditional methods and means cannot ensure the respective performance, that is, such a task can be solved only by conducting an examination, establishing the presence or absence of the requested information in the memory of a people.

There are crimes where time is the most precious factor. In the case of human trafficking, for example, when a child is trafficked today in Chisinau, tomorrow he is already at the airport in Kiev and in another day he is in Tel Aviv on the operating table as an organ donor, we as a police organ we don't have the luxury of spending time on classic police activities.

- Situations when there are no other possibilities to gather information during the investigation of the crime.

Testing with the application of the polygraph allows us to save time, human efforts, as well as material costs for conducting police activities related to investigation and other actions.

The polygraph examination makes it possible to obtain the following information: narrowing down the circle of suspects , establishing the commission of the illegal act, identifying the participants in the illegal act, evaluating the veracity of the information provided, collecting additional information.

In the stages preceding the testing with the application of the polygraph, the polygraph examiner must familiarize himself with the materials of the file. Often just reading the documents in the file is not enough and in this case, we recommend polygraph specialists to initiate a dialogue with the criminal investigation officer investigating the case.

International practice proves the effectiveness of the polygraphist's participation in the on-site investigation. Very often, the important details for a polygraph test are not found in the report prepared during the on-site investigation. This is explained by the fact that the duties and objectives of the criminal investigation officer do not coincide with those of the polygraph examiner.

We believe that the polygraph specialist must have behavioral analysis skills. The primary information obtained must allow the polygraph specialist to reconstruct the actions of committing the crime. The psychological analysis stage of the person's criminal activity begins with the reproduction/reconstruction of the way the crime was committed. This process, as a rule, boils down to the definition of each action of the criminal and is based on the traces found at the scene, the testimonies of the victim, witnesses, etc.

Sometimes, this process is confused with the fact-by-fact reconstruction with which we agree, on the grounds that it is only desired to define the actions that took place in the criminal field through the lens of psychocriminology.

Conclusions

For a good performance of his activity, the polygraph examiner must know very well the details of the commission of the crime. This will allow him to understand the criminal behavior, the way of operation, the reason behind the commission of the crime.

The questions in the test battery should focus on the details present at the scene. Some details may only be known to the offender and the team investigating the case. In this sense, it is important to preserve the secrecy of the investigation. Testing according to the CIT method will only be carried out under the conditions when the details of the crime are known only to the offender.

It is commendable that the polygraph specialists in Romania actively collaborate with the employees of the Behavioral Analysis Service within the General Inspectorate of the Romanian Police - a unique structure in Romania, specialized in drawing up reports to assess criminal personality or criminal behavior. The analysis of the criminal's modus operandi is informative for the polygraph examiner and must be taken into account when compiling the set of questions. This could lead to the identification of the perpetrators on other files as well.

Generalizing the above, we recommend practitioners in the detection of simulated behavior through the application of the polygraph in the Republic of Moldova, to deepen their knowledge in the tactics of conducting on-site research, because their participation in the CFL would contribute positively to the quality and veracity of obtaining information hidden.

In the same vein, we come with recommendations to theorists to show more interest in how to capitalize on memorial traces, considering that during the last few decades, the polygraph technique has managed, thanks to technological progress, to achieve new performances in the field of detection of simulated behavior, a fact demonstrated in practice by polygraphologists from different countries.

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THE INTERSECTION BETWEEN RULE OF LAW AND ARTIFICIAL INTELLIGENCE

D.-M. MINGHIRAȘI

Dragoș-Marius Minghirași
"Carol I" National Defense University, Romania
https://orcid.org/0009-0003-2639-3180, E-mail: minghirasidragosmarius@yahoo.com

Abstract: *Like every innovation in history, Artificial Intelligence also needs to be governed for its disruptive power and impact on people, economy, society, rights and freedoms. Its impact does not only concern innovative areas but permeates all corners of our personal, social, economic and professional lives. Artificial intelligence has become a central component of our daily lives in many ways, so the perspectives are both for the positive results they can bring to humanity and concerns for their disruptive potential. It brings structural changes that are captured by legal norms, but which sometimes go beyond the existing legal framework by transforming it. To this global revolution the law response must provide an equally innovative approach in order to ensure that complex technology does not undermine the rule of law.*

Keywords: *artificial, intelligence,*

Introduction

Artificial intelligence contains and raises profound and unprecedented questions, which affect the fields of legal civilization, and come to prefigure scenarios in which the very essence of what we consider human identity can be called into question. The main concerns that raise are related to the appropriate regulations, the new tools that should be put in place. Jurists of different backgrounds, philosophers, robotic and AI scientists are trying to answer all these questions.

The concept of artificial intelligence has gone from being synonymous with science fiction to becoming a tool used by millions, as experts warn of its risks and amid the emergence of the first attempts to regulate it worldwide.

This year, social media was full of photos and videos that users created using various generative AI tools and screenshots with conversations with AI on all kinds of topics. The trigger for this technology came from the popularity of the ChatGPT chatbot that the OpenAI company launched in November 2022 and which, in a few days, captured the attention of millions of people.

The definition we have for the artificial intelligence is the Alan Turing Institute that defines AI as algorithmic models that perform 'cognitive or percep tual functions in the world that were previously reserved for thinking, judging and reasoning human beings'(turing.ac.uk). Current AI derives its 'intelligence' from Machine Learning – rather than humans inputting rules into a machine, it learns by itself.

In the last two years, we have witnessed a huge amount of activity regarding the policies to be implemented to ensure the full development of artificial intelligence with national strategic documents on the matter.

Artificial intelligence can greatly improve predictive analyses that can allow companies to have greater certainty on the long-term effects of a given market choice. In this perspective, it will be necessary to deal increasingly with regulatory aspects, in the awareness of the numerous and complex problems that arise on a legal level and will increasingly arise. In fact, an adequate legal framework based on fundamental rights must be ensured, including respect and protection of personal data, in the awareness that artificial intelligence and robotics will allow a new approach to the provision of services, an approach that can be defined as "machine-to-machine": in the immediate future, in fact, many services offered will be provided through direct interaction between objects, without the need for human intervention. Issues such as civil liability for conduct arising from algorithms, or consumer protection with respect to commercial practices implemented directly by software without human intervention, will then become crucial to guarantee full and orderly economic development.

1. The introduction of the artificial intelligence concept in the European legal framework

In March 2023, entrepreneurs and researchers in the technology sector demanded in a public letter that A.I. systems to be suspended for six months. Two months later, hundreds of experts warned that A.I. implies a risk of extinction, comparable to that of pandemics or a nuclear war.

However, the first entity to develop the first major regulation for A.I. was the European Union, which in December 2023, after extensive negotiations, agreed on the artificial intelligence law with a regulation that allows or prohibits the use of technology depending on the risk it poses to people and aims to boost European industry against giants such as China and the US

If, until now, the relationship between computer science and law has focused on the way in which the former has been able to help legal practitioners in carrying out their work or, on the new cases that computer science has been able to produce in terms of legally relevant human conduct, it is reasonable to think that in the near future the aforementioned relationship will be enriched by the legal regulation of non-human conduct.

In this regard the doctrine has defined the expression "cybernetics of law" to indicate the hypothesis in which the computer is programmed for the automatic application of the law or for the stipulation of contracts without human intervention. The presence of intelligent machines that enable high-level cognitive processes such as thinking, perceiving, learning, problem solving and decision making, provides humanity with an endless series of new opportunities to integrate human intelligence with non-human intelligence and change the way people interact and work.

The development of new-generation algorithms and increasingly sophisticated automated data processing techniques offers new opportunities but, at the same time, poses complex challenges that affect almost every area of law (Decebal, 2023). Intervention called to promote the development of a technology that is now indispensable for economic growth

and social well-being, on the one hand, and to guarantee the protection of fundamental rights and the principles of freedom and democracy on which the constitutional State is based, on the other. Recent initiatives by international and supranational institutions are moving in this perspective, including in particular the proposal for a European Union regulation on AI.

The European Ethical Charter on the use of Artificial Intelligence in judicial systems and related fields issued by the European Commission for the Efficiency of Justice, organ of the European Commission for Justice through the issuance of the aforementioned charter established the basic principles to be observed in Europe in terms of AI. The ECEJ is a judicial body composed of technicians, representing the 47 countries that are part of it. The five principles of the Ethical Charter are meant to ensure the development and implementation of artificial intelligence tools and services are compatible with fundamental rights:

- Principle of non-discrimination: aims to specifically prevent the development or intensification of discrimination between people or groups of people.

- Principle of quality and security: It concerns the use of technologies that process judicial decisions and data and therefore, in order to process judicial decisions and data, it is recommended to use certified sources and intangible data with models developed multi-disciplinary, in a secure technological environment.

- Principle of transparency, impartiality and fairness: data processing methodologies must be made accessible and understandable, external checks must be authorised.

- Principle of user control: it must avoid a prescriptive approach and ensure that users are informed actors and have control over their choices.

It is worth noting that the CEPEJ not only encourages the use of such tools in national and supranational judicial systems, so as to improve the efficiency and quality of justice, but also seeks to identify general ways to implement this innovative process in a responsible manner, in compliance with the fundamental rights of the person.

The European Union is preparing to introduce the first law in the world on artificial intelligence (AI) in order to regulate its complex use. This initiative is part of the EU digital strategy and aims to create a regulatory framework that promotes the responsible development of AI, while ensuring the protection of citizens and safeguarding their rights. The proposed EU law includes a number of measures to address the different levels of risk associated with AI. AI systems will be analysed and classified according to the degree of danger they pose to users. This will allows specific and proportionate rules to be set in relation to each level of risk.

The European Parliament's priority is to ensure that AI systems used in the EU are safe, transparent, traceable, non-discriminatory and environmentally friendly. Work is underway to define a technology-neutral and uniform definition of AI that can be applied to future artificial intelligence systems. The new law includes different risk categories for AI systems. Systems with unacceptable risk, which pose a threat to people, will be banned. This includes, for example, the use of AI to manipulate dangerous behaviour in vulnerable groups, the social classification of people based on personal characteristics and real-time and remote biometric identification, such as facial recognition. High-risk AI systems, which may have a negative impact on security or fundamental rights, will be subject to stricter requirements. These include systems used in sectors such as toys, aviation, cars, medical devices and others.

In addition, AI systems used for biometric identification, management of critical infrastructure, education and training will be registered in an EU database.

The international organizations such as OECD, UNESCO and WHO have promoted action initiatives for the ethical development of A.I., proposing non-binding governance principles to inspire practice and regulation in the future. At the same time, there is an evolution of voluntary norms (AFNOR, ISO, etc.) aimed at the reliability, auditability and security of technologies, as well as the useful articulation of legal rules.

In the development of AI, the law appears to be a privileged tool, the fundamental responses to risks, challenges and accruals being legal. Classic legal rules must deal with a set of topics related to AI technologies, but new challenges, such as the application of responsibility, and the need to repair the damage of such a complex human act with AI, are almost impossible. In the rationale of the complexity and evolution of AI, the principle of transparency is essential, as are the major principles of lawfulness, fairness and proportionality (Aziz, 2021).

The AI-Act text establishes 3 levels of risks and adopted frameworks:

a) the unacceptable risk of using the A.I. system - prohibited (eg exploitation to cause damage);

b) the high risk requires compliance measures "by design", in particular a strict policy, to constrain data governance, to inform users (e.g. employee management, medical devices)

c) the risk of limiting the simplified measures, including the obligation of transparency towards users (e.g. anti-spam filter).

The Draft Regulation (EU) of 8.12.2023 provides that for organizations using I.A. obligations are express, such as data control, daily retention and suspension of use in case of non-compliance. This regulation is to be applied not only to A.I. technologies, but also to any economic operator of the European market, the applicable financial sanctions rising up to 30 million euros or 6% of the consolidated annual turnover.

All A.I. systems that are an obvious threat to the security, livelihoods and rights of individuals will be outlawed as will the social notations of rulers who use real assistance and encourage dangerous behavior. Also, high risks. A.I. systems identified with high technological risk are used in:

a) critical infrastructures, likely to endanger the life and health of citizens;

b) educational or professional training, which allows determining access to education and the professional course of a person's life;

c) product security components;

d) work, management of workers and access to self-employment;

e) essential public and private services;

f) migrant management, asylum and border control;

g) repressive services likely to interfere with the fundamental rights of individuals;

h) administration of justice and democratic processes.

The need to implement ethics in the use of AI is imperative and constitutes a major challenge for all those involved in trying to control a phenomenon whose consequences and evolution are still unknown to us.

The concern for regulation as a tool of control and protection clearly outlines the emergence of a right of artificial intelligence. The inadequacies of the new artificial

intelligence law concern the slow legal reaction, the lack of clear and common definitions of different types of artificial intelligence technologies, etc.

In the context of the implementation of AI in most sectors of activity, its widespread use including in public institutions combined with the digitization process, we can speak of the emergence of a new concept, the digital state. The development of a human-centric AI is approached from two points of view: the first focuses on risks, self-regulation and self-evaluation of the development of new technologies, the second on the integration of human rights in the whole life cycle of AI.

It is rightly said that technology is the key to all fundamental problems of the 21st century and that artificial intelligence (AI) constitutes, in such a perspective, its new frontier, an inevitable technological revolution, comparable to electricity or the automobile. It is par excellence a disruptive innovation, as it upsets the control and acquisition of knowledge and affects virtually all sectors of human activity.

At the same time, the Convention Council of Europe framework on artificial intelligence, human rights, democracy and the state of law) inaugurates the international legal framework in the field.

In the end, the idea of a global regulation was imposed, by adopting, at March 21, 2024, of the first resolution of the UN General Assembly in the matter, regarding the promotion artificial intelligence systems that are safe, secure and conducive to sustainable development. In just a few months, artificial intelligence has gone from development to reality, asserting itself as the most powerful and fastest technological revolution in history.

Norm, regardless of its nature, must, on one hand, not prevent the assertion of technological innovation, and on the other, avoid as much as possible or minimize in extremis the risks they present for the rights fundamentals and (democratic) foundations of society (Manolescu, 2014). In a system of legal regulation like the European one, such reasons are often provided with the title of exposition of reasons of the legislative approach initiated or in the process of being initiated. Thus, in the adoption of Regulation IA (2024) the European legislator invoked "the risk of seeing that the future norms in the matter of AI to be developed abroad, often by non-democratic actors" (Deteseanu, 2024).

In such a perspective it is up to the politics as by democratic assumption, on the way of regulation to establish the line of balance between the two fundamental aspects, which can sometimes prove contradictory, but in some respects can be overcome. Indeed, as in any field and even more so in situations of rupture such as the one generated by the AI revolution, the compatibility between the imperative of economic growth and the essential demands of the rights of individuals and social becoming in general presuppose negotiated and structured remedies (Marcellin, 2023). This is how it happens that, if at first the regulatory reflection and action were only aimed at a framework of normative suppleness, expressed in soft law instruments, promoting above all an ethics and involving at least the legal, gradually the general orientation moved towards more normativity of legal essence, primarily at the European level, both that of the EU and the Council of Europe.

Indeed, according to its rationale of being (primarily normative) the EU opted for innovation regulation; in turn, like any technological revolution, AI demands a certain regulation. But Europe cannot claim an extended one, through the enticing effect of model and exciting cooperation, when it is excluded from the race of artificial intelligence and

therefore from productivity gains that drive increased growth, profitability, capital and labor remuneration. The two sides of the equation seem inseparable and deserve to be treated as well promoted as such.

Is considered so that only soft law regulation would allow a harmonious regulation of this technology emergent. With regard to the proposed contents, there is a slight mix of genres, in the sense that an important number of commitments in reality resume a series of fundamental rights. Proper to an ethical norm is to be a rule of behavior, free of state sanction, on which the actors impose on themselves, or respect for fundamental rights is not optional, she is not it must in no way depend on the will of those involved. And this without taking into account the fact that those actors are the most powerful of the existing ones, the only ones who impose a norm of behavior. Indisputably, soft law presents certain advantages: it is transnational, its rule is agile, detached from any normative procedure and respected, being accepted by the parties interested. But the privatization of the norm with its corollary disengagement of states is not desirable. While the appeal to fundamental rights can be appreciated as a consolidation through confirmation, parasitism normative entails the risk of degradation of fundamental rights, giving the impression that they would not enjoy imperativeness.

So, in a more general plan, the ethical norm must to be articulated with the legal rule and not to be substituted for it; in other words, it's not about rivalry, but of complementarity. In essence, if fundamental rights undeniably appear as a shared objective, the criticisms regarding the perception of the related requirements and their guarantee, they mainly go towards the approaches of legal regulation.

2. Artificial Intelligence and its Impact on Justice

Artificial intelligence has demonstrated enormous potential in the justice sector. AI algorithms can analyse large amounts of legal data, including legislative texts, judicial precedents and court decisions, in order to provide support for judicial decisions. One of the main AI tools used in predictive justice is machine learning, which allows systems to learn from data and improve their performance over time. For example, a predictive justice system can be trained on a large set of past judicial decisions, allowing it to make predictions about future outcomes.

Two important topics that attract increasing interest in the legal field is jurimetrics and predictive justice. Jurimetrics is the application of computer science to law, while predictive justice uses complex algorithms to make judicial decisions or predict the outcomes of decisions. These digital innovations offer advantages such as greater legal certainty and uniformity in legal interpretations, but they also raise concerns about the risks and transparency of decisions based on algorithms. Currently, predictive justice is more widespread in the United States, while in Europe and Italy it is still in the experimental phase. It can be defined as a method that allows the possibility of entrusting judicial decisions to an algorithm, instead of a human judge.

For some authors, computer science applied to law would have the advantage of ensuring a certain, clear, knowable, univocal and uniformly interpreted and applied law by the various judicial offices. It is important to evaluate the benefits and disadvantages that this

digital innovation will bring to the judicial system. Some authors already highlight the risks. However, at the state of the art it is not easy to resolve these doubts.

Intended as the possibility that in a trial the judicial decision is entrusted to an algorithm to guarantee a certain, clear, knowable, univocal law, as well as interpreted and applied in a homogeneous way in the different judicial offices. Well, predictive justice represents an emerging field that combines jurimetrics and artificial intelligence to improve the efficiency and accuracy of judicial decisions.

Jurimetrics closely related to predictive justice is a discipline that deals with the measurement and analysis of legal phenomena through quantitative methods. In the field of predictive justice, jurimetrics is used to examine past judicial decisions and identify patterns or trends that can provide indications on the probability of outcome in similar future cases. Jurimetric analysis involves several factors, including the type of case, the characteristics of the parties involved, previous decisions and other relevant elements. It uses statistical models and machine learning algorithms. Jurimetrics seeks to predict the outcomes of legal cases based on this information.

The adoption of predictive justice, supported by jurimetrics and artificial intelligence, has several potential benefits. First, it can help reduce the discretion of judicial decisions, ensuring greater consistency in the application of the law. Second, it can help identify high-risk or high-priority cases, allowing courts to allocate resources more efficiently. However, the use of predictive justice also raises some challenges. For example, the accuracy of predictive models depends on the quality of the data used for training. If the data contains bias or discrimination, these could be amplified by machine learning algorithms, leading to unfair or wrong decisions. It is therefore essential to ensure the quality, impartiality and transparency of the data used in predictive justice systems.

Predictive justice, combining jurimetrics and artificial intelligence, promises to revolutionize the judicial system, improving the efficiency and fairness of decisions. However, it is necessary to address the challenges related to data quality, impartiality of algorithms and privacy protection to ensure that the use of these technologies is fair and respectful of fundamental rights. The balance between automation and the role of humanity in justice remains a central theme in the debate on the evolution of predictive justice and requires continuous reflection and regulation.

Conclusions

The use of AI in the justice sector raises important ethical and legal issues, such as transparency, accountability, data privacy and fairness in the use of decision-making algorithms. Therefore, a thoughtful approach and ongoing dialogue are needed to ensure that AI is used ethically in the justice context.

In the criminal sector, it can be useful for the identification of fraud and suspicious behavior, helping in the fight against financial crime and organized crime, provided that it does not conflict with art. 6 ECHR and other rules that prohibit automated decisions. However, the implementation of Cyber justice also raises concerns about the transparency of decisions taken by algorithms, the responsibility of robots' actions, the protection of personal data and the risk of algorithmic discrimination.

It is therefore essential to ensure that the use of robots and artificial intelligence in the justice system is fair, transparent and in compliance with fundamental legal principles. At the moment, robotic justice is still in an early stage of development and testing, and its impacts and limitations need to be carefully assessed. It is necessary to balance the adoption of new technologies with the protection of fundamental rights and the maintenance of trust in the justice system.

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HOWLING AT THE BLIND LADY, COMMUNICATION BARRIERS BETWEEN MINORS, PARENTS AND THE LAW

Francesco Miraglia[1], Albert-Camil Rath-Bosca[2]
[1] National Institute of Family Pedagogy in Rome, Italy & Madrid Forum, Spain
E-mail: info@avvocatofrancescomiraglia.it
[2] University of Oradea, Romania
https://orcid.org/0009-0004-6815-9509, E-mail: camilend@yahoo.com

Abstract: *In a world of eternal accelerations old issues such as miscommunication between the representatives of the law or of the state in general and the minor or the familial unit are bound to aggravate. In this article we will present the general situation of the right of the child to be listened as it is imposed by international law and adapted for our respective legislations. After this we will offer a possible explanation as to why these laws seem to fail despite sincere efforts towards a betterment of the situation.*

Keywords: *Italy, Romania, family law, criminal law, Jacques Lacan, Alenka Zupancic, psychoanalysis, psychology, repression.*

Introduction

In 2012 Amanda Todd, a 15-year-old Canadian girl, took her own life after suffering a prolonged period of cyberbullying (https://www.bbc.com/news/world-europe-67787843). Before the event, Amanda had told her story and tried to ask for help even through a YouTube video. All prior attempts to find any solace or help have failed.

Despite attempts to report her abuse, authorities responded in an insufficient manner and failed to protect her. The case highlighted the serious shortcomings in the support system for young victims of bullying and the inability of educational institutions. Societal structures that are essential to the healthy development of a child or adolescent have failed to intervene on behalf of minors in situations of psychic harm and the abuse that creates such damage.

This unfortunately proves itself not to be a single instance of such occurrences or a sinister exception to the normal order of things. Suicide amongst minors, particularly teenagers, has become a reality of the European and American continents. When we look at both Italy and Romania, we observe similar situations.

In more recent cases, a Romanian youth committed suicide due to low grades in school (https://stirileprotv.ro/socant/un-elev-de-clasa-a-viii-a-din-navodari-s-a-sinucis-din-cauza-notelor-mici-de-la-scoala.html) and a 17 year old Italian girl has committed suicide after being the victim of a gang rape 2 years prior (https://www.tgcom24.mediaset.it/cronaca/agrigento-17enne-si-uccise-dopo-violenza-di-gruppo_61162841-202302k.shtml). Why is this happening? Why are our youth committing to such violent acts against the self and others?

What does it really mean to "listen" to a minor? How important is it to listen to minors in judicial proceedings? Article 12 of the United Nations Convention on the Rights of the Child

states that every child has the right to express their opinions; however, often, this is precisely what is missing whenever authorities have to engage with set minors.

After the establishment of the aforementioned article, some research was conducted in the European context which highlighted how minors do not feel involved in decisions that concern them, as a matter of fact, as many as 2/3 of children in Europe are not satisfied with the way in which they are heard in their living environment and how it interacts with them (The Europe Kids Want, 2019).

The resulting recommendations, therefore, call on decision-makers to greater involvement of children and young people in political dialogues at European, national and local levels, as well as invite the European Union to intervene to establish mechanisms for the participation of minors in decision-making processes on issues that concern them. Minors constitute a key and essential element in the creation of inclusive civil societies.

The research encapsulated by the study “Our Europe, our rights, our future”, which in 2021 saw the participation of thousands of minors between the ages of 11 and 17, underlines that, regardless of background, the vast majority of those interviewed would like to participate more in the choices they concern them if given the opportunity, with greater interest found in the female gender. Even if children feel listened to in the family environment, the same cannot be said in other spheres of social life such as school. But above all the minor feels failed mostly by social and health services, expressing that professionals often prefer to talk to parents rather than with them.

A considerable percentage of participants even reports that, for the purposes of greater protection of their rights, minors should not interface with additional professional figures, with particular reference to social workers, as they are not considered helpful figures who value and listen to opinions and wishes of minors.

In light of what emerged, the European Commission, in order to encourage and strengthen mechanisms for young people's participation in decisions that concern them, in 2022 established the "European Union Children's participation platform", a space dedicated to giving voice to the opinions of young people, who are called to share their priorities, as well as to suggest effective and participatory strategies for the real exercise and respect of their rights.

The progressive evolution of national and international regulations regarding the necessity of listening to minors highlights a growing recognition of the importance of children and adolescents having a voice in proceedings that concern them. Even if there are sluggish improvements towards a better tomorrow, something still feels hopeless and rings hollow. We should never scuff at the betterment of any societal ill, but, we must stay vigilant and aware of what is being done and why.

I. The law

As previously stated, the United Nations Convention on the Rights of the Child imposes upon all signatory countries the right of the child. This notion was conceived in 1989, as such, it was there before the youth of today became more prone to heinous actions against the self. The language used by the convention itself poses a couple of notable problems.

Firstly, point one of the article specifies that the age and maturity of the child are to be considered essential factors in how important the statements given by the child will be in a

court proceeding. The general issue here is the loose nature of what age and maturity may be considered. Culture plays a major role in the perceived maturity of the child.

A society that has more traditional values may instil that a child should be responsible for themselves at an earlier age but put less emphasis on how these children feel, while a more progressive society may allow more leeway in their development and be more receptive to the issues expressed by kids. The room for error in the development of a child is of the essence in many instances where a child is directly or marginally involved in any court proceedings.

Secondly, the possibility of the child being represented creates conundrum. How is the child able to speak truthfully if they are represented and not the speaker of its own ills? This little detail shall be important down to road of our research.

The minor must be listened, generally, in two instances. Be it in family proceedings or in a criminal court from the standpoint of the witness, the victim, or the perpetrator. Of course, such roles played by the minor in the court of law involve different conjunctures and offer different results in the judge's decision, and yet, there is sufficient similarity for it to be analysed as a unit.

We are in no way claiming that family and criminal law proceedings are identical, we are stating that the child being the subject of the research their right to speak should be analysed in both of these branches. It is not about creating difference, it's about a more general issue of the child being voiceless in the face of bureaucracy

In the Romanian legislation the Civil Procedure Code grants the child that has reached 10 years of age (Romanian Civil Code, art.264) to speak by themselves without any representative in the case of a family hearing, however, it is for the judge to decide if a parent, a tutor, or any other person should be present (Romanian Civil Procedure Code, art.266). Another caveat is where the child is heard. The children must be heard out in a council room as they may be influenced by the present of other people (https://lege5.ro/gratuit/gyztaojtgy/art-226-ascultarea-minorilor-codul-de-procedura-civila?dp=g43temjuga4dg).

In the realm of Romanian criminal law, we have observed some modification that are towards the better listening of the child. In 2023 the Criminal Procedure Code has made the presence of a psychologist mandatory when listening to a minor.

Art. 111, point d), number (8) and (8^1) ensures that if the victim of any crime is a minor they have to be interviewed by the authorities only in the presence of a psychologist. Further than that, number (8^3) of the same article and point imposes another form of protection, mainly, if one of the parties standing accused in a case where the minor under their care or education is the victim, there must be a representative from the tutelary authority or a relative that's "sane of mind".

In the case of the minor that is a witness to a crime, the same rules apply according to art.124. at point 4 of the aforementioned article states expressly that none of the actions cause any psychic damage to the child.

When the minor is the perpetrator of a crime, they are offered special jailing conditions as to not affect their physical, mental or moral development according to art.244 of the Criminal Procedure Code. Art.244^1 ensures again that there is always an adult with the child while they are being interrogated by the authorities.

In Italy, there is a storied course of the voice of the child being considered valuable. Already in the 1980s, Italian law had begun to consider the possibility of hearing minor

children during separation and divorce proceedings, but only if the President of the Court deemed it necessary.

In the international legal landscape, it was the 1989 New York Convention on the Rights of the Child that established the principle of the child's right to freely express his opinion on matters that concern him in judicial proceedings. Subsequently, the ratification of the Strasbourg Convention on the Exercise of the Rights of the Child in 2003 made it mandatory for children to be heard in judicial proceedings on matters relating to their custody.

The introduction of article 155 of the Italian civil code, called "Powers of the judge and listening to minors", further underlined the importance of listening to minors in the legal field. The article, in fact, establishes the judge's obligation to order the hearing of the minor child who has reached the age of twelve, as well as of a younger child if capable of discernment.

The art. 336 bis of the Civil Code states that hearing the minor is a fundamental right, but does not impose a categorical obligation on judges. In other words, the law provides for a discretionary assessment by the judge, who must consider some factors such as the age of the minor, his capacity for discernment and the specific circumstances of the case. Similarly, the "manifest superfluity" clause allows the omission of hearing in situations in which the information is already ascertained or uncontested, or in cases where hearing the minor does not add useful elements to the sentence.

However, this provision has raised concerns about the child's right to be heard, even in circumstances involving mutual separation or joint divorce proceedings.

The filiation reform has strengthened the right of minors to be heard, introducing principles of flexibility and discretion which allow the judge to evaluate the need to hear the minor on a case-by-case basis. This approach aims to balance the child's right to be heard with the need to protect their wellbeing, however, the application of such ideas has difficulties in implementation still.

II. Around the law

The legal texts in both countries are relatively clear. The voice of the child is an important factor in all the court proceedings that have to do with its wellbeing, and yet, the truth as espoused by a judge or an institution is finicky and unreliable to the same extent the law is not functional.

If both of our countries and many others have provisions to give the child a voice and the right to express what they wish why are they still feeling and acting as if their opinions are not taken into consideration when they speak of their ills?

For a possible answer we must look beyond the law. We wish to present a hypothesis based in psychoanalysis and ethics.

3.1. Repression of power:

When we simply look at the definition of repression we find out that it is *"the process and effect of keeping particular thoughts and wishes out of your conscious mind in order to defend or protect it"* (https://dictionary.cambridge.org/dictionary/english/repression). This definition, as functional as it is, is somewhat dissatisfying, hence, we wish to use the ideas elaborated by Jacques Lacan. Before we start understanding his notion of repression we must

offer a disclaimer. Lacanian psychoanalysis is complex and intricate, as such, we will dwell only on the necessary, we shall link a video explainer for a better understanding (https://www.youtube.com/watch?v=67d0aGc9K_I&ab_channel=LacanOnline).

One of the first aspects worthy of discussion is the general disgust Lacan felt towards psychology as a field of studies, calling psychologists people immersed in a judicial astronomy (Lacan, p.676) due to their failure to fully comprehend the signification chains that build the conscious and unconscious. This is the essential notion of Lacan, everything is signs and connections. The human is born and bound to a symbolic order of meanings built before they were born. We are chained by signifiers and unable to escape representation.

This chaining as it was of the subject results in a paradoxical state of being and non-being at the same time. The subject in itself is bared, it's not a clear person or notion, it is a formation of human subjectivity by which we exist and function. The "I" is strict nonsense when taken as an isolated signifier of the self. In order to offer "I" any meaning, we must explain actions and relation to other objects or selves (Lacan, 679).

-I am standing.

-I am strutting.

-Who shouted? I did.

The self in the absence of context is nothing, as such the coherence of the subject becomes secondary to the action and the thoughts that resulted in set action. Even the differentiation of thinking and being is important here. Being, or doing, differs from thinking by temporal and procedural vicissitudes. When we act, we exist in a conscient state where we interact with the material world or other humans. When we think, we are engaging in an unconscious manner by which we "find excuses" for being retroactively.

This is a basic formulation derived from Lacan's critique of the Cartesian "cogito". The famous saying goes "*I think, therefore, I am*". Realistically, the opposite is true, only by being one may engage in thinking for a retroactive signification of events. This is the split of the subject. We never exist and think at the same time. We are split between living and thinking as symbiotic actions that define the "I" (Lacan, pp.731-735)

These two notions were necessary before we can speak about repression as Lacan presents it. We will also take some creative freedom in the interpretation of both forms of denial, of the demand and the desire.

The need is contaminated by language, by thought and expression. A need gives birth to a demand in order to fulfil what we require to quench a biological necessity. The easiest example would be the infant crying. An infant is crying due to presumed hunger, the symbolic mother refuses set demand as they fed the child not too long ago. Here we see the primal repression in Freudian psychoanalysis, the denial of the thought to manifest in conscious form.

This first denial is associated with the symbolic mother, which is not necessarily the mother or even a woman. The symbolic mother is the person to which we express the fundamental demand for love, for recognition. The symbolic mother could be a husband, a manager, a nanny, a grandmother, and any other person to which we express the demand for love.

The repression of desire is fundamentally bound to the symbolic father, the "*Grand Outreau"*, and the *petite object a.* The symbolic father (https://nosubject.com/Father) operates as the entity which forbids the person from fulfilling a desire. This again, doesn't have to be a

father. By the evolution of the subject, the symbolic mother and father are being displaced. In reality, as we grow up we have to deal with these two paradoxical figures haunting us, observing them in all social, hence, linguistic forms. The father is both a protector and a figure of prohibition. The mother is the figure of both love and sexuality.

The denial of desire fulfilment results in the formation of the big other. The big other serves as an automated symbolic father. While developing, one learns the rules of society. It develops an internal presence of set rules that makes the symbolic father technically useless

The way repression appears is by denial. Denial of demands by the symbolic mother and denial of desire by the symbolic father leads the person to have repressed. Repression is not necessarily a bad occurrence in itself or not even concurring with the dictionary definition.

Lacan concludes that repression in its excess leads to the formation of the neurotic subject. The neurotic is in a state of questioning, depending on the content of the question, the neurotic subject can be hysteric, obsessive, or develop phobias.

3.2. The repetition of the meek

These structures of repression form themselves throughout the psychic life of the subject and unavoidably repeats in structure. It repeats on the individual scale and on the social scale. If we are to think of a society, there is a common psychic shared by all members trough culture.

Repression on a socio-political scale, comes in the metamorphosis of the symbolic mother in the political and administrative sphere and the law takes up the role of the symbolic father. How does this happen?

The political sphere is elected by us, citizens of a state. This choice will lead to an ideological basis upon which administration, both at the state and local level, appears or shifts. Certain governments will apply certain ideologically driven solutions to the demands expressed by the voter. These solutions, no matter how good or bad, will end up dissatisfying a sector of the population, it will fail to fulfil some needs of the social psyche. We are socially bound to the politically driven administration to see it as the symbolic mother.

As for the legal system, it fits perfectly in the paradoxical nature of the symbolic father. If the citizen has an issue, they are bound to solve it through interpersonal means with the other, if this fails, the citizen will go to an administrative body, and if that fails, the citizen will address it’s now formed desire to a court of law.

The court of law will fulfil the function of prohibition and protection at the same time. One party will seek protection, the other will have to face prohibition. In this regard, it is up to the legal apparatus to decide how to exercise this power.

Whenever we address the administration or the legal system, we don’t talk to the abstract notions, we talk to a representative of these powers. We insert a further form of representation. Both systems represent the people in different ways, the administration is the will of the people, the legal system is the regulatory body of the people. They do however both gain a monolithic nature of being an independent abstract entity, ulterior to this, they require representation via an emissary. Regardless of which of the two abstract notions we approach we are confronted with a representative that we can broadly call a bureaucrat.

3.3. God in the role of a bureaucrat

On last notion to grasp is the idea of the bureaucrat. Again, going to the dictionary we find out that a bureaucrat is "*a person who is one of the people who run a government or big company and who does everything according to the rules of that government or company: a person who is part of a bureaucracy*".

In her essay *The Subject of Law*, psychoanalyst Alenka Zupancic speaks of the notion of diabolical evil as Kant envisions it through the lens of Lacanian thought. Her conclusion is that truly diabolical evil resides in the God who believes himself a mere bureaucrat. Her example is the willingness of the Nazi soldier to execute heinous actions (Zupancic, p.57).

The Nazi soldiers were not bureaucrats that believed themselves god over those in the concentration camps, they believed themselves to be bureaucrats in a system anointed by God to be holy and righteous. This is a pretence in reality, they would not be willing to embrace their true desires of hurting the other as it was formed by Nazi ideology in the brain of the fascist.

The reason that this reading of Kantian morals is important to us is simple. By the way that both administrative and legal systems operate, they are bound to produce diabolical applications, not by some evil intention, but by perpetuating a form of psychic malpractice.

In many cases, the representative of law and administration may develop a sincere sense of moral authority granted to them by the law of men. This can easily lead to them unavoidably developing an incidental diabolical pattern of actions. This leaves place for both the godhood of men obtained through the subjective self to be bureaucratised or for bureaucrats to think themselves wicked gods.

III. Folding dirty laundry

An old Romanian saying says that "you should never wash your clothes in public". The real meaning behind this wisdom is to never discuss private matters in public. This is oddly representative of the nation as a whole, it is repression imposed by tradition and perpetuated by cultural norms. This is not a particular, it is an eerily similar function as the repression formed by the familial structure that repeats itself between family and state.

Even if the laws in both our respective countries, Italy and Romania, have been doing some progress in regards to listening to children, there is still a long way to go and there are still unresolved issues that reside in the deepest recesses of the social and individual psyche.

The symbolic orders and dichotomies are eternal chains of representation and reconfigure the actors but not the roles. The child will unavoidably face repression in its development in their household. This situation seems to repeats itself in how the child interacts with any authority. In the household of the average family, more and more commonly we see the creation of excessive repression trough miscommunication. Due to generational gaps and the excess of accelerated feelings we see both the repression of demands and desires appear in surplus.

This interaction repeats itself through the discursive actions of the parent and the state, be the state represented by a judge or clerk, a representant of their respective abstractions themselves. The family has to interact, in many instances and trough many institutions and branches of law, in order to achieve the satisfaction of a demand or a desire.

Here lies the real problem, these repetitive chains of representation are bound to create repression of the social conscience, to the familial unit, and to the child who remains voiceless

by most studies. It's repression, repeated against the meek family or individual members of the family. The generalised form of repression that develops in the interactions between the child, the family and the state, forms an endless chain of neurotic subjects, a factory of issues that produces with such efficiency that the neurotic becomes the normal.

Normalising the image of the voiceless and incapable child in the processes of legal and administrative matters leads to the tragedies that we have started the studies with. A child being cyberstalked forms neurotic behaviours when the basic demand for human recognition was forbidden by many emissaries of the state and by family. A child killing himself due to low grades and the pressure of both social and familial structures denying the demand to be human and fail. An adolescent girl becoming neurotic and untrusting of systems to protect her from her trauma and the initial traumatic event, gone to suicide.

All of these cases are the chains of repression institutionalised and repeated on all levels choking the youth of our nations and of all nations in the contemporary life of accelerated movement that offers no solace ore calm for them to grow and develop in a healthy manner. A hermeneutic of suspicion is no longer a good philosophical tool to question what is and what isn't, it's the status quo of all humans from birth. The symbolic order is plagued by this acceleration and institutionalised repression.

In Italy, we of course have the infamous case of the Trial of the Angels and Demons (https://www.corrierepl.it/2022/06/28/bambini-strappati-intervista-allavvocato-francesco-miraglia/) which shows us that bureaucrats can act as god and impose their own will on human life, treating humans as means to an end and not as a meaning in itself. This would not be possible if the gods operating as bureaucrats in the courts and administration would not allow such events to happen.

In Romania we see a similar situation happening to the elderly in what have been dubbed the Asylums of Horror by the media (https://www.euronews.ro/articole/dosarul-azilele-groazei-trimis-in-judecata-fostul-sofer-al-gabrielei-firea-se-afl). We again, see bureaucrats acting as gods by the permission of gods acting as bureaucrats.

By following the law as it stands, without constant revisions of the morality and the efficiency of laws, structure become diabolical by error leading to forge the chains of repression again and again in new generations.

Conclusions

As we have stated *at nauseam* at this point, there are slow and meaningful changes occurring in both our countries and at a global level, and yet, unless we can elaborate manners by which the chains of repression can be fully broken at a systemic level and left at normal, necessary levels for the development of children, we will never manage to offer the children a voice to pronounce their pains and issues clearly towards the legislator or the family.

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GENDERED LANGUAGE IN THE CONSTITUTION OF NIGERIA – REPHRASING TO ACHIEVE GENDER NEUTRAL DRAFTING

A.E. ODIKE, H.P. FAGA, B. UGOALA

Adakole Odike[1], Hemen Philip Faga[2], Bibian Ugoala[3]
[1] Department of Jurisprudence & International law, National Open university of Nigeria, Abuja
https://orcid.org/0000-0002-4406-0844, E-mail: eodike@noun.edu.ng
[2] Department of Jurisprudence & International law, Faculty of Law, Ebonyi State University, Abakaliki, Ebonyi State, Nigeria
https://orcid.org/0000-0001-5162-011X, E-mail: hemenfaga@ebsu.edu.ng
[3] Department of English, Faculty of Arts, National Open University of Nigeria
https://orcid.org/0000-0002-6628-4400, E-mail: bugoala@noun.edu.ng

Abstract: *The use of words to portray gender and therefore apportion benefits or disadvantages is true in both verbal and written communication. This is even truer in legislative drafting, as the use of gendered language may depict a more serious problem of sexism, discrimination and paternalism in the society. Using the doctrinal approach, this paper examined gendered language in the Constitution of the Federal Republic of Nigeria 1999 relating to the qualification and appointment of judicial officers, to analyse the effect of such gendered language on the interpretation of the constitution and the likelihood of the female gender suffering disadvantage thereby. The paper found that the gendered language used in the 1999 constitution of Nigeria in the qualification and appointment of judicial officers, is gender insensitive, ambiguous and capable of excluding the female gender from consideration for appointment to such offices. It also found that the gendered language in the relevant constitutional provisions exhibit masculinity and does not promote the required gender equality in a legal draft. The paper recommended amendment to reconstruct the language of the constitution to achieve gender neutrality.*

Keywords: *Gender, gendered language, gender sensitivity, gender neutrality, gender inclusiveness, sexism*

Introduction

In its broadest sense, gender refers to socially and culturally defined roles and expressions that are usually labeled as ‘male’ or ‘female’ (Blackstone 2003: 335). In other words, ‘gender’ means the fact of being male or female, especially; when considered with reference to judicial and cultural differences and not differences in biology or issues of class or race (Hornby, 2015: 650). Gender sensitivity is the process by which people are made aware of how gender plays a role in life through their treatment of others (Potter, 2008: 55).

Gender generic, also known as ‘gender generic masculinity’ is a linguistic phenomenon that covers a situation where the gender is deemed not of concern and a word is used to refer to two genders as one, in order to save time and space (Gabriel and Mellenberger, 2004:273). Gender Identity refers to a person’s deeply held belief or knowledge of himself or herself that

may or may not be visibly identifiable (Byrne, 2023: 2709). Gender expression is the way a person may represent himself or herself using various modes of expression that are commonly culturally associated with gender, such as name or pronoun (PEI Human rights Commission, 2018). A gendered language is commonly understood to mean a language that is bias towards a particular sex or social gender (Davis and Reynolds, 2018: 46; Abdalgane, 2021: 204). A gender neutral or inclusive language is a language that respects a person's gender identity regardless of the sex assigned at birth. It includes pronouns, not names, titles, honorifics and other forms of address (Ludbrook, 2022). Therefore, a gender neutral or inclusive language is any language that avoids assumption about the social gender or biological sex of people referred to in a speech or writing.

Gender neutral or inclusive language promotes gender sensitivity, gender identity and gender expression because, the concept of gender neutral or inclusive language is based on the idea that policies, language and other political institutions should avoid distinguishing roles according to people's sex or gender (Peters, 2020: 186). A lack of gender neutral or inclusive writing or speech breeds gender insensitivity, which in turn encourages gender discrimination. Historically, the masculinization of society has been the norm since evolution of human society (Valsecchi et al, 2023: 146). Examples of the masculinization of human society can be seen in the way we talk about humans and refer to humans as mankind as if women do not exist or are not part of the human society. Masculine bias also exists in positions and occupations that historically were only available to men hence, phrases such as policeman, fireman, or chairman instead of police officer, fire officer and chairperson (Prewitt-Freilino et al, 2012: 268).

Throughout the history of the human race, the impact of disparity in gender equality is glaring. This is why, in recent times, there has been several policies and legal initiatives aim at advancing inclusive language and equality all in an attempt to ensure gender neutral or inclusive drafting. One of the most important international legal instruments that prohibit discrimination against women in whatever form, is the United Nations Convention on Elimination of All Forms of Discrimination against Women. Article 1 of this convention prohibits:

> Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

The convention in its Article 3 enjoins all state parties, which Nigeria is one, to take all appropriate measures that will ensure the full development and advancement of women for the purpose of guaranteeing women the exercise and enjoyment of human rights and fundamental freedom on a basis of equal rights with men. In *Miss Yetunde Zainab Tolani v. Kwara State Judicial Service Commission & Ors.*, (2009) Satonye Denton-West JCA stated that 'women rights have been unduly subjected to the background and they have sutured all sorts of discrimination arising from this unwholesome act of relegation in their place of employment'. The Learned Judge therefore, opined that:

> The human rights of women should form an integral part of the United Nations human rights activities, including the promotion of all human rights instruments relating to women.

According to Justice Anthony Kennedy of the United States Supreme Court, "the law lives through language and we must be careful about the language we use" (Rose, 2010: 81). This admonition has particular relevance in the construction of legal instruments that tend to discriminate or even exclude women from the common good provided in a piece of legislation. This paper examines certain provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended) relating to the qualification and appointment of judicial officers in Nigeria, to analyse the effect of gendered language on the interpretation of these provisions, and to determine the best way to reconstruct them to achieve gender neutrality. Section 1 of the paper deals with the origin of gendered language in legislation generally. Section 2 examines the gendered language in the constitution of Nigeria and analyses its effect in excluding the female gender from appointment as judicial officers in Nigeria. Finally, section 3 deals with the best way to reconstruct the provisions of the Nigerian constitution to ensure gender inclusivity and sensitiveness.

1. Origin of Gendered Language in Legislation

The use of masculine words to cover people regardless of gender or sex is a 19th century creation of an English law. Prior to the mid-19th century, it was relatively common to find legislation drafted in gender neutral language. However, that changed in 1850 when the Parliament of the United Kingdom passed an Act "For Shortening the Language Used in Acts of Parliament". Article IV of the Act stated that:

> In all Acts words importing the masculine gender shall be deemed and taken to include females, and the singular to include the plural, and the plural the singular, unless the contrary as to gender or number is expressly provided.

The above provision gave rise to the legal assumption that the generic 'he' in a legislation, connotes universality which shelters a man and a woman (Olomojobi, 2016: 31). Section 14(a) of the Nigerian Interpretation Act also adopted the use of the pronoun "he" as referring to a man and a woman, hence the use of gendered language in the constitution.

2. Gendered Language in the Constitution of Nigeria

Language is a tool to convey meaning; it is also sometimes, the meaning itself. Gender language casts the mold of the law in addition to conveying the intention of the legislature. For instance, in *Muller v.Oregon* (1908), the law regulating the hours of work of female employees 'in any mechanical establishment, factory or laundry' was held not to be unconstitutional because it rests on the police power and right to preserve the health of women of the State of Oregon, and it did not conflict with the due process or equal protection clauses of the Fourteenth Amendment. This case gave impetus to the use of gender language to deliberately create a different legal status between the sexes (Erickson, 1989: 228). In *Bradwell* v. *The State* (1873), the State of Illinois legislation used the gender word 'he' in describing persons who can be admitted to practice law. The court refused to allow a woman the right to practice, on account of the language, which tend to exclude women. The court ruled that:

> if we were to admit them (woman) we would be exercising the authority conferred upon us in a manner which, we are fully satisfied, was never contemplated by the legislature…In view of these facts, we are certainly warranted in saying that when the legislature gave to this court the power of granting licenses to practice law, it was with not the slightest expectation that this privilege would be extended to women.

The Constitution of the Federal Republic of Nigeria 1999 uses gendered language in all sections that provide for the qualification and appointment of superior court judges in Nigeria. The relevant subsections will be discussed for ease of understanding and to ensure a free flow of thought. For instance, while section 231(1) of the constitution provides for the appointment of the Chief Justice and Justices of the Supreme Court (Odike, 2010: 42), section 231(3) provides for the qualification of the aforementioned judicial officers as follows:

> A person shall not be appointed to the office of the Chief Justice of Nigeria or of a justice of the Supreme Court, unless he is qualified to practice as a legal practitioner in Nigeria and has been so qualified for a period of not less than fifteen years.

This extract from the Nigerian Constitution clearly shows that only a man (he) can be appointed to the office of the Chief Justice of Nigeria or of a Justice of the Supreme Court. This pronouncement excludes women from assuming such offices. On the other hand, sections 238(1) and 238(3) of the constitution provides for the appointment of the President and Justices of the Court of Appeal and the qualification of persons to be appointed to such offices respectively. Section 238(3) provides as follows:

> A person shall not be qualified to hold the office of the President and a Justice of the Court of Appeal unless he is qualified to practice as a legal practitioner in Nigeria for not less than twelve years.

This is another example of gendered language in the Nigerian Constitution. The use of the masculine pronoun 'he' implies that only males can be the President and Justice of the Court of Appeal. This shows gender inequality in the constitution. Again section 250(1) of the constitution provides for the appointment of the Chief Judge and Judges of the Federal High Court, while section 250(3) provides for the qualification of the afore mentioned judicial officers in the following words:

> A person shall not be qualified to hold the office of Chief Judge and a Judge of the Federal High Court unless, he is qualified to practice as a legal practitioner in Nigeria and has been so qualified for a period of not less than 10 years.

A literal interpretation of the masculine pronoun, 'he' in this section means that only males can be appointed the Chief Judge and a Judge of the Federal High Court in Nigeria. This clearly demonstrates gender inequality in the Nigerian Constitution. The same language is used in sections 256(1) and 256(3) of the constitution for the appointment of the Chief Judge and Judges of the High court of the Federal Capital Territory, Abuja and qualification for appointment to such offices, respectively (see also sections 271(1) and 271(3) of the constitution on the appointment and qualification of the Chief Judge and Judges of the different state High Courts in Nigeria). In the case of appointment of the Grand Kadi and Kadis of Sharia Court of Appeal of the Federal Capital Territory (Odike, 2009: 176), section 261(3) of the

constitution provides for the qualification of persons to be appointed to such offices in the following words:

> A person shall not be qualified to hold the office of Grand Kadi and a Kadi of the Sharia Court of Appeal of the Federal Capital territory, Abuja unless,
>
> a) he is a legal practitioner in Nigeria and has been so qualified for a period of not less than ten years and has obtained a recognized qualification in Islamic law from an institution acceptable to the National Judicial council ;or
> b) he has attended and has obtained a recognized qualification in Islamic law from an institution approved by the National Judicial council and has held the qualification for a period of not less than twelve years.
>
> i) he either has considerable experience in the practice of Islamic law; or
> ii) he is a distinguished scholar of Islamic law.

This section borders on the Islamic religion, and like the other extracts discussed above, the language used in the section could be literally interpreted to mean that only males can be appointed as the Grand Kadi or Kadis of the Sharia Court of Appeal of the Federal Capital Territory, Abuja. The provision is categorical in the use of the phrases 'he is a legal…', 'he has attended…', 'he either has…', and 'he is a distinguished…' to show that only 'he' (male) can be appointed in the position (see also sections 276(1) and 276(3) of the constitution on the appointment and qualification of the Grand Kadi and Kadis of the different states in Nigeria). The exact same words are used in sections 266(1) and 266(3) of the constitution in the appointment of the President and Judges of the Customary Court of Appeal of the Federal Capital Territory, Abuja and the qualification of persons to be appointed to such offices respectively (see also sections 281(1) and 281(3) of the constitution on the appointment and qualification of the President and Judges of the Customary Courts of Appeal of the different states in Nigeria).

According to Ugoala (2022: 171) language is vital in maintaining cordial relationships between individuals, groups and countries. Thus, the use of language in the above provisions of the Nigerian constitution reveals an unbalanced and disturbing trend towards gender insensitivity and bias. Nigeria as a country is not just occupied by men alone; women also exist in the society. This paper argues that the use of only 'he' in stating the person that can hold judicial positions in Nigeria is not right, it can demean women who are qualified to hold such positions. Thus, there is a need to amend the constitution to revise the language in order to accommodate females in general by using gender neutral pronouns.

To begin with, a gendered language such as the use of the pronoun ''he'' in providing for the qualification of senior judicial officers in Nigeria communicates subtle sexism (Gabriel & Gygax, 2016: 177). In addition, it can breed ambiguity. The use of particular words heavily influences the understanding ascribed to the words. Thus, barring an interpretative provision in the law, a reader may assume that gendered language has a specific purpose and meaning. In *Kennedy v. Louisiana* (2008), Justice Alito of the US Supreme Court opined in his dissenting judgment that gendered language are not precise unlike gender neutral language that are both precise and powerful.

Certainly, many readers of the Nigerian constitution would find it difficult to accept that a gendered generic word or the pronoun 'he' connotes universality, which shelters a man and a woman (Olomojobi, 2016: 31). Language matters and the use of a gendered language in

the constitution in form of the pronoun 'he' may imply that the person referred to in the applicable section is a person of male gender. Indeed, the apparent validity given to the use of gendered language in the Nigerian constitution by section 14(a) of the Interpretation Act stands against the provision of section 42(1) & (2) of the same constitution, which provides for freedom from discrimination. In fact, the continuous use of gendered language in the Nigerian constitution violates the three foundational principles of the United Nations Convention on the Elimination of all Forms of Discrimination against Women, which are, non-discrimination, state obligation and substantive equality (Cusack & Pusey, 2013: 4). Thus, in spite of section 14(a) of the Interpretation Act, which tend to validate the gendered generic use of the pronoun 'he' in the Nigerian constitution to cover the female gender, we are of the opinion that this approach unnecessarily produces prejudice against females, and unduly confers advantage on the male gender, rendering the expression sexist, chauvinistic and discriminatory (DeFranza et al, 2020: 7).

Apart from the above, the use of gendered language in the Nigerian constitution violates the provisions of Articles 2 and 7 of the United Nations Universal Declaration of Human Rights, Articles 2 and 3 of the African Charter on Human and Peoples Rights, Articles 2 and 26 of the International Convention on Civil and Political rights, and Article 8 of the United Nations Charter.

3. Rephrasing Gendered Language in the Nigerian Constitution to Reflect Gender Neutral Drafting

The hallmark of legal drafting is precision and brevity (Shattah, 2019: 157). The legal profession values and celebrates wordsmithing that convey clear meaning and unambiguity (Osbeck, 2012:417; Turnbull, n.d.). The use of the gendered word 'he' in the Nigerian constitution has greatly undermined precision and unambiguity. Indeed, a judge that is determined to interpret words according to their ordinary or plain meaning would readily interpret the pronoun 'he' in the Constitution of the Federal Republic of Nigeria 1999, as referring only to the male gender and that is not gender sensitive (Odike, 2016: 168). Thus, in order to ensure impartiality and avoid sexism, the gendered language in the current Nigerian constitution has to be rephrased to reflect gender-neutral drafting that accommodates the gender identity and expressions of all citizens of Nigeria. The provisions can be rephrased as follows:

Section 232(3)

> A person shall not be appointed to the office of the Chief Justice of Nigeria or of a justice of the Supreme Court, unless the person is qualified to practice as a legal practitioner in Nigeria and has been so qualified for a period of not less than fifteen years.

Section 238(3):

> A person shall not be qualified to hold the office of the President and a justice of the Court of Appeal unless the person is qualified to practice as a legal practitioner in Nigeria for not less than twelve years.

Section 250(3):

A person shall not be qualified to hold the office of Chief Judge and a judge of the Federal High Court unless, the person is qualified to practice as a legal practitioner in Nigeria and has been so qualified for a period of not less than 10 years.

Section 261(3):

A person shall not be qualified to hold the office of Grand Kadi and a Kadi of the Sharia Court of Appeal of the Federal Capital territory, Abuja unless,

a) The person is a legal practitioner in Nigeria and has been so qualified for a period of not less than ten years and has obtained a recognized qualification in Islamic law from an institution acceptable to the National Judicial council ;or
b) The person has attended and has obtained a recognized qualification in Islamic law from an institution approved by the National Judicial council and has held the qualification for a period of not less than twelve years.
    i) The person either has considerable experience in the practice of Islamic law; or
    ii) The person is a distinguished scholar of Islamic law

A gender neutral drafting such as the above rephrased sections create a society that is fair and equitable for everyone, regardless of gender expression or identity (Montano et al, 2024: 336). Again, a gender neutral or inclusive language in a legislation helps to eliminate gender-based violence and promote equality of all individuals regardless of gender differences (Sczesny et al, 2016: 6).

Conclusions

The use of gendered language in the constitution of Nigeria does not portray the constitution or the country as gender friendly, neutral, or even gender inclusive; rather, gendered language in the constitution portray the country as a masculine, paternalistic and sexist country, given to discrimination and oppression of the female gender. The paper showed that the incessant use of the pronoun 'he' in the Nigerian constitution could be interpreted to exclude the female gender in the qualification and appointment of persons into judicial offices in Nigeria, hence the need to amend the constitution to reconstruct the relevant provisions. The paper recommends the most appropriate way to rephrase the necessary provisions in order to achieve a gender neutral constitution.

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AN APPRAISAL OF THE REGULATION OF DIGITAL BANKS IN NIGERIA

N. OFO, R. NGWOKE, F.K. EKWE

Nat Ofo[1], Rita Ngwoke[2], Faith Kelechi Ekwe[3]
[1] [2] [3] Department of Business Law, College of Law, Igbinedion University, Okada, Edo State, Nigeria.
[1] https://orcid.org/0000-0002-7720-3389, E-mail: natofo@iuokada.edu.ng
[2] https://orcid.org/0000-0001-6539-036X, E-mail: okpeahior.rita@iuokada.edu.ng
[3] https://orcid.org/0009-0006-6946-0963, Email: ekwe.faith@iuokada.edu.ng

Abstract: *The advent of the computer age saw industries across the world hopping on the Information and Communications Technology train in a bid to survive. The financial industry is no exception, having since incorporated Information and Communications Technology in its operations. Traditional financial institutions like banks now utilize technology to render financial services to their customers. Aside the traditional banks, a new class of banks called digital banks has emerged in recent times in Nigeria, examples include Kuda, Aladdin, and VBank. These banks operate without a physical banking hall and render their services digitally. Although digital banks were not originally included in Nigerian laws, these banks now have the backing of the principal legislation regulating banks in Nigeria: the Banks and Other Financial Institutions Act 2020, hence solidifying their place in the Nigerian financial sector. With the aim of evaluating the effectiveness of the extant legal framework for digital banks in Nigeria, this paper explored the evolution of banking in Nigeria, the emergence of digital banks, the pros and cons of such banks as well as the existing legal framework for digital banks in Nigeria. The research methodology adopted is the doctrinal research methodology and primary sources like statutes, guidelines and case laws as well as secondary sources like textbooks and journals were utilized. The paper found that the existing legal framework for digital banks in Nigeria is fragmented and does not sufficiently address the uniqueness of these banks. It recommended the development of a comprehensive legal framework for digital banks in Nigeria, which incorporates a licensing regime solely for digital banks.*

Keywords*: Banks, digital banks, banking, FinTech, business.*

Introduction

The turn of the 21st century saw the emergence of a new genus of banks in Nigeria different from the traditional banks. These banks operate without a physical banking hall and render banking services digitally (Sharma & Dubey 2022: 504). Known as digital banks, challenger banks or neo banks, these banks have grown astronomically in Nigeria. They come in different names, such as Kuda, Aladdin, VBank, Sparkle Opay, PalmPay and Moniepoint (Ajayi, 2021: 1). The appeal of digital banks mostly lay in the ease with which bank customers can access banking services at any time, day and from any location using internet connectivity.

However, a major disadvantage of these banks is that they offer limited services in comparison to traditional banks.

The emergence of digital banks in Nigeria has disrupted the traditional banking system, and made it inevitable for an over haul of Nigeria's legal framework for banking (Ofodile, 2024: 348). Thus, it is laudable that the principal legislation on banking in Nigeria, the Banks and Other Financial Institutions Act (BOFIA) 2020 takes cognizance and validates these banks. Section 57 of BOFIA for instance, requires those who wish to carry on or are already carrying on specialized banking business or business of other financial institutions to acquire a licence to do so from Central Bank of Nigeria (CBN) irrespective of whether such businesses are conducted digitally, virtually or electronically. There is however, no licensing scheme entirely for digital banks in Nigeria and therefore, operators of these banks rely almost entirely on other species of banking licenses to operate, leaving a gasping vacuum for specialized regulation, management and supervision of digital banking in Nigeria. This paper examines the extant regulatory framework for digital banking in Nigeria, identifying the shortcomings inherent in the current system, and recommending ways to improve on the extant regulatory framework.

1. Conceptual Clarification

The words 'banks', 'banking business', 'FinTech' and 'digital banks/digital Banking' are recurrent in this paper and thus, their respective definitions are given below.

1.1 Banks

There is no universal meaning of the word 'bank' as its meaning varies depending on time and location. The following definitions however capture the meaning of banks in Nigeria. According to Ojukwu-Ogba a bank is "any entity duly incorporated under the Companies and Allied Matters Act and also licensed by the CBN to carry on the business of banking" (Ojukwu-Ogba, 2009). Oshio defines a banker as "a corporate body licensed or otherwise authorised by the State to operate as a bank and transact business as defined by its enabling statute or regulations" (Oshio 1995: 3). Finally, Muhammad defines a 'bank' as:

> an incorporated body carrying on the business of receiving deposits on current account, savings account or other similar account, paying or collecting cheques, drawn by or paid in by a customer, provision of finance or such other business as the Governor may, by order published in the Federal Gazette, designate as a banking business (Muhammad 2015: 231).

A bank in Nigeria is thus, a corporate body duly licensed or authorised by the Nigerian government to operate a banking business.

1.2 Banking Business

BOFIA has made a fine attempt at describing extensively what banking business in Nigeria entails. Section 131 of the Act describes the banking business thus:

> the business of receiving deposits on current account, savings deposit account or other similar account, paying or collecting cheques, drawn by or paid in by customers; provision of finance consultancy and advisory services relating to corporate and investment matters, making or managing investments on behalf of any person whether such businesses are conducted digitally, virtually or

> electronically only or such other business as the Governor may, by order published in the Gazette, designate as banking business.

In Nigeria, banking business thus, entails all services or activities contained in section 131 of BOFIA. It is noteworthy that the law recognizes digital banking, an innovation stemming from the proliferation of FinTech in Nigeria over the years.

1.3 FinTech

The word 'FinTech' is a combination of the words 'financial' and 'technology'. Lu, defines 'FinTech' as "the application of internet technology and innovation in financial activities such as payment, lending, wealth management and insurance" (Lu 2017: 273). Ukwueze on the other hand, defines FinTech thus:

> Financial technology (FinTech) in its broadest sense connotes the application of technology in the provision of financial services. The term is used to refer to a process as well as entities involved in the process (Ukweze 2021: 5).

Conclusively, FinTech is the use of technology to render financial services.

1.4 Digital Banks/Banking

According to PricewaterhouseCoopers (PWC), a 'digital bank' is defined as a bank, which primarily delivers banking services through the internet or other forms of electronic channels without the presence of physical branches (PWC 2019). Sharma and Dubey defined digital banking also known as e-banking, online banking or internet banking as "a system which enables banking transactions like payments, deposits, withdrawals of cash virtually with the help of internet rather than physically visiting the bank branches" (Sharma & Dubey 2022: 504). To Sujana, digital banking includes:

> all kinds of online/internet transactions for various purposes. They may include booking movie tickets, online shopping, using e-commerce websites to do transactions and using internet-banking services to make payments via transfers like NEFT transfers (Sujana 2018: 334).

Put in a nutshell, digital banking is the rendering of banking services digitally or electronically without a physical banking hall.

2. Brief History of Banking in Nigeria

Modern banking in Nigeria dates back to 1892 when the African Banking Corporation, which was based in South Africa, set up a branch in Nigeria (Igweike 2005: 1). Many other banks sprang up in subsequent years, but due to weak institutional and regulatory framework, many of them failed (Adeniji 1981: 1). Following the Structural Adjustment Programme (SAP) in 1986, many more banks and other financial institutions emerged heightening competition amongst banks in Nigeria, which led to banks incorporating technology in their operations to have a competitive edge (Njoku 2024: 93). This paved way for the rise of electronic banking and FinTech in Nigeria. Indeed, by 1989, the defunct Societe Generale Bank launched Automated Teller Machines (ATMs) for the first time in Nigeria (Jegede 2014: 2). This achievement and the subsequent proliferation of FinTech solutions to the banking public metamorphosed the Nigerian banking system from the traditional banking to electronic banking, leading to the emergence of the new genus of digital banks (Samuel-Ogbu 2022: 133).

In 2017, ALAT established by Wema Bank became the first digital bank to be launched in Nigeria. Other digital banks have since emergence, some of the most prominent being Opay, PalmPay, Moniepoint and Kuda.

The 2020 Covid-19 pandemic as well as the cash crises and poor bank network issues witnessed by Nigerians in the first quarter of 2023 as a result of the poor circulation of the redesigned naira notes, are some of the factors that have boosted the popularity and patronage of digital banks in Nigeria (Fabunmi, 2023).

3. Digital Banks in Nigeria

A good number of 'digital banks' in Nigeria are FinTech companies that have obtained the requisite CBN licence to render digital banking services (PWC 2021: 9, 16). Some commercial banks have digitalized their services too, creating a digital arm of the bank to render these services. Examples of both categories of digital banks in Nigeria include:

a) ALAT

Established by Wema Bank, this digital bank was launched in 2017. Its digital App known as 'ALAT' allows the bank's customers access banking services like opening a savings account, scheduling bill payments, getting a free ATM card as well as transferring funds. In 2017, the App won the award for the 'Best Mobile Banking App' while the bank won the award for the 'Best Digital Bank' at the World Finance Digital Banking Awards 2017 (Tsanis, 2019).

b) OPay

Founded by the Norwegian browser company known as Opera Norway AS Group, OPay Digital Services Limited is a company that operates across Africa, Asia and Latin America in countries like Egypt, Mexico, Nigeria, and Pakistan. It was founded in Nigeria in 2018. It is a mobile-based FinTech company rendering digital banking services like payments, transfers, loans, and savings amongst other services. There are currently over 35 million registered OPay app users and 500,000 agents in Nigeria who utilize the services of the company (Asheolge, 2023).

c) GoMoney

Launched in 2018, it allows for peer-to-peer payment and integrated third-party service. Its services include funds transfer, splitting of bills amongst people, expense tracking, bills payment, access to loans amongst others. The bank was developed by GO Financial Services Ltd in collaboration with Sterling Bank Plc. It has an App known as 'GoMoney' (Dada 2020).

d) Kuda

Founded in 2019, it is the first bank to be licensed by CBN as a mobile-only bank. Originally known as Kudimoney, it has risen to prominence; as at 2022, its value was put at $500 million, making it the seventh most valuable bank in Nigeria. The bank has an App known as 'Kuda', is famed for not charging banking fees, and pride itself as 'The Bank of the Free' until 2022 when it began charging a fee on deposits (Adesanya 2022).

e) PalmPay

Launched in Nigeria and Ghana in 2019, PalmPay is a FinTech company, duly licensed in Nigeria by the CBN to provide mobile money services. It seeks to redefine payment

experiences for consumers and businesses in Africa by making financial services more accessible and affordable. The company has reportedly provided over 5 million customers with convenient and affordable digital payments. It has an App called 'PalmPay' with which it renders its financial services (Alimi, 2024).

f) Sparkle

Sparkle targets Nigeria's retailers, Small and Medium-Sized Enterprises (SMEs) and individuals. It was launched by Sparkle Microfinance Bank in 2019 and offers banking services like funds transfer, access to loans, opening savings account, and bill payments. The bank's App is known as "Sparkle" (Oloruntade, 2024).

g) Rubies

This is a fully digital banking platform that offers banking services for free. It targets FinTech companies, SMEs, and quasi-financial institutions. Its unique features include access to free debit cards with any preferred name, ability to transfer money via bluetooth and ability to personalize one's account number. It was launched by Rubies Microfinance Bank in June 2019 and has an App also known as 'Rubies' (Techpoint, 2020).

h) Vbank

This bank was launched by VFD Group, the owners of VFD Microfinance Bank in 2020. The bank has an app known as the 'V'. Asides the usual banking services, the App allows customers of the bank to receive and send money without an account number, send money to multiple beneficiaries simultaneously and to invest. In the same year it was launched, the bank reportedly returned 400% in investment (Rufus 2022).

i) Mintyn

This was launched by Finex Microfinance Bank Ltd in 2020. Mintyn Online Bank offers banking services free of charge to its customers. These services include funds transfer, savings, and bill payments. It has an App known as 'Mintyn' (Mintyn 2024).

j) Aladdin

Founded in 2020, this digital bank combines banking and commerce, offering banking services like opening of savings account, money transfers, making payments, access to loans and trading amongst others to its customers. The bank targets SMEs in Africa who are increasingly conducting their businesses online. The bank's app is known as 'Aladdin Finance' (Techcabal 2022).

k) Moniepoint

The company obtained its Micro-Finance Bank (MFB) license from CBN in February 2022 and currently helps over 1.5 million businesses with banking, payments processing, access to loans and business management tools. Moniepoint Microfinance has set its sight on rendering banking services to small and medium-sized businesses in Nigeria. In 2022, Moniepoint MFB was awarded as the most inclusive payment platform in the country by CBN. The bank operates the largest distribution network for financial services in Nigeria, and over 33 million people in Nigeria use their ATM cards on Moniepoint POS terminals monthly (Agogbua et al, 2024: 62).

There are different pros and cons of digital banks in Nigeria. These include the issue of cost effectiveness. Digital banks have eased bank charges associated with traditional banking in Nigeria (Iwedi, 2023: 12). For instance, Kuda, which used to pride itself as "the bank of the

free" until 2022, rendered its services free, and still currently, renders some of its services free (Mogaji, 2022). Furthermore, the operational costs of digital banks are less than that of traditional banks and this is due to the absence of a physical infrastructure and smaller manpower required to run such banks (Odu, 2021: 4). Another advantage is the issue of time saving. Digital banks have helped reduce the time spent in accessing banking services in Nigeria. People no longer have to wait in long queues at bank premises to access banking services (Odu, 2021: 5). Furthermore, electronic banking is known to deliver faster than traditional banking. This also means that digital banking has become more convenient than the traditional banks. Digital banks allow bank customers to access banking services every day (including on non-working days for traditional banks and public holidays) and at any time without the hassles of visiting banking halls. Additionally, bank customers can now access banking services from digital banks at any time of the day from any location (Odu, 2021: 6).

However, there are also disadvantages associated with digital banking in Nigeria. These include the issue of data security because sensitive information is usually required from bank customers on Know-Your-Customer (KYC) and Customer Due Diligence (CDD) basis, which raises data security concerns as such information, can get into the wrong hands in the event of a data breach or cyber-attack (Singh, 2007). This is especially worrisome due to the spate of cybercrimes in the country (Eze, 2021: 63).

There is also the issue of technology and internet network failure. The use of electronic devices and the internet is dependent on their efficiency and stability. Electronic devices used for digital banking can malfunction at thus, posing a threat to digital banking. Internet network failure is common in Nigeria, which poses a challenge to digital banking (Aidonojie, 2022: 195). Moreover, a person has to have internet data to access the internet, and this may not always be feasible due to the poor purchasing power of the average Nigerian (Okechukwu, 2023: 27).

Apart from the above, digital banking does not promote the interpersonal banker/customer relationship associated traditional banking, which is fostered when bank customers and bankers physically meet and interact in banking halls. As a result of this limitation, the services rendered by digital banks are limited in comparison to traditional banks. For instance, cash deposit is not within the range of services rendered by traditional banks. Furthermore, enrolment for Bank Verification Number (BVN) cannot be done in digital banks in Nigeria.

4. Licensing of Digital Banks in Nigeria

There is no licensing scheme exclusively for digital banks in Nigeria. Thus, anyone who desires to undertake banking business (including banking business conducted digitally) in Nigeria is to apply to the CBN Governor for a banking licence, which may or may not be granted (section 3(3) BOFIA). According to section 12 of BOFIA, even where a licence is granted to authorize banking services, it can be revoked for various reasons. Consequently, due to the lack of specialized licences for digital banks, companies desiring to render digital banking services in Nigeria apply for the following three classes of licences: Finance Company Licence; Microfinance Bank Licence; or (c) Payment Service Banks Licence (Apori & Ebri, 2021).

4.1 Finance Company Licence

A Finance Company Licence enables the licensee to provide services like fund management, asset finance, debt securitization and granting of consumer loans to companies and individuals but the licensee is not allowed to receive deposits (CBN Revised Guidelines 2014, para. 2). To obtain this licence, an application is to be made to the CBN Governor who may or may not grant the licence (ibid, para. 3). If the licence is granted, CBN may at any time vary or revoke any condition of such licence or impose additional conditions. The licence is renewable within the first quarter of each year failure of which attracts severe sanctions, including revocation.

4.2 Microfinance Bank Licence

A Microfinance Bank Licence **(**MFB Licence) is preferred for companies wishing to render digital banking services in Nigeria (Ajayi, 2021: 6). It allows the licensee to receive deposits and grant loans to its customers but the licensee cannot purchase or sell foreign currency or remit funds internationally (CBN Guidelines for MFB 2020, para.2). There are four categories of MFBs and their capital requirement range from ₦50, 000,000 (Fifty Million Naira) to ₦5, 000,000,000 (Five Billion Naira) (ibid, para. 3).

Application for MFB licence is made to the CBN Governor who may or may not grant the licence. It is noteworthy that an application for MFB licence is in three stages: pre-licensing presentation; approval-in-principle; and final licence (ibid, para.4.2). The licence may be revoked for submission of false information/data during and/or after the processing of the application for licence, use of proxies or disguised names to obtain a licence to operate as an MFB, and engaging in non-permissible activities.

4.3 Payment Service Banks Licence

A Payment Service Banks (PSBs) Licence allows the licensee to accept deposits from its customer. However, the licensee cannot grant loans to its customers. This licence is only granted to already established banking agents, licensed telecommunication companies and existing FinTech companies. To obtain this license, a capital requirement of ₦5, 000,000,000 (Five Billion Naira) is required (CBN Guidelines on PSB 2020, para. 4).

To obtain this licence, an application is to be made to the CBN Governor who may or may not grant the licence. Just like MFBs, the application for PSB Licence is in three stages: pre-licensing presentation, approval-in-principle and final licence (ibid, para. 6). Conclusively, this licence can be revoked for failure to comply with the provisions of BOFIA, the PSB guidelines as well as other circulars and guidelines issued by the CBN and upon voluntary liquidation by the bank (ibid, para 15).

5. Regulation of Digital Banks in Nigeria

There are different legislations and institutions saddled with the responsibility of regulating digital banks in Nigeria. This paper examines these legislations and institutions.

5.1 Legislations

5.1.1 Banks and Other Financial Institutions Act, 2020

This is the primary legislation on banking in Nigeria, alongside the Central Bank Act, 2007. Section 1 of the Act, empowers the CBN to supervise and regulate banks and other financial institutions in Nigeria. Section 2 (1) of the Act provides that no person shall carry on any banking business in Nigeria except it is a company duly incorporated in Nigeria and holds a valid banking licence issued under the Act. The Act recognizes that banking business in recent years has grown to encompass banking business conducted digitally, virtually or electronically (see section 131 BOFIA).

5.1.2 Central Bank of Nigeria Act, 2007

The Act establishes the Central Bank of Nigeria (CBN), which is the chief regulator of banking and other financial institutions in Nigeria. The CBN thus, regulates digital banks and digital banking in Nigeria. Anyone who desires to operate a digital bank in Nigeria must obtain any of the three banking licences from CBN: Finance Company Licence, the Microfinance Bank Licence or the Payment Service Banks Licence.

The CBN Act provides for the powers, functions and management of the CBN amongst other things. By section 6(1) of the Act, the CBN is managed by a Board of Directors, which is responsible for the policy and general administration of the bank. The board is made up of the CBN Governor as the chairman, four Deputy Governors, the Permanent Secretary of the Federal Ministry of Finance, five Directors and the Accountant-General of the Federation. Sections 39 and 41 of the Act, empowers the CBN to act as a bank to the federal, state and local governments as well as to other banks in Nigeria. The principal objectives of the bank are to ensure monetary and price stability, issue legal tender currency in Nigeria, maintain external reserves in order to safeguard the international value of the legal tender currency, promote a sound financial system in Nigeria, and act as a banker to give economic and financial advice to the federal government (section 3 CBN Act).

Section 33(1)(b) of the Act, empowers the bank to issue guidelines to any person or institution under its supervision. It is on this premise that the CBN Governor issued several guidelines that regulate digital banks in Nigeria. These include:

a) Guidelines for the Regulation and Supervision of Microfinance Banks 2020, which provides for the permissible and non-permissible services of MFBs, categories of MFBs (Tier 1, Tier 2, State MFBs and National MFBs) and their respective minimum capitals, ownership and licensing requirements of MFBs conditions for revocation of such license etc.
b) Guidelines for Licensing and Regulation of Payment Service Banks 2020, which provides for the structure of PSBs, its permissible and non-permissible activities, licensing requirements, revocation of license, corporate governance, risk management.
c) Revised Guidelines for Finance Companies in Nigeria 2014, which provides for the permissible and non-permissible services of Finance Companies, its licensing requirements, revocation of licence, source of funds, supervision and compliance, prudential requirements, risk management etcetera.
d) Guidelines on Electronic Banking in Nigeria 2003, containing guidelines on digital banking and payment services in Nigeria with regards to ICT standards, monetary policy, legal guidelines as well as the regulation and supervision of digital banking and payment services in the country.

5.1.3 Nigeria Deposit Insurance Corporation Act, 2023

This Act establishes the Nigeria Deposit Insurance Corporation (NDIC) to insure all deposit liabilities of banks and other financial institutions in Nigeria, supervise banks to reduce potential risk of failure and check unsound banking practices, ensure timeous and efficient resolution of failing and failed institutions and liquidate banks that do not respond to failure resolution measures (sections 2 & 3).

By section 7 of the Act, the NDIC has a governing body known as the Board of Directors, which comprises of a chairman, managing director, two executive directors, a representative from the CBN and the Federal Ministry of Finance respectively, and six other members from each of the six geo-political zones of Nigeria. Its functions as stipulated in section 3 of the NDIC Act are as follows:

a) insuring all deposit liabilities of licensed banks and such other financial institutions so as to engender confidence in the Nigerian banking system;
b) giving assistance to insured institutions in the interest of depositors, in case of imminent or actual financial difficulties of banks particularly where suspension of payments is threatened, and avoiding damage to public confidence in the banking system;
c) guaranteeing payments to depositors, in case of imminent or actual suspension of payments by insured institutions up to the maximum as provided for in section 20 of the Act;
d) assisting monetary authorities in the formulation and implementation of policies so as to ensure sound banking practice and fair competition among insured institutions in the country;
e) pursuing any other measures necessary to achieve the functions of the Corporation provided such measures and actions are not repugnant to the objects of the Corporation.

5.1.4 Companies and Allied Matters Act, 2020

The Companies and Allied Matters Act (CAMA) 2020 provides for the incorporation of companies, trustees of certain communities, bodies and associations, and registration of business names. The Act establishes the Corporate Affairs Commission (CAC), which is charged with regulating the formation and management of companies, businesses and trustees of bodies in Nigeria. By section 8 of the Act, the functions of the Commission include:

a) to administer the Act, including the registration, regulation and supervision of (i) the formation, incorporation, management, striking off and winding up of companies, (ii) business names, management and removal of names from the register, and (iii) the formation, incorporation, management and dissolution of incorporated trustees;
b) to establish and maintain a company's registry and office in each State of the Federation suitably and adequately equipped to perform its functions under the Act or any other law;
c) to arrange or conduct an investigation into the affairs of any company, incorporated trustees or business names where the interest of shareholders, members, partners or public so demands;
d) to ensure compliance by companies, business names and incorporated trustees with the provisions of the Act and such other regulations as maybe made by the Commission;
e) to perform such other functions as may be specified in the Act or any other law; and

f) to undertake such other activities as are necessary or expedient to give full effect to the provisions of the Act.

Judging from the functions of the CAC, it also regulates the formation and management of digital banks in Nigeria. A digital bank cannot operate in Nigeria unless it is first incorporated as a company under the Companies and Allied Matters Act, and then licensed by the CBN (Apori & Ebri, 2021). In addition, the CAC wields regulatory powers over digital banks especially with respect to certain statutory filings required to be made by them (chapters 14, 15 and 16 of the Act). Other legislations regulating digital banks in Nigeria include the Cybercrimes (Prohibition, Prevention, Etc) Act 2015, which seeks to curb cybercrimes in Nigeria, and the Financial Reporting Council of Nigeria (FRCN) (Amendment) Act, 2023, which establishes the FRCN with the responsibility of enforcing compliance with accounting, auditing, corporate governance and financial reporting standards in Nigeria (section 8). The National Office for Technology Acquisition and Promotion (NOTAP) on the other hand, regulates the inflow of foreign technology in Nigeria, while the National Communication Commission (NCC) regulates telecommunications, including internet connectivity.

6. Problems with the Extant Legal Regime for Digital Banks in Nigeria

It is commendable that the government has taken steps to regulate digital banks and digital banking, which was not originally envisaged in Nigeria's banking laws. BOFIA 2020 clearly accommodates digital banking, and the CBN governor's guidelines are indispensable in the regulation of digital banks and digital banking in Nigeria. There are however some grey areas in the extant legal framework for digital banks in Nigeria. They include:

a) Absence of licensing scheme solely for digital banks. Currently, there is no such thing as a digital bank licence. Companies that desire to operate as a digital bank must obtain a Microfinance Bank Licence, a Finance Company Licence or a Payment Service Banks Licence, each of which allows a limited scope of banking services.
b) Absence of a single comprehensive law for digital banks in Nigeria. Although BOFIA 2020 now regulates banking services conducted electronically, virtually or digitally, and the CBN guidelines tend to make up for areas not covered by the law, the legal framework for digital banking in Nigeria remains fragmented and incomplete.

Conclusions

The paper examined the legal framework on regulation of digital banking in Nigeria. It noted the progress made in incorporating digital banking into the mainstream of the Nigerian banking system by the amendment of BOFIA 2020, and the numerous CBN guidelines. However, the paper observed some shortcomings with the extant legal framework for digital banking regulation, by the absence of both a specialized licencing regime, and a comprehensive single legislation dealing with the digital banking in Nigeria. The paper therefore recommends that a licensing scheme be developed solely for digital banks in Nigeria. In other words, there should be a licence or licences solely for digital banks. This will help accommodate the peculiarities associated with such banks. The presence of a comprehensive law that addresses the uniqueness of digital banks will also help to enhance the regulation of digital banks in Nigeria.

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CONVENTION ON BIOLOGICAL DIVERSITY AND THE NAGOYA PROTOCOL: PROTECTION OF TRADITIONAL KNOWLEDGE IN NIGERIA

T.A. OLORUNNIPA, O. I. ADISA-IBOJO, F. A. ADETOYE

Temitope Abigail Olorunnipa[1], Oluwabunlola Ibhade Adisa-Ibojo [2], Funmilola Abeke Adetoye[3]

[1] Babcock University, Ilishan Remo, Lecturer at Lead City University, Ibadan, Nigeria
https://orcid.org/0009-0008-5290-6513, E-mail: olorunnipa.temitope@leadcity.edu.ng
[2] Lead City University, Ibadan, Nigeria
https://orcid.org/0009-0001-3342-6476, E-mail: ibhade.ibojo@lcu.edu.ng
[3] Babcock University, Ilishan Remo, Chrisland University, Nigeria
https://orcid.org/0009-0009-3761-8924, E-mail: fadetoye@chrislanduniversity.edu.ng

Abstract: *The continued sustenance of human being is, to a large extent, dependent on the conservation and/or preservation of the biological diversity in his particular environment. The totality of living thing around human being - ecosystems, species and genetic resources - is useful for his existence and sustained development as well. But over the ages, biological diversity has been challenged by different issues like degradation, pollution, alien invasions and so forth which has led to the extinction of some biological diversity at one time or the other. In addition to these is the crucial challenge of patenting the traditional knowledge in genetic resources of traditional communities without due regard to same as their cultural heritage that need yield economic interest as well as morally deserving attribution. The international frameworks to tackle this challenge have also addressed the need to have different interests protected including the local or indigenous communities. With the aid of doctrinal method of research, this work aim at exploring the provisions of the international instruments being the Convention on Biological Diversity and the Nagoya Protocol on Access to Equitable Sharing of Benefits arising from the utilization of genetic resources cum how they relate to the protection of local and indigenous communities. It concludes that the instruments are targeted towards human sustainability generally but needs domestication and enforcement in our developing environments for there to be efficacy in the protection of the traditional knowledge in the biodiversity of local communities from misuse, misappropriation and abuse.*

Keywords: *Biological Diversity, CBD, Nagoya Protocol, Local Communities, traditional knowledge*

Introduction

Every place on earth is home to one living thing or the other. There are different levels of their existence but due to one reason or the other, they are all confronted with the threat of extinction. This has led to resolve to finding solutions to help the environment keep its life with the resultant effect of sustaining human lives through concerted efforts at international levels which trickles down to local communities who are also already aware of their resources and

crave for the benefit from the utilization of their resources having nurtured same through their traditional knowledge and sustained from generations past.(Barry, 1998)

Since the early 1980s, traditional communities, especially of developing nations, have craved for the protection of their traditional knowledge based genetic resources in biological diversity (biodiversity) (Dutfield & Suthersanen, 2024) which are considered as cultural heritage (Stamatoudi, 2022:29). Traditional knowledge, in this sense, is the skill or know-how that yields intellectual creations in traditional communities which can be seen in the area agriculture, medicine, ecosystem, technology amongst others. It is of great economic value to the communities. (Okediji, 2019) The call for protection of traditional knowledge became imminent following the exploitation of the biological resources of the traditional communities (termed 'bioprospecting') without authorization, acknowledgement of source and benefit sharing, (Okediji, 2022) and patenting of same in industrialised nations (Okediji, 2019). In 1992, the United Nation came up with the Convention on Biological Diversity (CBD) in Rio which about 196 countries have ratified including Nigeria. (United Nations) The CBD is an international legal instrument for the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.(Preamble, CBD) The CBD defines biological diversity to mean the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part: this includes diversity within species, between species and of ecosystems.(Art. 1, CBD) Thus, biodiversity is the totality of the variety of life found on earth - plant, animal, fungi and all living thing at different places. Therefore, it is important to conserve and preserve biological diversity for the sustenance of human being and further our development.(Coombe, 2001)

Against this backdrop, the objective of the CBD is to encourage actions geared towards a sustainable future - that is, the conservation of biodiversity is rendered 'a common concern of humankind'.(Preamble, CBD) As already stated, CBD covers biodiversity at all levels: ecosystems, species and genetic resources. It also covers biotechnology, including through the Cartagena Protocol on Biosafety, an international agreement which aims to ensure the safe handling, transport and use of living modified organisms (LMOs) resulting from modern biotechnology that may have adverse effects on biological diversity, taking also into account risks to human health; it was adopted on 29 January 2000 and entered into force on 11 September 2003. As a matter of fact, CBD covers all possible domains that are directly or indirectly related to biodiversity and its role in development, ranging from science, politics and education to agriculture, business, culture and much more with the aim of preventing misuse, mismanagement, abuse and destruction. But the focus of this study is basically on its protection as it relates to traditional knowledge in flora and fauna exploitation.

Since biodiversity spans every aspect of the existence of man's sustenance, the need for protection of the rights of the local communities where they are situated cannot be overemphasized. Just like the Intellectual Property protection system is deployed as a veritable tool to protect the interest of creators in their intellectual works, there is need to protect the knowledge, innovations and skill of local communities in their biological resources. According to World Intellectual Property Organization (WIPO), genetic resources are 'subject to access and benefit-sharing regulations, in particular within the international frameworks defined by

the CBD and its Nagoya Protocol'. (WIPO, 2023) Thus, it is safe to state that the CBD and its Nagoya Protocol also deal with traditional knowledge and genetic resources. This renders the review of the provisions imperative.

Biodiversity in Nigeria

Situated in the West African region of Africa, Nigeria lies between longitudes 30 E and 150 E and latitudes 40N and 140N. She has a land mass of 923,768 sq.km and is bordered to the north by the Republics of Niger and Chad; shares borders to the west with the Republic of Benin, while the Republic of Cameroun shares the eastern borders right down to the shores of the Atlantic Ocean which forms the southern limits of her Territory. She has maritime power due to her coastline of about 853km. (Nigeria, 2015) Nigeria has a large population of biodiversity and though she had ratified the CBD and the reeled out a number of policies, biodiversity is challenged in Nigeria by surge in population, alien species invasion, misappropriation, poverty, economic activity, habitat fragmentation, building construction, deforestation and so on. (Imarhiagbe et al, 2020). Of more relevance to this study is the challenge of religious bigotry and more especially bio-piracy by contemporary pharmaceuticals and research institutes without due benefits given to the traditional community. The case of NIPRISAN development using traditional knowledge by a national research agency, National Institute for Pharmaceutical Research and Development (NIPRD) which was patented comes to mind.(Perampaladas, 2010) Though the local that facilitated the traditional knowledge was paid, no further mention was made of his inclusion in all other transactions that was done pertaining to NIPRISAN.

Nigeria has however not domesticated the CBD as required by Section 12(1) of her constitution. But there are various laws to implement that align with the provisions of the CBD. She also has national plan for implementing CBD and submits reports accordingly.

Considering the challenges confronting biodiversity, issues relating thereto in terms of Traditional knowledge, innovations and practices of local communities are in jeopardy but for the intervention of the Convention and the Nagoya Protocols to it. (CBD factsheet, 2011) The Convention gave a pride of place to the protection of local communities in different parts through its three objectives. (UNCBD, 2023) This renders it extremely necessary to pay close attention to issues of biodiversity by the government.

Importance of Convention on Biological Diversity to Local Communities

The Convention and the Nagoya Protocol pay particular attention to the plight of local communities as regards traditional knowledge, innovations and practices. As stated before, it addresses also matters pertaining to genetic resources as it relates to local communities. It is evident from the Preamble that the Convention recognizes the 'close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components. Traditional knowledge is employed here to mean knowledge, innovations and practices of indigenous and local communities embodying

traditional lifestyles relevant for the conservation and sustainable use of biological diversity. (Blakeney, 2001)

According to Article 8(j) which is core to the application of the CBD to local communities, each contracting party or state shall, as far as possible, subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices:

There are yet other provisions that must be read in conjunction with Article 8(j) to draw the protection of local communities as regards their biological resources that can depict their knowledge, innovations and practices. Article 10 (c) which requires parties to 'protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements'. Such 'customary uses' can be considered to be synonymous with the "practices" referred to in Article 8(j), when both are relevant to or compatible with the conservation and sustainable use of biological resources. Also, Article 15 recognizes the sovereign rights of States over their natural resources, the authority to determine access to genetic resources rests with the national governments and is subject to national legislation. It further provides for the seeking of consent of contracting state who own genetic resources before being utilized, but encourages mutuality in such dealings.

Furthermore, Article 16(1) recognizes that transfer of technology (biotechnology) is essential for the achievement of the objectives of the Convention, so each contracting state 'undertakes, subject to the provisions of the Article, to provide and/or facilitate access for and transfer to other Contracting Parties of technologies that are relevant to the conservation and sustainable use of biological diversity or make use of genetic resources and do not cause significant damage to the environment.

In addition, Article 19 is on handling of Biotechnology' and Distribution of its Benefits - the duties and corresponding expectations from contracting parties. Contracting Parties shall facilitate the exchange of information and such exchange of information shall include exchange of results of technical, scientific and socio-economic research, as well as information on training and surveying programmes, specialized knowledge, indigenous and traditional knowledge as such and in combination with the technologies referred to in Article 16, paragraph 1. It shall also, where feasible, include repatriation of information. (Article 17)

The Contracting Parties have to, in accordance with national legislation and policies, encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies, in pursuance of the objectives of the Convention. For this purpose, the Contracting Parties must also promote cooperation in the training of personnel and exchange of experts. (Article 18.4)

As stated above, for sustainable use of components of biodiversity, Article 10(c) states that each Contracting Party shall, as far as possible and as appropriate protect and encourage customary use of biological resources in accordance with traditional cultural practices that are

compatible with conservation or sustainable use requirements. The status of "indigenous and local communities' traditional knowledge" is also affirmed by paragraph 9 of preamble to Decision III/14 of the Conference of the Parties regarding the implementation of Article 8 (j).

Besides Article 8(j), the CBD also states that access to genetic resources shall be subject to prior informed consent (PIC) of the Contracting Party providing such resources, unless otherwise determined by that Party. (Artcle 15.5) Access to genetic resources and benefit sharing arising out of the use of genetic resources are in consonance with traditional knowledge of indigenous and local communities. A combined reading of Art. 8(j), 10(c) and 15(5) would spotlight traditional knowledge as being useful in identifying sources of new products derived from genetic resources.

Moreover, it is the provisions of the CBD that the Contracting Parties shall, in accordance with national legislation and policies, encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies, in pursuance of the objectives of this Convention. For this purpose, the Contracting Parties are to also promote cooperation in the training of personnel and exchange of experts.

The Nagoya Protocol on Access and Benefit-Sharing

The Nagoya Protocol to the CBD was signed in 2010 but came into force in 2014. Just like the CBD, Nigeria ratified the Nayoga Protocol but is yet to domesticate it. In order to address the linkage between biodiversity conservation and its sustainable use, the Convention on Biological Diversity (CBD) introduced as one of its three objectives the fair and equitable sharing of the benefits arising out of the utilization of genetic resources with those providing such resources. The Nagoya Protocol as supplement to CBD covers the use of genetic resources without misappropriation (bio-piracy) as it relates to traditional knowledge - emphasizing Prior Informed Consent (PIC) of the local communities that own traditional knowledge in genetic resource, Access and Benefit Sharing (ABS) and mutually agreed terms (MAT). (Nagoya, Preamble)

Emphatically, the purpose of the Protocol is to implement the fair and equitable sharing of benefits arising from the utilization of genetic resources as it relates also to traditional knowledge. It builds on the access and benefit-sharing provisions of the Convention. Moreover, Parties to the Protocol are to ensure that their nationals comply with the domestic legislation and regulatory requirements of provider countries related to access and benefit-sharing of traditional knowledge associated with genetic resources. The ABS system creates incentives to conserve and sustainably use genetic resources which in turn enhances the contribution of biodiversity to development and human well-being in the communities.

Nagoya Protocol applies to genetic resources within the scope of Article 15 of the Convention and to the benefits arising from the utilization of such resources. It also applies to traditional knowledge associated with genetic resources within the scope of the Convention and to the benefits arising from the utilization of such knowledge. (Article 3) A combined reading will show that as stated in the Preamble to the CBD, States have sovereign rights over their own biological resources. Access to genetic resources by users must therefore be based on prior informed consent and equitable benefit sharing must occur on mutually agreed terms

- that is PIC and MAT, respectively as contained in Nagoya Protocol, Articles 5 and 6 and also in CBD, Articles 15, 16 and 19 which all present the way the ABS provisions of the Nagoya Protocol and the CBD are designed to work as regard traditional communities' interests.

Brief Critique

It is abundantly clear from the foregoing that both the CBD and Nagoya Protocol are plausible proactive measures to forestall unworthy utilization of biodiversity at the international level prescribing best practices for contracting parties. However, it goes without saying that there is bound to be some limitations as they are work in progress expected to be accomplished by the efforts of contracting parties through their national laws and other collaborative efforts. For instance, as part of effort to reposition Traditional knowledge, WIPO had just adopted the Treaty Intellectual Property, Genetic Resources and Associated Traditional Knowledge at the Diplomatic Conference to Conclude an International Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources held in Geneva between 13th and 24th May, 2024 (WIPO, 2024 GRATK/DC/7); which would further enhance the protection sought to be done under the CBD and the Protocol by the indigenous and traditional communities.

Conversely, definition of local communities seems not to have been certain or is multifaceted and limitations in applying the provision have been identified as part of the shortcomings of the Protocol. More importantly, despite the importance of the Nagoya Protocol, intellectual property is largely absent from it with the exception of its mention as a means for possibly securing equitable benefit sharing.

Conclusions and Recommendations

Like most developing countries, for example Uganda which also possess a good number of biodiversity, Nigeria as a State party has laws and policies that are geared towards the goals of sustainable development but has not domesticated these international instruments. This has occasioned misuse and abuse of genetic resources as relates to traditional knowledge in the form of bio-piracy - pharmacy using genetic resources without prior consent of local communities; religious bigotry against biodiversity and unwholesome standards for indigenous healing medicine produced from genetic resources. (WIPO IGC, 2010; Gasu et al, 2021)

The CBD and Its Protocol aims to protect traditional knowledge which is beneficial to Nigeria. Thus, it is recommended that Nigeria domesticates these instruments and follow up on their implementation for the objectives of the CBD to be realised in terms of protecting local communities, their genetic resources and traditional knowledge while the further efforts at protecting intellectual property in genetic resources by WIPO awaits commencement.

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THE EMERGING THREAT OF CHINESE ORGANIZED CRIME IN ITALY AND EUROPE

G. PALERMO, M. LANNA

Giovanna Palermo[1], Michele Lanna[2]
[1] [2] Università della Campania Luigi Vanvitelli, Italy
[1] https://orcid.org/0000-0002-6905-4133, E-mail: giovanna.palermo@unicampania.it
[2] https://orcid.org/0009-0009-3022-0657, E-mail: michele.lanna@unicampania.it

Abstract: *The mafias, opening up from their territories of origin, have opened up to profound global transformations, also rethinking their own hierarchies of values, their own purposes and their own rules. In particular, in this paper the author deals with the Chinese mafia and its presence on Italian and European territory. In a transnational dimension, the Chinese underworld operates, with the native and foreign criminal cliques present in the territories, in carrying out illicit business and does this with a "mafia-style" methodology.*
Triad is the name given in the West to a secret society, founded in China in the 17th century and which has today become a dangerous mafia criminal organisation. It has its bases in Hong Kong and the island of Taiwan, but today it is increasingly widespread not only in the United States of America, but also in Italy and Europe.

Keywords: *organized crime, mafias, triads, Chinese criminal organisations.*

Introduction

Chinese crime, which for years has also taken on mafia-like characteristics, represents a danger to the security not only of Italy, but of many European countries. The alarm was raised way back in 2003 by the parliamentary anti-mafia commission which listed the types of criminal activities carried out by the Chinese in Italy.

During the same period, the fifty-second "Report on information and security policy" of the Presidency of the Council of Ministers warned about the "Chinese cliques", their expansion in Italy and the ramifications that were emerging in Eastern Europe and France .

In the 2017 report, Europol highlights how today around five thousand criminal organisations are under investigation in the 28 member countries of the European Union and if it is true that only Italian ones are legally classified as mafia-type associations, it is equally true that many associations foreigners are also characterized because "they make use of the intimidating force of the associative bond and the condition of subjugation and silence that derives from it to commit crimes, to directly or indirectly acquire the management or in any case the control of economic activities, concessions, of authorizations, contracts and public services or to obtain unfair profits or advantages for oneself or others, or for the purpose of preventing or hindering the free exercise of voting or procuring votes for oneself or others during electoral consultations" (art. 416 bis Italian penal code).

1. The Chinese mafia and infiltration into Italian territory

Jean-François Gayraud (2010) considers as “mafias” the Sicilian Cosa Nostra, the Italian American Cosa Nostra (in the United States), the Calabrian 'Ndrangheta, the Neapolitan Camorra, the Apulian Sacra Corona Unita, the Chinese Triads, the Japanese Yakuza, the Albanian-speaking mafia (in Albania and Kosovo) and the Turkish Maffya.

In particular, Chinese criminal associations seem to reproduce the 'Ndrangheta model. In fact, they are based on a family basis, leveraging the feeling of belonging to a group, the so-called guanxi (关系), which goes beyond blood ties. On an etymological level, the term gaunxi means "entrance door into a hierarchy or group" and, as specified by Ying Lun So and Antony Walker (2005, p. 3-4): “The simple translation of the Chinese word *guanxi* is "relationship". The same word can be used either to refer to people when the word means human relationship, or non-human issues, …when the word appears in English … it refers only to relationship between people … one the primary difference in the Chinese and Western ways of doing business could be traced to the fact that in the West business developed is own culture separate from private and personal culture, with a different set of rules and a character its own. In the Chinese context, there is no separate morality for business. There are no separate rules that divide the conduct of business from that of personal affairs, in which the key factor is proper human relations. A successful business relationship between Chinese companies begin with the establishment of a personal bond between the principal managers of the companies and is based thereafter on the careful maintenance of these personal ties (De Mente, 1992)”.

“The Chinese cliques in Italy are structured according to essentially hierarchical methods, mainly focused on family and solidarity relationships. In particular, these are "closed" partnerships and, therefore, impenetrable to external contamination or collaboration. Rarely, in fact, is the creation of functional agreements with Italian criminal organisations or the establishment of small multi-ethnic cliques" (DIA, II semester 2022, p. 303).

Thus, Chinese organized crime is an "extended economic family", linked by common interests: the pursuit of both legitimate and illicit profits.

More precisely, with the term Chinese organized crime we can refer to three criminal groups: the Triads, the Tongs and the Street Gangs (Booth 1990; Chin, 1996; Huston, 2001; Chin, Zhang & Kelly, 2002).

The Triads represent the best-known Chinese criminal organisations, which, as we will see, refer to ancient secret associations, initially created to pursue legitimate purposes, which over time moved towards illegal markets.

The term *Tong* derives from the Mandarin *tang*, literally meaning hall or meeting place, to probably indicate those original associative forms that represented the first types of self-government of Chinese communities. These are associations that appear legal, have their own offices, provide legal and administrative assistance to their members, but their leaders are often criminals and, behind various apparently legitimate activities, conduct illegal businesses.

Street gangs appeared towards the end of the 1960s in the USA and were the product of the migratory flow of Chinese into American Chinatowns. They were initially the response to attacks by other ethnic groups and strengthened as organized criminal groups following relationships of exchange and mutual support with the criminal part of the tongs.

The triads represent the most powerful mafia in the East and are spreading widely in the West too.

Their internal hierarchical organisation means that there are no, or no visible, stable federative links between the various triads, nor can it be said that a top body exists, like the Sicilian dome of "Cosa Nostra" (Buzzat, Musumeci, 2007).

The Chinese mafia organisation began between the 17th and 18th centuries and its origin is linked to legends that trace their birth to an act of resistance by a group of Buddhist monks from a monastery called Shaolin, against the Qing dynasty (or Ch'ing).

It is said, in fact, that, around 1644, the Qing dynasty conquered China, putting an end to the Ming dynasty and southern China tried to rebel.

The group of Buddhist monks was joined by several rebels who reached the Shaolin monastery, when, in 1647 or 1674 (or again in 1732), according to different chronicles, the troops of the Qing empire massacred the monks of the temple, which was then set on fire . Only five of them managed to save themselves and, during their journey, they saw a censer floating on the waters of a river, on which an epigraph instructed them to "overthrow the Qing and restore the Ming".

Thus, they created the first Chinese secret society, the Triad (name with which the English colonialists of the nineteenth century called it), or Hong Men (Great Gate) or Sun Hoh Hwui evolved into Tian-Di Hui (Society of three united: sky, earth , man, the three powers in nature) (Milne, 1826), with a symbol in the shape of an equilateral triangle (Wilson, Newboldm 1841; Ownby, Somers Heidhues 1993; Murray, 1994; Rodier, 2012).

According to historians, however, the birth of the first triad dates back to 1760, in the province of Fujian, and its main objectives were not of a political nature, but of helping merchants and immigrants.

In the 19th century, the Triads also participated in the Opium War and the Yellow Turban Uprising, led by the Taiping and quelled by France and Great Britain which, having control of Hong Kong at the time, prohibited any form of secret society. It was then that the Triads, silently dedicated themselves to activities such as smuggling and piracy, formed ties with political power and began to influence decisions regarding the fate of the country. Thus, on January 1, 1912, Sun Yat-sen, an important member of the Ge Lao Hui triad, proclaimed the Republic of China. The triads were, therefore, starting to take on more and more senior roles.

After the Second World War, the power of the triads reached such high levels that the United States agreed on an anti-communist pact: to support Chiang Kai Shek's nationalist party to prevent Mao Tze Tung from gaining power. However, Mao came to power and in 1949 he began a strong repression against these organisations: 820,000 people were imprisoned, many others were executed and many migrated to Macao, Taiwan and the United States of America.

During this period, secret societies were therefore banned as illegal, but soon the Chinese government began to resort to triads, which had great economic wealth and could have provided liquidity to the country. This collaboration allowed China to prosper in a time of crisis, thanks to sanctioned crime. Starting from the 1970s, therefore, this attitude of tolerance towards the triads allowed them to grow and emerge again. The only condition to be respected was not to try to overthrow political power and to operate in total secrecy.

In the same period, the diaspora of the triads continued progressively: from Hong Kong to Great Britain, the Netherlands, South Africa and the North American continent.

Among the most dangerous triads, we remember the *14k* or *Sap Sze Wui*, considered in the 1990s the largest and most powerful operating in Macau; the Shui Fong (the water room); *Sun yee on* (New Virtue and Peace), the most powerful organisation in Hong Kong, with over 30,000 members and over 55,000 affiliates worldwide; the *Wo shing wo*; the *Luen*; the *King Yee Triad*; the *Hung Mun Triad*, etc.

The new wave of migration at the end of the 1980s which led Chinese communities to settle not only in America and Australia but also in Europe, also led to the entry of the Triads into these countries.

"Their global diffusion more or less follows that of the Chinese diaspora. This is an impressive phenomenon" (Gayraud, 2010, p. 147).

The Triads manage clandestine emigration from China to new lands. The technique they use to establish themselves and organize their criminal power passes mainly through the start-up of commercial activities, the acquisition of economic activities, the subsequent monopolization of territories and the creation of a Chinatown. A real fortress closed to the police and other criminal organisations. The Triads thus replace the original criminal associations in the management of drugs, prostitution and gambling and in offering other services, such as the trade of organs for transplants.

Today they are rapidly expanding and, having historically had the need to create an invisible system of capital transfer, they are excellent interpreters of financial globalisation, managing to take on a leading role compared to other mafias.

From a structural and organisational point of view, triads are similar to secret sects, characterized by rituals and symbolism (e.g. tattoos; combinations of numbers combined with the various roles within the organisation). Usually, Chinese crime bosses, unlike others, do not aspire to fame, but exclusively to the exercise of power, so much so that their identity is kept secret. Secrecy is generally a dogma for Chinese culture, so CDs are rare. "repents" or "collaborators of justice".

The internal structuring of the triads varies depending on external conditions, but some characteristics remain constant, primarily the organisational levels: at the top of the hierarchy there is the leader, called the *Master of the Mountain* (Shan Chu) or *Dragon Head* (Lung Tau) or 489, or *Big Brother* (Tai Lo); at the next level, there is a sub-boss, called 438. The boss is surrounded by two managers: the vanguard, an operational manager, and the *Master of the incense* (Hueng Chu), the guardian of the traditions and responsible for the recruitment of new followers, with a leading role within the organisation. The boss and sub-bosses define the general strategy of the organisation and take care of relations with foreign criminal organisations.

Below this first level we find the *Officers' Committee*, with the functions of spokesperson for the organisation, safety manager and advisor. The last step is occupied by the *soldiers* or *49*, who act in the field under the direction of a leader, the Cho Kun. Aspirants to join the association are called *Blue Lanterns* and must pass a series of tests before joining the association.

In Italy, Chinese bosses manage their trafficking from their homeland and delegate the management of activities in the cities to underbosses and criminal labourers. From the report of the DIA (Anti-Mafia Investigative Directorate) on foreign mafias in Italy, published in June 2018 and relating to the period September-December 2017, it emerged that Chinese organized

crime has spread over a large part of Italian territory, in particular in Lombardy, in Tuscany, Emilia Romagna and Lazio.

Chinese organized crime in Italy is mainly dedicated to gambling, money laundering, "aiding and abetting illegal immigration (aimed at "trafficking", "illegal" work and prostitution), crimes against the person (sometimes committed in the context of intimidating actions or clashes between members of opposing groups), to robberies and extortions against fellow countrymen, to the counterfeiting of brands, to cigarette smuggling, to the falsification of documents, sectors to which added, albeit residually, the activities connected to gambling and drug trafficking, in particular methamphetamines (such as Shaboo), sometimes practiced in connection with the Philippine community" (DIA, 2018, p. 135).

In the report for the second half of 2022, the Anti-Mafia Investigation Directorate noted that "Chinese crime appears dedicated [also] to the commission of extortion and robberies almost exclusively to the detriment of its own compatriots, to the exploitation of prostitution, to the perpetration of financial crimes, to which they accompany illicit money transfer activities, as well as the detention and dealing of methamphetamine, which is treated almost as a monopoly by Chinese pushers". “This criminal activity is carried out together with Philippine and Bangladeshi crime. In particular, the Chinese and Philippine ones in the dealing of shaboo (synthetic drug made up of methamphetamine crystals). Bangladeshi crime is instead active not only in the dealing of marijuana and hashish, but also in that of yaba, a synthetic narcotic coming from the Asian market" (DIA, II semester 2022, p. 303, note 109).

For accounting practices, primarily functional to tax and social security evasion, perpetrated through the frequent establishment of so-called companies "open and close", Chinese crime often makes use of Italian consultants and professionals.

Most of the crimes are committed within the community, so they do not attract particular attention in public opinion and do not make the potential of this mafia visible, which we can see, however, in all its danger in the United States. On the other hand, the migration process of Chinese towards Italy is certainly much more recent than in the United States, where the Chinese presence has a history of more than one hundred and fifty years. When Chinese crime projects itself externally, it does so to launder and reuse capital, also establishing relationships with compliant professional environments.

The first conviction in Italy for mafia association against an organized group dates back to 1994, the year in which the Court of Rome with sentence no. 285, condemned, pursuant to art. 416 bis penal code, a group of Chinese citizens belonging to the Tiger Head clan, at the top of which was Zhou Yiping. The Court recognized in the accused's power of influencing his fellow countrymen, which led them to retract their statements during the hearing or even to leave the country before the start of the trial phase, those characteristics typical of the mafia-type association which made use of the associative bond and the intimidating force referred to in the art. 416 bis Italian penal code, to which reference was made previously. This rule is typified only in Italy and expressly provides for the possibility of also being applied to foreign criminal organisations operating on Italian territory. In fact, however, the aforementioned rule is difficult to implement.

The Court of Cassation pays particular attention to the manifestation of the "intimidatory method", and excluded the applicability of the art. 416 bis c.p. on several occasions and not only for the Chinese mafia, but also for the Nigerian and Ukrainian ones, as he stated that the fame

or criminal prestige of the groups which are mainly confined to their respective national communities of reference is not "crystallized or sufficiently widespread" (Sparagna, 2015, p. 18).

On this point more recently the Court of Cassation (Section 2, n. 50949 of 2017) stated that "the crime provided for by art. 416-bis of the penal code is also integrated by organisations which, even without having control over all those who live or work in a specific territory, have the aim of subjecting an indeterminate number of people who have immigrated or been forced to immigrate illegally to their criminal power." .

Lastly, the Court stated that "the crime referred to in art. 416 bis can also be configured with regard to organisations which, without indiscriminately controlling those who live or work in a specific territory, limit their illicit attentions to the detriment of the members of a specific community, making use of typically mafia methods, since the reason for the particular incrimination is given by the use of this methodology, considered to be most damaging to the protected assets" (Court of Cassation, section II, 21 July 2017, n. 1586).

The Triads, therefore, are increasingly evolving as mafia-style transnational criminal organisations and technological progress and the globalization of markets could increasingly favor the affirmation of this criminal phenomenon, to combat which it will be necessary to prepare effective legal instruments and guarantee specific preparation for the international bodies responsible for guaranteeing security.

2. Socio-political profiles of Chinese organized crime in Europe

Chinese organized crime, which already "occupies a prominent position among foreign criminal organisations in Italy, in particular in Tuscany..., in Lombardy, in Veneto, in Piedmont and in Lazio" (DIA, 2019), has gradually and systematically penetrated also in other EU countries, using as bases the main cities which for years had been the "crossroads" for the trafficking of drugs and illegal immigrants.

The Chinese mafia makes huge profits from illegal immigrants, who will be forced to commit crimes of all kinds on behalf of organisations to pay for their trip, leveraging their desperation and their dream of making a fortune.

In the Netherlands, for example, the development of Chinese entrepreneurship, particularly in the restaurant industry, and migration policies have, over the years, favored a considerable influx of young Chinese and also of criminals, so much so that, in Amsterdam alone, some groups have settled, such as Sun Yee on, Wo Shin Yee, Luen Ying She, Yuet Tung, connected to the Triads.

In Belgium, in Brussels, the presence of the Triads 14K and Wo Sing Wo has been confirmed. Presence of Chinese crime has been reported in Paris, where in a sort of Chinatown, some Triad leaders control communities of settled Chinese.

In Germany the Triads operate mainly in Hamburg. In Stuttgart and Nuremberg they control gambling, brothels, the trafficking of illegal immigrants, the falsification of documents and the trafficking of synthetic drugs. Even in Spain there is a strong concentration of Chinese from Zhejiang, but significant presences are also recorded in the Balkan region, in particular in Bosnia where several episodes of human trafficking for labor exploitation and prostitution have been detected in the Chinese community.

Chinese criminal presences also in Serbia and Kosovo, as well as in Malta, where the Chinese mafia mainly deals with human trafficking.

The Chinese communities in Europe, as well as in America and Australia, are all controlled by the triads, who organize clandestine emigration from China to other continents, also providing counterfeit documents.

The technique of conquering the territory, already tested in England, Holland, Canada, the United States of America and then also extended to France, Germany and Italy, involves the acquisition of the economic activities of the neighborhood and the progressive expulsion of residents, to establish the so-called Chinatown, a true enclave difficult to penetrate even by the police and other criminal groups.

In this way, the Tongs have asserted their dominance both in the management of the usual criminal activities, such as drugs, prostitution and gambling, and by offering new services, such as the trafficking of adolescents and the trade of organs for transplants.

Conclusions

From the investigations conducted, no stable federative connections between the various triads emerged, nor does it appear that a top body exists. However, investigators do not rule out the possibility that central coordination could be established in China of the criminal activities and legal investments of triads around the world.

The triads, thanks to the migratory flow, which is quantitatively growing and geographically expanding, and the ability to transfer capital while escaping government controls, have assumed, with their "*Invisible Empire*" (Faligot, 1996), a leading role in the panorama of the new mafias.

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DOMESTIC VIOLENCE: CRIMINOLOGICAL PROFILES, PREVENTION AND VICTIM PROTECTION

P. PELUSO

Pasquale Peluso
Department of Legal and Political Sciences, Guglielmo Marconi University of Rome, Italy
https://orcid.org/0000-0002-9004-1812, E-mail: p.peluso@marconi.it

Abstract: *One of the reasons for the high dark number that characterizes domestic violence is that women often fail to recognize violence especially in the forms of psychological or economic violence, which, however, through the humiliations, denigrations with which it is substantiated annihilates women's personalities. Often women decide to turn to an anti-violence center only after they have suffered physical violence, and there they discover, then, that they have also been victims of other forms of violence that had not, however, been experienced as such, despite the outcry raised by the media.*

Keywords: *domestic, violence, prevention, victim, protection.*

Introduction

In order to understand the criminogenic causes of intra-family violence, it is necessary, first of all, to dwell on the evolution of society over the past fifty to sixty years. Indeed, cultural and social evolution, which has also led to an increase in women's work, has resulted in the disappearance of the patriarchal structure of the family. Women have begun to take on roles previously reserved only for male subjects, and relationships within the family have become increasingly fragile. The causes of violence should not be sought within a single factor, as violence arises from a multiplicity of factors of different natures: social, cultural, individual and relational. One of the greatest difficulties encountered in analyzing the phenomenon is the enormous obscure number. Indeed, many women, despite being victims of violence, do not report it. The data in the possession of anti-violence centers, which fail to detect that part of the phenomenon that remains undeclared, are not helpful either. Statistics in recent years show a certain stability in homicides of women accompanied by a decrease in voluntary homicides of the male gender (ISTAT, 2020).

Several criteria can be used to distinguish domestic violence from other forms of violence or simply noncompliant behavior, including that of the behavioral patterns used by the violent person, that of the subjective perception of the victim, and that of the immediate and long-term consequences (Sontate et al., 2021).

1. The concept of domestic violence

Domestic violence, as previously mentioned, comes in different forms encompassing physical, sexual, psychological, and economic violence, and all individuals can be victims regardless of gender and age. In most cases it occurs in the family and home economy, but it can also involve current or former partners who do not live under the same roof, and the

victim does not always have a correct perception of being subjected to acts of domestic violence.

The World Health Organization has pointed out, however, that intimate partner violence and sexual violence have a strong gender connotation because most victims are women and most perpetrators are men (WHO, 2010).

According to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention; RS 0.311.35, approved in Istanbul on 11.05.2011 and ratified in Italy by L. 77/2013), the term "domestic violence" designates all acts of violence: physical, sexual, psychological or economic that occur within the family or household or between current or former spouses or partners, regardless of whether the perpetrator shares or has shared the same residence with the victim (Art. 3(b)). In relation to physical violence there are so-called "spy crimes," which are represented by all those crimes indicative of gender-based violence directed against a woman such as threats, beatings, and family abuse, the occurrence of which can then lead to an escalation that ends in crimes of attempted murder or even consummated murder. Sexual violence occurs when the victim suffers sexual harassment, rape, or is coerced into sexual acts. It should be pointed out that according to the Lanzarote Convention, all sexual acts committed with a person who by national law has not reached the age limit for legal protection constitute the crime of sexual abuse of minors. Psychological violence takes the form of a series of acts that can also be quite subtle such as instilling guilt, instilling terror, limiting the victim's social life by resorting to different motivations and others, on the other hand, more explicit such as insults, intimidation, denigration, humiliation, and fear for personal safety. Economic violence takes the form of making it difficult or limiting the victim's economic autonomy by, for example, prohibiting her from working or controlling her expenses or income or exploiting her economically. In addition, we distinguish domestic violence in the family and couple by the type of violence acted (physical, sexual) by the acts suffered by the victims and the consequences resulting from them, severity, frequency and duration. Violence may take the form of one-time violent behavior or continuous behavior that may result in violence and control. Thus, domestic violence occurs between individuals who are not always related by family or biological ties, and victims are such regardless of gender; often, however, perpetrator and victim may live in the same place such that incidents may occur even after the relationship has ended It also differs from nondomestic violence in that the violence occurs more in the victim's home or in a place considered by the victim to be safe and secure; the victim is threatened by a person known to her with whom she has an emotional or intimate bond. Violence affects not only physical integrity but also psychological and/or sexual integrity. Different forms of violence can occur either singly or in combination. Another peculiarity of domestic violence is that systematic violent behavior toward the ex-partner or minors in the domestic sphere is based on and consolidates power inequality (Hagermann-White, 2016). From a classificatory perspective, it can be affirmed that domestic violence falls into the three categories of violence outlined by the World Health Organization: self-inflicted violence, interpersonal violence committed by other individuals or small groups (domestic violence), and collective violence enacted by organized groups.

2. Forms of violence

The Istanbul Convention distinguishes between two types of domestic violence: violence between current or former partners and intergenerational violence between parents and children or between people of different generations with other kinship ties. One aspect that is often ignored by the media and scarcely reported in official statistics due to the high obscure number is intergenerational violence, which constitutes a form of domestic violence and takes the form of acts of violence enacted by parents and caregivers against children and adolescents, or acts of violence enacted against older persons, but also forms of violence witnessed by minors or even acts of violence acted by in acts of violence acted by minors against their parents. Hence the complexity and difficulty of recognizing domestic violence since it sometimes happens that a victim of multiple individuals becomes or performs acts of violence simultaneously in the same family relationship (Sontate et al., 2021).

Children's exposure to domestic violence negatively affects their psychophysical development. Without proper reprocessing of the traumas experienced during childhood the same can cause mental, physical and psychosocial disorders and exposes them to the risk of becoming perpetrators of violence in adulthood. Violence is considered to be acted on minors even when it is not personally experienced by them. Stalking is one of the forms by which domestic violence can be acted out and is particularly common in cases of separation or divorce. The Istambul Convention in Article 34 defines stalking as "intentional and repeatedly threatening behavior towards another person, leading him or her to fear for his or her safety," and impairs the psychological and/or social integrity of the victim. Even in this form, domestic violence is difficult to detect because the acts in which stalking takes place may appear individually harmless but their repetition makes them particularly dangerous.

In order to prepare strategies for the prevention of domestic violence, empirical data must be taken into account in addition to theoretical elaborations. Indeed, some authors distinguish between situational violence and systematic violence (Johnson, 2008).

The situational one, which takes the form of spontaneous conflict behavior, is characterized by acts enacted by the perpetrator(s) one or more times, even regularly, in couple or family conflicts to eliminate tensions and resolve conflicts. It is based on poor communication and poor interpersonal skills as well as insufficient skills to resolve existing conflicts including economic conflicts (Anderberg et al., 2016). In the literature, the systematic use within a pattern of controlling and humiliating behavior by the perpetrator on the victim is called intimate terrorism. Situational violence can become systematic violence and have severe or lethal consequences.

Systematic or controlling behavior violence, on the other hand, is characterized by the repetitiveness and persistence of violent acts and is based on an asymmetrical relationship of abuse. It is directed at creating an enduring power gap through prevaricating, controlling and managing behaviors in the relationship with the victim. Victims report greater physical and psychological consequences and this form of violence can only be stopped through the tools provided by the criminal justice system or with the victim support network.

There are two typical profiles of violent offenders, but the transition from one profile to the other always appears possible. People who are violent "by situational factors" act in stressful situations present in the family relationship, couple, or environment. Violence is acted out as a means of conflict resolution and, often, the victim also uses violence against his

or her perpetrator. Individuals who are violent due to "personality-related factors" enact violent behavior due to personality disorders or more generally due to personality characteristics related to con correct development, and this implies that even an irrelevant fact is enough to trigger it. In such circumstances in the couple is the sole perpetrator of violence.

Violence is always the result of an interaction of several mutually influencing causes. Empirical studies are concerned with indivi¬duating risk and protective factors. In science, a risk factor is defined as a higher statistical probability of undergoing or committing violence in the presence of certain characteristics or conditions. Protective factors, by contrast, reduce the probability of undergoing or committing violence and increase resilience in the presence of risk factors (Wilkins et al., 2014).

Differentiating the types of violence suffered, any overlapping of the same, and the severity of the acts is important to assess the possible consequences of violence on the victim and prepare supportive action for the victim. Each victim experiences the extent of health violence differently in relation to his or her individual characteristics (age, health status), the form of the violence experienced, and the relationship with the perpetrator/offender (Dokkedahl et al., 2019). Psychic violence that lasts for a long period can produce greater damage on victims' health than physical violence (Johnson, 2008), and the consequences produced in the long term from a psychic perspective are more thought-provoking than short-term physical ones (Dokkedahl et al., 2019). Trauma from having experienced violence can have perennial consequences and, more importantly, increases the risk for the perpetrator to become a victim of violence again. In fact, violence causes both short- and medium- and long-term health consequences for victims, whether they have experienced violence or witnessed violence (Dziewa et al., 2022). Immediate consequences of physical violence include physical injuries, concussions, head trauma, internal injuries, sleep disturbances, fear, anxiety, performance and concentration problems, and reliance on medication. In the medium and long term health include a wide spectrum of psychosomatic disorders (D'Inverno et al., 2019) such as pain syndromes, gastrointestinal disorders, cardiovascular and skin disorders generating fear, sense of helplessness and overwhelm, post-traumatic stress disorder (Seidler et al., 2019). Cognitive and emotional developmental impairments and attachment disorders can occur in children who are victims of violence (Brisch 2012). The Istanbul Convention states that when determining child custody and visitation rights, incidents of domestic violence should also be considered in order to prevent further harm to children (Art. 31). Exposure of children to ongoing parental conflicts can undermine their psychophysical balance and, therefore, when establishing parental authority in the case of separation or divorce such conflicts must also be specifically assessed in combination with other factors (Kalmijn, 2016). In fact, it may happen that the abusive parent may continue to exert control over the former partner through shared custody of the children, engaging in personal relationships, and participating in child care (Meier et al., 2019). Violence is considered to be acted upon children even when it is not personally experienced by them (McTavish J.R., 2016). In relation to gender, several studies have shown that the health consequences of domestic violence are greater among female victims particularly those who are victims of mental and sexual violence (D'Inverno et al., 2019). From a social point of view, violence in the medium to long term can affect the ability to work temporarily or permanently by affecting the professional life of victims.

2.1. The concept of transgenerational violence

Transgenerational violence occurs when a person reproduces in his or her relationship or family the violence experienced during childhood. The correlation between violence experienced in childhood and violent behavior is well known in the literature (Spearman et al., 2023). Indeed, in stressful situations, individuals who have experienced violence during childhood have an increased risk of reproducing on their children the traumas they have experienced by developing the latter trauma disorders also due to biological mechanisms of trauma transmission that can leave epigenetic traces and change the regulation of the stress hormone system (Ahmad et al., 2022). However, we cannot speak of the existence of a deterministic link between experience of violence and reproduced violent behavior or development of post-traumatic stress disorder. Therefore, protective and resilience factors need to be enhanced in prevention (Deriu, 2016).

The costs for prevention activities are absolutely lower and most importantly they eliminate or reduce the suffering of victims (Rutherford et al., 2007).

A particular form of domestic violence is what is called "separation violence," and it occurs either as a reaction to the communication of one partner's desire to separate from the other or during separation and divorce proceedings or even when they have already ended. In such circumstances, in fact, the risk of violent behavior increases especially when violence was already present prior to separation (Capaldi, 2012). In some cases, despite the episodes of violence suffered, the victim does not leave the home in which she lives with her aggressor in order to prevent her partner from becoming even more violent or because the position of control and dominance in which the victim comes to find herself, or other factors such as the presence of the children does not allow her to do so. Frequent couple conflicts or previous episodes of acted out violence or controlling behaviors in the relationship constitute risk factors for separation violence (Walker et al., 2004). In dating violence, the first episode of physical violence may be preceded by verbal aggression, hostile attitudes, or jealous and controlling behavior. Longitudinal studies show that purely psychological violence is associated with an increased risk of future physical violence (Salis et al., 2014).

Among individual factors, sociodemographic characteristics may be useful in identifying groups of people at risk for violence.

Older age goes hand in hand with lower risk of committing and experiencing dating violence and thus is a protective factor. Men and women are equally likely to commit relationship violence. Family income, unemployment and poverty are risk factors especially with unfavorable conditions for stress management and conflict resolution (Anderberg et al., 2016). Having experienced abuse and violence during childhood or having witnessed violence among parental caregivers exposes one to the risk of subsequently committing or experiencing violence in the relationship or in one's family especially in the presence of risk factors and in the absence of protective factors. Parental educational behavior with parents' participation in their children's lives, their support, and their encouragement of nonviolent behavior constitute protective factors. Negative emotionality (fear, anger, hostility) and aggressive behavior constitute risk factors. Certain personality disorders have been found to be predictive factors for the use of couple violence in the same way that depressive symptoms may constitute risk factors more for women than for men (Lanchimba et al., 2023). In

addition, substance use is also considered an important risk factor for both genders especially in the presence of particular behavioral problems or antisocial behavior. Stress whether economic, parenting, relational, work overload stress is a risk factor along with other risk factors.

Relational factors include relationship status and the occurrence of relationship violence. According to some research, married people are at a lower risk in the onset of relationship violence unlike separated women who are particularly at risk of violence from their ex-partner. Another risk factor for both genders is low relationship satisfaction since there is a close correlation between relationship satisfaction and couple conflict. Conflict rates are a predictor of violence for both men and women, and the lowest rates are found in couples where partners are on equal footing. Jealousy and possessiveness are also related to couple violence against women.

Critical changes and transitions such as the birth of a child cannot be forgotten, which can be associated with stress loads; separation situations are an adverse event and behavior an increased risk of violence.

Community and social factors include social isolation and social support while the former is a risk factor several studies have shown that support and concrete help protect against violence. Social disorganization can also affect violence as it involves less informal social control of the neighborhood and community. Finally, the broadly understood social environment (legal, political, and economic equality between men and women) can also affect the occurrence of violence as the acceptance of hierarchical gender at¬titudes in society increases women's risk of experiencing dating vio¬lence (Kindler and Walper, 2016).

2.2. The concept of couple violence

In relation to the protection of victims of violence, it is necessary to distinguish prevention strategies in legal, coordination and collaboration with any services involved, protection and support of victims of separation violence, and support of perpetrators of violence. Protection of victims of domestic and separation violence through legal measures is based on the use of the tools offered by criminal law, police measures, and civil law; protection and support strategies for victims of separation violence include information, counseling, protection, safety planning, risk assessment, psychological and therapeutic support of both victims and children who witness violence. Particularly useful, although they are only recently becoming more widespread, are perpetrator treatment programs that aim to help perpetrators of violence reflect on violent behavior by making them abandon those culturally constructed and socialized beliefs or norms that justify violent behavior and by making them take responsibility for the actions they put in place and awareness of the consequences produced by violence (Bozzoli et al., 2017). Such programs, then, also aim to reduce the risk of recidivism.

Couple violence in all its forms is always the result of the interaction of many factors at different levels. The conditions that trigger couple violence are not easily transferable to other forms of domestic violence such as child abuse, violence against the elderly, and violence of children against their parents.

It is not possible to explain why some people or groups become violent or experience violence more often while others are better protected. WHO (2002) has since 2002 adopted

an ecosystemic model for explaining interpersonal violence by tracing it back to a complex interaction of influencing factors on 4 levels that change over the life course: individual, relational, community and social.

At each level correspond factors that can increase or reduce the likelihood of the occurrence of relationship violence. At the individual level it emerges that the behaviour of each partner is influenced by developmental, biological and personal factors, but also characteristics such as gender, age, level of education and employment status. At the relational level, communication and conflict management patterns and the distribution of power within the couple are relevant. At the community level the social reference systems of individuals and couples such as relatives, friends, the workplace and the resulting social isolation or social support, approval or tolerance of violent behaviour by the social context become important. At the social level, factors that can create a climate that promotes or prevents violence such as social norms, gender roles, and the management of violence are noted.

The ecosystem model emphasizes that there is no single cause of couple violence. Violence is always the result of an interaction of several causes that influence each other. Moreover, couple violence is never inevitable, even under certain conditions. Moreover, couple violence is never inevitable, even under certain conditions. It is not possible to empirically prove the existence of a cause-effect link in the complex phenomenon of couple violence. Therefore, empirical studies are concerned with identifying risk and protective factors. In science, a risk factor means a statistically higher probability of experiencing or committing violence in the presence of certain characteristics or conditions. Protective factors, on the other hand, reduce the probability of experiencing or committing violence and increase resilience in the presence of risk factors (Wilkins et al., 2014).

Research on couple violence has described various cycles of violence that can occur in violent relationships. The cycle of violence theory (cycle of abuse) developed by Walker (1979) describes a frequently observed pattern of violence in relationships that includes the following phases: 1) build-up of tension, 2) outbreak of violence (physical, sexual) and 3) repentance, reconciliation and calm. This cycle repeats itself until an intervention or separation (or in the worst case, the killing of the victim) interrupts it (Walker, 1979). The frequency of repetition is variable and both the individual phases and the whole cycle can have different durations: hours or days the first, up to a year and more the second. The violence may become more intense and the outbursts more frequent, in other words, the violence may escalate (Walker, 1984).

The cycle of violence - also known as the 'violence spiral' - is widely used in practical prevention work to describe the individual and interactive behavioural patterns of violent people and victims of violence.

Couple violence can create psychological burdens in victims such as post-traumatic stress disorder, depression, anxiety, substance abuse, which limit the victim's ability to exit the violent relationship. However, resilience factors such as self-esteem, flexibility in dealing with stressful situations, can mitigate the psychological consequences of violence and increase the ability of victims to contain repeated couple violence (Foa et al., 2000). In some cases, couples are able to end repeated violence and establish a lasting non-violent

relationship on their own or by availing themselves of external support, but much more often, violence leads to the separation of the couple. Victims with a strongly ambivalent behaviour in dealing with violence and with extremely limited personal resources need more extensive and longer-term support in order to successfully exit the violent relationship (Rajagopalan et al., 2015).

3. Forms of violence prevention or repression

In the Istanbul Convention, the signatory States undertook, among other things, to share and transpose into national legislation certain principles considered fundamental, including: the specialisation of all operators; the provision of adequate mechanisms for effective cooperation between all competent state bodies, including 'judicial authorities, public prosecutors and law enforcement authorities'; the possibility of monitoring its application through an effective statistical survey and the consequent evaluation of data revealing the phenomenon.

Among the objectives that the same Convention sets for States to eliminate violence against women and domestic violence is that of adopting an integrated approach to be pursued through effective cooperation between law enforcement authorities, an objective that can be achieved through coordination in the collection of data on the phenomenon and the consequent dissemination of the results obtained. This approach consists of helping all those involved, creating effective coordination between all institutions involved in the issue of domestic violence and optimising their cooperation and interventions (Hagemann-White et al., 2010).

It is precisely with regard to this obligation of "diligence" in preventive and repressive activities that the Commission could not fail to consider the important warning of the judges of the European Court of Human Rights - in the judgment " Talpis v. Italy " of 2 March 2017- to work to ensure that the protection mechanisms provided for in domestic law work in practice and not only in theory, and that especially in cases of domestic violence the rights of the aggressor cannot prevail over the rights to life and the physical and psychological integrity of the victims (European Court of Human Rights, 2017).

It is also well known that, due to the specific characteristics of this form of violence, especially in cases where the conduct has been going on for a long time and with repetitiveness, the perpetrator does not always become fully aware of the disvalue of his behaviour, often does not consider himself guilty, does not understand the sentence and hardly changes his conduct (Walker, 1989). In this context, the granting of prison benefits, from per¬ sentences to semi-release, cannot disregard a well-founded assessment that they do not jeopardise the safety of offenders (Merzagora, 2009).

It seems appropriate to draw attention to what is provided for in Article 15 of the Istanbul Convention, namely inter-institutional cooperation. This provision encourages the legislators of the signatory countries to include courses on “coordinated inter-institutional cooperation in the training of professionals who deal with victims or perpetrators of all acts of violence, in order to enable a comprehensive and appropriate management of the guidelines to be followed”. In addition, Article 18 of the Convention places an obligation on States to ensure 'adequate mechanisms of effective cooperation between all relevant State bodies, including judicial authorities, prosecutors, law enforcement authorities'. In Italy,

taking into account the close correlation between civil proceedings and criminal proceedings for physical and psychological violence occurring in family relationships, the legislator with Law 69/2019 introduced, in the implementing provisions of the Code of Criminal Procedure, the obligation to transmit certain acts of the criminal proceedings to the civil proceedings in cases where specific criminal offence hypotheses are being prosecuted (Article 64-bis). Still on the subject of the unicity of jurisdiction, it also seemed central to emphasise the role played by the public prosecutor in civil proceedings, in respect of which - as is well known - Article 70 of the Code of Civil Procedure stipulates that he 'must intervene under penalty of nullity [...] in matrimonial cases, including those of the personal separation of spouses'. For more than obvious reasons, it seems essential that he should be a judge specialised in gender and domestic violence, just as a new and significant reconsideration of the role he can and must actually play also in the aforementioned civil cases is considered fundamental. It must be emphasised that the intervention of the Public Prosecutor in civil cases of separation and divorce and in those concerning minors, in his capacity as the one who represents the State must be concrete by guaranteeing the effective protection of the parties, in particular the weaker ones as in the case of minors when they may be involved in family relationships characterised by violence, thus contributing to ensuring that the "'best interests of the child" are taken into account in all decisions.

A further problem is given by the protection orders against family abuse regulated by the art. 342bis of the Italian civil code. The competent judge for the adoption of such measures is the civil one. The protection orders, in the intention of the legislator, were to combat violence in family relationships. To date, the measures with which protection orders were adopted have only highlighted episodes of domestic violence in very few cases. This situation before the civil courts is more critical than what emerged in the prosecutor's offices.

This data can be interpreted through the lack of awareness that professionals have of the complexity of gender and domestic violence, so much so that at a judicial level it often continues to be equated with other matters even in the definition of magistrates' workloads. This could contribute to the triggering of vicious cycles: inadequacy and efficiency of the judicial response, non-timeliness of the intervention, increase and imbalance in the workload to the detriment of specialized magistrates, with the real risk of a disaffection towards the matter It should also be highlighted that in Italy, the offices most directly involved in the action to combat gender and domestic violence for the investigative functions assigned by the judicial system are the Public Prosecutor's Offices, competent offices, together with the judicial police bodies. About a fifth of prosecuting magistrates have been assigned to deal with the matter of gender violence and domestic violence but it is not certain that they only deal with this matter, as they also deal with other matters concerning the so-called "weak or vulnerable subjects".

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Conclusions

The role played, even in the preliminary investigation phase, by technical consultants, professional figures represented, in almost all cases, by psychologists, has taken on an increasingly greater importance which is expressed not only in the carrying out of specialist assessments (technical assessment or expertise), but also in the function of assisting the judicial police, the public prosecutor or the defender, in the collection of information from minors or injured persons in conditions of particular vulnerability, with direct consequences on the taking of declaratory evidence (testimony) in criminal proceedings . The deficits in their use in carrying out psychological counseling on minors are significant and, first and foremost, the fact that the appointment does not always take place on the basis of the verification of an effective specialization in the field of gender and domestic violence. In many prosecutor's offices, consultants are chosen from among those registered in the court's register of experts, a register which does not contain a section or a list of experts specialized in the subject. Furthermore, the adoption of standard questions in assigning tasks to consultants in the field of gender violence and child abuse is still too rare. This choice seems desirable, firstly because it guarantees homogeneity in judicial action (and this is particularly significant in medium and large-sized offices), secondly because it allows to ensure, especially in such a complex sector , a correct identification of the object of the assignment and, therefore, to best guarantee compliance with the boundaries between the expert assessment and the jurisdictional function reserved to the magistrate.

There is a social problem, a "cultural pathology" which has also been defined as penal populism: to indicate the tendency and practice of delegating the tackling of complex social issues, such as domestic violence, to the penal code (and punishment), "also making a symbolic function of criminal law prevail, but it is not from criminal law that the fight against domestic violence will receive its confirmations and victories" (Ronconi, 2021). The risk of becoming accustomed to violent gestures and words is not the prerogative of victims of violence but of all of us. Everyone in their role must not be afraid to take difficult positions of rupture, of contrast because only in this way can we avoid that, day after day, we become accustomed to the most subtle forms of violence and end up defining normal what is not normal.

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NATIONAL AND INTERNATIONAL COOPERATION IN INVESTIGATING CRIMES OF CHILD SEXUAL ABUSE OR SEXUAL EXPLOITATION COMMITTED BY USING INFORMATION TECHNOLOGIES

L. POPA

Lilia Popa
Prosecutor's Office for Combating Organised Crime and Special Cases, Republic of Moldova
https://orcid.org/0000-0002-5366-1887, E-mail: liliapopa13@gmail.com

Abstract: *This article explores the relevance of national and international cooperation in investigating crimes of child sexual abuse and exploitation using information technology. It will look at the cooperation between prosecutors and forensic experts, which is essential to carry out accurate forensic examinations of the devices involved, thus facilitating the identification and proof of offences. It also discusses the involvement of specialised NGOs, which contribute significantly to the detection of crime and provide additional resources and expertise in the investigation process. The role of psychologists and psycho-educators in interacting with child victims to ensure a sensitive and appropriate approach, safeguarding their welfare and ensuring respect for the best interests of the child will be addressed. In terms of international cooperation, the article examines international legal assistance, in particular, the formation of joint investigation teams, essential for coordinating cross-border efforts in the context of globalised crime, and collaboration with organisations such as Interpol and NCMEC. Thus, the article stresses that these forms of cooperation create an integrated and comprehensive framework for tackling the crimes under consideration, ensuring the protection of victims and bringing offenders to justice.*

Keywords: *sexual abuse, sexual exploitation, children, minors, information technology, cooperation, interaction, mutual legal assistance in criminal matters.*

Introduction

Crimes related to the child sexual abuse or sexual exploitation committed using information and communication technologies are on the rise. This can be explained both by the development of technical means and communication technologies (platforms, software through which analysed offences can be committed) and by the decreasing age of users of information technologies, given that, in today's digitalised world, children are starting to use gadgets and access the internet at an ever younger age.

Given the complex nature of the analysed crimes, but also considering that the victims of these crimes are children, who are a vulnerable part of society, the investigation of crimes related to sexual abuse or exploitation of minors committed through information technologies requires inter-institutional and international cooperation.

Thus, in the following we will elucidate some essential aspects of inter-institutional cooperation, specific to the investigation of all offences related to online sexual abuse or

exploitation of minors, but also those concerning international cooperation, the need for which arises from the transnational nature of the analysed offences.

As far as inter-institutional cooperation is concerned, first of all we need to talk about the competence of law enforcement bodies in examining cases of online child sexual abuse or sexual exploitation.

There are several prosecution bodies in the Republic of Moldova, but only one currently has the specialist skills and technical equipment to proactively investigate cases of online child sexual abuse and exploitation. This is a specialised unit within the Cybercrime Centre of the National Investigation Inspectorate of the GPI. The Centre consists of 5 sections, one of which is dedicated to child protection. This unit, which is responsible for investigating offences against the sexual inviolability of minors committed with the use of information technologies, uses the Child Protection Software System (GRIDCOP) provided by the Child Rescue Coalition. This system identifies local peer-to-peer network users who trade images and/or videos of child sexual abuse. Prosecution is supervised by prosecutors, who ensure that prosecution files are properly compiled and that identified images are checked against Interpol's international child sexual exploitation database (ESIC/ICSE-English version).

The Prosecutor's Office for Combating Organised Crime and Special Cases (PCCOCS) is the only specialised unit within the prosecutor's office dealing with cybercrime cases and online sexual abuse and sexual exploitation offences against minors nationwide.

Thus, in this analysis we will not stop at describing the inter-institutional cooperation of the prosecution body with the public prosecutor's office, as well as describing the organisational and managerial interaction in the process of investigating a crime. In the following, by analysing national cooperation in the process of investigating crimes of online child sexual abuse or exploitation, we will elucidate specific aspects of this category of crimes.

1. Forms of national cooperation in the investigation of child sexual abuse or sexual exploitation

In this context, the following forms of national cooperation in the investigation of the crimes under discussion, determined according to the subject of the cooperation, are important:

– Collaboration with expert institutions and specialists;

– Collaboration with civil society and NGOs whose work is relevant to the area of analysed crimes;

– Interaction with relevant specialists to ensure effective communication with minors (educators, teachers, psychologists, etc.).

Firstly, we will refer to the cooperation of the prosecuting body with the institutions carrying out the expertise. In this context, a beneficial interaction and cooperation between the prosecution body and the expertise institutions in the person of the head of these institutions or directly with the forensic experts is of paramount importance, given that the interaction between the authorising officer and the forensic expert is necessary for achieving truly valuable results through the forensic expertise process *(Dolea Igor, 2022).*

„At the phase of carrying out the forensic expertise, as well as at the preparatory and commissioning phases, a permanent professional interaction between the originator and the expert is necessary. This would allow the originator to meet the expert's requests in good time, to provide information and explanations on certain circumstances of the case, to provide the expert with new data obtained in the course of the subsequent prosecution which are relevant to the research, to clarify the questions submitted or to ask additional questions. In some cases, in the process of carrying out the forensic expertise, new information becomes known which the originator must be informed of as a matter of urgency in order to take the necessary measures within a limited timeframe" *(Dolea Igor, 2022).*

Thus, taking into account the fact that in the investigation of offences related to online child sexual abuse or exploitation it is necessary in almost all cases to carry out computer forensics of the devices through which the offences were committed, it is absolutely obvious that such cooperation between forensic experts and the prosecution body is required. IT forensic examination is a specialised branch of forensic science that focuses on the identification, acquisition, processing, analysis and reporting of data stored on various digital devices and media. These activities are essential for investigating computer crime and obtaining electronic evidence.

Such expertise is most often carried out in the National Centre for Judicial Expertise under the Ministry of Justice and in the Technical-Criminal and Judicial Expertise Centre under the General Inspectorate of Police.

In addition to the need for the traditional IT expertise of technical means, cooperation with specialists in the field may be necessary when carrying out prosecution actions such as searches, examination of objects and documents, etc.

Another type of cooperation is with civil society, which is of particular importance in preventing and combating crime, especially when we are talking about child protection. Civil society subjects can denounce different cases when they are known to them. Specifically, there is online sexual abuse, where not only parents or close relatives can intervene in order to report it to the prosecution service, but also other people. The subject of child abuse, especially sexual abuse, is a particular disease and challenge for society.

In this regard, „it can be said that the Public Prosecutor's Office and civil society, as subjects of interaction, exist in a common legal space and, fulfilling various functions, perform a single task - serving public interests. At the same time, numerous points of contact, common and sometimes even contradictory interests may arise between the Prosecutor's Office and civil society institutions, which requires their cooperation. The Prosecutor's Office must seek the support of civil society institutions in resolving problems related to ensuring legality and the rule of law. In turn, civil society, represented by its institutions, in resolving its problems, establishes cooperative relations with the prosecution bodies" *(Guceac Ion, 2021).* Collaboration with NGOs in the field is indispensably linked to, but not limited to, the process of uncovering crimes related to online child sexual abuse or sexual exploitation. Specific to the Republic of Moldova are the referrals filed by the OA International Centre „La Strada", which has a special area of work on the prevention of sexual exploitation of children and the promotion of children's safety online.

Therefore, in 2023 the OA International Centre ,,La Strada" launched the child sexual abuse reporting service where any person can anonymously report child sexual abuse material or the exposure of a minor to sexual abuse online using the form available on the platform www.siguronline.md. Through this, the Republic of Moldova joined the global network INHOPE - International Association of Internet Hotlines, establishing a way of cooperation between the General Police Inspectorate and other public or private entities in the field of information and communication technologies for the purpose of preventing and combating cases of online child sexual abuse.

Following the launch of this reporting mechanism, which is anonymous for persons reporting either online child sexual abuse or material that may contain child sexual abuse or sexual exploitation, the identification, referral, notification, removal and prevention of repeated distribution of child sexual abuse material is becoming increasingly effective and widespread. Thus, the number of reported cases is increasing, which means that the fight against this phenomenon is gaining momentum.

According to the information presented for the year 2023 by the OA International Centre ,,La Strada" an illustrative case may be the one where a teacher wrote on the platform www.siguronline.md about the situation of a 14-year-old girl, who for some time had been in an online relationship with a person she had met on the Internet, thinking they were of an age. While they were in the relationship, the girl sent to the person several photos in her underwear. After a short time, the person asked her to send nude photos. When the girl refused, the person threatened to send her parents the photos she already had. Another illustrative case - of the abuse victim herself being approached on the platform - is the reported case of a 10-year-old girl who approached the counsellor on the platform www.siguronline.md for help, reporting that she had met someone on a social network who had asked her to produce and send photos showing herself in sexual poses. Scared that the ,,virtual friend" might find her and hurt her, the child sent the photos. When the girl stopped responding to the abuser's insistence to send more photos and videos, they were distributed online. At the same time, within the International Centre ,,La Strada" there is the Child Assistance Team/EAC (created in 2010), made up of a lawyer and several psychologists, who assist child victims and witnesses of sexual abuse and sexual exploitation throughout the criminal process.

Interaction with relevant professionals for interaction with minors, in particular psychologists, psycho-educators, teachers and educators, is a necessity in the criminal process, dictated both by the aim of ensuring an effective investigation and by criminal procedure law, which emphasises the importance of ensuring the best interests of the child in the decision-making process concerning him or her, including when involved in criminal proceedings. In this respect, Art. 10 para. (6) of the Criminal Procedure Code guarantees respect for the interests of the child victim/witness at all stages of the criminal process.

The specific cooperation of the prosecution body is with the interviewer, who is the bridge of the special hearing of the minor in the order of Article 110^1 of the Code of Criminal Procedure, and who is a person trained for effective communication with the child. The role of the interviewer is to mediate the hearing of the minor victim/witness of the crime in the order of the procedural rule stated above.

In these circumstances, ,,as interviewer it is necessary to train a person capable of establishing contact and a relationship of trust with the child-victim, to possess a range of skills and abilities, to master the special techniques of interviewing child victims of crime, and to maintain the confidentiality of what is reported. It is very important for the success of the interview that the interviewer discusses the truth/lie with the child and obtains a promise from the child that during the interview he/she will tell the truth". Therefore, cooperation with the interviewer should be tactical, with well-planned questions, so that asking questions and giving answers are understood and objective.

Another form of cooperation is with psychologists, because during the criminal process child-victims of crime will benefit from the support services provided by Law No 137 on the rehabilitation of victims of crime. The rehabilitation of victims and their rights, according to Article 5 of Law No 137/2016, is achieved by providing four categories of support services, which directly address the needs of victims of crime, namely: informational counselling on their rights, psychological counselling, state-guaranteed legal assistance, financial compensation provided by the state. In this regard, under the provisions of Article 8 para. (1) of Law no.137/2016, the competent subjects for providing both categories of psychological counselling to victims of crime are psychologists from: territorial subdivisions of social assistance, non-commercial organizations, profit-making legal entities. At the same time, non-commercial organisations and profit-making legal persons may provide psychological counselling to victims of crime if they fulfil two conditions: they are active in the field of rehabilitation of victims of crime, they have been co-opted for this purpose by local public authorities or by the Ministry of Labour, Social Protection and Family.

Therefore, in view of the psychologists' powers, the cooperation of the prosecution with them adds value to the investigation at any stage of the investigation. The prosecuting body can provide specific information (circumstances of the abuse, characteristics of the minor and the abuser, other relevant data) that can be used in psychological counselling. At the same time, psychologists, in turn, can provide information to the prosecuting authority on the child's behaviour, the child's condition, and information on the circumstances of the abuse other than that given at the hearing. This information may be used for further planning of investigations, submission of statements or, in exceptional cases, repeat hearings.

This national cooperation in its described forms is used in the investigation of all offences of online sexual abuse or exploitation of minors, given the specific nature of the analysed offences.

2. Forms of international cooperation in the investigation of child sexual abuse and sexual exploitation

As regards international cooperation, this is essential in the investigation of online child sexual abuse and exploitation offences, as these offences often cross national borders and global coordination is needed to identify and bring offenders to justice. Collaboration between the prosecution body and similar bodies in other countries, international organisations and digital platforms facilitates the rapid exchange of information and resources, increasing the efficiency and impact of investigations.

In the analysis of international cooperation, we will also focus on the analysis of the specific forms of cooperation for the analysed category of crimes. Obviously, in the investigation of offences of online child sexual abuse or exploitation, if there is a need to carry out any prosecution actions outside the Republic of Moldova, recourse is made to the traditional forms of mutual legal assistance in criminal matters, such as: transmission of documents, data and information; communication of procedural documents; summoning of witnesses, experts and persons sought; rogatory commissions; extradition.

We can mention that in cases of investigating offences of online child sexual abuse or sexual exploitation, one of the most commonly used forms of mutual legal assistance in criminal matters is the request for rogatory commission. This request is made if the prosecuting authority or the prosecutor in the criminal case, in which the prosecution has been initiated on the basis of the elements of one of the offences provided for in the Criminal Code to which the actions in question can be classified, considers it necessary to carry out criminal prosecution actions on the territory of another State, usually in that State where the offender is located.

As an example, can be used a criminal case *(Criminal case no. 2020560023)* initiated on the fact that in the period of time from the beginning of February 2020 – until now, persons unknown to the prosecuting authority, through the social network Facebook and the application „Messenger" have conducted discussions of a sexual nature with the aim of inducing sexual intercourse and other actions of a sexual nature, requesting by threat, coercion and blackmail, nude, indecent photo images of the minor XXX. Given that it was established that the alleged offender's home is in Bucharest, Romania, and that the evidence gathered gives rise to a reasonable assumption that the offender's home may contain instruments that were used to commit the crime, which cannot be obtained through other evidentiary procedures, the competent Romanian authorities were requested to carry out a search at the home of the identified person, to carry out an information expert's report on the objects seized during the search and to inform about the results, etc.

At the same time, given current trends in the prosecution of cases of online child sexual abuse or sexual exploitation, one form of mutual legal assistance that is increasingly being used is the formation of *Joint Investigation Teams (JIT).*

Taking into account that since 01.12.2013 the Second Additional Protocol to the Council of Europe Convention on Mutual Assistance in Criminal Matters entered into force for the Republic of Moldova, the Criminal Procedure Code was completed with Article 540^2, Section 1^2, Chapter IX, by Law no.66 of 05.03.12, in force since 27.10.12, which constitutes the national legal basis for the formation of the JIT.

The Joint Investigation Team (JIT) is one of the most advanced instruments used in international cooperation in criminal matters, comprising a legal agreement between the competent authorities of two or more States for the purpose of conducting criminal investigations.

The concept of the „joint investigation team" was born out of the conviction that existing methods of international police and judicial cooperation were not sufficient to deal with serious cross-border organised crime. It was felt that a team made up of investigators and judicial authorities from two or more countries, acting together and on the basis of clear

legal authority and legal certainty as to the rights, duties and obligations of the participants, would improve the fight against organised crime *(Rotundu Diana, 2014).*

Thus, according to the legal provisions, ,,the competent authorities of at least two States may set up a joint investigation team, by mutual agreement, with a specific objective and for a limited period of time, which may be extended with the agreement of all parties, with a view to conducting criminal proceedings in one or more of the States setting up the team".

Joint investigation teams cannot be set up if the offence under investigation is of a strictly national nature with no foreign element, even if it is serious, particularly or exceptionally serious. If the offence is of a national nature and prosecution in one State or another is necessary, it must be requested by rogatory commission, in general order, within the framework of mutual legal assistance in criminal matters.

A JIT may be set up when: in the context of an ongoing criminal prosecution in the requesting State, it is necessary to conduct difficult criminal prosecutions involving the mobilisation of substantial resources involving other States; several States are conducting criminal prosecutions which require coordinated and concerted action in those States.

To form the JIT, it is necessary to follow the following procedure:

1. Defining the crime: A first step in setting up a JIT is to collect and analyse all available information on the cross-border crime in order to confirm that the investigation of the crime requires coordination in all States involved and therefore to take an informed decision on the setting up of a JIT.

2. Identifying an appropriate legal basis: JITs can be set up with and between countries both within and outside the European Union, provided there is a legal basis for setting up such JITs.

3. Contacting foreign authorities: The next step is to establish contact with the authorities of the other potential JIT members to exchange information about the case and explore the possibilities of establishing a JIT in the specific case. Europol and Eurojust can assist EU and non-EU Member States in these activities. It is advisable to informally exchange information on possibilities with other potential JIT members on the establishment of a JIT before sending a formal request.

4. Application for the establishment of a JIT: after obtaining an informal agreement on the establishment of a JIT from all countries involved, the prosecution prepares a formal application for its establishment.

5. Drafting and signing the formal agreement: Since a JIT is a „contract" between at least two or more states, with a specific objective, for a specific period of time, set up to carry out a joint investigation, it is necessary to draw up the formal agreement for a JIT. The essential elements of a JIT agreement are: purpose, legal possibilities and/or limitations, leader, members and participants of the JIT, funding and possible support from Europol and Eurojust. When the final draft of the agreement is agreed by all participating countries, the formal procedure for signing the agreement can take place.

6. Implementation of the agreement - Operational Action Plan (OAP): the OAP is a document that sets out how work will be carried out in a JIT.

The benefit of this form of international legal assistance is that it is a flexible prosecution tool, as it ,,allows direct collection and direct exchange of information and evidence without the need to use traditional means of mutual legal assistance" *(Dinu Ostavciuc, Tudor Osoianu, 2022),* and allows the prosecution to coordinate its efforts with direct exchanges of information. In addition, the JIT formation procedure and working process are less formalised, unlimited real-time exchange of information and/or evidence is possible, and procedures are parallel and coordinated (in terms of common operational objectives, agreement on prosecution strategies, etc.).

With regard to specific forms of international cooperation in the process of investigating crimes of online sexual abuse or sexual exploitation of minors, we refer to cooperation with INTERPOl and NCMEC (National Center for Missing & Exploited Children).

According to its Statute, Interpol ensures and develops mutual cooperation between law enforcement agencies within the limits of the legal framework in force in the respective countries, and creates and develops institutions that contribute to the fight against and prevention of crime. The basis of its work is the organisation of cooperation on specific criminal cases by receiving, analysing and transmitting information from and to the central national bureaus.

Today, Interpol is one of the main international bodies dealing with cross-border crime, focusing mainly on offences covered by international conventions in various forms of organised crime (drug trafficking, people trafficking, etc.). At the same time, Interpol is the main co-ordinator of the international search for criminals *(Alexandru Drăgulean, Cristina Anghel, 2018).*

In addition to the traditional cooperation with Interpol, databases containing interlinked online child sexual abuse material are used in the process of investigating online child sexual abuse or exploitation offences, facilitating the process of identifying victims. One example is the International Child Sexual Exploitation Database (ICSE), managed by Interpol and funded by the European Commission. It allows investigators to exchange information with colleagues around the world. The ICSE DB provides an online platform where police officers and some qualified civilians as national experts from member states work together to identify victims, suspects and crime scenes through the close examination of CSAM. Given its nature, this database can be classified as an international tool of the international cooperation mechanism (Kemal Veli Açar, 2023). According to the latest data provided by INTERPOL, in October 2020 the ICSE database held more than 2.7 million images and video sequences that helped identify more than 23,500 victims worldwide *(Russu S., Botezatu E., 2021).*

Similar to Interpol, but at a regional level, Europol, which is a European Union law enforcement organisation, contributes to preventing and combating cross-border crime, with the aim of improving effective cooperation between the competent police authorities of the Member States in preventing and combating cross-border crime *(Alexandru Drăgulean, Cristina Anghel, 2018).*

EUROPOL's Focal Point Twins Unit plays a crucial role in the identification of victims at EU level. Within this unit there is a Victim Identification Taskforce, involved in operations on online child sexual abuse cases. In the case of victims in third world countries,

EUROPOL, in addition to its collaboration with INTERPOL, also maintains contact points with law enforcement agencies and NGOs in those countries.

The most common mechanism used is the cooperation mechanism manifested by the referral to the law enforcement authorities of the Republic of Moldova by the National Centre for Missing and Exploited Children (NCMEC), which is a private, non-profit organisation whose mission is to help find missing children, reduce the sexual exploitation of children and prevent the victimisation of children. NCMEC works with families, victims, private industry, law enforcement, and the public to help prevent child abductions, recover missing children, and provide services to deter and combat child sexual exploitation. The International Center for Missing and Exploited Children (ICMEC), having been created by the NCMEC International Board of Directors, is a related organization to NCMEC and works worldwide to promote child protection and to protect children from abduction, sexual abuse and exploitation. In 2022, over 32 million reports of suspected CSAM were detected. 8372 of these reports related to material hosted in Moldova (according to NCMEC).

An example of this interaction can serve the criminal case initiated based on the fact that during the period of time 21.12.2018 - 21.06.2020 the user of computer systems connected to the Internet, using file sharing software programs, copied, owned and distributed 157 electronic files, which were identified and classified by international police databases specializing in identifying victims of child pornography, child sexual abuse and exploitation, with child pornography content. The NCMEC referred the matter to the Moldovan prosecuting authorities, and the referral was the basis for the initiation of criminal proceedings *(Criminal case no. 2020560162).*

Conclusions

In conclusion, national and international cooperation in investigating crimes of sexual abuse or exploitation of minors using information technology is essential for the effectiveness and success of such investigations. Cooperation of the prosecuting authority with expert bodies enables accurate and rapid analysis of the technical means involved, which is crucial for the identification and proof of offences.

The involvement of NGOs specialised in this field provides valuable support, both in detecting crimes and in assisting the investigation process, offering additional resources and expertise. Working with psychologists and psycho-educators in interacting with child victims ensures a sensitive and appropriate approach, safeguarding their well-being and facilitating accurate and complete testimonies.

Internationally, mutual legal assistance and joint investigation teams allow for the coordination of cross-border efforts, which is essential in the context of globalised crime. Cooperation with international organisations such as Interpol and NCMEC (National Center for Missing & Exploited Children) enhances responsiveness and effectiveness in combating this type of crime, facilitating the rapid exchange of essential information and resources.

Overall, these forms of cooperation, both nationally and internationally, create a comprehensive and integrated framework for tackling offences of sexual abuse and exploitation of minors, ensuring better protection of victims and prosecution of offenders.

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AFFECTIVE TIES AND LEGAL BOUNDARIES: FAMILIES AND THE FAMILY BETWEEN LAW AND TRADITION IN ITALY AND ROMANIA

L.D. RATH-BOȘCA, F. MIRAGLIA

Laura Dumitrana Rath-Boșca[1], Francesco Miraglia[2]
[1]Faculty of Juridical and Administrative Sciences, Agora University of Oradea, Romania
https://orcid.org/0009-0008-5735-528X, E-mail: dumitra1970@yahoo.com
[2]National Institute of Family Pedagogy in Rome, Italy&Madrid Forum, Spain
https://orcid.org/0000-0001-5376-5232, E-mail: info@avvocatofrancescomiraglia.it

Abstract: *The fundamental pillar of any society is the family. The family provides its members with security, stability and excitement. The family is the environment in which we form our personality, acquire values and skills. In the family we learn about love, responsibility, communication and respect, how to develop our emotional and social skills and how to form a balanced identity. Most individuals believe that family is the value that gives meaning to life. From a legal point of view, the family is that group of people between whom there are rights and obligations that arise from marriage, kinship but also from other relationships that the law assimilates to family relationships. Thus, as Prof. Dr. Ion Filipescu said, the family is a legal reality because it is regulated by legal norms. Considering the fact that legal rules are closely related to the history, culture, economy and social evolution specific to each state, the legal rules governing the family vary from one state to another.*

Keywords: *family, Italy, Romania, legislation, change, marriage, concept, women, husband, child, protection, divorce.*

Introduction

While the Italian state is looking for ways to increase legal and social support for non-traditional families, singles, unmarried couples and LGBTQ+ families to ensure that all family configurations enjoy the same protection, to reduce prejudice and help society understand and accept all forms of family, in Romania, the state is struggling to develop legislative and social programs to help traditional families and families belonging to vulnerable groups or minorities that need support.

The concept of family in Italy and its evolution from the Pisanelli code (1865) to the law of civil unions (2016) and the Cartabia reform (2022)

The family, defined in the Italian Constitution as "natural society", is a rather changing concept that travels in parallel with the development of a society, reflecting its trends in certain historical periods. It could be argued that its "natural" characteristic defines its pre-existing condition for any state, which implies the need for the latter to adapt to its changing characteristics (Savoretto, 2021).

From the adoption of the Pisanelli code in 1865 to the law of civil unions in 2016 and the most recent Cartabia reform in 2022, the concept of family in Italy has undergone variations in response to changes in society. Savoretto (2021) claims that the strong interest of anthropologists, historians and jurists in this theme is given by the fact that Italian society is currently characterized by a phenomenon of pluralization of families. That is, in recent decades, Italy has been hit by a large demographic increase; This figure, however, was not accompanied by the growth of so-called "nuclear families", which instead fell sharply due to the decline in marriages and births. Italian legislation therefore had to deal with the "new families" resulting from the development of new social consciousnesses and values: single-person families, mixed families and unmarried couples. Precisely in this context, Italian legislation had to move in the direction of recognizing the protections and rights of de facto couples, homosexual and heterosexual couples, cohabitants and civilly united couples (Savoretto, 2021; Guidi, Palmieri and Miraglia, 2013). .

Another determining factor in the structural change of the Italian family is the role of the woman, subordinate to her husband until 1975, the year of the reform of family law. In fact, the formulas that were read at the time of marriage, which represented the founding act of the family, were article 144 of the Civil Code which said that "the husband is the head of the family, the wife follows his marital status and is obliged to accompany him wherever he sees fit to establish his residence', and Article 145, which stated the husband's duty 'to protect his wife, to keep her with him and to provide her with everything necessary for the necessities of life'. These articles translated into the subordination of the woman to the husband as well as the conjugal authorization, necessary for any administrative act of material goods even belonging to the woman. However, in the late 19th century, the landscape of women's work in Italy changed considerably; many emigrated with their families to northern Italian cities and were hired to work in factories. During the First World War, many women replaced men in the workplace and this drastically changed the perception of women employed in industries, in society and consequently in the family (Vellati, 2017). This led to changes in the legislative field in particular, as the first civil code of a united Italy, the Pisanelli code had to reflect all the ideals of freedom, secularism and equality from which it claimed to be inspired, especially with regard to the disadvantaged situation of women who had characterized the legislative norm until that moment. However, the code continued to exclude women from the active and passive electorate, as did the illiterate. In 1891 the magazine "Divorţ. Critical Review of the Italian Family" in which Zanardelli and Turati discussed the modernization of the family with themes that addressed the inferior condition of women. Already in 1867 Salvatore Morelli had presented a bill for the legal reintegration of women by claiming their civil and political rights, and in 1878 he had formulated the first bill regarding divorce admitted in particular cases such as adultery (Vellati, 2017).

In 1919 the marriage license was abolished. However, the Divorce Act of 1970 and the Family Law Reform of 1975 sanctioned an equal turning point by specifying that upon marriage both men and women acquired the same rights and assumed the same duties. Equality also extended to the filiation relationship, ensuring equal treatment for children born out of wedlock or during wedlock. Spousal equality helped to dilute the image of the "traditional family", reflecting the social change of those years and giving it legal value.

The filiation reform (Law 219/2012 and Legislative Decree 154/2013) then guaranteed the right to a family of the natural child born out of wedlock, including by inclusion in the family formed by the parent following the marriage with "another person (art. 252 CC) (Savoretto, 2021).

It is important to state that the minor's right to a family is also understood as the right to live in an adoptive family when the biological family is unable to support the minor. In other words, entrusting the minor to family-type communities must represent the extreme solution to which insertion in an adoptive family is always preferred (Miraglia, 2022; Palmieri and Miraglia, 2021, Manicardi, 2011). The current legislation is based on the "not arbitrary or irrational" idea according to which a family consisting of two parents of different sex and of potentially fertile age represents, in principle, the most suitable context for receiving and raising a minor (Constitutional Court decision 230/2020). Therefore, the minor must be guaranteed as a matter of priority the right to a family modeled according to the scheme of the natural family based on marriage (Mazzitelli, 2024). However, as Mazzitelli (2024) states, it happens more and more often that the minor lives in the family formed by his biological parent with another person and establishes an emotional connection with the latter. In these cases, as in all other circumstances where there is a gap between the factual reality (in which extended or rainbow families are present) and the legal reality (which would support the natural family model based on the marriage between two people of the opposite sex, the realization of the interest superior of the minor imposes the need to recognize the factual situations and the emotional ties that have been created over time so that the full identity of the minor can be protected as a fundamental right of the person (Mazzitelli, 2024).

The art. 2 of the Italian Constitution defines the family as the main social formation in which man develops his personality, and in art. 29 is limited to defining it as "natural society based on marriage", leaving out all families other than the nuclear one.

As previously mentioned, in the last ten years the so-called nuclear families in Italy have decreased drastically due to the decrease in marriages and births. However, new types of families have emerged, such as single-person families, blended families, and families made up of unmarried couples. Consequently, legislation has had to adapt to social, economic and political changes to recognize protections and rights for de facto couples, same-sex couples, cohabitants and civilly united couples as well (Savoretto, 2021). In this context, the Law establishing civil unions and de facto cohabitations is placed: law no. 76 of 20 May 2016, which entered into force on 5 June 2016, establishes civil unions between persons of the same sex and regulates cohabitation between heterosexuals and homosexuals by establishing cohabitation contracts. According to law 76/2016, de facto cohabitation means two adults stably united by emotional ties as a couple and mutual moral and material assistance, not linked by kinship, affinity or adoption, by marriage or by civil union. As Dosi (2023) states, "de facto cohabitation has been at the center of the last decades of a progressive attribution of legal relevance as a social formation (art. 2 of the Constitution) within which the duties of family solidarity and the fundamental rights of the person" . Moreover, it specifies that "art. 2 of the Constitution and art. 8 of the European Convention on Human Rights protects the right to family life, it is not limited to relationships based on marriage" (Dosi, 2023).

The importance of defining the concept of "family" and protecting it is not only a legal necessity at the national level, but also responds to the need to comply with European legislation regarding the right of European Union citizens and their family members to move and reside freely in the states members and family reunification. In fact, European legislation establishes the conditions under which the state must legislate, although it always has competence in matters of immigration, but protects the vulnerable situation of other categories that it defines as "other family members", obliging member states to facilitate entry and stay them. family members who depend on the EU citizen and inviting them to delve into specific personal situations to assess the application for entry and stay (Savoretto, 2021).

To summarize, the seventies signaled the beginning of a season of reforms that drastically changed Italian patterns and culture. From marriage it moved to divorce and then to summary divorce, introduced in 2015. Meanwhile, marriages have fallen and cohabitation has risen, as have other aspects highlighted by the 'Modern Family' research commissioned by BNP Paribas Cardiff into the occasion the 30 years of activity. Specifically, the study was carried out by the research institute Eumetra MR which monitored the changes in the Italian family from 1989 to 2019. The research highlighted the transformations of the Italian family which seems happier than in the past, traditional on the one hand but also modern and modern. open, attentive to the environment and with stronger ties to the family of origin.

The average number of members of the contemporary Italian family is about three people. According to the research, four out of ten families have no children, and 26% have only one. The number of singles increased (8.4 million, +110%), marriages collapsed by -40.5% in favor of cohabitation, and divorces increased considerably (+230%). Despite these data, the research shows that the contemporary family defines itself as traditional (37%), a safe haven (31%) and modern and open (26%). However, the most significant data is that 71% of families feel happier and more peaceful than thirty years ago, thanks to greater economic stability. The relationship between parents and children has also changed; in particular, many parents perceive "external" risks outside their own family unit and tend to provide more certainty and security to their children (57%), have respect for them (48%), the desire for affection is also increasing (42). %) and the desire to be friends (27%). However, the figure of the parent as a teacher is clearly decreasing (11%).

The research also highlighted the new relationship with the family of origin and the elderly. 25% of the elderly, for example, give help to the new family, while 45% receive assistance from younger family members.

Regarding the sphere of female work, women are increasingly involved in entrepreneurial and managerial functions, even if equality is still far away. 34% of the women are housewives, while a large proportion of the remaining workers benefited from the company's work-life balance policies, such as part-time or remote work. In this sense, technology has also adapted to the concept of the modern family. 95% of families with access use the internet every day and 74% use social media daily.

Regarding environmental and sustainability issues, families have become more attentive to the separate collection of waste (69%), adopt actions to reduce waste (67%), pay attention to products that respect the environment (43%) or those from km 0 (40%). %).

In terms of economic sustainability, although 42% of families say their economic situation has improved compared to thirty years ago, only a third believe they feel secure about

their current financial situation and only 28% hope to improve their economic situation in the next ten. years. This means that many families give up, at least once, fulfilling their desires such as going on vacation and purchasing wellness or leisure products.

Finally, compared to thirty years ago, 62% of families have the perception that the risks have increased; these include job loss, technology theft, robbery, violence and health, which seem to worry women the most. Almost eight in ten families own at least one policy and 36% of those surveyed have taken out a policy through digital channels at least once; among these are car insurance (8%), home insurance (37%), life insurance (25%) and health insurance (14%) (ANSA, 2019).

The analyzed data demonstrate how the Italian family has changed over time from a social, economic and cultural point of view and how it shapes and is shaped by a constantly evolving reality with which the law must keep pace. In this context, the Cartabia reform regarding family law is an important step and a link between the past and the future.

As specified in art. 1 of the enabling law of November 26, 2021, n.206, the purpose of the reform, to implement the obligations assumed by Italy towards the European Union, is to simplify, accelerate and rationalize the civil process (De Filippis, 2023). In particular, the Cartabia reform intends to intervene on some aspects of the procedural process by increasing digitization and revising alternative dispute resolution tools. The process should allow for faster development of cases and shorter times to define them.

As De Filippis (2023) states, the intervention of the Reform in matters of family law is of particular importance because, first of all, it determines the replacement of the Juvenile Court with the Court for Persons, for Minors and for Families, completing the 2012-2013 Reform of which objectives were never achieved. Compared to 1934, the year in which the Juvenile Court was established, the general context has changed. Currently, the predominant needs are to ensure the judge's impartiality by avoiding assigning him different tasks than those he performs in ordinary justice, unifying the rite and excluding the possibility that different rules apply to children born out of wedlock. In this sense, replacing the Juvenile Court with the Family Court is the most logical solution because it recognizes the unity of family and personal problems. Another novelty of the Reform consists in the simplification and unification of the rite. The distances between separation and divorce are also shortened, which should lead to the elimination of separation and the creation of a single path to divorce.

The reform also provided for the appointment of a guardian of the minor, following the principle that the minor is a person and has the right to participate in all proceedings concerning him. The reform also provided greater protection for women and minors who suffer violence, favoring the principle of specialization of judges and all other figures involved in the process; in particular, specific training courses are offered for judges (De Filippis, 2023).

Therefore, from the adoption of the Pisanelli code to the more recent Cartabia reform, the traditional Italian family has undergone changes of a different nature, which in turn are the result of changes in the national economic, political and social panorama. As analyzed so far, the breakdown of family patterns was not immediate and total: internal migration, the role of women in the Italian economy, the introduction of divorce and a more liberal approach to sexuality represent the driving forces of a change in the behavioral codes of families and new generations.

A final analysis of the evolution of family law in Italy can be divided into three distinct but interconnected levels: scientific conclusions, proposals for the future and reflections on the emotional implications of these transformations. This multidimensional approach will allow us to comprehensively explore the impact of laws on Italian society.

From a scientific point of view, the evolution of family law in Italy shows a clear trajectory towards greater inclusion and adaptability, with an increasing emphasis on the protection of individual rights, regardless of family form. The introduction of laws such as those on civil unions and the Cartabia reform highlight a progressive adaptation of the legal system to contemporary social realities and a response to changing cultural dynamics. The reforms reflect not only a legislative change, but also a change in the mindsets and expectations of Italian society towards greater recognition of diversity and gender equity. To ensure that Italian laws remain aligned with European standards, a continued commitment to the adoption and integration of EU directives and regulations on family and individual rights is necessary. In addition, there is a need to increase legal and social support for non-traditional families, including singles, unmarried couples and LGBTQ+ families, to ensure that all family configurations enjoy the same protections and rights, and to promote education and awareness-raising to reduce prejudice and increase understanding of different family forms. This could include school programs that address family diversity and civil rights. Transformations in family law not only shape the legal structure, but profoundly influence personal and collective experiences. Expanding definitions of family bring with it a renewed sense of belonging and acceptance for those who previously felt excluded. However, these changes can also cause uncertainty or resistance among those who see the new norms as a departure from tradition.

Legal reforms that recognize and protect non-traditional families bring dignity and security to many people, helping to build a more inclusive society that respects the rights of all. At the same time, recognizing different family configurations can help reduce emotional stress and increase the psychological well-being of the individuals involved.

Therefore, the evolution of family law in Italy reflects a growing commitment to equity and inclusion, aspects that are essential in a democratic and modern society. As laws continue to change to reflect social realities, it is critical that these changes be accompanied by a shared commitment to education and awareness, as well as an open dialogue about family diversity. These collective efforts will not only strengthen the legal and social fabric of the country, but also the cohesion and harmony among its citizens, promoting a future where every individual can find respect and support within the community.

The family in Romania

As far as Romanian law is concerned, the legal dictionary defines the family as that group of people related to each other by marriage or kinship.

The UNESCO dictionary gives the following definition of family: the form of human community established by marriage, which unites spouses and their descendants through close biological, economic, psychological and spiritual relationships.

The family has been analyzed, over time, from several points of view: sociological, legal, historical, but also religious, given the complex nature of family relationships. The family developed and continues to develop today along with the development of society, changing in relation to it.

The definitions that are given to the family are countless, because it is the research object of many sciences. Not only law defines and explains the term family, but also psychology, sociology, history, medicine, etc.

Researchers have defined the term family according to how human beings have organized and evolved in society since the beginning of human history.

In Roman law, the pater familias was the owner of the entire family which consisted of the wife, children and slaves and all the goods they owned. The pater familias was not only the master of all the members who made up his household, he was also the owner of the product of their labor. He had the right of life and death over all persons subject to his authority and over the common patrimony.

In Moldova in the 17th century and until the beginning of the 19th century, the basis of the conjugal family was marriage. Marriage was of particular importance in the link of the matrimonial alliance because it involved, in addition to the status and honor of the families, the material advantages obtained as a result of the conclusion of the marriage. The girl who was getting married and her family had an important role because she came to the marriage with a dowry.

In order to be able to conclude a valid marriage, certain conditions had to be met, among which we mention: the voluntary agreement of the future spouses, the agreement of the parents (Felea, 2022, pp. 66-70) or of the young people's relatives, the age allowed to conclude marriage, etc. (From the research carried out, it appears that those who married without the consent of their parents could be disinherited. (the case mentioned on March 6, 1629, when the case was examined and judged between Luchiian, deacon and his brothers against their sister Irina, who did not obtain the blessing her father, Gligorie, disowned his daughter in front of the villagers and disinherited her. observed, in the sense that written legislation was applied, the same traditions were observed regarding courtship, betrothal and wedding ceremonies.For example, the procedure of examining young people to determine whether all the required conditions were met and to determine that they were not impediments to marriage, was carried out in all three Romanian states. The parish priest from the locality where the future spouses were from was the one who carried out the research procedure.

In the middle of the 17th century, in 1652, in the princely printing house in Târgoviște, the oldest Pravila in Wallachia saw the light of day, the direction of the law, the first code of laws written in Romanian (Cronț, 1960, p. 64). This Code of Laws was the fruit of a remarkable collaboration between the state and the church and represents a perfect combination between the appearance of written law in Romanian and the official reception of Byzantine norms and canons as legal norms in Wallachia. It is the most comprehensive codification printed in Romanian throughout the Middle Ages).

The rule includes provisions of civil law and criminal law. As far as civil law provisions are concerned, property, legal capacity, marriage and its effects, separation, engagement, property, succession, etc. are regulated. The regulation in family matters has a pronounced educational character which had as its objective the strengthening of the institution of marriage based on the union and the increase of the moral level of family life.

During this period, the Church considered that sexuality was the grave source of sin and men, if they could not live in chastity, could choose marriage, because it was the only situation

in which passionate and bad love was accepted. Marriage represented the necessary sin and the Church established the rules by which it could function, combining religion with law, stressing, as expected, the spiritual component (Mazilu, 2006, p. 358).

In the content of the Rule, the degrees of kinship (clerical - through baptism - or blood) are presented in detail (Șerban, 2007)

Marriage between blood relatives was forbidden until the seventh spoke. Also, the conditions that had to be fulfilled by the people who wanted to get married are regulated. One of the conditions was that the future spouses should be of similar age. Under no circumstances was marriage allowed between people with a large age difference. However, if the man was older, the marriage was allowed, conversely not, the woman could never marry a younger man. The rule forbade more than three marriages in order to avoid immorality, corruption and promiscuity and the man was the head of the family, he had the role of leader within the family. Marriages between Christians and non-Christians, between free persons and slaves, were forbidden. Slaves could only marry each other with the consent of their masters and a child born of the union of a free person and a slave was always free.

Sanctions for those who had forbidden sexual relations are regulated in the Rule. The punishment for intimate relationships between relatives was death. (chapter 211 shows that: mixed blood is a sin and mistake even worse and more terrible than fornication). Adultery was punished, but also the intention to indulge (preacurvia). The cheating husband had the right to kill his adulterous wife and his rival if he caught them in the act.

In the Direction of the law, as in other earlier and later codifications and regulations, women were considered inferior to men, given their impotence and weakness of nature. Moreover, the Rule shows that the woman is worse than the man, which is why the man has multiple rights, including the one to beat his wife but with gentleness and not with hostility. A slap or a fist, no matter how much or how often, was not considered a hostile fight.

As for the most important reasons for breaking up the marriage, they were: adultery or fornication, as it was called at the time, repeated adultery, i.e. fornication, enmity, the husband's nocturnal erotic fantasies, misunderstandings of a material nature, etc. Crimes against conjugal life, such as incest and sodomy, were punishable by death.

Between the 17th and 19th centuries, the term family was found only in a theological context. In the context of Orthodox Christianity, the term family was found only in relation to marriages solemnized and blessed by the church. Thus, for the period we are talking about, we find the term family only when it was about legitimate couples accepted by the church and, implicitly, by society.

Simion Florea Marian, historian, teacher and Romanian Orthodox priest, born in the middle of the 19th century, described in a historical-comparative ethnographic study from the year 1890, the main purposes when concluding a marriage, as follows: to have a consort to help and party, to be consolation and alleviation of pain in cases of unhappiness and suffering (the sharing of good and bad, of joy and sorrow in the course of life); the birth of legitimate offspring, to carry on the family name, not to squander the parental wealth, to take care of the parents when they reached old age, and after their death to mourn and bury them in a Christian way and to pray for They; that they may not be reproached for having lived in this world in vain, etc.

From the text above but also from the analysis of the speech promoted by the Orthodox Church regarding the importance of the family in order to preserve good morals, it follows that the family satisfies the existential needs of people, namely: sexuality, procreation and economic survival. The laws of the time strengthened over time, the discourse promoted by the Orthodox Church, supporting marriage and the foundation of the family as a means by which certain misfortunes are avoided, from polygamy to seduction, etc.

In order to conclude a valid marriage, certain conditions had to be met, as follows: the existence of the consent of the families of the two (of the parents or the master), the socio-economic status of the future spouses to be similar and the man not to be in his fourth marriage. The studies undertaken by the researchers show that in order to get married, the man had to be over 14 years old and the girl over 12 years old.

Also, the widow was obliged to mourn her husband for a year. Only after that year could he remarry.

Other impediments to marriage were: the state of blood relationship but also the spiritual one, people who were of different faiths could not marry, and monkhood and kidnapping fell into the category of impediments to marriage.

The couple lived for quite a long time in the house of the groom's parents, until they were able to build a house of their own. We still encounter this situation today, at least in our country, because the economic situation of many couples does not allow them to purchase or build their own home.

In the period we are discussing, the inheritance of the parental home belonged to the eldest of the family, who also had the duty to take care of the parents when they grew old.

It should be noted, however, that the fate of the peasants was extremely harsh. The young couple's home, whether they received it from their parents or built it themselves, was actually a one-room hut in which they would raise their children and where, often during the winters, frosty, they had to receive their animals as well (Vintilă Ghițulescu, 2011, pp. 270-273).

The families of the wealthy benefited from durable houses built of stone, which had several rooms and in the courtyard they had specially arranged places for the homes of those who served them.

In rural areas, things were even worse because, being poor, some couples agreed to live more than one in one room.

As for the relationship between the spouses, they had very well defined roles. The man maintained the house and supported the whole family financially, while the woman took care of the household and the education of the children. All this time, the woman was obliged to be obedient, to submit to her man in gratitude for the security he offered her. The man was allowed to argue with and even punish his wife by beating her if she showed the slightest sign of disobedience.

Another obligation women had was to follow their husband wherever he thought he wanted to establish the family home. Otherwise, the woman was brought by force and, of course, punished.

Research shows that women gave birth to many children, sometimes to the point where this was no longer biologically possible, only because the infant mortality rate was so high that

few of them survived. (for example in a family where 20 children were born, only between 2 and 4 children managed to reach adulthood).

As for the high death rate among the children, this is due to the indifference with which they were treated. In Europe, between the 17th and 18th centuries, for every 5 or 6 births, one died from various causes: contagious diseases such as measles, scarlet fever, diseases of the respiratory system, epidemics of typhoid fever, cholera, malaria, etc.

Cases in which couples could not have offspring were considered a failure. In this situation, couples had only one solution, adoption, but this solution was rarely chosen in the 17th century. In the centuries that followed, more and more couples who could not have children resorted to adoption.

The woman who could not give birth was in an extremely difficult situation because she risked being rejected by her husband. This is also one of the reasons why remarriages were practiced quite often in the 17th century.

As for the divorce, the procedure was complex and went through several stages. The husband or wife, as the case may be, appeared at the Ecclesiastical Court where he filed a complaint. There was also the situation in which the parish priest granted a sentence of separation.

The main reason why women resorted to divorce was that they were leading a difficult life from which they wanted to escape. The Church does not accept separation for any reason. Some of the reasons for which the Church accepted the separation of spouses were: debauchery, abandonment of the family, adultery, monasticism, bad living or bad life. The strife of life refers to cases of extreme domestic violence. However, for a woman to be able to divorce a violent husband, she had to bring witnesses to confirm that the beating was repeated and of maximum violence or that the husband used a staff that he broke during the beating. Otherwise, in case of moderate violence, the wife could not divorce, because the judges considered that moderate violence is not a reason for separation of husbands. We must not forget that hitting or beating the woman was allowed, being considered a means of correcting the inappropriate behavior of the woman.

In case of illness, only if one of the spouses fell ill with leprosy, divorce was allowed. In the case of epilepsy, divorce was allowed only if the sick spouse suffered from it before marriage, not if he became ill during the marriage. Epilepsy was also called the beating disease, because it usually appeared after violent and repeated beatings to which the wives were subjected. Impotence and sometimes insanity are added to the diseases that could be invoked as grounds for divorce.

As for the Callimachus Code, the Civil Code of Moldavia, promulgated by the ruler Scarlat Callimachi in 1817, it includes regulations regarding the family, kinship and marriage relationships and is based on older provisions from Byzantine law. However, the regulation of marriage was based on principles that are still the basis of contemporary law today. The code forbids marriage between Christians and non-Christians or between free citizens and slaves. Divorce is also regulated in the Code.

At art. 63 of the Callimachus Code, the lawgiver states that: "Family bonds are formed through the marriage bargain, through which two people, the male part and the female part, show with a lawful face their will and decision to live in a lawful companionship, with love ,

with the fear of God and with honor, in an inseparable companionship, to give birth to babies, to raise them and to help each other as much as possible in all events".

This regulation is much more moral, Dimitrie Alexandresco points out, than the regulation in Caragea's Code which, as it shows, is "brutal and wrong" because the legislator wrongly considers that the procreation of children is the only purpose of marriage.

In the century of the 19th century, the Caradja Legion was in force in Wallachia, the Calimach Code in Moldova and in Transylvania the Austro-Hungarian laws which were applied, with certain modifications, for a period even after the Union of 1918. In 1865 it entered a new Civil Code enters into force. The 1865 code was also applied in Bucovina from 1938 and in Transylvania from 1943, and in Northern Transylvania from 1945.

In the Civil Code of 1865, women had a status similar to minors and mentally incompetent persons. Women were politically, socially and economically incapacitated, they could only sign documents with the consent of their husbands or the judiciary, and they could not manage their own income. Women were practically deprived of civil and political rights.

In the interwar period, an improvement in the status of women can be seen through the adoption of the 1929 Law on employment contracts, the Law for lifting the civil incapacity of married women, promulgated by Decree no. 1412, Official Gazette no. 94 of April 20, 1932.

The demands of Romanian women at that time in matters of family and marriage were the following: equality between spouses through law and education, management of their own wealth, regardless of gender, women claimed part of their husband's income for household work, elimination of the double moral standard, etc.

In 1954, the Family Code entered into force on February 1, 1954. It underwent changes and additions by Law no. 4 of April 4, 1956, was amended during the communist era by Decree no. 779/1966, by Law no. 3/1970 and by Decree no. 174/1974.

In the first article of the Family Code from 1954, the legislator stated that: "In Romania, the state protects marriage and the family; he supports, through economic and social measures, the development and consolidation of the family". In the Family Code of 1954, the family was based on freely consented marriage between spouses and the legislator states that "in relations between spouses, as well as in the exercise of rights towards children, men and women have equal rights."

During the communist period, theories could not be developed that would promote the rights of women as individuals, theories that would contribute to the autonomy of women because the totalitarian regime did not accept other ideologies outside of the communist ideology. However, during this period, women actively participated in the modernization and industrialization of the state. At the same time, the image of the woman was promoted by communist propaganda.

Starting with 1966 when the implementation of pronatalist policies, regulated in Decree no. 770, which prohibited abortion and criminalized women who had abortions, expands the reproductive role of women. Although from a formal point of view, the state participated in raising children through various measures, among which we list: a large number of nurseries, maternity leaves, allowances for children, etc., in reality the measures did not respond to the real needs of women. Decree 770 made many victims among women.

In the current Constitution of Romania, art. 48 showed that: The family is based on freely consented marriage between spouses, on their equality and on the right and duty of parents to ensure the growth, education and training of children".The Civil Code of 2011 took over almost entirely the text from the Constitution and provides in art. 258 paragraph (1) that: The family is based on freely consented marriage between spouses, on their equality, as well as on the right and duty of parents to ensure the growth and education of their children.

In paragraph (2) of art. 258 of the Civil Code states that the man and the woman have the right to marry in order to found a family, and paragraph (4) provides that: For the purposes of this code, spouses mean the man and woman united by marriage".

As can be seen, the Romanian legislator also mentions the sexual difference through the regulation of art. 259 paragraph (1) which states: Marriage is the freely consented union between a man and a woman, concluded in accordance with the law. Moreover, the legislator provides in art. 277 paragraph (1): Marriage between persons of the same sex is prohibited and in paragraph (2), Marriages between persons of the same sex concluded or contracted abroad either by Romanian citizens or by foreign citizens are not recognized in Romania. In paragraph (3) of art. 277, the legislator provides that: Civil partnerships between persons of the opposite sex or of the same sex concluded or contracted abroad either by Romanian citizens or by foreign citizens are not recognized in Romania. In these cases, the public order exception in Romanian private international law is invoked.

From the provisions relating to marriage, adoption and medically assisted reproduction with a third-party donor, it is clear without a trace that the Romanian legal system does not recognize marriages and partnerships between people of the same sex. (Homosexuality was gradually decriminalized in Romania. The last law criminalizing homosexual relations was repealed in 2001 by UUG 89, the repeal of art. 200 of the law being one of the preconditions for our accession to the European Union).

However, in the case filed by Buhuceanu, Ciobotaru and 20 other families against Romania, the European Court of Human Rights (ECtHR) decided, on May 23, 2023, that Romania does not comply with Article 8 of the Convention, article regulating the right to respect for private and family life in the case of same-sex couples. (Article 8 provides: "1. Every person has the right to respect for his private and family life, his home and his correspondence; 2. Public authorities may not intervene in the exercise of this right except to the extent that this is provided by law and is necessary, in a democratic society, in the interest of national security, public safety or economic well-being of the country, for the defense of order and crime prevention, for the protection of health or morals or for the protection of the rights and freedoms of others"). (The ACCEPT association believes that this is a historic decision and that Romania must recognize and protect same-sex families).

The ECHR clearly emphasized that same-sex partners/couples urgently need a form of recognition that would give them ... equal rights and create a legal framework that would protect their common life.

In Romania, civil partnerships between people of the opposite sex are not recognized either, although in recent years more and more young people have chosen to live together without appearing before the registrar to formalize their relationship. Moreover, it was found that many couples already have children and still do not choose to get married. The reasons are multiple and what years ago was considered unacceptable has become normality, even though,

in Romania, you still feel that pressure to conclude a marriage. Many young people choose some form of personal independence or the establishment and development of a career, marriage not being considered a mandatory step for starting a family. Also, the financial aspect is an obstacle for some couples. Many young people say they are not financially ready to get married. There are also couples who claim that with the signing of the marriage certificate, the partner has changed, which causes them to live in cohabitation. The fear of getting divorced is also an obstacle, given that the divorce rate is on the rise.

Conclusions

Analyzing the legislation of the two countries and the evolution of the family in Italy and Romania, we find that the differences are major.

We can see that the family law regulation in Italy has a clear and unequivocal trajectory towards inclusion and adaptability where legislative reforms are adapted to contemporary social realities, while Romania remains conservative in the face of these realities, along with several other member states of the European Union.

Moreover, in Romania, studies have been carried out that show that two thirds of gay people do not disclose their sexual orientation because they fear discrimination and the hostile reaction of those who condemn such behavior.

The postponement of legislative reforms in Romania, the postponement of the adoption and integration of European Union directives and regulations regarding family rights into national legislation, actually reflects the impossibility of changing the mentality of Romanian society and its difficulty in recognizing and accepting diversity and gender equity.

In conclusion, we ask ourselves: if Italian society, Catholic and traditionalist, has sought and continues to seek solutions to accept all forms of family, why can't the Romanians?

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PREVENTING AND COMBATING CRIMES COMMITTED IN THE SPHERE OF FAMILY RELATIONS – AS A FORM OF PREVENTION AND COMBATING THE PRACTICE OF MERCENARY ACTIVITY

I. SOROCEANU

Igor Soroceanu
"Ștefan cel Mare" Academy of the Ministry of Internal Affairs, Republic of Moldova
https://orcid.org/0000-0002-8719-0454, E-mail: soroceanuuuigor@gmail.com

Abstract: *The activity of police bodies is always at the centre of attention. This can be manifested in various forms, either by maintaining, ensuring and restoring public order, by preventing and combating certain types of illegal acts, or by carrying out specific criminal prosecution and special investigative actions, as well as other activities specific to the police field. Therefore, the activity of preventing and combating crimes committed in the sphere of family relations is a sensitive subject, which can have emotional consequences for each of us. The people involved in conflicts in the family field, unfortunately, do not know that these illegalities can have particularly serious consequences, including committing other types of crimes. Thus, in the following order, we propose to analyze how the prevention and combating of crimes committed in the sphere of family relations can lead to the prevention and combating of the crime of mercenary activity.*

Keywords: *police, prevention, combat, crime, family, mercenary activity, criminal liability, subject of law, etc.*

Introduction

The analysis of the criminal situation and the results obtained by the territorial subdivisions of the Capital Police in preventing and countering crimes against the life and health of the person, during the year 2022, shows the fact that, in some Police Inspectorates of the Chisinau municipality in the Republic of Moldova, the operational situation has essentially worsened at the family violence department, with 75 criminal cases registered according to the signs of the crime composition provided by art.201^1 Criminal Code (*Family Violence*), (Botanical Police Inspectorate of the Police Directorate of the Chisinau municipality in the Republic of Moldova – 15, Inspectorate of Buiucani Police of the Police Department of Chisinau in the Republic of Moldova – 14, the Central Police Inspectorate of the Police Department of Chisinau in the Republic of Moldova – 10, the Ciocana Police Inspectorate of the Police Department of Chisinau in the Republic of Moldova – 18 and the Inspectorate of the Rîșcani Police of the Police Department of the Chisinau municipality in the Republic of Moldova – 18), compared to the previous year (2021), 60 criminal cases were registered, thus attesting an increase of 25%.

At the same time, during the reporting period, the Police Inspectorates of Chisinau in the Republic of Moldova received 1,106 notifications about manifestations of violence between family members registered in the Registers of other information regarding crimes and incidents (R-2): Botanic Police Inspectorate of the Chisinau Police Department – 249,

Buiucani Police Inspectorate of the Chisinau Police Department – 253, Central Police Inspectorate of the Chisinau Police Department – 50, Ciocana Police Inspectorate of the Police Department of the municipality of Chisinau – 193 and the Rișcani Police Inspectorate of the Police Directorate of the municipality of Chisinau – 361.

Following the examination of family incidents, during 2022, 238 were initiated contravention files under art.78[1] Contravention Code (*Family Violence*), (Botanical Police Inspectorate of the Chisinau Police Department – 62, Buiucani Police Inspectorate of the Chisinau Police Department – 62, Central Police Inspectorate of Police Department of Chisinau – 54, Ciocana Police Inspectorate of Chisinau Police Department – 26 and Rîșcani Police Inspectorate of Chisinau Police Department – 34), (Disposition no.9, 2023).

Materials used and methods applied. In the process of elaborating the scientific article, we were guided by several various scientific research methods that made it possible to properly investigate the titular subject, among which we can list: the analysis method, the synthesis method, the deduction method, the systemic method, the historical method, as well as the comparative method.

The theoretical-legal basis of the scientific approach includes the international and Moldovan normative framework, some national administrative acts and specialized literature – which directly or indirectly, address the essence and generic content of the subject under analysis.

The degree of investigation of the problem at present, the purpose of the research. At the current stage, the importance and purpose of developing this scientific approach appear from the author's intention to bring to light an analysis of the activity of police bodies in the field of preventing and combating crimes committed in the sphere of family relations – as a form of prevention and combating the practice of mercenary activity, to reduce the criminal level of war crimes, manifested by the practice of mercenary activity.

The results were obtained based on the scientific analyzes carried out. On June 10, 1977, additional protocol no.1 to the Geneva Conventions of August 12, 1949, regarding the protection of victims of international armed conflicts entered into force.

In the preamble of this international act, the High Contracting Parties proclaim their ardent desire to see peace prevail between peoples and consistently remind that every state has to refrain, in its international relations, from resorting to the threat of force or the use of force. Likewise, the High Contracting Parties express their conviction that no provision of the Protocol or the Geneva Conventions of August 12, 1949, can be interpreted as legitimizing or authorizing any act of aggression or any other use of force. At the same time, these provisions must be fully applied, in all circumstances, without any unfavourable differentiation based on the nature or origin of the armed conflict or the causes supported by the parties to the conflict or attributed to them (Additional Protocol No.1, 1977).

More than that, within the limits of this international act, the High Contracting Parties expressly provided for the terminological definition of the mercenary *concept*.

Thus, the term *mercenary* means any person:

a) who is specially recruited in the country or abroad to fight in an armed conflict;

b) who takes part in the hostilities;

c) who takes part in hostilities, especially intending to obtain a personal advantage

and who is effectively promised, by a party to the conflict or on its behalf, a remuneration higher than that promised or paid to combatants having a similar rank and position in the forces armies of this party;

d) who is neither a national of a party to the conflict nor a resident of the territory controlled by a party to the conflict;

e) who is not a member of the armed forces of a party to the conflict;

f) who was not sent by a state, other than a party to the conflict, on an official mission as a member of the armed forces of that state. At the same time, the High Contracting Parties of additional protocol No.1 to the Geneva Conventions of August 12, 1949, regarding the protection of victims of international armed conflicts, also provided for the fact that a mercenary does not have the right to the status of combatant or prisoner of war (Additional Protocol No.1, 1977).

The concept of mercenary in the Moldavian Law

Thus, the concept of a mercenary was also transposed into the legislation of the Republic of Moldova, as a basis, with the provisions of Additional Protocol No.1 of June 10, 1977. According to article 130 of the Criminal Code of the Republic of Moldova, ,,mercenary means a person specially recruited in the country or abroad, to fight in an armed conflict, who takes part in military operations intending to obtain a personal advantage or promised remuneration by or on behalf of a party to the conflict, who is also not a national of the party to the conflict, nor a resident of the territory controlled by a party to the conflict is not a member of the armed forces of a party to the conflict and has not been sent by a state other than a party to the conflict on an official mission as a member of the armed forces of that state" (Criminal Code of the Republic of Moldova no.985, 2002).

In order not to admit different types of crimes committed in the sphere of family relations, including the practice of mercenary activity, the following prevention and combating activities are continuously carried out by the employees of the Police of the Chisinau municipality of the Republic of Moldova:

1) the implementation of effective measures, aimed at preventing crimes against the life and health of the person, especially those committed in the sphere of family relations, by training in this sense the entire potential of the police, creating a viable partnership with members of civil society;

2) the intensification of general and individual prevention activities, primarily oriented to the prevention of antisocial deviations within the family, including the practice of mercenary activity, through:

1. permanent analysis of the causes and conditions that generate the commission of crimes of this kind, by organizing and taking concrete measures, to use all the forms and methods of prevention against the persons prone to commit such crimes;

2. raising awareness through the meetings held with the population, with the work collectives, as well as with the studious youth, the legal provisions regarding the sanctioning of cases of violence in the family, the practice of mercenary activity, the rights of the victims of aggression, the way of executing emergency restriction orders and of protective orders by aggressors, etc.;

3. instilling in the meeting participants zero tolerance towards actions of physical and/or mental violence within a family, disallowing the practice of mercenary activity in objective reality, including the facts that have become known to them, with the notification of bodies with competencies in the field, in the purpose of undertaking the austerity measures;

4. the identification, registration and prompt reporting of cases of family violence, practice of mercenary activity, ensuring the nominal record of the aggressors (offenders), notification, in the case of child victims of family violence, to the guardianship authorities for undertaking protective measures which are imposed;

5. the qualitative examination of complaints and reports received from citizens, social workers, educational institutions, and medical institutions regarding family conflicts, acts of violence, death threats or regarding the existence of an imminent danger of their perpetration, with the emergency enterprise of all the actions provided for by the legislation in force, both concerning victims of family violence, as well as concerning aggressors and criminal subjects of mercenary activity;

6. submitting to periodic checks at the homes of families, the member/members of which are on the Police record as family aggressors, spending the work of preventing cases of repeated acts of family violence and showing the intention to practice mercenary activity, through discussions, warning in writing of people prone to committing acts of aggression in the family;

7. carrying out the periodic verification of the prevention worksheets with the persons on the record as ,,family aggressors", under the management of the sector officers, with the provision of methodical-practical help, regarding the method of holding prevention discussions with the aggressors, at the same time, drawing the attention of the police to the exclusion of formalism from the activity in this chapter;

8. explaining to the victim, in the case of the finding of an act of domestic violence, the right to apply to the court to obtain a protection order, and in the case of establishing the impossibility of applying to the court independently, at the request of the victim, the provision by the Police of the assistance necessary to initiate the procedure for obtaining the protection order, as well as the provision of assistance for their placement in centres for victims of domestic violence;

9. issuance of emergency restraining orders regarding the aggressors, with an explanation of the rights of the victims and the restrictions imposed on the aggressors, in the case of finding the degree of increased or medium risk of repeating acts of family violence;

10. ensuring the supervision of the aggressors' compliance with the prohibitions stipulated in the ordinances in question, by informing the persons concerned in the manner, in the case of the issuance of protection ordinances regarding victims of family violence;

11. supervision of the subjects of family violence, the subjects of the crime of mercenary activity and, operationally, the subjects of probation, convicted of committing crimes in the sphere of family relations, in order not to admit recidivism or the possible fatal consequences of their aggressive actions;

12. carrying out, in crises, the contraventional detention of the aggressor, depending on the seriousness of the case, to protect family members from possible manifestations of violence;

13. monitoring and instrumentation, jointly with social workers, of cases of family violence in the territory, served, referring registered cases to other authorities with competencies in the field, for the provision of counselling services, updating the database with information in the field;

14. ensuring the cooperation and active involvement in the process of preventing violence in the sphere of family relations, of local public administration bodies, public associations at the place of living, of non-governmental organizations, by mediating the methods of solving family and everyday conflicts, at the same time publication in media sources of cases with increased resonance in society;

15. participation in the meetings of multidisciplinary teams, created to prevent and resolve cases of domestic aggression, participation in armed conflicts, with joint interventions, to exclude in the future the repetition of cases of violence in the respective families;

16. analyzing the situation and organizing cooperation with the additional forces for maintaining public order, patrolling day and night the parks, and squares, adjacent to leisure institutions, checking suspicious persons, who have immoral behaviour, who were previously in conflict with the law and potentially prone to commit crimes against human life and health, including war crimes – such as mercenary activity;

17. establishing as a primary task, raising the personal responsibility of police employees in the field of combating these types of crimes;

3) coordination and organization of activities, to carry out a permanent analysis and highlight the causes and conditions that contributed to the commission of crimes of this kind, with the undertaking of the necessary measures, to use all forms and methods of prevention against persons prone to commit such crimes of crimes, with an appreciation of the role of responsible police officers;

4) the efficiency of operational coverage activities, the accumulation of information, within the limits of competence, the execution of control and supervision of persons previously convicted, released from places of detention, amnestied, tried conditionally for crimes of family violence and of mercenary activity, with the accumulation of information necessary;

5) coordination and organization of measures in the direction of carrying out special investigative activities, aimed at preventing, combating and discovering crimes committed in the sphere of family relations, as a form of prevention in the context of committing the crime of mercenary activity (Disposition no.9, 2023).

Following the aforementioned, we can add that one of the most serious problems facing contemporary society is considered to be the phenomenon of family violence, which can certainly be categorized as a crime committed in the sphere of family relations. This is a complex issue, which involves both the protection of the personal integrity of the victims and the protection of their common social interests, such as freedom, independence and democracy (Soroceanu, 2018: 96).

Conclusions

The police is a state institution, which is always in the public eye. Police activity is dynamic and present in all areas of social life. One of the most effective activities is

preventing the commission of illegal acts. The prevention of crime is a process that is closely related to the fight against crime, because if there is no prevention, there will necessarily be the fight against crime when these crimes are committed. Preventing and combating crimes committed in the sphere of family relations is a sensitive action, because every family has its own problems. But this activity needs to be carried out compulsorily, because it can favor the commission of another crime, such as the activity of mercenaries. Therefore, the above content reproduces the main necessary rules that police employees must undertake in order to prevent and combat crimes committed in the sphere of family relations – as a form of prevention and combating the practice of mercenary activity.

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HALF A CENTURY OF PRESIDENTIALISM IN ROMANIA

A.I. BOGDAN

Adrian Ionuț Bogdan
Babes-Bolyai University of Cluj-Napoca & Agora University of Oradea, Romania
E-mail: adrianionutbogdan@gmail.com

Abstract: *This academic paper delves into the intricate evolution of Romanian presidentialism from 1974 to 2024, exploring ethical, philosophical, political, and historical dimensions. Drawing from thinkers like Locke and Hegel, it emphasizes the delicate balance between power and ethical responsibility in a democratic society. Ceauşescu's era marked the introduction of the presidency, concentrating power in a quasi-monarchical fashion, lacking checks and balances. The post-communist transition witnessed legal delimitation and depoliticization. Băsescu's presidency brought direct involvement, while Iohannis's displayed initially reserved and yet after increased participation. The study underscores the complex interplay between power, ethics, and constitutional evolution, providing valuable insights for Romania's political system future.*

Keywords: *Presidentialism, Ethical leadership, Separation of powers, Democratic transition and Constitutional evolution.*

Introduction

The presidency, as an institution, occupies a crucial position in the political architecture of a nation, embodying the delicate balance between power, ethics, and democracy. The journey of the Romanian presidential system from its establishment in 1974 to the present day reflects a complex interplay of historical events, ideological shifts, and constitutional developments. This academic paper aims to explore the evolution of the Romanian presidency over the past half-century, shedding light on the factors that have shaped its trajectory and the challenges it has faced.

Central to our inquiry is the primary research question: "How has the presidential system evolved in Romania from its establishment in 1974 to the present day, and what factors have contributed to these changes?" This overarching query guides our exploration into the dynamic nature of the Romanian presidency across different historical periods. Complementing this, the secondary research questions further enrich our understanding: "What challenges and opportunities has the Romanian presidential system encountered during different historical periods, such as the communist era, the post-communist transition, and the contemporary political context?" and "To what extent has the Romanian presidency played a significant role in shaping the country's political landscape over the past fifty years?"

Before delving into the historical analysis, it is crucial to establish the ethical and philosophical foundations that underpin the study of presidential power. Drawing inspiration from thinkers such as John Locke, Montesquieu, and Hegel, our methodology revolves around the Ethical and Philosophical Considerations of Presidentialism. This framework emphasizes the ethical responsibilities of presidential power, highlighting the principles of justice, fairness,

and the common good. The philosophical underpinnings of democracy, with an emphasis on accountability, transparency, and popular sovereignty, serve as guiding principles for our examination of the Romanian presidency. While Georg Wilhelm Friedrich Hegel did not explicitly address the modern presidency, his political philosophy provides valuable insights. Hegel's emphasis on the organic state, the role of leadership, and historical development offers a lens through which we can interpret the evolution of the Romanian presidency within the broader context of the state as an ethical and historical entity.

The paper organizes the historical analysis into three distinct periods: I. Presidential Institution (1974-1989): Examining the establishment of the Romanian presidency during the communist era, characterized by Nicolae Ceaușescu's consolidation of power. This period represents a quasi-monarchical role for the president within the totalitarian-administrative structure. II. Presidential Institution (1989-2004): Analyzing the post-communist transition marked by Ion Iliescu's leadership and subsequent developments. This era witnesses the establishment of constitutional limits and depoliticization, yet experiences challenges with President Iliescu's influence attempts and the efforts of President Constantinescu to support a clear power limitation for the office. III. Presidential Institution (2004-2024): Covering the contemporary period, including Traian Basescu's "Player President" phase and Klaus Iohannis's initially more reserved and backstage approach. This section highlights the evolving role of the president in recent years, including the challenges and opportunities faced.

In doing things more easily, this academic paper provides a comprehensive analysis of the Romanian presidential system's evolution over the past fifty years. By examining each period through, ethical, political, and historical lenses, we seek to unravel the intricate tapestry of presidential power in Romania and its profound impact on the nation's political landscape.

Presidentialism – ethical and philosophical considerations

The presidency raises questions about the nature of power and its rightful exercise in a democratic society. Scholars like John Locke and Montesquieu have contributed to the understanding of the separation of powers and the need for checks and balances to prevent the abuse of authority. Ethically, the exercise of presidential power involves considerations of justice, fairness, and the common good (Montesquieu, 1748).

Presidential power, therefore, must be wielded with a keen awareness of ethical principles, respecting the rule of law, protecting individual rights, and ensuring the overall welfare of the nation (Locke, 1690). The philosophical underpinnings of democracy emphasize accountability, transparency, and the ultimate sovereignty of the people, guiding the ethical conduct of the presidency. It is in this delicate balance of power and ethical responsibility that the true essence of the presidency emerges, as a position entrusted with the noble task of serving the greater good while upholding the principles of democracy and justice.

Georg Wilhelm Friedrich Hegel, the well-known philosopher of the 19th century, did not specifically address the institution of the presidency as it exists in modern democratic states. However, his political thoughts provide some insights into broader concepts related to the state, government, and leadership. Hegel's political beliefs are encapsulated in his major work, "The Philosophy of Right" (1821), where he elaborates on the nature of the state and the ethical dimensions of political life. According to Hegel, the state represents the realization of freedom, and political institutions are essential in achieving a harmonious ethical life for individuals

(Hegel, 1821). While Hegel did not specifically discuss the presidency, some key Hegelian concepts can be applied to understand how he might view the role of a leader within a political system. Organic State (Hegel, 1821): Hegel considered the state as an "organic" entity, where individuals find their true freedom through active participation in civic life. In this context, a leader, such as a president, would be seen as a necessary part of the organic whole, contributing to the realization of the ethical life of the state. Role of Leadership (Hegel, 1821): Hegel believed in the importance of strong leadership within the state. A leader, in Hegelian terms, plays a crucial role in embodying and implementing the rational principles of the state. The leader, while not above the law, is a vital agent in the actualization of the state's ethical purpose. Historical Development (Hegel, 1821): Hegel's philosophy emphasizes historical development and the progression of societies. The presidency, in this context, could be seen as a manifestation of the historical unfolding of the state, adapting to the changing needs and circumstances of the society it governs. Even so, for Hegel, a believer in the monarchical order, the presidential institution is a pale shadow of the state. The legitimacy of ceremonial continuity and the sacramental bridge between the people and God that the Monarch embodies cannot be recreated by the political leader who has become sovereign on the popular wave of support that will always prove ephemeral. Thus, presidentialism suffers from this imperfect structural form that makes it vulnerable to the rapid deterioration of the trust of those who gave the mandate (the people) to the elected sovereign and favoring the abuse of power and political influences that, without effective management, question the very existence of the presidential institution and the role it should play in the life of the state.

It's important to note that Hegel's political philosophy is rooted in a hierarchical view of the state (Hegel, 1821), with an emphasis on the ethical life of individuals within a community. While he did not specifically address the presidency, his ideas contribute to a broader understanding of the role of leadership in the context of the state as an ethical and historical entity. Applying Hegelian principles to the presidency would involve considering how the office contributes to the realization of freedom, ethical life, and historical development within the state.

Presidential institution I. (1974-1989)

The establishment of the Romanian presidency in 1974 marked a pivotal moment in the country's political evolution. Ceaușescu's consolidation of power led to constitutional amendments, transforming Romania from a people's republic to a socialist republic with a distinct presidential office. This move mirrored similar developments in other Eastern Bloc countries during the Cold War. The introduction of the presidency brought forth a concentration of power in Ceaușescu's hands. The 1974 Constitution granted the president significant authority, including the ability to issue decrees, represent the state in foreign affairs, and appoint key government officials (Council of State, 1975). The president became a central figure in decision-making processes, wielding considerable influence over policy implementation (Council of State, 1975). In the political realm, Ceaușescu's presidency went beyond its constitutional duties. He assumed a quasi-monarchical role, cultivating a cult of personality that became ridiculous.

Of course, the introduction of the presidential office into the totalitarian-administrative structure of Socialist Romania can be seen as a metamorphosis of the same regime that wanted

to obtain the credentials and international appearance of a credible and institutionally comparable political actor with the rest of the democratic world, especially a resemblance to Western presidential institutionalism. However, although the establishment of Romanian presidentialism takes place against a background of abundant popular support and strongly catalyzed towards Nicolae Ceaușescu, the position of President of the SRR will prove to be only a dangerous centralization of political and institutional power. Communism, ideologically, is a totalitarian regime, but the custom of implementing Leninist-Stalinist makes the institutional decision-making core as polycentric as possible, and this was also transposed in the communized states of Eastern and Central Europe that had the historical misfortune of being on the wrong side of the Iron Curtain. In Communist Romania, the institutional decision-making structure revolved around two very important administrative offices. On the one hand, it is the Prime Minister (President of the Council of Ministers) and on the other hand it is the President of the Council of State. The Council of State, administratively different from the Government, had the role of ensuring the leadership of the state, and its President had the prerogatives of a real head of state. Even so, to the two governmental positions that in a democratic republican spectrum we would find a space of cohesion and complementarity in decision-making or shaping public policies, in the case of Communist Romania was added the third, but also the most important public position, that of General Secretary of the Romanian Communist Party. The office of the General Secretary is the attribute of political monopoly, and although in general state administrative theory, it should be inferior to the top executive, it precedes it and uses the executive as instruments. Therefore, whether we are talking about the People's Republic of Poland, Czechoslovakia, or Bulgaria and Hungary, the positions of General Secretary of the Communist Party were the real centers of political and institutional power in that part of the world.

In Romania, after Ceausescu took power, an unusual symbiosis took place between the accumulation of political and state office, and its peak took place with the abolition of the office of President of the Council of State and the creation of the office of President of the Republic. Of course, there were precedents, Gheorghe Gheorghiu Dej wanting to achieve the same thing during the Stalinist years. However, in Romania, presidential centralism appears most premature, manifesting itself very late in the other communist states, such as Poland, and in the Soviet Union only in 1990, a year before the Soviet dissolution.

The centralism of power was not an exclusivity found only in the annals of Romanian communism (Council of State, 1975), but it is undoubtedly a consequence of Nicolae Ceausescu's assiduous desire for complete control. The SRR Constitution unequivocally affirmed the leading role of the Romanian Communist Party in the leadership of the state, so Ceausescu legitimized his high position as party leader. Combining the two qualities in a fair and solid democracy is impossible, but in Romania, it has become the constant of the presidential office for 15 years.

The introduction of the presidential office could have represented an institutional and political reforming opportunity for Romania (Council of State, 1975), but it became only an accumulation of roles, rights, and qualities that created a powerful monolith with unlimited action power. In the decade and a half of presidentialism under Ceaușescu, the supreme office in the state did not evolve constitutionally noticeably through articles, limitations, or other reforming measures, but on the contrary, it was a regression through the increase of

institutional-political power that exceeded and violated even the tinny limits of the communist constitution.

The period 1974-1989 represents the last stage of Romanian communism and are the years in which the presidential institution was the main decision-making factor in all public policies and at all levels of action and intervention. The unique and ironic situation of the regime was given by the fact that Socialist Romania was a parliamentary republic, without a President elected by popular vote, but elected indirectly by the vote of the communist legislature, but from the point of view of the manifestation of institutional power, the constitutional and unofficial prerogatives of the SRR President could easily have been attributed to a presidential political system with great extensive powers.

The presidential institution that existed throughout the communist period was part of this desolate totalitarian amalgam devoid of any reforming intentions. The centralization of power, the ignorance of constitutional prerogatives and their extension, the combination of political office and head of state, but also the effective lack of any method of control are the attributes that have governed the supreme office in the state for 15 of the 50 years of presidentialism in Romania. Indeed, the political, institutional, and social consequences that Ceaușescu and communist presidentialism brought to the Romanian state were of immense intensity, but they were followed by reforms after the post-communist transition. The introduction of the presidential office did not bring benefits at the time of implementation in terms of state reorganization, respect for human rights, or a move towards democracy, but after the fall of the communist regime in December 1989, this totalitarian institution became an opportunity for a restart, rehabilitation and fundamental reconstruction of Romania as a state.

Presidential institution II. (1989-2004)

The fall of communism following the Revolution of December 1989 leads to the abolition of the Socialist Republic of Romania and implicitly of the office of President of SRR. The seizure of power by the country's first communist rejectors, led by Ion Iliescu, gradually crystallized, in the last days of the revolution, in the National Salvation Front. The NSF will be, until the first elections in May 1990, the mammoth organization with a state, political, and organizational role, an incredible institution whose leadership will be held by Ion Iliescu as President.

The transformation of the NSF on the eve of the elections at the end of spring 1990 into a political party not only brought criticism and protest to the civil society with democratic orientations at that time (Naumescu, 2018) but also foreshadowed a detached victory of this party led by Ion Iliescu. With over two-thirds of the seats in the newly formed legislature, the NSF had absolute discretion in shaping the future and further evolution of the presidential institution. Keeping the office at a ceremonial level similar to that of the German, Austrian, or Portuguese was not an agreed option and was completely ignored in the final decision taken by the NSF. The compromise option of the two-headed, semi-presidential executive was chosen, in which the President would be elected by popular, universal, free, and secret suffrage. The relations between the new official offices (Victoria and Cotroceni) were to be based on the principles of the French Fifth Republic in theory, but rather they were invoked by the NSF and the then-Romanian leadership as an excuse to preserve to some extent the former form of executive organization.

Of course, through the provisional laws of 1990 and the new Constitution of 1991, voted and accepted by popular vote, the office of the President of Romania gained a clear, concise, and simple-to-understand legal and institutional delimitation, a positive evolutionary aspect that would become a beneficial precedent. Another progressive aspect of the rehabilitation of the Cotroceni office was seen in the mandatory depoliticization of the holder of this position. The President of Romania, in accordance with the Constitution, was to be suspended the right to belong to political parties during his or her mandate (Presidential Administration, 2023). Of course, this impartiality of the President in relation to the parliamentary or executive political forces has always provided fertile ground for speculation and, indeed, there have been situations in Romania's post-December history when the President acted from the supreme office to the greater or lesser advantage of the party that propelled and supported him.

Even if the President should occupy an artificial and unbiased role in the political life of the state, the universal political reality (not just Romanian) has shown that interference between the Head of State and the Head of Government or with the President of the Legislature can rarely be avoided (Nelson, 2013), and up to a certain point, they are natural and necessary to harmonize relations between the three powers. Of course, there are political systems, such as the American one, that do not allow interactions between powers, but at the level of Western political systems, the interaction between the legislature and the executive has been a constant.

President Iliescu's influence in Romania's first post-December governments was as high as possible. This influence manifested itself not only indirectly in terms of the control exercised over the NSF parliamentarians, but in the most direct way by deciding to suspend or promote persons in the Government and other essential governing bodies. Regaining a second mandate in 1992 was a political catastrophe for Romania that resulted in an extension of social and economic degradation, but most problematically, a stagnation in the process of democratization and reform. "Original Democracy", the phrase so loved by President Ion Iliescu, suddenly manifested itself not only at the level of the presidential administration in Cotroceni but also at the Victoria Palace, in Justice, in foreign policy, and in all measures and public policies during 1992-1996 (Stănescu, 2014). President Iliescu's second term becomes a serious challenge for the future reform and democratization of Romania, insisting on the preservation of communist prerogatives.

President Iliescu's mandate represented the deliberate miss of the opportunity to create a healthy precedent for the presidential office (Naumescu, 2018), and this was to be reflected in the mandates of the successors from Cotroceni. However, Romania's socio-economic degradation forced the NSF Government and President Ion Iliescu to resort to a change of course through the Snagov Declaration and Romania's orientation towards a Euro-Atlantic path. In the elections at the end of 1996, Ion Iliescu was defeated by Emil Constantinescu, being the first time in modern Romanian history when a head of state was changed following elections.

University professor, supported by a broad right-wing coalition established in the Romanian Democratic Convention, RDC, Emil Constantinescu led to the creation of positive precedents regarding the role of the President as a mediator between the three powers. From a legislative and institutional point of view, it did not bring changes in the official and constitutional role and limits of the constitutional mandate, but it offered premises that

materialized in customs with a positive role for the position. Of course, the President's interference with the Government or the Legislature existed and was felt, but most of the time it had an advisory and limited role that left the Executive to overcome its historical trauma of taking decisions unilaterally.

What is worth highlighting in this chronology of the evolution of the presidential institution is that Ion Iliescu's regaining of the Cotroceni seat in 2000 does not put an end to this manifestation of independence of the Government, but even intensifies it. Between 2000 and 2004, Prime Minister Adrian Nastase became the most influential politician in Romania, and President Iliescu's role seemed to become increasingly diluted, even though both were from the same party.

Therefore, at the end of 2004, the President of Romania had become just a simple element of the decision-making system (Stănescu, 2014), by far not the most important, and at a careful analysis, it was the weakest manifestation in the history of the presidential office. It was a noticeable transition from a semi-presidential political system with a presidential accent to a system with a parliamentary emphasis that was reflected in the Prime Minister's increasing power.

Presidential institution III. (2004-2024)

In December 2004, after a very fierce confrontation between Prime Minister Adrian Nastase and the then Mayor of Bucharest, Traian Basescu, the latter managed to win the presidential election. The novelty of this new presidential era was given by the extension of the presidential mandate from 4 to 5 years to avoid simultaneous elections.

President Basescu's victory brings to power in the legislature and executive a right-wing coalition and paves the way for defining a new typology of a president who will remain in the Romanian political culture as the "Player President". Having won the elections on an anti-corruption campaign and structural reform of the judiciary speech (Băsescu, 2009), President Basescu was most actively involved in influencing the way in which the judiciary evolves (Macovei, 2006). He exceeded his mandate and constitutional powers by recommending and directly imposing Monica Macovei as Minister of Justice. Without making professional observations on the qualities of the person who held the position of Minister of Justice, the manner in which she was aggressively imposed by the President in the Executive led to the establishment of a negative and dangerous precedent for the presidential administration of Romania.

The continuous pressures on the judiciary, too much influence in the Executive, the accusation of using the secret services for personal purposes, but more practical and especially, the loss of the parliamentary majority bring President Basescu to the thankless situation of being the first President of Romania to be suspended from office. Parliament's affirmative vote led to the suspension for 30 days of the President and the organization of a national referendum on his impeachment. However, amid the fight against corruption and popularity, President Basescu managed to escape impeachment by the majority vote of Romanians who voted for him.

After the exit from government in 2007 of the party that supported him, LDP, a new political premiere took place for the Victoria Palace and the Presidential Administration. For the first time in history, the President and Prime Minister come from different and conflicting

sides, a situation that is generically referred to in French politics as "Cohabitation". The cohabitation between President Basescu and Prime Minister Tariceanu was not, however, a lasting one. In 2008, following the presidential elections, the president's party won the elections, and in 2009, Traian Basescu won a second term as president.

The period 2008-2012 can be called the most active period of Traian Basescu's presidential term, but it is also an interval in which there were serious interferences of the Presidential Administration in Justice, government appointments, and many other conflicts of interest that were easily noticed. At the same time, the years of Traian Basescu's presidency fully felt the adverse effects of the Global Economic Crisis (Băsescu, 2009) and finally led to the opposition winning legislative and local elections in 2012. In 2012, with accusations like those of 2007, the President was again suspended from supreme office by Parliament. The popular referendum taking place a month later shows the deterioration of the relationship between the population and the Presidential Administration. Although the necessary electoral threshold of 50% for the validation of the referendum was not reached and it was not validated by the Constitutional Court (Constitutional Court of Romania, 2013), over 87% of the voters, for instance, more than 7 million people, demand the removal of the president from office. The honorary resignation of the President never happened, and in December 2014 he ends his second term as the head of state (Stoenescu, 2021).

The last 10 years of the presidential administration, the most recent period, 2014-2024, is marked by the two mandates of President Klaus Iohannis. Unlike his predecessor, Klaus Iohannis had a much more reserved approach in his first mandate (Stoenescu, 2021), but after 2019 he had very important involvement and interferences not only in terms of government affairs but also from the perspective of involvement in the internal decisions of the party that supported him (Stoenescu, 2021), being a key figure in the main decisions of his former party.

Therefore, we are talking about 50 years of Presidentialism in Romania, half a century which, chronologically and politically, it would be honest to separate in the periods and stages that were the subject of this work. In 2024, in Romania, fifty years after the establishment of the presidential office, a great political premiere takes place, for the first time in Romania's history, all electoral elections (European Parliamentary, local, presidential, and parliamentary) will take place in the same year, and regardless of their results, the new President will not have an easy mission and will have to take into account the mistakes of his predecessors in order to succeed in being a real guarantor of the Constitution and a harmony provider in the so difficult relations between Executive, Legislative and the Judiciary that governs the political system.

Conclusions

In examining half a century of presidentialism in Romania from 1974 to 2024, this study has traced the evolution of the presidential institution through various historical, political, constitutional, philosophical, and ethical lenses. The presidency, introduced during the Ceaușescu era, underwent significant transformations in the post-communist period, shaping and being shaped by the country's political landscape.

The study began by delving into the ethical and philosophical considerations surrounding the presidency. Drawing inspiration from thinkers like John Locke and Montesquieu, it emphasized the need for ethical principles in wielding presidential power. The philosophical insights of Hegel were also explored, providing a lens through which to

understand the leader's role in the organic state. The delicate balance between power and ethical responsibility emerged as crucial, encapsulating the essence of the presidency in a democratic society.

The establishment of the presidency in 1974 under Ceaușescu marked a turning point, concentrating power in a quasi-monarchical manner. The study highlighted the paradox of introducing a presidential office within a totalitarian regime, noting the significant concentration of power and the absence of checks and balances. Despite the potential for reform, Ceaușescu's presidency contributed to the deterioration of what that office could mean.

The post-communist transition saw the emergence of a new era with Ion Iliescu and later Emil Constantinescu. The presidency underwent legal and institutional delimitation come to exist, and the depoliticization of the office marked positive precedents. However, Iliescu's second term posed challenges to democratization, and Constantinescu's tenure showcased positive examples of mediation between the powers in the state.

Traian Băsescu's presidency introduced a new typology characterized by direct involvement in the state through all political possible means. His tenure witnessed political confrontations, impeachment, and a changing balance of power between the president and prime minister. The" Player President" remains even today in the Romanian political culture as a concept that will be long remembered while Klaus Iohannis's presidency displayed a more reserved approach initially, later marked by increased and controversial involvement.

The study and analysis of Romania's presidentialism reflects a complex interplay between power, ethics, and constitutional evolution. Each era brought unique challenges and opportunities, influencing the role of the president in shaping the nation's trajectory. The research underscores the importance of learning from historical mistakes, acknowledging the delicate balance required in wielding presidential power and promoting democratic principles for the effective functioning of the state. As Romania stands at the crossroads of a new political era, the lessons from its presidential history become invaluable. The next president faces the responsibility of upholding constitutional values, fostering harmony among branches of government, and navigating a path that respects both ethical principles and democratic ideals of the newly Romanian reborn state.

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DIGITAL TECHNOLOGIES AND THE RESILIENCE OF UKRAINE'S SOCIAL PROTECTION SYSTEM: WARTIME EXPERIENCE

T. BURLAY

Tetiana Burlay
Institute for Economics and Forecasting of the National Academy of Sciences of Ukraine
https://orcid.org/0000-0003-4530-9151, E-mail: btv2008@ukr.net

Abstract: *The article focuses on the problem of digitalization under military shocks in Ukraine. The research key aim is to substantiate the digitalization of the social sector of Ukraine as a strong determinant of its societal resilience in the full-scale war conditions. One of the main objectives is to determine the impact of digital technologies on the stability of the social security population under martial law. The study applies a comprehensive methodology based on a combination of logical-historical, analytical, institutional, graphical, and sociological approaches. It is all-important that in 2020 Ukraine adopted the Strategy for Digital Transformation of the Social Sphere, and within its framework carried out digitalization. Since the beginning of the war in February 2022, the Unified State Web Portal of Electronic Services "Diia" provided the opportunity to: receive pension and social payments on bank cards; new registration or recalculation of such payments; the restoration of documents on work experience (E-work book) or disability; etc. Digital technologies such as access to ID cards, digital signatures, etc. also helped economically active Ukrainians during the war. It is concluded that digitalization has become a strong factor for stability of the national social protection system, as well as the Ukraine's socio-economic and societal resilience in in the most difficult times of war.*

Keywords: *digitalization, military shocks, social security, societal resilience.*

Introduction

The research focus

For the third year running, a full-scale war has had an extremely shocking impact on Ukraine's economy, destroying its human capital and social development. Thus, according to the UN Human Rights Monitoring Mission, in Ukraine at the end of 2023 the number of civilian casualties during the war alone exceeded 29 ths people, including the deaths of more than 10 ths civilians. As of the end of February 2024, over 11.4 million Ukrainians have become internally displaced persons (IDPs) or war refugees abroad, which is slightly less than a third of the pre-war population. The number of Ukraine's citizens officially registered as IDPs in the national Ministry of Social Policy reached 4.9 mln as of December 2023, among them 2.5 mln (51%) were displaced and cannot return to their homes, because their housing is either destroyed or in the zone of active hostilities or in the temporarily occupied territory. And almost 6.5 mln refugees from Ukraine are registered globally, among them more than 4.3 mln had temporary protected status in the host EU countries (Burlay, 2024).

The financial dimension of the material damage caused by the war to Ukraine's social sector is enormous. According to the consolidated international report "Rapid Damage and Needs Assessment" for the period from February 24, 2022 to the end of December 2023, the social sector includes housing, education and science, health care, social protection and social security, culture and tourism, which totals more than $66 billion in direct and $71 billion in indirect losses. It is the social sector that needs the most reconstruction funds over the next ten years, almost $162 billion, half of which will be needed to rebuild housing (World Bank [WB], 2024, p. 39, 85–96).

Under the martial law, the issues of social and societal resilience of the country are extremely relevant. At their respective levels, these concepts describe the ability to withstand significant shocks by combining three components: (i) the ability to overcome stressful influences; (ii) the ability to learn from past experiences and adapt to future challenges; (iii) transformational capacity to build institutions and implement social security and other measures to build resilience to future shocks. Thus, social resilience is defined in relation to different social groups, including the poor and marginalised (Keck & Sakdapolrak, 2013, p. 6–8, 14), while societal resilience is assessed at the level of society as a whole (Burgess, 2022, p. 9). The national social protection system becomes a fundamental pillar for any country's social and societal resilience. The Ukrainian social protection system provides certain categories of citizens with social support, which includes the types of social assistance, subsidies, benefits, social services, the local programs of social protection, the payments of social sphere, etc., provided by the law. More than 30,000 social workers provide social support to Ukrainians, but there are not enough of them. That is why the introduction of digital technologies is of great importance for the timely, high-quality and complete provision of social support to people, especially in times of military shocks. Digital technologies greatly simplify extraterritorial access, registration, control of social benefits, and change of status of social support recipients; prevent corruption, fraud, and social risks in the receipt of social benefits; and make the social protection system much more transparent, fair, and flexible.

Hypothetical justification

According to our assumption within the framework of political economy and institutional theory, the main elements of social and societal resilience are, in particular, the institutions of public administration, social security, social protection, including the institution of social support for the population. The effectiveness of these institutions in the digital era depends significantly on the level of digital technologies used and the scale of their implementation. Thus, in the context of this study, we hypothetically assume that:

(1) in times of extreme and prolonged shocks, such as the full-scale war in Ukraine, providing sufficient social support to the population is a necessary factor determining the physical and social survival of people in the areas affected by hostilities, shelling, air raids, etc., preserving human and social capital, and promoting social stability.

(2) this social support, which primarily includes social and pension payments, social assistance and benefits, social services, etc., directly contributes to social resilience. The termination/restriction of access to social support for the most vulnerable categories: the disabled, pensioners, the poor, families with children, internally displaced persons, etc., under

martial law leads to an explosive increase in social tension, loss of social solidarity and trust in the government, as well as in other political and social institutions.
(3) digitalization of the social sphere is an effective and reliable mechanism for ensuring access to social support for the most vulnerable categories of the population in times of military shocks. Thus, the use of digital technologies in the social protection system directly contributes to the resilience of society, as well as maintains solidarity and institutional trust in a country affected by military conflict, which is vital for Ukraine, which is struggling with difficulties.

Purpose and objectives of the research

Taking into account everything mentioned above, the main purpose of the article is to substantiate the digitalization of Ukraine's social sector as a strong determinant of its societal resilience in the conditions of a full-scale war. In order to achieve the purpose involves solving the following tasks: (1) clarifying the main parameters of the social protection of Ukrainians; (2) determining the level of institutionalization of the use of digital technologies in this area; (3) determining the impact of digital technologies on the stability of social protection of the population under martial law; (4) substantiating the link in times of war between the stability of the social protection system and the social stability of Ukraine through the prevention of extreme poverty and social tension, as well as increasing solidarity and institutional capacity.

Brief literature review

The issues of content, main factors and ways to achieve societal resilience are in the focus of attention of most contemporary researchers. The scientific work by Burgess (2022) reveals the key components of the specified scientific category. An analytical article by Haavik (2020) explores societal resilience as a new direction in security science, in addition to the technological, human and organizational aspects of security. Keck and Sakdapolrak (2013) reasoned that finding ways to ensure societal resilience is a serious problem for public policy in the vast majority of countries. Many in-depth scientific studies have been devoted to the issue of the social sphere digitalization. In particular, Lee-Archer (2023) investigated the role of digital technologies in the transformation based on a human-centered model of traditional approaches to social policy and social security administration. The main problems of the current stage in the digitalization of the national social security systems of the European Union countries are revealed by Schoukens (2020). The assessment of the impact of digitalization on social development, studying the experience of the EU and Ukraine, was made in a study by Grytsenko and Burlai (2020). The approaches to digitalization of the state regulation system and public services provision in Ukraine are justified in the article by Mishchenko and Mishchenko (2023). The study by Huk (2021) devotes the digitalization impact on the use of standard and new employment forms in Ukraine. A recent scientific study by Gjoni (Meta) and Elez (2023) gave grounds (using the Albanian case) to consider the implementation of digital technologies in the national labor market as an effective component of its internationalization. Using the Azerbaijanian case, the relationship at the microeconomic level between the introduction of digital technologies and the growth of labor productivity, and as a result, competitiveness, was considered by Hashimova (2023). At the same time, there is still a wide

scope for studying the impact of digital technologies on the dynamics of social development under martial law, including the example of Ukraine.

Scientific methods

The study applies a comprehensive methodology based on a combination of logical-historical, analytical, institutional, graphical and sociological approaches. The institutional methodology was used to identify the impact of digitalization institutions and social development institutions. The use of analytical approach made it possible to understand the extent of coverage of Ukrainians by the social protection and support system, as well as to characterize their use of social e-services provided by the Government of Ukraine. Graphical methods in our study allowed us to better demonstrate the current capabilities of Ukraine's key digital platforms to provide social support to Ukrainians remotely and without paper. Using sociological approaches, our research recognizes the dynamics and structure of users of digital social services in Ukraine. A World Bank study proves that strengthening national social protection systems is definitely an effective factor for the post-war recovery of fragile and conflict-affected countries (Ovadiya et al., 2015). Applying the logical-historical method, it is advisable that this experience should be taken into account by policymakers in Ukraine, which is currently engulfed in a large-scale military conflict.

Results

Institutional framework

The start of digitalization processes deployment in the social policy sphere was given by the approval in January 2018 of the Concept for development of the digital economy and society for 2018–2020 in Ukraine. In October 2020, Ukrainian Government adopted the Strategy for Digital Transformation of the Social Sphere. And within its framework, the rapid implementation of digital technologies aimed at ensuring social protection of Ukrainians, including by simplifying access to social benefits and social services for those citizens who have legal grounds for it, as well as guaranteeing such access even during such extraordinary crises as COVID-19 and the Russian-Ukrainian war.

Emphasizing that "*the digital transformation of the social sphere has become a key element of the national strategy in the digital technologies area aimed at the development of an effective and accessible Digital State*", in March 2024 Ukrainian Ministry of Social Policy initiated the signing of open memoranda with manufacturers and suppliers of information and communication equipment (vendors) on cooperation in the field of digital transformation of the social sphere. This is expected to help reduce corruption and ensure maximum transparency in procurement procedures through the Ukrainian electronic procurement system Prozorro (Ministry of Social Policy of Ukraine [MSPU], March 2024).

The legislative framework for regulating for Ukrainian social sphere digitalization includes the laws of Ukraine "On social services", "On the basics of social protection of persons with disabilities in Ukraine", "On ensuring the rights and freedoms of internally displaced persons", "On the status war veterans, guarantees of their social protection", "On the status and social protection of citizens who suffered as a result of the Chernobyl disaster", "On the basic principles of social protection of labor veterans and other elderly citizens in Ukraine", "On

social work with families, children and youth", "On electronic identification and electronic trust services", "On personal data protection", "On information protection in information and communication systems" and others.

The key institutions for the implementation of the digitalization of the social sector in Ukraine are the Ministry of Social Policy, the Ministry of Digital Transformation, the Pension Fund, the National Social Service of Ukraine and others. The parameters and dynamics of the digitalization of Ukraine's social sector will be assessed using the national Digital Economy and Society Index (DESI), based on the EU methodology and approved in September 2023.

Ukrainian recipients of social support

Due to the historical legacy of previous decades, social protection in Ukraine today covers almost the entire population, although to varying degrees. In general, pensions are received by pensioners, people with disabilities, families who have lost a breadwinner, etc.; social payments, benefits, subsidies and privileges are received by war veterans, people with disabilities, orphans, families with children, low-income families, etc.; payments in case of occupational injuries, sick leave, maternity leave, unemployment benefits, etc. are received by citizens covered by the social insurance system of Ukraine.

State social support is primarily intended for vulnerable groups of the population, which, according to Ukrainian legislation, are individuals/families at the highest risk of falling into difficult life circumstances as a result of adverse external and/or internal factors. Such factors include, in particular, old age; mental and behavioural disorders; disability; homelessness; unemployment; poverty; child abuse; damage caused by fire, natural disaster, catastrophe, military operations, terrorist act, military conflict, temporary occupation.

The undoubted importance and usefulness of digitalization for the Ukrainian national social protection system, especially for maintaining social stability, solidarity and resilience of society in wartime, is related to the large number of recipients of various social benefits and social services. At the end of 2023, 10.5 million Ukrainian citizens received pension payments, including 1.4 million people who received a disability pension (Pension Fund of Ukraine [PFU], 2023). And also, with a significant number of types of social support for population. Currently, the Ukraine provides 39 types of social assistance or benefits (MSPU, January, 2024), and quite often, an average Ukrainian family can receive several of them at once. At the same time, 23 types of social services are provided for vulnerable groups in Ukraine.

Key components and approaches for Ukrainian social sphere digitalization

The above-mentioned Strategy for Digital Transformation of the Social Sphere provided for the Unified Social Sector Information System (USSIS) creation; the legislative Regulation on it was approved by the Resolution of the Ukrainian Government dated 04.14.2021 No. 404. Follow the Ministry of Social Policy, USSIS is a complex system designed to automate all areas of social support by all social sphere institutions within a single information environment and technological platform. Also, USSIS is the foundation for digitalization of social services and is built on such key approaches as: *Paperless* (to ensure citizens' remote access to all services provided by social protection institutions); *Extraterritorial and Multi-Channel Application* (via mobile communication, e-mail, mobile

application "Diia" Portal, etc.). USSIS structure is shown in Figure 1. Research and industrial operation of USSIS began in January 2022 and lasted for two years (MSPU, 2023).

Figure 1. *Structural components of Ukraine's Unified Social Sector Information System, introduced on December 30–31, 2021*

UNIFIED SOCIAL SECTOR INFORMATION SYSTEM (USSIS)	
General purpose subsystems	**Applied subsystems of e-services**
• Unified Social Register • Register of Providers and Recipients of social services • "Electronic Budget" subsystem • Subsystem "Social Treasury" (Unified settlement and payment center of the social sphere) • Subsystem "Unified Social Processing" • Electronic Social Identity Card	• Subsystem "Subsidy" • Subsystem "Social Assistance" • Subsystem "Pensions" • Subsystem "Internally Displaced Persons" • Subsystem "Social Services" • Subsystem "Persons injured as a result of the Chernobyl disaster, other nuclear accidents and tests, military exercises with the use of nuclear weapons" • Subsystem "Victims of Nazi persecution" • Subsystem "Persons who have special merits to the Motherland"

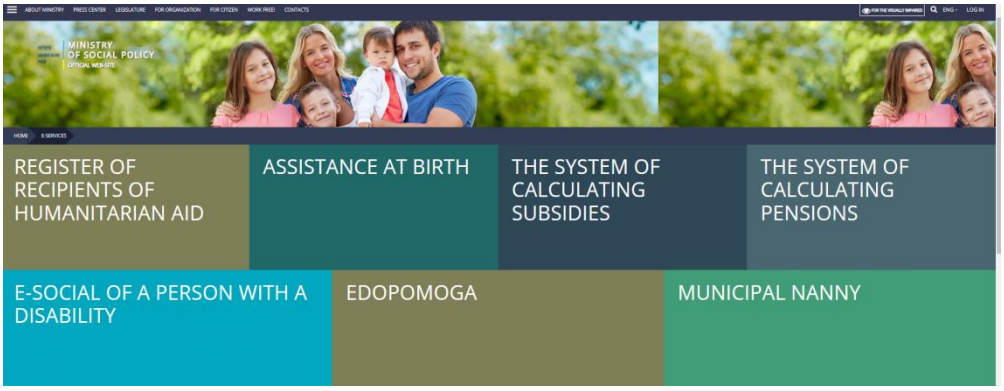
Source: "Diia" Portal (2024).

Ukrainian main digital platforms for providing public socially oriented e-services

The main such digital platforms that are integrated with USSIS and with each other are: (1) the Unified State Web Portal of Electronic Services "Diia" ("Diia" Portal, https://diia.gov.ua/) and (2) the web portal of electronic services of the Pension Fund of Ukraine (PFU Portal, https://portal.pfu.gov.ua/). The service is provided for users who access the portals using a qualified digital signature or the Integrated system of electronic identification ID.GOV.UA (https://id.gov.ua/). Also, some digital social services in Ukraine are available as e-services on the following sites:

- the Information and Computing Center of the Ministry of Social Policy of Ukraine (*very few and still poorly functioning e-services*, https://www.ioc.gov.ua/en/eservices/);
- the Ministry of Social Policy of Ukraine (https://www.msp.gov.ua/en/main/Eservices.html)

Figure 2. *E-services on the Ukrainian Ministry of Social Policy website*

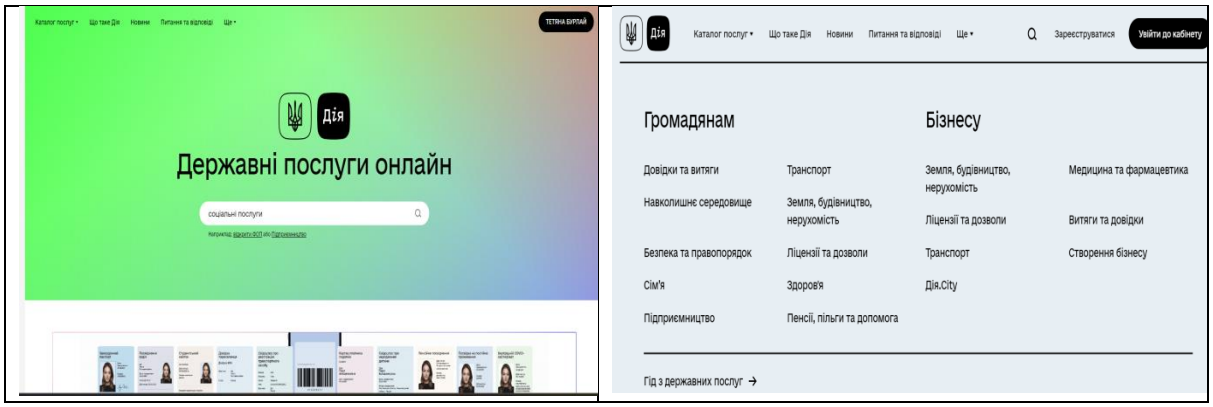


Source: Ministry of Social Policy of Ukraine (n.a.).

The Unified State Web Portal of Electronic Services "Diia"

The Regulation on the Portal, approved by the Resolution of the Ukrainian Government dated 04.12.2019 No. 1137 stipulates that the "Diia" Portal (Figure 3) is intended to implement the right of everyone to access electronic services and information on administrative and other public services. According to this resolution, the owner of the "Diia" Portal is the Ministry of Digital Transformation of Ukraine. The Ministry estimates that the potential economic effect of this Portal e-services amounts to UAH 34.3 billion per year, and the potential anti-corruption effect is more than UAH 5.3 billion.

Figure 3. *The front page and electronic services of the Ukrainian "Diia" Portal*

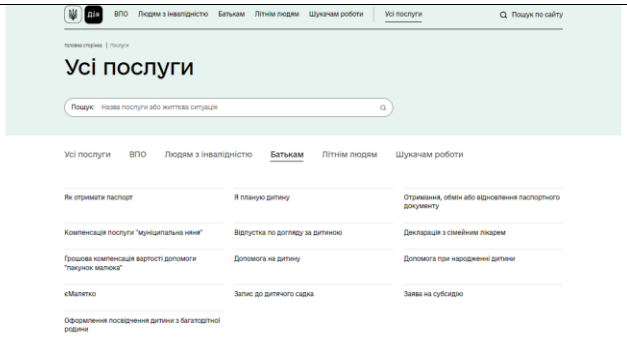


Source: "Diia" Portal (n.a.).

On Figure 3 also demonstrates the directions in which the "Diia" Portal provides social e-services (informational, consulting, processing of official documents, etc.) to the population and businesses. In particular, Ukrainian citizens today can receive e-services in various areas: "References and Extracts", "Environment", "Safety and Law-and-order", "Family", "Healthcare", "Land, Construction, Real Estate", "Transport", "Entrepreneurship", "Licenses and Permits", "Pensions, Benefits and Assistance". In certain directions, this Portal contains a limited number of social e-services, their full list is provided on profile portals, e.g. the web portal of electronic services of the Pension Fund of Ukraine.

In December 2022, the section "Diia. Barrier-free" (https://bf.diia.gov.ua/) was launched on the "Diia" Portal. It was developed as per the National Strategy for the Creation of a Barrier-Free Space in Ukraine for the period until 2030. The website states that the Section will be useful for older people; people with disabilities; parents raising children of preschool age; people looking for work; IDPs and Ukrainian refugees from the war (Figure 4).

Figure 4. *Social e-services on the section "Diia. Barrier-free" of the "Diia" Portal*

	**Social e-services and instructions in the menu item "For parents" on the "Diia.Barrier-free" section:** "How to get a passport", "Obtaining, exchanging or restoring a passport document", "Planning a child", "Compensation for the "Municipal nanny" service", "Childbirth assistance", "Parental leave", "Declaration with a family doctor", "Cash compensation for the cost of the baby's package", "Enrolment in a kindergarten", "Childbirth assistance", "E-baby", "Subsidy application", "Certificate of a child from a large family", "Friends and partners".

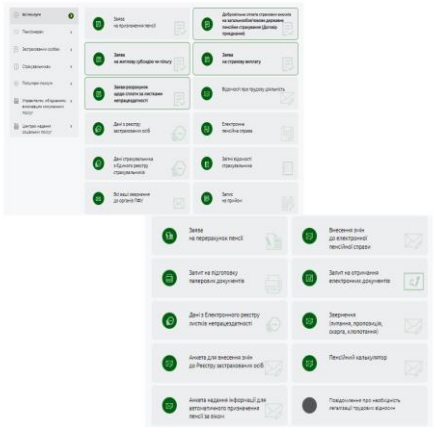
Source: Section "Diia. Barrier-free", "Diia" Portal (n.a.).

Currently, in 2024, it is possible to receive 4 social benefits on the "Diia" Portal: in case of adoption; for children with serious illnesses; persons with disabilities since childhood; for children of single mothers. Pursuant to Ministry of Social Policy, more than 600.0 ths Ukrainians took advantage of this opportunity. The deadline for the appointment of these benefits occurs within 10 days from the application start, and the notification of the application result will be sent to the user's personal account on the "Diia" Portal or to e-mail. In the digitalization course, a Register of providers and recipients of social services was introduced, the development of an electronic case-management was started, and a transparent accounting mechanism for humanitarian aid through an automated system of its registration (https://good.gov.ua/) was also created (MSPU, January, 2024).

The Web-portal of Electronic Services of the Pension Fund of Ukraine

The Pension Fund Portal provides a very significant number of e-services related to pension insurance, as well as social insurance in connection with temporary disability, industrial accidents and occupational diseases (Figure 5). In this case, e-services are provided through the personal accounts of the citizen and the employer, so both parties to the labour relationship can control information on employment history, social contributions, average salary for pension calculation, etc.

Figure 5. *Social electronic services on the PFU Portal*



Social electronic services and instructions on the PFU Portal: "Application for pension", "Voluntary payment of insurance contributions for obligatory state pension insurance (Accession Agreement)", "Application for housing subsidy or benefit", "Application for insurance payment", "Application for payment of sick leave", "Information on employment", "Data from the Register of Insured Persons", "Electronic pension file", "Insured person's data from the Unified Register of Insured Persons", "Insured person's reporting information", "All your appeals to the Pension Fund of Ukraine", "Appointment record", "Application for pension recalculation", "Amendments to the electronic pension file", "Request for paper documents", "Request for electronic documents", "Data from the Electronic Register of sick leave certificates", "Appeal (question, suggestion, complaint, petition)", "Questionnaire for making changes to the Register of insured persons", "Pension calculator".

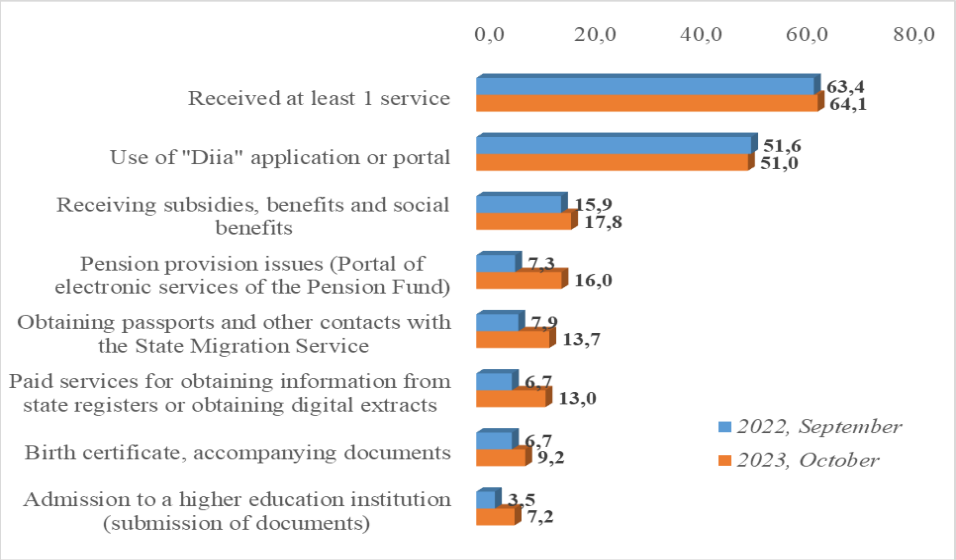
Source: PFU, 2023, p. 31; the Web Portal of the Pension Fund of Ukraine (n.a.).

Statistics show the great importance of PFU Portal as a digital platform. As of October 1, 2023, more than 14.7 mln users were registered on it, among them 10.4 mln were using a qualified e-signature. During January–September 2023, through the PFU Portal, 4.3 mln certificates with a QR-code were generated; 36.6 ths applications for the pension appointment and 24.7 ths for the pension recalculation were submitted; 27.3 ths questionnaires of an insured person for submission / changes / clarification of data in the Register of insured persons. During this period, 1,529.0 ths applications for digitalization of employment records were filed, including 29.9 ths by employers for 895.9 ths employees and 633.1 ths by employees themselves (PFU, 2023, p. 31–34).

The importance of digital technologies for the Ukraine's social resilience in a full-scale war

It is quite objective that the digitalization of the Ukrainian social sector has an extremely important positive value for maintaining the resilience of the national social protection system under martial law. In particular, from the first days of the war in February 2022, the "Diia" Portal and PFU Portal provided vital opportunities for vulnerable categories of Ukrainians: receiving pension and social state payments to bank cards; processing or recalculating such payments; updating documents on employment history (electronic work record book) or disability for pension applications; etc. Digital technologies, such as access to ID cards and other personal documents, electronic digital signatures, and others, have also helped economically active Ukrainians, students and schoolchildren during the war. In particular, simplified border crossings for Ukrainian refugees from the war abroad; finding housing and jobs for internally displaced persons; opportunities for businesses to issue loans online; distance learning for schoolchildren and students, as well as remote employment where possible, and others. The direct positive impact of the digitalization of the domestic social sphere on ensuring Ukrainians' access to social protection under martial law is confirmed by analytical and sociological sources. For example, the Human Impact Assessment report (United Nations Development Programme in Ukraine [UNDP in Ukraine], 2023) shows that in almost all areas of assessment in June 2023, including food security, livelihoods, living standards, health and education, and social integration of internally displaced persons, the use of digital technologies has become one of the most effective mechanisms for Ukrainians to adapt to the difficulties of war. The value and indispensability of this mechanism under martial law is also proved by the data of sociological surveys. Figure 6 shows the increase in the share of Ukrainian users of digital social services in October 2023 compared to September 2022.

Figure 6. *The share of Ukrainians who have had the opportunity to receive government e-services in any of the following areas over the past year (respondents could select multiple answers), %.*



Source: UNDP in Ukraine, 2024, p. 21–22.

The shock effects of the war have critically reduced the living standards of the vast majority of Ukrainian citizens, especially IDPs and those who remained in the frontline areas.

During the war, the scale and depth of poverty in Ukraine has increased many times over, due to the loss of jobs, personal property and income (especially taking into account the inflationary component). According to international estimates, since the beginning of the war and as of the end of 2023, the loss of income of Ukrainian households has amounted to at least USD 60 billion (WB, 2024, p. 40).Demographers estimate that in pre-war 2021, 39% of Ukraine's population lived below the poverty line. Under the conditions of military shocks, with the modelled data remaining unchanged, the poverty rate was 60% in 2022 and 67% in 2023. In fact, because of the war, Ukraine returned to the poverty level of 2001, having lost 20 years (Gordiychuk, 2023). The pre-war experience of Ukraine has convincingly demonstrated the link between the level of social security (stability of the social security system) and the prevention of poverty and social tensions (Koval, 2018). And for wartime, it is absolutely clear that without remote, paperless access to social payments, benefits, pensions, etc. provided by digital technologies, poverty indicators in the country can become critical in the social dimension, causing irreversible processes in Ukrainian society and several million additional refugees to the EU and other host countries. Despite the stability of the national social security system during the war, this did not strengthen institutional trust in Ukrainian society. Sociological research by the Kyiv International Institute of Sociology recorded an increase in criticism of the Ukrainian government and a significant decline in institutional trust in December 2023 compared to December 2022. In particular, the share of those who trust the Verkhovna Rada (Parliament) decreased from 35% to 15%; trust in the Government decreased from 52% to 26% (Hrushetskyi, 2023).

Conclusions

Based on our research, we draw certain conclusions. First of all, the main conclusion is that digitalisation has become a powerful factor in the socio-economic and societal resilience in the most difficult times of war. The Ukrainian case is a clear indication that under martial law, the national social protection system becomes a fundamental pillar of social and societal stability in any country (this confirms the *first* hypothesis of the study). The introduction of digital technologies is of great importance for the timely, high-quality and full-fledged provision of social support to the population, especially in the context of military upheaval (this confirms the *third* hypothesis of the study). The *second* hypothesis (the sustainability of social support achieved, among other things, through the digitalization of the social sphere protects against poverty and helps to strengthen institutional trust) is only partially confirmed.

The practical significance of the study is that it is advisable to take into account the above conclusions and the results of verification of the put forward hypotheses in the development and implementation of public governance measures in Ukraine under martial law and its post-war recovery. In particular, when finalizing the draft Ukraine Recovery Plan (https://recovery.gov.ua/en), including draft of «Recovery pre-requisites: Digital Government» and «Secure targeted and effective Social Policy» national programs. At the same time, a very important topic remained outside the focus of our study: "bottlenecks" and challenges posed by the digitization of the social sphere. The relevant scientific discussion can begin with an analysis of the position of the UN expert, Professor Philip Alston, who argues that the

digitalization of public services is used to reduce social costs, implement surveillance systems and serve the interests of private companies (United Nations, 2019).

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PUBLIC INVESTMENT, ECONOMIC GROWTH AND EFFICIENCY

Eni Danaj[1], Lorela Reçi[2]
University College of Business, Albania
[1] https://orcid.org/0009-0006-8732-1246, E-mail: endanaj@kub.edu.al
[2] https://orcid.org/0009-0006-2529-9960, E-mail: koordinatorekub@kub.edu.al

Abstract: *The definition of public investment is not as clear and precise as it may seem. Often, public investments are described as public expenditures that contribute to the stock of physical capital, encompassing tangible assets such as properties (excluding land), buildings and other structures (e.g., roads, airports, hospitals, schools, telecommunication structures, government buildings, bridges, etc.), machinery, transportation equipment, and intangible assets like intellectual property (OECD, 2016). Therefore, public investment is the allocation of funds that result in the growth of the aforementioned items. Public investment can be viewed as a political tool in the hands of a government, capable of altering or determining the course that a country's economy and other aspects of life will take. Governments utilize public investments to respond to a variety of challenges over time, addressing global issues such as climate change and local problems like periods of economic decline, diverse demographic trends, rapid urbanization, or adaptation to new technologies. As emphasized by the European Investment Bank, "properly functioning infrastructure networks are the backbone of flourishing economies" (European Investment Bank, 2010). Public investments are integral for economic and social prosperity, contributing to the national capital stock by allocating resources to essential basic infrastructure, education, research and development, thereby leading to increased productivity and improved living standards. The aim of this article is to analyze the role of public investments in the economy in addressing contemporary challenges.*

Keywords: *Public investments, the role of public investments in the economy, etc*

Introduction

In the 19th century, economists argued that public investment was important and critical for an industrialized economy seeking to develop further to compete with advanced economies. In that period, public investment was also seen as a basis for independence, national unity and a sense of common purpose. Later, in the first half of the 20th century, in the context of easing the effects of the Great Depression, the role of public investment was further expanded. This is also thanks to the ideology and contribution of the eminent economist John Maynard Keynes, who argued that in conditions of economic recession the market may not be able to self-regulate spontaneously to ensure full employment. Therefore, according to him, the government should intervene by borrowing to finance public investment, in order to give a boost to the economy through the multiplier effect on private investment, demand and consumer confidence. However, subsequent historical and economic circumstances again cast doubt on the dysfunctionality of Keynes's theory. Thus, in the second half of the 20th century, liberal voices re-emerged recalling the benefits of laissez-faire and arguing that public investment crowded

out private investment, and was therefore no longer efficient. The movement against public investments required the privatization of public assets, thus depoliticization would be achieved and economic efficiency and freedom would increase.

Discussions of this nature, enriched and with many other elements, according to the historical, cultural, geographical and demographic context, have continued and will probably continue for a very long time. What has been noticed since the 1990s, as an innovative public investment instrument, is the creation and growth of Public Private Partnerships (PPP). PPPs were introduced with the aim of strengthening efficiency and accountability in terms of public investments. PPPs have taken a variety of forms, from private sector ownership, state-owned firms, etc. The expected benefits of PPPs are efficiency, transfer of risk from the taxpayer to the private sector and more added value for each unit of money spent. However, risks are not completely eliminated, since, like traditional private investments, PPPs are delicate and complex instruments that, in the absence of integrity, can cause more harm than good.

The impact of public investments on economic growth, however, is not so clear and positive in all countries, since if this were the case, the world would have a guaranteed success formula towards economic growth. In fact, as it has been proven by many cases and in the literature, the nature of public investments makes the latter vulnerable and prone to corruption. Corruption is a major problem in the world and especially in small developing countries like Albania. According to the OECD Bribery Report, almost 60% of corruption cases occurred in infrastructure-related sectors. In addition to the obvious ethical problems, undermining citizens' trust in government, corruption causes other obstacles and increases the cost of investment, weakening efficiency and reducing the quality of work and value for money paid.

1. Methodology/Method

The medhodology of study is Survey Research is a quantitative research method used for collecting data from a set of respondents. It has been perhaps one of the most used methodologies in the industry for several years due to the multiple benefits and advantages that it has when collecting and analyzing data. Research questions and hypotheses are part of our study. We have combinate quantitative research, quantitative research method used for collecting data from a set of respondents and qualitative Analysis.This involves gathering non-numerical data. It focuses on observation.

2. Purpose of the study

The main purpose of this study is to examine the impact of public investments on economic growth in Albania. For this reason, two components of public investment are examined: *spending on government consumption and fixed capital formation.*

Meanwhile, the secondary objectives of the paper are:

- to analyze the trend of public investments in Albania,
- to clarify the effect that public investments have on real economic growth,
- to analyze the relationship between the size of the state (government consumption) and economic growth,
- to evidence the effect of public investments on private investments,

- to assess the relationship between other variables: exports and labor force participation in economic growth, in the case of Albania,
- to determine whether Wagner's law or Keynes' theory is proven for the case of Albania.

3. Research questions and hypotheses

After the overview is given and the problem is stated, it is appropriate to present the research question and the relevant hypotheses.

Research question: Does government spending (expenditure on government consumption and fixed capital formation) affect economic growth?

Hypotheses:

H 0: Government expenditures (expenditures for government consumption and fixed capital formation) have no impact on economic growth.

H a: Government expenditures (expenditures for government consumption and fixed capital formation) have an impact on economic growth.

4. The study and their limitations

Originally, in order to evaluate the efficiency of public investments and the impact they have on private investment, it was thought to study the specific case of the promenade of the city of Vlora "Lungomare". In fact, attempts to find the necessary information on private businesses, their exact number before and after the investment made in this area, as well as the profit before and after the investment, proved unsuccessful. Thus, it was thought that this would be accomplished through a questionnaire that was sent to businesses in the promenade area. This too was not successful due to the low completion rate of the questionnaire. Therefore, the study took a different, more general direction for public investments in Albania and the impact they have on economic growth. It is expected that the results of the study will be quite valuable, since on their basis relevant recommendations can be made regarding the policies that can be followed towards an ever more healthy economic growth.

However, from conversations with business owners and managers in the Lungomare area, it was clear that the impact of the investment was quite positive. Many of them agreed that although the number of businesses (mainly bars and restaurants) had increased significantly since the inauguration of the new promenade, so had their profits. Even the administrator of one of the bars that was opened many years before investing in Lungomare said that after the stabilization of the promenade of Vlora as a new tourist attraction, the profit in his bar had tripled. Based on the testimonies of individuals engaged for years in the service industry and familiar with the area, it can be said that the case of investing in the promenade of Vlora is successful in terms of the impact on private investments.

5. The importance of the study

The importance of this paper lies in the fact that this study serves to fill a space in the existing literature in Albania regarding public investments and economic growth. This study aims to examine and reach a conclusion regarding the impact of public investment and government size, represented by government consumption expenditures, on economic growth, through a regression analysis.

6. The scope of the problem

The theoretical framework, research works and theoretical studies do not exhaustively conclude about the impact of public investments in the economy. A number of success stories can be found in the literature, but also full of ambiguous and unclear cases. Each country has its own dynamics and specifics that produce results quite different from each other, even if they have the same input. Thus, most economists would agree that there are situations in which little government involvement and low levels of government spending would be favorable to economic growth, just as they would agree that in other situations government intervention government and high public investment would bring higher economic growth.

Albania is a small country and rich in natural beauty, which preserved and exhibited in the right way can result in great benefits in the economy. In order to achieve this, the first investment is in infrastructure, roads, highways and public works. Recently, the current government has placed emphasis on large public investment as a path to development. However, there have been many controversies that have followed the public investments promised by the government, and there have been no shortage of doubts about investments with high amounts. Throughout the years, there have been no shortage of recommendations from the International Monetary Fund (IMF) to be careful with public investments, and that these appear "posted" in the relevant documentation, but leave much to be desired in reality, which in addition to damaging the credibility of the government, it also reduces the efficiency of investments and their effect on development.(Monitor, 2017)

In addition, in the last year, as a policy to get the country out of the technical review and economic deadlock it experienced during the period of the pandemic, the government sees fit to increase public investments. In line with the Keynesian ideology, which is detailed below in this study, the Minister of Finance and Economy has stated that the highest level of investments for Albania is planned in the 2021 Budget. This action, justified as an action that can be taken by a left-wing government, is seen as a way to recover the Albanian economy hit not only by the pandemic, like the rest of the world, but also by the earthquake of November 2019. However, in addition to the doubts related to the ability of an economy financed with extremely high budget deficits to afford investments in public works and Public Private Partnership contracts, in Albania there are also many doubts about the transparency and true purpose of these policies.

Therefore, there is a need to turn to figures and facts, in order to prove the connection between public investments and economic growth in Albania and to answer the question of whether it is appropriate to continue with high rates of public investments. Also, light should be shed on the efficiency of public investments and on the effect they have on private investments: do they attract more private investments, or drive them away, thus producing negative consequences for business in the country.

7. Literature review

Public spending allows governments to produce and purchase goods and services in order to fulfill their objectives, such as: providing public goods; or income redistribution. Throughout history, from the moment when the first notions of the state were thrown up until the last days, two opposing camps of thought regarding the position of the state in an economy have coexisted - and even collided. Thus, for example, Keynesians argue for the importance of

government in pulling an economy out of recession, while liberals believe that the state has no place in the economy and markets should be left free. Between these camps there is a wide spectrum of opinions and attitudes, and lately it is increasingly difficult to make a clear division of the percentage of a government's intervention in the economy.

This is, in a way, the starting point of the debates regarding public investments. The latter are directly related to the involvement of the government in the economic life and in the life of the citizens of a country. A government more involved in the decisions and economic life of the country is more likely to have greater public spending on infrastructure, goods and services in the field of social protection, education and health. The opposite can be said for a less involved government, which will seek to leave the solution to the "invisible hand of the market", the famous classic notion introduced by Adam Smith in 1759. As discussed below, this issue it has been analyzed and discussed in many different perspectives, including Keynesian ones. The Keynesian view is supportive of government involvement in the economy to give it a boost at critical moments. However, it seems that in recent decades most governments in the world decide to intervene in the economy precisely through public investment, regardless of the level at which they decide to be involved. The need for public investment, for example in health, was best seen during the pandemic that suddenly hit the globe and found even the most developed countries unprepared.

According to long-term data, the historical trend of the level of public investment, measured as a percentage of Gross Domestic Product (GDP), has changed drastically in recent centuries. Industrialized countries experienced a marked increase in public spending, especially in the 20th century. This increase was mainly attributed to the increase in public spending on health and education. According to Ortiz-Ospina and Roser (2016), world data on public spending show a heterogeneous composition of public spending levels from one country to another. States with high incomes spend more on public investments and especially for the category of social protection compared to countries with low incomes. Recent data show the trend of governments to rely on the private sector for the production and management of public goods and services. Also, there has been an increase in the popularity of Public Private Partnerships (PPP), as a mechanism for governments to finance, design, build and manage major infrastructure projects. In the period 2005-2010, the total value of PPP in low- and middle-income countries has increased by more than two times.

8. Overview of the theoretical framework of economic growth

The impact of public investments on economic growth is specific for each country, which means that each country has a different scenario regarding public investments. There are a number of channels through which economic growth can be influenced by public investment, and these conditions vary from country to country. Public spending can have contradictory effects on economic growth; can have a positive or negative impact. Initially, public investments cause an increase in production, which will consequently increase the amount of the product, the level of employment and give an impetus to economic growth. According to the Keynesian view, public investment is a valuable instrument that the government can use to increase production in certain difficult times for the economy. Public investment, through the mechanism mentioned above and the multiplier effect, will cause an increase in aggregate demand. (Blinder, n.d.)Whereas, from a neo-classical point of view, public investments are, in

a way, harmful to the economy, since they displace resources from the private to the public sector. This displacement has negative consequences on economic growth and creates a "crowding out" effect, which inevitably delays economic growth. The following paragraphs briefly and concisely discuss the main theories of economic growth and the differences between them.

Against the Keynesian point of view, Adolph Wagner (1835 - 1917), famous for "Wagner's Law", is often placed in the literature. In an observation made by Wagner in the 19th century, he observed that the percentage of the public sector in relation to GDP increased steadily over time. Wagner's law predicts this very fact: with the passage of time and more prosperity, the proportion of the public sector will continue to grow. This law is based on three claims: economic growth results in higher welfare and therefore the stage in which the economy finds itself requires the introduction of new laws and the development of the legal structure (ie more government spending); urbanization that comes with economic growth will cause more negative externalities, for which the government will have to intervene through subsidies or other forms; and third, the goods provided by the public sector have a higher income elasticity of demand. If the elasticity is greater than 1, public sector expenditures will increase proportionally with revenues.(Oxford Reference)

Therefore, many studies try to prove the relationship between economic growth and government consumption spending and the direction of this relationship. However, regarding the third point, there is no empirical evidence to support it. Both perspectives, however, agree that there is a clear relationship between economic growth and government spending. However, the two economists differ on the point where the direction of the connection of these variables is determined. Keynes argues, as described above, that the direction of the link follows from government spending towards economic growth, while Wagner argues the opposite.

Classical economic growth theory suggests that a country's economic growth will decline as its population increases and its resources become limited. This is because economists of the classical school believe that a temporary increase in real GDP per capita will inevitably lead to an increase in population and consequently limit a country's resources, ultimately reducing real GDP. Thus, the pace of economic growth will slow down. The classical theory of economic growth has many shortcomings, such as ignoring the role that technological progress has in the functioning of an economy.

Neoclassical theory is a growth model that analyzes how the three economic forces: labor, capital and technology combine to produce sustainable economic growth. Neoclassical theory sees output as a function of economic growth with the factors labor, capital and technological progress. In equilibrium, the growth rate of output is equal to the growth rate of the population or labor force and is not affected by the rate of savings. Whereas, in the long term, economic growth depends on the rate of technological progress.

The simplest and representative model of the neoclassical theory is the Solow-Swan model. In 1956, Robert Solow and Trevor Swan proposed a long-run economic growth model in response to the unsatisfactory results of the Harrod-Domar model. The Solow-Swan model is an exogenous model of economic growth that analyzes changes in the level of output in an economy in the long run as a result of changes in the rate of population growth, the rate of savings and the rate of technological progress. According to the model, if countries have the same population growth, savings rate and capital depreciation rate, then they are in the same

steady state, so they will converge. Along the convergence path, poor countries will grow faster.(Corporate Finance Institute, 2021a)

This economic theory suggests that investment can increase output, since it is a factor of production and can have an effect on the level or rate of growth, depending on the increasing or decreasing marginal return. According to the Solow model, the higher the rate of investment, the higher the level of output. However, the model predicts that the effect on growth will not be long-lasting due to diminishing returns. Beyond this effect on GDP, the main conclusion of the Solow model and the exogenous growth literature is that in the long run, assuming constant or increasing returns, economic growth is closely related to the accumulation of human and physical capital.

The exogenous theory of growth is a key doctrine of neoclassical theory. She states that economic growth is fueled by technological progress independent of economic forces. This theory considers output, diminishing returns to capital, the saving rate, and technological variables to determine the level of economic growth. Both theories, however contradictory to each other, the exogenous and the endogenous theory, emphasize the role of technological progress to achieve a sustainable level of growth. The main difference is that the exogenous theory sees technological progress as a factor that is determined by external, independent factors.

A theory of growth that contradicts the aforementioned theories is the endogenous growth theory, developed to fill gaps in the existing literature in the 1980s. This theory, unlike exogenous ones, sees economic growth as generated within economy. For example, government policies can increase a country's economic growth. According to endogenous theory, there are increasing returns to scale from capital investment in knowledge, for example in education, health, research and development and technology. Economist Paul Romer, who won the Nobel Prize in 2018, argued that technological change is not simply an exogenous product of independent scientific developments, but a consequence of government policies that include successive investments in research and development, intellectual property laws , which in the end serve as drivers of development and sustainable economic growth.

According to this theory, improvements in productivity and further in the final product of an economy are directly related to rapid innovation and more investment in human capital by the government and the private sector. Supporters of this theory urge the government to increase spending on human capital, in areas such as education, research and development, financing new projects and initiatives, etc. The idea behind this is that with a knowledge-based economy, the spillover effects from investing in technology will be large and will continue to bring benefits and generate returns. The foundations and hypotheses of this paper are laid on the endogenous theory.(Corporate Finance Institution, 2021b)

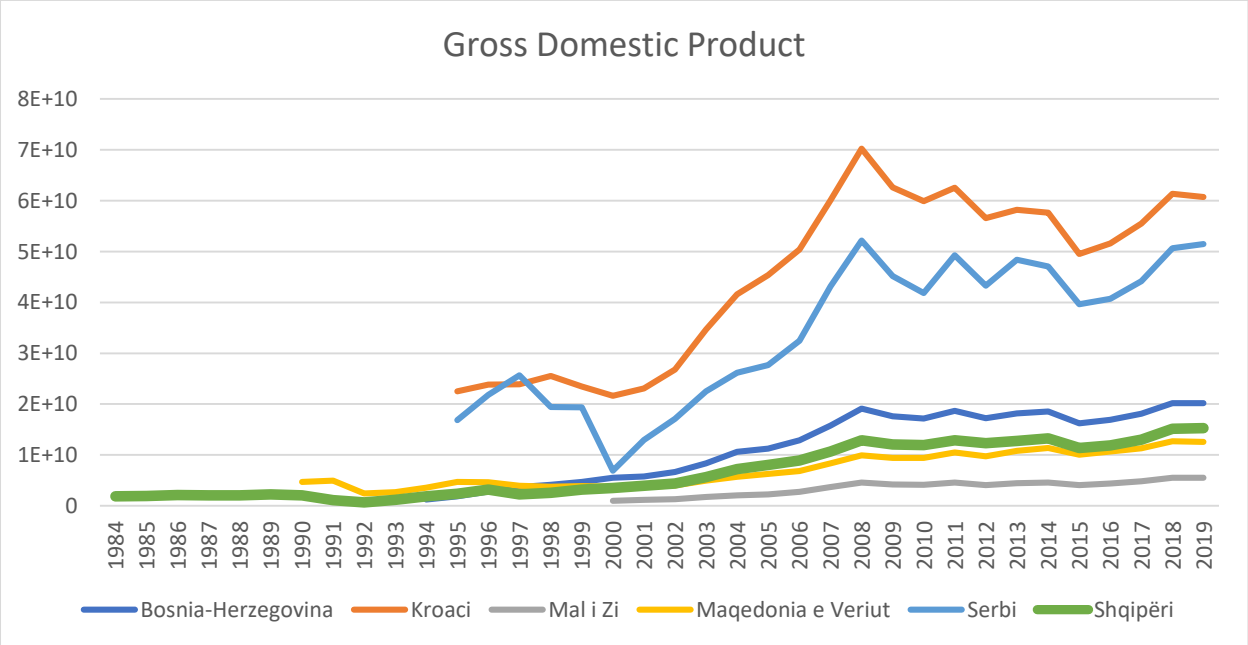
9. Analyses of the current situation in Albania

The pandemic, during the second quarter of 2020, hit consumption more than investments. According to INSTAT, the final consumption of the population fell by 7% compared to the previous period. While investments decreased by 11.1% compared to the first quarter, this decrease softened by the end of the year and is mainly attributed to the decrease in the volume of investments from the TAP gas pipeline. According to the Bank of Albania, the main reason why total investments fell was the decline in public investments and then the

decline in private investments, especially in the second quarter of 2020. However, at the end of 2020, public investments began to improve. In the period July - October 2020, government spending increased twice, from 28 billion ALL at the beginning of the period, to approximately 56 billion ALL at the end of this period. The figures of the Ministry of Finance testify to a 17% increase in investments in the first 10 months of 2020, compared to the same period of the previous year. Government capital spending is expected to continue in 2021 and is expected to be 7.2% of GDP, or about 1 billion euros, of which 225 million euros belong to the reconstruction program.

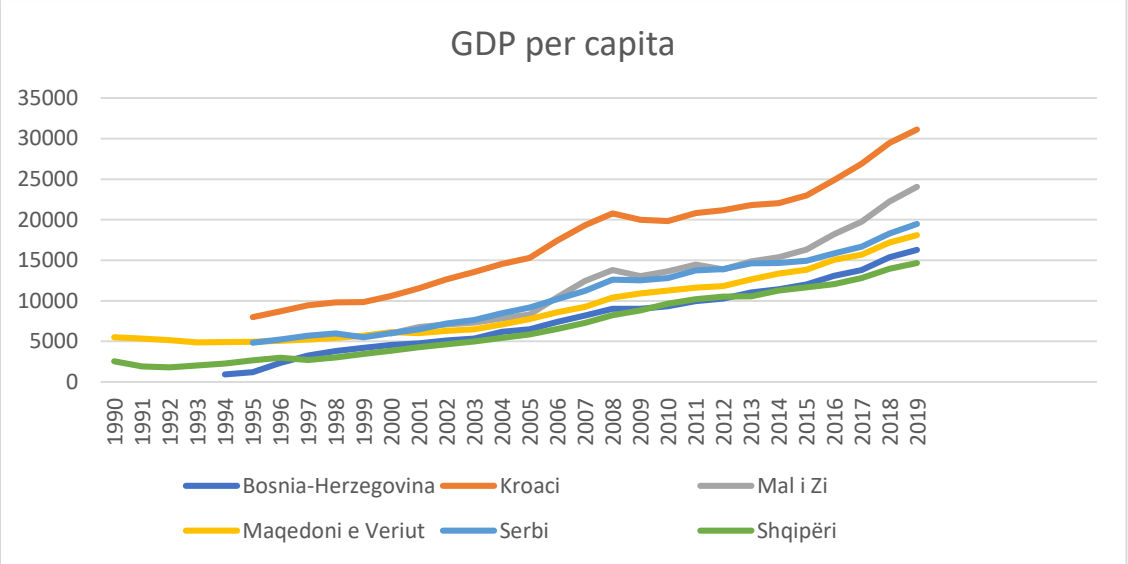
10. Albania's macroeconomic indicators compared to the region

Albania is a small country whose GDP reached $15.3 billion in 2019. To turn this into a more tangible figure, GDP per capita adjusted to purchasing power parity, an indicator of converted GDP, is used in international dollars (1 international dollar has the same purchasing power as 1 US dollar) using purchasing power parity rates and divided by the population. Albania's GDP per capita in 2019 was $14,648, a figure 2.7% higher than the previous year. Economic growth for 2019 was 2.24%. In the last decade, inflation in Albania has been stable and within the target set by the Bank of Albania, in 2019 annual inflation was 1.4%.



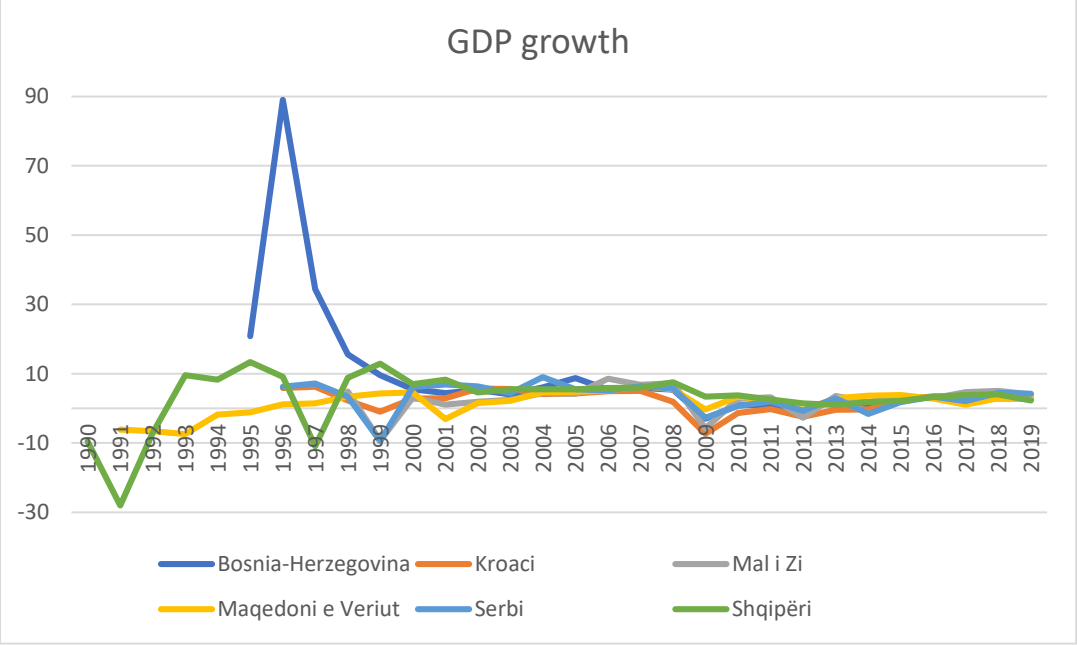
Graph 1: Gross Domestic Product. Source: World Bank

After giving a quick overview of Albania's economy, in order to put it in context and give more meaning to the figures, a comparison is made with the countries of the region, which have a similar development and history. As can be seen from the graph, the country of the region with the highest GDP throughout the period 1984-2019 is Croatia, followed by Serbia, Bosnia-Herzegovina. Croatia and Serbia stand far above Albania and other Balkan countries, with a very large difference in GDP in dollars. Albania is very close to Bosnia and North Macedonia, but higher than the latter.



Graph 2: GDP per capita (PPP). Source: World Bank

In order to somehow eliminate the effect of population size, in order to make a fairer comparison between the countries of the region, the GDP per capita indicator (based on purchasing power parity) is used. This indicator divides the GDP by the number of the population and at the same time adjusts the amount in dollars to the purchasing power. Despite this adjustment method, Croatia remains the first country in the region, with about $31,000 per capita per year, for 2019. It is followed by Montenegro with $24,000 per capita per year, Serbia with $19,500 per capita, North Macedonia with 18,000 dollars per capita, Bosnia with 16,000 dollars per capita in 2019 and finally, Albania with close to 14,600 dollars per capita in 2019. As can be seen from the graph, the trend of this indicator seems constant throughout the entire period from 1990 to 2019 and there doesn't seem to have been any difference between the ranking of countries either.

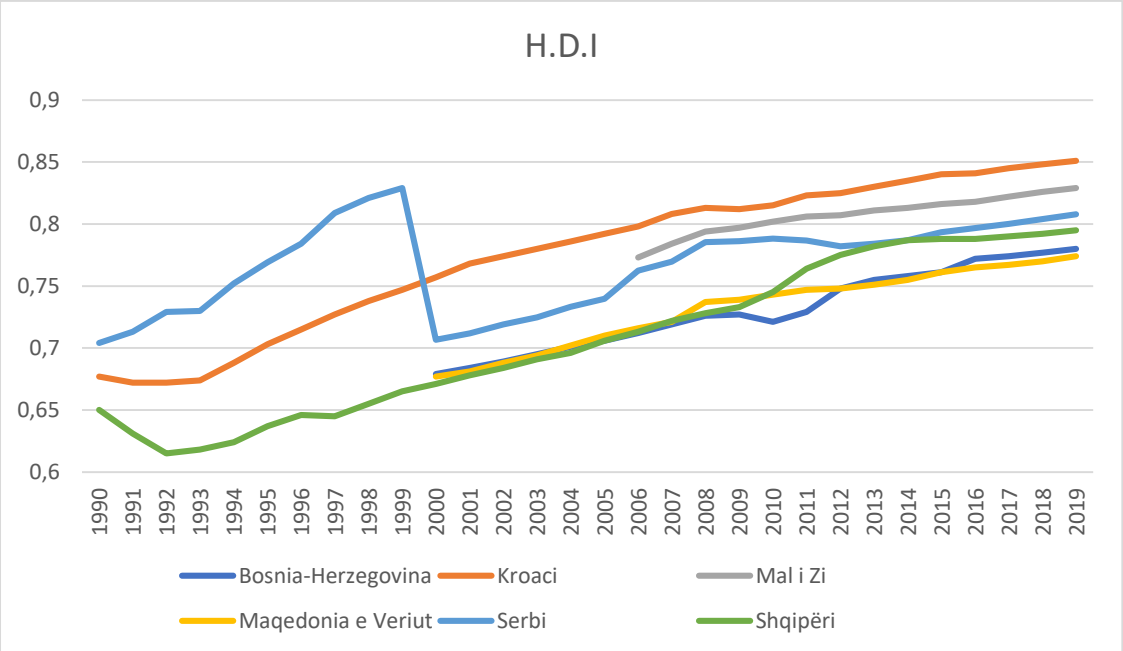


Graph 3: GDP growth. Source: World Bank

Economic growth, measured by GDP growth, evident from the graph, reflects a somewhat more volatile situation than the two previous graphs. But, it should be taken into account that the time period since 1990 is a very long period and rich with historical and economic events, strong shocks and great growth. It is mentioned here, a well-known fact by Albanians, the year 1991 with political unrest due to the change of systems (which also marked the biggest economic decline for Albania and for the Balkans), the year 1997 with civil unrest reflected by a negative increase in powerful and the year 2009 with the consequences of the world economic crisis that affected all the countries of the region. At the beginning of the period, Albania is the country with the biggest fluctuations in terms of GDP growth. Another notable moment in the graph seems to be the year 1996 for Bosinen, which experienced the highest economic growth of the entire period, around 88%. Such an increase, which almost doubled Bosnia's GDP, came as a result of the end of the war in December 1995 and the recovery of the economy. The country with the highest economic growth in 2019 in the region is Serbia (4.2%), followed by Montenegro (4%), North Macedonia (3.2%), Croatia (2.8%), Bosnia (2.6%) and finally Albania (2.2%).

Regarding the structure of GDP according to the contribution of economic sectors, Services represent the largest share in the economy for 2019, similarly to previous years, with 48.4% of GDP. Then, the Industry and Construction sector constitutes 20.6% of GDP and the third sector, Agriculture, hunting and forestry with 18.4% of GDP. According to INSTAT, the main contribution to GDP growth for 2019 was the Trade, transport, accommodation and food services sector with 0.65%, while the Arts, entertainment and other recreational activities sector had the lowest contribution.(INSTAT, 2021)

To make up for the shortcomings of GDP as a measure of well-being, the Human Development Index (HDI) is also included in the analysis, which takes into account factors that affect well-being, such as education, health and standard of living. Albania, according to this index, is included in the group of countries with high human development and ranks 69th with 0.795 points in 2019.



Graph 4: HDI. Source: UNDP

In terms of human development, Croatia has shown a steady growth rate and a higher level than other countries in the region. After her, in recent years, Montenegro has performed better; Serbia, which had a distinct "boom" compared to other countries in the region in 1999; Albania; Bosnia; and North Macedonia.

11. The city of Vlora "Lungomare"

Our study in the same time was focused on efficiency of public investments and their impact with specific case in the city of Vlora "Lungomare". After analysis of questionary the estimation results show that government expenditure has a negative impact on economic growth. Specifically, the interaction between government expenditure and other factors for example corruption control can reduce economic growth. There is no relationship between the independent variables (fixed capital formation, government consumption expenditure, export and labor force participation) and the dependent variable - economic growth,

Conclusions and Recommendations

From recent discussions on the high level of government spending in Albania as a way to "medicate" the economy still reeling from the November 2019 earthquake and the pandemic that slowed down the whole world, space was created for such a paper on the occasion of Albania. In addition to the expenses conditioned by Covid-19, for example for economic aid packages, the Albanian government has considered reasonable a high level of investments in infrastructure and public works. Thus, also according to the words of the Minister of Finance and Economy, "Budget 2021" is the budget in which the highest level of public investments is foreseen, at least in recent years. In the view of the government and its supporters, this is a well-thought-out plan to stimulate and recover the economy. However, under another lens, a high level of public spending at such a moment for Albania is irresponsible and dangerous for the economy.

Since theoretically there is no widely accepted conclusion and the issue of public spending remains open for debate, this study aims to evaluate the relationship that exists between the level of public spending and economic growth, at least for the case of Albania. Thus, keeping in mind this primary goal, at the beginning of the paper the research question was asked if there is a relationship between public spending (formation of fixed capital and spending on government consumption) and economic growth. Next, the existing literature was browsed and relevant expectations were raised. The methodology that was chosen is simple and multiple regression analysis. The results and findings of the analysis were presented and elaborated in the chapter above. Finally, this chapter focuses on clarifying the conclusions reached from the work done, highlighting the contributions of this study, as well as making relevant recommendations.

At this point, H0 hypothes is rejected. There is no relationship between the independent variables (fixed capital formation, government consumption expenditure, export and labor force participation) and the dependent variable - economic growth,. The results of the regression analysis showed that there is a clear relationship between these variables, so since the basic hypothesis is rejected, its opposite, the alternative hypothesis stands. The main conclusions of this study on the relationships between the variables are discussed below.

The relationship between economic growth and the formation of fixed capital, which is the indicator of investment in public works and infrastructure, is a positive and important relationship. This means that higher levels of public spending on infrastructure projects are likely to translate into higher economic growth and development. In the case of Albania, the effect that the formation of fixed capital has on economic growth is especially noticeable in the strategic projects carried out within the framework of tourism development. The example taken by this study is that of the promenade of the city of Vlora, which, with the attraction it has made to private businesses in the area, the opening of new jobs and the increase in the number of tourists, especially in the summer season and at the weekend, significantly affects the increasing the well-being of the area and the city in general.

Spending on government consumption, which includes spending on defense, education, health, and social protection, has a statistically significant but negative relationship with economic growth. This result, in fact, is different from what was expected, based on theory and empirical literature. Theoretically, it was expected that the expenditures that a country makes at least on education and health, have a positive impact on economic growth. Education and health are two very important components of the human development index, an indicator of the well-being and development of a country's society, therefore it is expected that investment in these areas will translate into stimulation of human well-being and economic growth.

However, such a negative result in the case of Albania may indicate more about the efficiency of these expenditures. According to reports, in Albania, corruption and lack of transparency in public procurement are very present problems, which damage the quality and efficiency of the latter. This may be one of the reasons why an increase in the level of government consumption expenditure is likely to result in a decrease in GDP growth.

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SPIRITUALITY AND SUSTAINABILITY: A BIBLIOMETRIC REVIEW

H. DISSANAYAKE, H. DISSABANDARA, R. AJWARD, W. PERERA

Hiranya Dissanayake[1], Hareendra Dissabandara[2], Roshan Ajward[3], Wasantha Perera[4]
[1] Faculty of Business Studies and Finance, Wayamba University of Sri Lanka, Kuliyapitiya, Sri Lanka.
https://orcid.org/0000-0002-4963-5125, E-mail: hiranya@wyb.ac.lk
[2] [3] [4] Faculty of Management Studies and Commerce, University of Sri Jayewardenepura, Gangodawila, Nugegoda, Sri Lanka
[2] https://orcid.org/0000-0002-6374-2904, E-mail: dissa@sjp.ac.lk
[3] https://orcid.org/0000-0002-7001-9335, E-mail: ajward@sjp.ac.lk
[4] https://orcid.org/0000-0003-2630-5817, E-mail: wasantha.perera@sjp.ac.lk

Abstract: *Amidst the global stress escalation triggered by the COVID-19 pandemic, there has been a noticeable surge in people turning to spirituality. Recognizing the growing importance of spirituality in contemporary society, this study investigates the relationship between spirituality and sustainability through a bibliometric analysis, utilizing the SCOPUS database. The main objective of the study is to holistically map and evaluate the direction of the area by identifying prominent themes, patterns, and major works, which in turn will be used as the guiding principles for future research. The analysis of 384 documents reveals a substantial upward trend in publications between 1993 and 2023. Predominantly, studies on spirituality and sustainability originate from the United States of America, India, and Australia. Through the evaluation of bibliometric data, this research identifies leading authors, publications, journals, and institutions in the field. Additionally, keyword co-occurrence analysis, topic modeling, and content analysis unveil the theoretical foundations and emerging patterns, offering valuable insights for future research directions. The study showcases diverse themes in spirituality and sustainability, providing implications for both academics and organizations. Furthermore, it sheds light on areas where research is lagging in the current landscape.*

Keywords: *Spirituality, Sustainability, Bibliometric Analysis.*

Introduction

Sustainability is a primary global challenge that each state, sector and individual are facing all around the globe (Gigauri & Vasilev, 2022; Nikčević, 2023; Surmanidze et al., 2023). In the contemporary landscape of academia and societal discourse, the intersection of spirituality and sustainability has emerged as a compelling area of exploration (Leal Filho et al., 2022). This convergence offers a lens through which to understand and address pressing environmental and social challenges, fostering holistic approaches to sustainability that encompass not only ecological considerations but also ethical, cultural, and spiritual dimensions. Over the past three decades, scholars and practitioners have increasingly recognized the importance of integrating spiritual values and principles into sustainability

efforts, acknowledging the profound interconnectedness between human well-being and the health of the planet (Daniel, 2002; Dhiman & Marques, 2016).

Through a comprehensive trend analysis of scholarly publications spanning from 1993 to 2023, this article aims to illuminate the evolving discourse and engagement with spirituality and sustainability. The main research questions examined in this study include

1. What are the recent publication trends in Spirituality and Sustainability research?
2. What are the most prominent sources in Spirituality and Sustainability research?
3. Who are the most influential authors studying the impact of Spirituality and Sustainability?
4. Which countries lead in Spirituality and Sustainability research influence?
5. What keywords are frequently used by authors in Spirituality and Sustainability research?
6. What themes are frequently used by authors in Spirituality and Sustainability research?
7. What future research recommendations are suggested for Spirituality and Sustainability?

By examining publication trends, thematic clusters, authorship patterns, and citation impacts, we seek to uncover key insights into the trajectory of research and dialogue within this interdisciplinary field. From the nascent beginnings of inquiry to the current state of prominence, our analysis offers a nuanced understanding of the dynamics shaping the intersection of spirituality and sustainability and underscores its significance in addressing the complex challenges of the 21st century.

Methodology

This paper utilizes bibliometric analysis to offer a comprehensive overview of the current state of scholarly output and assess the quality of previous studies, thereby providing valuable insights into a specific topic. Bibliometric analysis has seen significant growth and is recognized for its utilization of various mathematical tools and statistical methodologies to examine published works such as articles and books, as described by (Garfield, 1955). It serves to elucidate scientific research trends, explanations, and disciplinary patterns, aiding researchers in understanding the history and current status of a field while suggesting new avenues for research (Durieux & Gevenois, Pierre, 2010).

Focusing specifically on spirituality and sustainability research, this study concentrated on empirical and review articles written in English. The methodology, depicted in Figure 1, follows five stages typical of bibliometric analysis: research design, data gathering, analysis, visualization, and interpretation (Dissanayake et al., 2022; Zupic & Čater, 2014).

The SCOPUS database was chosen as the primary source due to its comprehensive coverage of peer-reviewed academic journals across various disciplines(Dissanayake et al., 2023). Using search terms "Spirituality" and "Sustainability," 418 documents were initially identified. Subsequently, non-English language articles and 2024 publications were excluded, resulting in 384 English language publications for further analysis.

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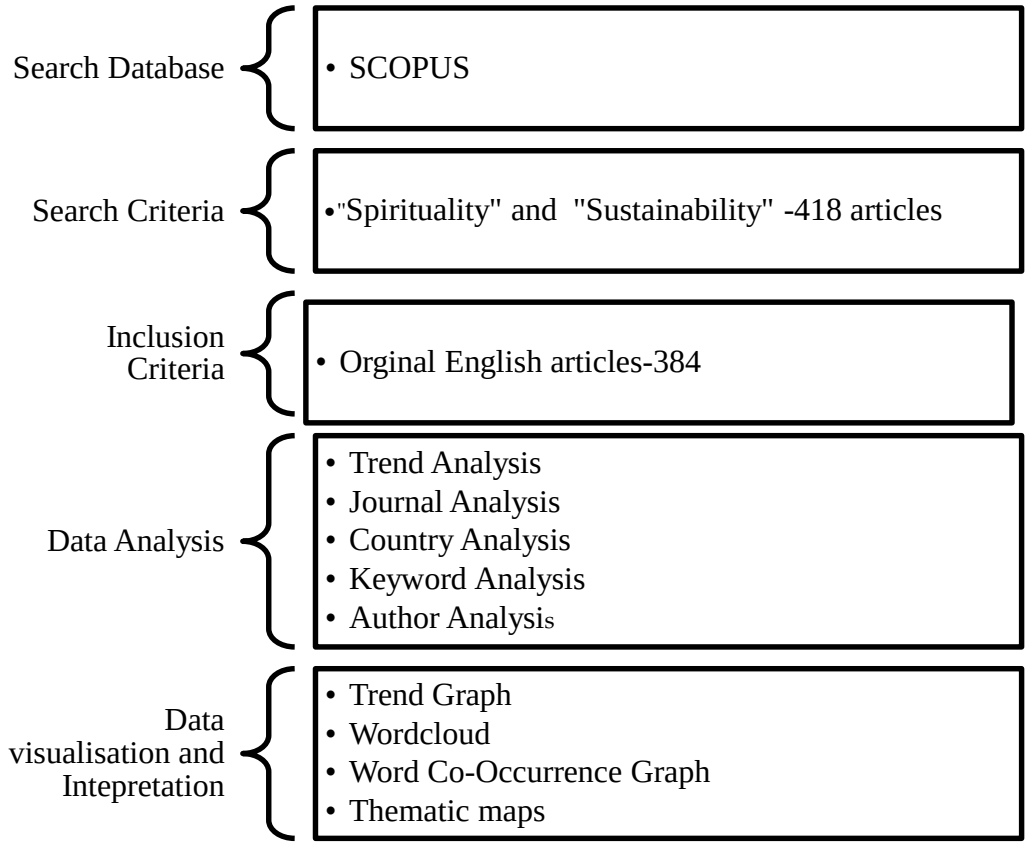

Figure 1. ***Methodology of the Paper***
Adapted from Zupic and Čater (2014)

Data analysis was conducted using biblioshiny programs, a software developed by Massimo Aria with the R programming language, to examine the current landscape and future directions of entrepreneurship education at universities(Aria & Cuccurullo, 2017). Various bibliometric techniques were employed to explore publication trends and analyze sources, countries, authors, and keywords. Author and journal productivity were assessed using metrics such as H-Index, G-Index, m-Index, and total citations, providing insights into scholarly influence and productivity. Table 1 illustrates the data analysis sections and tools for each research question.

Table 1. ***Data Analysis Methods***

Research Question	Analysis section	Analysis tools
1. What are the recent publication trends in Spirituality and Sustainability research?	Trend Analysis	Trend Graph
2. What are the most prominent sources in Spirituality and Sustainability research?	Source Analysis	Bradford Law, Source Impact Analysis
3. Who are the most influential authors studying the impact of Spirituality and Sustainability?	Author Analysis	Lotka Law, Author Impact Analysis

4. Which countries lead in Spirituality and Sustainability research influence?	Country Analysis	Country Total Publications, Citations analyis
5. What keywords are frequently used by authors in Spirituality and Sustainability research?	Keywords Analysis	Keyword Occurrence Analysis, Word cloud, Trend Topics
6. What themes are frequently used by authors in Spirituality and Sustainability research?	Thematic Analysis	Thematic Map, Word Occurrence Graph
7. What future research recommendations are suggested for Spirituality and Sustainability?	Future Research Directions	Content Analysis

Source: Constructed by the authors

Visualization techniques, including trend graphs, top authors' production charts, country figures, maps, and thematic maps, were utilized to present the data visually. These visualizations were then interpreted to derive meaningful conclusions from the findings.

Results and analysis

Trend Analysis

In recent decades, the exploration of spirituality and its relationship with sustainability has emerged as a significant and evolving field of study. Through a meticulous examination of article publication trends spanning from 1993 to 2023, a compelling narrative emerges, reflecting the evolution of discourse and engagement with this multifaceted intersection. Trend analysis of four periods is depicted in Figure 2.

Emergence and Early Discourse (1993-1999): During the early stages of our analysis, spanning from 1993 to 1999, it becomes evident that scholarly attention towards spirituality and sustainability was scant, with a mere handful of articles published. The first article published in 1993 was Economy, ecology and Spirituality: Toward a theory and practice of sustainability (Part I)(Korten D.C, 1993). The highest cited article in this period was "The growing interest in spirituality in business: A long-term socio-economic explanation**"** with 66 citations (Tischler, 1999).This period likely represents the initial seeds of inquiry, where scholars tentatively began to explore the interplay between spirituality and environmental concerns, although the discourse had yet to gain significant traction within academic and public spheres (Brinkerhoff & Jacob, 1999).

Incremental Growth and Recognition (2000-2009): As we transition into the new millennium, the trajectory of discourse around spirituality and sustainability begins to take shape. The number of articles published gradually increases, indicating a burgeoning interest and recognition of the importance of this intersection. Scholars and practitioners alike start delving deeper into the connections between spiritual beliefs, values, and practices, and their implications for fostering sustainable lifestyles, communities, and societies. In this period highest cited article was "A holon approach to agroecology"(Bland & Bell, 2007). This period serves as a foundational phase, laying the groundwork for more robust and nuanced explorations in the years to come.

Rapid Expansion and Maturation (2010-2019): The following decade witnesses a remarkable surge in both the quantity and quality of articles addressing spirituality and sustainability. The exponential growth in publication numbers underscores a profound shift in societal consciousness, as issues related to environmental degradation, social justice, and existential purpose increasingly converge. "Mindfulness in sustainability science, practice, and teaching" was the higest cited artiicle with 150 citations(Wamsler et al., 2018). "Consumers' Sustainable Purchase Behaviour: Modeling the Impact of Psychological Factors" was the second highest cited article in this period which cited by 140 scholars(Joshi & Rahman, 2019). Scholars from diverse disciplines contribute to a rich tapestry of research, examining topics ranging from indigenous ecological wisdom to eco-spiritual activism, from mindfulness-based sustainability practices to ethical consumption patterns. This period marks the maturation of the field, as interdisciplinary collaborations flourish, and holistic frameworks for understanding and addressing sustainability challenges begin to take shape.

Consolidation and Acceleration (2020-2023): In the most recent years under review, spanning from 2020 to 2023, the momentum of discourse around spirituality and sustainability shows no signs of abating. On the contrary, publication numbers continue to climb, signaling a deepening engagement and urgency in confronting pressing ecological and existential dilemmas. The unprecedented challenges posed by climate change, biodiversity loss, and social inequities catalyze renewed reflections on the interconnectedness of all life and the imperative of cultivating spiritual resilience and wisdom in the face of uncertainty. In this period highest citation count was obtained by the article titled "The New Consumer Behaviour Paradigm amid COVID-19: Permanent or Transient? Which received 185 citations (Mehta et al., 2020). Moreover, emerging paradigms such as regenerative agriculture, eco-spiritual activism, and deep adaptation gain prominence, offering hopeful pathways towards a more sustainable and spiritually fulfilling future.

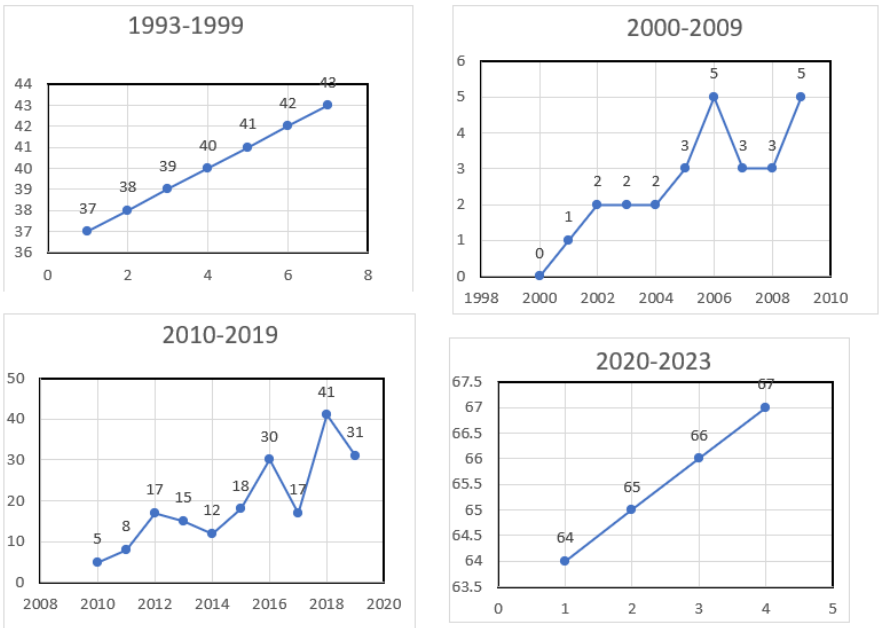

Figure 2. ***Trend Analysis***
Source: Constructed by the authors

The trend analysis of article publications spanning three decades offers valuable insights into the evolving discourse and engagement with spirituality and sustainability. From its nascent beginnings to its current prominence, the intersection of spirituality and sustainability has emerged as a dynamic and indispensable field of inquiry, inviting ongoing exploration, dialogue, and transformative action. As we navigate the complexities of the 21st century, integrating spiritual wisdom with ecological stewardship holds the promise of fostering resilience, regeneration, and reverence for the intricate web of life upon which our collective well-being depends.

Source Analysis

Bradford's Law, named after Samuel C. Bradford, is a bibliometric principle used to analyze the distribution of scholarly publications within a specific field (Leimkuhler, 1967). This law suggests that the number of journals publishing a significant portion of the articles in that field follows a predictable pattern. In the context of spirituality and sustainability, Bradford's Law can offer insights into how research outputs are distributed among different journals.

Figure 03 provided data related to spirituality and sustainability, we can observe the application of Bradford's Law across three zones:

1. **Zone 1**: This zone represents the core journals in the field, which publish a substantial number of articles on spirituality and sustainability. In this case, 35 journals contribute to 128 publications. These journals are likely to be prestigious, widely recognized, and highly regarded within the academic community for their research quality and impact in the field.
2. **Zone 2**: Zone 2 includes journals that publish a moderate number of articles on spirituality and sustainability but do not have the same level of influence as those in Zone 1. In this zone, there are 120 journals contributing to 130 publications. These journals may cover a broader range of topics related to spirituality and sustainability, catering to various subfields or interdisciplinary approaches within the overarching theme.
3. **Zone 3**: This zone encompasses journals with a lower publication output compared to Zones 1 and 2. Despite their lower frequency of publications, these journals still contribute significantly to the discourse on spirituality and sustainability. In Zone 3, there are 126 journals contributing to 126 publications, indicating a more diverse array of sources that may focus on specialized or emerging topics within the field.

Overall, Bradford's Law applied to spirituality and sustainability research helps researchers understand the distribution of scholarly output across different tiers of journals. It highlights the core journals driving the field's discourse, as well as the broader spectrum of journals contributing to the dissemination of knowledge in this interdisciplinary area. This understanding can guide researchers in identifying key outlets for publication and staying informed about developments in the field.

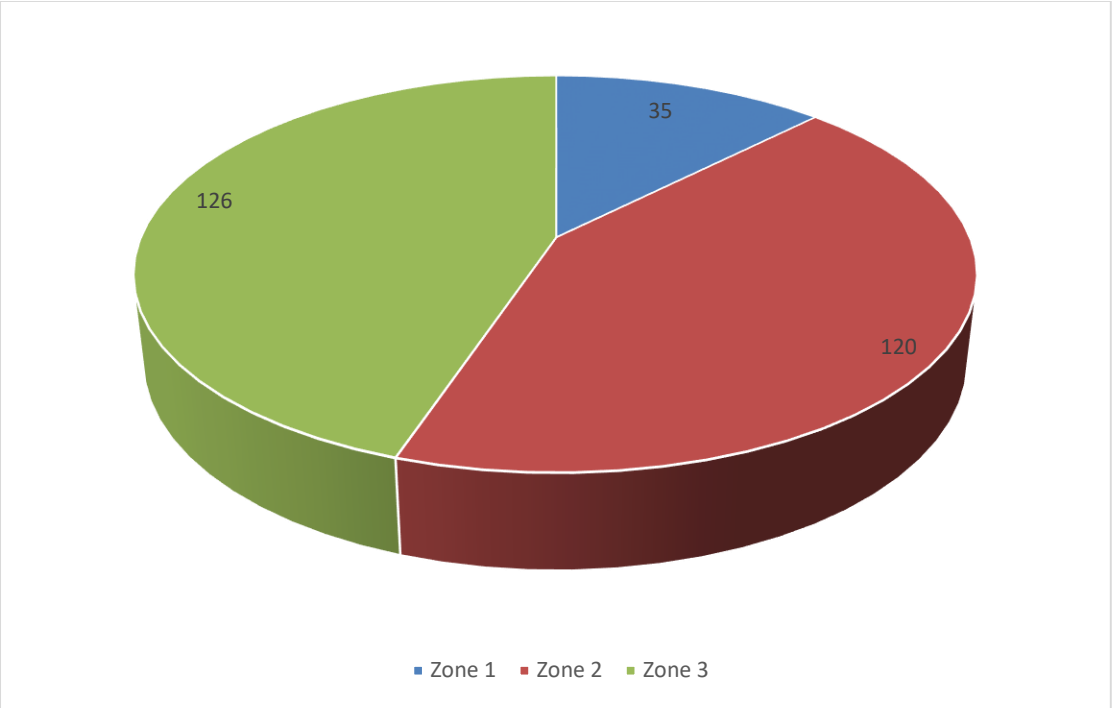

Figure 3. ***Journals Zones according to Bradford Law***
Source; Constructed by the authors

Table 2 depicts the Source Impact data with the highest cited sources.

Table 2. ***Source Impact Analysis***

Source	**h_index**	**g_index**	**m_index**	**TC**	**NP**	**PY_start**
Sustainability Science	4	5	0.571	384	5	2018
Sustainability (Switzerland)	11	17	1.571	299	22	2018
Ecological Economics	2	2	0.286	231	2	2018
Journal Of Health Management	1	1	0.2	186	1	2020
Ambio	1	1	0.2	161	1	2020
Journal of Management, Spirituality and Religion	4	6	0.364	131	6	2014
The Oxford Handbook of Positive Organizational Scholarship	1	1	0.077	129	1	2012
Journal of Organizational Change Management	2	2	0.077	90	2	1999
Journal of Business Ethics	3	3	0.25	81	3	2013
Annals of The American Association of Geographers	1	1	0.125	79	1	2017

Source: Constructed based on Biblioshiny Software

The synergy between spirituality and sustainability has become a focal point in contemporary discourse on environmental conservation and societal well-being. Among the plethora of scholarly contributions, "Sustainability Science" and "Sustainability (Switzerland)" stand out as prominent platforms fostering rigorous inquiry into the interconnectedness of spirituality and sustainable practices. With respective h-indexes of 4 and 11, and cumulative citation counts exceeding 384 and 299 since their inception in 2018, these journals provide vital forums for interdisciplinary dialogue, enriching our understanding of how spiritual values can inform and catalyze sustainable development efforts. Through empirical research, theoretical explorations, and practical case studies, they illuminate the intricate dynamics between spirituality, environmental stewardship, and social responsibility, offering insights that resonate across academic, policy, and grassroots communities.

Moreover, the scholarly landscape is enriched by journals like "Ecological Economics" and "Journal of Management, Spirituality and Religion," each bringing unique perspectives to the nexus of spirituality and sustainability. "Ecological Economics," with an h-index of 2 and a total citation count of 231 since 2018, delves into the economic dimensions of environmental sustainability, often incorporating spiritual considerations into its interdisciplinary analyses. Meanwhile, the "Journal of Management, Spirituality and Religion," boasting an h-index of 4 and a citation count of 131 since 2014, serves as a hub for exploring how spiritual and religious principles inform sustainable organizational practices. Together, these publications contribute to a rich tapestry of knowledge that transcends disciplinary boundaries, paving the way for holistic approaches to addressing the complex challenges of our time.

Author Analysis

Lotka's Law, a principle often applied in bibliometrics, finds relevance in analyzing the distribution of scholarly productivity within the domains of spirituality and sustainability(Lotka, 1926). According to the provided data, the law manifests in the unequal distribution of scholarly contributions among authors in these fields. The data indicates that the majority of authors, approximately 93.5%, have produced only one article, reflecting a pattern where a large proportion of contributors make minimal contributions to the literature. Conversely, a small fraction of authors, accounting for less than 1% of the total, have authored two or more articles, indicating a concentration of productivity among a select group of prolific authors. This distribution aligns with Lotka's Law, which posits that a small percentage of authors produce the majority of scholarly output, while the majority contribute minimally. In the context of spirituality and sustainability, understanding this distribution sheds light on the dynamics of scholarly productivity, emphasizing the prevalence of both highly productive authors and those who contribute sporadically. Recognizing this pattern is crucial for fostering a balanced scholarly ecosystem that acknowledges and supports the diverse contributions of authors across the spectrum of productivity.

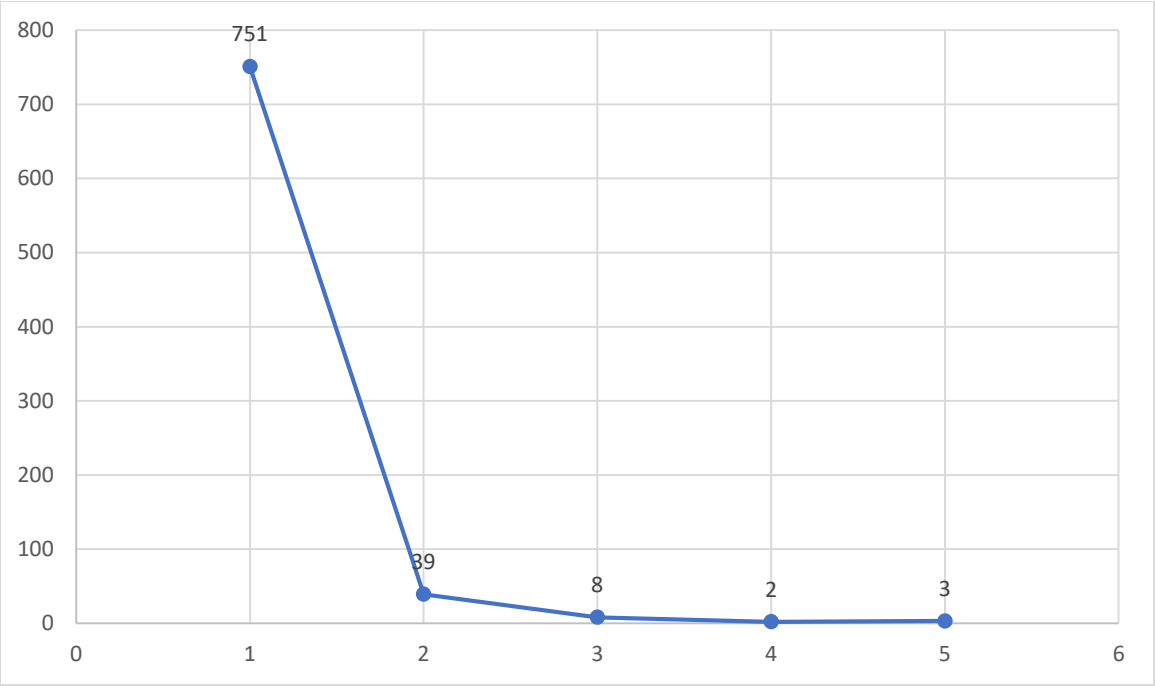

Figure 4. ***Lotka Law***
Source: Constructed by the authors

In the realm of spirituality and sustainability, understanding the key authors and their contributions is essential for gaining insights into the evolving discourse within these interdisciplinary fields. The provided author analysis offers a glimpse into the scholarly landscape through various metrics such as h-index, g-index, and m-index, among others. Table 3 illustrates the author's impact analysis.

Wamsler C emerges as a notable figure with an h-index of 4, indicating that they have authored at least four papers that have been cited four times each. This suggests a substantial impact within the scholarly community. Similarly, Ives CD demonstrates a notable presence with an h-index of 2, reflecting a significant influence despite a smaller number of publications.

Table 3. Author Impact Analysis

Authors	h_index	g_index	m_index	TC	NP	PY_start
Wamsler C	4	4	0.571	334	4	2018
Ives Cd	2	2	0.333	242	2	2019
Mehta S	1	1	0.2	186	1	2020
Purohit N	1	1	0.2	186	1	2020
Saxena T	1	1	0.2	186	1	2020
Fischer J	1	1	0.2	161	1	2020
Freeth R	1	1	0.2	161	1	2020
Brossmann J	1	1	0.143	145	1	2018
Hendersson H	1	1	0.143	145	1	2018
Kristjansdottir R	1	1	0.143	145	1	2018

Source; Constructed based on Biblioshiny Software

Moreover, Mehta S, Purohit N, Saxena T, Fischer J, and Freeth R, among others, each exhibit a modest yet noteworthy contribution to the literature with an h-index and m-index of 1. While their impact may be relatively limited compared to more prolific authors, their collective efforts enrich the diversity of perspectives within the discourse on spirituality and sustainability. Furthermore, authors such as Brossmann J, Hendersson H, and Kristjansdottir R, while having lower h-indices, contribute to the breadth of the literature with their unique insights. Despite their smaller publication output, their work adds depth to the interdisciplinary exploration of spirituality and sustainability. Overall, this author analysis underscores the multifaceted nature of scholarly contributions in spirituality and sustainability, highlighting both prominent voices and emerging perspectives that collectively shape the trajectory of research and discourse in these fields.

Country Analysis

The analysis of research output and citation impact across different countries provides valuable insights into the global landscape of spirituality and sustainability studies (See Table 4). India emerges as a significant player in this field, with 81 publications and 534 total citations, indicating both a substantial volume of research and considerable impact. The high average article citation rate of 19.8 underscores the quality and relevance of Indian contributions. Meanwhile, the United States, despite its higher number of publications (145), exhibits a lower average article citation rate of 11.1, suggesting a broader spectrum of research topics and impact levels. In contrast, the United Kingdom and Australia demonstrate strong engagement with the subject matter, with 44 publications and 383 citations, and 72 publications and 351 citations, respectively. Their average article citation rates of 19.1 and 14.6 highlight the significant impact of research originating from these countries in shaping the discourse on spirituality and sustainability.

Table 4

Country Analysis

Country	**TP**	**TC**	**Average Article Citations**
India	81	534	19.8
USA	145	522	11.1
United Kingdom	44	383	19.1
Australia	72	351	14.6
Sweden	11	252	84
Malaysia	67	170	10.6
South Africa	17	122	17.4
New Zealand	33	86	10.8
Thailand	5	77	38.5
Spain	13	73	18.2

Source; Constructed based on Biblioshiny Software

Sweden stands out among the countries analyzed, with only 11 publications but a remarkably high total citation count of 252, resulting in an average article citation rate of 84. This suggests that Swedish research in spirituality and sustainability is highly impactful, despite its comparatively lower volume. Other countries such as Malaysia, South Africa, New Zealand, Thailand, and Spain also make notable contributions to the field, each with its own level of research activity and citation impact. Malaysia and South Africa maintain moderate levels of research output, while New Zealand and Spain demonstrate higher average article citation rates, indicating the significant impact of their research within the field. Overall, this country analysis illustrates the diverse global engagement with spirituality and sustainability studies, highlighting the varying contributions and impact levels across different regions.

Keyword Analysis

The word frequency analysis depicted in Table 5 comparing author keywords and titles related to spirituality and sustainability provides insights into the key themes and concepts emphasized in both.

In the author's keywords, "workplace spirituality" emerges as the most frequent term, indicating a significant focus on spirituality within organizational contexts. This is followed by "sustainable development" and "climate change," reflecting the prevalent discourse on environmental sustainability. Other prominent keywords include "business ethics," "sustainable consumption," and "corporate social responsibility," underscoring the ethical dimensions of sustainability in business practices.

Table 5. ***Keyword Occurrence Analysis***

Author Keywords		**Titles**	
Words	**Occurrences**	**Words**	**Occurrences**
workplace spirituality	18	spirituality	110
sustainable development	11	sustainability	92
climate change	9	sustainable development	25
business ethics	4	workplace spirituality	22
sustainable consumption	4	religion	20
bottom line	3	values	12
corporate social	3	climate change	11
covid- pandemic	3	mindfulness	10
mediating role	3	culture	8
missing link	3	environment	7
social responsibility	3	leadership	7
social sustainability	3	consciousness	6
spiritual leadership	3	education	6
spirituality sustainability	3	ethics	6

st century	3	India	6
sustainability management	3	spiritual leadership	6
sustainable performance	3	well-being	6
Benedictine monasteries	2	Buddhism	5
business education	2	corporate social responsibility	5
change adaptation	2	development	5

Source; Constructed based on Biblioshiny Software

WordCloud -AuthorKeywords

WordCloud -Titles

Figure 5. ***Word Cloud***

Source; Constructed based on Biblioshiny Software

In contrast, the titles predominantly feature broader terms such as "spirituality" and "sustainability." "Spirituality" appears most frequently, suggesting a general exploration of spiritual concepts across various contexts. "Sustainability" follows closely, reflecting the overarching theme of sustainable practices and development. Additionally, titles include terms like "sustainable development," "workplace spirituality," and "religion," highlighting specific areas of focus within the broader discourse.

Notably, while certain keywords like "climate change" and "business ethics" are also present in titles, their frequency is relatively lower compared to broader terms like "sustainability" and "spirituality." This suggests that titles may encompass a wider range of topics and discussions beyond the specific keywords highlighted by authors.

Overall, this analysis highlights the complementary nature of author keywords and titles in capturing the diverse themes and concepts within spirituality and sustainability research, with keywords providing more specific insights into focused areas of interest and titles offering a broader overview of the subject matter.

The trend topics exhibited in Figure 6 highlight key areas of focus and interest within the intersection of spirituality and sustainability over time:

1. **Environment and Climate Change**:
    - Both "environment" and "climate change" have seen consistent attention, with "environment" showing a relatively stable frequency over time, while "climate change" experienced a notable increase in frequency from 2014 to 2021, indicating heightened scholarly interest in understanding and addressing environmental challenges within the context of spirituality and sustainability.
2. **Mindfulness and Well-being**:
    - The term "mindfulness" saw a peak in 2018, suggesting a significant focus on mindfulness practices within the study of spirituality and sustainability. Similarly, "well-being" experienced a gradual increase in frequency from 2021 onwards, indicating growing recognition of the importance of mental health and holistic well-being in sustainable living practices.
3. **Leadership and Workplace Spirituality**:
    - "Leadership" and "workplace spirituality" demonstrate a varied trajectory, with "leadership" experiencing peaks in 2015 and 2018, while "workplace spirituality" saw a steady increase in frequency from 2018 to 2022. These trends suggest ongoing interest in incorporating spiritual principles into organizational leadership and workplace environments to foster sustainability-oriented practices and values.
4. **Sustainability and Sustainable Development**:
    - The terms "sustainability" and "sustainable development" show a steady rise in frequency, with "sustainability" experiencing peaks in 2017, 2020, and 2022, and "sustainable development" showing a notable increase from 2018 to 2021. These trends reflect sustained scholarly attention to foundational concepts in sustainability science and practice.
5. **Ethics, Religion, and Culture**:

- Keywords like "ethics," "religion," and "culture" highlight the ethical, moral, and cultural dimensions of sustainability and spirituality research. "Ethics" saw peaks in 2014 and 2019, while "religion" and "culture" showed steady increases in frequency from 2017 to 2022. These trends indicate growing interest in exploring how diverse belief systems and cultural practices intersect with sustainability goals.

6. **Education and Innovation**:
   - The emergence of terms like "education" and "innovation" in recent years underscores a focus on the role of education in promoting sustainability literacy and the importance of innovative approaches in addressing complex sustainability challenges. "Education" saw an increase in frequency from 2020 to 2022, while "innovation" experienced peaks in 2020 and 2023.

Overall, these yearly trends highlight the evolving landscape of spirituality and sustainability research, characterized by a multidimensional approach encompassing environmental, social, cultural, and organizational perspectives to foster holistic understandings and solutions for a sustainable future.

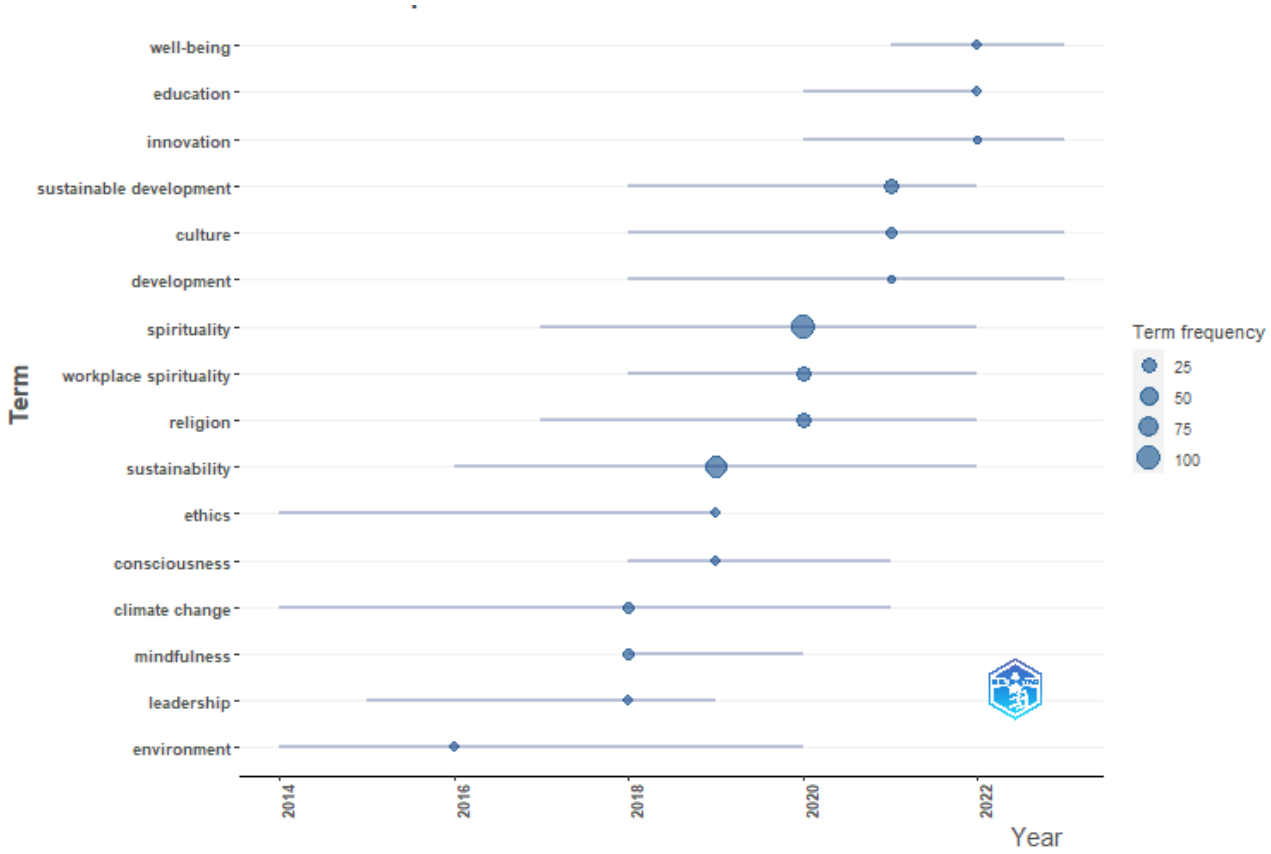

Figure 6. ***Trend Topics***
Source; Constructed based on Biblioshiny Software

Thematic Analysis

Figure 7 depicts the themes related to spirituality and sustainability, this study identified several distinct clusters, each shedding light on different aspects of these interconnected concepts. 11 clusters identified for the four quadrants in the map. This map is prepared based

on the development degree and relative degree. Bottom-right part of the map shows the basic themes representing the well-established research issues in this area. The main themes are grouped into three clusters. One cluster name is culture which include culture, governance and paradigm. Second cluster name is Leadership which include leadership, community, compassion. Third cluster label is spirituality include spirituality, sustainability and sustainable development.

The themes gaining importance in the recent past are presented in the top-right part of the map. It mainly includes five clusters: well-being, Mindfulness, Anthropocene, Ethics and Ecology .Well- being cluster include social sustainability, tourism, wellbeing, nature, and mental health. Mindfulness cluster include inner transition, inner transformation, consciousness, adaptation, transformation, interiority and sustainability science. Anthropocene cluster include Anthropocene and consumption. Ethics cluster include knowledge management, ethics, corporate social responsibility, business education, organizational spirituality,buddhism,entrepreneurship and christianity. Last cluster includes ecology and eco-spirituality.

The niche themes includes one cluster which is cultural ecosystem services. Bottom left hand corner illustrates emerging or declining themes include four clusters namely triple bottom line, COVID-19, pilgrimage, development and innovation.

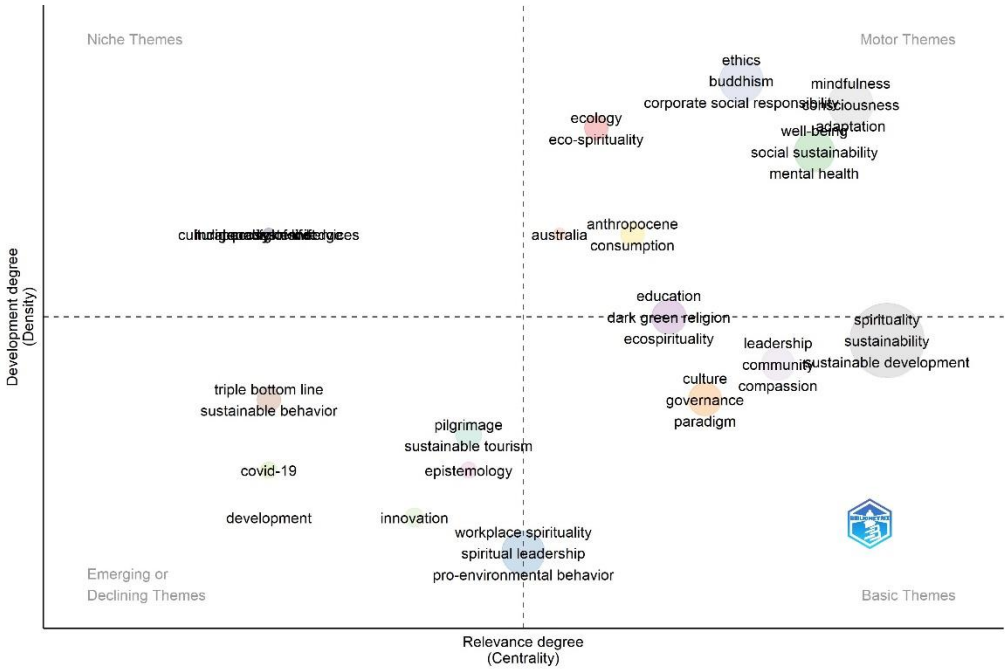

Figure 7. ***Thematic Analysis***
Source; Constructed based on Biblioshiny Software

Author Keyword Co-Occurrence Analysis

In our exploration of author keyword co-occurrence within distinct clusters of spirituality and sustainability discourse, we uncover intricate patterns that shed light on the interconnectedness of key concepts and themes. Leveraging metrics such as closeness

centrality, betweenness centrality, and PageRank, we gain insights into the relative importance and influence of different keywords within each cluster.

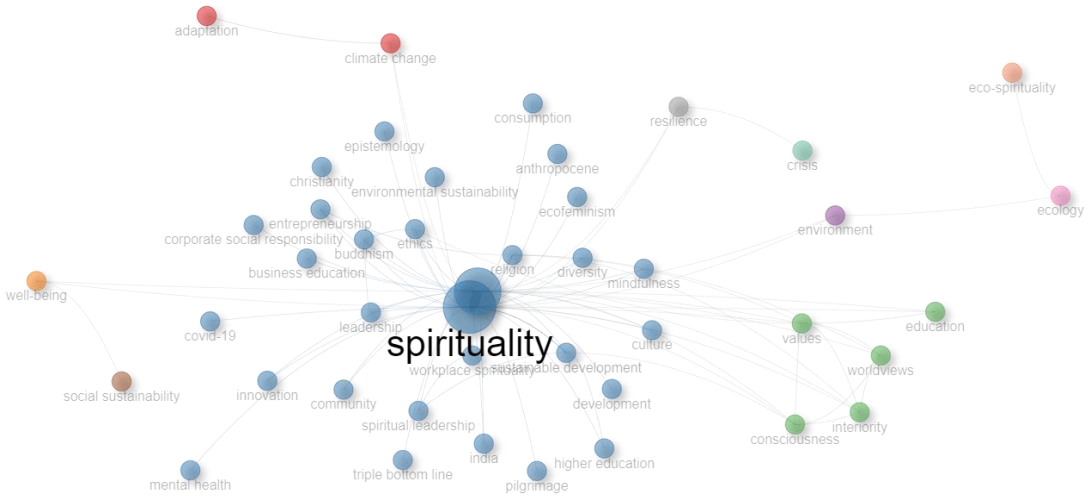

Figure 8. ***Word Co-Occurrence Map***

Cluster 1: Climate Change and Adaptation Within this cluster, keywords like "climate change" and "adaptation" emerge as central nodes, reflecting their pivotal roles in discussions surrounding environmental resilience and mitigation strategies. With moderate levels of betweenness centrality, these keywords serve as bridges connecting other terms within the cluster, while their high closeness centrality underscores their proximity to other nodes. Interestingly, despite its low betweenness centrality, "climate change" maintains a relatively high PageRank, indicating its significance in shaping the discourse on spirituality and sustainability.

Cluster 2: Spirituality, Sustainability, and Related Concepts This cluster encompasses a diverse array of keywords ranging from "spirituality" and "sustainability" to "leadership," "culture," and "ethics." Here, "spirituality" and "sustainability" emerge as central nodes with the highest betweenness and PageRank scores, highlighting their overarching importance in the discourse. Additionally, keywords like "mindfulness," "religion," and "spiritual leadership" exhibit notable closeness centrality, indicating their proximity to other terms within the cluster and their potential to influence broader discussions on spirituality and sustainability.

Cluster 3: Values and Consciousness In this cluster, keywords such as "values" and "consciousness" take center stage, reflecting a deeper exploration of ethical frameworks and inner awareness within the context of sustainability. While "values" demonstrates high betweenness centrality, suggesting its role in connecting disparate themes, "consciousness" exhibits notable PageRank centrality, indicating its significance in shaping scholarly discourse. Moreover, keywords like "education" and "worldviews" contribute to the diversity of perspectives within this cluster, reflecting the interdisciplinary nature of spirituality and sustainability research.

Cluster 4: Environment and Ecology Keywords like "environment" and "ecology" anchor this cluster, emphasizing the interconnectedness of ecological systems and human well-being. With moderate levels of betweenness and pagerank centrality, these terms serve as focal points

for discussions on environmental sustainability and resilience. Additionally, keywords like "well-being" and "resilience" underscore the importance of holistic approaches that prioritize both ecological and social dimensions of sustainability.

Cluster 5: Social Sustainability and Crisis This cluster highlights keywords related to social dimensions of sustainability and responses to crises. While "social sustainability" and "crisis" emerge as central nodes, their relatively low betweenness and pagerank scores suggest a narrower focus within the broader discourse. Nonetheless, these terms play critical roles in addressing issues of social equity, community resilience, and adaptive governance in the face of environmental and societal challenges.

Cluster 6: Eco-Spirituality Keywords like "eco-spirituality" represent a distinct thematic cluster within the discourse on spirituality and sustainability, underscoring the significance of spiritual connections to nature and the environment. Despite its low betweenness centrality, "eco-spirituality" exhibits a notable pagerank score, indicating its influence in shaping discussions on holistic approaches to ecological stewardship.

In summary, the author keyword co-occurrence analysis reveals the multifaceted nature of spirituality and sustainability discourse, highlighting the interconnectedness of key concepts and themes across distinct clusters. By leveraging metrics such as closeness centrality, betweenness centrality, and pagerank, researchers can gain deeper insights into the relative importance and influence of different keywords within specific domains, informing future scholarship and interdisciplinary dialogue in this dynamic field.

Future Research Directions

The trend analysis of scholarly publications on spirituality and sustainability not only provides insights into the historical trajectory of discourse but also offers valuable cues for future research directions. As we reflect on the evolving landscape of this interdisciplinary field, several areas emerge as potential avenues for further exploration and inquiry.

One promising direction for future research lies in the intersectionality of spirituality and social justice. While existing literature has touched upon the ethical dimensions of sustainability (Mukherjee & Ghosh, 2022; Shearman, 1990) , there remains a need to delve deeper into how spiritual principles can inform efforts to address systemic inequities and promote social inclusion. Understanding how spirituality intersects with issues of race, gender, and socioeconomic status can enrich our understanding of sustainable development and foster more inclusive and equitable practices.

Moreover, as technological advancements continue to reshape our world, there is a growing interest in exploring the role of spirituality in navigating the digital age (Mukherjee & Ghosh, 2022). Research could investigate how digital technologies, such as artificial intelligence and virtual reality, can be harnessed to cultivate spiritual awareness and foster connection with nature and community in an increasingly digitized society. Additionally, studies examining the ethical implications of technology-driven sustainability initiatives and the potential for digital platforms to facilitate spiritual practices and mindfulness could yield valuable insights. Another area ripe for exploration is the integration of indigenous wisdom and traditional knowledge systems into sustainability efforts (De Angelis, 2018; Kakoty, 2018).

Indigenous cultures around the world have long-held spiritual beliefs and practices that emphasize harmonious relationships with nature. Future research could focus on collaborative partnerships with indigenous communities to co-create sustainable solutions grounded in indigenous cosmologies and values. By centering indigenous perspectives, researchers can contribute to decolonizing sustainability discourse and fostering culturally responsive approaches to environmental stewardship.

Furthermore, there is a need for longitudinal studies that assess the long-term impact of spirituality-oriented interventions on individual and collective well-being. While anecdotal evidence suggests that spiritual practices such as mindfulness meditation and nature-based rituals can enhance resilience and foster a sense of connection, rigorous empirical research is needed to validate these claims and understand the mechanisms underlying their effects. Longitudinal studies tracking participants over extended periods could provide valuable insights into the sustained benefits of spirituality for mental health, community cohesion, and ecological consciousness.

Finally, interdisciplinary collaborations between scholars, practitioners, and policymakers will be essential for advancing the field of spirituality and sustainability. By bridging disciplinary silos and fostering dialogue across diverse perspectives, researchers can co-create innovative solutions to complex sustainability challenges. Future research should prioritize participatory approaches that engage stakeholders from various sectors, including academia, government, business, and civil society, to ensure the relevance and impact of research outcomes on real-world practice and policy.

In summary, the future of spirituality and sustainability research holds immense promise for addressing the interconnected ecological, social, and spiritual challenges of our time. By embracing interdisciplinary perspectives, centering marginalized voices, and fostering inclusive and participatory approaches, researchers can contribute to building a more sustainable and spiritually fulfilling world for current and future generations.

Discussions and Conclusions

Over the past two decades, Spirituality and Sustainability research has gained significant traction, with rapid growth in scholarly publications reflecting increasing awareness of sustainability in spirituality practices. While early studies established foundational concepts, later research expanded to practical applications, interdisciplinary perspectives, and regional adaptations. Journals like "Sustainability Science," "Sustainability (Switzerland)," and "Ecological Economics" have become key platforms for Spirituality and Sustainability discourse, known for publishing high-impact articles and driving academic interest in the field. Notable authors, including Wamsler C, Ives CD, and Mehta S, have significantly influenced Spirituality and Sustainability with their frequently cited studies, advancing the understanding of sustainable strategies. Their work highlights the importance of integrating ethical, environmental, and social considerations into corporate policies. Countries like India, the United States, the United Kingdom, and Australia lead Spirituality and Sustainability research, each contributing unique regional insights. India's high citation rate and Sweden's impactful research stand out, emphasizing the global and interdisciplinary nature of this field.

Future research in Spirituality and Sustainability should delve deeper into the intersection of spirituality and social justice, uncovering how ethical frameworks and spiritual principles can help address systemic inequalities(Shearman, 1990)Digital technologies, such as Artificial Intelligence (AI) and Virtual Reality (VR), also offer promising new tools for fostering sustainable, mindful practices(Zhanbayev et al., 2023). Additionally, collaboration with indigenous communities can yield valuable insights into traditional knowledge systems that emphasize harmonious coexistence with nature(Kakoty, 2018). Researchers are encouraged to pursue longitudinal studies to assess the long-term impact of spiritual practices on sustainable behavior and engage in interdisciplinary collaborations across sectors to develop holistic and culturally responsive solutions.

In conclusion, the trend analysis of scholarly publications spanning three decades offers valuable insights into the dynamic evolution of discourse on spirituality and sustainability. From its nascent beginnings to its current prominence, the intersection of spirituality and sustainability has emerged as a dynamic and indispensable field of inquiry, inviting ongoing exploration, dialogue, and transformative action. As we navigate the complexities of the 21st century, integrating spiritual wisdom with ecological stewardship holds the promise of fostering resilience, regeneration, and reverence for the intricate web of life upon which our collective well-being depends. By fostering interdisciplinary collaborations, promoting ethical values, and embracing diverse perspectives, we can chart a course toward a more sustainable and spiritually fulfilling future.

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HISTORICAL ASPECTS OF THE EVOLUTION OF NATIONAL SECURITY IN THE REPUBLIC OF MOLDOVA

D. GORDILĂ

Dianu Gordilă
„Ștefan cel Mare" Academy of the Ministry of Internal Affairs", Republic of Moldova
https://orcid.org/0009-0003-6565-5198, E-mail: gordiladianu@gmail.com

Abstract: *National security represents a fundamental pillar of the rule of law, which has gone through a long path throughout history and has undergone a series of geopolitical and economic changes. After gaining independence in 1991, the Republic of Moldova gradually developed its institutions in the field of national security to ensure the protection of its interests and state sovereignty. Following the dissolution of the Soviet Union, during the post-independence transition period, the Republic of Moldova faced significant challenges related to its national security system, including political instability, external pressures, ethnic and territorial conflicts. In this context, the creation and consolidation of institutions in the field of security has been and continues to be an important step for the Republic of Moldova in maintaining state sovereignty and democracy. Throughout its history, the Republic of Moldova has joined international organizations, which is an integral part of efforts to strengthen national security and promote the democratic values of the rule of law.*

Keywords: *national security, sovereignty, independence, rule of law, democracy, international organizations, external pressures.*

Introduction

The consolidation of indispensable interests of the state and a democratic society, the existence of a state of security, and an adequate standard of living are objectives that can only be achieved in the presence of an appropriate national security system. Throughout its history, national security has become a key element in the foreign policy of the Republic of Moldova. It forms the appropriate framework for cultural, economic, political, and social development. Geopolitical transformations and changes have compelled the state of the Republic of Moldova to create institutions and develop international relations in the field of national security to ensure state independence and democracy.

The national security of the Republic of Moldova is undergoing a complex and continuous evolution of reform, facing numerous challenges, but there are also certain benefits. The Eastern European area is becoming a crossroads for the geopolitical interests of major players, exerting pressures and offering a distinct role to external factors in managing internal security, thus influencing directions of action. The end of the 20th century and the beginning of the 21st century are largely defined by significant transformations in the national, regional, and international security sectors, as well as the generation of challenges and new threats to societies and states. Political uncertainty, regional disputes, separatist tendencies, social unrest, the spread of conventional and unconventional weapons, massive migration flows, terrorism,

catastrophic natural phenomena, cross-border crimes, and excessive dependence on foreign energy resources constitute current risks for national and international security.

The Soviet Union's invasion generated a significant crisis in the field of security studies and discredited the classical concepts that predominated and emphasized realism, interpreting security in terms of military authority and power. Idealistic theories that emerged after the 1990s changed the way security was understood and interpreted, no longer relating it solely to military power, thus initiating a shift in this concept by expanding the scope to the social and economic sectors. This scientific initiative and the changes that occurred after the invasion of "realism" prompted national authorities and international organizations, including the North Atlantic Treaty Organization, the European Union, the Organization for Security and Cooperation in Europe, and the United Nations, to revise their security policies adapted to new realities.

Revising the national security system holds special importance for most states due to the necessity of conforming to the flexible changes in the social, economic, and political environment, as well as to the geopolitical changes at the regional level that occurred with the end of the Cold War.

Legal Content

The starting point for the Republic of Moldova in establishing a national security system was marked by the formation of the regulatory framework and competent structures in the respective field. Thus, starting on August 27, 1994, the Constitution of the Republic of Moldova and other relevant documents came into force, such as the first National Security Concept of the Republic of Moldova from 1995, the National Security Concept of the Republic of Moldova from 2008, followed by the adoption of the National Security Strategy of the Republic of Moldova in 2011 (Varzari, 2016: 8).

The concept of "national security" was first used by the President of the United States, Theodore Roosevelt, at the beginning of the 20th century during a congress, where the importance of the military occupation of the Panama Canal area in the "interests of American national security" was discussed (Buzan, 2000: 24).

The history of the national security system of the Republic of Moldova has its beginnings during the reign of Stephen the Great, a voivode who left a significant mark on the country's history. The battles fought by Stephen the Great for the defense of Romanian land's independence and freedom marked constitutive elements of state security, as these battles and the ruler's bravery led to an unprecedented flourishing of Moldova. Thus, by fighting on equal terms with much stronger neighbors, Stephen the Great managed to form the country as a state with almost equal rights. "At the time of his ascension to the throne of Moldova, the country had reached a threefold dependency" on Poland, Hungary, and Turkey. Therefore, his first actions were to consolidate the northern and southern borders and to reclaim the fortresses of Hotin and Chilia. However, the eastern sector of Moldova remained less protected. The Tatars continuously invaded through the Nistru fords, plundering villages and hamlets (Zbârciog, 2017: 27).

Among the notable battles in the history of the Moldovan state is the Battle of Podul Înalt in 1475 between the Ottoman Empire and Moldova, resulting in Stephen the Great's victory over the Ottomans. Similarly, in 1476, the Battle of Războieni (Valea Albă) took place

as a reaction to the defeat of the Ottoman Empire by Stephen the Great's army, which ended in Stephen's loss. Another significant battle was the Battle of Codrii Cosminului in 1479, followed by Stephen the Great's victory.

In this context, the battles fought by Stephen the Great represent a beginning that influenced the modification and development of the continuity of the national security system of the Republic of Moldova.

Another notable event that influenced the historical course of the Republic of Moldova was the declaration of independence of the Moldavian Democratic Republic in 1918, which was the main political act of the Sfatul Țării. On January 24, 1918, the Sfatul Țării, as the governing body of the republic, unanimously voted for the declaration of independence of the Moldovan Republic. This declaration is almost always conceived in relation to the declaration of Ukraine's independence on January 9, 1918. "Everyone understood that we had only one way out - once Ukraine is independent, the Moldovan Republic must also be independent, and no one can stand in the way of this tendency. It must be independent because otherwise, attempts will be made to attach it to someone else." (Țurcanu, 2018: 163-164)

The formation of the Union of Soviet Socialist Republics in 1922 was a remarkable phenomenon from a negative perspective on the national security of today's state. This historical stage was characterized not only by the creation of collective farms and Soviet propaganda but also by famine, totalitarianism, deportations, Stalin's personality cult, gulags, World War II, communism, censorship, and many other features that negatively impacted state security. With the formation of the USSR, the Moldavian Autonomous Soviet Socialist Republic was created in 1924, which later, on August 2, 1940, became the Moldavian Soviet Socialist Republic.

The Transnistrian conflict exemplifies the insufficiency of resources in the national security domain during the post-independence period for conflict resolution. In this regard, even the levers of the European Union were insufficient to calm the triggered conflict. To further understand the circumstances, it is necessary to highlight the context in which the Transnistrian conflict erupted.

The Transnistrian War, also known as the War for the Defense of the Integrity and Sovereignty of the Republic of Moldova (Bălan, Ciobanu, Cojocaru, 2012: 144) or the Russian-Moldovan War, is a military conflict and currently a political conflict between the Republic of Moldova and the self-proclaimed "Transnistrian Moldovan Republic" regarding the control of Dubăsari, Slobozia, Tiraspol, Grigoriopol, Camenca, and Rîbnița districts, regions located on the left bank of the Nistru River, and Bender, a city situated on the right bank of the Nistru River. The Transnistrian conflict began on November 9, 1990, and lasted until July 21, 1992.

"Like other conflicts in the post-Soviet space, the Transnistrian conflict was inspired by Russia. Initially, the conflict was used by Moscow as a lever to prevent good relations between the Republic of Moldova and Romania; over time, it became a lever in the hands of Kremlin strategists to pressure the authorities in Chișinău to keep Moldova within Russia's sphere of influence and to justify the presence of Russian troops in Transnistria. Currently, the Transnistrian conflict is seen by Moscow as the main lever capable of hindering Moldova's pro-European path and the country's modernization process." (Țăranu, Gribincea, 2014: 6)

With the end of the Transnistrian conflict, the Legal Agreement on the Principles of Peaceful Settlement of the Armed Conflict in the Transnistrian Region of the Republic of

Moldova was signed in Moscow in 1992. With the signing of this agreement, the process of resolving the Transnistrian disputes that arose from the armed conflict began (Gvidiani, 2020: 10). The agreement was signed in Moscow between the heads of state of the Republic of Moldova and the Russian Federation, and it established the circumference of the Security Zone and the Joint Control Commission in a tripartite format, namely representatives from Chișinău, Tiraspol, and the Russian Federation. The city of Tighina was proclaimed a district with an increased security regime. By concluding this agreement, the representatives of the former 14th Army of the Russian Federation's Military Forces assumed the obligations to respect neutrality on the territory of the Republic of Moldova.

Concurrently with the signing of the aforementioned agreement, a statement issued by Presidents Mircea Snegur and Boris Yeltsin emphasized that the districts on the left bank of the Nistru would have a special status within the Republic of Moldova, with the principle of territorial integrity of the Republic of Moldova being an important pillar in the political settlement of the Transnistrian conflict (11).

The European Union, being interested in securing its own borders, offered support to the Republic of Moldova in managing the negative phenomena affecting its national security caused by the lack of state border control in the eastern districts, which stimulates smuggling, human trafficking, drugs, weapons, materials and nuclear technologies, money laundering, terrorism financing, illegal migration, etc. The mechanisms for restoring its territorial integrity must consolidate the country's security, its constitutional system, and its affirmation at the regional and international levels as a state participating in crisis management and a security guarantor (Ciobanu, 2021: 9-10).

The Transnistrian conflict has been and continues to be a challenge for the security zone of the Republic of Moldova, necessitating the Republic of Moldova to be prepared defensively and militarily for any danger that could threaten the state's national security.

Terrorism is another phenomenon that persists in the world, and in some states, it even reaches significant proportions. Often, for some governments, organizations, or individuals, terrorism is an instrument for achieving political or other plans. Whatever the method and means of manifesting terrorism, it directly threatens the national security of any state without exceptions. Thus, it is necessary to always show readiness in the field of security to avoid such a phenomenon.

Considering the peak reached by terrorism, it becomes a problem not only at the state level but a subject that concerns the entire international society. For combating this phenomenon, international cooperation is necessary. The establishment of the United Nations after World War II opened a new stage in the historical course of international relations of interaction and cooperation. In this context, on December 18, 1972, through resolution 3034, a specialized committee was created to counteract international terrorism.

The International Civil Aviation Organization played a crucial role in combating terrorism, particularly regarding any form of aerial piracy. In the context of curbing terrorism, many organizations were established, among which are the TREVI Group founded in Rome in 1976 and the Vienna Club from 1976.

The Europol Convention is a document signed in 1995 in Brussels, aimed at improving collaboration between representative authorities of the member states in countering and curbing terrorism, illicit drug trafficking, and other international criminal activities.

Terrorism constitutes a risk to state security, and in this sense, "the government is the main authority responsible for organizing the activity of combating terrorism and ensuring it with the necessary forces, means, and resources. The coordination of the activities of the authorities involved in combating terrorism is carried out by the Supreme Security Council of the Republic of Moldova." (Balan, Beşleagă, 2002: 73-74)

In the Republic of Moldova, the authorities exercising activities to counteract terrorism and ensure national security are: the Information and Security Service of the Republic of Moldova, the Ministry of Defense, the Ministry of Internal Affairs, the State Protection and Guard Service, the General Prosecutor's Office, the Customs Service, etc.

According to Law No. 619 of 31-10-1995 (8) regarding state security bodies, the responsibilities of the bodies ensuring security in the Republic of Moldova are:

- defending the independence and territorial integrity of the Republic of Moldova,
- ensuring state border security,
- defending the constitutional regime, the rights, freedoms, and legitimate interests of individuals.

Conclusions

The security sector of the Republic of Moldova has experienced a prolonged period of stagnation and difficulties caused by a multitude of political, economic, and geopolitical factors. However, the Russian invasion of Ukraine in 2014 actually triggered a reform of Moldova's security policy. Despite being on the path of transformation, the country faced a series of disagreements among key security institutions. In the Republic of Moldova, there is no single consolidated military institution capable of promoting its own position. The Ministry of Defense is essentially a politically marginalized institution. Additionally, Moldova does not have a strong defense sector that could stimulate investments in the Armed Forces. Even the small part of the defense capability remaining from the Soviet Union's industrial complex is located in Transnistria, and consequently, Moldovan authorities have had no control over it since the beginning of the conflict in 1992. The political apparatus of the Republic of Moldova has long distanced itself from the defense sector. The authorities have been content with a passive security policy based on the principles of neutrality, as it did not require any particular effort to implement. This situation is particularly dangerous given the "frozen conflict" in Transnistria, which remains one of the main security challenges for the Republic of Moldova to this day.

Considering the historical development errors that have disrupted the normal course of national security, there is a need to implement new strategies and mechanisms that would allow the improvement and mitigation of potential risks in the security sector. Permanent international cooperation and collaboration are key elements in achieving the proposed goals, which would allow significant improvement in the field of national security.

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IMPACT OF ALTERNATIVE ENERGY INVESTMENTS ON EMPLOYMENT IN AZERBAIJAN

I. KARIMOV

Ilham Karimov
Azerbaijan State University of Economics, Azerbaijan
https://orcid.org/0009-0005-2525-639X, E-mail: ilham.kerimov.2001@gmail.com

Abstract: *Transition to alternative energy sources is increasingly recognized as a vital component of global efforts to mitigate climate change and foster sustainable development. This study examines the impact of alternative energy investments on employment, focusing on the renewable energy sector's role in generating job opportunities. Paper explores the mechanisms through which investments in alternative energy projects, such as wind, solar, hydroelectric, and biomass, influence employment outcomes. Key factors influencing employment generation, including technological innovation, infrastructure development, policy frameworks, and market dynamics, are analyzed to understand the complex interplay between alternative energy investments and labor markets. The study highlights the potential for alternative energy investments to create diverse employment opportunities across various sectors. Furthermore, it examines the socio-economic benefits of renewable energy projects in terms of job creation, skills development and income generation. By elucidating the relationship between alternative energy investments and employment, this research contributes to a deeper understanding of the transformative potential of renewable energy transition in devising strategies to maximize the socio-economic benefits of sustainable energy development. Findings show upward trend in average monthly nominal wages and salaries within the sector reflects positive growth in labor compensation, potentially influenced by factors such as rising demand for skilled labor and productivity improvements. Additionally government agencies and international organizations are main drivers of green investments and sustainable development in Azerbaijan.*

Keywords*: Green finance, Employment growth, Renewable energy, Non-oil sector*

Introduction

Green economy is increasingly recognized as a critical pathway for sustainable development, particularly in regions reliant on traditional industries like Azerbaijan. In this context, green finance and investments play a pivotal role in driving employment growth, fostering innovation, and diversifying economic activities (Qasimli et al ., 2022).

Aim of this study is to investigate how alternative energy investments impact employment in Azerbaijan, with a specific focus on the renewable energy sector's role in fostering job opportunities and socio-economic development. The objectives encompass analyzing investment trends, assessing employment effects, exploring influencing factors, and identifying challenges and opportunities associated with leveraging alternative energy investments for maximizing employment benefits.

IMPACT OF ALTERNATIVE ENERGY INVESTMENTS ON EMPLOYMENT IN AZERBAIJAN

Understanding how alternative energy investments impact employment in Azerbaijan is of paramount importance from both practical and scientific perspectives. Firstly, as Azerbaijan seeks to diversify its economy and reduce reliance on traditional fossil fuel industries, alternative energy investments emerge as a crucial pathway for sustainable development. Examining the employment effects of such investments provides policymakers, investors, and stakeholders with valuable insights into the potential benefits and challenges associated with transitioning to renewable energy sources.

Green finance facilitates investments in renewable energy projects such as solar, wind, and hydropower. This includes renewable energy technologies (solar panels, wind turbines), energy-efficient appliances, electric vehicles, and waste management systems. By supporting research and development, as well as providing incentives for green technology companies, investments can spur innovation and growth in this sector. Green technology manufacturing creates employment opportunities in engineering, research and development, manufacturing, installation, and maintenance. Additionally, the supply chain associated with green technology manufacturing, including raw material sourcing, transportation, and logistics, further diversifies employment opportunities across various sectors. By investing in renewable energy infrastructure, Azerbaijan can reduce its carbon footprint and simultaneously create employment opportunities. Green finance encourages innovation and entrepreneurship in green technologies and industries. Startups and small businesses focusing on renewable energy, energy efficiency, waste management, and other sustainable solutions can thrive with adequate financial support. These ventures not only create jobs but also drive technological advancements and enhance the country's competitiveness in the global green economy. Furthermore, green finance initiatives promote the adoption of sustainable practices across various sectors of the economy, leading to long-term environmental and socio-economic benefits. For instance, investments in energy-efficient technologies and green building initiatives not only reduce energy consumption and greenhouse gas emissions but also create demand for skilled workers in construction, engineering. By integrating green design principles, renewable energy technologies, and resource-efficient practices into urban planning and construction projects, cities and municipalities can reduce carbon emissions, improve air and water quality, and enhance quality of life for residents. Green construction projects create employment opportunities in architecture, engineering, construction, and urban planning, while also promoting resilience to climate change and enhancing overall urban sustainability.

Various sources shed light on the efforts and potential for scaling up green investment in Azerbaijan, with a focus on fostering a green transformation. UN Environment Document Repository highlights the importance of mobilizing green finance to support sustainable development initiatives in Azerbaijan, emphasizing the need for innovative financing mechanisms and policy frameworks to attract investment in renewable energy, sustainable agriculture, eco-tourism, and green technology manufacturing. The policy brief from the United Nations in Azerbaijan underscores the significance of a green transformation in Azerbaijan's development agenda, advocating for the adoption of policies and strategies that promote environmental sustainability, climate resilience, and inclusive growth. Furthermore, the Asian Development Bank's report on green finance for state-owned enterprises in Asia provides insights into the role of financial institutions in facilitating green investments and promoting sustainable business practices. Finally, the research paper by V.Ə.Qasımlı offers a

local perspective on green finance, discussing the challenges and opportunities for advancing sustainable development in Azerbaijan through innovative financing mechanisms.

By controlling for relevant variables such as economic growth, sector-specific trends, and government policies, comparative analysis provides insights into the significance between green investment and employment. Literature review contextualize the findings within the broader research landscape. The literature review will encompass studies, reports, and academic articles related to alternative energy investments, employment, and economic development in Azerbaijan. By synthesizing existing research findings, theoretical frameworks, the literature review provides a theoretical foundation and identify gaps in knowledge to guide the empirical analysis. Another aspect of the research methodology involves conducting a comparative analysis of employment dynamics across different sectors in renewable energy production. By analyzing sector-specific data and performance indicators, the study aims to identify the sector with the highest potential for employment generation and conduct in-depth analysis to understand its dynamics, challenges, and opportunities.

2. Factors Influencing Green Investments in Azerbaijan

Green investments in Azerbaijan are influenced by a combination of factors that span economic, environmental, social, and political dimensions. Several key influences shape the landscape of green investments in the country including:

Government Policies and Regulations: Regulatory environment plays a crucial role in shaping green investments. Clear and consistent policies that promote renewable energy, energy efficiency, and sustainable development can provide a conducive framework for investors. In Azerbaijan, the government's commitment to green initiatives through policy measures such as incentives, subsidies, and renewable energy targets can significantly influence investment decisions in the green sector. Main environmental policy measures in Azerbaijan are include:

The Azerbaijani government has enacted the following climate-related policy documents since 2021:

- On May 31, 2021, and July 12, 2021, the law "On the Use of Renewable Energy Sources in Electricity Generation" was approved.
- Adoption of the first "National Action Plan on Energy Efficiency of the Republic of Azerbaijan," creation of the "Rational use of energy resources and energy efficiency" law, and the "Roadmap for accelerating the adoption of eco-design and labelling requirements for products using energy" are all under the EU4Energy program phase I (European Union [EU], 2023).
- The project provided support to MoEnergy on establishing technical norms and standards for energy efficiency in buildings in line with EU and best international standards, such as: Energy efficiency certification system introduced; Assessment of the existing billings standards in Azerbaijan; Draft Rules for energy efficiency certification of buildings; Approximation of the EU legal framework on eco-design and energy labeling; Capacity building among relevant governmental and non-governmental Stakeholders and awareness-raising and communication programme on energy efficiency.

- On February 2, 2021, the "Azerbaijan 2030: National Priorities for Socio-economic Development" was approved. With considerable support from the EU, particularly through the EU4Energy Initiative, and from international finance institutions, Azerbaijan is making progress on its sustainable energy roadmap (European Union, [EU], 2023).

In its initial Nationally Determined Contribution (NDC), Azerbaijan pledged to meet a quantifiable goal of reducing greenhouse gas emissions by 35% by 2030 in comparison to 1990 levels (Azerbaijan President's Office, 2021). Azerbaijan declared at COP 26 that it would reduce greenhouse gas emissions by 40% by 2050. The ecological environment must be harmonized with economic growth, according to Azerbaijan's 2030. National Priorities for Socio-Economic Development, in order to ensure that water resources are effectively utilized and current resources are revived. There are plans to boost the use of renewable and alternative energy sources in order to effectively meet the nation's energy needs. In the meanwhile, it's critical to support eco-friendly green technologies and raise the proportion of alternative and renewable energy sources in primary consumption while minimizing their contribution to global warming. Air quality and the environment may benefit from initiatives to promote the use of ecologically efficient automobiles.

A report titled "Analysis of problems in the agricultural sector in Azerbaijan related to climate change" was developed and submitted to the Ministry of Agriculture. The guidelines on mainstreaming climate change into the priority sectors of energy and agriculture were developed by analyzing the national circumstances in line with strategic documents/roadmaps of the country (United Nations [UN], 2022). The Ministry of Energy received the study that was prepared and submitted, titled "Gender and Climate Change Integration Into the Energy Policy" (Ministry of Energy of the Republic of Azerbaijan [MERA], 2024).

The state financial institutions and the current budget tagging mechanisms were examined for their potential to strengthen capability for climate change adaptation and mitigation. The Ministry of Finance approved the CBT report, which was then added to the Budget Guide for Citizens.

Market Demand and Consumer Awareness: Market demand for sustainable products and services can drive investments in green technologies and industries. As awareness of environmental issues grows among consumers, there is a rising demand for eco-friendly solutions in areas such as renewable energy, green transportation, and waste management. Companies that respond to this demand by investing in green innovation and sustainability practices can gain a competitive edge in the market. Environmental impact of fossil fuel extraction, production, and consumption, including air and water pollution, greenhouse gas emissions, and climate change, has spurred heightened awareness and activism among consumers. Concerns about environmental degradation and its implications for future generations drive demand for renewable energy technologies that offer cleaner and more environmentally friendly alternatives to oil. Measures such as renewable energy targets, carbon pricing, subsidies for clean energy projects, and tax incentives for renewable energy investments incentivize businesses and consumers to transition towards sustainable energy sources.

According to World Investment Report 2023, Announcements of greenfield investment projects increased by 15% in 2022, with growth observed in most sectors and regions in the

world. International investment in the production of renewable energy, such as wind and solar power, increased as well, albeit more slowly than in 2021 (growing by 50% to 8%). Notably, announced initiatives for the production of batteries increased threefold to exceed $100 billion by 2022. In 2022, there was a rise in foreign investment in developing nations' SDG sectors, with a particular focus on infrastructure, energy, water and sanitation, agrifood systems, health, and education (United Nations Conference on Trade and Development [UNCTAD], 2023). However, because of the COVID-19 pandemic's severe reduction in investment and the early years of sluggish GDP, the increase since the SDGs were approved in 2015 has been rather small.

Access to Finance and Investment Incentives: Access to finance is critical for scaling up green investments. Availability of funding sources such as green bonds, venture capital, and international development assistance can facilitate investments in renewable energy projects, energy-efficient infrastructure, and sustainable businesses. Moreover, investment incentives such as tax breaks, subsidies, and grants can encourage private sector participation in green initiatives and mitigate financial risks associated with green projects. Several financing sources play a crucial role in funding these initiatives.

As a sovereign wealth fund established to manage the country's oil and gas revenues, SOFAZ allocate funds towards green investments and sustainable development projects. These investments may include renewable energy infrastructure, energy efficiency initiatives, and environmental conservation efforts. SOFAZ's financial resources can provide a stable source of funding for green projects and support Azerbaijan's transition to a more sustainable economy. Agency provides grants, subsidies, or concessional loans to support renewable energy projects, energy efficiency improvements, and research and development in green technologies. SAARES's funding programs help incentivize private sector investment in green initiatives and accelerate the deployment of renewable energy infrastructure (Eastern Partnership [EaP], 2018). International organizations, development banks, and foreign governments often provide financial assistance and grants for green investments in developing countries like Azerbaijan. Institutions such as the World Bank, European Bank for Reconstruction and Development (EBRD), Asian Development Bank (ADB), and United Nations Development Programme (UNDP) offer funding for renewable energy projects, climate change mitigation initiatives, and environmental conservation programs. These international donors play a crucial role in supporting Azerbaijan's efforts to address environmental challenges and promote sustainable development.

Private sector companies and financial institutions can also contribute to financing green investments through direct investments, project financing, and corporate sustainability initiatives. Large corporations may invest in renewable energy projects, green infrastructure, and sustainable technologies as part of their corporate social responsibility (CSR) efforts or to meet sustainability targets (Asian Development Bank [ADB], 2023). Financial institutions, including commercial banks, investment funds, and venture capital firms, provide capital for green projects through loans, equity investments, and green bonds. These institutions play a vital role in mobilizing private sector finance for green initiatives and driving innovation in sustainable finance.

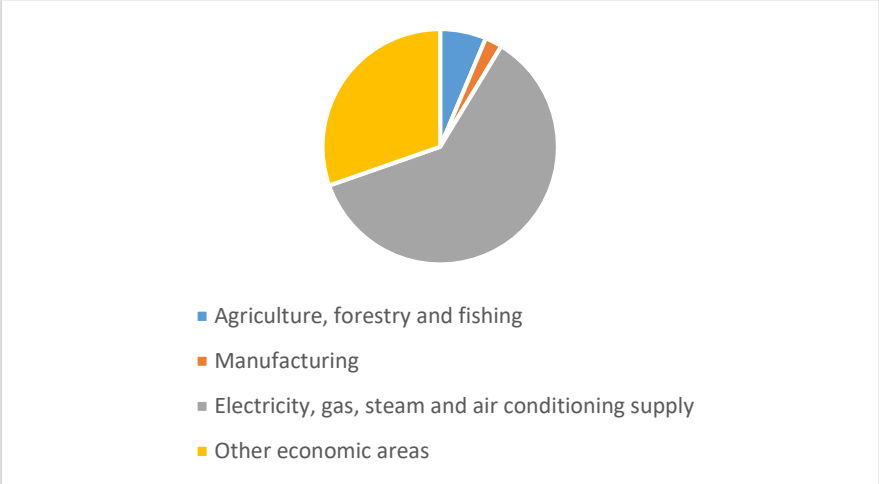
Technological Innovation and Infrastructure Development: Technological advancements and infrastructure development play a pivotal role in enabling green investments. Investments

in research and development (R&D) for renewable energy technologies, smart grid systems, energy storage solutions, and sustainable transportation infrastructure can unlock new opportunities for green investment in Azerbaijan. Additionally, improving the country's energy efficiency standards and expanding renewable energy capacity can create a more conducive environment for green investments.

International Cooperation and Partnerships: International cooperation and partnerships play a significant role in supporting green investments. Collaboration with international organizations, multilateral development banks, and foreign investors can provide access to technical expertise, financial resources, and best practices in green finance and sustainable development. Engaging in cross-border initiatives such as climate change mitigation efforts and green technology transfer can enhance Azerbaijan's capacity for green investment and foster global partnerships for sustainable development (Ankara Center for Crisis and Policy Studies [Ankasam], 2024). While talks are still ongoing on a new bilateral agreement, the European Union's (EU) relations with Azerbaijan are founded on the EU-Azerbaijan Partnership and Cooperation Agreement, which has been in effect since 1999. In addition, Azerbaijan is a member of the Organization of Black Sea Economic Cooperation (BSEC) and the Eastern Partnership program. In 2022, Azerbaijan and the EU signed a new Memorandum of Understanding (MoU) on a Strategic Partnership in the energy sector, paving the way for increased collaboration.

3. Current State of Renewable Energy Investments and Employment

Chart 1. ***Resources of energy products in Azerbaijan, 2022***



Source: State Statistics Committee of Azerbaijan, azstat.gov.az

Data provided represents the distribution of producers of renewable energy products in Azerbaijan across different economic sectors in 2022. First figure indicates that a portion of producers of renewable energy products in Azerbaijan which are operating within the agriculture, forestry, and fishing sector. This may include activities such as the production of biofuels from agricultural crops or biomass, the installation of renewable energy systems on agricultural lands (such as solar panels or wind turbines), or the utilization of agricultural waste for energy generation.

Manufacturing includes companies engaged in the production of renewable energy equipment and components. Additionally, manufacturers produce materials and technologies used in renewable energy infrastructure, such as components for hydropower systems.

This category represents the largest portion of energy product producers corresponds to the electricity, gas, steam, and air conditioning supply sector in Azerbaijan. This sector includes entities involved in the generation, transmission, and distribution of electricity, as well as the production of renewable energy from sources such as solar, wind, hydro, and biomass. These producers contribute to the expansion of renewable energy capacity and the integration of clean energy sources into the national grid.

Category of "Other economic areas" encompasses a diverse range of economic activities beyond agriculture, manufacturing, and energy supply. It indicates that a significant number of producers of renewable energy products, in sectors not explicitly specified in the dataset. These include industries such as construction, transportation, services, and research and development, where renewable energy technologies and products are utilized or developed to support sustainable practices and energy efficiency initiatives.

Electricity, gas, steam, and air conditioning supply sector plays a critical role in Azerbaijan's economy, as evidenced by the significant number of producers of renewable energy products operating within this sector. This sector is instrumental in ensuring the reliable supply of essential utilities, while also facilitating the transition towards cleaner and more sustainable energy sources.

Table 1. ***Alternative energy production in Azerbaijan, 2013-2022***

	hydroelectric power station	wind	solar power station	electricity generated from wastes incineration
2013	1 489,1	0,8	0,8	134,1
2014	1 299,7	2,3	2,9	173,5
2015	1 637,5	4,6	4,6	181,8
2016	1 959,3	22,8	35,3	174,5
2017	1 746,4	22,1	37,2	170,3
2018	1 768,0	82,7	39,3	162,2
2019	1 564,8	105,4	44,2	195,9
2020	1 069,5	96,1	47,0	200,6
2021	1 277,3	91,4	55,2	193,2
2022	1 595,7	83,3	60,9	205,3

Source: State Statistics Committee of Azerbaijan

Production of electricity in Azerbaijan, as indicated by the data provided for various energy sources from 2013 to 2022, reflects the country's efforts to diversify its energy mix and incorporate renewable energy sources into its electricity generation portfolio. The data shows the production levels for hydroelectric power stations, wind energy, solar power stations, and electricity generated from waste incineration over the specified period.

Steady growth in electricity production from renewable sources reflects Azerbaijan's commitment to diversifying its energy mix and reducing reliance on fossil fuels. This trend

signals a conducive environment for green investments in renewable energy infrastructure, including the development of hydroelectric dams, wind farms, solar parks, and waste-to-energy facilities. The expanding renewable energy sector presents lucrative opportunities for green investments in Azerbaijan. Investors are increasingly drawn to projects that harness the country's abundant natural resources, such as wind, solar, and hydroelectric power, to generate clean and sustainable energy. Green investments in renewable energy projects contribute to economic development, job creation, and environmental sustainability. Government's supportive policies and incentives for renewable energy development further incentivize green investments in the energy sector. Initiatives such as feed-in tariffs, tax incentives, and regulatory frameworks promote the deployment of renewable energy technologies and attract investment in green infrastructure projects.

Expansion of renewable energy production fosters job creation across various segments of the labor market. Construction, manufacturing, installation, operations, and maintenance of renewable energy infrastructure require a skilled workforce, generating employment opportunities. Growth of the renewable energy sector stimulates economic growth and enhances the resilience of the labor market. Job opportunities in renewable energy contribute to household incomes, consumer spending, and overall economic activity, driving prosperity and socio-economic development.

Table 2. ***Investments in fixed assets directed to the energy sector, 2015-2022, million manat***

2015	287,2
2016	370,2
2017	870,5
2018	602,9
2019	490,0
2020	486,6
2021	482,9
2022	689,8

Source: State Statistics Committee of Azerbaijan

Investments in fixed assets directed to this sector signify a commitment to infrastructure development and capacity expansion, essential for meeting growing energy demands and advancing renewable energy initiatives. These investments contribute to the modernization and upgrading of energy infrastructure, including the construction of new power plants, the expansion of transmission and distribution networks, and the implementation of renewable energy projects such as solar and wind farms. Data reveals fluctuations in investment levels over the period under consideration, reflecting changes in economic conditions, policy priorities, and investment cycles within the energy sector. Data shows a general increasing trend in investments with a substantial jump in 2017 when investments reached 870.5 million manat, more than doubling the previous year's figure. Following the peak in 2017, investments experienced fluctuations in subsequent years, with decreases recorded in 2018, 2019, and 2020 before a slight increase in 2021 and a more significant rise in 2022. Decline in investments observed in 2020 partly attributed to the global COVID-19 pandemic (State Statistics

Committee of Azerbaijan, [SSC], 2022). Rebound in investments in 2021 and 2022 suggests a recovery in investment activity within the electricity, gas, steam, and air conditioning sector, signaling resilience and renewed confidence in the long-term prospects of the energy industry.

Table 3. ***Level of average monthly nominal wages and salaries and number of employed population in supply of electricity, gas, steam and air conditioning***

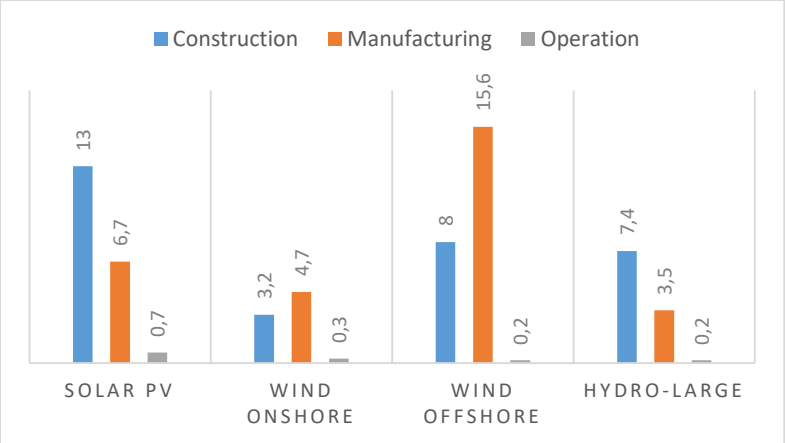
2015	513,2	27,1
2018	583,3	27,5
2019	638,9	30,5
2020	698,3	28,3
2021	770,0	27,2
2022	897,2	27,9

Source: State Statistics Committee of Azerbaijan, azstat.gov.az

There is a clear increasing trend in the level of average monthly nominal wages and salaries over the period under consideration, from 513.2 manat in 2015 to 897.2 manat in 2022. This upward trend suggests growth in wages and salaries within the sector, potentially driven by factors such as increased demand for skilled labor, improvements in productivity, and adjustments for inflation or cost of living. Data also includes the number of individuals employed in the supply of electricity, gas, steam, and air conditioning sector, measured in thousands. The number of employed population remains relatively stable over the years, ranging from 27.1 thousand in 2015 to 27.9 thousand in 2022. While there may be fluctuations in employment levels from year to year, the overall trend indicates a consistent workforce size within the sector, with no significant deviations observed over the period.

Data reflects the socioeconomic importance of this sector in providing employment opportunities and livelihoods for a significant portion of the population. Competitive wages and salaries attract skilled workers and professionals to the energy sector, fostering talent development and expertise in energy production, distribution, and management. As a result, the sector not only drives economic activity and contributes to GDP growth but also supports household incomes and standards of living.

Chart 2. ***Employment in different energy sectors (Jobs per MW)***



Source: Mustafayev, Kulawczuk, Orobello, (2022)

Manufacturing sector could be impacted by changes in the wages and employment levels within the supply of electricity, gas, steam, and air conditioning sector. Manufacturing industries often rely on energy-intensive processes and infrastructure for production, including electricity and steam. Any fluctuations or trends in the wages and employment levels within the energy supply sector can have ripple effects on manufacturing activities, influencing production costs, competitiveness, and workforce dynamics (Mustafayev, Kulawczuk, Orobello, 2022).

Construction sector is closely linked to the demand for infrastructure development, including energy-related infrastructure such as power plants, transmission lines, and distribution networks. Changes in the wages and employment levels within the supply of electricity, gas, steam, and air conditioning sector may indicate shifts in investment patterns, project timelines, and construction activities related to energy infrastructure projects. Consequently, the construction sector may experience changes in demand for construction services, labor availability, and project opportunities based on developments in the energy supply sector.

Transportation and storage sector plays a crucial role in facilitating the movement of energy resources, including electricity, gas, and steam, from production facilities to end-users. Fluctuations in the wages and employment levels within the supply of electricity, gas, steam, and air conditioning sector can influence transportation requirements, logistics operations, and storage capacities associated with energy distribution and delivery.

4. Azerbaijan's Renewable Energy Potential

As the global demand for clean and sustainable energy continues to rise, Azerbaijan stands poised to capitalize on its renewable energy potential to meet domestic energy needs, reduce dependency on fossil fuels, and contribute to environmental sustainability. Azerbaijan's abundant rivers, including the Kura, Araz, and Tovuz, present considerable potential for hydropower generation. The country's mountainous terrain and high precipitation levels contribute to the availability of water resources suitable for hydropower projects. Hydropower plants can be constructed on various scales, from large-scale reservoir dams to small-scale run-of-the-river installations, providing flexibility in meeting energy demand and enhancing energy security.

With approximately 2,400 to 3,200 hours of sunshine per year, Azerbaijan enjoys abundant solar radiation levels ideal for solar power generation (Center of Analysis of International Relations [AIR Center], 2024). The country's favorable climatic conditions and vast expanses of open land offer ample opportunities for deploying solar photovoltaic (PV) and concentrated solar power (CSP) systems. Solar energy projects, including rooftop installations, solar parks, and utility-scale solar farms, hold significant potential to diversify Azerbaijan's energy mix and reduce reliance on fossil fuels.

Azerbaijan's coastal regions and elevated landscapes present favorable wind conditions conducive to wind energy generation (Azertag.az, 2024). The Caspian Sea coastline and the foothills of the Greater Caucasus Mountains offer high wind speeds suitable for onshore and offshore wind farms. Wind energy projects, featuring modern wind turbines and advanced technology, have the potential to harness Azerbaijan's wind resources and contribute to meeting electricity demand, particularly in rural and remote areas.

Azerbaijan possesses abundant biomass resources derived from agricultural residues, forestry residues, and organic waste streams. Agricultural activities, including crop cultivation and livestock farming, generate significant biomass feedstock suitable for bioenergy production. Biomass energy technologies such as biogas production, biomass combustion, and biofuel refining offer sustainable solutions for heat and power generation, as well as for decentralized energy production in rural communities (Mammadov, 2022).

Azerbaijan's abundant solar radiation, favorable wind conditions, and hydroelectric potential provide a solid foundation for manufacturing renewable energy technologies. The country can establish facilities for producing solar panels, wind turbines, and hydropower equipment, catering to both domestic demand and export markets. With supportive policies and incentives, Azerbaijan can attract investment in renewable energy technology manufacturing, fostering innovation and job creation in engineering, manufacturing, and installation sectors. The growing emphasis on energy efficiency and conservation presents opportunities for manufacturing energy-efficient appliances in Azerbaijan. By promoting the adoption of energy-efficient technologies and setting stringent energy efficiency standards, Azerbaijan can stimulate domestic demand for green appliances and encourage local manufacturing to meet consumer needs while reducing energy consumption and carbon emissions.

With the global shift towards electric mobility, Azerbaijan has the potential to manufacture electric vehicles (EVs) and associated components such as batteries, electric motors, and charging infrastructure. Leveraging its expertise in automotive manufacturing and strategic partnerships with EV technology providers, Azerbaijan can establish assembly plants and research facilities to produce EVs tailored to domestic market preferences. Investments in EV manufacturing not only promote sustainable transportation but also create employment opportunities in vehicle assembly, component manufacturing, and charging infrastructure development.

Azerbaijan's potential to produce green technologies extends beyond manufacturing to encompass the entire supply chain, including raw material sourcing, transportation, and logistics. The country can establish partnerships with local suppliers, invest in infrastructure development, and streamline logistics processes to support green technology manufacturing. By integrating the supply chain efficiently, Azerbaijan can enhance competitiveness, reduce production costs, and ensure the sustainability of green technology manufacturing operations.

Conclusions

The findings confirm that investments in renewable energy technologies and infrastructure development play a critical role in job creation, skills development, and income generation. It underscores the transformative potential of renewable energy transition, contributing to a deeper understanding of how strategic investments in green energy can maximize socio-economic benefits and drive inclusive growth and development across the economy. It fills the research gap by showing how fluctuations of investments in renewable energy projects influence employment outcomes and wages of employees who work in this sector in Azerbaijan.

The electricity, gas, steam, and air conditioning supply sector in Azerbaijan is a cornerstone of the nation's economy, serving as the backbone of essential utilities provision

and driving the transition towards sustainable energy sources. Through investments in fixed assets, this sector underscores a commitment to infrastructure development vital for meeting increasing energy demands and advancing renewable energy initiatives. Despite fluctuations in investment levels over the years, the sector has demonstrated resilience, particularly highlighted by a rebound in investments following the disruptions caused by the global COVID-19 pandemic. This resurgence signals renewed confidence in the long-term viability of the energy industry and reflects ongoing efforts towards modernization and capacity expansion.

Upward trend in average monthly nominal wages and salaries within the sector reflects positive growth in labor compensation, potentially influenced by factors such as rising demand for skilled labor and productivity improvements. Although the number of individuals employed in the sector has remained relatively stable, fluctuations in employment levels could have broader implications for related industries, including manufacturing, construction, and transportation. Changes in wages and employment within the energy supply sector can impact production costs, construction activities, and transportation requirements, influencing workforce dynamics and economic activities across various sectors. Strategic investments and policy interventions will play a pivotal role in shaping the future trajectory of the energy sector and driving inclusive growth and development across the economy.

Collaboration between government agencies, sovereign wealth funds, international organizations, and other stakeholders is essential for driving green investments and sustainable development in Azerbaijan. By leveraging policy frameworks, financial resources, and international partnerships, Azerbaijan can accelerate its transition to a low-carbon economy and mitigate environmental risks.

Azerbaijan's commitment to renewable energy development, coupled with strategic investments in manufacturing and innovation, holds immense potential for driving sustainable growth, reducing environmental impacts, and enhancing energy security. By capitalizing on its renewable energy resources and fostering a conducive policy and regulatory environment, Azerbaijan can achieve its vision of a cleaner, more resilient, and sustainable energy future, contributing to the well-being of its citizens and the global community alike.

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PATHWAYS TO PROSPERITY AND SUSTAINABILITY: ASSESSING THE EFFECTS OF TRANSPORT INFRASTRUCTURE INVESTMENTS ON ECONOMIC GROWTH AND GHG EMISSIONS IN AZERBAIJAN IN THE CONTEXT OF COP 29

N. MAHMUDOV

Nijat Mahmudov
Azerbaijan State University of Economics, Azerbaijan
https://orcid.org/0009-0004-0978-8014, E-mail: mahmudov.nicat@gmail.com

Abstract: *Ahead of Azerbaijan's hosting of COP 29, this paper examines the impacts of transport infrastructure investments in Azerbaijan on economic growth and greenhouse gas (GHG) emissions. In this study, using the data of the official reports of the Statistical Committee of the Republic of Azerbaijan and the World Bank, the Ordinary Least Squares (OLS) regression analysis tool was used to reveal the potential impact of investments in transportation infrastructure. The main essence of this study is to examine the strategic investment projects aimed at modernizing the transportation networks of Azerbaijan and its ambitious effects. The nation's vision is not limited to infrastructural development, but also strives to achieve sustainable progress by establishing itself as a global leader in promoting environmentally conscious activities. Through political certainty and international cooperation, Azerbaijan is trying to show itself as a leader in promoting sustainable development in the context of 29th Conference of the Parties (COP 29). The research aims to examine how the planned development of transport infrastructure drives economic progress with a focus on climate impacts. This article revealed the significant role of investments in transport infrastructure in fostering economic growth in Azerbaijan, particularly through positive effects on the non-oil GDP growth rate. However, it found that these investments did not lead to substantial reductions in GHG emissions, indicating a lack of corresponding environmental benefits. This underscores the complex interplay between infrastructure development and environmental sustainability, highlighting the necessity for a balanced approach in policy implementation.*

Keywords: *COP29, Economic growth, Greenhouse gas (GHG), Transport infrastructure investments, Azerbaijan.*

Introduction

In the dynamic economic landscape of Azerbaijan, transport infrastructure is emerging as a major force ready to drive both economic growth and sustainability. Azerbaijan's importance as a strategic hub on the historic Silk Road holds great promise for its targeted investment in transportation networks to accelerate economic growth. However, these positive promises are not without drawbacks, as the mentioned activities highlight the challenge of limiting GHG emissions in particular. This article examines the delicate balance between increasing economic growth through the expansion of transport infrastructure and the urgent

need to protect the ecology. At the heart of this story is the government's strong commitment to developing the transport sector. By strengthening trade ties within and outside the country, Azerbaijan aims to facilitate unhindered trade flows, promote regional integration, and move its economy away from heavy dependence on oil revenues. The heritage of the Silk Road combined with modern aspirations plays a very critical role in the economic and political life of Azerbaijan for trade and cultural exchange. However, the vision requires a dual focus—one that scrutinizes the economic gains while acknowledging the environmental costs. From highways to railroads, from ports to airports, the growth in transportation infrastructure projects has undeniable economic implications. This boosts job creation, stimulates investment and increases trade opportunities. However, these activities also have negative downsides: increased emissions, habitat destruction, and resource depletion and etc. The difficulty lies in harmonizing these seemingly different directions. Azerbaijan's commitment to environmental protection is obvious. The declaration of 2024 as the "Year of Green World Solidarity" underlines its determination. Besides, by signing the Paris Agreement, Azerbaijan undertook to reduce emissions by 2030 and 2050. This alignment with global climate goals requires serious consideration of the GHG impact of transportation infrastructure. Can economic growth go hand in hand with carbon reduction? Policy coherence, technological innovation and sustainable practices can answer this question. This article explores Azerbaijan's strategic investments in transport sector. As Azerbaijan prepares to host COP 29, it seeks to strengthen its role as a champion of sustainable development. The focus should be on how transport infrastructure can be a conduit for economic growth while minimizing environmental damage. The road ahead is both pragmatic and aspirational.

Main objective

The main purpose of this article is to comprehensively examine the impact of investments in transport infrastructure on both economic growth and GHG emissions in Azerbaijan. This analysis is carried out on the eve of the COP 29. The study seeks to strike a balance between promoting economic growth through transport infrastructure development and addressing the critical imperative of environmental sustainability. Specifically, the study focuses on the following key directions:

Economic Impact

How did investments in transport infrastructure affect the economic growth of Azerbaijan?

Environmental Impact

What are the environmental consequences of these investments, especially in terms of greenhouse gas emissions?

This article aims to provide a final comprehensive conclusion based on factual data to assess the advantages and disadvantages of significant investments in the sector. The main goal is to provide valuable ideas and results that can advise on future options regarding the development of transport infrastructure, focusing on activities in the direction of increasing economic growth and environmental protection in Azerbaijan.

Literature review

Investments in transportation infrastructure have consistently demonstrated a positive relationship with economic prosperity in various economies. Transport infrastructure development plays an important role in increasing productivity, connectivity and overall economic growth. According to Banister and Berechman robust transport networks contribute significantly to regional development by promoting the efficient movement of goods and people. (Banister & Berechman, 2000). In the context of developing economies, infrastructure plays a key role in supporting economic expansion and diversification. (Rodrigue, 2016). Focusing on transport as one of the main directions of the non-oil sector in Azerbaijan is in line with the country's goals to reduce oil dependence and promote economic stability, especially after 2000. (Asian Development Bank, 2019)

The economic benefits of investments in transportation infrastructure are well documented, and numerous studies have found that these investments have a positive impact on GDP growth, job creation, and trade efficiency. (Aschauer, 1989; Calderón & Servén, 2004). In the context of Azerbaijan, investments in the transport sector have played a key role in the diversification of the economy, and the sector's potential as a catalyst for growth is highlighted. (Asian Development Bank, 2019).

Annual Review of Environment and Resources provides an overview of how transport infrastructure can both reduce and exacerbate environmental degradation, including GHG emissions. (Doll & Puppim de Oliveira, J. A., 2017).

EBRD conducted a sustainability assessment of Azerbaijan's transport sector with a special focus on efforts to reduce carbon emissions. (European Bank for Reconstruction and Development (EBRD),2019).

"Towards Sustainable Transport in Azerbaijan" report details the strategies of Azerbaijan for implementing sustainable transportation solutions aimed at reducing GHG emissions, consistent with its national objectives and global obligations. (United Nations Development Programme (UNDP), 2021).

Although the economic benefit of transport infrastructure is clear, the environmental consequences, especially GHG emissions, require detailed investigation. The transport sector is a major contributor to global carbon emissions, and infrastructure development often results in increased fossil fuel use. (Sims et al., 2014). The development of road infrastructure and the increase in the ownership of vehicles in Azerbaijan have created problems for both national and international sustainability goals and led to an increase in GHG emissions. (European Environment Agency, 2020). The importance of considering environmental factors in planning infrastructure investments is emphasized in global commitments to reduce emissions and combat climate change. (UNFCCC, 2021).

Azerbaijan's way of adapting economic progress to environmental sustainability reflects a broader global problem. While a country's infrastructure investments are critical to economic growth, considering their environmental impacts is complicated. Approaches to reduce these impacts include using greener technologies, increasing energy efficiency, and investing in public transportation systems. (World Bank, 2019). In addition, Azerbaijan's participation in global environmental agreements underscores its commitment to synchronizing infrastructure development with sustainability goals (World Bank, 2019). In addition,

Azerbaijan's participation in international environmental agreements emphasizes its commitment to aligning infrastructure development with sustainability goals. (IEA, 2019).

Methodology

In this research, the quantitative methods were used to assess the impact of transport infrastructure investments in Azerbaijan on both economic growth and GHG emissions. In order to exclude oil effect, non-oil GDP growth rate we used as economic growth indicator, in order better gauge the impact of investments. The data used in this study, the figures for investments in transport infrastructure and the growth rate of non-oil GDP were taken from the Statistical Committee of the Republic of Azerbaijan, and the data on greenhouse gas emissions were taken from the official reports of the World Bank. The data for the period covering the years 2010-2020 were used in the analysis.

The Ordinary Least Squares (OLS) regression models were used to examine the effects of transport infrastructure investments on economic growth and the environment. These models allowed to measure how increased spending on transport infrastructure could affect economic growth and environmental outcomes in Azerbaijan. Specifically, two separate regression models developed:

GDP Growth Model: This model predicted non-oil GDP growth as a function of transport investments. By examining the direct relationship between investment volume and economic performance, we gained insights into the potential economic benefits of infrastructure spending.

GHG Emissions Model: The second model focused on greenhouse gas emissions, using volumes with the same investment as the first model. This allowed us to assess the impact of transport development on the environment.

In evaluating the models' adequacy, we considered the R-squared value—a measure of how much variance in the dependent variable (non-oil GDP growth or GHG emissions) could be explained by the independent variable (transport investments). In addition, p-values helped determine the statistical significance of our findings.

This methodology not only emphasized the positive effects of increased infrastructure spending on economic growth, but also considered environmental issues in line with global sustainability goals. By understanding the economic growth and environmental impacts of investments in the sector, public administrators can make informed decisions about their investments in transportation infrastructure in Azerbaijan.

Limitation of methodology

A major drawback of this approach is that it relies on linear ordinary least squares (OLS) regression. This method assumes a direct and invariant relationship between variables, which can oversimplify complex economic and environmental dynamics. Furthermore, the analysis is limited by the use of annual data, potentially missing short-term fluctuations and lagged effects of investment on non-oil GDP and GHG emissions. In addition, the study only focuses on transport investments and does not consider other influencing factors such as policy changes, technological advances, economic and legal issues. Finally, the small sample size hinders the generalizability and statistical robustness of the findings.

Conference of the Parties (COP) and Its Implications

The Conference of the Parties (COP) is the highest decision-making body of the United Nations Framework Convention on Climate Change (UNFCCC), established in 1994. This includes all 197 states that have ratified the Convention. The COP is held annually to assess progress in addressing climate change, negotiate additional measures and review the implementation of the Convention along with the Kyoto Protocol and the Paris Agreement.

COP 29, scheduled to be held in Baku in November 2024, is a continuation of global efforts to combat climate change. After 2023, the warmest year on record, the conference will focus on key areas such as understanding global emissions and finalizing the first enhanced transparency framework essential to progress towards climate goals. In addition, it will seek to establish a new collective clear target for climate finance, stating the need for increased financial support to scale up climate action.

Each COP serves as an important platform for negotiating and advancing global climate action, and COP 29 will be no exception, with high stakes for both policy and practical implementation strategies to combat climate change. An important stage in Azerbaijan's green initiatives is to fulfill its role as the host country of the COP29 UN Climate Change Conference, which will be held in Baku at the end of this year. This event is considered an important opportunity for Azerbaijan to demonstrate its progress in the field of green energy and strengthen international cooperation on climate action.

Transport infrastructure in Azerbaijan: an overview

The transport sector of Azerbaijan has a deep historical history, through which the ancient Silk Road passes. This historic trade route facilitated the exchange of goods, cultures and ideas between East and West. Over the centuries, the geographical position of Azerbaijan has maintained its relevance as a major trade center. Strategically located at the crossroads of north-south and east-west trade routes between Asia, the Middle East and Europe, Azerbaijan is currently an important producer and exporter of oil and gas in the Caspian Sea region. The transport sector in Azerbaijan is developing rapidly and makes a significant contribution to the country's Gross Domestic Product (GDP). However, the sector faces a number of challenges, such as a lack of coordination between government priorities and activities of key stakeholders, and a lack of data on transport sector emissions.

Especially considering its strategic location at the intersection of Eastern Europe and Western Asia, transport infrastructure has been the main focus of Azerbaijan's development strategy. The government is focusing on improving and expanding transport networks to facilitate economic growth, strengthen connectivity and integrate more effectively into global trade systems. The transport infrastructure of Azerbaijan consists of railway transport, road transport, sea transport and air transport:

Road Network

The primary entity for roads in Azerbaijan is the State Agency of Azerbaijan Automotive Roads (AAYDA), established in 2017. AAYDA is responsible for the design, construction, operation, repair, and maintenance of state highways and other road facilities. Azerbaijan has made significant investments in road infrastructure to improve connectivity and

transport efficiency within and outside the country. The government has implemented numerous road construction and rehabilitation projects to expand the road network, reduce travel times and improve road safety. North-South and East-West highways are vital arteries that connect different regions of Azerbaijan and promote trade within the country. The development of highways and expressways has not only facilitated the movement of goods and people, but also strengthened regional integration and economic activities. Effective road connectivity has given businesses easier access to markets, thus spurring economic development in both urban and rural areas.

Rail System

Railway transport in Azerbaijan is managed by Azerbaijan Railways Closed Joint Stock Company (ADY), established in 2009. ADY provides both freight and passenger railway services in the country. Railway transport plays an important role in the transport sector of Azerbaijan, especially in facilitating trade between Europe and Asia. The Baku-Tbilisi-Kars (BTQ) railway project, which was completed in 2017, is of great importance in this regard. BTK railway connects Baku, the capital of Azerbaijan, with Tbilisi, the capital of Georgia, and then with the port city of Kars, Turkey. This strategic rail corridor provides a shorter and more efficient route for transporting goods between Europe and Asia, bypassing congested Black Sea ports. By reducing transportation costs and transit times, the BTQ railway has turned Azerbaijan into an important transit country, attracting significant trade volumes and foreign investments. In addition, Azerbaijan's railway network connects different regions of the country, contributes to regional economic development and strengthens social cohesion.

Air transport

Air transport in Azerbaijan is managed by Azerbaijan Airlines (AZAL). Baku’s Heydar Aliyev International Airport, the primary international gateway into Azerbaijan, has seen extensive upgrades to its facilities and services, aligning with international standards. The expansion of air services is supported by improvements at other major airports in the country, including Nakhchivan and Ganja, which are crucial for boosting tourism and business travel. The development of Azerbaijan's air transport infrastructure has contributed to economic development, especially to the tourism sector. Heydar Aliyev International Airport in Baku, along with other regional airports, has played an important role in promoting tourism by facilitating accessibility for international travelers. Azerbaijan's rich cultural heritage, diverse landscapes and modern attractions have increased the number of tourists in recent years. The availability of well-coordinated airlines and international flights has been an important factor in boosting the country's tourism industry, thereby stimulating economic growth in related sectors such as hospitality, retail and services.

Sea and Ports

The State Maritime Agency is the regulatory body in charge of maritime transport in Azerbaijan. The Port of Baku at Alat has been transformed into a major logistics and trade hub. Azerbaijan's access to the Caspian Sea has been an important factor in the development of its maritime transport sector. The country has invested in port facilities, infrastructure and logistics to increase its capacity to handle cargo and promote maritime trade. Baku Port, located in a strategic position on the coast of the Caspian Sea, has become a decisive center for international trade, especially for landlocked Central Asian countries. The establishment of the International

North-South Transport Corridor has further increased the importance of Azerbaijan as a transit country. The corridor is a multimodal transport corridor connecting India, Iran, Azerbaijan and Russia, providing an alternative trade route between South Asia and Europe. This initiative expanded the role of Azerbaijan as a transit country and offered profitable opportunities for economic growth and attracting foreign investments.

Urban Transport

In urban areas, especially in Baku, the government is focusing on modernizing public transport to reduce traffic congestion and pollution. This includes the expansion of the Baku Metro and the introduction of bus rapid transit systems. Investments in these areas are aimed at improving the quality of life of residents and supporting sustainable urban development.

Revitalization in Liberated Territories and Zangazur Corridor Initiative

Azerbaijan aggressively continues to build new transport links and restore old ones in the liberated territories. These efforts aim to support economic development and strengthen connectivity in these regions. The Zangezur Corridor is an important initiative aimed at creating a direct transport link between Azerbaijan and its exclave, Nakhchivan. This corridor is expected to simplify transit routes and strengthen economic ties throughout the region. This is an important step towards strengthening regional integration and connectivity.

Government Initiatives for Sustainable Transportation

Azerbaijan has achieved many in the field of improvement of environmental standards and promotion of green transport. The government promotes the use of EU-95 gasoline, which emits less carbon dioxide, by adopting Euro 5 standards, and has imposed restrictions on the import of old cars for more than seven years. The State Customs Committee has banned the import of vehicles manufactured before 2013, thereby renewing the country's vehicle fleet, which strengthens both environmental protection and road safety.

In addition, local production of EU-95 brand gasoline has been started in order to reduce fuel costs and minimize the impact of transportation on the environment within the framework of the measures. This initiative aims to phase out old types of gasoline and support Azerbaijan's transition to sustainable fuel use. In addition, the government has introduced fiscal incentives to encourage the use of electric and hybrid vehicles. For example, until 2025, newly imported electric cars, CNG buses and related equipment are exempted from VAT.

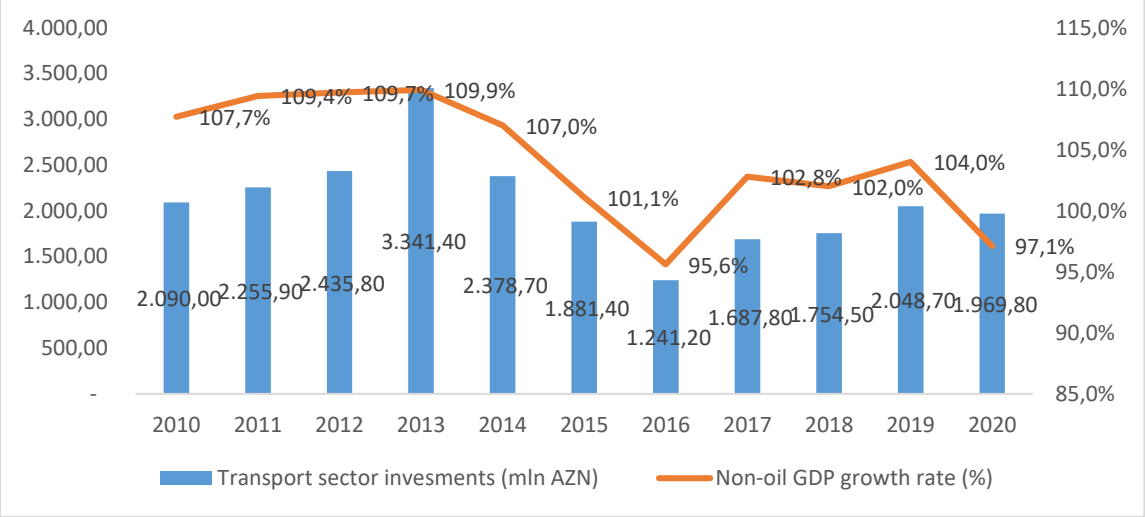
In order to strengthen public transport in Azerbaijan, large amounts of subsidies are allocated for public transport, and public-private partnership is promoted. At the same time, new bus and subway lines are being built, and work is being continued on suburban and inter-regional high-speed railways. In line with green city initiatives, the development of bicycle and pedestrian infrastructure and bicycle and car sharing schemes further support sustainable urban mobility. In the freight sector, which accounts for a large share of the country's greenhouse gas emissions, the government is working through legislative measures and campaigns to modernize the truck fleet and support clean and energy-efficient transportation. Railway transport is also doing a lot to protect the environment by electrifying lines, using renewable energy sources and implementing energy-saving technologies, replacing diesel locomotives and trains with electric locomotives and trains. This also includes the installation of solar panels

and wind turbines on electric railway infrastructure. These comprehensive actions demonstrate Azerbaijan's commitment to reducing emissions, modernizing transport systems and promoting sustainable development. This coincides with the efforts of the government to adapt its activities in the direction of economic growth to environmental sustainability.

OLS Regression Analysis: Assessing Transport Investments' Influence on Azerbaijan's Economic Growth and Environmental Sustainability

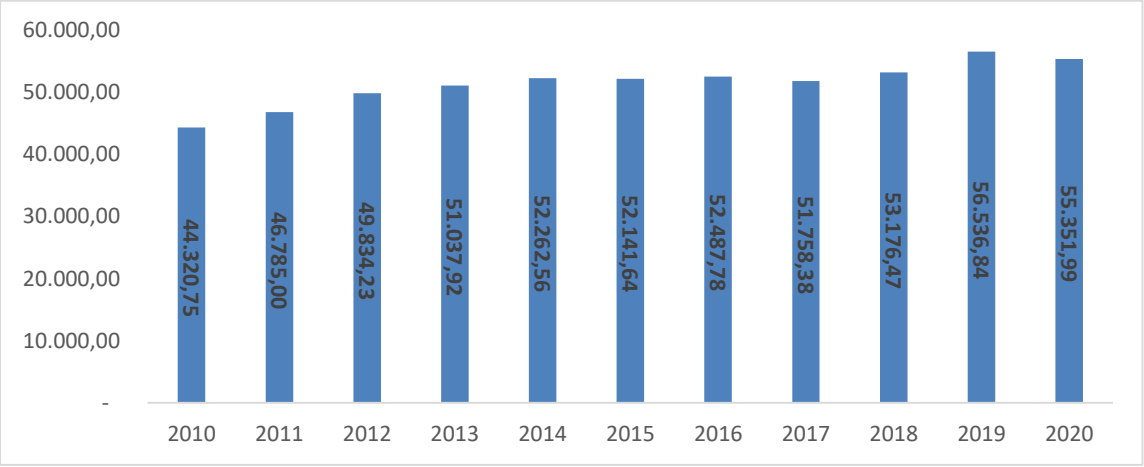
The data of the Statistical Committee of the Republic of Azerbaijan and the World Bank covering the decade from 2010 to 2020 were used in the analysis. The main objective of the analysis is to reveal potential causal relationships that provide insights into both economic and environmental aspects of investments in the transport sector by applying Ordinary Least Squares (OLS) regression analysis. This methodological approach allows for a comprehensive understanding of the interaction between the development of transport infrastructure and its impact on economic growth and greenhouse gas emissions.

Chart 1. ***Transport infrastructure investments and economic growth***



Source: The State Statistical Committee of the Republic of Azerbaijan

Chart 2. ***Total greenhouse gas emissions (kt of CO2 equivalent)***



Source: World Bank

Model Descriptions

Two distinct OLS regression models were developed to assess:

Economic Impact: How transport infrastructure investments influence GDP growth, highlighting potential pathways to prosperity.

$$\text{GDP Growth} = \beta 0 + \beta 1 \times \text{Transport Investments} + \epsilon$$

Environmental Impact: The effect of these investments on GHG emissions, which is critical for evaluating sustainability in the context of global climate commitments.

$$\text{GHG Emissions} = \alpha_0 + \alpha_1 \times \text{Transport Investments} + \mu$$

Table 1: Impact of Transport Infrastructure Investments on non-oil GDP Growth

Variable	Coefficient	Std. Error	t-statistic	P-value	95% Confidence Interval
Constant	88.8825	4.236	20.984	0.000	[79.301, 98.464]
Transport Investments	0.0073	0.002	3.723	0.005	[0.003, 0.012]

R-squared: 0.606

Adjusted R-squared: 0.563

Table 1 reveals a substantial positive correlation between transport infrastructure investments and non-oil GDP growth. For every unit increase in transport investments, there is a 0.0073 unit increase in non-oil GDP, as shown by a statistically significant coefficient (p-value = 0.005). The model accounts for 60.6% of the variation in non-oil GDP growth (R-squared), suggesting a robust fit. When adjusted for the number of predictors, the Adjusted R-squared is 56.3%, further confirming the model's efficacy. These results highlight the critical role of transport investments in driving economic growth, offering valuable insights for policy formulation.

Table 2: Relationship Between Transport Infrastructure Investments and GHG Emissions

Variable	Coefficient	Std. Error	t-statistic	P-value	95% Confidence Interval
Constant	54390	4594.077	11.838	0.000	[44000, 64800]
Transport Investments	-1.4101	2.127	-0.663	0.524	[-6.223, 3.402]

R-squared: 0.047

Adjusted R-squared: -0.059

Table 2 investigates the association between transport infrastructure investments and GHG)emissions, showing an insignificant relationship. The model indicates a decrease in GHG emissions by 1.4101 units for each unit increase in transport investments, but this effect is statistically not significant (p-value = 0.524), and the confidence interval encompasses zero.

The R-squared of the model is 4.7%, suggesting it only accounts for a minor fraction of the variance in GHG emissions. Moreover, the negative Adjusted R-squared of -0.059 implies that the model may be less predictive than a simple mean. These results suggest that other factors may have a more significant impact on GHG emissions, emphasizing the necessity for a broader analysis.

Discussions

The objectives of the research were successfully achieved through a comprehensive analysis of the impact of transport infrastructure investments on both economic growth GHG emissions in Azerbaijan. The study aimed to fill a research gap by addressing two main research questions:

Economic Impact: The analysis confirmed that investments in transport infrastructure significantly boosted economic growth in Azerbaijan. This finding aligns with the insights provided in the initial part of the article, which highlighted how infrastructure development enhances trade flows, stimulates investment, and diversifies the economy away from oil dependence.

Environmental Impact: On the other hand, the study revealed that while there were notable economic benefits, the reduction in GHG emissions as a result of these investments was statistically insignificant.

The analysis identified the important role of investments in transport infrastructure in promoting economic growth in Azerbaijan and demonstrated its positive effects on non-oil GDP growth rate. However, the relationship between these investments and reductions in GHG emissions was found to be statistically insignificant, indicating that these economic gains did not translate into corresponding environmental improvements. This highlights the complex interdependence between infrastructure development and environmental sustainability, emphasizing the need for a balanced approach when implementing policies in this direction.

The results of OLS regression models show that although investments in transport infrastructure are crucial factors for economic growth, their environmental impact is less and additional measures are necessary in accordance with Azerbaijan's sustainability goals. This study highlights the importance of considering both economic and environmental factors in the planning and implementation of transport infrastructure projects.

Based on the research results and findings, the following recommendations are offered to guide the development of future transport infrastructure projects in Azerbaijan:

Policy Integration: Formulate integrated policies that aim for environmental sustainability alongside economic growth. This may include environmental impact assessment and amendments to existing infrastructure policies to take into account sustainability standards.

Investment in Green Technologies: Expand investments in green transport technologies such as electric buses, sustainable urban transport systems and renewable energy sources for infrastructure. These technologies can help reduce the carbon footprints associated with new and existing transportation networks. Public-Private Partnerships (PPPs): Promoting the creation of PPPs to increase private sector participation in investments in the sector to create sustainable transport solutions. These partnerships can also ensure the sharing of risks and benefits associated with large-scale infrastructure projects.

Educational and Public Awareness Programs: Initiate educational programs and public awareness campaigns on the benefits of sustainable transport solutions to reach a wider audience. These programs can enhance public acceptance and use of new systems, thereby maximizing their environmental and economic benefits.

Regulatory Frameworks: Improve regulatory frameworks to ensure that all new transport infrastructure projects meet environmental standards and contribute to national and international sustainability goals. These frameworks may include setting strict emission standards and green certification for new projects.

By implementing these recommendations, Azerbaijan can ensure that investments in transport infrastructure contribute positively to both economic growth and environmental health, thereby supporting the country's broader sustainable development goals. These events will also strengthen Azerbaijan's commitment to global climate initiatives and its role as host of the upcoming COP 29.

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THE CHALLENGES ASSOCIATED WITH DIGITAL EDUCATION IN HIGHER MILITARY EDUCATIONAL SETTINGS

G.-F. NICOARĂ, A.-G. COROI

Gabriela-Florina Nicoară[1], Alex-Giulian COROI[2]
[1] [2] Command and Staff Faculty, "Carol I" National Defence University, Bucharest, Romania
[1] https://orcid.org/0009-0000-5061-8800, E-mail: nicoara.gabriela@unap.ro
[2] E-mail: coroianu20@gmail.com

Abstract: *In the context of a digitized society, educational activities transcend conventional spaces. Generation Z, the cohort to which today's students belong, differs substantially from previous generations. Within this framework, characterized by the lens of technology and easy access to information, digital education is considered a cornerstone in educating the human resources of the future. Building upon these premises, the objective of this endeavor is to identify the main challenges encountered in the domain of military university education. Additionally, utilizing the method of content analysis, this article aims to delineate an accurate portrayal of the current state of challenges in the field of digital education and to present future perspectives in addressing these challenges.*

Keywords: *education, digitisation, infrastracture, Military, defence*

1. Introduction

In an era marked by rapid and profound technological transformations, the relevance of digital education becomes undeniable. The accelerated development of technology and the emergence of advanced systems, including artificial intelligence applications, necessitate continuous adaptation of human skills. Generation Z, raised in the digital environment, brings new challenges and requirements, challenging traditional pedagogical methods. These changes require a reevaluation of the educational system, which must embrace and integrate digital technologies to remain relevant and efficient.

Digital education has become an integral part of higher education in Romania. Its implementation not only enables students to adapt to new technological advancements but also contributes to the modernization and innovation of the educational process. By incorporating digital technologies into teaching, the educational system can become more appealing and relevant to students' needs, thereby fostering continuous learning and the development of essential skills required for the contemporary job market.

However, the development of the conventional pedagogical system towards a higher level involves a variety of challenges, manifested through changes in infrastructure, teaching staff, and students. Against the backdrop of these transformations and challenges, this article aims to achieve two main objectives:

• Presenting the current image of the educational system in relation to the first category of transformations imposed by digital education, namely infrastructure.

• Analyzing future trends regarding the European response and, based on this, the national response at the infrastructure level. Furthermore, considering the lack of specialized

literature focused on this area, an analysis of the movements and approach of the largest and most renowned higher education institutions in Romania, especially the military ones, will be presented.

The directives of the *European Commission's Digital Education Action Plan* for 2021-2027, launched in 2020, will be presented alongside *Romania's Education Digitalization Strategy* (2021) and the strategies of various academic institutions, including the University of Medicine and Pharmacy in Timișoara, „Babeș-Bolyai" University, University of Bucharest, „Nicolae Bălcescu" Land Forces Academy, „Henry Coandă" Air Forces Academy, „Mircea cel Bătrân" Naval Academy, „Ferdinand I" Military Technical Academy, and "Carol I" National Defense University.

2. Analysis of the current infrastructure in relation to digital education in higher education

The European Commission strongly advocates for the necessity of digitizing education and emphasizes that „The EU should ambitiously address the opportunities and challenges of digital transformation in education and training." (European Commission, 2020:11). Consequently, at the European level, a strategic priority titled „*Fostering the development of a high-performing digital education ecosystem*" (European Commission, 2020:11), has been established, aiming to develop the necessary infrastructure for digital education in educational institutions. Within this framework, four main directions regarding infrastructure are defined**: technological resources, connectivity, open educational resources, and cybersecurity.** Based on these European directives launched in 2020, Romania developed the *Digitalization of Education Strategy* in 2021, with the objective of developing the digital ecosystem during the period 2021-2027.

In terms of **technology resources**, there is not a balanced balance between devices and users. According to data provided by the National Institute of Statistics for the period 2019-2020, in higher education in Romania, the level of coverage with personal computers is only 19.8% , and of these, only 19% are connected to the internet. The higher education system comprises 90 institutions with a total of 543,299 students and 26,429 teaching staff, with a total of 112,951 computers. According to the European Commission's Digital Economy and Society Index report, Romania ranks 26th out of 27 EU Member States in terms of digitisation. However, in terms of **connectivity**, the country ranks 11th in Europe. This is mainly due to the widespread use of high-speed broadband services and the widespread availability of high-capacity fixed networks, especially in urban areas (Ministry of Education and Research – Romania, 2021:56).

RoEduNet, as a member of the European Research and Education Network GEANT, ranks among the top three networks of its kind in Europe. With a robust data communications infrastructure, including a 100 Gbps backbone, RoEduNet interconnects universities, student campuses, research centers, schools, and highschools throughout Romania. Additionally, a dark fiber connection has been established with VIX Vienna, one of the two relevant data centers in Europe, with two capacities of 100 Gbps each. One of these capacities is dedicated to the research platform in Măgurele, directly connected to CERN Geneva, while the other is dedicated to education. Any initiative to expand connectivity within Romania's educational

system will build upon the infrastructure and expertise already developed by the National Education and Research Network Management Agency, which administers the RoEduNet network (Ministry of Education and Research – Romania, 2021:72).

In the context of Romania's strategy for digitalization, there is not a detailed perspective offered on Open Educational Resources (OER) in higher education. Instead, only the Online Learning Center (http://training.ise.ro) is mentioned. However, the strategy does highlight platforms and websites developed by the Ministry of Education within various nationally or European-funded programs, dedicated to pre-university education (such as www.subiecte.edu.ro, www.manuale.edu.ro, www.didactic.ro, etc.). Nevertheless, there are currently numerous open educational resources dedicated to university students, such as *E-nformati*on, the *National Digital Library*, and other similar platforms developed by higher education institutions in the country (Ministry of Education and Research – Romania, 2021:80-83).

Additionally, it is essential to note that the implementation of digitalization in education and the intensification of distance communication are accompanied by specific cybersecurity risks. These risks are often exacerbated by insufficient awareness of online threats and educational infrastructures that are not yet mature in terms of cybersecurity. Several significant challenges face most educational institutions and units:

- Decentralization of IT: Many educational entities manage their own IT systems, which are highly diverse and tailored to each entity's specific requirements. This diversity and widespread distribution of networks make implementing security policies challenging.
- BYOD culture (bring your own device): Many users bring their own devices into the educational environment, increasing the complexity of security management as these devices may have different security levels or be vulnerable to cyber attacks.
- Use of open networks: In the educational environment, there are often open WiFi networks that are vulnerable to cyber attacks because they are not protected by adequate security methods.
- Internal threats: Internal threats are one of the most common concerns in cybersecurity. These can be initiated by individuals within the organization and may involve attacks such as phishing emails or the transfer of sensitive information to personal or insecure devices (Ministry of Education and Research – Romania, 2021:85-92).

In conclusion, at this moment, Romania's image from the perspective of the four strategic directions is satisfactory only regarding connectivity, with deficiencies persisting in other aspects. However, *The Digitalization of Education Strategy in Romania* is not limited to just an assessment of the current national situation; it also provides a vision for the improvements Romania intends to implement in the future.

2. The national response regarding infrastructure in digital education within higher education.

The educational infrastructure concerning technological resources will be updated by equipping at least 13 practice, didactic, and university research laboratories annually, reaching a total of 91 laboratories by the end of 2027. This will facilitate the development of advanced competencies in digital and technological domains. Emphasis will be placed on

modernizing university facilities to improve and expand the skills necessary in the labor market, particularly in ICT, biotechnology, nanotechnology, artificial intelligence, robotics, automation through RPA, the Internet of Things (IoT), blockchain, autonomous transport, virtual reality, and 3D and 4D printing.

3D virtual laboratories and virtual reality (VR) environments will enable students to conduct experiments in a safe setting, providing the opportunity to observe, study, demonstrate, verify, and measure the outcomes of analyzed phenomena. Through these virtual experiments, students will be able to recreate real-life scenarios, regardless of the associated complexity or risks. These processes can be repeated until a thorough understanding is achieved, and the platforms will be designed to be engaging and user-friendly. The development of virtual laboratories will adhere to both pedagogical requirements and educational curricula, as well as to specific recommendations, standards, and norms for designing digital educational content (Ministry of Education and Research – Romania, 2021:63-64).

For university and doctoral education, digital certificates will be stored on blockchain, covering documents such as university degrees, postgraduate degrees, doctoral degrees, and micro-credentials (which attest to participation in modules or courses at other institutions or countries). This system offers numerous advantages: enhancing the integrity of certificates through digitization, improving the confidentiality of personal data, increasing transparency in the educational process, ensuring more precise accuracy in presenting the skills and competencies portfolio, facilitating the portability and mobility of documents for further studies or employment, and promoting the personalization of educational pathways (Ministry of Education and Research – Romania, 2021:64).

Connectivity within educational institutions in Romania must be aligned with efforts to modernize the educational infrastructure to create optimal conditions that enable students to develop the skills necessary for the 21st century. Although connectivity in Romanian university spaces is currently adequate, future digital education projects and the introduction of advanced educational technologies require continuous updates to connectivity to support these reforms. The European Commission emphasizes the importance of sharing educational materials online and, implicitly, the development of Open Educational Resources (OER). The digitization strategy includes, among its priorities, the "Creation of Open Educational Resources (OER)" (European Commission, 2020:14-15). According to the action plan in the digitization strategy for the period 2021-2023, it is planned to "Create learning centers at each university where OER resources will be available as educational support" (Ministry of Education and Research – Romania, 2021:84). However, unlike other priorities of the strategy, the subject of OER is addressed more generally and briefly, without clearly defined objectives. Nonetheless, the topic of OER is treated with much more seriousness and detail in the context of pre-university education.

The implementation of innovative solutions in education, such as smart laboratories and advanced e-learning systems, requires rigorous information security management, in accordance with data protection legislation, ensuring secure access and performance monitoring. It is essential to develop effective mechanisms to attract IT specialists from the private sector to collaborate with schools and universities in Romania, in roles such as

network administrators, or to create regional call centers that provide support for managing these infrastructures. In the field of cybersecurity, three priority directions stand out (Ministry of Education and Research – Romania, 2021:85-88):

1. Implementation of equipment for network security
2. Protection against fraud
3. Training of new specialists in cybersecurity

Pornind de la recomandările și strategiile elaborate la nivel european și de către Based on the recommendations and strategies developed at the European level and by the Ministry of Education, higher education institutions in Romania have initiated efforts to strengthen infrastructure, thereby facilitating the digitalization of education, with the primary goal of transcending the traditional level of the educational system.

3. The response of higher education institutions regarding infrastructure in the context of digital education

The „Victor Babeș" University of Medicine and Pharmacy (UMF) in Timișoara will expand its facilities by constructing a new, modern study center dedicated to students and faculty in the commune of Ghiroda, located near the city of Timișoara. The investment, estimated at 25,000,000 euros, involves the launch of a tender on the SEAP platform for the design and execution of the necessary works. The project will be situated on a site measuring 21,000 square meters, and will involve the construction of a structure that will accommodate two amphitheaters, ten seminar rooms, a conference center, an anthropological museum, and an exhibition center. Furthermore, the design will incorporate offices for faculty and scientific staff, two study and discussion rooms, as well as a variety of annexes. The project also includes the construction of a building for educational purposes and a building for accommodation units, along with a gymnasium and sports fields (Agerpres, 2022).

The „Babeș-Bolyai" University (UBB) aims to address most of the current challenges related to digitalization by 2027, committing to become "perfectly adapted and integrated into the digital landscape of society." In this context, the university is developing six strategic directions and operational programs:

1. Education and research
2. Improvement of decision-making processes and administrative simplification through digitalization
3. Digital integration
4. Information and communications technology direction
5. Relationship with the IT business environment
6. UBB Green

Specifically, in the aim of digitalizing education, UBB plans to achieve the following objectives: building authentic databases, migrating to online platforms, perfecting existing digital systems, creating a "red button" feedback system, implementing a system to facilitate access to OER, ensuring high cybersecurity standards, publishing a monthly newsletter, and other similar initiatives (Babes-Bolyai University, 2021).

The **University of Bucharest (UB)** is implementing the "*Digital Transformation Strategy of the University of Bucharest*" for the period 2022-2027, focused on three main

areas: Education, Research, and Administration. This strategy aims to streamline the educational system through a series of specific objectives:

- Adoption of state-of-the-art information and communication technologies to ensure the infrastructure necessary for modern and efficient education.
- Improvement of the quality of educational services through the use of IT&C-supported methods, thus optimizing the teaching and learning process.
- Revision and updating of study programs to include emerging technologies and professions, ensuring the relevance and timeliness of the university curriculum.
- Collaboration with university partners and the IT&C industry to facilitate bidirectional exchange of knowledge and resources, developing programs and outcomes beneficial for students, participants, the university, and partners.

Through these initiatives, UB aims to significantly improve the quality and efficiency of educational processes, consolidating its position in the modern academic and digital landscape (University of Bucharest, 2022).

As part of the "*Grants for the Digitalization of Universities*" program funded through the National Recovery and Resilience Plan (PNRR), the **"Alexandru Ioan Cuza" University (UAIC)** in Iași has secured funding of over 8 million euros for the digitalization of the institution. The aim of this project is to ensure the necessary resources in the field of Information and Communication Technology (ICT) in line with technological progress and new technologies available on the market, through investments in the modernization of digital infrastructure. Additionally, a series of IT services will be modernized and implemented within the university by 2025. The project will create an institutional framework for developing the digital skills of members of the academic community, by updating, developing, and providing training programs in basic and advanced digital skills. Furthermore, IT and communication services will be developed, modernized, and updated to facilitate access to the academic environment and improve the quality of educational and research services by 2025. The project will be implemented over a period of 39 months, with a total value of 40,265,619.21 lei (Alexandru-Ioan Cuza University of Iasi, 2022).

The **"Nicolae Bălcescu" Land Forces Academy (AFT)** in Sibiu continues its digitalization initiative as part of its institutional strategy through the project „*DigitalArmyAcademy: Integrating Digitalized Educational Processes in the Land Forces Academy.*" This project, funded with over 13,417,837.86 lei through the "*Grants for the Digitalization of Universities*" program within PNRR, aims to modernize educational infrastructure and enhance the advanced digital skills of both faculty and military students, in line with European standards for digital competencies. The project aims to:

- Establish a data center;
- Implement IT solutions for digitalizing educational relationships and processes with students;
- Upgrade ten laboratories with state-of-the-art hardware and software equipment, promoting innovative methods of digital teaching and learning (Nicolae Bălcescu Land Forces Academy: https://www.armyacademy.ro/ev_2022_09_23.php).

According to the „*Digitalization Strategy of the **Air Force Academy*****" (AFAHC)**, this institution possesses multiple strengths in the field of digitalization. Students demonstrate

advanced competencies in information technology, and the academy efficiently utilizes an e-learning platform. The management of AFAHC actively supports the digital transformation process and collaborates with international universities on projects related to the digitalization of military higher education institutions. Additionally, the academy benefits from experts in IT&C and internal methodologies and regulations that facilitate the development and use of digital tools.

During the period 2021-2025, AFAHC has established a strategy for the development of digital education infrastructure, which includes 11 objectives, among which are:

- Modernizing and updating infrastructure, as well as connectivity of digital equipment.
- Creating high-quality digital educational content.
- Automating processes and activities within the information system.
- Implementing modern technologies such as artificial intelligence, virtual reality, and augmented reality in the educational process (Henry Coandă Air Force Academy, 2022:66-8).

While the **Naval Academy "Mircea cel Bătrân" (ANMB)** does not publicly disclose its digitalization strategy, its "*Strategic Plan for Institutional Development*" is available, outlining six fundamental objectives for the period 2021-2025. Within the objective of "*Consolidating the culture of quality and ensuring excellence in education*," various action directions related to the digitalization of education from an infrastructure perspective are outlined, such as:

- Improving the digitalization of the educational and training process by updating teaching materials and using interactive digital resources and online learning.
- Increasing the objectivity of assessment processes through the gradual adoption of digital assessment technologies.
- Developing a portfolio of online courses supported by the ADL platform (including courses under the ESDC), to capitalize on institutional potential.
- Transitioning to an electronic library (Mircea cel Bătrân Naval Academy, 2020:7-9).

The mentioned objectives are supported and funded by the project "*Digitalization of the Naval Academy's Infrastructure*" within the PNRR, with a value of 13,071,215 lei (Mircea cel Bătrân Naval Academy, 2022). In 2023, ANMB inaugurated a specialized laboratory, equipped according to international standards, dedicated to the fields of Voyage Planning and Execution, Electronic and Integrated Navigation. This laboratory aims to provide high-quality professional training to all personnel of the institution (Mircea cel Bătrân Naval Academy: https://www.anmb.ro/DigiANMB/events01.html).

The **"Ferdinand I" Military Technical Academy (ATM)** is developing the „*Strategic Plan of the Academy"* for the 2024-2029 term, with only the operational plans for the digitalization of the institution for the previous academic years 2023-2024 being made public. The operational plan for the digitalization of the institution is correlated with the digitalization strategies of the Ministry of National Defense, establishing two main guidelines: the digitalization of educational and research processes; the digitalization of administrative processes.

Within the first guideline, ATM aims to achieve the following objectives:

- Expansion of ATM's virtual library and integration with other university libraries.

- Ensuring online access to the book collection for all academy members.
- Maintenance and utilization of online training platforms in the educational process.
- Completion of the acquisition and operationalization of a new mobile data center.
- Ensuring secure and continuous access to data required for education and research (Ferdinand I Technical Military Academy, 2023: 1-3).

To achieve these objectives, UNAp has obtained funding amounting to 12,867,266.61 lei through the PNRR, aiming to overhaul the institution into a contemporary establishment aligned with the tenets of digital education. From 2022 to 2025, UNAp plans to modernize the digital infrastructure of 12 departments and three laboratories, facilitating the cultivation

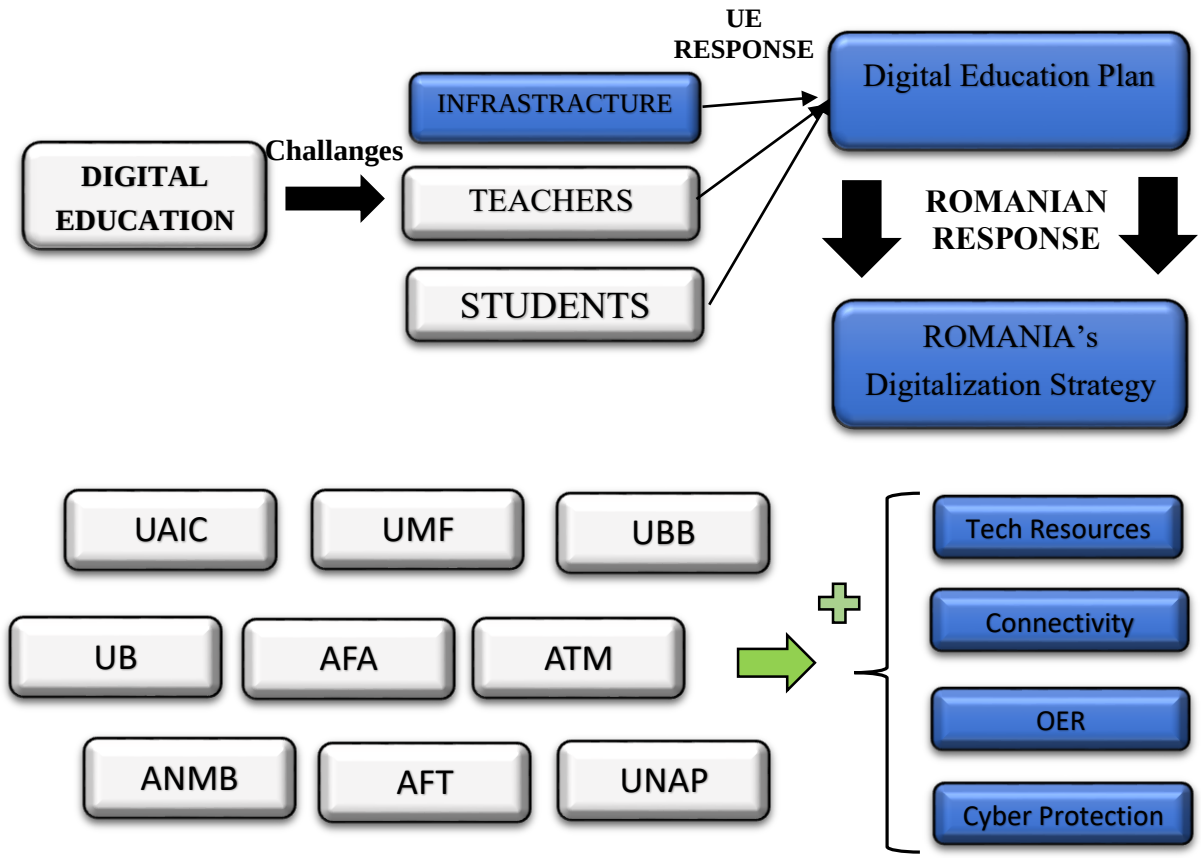

Figure 1: The figure depicting the implications of digital education in the higher education system and the European and national response to the infrastructure-related challenge
Source: author's conception

The **National Defense University "Carol I" (UNAp)** conceptualizes digital transformation as a balance between people, technologies, and processes, aiming to create a digitized educational environment by the year 2027. According to the UNAp Digital Transformation Strategy, three guiding principles are outlined regarding the digitalization of education:

• Expansion and consolidation of ICT infrastructure: The university will improve its ICT infrastructure to provide digital access to all students and staff by 2027.

• Development of applications and IT platforms: The university will create integrated portals and digitize workflows by 2027.

• Implementation of emerging technologies in the educational process: The university will integrate emerging technologies into study programs and support research in this field by 2024.

To achieve these objectives, UNAp has obtained funding amounting to 12,867,266.61 lei through the PNRR, aiming to overhaul the institution into a contemporary establishment aligned with the tenets of digital education. From 2022 to 2025, UNAp plans to modernize the digital infrastructure of 12 departments and three laboratories, facilitating the cultivation of digital competencies among 30 faculty members and approximately 500 students (Carol I National Defense University: https://www.unap.ro/index.php/ro/8-noutati/evenimente/388-investitii-masive-pentru-digitalizarea-unap-carol-i).

Conclusions

In conclusion, the importance of digital education is indisputable in shifting from traditional teaching methods to more modern approaches that cater to current societal demands. This approach enables us to redesign the educational experience as interactive, captivating, and relevant to students' needs, thereby equipping them for their future professional lives. By familiarizing them with cutting-edge technology and preparing them for future obstacles, digital education mitigates the risk of them being left behind by technological advancements. However, digital education confronts three distinct sets of challenges that impact infrastructure, instructors, and students.

Regarding infrastructure, the European Commission has established an action plan that served as the basis for the development of a digitization strategy in Romania. At the institutional level, each university analyzed previously has initiated its own digitalization strategies, most through the PNRR (Ministry of Education – Romania: https://www.edu.ro/digitalizare_universitati_PNRR). By accessing European funds, these institutions have begun to implement measures for the digitalization of education, focusing on the four guidelines established by the European Union and the Romanian government: equipping with technological resources, developing connectivity infrastructure, promoting open educational resources, and strengthening cybersecurity. Moving forward, our objective is to employ a similar analytical methodology in addressing other challenges in the realm of digital education.

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TERRORISM: THE CHALLENGE OF AVIATION SECURITY

R.-C. NICOLAS

Radu-Chiru Nicolas
Politehnica Bucharest National University of Science and Technology, Romania
https://orcid.org/0009-0005-8665-1414, E-mail: nicolas.radu@stud.aero.upb.ro

Abstract: *The paper explores a chronological account of major aviation-related terrorist incidents, including the hijacking of aircraft and attacks such as those on September 11, 2001. These events underscore the vulnerabilities within civil aviation security and highlight the psychological impact of such attacks. This study emphasizes the need for advanced technologies and stringent national and international regulations to combat aviation terrorism. It discusses the evolution of aviation security measures, the importance of a holistic approach involving airlines, airport authorities, security forces, and governmental bodies, and the necessity of information sharing and best practices adoption. Additionally, the paper addresses the economic implications of aviation security, advocating for better data collection and analysis to optimize resource allocation and enhance overall safety. The ongoing development of aviation security strategies, driven by evolving threats and technological advancements, is critical for safeguarding passengers and ensuring the resilience of the global aviation industry against terrorist threats.*

Keywords: *terrorism, aviation, security, aircraft, hijacking, attacks.*

Introduction

As Gerard Chaliand (2018) highlights in ”The History of Terrorism from Antiquity to Daesh’’, the concept of terrorism has ancient roots, with various groups throughout history employing terror tactics to achieve political aims. The term terror (from the Latin terrere - to make to tremble), with the meaning we attribute to terrorism today, was used for the first time during the French Revolution (1789 - 1799), although actions that can be defined as terrorist acts date back from much more distant times.

In Antiquity, the first known empire, the Akkadian, founded by King Sargon of Akkad, used terror to keep subject populations under control, respectively to eliminate revolts.

The term "terrorism," originating from the Latin "terrere" (to cause to tremble), first appeared during the French Revolution, though acts of terrorism date back much further. Ancient civilizations, such as the Akkadian Empire and the Roman Empire, employed terror to control populations and suppress revolts. Over the centuries, various groups, from the Sicarii in Judea to the Nizari Assassins in the medieval Islamic world, have utilized terror tactics to achieve political aims. The evolution of terrorism continued through significant historical events, including the Gunpowder Plot in England and the revolutionary terror in France. In the contemporary era, aviation has become a primary target for terrorist activities due to its potential to cause widespread fear and significant human and material damage.

The ancient terrorists

In the Greek and Roman civilizations, terrorism took the form of tyrannicide (from fr. tyranicide - killing a tyrant). For example, assassination by stabbing of the dictator Julius Caesar (44 \.Hr.) was considered by the majority of Romans a tyrannicide.

The Roman Empire also faced another type of terrorism, the most known and invoked in Antiquity, practiced by the Sicari, a radical faction of the Zealots (from the Greek zelotes - ardent follower). The Zealots were a sect that accepted no other lord but God and used terrorist tactics against the Roman rule, including the Jews considered collaborators of the Romans. In the first revolt against Rome (AD 66-70), Zeolites took control. In the year 73, they preferred to commit suicide rather than surrender the Masada fortress and be killed by the Romans. The Zealots continued to remain a formidable force well into the first part of the following century. A faction of the Zloty, the Sicari killed their enemies in crowded public places (such as the markets), using a double-edged dagger ("sica"). They also distinguished themselves by kidnapping figures from the Jewish community, demanding in return the release of the Sicari prisoners from the Roman prisons, but also by attacking the buildings where the Romans kept records of the taxes collected from the population, thus trying to win the sympathy of the common people.

Sect of Assassins

Representative in the East, during the Middle Ages, was the Nizari sect, whose members executed on command political assassinations or selective crimes, without hesitating to sacrifice their own lives. Soon they were named sect of the Assassins/"Hashhashin" (hasasiyya -consumer of hashish). The assassins were also considered the first suicide terrorists in the world because they killed their victims in public, in crowded places (eg mosques), and they were most often captured and executed. It should be mentioned that there are notes that attest that they still tried to flee the scene, but their chances were minimal or even non-existent. Therefore, the use of the term "suicide terrorists" can be slightly forced.

Moving on to Europe, an example of the use of terrorist means to achieve political goals was the Gunpowder Plot (Wounded Treason), which attempted to blow up the House of Lords in the British Parliament. The attack was prepared by a group of Catholics, as a result of the measures of persecution directed against them, and had as their target King James I. They rented a cellar in the basement of the edifice and stored there a considerable number of barrels of gunpowder. The plot was discovered by an English parliamentarian, who received a letter by which he was warned not to move to the seat of the Legislature. Most of those involved were sentenced to death.

Revolutionary treason

The mentioned examples demonstrate the existence of terrorism in society, in different forms, since ancient times. The French Revolution at the end of the 18th century was a key moment in the evolution of terrorism. At this historical stage the phenomenon acquired the connotations that are frequently associated with it nowadays. The revolutionary terror was manifested by the execution of tens of thousands of people to make the French accept the principles of the Revolution and the new leadership of the state.

A phenomenon that has never been completely eradicated, terrorism has accompanied humanity throughout its evolution, each time managing to transform and adapt to survive. The evidence is the weapons used to spread terror, from the double-edged dagger of the snipers to the materials broadcast in the virtual environment, which manage to induce an individual to commit the ultimate sacrifice. Regardless of the period in which it made its presence felt, terrorism knew how to exploit the lack of adaptability and frustrations of individuals.

Threats to aviation security are constantly evolving, subjecting overall safety to risks that can produce significant human and material damage in all public and governmental sectors, including at the economic level, affecting the safety climate globally. According to Elias B. and Cohn M. (2017) in 'Aviation and Airport Security: Terrorism and Safety Concerns,' the vulnerabilities in civil aviation security have been a significant concern, especially in the wake of high-profile terrorist incidents.

We can review a short chronology of the main attacks:

Aircraft hijacking (also known as hijacking airplane hijacking, skyjacking, airplane hijacking, plane jacking, air robbery, air piracy, or aircraft piracy, the latter term being used in special aircraft jurisdiction in the United States), or simply hijacking, is the illegal seizure of an aircraft by a person or a group. Dating back to the first hijackings, most cases involve a pilot being forced to fly according to the pirate's demands. However, in rare cases, pirates have flown them themselves and used them in suicide attacks – note the 9/11 attacks , in other cases, planes have been hijacked by the official pilot or co-pilot; for example the Lubitz Case.

Unlike automobiles or marine vessels, an aircraft hijacking is not usually committed for robbery or theft. Individuals driven by personal gain often divert planes to destinations where they have no intention of going alone. Some pirates intend to use passengers or crew as hostages, either for monetary ransom or for some political or administrative concessions from the authorities.

Various reasons led to such events, such as the request for the release of certain high-profile individuals or for the right to political asylum (especially flight ET 961), but sometimes the decision to carry out a hijacking can be influenced by a failed private life or financial distress, as in the case of Aarno Lamminparras of Oulu Aircraft Hijacking. In the case of Lufthansa Flight 181, and Air France Flight 139, the hijackers were not satisfied and showed no inclination to surrender, resulting in attempts by special forces to rescue the passengers.

In most jurisdictions around the world, hijacking aircraft is punishable by life imprisonment or a lengthy prison term. In most jurisdictions where the death penalty is a legal penalty, aircraft hijacking is a capital offense, including China, India, and the United States of Georgia and Mississippi. International civil aviation is vulnerable to the manifestation of security risks, as the psychological impact in the event of an attack is major, therefore civil aviation was a first option in the illicit operations of various extremist groups precisely through the lens of this major psychological impact.

In recent years, processes have been initiated at the international level to develop strategies and standards in security applied to civil aviation, generating obligations to adapt the regulations and national institutions/organizations accordingly. Recent European regulations create the obligation to establish concrete institutional responsibilities and impose financing and development decisions (in infrastructure, technology, human resource training, standardization and regulation), to align national civil aviation with community security

requirements. Threats against airports, airlines, aircraft and aviation personnel highlight the fact that terrorist groups view the air transport business as a favorable target for causing destruction and creating fear among the population. The negative effect of hijackings, sabotage and attacks on airport infrastructure was far more profound than any type of attack used against civilians. Air terrorism is a complex phenomenon, which is a concomitant feature of the development of international civil aviation, but also of political unrest around the world.

The article is based on understanding the causes invoked by terrorist groups for committing attacks and the consequences generated after their occurrence. The cases of attacks presented in a chronological order clearly exemplify the evolution of the phenomenon. Thus, the need to develop new technologies, as well as national and international regulations, can be justified to win the fight against these illegal actions. It is important to note that preventing and combating terrorism requires a holistic approach and close collaboration between different actors involved, such as airlines, airport authorities, security forces and government authorities. These actors must share relevant information and adopt security best practices in order to identify and counter terrorist threats before they become operational. During the last decades, the state of affairs in the management of security on board aircraft and the prevention of terrorism has undergone a significant evolution. This development has been driven by a number of factors that have heightened security concerns in the aviation industry.

One of the main reasons that have led to increased concern in this area is represented by the evolution of terrorist threats at the global level. In recent decades, we have witnessed numerous terrorist incidents targeting commercial aircraft, such as the September 11, 2001 attacks on the World Trade Center and the Pentagon, as well as other notable incidents such as the mid-air bombing of Pan Am Flight 103 over the city of Lockerbie in 1988. These incidents showed the vulnerabilities in civil aviation security and generated global concern about the protection of passengers and aircraft against terrorist threats.

In addition to these tragic events, the continued evolution of technology and the increasing accessibility of information have provided terrorists with the tools and resources to plan and execute attacks on aircraft. For example, in recent years, the threat of cyber-attacks on civil aviation systems has arisen, raising additional security concerns.

In response to these threats, the international community has acted quickly and firmly to strengthen security on board aircraft. Strict rules and regulations have been developed and implemented globally under the auspices of organizations such as IATA, ICAO through Annex No. 17 to the Chicago Convention stipulates international standards and recommended practices for safeguarding civil aviation against acts of unlawful interference, EASA (Regulation (EC) No. 300/2008 established a comprehensive framework for civil aviation security, addressing the need for standardized security measures across member states), for example

The National Aeronautical Security Program (PNSA), approved by H.G. No. 1193/2012, outlines essential strategies and protocols to enhance aviation security at a national level These rules imposed mandatory requirements and standards regarding civil aviation security and laid the foundations for a coherent and unified approach to the prevention of terrorism on board aircraft. Another important factor that has led to increased concern in this area is the growing awareness of the importance of aviation security.

Terrorist incidents and attacks on civil aviation have had a significant impact on public opinion and authorities, drawing attention to the need to develop and implement robust strategies to prevent and combat terrorism in the aviation industry. In this regard, the pressure exerted by passengers, non-governmental organizations and the media has led governments and authorities to pay more attention to this aspect and allocate resources and efforts to ensure an adequate level of security.

The Economic Perspective of Aeronautical Security

We have argued that aviation security is not immune to fundamental resource allocation problems. This means that decisions must be made about how to allocate scarce resources efficiently and how to generate the maximum net social welfare. Making such decisions requires data, and despite our best attempts to find and analyze relevant data, we were struck by the lack of available data – and, where data exists, by the lack of consistency and transparency. Future research on aviation security issues could make significant contributions if international standards for the publication, reporting and delineation of aviation security data were developed at both international, national and individual airport analysis levels. We see the potential for more research on measuring outcomes in aviation security (how safe are we?) and for more extensive use of benefit-cost analysis to determine the performance of security measures or programs (groups of measures). But again, data is needed. With more and better data, analysis can help us better understand the cost relationships and economic consequences of different funding mechanisms. Regarding the effectiveness of aviation security, it should be noted that efficiency differs by "effort" and efficiency matters because a more efficient aviation security system can reduce indirect economic costs to society while improving the benefits and overall safety of travelers and of the public. With access to data, I estimate that screening service levels relate to technology investment, human capital investment, and time costs imposed on passengers, airlines, and airports. In terms of financing aviation security, the trend towards increased reliance on security fees levied on air travelers is worrying and unjustified on economic grounds. The reasoning appears to have been, we can fund aviation security with a user charge because air travelers can and will pay; however, this approach does not take into account the external economic costs imposed on aviation and the wider economy.

There appears to be little doubt that the current standard implementation of aviation security at airports around the world will need to change given the projected growth in air travel and the increasing number of passengers passing through airports. Specifically, we cannot continue to operate under the assumption that every passenger is an equal threat to aviation. The shift to risk-based systems is an inevitable consequence of economic pressures exacerbated by current institutions that evolved from hasty decisions following the 9/11 attacks. International industry associations (notably IATA and ACI) have developed and promoted a coordinated movement towards "next generation" aviation security. Working independently until recently, IATA called its vision for aviation security "checkpoint of the future", while ACI developed a concept it called "better security". This year, at the ICAO meetings in Montreal, IATA and ACI announced a memorandum of understanding to harmonize their work and jointly advance the next generation of aviation security, with a focus on "the airline-airport interface, the ability to airport transfer and efficiency".

Conclusions

The challenge is to create a coordinated international evolution of risk-based aviation security. Many of the problems faced at the individual jurisdiction level are compounded by the coordination problems of moving to an international standard model for risk management and adopting new technologies. Such coordination creates incentives like the prisoners' dilemma at the international level. There is an incentive for each nation or jurisdiction to delay the implementation of the new measures to wait and see the outcome of other countries adopting the new model. If all countries follow this incentive, then delay is the result.

A central problem with plans as envisioned by IATA and ACI is the lack of data and analysis with which to measure expected outcomes and net benefits, along with costs and net efficiency changes. IATA and ACI have begun the process of pilot studies, but there are no published results at the time of writing. Another issue concerns the issue of adding new layers of security to existing ones. Future risk-based systems will be a hybrid of new security layers and existing security layers, which involves a reallocation of resources as new layers replace some existing layers while other existing layers remain or are augmented. The degree of complementarity and substitutability between layers will play an important role in determining security efficiency, transfer efficiency and the quality of the passenger experience. Differences in how individual nations choose to design, organize, and implement the security systems of the future will give rise to differences in effectiveness, efficiency, and cost. Thus, we need more data and analysis to better understand exactly how the different layers of security relate to each other and how adding, removing, increasing or decreasing layers would affect the entire system. As argued, the danger is that in the absence of compelling analysis and data, political incentives will push us to add new layers of security with minimal adjustments and without removing existing layers.

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EDUCATION AND PROFESSIONAL TRAINING OF PUBLIC SERVANTS IN THE AGE OF ARTIFICIAL INTELLIGENCE

S. ROSTAȘ

Samuela Rostaș
Faculty of Law and Social Sciences, "1 December 1918" University of Alba Iulia, Romania
E-mail:samuela.rostas@uab.ro

Abstract. *Society is evolving in an era of speed, where the population is eager for knowledge, especially technology, everything that means digitization and especially artificial intelligence. In the context where E-governance has gained momentum, and the use of artificial intelligence in carrying out usual activities is becoming a common aspect, the public services provided by authorities and public institutions must be correlated to meet the needs of society, citizens and the business environment .*
Considering these aspects, through this paper we propose to explore the need for education on certain topics, the professional training of public servants, but also the particular importance of an effective human resources management.
Adapting the administrative system and public development policies to the global changes taking place and to European standards is vital for national well-being. Implicitly, the professional training of public servants, in order to perfect or acquire the necessary capacity and skills, is imperative.

Keywords*: vocational training, public servants, innovation, artificial intelligence, reform, public administration.*

Introduction

The architecture of the administrative system is extremely complex, consisting of a coherent set of structures, institutions, legal regulations and human resources, all of them has a well-defined and extremely important role for the optimal functioning of society.

Within the public administration we can identify two distinct directions, namely the implementation of internal and external policy, and secondly the provision of public interest services. Effective governance and also effective public administration is the key factor of the socio-economic level of the country, the well-being of the citizens and the prosperity of the business environment. It is vital that public authorities and institutions have the ability to adapt to changes and align with European standards and practices.

Through this paper, we propose to explore the need for education on certain topics, professional training of public servants, but also the particular importance of an effective human resources management. As a subsidiary, we propose to create a framework for debates, to identify new directions of professional training for the personnel who carry out their activity at the level of authorities and public institutions, so that through the public interest services provided, public institutions meet the current needs of society civil society, citizens and the business environment. The research methodology used in this paper is based on the observation and interpretation of the legislation related to public administration but

also on the professional training of the staff within the public administration in Romania, national and European legislation and statistical data related to artificial intelligence.

The premises of the research. The impact of human resource management.

Frequently, there have been special situations, in which the Romanian government, but also the governments of other countries, had to face unexpected challenges, reorganize their political agenda, change priorities, take drastic measures and be creative in the solutions adopted or the measures undertaken. The alignment with European standards, Romania's accession to the European acquis and implicitly to the Schengen acquis, in addition to the well-known rights and benefits, the romanian gouvernment also assumed obligations and objectives, which he had to fulfill. At the same time, national political instability, international political differences, wars, the COVID-19 pandemic, cyber attacks on public institutions, were unfortunate situations that represented real tests for all governments, as they were put in unprecedented situations, with major national and international repercussions. As can be observed, the driving force of any authority, institution, in fact of the administrative apparatus itself, is the human resource. The implementation of legislation, of public services that all citizens benefit from, as well as the implementation of public policies for national or local development, directly depends on their capacity and skills. The way in which they fulfill their duties, the determination to achieve their objectives as well as their professional training determines the achievement of the objectives at the institutional level, the socio-economic level of the municipality, the well-being of the community and the prosperity of the business environment at the local level.

Therefore, we can affirm the fact that the management of human resources within public authorities and institutions has a particularly important role in terms of efficiency, the implementation of public policies and the provision of services of public interest; summarily, an effective management of human resources signifies a positive image of the Government, implicitly of public authorities and institutions, citizens satisfied with the services provided and an efficient public administration.

In general, the activity of human resources management involves the activity of staff recruitment and selection, the professional and personal development of staff, administrative activities related to the management of the personnel file and related to payroll (Raymond N., Hollenbeck J., Gerhart. B., 2008). . However, a particular emphasis must be placed on the professional development of all public administration staff, both public servants and contractual ones, because as we could observe, the efficiency of public administration is directly determined by the quality and professional training of the staff from the administrative system. We can draw a **first conclusion**, namely that **an efficient management of human resources means an efficient public administration**, and the implementation of public policies at the central and local level and the provision of services directly depends on the quality and improvement of staff at the level of public authorities and institutions of public interest to meet the needs of citizens. In this way, the quality of public servantsis reflected in the public image that public authorities and institutions reflect in society.

The legal framework for the professional development of public administration staff

Administrative Code (G.E.O. no. 57/2019), in Part IV relating to the Statute of public servants, Chapter V: Rights and duties, allocates a section to this aspect, namely Section 4: Professional training of public servants, regulations that facilitate the training and development of public servants at the administration level public. Thus, for public servants, participation in such programs is a right that they can benefit from and, at the same time, it is also their obligation to improve their knowledge in the field in which they operate " *public servants have the right and obligation to continually improve skills and professional training*." (G.E.O. no. 57/2019, art.458, paragraph(1)), and "*Public authorities and institutions have the obligation to ensure the participation of every public servant in at least one training and professional development program once every two years*" (G.E.O. no. 57/2019, art.458, paragraph(2)),.

Moreover, the Administrative Code establishes the obligation of public authorities and institutions to bear the fees and expenses related to the participation of public servants in training and improvement programs (G.E.O. no. 57/2019, art.458, paragraph(4)),, and at the same time, establishes the obligation of public authorities and institutions to draw up, annually, the Professional Development Plan for public servants (G.E.O. no. 57/2019, art.459, paragraph(1)),, document that will be communicated to the National Agency of Public Servants (G.E.O. no. 57/2019, art.459, paragraph(2)),.

Although public servants are the most visible, and they are the first people with whom citizens interact, representing the interface between citizens and the entire administrative apparatus from public authorities and institutions, citizens dont interact only with public servants but also with contractual staff, local elected officials, high level public servants.

The same regulations apply to contractual staff from authorities and public institutions, participation in training programs being a right and also an obligation. The administrative code specifies, as in the case of public servants, the obligation of public authorities and institutions to draw up, annually, the Professional Development Plan for contractual staff, as well as the obligation to provide in the budget the sums necessary for the payment of professional training programs (G.E.O. no. 57/2019, art.551, paragraph(1)),.

During the mandate, local elected officials have the right participate to professional training programs (G.E.O. no. 57/2019, art.217, paragraph(1)), as well as covering related taxes and costs (G.E.O. no. 57/2019, art.217, paragraph(2)),. Unlike public servants or contractual staff, high level public servants are obliged to attend professional training programs annually (G.E.O. no. 57/2019, art.398, paragraph(3)),.

Having an important role in the management of the public function, the following two institutions must be specified: The National Agency of Public Servants is the romanian public institution of the central administration that ensures the record and the management of the public function and public servants, elaborating the frameworks of competence, policies and strategies, and draft normative acts in the field.

The agency supports the development of a body of professional, well-trained, politically neutral public servants capable of assimilating and acquiring performance standards from the European Union level, in order to make public administration more efficient and improve relations between the administration and its main beneficiaries, the citizens.

Also, it also promotes values such as:

- ✓ Transparency of the administrative act;
- ✓ Honesty and integrity in the exercise of public office;
- ✓ Respect for the citizen and orientation of the public administration towards his needs;
- ✓ Professionalism and innovation in the exercise of the public function;
- ✓ Quality of public services;
- ✓ Impartiality and objectivity in the activity of public servants;
- ✓ Compliance with the norms of professional ethics and deontology;
- ✓ Flexibility, adaptability and dynamism;
- ✓ Effective inter- and intra-institutional communication (www.anfp.gov.ro).

The second one is the National Institute of Administration, that operates in based on HG no. 645/2020, its role being to implement the Government's strategy in order to improve the public administration through professional training of public servants from central and local level, putting the focus on the digitization process in public administration.(www.ina.gov.ro)

The second conclusion we can draw is the fact that there is a legal framework that regulates the training and development of public administration staff, public servants, contractual staff, local elected officials, high level public servants, as well as public institutions that have a role in public service management and professional training, such as the National Agency of Public Servants and the National Institute of Administration. Moreover, **the government, through the personnel policy highlighted above, encourages professional development**.

New directions for professional training of public servants

The society we live in determines how public policies at central and local government level are designed. Given the fact that legislation, programs, public projects are developed for society and the business environment, the public administration must meet these needs, the needs of citizens, society and the business environment, needs that are constantly updated and evolving. Society is increasingly active, eager for knowledge and all that digitization means.

As a result, in recent years E-Gouvernance has gained momentum, experiencing an unprecedented evolution, and the provision of public interest services through electronic platforms, to the detriment of the classic method, is becoming common. Inter-institutional interaction, from institution-to-institution, institution-citizens, or institution-business environment, which would normally have taken place in physical format, today takes place digitally; two-way communication takes place online. Example: the administrative meetings takes place online, local council meetings, or audiences takes place online, citizens can request online certains public services and public servants can deliver them online, the recruitment and selection of public servants is carried out on electronic platforms, the digitization of databases, portals of open data where institutions publish data of public interest and which are thus available to interested persons, for example www.data.gov.ro, participatory budgeting platforms, and the examples can go on.

In the last decades, new paradigms regarding public administration have gained momentum. The european countries took examples of good practice from their neighbors and implemented them. Thus, concepts and public policies related to E-governance, Open Governance or Corporate Gouvernance were implemented in Romania as well.

Researchers and academics have tried to define E-gouvernance, so even with a simple superficial search we can identify a lot of definitions.

E-governance or electronic gouvernance can be interpreted as a way to reform the administrative system, in view of the fact that it uses digitalization, information and communication technology (I.C.T.) and software, through which the public administration carries out its activity and with the help of which public interest services are provided.

The role and objectives of E-government consist of:

- ✓ carrying out the activity in public institutions through digitization;
- ✓ improving the relationship between public institutions and citizens by shortening the time allocated to accessing services of public interest;
- ✓ simplification of administrative procedures;
- ✓ optimization of resources and time;
- ✓ ensuring easy access to information of public interest;
- ✓ increasing the degree of trust in public institutions.

As we can observe, carrying out any kind of activity in public authorities and institutions would be difficult or even impossible without public servants having a set of minimal or basic knowledge related to digitization, or the use of information and communication technology.

The implementation of legislation specific to public administration, the implementation of public policies and the provision of public interest services in this digital era, requires that the public servants must use specific digital techniques and tools, which implies that they must have specific knowledge of them.

At the same time, the concern of researchers, European decision-makers, the business environment and society towards artificial intelligence is noticeable, an aspect that obviously results from:

- ✓ the European Strategy on Artificial Intelligence from April 2018,
- ✓ The white paper on Artificial Intelligence - A European approach to excellence and trust (2020),
- ✓ the development of the National Strategy in the field of artificial intelligence 2024-2027,
- ✓ the activity of the Research Institute for Artificial Intelligence "Mihai Dragănescu" Romanian Academy,
- ✓ the construction of the Cluj Artificial Intelligence Research Institute 2024,
- ✓ the development of master's degree programs in the field of artificial intelligence.

The concept of Artificial Intelligence is described to be as a device that has the ability to imitate human functions such as reasoning, learning, planning and creativity, the use of software and technical systems that can perceive the environment in which it operates and in the same time solve problems by acting to achieve a certain goal. Also, artificial intelligence

implies a set of systems that exhibit intelligent behaviors and take measures, all with a certain degree of autonomy.

Artificial intelligence is considered a central element of the digital transformation of society, becoming a priority for most states, as it is already present in our lives.

The European Strategy on Artificial Intelligence developed by the European Commission in 2018 "*includes fundamental objectives related to* ***the adoption of AI throughout the economy, by the public and private sectors****, the preparation of society for the transformations generated by AI and the supervision of the operation of an appropriate ethical and legal framework, which respond to the EU's technology vision and values*" (National strategy in the field of artificial intelligence, 2024-2027, p.5).

Today, artificial intelligence is frequently encountered in everyday life, for example in virtual assistants that answer questions, translation software, navigation, mobile phones using AI technology, image analysis software, search engines, voice and facial recognition systems.

Artificial intelligence is also used by the private sector, moreover, the private sector is considered to be the promoter of artificial intelligence. In 2023, at the level of the European Union, the average of companies using artificial intelligence is 8%, the highest level being registered in Denmark (15.2%), Finland (15.1%), and the lowest in Romania (1.5%).

At the same time, researchers are studying how artificial intelligence can be used in the field of health, transport, manufacturing, food, agriculture.

The efficiency of the use of artificial intelligence is indisputable, however, we must bear in mind that the benefits come with major risks, which may have consequences that are difficult to fix or irreversible. Thus, aspects such as the protection of personal data, vulnerability to cybernetic attacks, risks such as unauthorized access to sensitive data, excessive reliance on artificial intelligence, technical errors or errors generated by algorithms used by artificial intelligence must be taken into account.

Considering all the specified aspects, correlated with the fact that public administration addresses society, citizens and the business environment, it is easy to understand that public policies, programs, services of public interest must meet their current needs. The public administration, civil society and the business environment must use the same ”language”. Therefore, there is a very high probability that the administration will also use artificial intelligence.

Artificial intelligence can be integrated into the activity of public administration, it can be used to analyze a large volume of data, to identify patterns, trends or relevant information based on which it can anticipate events. It can be used to observe traffic trends, the time interval in which traffic fluctuates, traffic jams, the busiest intersections, weather conditions, and based on the information collected, make recommendations to make road traffic more efficient and improve urban mobility.

It can also be used to provide virtual assistance to citizens, or it can be used to automate repetitive and time-consuming activities.

In the third conclusion, we distinguish a new direction of profesional training and improvement of public servants, namely in the field of artificial intelligence.

Conclusions

Human resources management has a particularly important role. The professional training of public servants directly influences the activity of public institutions, thus the performance of public servants is reflected in the performance of the public institution.

Legislation and public institutions through the prism of public policies adopted, encourages the professional training of public servants. At the level of the European Union, but also at the national level, we can observe the increase in the degree of use of artificial intelligence, the benefits of using artificial intelligence are obvious, but at the same time we must also take into account the associated risks. With regard to the personnel who carry out their activity in public authorities and institutions, public servants, contractual staff, high level public servants, local elected officials, it is not enough that the training and improvement take place only in regard to the specific field of activity, but it would be useful for them to acquire the necessary skills and capacity to use artificial intelligence, through the lens of the public interest services they provide. The inter-institutional interaction, the interaction between institutions and civil society or the business environment, the provision of public interest services will no longer involve the classic methods, but will involve the use of tools or software that correspond to their current needs.

Currently, considerable efforts are being made to reduce bureaucracy, to shorten the necessary time that citizens spend in order to access a service of public interest, to reduce the number of documents used on script. For example, for this purpose, the use of the electronic signature was regulated, and to eliminate " hardcover folder ".

In the near future, public servants should possess basic knowledge and the minimum skills necessary to carry out their work with the help of artificial intelligence, or at least to use the same ”language” as civil society and the business environment, but also to avoid becoming the target of malicious persons or even cyber-attacks. Avoiding the use of artificial intelligence will not rule out the possibility of public authorities and institutions becoming possible targets, which underlines the importance of profesional training of public servants in the field of artificial intelligence. In the end, we reiterate the special importance of profesional training of the personnel from public institutions, and at the same time, we emphasize the need for their training and improvement in the field of artificial intelligence.

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CRIMINAL POLICIES OF THE EUROPEAN UNION IN THE FIELD OF HUMAN TRAFFICKING

N.-A.-T. BURCĂ

Nicoleta-Andreea-Teodora Burcă
Faculty of Juridical and Administrative Sciences, Agora University of Oradea, Romania
E-mail: nicoburca06@gmail.com

Abstract: *Trafficking in persons, like any other crime, generates a negative behavior that affects some people, who in most cases give their consent without realizing the extent of the consequences. Trafficking in human beings implies, in most cases, the carrying out of specific activities on the territory of the victims' state of origin, continued actions on the territory of the destination state, where the criminal activity can be completed or continue on the territory of other states. Thus, the traffic acquires a transnational and cross-border character in the realization of which several people with precisely determined roles are involved and who, through simultaneous or successive actions, collaborate directly in the commission of the act. Human trafficking is a very serious problem both domestically and internationally, which is why the law enforcement authorities of all EU member states should work together to strengthen the fight against human trafficking and to come in support of victims subjected to exploitation.*

Keywords*: trafficking, gang, exploitation, consent*

1. Concepts and definitions

Trafficking in persons is the offense provided for in art. 210 Criminal Code and which consists of "recruiting, transporting, transferring, sheltering or receiving a person, with a view to exploiting him, committed:
a) by coercion, kidnapping, misleading or abuse of authority;
b) taking advantage of the impossibility to defend oneself or to express one's will or the obvious state of vulnerability of that person;
c) by offering, giving, accepting or receiving money or other benefits in exchange for the consent of the person who has authority over that person,
is punishable by imprisonment from 3 to 10 years and the prohibition of the exercise of certain rights.
(2) Trafficking in persons committed by a public official, in the exercise of his official duties, is punishable by imprisonment from 5 to 12 years.
(3) The consent of the person who is a victim of trafficking does not constitute justifiable cause."

2. Classification

Trafficking networks are more often well-organized groups, made up of recruiters, intermediaries, transporters, hosts and the traffickers themselves, whose occupation is to buy victims to use for exploitation. These networks are interest groups that operate according to

predetermined rules, which each member of the organization strictly adheres to, and according to the principle of profit maximization.

By means of the Protocol on the Prevention, Suppression and Punishment of Trafficking in Persons, Especially Women and Children, which is additional to the United Nations Convention against Transnational Organized Crime, human trafficking and the forms in which this crime takes place were defined, considering several aspects, such as: the goal pursued, the characteristics of the trafficked persons, but also of the traffickers, the causes that generated the phenomenon and the social implications. Thus, achieving a classification of human trafficking as follows:

"1. viewed from the point of view of human rights, human trafficking includes slavery, forced labor, violence, abuse of trust, physical and psychological aggression of the person, being fully justified the assessment that human trafficking is a form of slavery at the beginning of the millennium;

2. from an economic point of view, trafficking involves financial interests (huge profits), regional and international networks, the illicit circulation of money (laundering money that comes from trafficking and on the basis of which the trafficking activity is carried out);

3. from the point of view of the origin of the phenomenon, the factors that generate and support trafficking are the extreme poverty of the victims, low educational level, lack of self-confidence, failures in life;

4. from the perspective of damaged social values, trafficked persons are reduced to the condition of "commodity", they are gradually dehumanized, their deepest feelings being damaged, the trauma suffered marking their entire future evolution;

5. from the point of view of social implications, due to the alarming increase in recent years, human trafficking is becoming a national and transnational phenomenon, being favored by the general process of globalization and the use of modern technologies;

6. from the perspective of the intended purpose, trafficking implies huge profits for traffickers, including in the case of trafficking for the purpose of forced labor". (Udroiu, 2017, p. 140)

3. The constitutive content of the crime of human trafficking illustrated by means of a case study

At the beginning of March 2020, while he was on 1 Decembrie 1918 Boulevard in the municipality of Târgu Mureș, near the bus station, in the presence of witnesses M1 and M2, the injured person P.V. she was approached by the defendant I.I., who promised her a job, in Germany, telling her that she would receive a monthly salary of 1000 euros, that her food would be provided, that she would be accommodated in a hotel where she would not have to to pay nothing, and transportation to the location will be provided.

After they arrived at the hotel, according to what was stated by the injured person, the defendant took her identity document, claiming to conclude an employment contract, and after a few more days, the defendant transported her to the territory of France, where he asked her to steal from commercial companies. The injured person stole food from a store that day, and two more days later, also at the defendant's request, he stole a phone from another store. The next day, the defendant asked her to steal a television from a store, but she refused, the defendant cursing and threatening her, which scared her very much.

P.V. she managed to call her cohabitant, who she asked to call the police, so she could return home, because the defendant was taking her to steal.

On May 15, 2020, I.I. abandoned P.V. in a metro station and handed him the sum of 50 euros, because he didn't want to steal anymore, according to what the injured person stated. After being abandoned, she started shouting for the police and was later picked up by a crew.

In order to retain the factual situation described above, the court had in mind the corroborated analysis of the evidence obtained during the criminal investigation through the means of evidence indicated in the content of the referral document, mentioned previously, as well as through the means of evidence administered during the trial, respectively the statement of the injured person and the statements of witnesses M1 and M2.

During the hearing during the criminal investigation, the injured person reported the manner in which he was picked up by the defendant, as it was presented in the actual situation. She specified that, at the defendant's request, she stole twice, namely food from a grocery store, and a mobile phone and claimed that she was verbally assaulted by I.I. when he refused to steal others, a fact that created a state of fear for her.

He also stated that during the time he lived in Germany, he received very little food, which consisted mainly of macaroni, he was not allowed to contact his relatives. In the end, however, she managed to inform her concubine about her situation, who in turn informed the Romanian authorities. Until the date of abandonment, when he refused to commit any more thefts, he did not report to the German authorities because he did not know the language and was afraid of being accused.

The essential aspects regarding the circumstances and the method of committing the deed charged to the defendant, consisting in the collection and exploitation of the injured person, in the sense that he determined the injured person, through mental coercion, to commit thefts for his benefit, were confirmed by the witnesses heard in the case during the criminal investigation and heard again during the trial. Thus, witnesses M1 and M2 were present at the time of the roundup, in the area of the bus station in Târgu Mureș, receiving the same offer, but they refused it. Both witnesses recognized the defendant I.I. from the photograph. as the person who presented them with the job offer in Germany.

From the content of the indictment, it emerged that the defendant I.I. other people have also been scammed by the same operating mode. (Criminal sentence published by the Mureș Court, Criminal Section, on the website of the Supreme Council of Magistracy https://www.rejust.ro/juris/39deed453)

The object of the crime

The main legal object of the crime of human trafficking is represented by the social relations regarding both the right to freedom of will and the right to action specific to each person.

The material object consists of the body of the person on whom the action is performed if this action was carried out by physical coercion or kidnapping. (Diaconescu, 2004, p. 177)

Subjects of the crime

The active subject of the crime of human trafficking can be any person, both a natural person and a legal person, the subject being an uncircumstantial one, in the case presented above being a male person, unmarried and without a stable job.

The active subject of the crime of human trafficking can be any person who meets the general conditions of criminal liability, this being circumstantial only in the case provided for in art. 210 para. 2, namely when the act was committed by a public official. Traffickers are both men and women. In general, the recruiters are young, neatly dressed, and make a good impression, both by outward signs of their well-being and by the success stories they circulate of their own success. These people flaunt a very good material condition, being convincing by presenting attractive employment contracts: positions in Western European countries, very well paid and which do not require special qualifications.

In criminal activity, women represent, in most cases, the first link in the trafficking phenomenon. They very easily capture the trust and interest of young women, taking advantage of their naivety, their lack of life experience, their lack of education and above all their precarious material condition. The traffickers present the young women with fictitious cases of people who went to work abroad and returned with large sums of money after a short period of time. The women who commit such acts were, in most cases, themselves victims of human trafficking. Due to the traumatic experiences they have gone through, they know well the mechanism of trafficking and become very skilled in attracting victims and placing them for the purpose of exploitation. In some cases, women engage in trafficking willingly most of the time, for even higher earnings, but at other times they do this activity under the authority of traffickers who have power over them. As regards human trafficking for the purpose of sexual exploitation, different criminals are involved, on several levels, starting from beginners, who carry out spontaneous, unorganized actions, to international human trafficking chains with a complex degree of organization.

The passive subject is represented by "the person recruited, transported, transferred, sheltered or received, for the purpose of exploitation.", according to art. 210 Criminal Code.

The main characteristic of the vulnerability of the potential victim is the desire to improve poor living conditions and obtain high incomes in a relatively short time abroad.

Regarding "criminal participation, it is possible in all forms, namely: co-authorship, instigation or complicity" (Udroiu, 2017, p. 141).

If the act of trafficking has affected several people, there is a multiple passive subject, and in judicial practice the issue has been raised, from the point of view of legal framework, if the recruitment of several people at the same time and place, based on a single criminal resolution, for practicing prostitution and transporting them abroad in order to achieve material benefits, constitute a crime of human trafficking and pimping, or as many crimes as passive subjects were recruited for this purpose (Bodoroncea, 2016, p. 68).

The material element

According to art. 210 Criminal Code, the material element of the crime consists in any of the following alternative actions: "recruiting, transporting, transferring, harboring or receiving a person".

The phenomenon of human trafficking must be analyzed from the perspective of several aspects, such as:

"Recruitment can be materialized in the proposal made to the victim in the initial phase of the trafficking process. This proposal usually turns out to be a false promise in the end, either related to the object or nature of the work, the destination of the victim's journey, the conditions in which he will be, will be held or work or the place of the activity. Recruitment can be carried out by one or more natural or legal persons, directly or through an advertisement, through the media or the Internet, using one or more of the means listed below.

Transportation involves the placement of the victim by traffickers (intermediaries or transporters) from the place of origin or where the recruitment took place to the place of destination, where the exploitation will take place. It is not mandatory that the transport is carried out across the state border.

The transfer or sale can take place in the situation where the victim is given by the recruiter to an intermediary for transportation and/or further to the natural or legal person for exploitation. The transfer can be accompanied by the payment of a sum of money, material goods or other kind. At the same time, there are also cases when the transfer and/or sale is carried out by the natural or legal person who first exploited the victim, who is transferred and/or sold to another person/group who will continue to exploit her.

Shelter or accommodation can be provided by the recruiter, intermediaries or the natural or legal person who exploits the victim, who can be kept in a home, hotel, improvised premises.

The reception of the person or persons intended for the object of exploitation takes place in the context of the transfer or sale" (Order no. 2353/2008 of the Minister of Justice).

For the existence of the offense provided for in art. 210 Criminal Code, the material element must be carried out by "coercion, kidnapping, misrepresentation or abuse of authority."

Coercion, regardless of whether it is physical or moral, is a way of restricting a person's will, which can be done through threats, violence, or any other means of coercion. The person in question is deprived of the opportunity to freely express and manifest their wishes or interests.

Kidnapping represents that act of deprivation of liberty, by which a person is moved by means of physical or mental violence to another place, against their will.

Misleading is achieved through a deceptive action or inaction whereby a person is ensnared in the trafficking activity against their will for the purpose of exploitation.

Abuse of authority involves the abusive exercise of the de facto influence or legal authority that the trafficker had over the victim (Udroiu, 2017, p. 144).

Another essential requirement of the material element is achieved by "taking advantage of the impossibility to defend oneself or to express one's will or the state of manifest vulnerability."

The impossibility of expressing one's will is that situation in which a person is not able to manifest his desire due to causes of a psychological nature. Thus, that person, although he could defend himself, cannot do so because his will is affected by psychological factors.

Vulnerability can be understood as that visible, express state in which a person is physically and mentally easily attackable, frail, who cannot resist in order to reject the action of the perpetrator to traffic him, abusing the special state in where the person finds himself because of his illegal or precarious situation, or because of pregnancy, an illness or infirmity or physical or mental deficiencies, the victim can be more easily trafficked (Dungan, 2017, p. 216).

The defendant carried out several activities from those included in the incrimination norm, namely he recruited the victim, provided her transport and sheltered her, by misleading her, under the pretext of offering a well-paid job in Germany.

As such, contrary to what was claimed by the defendant, through the ex officio appointed defense counsel, the material element of the crime of human trafficking is realized in the case. He claimed that the state of facts is not circumscribed by the thesis provided by the criminal law, because there would not have been a submission to the execution of a job or the performance of a service in a forced manner, but these aspects do not concern the objective side of the crime but the purpose of its commission. In order for the deed to be considered a crime, the criminal law requires that the activities of recruiting, transporting, transferring, sheltering or receiving a person are carried out for the purpose of exploiting him, it is not necessary that specific exploitative activities have actually existed for the consummation of the crime.

The immediate consequence is the state of danger created for social relations regarding the person's freedom, respect for rights and freedoms, dignity and mental integrity.

Being a crime of danger, the causal link results ex re, from the simple performance of the action that constitutes the material element.

From the point of view of the subjective side, the defendant committed the act with the direct intention qualified by purpose, to exploit the trafficked person and thus obtain material advantages, by psychologically coercing her to steal goods for her benefit, coercion that was achieved by threatening the injured person in the sense that he would suffer. This threat created real fear for the injured person, which was also revealed by witnesses M1 and M2. Thus, during the hearings, they stated that the injured person was crying on the phone and told them that she was being taken to steal. The injured person was brought into the situation of not being able to change his condition, being deprived of freedom of movement, unable to return to the country or leave the locality where he was, due to his lack of knowledge of the German language, the surveillance exercised over him by the defendant and poor living conditions, stating that she received very little food, which consisted mainly of macaroni.

Reported to the concrete situation of the present case, contrary to what was claimed by the defendant, through the ex officio appointed defender, the court found that the exploitation was carried out in one of the five variants provided by the law, respectively by submitting to the performance of services, in the manner forced. The accusation also noted the fact that the exploitation would also have been achieved by forcing the injured person to work, and the defendant would have appropriated the money earned from the work performed by the injured person, but the injured person's statement in this regard is not corroborated with any another piece of evidence, so that it will not be retained by the court.

Related to the above, the court held that the conditions provided by art. 396 para. (2) of the Code of Criminal Procedure - the act exists, constitutes a crime and was committed by the defendant, beyond any reasonable doubt, for which reason he will be sentenced, there being no incident preventing the further exercise of the indicated criminal action by the defendant, through the ex officio designated defense counsel. (Criminal sentence published by the Mureș Court, Criminal Section, on the website of the Supreme Council of Magistracy https://www.rejust.ro/juris/39deed453)

The immediate aftermath

The immediate consequence consists in a state of danger created for the freedom of the victim as well as for the relationships related to the dignity of the person.

Trafficking in persons committed against several passive subjects, under the same conditions of place and time, constitutes a single crime, in continuous form, and not several crimes in competition (Dungan, 2017, p. 122).

Causality link

There must be a causal link between the action taken by the perpetrator and the immediate aftermath, which must be proven.

Conclusions

Trafficking in persons represents a growing and developing phenomenon in recent years, being a real problem both at the national and international level.

Although this phenomenon is global in scope, it manifests itself mainly in less developed areas, with inadequate legislation, which has ambiguous provisions in this field and in areas where cooperation between state and international bodies is less effective.

From the examination of the causes that determine the emergence and growth of the phenomenon of human trafficking in our country, we can conclude: the political-social, cultural changes determined by the transition of the countries from the communist regime to the democratic one, determined a low standard of living characterized by cheap labor.

Given the fact that the main victims of human trafficking are women, we can conclude that there are certain factors that favor this group, for example women are the last to be hired and the first to be fired, they are pushed towards non-conventional sectors of the economy, being much more prey light of these facts.

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THE CONCEPT AND CHARACTERISTICS OF SAFETY MEASURES

P.-G. DANCIU

Patricia-Georgiana Danciu
Faculty of Juridical and Administrative Sciences, Agora University of Oradea, Romania
E-mail: patriciadanciu@yahoo.com

Abstract: *This article deals with an important category of criminal sanctions: safeguards. The fundamental institution of criminal law, criminal sanctions, are nothing more than the effect of criminal liability, this in turn being the legal consequence of committing the crime. Within the framework of criminal sanctions, an important category is safety measures. The defense of society against crimes could not be effectively ensured if only the application of punishments, however severe they may be, both in duration and in the mode of execution, were used for this purpose. The crime must be examined in relation to the man who committed it, and not isolated as an abstract notion, without any connection to social life, and the criminal treatment to be applied must take into account everything that characterizes the person of the perpetrator as described it shows in the present and how it is shaping up in the future. When an act provided for by the criminal law is committed, the investigations carried out in the respective case sometimes reveal, in addition to the gravity of the respective act, some situations, some realities that reveal a danger for the future in terms of the commission of other crimes. In order to solve these "dangerous situations" safety measures were found as a solution.*

Key words*: crime, safety measures, Criminal Code*

1. General safety considerations

"Criminal biology came to the conclusion, then also accepted by the science of criminal law, that it is necessary to introduce into the criminal law some preventive sanctions which, together with the punishments, will bring about the correction of the perpetrators and their readaptation to social life, ensuring in this way , in a more efficient way, the defense of society" (Vasiliu, 1972, p. 574).

Society must not wait for those persons who are likely to commit crimes or acts under the criminal law to disturb the legal order again.

"Therefore, the needs of society's defense required the introduction of some preventive sanctions in the criminal law. In this way, a new realm of fighting crimes was created, which took the name of post-crime prevention, which meant progress in the fight against crime" (Vasiliu, 1972, p. 574).

Preventive sanctions were introduced into the legislation of different states starting from the end of the 19th century and continuing with the 20th century, with the role of complementing the effect of punishments, thus increasing the fighting capacity of society against some criminals or against the mentally ill or drug addicts.

The International Union of Criminal Law has chosen for these preventive sanctions the name of safety measures.

In Romania, safety measures were introduced for the first time through the Penal Code from 1936 as stand-alone measures, different from punishments that can accompany a punishment, or can be applied alone.

In the Criminal Code from 1968, the purpose of safety measures was expressly provided for, which was also preserved in the current criminal regulation:

a) removal of a state of danger

b) preventing the commission of acts provided for by the criminal law.

According to the Criminal Code in force, they can be taken against the persons who have committed unjustified acts provided for by the criminal law, even if the perpetrator is not punished.

Therefore, within the criminal law sanctions, an important category is safety measures (Popoviciu, 2014, p. 421).

2. The concept and characteristics of safety measures

In the fight against crimes, if only punishments were used, this would not be enough, because, first, some criminals could not be punished, for example, irresponsible criminals. To them, instead of punishment, safety measures are applied, for example, medical hospitalization (Oancea, 1965, p. 293).

There are situations where, although offenders are responsible, if they were only punished, they could not be stopped from committing further offences, for example, offenders who have weapons on them or possess certain tools for the commission of the offence.

For these, it is necessary to apply, apart from the punishment, the security measure of the confiscation of these objects.

Defining the safety measures, it was said that "by these are understood certain coercive, restrictive measures, provided by law, applicable by the court to those who have committed acts provided by the criminal law, in which the state of danger is found, measures that are applied instead of or accompanying a punishment, in order to prevent the commission of new crimes" (Bulai, p. 152).

Or, in other words, security measures are light coercive measures, which are applied to those who have committed acts provided for by the criminal law, alone or accompanied by a punishment, in order to remove a state of danger and prevent the commission of new such acts.

They are measures taken against people who present a social danger and who, if these measures were not taken against them, there would be the fear that they will continue to commit dangerous acts in the future.

"The safety measure can therefore only be a post factum or post delictum measure; it appears as a consequence of the commission of an act provided by the criminal law, as a criminal law sanction that the law provides for the commission of such an act in connection with which the state of danger appeared and which is to be removed or reduced with the help of that measures" (Posdarie, 2000, p. 10).

It can be concluded that the safety measures have the following characteristics:

a) The need for safety measures is determined by the prevention of the repetition of dangerous acts in the future (Oancea, 1971, p. 347).

b) They are criminal law sanctions with a primary prevention character, and only subsidiarily with a coercive character.

c) Safety measures are taken against persons who have committed acts ¬provided by the criminal law.

d) They can only be taken if there is a certain state of danger.

3. Purpose of safety measures

From the content of art. 107 of the Criminal Code, it follows that the basis for taking safety measures is the state of danger of the person who has committed an act provided for by the criminal law. Committing a crime or an act provided for by the criminal law is not proof that the perpetrator presents a state of danger, this is only a symptom that shows that he can be dangerous and at the same time the starting point of this state.

There are people who have committed acts provided for by the criminal law for the first time and regarding whom the conclusion could not be drawn that they present a state of danger.

They are recidivist or multi-recidivist criminals, they do not always present a state of danger, and therefore taking safety measures against them does not automatically do so.

In the case of committing a crime, the perpetrator is penalized even if he does not present the danger of committing other acts provided for by the criminal law. Safety measures are taken, however, only if the existence of the state of danger is established.

4. The legal framework of safety measures

The legal framework regulating these criminal sanctions is included in the provisions of Title IV (art. 107-112) of the general part of the Criminal Code in force.

These provisions are the subject of regulations contained in two chapters:

- Chapter I: General provisions
- Chapter II: Regime of safety measures.

There is no regulation of the methods of application and execution of security measures common to all these measures.

"This would otherwise not be possible due to the differences that exist between the various safety measures, the particularities resulting from the different nature of the danger states that justify and impose the measures and that naturally have an impact on their application and execution" (Posdarie 2000 , p. 22).

The security measures regulated in Title IV are general sanctions, which means that they can be taken if a person who has reached the age of 14 and has committed an act provided by the criminal law (Basarab, 1997, p. 294).

They are listed in art. 108 Criminal Code:

a) obligation to medical treatment

b) medical hospitalization

c) the prohibition of occupying a position or exercising a profession

d) special confiscation.

e) extended confiscation.

Obligation for medical treatment is a medical, curative, rights-restrictive measure that can be taken against the person who has committed an act provided for by the criminal law

and which is unjustified when this person poses a danger to society, being forced to undergo medical treatment until he recovers, or until, through amelioration, he is no longer dangerous.

Medical detention is a medical, curative, custodial measure that can be taken against the person who has committed an act provided for by the criminal law and which is unjustified due to a mental or infectious disease or chronic intoxication with a psychoactive substance when this person poses a danger to society, being hospitalized in a specialized health unit until he recovers, or until, through improvement, he no longer poses a danger.

Prohibition of occupying a position or exercising a profession is a security measure restricting rights that can be taken against the person who has committed an act provided by the criminal law and which is unjustified, due to incapacity, lack of preparation or other causes that make him unfit for occupying a certain position, for the exercise of a profession or trade or for carrying out another activity when this person poses a danger to society.

Special confiscation is a patrimonial security measure that can be taken against the person who has committed an act provided by the criminal law and which is unjustified, consisting in the forced and free transfer into the property of the state of some assets used or belonging to it due to the connection with the act committed or due to their nature present the danger of committing similar acts in the future.

Extended confiscation is a patrimonial security measure that can be taken against the person who has committed a crime of a certain gravity and consists in the forced and free transfer into the property of the state of some assets that belong to it if the value of the assets acquired by the convicted person, in - a period of 5 years before and, if applicable, after the time of the commission of the crime, until the date of issuance of the act of referral to the court, clearly exceeds the income obtained by it lawfully and if the court is convinced that the goods in question come from activities criminal.

5. Practical case in which a safety measure of medical admission is applied

Medical hospitalization is a safety measure regulated in art. 110 Criminal Code according to which "When the perpetrator is mentally ill, a chronic user of psychoactive substances or suffers from an infectious disease and poses a danger to society, the measure of hospitalization in a specialized health unit can be taken, until he recovers or until he obtains a improvements to remove the state of danger".

"This security measure is a medical, curative, custodial measure that can be taken against the person who has committed an act provided for by the criminal law and which is unjustified due to a mental or infectious disease or chronic intoxication with a psychoactive substance when when this person poses a danger to society, being hospitalized in a specialized health unit until he recovers, or until, through improvement, he no longer poses a danger" (Neagu, 2021, p. 389). It is an optional measure (Udroiu, 2019, p. 420).

The state in which the perpetrator must be in order to be able to order this security measure against him is clearly specified by law. In addition to the fact that the perpetrator must be sick, this must create the state of danger that he presents.

The serious alteration of a person's psycho-physical capacity and the commission, because of this, of an act provided for by the criminal law highlights his social danger and justifies taking a safety measure against him. By admitting such a person to a specialized

hospital, the danger of committing such acts in the future is prevented and, at the same time, the health condition of the person in question is improved (Vasiliu, 1972, p. 586).

This safety measure is not incompatible with the application of a punishment (Pașca, 2012, p. 464). It is usually ordered against irresponsible persons, but there are situations where, for example, the responsible person is, in addition to the prison sentence, also obliged to undergo medical treatment, which can be replaced by medical hospitalization, in which case the two criminal sanctions will coexist, without they exclude each other (Neagu, 2021, p. 390). I will present a practical example by which the medical hospitalization of the said X., domiciled in the locality Y., was ordered in a specialized medical assistance unit, until he recovers or until his state of health improves, which removes the dangerous condition that determined to take the measure.

The court, based on the analysis of the documents and files of the file, found that the conditions stipulated by the law for the provisional medical hospitalization of the said X are met. It was noted that he beat the female Z. Thus, being on the street, in the context in which he wanted to go to the store to buy a loaf of bread, named X, saw his neighbor, named Z, on a bicycle. She was heading home, passing X-perpetrator on her way. When he approached the perpetrator, he called out to the victim and told her that he had something to talk to her about. The injured party Z. got off the bike in front of his neighbor. He asked her to let him have the bike to go with her to the store. The injured party refused the perpetrator's request, reasoning that he cannot borrow his bicycle because he has luggage, and he cannot carry it in his hands, and also, after leaving the luggage at home, he still has other ways to go, in order to clear more problems. When the injured party refused, the perpetrator pushed her off the bike. The injured party lost her balance, fell, and the perpetrator punched and kicked her until she was unconscious.

In this case, it was established that the act provided by the criminal law is not a crime, because the essential feature of imputability is not met, the suspect not having the discernment of his actions.

According to the medico-legal psychiatric expert report submitted in the case, it appears that X. has a diagnosis of paranoid schizophrenia, he does not have the mental capacity to critically assess the content and socially negative consequences of the act for which he is being investigated.

He has no discernment, and the expert committee recommended the safety measure provided by art. 110 Criminal Code.

During the hearing by the court, the perpetrator showed that his actions were committed as a result of the halving of the dose of medication with which he is being treated.

Bearing in mind that the perpetrator, due to the mental illness he suffers from, presents a danger to society, based on art. 110 Criminal Code in conjunction with art. 315 paragraph 1, lit. it is also art. 246 para. 13 of the Criminal Procedure Code, the medical hospitalization of the said X. was ordered, in a specialized medical assistance unit, until he recovers or until his state of health improves, which removes the state of danger that determined the taking of the measure.

The measure of medical hospitalization is taken by the court that judges the perpetrator for committing the act provided for by the criminal law after a medical examination has been carried out, if it is found that he is mentally ill, a chronic user of

psychoactive substances or suffers from an infectious disease and from this cause poses a danger to society.

The measure is ordered for an indefinite period, but it cannot last longer than the condition exists that generated the danger of repeating a behavior and that determined its taking. The measure of medical hospitalization can be ordered provisionally, during the criminal process or by final decision by the court. The replacement or termination of the safety measure of medical hospitalization occurs when the state of health improves, so that medical treatment is no longer required, either at all, or under hospitalization regime (Neagu, 2021, p. 388). It can be replaced when the disease has improved, with the safety measure of requiring medical treatment.

The medical hospitalization of the mentally ill, chronic users of psychoactive substances or those suffering from an infectious disease is justified by the fact that their mental faculties are altered due to pathological causes, physiological anomalies.

The legislator considers only those diseases capable of seriously altering the psychophysical state of the perpetrator (Dima 2014, p. 649).

According to the law 487/2007, the person with mental disorders is that person who presents mental imbalance or is insufficiently mentally developed or dependent on psychoactive substances, which belong to psychiatric practice, and the person with serious mental disorders is the one who is not able to understand the meaning and the consequences of his behavior, thus requiring immediate psychiatric help (Neagu, 2021, p. 389), for example: paranoid schizophrenia.

The infectious-contagious disease (communicable, transmissible, contagious) is caused by a biological agent (virus, bacterium, mono or multicellular parasite, fungus, insect or prion, a peptide, a protein fraction) against which the attacked organism, in complex circumstances, he is not able to defend himself, for example: syphilis.

Psychoactive substances are established by law. People who consume them tend to introduce increasing amounts of these toxic substances into the body, which cause important physiological changes, creating unusual, euphoric sensations and experiences with serious consequences for mental and physical balance (hallucinations, delirium).

During the execution of the safety measure, these persons are subject to the prescribed medical treatment.

Conclusions

The importance of safety measures is expressly deduced from the purpose established by law and provided for in art. 107 of the Criminal Code, namely the removal of a state of danger and the prevention of the commission of the acts provided for by the criminal law.

The state of danger provided by art. 107 Criminal Code concerns the person of the perpetrator or certain things that are related to the act committed by him and constitute a threat for the future.

Taking safety measures is the result of fulfilling certain conditions:

a) An unjustified act provided for by criminal law must be committed.

b) The perpetrator presents a state of danger.

c) There is a fear that in the future the person will again commit an act provided for by the criminal law.

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CRIMINAL SANCTION OF THE LEGAL PERSON

R.-A. DORNAUER

Reinhardt-Andrew Dornauer
Faculty of Juridical and Administrative Sciences, Agora University of Oradea, Romania
E-mail: dornauerandrew@gmail.com

Abstract: *The criminal liability of the legal person is not a new institution in terms of criminal law, being a necessity of the current times in which legal persons are more and more involved in criminal resolution. Many times, natural persons resort to the moral side of individuals to commit illegal acts or give birth to legal persons aiming to avoid criminal liability through them, by interposing the legal person to the completed act. Thus, the criminal activity of the legal person represents the specific actions of one or more natural persons.*

Keywords*: legal person, punishment, fine, criminal activity*

1. The conditions of criminal liability of the legal person

In order for the legal entity to be held liable, it must meet certain cumulative conditions, have personality and legal capacity, the crimes must be committed in the pursuit of the object/interest of the activity or in the name of the legal entity.

The legal person has an independent organization (Popoviciu, 2014, p. 376). Legal personality consists in the existence of civil rights and obligations that the legal person has and is characterized by the existence of its own patrimony, independent organizations, lawful and moral object of activity, which must correspond to the global interest of society (Barbu, 2016, p. 284). The legal capacity of the legal person is its ability to be criminally liable and bear the effects of the criminal activity. There are categories of legal entities that have legal immunity, they being expressly excluded by the legislator.

According to the provisions of art. 135 C.P., the state and public authorities are exempt from criminal liability for crimes committed in the pursuit of the object of activity or in the interest or on behalf of the legal entity. The state, as an entity, cannot be the subject of criminal liability because it is the one that sanctions natural/legal persons who do not comply with the legal criminal framework, benefiting from general and absolute criminal immunity, but in terms of civil or international liability, the state can be subject.

The commission of the crime in the pursuit of the object of activity or in the interest or name of the legal entity requires that the committed acts do not have an occasional character, but relate directly to the field of activity of the legal entity, to the main activities that it carries out in achieving the purpose for which was constituted. The legal person cannot commit criminal acts, the criminal activity being carried out by one or more natural persons who must have a special connection with the legal person. When committing the criminal act, the subjective side of the legal entity can take the form of intention or guilt, and with regard to the intentional aspect, there must be the decision of the legal entity that is the basis for committing the crime. In the case of crimes caused by fault, account is taken of the obligations that the legal person had but as a result of their non-compliance, the negative consequence occurred.

In order to impute the crime committed to the legal person, it can also be carried out by persons who do not represent organs of the legal person (representatives of the legal person), provided that the latter has knowledge of the criminal activity carried out.

2. Penalties applicable to the legal entity

According to art. 136 of the Criminal Code, the legal person is subject to the main and complementary penalties. Within para. 2 there is only one main penalty, namely the fine, but para. 3 of the same article lists "complementary punishments:
a) Dissolution of the legal entity;
b) Suspension of the activity or one of the activities of the legal entity for 3 months to 3 years;
c) Closing some workplaces of the legal entity for a period of 3 months to 3 years;
d) Prohibition to participate in public procurement procedures for a period of 1 to 3 years;
e) Placement under judicial supervision;
f) Display or publication of the conviction."

As in the case of the natural person, the legal person may be subject to the single main penalty (fine) accompanied by one or more complementary penalties from those listed above, with the exception of security measures (the most common measure being that of special confiscation) which are expressly provided by the incriminating text.

Preventive measures are ordered by the judge of rights and liberties through a reasoned decision given in the council chamber, with the citation of the legal entity, with the mention that they can be ordered for a period of no more than 60 days, being the possibility of extension for a period that does not may exceed 60 days.

2.1. Fine penalty regime for legal entities

Within the art. 137 C.P. the only main penalty applicable to the legal person is defined as the amount of money that the legal person is sentenced to pay to the state. The amount regarding the penalty of the fine is established through the system of fine days, a fine day worth between 100 and 5,000 lei. When individualizing the penalty of the fine, the court must initially establish the number of days-fine, taking into account the general criteria for individualizing the punishment and later the court establishes the value of a day-fine taking into account the turnover, respectively the value of the patrimonial asset, as well as other obligations of the legal entity. ” The special limits of fine days are between:
a) 60 and 180 days-fine, when the law only provides for the penalty of a fine for the offense committed;
b) 120 and 240 days fine, when the law provides for a prison sentence of no more than 5 years, single or alternatively with a fine;
c) 180 and 300 days-fine, when the law provides a prison sentence of no more than 10 years;
d) 240 and 420 days-fine, when the law provides a prison sentence of no more than 20 years;
e) 360 and 510 days-fine, when the law provides for a prison sentence of more than 20 years or life imprisonment."

It should be mentioned that the legislator provides for the application of an increased sanction in case the legal person had in mind, when committing the act, the obtaining of a patrimonial benefit, thus the special limits of the days-fine provided by law for the crime committed can be increased by one third, without exceeding the general maximum of the fine.

2.2. The regime of complementary penalties applied to the legal person

2.2.1. Dissolution of the legal entity

The complementary penalty of dissolution is a capital sanction, and by applying it, the legal person loses both its capacity and legal personality, which can be compared to a "death penalty" because it effectively terminates its legal existence (Udroiu, 2017, p . 395).

Within the art. 139 C.P. the cases in which such a "sanction" is justified are listed:

a) The legal person was established for the purpose of committing crimes;

b) His object of activity has been hijacked for the purpose of committing crimes, and the punishment provided by law for the committed crime is imprisonment for more than 3 years;

c) In case of non-execution, in bad faith, of one of the complementary penalties provided for in art. 136 paragraph 3 letter b-e."

2.2.2. Suspension of the activity of the legal entity

The suspension of the activity or one of the activities of the legal person represents the prohibition of that activity of the legal person in the performance of which the crime was committed.(https://www.umk.ro/images/documente/publicatii/conferinta2013/vasile_pavaleanu.pdf) This complementary punishment can be ordered for a period not exceeding 3 months, because it would undoubtedly generate the de facto cessation of the existence of the legal entity and lead to the creation of unfavorable situations for third parties involved in the activity of the legal entity (e.g. employees , beneficiaries) who cannot be blamed for the criminal activity.

2.2.3. Closing some work points of the legal entity

According to art. 142 C.P. "the complementary punishment of the closure of some workplaces of the legal entity consists in the closure of one or more of the workplaces belonging to the profit-making legal entity, in which the activity that led to the crime was carried out."

2.2.4. Prohibition to participate in public procurement procedures

This penalty consists in the exclusion of the possibility of taking part, directly or indirectly through interposed persons or subcontracts concluded through them (Jurma, 2019, p. 134), in the procedures for awarding public procurement contracts provided for by law and can be applied for a period from 1 to 3 years.

2.2.5. Placement under judicial supervision

Placement under judicial supervision consists in the appointment by the court of a judicial administrator or a judicial trustee who will supervise, for a period of 1 to 3 years, the conduct of the activity that caused the commission of the crime, having the role of a supervisor and without is involved in the administration of the legal entity, but only the obligation to notify the court in case it finds that the legal entity has not taken the necessary measures in order to prevent the commission of new crimes.

2.2.6. Display or publication of the judgment of conviction

This punishment aims to protect the possible future beneficiaries of the services offered by the legal entity as well as to inform the company about the activity of the legal entity, having a general preventive nature regarding business relations.

Sanctioning the legal person with the main penalty accompanied by the complementary penalty

In the following case, I reported the court decision by which the defendant legal entity was sentenced to the main penalty of a fine accompanied by the complementary penalty of publication of the conviction.

In fact, the defendant S.C. EF 12345 S.R.L., in the period January 2016 - August 2019, in the performance of its object of activity, in order to evade the fulfillment of fiscal obligations, declared and recorded in the accounting records unreal purchases from several supplier companies on the basis of which it illegally deducted VAT in the total amount of 134,029.64 lei and evaded the payment to the consolidated state budget of a profit tax in the amount of 111,948.16 lei.The checks carried out in the case during the criminal investigation established that the defendant S.C. EF 12345 S.R.L., in carrying out the object of activity, registered and declared purchases from various commercial companies based in Oradea, but these purchases do not correspond to reality, an aspect highlighted by the evidence administered in the case, the approach aimed at reducing the obligations owed to the consolidated state budget .

Specifically, from the evidence administered in the case it appears that during the period that is the subject of the criminal action, a number of 50 commercial companies appear as suppliers in the records of SC EF 12345 SRL, but these commercial companies did not confirm the transactions fictitiously recorded in the records of the defendant legal entity .Therefore, the active subject of the crime of tax evasion is the part of the fiscal law relationship, being the criminal liability, as the author of the crime of tax evasion, of both natural persons and legal persons to the extent that the acts are committed in the name and in the interest of the latter.

As regards the defendant legal entity S.C. EF 12345 S.R.L., the court found that the evidence administered in the case confirms the accusation made by the prosecutor against him, this in the conditions where it is as clear as possible that the crime of tax evasion that is the subject of the criminal action was committed in the interest of the legal entity that has the capacity of defendant in the case. Thus, the active subject of tax evasion offenses brought to trial cannot be only natural persons who have attributions, responsibilities regarding the highlighting in official accounting documents of commercial operations and realized incomes, but the S.C. taxpayer himself. EF 12345 S.R.L. and only as a result of this liability, his representative. Given that the criminalization of tax evasion punishes failure to fulfill tax obligations, it is natural that the active subject of the crime should be, mainly, the subject to whom these obligations fall, the taxpayer who owes taxes and fees motivated by the fact that the tax evasion action and taxes benefit primarily the legal entity - debtor of the obligation - in the present case, S.C. EF 12345 S.R.L. and, in the alternative, to the natural person who contributed to its execution, in this case the de facto administrator of the company. In reference to the legal entity SC EF 12345 SRL, the court finds that it can have the status of an active subject of the crime of tax evasion as long as the criminalization of this crime sanctions the failure to fulfill fiscal obligations and the company has these obligations, of paying taxes and fees . In addition, the court notes that the evasion of the payment of fees and taxes primarily

benefits the legal entity, debtor of the obligation, and, subsidiarily, the natural persons who contributed to its fulfillment, in this case, the person who carried out specific administration activities, in this case the de facto administrator of the company.

Under the aspect of the objective side of the crime, it consists, in the case of the alternative variant of committing the act of tax evasion, provided for by art. 9 para. 1 lit. c from Law no. 241/2005, in the highlighting, in the accounting documents or other legal documents, of the expenses that are not based on real operations or the highlighting of other fictitious operations, specifically the fraudulent reduction of the taxable base when the object of taxation is the value of a certain good, the amount of an income or an income-generating activity or an operation. In the present case, as it appears from the evidence administered both during the criminal investigation and during the trial, we are in the presence of expenses that are not based on real operations, for which fictitious supporting documents were issued in the name of commercial companies who at the time of issuing these documents were either no longer engaged in commercial activity, or had another object of activity, not knowing that these apparently justifiable documents had been issued in their name.

In the case of the offense provided for by art. 9 para. 1 lit. c from Law no. 241/2005, under the aspect of immediate follow-up, the court finds that the law does not require the production of a materialized result in a damage for the qualification of the deed as a crime. As such, it can be appreciated that the analyzed crime is a crime of danger, being sanctioned by the legislator simply endangering the social value protected by the norm of criminalization. In the case referred to the judgment, the immediate consequence consisted in the creation of a state of danger for the social relationship protected by the norm of incrimination, a state of danger materialized in the reduction of fiscal obligations to the state - the amount of 134,029.64 lei as VAT and the amount of 111,948, 16 lei as profit tax.

From the subjective aspect, the crime of tax evasion inferred in the judgment is carried out with intention, being qualified by purpose, namely that of evading the fulfillment of fiscal obligations. From the analysis of the administered evidence, it follows, without a doubt, that the defendants acted with direct intention in the sense that they foresaw the result of their actions and followed its occurrence by committing the act, acting according to art. 16 para. 3 lit. a from the Criminal Code. Regarding the retention of the continued form of the crime, the court considers that the crime is continued when a person commits at different time intervals, but in the realization of the same criminal resolution, actions or inactions that represent, each separately, the content of the same crime.

In the present case, the defendant committed the acts on the basis of a single criminal resolution, which was outlined in general terms from the beginning of the criminal activity, resulting from the registration of some fictitious purchases in the company's accounting records in the period 2016 - 2019, the existence of time intervals between the successive actions/inactions and the existence of the same criminal purpose – evading the fulfillment of fiscal obligations. The court, based on art. 9 para. 1 lit. c from Law no. 241/2005 with the application of art. 35 para. 1 of the Criminal Code, sentenced the defendant SC EF 12345 SRL to a penalty of 19,000 lei criminal fine for committing the crime of tax evasion, committed in continuous form (50 material documents) - 190 days fine established according to the provisions of art. 137 para. 4 lit. c from the Criminal Code; 100 lei, the value of a day's fine established according to the provisions of art. 137 para. 2 of the Criminal Code.

When determining the amount of a one-day fine, the court takes into account the current legal situation of the company, being in the liquidation of the assets, but also the data regarding the defendant's financial situation in the period 2019 - 2021 as they result from the certificate issued by ONRC with regarding the situation of the accused S.C. EF 12345 S.R.L. – tabs 171 – 173, court file, volume II. Based on art. 9 para. 1 of Law no. 241/2005 and art. 138 para. 2 of the Criminal Code, will apply to the defendant legal person the complementary punishment provided by art. 136 para. 3 lit. f of the Penal Code, respectively the publication of the device of the sentencing decision, at the expense of the convicted legal entity, in a local newspaper, in the number of 3 appearances, under the conditions established by art. 138 para. 4 of the Criminal Code (Criminal sentence published by the Bihor Court, Criminal Section, on the website of the Supreme Council of Magistracy https://rejust.ro/juris/ee33g4e6e)

Conclusions

The criminal liability of the legal person is a delicate subject due to the complex nature of the situations in which it is involved. They are found more often in areas that are supposed to be tax havens, where the legislator has imposed a precarious legislative basis, leaving room for interpretations.

In judicial practice, in many cases in which legal entities were involved, only the civil liability of the legal entity was engaged, thus only being obliged to make compensatory payments. An argument of this practice is the fact that in order to apprehend a crime, even if it was committed by the legal person through an action or inaction, the presence of a human substrate is necessary, namely the decisions taken by an individual or group of individuals. Thus, most of the time the criminal liability of the natural persons responsible for the administration of the legal persons and not of the entity is involved, for example the cases where the companies facilitate acts such as tax evasion, money laundering, etc., in which of the several times only the administrators were held criminally liable, because the court considered that the main perpetrators who had the capacity of active subjects were the administrators, the legal person being only a screen used by them to mask the commission of illegal acts. On the other hand, this judicial practice can also be understood because in the case of many legal entities there are employees who are in good faith and carry out their activity in accordance with the law, having no involvement in the criminal phenomenon, thus it would be immoral for the respective natural persons to feel the repercussions of a sanctions to which the legal person was subjected, so most of the time the court opts for the joint criminal liability of the natural person and the legal person.

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THE CONCEPT, CONDITIONS AND FORMS OF GUILT

O.-M. MARIAN

Oana-Maria Marian
Faculty of Juridical and Administrative Sciences, Agora University of Oradea, Romania
E-mail: oanamarian31@gmail.com

Abstract: *In the legal context, intention represents the mental state of the perpetrator at the time of committing an act and can be classified into several forms. Direct intention involves actions with an explicit purpose, while indirect intention involves anticipating consequences and eventual intention involves accepting the risk of an undesirable outcome. A specific form, outdated intent, occurs when the perpetrator sets out for an outcome, but the consequences significantly exceed initial expectations. These concepts are fundamental in assessing legal responsibility and the degree of guilt within the legal system.*

Keywords: *guilt, intention, fault, forms, factors.*

Introduction

This paper will present all forms of guilt, each of which is presented in detail.

In the legal field, the concept of guilt plays a crucial role in defining individual responsibility for committing crimes and determining appropriate sanctions. Guilt is often a central element of criminal justice systems and is closely linked to the idea of culpability. In a legal context, guilt refers to the degree to which a person is responsible for or aware of a crime.

Legal systems around the world often base their principles on the presumption of innocence, where the accused is presumed innocent until proven guilty. Guilt is assessed before the court where prosecutors must prove beyond reasonable doubt that the accused is guilty of the act. In this context, guilt is often defined in legal terms and criteria may vary depending on the specific legal system and legislation in force.

The concept of guilt

Understanding the term "guilt" in the legal context involves examining in detail the psychological and normative aspects related to the anticipation and consequences of an act committed by an individual as well as the legal attribution of this act to the person responsible.

-Guilt (psychological aspects):

Psychological guilt refers to the mental state of the perpetrator at the time of committing the crime. It is associated with intent or awareness of the wrongfulness of the act. The analysis of psychological guilt involves evaluating aspects such as intention, knowledge and the capacity for discernment of the individual during the commission of the act. It can also explore circumstances that may influence the degree of guilt, such as impulsivity or psychological challenges faced by the perpetrator.

-Imputability (Normative aspects of guilt):

Imputability refers to the individual's ability to be subject to criminal responsibility for the act committed. This dimension focuses on normative criteria such as age, mental health and the ability to understand the nature and consequences of the act. The assessment of imputability is based on legal and psychological standards that determine whether the individual concerned can be considered guilty for the purposes of assigning legal responsibility for the crime committed. In this context, psychiatric expertise and other means of assessing the mental capacity of the perpetrator can be explored (Barbu, 2022).

Conditions of guilt

1. Factors of guilt

Conscience or intellective aspect implies the ability of the perpetrator to anticipate the consequences of his deed. The defining characteristic of the perpetrator is the ability to foresee ("foreseeability") the consequences of the act, not necessarily the fact that the perpetrator concretely anticipated the consequences of his act. More precisely, the evaluation of the intellective factor does not focus exclusively on what the perpetrator actually knew, but also includes that knowledge that should have existed - that is that knowledge that a normal and diligent person would have had in a similar situation (Guiu, 2012).

The volitional will or aspect implies the freedom of will and action of the perpetrator indicating that he must carry out the impugned action or inaction of his own free will without being constrained by another person or external factors (Barbu, 2022).

2. Forms of guilt

Guilt implies a certain mental state of the perpetrator in relation to the socially dangerous action or inaction and its consequences. Thus, the perpetrator may or may not anticipate the socially dangerous outcome, may or may not pursue those consequences, thus creating the conditions for various forms of guilt. For there to be guilt, the law requires the act to be committed in three distinct ways: intentionally, culpably or with outdated intent. However, with regard to the criminalisation of acts in criminal law, the rule established by legislation is rare. More specifically, the law predominantly states that acts must be committed intentionally. Acts committed through negligence or with exceeded intent are less common in criminal regulation. This distinction emphasizes the importance of intent in guilt analysis, highlighting that most criminal acts are governed by provisions that require the perpetrator's knowledge and willingness to do so. At the same time, it is emphasized the rarity of situations in which guilt can be attributed to the act committed through negligence or with an outdated intention within the legal norms (Barbu, 2022).

Forms of guilt

1. Intention

In order to establish the existence of intention, the legislature requires not only the provision of the action, but also a certain mental attitude towards its result: its express pursuit or acceptance. In this aspect, we can distinguish between two forms of intention: direct intention and indirect intention.

a) Direct intention:

Direct intention or direct mourning occurs when the perpetrator anticipates the outcome of his act and explicitly intends for it to occur. For example, the person who

commits a theft acts with direct intention or shoots a gun at the victim from a very close distance. In direct guilt, only one outcome, which is both possible and inevitable, is always anticipated namely the death of a person taking as an example the crime of murder (https://legeaz.net/dictionar-juridic/formele-vinovatiei-si-gradele-culpei). Example: A person fires a gun at another person with the clear intention of harming or killing them.

b) Indirect intention:

According to the provisions of the Criminal Code, when the perpetrator commits actions which by their nature or manner of execution, are capable of producing in concrete terms several consequences (some even licit), consequences to which the perpetrator is indifferent and lets them occur certainly, not acting to prevent them, a specific form of guilt emerges. In this situation, it is possible that the main consequence envisaged by the perpetrator is lawful and only subsidiary consequences are dangerous and illicit. However, if the perpetrator is aware and foresees these consequences, he will respond in the form of guilt of indirect intention. If through the complete inaction of the perpetrator, the foreseen consequences, whether main or incidental or inevitable, materialize the form of direct guilt will be retained. In the case of indirect intention, there are always two possible outcomes with the intervention of chance. For example, in the case of the crime of murder, indirect intent can occur when someone applies multiple blows to a person and then leaves them on the street in the hope that they will be discovered by someone. Therefore, two situations can occur: either the person dies or is discovered and survives (https://jurisdictie.wordpress.com/tag/intentie-directa/). Example: An individual applies repeated blows with the intention of hurting without having a specific purpose, but being aware that it can cause significant harm.

2. Guilt

Fault is a legal concept that refers to civil or criminal liability for negligent or reckless action causing damage or damage. It is the opposite of intention.

Form of guilt, provided for in the head. I, t. II, art. 16 al (4), C. Pen,. "The act is committed by negligence, when the offender foresees the result of his act but does not accept it, believing without reason that it will not occur; when the offender does not foresee the outcome of his act although he should and could have foreseen it. It can be: fault with foresight, simple fault, recklessness, carelessness" (Criminal Code of Romania).

a) Fault with provision

For example, there is fault with foresight in the case of a driver who although driving a vehicle with a faulty braking system, drives on the public road, relying on the idea that by maintaining a low speed thorough signalling and use of the parking brake, given his rich experience as a professional driver, he will be able to avoid an accident. However, if an accident occurs resulting in the death of a person, the driver will be liable for manslaughter (according to Art. 192 C. pen.), given that he anticipated the outcome of his act, but did not accept it, hoping without reason that it would not materialize (Barbu, 2022).

The common element of this method of fault, compared to the modalities of intention, consists in foreseeing the socially dangerous outcome. The key difference, however lies in pursuit and acceptance. In the case of intention, the result is pursued or accepted, whereas in the fault with foresight, it occurs without the perpetrator explicitly accepting this possibility. Thus, the distinction is made in relation to the acceptance or non-acceptance by the

perpetrator of the socially dangerous result produced. This difference, being related to the mental attitude of the perpetrator can be difficult to establish even by analyzing in detail the concrete circumstances of committing the act (Barbu, 2022).

b) Simple fault

The easiest way to fault is simple fault or negligence. According to art. 16 (4), b) of the legislation "the act is considered to have been committed through negligence when the perpetrator does not foresee the outcome of his act, although he could and should have anticipated it."

A common example of simple fault would be a traffic accident caused by non-compliance with traffic rules or insufficient attention on the part of the driver. In cases of simple negligence, the perpetrator did not concretely foresee the results of his act, but due to his negligence or recklessness generated socially dangerous consequences.

Legislation differs in specific standards of culpability in different jurisdictions, but in general simple fault is often assessed against the average standards of care and attention of a rational person in the same situation. It is important to note that simple fault can be a relevant factor in establishing a person's civil or criminal liability for their actions.

Other classifications of fault may also be: "culpa lata, culpa levis and culpa levissima" (Barbu, 2022).

3. Outdated intention

It represents the 3rd form of guilt

"Outdated intent" is a specific form of intent in the legal context. This form of intent refers to a situation where the perpetrator, during the commission of the act, seeks an outcome, but the consequences of the action significantly go beyond what was originally foreseen or desired. It is characterized by the fact that the subject of the crime foresees and desires or accepts the occurrence of dangerous consequences, but a more serious outcome occurs that he did not foresee, but should and could have foreseen.

Crimes that can be committed subjectively with intent are provided for by criminal law.

Example: hitting or injury causing death which consists of an act of striking which results in bodily harm intended and desired by the offender, committed with direct intent, but as a result of the injuries caused a more serious result (death) which the offender did not foreseen, but could and should have foreseen it: the offender hits the victim who becomes unbalanced, falls, bangs his head against a blunt body and dies (Popoviciu, 2020).

Conclusions

There are several types of guilt recognized in the legal field such as intentional guilt (when the act was committed knowingly), negligent guilt (when the individual acted negligently or failed to comply with certain precautionary standards) and other specific forms depending on applicable law and case law.

In the judicial process, the determination of guilt is often accompanied by analysis of mitigating factors or exonerating circumstances which may influence the court's decision on the measure of punishment. Also, the idea of guilt can evolve over time with the development of criminal law and social changes, reflecting the adaptation of legal systems to the evolving values and norms of society.

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RECIDIVISM – A FORM OF MULTIPLE OFFENSES

O.-D. MOCAN

Oana-Diana Mocan
Faculty of Juridical and Administrative Sciences, Agora University of Oradea, Romania
E-mail: oanadianam@yahoo.com

Abstract: *The notion of multiple offenses is regulated by the current Criminal Code in Title II concerning the offense, Articles 38-45, and encompasses three forms: the concurrence of offenses, recidivism, and intermediary plurality. Among these forms, recidivism is regulated by Article 41 of the Criminal Code. According to this article, "recidivism occurs when, after a final conviction to a prison sentence of more than one year and until rehabilitation or the expiration of the rehabilitation term, the convict commits a new offense with intent or aggravated intent, for which the law prescribes a prison sentence of one year or more. Additionally, recidivism also occurs when one of the penalties is life imprisonment." (Florin Streteanu, 2010). The issue of recidivism generates interest in the current landscape due to the enormous expenses incurred by the justice system in this regard and the consequences this phenomenon has on society. The public perception of recurring criminal behaviors and prolonged sentences is associated with a reduction in the chances of social reintegration for inmates.*

Keywords: *Criminal Code, offense, recidivism, post-conviction recidivism, post-execution recidivism, recidivist, recidivism, penalty*

I. Introduction. Concept. Legal Basis

From an etymological perspective, the notion of "recidivism" comes from the Latin term "recidivus," meaning "relapse," and in a broad sense, "recidivism" means "the repetition of a phenomenon after its apparent disappearance," (Mateut, 1997) i.e., "the reiteration of offenses." (Mateut, ”Recidiva în cazul persoanei fizice”, 2007)

Regarding recidivism, the New Criminal Code has introduced new elements both in terms of the definition and terms of recidivism, as well as the penalty, compared to the regulations in the 1969 Criminal Code. Thus, the principle of relative recidivism has been retained, but the terms of recidivism have been modified to increase their limits, and minor recidivism has not been regulated, as it no longer justifies itself due to not revealing the same danger as major recidivism.

In doctrine, recidivism is considered a mandatory aggravating cause of the penalty, and for this reason, it does not constitute an aggravating circumstance, does not enter into the abstract or concrete content of the offense, and does not serve for the legal classification of the act (V. Pașca).

Regarding the sanctioning treatment of recidivism, it differs from that in the old Criminal Code, being regulated by arithmetic accumulation in the case of post-conviction recidivism and by increasing the special limits of the penalty by half in the case of post-execution recidivism.

Recidivism is an institution of criminal law that is regulated by the provisions of Article 41 of the Criminal Code. The New Criminal Code regulates the existence of the state of recidivism differently, depending on whether the active subject of the offense is a natural or legal person.

Recidivism is "a basic form of multiple offenses, consisting of the commission of a new offense by a person who has been definitively convicted for another offense." (Bulai, 1997) Recidivism exists when, after a final conviction to a prison sentence of more than one year and until rehabilitation or the expiration of the rehabilitation term, the convict commits a new offense with intent or aggravated intent, for which the law prescribes a prison sentence of one year or more. Additionally, recidivism also occurs when one of the aforementioned penalties is life imprisonment.

To establish the state of recidivism, consideration is also given to the conviction pronounced abroad if the act is also provided for by Romanian criminal law and if the conviction has been recognized according to the provisions of Article 41, paragraph 3 of the Criminal Code.

Recidivism is conditioned by both the existence of a prior definitive conviction of the offender and the commission of a new offense with intent by the offender. The prior definitive conviction and the new offense committed represent the constitutive elements of the state of recidivism, called "terms of recidivism," and determine its modalities.

Recidivism is a socio-criminological phenomenon with a relatively widespread, stable, historical-evolutionary, and juridical-criminal character, expressed through the totality of offenses committed in a certain territory, within a determined period, by persons with criminal records (Simionescu, 2011).

The resumption of criminal activity after a definitive conviction for a previously committed offense leads to a more energetic repressive reaction and the exclusion of recidivism from the benefit of certain acts of clemency. (Poenaru, 1982)

II. Forms of recidivism

A final conviction for an offense and the commission of a new offense represent the elements of recidivism, which is a form of multiple offenses. These elements are known in specialized literature as "the two terms of recidivism." (Basarab, 1997). Thus, the first term of recidivism consists of a final conviction to a custodial sentence, and the second term consists of committing a new offense.

The forms of recidivism represent the manner in which recidivism concretely manifests itself, in relation to the variations to which the two terms of recidivism are subject. These differ from each other by their concrete content, which influences the assessment of the social danger posed by recidivists.

Recidivism can take various forms and modalities, depending on the relationships between the two terms. The new Criminal Code has adopted the systems of general recidivism, temporal recidivism, relative recidivism, and international recidivism.

The new Criminal Code does not explicitly regulate post-conviction and post-execution recidivism but still stipulates the legal conditions for recidivism after conviction and those for recidivism after execution, as well as their penal regime.

The current Criminal Code regulates the existence of recidivism differently, depending on whether the active subject of the offense is a natural person or a legal entity.

Based on the timing of the new offense after the prior conviction, specifically before or after the execution of the sentence, recidivism has two forms: post-conviction recidivism and post-execution recidivism.

Post-conviction recidivism is also known in criminal doctrine as "fictitious recidivism" or "formal recidivism," whereas post-execution recidivism is known as "real recidivism."

Depending on the nature of the offenses constituting recidivism, two categories are distinguished: general recidivism and special recidivism.

Recidivism is general when its existence is not conditioned by the nature of the committed offenses, and it is special when its existence is conditioned by the commission of offenses of the same kind or nature.

Depending on the gravity of the first conviction, recidivism can be absolute or relative.

Recidivism is absolute when its existence is not conditioned by the gravity of the first conviction or by the severity of the penalty prescribed by law for the newly committed offense or by the form of guilt with which the offenses are committed.

Recidivism is relative when its existence is conditioned by a certain gravity of the penalty pronounced for the first offense, or by the severity of the penalty prescribed by law for the newly committed offense, or by the form of guilt with which the offenses are committed.

Depending on the time elapsed between the execution of the penalty for the previous offense and the commission of a new offense, recidivism can be permanent or temporary.

Recidivism is permanent or perpetual when its existence is not conditioned by the time elapsed since the commission of the new offense within a certain period, (Dongoroz, 1939) and it is temporary when its existence is conditioned by the commission of the new offense only within a certain interval from the conviction or from the execution of the penalty pronounced for the previous offense.

Based on the location where the final penalty for the offense constituting the first term of recidivism was pronounced, there are territorial and international recidivism.

Recidivism is territorial or national when the first term consists of a final conviction to a prison sentence pronounced by a Romanian court, and it is international when the final conviction constituting the first term of recidivism is pronounced by a foreign court.

Depending on the sanctioning treatment of recidivism, it can have a single effect, progressive effect, uniform sanctioning regime, or differentiated sanctioning regime.

Single-effect recidivism consists of applying the same penal treatment to both first-time recidivists and multiple recidivists. Progressive-effect recidivism involves aggravating the recidivist's penalty with each new recidivism. Uniform sanctioning regime recidivism involves applying the same sanctioning regime to all forms of recidivism. Differentiated sanctioning regime recidivism involves applying different sanctioning regimes to different forms of recidivism.

In the current Criminal Code, the forms of recidivism are as follows:

- For natural persons: post-conviction recidivism, post-execution recidivism, national recidivism, international recidivism, temporary recidivism, general recidivism, single-effect recidivism, differentiated sanctioning effect recidivism.

- For legal entities: post-conviction recidivism and post-execution recidivism (Constantin Mitrache, ”Drept penal român. Partea generală”, 2019)

Post-conviction recidivism for natural persons exists when, after a final conviction to life imprisonment or a prison sentence of more than one year for an intentional offense, the convicted person commits a new intentional offense or an offense with aggravated intent before the start of the sentence execution, during its execution, or while in a state of escape, and the penalty prescribed by law for the second offense is life imprisonment or a prison sentence of one year or more (Article 41, Criminal Code).

III. Recidivism in the case of natural persons

III.1. Post-conviction recidivism of a natural person

Conditions regarding the First Term of post-conviction recidivism for a natural person: a) The first term of post-conviction recidivism is the final conviction to imprisonment or life detention.

b) The final conviction must involve imprisonment for more than one year or life detention. This condition is met when the sentence is pronounced for a single offense or as a resulting sentence for a combination of offenses. It is also satisfied when, in addition to imprisonment for more than one year, a penal fine is imposed under the conditions of Article 62 of the Penal Code. For recidivism to exist, if the first term consists of a combination of offenses, one opinion holds that the sentence for at least one intentional offense must exceed one year (G. Antoniu, M. Basarab, M. Udroiu), while another opinion asserts that the resulting sentence should be considered and not the sentence for the negligent offense, even if it is greater (G. Ivan).

Additionally, the condition is met when the sentence is pronounced by a foreign court, provided this judicial decision has been recognized in Romania according to the law.

To fulfill the severity condition of the conviction for the first term of recidivism, it is required that at the time of committing a new offense, the previous sentence must be more than one year. c) The final conviction must be for an intentional offense or one committed with intent.

Convictions for offenses committed out of negligence are not considered when establishing recidivism.

Negative conditions regarding the first term of recidivism - the following aspects are not considered when establishing recidivism:

a) Convictions for acts that are no longer defined as offenses (Art. 42(a) Penal Code)

b) Convictions for amnestied offenses (Art. 42(b) Penal Code)

c) Convictions for offenses committed out of negligence (Art. 42(c) Penal Code).

A final judicial decision where the court ordered the renunciation of penalty application or postponement of penalty application cannot constitute the first term of recidivism because in these two situations, the court does not pronounce a conviction, and it does not result in any disqualification, interdiction, or incapacity for the individual and would not constitute a precedent that could give rise to recidivism (Constantin Mitrache, ”Drept penal român. Partea generală”, 2019)

Other convictions that cannot constitute the first term of recidivism:

- Final convictions to a fine penalty.

- Convictions for offenses committed during minority.

Conditions regarding the second term of post-conviction recidivism:

a) The commission of a new offense as defined by Art. 174 Penal Code, which includes any act punishable by law as a completed offense, an attempt, or participation as a co-author, instigator, or accomplice.

b) The new offense must be committed with intent or overextended intent.

c) The legal penalty for the new offense must be one year or more.

d) The new offense must be committed after the final conviction for the previous offense and before the execution or deemed execution of the penalty provided in the conviction.

The moments when the new offense can be committed to give rise to post-conviction recidivism are:

- Before the start of penalty execution.
- During penalty execution, which includes: during detention, during the interruption of imprisonment or life detention, during the conditional release supervision period, or in a state of escape.
- If the offense constituting the second term of recidivism is continuous, continued, or habitual, it must be completed before the execution or deemed execution of the previous conviction.

III.2. Post-execution recidivism in the case of a natural person

Post-execution recidivism exists when, after serving a sentence of more than one year, total or partial pardon, or after the completion of the prescription term for executing such a sentence for an intentional offense, the convicted person commits another offense with intent or overextended intent for which the law prescribes a penalty of life detention or imprisonment of one year or more (Art. 41 Penal Code) (Drimer).

Conditions regarding the first term of post-execution recidivism:

The first term of post-execution recidivism is a sentence of more than one year of imprisonment, which has been executed or considered executed by total or partial pardon or for which the execution term has been completed, or it may consist of a life detention sentence from which the convict has been conditionally released, and the penalty is considered executed or has been extinguished by prescription.

The more than one year imprisonment, executed or considered executed, must have been pronounced for an intentional offense, directly or indirectly, or with intent.

The mode of execution of the penalty is irrelevant: actual execution in a place of detention, partial execution with the rest pardoned, partial execution with conditional release, or whether the sentence was pronounced by a Romanian or foreign court.

Negative conditions regarding the first term of post-execution recidivism:

The conviction must not be among those not considered in establishing recidivism (Art. 42 Penal Code).

Convictions for which rehabilitation has occurred or for which the rehabilitation term has been completed will not be considered when establishing recidivism.

Conditions regarding the second term of post-execution recidivism:

The second term of post-execution recidivism consists of committing a new intentional offense, directly or indirectly, or with intent, for which the law prescribes a penalty of more

than one year of imprisonment. The severity condition of the newly committed offense is met when the penalty prescribed by law is life detention. The new offense must be committed after serving the penalty, total or partial pardon, or prescription of the penalty execution that constituted the first term of major post-execution recidivism, and it must be committed before rehabilitation or the completion of the rehabilitation term, either automatically or judicially.

III.3. Penal treatment of recidivism for natural persons:

Recidivism constitutes a mandatory aggravating factor for penalties, as reflected in the penal sanctioning system. It demonstrates the offender's increased danger, necessitating a more vigorous repressive response.

The application of the main penalty in the case of post-conviction recidivism follows the arithmetic accumulation system, according to Art. 43(1) Penal Code.

When the convicted person commits a new offense before starting the execution of the penalty forming the first term, a penalty is set for the newly committed offense, which is added to the previous unexecuted penalty. Whenever, in the merging of penalties for multiple offenses in the form of recidivism, life detention was applied for the first term or for the newly committed offense, this penalty will be applied as the legislator deemed it sufficiently severe.

When the new offense is committed during the execution of the imprisonment forming the first term, after the convict has already served part of the penalty pronounced for the previous offense, the penalty set for the new offense is added to the remaining unexecuted part of the previous penalty.

The calculation of the remaining unexecuted penalty is done from the date of committing the new offense when the state of post-conviction recidivism arose, not from the date of the conviction decision for this offense.

If the newly committed offense is escape, the penalty for escape will be added to the remaining unexecuted part of the previous penalty at the date of escape. Committing the offense of escape can give rise to a state of post-conviction recidivism if the other conditions are also met.

If after a final conviction and before the previous penalty is executed or considered executed, the convict commits several concurrent offenses, of which at least one is in a state of recidivism, the rules for multiple offenses apply first, followed by recidivism rules. The penalties set for the newly committed offenses will be merged according to the provisions for multiple offenses, and the resulting penalty will be added to the previous unexecuted penalty or the remaining unexecuted part of it, according to Art. 43(2) Penal Code.

If the convict escapes and then commits an offense while in a state of escape, the two offenses are concurrent, but the penalty set for escape is added to the remaining unexecuted part of the previous penalty, and then this penalty is added to the penalty set for the offense committed while in a state of escape (Art. 285(4) Penal Code).

The application of the main penalty in the case of post-execution recidivism is done by applying a penalty within the limits prescribed by law, increased by half, according to Art. 43(5) Penal Code.

When the penalty prescribed by law is life detention alternatively with imprisonment, and the court chooses life detention, this penalty will be applied and cannot be aggravated further.

In cases where, after the previous penalty has been executed or considered executed, multiple concurrent offenses are committed, of which at least one is in a state of recidivism, the rules for post-execution recidivism take precedence over those for multiple offenses.

In cases of repeated offenses both in a state of post-conviction recidivism and in a state of post-execution recidivism, the rules for post-execution recidivism apply first, meaning the penalty is set within the special limits increased by half, and then the rules for post-conviction recidivism apply by adding the aggravated penalty to the previous penalty or its remaining unexecuted part.

If, by applying the provisions regarding recidivism, the general maximum prison sentence of 30 years is exceeded, the prison sentence imposed for execution cannot exceed 30 years.

According to the provisions of Article 43, paragraph 3 of the Penal Code, if multiple prison sentences are established and their sum, under the conditions of Article 43, paragraphs 1 and 2 of the Penal Code, exceeds the general maximum of the prison sentence by more than 10 years, and for at least one of the concurrent offenses the penalty provided by criminal law is 20 years or more, life imprisonment may be applied instead of a prison sentence.

According to the provisions of Article 45, paragraph 3, letter b of the Penal Code, if, in addition to the previously applied principal penalty, a complementary penalty of the same nature and content was also applied in the case of the new offense, the unexecuted part of the complementary penalty will be added to the penalty established for the new offense.

Safety measures in the case of recidivism are merged according to Article 45, paragraphs 6 and 7 of the Penal Code, as with all forms of plurality of offenses.

After the final conviction decision, it is possible to discover that the offender, at the time of committing the new offense which led to the conviction, was in a state of recidivism. This situation, if not known at that time, did not lead to the application of legal provisions regarding recidivism, or the state of recidivism was known, but its effects were not taken into account because life imprisonment was applied.

In such a situation, the recalculation of the penalty for the state of recidivism is required, considering two scenarios:

- The subsequent discovery of the state of recidivism implies the finding, acknowledgment of the state of recidivism for which there was no evidence in the file at the time the conviction decision became final.
- The recalculation of the penalty due to the discovery of the state of recidivism also applies in the case of commutation of life imprisonment to a prison sentence. The recognition of the state of recidivism of the convicted person whose life imprisonment has been commuted or replaced is important for the application of other institutions of executive criminal law or acts of clemency.

IV. RECIDIVISM IN THE CASE OF LEGAL ENTITIES

According to the provisions of Article 146 of the Penal Code, there is recidivism for legal entities when, after the finality of a conviction and until rehabilitation, the legal entity commits another offense, with intent or with exceeded intent.

The recidivism of a legal entity has two modalities: post-conviction recidivism and post-execution recidivism.

IV.1. Post-conviction recidivism in the case of legal entities

Post-conviction recidivism in the case of legal entities occurs when, after the finality of a conviction, the legal entity commits another offense with intent or with exceeded intent, and the fine for the previous offense has not been executed.

Conditions regarding the first term of post-conviction recidivism in the case of legal entities:

- A definitive conviction for a fine
- The offense that led to the definitive conviction can be committed with intent or with exceeded intent
- The definitive penalty applied should not have been executed or should not have been fully executed until the commission of the new offense
- The conviction for the fine should not be among those disregarded when determining the recidivism status, according to Article 146 paragraph 4 of the Penal Code in conjunction with Article 42 of the Penal Code. (Constantin Mitrache, ”Drept penal român. Partea generală”, 2019)

Conditions regarding the second term of post-conviction recidivism in the case of legal entities:

- Committing another offense by the legal entity
- The new offense must be committed with intent or with exceeded intent (praeterintention)
- The new offense must be committed before the fine for the previous offense has been executed.

IV.2. Post-execution recidivism in the case of legal entities

Post-execution recidivism in the case of legal entities is the form of recidivism that occurs when, after paying the fine or considering it executed, the legal entity commits a new offense with intent or with praeterintention.

Conditions for the first term of post-execution recidivism in the case of legal entities

The first term of post-execution recidivism in the case of legal entities consists of:

- The existence of a prior definitive conviction for committing an offense.
- The offense that led to the definitive conviction must have been committed with intent or with exceeded intent.
- The conviction for which the fine was executed should not be among those disregarded when determining the recidivism status, according to Article 146 paragraph 4 of the Penal Code in conjunction with Article 42 of the Penal Code.
- The definitive conviction for the fine must be executed or considered as executed before the commission of the new offense. The fine is considered executed when its enforcement has expired through any of the legal means (prescription, pardon).

Conditions regarding the second term of post-execution recidivism in the case of legal entities

The second term of post-execution recidivism in the case of legal entities consists of:

- Committing another offense after the fine for the previous offense has been executed or considered as executed.

- The new offense must be committed with direct or indirect intent or with praeterintention.
- The new offense must be committed before rehabilitation. In the case of legal entities, rehabilitation is solely by law.

IV.3. Penal treatment of recidivism in the case of legal entities

In the case of legal entities, the primary punishment is a fine based on the day-fine system, according to Article 137 of the Penal Code, with special punishment limits expressed in day-fines.

According to the provisions of Article 146 paragraphs 2 and 3, a unified sanctioning system for recidivism in the case of legal entities has been established, regardless of its form (post-conviction or post-execution).

The court will establish a fine for the new offense within the limits provided by law, increased by half. The special limits that are increased by half are the number of day-fines, which are set between 100 and 5000 lei based on the turnover criterion for legal entities with a profit-making purpose or based on the value of the asset for other legal entities, as well as other obligations of the legal entity. The punishment established under the above conditions will be added to the previous punishment or to the remainder to be executed from it.

The legislator has not regulated the application of punishment in case of committing multiple offenses again after a definitive conviction by the legal entity, and at least one is in a state of post-conviction recidivism, which is why several opinions have been issued in legal literature on this aspect.

In one opinion (Constantin Mitrache, ”Drept penal român. Partea generală”, 2019), which is closer to the spirit of the regulation in this matter, it is appreciated that the court will proceed as follows:

1. Firstly, a punishment will be established for each new offense, and for those committed in a state of post-conviction recidivism, the punishment will be set within the limits provided by law, increased by half.
2. Then, the punishments established in point 1 will be merged according to the provisions of the competition of offenses.
3. Finally, the resulting punishment from point 2 will be added to the unexecuted previous punishment or to the remaining unexecuted punishment.

By successively applying the legal provisions on recidivism and the competition of offenses, the general maximum of the fine punishment cannot be exceeded under the conditions of Article 137 paragraph 2 of the Penal Code. The general maximum of the punishment is obtained by multiplying the maximum number of day-fines (600) by the maximum amount corresponding to one day-fine (5,000 lei), which is 3,000,000 lei.

In the case of post-execution recidivism in the case of legal entities, the punishment for the new offense will be established within the special limits provided by law, increased by half.

If after the execution of the fine punishment or the extinction of its execution through pardon or prescription, the legal entity commits multiple offenses again in a state of post-execution recidivism, firstly, a punishment will be established for each within the special limits provided by law, increased by half, then all these punishments will be merged according to the rules regarding the competition of offenses.

Punishments of different nature complementary to each other, except for dissolution, or those of the same nature but with different content, are cumulated, and in the case of complementary punishments of the same nature and with the same content, the most severe one is applied.

Safety measures taken in the case of special confiscation are cumulated, according to Article 147 paragraph 3 of the Penal Code.

If after the finality of the conviction decision of the legal entity for the new offense, and before the fine is executed or considered as executed, it is discovered that the convicted legal entity was in a state of post-conviction or post-execution recidivism, the court will apply the rules for sanctioning the respective recidivism form.

The recalculation of the punishment in case of subsequent discovery of the recidivism state is possible only if the discovery of the recidivism state occurred before the fine punishment for the new offense was executed or considered as executed.

Conclusions

Understanding the forms of recidivism is important for a better understanding of the legal regulations concerning recidivism and presents a particular practical interest because recidivism always appears in one of these forms, depending on which the degree of persistence on the path of criminality of the perpetrator can be assessed, as well as the mode of sanctioning recidivism, and the legislator's conception regarding the structure and conditions of existence of recidivism.

Considering that the criminal legislator has separately regulated the criminal liability of legal entities, in Title VI, Articles 135 - 151 of the Penal Code, it should have expressly provided legal solutions for different situations, either through distinct regulations or through references to regulations concerning natural persons, because in these hypotheses, in the silence of the law, any answers may give rise to objections since there is no explicit reference by the legislator.

Therefore, as a recommendation for future legislation, the legislator should expressly establish the method of applying punishment in the case of a legal entity committing multiple offenses again after a definitive conviction, with at least one being in a state of post-conviction recidivism, just as in the case of natural persons, through the provisions of Article 43 paragraph 2 of the Penal Code.

Furthermore, as a recommendation for future legislation, the legislator should expressly regulate the provisions regarding the subsequent discovery of the state of recidivism in the case of legal entities, with some authors currently believing that in such situations, the provisions applicable to natural persons under Article 43 paragraph 6 of the Penal Code should be applicable.

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THE CONDITIONS OF CRIMINAL LIABILITY OF THE LEGAL PERSON

I.-L. MOȘ

Iasmina-Lavinia Moș
Faculty of Juridical and Administrative Sciences, Agora University of Oradea, Romania
E-mail: iasmina_mos@yahoo.com

Abstract: *In this article I tried to summarize essential aspects regarding the criminal liability of the legal person. People can be involved in criminal legal relations, both individually and organized according to the law in the form of legal entities. One of the subjects of criminal liability according to the Criminal Code in force is the legal person. Since it is an active subject of the crime different from the natural person, naturally the conditions for the existence of his criminal liability are also different. Also, the legal person attracts a distinct form of liability, with specific features, which is subject to its own rules, separate from those applicable to the natural person. However, like the natural person, the legal person is subject to compliance with the fundamental principles of criminal law. The legal person participates as a distinct legal subject in the most varied legal relationships: civil, commercial, financial, administrative, banking and criminal. The introduction into Romanian criminal law of the criminal liability of the legal person took place through Law no. 278/2006, amending the Criminal Code from 1968. Currently, the Criminal Code in force dedicates Title VI to this legal institution entitled "Criminal liability of the legal entity". I chose this theme considering the challenges it entails and the issues it raises. I tried to answer some of them, such as the premises of the criminal liability of the legal person, showing how the criminal sanction was reached from the historical perspective of the legal person, I then explained the necessity that determines the regulation of such liability in criminal law, I explained the notion of a legal person, I have shown the conditions under which the criminal liability of the legal person is engaged and the way in which legal persons are sanctioned from a criminal point of view. I also presented a case in which the criminal prosecution of this subject of criminal law is practically illustrated.*

Keywords*: criminal liability, legal entity, sanction*

1. General considerations regarding criminal liability

The interest shown towards criminal liability in the theory of criminal law is commensurate with its importance.

"None of the entire range of problems that interest this institution is lost outside the sphere of scientific research. In numerous studies and monographs, an intense preoccupation can be observed for defining and highlighting the essential features of criminal liability, fixing the limits and connections it has with other forms of legal liability, specifying the phases and forms of its realization, determining the ways of replacing and extinguishing it" (Mircea , 1987, p. 160).

The most serious of all forms of liability is criminal liability.

When it intervenes, it means that a socially dangerous act has been committed with guilt by a responsible natural person or by a legal person, which violates a criminal norm, a fact that determines the birth of the criminal legal relationship.

According to the Criminal Code, criminal liability has as its objective basis the crime committed."Nothing else can generate or activate the incidence of the fundamental institution of criminal liability than the pre-existence (verified in each concrete case separately) of the fundamental institution of the crime" (Michinici-Mărculesu, Dunea, 2017, p. 325).

"Representing (theoretically, formally) the most severe form of legal liability existing in a society, involving consequences (direct and indirect, immediate and mediated, current and future) among the strictest on the person to whom it is committed, criminal liability does not can and must not be (potentially) attracted only by the commission of a concrete act that cumulatively meets all the essential features of the crime (in general and by means of the meeting of the feature of typicality and all the specific constitutive elements, in particular, of a certain determined crime)" (Antoniu , Daneș, Popa, 2022, p. 61).

The non-meeting, in the concrete act committed, of at least one of the essential features of the crime leads to the impossibility of generating criminal liability for the person who committed it and, implicitly, the impossibility of sanctioning him through criminal sanctions.

As regulated by the express provisions of the Criminal Code, a crime can be committed by a natural person or a legal person. Thus, the issue of criminal liability for the commission of crimes concerns both the natural person and the legal person.

The regulation of the criminal liability of the legal person, currently, can be found in Title VI of the Romanian Criminal Code in force.

2. The historical perspective on the criminal liability of the legal person

The criminal liability of the legal person is not a new problem.

It finds its origins in ancient law, so that at the end of the 19th century it returned to the attention of European criminal doctrine, and nowadays it is a central subject of scientific and legislative approaches (Streteanu F., Chiriță R., 2002, p . 5).

The origins of the notion of a legal person exist even before the Code of Hammurabi (ca. 1750 BC).

The notion is also found in Roman law.

In Romanian law, the state was the first legal entity.

He was the owner of his own patrimony (ager publicus) and where solidates and collegia were found, which regrouped people for a religious and political purpose, corpora (associations of workers) and societates (prefigurations of today's societies) (Neagu, 2021, p. 653). In Roman history, numerous situations are recorded in which cities, fortresses and municipalities were punished. Emperor Theodosius of Byzantium punished the city of Antioch by taking away its theater, baths and the title of metropolis for the crime of mocking the statue of his wife (Jurma, 2010, p. 1).

Losing its importance over time, the idea of collective responsibility is reiterated by German law that knew the existence of free associations, the so-called Genossenschafien or Gilden (Jurma, 2010, p. 2).

Throughout history, this responsibility has been legally regulated.

The French Revolution of 1789 removed the criminal liability of the legal person.

Towards the end of the 19th century and the beginning of the 20th century, legal entities became more and more numerous and stronger from an economic point of view, the risk of committing crimes by them increased considerably, so that the criminal liability of the person started to be regulated in legislation or jurisprudence (Neagu, 2021, p. 655).

The first system that reintroduced this form of legal liability was the common law system, so that it currently exists in most legislative systems.

In Romanian criminal law, the criminal liability of the legal person was introduced for the first time in the Criminal Code of 1936, to be later removed from the Criminal Code of 1968, however it was later introduced by Law 278/2006.

The criminal liability of the legal person was also preserved in the Criminal Code in force, being assigned a special title, Title VI: Criminal liability of the legal person.

3. The need to hold the legal entity criminally liable

The study of the criminal liability of the legal person acquired a new dimension after addressing this issue as the theme of the International Congress of Comparative Law in Athens in 1994 (Mancaș, 1998, p. 67).

It was argued that the legal person is not a fiction but a legal reality that has its own will and its own patrimony, exercises its own rights and fulfills its obligations.

It was thus concluded, in most states, that with the recognition of the civil capacity of the legal person, it is also necessary to regulate the criminal liability of the legal person, especially due to the fact that the economic-financial crimes committed by natural persons cannot be carried out without them using a legal person.

In the overwhelming majority of cases, the subjects of commercial relations are legal entities, and the natural persons who act in their name and interest, through the crimes committed, bring profits to these companies (Mancaș, 1998, p. 69).

The appearance of legal entities in the sphere of economic-financial crime is no longer an exception, but, on the contrary, it is a rule.

In the absence of criminal liability of the legal person, if only the natural persons within the legal persons were sanctioned, they could resume their criminal activity unhindered.

As a result of the alignment of the Romanian criminal legislation with the legislation of the European states, the Romanian legislator also introduced the criminal liability of the legal person (Popiviciu, 2014, p. 376).

4. The notion of a legal person

The existence of the legal person is recognized unconditionally and is statutorily separated in the Civil Code.

Thus, the separate and independent bodies, the result of a process of modernization of Romanian law, as well as of the now unanimously established quality, are the result of harmonization with existing international regulations subject to corporate law, these being legal entities (http:///ads/Dima_Monica_Ana_Georgiana.pdf).

Collective legal entities have been defined in various ways.

Therefore, a collective subject of civil law, a group of people who participate independently in legal relations and have their own legal responsibilities and have a well-

defined organizational structure with independence in property law and strive to achieve objectives consistent with the public interest is can name a legal entity (Moldovan, 2010, p. 24). A legal person is a group of people that has its own subjective rights and civil obligations (Beleiu, 1998, p. 377).

5. The conditions of criminal liability of the legal person

The analysis of the conditions of criminal liability of the legal person concerns:

a) Categories of criminally responsible legal persons

According to art. 25 para. 3 Civil Code, "the legal person is a form of organization which, meeting the conditions required by law, is entitled to civil rights and obligations".

Legal entities are of public or private law.

Legal entities under private law can be constituted, freely, in one of the forms provided by law (Neagu, 2021, p. 660).

Legal entities under public law are established by law.

By way of exception, in the specific cases provided by law, legal entities under public law may be established by acts of central or local public administration authorities or by other means provided by law.

The legal person is established for an indefinite period, if the law, the act of incorporation or the statute does not provide otherwise.

From the moment of establishment it will respond until the moment of dissolution.

Art. 135 para. 1 Criminal Code, excludes from the category of legal entities criminally liable:

a) The state, by justifying the fact that the state is a legal entity that cannot be dissolved.

Also, in criminal legal relations, the state has the capacity of an active subject, being the only one that has the right and the obligation to prosecute criminals (Hotca, 2013, p. 164).

So the state cannot hold itself criminally liable.

b) Public authorities: the Parliament, the President of Romania, the Government, the Supreme Council of Defense of the Country, the Public Administration, the Judicial Authority held by the High Court of Cassation and Justice and the other courts, as well as the Superior Council of the Magistracy.

Law no. 187/2012 provides that in addition to public authorities regulated by the Romanian Constitution, the Court of Accounts and the Constitutional Court are no longer criminally liable (Hotca, 2013, p. 119).

For example: the National Institute of the Magistrate, the "Mina Minovici" Institute of Forensic Medicine, the Institute of Forensic Expertise, the National Institute for the Training and Development of Lawyers, the National Bank of Romania, etc.

Unlike legal entities under public law, legal entities are liable regardless of their legal nature, they can be profit-making legal entities and non-profit legal entities.

Most of the crimes recorded in the criminal judicial practice are those committed by legal entities and commercial companies.

I will present an example. In fact, it was held, in essence, that S.C. XXX SRL through the person of A. as an administrator, omitted, in part, to highlight in the company's accounting documents the purchases and sales of wood material made in the period 2016-

2019 at one of the company's work points, namely at the located in town Y. By this, SC XXX SRL created a total loss of yyyy lei, of which xxxxx lei is profit tax and yyyyy lei VAT. In conducting the criminal investigation regarding the defendant commercial company, the criminal investigation bodies showed that in the period 2016–2019, S.C. XXX SRL has repeatedly made several purchases of wood material. The purchases were carried out on the basis of the contracts that the commercial company had concluded with the Forestry Directorate xxx and the Ocolul xxx. The investigations in question started from a routine control carried out by the police officers of the Road Police from the locality x, on a transport from the company SC XXX SRL, which transported wooden material and regarding which the police officers found that no there are documents. In the case, several notifications were submitted, from which it appears that different quantities of wood material were sold by SC XXX SRL, without being entered in the accounting documents. Following the investigations carried out in the case, it emerged that SC XXX SRL did not fully record in the accounting documents the commercial activities carried out and the incomes made with wood material during the mentioned period. Large discrepancies were found between the inputs of wood material that were contracted based on the existing contracts in the case file with state institutions and which were authorized and then transported to the headquarters of the commercial company and the exits of wood material from the headquarters of the commercial company. The management deficits were assessed at the total amount of 5,456 cubic meters. The criminal investigation bodies requested through an address the Forest Guard yyy, to calculate the value of the wood found missing from the accounting of SC XXX SRL. Also, in the case, it was also ordered to carry out technical-scientific findings regarding the activity carried out by S.C. XXX SRL between 2016 and 2019, by an anti-fraud specialist. Thus, according to the research carried out, it turned out that A. as administrator of S.C. XXX SRL, in the period 2016 — 2019, purchased in the name and object of activity of the company whose administrator was a total quantity of 25,514 m2. wooden table based on the contract concluded with Ocolul Silvic yyy. From this quantity of wood, according to tax invoices, 11,234 cubic meters were sold in the period 2016-2019, the difference up to 25,514 not being found in any of the accounting documents of the commercial company, nor was it found at the headquarters of the commercial company. It was found to be damage to the general consolidated budget of the state, based on revenues representing the value of the wood mass not registered in the technical-operational and accounting records of the company in question, in the profit tax chapter the amount of xxx lei and yyy lei VAT. In the case, an accounting expertise was carried out by an expert from C.E.C.C.A.R. yyy.

In the report drawn up by the accounting expert, it was stated that the total value of the fiscal obligations related to the wood mass for which no documents related to the exit from the management of the company were identified is aaaaa lei, of which xxxxx lei is profit tax and yyyyy lei VAT. This damage registered by the commercial company XXX was brought to the attention of the County Administration of Public Finances by the criminal investigation bodies of the Judicial Police within the County Police Inspectorate yyy through an address.

The criminal investigation bodies found that during a routine check carried out by the traffic police, the commercial company XXX carried out two shipments of wooden material of about 8 m3.

A transport vehicle belonging to the same company was used to carry out the transport of wood material. The wooden material had a notice to accompany the goods, but it was not drawn up according to the legal provisions in force. In law, SC XXX SRL committed acts of tax evasion. In addition to the two transports discovered by the traffic police, it was found that on other occasions, other transports of wood material were carried out for which the necessary documents were not drawn up according to the law. It is established that the crime of tax evasion has been committed in a continuous form, and the main punishment for its conviction will be applied. A complementary penalty will also be applied (example inspired by a published case https://www.jurisprudenta.com/jurisprudenta/speta-196z7c9f/).

The legal person is criminally liable if he commits the act in the pursuit of the object of activity or in the interest or on behalf of the legal person.

6. Criminal sanctioning of the legal entity

The criminal sanctions that apply to legal entities are:

- the main punishment of the fine
- complementary punishments
- safety measures.

a) The main penalty

The only main penalty that applies to the legal person is the fine.

In its absence, no complementary punishment can be applied.

The fine is a patrimonial punishment consisting in the reduction of the patrimony of the legal entity by obliging it to pay a sum of money that is brought to the state budget.

It is established on the basis of the system of fine days.

The amount corresponding to a daily fine between 100 and 5,000 lei is multiplied by the number of fine days, which is between 30 days and 600 days.

b) Complementary punishments

In addition to the main penalty of the fine, one or more complementary penalties from those provided in art. 136 para. 3:

The dissolution of the legal entity is the complementary penalty that leads to the termination of the legal entity, having the effect of its entry into liquidation.

The suspension of the activity of the legal entity is the complementary punishment that consists in prohibiting its activity for a certain period of time from 3 months to 3 years.

The closure of some workplaces is the complementary punishment that consists in the closure of one or more workplaces where the criminal activity was carried out.

It can be arranged for a duration from 3 months to 3 years.

The prohibition to participate in public procurement procedures is the complementary punishment that consists in the prohibition to participate in public procurement contract awarding procedures for a period of one to 3 years.

Placement under judicial supervision is the complementary punishment that consists of carrying out the activity that caused the crime to be committed under the supervision of a trustee. The display or dissemination of the conviction consists in bringing the conviction to the public at the expense of the convicted person.

The security measures applicable to the legal person are special confiscation and extended confiscation.

Conclusions

The criminal liability of the legal person is regulated in the Criminal Code in force, with a special title assigned to it: Criminal liability of the legal person.

According to this regulation, legal persons are criminally liable.

However, the law also establishes some exceptions. Regarding legal entities under public law, art. 135 para. 1 Criminal Code, excludes from the category of legal entities criminally liable:

The legal person is criminally liable if he commits the act in the pursuit of the object of activity or in the interest or on behalf of the legal person.

The guilt of the legal entity can be presented in the form of fault or intention.

The criminal sanctions that apply to legal entities are:

- the main punishment of the fine
- complementary punishments
- safety measures.

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