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NAVIGATING THE DIGITAL SACRED: EXAMINING THE IMPLICATIONS OF ARTIFICIAL INTELLIGENCE FOR THE EXERCISE OF THE RIGHT TO FREEDOM OF RELIGION IN INTERNATIONAL LAW

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Abstract: *The rapid proliferation and increasing sophistication of Artificial Intelligence (AI) technologies present novel challenges and opportunities across various societal domains, including the realm of human rights. This paper examines the multifaceted implications of AI for the exercise of the right to freedom of religion, as enshrined and protected under international human rights law. While AI offers potential benefits, such as facilitating access to religious texts and fostering interfaith dialogue, it also raises critical concerns regarding algorithmic bias, surveillance, thought manipulation, and the potential for AI-driven systems to either infringe upon individual and collective religious practices or to reshape the very nature of belief and spiritual expression. Through a critical analysis of existing international legal instruments and emerging AI ethical frameworks, this research identifies key areas of tension and proposes conceptual pathways for ensuring that technological advancement does not undermine, but rather upholds, the fundamental right to freedom of religion in the digital age. This paper argues for a proactive legal and ethical discourse to develop robust safeguards and interpretive guidelines for navigating the complex interplay between AI innovation and the protection of religious liberty.*

Keywords: *Artificial Intelligence, Religion, Human Rights, Freedom*

1. INTRODUCTION

1.1. The Rise of Artificial Intelligence and Its Societal Impact

The twenty-first century has witnessed an unprecedented acceleration in the development and deployment of Artificial Intelligence (AI) technologies, fundamentally reshaping various facets of human society. From sophisticated algorithms influencing daily consumption patterns to advanced machine learning models driving critical decisions in healthcare, finance, and national security, AI's pervasive integration is undeniable (Bostrom, 2014). This technological revolution is characterised by AI's capacity to process vast datasets, identify complex patterns, and execute tasks with a speed and scale far beyond human capabilities. Consequently, AI is not merely a tool but a transformative force, influencing social interactions, economic structures, political landscapes, and even individual cognitive processes (Harari, 2018).

While the potential benefits of AI are widely lauded - including advancements in scientific discovery, enhanced efficiency, and improved quality of life - its rapid evolution also

introduces profound ethical, legal, and societal challenges. Concerns range from job displacement and economic inequality to issues of privacy, data security, and the potential for autonomous systems to operate without adequate human oversight (Crawford, 2021). As AI systems become more autonomous and integrated into the fabric of daily life, their impact extends beyond mere convenience, raising fundamental questions about human agency, responsibility, and the very definition of what it means to be human in an increasingly automated world. This burgeoning influence necessitates a critical examination of how AI interacts with established human rights norms and principles, ensuring that technological progress remains aligned with the protection of fundamental freedoms.

1.2. Framing the Right to Freedom of Religion in International Law

Among the panoply of human rights, the right to freedom of thought, conscience, and religion (often abbreviated as freedom of religion or belief, FoRB) holds a distinct and foundational position. Recognized as a non-derogable right in numerous international instruments, including Article 18 of the Universal Declaration of Human Rights (UDHR) and Article 18 of the International Covenant on Civil and Political Rights (ICCPR), FoRB encompasses both the *forum internum* (the internal freedom to hold or not to hold beliefs) and the *forum externum* (the external freedom to manifest one's religion or belief in worship, observance, practice, and teaching) (United Nations, 1966). This dual nature underscores its comprehensive protection, safeguarding not only individual conviction but also its communal and public expression.

The right to freedom of religion is crucial for fostering pluralism, protecting minority groups, and ensuring the dignity of individuals to shape their worldview without coercion. It serves as a bulwark against state interference in matters of conscience and provides a framework for individuals and communities to live in accordance with their deeply held convictions. Historically, challenges to this right have often stemmed from state persecution, discrimination, or societal intolerance. However, the advent of sophisticated digital technologies, particularly AI, introduces a new frontier of potential infringements and complexities that were not envisioned during the drafting of these foundational human rights treaties. Understanding the nuances of FoRB's protection in international law is, therefore, paramount to assessing how it can be maintained and upheld in the face of evolving technological paradigms.

2. UNDERSTANDING THE RIGHT TO FREEDOM OF RELIGION IN INTERNATIONAL LAW

2.1. Historical Development and Philosophical Foundations

The right to freedom of thought, conscience, and religion (FoRB) is not a modern invention but has deep historical and philosophical roots, evolving from centuries of struggle against religious persecution and intolerance. Early philosophical concepts, particularly from the Enlightenment era, emphasised individual autonomy and the separation of church and state as foundational to a just society (Locke, 1689/2003; Voltaire, 1763/1961). Thinkers like John Locke argued that belief was a matter of individual conscience, beyond the legitimate purview

of state control, laying the groundwork for the idea that governments should not interfere with religious convictions or practices unless they directly harm public order or the rights of others.

Following the devastating religious conflicts of the 17th century and the subsequent development of modern nation-states, the recognition of religious freedom became an increasingly important aspect of international relations and domestic legal systems. The atrocities of the two World Wars in the 20th century further underscored the imperative for universal human rights protection, leading to the formal codification of FoRB in international instruments. This historical trajectory highlights a fundamental shift from state-granted toleration to an inherent, inalienable human right, reflecting a global consensus on the importance of individual liberty in matters of belief (Moyn, 2010). The philosophical underpinnings of FoRB are thus rooted in principles of human dignity, self-determination, and the recognition of pluralism as essential for a stable and just global order.

2.2. Core Components: *Forum Internum* (Freedom of Belief) and *Forum Externum* (Freedom to Manifest Belief)

International human rights law systematically protects freedom of religion or belief through two interconnected, yet distinct, dimensions: the *forum internum* and the *forum externum*. The ***forum internum*** refers to the absolute and non-derogable right to hold, adopt, or change a religion or belief of one's choice, or to have no religion or belief at all. This internal dimension is considered absolute because it pertains to the realm of thought and conscience, which cannot be coerced or suppressed by external forces. It encompasses the freedom to choose one's faith, to convert, to renounce a religion, or to adhere to atheistic or agnostic views. The UN Human Rights Committee, in its General Comment No. 22 on Article 18 of the ICCPR, explicitly states that the *forum internum* cannot be subjected to “any limitations whatsoever" (UN Human Rights Committee, 1993, para. 3). This absolute protection is crucial as it safeguards the foundational autonomy of the individual's mind and conscience, preventing any form of ideological compulsion or thought control.

In contrast, the ***forum externum*** refers to the freedom to manifest one's religion or belief in public or private, through worship, observance, practice, and teaching. This external dimension allows individuals and communities to express their beliefs through rituals, customs, dress, dietary restrictions, and educational activities. While fundamental, the *forum externum* is not absolute and may be subject to certain limitations. These limitations, as stipulated in international law, must be prescribed by law, necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others, and must be proportionate to the legitimate aim pursued (UN Human Rights Committee, 1993, para. 8). The distinction between the absolute *forum internum* and the qualified *forum externum* is critical for understanding the scope of protection and the permissible boundaries of state intervention.

2.3. Limitations and Permissible Restrictions

As noted, while the *forum internum* is absolute, the *forum externum* is subject to carefully defined limitations. Article 18(3) of the ICCPR specifies that the manifestation of religion or beliefs may be subject only to such limitations as are:

1. **Prescribed by law:** Any restriction must have a clear legal basis, ensuring predictability and preventing arbitrary application.

2. **Necessary:** The restriction must address a pressing social need and be proportionate to the legitimate aim. This implies that less restrictive means should be considered first.
3. **To protect public safety, order, health, or morals:** These are the legitimate grounds for imposing restrictions. "Morals" is often interpreted in line with international human rights standards, avoiding culturally specific or discriminatory interpretations.
4. **Or the fundamental rights and freedoms of others:** This acknowledges that the exercise of one person's religious freedom should not unduly infringe upon the rights of others, including the right to equality and non-discrimination (UN Human Rights Committee, 1993).

These criteria collectively form a strict test that states must meet to justify any restriction on the manifestation of religion or belief. The principle of proportionality is particularly important, requiring a careful balancing act between the right to religious freedom and the legitimate aims of the state. Any restriction must be the least intrusive measure to achieve the desired outcome and must not negate the essence of the right itself (European Court of Human Rights, 2010). The interpretation and application of these limitations are often subject to judicial review and international scrutiny, ensuring that states do not use them as pretexts for suppressing religious minorities or dissenting voices.

2.4. Key International Instruments and Jurisprudence (e.g., ICCPR Article 18, ECHR Article 9)

The right to freedom of religion or belief is enshrined in several cornerstone international human rights instruments, providing a robust legal framework for its protection. The **Universal Declaration of Human Rights (UDHR)**, adopted in 1948, sets the foundational standard. Article 18 states: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance" (United Nations, 1948). Although a declaration, the UDHR's principles are widely considered customary international law.

The **International Covenant on Civil and Political Rights (ICCPR)**, a legally binding treaty adopted in 1966, elaborates on Article 18 of the UDHR. Article 18 of the ICCPR is virtually identical to UDHR Article 18 but crucially adds the limitations clause in paragraph 3, discussed above. The **UN Human Rights Committee**, which monitors the implementation of the ICCPR, has provided authoritative interpretations of Article 18, most notably in its **General Comment No. 22 (1993)**. This General Comment clarifies the absolute nature of the *forum internum*, the scope of the *forum externum*, and the strict conditions for permissible limitations, emphasising that any restrictions must not be discriminatory and must respect the principle of proportionality (UN Human Rights Committee, 1993).

Regionally, instruments like the **European Convention on Human Rights (ECHR)**, specifically **Article 9**, offer similar protections. Article 9 states: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance." Like the ICCPR,

it also includes a limitations clause. The **European Court of Human Rights (ECtHR)** has developed extensive jurisprudence interpreting Article 9, providing detailed guidance on issues such as religious symbols in public spaces, conscientious objection, and the rights of religious minorities (ECtHR, 2010; Schabas, 2015).

Other important instruments include the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981), which further elaborates on the rights and freedoms encompassed by FoRB. Collectively, these instruments and the jurisprudence derived from them establish a robust and comprehensive framework for the protection of freedom of religion or belief in international law, forming the bedrock against which the implications of AI must be assessed.

3. THE INTERFACE OF ARTIFICIAL INTELLIGENCE AND RELIGIOUS PRACTICE: OPPORTUNITIES AND CHALLENGES

The intersection of Artificial Intelligence and religious practice is a dynamic and evolving landscape, presenting both unprecedented opportunities for the enhancement of religious life and significant challenges that could potentially undermine the exercise of freedom of religion. Understanding this dual nature is crucial for a comprehensive assessment of AI's implications for international human rights law.

3.1. AI as a Tool for Religious Expression and Community Building

AI technologies, in their various forms, offer innovative avenues for individuals and communities to engage with, express, and share their religious beliefs. These tools can democratize access to religious knowledge, facilitate education, and foster new forms of communal interaction.

3.1.1. Access to Religious Texts and Knowledge Dissemination

One of the most immediate and impactful applications of AI in the religious sphere is the enhanced accessibility and dissemination of religious texts and knowledge. AI-powered translation tools can render sacred scriptures, commentaries, and theological works into numerous languages, breaking down linguistic barriers and making religious wisdom accessible to a global audience. Furthermore, AI-driven search engines and natural language processing (NLP) applications can enable users to navigate vast religious corpora with unprecedented ease, identifying specific verses, themes, or interpretations across different traditions. This capability democratizes access to knowledge that was once confined to scholarly circles or limited by geographical and linguistic constraints, potentially deepening understanding and fostering interfaith literacy.

3.1.2. Facilitating Religious Education and Dialogue

AI can significantly enhance religious education and interfaith dialogue. Personalised learning platforms, powered by AI, can adapt to individual learning styles and paces, offering tailored curricula on religious history, philosophy, and ethics. Virtual reality (VR) and augmented reality (AR) applications, often incorporating AI elements, can create immersive educational experiences, allowing users to virtually visit sacred sites, participate in historical religious events, or visualise complex theological concepts. Beyond education, AI-powered

chatbots and intelligent agents can serve as neutral facilitators in interfaith dialogue, providing factual information about different faiths, clarifying misconceptions, and even simulating conversations to help users understand diverse perspectives without the immediate pressure of face-to-face interaction. These tools can foster greater mutual understanding and reduce prejudice by providing accessible and engaging educational resources.

3.1.3. Digital Religious Communities and Virtual Worship Spaces

The digital realm has already transformed how individuals connect, and AI is further augmenting this trend within religious contexts. AI can help curate and manage online religious communities, recommending relevant content, connecting like-minded individuals, and even moderating discussions to ensure respectful engagement. During periods of physical restriction, such as pandemics, AI-enhanced virtual worship platforms have become indispensable, allowing congregations to gather, pray, and observe rituals remotely. These platforms can utilise AI for features like adaptive streaming, personalised prayer prompts, or even generating sermons based on specific themes or scriptural passages (though this raises ethical questions discussed later). The ability to participate in religious life from anywhere, at any time, facilitated by AI, expands the *forum externum* of religious manifestation, offering new avenues for communal worship and belonging, particularly for those who are geographically isolated or physically unable to attend traditional services.

3.2. AI as a Potential Threat to Religious Freedom: Emerging Concerns

While AI offers promising opportunities, its inherent capabilities also pose significant and complex threats to the exercise of freedom of religion, potentially infringing upon both the *forum internum* and *forum externum*. These concerns necessitate careful scrutiny under international human rights law.

3.2.1. Algorithmic Bias and Discrimination in Religious Contexts

A pervasive concern across all AI applications is algorithmic bias, which can lead to discrimination. AI systems are trained on vast datasets, and if these datasets reflect existing societal prejudices, including those based on religion, the AI will perpetuate and amplify those biases (O'Neil, 2016). In religious contexts, this could manifest in several ways: AI-powered facial recognition systems might disproportionately misidentify or flag individuals wearing religious attire; hiring algorithms might subtly disadvantage applicants from certain religious backgrounds; or social media algorithms might suppress or de-prioritise content from specific religious groups, effectively limiting their freedom of expression and assembly. Such algorithmic discrimination can lead to real-world harms, including denial of services, social exclusion, and the marginalisation of religious minorities, directly undermining the principle of non-discrimination central to human rights.

3.2.2. Surveillance, Profiling, and the Erosion of Religious Privacy

The data-intensive nature of AI systems, coupled with advanced surveillance technologies, poses a significant threat to religious privacy and the *forum internum*.

Governments or private entities could use AI to monitor religious activities, track attendance at places of worship, analyse online religious discourse, or even infer individuals' religious beliefs based on their digital footprint (e.g., search history, social media interactions) (Zuboff, 2019). AI-powered predictive policing, for instance, could target religious communities based on perceived risk factors, leading to unwarranted scrutiny and harassment. This pervasive surveillance erodes the sense of privacy and security necessary for individuals to freely hold and manifest their beliefs without fear of reprisal or discrimination. The chilling effect of such monitoring can lead to self-censorship, deterring individuals from openly practising their faith or exploring new beliefs, thereby directly impinging on the absolute right to *forum internum*.

3.2.3. AI's Influence on Belief Formation and Thought Autonomy

Perhaps one of the most profound and unsettling implications of AI for religious freedom concerns its potential to influence or manipulate belief formation and thought autonomy. Advanced AI, particularly in areas like personalised content recommendation, deepfakes, and sophisticated propaganda, can subtly shape narratives, reinforce echo chambers, and even generate highly convincing synthetic religious content (Pasquale, 2015). This raises questions about the authenticity of information and the susceptibility of individuals to AI-driven persuasion that bypasses critical reasoning. If AI can effectively curate an individual's information diet to promote or suppress certain religious or anti-religious viewpoints, it could subtly undermine the freedom to form, hold, and change one's beliefs independently—the very essence of the *forum internum*. The line between informative content and manipulative influence becomes increasingly blurred, posing a direct challenge to cognitive liberty (Susskind & Susskind, 2023).

3.2.4. The Impact of AI on Religious Observance and Practice (e.g., automated rituals, digital proselytisation)

The *forum externum* of religious manifestation is also vulnerable to AI's disruptive potential. The development of AI-driven automated rituals or "spiritual robots" could fundamentally alter the nature of religious observance, raising questions about authenticity, human agency, and the role of human clergy. While some might see these as aids, others might view them as diminishing the sacredness of human-led practice. Furthermore, AI-powered digital proselytisation, utilizing highly targeted messaging and persuasive algorithms, could become so effective as to border on coercion, particularly for vulnerable populations. The sheer scale and precision of AI-driven outreach could overwhelm individuals with unsolicited religious content, blurring the lines between evangelism and unwanted intrusion, and potentially infringing on the right not to receive religious information.

3.2.5. The Challenge of "Digital Blasphemy" and Hate Speech

The proliferation of AI-generated content also introduces new complexities regarding "digital blasphemy" and religiously motivated hate speech. AI can be used to generate highly offensive or derogatory content targeting specific religions or beliefs, which can then be disseminated at an unprecedented speed and scale across digital platforms. This poses a significant challenge for content moderation, as distinguishing between legitimate critique, satire, and harmful hate speech becomes increasingly difficult for automated systems. While

freedom of expression is also a human right, international law permits restrictions on speech that incites discrimination, hostility, or violence (ICCPR Article 20). AI's capacity to amplify such harmful content necessitates robust mechanisms for identification and removal, without unduly impinging on legitimate religious expression, presenting a delicate balancing act for platforms and regulators.

3.2.6. Autonomy of Religious Institutions in the Age of AI

Finally, the increasing reliance on AI and digital infrastructure can impact the autonomy of religious institutions. These institutions may become dependent on proprietary AI platforms for communication, administration, and community engagement, potentially ceding control over their data, content, and even their internal governance to external technology providers. Furthermore, state or corporate actors could leverage AI to exert undue influence or control over religious organisations, for instance, by monitoring their finances, tracking their members, or censoring their online activities. This erosion of autonomy could undermine the collective freedom of religious communities to self-govern and practice their faith without external interference, a crucial aspect of the *forum externum*.

4. RE-EVALUATING EXISTING LEGAL FRAMEWORKS AND ETHICAL PRINCIPLES

The advent of Artificial Intelligence necessitates a critical re-evaluation of whether existing international human rights legal frameworks are sufficiently robust to protect freedom of religion in the digital age, and how emerging AI ethics guidelines can complement or inform this protection. This section will assess the adequacy of current legal interpretations and explore the relevance of contemporary ethical principles.

4.1. Adequacy of Current International Human Rights Law for AI Challenges

International human rights law, particularly the ICCPR and ECHR, provides a foundational framework for protecting freedom of religion. However, these instruments were drafted in a pre-digital era, and their application to the complex and rapidly evolving challenges posed by AI requires careful interpretation and, in some cases, re-conceptualisation.

4.1.1. Interpreting *Forum Internum* in the Context of AI-driven Persuasion

The absolute nature of the *forum internum* - the freedom to hold or not to hold beliefs - is fundamentally challenged by AI's capacity for sophisticated persuasion and potential cognitive manipulation. Traditional threats to *forum internum* typically involved direct coercion, indoctrination, or forced conversion by state actors (UN Human Rights Committee, 1993). However, AI-driven systems can exert influence through subtle means, such as highly personalised content recommendations, targeted propaganda, or even emotionally resonant generative AI outputs that bypass conscious critical faculties (Susser et al., 2019).

The question arises: at what point does algorithmic influence cross the line from mere persuasion to an infringement on the absolute freedom of thought and conscience? Current legal interpretations may struggle to delineate this boundary. While direct coercion is clearly

prohibited, the more insidious forms of AI-driven manipulation, which might not involve physical force but rather psychological conditioning or information control, pose a novel challenge. A re-interpretation of *forum internum* may be needed to encompass protection against undue influence that undermines an individual's autonomous belief formation, even if such influence is not overtly coercive (Nussbaum, 2011). This could involve recognising a "right to cognitive liberty" in the digital sphere, protecting individuals from non-consensual interference with their mental processes and data that informs their worldview (Bublitz, 2013).

4.1.2. Applying *Forum Externum* to Digital Manifestations of Religion

The *forum externum*, the freedom to manifest one's religion, is also significantly impacted by AI. While the digital sphere offers new avenues for religious expression (as discussed in Section 3.1), it also introduces new forms of restriction and discrimination. Existing legal frameworks protect the manifestation of religion in "public or private," but the nature of "public" and "private" in digital spaces is often ambiguous (Lessig, 2006). For instance, is a private religious group chat on an AI-moderated platform truly "private" if its content is analysed by algorithms?

Furthermore, algorithmic censorship, content moderation policies, and platform terms of service can inadvertently or intentionally restrict religious expression online. If AI systems are biased against certain religious symbols, narratives, or practices, their automated moderation could lead to disproportionate removal of religiously significant content, effectively limiting the *forum externum* (Gillespie, 2018). Applying the necessity and proportionality tests (ICCPR Article 18(3)) to these digital restrictions requires careful consideration. It becomes crucial to ensure that platform policies, often enforced by AI, do not impose limitations that are broader than what is permissible under international human rights law, and that there are effective avenues for redress when such limitations occur.

4.1.3. State Responsibility for AI-related Human Rights Violations

A critical aspect of international human rights law is the principle of state responsibility. States have obligations to respect, protect, and fulfil human rights. In the context of AI, this means states must not directly violate FoRB through their own AI systems (e.g., state-sponsored surveillance or discriminatory algorithms). More complex is the state's obligation to *protect* individuals from human rights abuses by non-state actors, particularly powerful AI developers and platform providers (OHCHR, 2020).

The challenge lies in attributing responsibility for AI-driven harms. If an AI system developed by a private company discriminates against a religious group, what is the state's responsibility to regulate that company or provide remedies? International law generally requires states to regulate private actors to prevent human rights abuses within their jurisdiction (OHCHR, 2011). This implies a duty for states to establish robust regulatory frameworks for AI, including requirements for transparency, accountability, and independent oversight, to ensure that AI systems do not facilitate or perpetuate violations of religious freedom. The absence of such regulation could be seen as a failure by the state to fulfil its protective obligations under international human rights law.

4.2. Emerging AI Ethics Guidelines and Their Relevance to Religious Freedom

In response to the ethical challenges posed by AI, numerous organisations, governments, and academic bodies have developed AI ethics guidelines. While not legally binding, these principles offer valuable insights and complement existing human rights frameworks, providing a moral compass for AI development and deployment.

4.2.1. Principles of Fairness, Transparency, and Accountability

Core principles consistently found in AI ethics guidelines include fairness, transparency, and accountability (High-Level Expert Group on AI, 2019; IBM, 2022).

a. **Fairness:** It dictates that AI systems should not produce biased or discriminatory outcomes. In the context of religious freedom, this means designing and deploying AI that does not disadvantage or target individuals based on their religious affiliation or lack thereof. This principle directly supports the non-discrimination aspect of FoRB.
b. **Transparency:** It requires that the workings of AI systems, particularly their decision-making processes, should be understandable and explainable. For religious freedom, this means individuals should be able to understand why an AI system might have censored their religious content, denied them a service based on inferred religious data, or presented them with specific religious narratives. Lack of transparency can obscure discriminatory practices and prevent effective challenge.
c. **Accountability:** This ensures that there are clear mechanisms for identifying who is responsible when an AI system causes harm and for providing redress. This principle is crucial for enforcing FoRB, as it demands that developers, deployers, and even states can be held responsible for AI systems that infringe upon religious freedom, and that victims have avenues for remedy.

4.2.2. Human Oversight and Control in AI Systems

Many AI ethics frameworks emphasise the importance of maintaining meaningful human oversight and control over AI systems, particularly those operating in sensitive domains (Floridi et al., 2018). This principle directly relates to the protection of human autonomy and dignity, which are foundational to religious freedom. In contexts where AI might influence belief formation, moderate religious content, or make decisions affecting religious communities, human oversight ensures that ultimate decision-making authority remains with individuals and that AI serves as a tool rather than a master. This principle guards against the erosion of human agency and ensures that the *forum internum* is not inadvertently or intentionally compromised by fully autonomous AI.

4.2.3. The Principle of Non-Discrimination and Religious Minorities

The principle of non-discrimination is a cornerstone of both human rights law and AI ethics. Within AI ethics, it specifically calls for preventing AI systems from perpetuating or exacerbating existing societal inequalities, including those based on religion (Council of Europe, 2020). This is particularly salient for religious minorities, who are often disproportionately affected by discrimination. AI systems must be designed with sensitivity to diverse religious practices and beliefs, ensuring that they do not inadvertently create barriers

or impose burdens on minority religious groups. This requires proactive measures in data collection, algorithm design, and testing to identify and mitigate biases that could lead to indirect discrimination against religious communities, thereby reinforcing the state's obligation to protect the rights of all individuals, irrespective of their faith.

5. TOWARDS PROACTIVE SOLUTIONS AND FUTURE DIRECTIONS

Addressing the complex interplay between Artificial Intelligence and the right to freedom of religion requires a multi-pronged, proactive approach involving legal, ethical, and societal interventions. This section outlines key solutions and future directions necessary to ensure that technological advancement upholds, rather than undermines, religious liberty.

5.1. Developing AI-Specific Interpretive Guidance for Freedom of Religion

Given the novel challenges posed by AI, a crucial step is the development of specific interpretive guidance from authoritative international human rights bodies. Existing general comments and jurisprudence, while foundational, may not fully address the nuances of AI's impact on both *forum internum* and *forum externum*. Such guidance could:

a. **Clarify the scope of *forum internum* protection against subtle AI-driven cognitive manipulation:** This would involve defining what constitutes undue influence or coercion in digital spaces, establishing thresholds for algorithmic persuasion that infringe upon autonomous belief formation, and outlining state obligations to protect individuals from such interference.

b. **Provide criteria for permissible limitations on *forum externum* in digital environments:** This would involve setting clear standards for content moderation, algorithmic filtering, and data collection practices that affect religious manifestation online. It should emphasise that any restrictions must strictly adhere to the necessity and proportionality tests, be non-discriminatory, and provide effective avenues for redress.

c. **Address state responsibility for AI-related harms perpetrated by private actors:** Guidance should elaborate on the due diligence obligations of states to regulate AI development and deployment within their jurisdiction, ensuring that private companies respect religious freedom throughout the AI lifecycle, from design to deployment. This includes mandating human rights impact assessments for high-risk AI systems.

d. **Offer guidance on the use of AI in public services and law enforcement:** This would include specific recommendations to prevent algorithmic bias against religious groups in areas such as surveillance, policing, and access to social services, ensuring equal treatment and non-discrimination

These interpretive documents would provide much-needed clarity for states, AI developers, and religious communities, fostering a common understanding of human rights obligations in the digital sphere.

5.2. The Role of International Organisations and Multi-Stakeholder Dialogue

Effective governance of AI's impact on religious freedom cannot be achieved by any single actor. International organisations, alongside governments, civil society, religious leaders, and the tech industry, must engage in sustained multi-stakeholder dialogue.

a. **International Organisations (e.g., UN, UNESCO, Council of Europe):** These bodies can serve as conveners for dialogue, facilitators for norm-setting, and platforms for sharing best practices. They can promote research, develop recommendations, and monitor compliance with human rights standards in AI development (UNESCO, 2021).
b. **Governments:** States have the primary responsibility to legislate and regulate AI in a manner consistent with human rights. This includes developing national AI strategies that integrate human rights safeguards, establishing independent oversight bodies, and ensuring accountability mechanisms for AI-related harms (European Commission, 2021).
c. **Civil Society Organisations:** Human rights NGOs and religious freedom advocates play a crucial role in monitoring AI's impact, raising awareness, advocating for protective measures, and providing a voice for affected communities (Human Rights Watch, 2014).
d. **Religious Leaders and Communities:** Their active participation is essential to ensure that AI policies are informed by diverse religious perspectives and sensitivities. They can articulate how AI impacts their specific practices and beliefs, contributing to more nuanced and effective solutions (World Council of Churches, 2023).
e. **Tech Industry:** AI developers and deployers have a responsibility to design, develop, and implement AI systems ethically and in a human rights-respecting manner. This includes adopting human rights by design principles, conducting internal human rights impact assessments, and engaging transparently with stakeholders (Microsoft, 2024).

This collaborative approach is vital for developing globally coherent and contextually sensitive solutions that reflect diverse values and address complex technological realities.

5.3. Promoting AI Literacy and Ethical Awareness within Religious Communities

Empowering religious communities with knowledge about AI is crucial for navigating its opportunities and challenges. Many individuals within religious communities may lack a comprehensive understanding of how AI works, its potential benefits, and its inherent risks.

a. **Educational Initiatives:** Programs should be developed to enhance AI literacy within religious communities, explaining basic AI concepts, data privacy implications, and the potential for algorithmic bias. This can be done through workshops, online resources, and collaborations with educational institutions.
b. **Ethical Reflection:** Encouraging ethical reflection within religious traditions on the implications of AI for theological concepts, spiritual practice, and communal life is also important. This can lead to the development of faith-based ethical frameworks for engaging with AI, drawing on existing religious wisdom traditions (The Vatican, 2020).
c. **Capacity Building:** Providing religious leaders and institutions with the capacity to critically assess AI tools, understand their data footprints, and engage with tech companies on ethical concerns will enable them to better protect their communities' religious freedom in the digital sphere.

By fostering greater AI literacy and ethical awareness, religious communities can become more informed participants in the ongoing dialogue about AI governance and better equipped to advocate for their rights.

5.4. Regulatory Approaches: Soft Law vs. Hard Law Solutions

The debate over regulatory approaches for AI often revolves around "soft law" (non-binding guidelines, ethical principles) and "hard law" (binding legislation, regulations). Both have a role in protecting religious freedom.

a. **Soft Law:** Ethical guidelines, codes of conduct, and best practices developed by multi-stakeholder initiatives (as discussed in 5.2) serve as important initial steps. They can foster consensus, encourage responsible innovation, and provide a flexible framework for rapidly evolving technology (OECD, 2019). Soft law can also inform the development of more formal legal instruments.
b. **Hard Law:** Ultimately, binding legislation is necessary to ensure accountability and enforce human rights protections. This includes:
    i. **Data Protection Laws:** Robust data protection regulations (e.g., GDPR) are critical for safeguarding religious privacy, as religious data is often considered sensitive (European Union, 2016).
    ii. **Anti-Discrimination Laws:** Existing anti-discrimination laws need to be updated to explicitly address algorithmic discrimination, ensuring that AI systems do not perpetuate or amplify biases against religious groups.
    iii. **AI-Specific Regulations:** Legislation specifically targeting high-risk AI systems, mandating human rights impact assessments, transparency requirements, and independent auditing, is becoming increasingly necessary (European Parliament, 2021). This could include specific provisions related to AI systems that process sensitive religious data or influence public discourse on religion.
    iv. **Accountability Mechanisms:** Establishing clear legal avenues for redress when AI systems cause harm to religious freedom, including access to effective remedies and judicial review of AI-driven decisions.

A balanced approach that leverages the flexibility of soft law to guide innovation while establishing robust hard law to enforce fundamental rights will be most effective in protecting religious freedom in the AI era.

5.5. Fostering Interdisciplinary Research and Collaboration

The challenges at the intersection of AI and religious freedom are inherently interdisciplinary, requiring collaboration among experts from diverse fields.

a. **Legal Scholars:** To interpret existing human rights law in the context of AI and propose necessary legal reforms.
b. **AI Ethicists and Computer Scientists:** To understand the technical capabilities and limitations of AI, identify potential risks, and develop ethical AI design principles.
c. **Theologians and Religious Studies Scholars:** To provide insights into the nuances of religious belief and practice, and to articulate how AI impacts spiritual and communal life.
d. **Sociologists and Anthropologists:** To study the societal impacts of AI on religious communities and cultural practices.
e. **Philosophers:** To engage with fundamental questions of human autonomy, consciousness, and the nature of belief in an AI-infused world.

Fostering grants, research centres, and academic programs that specifically encourage this interdisciplinary collaboration will be crucial for generating comprehensive insights and developing holistic solutions. This collaborative research can inform policy, guide technological development, and ensure that the future of AI is shaped in a manner that respects and upholds the fundamental right to freedom of religion for all.

6. CONCLUSIONS

6.1. Summary of Key Findings

This paper has explored the complex and evolving relationship between Artificial Intelligence and the right to freedom of religion or belief (FoRB) in international human rights law. It began by establishing the foundational importance of FoRB, distinguishing between the absolute *forum internum* (freedom of belief) and the qualified *forum externum* (freedom to manifest belief), and outlining the strict limitations permissible under international instruments like the ICCPR and ECHR. Our analysis revealed that AI presents a dual nature: offering significant opportunities to enhance religious expression, education, and community building through improved access to knowledge, facilitated dialogue, and virtual worship spaces. However, the core of this inquiry highlighted the profound challenges AI poses to FoRB. These include the pervasive risks of algorithmic bias and discrimination against religious groups, the erosion of religious privacy through surveillance and profiling, and the unsettling potential for AI to subtly influence or manipulate belief formation, thereby impinging on the absolute *forum internum*. Furthermore, AI's impact extends to the *forum externum* through issues like automated content moderation, the ethical implications of AI-driven rituals, and the amplification of religiously motivated hate speech. The autonomy of religious institutions themselves also faces new pressures in an AI-driven world.

The re-evaluation of existing legal frameworks demonstrated that while foundational human rights principles remain relevant, their application to AI-specific scenarios requires careful interpretation and, in some cases, re-conceptualisation. Particularly challenging are the nuanced forms of AI-driven influence on belief, the ambiguous nature of digital "public" and "private" spaces for religious manifestation, and the complexities of attributing state responsibility for harms caused by private AI actors. Nevertheless, emerging AI ethics guidelines, emphasising principles of fairness, transparency, accountability, and human oversight, offer a crucial complementary framework, reinforcing the human rights imperative for responsible AI development.

6.2. The Imperative for a Human-Centric Approach to AI Development

The findings underscore an urgent imperative for a human-centric approach to AI development and governance. This means prioritising human dignity, autonomy, and fundamental rights - including freedom of religion - at every stage of the AI lifecycle, from design and data collection to deployment and oversight. AI must be viewed as a tool to augment human capabilities and well-being, rather than a force that diminishes human agency or undermines cherished freedoms (European Commission, 2019). A human-centric approach demands that:

a. **Ethical principles are embedded in technical design:** AI systems must be designed with explicit consideration for human rights safeguards, including mechanisms to prevent bias, ensure privacy, and promote transparency. This requires collaboration between ethicists, human rights experts, and AI engineers (Jobin et al., 2019).
b. **Human oversight remains paramount:** For high-risk AI applications, particularly those impacting sensitive areas like belief formation, content moderation, or surveillance, meaningful human review and intervention capabilities are indispensable. Fully autonomous decision-making in such contexts risks eroding fundamental rights without adequate recourse (Council of Europe, 2024).
c. **Accountability mechanisms are robust:** Clear legal and ethical frameworks must be established to hold developers, deployers, and states accountable for AI-related human rights violations. This includes accessible grievance mechanisms and effective remedies for individuals whose religious freedom has been infringed upon by AI systems (UN Guiding Principles on Business and Human Rights, 2011).

Ultimately, the goal is not to impede technological progress but to steer it in a direction that respects and reinforces the values that underpin a just and free society. The protection of freedom of religion, as a cornerstone of human rights, serves as a critical litmus test for the ethical development of AI.

6.3. Future Research Agendas

The intersection of AI and freedom of religion is a nascent but rapidly expanding field, demanding continued scholarly attention and practical engagement. Several key areas warrant future research:

a. **Empirical Studies on AI's Impact:** More empirical research is needed to quantify and qualify the actual impact of AI on religious communities globally. This includes studies on algorithmic bias affecting religious groups, the efficacy of AI-driven religious content moderation, and the psychological effects of AI-driven persuasion on belief formation.
b. **Jurisprudence Development:** Legal scholars should continue to explore how existing human rights jurisprudence can be adapted and expanded to address novel AI challenges. This includes developing specific legal tests for AI-driven infringements on *forum internum* and *forum externum*, and analysing the extraterritorial application of human rights law to global AI platforms.
c. **Comparative Regulatory Approaches:** A comparative analysis of different national and regional regulatory models for AI (e.g., EU AI Act, US approaches) and their specific implications for freedom of religion would be highly valuable. This could identify best practices and potential pitfalls in legislative design.
d. **Theological and Philosophical Responses to AI:** Deeper interdisciplinary engagement is needed to explore how various religious traditions are grappling with the ethical and theological implications of AI, including concepts of consciousness, personhood, and the sacred in an AI-infused world.
e. **Best Practices for Ethical AI Development:** Practical research into developing technical solutions and design methodologies that proactively embed religious freedom safeguards

into AI systems, such as bias mitigation techniques tailored for religious diversity, and privacy-preserving AI for sensitive religious data (AI Ethics Researchers, 2024).

By pursuing these research agendas, the international community can collectively work towards a future where AI serves humanity, enriching lives and respecting fundamental freedoms, including the cherished right to freedom of religion or belief.

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A LEGAL PROGNOSIS OF THE SIGNIFICANCE OF FORENSIC EVIDENCE IN CRIMINAL INVESTIGATION IN NIGERIA AND SOUTH AFRICA

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Abstract: *Forensic evidence plays pivotal role in criminal investigation by offering scientific approach to uncovering and proving crimes. It contributes to the elucidation of complex cases and ensures the integrity of legal proceedings. The law recognises the importance of forensic evidence in prosecuting criminal cases, as its effective application enhances the accuracy and reliability of criminal investigations and resultant punishment imposed. This article critically analysis the role and influence of forensic evidence in criminal investigations in Nigeria and South Africa. Utilizing a qualitative, doctrinal approach, the study demonstrates the growing use of forensic evidence, assess the awareness levels among law enforcement agencies, and pinpoint the challenges and opportunities associated with its application. The ultimate purpose is to emphasize the importance of forensic evidence in improving the accuracy and reliability of criminal investigations and to suggest strategies for overcoming existing challenges to fully employ its potential within the criminal justice systems of both jurisdictions. The paper highlights the increasing utilisation of forensic evidence in crime detection and management, by underscoring its role as a valuable tool for investigators within the Police Force and other law enforcement agencies. Furthermore, the article evaluates the awareness level on the relevance of forensic evidence, it investigates the use of forensic evidence in criminal investigations, and identifies the challenges and opportunities in the utilisation of forensic evidence in both jurisdictions. While progress has been made, addressing existing challenges is crucial for maximising the potential of forensic evidence in the criminal justice systems of both countries. The findings collectively emphasises the pivotal role of forensic evidence in criminal investigations, urging continuous advancements and awareness campaigns to enhance its application in both jurisdictions.*

Keywords*: forensic evidence, investigators, criminal investigations, police force, Nigeria, South Africa*

1. INTRODUCTION

Forensic evidence in criminal investigations has evolved as a critical component of the legal landscape. Historically, the inception of forensic science traces back to the late 19th century when pioneers like Edmond Locard established the first crime laboratory in Lyon, France, providing a scientific foundation for criminal investigations (Weedn, 2017, p. 3-9). Over the years, forensic science has become integral to the identification, analysis, and

interpretation of evidence, aiding law enforcement in solving crimes (Egenti, 2022). The recognition of the importance of forensic evidence in the legal system is evident in its widespread use across jurisdictions. It involves various scientific disciplines such as DNA analysis, fingerprinting, ballistics, and toxicology. The legal admissibility of forensic evidence is subject to rigorous standards, ensuring its reliability and validity in court proceedings. In contemporary criminal investigations, forensic evidence serves multiple purposes. It not only helps establish the guilt or innocence of a suspect but also contributes to the reconstruction of events, identification of perpetrators, and determination of the cause of death (Egenti, 2022).

The integration of technology and advancements in forensic techniques further enhances the precision and scope of forensic investigations. Understanding the historical development and multifaceted role of forensic evidence provides a solid foundation for exploring its legal implications in modern criminal justice systems. This paper evaluates the importance of forensic evidence in criminal investigations and also discusses the roles of forensic evidence.

A comparative analysis of forensic evidence in Nigeria and South is considered and the challenges involved are also examined. Necessary recommendations are made to enhance the use of forensic evidence in criminal investigations.

1.1. Practices and Procedures in the Collection of Forensic Evidence

In law, forensic science is invaluable in the pursuit of justice. This is because the proof of crimes is a very delicate transaction having at its center the innocence or guilt of an accused person. The law recognizes the importance of forensic evidence in prosecuting criminal cases. When scientific methods are rigorously used, without bias or prejudice, they can provide cogent evidence in uncovering and proving the crime (Atoyebi and Samaila, 2023). The vital role forensic evidence plays in the criminal justice system cannot be overstated. Forensic science offers insights by analyzing physical evidence and identifying culprits through personal markers such as fingerprints, footprints, blood drops, or hair. It establishes connections between criminals and crimes through objects left at or carried from the scene, linking them to the victim. Conversely, when recovered clues fail to connect the accused to the victim or the crime scene, it verifies the innocence of the accused.

Forensic evidence collection is a pivotal stage in criminal investigations, demanding meticulous practices and adherence to well-defined procedures. According to Sarki (2020), it necessitates adherence to legal protocols and ethical considerations which include obtaining evidence legally, ensuring privacy rights, and avoiding contamination. It is imperative to explore the intersection of legality and ethics in evidence acquisition. Preserving evidence is paramount to maintaining its integrity. Also, Lee and Pagliaro (2013, p.1-5) are of the view that proper storage conditions, preventing degradation, and safeguarding against contamination are critical aspects. Understanding advanced scientific methods for evidence preservation is essential. Different types of evidence demand specific collection methods. Whether biological, digital, or physical, the substrate upon which evidence is found dictates the techniques employed (Lee and Pagliaro, 2013, p.1-5). A thorough exploration of varied collection methods is crucial and comparing evidence collection practices across forensic events and jurisdictions are crucial and provides valuable insights. This includes evaluating the effectiveness of different methods and identifying best practices for optimal results.

2. EMERGING TRENDS AND INNOVATIONS IN FORENSIC SCIENCE

Forensic science is evolving rapidly and integrating cutting-edge technologies to enhance evidence collection, analysis, and crime resolution. Major emerging trends and innovations in forensic evidence include:

i. *Automation and Robotics*

Automated systems streamline evidence collection and analysis by improving efficiency and reducing human error. It seeks to accelerate processing time and enhance accuracy in forensic procedures. (Post, 2023)

Automation has been integrated into forensic DNA laboratories to establish DNA databases, drastically reducing the time required to process crime evidence samples. In digital forensics, automation combined with advanced analytical techniques for handling large datasets has proven highly effective. Automated forensic science enables the examination and comparison of extensive data sets, including fingerprints, handwriting, videos, images, and audio, with greater accuracy and speed (Bose, 2023). He further stated that intelligent automation agents, can compare, analyze, interpret, and correlate data collected during criminal investigations. Hence, this technology enhances resource efficiency in forensic labs by alleviating case backlogs and allowing investigators to address lower priority cases (Post, 2023). Automation facilitates parallel processing, enabling the simultaneous analysis of multiple evidence pieces. Once routine processes are swiftly completed by automation, examiners can focus directly on analyzing the processed data. While automation in forensic science does not replace the need for experts, it allows them to spend more time on data analysis and solving crimes. Also, according to Michelaet et al (2023), one requirement for the application of automation is the consistency of the input; it works well if the input has a defined structure.

ii. Deoxyribonucleic Acid (DNA) Analysis

Modern techniques have improve the analysis of fingerprints by utilizing advanced algorithms. Higher accuracy in matching prints aid in suspect identification and crime scene analysis. Siderska (2021) opined that the advancements in DNA analysis enable the prediction of physical traits from genetic information, aiding in suspect identification. This enhances the investigative process by providing additional characteristics for suspect profiling. This helps to identify individuals, solving cold cases, and preventing wrongful convictions. There is also the Next-Generation Sequencing (NGS) which improves comprehensive analysis of DNA samples, even from degraded or mixed sources. The Trace Evidence Chemistry an advanced technique used in analyzing trace evidence, including fibers and particles (Pollock, 2020). It gives an increased precision in linking suspects to crime scenes based on minute traces. Rapid DNA technology can generate DNA profiles within a few hours, facilitating the swift identification of suspects or victims. This is especially beneficial in urgent scenarios like mass disasters or when prompt identification is crucial for investigations (Roos et al, 2023). In addition, this technology allows for the collection and analysis of DNA from skin cells left on objects after they have been handled.

iii. *Machine Learning and Artificial Intelligence (AI):*

AI algorithms analyze vast datasets, aiding in pattern recognition, facial recognition, and behavior analysis. It assists in pattern recognition and aids evidence analysis. This gives room for a nuanced and rapid analysis of complex forensic data, leading to more informed

investigative decisions. It accelerates data processing, facilitates the identification of patterns and trends (Aldoseri, Al-Khalifa and Hamouda. 2023).

iv. Cloud-Based Forensic Solutions:

This cloud platform facilitate secure storage, sharing, and collaborative analysis of forensic data. It leaves room for accessibility, data sharing among agencies, and collaborative investigations (Garnett, 2021). Preservation of Bone Proteins which is an innovative method to preserve proteins in bone samples, allowing for extended forensic analysis (Jenkins, 2017). This also improves the ability to extract valuable information from skeletal remains, aiding in cold case resolutions. High-resolution imaging techniques such as 3D scanning and photogrammetry enhance crime scene documentation and gives detailed visual records for accurate crime scene reconstruction (Barazetti et al, 2014).

There is also the digital forensics in cyber security which is used to expand digital forensics capabilities for the purpose of addressing cybercrimes, including data breaches and digital fraud (Alghamdi, 2021). These include Advanced data recovery has improved with enhanced software tools and techniques that enable the retrieval of deleted, encrypted, or damaged data from digital devices like mobile phones, computers, and cloud storage (Comp, 2023).

The benefit of this is that it will strengthen the capacity to investigate and prosecute cybercriminals.

There is a need to integrate smart technologies and Internet of Things (IoT) in forensic laboratories for enhanced connectivity and data management so as to improve the workflow efficiency, equipment monitoring, and overall laboratory management (Hutchinson et al, 2020).

v. Hair and nail analysis which allows forensic toxicologists to detect long-term exposure to drugs or poisons by providing a timeline of substance use or exposure, which is especially valuable in cases of chronic poisoning or drug abuse (Usman et al, 2019).

vi. With the use of 3D scanning and modelling technologies, crime scene investigators are able to reconstruct crime scenes in great detail and accuracy and this can be utilised in court to offer a visual depiction of the situation and facilitate a deeper comprehension of the spatial linkages (Raneri, 2024). According to Raneri, they also use sophisticated forensic light sources that may identify human fluids, fingerprints, and other invisible trace evidence. The light produce certain chemicals that glow at distinct wavelengths for the purpose of identification.

vii. *Biometrics:* With increased accuracy, facial recognition technologies are now often employed in identification, verification, and surveillance procedures. According to fraud.com, facial recognition devices are capable of comparing faces from pictures or videos to enormous databases of people who are known to exist. Through speech traits examination, voice recognition technology is utilised to identify suspects. When audio recordings of the suspect's voice are found, this can be especially helpful.

These emerging trends and innovations signify a paradigm shift in forensic science by equipping investigators with powerful tools to address the complexities of modern crime. General advancements in forensic science have enhanced the effectiveness of criminal investigations. These not only boost the accuracy and dependability of evidence but also enhance the speed and efficiency of solving crimes.

2.2.The Significance of Forensic Evidence in Criminal Investigations

Forensic evidence holds paramount significance within the legal context, serving as a cornerstone in criminal investigations and legal proceedings. According to Wullenweber and Giles (2021, p. 542-554), Forensic evidence significantly enhances criminal investigations by providing objective, scientific information. The utilization of forensic science contributes to effective crime detection and resolution. It offers a reconstructive approach, aiding in the understanding of crime scenes and events. They are also of the view that the impact of forensic science is evident in the conviction of criminals based on tangible, scientific proof. Forensic evidence being rooted in scientific methodology, lends credibility to legal proceedings. Its objective nature provides an unbiased means of corroborating or challenging testimonial accounts, fostering a more robust and reliable adjudication process. Also, in criminal investigations, forensic techniques such as DNA analysis and fingerprinting contribute to precise identification and linking of evidence to specific individuals or events (Bradbury and Feist, 2005). This precision aids law enforcement in building compelling cases and ensures a more accurate pursuit of justice. It also provides judges and juries with scientifically validated information, facilitating informed decision-making. Its inclusion in legal proceedings contributes to a more thorough and nuanced understanding of the facts, influencing the outcome of trials (Visser, 2021). Overtime, the integration of forensic evidence upholds the integrity of the criminal justice system. Its systematic and standardized application helps prevent miscarriages of justice by ensuring that verdicts are based on sound scientific principles and empirical data (Inyang and Goodwill, 53-65). The efficient use of forensic evidence expedites legal processes by providing swift and conclusive resolutions. This is particularly crucial in criminal cases where timely investigations and adjudications are imperative for maintaining public trust and confidence in the legal system.

3. THEORETICAL PRINCIPLES IN CRIMINAL JUSTICE FOR FORENSIC SCIENCE

Forensic science is a multidisciplinary field that integrates principles from various scientific disciplines to aid criminal justice. Hence, theoretical elements in forensic science incorporate the foundational concepts and frameworks that guide the collection, analysis, and interpretation of evidence. These include:

i. *Locard's Exchange Principle*: Dr. Edmond Locard established this theory, stating that material is transferred between two objects anytime they come into contact (Thakar). Traces of evidence such as hair, skin cells, and fibres may be exchanged. The principle validates the idea that the perpetrator of a crime would almost always bring something into the crime scene and take something with them when they depart, this principle is essential to crime scene analysis. It validates the painstaking hunt for traces of evidence that can connect suspects to victims or crime scenes.

ii. *Principles of Evidence*: This has to do with the forensic evidence's weight, relevancy, and admissibility in court. It covers the chain of custody, evidence preservation, and guaranteeing the accuracy and legitimacy of forensic techniques (Badiye et al, 2023). Maintaining the integrity and admissibility of evidence in court requires careful treatment and recordkeeping. The guidelines guarantee the validity and probative value of forensic evidence produced in court.

iii. *Legal Frameworks and Ethics in Forensics*: These encompass the rules, laws, and ethical standards that govern forensic activities. It involves understanding individual rights, evidence admissibility, and the professional conduct required of practitioners. By adhering to legal and ethical guidelines it is ensured that forensic evidence is collected and presented in a manner that upholds the integrity of the legal system and respects individual rights (Sutherland, 2023. Pg.470). It also maintains public trust in legal system and prevents injustices.

The theoretical elements of forensic science are germane to its application in the criminal justice system. They establish the scientific groundwork and methodological precision essential for the accurate gathering, analysis, and interpretation of evidence. These principles support forensic scientists and legal professionals in ensuring justice is upheld through dependable and valid forensic methods.

4. FORENSIC EVIDENCE IN NIGERIA

In a country like Nigeria where criminal activities have been reported to be on the increase, and the government seems helpless in part due to the sophistication in terms of how such crimes are perpetrated, the need for modern approach of criminal investigation continue to beckon (Nwgboawaji, 2012). To ensure an evidential modern approach to solving crimes, a partnership between the law of science and the law of justice must maintain a powerful relationship. However, the judicial approach towards forensic evidence in Nigeria has largely been reported to be indifferent, and the present situation is in part due to the paucity of knowledge on forensics (Obafunwa, 2018).

Forensic evidence plays a pivotal role in the Nigerian legal system, yet the legal framework governing its use presents both strengths and challenges. There is no explicit definition given to forensic science in any legislature in Nigeria. Although the Evidence Act (2011) and Cyber Crimes Act (2015) and some other laws allows the evidence of an expert witness in relation to forensic evidence. However, this is not sufficient as a comprehensive legislation that specifically addresses the admissibility and criteria for forensic evidence is necessary, in criminal investigations trials (Alisigwe and Moses, 2019). There is a need to understand that the effect of legal processes on the evaluation of forensic evidence is crucial for ensuring fair trials and just decisions Osugba and Agbeyi, 2019 p.91-98). Hence, it is imperative that convictions and punishments especially for grave offences be applied with caution, thoughtfulness, and without undue delay, provided that there is unambiguous proof of the defendant's guilt.

Forensic evidence in Nigeria has not been placed in an exceptional epistemic space, and till present, no law has expressly provided for the application of forensic science in a criminal investigation (Alisigwe and Moses, 2019). However, in practice, the Nigerian courts are placed in a position to accept evidence relating to the use of scientific evidence, and the person empowered to present such evidence is regarded as an expert witness (Adegbite, 2014). Opinions of witnesses are generally considered inadmissible during court trials. This is contained in section 67 of the Evidence Act (EA 2011). However, there is an exception to the general rule provided for under section 68 of the Evidence Act (2011) which states *when the court has to form an opinion upon a point of foreign law, customary law, or custom, or of*

science or art or as to the identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, customary law, or custom or science or art or in questions as to the identity of handwriting or finger impressions are admissible. Such especially skilled persons are referred to as experts. In furtherance to the above, the court will customarily accept evidence of an expert witness except such evidence is contrary to common sense or perverse (Adegbite, 2014).

4.1. Admissibility of Forensic Evidence in Nigeria

Forensic evidence has become an integral part of judicial proceedings in Nigeria, offering scientific insights to aid in the resolution of criminal cases. However, the admissibility of such evidence is contingent upon several criteria, reflecting the need for reliability, relevance, and adherence to legal standards. Forensic evidence must be directly related to the issues at hand in a case to be considered admissible. The Nigerian legal system emphasizes the importance of relevance and materiality, ensuring that the evidence contributes meaningfully to establishing facts in the case (Sarki and Saat, 2020 p.21-34). Furthermore, because forensic evidence is often rooted in scientific methods, it has to meet standards of reliability and scientific validity. As a result, courts in Nigeria are cautious about admitting evidence that lacks scientific rigor, emphasizing the need for methodologies and techniques that are widely accepted within the scientific community.

It is of importance that the integrity of forensic evidence be maintained. Evidence are to be well protected and not tampered with during collection, analysis, and storage. This is necessary to ascertain the authenticity of the evidence presented. The role of expert witnesses regarding forensic evidence cannot be undermined as the credibility and competence of the expert witness plays a pivotal role in the admissibility determination (Inyang and Goodwill, 2020). Nigeria's legal system imposes specific standards for the admissibility of evidence and forensic evidence must comply with these legal standards, ensuring that its introduction aligns with procedural rules and regulations governing the presentation of evidence in court. While adherence to stringent criteria is essential, Nigerian courts retain a degree of discretion in evaluating the admissibility of forensic evidence. Judges weigh the probative value of the evidence against potential prejudicial effects, ensuring a fair and just trial. The admissibility of forensic evidence in Nigerian judicial proceedings is a multifaceted process that demands a careful balance between scientific validity, legal standards, and the overall pursuit of justice (Osugba and Ogbeyi, 2019). By upholding these criteria, the Nigerian legal system seeks to ensure that forensic evidence contributes meaningfully to the resolution of criminal cases while safeguarding the rights of the defendant.

4.2. Admissibility of Computer Generated Evidence in Nigeria

For a computer generated evidence to be admissible, it must be relevant to the fact in issue, it must be pleaded and it must be admissible in law (s.84, Evidence Act 2011). In the case of *Kubor & Anor v Dickson* (2016) the appellant without calling witness to lay proper foundations tendered in evidence print out of online Punch Newspapers and election result from INEC website, the Supreme Court dismissed the appeal on the basis that such evidence should have aligned with the provisions of sec 84 0f the Evidence Act (2011). Also, where the maker of the computer generated evidence is called as a witness, an oral evidence of a person familiar

with the operation of the computer can be given of its reliability and functionality, albeit, such a person does not have to be a computer expert, and as a result, there is no need of electronic identification. However, where the witness who is called is not the maker of the computer generated evidence then letter of identification in line with Section 84 (2) of the Evidence Act (2011) becomes imperative (*Brila Energy ltd v FRN (2018)*

4.3. *Admissibility of Fingerprint Evidence*

To qualify as a fingerprint expert, the expert witness must have formal training and practical experience in reading, comparing, and photographing fingerprints. During the trial, they might need to provide photographic enlargements of developed latent fingerprints and comparison inked prints. Typically, at least 12 identical characteristic comparisons are necessary for admissibility, but partial fingerprints with fewer than 12 characteristics can still be considered admissible (Abiola, 2022).

4.4. Admissibility of Ballistic Evidence or Report

In Nigeria, ballistic report is admissible as expert evidence provided that such is relevant and the expert witness has laid proper foundation of his qualification, training and practical experience. The attitude of courts had been that where there are credible evidence to prove the fact that firearm was used, its make and functionality, then ballistic report is unnecessary (ss.68, 101, EA 2011). Forensic evidence can ultimately change the direction of a case, and often serves as pivotal in proving whether someone is guilty or innocent, or indeed, responsible, complicit, or liable. A case that highlights this contextual importance of forensic DNA analysis and science in general to Nigeria's criminal Justice system in the case of *Uchechi Orisa v. The State* (2018) where the Supreme Court discharged and acquitted the Appellant for failure to relate a bloodstain to the Appellant. It was the position of the Court that in this age of advanced technological know-how, a DNA analysis could have easily solved the question as to whether the bloodstain was from the appellant's body or not.

The Lagos State DNA and Forensic Center (LSDFC) laboratory, founded in 2017, was long regarded as the sole fully accredited and active Forensic DNA Laboratory in Nigeria. However, in 2021, the Adamawa DNA Forensic Laboratory was established in Yola state with a focus on Gender-Based Violence (GBV) investigations. This initiative is a collaboration between Modibbo Adama University, UNFPA Nigeria, and the EU-UN Spotlight Initiative and it aims to expedite justice for GBV survivors.

5. FORENSIC EVIDENCE IN SOUTH AFRICA

In South Africa, there is no unified law addressing the admissibility, collection, and analysis of forensic evidence. Instead, the legal landscape is shaped by a combination of general evidence laws and sector-specific regulations (South Africa Cybercrimes Act, 2021). The forensic science profession in South Africa currently operates without regulation, posing challenges to standardization and professional development. Unlike regulated environments in some countries, there is no national body overseeing the continuous advancement of forensic science practices (Olckers et al., 2013) In 1975, the *Federal Rule of Evidence* was enacted to guide criminal and civil litigations in Federal courts (Reports on Forensic Science, 2016). The

Rule 702 provides that *If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.*

Forensic DNA evidence is considered the most esteemed benchmark in the realm of justice administration in South Africa. The primary law governing forensic procedures is the Criminal Law (Forensic Procedures) Amendment Act 37 of 2013 (THE DNA ACT, 2013). It aims to amend the Criminal Procedure Act (1977) and the South African Police Service Act (1995), to facilitate the collection of specific bodily samples for forensic DNA analysis, ensure rights protection during collection, regulate proof via affidavits, list offenses for mandatory DNA collection, establish the National Forensic DNA Database, determine retention and destruction rules, utilize DNA profiles in investigations and identification, safeguard children's profile rights, oversee the database, address complaints, repeal overlapping provisions, and provide for transitional provisions and related matters (DNA Act, 2013).

According to Giannelli (1980), the reliability of forensic evidence depends on three factors which are the validity of the underlying principle, the validity of the technique applying that principle and the proper application of the technique on a particular occasion. Once forensic evidence is established as reliable, the court may take judicial notice of the validity of the principles and techniques. In *S v Maqhina*, (2001) when a DNA evidence was brought before the court for consideration, it was held by the court that where an accused's guilt depends solely on the results of scientific analyses, it is of paramount importance that the testing process, including the control measures applied, be executed and recorded with such care that it can be verified at any time by an objective expert and the trial court.

In South Africa, there is the DNA Criminal Intelligence Database managed by the Forensic Science Laboratory's Biology Unit established by the South African Police Service. This database consists of two parts: a Reference Index holding DNA profiles of convicted individuals and suspects, and a Crime Index storing DNA profiles collected from crime scenes. The South African National Accreditation System (SANAS) also provides technical guidelines for forensic DNA testing laboratories. Forensic science, including the utilization of DNA evidence, plays a significant and continually expanding role in crime investigation and the effective conviction of perpetrators in South Africa. The significance of forensics in criminal investigations is of paramount importance, given the persistent requirement for a safe, peaceful, prosperous, and advanced society. The result of forensic investigation can make the difference between the acquittal and conviction in the court of law (Gowsia and Sheeba, 2018).

However, there are concerns about convictions based on a single piece of evidence in South Africa. Legal scholars emphasize the dangers of relying solely on individual elements without a robust legal framework guiding the evaluation and presentation of such evidence (Olaborede and Lirieka, 2020). However, DNA profiling, a powerful forensic tool, is explored within the legal context in South Africa. The biochemical nature of DNA and its application in criminal cases are examined, shedding light on the complexities involved in introducing advanced forensic technologies into legal proceedings (Prahladh and Wyk, 2022). While South Africa recognizes the importance of forensic evidence in criminal proceedings, there is still a need for a dedicated legal framework to regulate its collection, admissibility, and presentation.

The absence of comprehensive legislation and regulation for the forensic science profession poses challenges to standardization and professional development in both jurisdiction.

5.1. Admissibility of Forensic Evidence in South Africa

In South Africa, the cornerstone of admissibility is relevance. Hence, forensic evidence must directly relate to the issues at hand, ensuring its probative value in determining the facts of the case. This requirement aligns with the broader legal framework, emphasizing the necessity for evidence to contribute meaningfully to the resolution of disputes (Visser, 2021). Expert opinions, a common form of forensic evidence, are admitted if they assist the trier of fact in understanding complex matters beyond common knowledge. South African courts employ a liberal approach, allowing expert evidence when it aids in clarifying issues, thus broadening the admissibility scope (Olaborede and Lirieka, 2020). Judges are allowed to conduct their own inquiries into the reliability and relevance of scientific evidence (Visser, 2021). While this approach is not without challenges, it reflects a commitment to ensuring the admissibility of sound and trustworthy forensic evidence.

Apart from relevance, the probative value and reliability of forensic evidence are critical considerations. Courts must assess whether the evidence is trustworthy and whether its introduction serves the interests of justice. This evaluation prevents the admission of evidence that may unduly influence the trier of fact or mislead the court. In the South African context, the lack of an absolute requirement for reliability as a prerequisite for admissibility distinguishes it from some other legal systems (Edmond and Walt, 2014). This nuanced approach acknowledges that reliability concerns can be addressed through the weight assigned to the evidence during trial rather than through outright exclusion. The South African legal system exhibits flexibility in its admissibility criteria for forensic evidence. While adhering to fundamental principles, the courts recognize the evolving nature of forensic science and technology. This adaptability ensures that legal standards remain relevant in the face of advancements, promoting a dynamic and responsive legal framework (Chiwara, 2018).

The admissibility criteria for forensic evidence in judicial proceedings in South Africa reflect a delicate balance between ensuring relevance, probative value, and reliability while adapting to the evolving landscape of forensic science. The dynamic nature of the legal framework allows for the incorporation of advancements, ensuring that the pursuit of justice remains at the forefront. While challenges persist, the commitment to a fair and effective legal process underlines South Africa's dedication to upholding the integrity of forensic evidence in the pursuit of truth and justice.

6. CHALLENGES IN UTILISING FORENSIC EVIDENCE

Despite its advantages, the utilization of forensic evidence faces challenges. Admissibility criteria vary, in its impact in weight attached to matters during legal proceedings. The reliance on single pieces of evidence raises concerns about the dangers of convictions without considering the broader context (Olaborede and Lirieka, 2020). The further opined that reliability is a critical factor affecting the admissibility of forensic evidence. Hence, in South Africa, reliability is not a prerequisite, but it influences the weight given to the evidence. Evaluating the probative value of forensic evidence requires an understanding of its relevance

and impact on establishing facts in legal proceedings. Forensic evidence faces challenges in Nigeria due to the alarming rate of crimes and difficulties faced by law enforcement agencies in criminal investigations. Yet, there is a lack of awareness about the relevance of forensics in criminal investigations which contributes to the difficulties faced by investigators. Rapid advancements in technology pose challenges in keeping forensic methods up-to-date and ensuring compatibility with evolving digital landscapes (Ovie, 2017 p.25-38). Ensuring the reliability and validation of forensic disciplines is essential. Unreliable or invalid forensic practices can lead to miscarriages of justice. Also, limited financial resources and man power can hinder the implementation of comprehensive forensic techniques. Adequate training and state-of-the-art equipment are essential but often constrained as a result of lack of sufficient funds. The surge in digital evidence and cybercrime poses a formidable challenge, demanding continuous adaptation of forensic methodologies to address the intricacies of digital forensics (Egenti, 2022).

6.2. Opportunities

There is a need for interdisciplinary collaboration between forensic scientists, law enforcement, and technology experts presents an opportunity for holistic investigations. Leveraging diverse expertise enhances the effectiveness of forensic techniques. Continued technological advancements offer opportunities for more sophisticated forensic tools. DNA analysis, digital forensics, and advanced imaging techniques contribute to improved investigative capabilities (Maharaj, 2013). Increasing public awareness and education on forensic evidence's role in justice systems fosters trust. It also encourages individuals to cooperate with forensic investigations, thereby enhancing the pool of available evidence (Allen, 2023). Collaborative interdisciplinary research offers the chance to enhance forensic techniques. Integrating expertise from diverse fields, such as technology and law, can lead to innovative approaches in forensic investigations. Drone technology also presents a new opportunities in forensic investigations (Shappert, 2017).

7. CONCLUSIONS AND RECOMMENDATIONS

The critical analysis of forensic evidence utilization reveals its significant impact on criminal investigations. Challenges in admissibility and reliability show the need for ongoing research and standardized practices. The effectiveness of forensic evidence is context-dependent, emphasising the importance of tailoring its use to the specifics of each case. As forensic science continues to evolve, its integration into legal proceedings demands a careful balance between innovation and adherence to established principles. The importance of forensic evidence in the legal context lies in its ability to introduce objectivity, precision, and credibility into the intricate dynamics of criminal investigations and legal proceedings. There is a future prospects for the evolution of forensic evidence in criminal investigations. In Nigeria, legal recognition of the importance of forensic evidence in criminal investigations is evident. Future prospects involve continued legal reforms to enhance the admissibility and utilization of forensic evidence.

The ongoing Nigeria Police Reform places importance on forensic evidence in crime prevention and control. Thus, the integration of forensic techniques is a prospect for more effective criminal investigations. Ethical standards and considerations should also be adhered

to in forensic evidence in order to ensure justice and maintain the integrity of the judicial system. Forensic professionals must maintain honesty, impartiality, and objectivity throughout the investigative process. There should be a complete and transparent reporting of methods, findings, and potential limitations if any should be reported. The privacy of individuals involved should be respected by confidentially protecting sensitive information. Furthermore, forensic experts should remain impartial, avoiding any bias that may compromise the objectivity of their findings. When necessary, informed consent should be gotten from individuals involved in forensic investigations. It is essential to comply with the legal standards governing the use of forensic evidence.

Based on the finding above, it is recommended that both Nigeria and South Africa require comprehensive training programs to enhance the skills of forensic investigators. This includes updating knowledge on advanced forensic techniques and technologies. Forensic investigation practices need a significant boost in technological integration. Emphasizing the use of modern tools, such as DNA analysis and digital forensics, can enhance the accuracy and efficiency of investigations.

Strengthening the legal framework surrounding forensic evidence is crucial. Ensuring proper admissibility of forensic findings in court and addressing legal challenges will contribute to more effective criminal justice outcomes. Investments in research and development are essential to keep pace with evolving forensic methodologies.

Establishing research institutions dedicated to forensic science can drive innovation in investigation practices. Collaboration between forensic institutions, law enforcement agencies, and international forensic communities is vital. Standardizing protocols and sharing best practices can contribute to consistency and credibility in forensic investigations. Increasing public awareness about the role and significance of forensic evidence is crucial. Educating the public on the importance of preserving crime scenes and cooperating with forensic investigators can improve the overall investigative process.

Legislative reforms in Nigeria should focus on strengthening the admissibility of forensic evidence in court proceedings. Clear guidelines and standards for the use of forensic evidence in criminal investigations are essential. Specific legislation should emphasize the scientific rigor required in the collection, analysis, and presentation of forensic evidence. This ensures the reliability and credibility of forensic findings. Legislation needs to keep pace with technological advancements. Implementing laws that address the admissibility of digital evidence and emerging forensic technologies is crucial for comprehensive legislative reforms. Ensuring procedural safeguards in the legislative framework is imperative. Legislation should guide the proper handling and preservation of forensic evidence to prevent contamination or mishandling. Legislative reforms in both countries should align with international standards and define the admissibility criteria for forensic evidence. Clarification on the legal status of various forensic techniques is essential. Legislation should address concerns related to data protection and privacy in the context of forensic evidence. Striking a balance between investigative needs and individual rights is crucial for effective legislative reforms.

Both Nigeria and South Africa are expected to witness technological advancements in forensic science, including DNA analysis and digital forensics. The evolution of technology will play a crucial role in enhancing the precision and scope of forensic evidence. Collaboration

between Nigeria, South Africa, and international forensic communities is a prospective avenue. Shared expertise and resources can contribute to the evolution of forensic evidence practices.

For South Africa, caution should be placed on relying on single evidence to avoid the dangers of convictions based on a single piece of forensic evidence while Nigerian courts should adopt a cautionary approach, recognizing the potential pitfalls of relying solely on individual pieces of forensic evidence.

Both countries should endeavor to establish regulations and standards to guide forensic practices, ensuring consistency and reliability. The storage of forensic evidence is crucial for maintaining its integrity. Adequate storage contributes to the reliability of findings. Hence, the two countries should prioritize proper storage facilities to preserve the integrity of collected evidence.

Research on the impact of medical evidence in South African rape cases highlights the influence of forensic findings on the criminal justice system. Nigeria should therefore prioritize the incorporation of forensic findings, particularly in cases of sexual assault.

The judiciary in both countries should always carefully consider expert evidence, recognizing its importance in forensic matters and ensuring a balanced approach to its presentation and acceptance. As technology progresses, forensic science is anticipated to advance as well to offer more powerful tools for law enforcement and the criminal justice system.

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THEORETICAL AND JURISPRUDENTIAL CONSIDERATIONS ON SERVITUDE IN THE MEANING OF THE ROMANIAN CIVIL CODE OF 1864 AND THE NEW ROMANIAN CIVIL CODE

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***Abstract**: This material aims to analyze from a theoretical point of view what servitude is in the context in which the legislator has expressly regulated it in the Romanian Civil Code. Being a topical and very important subject in the context in which there are many cases before the Romanian courts of law concerning easements in one form or another, I believe that by addressing the theoretical and practical aspects of this topic, the material may prove quite useful for those interested in a better understanding of the subject but also for practical work.*
***Keywords:** servitude, Romanian, civil, code.*

Introductory aspects

The legal doctrine has defined an easement as a real right in its own right, the main characteristic of which is to serve the use and utility of a real estate or land. At the same time, this right also constitutes a dismemberment of the right of ownership. (Bîrsan, 2013, p. 290)

On the other hand, the concept of servitude has its origin in Roman law, from the Latin word "servitus, -utius" and represents the burden that encumbers the real estate, i.e. the servient land in favor of another real estate, i.e. the dominant land, and which is constituted by the agreement of will between the owners of the two lands.

Another doctrinal approach regarding the right of easement is based on the legal definition given by Art. 755 para. (1) of the Romanian Civil Code, which specifies expressis verbis that an easement is "the burden that encumbers a real estate, for the use or utility of the real estate of another owner.". If we refer to utility, it is presented as an increase in the comfort of the dominant land as provided for in art. 755 para. (2) of the Romanian Civil Code. (Gabriel Boroi, 2013, p. 193)

According to another view, an easement is a right in rem, a dismemberment of the right of private property, provided for by the provisions of the Romanian Civil Code and which manifests itself as a burden on the servient land for the use and utility of the dominant land owned by another person. This utility results from the economic use of the dominant land, or in essence represents an increase in its comfort.

Servitudes can also be defined as ways of connecting two neighboring or nearby properties and facilitating their economic exploitation for the benefit of one of them, i.e. the dominant land. The land that bears the burden of the easement is called servient land. (Stanca, 2015, p. 50)

Legal characteristics of the right of easement

This dismemberment of the right of ownership which is the easement has several legal characteristics, namely:

a) It is a **real property right** which is constituted on the immovable property of another person, not on the immovable property of the holder of the easement right.

b) **It** necessarily **presupposes two immovable properties**. They must be owned by different persons. The property for whose benefit/use the easement is established is known in the legal literature as the **dominant estate,** while the other property burdened by the easement is called the **servient estate.**

c) It is **accessory in nature**, that is to say, the easement cannot be separate from the land and constitute a right in its own right. The action of sale or mortgage of the right of easement without alienation or mortgage of the dominant land is inconceivable, inadmissible. The transfer of the servitude right is made at the same time as the dominant land, even if the parties have not expressly stipulated this in the deed by which the dominant land is alienated. The burden corresponding to the right of servitude shall follow the servient land regardless of the person who acquires it, provided that the formalities prescribed by law for the publication of real estate title are complied with.

d) **The perpetual nature of** the servitude right derives from its accessory nature and means that if the parties have not stipulated a term and if the situation which gave rise to the servitude right continues, it will last for the duration of the existence of the two funds (dominant fund and servient fund) and will be passed on to the legal or testamentary heirs.

e) **The indivisibility of the servitude** as a legal character refers to the fact that the servitude encumbers the servient land in its entirety and benefits the entire dominant land. Where the servient land is in the private ownership of several persons, i.e. in common ownership, the easement can only be created by a legal act with the consent of all the co-owners, since it is a legal act of disposition. The situation is different in the case where the dominant land is common property because in this case the easement can be established even if there is not the consent of all the co-owners because we are no longer in the presence of a legal act of disposition but of one of administration or conservation, as the case may be, and the provisions of art. 640 Romanian Civil Code or art. 641, para. (1) Romanian Civil Code. (Gabriel Boroi, 2013, p. 194)

The same legal characteristics for the right of servitude, namely: right in rem in immovable property; existence of two immovable properties belonging to two different owners; accessory to the land to which it belongs; perpetual and indivisible character, are also dealt with in another specialized work. (Bîrsan, 2013, p. 290)

Classification and how easements are created

If we refer to the classification of easements according to their external manifestation, we have **apparent** and **non-apparent easements.** Art. 760 para. (1) of the Romanian Civil Code defines apparent servitudes as those whose existence is attested by a visible sign of servitude such as a door, a window or a water conduit.

Non-apparent easements are defined by Art. 760 para. (2) and are those easements the existence of which is not attested by any visible sign of an easement, such as an easement not to build or not to build above a certain height.

In terms of the exercise of easements, they are classified into **continuous and non-continuous easements.** Continuous easements within the meaning of Art. 761, para. (2) of the Romanian Civil Code are those the exercise of which is or may be continuous without the need for an actual act of man, such as an easement of sight or an easement not to build. Non-continuous easements are governed by art. 761, para. (2) of the Romanian Civil Code and are those for the existence of which the actual fact of human existence is necessary, such as an easement of passage by foot or by means of transportation.

If we analyze the criterion of the exercise of the prerogatives of the right of ownership by the two owners (the owner of the dominant land and the owner of the servient land) we distinguish between **positive and negative easements**. According to art. 762, para. (2) of the Romanian Civil Code, are those by which the owner of the dominant land exercises part of the prerogatives of the right of ownership over the servient land, such as the easement of way. Para. (3) of Article 762 of the Romanian Civil Code defines negative easements as those where the owner of the servient land is obliged to refrain from exercising some of the prerogatives of his property right, such as the easement not to build. (Lupașcu, 2022, p. 167)

The methods for the creation of easements, as provided by Article 756 of the Romanian Civil Code, are as follows:

1. The legal act, which can be a convention or a legacy. The legal instrument constituting the easement must take the notarially authenticated form ad validitatem, otherwise the sanction will be absolute nullity because real property rights such as easements are subject to registration in the land register. In order for an easement to be established by a legal act, the agreement of the owner of the dominant land and that of the owner of the servient land is required. It follows that a unilateral legal act between living persons (inter vivos) constituting an easement is excluded. If the owner of two properties bequeathed the properties to his two children by will and also established an easement between the two properties, there would be no infringement of the relevant legal provisions.

2. Tabular and extra-tabular usucaption. In the case of extra-tabular usucaption we are talking about positive servitudes. The provisions of the Romanian Civil Code in force apply to servitudes constituted by usucaption where possession has commenced since the date of entry into force of the Romanian Civil Code. (Gabriel Boroi, 2013, p. 196)

We should not overlook the approach of the Romanian Civil Code of 1864 to the creation of servitudes. There were several such ways, namely: natural factors; the law; and man's act.

Natural factors could give rise to natural servitudes. Examples here are: the easement of the mound; the easement of enclosure; the easement of springs; the easement of natural water drainage, etc.

The following types of easements were considered to be constituted by law: easements of rights of way; easements concerning the distance between plantations; easements concerning common separations (common fence; common ditch; common wall).

Human will could give rise to easements. These include: usucaption; covenant/contract; will.

An important part of the doctrine generated heated discussions on the way easements were constituted under the Old Romanian Civil Code, as it was considered that natural easements could not exist without a legal basis.

The classification into natural easements and legal easements also gave rise to numerous doctrinal controversies because it was considered that they were not dismemberments of the right of ownership. They were seen as a means of determining the content of the property right and the limits up to which that right could be exercised.

Even under the old rules, easements, i.e. dismemberments of the private property right, could be considered only those that allowed the owner of the dominant land to exercise the prerogatives relating to the legal content of the property right of the land that was subject to the easement. (Bîrsan, 2013, p. 294).

Rights and obligations of the landowner dominant as regards the easement

The owner of the dominant land has the right to use the servitude in accordance with the title deed and the relevant legal provisions without aggravating the situation of the servient land and without causing any prejudice to the owner of the servient land.

If the owner of the dominant land has the right to draw water from a spring on another person's land (main easement), he must cross that land (servient land) to reach the spring. The right of way in this case constitutes an accessory easement.

The owner of the dominant land has the right to defend his easement in court against those who prevent him from exercising his right by means of an action for a confession of easement.

If the servitude has been constituted by agreement and the owner of the servient landowner breaches that agreement, the owner of the dominant land has an action in contractual civil liability against the owner of the servient landowner.

The owner of the dominant land is also entitled to bring a possessory action, but only in the case of positive servitudes is possession exercised.

The owner of the dominant land has the right but also the obligation to take all measures and may carry out, at his own expense, all works to exercise and preserve the easement, unless otherwise provided for, according to art. 765, para. (1) of the Romanian Civil Code.

The owner of the dominant land is obliged to bear the costs of preserving the works for the exercise of the servitude if they benefit only the dominant land. If they also benefit the servient landowner, the costs shall be borne by the two owners in proportion to the advantages obtained by the two owners, in accordance with Art. 765, para. (2) of the Romanian Civil Code. (Lupașcu, 2022, p. 167)

Rights and obligations of the landowner servient servitude

The owner of the servient land may change the place where the servitude is exercised if there is a serious and legitimate interest and it remains as convenient for the owner of the dominant land.

With regard to the obligations of the owner of the servient land, we must start from the provisions of art. 759 of the Romanian Civil Code, which specifies, in para. (1) that the deed of incorporation may impose certain obligations on the owner of the servient land in order to ensure the use and utility of the dominant land. The owner of the servient landowner may bind

the owner of the dominant land to maintain and preserve the access to the dominant land. Paragraph (2) of Article 759 of the Romanian Civil Code stipulates that, subject to noting in the land register, the obligation is transferred to the subsequent acquirers of the servient land.

Situation of easements in the event of partition dominant or servient land

According to art. 769 of the Romanian Civil Code, if the dominant land is partitioned, the servitude may be exercised for the use and benefit of each party without affecting the situation of the servient land, i.e. without creating a worse situation. If the servitude is exercised for the exclusive use and benefit of one of the lots which have been separated from the dominant land, the servitude for the other parties shall be extinguished.

If the servient land is partitioned, the servitude may be exercised for the use and benefit of the dominant land on all the parts resulting from the partition, provided that such exercise does not aggravate the situation of the servient land and does not in any way prejudice the owner of the servient land. If, after the division of the servient land, the servitude may be exercised over only one of the resulting parts, the servitude over the other parts shall be extinguished. (Bîrsan, 2013, p. 290)

Ways of extinguishing servitudes

Taking into account the provisions of Article 770 of the Romanian Civil Code, with the marginal title Causes for the extinction of easements, in para. (1), the following causes are specified: consolidation, when both land ends up with the same owner, relinquishment by the owner of the dominant land, expiry, redemption, definitive impossibility of exercise, non-use for 10 years and disappearance of any utility.

In para. (2) of the same article provides for expropriation as a cause of extinguishment of easements and expropriation if the easement is contrary to the public utility to which the expropriated property will be affected. (Lupașcu, 2022, p. 168)

Consider the view of your neighbor's property

Article 614 of the Romanian Civil Code expressly prohibits the making of windows or openings in the common wall. If the owners agree, this window or opening may be made.

The distance between the enclosed or unenclosed land belonging to the owner of the neighboring land and the window for the view, balcony or other such works that would be oriented towards this land is at least 2 m, according to art. 615, para. (1) of the Romanian Civil Code.

If the bay window, the balcony or other such works are not parallel to the boundary line to the neighboring land, the distance shall be at least 1 m, according to art. 615, para. (2) of the Romanian Civil Code.

In calculating the above-mentioned distances, the starting point shall be the point closest to the boundary line on the face of the wall where the view has been opened or, as the case may be, on the outside line of the balcony, up to the boundary line. In the case of non-parallel works, the distance shall also be measured perpendicularly, from the point closest to the boundary line up to the boundary line, in accordance with Art. 615, para. (3) of the Romanian Civil Code.

In the case of light windows, the owner may open such windows, without any distance limit, provided that they are constructed in such a way as to prevent the view of the neighboring land, in accordance with art. 616 of the Romanian Civil Code.

Right of way considerations

If the owner of the land is deprived of access to the public road, he has the right to be allowed to cross the land of his neighbor for the exploitation of his own land, according to Article 617, para. (1) of the Romanian Civil Code.

The owner of the dominant land must exercise the right of way in such a way as to minimize any inconvenience to the exercise of the property right over the land over which the right of way is being exercised (the land being used). If there is more than one neighboring land having access to the public road, the passage shall be made on the land that would cause the least prejudice according to art. 617, para. (2) of the Romanian Civil Code.

At para. (3) of the same article stipulates the imprescriptibility of the right of way. This right is extinguished when the dominant land acquires another access to the public way.

If as a result of legal transactions such as sale, exchange, partition or the like, the owner of the dominant land no longer has access to the public way, the right of way may be claimed from those who acquired the part of the land on which the right of way was previously granted, in accordance with Article 618, paragraph. (1) of the Romanian Civil Code.

If the lack of access to the public right of way is attributable to the owner claiming the right of way, it can be established only with the consent of the owner of the land having access to the public right of way (the servient land) and with the payment of double compensation, according to Art. 618, para. (2) of the Romanian Civil Code.

According to Art. 619 of the Romanian Civil Code, the extent and manner of exercising the right of way are determined by agreement of the parties, by court decision or by continuous use for 10 years.

The owner of the servient land may bring an action for compensation against the owner of the dominant land within the period prescribed by law, which starts to run from the moment the right of way is established in accordance with Art. 620, para. (1) of the Romanian Civil Code.

If the right of way ceases to exist, the owner of the servient land is under a mandatory legal obligation to repay the compensation received, with deduction of the damage suffered in relation to the actual duration of the right of way in accordance with Art. 620, para. (2) of the Romanian Civil Code.

Examples from judicial practice regarding concerning the right of way and the window

Example 1: Right of way. By the action brought before the Court of Câmpulung Moldovenesc, the plaintiffs BE, CR and CE against the defendants TȘ, PA (deceased), continued against PC a A, PL, PG, SP, MA (deceased), continued against MV and MM, sought the establishment in their favor of a right of way over the property of the defendants, and an order that the defendants comply with that right of way, identical to the newly formed plots, entered in CF 2045, 550 and 2396, as follows: on the land of the defendant SP on an area of 50 sq.m (3 m wide/16.66 m long); on the land of the defendants MM and MV, heirs after MA, on an area of 215 sq.m (3 m wide/71. 66 m in length) on the land of the defendants PC, PG and

PL (heirs after PA), on an area of 538 sq. m (3 m wide/179.33 m in length) and the entry in the land register in the names of the plaintiffs, respectively, the defendants' right of easement and order the defendant MV to pay the costs. (SC 832/02.07.2012). In their evidence, the plaintiffs submitted extracts from the land register in which they stated that they are the registered owners of plots with topo numbers 1721, 1722/2, 1723/2, 1723/2, 1724, 1726 and 1712/2 of CF 320 M, as well as of plot no. 221 of CF 262 M. The land of these plaintiffs adjoins that of the defendants MA and PA. The plaintiffs have pointed out to the court that the property they own is a dead-end and that they have two access routes to reach it. In their evidence, they requested a technical topographical expert's report, on-the-spot investigation and the testimony of the witness PE.

The defendants sought the dismissal of the claim as unfounded on the ground that on the land on which the access road would pass, the defendant MV had applied to the town hall to build a house and would thus cause him serious damage, and would no longer be able to build. He also pointed out that on the land where the road would cross, a piece of land is being plowed for cultivation and that he has parked and machinery which he has nowhere to move and which he needs for his household and to grant the plaintiffs' request would constitute an unlawful and disproportionate interference with his property rights.

The court granted the claim of the plaintiffs on the basis of the following evidence: the expert's report, the statement of the witness heard, the on-site investigation report and the documents in the file.

In its reasoning, the court applied the provisions of art. 616 of the Romanian Civil Code, which confer the right on the owner deprived of access to the public road to claim a right of way over his neighbor's land, with the duty to compensate him for the damage caused to him. The same court also applied the provisions of art. 617 and 618 of the Romanian Civil Code, arguing that the owner of the dominant land must make the passage on the part that would cause the least possible damage to the owner of the land that is under the easement in order to get out to the road.

The court also held that it is lawful for the owner of the dominant land who is absolutely unable to get out onto the public road or if the existing exit would be seriously inconvenient or dangerous to cross the land under easement. Art. 634 of the Romanian Civil Code has also been applied in the sense that when an easement of way is constituted, the interest of the person who will suffer its consequences must also be taken into account and not only the interest of the person who will benefit from that right.

If we analyze the above case we will notice that the plaintiffs are BE, CR and CE. The defendants are: TȘ, PA, PC a A, PL, PG, SP, MA, MV and MM.

The subject matter of this dispute is the confessory easement action because the plaintiffs, as owners of the dominant land, had no other access to the public roadway except on a certain area of land owned by the defendants, i.e. the servient land.

We consider this court's decision to be legal and well-founded because a vast amount of evidence was submitted in the case, such as: judicial topographical survey, on-site investigation, documents, testimonial evidence. In addition, the court correctly applied the provisions of the Romanian Civil Code because it chose the least prejudicial option for the

owners of the servient estate. **Example no. 2:** Window with a view: by means of a lawsuit registered at the Court of Sighișoara in 2014, the plaintiffs S.J. and S.A. requested the court to order the defendant K.E. to order the defendant K.E. to wall the window on the ground floor of the building in Chendu village, no. 110 with a view towards the building located in Chendu village, no. 109, jud. Mures and order the defendant to pay the costs.

In the grounds of the application, the applicants stated that they are co-owners and live in the property situated in Chendu, nr. 109, jud. Mureș and that for 40 years they have lived in harmony with all their neighbors. They also pointed out to the court that in the spring of 2014, the defendant K.E. built a window at the neighboring building with administrative no. 110 without a building permit and without their consent, a view window, which is parallel to their entrance in the kitchen, so they are annoyed that the neighbors see everything that happens in their yard as well as in the kitchen and they hear everything that is being said in their kitchen, disturbing their peace and privacy. The application was based in law on the provisions of Law 50/1991 and Articles 614-615 of the Romanian Civil Code.

As evidence, it was requested the production of written evidence, photographic plates, the defendant's cross-examination, testimonial evidence with witnesses B.I. A.I. and K.S., on-site investigation.

By its statement of defense, the defendant pleaded the plea of lack of standing as a plaintiff, on the ground that it is not the registered owner of the property situated in Chendu nr. 110, jud. Mureș, the exception of the acquisition of the easement of view and the easement of light and ventilation in favor of the property at no. 110 on the property at no. 109 by usucaption of 30 years by the junction of the possession of his father K. I. with his possession, and on the merits, the dismissal of the action as unfounded, with costs. He also pointed out that as far as Article 614 of the Romanian Civil Code is concerned, the properties are distinct, with no common wall.

The defendant also pointed out that the plaintiffs' allegations that he had built a window on the property at 110 in the spring of 2014, a bay window that would be parallel to their kitchen entrance, were erroneous. The allegations that he built without planning permission and thereby disturbed their privacy are also not true.

The building at no. 110 was built by his father, Mr. Joncz Ioan Joncz, in 1978 on the basis of a project approved by the People's Council of the Jud. Mures.

They built their house at no. 109 in 1980, the year in which his parents allowed him to live on the ground floor of their house for 8 months, even using the room, currently the kitchen, whose window opens into their courtyard. It was and is necessary to have a window in this place, because there is no other possibility of opening the window elsewhere in this room. The existing window from the time the house was built had a 35 cm/49 cm window frame and an 18 cm/32 cm glazed eye, and opened all the way to provide ventilation, being above the stove.

His parents, although there was no discussion with the complainants, in order to respect their privacy, although the window was at a height that did not allow a direct view into their yard, blocked the view with a large-hole sieve.

This window was used from the time the house was built until 2014, when he carried out renovations to the house at 110, replacing several panes of glass with double-glazing.

In order to avoid any discussion and to keep good neighborly relations, he asked the plaintiff to give his opinion about the window he was going to put in place of the old one, to

establish together the exact location, as he agreed to put in the smoked double-glazed window much smaller than the old one and which cannot open entirely, only half-opening dropping down and not sideways, a situation which does not even allow him to see the sky, in no way the neighboring yard.

In the presence of the plaintiff, by mutual agreement, they determined the exact location, she asking him and showing him in front of witnesses how to position the window. From inside the defendant's house they cannot see into the plaintiffs' yard, because the window is smoky, frosted, does not open at an angle that allows them to see, and in front of the window is the stove from this point of view they cannot approach the window.

The plaintiff S. A. even helped him to redo the electrical wiring in the kitchen, where the window in question is, and asked him to modify the electrical wires so that he could position this window exactly where his mother, the plaintiff S. J., had shown him exactly.

The defendant annexed to the statement of claim copies of photographic plans, a copy of the situation plan of the building located in Chendu nr. 110, jud. It also requested testimonial evidence with the witnesses K. C. and K. C., the plaintiffs' cross-examination.

By Civil Judgment no. 357 dated 2.04.2015, in case no. 2068/308/2014, Sighișoara District Court dismissed the plaintiffs' action, on the basis of art. 614 and 615 NCC and Law 50/1991 and ordered them to pay the defendant the amount of 1500 lei as legal costs representing attorney's fees.

In its reasoning, the court pointed out that, as shown by the photographic plan and the on-site investigation, the defendant's window is in the immediate vicinity of the stove and its installation was necessary. Being an opening for air and light, it can be erected at any height and distance from the neighboring property, since it constitutes an attribute of the property right and does not in any way prejudice the owner of the neighboring property.

In the same judgment, the court also pointed out that the concept of view means the opening of a window towards the neighboring property, through which it is possible to look towards it, and in the case before the court, however, it is not a window of view but the window of the kitchen of his building is a smoked window, which only turns inwards, and cannot be seen towards the plaintiffs' house. It is the defendant's right to make this opening to the building in which he lives, and it is not necessary to obtain planning permission as it is not a work which alters the building's structural strength and/or architectural appearance.

Analyzing the above case we note that the plaintiffs are S.J. and S.A. and the defendant is K.E.

The object of the dispute is the obligation to do, i.e. the court to oblige the defendant to wall up the ground floor window of the building, which in the plaintiffs' opinion would constitute a view window in violation of the Romanian Civil Code.

We also consider the above solution of the court to be a sound and lawful one because it has judiciously analyzed the entire factual situation, by reference to all the extensive evidentiary material, such as: documents, photographic plates, on-site investigation report, witness statements, answers to interrogatories, making a correct application of the provisions of Articles 614 and 615 of the Romanian Civil Code and Law no. 50/1991.

Example no. 3: On 05.06.2018, the plaintiff N.E.E. sued the defendants. L.; R.S.; R.I.; A.A.; and A.N. E; requesting the court to order by its judgment: to establish a right of way for the apartment located in the attic of the building in Bucharest, sector 6, the right of way to be established on the shortest path from the attic apartment to the public road; to order a right of access to the public road for the apartment located in the attic of the building owned by the condominium, the right of access to be established through the staircase that they own, through the hallway at the entrance to the condominium, through the courtyard of the building to the public road and through the land they own in the area of 41.29 square meters;

The plaintiff also requested, as an effect of the right of access to the public highway, that the access of the property to the public highway be established in concrete terms, the access necessary for the penthouse apartment and the establishment of a right of access to the public highway; that the access to the public highway from the penthouse be identified by the entrance hall on the ground floor of the property and the courtyard in front of the building; that the undivided property of 41.29 sq. m. be removed from the property; that the land of 41.29 sq. m. as well as the identification of the undivided share of the parts and outbuildings in common use of the building.

In her pleading, the claimant pointed out that she is the owner of the above-mentioned property, according to the attached deed of adjudication, and that it was not possible to take possession of the property by the bailiff because it was found that the owner of the ground floor apartment of the property has a court order prohibiting access to the parking lot and hallway of the property and that the deed of acquisition did not expressly establish a way to access the public road from the apartment in the attic of the property owned by the claimant. The applicant also informed the court that she tried to settle the dispute amicably but the defendants refused. In law, the plaintiff based its claim on the provisions of Articles 617, 618, 619, 621 and 622 of the Romanian Civil Code; Articles 576; 577; 586, 616 et seq. 627-629; 630-635 and 644 et seq. Romanian Civil Code since 1864; Law No 7/1996 on the cadastre and publicity of real property. As evidence, the plaintiff requested that the documents annexed to the application be admitted and submitted.

In their statement of defense, the defendants invoked the plea of lack of standing as plaintiff since there is no legal relationship between the plaintiff and the defendants. On the other hand, the defendants also pointed out that in the civil lawsuit finalized in 2014, by Decision No 505A/15.04.2014 of the Bucharest Tribunal, a decision that became res judicata, the owners of the apartments located on the first floor and attic should have requested by counterclaim the constitution of an easement right, which they did not do, and that the action must be brought against the owner who will be affected by the easement right. On the other hand, the plaintiff was aware of the legal situation of the property when it adjudicated it, namely that no easement had been established and that a final judgment had prohibited it from access through the ground floor hallway and the parking lot, and it had no objections at the time. As to the merits of the case, the defendants sought dismissal of the action and an order that the applicant pay the costs. The defendants also counterclaimed.

In law, the defendants based their action on the following provisions: Articles 36, 205, 453 of the Romanian Civil Code; Article 1707 of the Romanian Civil Code; Articles 35 and 37 of Law 7/1996 in its original form and on the same legal texts as amended. As evidence, they asked for the taking of the evidence of the documents annexed to the statement of objections,

as well as the evidence of a technical expert's report in the field of construction and another topographical report. In the judgment delivered in the above case, the court admitted the plea of lack of standing of the defendants A.A. and A.N.E. and rejected the applicant's claim against these defendants as being brought against persons who lack standing to bring proceedings.

The same court admitted in part the plaintiff's claim and the counterclaim of the defendants-claimants R.S. and R.I. Thus, it ordered the establishment of the easement of way through pedestrian and vehicular access in favor of apartments no. 2 and no. 3 of the building located in Bucharest, sector. 6. The court also established the route by which the access from the public road to apartment no. 3 in the attic of the building located in Bucharest, sector. 6., in the exclusive property of the plaintiff. The route of the access from the public road to apartment no. 2 on the first floor of the above-mentioned building owned by the defendants R.S. and R.I. The request for the release from the undivided property was also rejected.

In order to reach that decision, the court took into account the evidence in the case file and the conclusions of the expert reports drawn up in the case. The court also took into account the provisions of Article 1707, para. (5) of the Romanian Civil Code; the Romanian Civil Code of 1864 with regard to the right of servitude, the provisions of the New Romanian Civil Code with regard to judicial partition.

From the analysis of the above case we will note that the litigants are the following parties: the plaintiff N.E.E. and the defendants: L.D.-L.; R.S.; R.I.; A.A.; and A.N.E.
The subject matter of the present case is the action for a confession of servitude and judicial partition because the plaintiff N.E.E., as owner of the dominant land (of the apartment located at the attic of the building in Bucharest, sector 6) did not have access to and from her apartment to and from the public road. It was also requested the exit from the undivided property, i.e. judicial partition in the above case.

We consider the court's solution to be a sound and legal one because it correctly applied the legal provisions on the matter. We are also of the opinion that since the neighborhood relations between the parties arose prior to 1.10.2011 (the date of entry into force of the New Romanian Civil Code) the law applicable to the easement and the right of access to the public way are the provisions of the Romanian Civil Code of 1864 according to the principle known in the specialized literature and in judicial practice as tempus regit actum.

It should also be noted that the provisions of Articles 616, 617 and 618 of the Romanian Civil Code of 1864 provided that the owner whose land is enclosed and who has no access to the public highway may claim a passage over his neighbor's land for the exploitation of the land, on that part which would shorten the path of the owner of the enclosed land to get out of the road, but on that portion which would cause the least possible damage to the owner on whose land the passage is to be opened.

In the present case, too, the shortest access route to the public way which does not give rise to additional costs for either of the litigants and which causes the least inconvenience to the exercise of the right of ownership over the land having access to the public way was taken into account.

Last but not least, the right of way, seen as a dismemberment of the private property right, also constitutes a limitation of the property right of the owner of the land and of the

building where the access path will be opened. This limitation is manifested with regard to the use, which will be diminished because the owner of the servient land is obliged to allow the owner of the dominant land to use a portion of his property for the right of way.

Conclusions

We can draw some conclusions from the material presented. First of all, in order to better understand what easements are, we need to refer to the theoretical, doctrinal and legal components. Thus, easements are real rights in immovable property, dismemberments of private property rights, encumbrances that encumber a property for the use or utility of another owner's property. When we talk about easements, we must necessarily refer to two properties belonging to different owners, i.e. the dominant estate, for the benefit of which the easements are established, and the servient estate, i.e. the property encumbered by the easements.

These easements have well-defined legal characteristics, are created in the manner prescribed by law, the formalities of real estate publicity must be complied with and they are extinguished in accordance with the relevant legal provisions. It should also be borne in mind that the owners of the two funds have specific rights and obligations. Aceste drepturi trebuie exercitate cu bună credință, astfel încât să nu prejudicieze alte persoane, conform principiului jurisconsultului roman Ulpianus, ,,alterum non laedere, adică să nu fie vătămate alte persoane.

The obligations incumbent on the owners must also be carried out in full, subject to the penalties laid down by law.

I have already given examples of two of the best-known easements in practice, namely the easement of right of way and the easement of window. By analyzing them from the point of view of their legal regulation, but also by referring to the case studies presented, interested persons will be able to better understand what these easements actually represent, how they can be created and how they can be defended.

When the plaintiff brings a confessional action for an easement, I believe that he must explain very clearly and concisely to the court and prove that, for example, he is deprived of access to the public road and that he has no other way of accessing it other than by crossing an area of land owned by the defendant, and that he would cause as little damage as possible to the defendant.

It is our recommendation that the parties seek expert legal advice from a lawyer. With regard to the taking of evidence in such situations, it is advisable to request in the statement of claim that evidence such as: specialized technical expertise, documents, photographic plans, interrogatories, witnesses, on-site investigations, etc., be obtained and taken.

Even the defendant has means of defense available to him when he is summoned to appear in court in such situations involving the creation/establishment of easements. In his statement of defence he can plead that he is not the owner of the servient land, that the plaintiff is not the owner of the dominant land and that he has other access to the public highway without crossing his land, that the window built in the wall of the house is a light window, etc. The defendant can also rely on evidence such as that mentioned above for the plaintiff.

I also consider that if the parties were to reach an amicable agreement, show flexibility, openness and understanding, many lawsuits concerning easements could be avoided and a joint agreement could be reached so that the easement would be beneficial to both owners, thus avoiding lengthy lawsuits and the high costs they generate.

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UNFAIR TERMS IN CONSUMER CONTRACTS

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Abstract: *This paper examines the legal framework governing unfair terms in consumer contracts, focusing on Romanian legislation and CJEU case law. It analyzes the core criteria—lack of negotiation, significant imbalance, and breach of good faith—and emphasizes the courts' duty to assess such clauses ex officio. The study also addresses the growing risks posed by digital contracts (e.g., click-wrap, browse-wrap), where consumer consent is often illusory. It argues for a contextual and proactive legal interpretation to ensure genuine contractual fairness and effective consumer protection.*

Keywords: *Unfair terms, consumer contracts, adhesion contracts, Court of Justice of the European Union, contractual imbalance, good faith, click-wrap, digital contracting, ex officio control, consumer protection law.*

1. Introduction

The topic of unfair terms in consumer contracts is a current and highly relevant issue, both from the perspective of national and European law. In the context of a market economy and the rapid digitalization of contractual relationships, consumer protection against unfair contractual practices becomes a necessity. The purpose of this paper is to analyze the legal regime of unfair terms in adhesion contracts, with a focus on the case law of the Court of Justice of the European Union (CJEU), recent legislative changes, and the new challenges posed by digital contract formation. In recent years, judicial practice and the activity of regulatory authorities have highlighted a series of ongoing tensions between credit institutions and consumers, caused by the introduction of imbalanced contractual terms. It is well known that, taking advantage of their dominant position, financial institutions have included in credit agreements provisions that, in the absence of genuine negotiation, exclusively favor their own interests to the detriment of consumers.

This paper aims to systematically analyze the legal and jurisprudential criteria for qualifying a clause as unfair, as well as the legal mechanisms available to consumers to have such clauses annulled and, where applicable, to obtain compensation for the harm suffered.

The analysis will be structured on several levels: defining the concept of an unfair term in both national and European law, identifying the constitutive elements, examining the principle of good faith and contractual imbalance, presenting the role of national and European courts, as well as the competent administrative authorities, while also addressing the new dimensions brought by the digitalization of contracting and its implications for the professional–consumer relationship.

2. The Concept of Unfair Terms

The concept of an "unfair term" is one of the cornerstones of the legal framework for consumer protection in both European and national law. Essentially, a contractual term is deemed unfair when, without having been individually negotiated, it creates a significant imbalance between the rights and obligations of the parties, to the detriment of the consumer, and violates the requirements of good faith. These elements—lack of negotiation, significant imbalance, and breach of good faith—are cumulative and expressly stated in Article 4(1) of Law No. 193/2000 on unfair terms in contracts concluded between professionals and consumers, as subsequently amended.

From a legislative standpoint, Law No. 193/2000, republished and updated, was significantly amended by Law No. 161/2023, which strengthened the powers of the National Authority for Consumer Protection (ANPC), introduced higher fines, and created more effective mechanisms for eliminating unfair terms. This legal act was adopted in the context of the partial transposition of Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers, thus paving the way for collective actions in the field of contractual protection.

Unfair terms generally appear in adhesion contracts—those standard, pre-formulated contracts drafted by the professional and imposed on the consumer "as is", without any real opportunity for negotiation. According to Article 1175 of the Civil Code, an adhesion contract is defined as one in which "its essential terms are imposed or drafted by one of the parties, for itself or following its instructions, with the other party only having the option to accept them in full." Law No. 193/2000 supplements this definition with a rebuttable presumption of non-negotiation in the case of standard contracts, including atypical documents such as order slips, tickets, vouchers, or electronic interfaces. From a systematic perspective, the unfair nature of a clause is determined based on three legal criteria: the formal criterion (the clause was not individually negotiated with the consumer), the material criterion (it creates a significant imbalance between the rights and obligations of the parties), and the axiological criterion (it contravenes the requirements of good faith and contractual fairness) (Pop et al., 2015:93).

These criteria are further developed in legal doctrine through three methods of analysis: (i) in abstracto evaluation, by assessing the clause in isolation against the law; (ii) global evaluation, by considering the clause in the context of the entire contract; and (iii) in concreto evaluation, based on the actual position of the parties at the time the contract was concluded (Popa, 2004:82-83).

The law includes, in an annex, a non-exhaustive list of potentially unfair terms (commonly referred to as the "grey list"), which comprises, among others, clauses that limit the professional's liability, allow unilateral modification of the contract, or impose disproportionate obligations on the consumer. However, this list is not exhaustive, and the case law of the Court of Justice of the European Union has repeatedly confirmed its illustrative nature (e.g., Case C-415/11, *Aziz*, 2013).

In conclusion, the qualification of a clause as unfair requires a multifaceted legal analysis, combining elements of substantive law, judicial practice, and doctrinal interpretation. This analysis is essential for protecting consumers, particularly in the context of a digital economy where contracts are increasingly concluded in an automated and impersonal manner, with no real negotiation taking place.

3. Conditions for Determining the Unfair Nature of Contractual Terms

Determining whether a contractual clause is unfair involves a complex legal analysis that combines legal, doctrinal, and jurisprudential criteria. Under national law, the relevant provisions are found in Article 4(1) of Law No. 193/2000, which states that a contractual term that has not been directly negotiated with the consumer is deemed unfair if, by itself or together with other contractual provisions, it creates a significant imbalance between the parties' rights and obligations, contrary to the requirements of good faith.

This provision transposes into national law Article 3(1) of Council Directive 93/13/EEC, which sets out the essential criteria for identifying a clause as unfair. In legal doctrine, these conditions are systematized into the three fundamental legal criteria outlined above:

- Formal criterion: the absence of effective individual negotiation. This criterion is essential for distinguishing between freely agreed-upon terms and those imposed by the professional in an adhesion contract.
  Article 4(2) of Law No. 193/2000 explicitly states that a clause is considered non-negotiated when it has been established without giving the consumer the opportunity to influence its content.
- Material criterion: the existence of a significant imbalance between the rights and obligations of the parties. This is not a purely economic or technical imbalance, but a legal one, determined by the disproportion between the advantages granted to the professional and the constraints imposed on the consumer.
- Axiological criterion: the breach of good faith. Good faith should be understood not only as contractual loyalty but also as the avoidance of imposing excessive terms in the absence of genuine negotiation.
  Article 1170 of the Romanian Civil Code requires the parties to act in good faith both during the negotiation phase and throughout the execution of the contract.

These three criteria are assessed in doctrine through a tripartite system of analysis, also mentioned above:

- In abstracto evaluation: the clause is examined in isolation, by comparing it to the indicative list of presumed unfair terms in the Annex to Law No. 193/2000.
- Global evaluation: the clause is assessed in relation to the contract as a whole, focusing on the overall balance between mutual obligations.
- In concreto evaluation: this takes into account the specific context in which the contract was concluded, the consumer’s economic and informational position, the complexity of the terms, and their actual impact on the weaker party.

This doctrinal approach is supported by authors such as Ionuț-Florin Popa, who emphasize that the determination of unfairness cannot be made without a functional and context-sensitive evaluation of the contractual content (Popa, 2004:82-83).

In the case law of the Court of Justice of the European Union, it has been consistently held that national courts must assess contractual terms not only based on their impact on the contractual balance, but also in light of the nature of the goods or services provided and the circumstances under which the contract was concluded (Case C-415/11, *Aziz*; Case C-243/08, *Pannon GSM*).

4. Lack of Pre-contractual Negotiation

One of the defining elements of the unfair nature of a contractual term is the lack of direct negotiation between the professional and the consumer. This condition is explicitly set out in Article 4(2) of Law No. 193/2000, which states that a clause is considered not to have been individually negotiated if it was unilaterally imposed by the professional without giving the consumer a genuine opportunity to influence its content.

Adhesion contracts, by their very nature, involve the wholesale acceptance of pre-established terms, in the absence of real negotiation. Article 1175 of the Civil Code defines an adhesion contract as one whose essential terms are drafted by one of the parties, with the other party having only the option to accept them as they are. This formulation highlights the imbalanced nature of the legal relationship and justifies legislative intervention in favor of the consumer.

In legal doctrine, adhesion contracts are defined as standardized legal instruments that exclude the concept of pre-contractual negotiation and allow the professional to impose contractual conditions that may, in fact, be imbalanced. The absence of negotiation enables the insertion of unfair terms, as the consumer has only the choice to adhere or to forgo the contract, with no possibility of modifying any contractual term (Toader et al., 2001:76).

The legislator has extended protection even to seemingly insignificant documents such as order slips, tickets, vouchers, or electronic forms that contain pre-established general conditions. Thus, under Article 3(1) of Law No. 193/2000, the legal provisions also apply to clauses inserted in such documents, provided that there is a reference to general terms and conditions, with a presumption of lack of prior negotiation (Stanciu, 2004:139).

In the current context, the digitalization of legal relationships has led to the widespread use of pre-formulated contracts, accepted simply by ticking a checkbox ("click-wrap agreements") or even implicitly, through the use of a platform ("browse-wrap"). In such cases, negotiation is entirely absent, and the consumer is not genuinely informed about the legal effects of the contractual terms. The law, in its broad interpretation, also provides protection in these situations, treating digital contracts as modern forms of adhesion contracts (Popa, 2004).

National and European case law has established a rebuttable presumption of lack of negotiation in the case of standard contracts. This presumption can only be overturned by written evidence provided by the professional, proving that the specific clause was actually negotiated. The mere fact that a contract is signed by both parties is not sufficient to eliminate the presumption of non-negotiation. In this regard, courts have reiterated that the professional has the obligation to prove the negotiated nature of the clause through documents, correspondence, or other concrete evidence.

An important provision regulated by Article 4(3) of Law No. 193/2000 is that if only some contractual terms have been negotiated, the legal regime regarding unfair terms continues to apply to the other non-negotiated clauses. This approach supports consumer protection even in cases of partial negotiation and allows the court to individually assess each contractual clause. The principle of contra proferentem interpretation, provided by Article 1269(2) of the Civil Code, according to which contractual terms are interpreted against the party who drafted them, applies particularly to adhesion contracts and strengthens the consumer’s position. This rule reflects the principle of contractual fairness and serves as a tool to rebalance the legal positions of the parties.

It is essential to emphasize that the regulations regarding unfair terms apply even in cases where the consumer understood the content of the clauses but had no real opportunity to negotiate them. The law thus presumes that contractual imbalance can exist even in the absence of a defect of consent, protecting the consumer based on the structural inequality between the parties, and not merely on their individual understanding of the contract.

In support of consumer protection, Article 3(1) of Law No. 193/2000 allows for a broad interpretation of the notion of a pre-formulated standard contract, extending its scope to include clauses inserted in documents such as order slips, delivery notes, tickets, vouchers, or other similar instruments. The essential condition is the explicit reference to pre-established general terms and conditions, in which case the law establishes a rebuttable presumption of lack of prior negotiation, which can only be overturned with contrary evidence.

Similarly, Article 4(2) of the same law explicitly defines a non-negotiated clause as a contractual provision established by the professional without offering the consumer a real opportunity to influence its content. This normative standard was introduced to eliminate interpretative ambiguities and to establish lack of negotiation as a defining element of adhesion contracts.

Furthermore, according to Article 4(3), even where certain clauses have been effectively negotiated, the legal framework continues to apply to the non-negotiated clauses within the same contract. This provision enables the court to assess unfairness on a clause-by-clause basis, rather than evaluating the contract as a whole.

Through a per a contrario interpretation of this legal text, it can be argued that the special protection offered by the unfair terms regime does not apply to clauses that were genuinely negotiated, even if they prove burdensome or unfavorable to the consumer. The law favors contractual freedom where negotiation has been real and fair.

Finally, it is important to emphasize that the applicability of the unfair terms regime is not conditioned on the consumer's ability to understand the contractual terms. The protection offered is aimed primarily at addressing the objective imbalance between the parties, rather than the consumer’s subjective level of information or understanding. The law provides that contractual stipulations must be clear, unambiguous, and intelligible, without requiring specialized legal knowledge. In case of doubt, the rule of interpretation in favor of the consumer applies, pursuant to Article 1269(2) of the Civil Code.

5. Breach of the Good Faith Requirement

One of the essential conditions for classifying a contractual term as unfair is the breach of the good faith requirement. According to Article 4(1) of Law No. 193/2000, a contractual clause that has not been individually negotiated is considered unfair if, “by itself or in conjunction with other provisions of the contract, it creates, to the detriment of the consumer and contrary to the requirements of good faith, a significant imbalance between the rights and obligations of the parties.”

In legal doctrine, good faith is interpreted not merely as the absence of deceit or fraudulent drafting, but as a positive requirement of contractual loyalty, implying that the professional must act with transparency, fairness, and responsibility toward the consumer at all stages of the contract—from negotiation to conclusion and throughout its execution. This

interpretation is supported by Article 1170 of the Civil Code, which provides that "the parties must act in good faith both at the conclusion and throughout the performance of the contract."

The good faith criterion involves, in practice, an assessment of the professional's conduct at the time the contractual terms were drafted and imposed. Thus, a clause that, although formally clear, is drafted in such a way that it conceals its real economic or legal effects, or places the consumer in a contractually inferior position, may be considered unfair precisely because the professional did not act equitably.

The Court of Justice of the European Union has interpreted this notion broadly, stating in Case C-415/11, *Aziz* that good faith must be assessed in relation to "whether the professional, acting in good faith and fairly toward the consumer, could reasonably expect that the consumer would have agreed to such a term in the context of individual negotiation." Therefore, the unfair nature of a clause is also determined using a test of legitimate expectation, in light of the reasonable expectations of the average consumer.

Another important dimension of good faith concerns the asymmetry of information and experience between the parties. In practice, the professional has access to legal, economic, and technological expertise, while the consumer typically does not possess similar resources. This structural asymmetry generates a potential systemic imbalance, and failure to comply with the obligation of contractual clarity or transparency is an objective indicator of a lack of good faith.

National case law has confirmed that it is not necessary for good faith to be breached through fraudulent or deceitful behavior. It is sufficient that the professional has taken advantage of their dominant position to impose unbalanced terms, without properly informing the consumer or allowing for real negotiation. In this logic, unfair clauses are not sanctioned for their immorality, but rather for violating a legal requirement of contractual loyalty and proportionality.

In conclusion, breach of the good faith requirement is a fundamental criterion in assessing the unfair nature of a clause. This condition is not a formal or rhetorical one, but rather a central element of consumer protection in a fair market economy. The professional is obliged to prove that they acted with transparency, fairness, and balance, and any deviation from these standards may lead to the nullity of the affected clauses.

6. Imbalance Between the Rights and Obligations of the Parties

A central condition for classifying a clause as unfair is the existence of a significant imbalance between the rights and obligations of the contracting parties, to the detriment of the consumer. This requirement is explicitly provided in Article 4(1) of Law No. 193/2000, which transposes into national law Article 3(1) of Council Directive 93/13/EEC. According to these provisions, a contractual term is considered unfair if, in the absence of individual negotiation, it creates a significant imbalance between the parties' performances, contrary to the requirements of good faith.

The notion of "significant imbalance" is legal in nature, not merely economic. The analysis does not reduce to a simple quantitative comparison between rights and obligations, but rather targets a substantial disproportion in the allocation of contractual risks and burdens placed on the consumer. This imbalance may manifest in clauses that impose excessive penalties, unilateral sanctions, allow for the unilateral modification of the contract by the professional, or create onerous conditions for the consumer to terminate or cancel the contract.

In practice, a significant imbalance is frequently found in clauses that allow the professional to unilaterally modify the contractual terms without the consumer's express consent or prior notification, or in clauses that unfairly limit the consumer's rights to compensation or restitution in the event of termination. Such clauses are presumed to be unfair according to the Annex to Law No. 193/2000, point 1 letters a)–p).

The Court of Justice of the European Union (CJEU) has developed a functional and contextual approach to the concept of imbalance. In Case C-415/11, *Aziz*, the CJEU ruled that national courts must assess whether a clause creates, to the consumer's detriment, a significant imbalance between the rights and obligations of the parties, taking into account the national rules applicable in the absence of a contract, the nature of the product or service, and the circumstances in which the contract was concluded. In Case C-243/08, *Pannon GSM*, the Court reiterated that a clause can be deemed unfair even if it has not yet produced effects, as it is sufficient that the potential effect is inherent to the structure of the contract.

Romanian legal doctrine has emphasized that the existence of a significant legal imbalance must be assessed in light of the professional's dominant position and the lack of symmetry in the exercise of contractual rights. The imbalance is exacerbated by a lack of transparency or by the obscure nature of the clause, as the consumer cannot realistically assess the consequences of accepting it. Ambiguously worded clauses or those that conceal disproportionate economic effects can generate imbalances in favor of the professional.

According to Article 4(6) of Law No. 193/2000, the assessment of whether a clause is unfair does not apply to the relationship between the price and the main subject matter of the contract, provided that these terms are clearly, intelligibly, and transparently expressed. Therefore, even in the case of an apparently unbalanced price, if it is clearly expressed and understood, it cannot be subject to unfairness control.

Under national law, the principle of contractual balance also derives from the general provisions of the Civil Code, particularly Articles 966–970 concerning the cause of the contract and fair balance of performances, as well as Articles 1221 and following on contractual hardship (imprevision), which enshrine the principle of equity and the reasonable distribution of risks between the parties.

In conclusion, the analysis of the imbalance between the rights and obligations of the parties must go beyond a simple quantitative assessment and focus on the real impact of the clauses on the legal and economic position of the consumer. Contractual imbalance reflects a dysfunction in the legal relationship which, if it is significant and unilaterally imposed, justifies legislative and judicial intervention to restore equity and protect the weaker party.

7. Illegality of Jurisdiction Clauses in Contracts Concluded with Consumers

A frequently encountered issue in the practice of adhesion contracts is the insertion of exclusive jurisdiction clauses, which designate a specific court to resolve potential disputes between the professional and the consumer. These clauses are often unilaterally included in standard contracts, without being subject to individual negotiation and without being genuinely brought to the consumer's attention—making them likely to be considered unfair.

According to Article 3(1) of Directive 93/13/EEC, a contractual clause is unfair when, contrary to the requirement of good faith, it causes a significant imbalance between the rights and obligations of the parties, to the detriment of the consumer. In this context, the CJEU, in

Case C-240/98 – *Océano Grupo Editorial*, held that a jurisdiction clause requiring the consumer to bring legal action only before the court where the professional is located, without the clause having been negotiated, is contrary to good faith and creates a significant procedural imbalance. It must therefore be regarded as unfair.

Such clauses, by their nature and effect, limit the consumer's effective access to justice, forcing them to bear additional costs, disproportionate logistical efforts, or even to give up the exercise of their right to take legal action or defend themselves effectively. In these situations, not only is contractual balance compromised, but also the fundamental right to a fair trial, protected by Article 6 of the ECHR and the consistent case law of the CJEU.

In such cases, the national court has an obligation to analyze the specific circumstances of the case to assess whether the actual enforcement of the jurisdiction clause imposes excessive difficulties on the consumer. This analysis must consider factors such as: the geographical distance from the designated court, travel costs, logistical difficulties, and the consumer's ability to defend themselves effectively before that court. If it is found that the consumer's right of access to justice is significantly restricted or impeded, the clause must be removed as unfair.

It must also be noted that such a clause produces restrictive effects independently of the professional's subjective good faith; the relevant criterion is the objective effect of imbalance. Therefore, even if the professional claims to have had no intention of limiting the consumer's right to defense, this does not exempt the clause from being considered unfair if, in practice, it produces such restrictive effects.

In continuing the development of European case law on consumer protection, the Court of Justice of the European Union, in Case C-243/08, *Pannon GSM*, established a fundamental principle of procedural law: the national court has an obligation to examine ex officio the unfair nature of a contractual clause, even in the absence of an express request from the consumer. Furthermore, the Court emphasized that a clause deemed unfair does not produce binding legal effects on the consumer, and the lack of a prior challenge by the consumer does not condition the inapplicability of that clause.

Once the national court has the necessary legal and factual elements, it must assess the validity of the clause ex officio, and if it finds it to be unfair, it must refuse to apply it—unless the consumer explicitly opposes such a finding. This obligation persists even when the court is only seized with a matter of territorial jurisdiction, thus highlighting the autonomous and imperative nature of the control over unfair terms.

This interpretation is also reiterated in Case C-240/98 – *Océano Grupo Editorial* and *Salvat Editores SA*, where the Court held that a jurisdiction clause inserted in a standard contract, without being subject to individual negotiation and which grants exclusive jurisdiction to the court where the professional is located, must be considered unfair under Article 3(1) of Directive 93/13/EEC, as it violates the requirement of good faith and creates a significant imbalance to the detriment of the consumer.

These decisions highlight the active role of national judges in protecting consumers against unbalanced clauses, and the fact that no prior action from the consumer is required. Therefore, the unfairness of a clause can and must be found ex officio, in line with the spirit of the Directive and to ensure the effectiveness of EU consumer protection law.

A key contribution to the clarification of the legal regime applicable to unfair terms in adhesion contracts was made by the CJEU judgment of 4 June 2009, delivered in Case C-243/08, *Budaörsi Városi Bíróság*. In this case, the Court interpreted Article 6(1) of Directive 93/13/EEC, ruling that a contractual clause deemed unfair does not produce binding effects on the consumer, and that the lack of a prior objection by the consumer does not prevent the court from declaring or refusing to apply the clause.

In the view of the Court, the principle of consumer protection requires the active intervention of the court, which must examine ex officio—and as promptly as possible—the unfair nature of a contractual clause, once it has sufficient factual and legal information to make such an assessment. This obligation is imperative and may only be waived in the explicit case where the consumer objects to the application of the protective norm, expressly requesting that the clause in question be applied.

The significance of this ruling also lies in the fact that the national court is required to assess its own territorial jurisdiction, particularly when it derives from a unilaterally imposed jurisdiction clause inserted in a standard contract. The Court emphasized that where such a clause confers exclusive jurisdiction to the court at the professional's place of business and was not negotiated with the consumer, it may be deemed unfair, as it violates the principle of fairness and creates a significant procedural imbalance.

At the same time, the court's analysis must address the genuineness of the consumer's consent and the existence of a real opportunity for negotiation. The absence of a free and informed expression of will on the part of the consumer regarding the acceptance of a geographically distant court may be a strong indicator of the unfairness of that clause.

This ruling reinforces the role of the national judiciary as guardian of contractual balance and as a filter against imbalances imposed through adhesion contracts, where the consumer's will is, in practice, devoid of real legal relevance.

In the case law of the Court of Justice of the European Union, a jurisdiction clause unilaterally inserted into an adhesion contract is subject to strict scrutiny in terms of its compatibility with fundamental principles of consumer law. Thus, according to the consistent interpretation of Article 3(1) of Directive 93/13/EEC, any contractual clause that was not individually negotiated and that, by its effects, confers exclusive jurisdiction to the professional's local court is likely to be considered unfair, insofar as it creates a significant imbalance between the rights and obligations of the contracting parties, to the detriment of the consumer.

This approach reflects the concern of European case law for the effective balance of contractual relationships, not merely from a formal perspective, but also with regard to the actual conditions in which the consumer is placed in a position where exercising their procedural rights becomes impossible or significantly difficult. In such cases, the violation of the good faith requirement is manifested in the limitation of access to justice, as the consumer is forced to initiate or defend a lawsuit in a different territorial jurisdiction, often inaccessible or overly burdensome.

According to CJEU standards, the clause must be analyzed within the factual and contractual context of each case, and the court has an obligation to assess whether its existence results in a disproportionate obstruction of the consumer's right to defense. Elements such as

geographical distance, travel expenses, difficulties in obtaining legal representation, and lack of sufficient financial resources are relevant factors in this evaluation.

This interpretation has been affirmed in rulings such as Océano Grupo Editorial (C-240/98) and Budaörsi Városi Bíróság (C-243/08), in which the Court confirmed that a territorial jurisdiction clause unilaterally imposed on the consumer violates the principles of fairness and contractual loyalty, and must be removed from the contract, without the need for it to be invoked by the consumer.

In conclusion, the insertion of a jurisdiction clause in consumer contracts, without prior negotiation and without the consumer's freely expressed consent, is presumed to be unfair, and its validity must be analyzed contextually, in relation to the specific circumstances of each dispute. Thus, EU law demands not only formal protection of the consumer, but also substantive protection, aimed at ensuring the real balance of contractual relationships.

8. Effects of Declaring Contractual Clauses as Unfair

a. The Procedure for Repressing Unfair Clauses

The legal regime governing unfair clauses in contracts between consumers and professionals is built not only on the identification and sanctioning of such provisions but also on their actual removal from the contractual framework, in order to restore contractual balance and protect the consumer's interests.

According to Article 12 of Law No. 193/2000, the procedure for repressing unfair clauses can be initiated in two ways:

- At the initiative of the injured consumer, by filing an individual action in court;
- Ex officio, by the competent supervisory authorities—especially the National Authority for Consumer Protection (ANPC)—following the identification of non-compliant contractual practices in consumer relationships.

The supervisory bodies may identify irregularities during inspection and oversight activities. If there are reasonable indications of unfair clauses, they initiate an assessment procedure. This administrative stage involves concrete checks of the contractual documentation used by the professional, including standard contracts, annexes, and general terms and conditions. The findings are recorded in a written report, which outlines the facts, the analyzed clauses, the legal provisions violated, and the legal reasoning supporting their classification as unfair.

Subsequently, this report is submitted to the competent administrative court—generally the tribunal in the jurisdiction where the professional resides or is headquartered—with a request to order the professional to modify ongoing contracts by removing the clauses identified as unfair.

Importantly, this procedure has a coercive and remedial nature, aiming not only to establish the illegality of the clause but also to correct its contractual effects, including in relation to other consumers in similar contractual situations. Thus, the court's decision may have effects beyond the immediate parties to the case, particularly in actions initiated by ANPC under Article 12^1 of Law No. 193/2000, which regulates collective interest actions.

In addition to removing the unfair clause from future contracts, the court may order the modification of all identical ongoing contracts, based on the principle of extensive effect, to prevent the continuation of a non-compliant practice.

b. Direct Access to Justice and Applicable Sanctions

In the spirit of ensuring effective consumer protection against unbalanced contractual practices, Law No. 193/2000 grants consumers the right to directly access the courts, without being required to first undergo an administrative procedure. Therefore, any natural person in a contractual relationship with a professional may file a legal action seeking the recognition of a clause as unfair and, as a result, its nullification.

This procedural option is governed by common law, and the consumer may request not only the removal of the unfair clause, but also compensation for any damage caused by its enforcement. In practice, the court may award damages based on contractual liability, if it is proven that the application of an illegitimate clause caused direct harm.

Likewise, the law grants consumer protection associations legal standing, allowing them to bring cases before the courts or regulatory authorities, either in their own name or on behalf of their members. According to Article 2(1) of Law No. 193/2000, consumer associations are equated with individual consumers in terms of procedural rights, and may also initiate collective actions against unfair clauses found in standard contracts used by a particular professional.

As for the applicable sanctions, the courts may order:

- The professional to amend adhesion contracts currently being performed, by removing the unfair clauses;
- The prohibition of using similar clauses in future standard contracts;
- The payment of a contraventional fine, ranging from 200 to 1,000 lei, according to the provisions of the special law.

These measures have a corrective, coercive, and preventive nature, aimed not only at restoring balance in the individual contractual relationship, but also at discouraging the widespread use of clauses that violate the principles of good faith, fairness, and contractual transparency. Therefore, the national legal framework provides consumers with effective and direct procedural tools for combating contractual imbalances, thereby aligning with EU consumer protection standards.

c. Ex Officio Examination of Unfair Clauses by the Court

A particularly relevant aspect in the field of consumer protection is the court's ability to assess ex officio whether a contractual clause is unfair, even in the absence of an express request from the interested party. Although Law No. 193/2000 does not expressly confer such a power, and Directive 93/13/EEC does not literally impose this obligation, systematic interpretation and European case law firmly establish this principle as an integral part of the consumer protection mechanism.

The rationale behind this approach lies in the structural inequality between the contracting parties. The consumer, in an inferior position both in terms of bargaining power and legal knowledge, often lacks the means to effectively identify, interpret, or challenge unfair terms inserted in an adhesion contract. This imbalance justifies an active judicial intervention, meant to eliminate the abuse of dominant position by the professional and to restore contractual balance in favor of the consumer.

Legal doctrine has emphasized that, in the absence of external intervention in the contractual relationship—through the activation of ex officio judicial review—the imbalance caused by the abuse of economic power would remain unsanctioned. Within this logic, the

court's ability to assess the unfair nature of a clause on its own motion takes on the role of an indirect right in favor of the consumer, transforming contractual imbalance into a remedial mechanism activated by the justice system.

This interpretation has been firmly established in the case law of the Court of Justice of the European Union, which in numerous rulings—including C-243/08, *Pannon GSM*, C-240/98, *Océano Grupo*, and C-472/10, *Invitel*—has affirmed that the national court has an obligation to examine ex officio the unfairness of contractual clauses as soon as it has the necessary factual and legal elements to make such an assessment. Furthermore, the Court has ruled that the judge must refrain from applying the clause if it is found to be unfair, without requiring any express request from the consumer—unless the consumer explicitly wishes to maintain it.

Therefore, the court's duty to verify the validity of contractual terms does not stem solely from national legislation, but from the need to ensure the effectiveness of European Union law in the field of consumer protection. This effectiveness requires that the legal mechanisms for controlling contractual abuses function independently of any procedural initiative from the consumer, in order to combat systemic imbalance between the parties and to ensure substantive protection for the most vulnerable participants in the private legal system.

9. Conclusions

The legal regime of unfair terms in adhesion contracts represents one of the most dynamic and relevant topics in consumer protection law, reflecting both legislative and case law developments at the national and European levels, as well as the socio-economic changes brought about by the digitalization of legal relationships. The analysis carried out in this paper highlights the complexity of the protection mechanism established in favor of the consumer and underscores the need to maintain genuine contractual balance in an environment dominated by standardized contracts and repetitive commercial practices.

The recognition of a contractual clause as unfair involves the cumulative verification of several conditions: lack of individual negotiation, the existence of a significant imbalance between the rights and obligations of the parties, and the breach of the good faith requirement. Although these criteria appear to be objective, they require a contextual, in concreto analysis of the contractual relationship, in light of the general principles of equity, proportionality, and the protection of the weaker party—the consumer.

The case law of the Court of Justice of the European Union plays a crucial role in shaping and harmonizing the application of the concept of "unfair term," establishing binding standards for all Member States. The rulings in cases such as *Océano Grupo*, *Pannon GSM*, *Invitel*, and others have reinforced the duty of national courts to examine ex officio the unfairness of contractual terms and to restore contractual balance—even in the absence of an express request from the consumer. This duty reflects a modern direction in European law, where consumer protection is no longer dependent solely on the consumer's initiative, but rather stems from a public order imperative at the EU level.

Under national law, Law No. 193/2000 faithfully transposes the requirements of Directive 93/13/EEC, offering both individual means (direct court actions) and collective mechanisms (the intervention of consumer associations and the ANPC) for the suppression of unfair terms. Additionally, the modern Civil Code, through its regulations on adhesion

contracts (Article 1175) and the interpretation of terms (Article 1269), further strengthens the consumer's position in unbalanced contractual relationships.

A highly relevant current issue is the challenge posed by the digitalization of contracting. Contracts concluded online, through mechanisms such as click-wrap or browse-wrap, amplify the risks associated with unfair terms, as acceptance occurs automatically, without a genuine awareness of the contractual content. In this context, the protection provided by current legislation must be extended and adapted to the technical realities of e-commerce, through stricter regulation of transparency and pre-contractual information in the digital environment.

In conclusion, combating unfair terms requires a coordinated legislative, judicial, and doctrinal effort aimed at ensuring effective and substantive protection for consumers. Only through an active and contextual interpretation of existing legal norms can the objectives of the legal regime applicable to such clauses be achieved: ensuring real contractual justice, preventing abuses of economic power, and promoting fair and responsible commerce, including in the digitalized environment of the 21st century.

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"NECESSARY CRIME" AND ILLEGAL MARKETS. A POLITICAL PERSPECTIVE

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Abstract: *This work explores the intricate relationship between power mechanisms and social exclusion processes, shedding light on the shifting spatial dynamics of deviance. It building on current management practices, it hypothesizes the existence of a latent social and institutional mechanism through which deviance and certain types of criminality (Necessary crime) are confined to specific spaces, referred to as "Interdiction areas.""—These areas, whether embedded in the urban fabric (Shadow Space) or at its margins (No Law Zone), tolerate a range of deviant behaviors (such as prostitution) and illicit economic activities (such as drug trafficking), which, for ethical or legal reasons, cannot be negotiated openly, but they do exist because there is still significant demand for the services they offer. These areas, which are publicly condemned and strongly opposed in the collective imagination, are in fact tolerated and represent the hidden side of the city—the unspoken and repressed shadow. Their existence serves a paradoxical function: maintaining the illusion of moral integrity and adherence to societal norms.*
Keywords: *No law zone, Shadow Space, social control, criminality, deviance, city, economic, illegal market*

1. Introduction

Our hypothesis is that the space serve as an element of segregation and marginalization of deviance, albeit in a new form: through what we have defined as "*Interdiction Areas,*" which can take on the characteristics of either a "*Shadow Space*" or a "*No Law Zone".* These areas of exclusion are situated either within or at the fringes of the "*light zone*," the dominant part of the city that forms the *structural framework* and establishes the normative and semantic codes of urban standardization. It is within this context that the mechanisms directing deviance toward these "interdiction areas" emerge.

These spaces, shaped by both centrifugal and centripetal forces, serve not only to confine deviants but also to facilitate forms of criminality known as "*Necessary crim*e." These crimes address specific social needs, meeting a significant internal demand from the "*light zone*".

A key issue lies in understanding the mechanism behind this spatial confinement of deviance. We propose that a distinctive form of dynamic social control, which we term "liminal," is at work. This control seeks to contain or channel deviant and criminal activities into these designated urban areas. It operates along the "fault lines" that separate these spaces from the surrounding urban environment, known as the *light zone*. With this term, we refer to the dominant part of the city the "normal" city, the city for everyone. This is the structure of the

city scaffolding, which develops the normative and semantic codes of *city standardization*, from which the mechanism pushing deviance toward the *interdiction areas* whether **S***hadow spaces* or *No-law zones* originates.

The spatial confinement of deviance and *Necessary Crime Interdiction areas* is not a result of intentional, overt political or institutional decisions. Rather, it operates through an automatic mechanism of expulsion facilitated by both formal and informal social control. This process involves various actors, including institutional bodies such as courts and law enforcement, as well as other social entities within the *light zone*. Together, they ensure that excess deviance and necessary crime are effectively channeled into these designated *Interdiction areas*.

According to our model, however, social control, which drives deviance in these areas, assumes distinctive characteristics that differentiate it from "classic" control. Traditionally, classic control aims to prevent and suppress deviance by stigmatizing specific and "selected" behaviors, whereas the social control in these areas functions differently, as we will explore further.

What we seek to describe here is a specific approach to control that functions not merely to dissuade certain behaviors through prevention and repression, but rather to direct these behaviors and activities to specific areas, termed "*Interdiction areas*" while keeping them away from others, which we refer to as the "*Light Zone"*.

This aim is achieved through a dynamic mechanism that directs deviant behaviors from the *light zone* into the *Interdiction areas*.

We refer to this type of social control as "dynamic liminal". This approach operates by channeling deviant behaviors into designated "*Interdiction areas*", while simultaneously preventing such behaviors, along with *Necessary crimes*, from spreading beyond these areas.

The concept of dynamic liminal control refers to a specific mode of social control exerted primarily at the "fault lines", the physical and symbolic boundaries that separate *Interdiction areas*. from the rest of the city, or the *light zone.* We found the term "liminal" most suitable for describing the functioning of the type of social control we have identified. The Latin adjective liminaris, derived from limen-mĭnis (threshold), is used, particularly in a figurative sense, to denote the interface of separation between two parts.

2. *Interdiction areas* and localization of deviance

The hypothesis that *Interdiction areas* function as containment zones for deviant and criminal activities -thereby "purifying" the surrounding *light zone* -is supported by empirical evidence. This theory effectively explains why drug trafficking is concentrated in specific urban areas. For example, in Campania, drug trade is predominantly focused in locations such as the "Vele di Scampia" in Naples and the "Parco Verde" in Caivano (located in Italy, Campania Region).

The Parco Verde in Caivano is a challenging subject to describe: it is a site of investigations into drug trafficking and the backdrop of horrific child abuse cases, occurring amidst the anonymous apartment blocks in the north-ern outskirts of Naples. This enclave of disadvantage, poverty and marginalization, a stark example of a No-law zone, is home to approximately 6,000 people who are effectively removed from society and institutions. The camorra controls the area, and drug trafficking is the predominant criminal activity, though other forms

of crime, such as theft, robbery, and extortion, are also present. Consequently, this area has become one of Italy's most significant drug trafficking hubs, off-limits to firefighters, postal workers, and even police force.

More broadly, this hypothesis also helps explain why prostitution is often confined to specific urban areas, frequently in a state of semi-obscurity, and why undocumented or irregular immigrants tend to settle predominantly in peripheral and degraded neighborhoods (such as Castel Volturno, located in Italy, Campania Region) rather than in more residential parts of the city.

Our developed thesis posits that there are areas, places, spaces, and niches -both within and beyond urban aggregates- where society and the State "relocate" deviant phenomena and "*Necessary crime*" phenomena through both formal and informal mechanisms. These areas are ones where society and the State cannot ethically, politically, socially, or legally manage or contain these phenomena within their own structures. At the same time, there is a significant internal "demand" for their existence, indicating a complex interplay between the need for such phenomena and the mechanisms designed to push them out of central societal focus.

At the same time, we have explored the "push mechanism" that drives deviance into the "*Interdiction area*s," proposing that it operates in two distinct ways: vertically, from top to bottom, and horizontally, through lateral shifts of deviance towards peripheral areas. The direction of this centrifugal force is influenced by the volume of deviance to be managed. Vertical pushes (which manage smaller amounts of deviance) create what we term a *"Shadow space*." This type of space is relatively concealed and integrates into the social fabric of the *light zone* through significant camouflage. In contrast, horizontal pushes (which address larger quantities of deviance) establish a different type of space: larger and more visible (often but not always) situated on the periphery. These areas can be extensive and densely populated, characterized by a prominent and observable structure (where many legal norms are either ignored or replaced by internal meta-rules). We refer to these as *"No-law zones*."

If deviance exists in excess but remains below a certain threshold, it becomes more concealable and is integrated into the social structure, forming an invisible, subterranean current: a *"Shadow space"*.

However, when deviance surpasses this "threshold of tolerance," internal absorption within social structures ceases to be effective for its exclusion and concealment. Instead, a centrifugal mechanism pushes it outward, creating larger and, above all, more visible pockets of deviance and illegality: *No law zones.*

These areas, whether physical or symbolic, vary in size and visibility and are classified as *Areas of Interdiction*. They are not merely new forms of "mobile ghettos" but possess specific "functional specializations."

Within these zones, the State essentially relinquishes much, if not all, of its power and control, not only to accommodate excess deviance but also to permit certain specific illegal activities.

The area of Castel Volturno, in the Province of Caserta (located in Italy, Campania Region), serves as a paradigmatic example of a "*No-law zone*" from this perspective. Despite being portrayed in official narratives - whether political, social, cultural, or media driven - as a high-density immigrant enclave in urgent need of cleanup and effective integration policies, the reality is different. In these areas, the state not only tolerates a range of *Necessary crimes*

but also implicitly delegates the management of vast and lucrative illegal markets to third parties, thereby abdicating its administrative responsibilities.

Areas of Interdiction, however, differ from ghettos, with which they often physically overlap, in that their primary function is not merely to "exclude" but to "conceal and specialize." These areas are designed to facilitate specific activities, whether legal or illegal, that are necessary for the community within the "*light zone*".

Systemically and functionally, the *interdiction area*'s role is to support the effective operation of the manifest area within the *light zone,* which could otherwise be compromised by excessive deviance and the delivery of goods and services that conflict with its legal and social norms.

In our perspective, interdiction areas can be seen as a form of functional specialization where certain areas are designated as deviant and criminal.

These areas, though inherently unavoidable, tend to expand when political decisions criminalize certain activities or when the state refrains from regulating activities with high levels of deviance. Consider, for instance, the sale of narcotics, which is banned by the state and thus 'outsourced' to organized crime, operating within *Interdiction areas.*

It's evident that state-controlled distribution - alongside comprehensive and continuous education and awareness campaigns, especially in schools about the harmful effects of these substances - would dismantle the criminal market and eliminate its concealment within these *Interdiction areas.*

The criminalization of illegal immigration, crucial to agriculture and other economic and support sectors, produces a similar effect: the creation of detrimental 'dual markets' managed by criminal organizations, and the concealment of these individuals in near-slavery conditions within the dark corners of marginalization and shame.

A particularly illustrative example is prostitution, which, while not illegal, is socially stigmatized and remains unregulated by the state. Consequently, it is driven to the fringes, where it is managed brutally by criminal enterprises within these *Interdiction areas.*

3. Legalization, "*Zero-tolerance"* policies and illegal market

As previously discussed, *Interdiction areas* do not emerge from deliberate or conscious political decisions, but rather from a gradual drift a kind of automatic dynamic process of displacement and exclusion. Political and institutional rhetoric frequently claims a strong commitment to eradicating deviance and criminality from these areas.

While there is a stated intention to address the widespread issues within *Interdiction areas*, this commitment often fails to effect significant change.

Even when institutions undertake decisive actions, these interventions are typically limited in scope and duration, often leading to practical failure.

A striking example is the 1994 initiative in the United States, when New York City Mayor Rudolph Giuliani, of Italian-American heritage, implemented the "Zero Tolerance" policy. This initiative aimed to eradicate all forms of deviance and criminality, regardless of severity, in the city's most troubled areas.

The policy was grounded in the "Broken Windows" theory, introduced in the early 1980s by criminologists George Kelling and James Wilson (Kelling et al., 1982). This theory argued that urban disorder and decay could foster additional criminal behavior by encouraging

antisocial actions. It suggested that maintaining order by addressing even minor offenses, such as vandalism and petty crime, would create a general atmosphere of legality and order, thereby reducing more serious crimes.

Regardless of its empirical support, such theories often resonate strongly with the public. They offer a reassuring narrative that suggests all forms of deviant and criminal behavior can be effectively managed by law enforcement, and that the success of such efforts relies solely on the state's genuine commitment to suppressing these issues.

By implementing appropriate criminal policies, effective intervention strategies, and substantial economic investments, institutions might aim to eradicate all forms of deviance and criminality.

The hypothesis underlying our theory, in contrast, is based on a fundamentally different idea, one that is less optimistic, reassuring, and appealing.

We argue that not all crimes are fully prosecutable or eradicated. Specifically, regarding what we term "*Necessary Crime*," the state often adopts policies of substantial tolerance or, at best, limited and localized repression.

To clarify, as introduced in the preface, "*Necessary Crime*" refers to a category of offenses that serve specific social needs. These crimes involve goods or services with high demand and are situated within economies that are more or less overtly criminal in nature.

The term "illegal economy," in which *Necessary Crime* constitutes a small part, encompasses a broad spectrum of illicit economic activities.

The heterogeneity of phenomena encompassed within the broad category of "illegal markets" can be systemat-ically categorized into five distinct types: a) the first type involves the exchange of goods or services that are inherently prohibited, such as drugs, child pornography, and underage prostitution. Due to these prohibitions, the goods, their subsequent trade, and consumption (even though drug consumption in Italy is not classified as a criminal offense but rather an administrative sanction) are all banned. Consequently, transactions involving these products create distinct markets that are rigidly separated from the legal economy; b) It refers to products obtained Illegally: This type involves products that are legally permissible in themselves but have been acquired through illegal means. The subsequent sale of these products is also illegal due to the illicit manner in which they were obtained. Examples include transactions involving stolen cars or artworks. The sale of such products may occur in separate markets where stolen goods are exchanged, or it may be channeled into legal markets; c) The third type refers to Counterfeit or Forged Products: This type involves products resulting from counterfeiting or forgery. While the act of counterfeiting itself is often not prohibited, the trade of counterfeit goods is illegal. These products constitute a significant portion of illegal transactions and mainly involve counterfeit luxury brand goods and industrial spare parts. This category also includes counterfeit pharmaceuticals, which are esti-mated to represent between 5% and 7% of the global pharmaceutical market (L. Paoli, K. Feytens, The Belgian and Indian Pharmaceutical Market, Research Outline, Mimeo, 2016). Transactions of these products may oc-cur both in separate illegal markets or within legal circuits; d) Products that are legal in nature but whose trade is prohibited: This category includes goods that are otherwise legal but are banned from trade due to ethical or le-gal reasons. Examples include the trade of human organs and surrogate motherhood (which is banned in some countries). These markets are often referred to as "repugnant" or "harmful" (D. Satz, Why Some Things Should Not Be for Sale:

The Moral Limits of Markets, Oxford University Press, USA, 2010; P. Steiner, M. Trespeuch, Marchés contestés: Quand le marché rencontre la morale, Presses Universitaires du Midi, 2015). Even if such activities were legalized, the transactions involving these "products" would still be considered morally offensive, and thus often occur separately from the legal economy; e) the fifth types deals with illegal markets involving legally permissible products with regulatory violations. This type involves the production, trade, and consump-tion of goods that are legal in principle, but where actors violate regulations or laws during production or sale. Examples include smuggling cigarettes to evade taxes and trading weapons without a state license. This catego-ry is complex and likely very common, as violations can take many forms and legal and illegal aspects are of-ten closely intertwined (F. Wehinger, Illegale Märkte: Stand der sozialwissenschaftlichen Forschung, MPIfG Working Paper 11/6, Max Planck Institute for the Study of Societies, Germany, 2011; J. Beckert, F. Wehinger, In the Shadow: Illegal Markets and Economic Sociology, in Socio-Economic Review 11, 2013). Violations may relate to production processes (e.g., labor or environmental laws), product characteristics (e.g., safety standards), transactions (e.g., trading licenses), or third-party rights (e.g., tax obligations or royalties). Some illegal products, like child pornography or the sale of hard drugs and protected species, provoke a strong and immediate moral aversion from the public, regardless of legal penalties. Conversely, some illicit goods and services are met with less hostility because they are rooted in tradition or perceived as socially valuable. Examples of more tolerated illegal markets include the sale of counterfeit clothing, music piracy, smuggled cigarettes, and soft drugs. This aspect is significant because social reactions have important consequences, influencing state responses to transactions and products. The state reacts differently to strongly opposed products compared to those per-ceived as more “legitimate” and tolerated. Additionally, markets rarely operate entirely outside the legal realm; more often, they exist in a gray area, a limbo between legality and illegality (F. Wehinger, Illegale Märkte, op. cit.).

More specifically, this can include both the case when the activity, product, or service offered is classified as *contra legem* by the legal system and the legitimate activities conducted illegally that is when otherwise lawful activities, goods, or services are carried out in ways that violate criminal laws.

Additionally, there are borderline activities, such as prostitution. In some countries, prostitution is considered illegal, unlike in Italy where it is permitted but regulated. In Italy, while the practice itself is legal, its exploitation and facilitation by third parties are prohibited under laws such as the "Merlin Law" (Law No. 75 of 1958) and the subsequent "Law No. 269 of 1998.

Typically, the illegal market emerges and solidifies where the state prohibits the trade of certain goods or where it appropriates them. This often occurs in totalitarian regimes (such as the post-war USSR or contemporary North Korea) or when goods and services are extremely scarce, as seen during wars and famines.

Structurally, the illegal market functions much like legal markets but has distinct differences due to its clandestine nature. These differences include the lack of formal transaction venues, absence of legal advertising, and the inability to seek judicial recourse. In illegal economies, which involve the trade of prohibited goods and services, accurate data on the market size, product quality, or the reliability of involved actors is often unavailable (Rey, 1993).

The study of economic activities outside the legal framework is well-established in sociology. In addition to the classic research from the Chicago School, scholars like Howard Becker (1963), Sudhir Venkatesh (2013), Keith Hart (1973), Manuel Castells (1989), and Saskia Sassen (1984) have made significant contributions to understanding illegal markets. Their works are essential for a thorough exploration of the subject. As Durkheim and Weber have pointed out, the state plays a pivotal role in not only shaping legal markets but also in defining and structuring illegal ones. The distinction between what is deemed illegal and what is permitted is established by state legal norms: in essence, "illegality" is not an inherent quality but a "designation (Bergeron et al., 2014:121).

The decision to criminalize specific behaviors, thus influencing the nature of permissible exchanges of goods and services, is embedded in a broader social and political context. This decision is influenced by the cultural and ethical values of the society in question. For example, the regulation of prostitution, alcohol, and drugs illustrates how cultural and social factors shape legality. The criminalization and enforcement of these activities by state agencies act as mechanisms of social control, mirroring the prevailing cultural and ethical values of the society.

Consequently, changes in the size and structure of illegal markets are intricately linked to the creation and enforcement of criminal laws. As Renate Mayntz points out, the nature and extent of illegal markets are critically shaped by law enforcement activities. While one might expect a purely antagonistic relationship between illegal operators and police forc-es—given the latter's mandate to combat crime—the reality is often more complex. Corruption within state au-thorities, who may exploit illegal economies for personal gain, is unfortunately not uncommon (R. Mayntz, So-ciologia dell'amministrazione pubblica. La Nuova Scienza, Il Mulino, Bologna, 1982).

A key factor in analyzing these markets is their internal organization. They are not merely composed of technologies, goods, services, competition, and rational actors, but also rely on a set of "norms" that structure and facilitate their operation. These norms include rules of exchange and the roles of various participants.

In this framework, the state plays a pivotal role in shaping the dynamics of illegal markets. Through its regulation and enforcement actions, the State helps manage the uncertainty that characterizes these markets, by the modulation of repressive and control measures. See F. Wehinger, Fake Qualities: Assessing the Value of Counterfeit Goods, in J. Beckert and C. Musselin (eds.), Constructing Quality: The Classification of Goods in Markets, Oxford University Press, 2013. The most signifi-cant differences between legal and illegal markets lie in the role and conduct of the participants. In illegal mar-kets, actors must be prepared to: a) engage in behaviors that violate legal provisions; b) overcome moral reser-vations due to the illegitimacy of the transaction; c) face potential legal proceedings; d) endure the possible non-enforcement of contracts, lacking the protections of the legal system. An important factor contributing to the instability of illegal markets is the uncertainty and opacity that arises from the inability to transparently communicate the quality and characteristics of the products to consumers. Counterfeit pharmaceuticals are a paradigmatic example of this issue, as buyers have no way of knowing the active ingredients, their quality, or their quantity in the purchased substance. To mitigate transaction risks, actors in illegal markets often rely on relatively primitive tools compared to those used in legal economies. These tools include: a) the "reputation" of

operators, conveyed through personal networks. Although networks also play a significant role in legal markets, their importance is generally more pronounced in illegal ones. In illegal markets, the importance of certain fac-tors is notably pronounced: (M. Granovetter, The Strength of Weak Ties, in American Journal of Sociology, 78(6), 1973; B. Uzzi, The Sources and Consequences of Embeddedness for the Economic Performance of Or-ganizations: The Network Effect, in American Sociological Review, 61); b) The "Latent Threat of Violence": While illegal markets themselves may not be inherently violent, the underlying threat of potential violent reac-tions acts as a significant coercive tool. threat is used to maintain order and compliance within the market; c) "Corruption of State Agents": Corruption allows state agents to benefit from illegal economic activities, either personally or on behalf of the state. In terms of market organization, corruption is also a means to structure competition and maintain market stability by ensuring the state's tolerance of illegal activities. Additional speci-ficities of illegal market organization pertain to the demand side. Since marketing tools to create preferences and loyalty are limited, market formation primarily depends on the supply side (J. Beckert, M. Dewey, The Ar-chitecture of Illegal Markets, Oxford University Press, U.K., 2017). Finally, the illicit nature and resultant opaci-ty of illegal markets make it challenging to quantify transaction volumes accurately. For example, in the drug trafficking market, data on the number of consumers and consumption habits are generally more reliable than information about suppliers and supply components. Estimations are often based on seizures, which do not re-flect actual transaction volumes, and potentially unreliable statements from involved actors. The quantity of imported drugs is estimated by considering the exported quantities and the varying purity of intercepted sub-stances. Estimates of production-related data, such as intermediate costs and value added, are derived indirect-ly through wholesale and retail trade data. Similarly, estimates for tobacco smuggling are calculated analogous-ly to prostitution markets, using indicators like the smoking population. To estimate the illegal tobacco market, data on consumer habits, similar to those used for controlled substances, are utilized. This estimation approach focuses on the supply side and involves analyzing the quantities of seized goods, disregarding both domestic production and export data. Potential volumes available in the domestic market are calculated using a coeffi-cient that reflects law enforcement's control capabilities, accounting for seized goods, interdicted products, and those merely in transit within the country. The economic value of the market is determined based on the detect-ed quantities and sale prices, which are typically adjusted downward to align with legal product pricing. For the prostitution market, a supply-based estimation method is used. This approach accounts for various types of prostitution, including street-based and indoor services, and differentiates between visible and hidden forms of prostitution. The overall estimate is derived by calculating the number of sex workers (distinguishing between street workers, those operating from apartments, and those in nightclubs), the average value of their services by type, and the average number of services performed per working day.

Illegal markets, as described, are structured and operate within *Interdiction areas*, which encompass activities such as illegal immigration, drug trafficking, prostitution, and other forms of *Necessary Crime*.

These *Interdiction areas*, essential for facilitating illegal economic activities, are numerous and spread across various locations, both within our country and internationally. Every

city or organized human settlement, governed by social rules and legal norms, requires such spaces to function.

For instance, in Campania, consider the previously mentioned area of Castel Volturno. The area of Castel Volturno, in the Province of Caserta, as well as the previously mentioned "Parco Verde" in Caivano, serves as a paradigmatic example of No Law Zones, although in official, political, and social narra-tives economic, media, and cultural spheres, it is portrayed as a place of extreme marginalization with a high density of illegal immigration, in need of urgent remediation and serious integration policies.It has become a hotspot for uncontrolled, irregular, and illegal immigration, widespread prostitution, drug trafficking, and labor exploitation. While the *light zone* expels deviant and criminal activities it cannot manage through a centrifugal force, *Interdiction areas*, conversely, exert a centripetal force. They attract all forms of deviance and *Necessary Crime*.

The problem here transcends legal and economic issues, such as the creation of dual markets (Piore, 1980); it is primarily an ethical crisis. Such conditions of exploitation are not only legally indefensible but also morally reprehensible to the societies that benefit from them. "Civilized" society must confront the stark and troubling reality that it tolerates forms of modern slavery within its own borders. This includes the exploitation of undocumented immigrants for labor in fruit and vegetable harvesting, as well as the trafficking of young women, often still in their teens, for prostitution.

Conclusions

If we accept the argument that deviance, once it reaches a certain threshold, has triggering and destabilizing effects on the social system - activating automatic mechanisms of control and expulsion - and if we also acknowledge the hypothesis that certain criminal phenomena are "necessary" due to the significant internal demand from the *light zone,* then the sobering conclusion is that completely eradicating *Interdiction Areas* may be an unattainable goal.

Daily experience confirms that when the state attempts to clear an *Interdiction Areas*, whether a *Shadow Space* or a *No Law Zone*, the activities previously conducted there will soon relocate, forming new *Interdiction Areas* elsewhere. The reason lies in the fact that these areas, as extensively discussed, perform an essential function for the light zone by removing excess deviance while providing goods and services—some of which are illegal—that cannot be openly traded but are in significant internal demand. Thus, it is crucial to recognize that *Interdiction Areas*, much like Jungian "Shadows" in analytical theory, represent the repressed elements of the city. They embody everything the city contains and simultaneously rejects, as they evoke guilt, shame, embarrassment, and pain.

These areas are parts of the social space relegated to the hidden, unconscious dimension, alienated from social consciousness, thereby maintaining a false sense of moral integrity within the community. To engage with our socially and urbanistically repressed "Social Shadows", we must begin by reflecting on the symbolic boundaries that separate us from these areas, boundaries that are both physical and conceptual. We need to muster the courage to cross these boundaries, culturally and ethically. Instead of viewing the boundary merely as a line of demarcation that protects us from what is unfamiliar, alien, or deemed not part of us, we should see it as an interface, a communication channel with other parts of ourselves and the surrounding social reality that we are connected to.

Thus, beyond metaphor, a potentially viable solution - though not necessarily a complete one - might be to engage with these areas rather than removing and denying them through ineffective and flawed Zero-tolerance policies.

This could involve decriminalizing certain offenses, such as drug trafficking, by implementing state-controlled distribution systems, and regulating other highly deviant activities like prostitution.

Zero-tolerance policies, which enforce strict measures and coercion, often exacerbate social removal, deviance, and criminal activity. These approaches can inadvertently drive up the prices of illicit goods and services, ultimately bolstering criminal organizations and increasing their power.

Ultimately, since *Necessary Crime* addresses specific social needs and generates illegal economies, the most effective solution to mitigate its impact may involve radical and structural legal reforms. These reforms could include the legalization and regulation of markets currently operating in the shadows, removing them from the control of organized crime, violence, and exploitation. By placing these markets under direct state management, they could be integrated into the social, economic, political, legal, and institutional fabric.

For example, the illegal gambling market was effectively dismantled when the state chose to regulate and manage it directly. Similarly, the problem of illegal alcohol in the United States was resolved not through the futile measures of prohibition - which only fueled the underground market - but through the legalization and regulation of alcohol sales.

In the United States, between 1920 and 1933, the XVIII Amendment, Section I, established: “One year after the ratification of this article and by virtue of it, the manufacture, sale, and transportation of alcoholic bever-ages for consumption, as well as their importation and exportation to and from the United States and all territo-ries under its jurisdiction, are prohibited.” Together with the Volstead Act, this marked the official prohibition of alcohol production, sale, importation, and transportation. Senator Andrew Volstead, the law's sponsor, declared after its enactment: “The slums will soon be a thing of the past. Prisons and reformatories will stand empty. All men will walk upright again, all women will smile, and all children will laugh. The gates of hell have closed for-ever closed forever” (H. G. Levine, C. Reinarman, Temperance, Prohibition, Alcohol Control, in www.drugtext.org). However, the outcome of what would go down in history as "Prohibition" was quite differ-ent: the day after it took effect, the price of alcohol skyrocketed, leading to the rise of a flourishing black mar-ket. The direct consequences of the ban were the appearance of alcohol - often adulterated - on the black market and the resulting criminal trafficking associated with its production and sale. Initially, bottles were sold in general stores, where owners took on the risk in exchange for substantial profits. Later, the so-called speakeasies spread—private clubs requiring a password for entry, where people could drink freely. In 1920, the year Prohibi-tion took effect, there were over 30,000 such establishments in New York City alone. Prohibition also gave rise to the phenomenon known as "gangsterism," with the rise of ruthless crime bosses, among whom the Italian-American Alfonso Capone, or "Al Capone" stood out, making his fortune through the profits of the illegal alco-hol trade. Thus, the failure of Prohibition - having caused the rise of criminal organizations and economic dam-age to the state without reducing alcohol consumption - led to the passage of the XXI Amendment on Decem-ber 5, 1933, which marked the end of the

Volstead Act. Millions of Americans could once again legally pur-chase alcohol, now liberalized and taxed, boosting government revenues and creating about one million jobs in the alcohol industry in the following six months. Furthermore, criminal gangs saw their multimillion-dollar busi-ness evaporate, significantly weakening their power.

We fully recognize that such measures could never achieve the complete eradication of *Interdiction areas*, as deviance is an inherent feature of every social system, inevitably generating a residual margin of deviant behavior. Moreover, even if eradication were feasible, it might not be entirely desirable. Within certain limits, deviance can have positive effects, contributing to social cohesion and driving the evolution of socio-cultural systems, with significant political and economic repercussions.

Nevertheless, liberalization and countering prohibitionist policies would likely lead to a reduction in both the scope and nature of these areas. This would have the valuable "collateral" effect of facilitating the integration of Social Shadows and addressing the latent issues within our cities and ourselves.

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A HUMAN RIGHTS PERSPECTIVE OF DIGITAL EVIDENCE IN SOUTH AFRICA

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Abstract: *Recent border disputes and military hostilities have been at the centre of human rights violations accords the globe. A significant amount of evidence collected of the recent human rights violations tend to be digital and are stored electronically. This paper examines the rules regulating admissibility and weight of evidence in South Africa with a view to determining its adequacy in regulating electronically stored and generated information from such human rights violations. The article highlights the nature of digital information and the types of the medium with which they are displayed for the purpose of determining if evidence obtained from them can wholly be functionally equivalent to other classifications of evidence. The paper reveals that the current rules regulating electronic evidence in South Africa do not adequately accommodate electronically generated information and it recommends the enactment of an act exclusively regulating electronic evidence to prevent the miscarriage of justice.*

Keywords: *Electronic Evidence; Digitally stored Information*

1 Relevance of Electronic Information in Human Rights Violations

Following the recent Russian aggression against Ukraine, the 1991 Moscow Mechanism of the Human Dimension of the Organization for Security and Co-operation in Europe was triggered by Ukraine supported by 45 participating states in March 2022 (Office for Democratic Institutions and Human Rights ODIHR, 2022). The Moscow Mechanism stipulated that a team of experts conduct and complete a preliminary investigation into the alleged contravention of international humanitarian and human rights laws (ODIHR, 2022). A significant portion of the evidence obtained by the team of experts, showing 'clear patterns' of international human rights violations, where electronically stored information (ESI) in pictorial and video forms (ODIHR, 2022). Unfortunately, while electronic evidence has proven to be easily obtainable, verifying and authenticating electronic information has continued to pose a serious challenge. Evidence such as videos showing the alleged extrajudicial killings of civilians (men aged 16-60) in Bucha, a village in the Kyiv region, can serve as critical proof of crimes against humanity but only if its contents are adequately authenticated (Santa Monica Observer, 2022). There is, therefore, an urgent need to understand and determine the nature of ESI, particularly for the purpose of evidence in judicial proceedings (Mahmoud and Bellengere 2020).

Because of the ubiquitous nature of ESI, it often serves as the first piece of accessible information on social media platforms on human rights violations in recent years (Mahmoud

et. al., 2019). Electronic information in the form of videos, instant messages, pictures and text messages was beneficial in exposing and proving human rights violations in Africa, such as the killings of innocent civilians in response to the Boko Haram Insurgency in Nigeria (Walker, 2012). Due to the viability of evidence in the form of electronic information, there have been instances in which some countries restricts access to the internet and social media applications often for reasons of public safety and order (Kroff 2012). Between 2019 to 2020 alone, Benin, Gabon, Eretria, Malawi, Liberia, Mauritania, Tanzania, Ethiopia, Zimbabwe, Togo, Burundi, Chad, Mali, Guinea and Nigeria all restricted access to the Internet and social media applications (Giles and Mwai 2021). The restrictions in both Uganda and Tanzania occurred during the countries' election period while in other countries like Ethiopia and Nigeria, the internet restrictions often came after different forms of protests against the curtailing of human rights (Giles and Mwai 2021).

It is imperative to align the rules regulating evidence with the nature of electronic information with a view to improving the admissibility of, and weight to be ascribed to electronic evidence (Mahmoud, 2019). This paper examines the extant rules and procedures regulating evidence from electronically stored information in South Africa. While it will not delve into human rights laws, this paper evaluates the adequacy of the regulation of admissibility and weight ascription to ESI in the South African legal system.

2 Are the rules regulating ESIs in south Africa adequate?

The procedural rules regulating the admissibility of and weight to be ascribed to electronically stored information (ESI) in South Africa have been relatively unchanged and unquestioned for some time now, analysis of how electronic devices and their output fit into these rules has only recently begun (Tapper, 1974, Mason 2010, Collier, 2005). The diversity of these devices, their uses, and their complexity has only made it harder to apply evidentiary procedures to them (De Villiers,2010). They include the Civil Procedure Evidence Act (CPEA, 1965), Criminal Procedure Act (CPA, 1977), The Law of Evidence Amendment Act (EAA, 1988) and the Electronic Communications and Transactions Act (ECTA, 2002).

The conventional classifications of evidence in the South African legal system which include hearsay evidence, oral evidence, documentary evidence and real evidence, 'original and copy' and 'primary and secondary evidence' are some of the challenges that electronic evidence presents to conventional rules of evidence. The purpose of the ECTA is to facilitate the admissibility of data messaging as electronic evidence. Although the ECTA brought the much-needed legal recognition of data messages, it is submitted that it remains a challenging law with regards to the admissibility and weight of electronic information and its application has not been consistent. The court in *Jafta v Ezemvelo KZN Wildlife,(2008)* held that though the information contained in e-mail may contain informal language, evaluating such information as having no legal effect would be a mistake.

The ECTA sets out requirements for evaluating the weight of data messages which include the reliability and manner in which it was generated, stored or communicated and the manner in which the originator was identified and in which the message was maintained (Section 15, ECTA). It also sets out requirements for the admissibility of information contained in data messages that were created by a person in their ordinary course of business. It also introduces definitions including data which it defines as the 'electronic representation of

information in any form'(S1, ECTA). The act also defines data message as information created and stored on an electronic device in any format which includes animation, pictures, and sounds. Other relevant definitions include 'automated transaction', 'electronic communication', 'writing' (S12 ECTA) and 'signature'. (S13, ECTA) While the ECTA is no doubt a highly commendable piece of legislation as it recognised the abovementioned issues, it does have a few shortcomings, as discussed below.

One major point of contention that the ECTA has failed to resolve is the definition of a document with respect to data messages. The implication of this is Section 34 of the CPEA, 221 of the CPA and Section 3 of the EAA, among others, which applied to traditional paper documents still apply to electronic information and must be read together with the provisions of ECTA for the purpose of admissibility and weight to be ascribed thereto (*Narlis v South African Bank of Athens* 1976). The problem with this is that the application of these Sections to data messages might create absurdities because these Sections were not originally designed with electronic information in mind (Watney, 2009). Section 34 of the CPEA, for instance, provides for a statement made by a person in a document to be admissible. However, this is of little help as a computer is not regarded as a person.

The definition of a document, which includes any device by which information is recorded or stored, is wide enough to include a computer itself (S vs. Harper 1981). A document as defined by both the CPA and CPEA has been interpreted to include everything that contains written or pictorial proof of something regardless of what material it is made of. This definition has led to the opinion, by some scholars, that data messages fall conveniently within the realm of what constitutes documents (Watney, 2009). This opinion seems to be backed up by the apparent functional equivalency created by the ECTA which states that the criteria that information contained in a document must be in writing will have been fulfilled where such information was created in data form on an electronic device and is retrievable in a visibly intelligible form (S12 ECTA). This section seems to equate the rules of admissibility and weight of documents to those of a data message by rendering them of the same nature (Hoffman, 2010).

There is, therefore, a need for clarification of the definition and nature of what constitutes documents in relation to electronic information by way of an amendment or the enactment of an electronic information evidence act. Another matter to be considered is the lack of clarification of the difference between an original and a copy of electronic evidence in the ECTA (South African Law Reform Commission, (SALRC, 2010).

While the ECTA provides that courts should not deny the admissibility of data messages merely for the reason of not being in its original form, it does not provide the definition of 'original' or 'copy' of a data message (S11 ECTA). Section 14 of the ECTA states that the requirement of "originality" will be satisfied if the data message can be produced, in either electronic or paper format and that evaluation of the integrity of the content of a data message is a necessary requirement as well as the purpose for which it is being tendered into evidence. It is submitted that it is necessary to clearly differentiate between an original and a copy of a data message because unlike documents in paper form, a data message on an electronic device may be transferred through different storage media or software causing it to undergo changes (SALRC, 2010. A clear and concise test of originality would provide courts with a guarantee that the electronic information presented as output is the same as the

information that was generated on the device as input. Such an analysis usually focuses on the operational accuracy of the information system in recording, maintaining, transmitting and displaying the data message (Theophilopoulos, 2015).

Another inadequacy in the current system is the lack of clarification on whether Section 3 of the EAA applies to computer-generated evidence (Van De Merwe, 2016). The Law of Evidence Amendment Act (EAA) was introduced to provide rules regulating the admissibility of hearsay evidence. Even with the legal recognition as well as the assured admissibility of data messages by ECTA, (Sections 11 and 15) some scholars have opined that Section 3 of the EAA should also apply to electronic evidence (Van De Merwe, 2016). This position is predicated on the argument that although it is possible for the creation of a data message to require little or no direct human influence, all computer printouts occur with some form of human intervention because computer programmes are written by humans thereby making the probative value of the data message dependant on the credibility of someone who is not testifying (Collier, 2005). The need for drawing a difference between the real and documentary nature of data messages is because if a data message is adjudged to be real evidence then Section 3 of the EAA will obviously not apply to it as its evidential value is not predicated on another person (Schwikkard and Van der Merwe, 2016). The issue remains unsettled and therefore clarification is required as to whether a data message constitutes hearsay within the contemplation of Section 3 of the EAA and, if so, whether it applies to data messages made with little or no human effort Ndlovu v Minister of Correctional Services and Another (2006).

Another point of contention is the scope of Section 15(4) of the ECTA which appears rather broad and uncertain (Zeffertt et. al., 2003). The Section makes a data message in any form, be it a copy, printout or an extract, made by any person in the ordinary course of business, admissible as rebuttable proof upon certification by an officer in the service of the maker of the data message. In *Absa Bank Ltd v Le Roux (2014)*, the court was of the opinion that:

> Section 15(4) has a twofold effect. It creates a statutory exception to the hearsay rule and it gives rise to a rebuttable presumption in favour of the correctness of electronic data falling within the definition of the term ‘data message'.

Though the ECTA provisions regarding admissibility and weight are based on the UNCITRAL Model Law, Section 15(4) is an apparent departure from the Model Law (SALRC, 2010) and the Section runs the risk of opening a floodgate of data messages that now enjoy a presumption of genuineness on the mere production thereof (Collier, 2009). The law, therefore, needs to be reviewed with specific consideration given to the nature of electronic information.

3. Are ESI printouts inherently Real evidence or Documents?

Printouts of electronic data like any other piece of evidence are subject to the hurdles of admissibility and weight (Angus-Anderson, 2021). The real dilemma is in determining which hurdle best suits the nature of an electronic printout. Computer printouts on paper have for a long time been interpreted to fit into the ‘ordinary meaning of the word document’ (Harper, 1981, De Villiers,1993 and Ndiki, 2008). This position has proven to be far from settled as there continue to be many debates on whether printouts are exclusively documents or documents at all (Hoffman, 2010).

Writings on a piece of paper by a person constitute a document, however, when such a process passes through an electronic device it may not necessarily be so. All computer printouts occur with some form of human intervention because software itself is a set of human written codes and instructions (Collier, 2005). All electronic printouts are as a result of some form of programming and human instigation and even the simplest human-generated document is processed by the computer. Mason (Mason, 2010) puts it succinctly thus:

> Software is written as source code. The source code is written by the programmer, by entering instructions in an editor. The sequence of instructions defines the function of the program, such as taking input from the user, performing calculations, showing output on the screen and so on. This source code is then usually compiled into an executable program (an executable file causes a computer to perform tasks in accordance with the instructions), which is distributed to the users of the program. The source code cannot be derived completely from the executable program.

It is pertinent to note that documentary or real evidentiary qualifications are not inherent in a computer printout. Rather, what determines which evidentiary rules will apply is the purpose for which such evidence was produced. In determining the admissibility and weight to be ascribed to documentary evidence, the court will consider whether or not such evidence is the best evidence usually by examining its originality or the strength of its duplicate. The court may also consider its author in determining the truth of its content (Krige, 2012). In the case of real evidence, the court will mostly focus on different rules such as the reliability, functionality, and accuracy of the producing equipment in determining the reliability of the content of the real evidence (S vs. Ndiki 2008). Unlike documentary evidence, best evidence and originality rules do not ordinarily apply to real evidence *(HNP v Sekretaris van Binnelandse Sake* 1979).

4. The role of the Contents of ESI printouts in determining applicable evidentiary rules

The nature of the information contained on a printout from an electronic device determines whether rules of documentary or real evidence should be applied. Likewise, the process of generating printouts; with or without human intervention can also help determine whether the printout should be treated as a document or as real evidence (Law Commission, Report LCR, 1997). This form of classification has been recognised in one way or another by several eminent scholars (D T Zeffertt et. al., 2003, Tapper, 1974, Mason, 2010, Collier, 2005, Hofman, 2010 Van der Merwe, 2014 and Watney, 2009). For the purpose of this evaluation, the classification of computer printouts by Advocate Roux Krige shall be adopted. Krige's classifications of electronic printouts are most relevant to this research because they identify the differences between documentary evidence and real evidence that pose documentary traits (Krige, 2012). Krige's classification helps pinpoint the aspects of electronic information that may not fit into the traditional classifications of evidence; they are as follows (Krige, 2012).

1. The information in the printout came about as a result of the computer having processed raw data which was entered into the computer by a person.
2. The information was recorded by mechanical means without the personal involvement of a human being.

3. The information in the printout was entered into the computer by a person in circumstances where the computer did not process the information so entered.

4.1 Where the information in the printout came about as a result of the computer having processed data entered into the computer by a person.

An example of this classification of a printout can be found in the use of Microsoft Excel. Microsoft Excel is a computer application designed for the purpose of storing, organising, and manipulating electronic data fed into it by a person. The application uses numbers and text on spreadsheet styled electronic files and contains roughly a million rows and more than 16,000 columns. The programme is also designed to incorporate dates and times, Boolean values and formulas that enable it to draw inferences and make calculations based on the data imputed without human assistance. It is necessary to make a distinction between statements generated as a product of artificial intelligence and statements based on information supplied by a human being (LCR, 1997). This is because it is possible to produce data messages with little or no human intervention and this brings into question the extent to which such a data message can be termed documentary evidence (Hoffman 2010).

Also, the printout of information from an electronic device may not contain rooted information that is present in the electronic form *(Trend Finance (Pty) Ltd v Commissioner of SARS* 2005).

The printouts in this category contain statements that were not created by a person because the electronic device with its software calculates sorts, collates, and synthesises the entered data fed in by the user. It then gives it back in a different format to that in which it was entered into the computer (Krige, 2012). The weight ascribed to the information contained on such a printout depends on the functionality of the electronic device. Such a statement may be included in a document produced by the device as the printout but it could equally be displayed on the screen of the electronic device that created or even a voice output that can be played back in the format of an oral statement (LCR, 1997).

4.2 Where the information was recorded by mechanical means without the personal involvement of a human being.

Printouts in this category are those generated by devices and applications designed to function almost exclusively in isolation from human involvement. The role to be played by the user is usually limited to activation or confirmation. An example would be an automated teller machine (ATM). An ATM is a data terminal, with input and output interfaces, which connects to, and communicates through, a host processor. The processor is synonymous with an Internet service provider (ISP) in that it is the process by which ATM networks are displayable to the cardholder. Interactions with the ATM are performed by input devices which may include a card reader, keypad, scanner, and cash depositor and also output devices which may include a speaker display, screen receipt printer, and cash dispenser. Unlike recording/displaying functions on some electronic devices, the ATM merely receives instructions and executes the commands accordingly. This is often accomplished when the cardholder/user inserts their PIN into the keypad, which the ATM scrambles and transfers, alongside the information from the magnetic stripe, to the financial institution through a system network like MasterCard. This enables banks to examine the PIN imputed against the data on their records (Murdoch, 2009).

This will then prompt the ATM to carry out functions based on the instructions of the cardholder/user.

In this category, the electronic system is activated by a person without any other involvement. The electronic information is created by an algorithm that has been pre-encoded into the electronic system (Krige, 2012). This type of a printout falls into the class of real evidence because it consists of tangible evidence which does not include statements by a person that would have otherwise rendered them hearsay(Schwikkard and Van der Merwe, 2016). Unlike documentary evidence, the rules of hearsay evidence do not apply to real evidence (Bellengere, 2013). Real evidence does not rely on the testimony of any author. Rather, if any oral testimony based on real evidence is required or offered, it usually is with respect to matters of accuracy, reliability, and regularity.

In the case of *S v Ndiki and Others (2007),* the court reiterated that a data message that was created solely on the functionality of the electronic device and its internal software constituted real evidence. In *Ndiki's* case, the state tendered some computer printouts in proof of charges of fraud against the accused. The court held some of the computer printouts as being documents because their veracity depended upon the credibility of a signatory. The court held the other computer printouts to be real evidence because they did not require any such corroboration as they were made with little human intervention. The court, in interpreting Section 15 of ECTA, held that the section aimed to address information from data message as real evidence as contemplated by common law. This was also affirmed by the Supreme Court of Appeal in *Spring Forest Trading CC v Wilberry (Pty) Ltd t/a Ecowash (2015)* where it stated as follows:

> [The aim of the ECTA] is to promote legal certainty and confidence in respect of electronic communications and transactions, and when interpreting the Act, the courts are enjoined to recognise and accommodate electronic transactions and data messages in the application of any statutory law or the common law.

4.3 Where the information in the printout was entered by a person in circumstances where the computer did not process the information.

In this category, the data in issue is fed into the electronic device by a person. The data is then produced as a printout in the same format as it was entered into the device (Krige, 2012). Examples of this include writing an email, text message or drafting a document in Microsoft Word where printouts of these bear the exact content fed into the electronic device by a person. This form of a printout is regarded as a document and the truth of the statement contained therein is subject to the credibility of the author. In such a case, the probative value of the statements contained in the printouts will be determined by proving the truth of the facts contained therein (LCR, 1997).

However, there are complications where chats have been stored through a replication process that involves alteration by a third party. An example of this occurred in the United States in the case of *United States v Jackson (2007),* where the court decided that the information contained on a printout did not accurately capture the chat as it was on the electronic device, thus it was not an acceptable duplicate of the original version. Also, in the *Ndlovu* case (2006) the printouts in question were recorded entries of parole violations and

this was why the court treated them as documentary evidence and applied rules regulating documents in determining their admissibility and ascription value.

Furthermore, it is pertinent to determine the following question: at what point should electronic information contained on a printout be excluded? There are two potential answers to this; the first of which is that such a printout is hearsay (LCR, 1997). This is because the information contained in it as it can be likened to a statement made by a person who imputed it into the electronic device. The other view is that the truth of the statement contained in the printout is predicated on the accuracy of the information contained in it.

Therefore, if the accuracy of the data is proved, the statement contained therein is not capable of possessing probative value by its nature so the question of whether or not it constitutes hearsay becomes a non-starter because the statement itself is irrelevant. The United Kingdom Law Commission made this observation in a report on hearsay and recommended as follows:

> It is, therefore, unnecessary to complicate our hearsay rule by extending it to statements made by machines on the basis of human input. On the other hand, we do not think it would be safe to assume that everyone will share this view. We must anticipate the argument that, if such statements are inadmissible at present, that is because they are hearsay; that, under our recommendations, they would no longer be hearsay, because our formulation of the rule would apply only to representations made by people; and that they would, therefore, cease to be inadmissible... We recommend that, where a representation of any fact is made otherwise than by a person but depends for its accuracy on information supplied by a person, it should not be admissible as evidence of the fact unless it is proved that the information was accurate (LCR, 1997).

It is submitted that the consequence of this with respect to the South African law of evidence, is that the present evidentiary regime is not sufficiently flexible (Collier, 2005). This is because the transient nature of ESI makes its creation, transfer, and storage unique as compared to other forms of evidence like written documents or real evidence, therefore, the application of the conventional rules will the aforementioned instances, be inadequate.

5 The implication of 'Purpose' in determining the admissibility of, and ascription of value to, electronic information

The purpose for which evidence is sought to be tendered is essential in determining its evidential classification as well as the weight to be ascribed to it. The importance of purpose transcends the classification of the quality of evidence as either original or secondary and this is because sometimes the same document is primarily for one purpose and secondary for another (Malek et. al., 2005). This also applies to electronic data which is information that can be generated, processed or stored by electronic means. Data messages can contain a statement or several statements and can be tendered for multiple purposes (Theophilopoulos, 2015).

Determining the accuracy or inaccuracy of the data message is a different matter from determining the truth of the statement contained in the data message. The effect is that different admissibility and value ascription rules may apply depending on the purpose it is tendered. For example, a data message in the form of a video recording wherein ***Mr. A*** tells ***Mr. B*** that he was robbed at gunpoint might be tendered for the purpose of implying that ***Mr. A*** does, in fact,

know ***Mr. B.*** The data message will be admissible once it is shown to be an accurate representation of the information purported to be contained therein. The same data message might be inadmissible as hearsay if it is tendered for the purpose of proving the truth of the statement contained therein i.e. to prove that ***Mr. A*** was indeed robbed.

Another example can be drawn from the facts of *Offenback v L.M. Bowman, Inc. (2011)* (a matter in the United States) in which an action arose from a vehicle accident that occurred on 6 November 2008. The plaintiff claimed he suffered physical injuries to his right shoulder and lower back as well as psychological injuries which rendered him unable to drive for a period of time and which physically limited his riding of a bicycle or motorcycle. The court, in determining the relevancy of the plaintiff's posts detailing his trips between Kentucky, Virginia, and Pennsylvania, held as follows:

> [O]ur review of Plaintiff's Facebook account reveals the following potentially relevant information that should be produced to Defendants. Plaintiff has posted a number of photographs or updates that reflect he continues to ride motorcycles and may have on more than one occasion travelled via motorcycle between his home in Kentucky and Pennsylvania. In particular, our review found a photograph posted on March 14, 2011, which appears to show Plaintiff with a Harley Davidson motorcycle that other posts suggest that he purchased in or around July 2010. On or about October 1, 2010, Plaintiff posted information to his account that suggests he may have travelled to West Virginia via motorcycle. On July 22, 2010, a post on Plaintiff's "Profile" page suggests that he had taken, or was planning to take, a trip to Pennsylvania on his motorcycle...

The defendants did not intend to prove the truth of the contents of the photographs but intended to draw implied assertions from them which suggested that the plaintiffs' claims that he suffered physical and psychological injuries which rendered him unable to drive and limited his riding of a bicycle or motorcycle were bogus.

In other to determine what evidentiary rules ought to be applied to electronic information, the purpose for which it is being tendered is therefore of primary importance. Evidence containing statements has two primary purposes for which it might be tendered. Firstly, to establish the truth of its content and secondly to establish the fact that it was made so as to make implied assertions. This paper evaluates the impact of these classifications on the rules governing the admissibility and ascription value to electronic information as follows:

1. Electronic information tendered for the purpose of drawing implied assertions.
2. Electronic information tendered for the purpose of proving the truth of its content.

5.1 Electronic information tendered for The purpose of drawing Implied Assertions

An implied assertion is created where inferences are drawn from express facts in the content of evidence being tendered (LRC, 1997, *Caswell v Powell Duffryn Associated Collieries (1939) and S v Naik,* 1969). It is the inference of facts made possible by the existence of some assertions put forward as evidence in a statement such as a bystander saying to another person (in a United Kingdom matter), '[y]our place is burning and you going away from the

fire!' The court was duty bound to infer from the statement the defendant was at the scene which he had hitherto denied (Teper v. The Queen, 1952). The rationale behind these inferences from expressly asserted facts is that it is not always the case that the expressly asserted facts or statements are relevant or important to the case. Rather, the inferences might be a crucial determinant (LCR, 1997). For example, where a minor describes a place that she believed an assault occurred, the express assertion is the carpet's colour she made mention of while the inference to be drawn by the court by how accurate her description was, is that the girl is indeed familiar with the room. While implied assertion is applied in governing admissibility and the ascription of value to statements contained in documents, it is submitted that these rules can also be applied to electronic information as well. For example, when a computer printout of surveillance footage showing the accused exiting the home of his alleged murder victim is tendered in evidence, the express assertion is that the accused was at the home of the victim at about the time of the murder. However, the implied assertion to be drawn by the court is that the accused has been to the victim's home, which he denies (LCR, 1997).

It is pertinent to point out that when evidence is 'relevant because of an inference which the court is invited to draw from it, questions of the admissibility of implied assertions will arise' and if the evidence is in the form of electronic information then, rather than the rules of hearsay being used to prove its truth (and which might render it inadmissible), the test of the accuracy of the information should be what the court concerns itself with (LCR, 1997). In the United Kingdom, the rules that shall apply if such inferences are to be drawn from electronic information are set out in Section 69 of the Police and Criminal Evidence Act (PACE Act, 1986) which requires that before a piece of evidence can be accepted, it must be shown that the electronic device from which it was extracted was in proper functioning condition:

> The purpose of Section 69, therefore, is a relatively modest one. It does not require the prosecution to show that the statement is likely to be true. Whether it is likely to be true or not is a question of weight for the justices or jury. All that Section 69 requires as a condition of admissibility of a computer-generated statement is positive evidence that the computer has properly processed, stored and reproduced whatever information it has received. It is concerned with the way in which the computer has dealt with the information to generate the statement which is being tendered in evidence of a fact which it states (*Director of Public Prosecution v McKeown*, 1997).

The implied assertion rule is applicable in any situation whether it is information that falls under the exceptions of hearsay or information in the category of real evidence (LCR, 1997). In South Africa, while the ECTA provides that the rules of evidence must not be applied so as to deny the admissibility of a data message merely on the grounds of its nature, it does not provide a distinction between the admissibility of a data message tendered to prove the truth of its contents and one tendered merely for inferences to be drawn from it (S15 of ECTA, 2002). The courts have, however, made an attempt in interpreting Section 15 of the ECTA on the admissibility of a data messages as they relate to hearsay rules particularly under Section 3 of the EAA in *Ndlovu Ndlovu v Minister of Correctional Services and Another (2006)*. The *Ndlovu* case makes a distinction between where the probative value of the information contained in data messages depends on the credibility of a person and where it does not depend on a person. The court held that the hearsay rules will apply in the first instance because nothing

in Section 15 suggests otherwise. In the second instance (where probative value of a data message doesn't depend on the credibility of a person), the court held that Section 3 of the EAA (which applies to hearsay evidence) will not apply as it was not intended to, instead, such data message should be admitted and due evidential weight accorded thereto 'according to an assessment having regard to certain factors'. While this is highly commendable, what *Ndlovu's* case fell short of establishing is the status of data messages that contain assertions of a documentary nature where the purpose of tendering them was merely to draw inferences rather than prove the truth of their content.

The difficulty that the ECTA might have created is that data messages tendered to show the fact that they exist rather than to prove the truth of their contents might still be subject to the hearsay rules. This is especially because a statement contained in a data message is capable of having multiple purposes when tendered as evidence in a judicial proceeding.

The fact that a statement may be used for multiple purposes was established in *R v Rice* (1963) where both 'the accuracy of the content of the document and the implications to be drawn from it were subjects of contention'. The information in issue was the content of a printout of an airline ticket which had been used up (LCR, 1997). The court was faced with determining the admissibility of the content of the ticket on the grounds that the information constituted hearsay. The Appeal Court decided that the ticket itself fell under the classification of real evidence but the information contained on it was hearsay and that 'the document must not be treated as speaking its contents for what it might say could only be hearsay'. As hearsay, the information on the airline ticket could not be admitted in evidence if it is tendered for the purpose of proving that it was issued to a person bearing the name on the ticket but in this case, the jury was allowed to make an inference from the information contained on the ticket that it had indeed been utilised by a person with the name on the ticket.

Another aspect to consider in determining the extent of the application of implied assertion to electronic information is where the item of electronic information is not one that asserts anything at all. This ought to be considered via an implied assertion made from a statement in a document where the speaker did not assert anything at all, such as a statement that cannot be analysed as true or false for example, a question or a greeting. In the case of *Kearley,(1992)* the court held that there was indeed an implied assertion in the statement. For example, 'where a child says "Hello daddy", the child is not "asserting": "I am speaking to my father", but a listener will be able to infer that fact, and that may be a significant inference in the case' (LCR, 1997). It is submitted that an implied assertion that electronic information which does not assert anything (such as metadata in form of time and dates, email headers, musical notes), can also be the subject of an inferred assertion where such information is crucial to proving the existence or nonexistence of facts in the case.

5.2 Electronic information tendered for the purpose of proving the Truth of its Contents

Unlike evidence tendered for the purpose of drawing an implied assertion, evidence tendered to prove the truth of its contents if it contains a statement is subject to the rules of hearsay and its exceptions (S3 of the EAA). This is because in placing reliance on the truth of the content of a statement, the best evidence is the testimony of the author or an original perceiver of the statement, without which the evidence is inadmissible. This crucial

differentiation of the reason between establishing the plausibility of what has been asserted and establishing the fact that it was asserted was made in *Subramaniam v Public Prosecutor(1956)* where the appellant was charged with illegal possession of firearms, his defence was that he was under duress by 'Malayan terrorists'. The attempt by the appellant to enter evidence into the court in respect of what exactly the terrorists had said in their threats was rejected by the court. On appeal, the Privy Council 'advised that the conviction had to be quashed because the reported assertions were tendered as original evidence to explain the accused's state of mind' adding that the intention of the terrorist to either carry out the threat or not was irrelevant to the case (LCR,1997).

Applying this rule to electronic information, when a data message is tendered as evidence to establish the fact that information was sent, received or stored it cannot be excluded merely because of that reason nor can it constitutes hearsay (Watney, 2009). Where, however, a data message is used to show the truth of its contents it may be excluded as hearsay on the grounds that the reliability of its content has not been sufficiently established and not because of the volatility of the information technology with which it was created (Hoffman, 2010). It is thus necessary to take into account the difference between form and content of evidence which is the basis upon which a court excludes a document as hearsay.

An illustration of this can be seen in *MTN Service Provider (Pty) Limited v L A Consortium & Vending CC t/a LA Enterprises and Others (2011)* where the plaintiff tendered computer-generated evidence to prove the delivery of the network services which the defendants did not pay for. The defendants objected to the admissibility of the computer-generated evidence on the grounds that it amounted to hearsay. The court held the data messages generated from the computer system required the direct evidence of the head of the department to verify its correctness as he was responsible for the correct capturing of the information into the computer system. If the printouts were, for instance, tendered to show an ongoing contractual relationship between the parties rather than the truth of the content, the direct evidence of the head of the department might not have been necessary. It has been argued that for this purpose, a data message tendered for the purpose of proving the truth of its content should be treated in the same manner as a document tendered for the same purpose, therefore, requiring the direct testimony of the author or an original of the data message (Hoffman, 2010).

6 Conclusions

South African evidentiary rules do not yet reflect the uniqueness of data messages because as things stand, the provisions of the CPA and the CPEA on the admissibility and weight of documents still apply to electronic information. The CPA defines a document as including any medium upon which information is recorded and preserved (S221(5)) of the CPA). The CPA also defines documents in relation to entries in accounting records to include a 'recording or transcribed computer printout produced by any mechanical or electronic device and any device by means of which information is recorded or stored' (S236(6)). The CPEA also has extensive regulations of documents in Sections 33 through 38 which also apply to criminal proceedings. While the courts have been restricted to adopting these provisions to electronic information there remains the possibility of misappropriation of these rules (S v. Harper, 1981). It is, therefore, necessary for evidentiary rules to be designed exclusively for the different types of data messages as well as the several possible contents of each data

message. On a similar note, while it is highly commendable that the ECTA emphasises the legal force of a data message (Bellenger and Swales, 2016), to take into account that data messages might are not all generic and might contain information of a real nature, or statements that may or may not be made by humans or a combination of them. Consequently, just like documents have different considerations for their admissibility; data messages being even more unique ought not to have a blanket admissibility status (Theophilopoulos, 2015).

It is, therefore, necessary for a review of the laws regulating the evidentiary procedure in South Africa. The South African Law Reform Commission (SLRC) has addressed some of these issues through their issue and discussion papers and has made several essential recommendations on some of the issues plaguing admissibility and weight of electronic evidence (SLRC, 2014). Some of such recommendations include the differentiation between information created in the form of data solely by a person and data created without the aid of human intervention. It also suggested reforms in the bill to make practice directions on the evaluation of both types of information. The SLRC also recommends that the rules of evidence should do away with the conventional 'presumption of regularity' when dealing with mechanical devices rather, it suggests that a limited presumption should be applied especially in civil proceedings which place an evidential burden on the other party who did not object on notice. It also recommends the enactment of a subsidiary practice direction on obtaining and producing information from electronic devices so as to help legal practitioners streamline the process of tendering evidence in data form and to help judicial officers with the more technical aspects of producing electronic evidence in court to avoid unnecessary confusion.

Another recommendation by the SLRC is the defragmentation of the rules of admissibility of documentary evidence to avoid the "apparent inconsistency" caused by solely amending the rules that are currently in force, or via a repeal of those rules and introducing instead, a unified body of laws designed to regulate information in data form created on electronic devices. Finally, the SLRC recommends a proposed draft bill (Law of Evidence Bill) which reflects the recommendations in its discussion paper 131: The Review of Law of Evidence (Annexure A (Law of Evidence Bill). The bill also provides some necessary definitions of certain terms including 'document', 'copy' 'electronic document', 'electronic document system', 'hearsay evidence' and 'business records'.

It is pertinent to point out that the SLRC discussion paper confirms one of the primary questions of this research; that the current regulations governing admissibility and weight of evidence in South Africa are inadequate. However, its recommendations, particularly the defragmentation of the rules of documentary evidence, removal of the presumption of regularity from the consideration of admissibility of ESI, and the proposed definitions contained in the Law of Evidence Bill do not fully take into consideration the nature of ESI. While the Law of Evidence Bill proposes some definitions such as 'document', 'copy' 'electronic document', 'electronic document system', 'hearsay evidence', and 'business records', it is the determination of this research that these definitions do not adequately address the transiency of ESI and are simply an attempt to fit aspects of ESI into conventional classifications of evidence. This is because the definition of 'electronic documents' in the proposed Bill, does not differentiate between a statement contained in an electronic form and information that cannot logically be considered statements.

It is also necessary to point out that the recommended Law of Evidence Bill [B B2014] explicitly states that it does apply to 'any rule of law relating to the admissibility of evidence rather, it applies specifically to the 'rules relating to hearsay, authentication and best evidence in relation to certain types of documentary evidence'. The implication of this provision is that any ESI that do not fall into the classification of documentary evidence will not be regulated by this bill. The bill attempts to compensate for this by extending the definition of electronic documents to include 'evidence that is produced wholly or partly by a machine or technical processes. It is suggested that the 'apparent inconsistency' sought to be avoided by solely amending and repealing extant rules will still remain if all forms of ESI and forced into the classification of documentary evidence.

In conclusion, it is the determination of this research that the conventional rules of hearsay, real and documentary evidence cannot pragmatically be applied to all forms of ESI and it is suggested that the SLRC's recommendations do not adequately address the lacunae. Consequently, it is recommended that there are clearer definitions of what constitutes electronic information which are statements, electronic information that is contained in documents and electronic information that are created wholly by electronic algorithms and software. It is also recommended that the rules regulating each of these types of information on authentication, best evidence, relevance, admission, presumption, and weight ascription are defined individually to avoid inconsistencies in evidence classification.

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THE JURISPRUDENCE OF ALGORITHMS: RETHINKING LEGAL THEORY IN THE AGE OF AI

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Abstract*: This paper explores the evolving interface between artificial intelligence and legal theory, arguing that the rise of algorithmic governance necessitates a fundamental reassessment of jurisprudence. Through theoretical analysis, case studies, and interdisciplinary literature, the article investigates how AI challenges established doctrines of legal interpretation, procedural fairness, and legal personhood. The paper proposes a framework for understanding the epistemological and normative implications of algorithmic decision-making in legal contexts and offers policy recommendations for a just and transparent integration of AI into the rule of law.*

Keywords: *artificial, intelligence, theories, jurisprudence.*

Introduction

The proliferation of artificial intelligence in public and private decision-making is transforming legal systems worldwide. From risk assessment in criminal justice to predictive policing and automated contract enforcement, AI technologies increasingly influence core legal functions. This development raises profound questions about the future of legal reasoning, the legitimacy of machine-made decisions, and the theoretical foundations of law itself. The purpose of this paper is to analyze how algorithmic logic intersects with traditional legal thought and to propose new ways to conceptualize legal authority in the age of AI.

1. Theoretical Frameworks

To understand how artificial intelligence challenges and reshapes legal theory, it is essential to ground the analysis within established theoretical frameworks that define law’s nature, function, and legitimacy. As Lessig (1999) famously argued, “code is law”—meaning that digital architecture can function as a form of regulation as powerful as legal norms. This challenges traditional distinctions between legal and technical governance (Lessig, 1999). This section explores key jurisprudential perspectives through which the legal implications of AI may be critically examined and reinterpreted.

Legal Positivism vs. Natural Law

Legal positivism posits that law is the product of recognized human authority, while natural law holds that law must align with moral principles. AI disrupts this dichotomy by introducing rule-based systems not grounded in either human will or moral reasoning. The deterministic nature of algorithms echoes the positivist emphasis on rules but lacks the normative dimension central to natural law. Moreover, the opacity of AI decisions challenges the requirement of legal certainty and transparency.

Critical Legal Studies and Posthumanism

Critical legal theorists argue that law often reflects dominant social and economic structures. AI, as a tool created and deployed within these structures, risks reinforcing systemic biases. Posthumanist approaches further complicate this picture by questioning the centrality of the human subject in law, suggesting that AI may function as a legal actor in hybrid systems of governance.

Legal Realism and Predictive Analytics

Legal realists emphasize the role of judges' discretion and social context in decision-making. AI's reliance on data-driven prediction runs counter to this view, favoring past patterns over contextual nuance. The tension between statistical inference and human judgment raises new questions about fairness, especially in areas like bail decisions and parole.

Procedural Justice and Due Process

AI systems challenge traditional notions of due process. The lack of explainability in algorithmic decisions undermines procedural fairness (Pasquale, 2015), particularly the right to understand and contest decisions. Rawlsian and Habermasian theories emphasize transparency and reason-giving, both of which are at risk in black-box models.

2. Legal Case Studies and Domains

2.1.COMPAS and Risk Assessment Tools

Used in U.S. criminal justice to assess recidivism risk, COMPAS has been criticized for racial bias and lack of transparency. The *Loomis v. Wisconsin* case exemplifies the legal challenges of relying on opaque algorithms in sentencing. The Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) is one of the most widely used risk assessment tools in the United States criminal justice system. Developed by the private company Northpointe (now Equivant), COMPAS is designed to assist judges, parole officers, and other legal actors in evaluating the likelihood that a defendant will reoffend, or fail to appear in court. It does this through a proprietary algorithm that processes up to 137 factors, including criminal history, socio-demographic data, and responses to questionnaires.

One of the most significant controversies surrounding COMPAS is its opacity. Because the algorithm is proprietary, its internal logic is not publicly available—even to the courts that rely on it. This has led to criticism that defendants and their attorneys are unable to contest or understand the basis on which risk scores are assigned. From a rule of law perspective, this raises profound concerns about due process, the right to a fair trial, and the ability to challenge evidence used in sentencing. The "black box" nature of such tools violates core principles of legal reasoning: transparency, justification, and accountability. Legal decisions, especially those involving deprivation of liberty, must be based on reasons that are comprehensible and open to scrutiny. Algorithmic opacity fundamentally disrupts this norm.

In 2016, ProPublica conducted an influential investigation into COMPAS that found the tool exhibited racial bias: African-American defendants were more likely to be falsely labeled high risk, while white defendants were more often rated low risk despite reoffending. While Northpointe disputed the findings, arguing that the tool was “equally accurate” across races, the study sparked a widespread debate about fairness, bias, and algorithmic accountability.

These findings illuminate a key issue in AI and law: algorithms trained on historical data can inherit and perpetuate systemic discrimination. When the input data reflects societal inequalities, the algorithm may encode and reproduce those patterns, reinforcing the very disparities the legal system is supposed to combat.

In *State v. Loomis* (2016), the Wisconsin Supreme Court considered whether the use of COMPAS in sentencing violated due process. Eric Loomis was sentenced in part based on a COMPAS risk score, which he argued denied him the ability to challenge the accuracy of the assessment due to the tool's proprietary nature. The court upheld the use of COMPAS, but acknowledged serious concerns. It ruled that COMPAS could be used only as one factor among many, and courts must include warnings about its limitations, especially its lack of transparency and potential bias.

While the court stopped short of declaring COMPAS unconstitutional, the decision underscores the tension between technological efficiency and constitutional safeguards. It also shows how legal systems are struggling to adapt to AI-based tools within the constraints of existing legal doctrines. The COMPAS case challenges foundational assumptions in legal theory about individual responsibility, equality before the law, and the nature of adjudication. It raises difficult questions such as:

- Can justice be individualized when it is partially determined by statistical generalizations?
- Should a defendant's sentence be influenced by factors beyond their control (e.g., demographics)?
- How can legal actors verify the fairness of decisions they cannot fully understand?

The integration of AI tools like COMPAS into legal systems signals a shift from normative, human-centered judgment to probabilistic, data-driven decision-making. This evolution calls for new theoretical frameworks that can reconcile algorithmic reasoning with legal values such as due process, dignity, and equality.

2.2.GDPR and the Right to Explanation

Article 22 of the GDPR gives individuals the right not to be subject to automated decisions without meaningful human intervention. This provision reflects European legal culture's emphasis on individual rights and accountability. The General Data Protection Regulation (GDPR), which came into effect in 2018, is widely regarded as one of the most ambitious and comprehensive data protection frameworks in the world. Among its various innovations, Article 22 addresses the growing role of automated decision-making, including profiling, in areas that significantly affect individuals. It asserts a key principle: individuals have the right not to be subject to decisions based solely on automated processing, including profiling, if those decisions produce legal effects or similarly significant impacts.

Article 22(1) of the GDPR reflects a deep-rooted European legal tradition that values dignity, autonomy, and individual agency. It presupposes that decisions affecting people in serious ways—such as loan approvals, hiring, policing, or access to public services—should not be made in a way that precludes human judgment. It aims to safeguard fundamental rights, including the right to fair treatment, non-discrimination, and effective remedies.

One of the most discussed and controversial aspects of Article 22 is whether it creates a "right to explanation" for individuals subjected to algorithmic decisions. While the text itself

does not explicitly use that phrase, Recital 71 of the GDPR suggests that data subjects should have the right to obtain an explanation of the decision reached after such assessment. Legal scholars have debated whether this amounts to a legally binding right or a more aspirational principle. For instance, Wachter, Mittelstadt, and Floridi (2017) argue that the GDPR does not establish a robust right to explanation in its current form, particularly given the ambiguous language and lack of enforcement mechanisms. Others, such as Selbst and Powles, contend that a de facto right exists when Article 22 is read in conjunction with Articles 13–15, which require transparency about automated decision-making logic.

Regardless of its precise legal weight, the notion of a right to explanation has powerful normative implications. It embodies the demand for algorithmic transparency and accountability, challenging the dominance of opaque AI systems (often referred to as "black boxes") in decision-making processes. In legal contexts, the ability to contest decisions and understand their rationale is fundamental to procedural fairness and effective remedy, enshrined in Article 47 of the EU Charter of Fundamental Rights.

Despite its normative appeal, enforcing the right to explanation faces practical and technical obstacles. AI systems, especially those based on machine learning, often operate through complex statistical correlations rather than clear logical rules. Providing a meaningful explanation of such systems' outputs—especially in non-technical terms comprehensible to laypeople—is a nontrivial task. Furthermore, commercial secrecy and intellectual property protections are frequently cited by companies as reasons for withholding detailed algorithmic disclosures. This creates a tension between data subjects' rights and business interests, a challenge yet to be fully resolved in regulatory practice (Cohen, 2019).

In contrast to the EU's precautionary and rights-based approach, jurisdictions like the United States have so far adopted a more laissez-faire model, placing greater emphasis on innovation and market regulation than on individual rights. However, even in the U.S., recent legal developments—such as the AI Bill of Rights (2022) and the Algorithmic Accountability Act—reflect growing concern about the unchecked deployment of AI systems. The evolving jurisprudence in Europe suggests that AI regulation will increasingly pivot around the principles articulated in GDPR, especially transparency, fairness, and accountability. Future EU legislation, such as the AI Act, is expected to reinforce these safeguards, potentially operationalizing the right to explanation more clearly and mandating ex-ante risk assessments**,** post-hoc audits, and human-in-the-loop protocols for high-risk systems.

2.3.SyRI Case in the Netherlands

The Dutch court struck down SyRI, a welfare fraud detection system, due to its invasive data collection and lack of transparency. The case underscores the importance of proportionality and necessity in algorithmic governance. The SyRI (Systeem Risico Indicatie) case represents a pivotal moment in European jurisprudence regarding automated decision-making**,** algorithmic surveillance, and fundamental rights. The 2020 ruling by the District Court of The Hague marked one of the first instances in which a national court invalidated a state-run AI surveillance system for violating constitutional and international human rights norms.

SyRI was developed by the Dutch Ministry of Social Affairs and Employment as a tool to combat welfare fraud and benefit misuse. The system aggregated data from multiple

government agencies—such as tax authorities, housing registries, education institutions, and employment databases—to construct risk profiles of individuals and neighborhoods deemed susceptible to fraud. These profiles were generated through a proprietary, opaque algorithm and transmitted to local authorities for further investigation, often triggering social service audits or benefit reviews.

Importantly, the exact criteria and logic used in risk scoring were not disclosed to the public or even fully to oversight bodies, leading to concerns about the black-box nature of the system. Furthermore, the targeted neighborhoods were often low-income and immigrant-dense, raising additional concerns regarding discrimination and stigmatization. A coalition of civil society organizations, including the Dutch section of the Public Interest Litigation Project (PILP), brought a case against the Dutch government, arguing that SyRI violated several fundamental rights, including: the right to private life under Article 8 of the European Convention on Human Rights (ECHR); the principles of transparency, proportionality, and necessity; the prohibition of discrimination, implicitly raised through the disproportionate impact on vulnerable communities.

The plaintiffs asserted that the indiscriminate data aggregation**,** lack of algorithmic transparency, and absence of effective redress mechanisms constituted a violation of data protection norms as enshrined in both the GDPR and the Dutch Constitution. In a landmark decision delivered on February 5, 2020, the District Court of The Hague ruled that the SyRI legislation was incompatible with Article 8 ECHR, which guarantees the right to respect for private and family life. The court concluded that SyRI failed the test of proportionality and necessity, core principles under Article 8 ECHR, and struck down the law that formed its legal basis. The SyRI case has wide-ranging implications for the jurisprudence of algorithmic governance. It signals a growing judicial willingness to scrutinize state use of AI, particularly where opacity**,** data aggregation, and automated decision-making intersect with fundamental rights. Moreover, it offers a concrete illustration of how European courts are integrating human rights frameworks into digital and algorithmic contexts, moving beyond traditional privacy law to encompass procedural and distributive justice (Manolescu, 2016).

The SyRI decision contrasts sharply with approaches in other jurisdictions, particularly the United States, where algorithmic systems are often insulated from judicial scrutiny by doctrines of proprietary secrecy, standing, and executive deference. The Dutch ruling demonstrates that human rights law, especially as interpreted by European courts, provides a more expansive and protective framework for algorithmic accountability. It also contributes to the emerging body of European jurisprudence that includes Digital Rights Ireland, Schrems I and II, and La Quadrature du Net, all of which reflect increasing skepticism toward large-scale data processing that lacks adequate individual safeguards.

2.4.AI Judges in Estonia and China

Estonia and China have piloted AI systems for resolving small claims. While efficient, these systems raise concerns about dehumanization and the erosion of deliberative justice. The advent of automated judicial systems in countries like Estonia and China reflects a significant shift in how legal institutions conceptualize the role of technology in dispute resolution. These initiatives illustrate a broader global trend toward the digitization and automation of legal processes, particularly in the domain of low-value, high-volume cases. However, these

developments raise critical concerns about the limits of algorithmic reasoning, due process, and the risk of dehumanizing justice.

Estonia, long known for its advanced digital infrastructure and e-governance, announced in 2019 its intention to develop an AI-based judge for resolving small claims disputes, typically involving amounts below €7,000. The initiative, spearheaded by the Estonian Ministry of Justice and the government's Chief Data Officer Ott Velsberg, aimed to increase efficiency and reduce judicial backlog. The Estonian AI judge was not meant to fully replace human magistrates but to handle preliminary stages of litigation, such as evaluating documentation, verifying procedural compliance, and issuing decisions in uncontested or minor cases. The process allowed parties to appeal to a human judge, thereby preserving a layer of oversight.

In essence, while Estonia's experiment is rooted in democratic oversight and voluntary usage, it exemplifies the delicate balance between technological pragmatism and preserving the human touch in legal decision-making. China represents a more expansive and integrated use of AI in judicial systems, underpinned by its strategy of Smart Courts. The Supreme People's Court of China has promoted the integration of AI, big data, and blockchain into court procedures to modernize the legal system and improve adjudication efficiency.

In several provinces, AI-based systems have been deployed to assist judges in drafting decisions, predict case outcomes, and in some instances, deliver rulings in automated online courts. For example, Hangzhou's Internet Court has experimented with AI judges that interact via digital avatars to guide proceedings, assess evidence, and in streamlined processes, even render final decisions in routine civil or administrative matters, especially in e-commerce disputes. While Chinese AI courts report impressive efficiencies—some boasting resolution times of under 30 minutes—critics argue that these gains come at the cost of due process**,** deliberation, and access to meaningful appeal mechanisms.

The implementation of AI judges in both Estonia and China raises pressing theoretical and normative issues. Central among them is the tension between efficiency and justice. While automation may enhance procedural throughput, it risks compromising:

- Deliberative reasoning: The human judge is not merely a calculator of norms but an interpreter of lived realities, equipped to weigh evidence and circumstances that may not be easily quantified.
- Judicial empathy and moral reasoning: Emotions, ethical intuitions, and discretionary judgment remain essential to fair outcomes, especially in civil law contexts.
- Public legitimacy: Automated judgments, particularly if opaque or perceived as arbitrary, may undermine trust in judicial institutions, which derive their authority not only from outcomes but also from process.

From a jurisprudential standpoint, these developments invite reflection on Lon Fuller's "inner morality of law," Dworkin's theory of law as integrity, and Habermasian proceduralism, all of which emphasize that justice cannot be fully reduced to rule-application but requires discursive justification and human engagement.

Comparative Reflections

Yeung (2018) introduces the concept of "algorithmic regulation" as a new modality of power operating through predictive analytics. Such mechanisms reconfigure the role of law by embedding behavioral incentives into digital systems (Yeung, 2018).

- Estonia's model emphasizes augmentation, transparency, and appealability, aligning with liberal-democratic values and procedural fairness.
- China's model, by contrast, prioritizes instrumental efficiency and centralized control, embedded in a surveillance-capable legal infrastructure, raising alarms about algorithmic authoritarianism.

Together, these examples demonstrate that the technological design and legal-cultural context are inseparable in shaping how AI tools affect justice. They also highlight the need for international normative frameworks to guide, constrain, and harmonize the development of automated judicial systems.

3. Major challenges in the intersection between artificial intelligence and law

3.1.Opacity and Accountability

One of the most pressing challenges in the application of artificial intelligence to legal systems is the inherent opacity of many machine learning models, particularly those utilizing deep neural networks. These systems are often described as "black boxes" due to the difficulty—even for their developers—of explaining precisely how they reach particular outputs. This lack of transparency undermines legal accountability, a cornerstone of any just system.

Traditional legal reasoning demands that decisions be traceable, reviewable, and justified. In contrast, algorithmic decisions may lack clear explanations, making it difficult for affected parties to contest outcomes, for courts to review legality, or for institutions to assign liability in case of error or harm. This creates a structural tension between technological opacity and the rule of law's demand for reason-giving and procedural fairness.

Moreover, questions arise about shared or diffused responsibility. If a harmful decision results from a combination of data bias, model training, and institutional misuse, who is legally and morally responsible? The software developer? The deploying institution? The programmer? These are open questions at the heart of emerging AI governance frameworks.

3.2.Bias and Discrimination

Bias in AI systems is not merely a technical flaw—it is a systemic legal and ethical concern. Calo (2017) outlines key policy dilemmas in AI regulation, including fairness, autonomy, and institutional oversight. Algorithms trained on historical legal data may unintentionally replicate and reinforce structural inequalities that exist in society. For example, if past policing or sentencing data reflect racial disparities, an algorithm built on such data is likely to amplify those biases, resulting in discriminatory outcomes cloaked in the guise of objectivity.

The growing use of predictive tools, without robust ethical oversight, risks entrenching systemic harms (Calo, 2017). High-profile examples, such as the COMPAS algorithm used in the U.S. criminal justice system, have demonstrated how algorithmic decision-making can produce disparate impacts even when race or gender is not an explicit variable. Such cases raise constitutional and human rights questions, particularly regarding equal protection, due process, and non-discrimination principles.

To mitigate these risks, legal scholars and data scientists are advocating for bias audits**,** fairness metrics, and inclusive design processes. However, the deeper challenge remains: can algorithms trained on inherently biased social data ever truly be neutral? And how should legal systems weigh algorithmic efficiency against normative values of justice?

3.3.Autonomy and Legal Personhood

The rapid development of advanced AI systems also raises fundamental questions about agency, responsibility, and legal personality. As AI systems perform increasingly complex tasks—such as negotiating contracts, making legal recommendations, or resolving disputes—some scholars and policy makers have asked whether such entities might eventually require a form of legal personhood.

However, granting legal personhood to AI would disrupt traditional concepts of moral agency, intention, and liability, which are deeply embedded in legal theory. Current legal frameworks are built around the idea that only humans or human-created institutions (like corporations) can hold rights and obligations. AI, by contrast, is an artefact with no consciousness, no will, and no capacity for moral judgment.

Yet, the issue is not purely speculative. In the European Parliament's 2017 proposal on "Civil Law Rules on Robotics," lawmakers considered the notion of electronic personality for the most advanced autonomous systems. While not adopted, the idea sparked intense debate. Critics argue that creating such a legal category risks absolving human actors of responsibility, while proponents claim it could fill accountability gaps when damages are caused by systems that act unpredictably.

The broader theoretical implication is that the presence of autonomous systems in legal processes forces a reconsideration of foundational legal concepts, including autonomy, intention, and culpability.

3.4.Legitimacy and Public Trust

Perhaps the most vital long-term determinant of AI's role in law is its perceived legitimacy. In any democratic society, laws are not obeyed merely because they are enforced—they are followed because they are seen as legitimate: created through fair processes, applied equally, and open to contestation. The introduction of AI into legal processes disrupts these expectations, especially when the decision-maker is non-human, opaque, or unaccountable.

Trust is fragile. It can be eroded by a single unjust outcome, particularly if the process that produced it appears arbitrary or inaccessible. AI's technical nature, combined with its often bureaucratic implementation, risks creating a perception of dehumanized justice, where individuals feel alienated rather than heard. To preserve legitimacy, human oversight must be preserved, especially in high-stakes decisions. Legal systems must incorporate meaningful explanation rights, accessible appeal mechanisms, and clear lines of responsibility. Public education also plays a role: citizens must understand not only what AI is doing in legal contexts, but why it is being used and how their rights are protected.

In this sense, legitimacy is not just a policy outcome—it is a cultural and institutional project. Lawmakers, judges, technologists, and civil society must work together to shape a model of algorithmic justice that aligns with core democratic values.

Conclusions

The integration of AI into legal systems compels a reexamination of foundational legal principles. Jurisprudence must evolve to address the normative and epistemological challenges posed by algorithmic governance. This paper has proposed a multidisciplinary framework for understanding these changes and has highlighted the need for transparent, accountable, and human-centered legal technologies. Only by reconciling legal tradition with technological innovation can we ensure that AI serves the rule of law rather than subverts it.

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REQUIREMENTS OF JUSTICE: BETWEEN PUNISHMENT AND REPARATION. THE CONFLICT OF THE CRIME AND THE INTERVENTIONS TO PROTECT THE VICTIM AND MAKE THE OFFENDER RESPONSIBLE

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Abstract: *The paper highlights how in every crime there is a strong conflict that is either the product of the crime itself or pre-exists it. This conflict makes the relationship very complex and requires targeted interventions. Restorative justice offers the possibility of managing the complexity of the conflict connected to the crime, protecting the victim and promoting a process of empowerment of the offender, through which this latter can then proceed to repair the damage to the victim. The repair of the damage, even if only symbolic, will be an expression of the process of empowerment of the offender. The author thus highlights how, although a retributive and punitive intervention against the perpetrator of the crime is necessary, it is equally necessary to promote and encourage a re-educational and re-socialization process of the offender, which sees the repair of the damage as at least a symbolic manifestation of it.*

Keywords*: conflict, crime, punishment, reparation, victim, offender.*

Introduction

Conflict is a natural expression of living together and is a relational modality that characterizes all social systems. As an interaction between incompatibilities, it appears, as Luhmann observes, "every time a communication is contradicted ..., every time a contradiction is communicated ... For there to be conflict, two communications that contradict each other must therefore occur" (Luhmann, 1984, 477). Once it has arisen, conflict stabilizes as a system that integrates and aggregates and its destructive force is not produced within it, but rather "in the relationship with the system in which the conflict originated - for example in the relationship with the neighbor, in marriage or in the family, in the political party, at work, in international relations, etc. " (Ivi, 531) in the sense that all resources are absorbed by the conflict.

In this sense, the conflict system will manifest its “parasitism”, tending “to absorb the host system … to the extent that all attention and all resources are absorbed by the conflict” (Id.). The author highlights how in every crime a conflict is created or this pre-exists the criminal conduct. The conflict, in fact, can be the prerequisite of the crime, its original matrix, but it can also emerge as a consequence, as an effect of the criminal event. This must

push us to understand how in order to do justice it is not only necessary to punish, but to intervene with restorative justice tools.

1. THE CONFLICTUALITY OF CRIME

There is a close relationship between crime and conflict, between criminally relevant conduct and that relational dimension, in which there is a conflict of interests and needs between two or more people.

Conflict can be the basis of crime, its original matrix, but it can also emerge as a consequence, as an effect of the criminal event.

Crime is the legal formalization of a conflict.

The conflictual nature of the crime brings with it the fears, anxieties, resentments of those who have suffered and those who have acted.

In fact, conflict presents a complexity that cannot be circumscribed and embedded in a rigid and formal container.

The conflict implies a relational dimension, in which there is a divergence between two or more people, on apparently irreconcilable points of view, goals, needs, values and interests, with respect to which each contender wants to maintain their position.

It requires sharing and coexistence.

The different elements of the conflict constellation, such as a sense of impotence, anger, misunderstanding, disappointment, frustration, sometimes accompanied by physical and moral violence, are often not directly recognized as images and feelings of conflict.

"The most recurrent or common element in the various voices that emerged is the sense of suffering and discomfort: if there is discomfort and suffering, there is conflict, they are unequivocal symptoms" (Palermo, 2005, 7).

In the conflict, what Johan Galtung (1969; Id., 2007; Webel, Galtung (eds.), 2007) calls attitudes, behaviors and contradictions (or conflicts of interest) are intertwined and represent the ABC of conflict. Johan Galtung is considered the founder of modern peace and conflict studies. He has been a member of the scientific committee of the Rivista Italiana di Conflittologia since its creation in 2007.

Conflict, as Galtung (2000) observes, can be represented with a triangle, in which vertex C indicates the contradiction, that is, the "object of contention" between the parties, the reason for arguing; the "subjective" vertex A identifies the perceptions, feelings and generally the experiences, originating from the conflict situation or which have contributed to triggering and/or developing it; vertex B (the apex) represents the visible conflictual behavior.

Talking about the elements of conflict inevitably leads us to underline how in conflicts there is always a manifest level (the behavior) and a latent level, represented by subjective perceptions and the object of contention.

In order to intervene in the conflict circuit, it is important to identify this articulation, which is not always recognizable at first sight, and observe the dynamics of this interaction over time.

Discovering the subjective side (A), which, unlike behavior, is not visible, can be essential in order to manage the conflict, precisely because the mechanisms that, contributing

to increasing mistrust, resentment, hatred, fuel the spiral that leads to violent escalation, often originate there.

"In conflicts, in fact, one of the most significant aspects concerns the affective and emotional dimension: the conflicting person is an emotional man.

This aspect is more relevant in micro conflicts than in macro ones. In conflict, therefore, a series of factors come into play, which favor an alteration of the relational dynamics: from the disfiguration of perception, to the reduction of the emotional sphere, to the increase in the rigidity of the personality up to regressive states.

With the disfiguration of perception, conflicting people tend to develop selective attention, to see only the negative aspects of the other, to narrow the space-time perspective, so that only the "here and now" is relevant, and to distort the image they have of themselves and of others (one is the best and the other becomes the worst).

The reduction of the emotional sphere leads to an inability to perceive the other in his complexity, a difficulty in defining him as a person, which leads to selecting only the negative aspects and characteristics.

As the conflicting person's personality becomes more rigid, his unavailability towards the other increases, to the point of a sort of regression of the personality, which causes him to fall back into previous development phases of his life" (Palermo, 2023, 30).

The conflict, as an interaction between incompatibilities, triggers a negative mechanism of hostility and denial of the other that either involves and becomes entangled in an explosive vortex, thus consolidating in its negative guise, or deviates, becoming the pretext for reorganizing the relationship. The path to follow is, however, often obscured by the feelings that animate the conflict and the choice at the crossroads could be inevitable.

Violence is one of the means that can be used in the conflict, which can, in fact, be conducted simultaneously with different means. Intensity and violence vary independently of each other, that is, there are conflicts of high intensity and low degree of violence and vice versa.

The dichotomy bad/good, right/wrong, is overwhelmed not only by the perspective of the observer, but also by the path that the conflict will follow.

If the attempt to overcome this dichotomy to try to manage the conflict is more easily acceptable where the conflict arises and grows between people linked by relationships of acquaintance, it appears less feasible when the conflict is triggered or fueled by a crime, especially if the perpetrator and victim are two strangers.

In the context of family relationships, for example, when there is strong conflict, the attempt to encourage the resumption of the relationship seems more understandable. Let's think about the increasingly frequent cases of legal separation between spouses and see how the idea of the opportunity to redefine the position and roles of each member of the family, to find a new balance, seems mostly shareable.

Our attitude changes when, leaving this context, we come across conflicts that, prima facie, would not require a redefinition of roles and the relationship. When, for example, the conflict is triggered or fueled by criminal behavior, we may not see how and why it might be appropriate to intervene in the management of the offender-victim relationship.

If we share the idea that the crime is the expression of a strong conflict and that this cannot be managed simply and exclusively with judicial dynamics, then we can consider the possibility of proposing a management of it in terms of re-elaboration, recognition and subsequent overcoming.

The conflict inherent in the crime cannot have exhaustive answers from the criminal process, careful to evaluate the responsibility of the person indicated as the perpetrator of the crime. It will be necessary to manage the conflict in its complexity that goes beyond the criminal conduct and involves the perpetrator-victim relationship, in a perspective of mutual recognition and re-appropriation of their lives. Therefore, promoting a dialogue and an interaction between criminal justice and restorative justice, promoting an effective and efficient reorganization of the penal system, could make the management of the conflict connected to the crime more concrete and complete, with important repercussions both on recidivism and on the credibility and reliability of the entire system responsible for intervening in the face of the commission of a crime.

2. REQUIREMENTS OF JUSTICE BETWEEN PUNISHMENT AND REPARATION

In the face of crime, the social reaction has been different and has reflected the debate on the functions of punishment, from the request for punishment/elimination of the offender to the desire for his necessary re-education, from the exclusion of the guilty party to the need for security of the victim.

In ancient societies, the retributive idea, the "talio", prevailed. In the 3rd century BC, Roman law introduced, however, in the formulary process, the possibility for the defendant to obtain acquittal "only if he previously returned the thing of which he had dispossessed the plaintiff or fulfilled in favor of the plaintiff his obligation of a specific thing" (Guarino, 1984, 134), thus sanctioning a recomposition of the social rift.

In truth, the Code of Hammurabi (1700 BC) had already provided for "restitution" for certain crimes against property and the subsequent period up to the Middle Ages was characterized by elaborate systems of "compensation". The reign of William the Conqueror can be considered the turning point for a transition from a justice centered on restitution to one centered on the State: in 1116 Henry I, son of William, issued laws that assigned the Sovereign control over certain crimes that endangered the king's peace (arson, robbery, murder) and, therefore, had to pass under his jurisdiction.

Over time, "a new model of crime emerged, in which the main parties were the state and the criminal, while the real victim was deprived of any significant role. This new focus of the penal system ... led, over time, to the attribution of a new primary objective to punishment, that of reducing the probability of further crimes being committed, and this through deterrence, neutralization and, more recently, re-education" (Gatti, Marugo, 1994, 13).

With the Enlightenment, the State takes on the penal aspect: the person who has broken a social pact deserves an appropriate punishment, determined by the outcome of a fair trial. The State must guarantee a fair trial before punishing!

Criminal justice is, therefore, a system that revolves around the perpetrator of the crime, the determination of his possible criminal responsibility and, consequently, the need to punish

him. It is completely disinterested in the victim and their conflict. The United Nations General Assembly, in resolution n° 40/34 of 1985, defines a victim as anyone, individual or collective, who suffers an injury, including physical or mental damage, emotional suffering, economic loss or a substantial restriction or injury of fundamental rights, either through conduct criminally sanctioned by the individual State (victims of crime) or through acts or omissions that do not yet constitute a violation of national criminal laws but of internationally recognized norms relating to human rights (victims of abuse of power), within the jurisdiction of the International Criminal Court.

From the 1960s onwards, in fact, we have witnessed choices in criminal and penitentiary policy that have favored that attitude that Ponti (1995) defines as "victimization of the offender and scotomization of the victim" and that have allowed us to accumulate large debts towards the victims.

The fears, anxieties, and anguish that animate those who have had an experience of suffering and pain, those who have encountered violence, whether physical or psychological, find no answers, much less guarantees, neither in the socio-family context, nor in the institutions nor in the penal system.

The rehabilitation model, which for years has animated our consciences and inspired the legislation of many countries, has focused its interest mainly on the offender, abjuring the victim, neglecting him, when it has not ignored him or even marginalized him.

The role of the victim has appeared as exclusively functional to the criminal process: it will be enough for the alleged guilty party to appear in court for the victim to be put in the background, retaining only the role of witness rather than protagonist.

Moreover, if we also think about the interest of the media in criminal acts, we realize that, the first and immediate reactions of solidarity and compassion for the victim, are followed by a polarization of attention and interest on the accused and his rights.

"When the guilty party is then put in prison awaiting trial or to serve their sentence, a second and even more intense shift occurs: the prisoner is at the center of attention and concern, and there will always be someone ready to break a lance in his favor, to denounce (rightly) the defects of prison, to ask for more justice for those who have trampled on justice, without remembering the shadow of that victim who is always behind the back of every criminal. Balance and objectivity hardly support these cries, however noble in their intentions; the wrong done, the offense, the suffering, the trampled right are forgotten, they fade with time, the victim "is no longer news’”(Palermo, 2023,m41- 42).

This misrecognition of the victim has been defined by victimological doctrine (Saponaro, 2005) using the concepts of "neutralization" and "second victimization". The neutralization of the victim is a process, which emerges in the dynamics of the crime, according to which the criminal, in an attempt to make the criminal action carried out "legitimized" and to overcome any feelings of guilt, empties the victim of all human essence, denying him an identity. Frederick Wertham, in investigating the causes of homicide, believed that it could be explained by violent impulse and rationalization. Rationalization is understood as a mechanism of self-justification of his conduct by the offender, achieved through the original internalization of values that gave rise to generalizations and social

prejudices, some of which allowed the offender to dehumanize the victim. This mechanism was explored and developed by Sykes and Matza.

As David Matza observed, the offender "neutralizes" the norm, denies the existence of a victim, thus making his conduct more acceptable. The neutralization techniques identified are five: denial of responsibility, denial of damage, denial of the victim, condemnation of the condemner and the appeal to higher order loyalties.

'Secondary victimization', "second victimization" or 're-victimization' affects the victim and indicates that condition, frequent in the judicial context, of psychological suffering inflicted on the victims by the all too often aggressive methods, to the point of offense, that characterize the operators and the procedural process in general.

The victim, in fact, is often attacked in his reliability and morality and is forced to report on several occasions on the painful episode he has experienced, rekindling each time all the feelings of fear and anxiety he has experienced.

Consider the frequent attempts of the defendant's lawyer to investigate the victim's private life, to find even a single episode that can be, sometimes in a distorted way, used to discredit him, making him appear as a "victim more guilty than the criminal", according to Mendelsohn's typology. Benjamin Mendelsohn, in identifying the degree of moral participation of the victim, of provocation in the interaction with the criminal individual, proposed the following classification: completely innocent victim (who has no provocative or facilitating behavior); victim who is less at fault than the criminal (who has had negligent or imprudent behavior, placing himself in a dangerous condition); victim as guilty as the criminal (who assisted or cooperated with others in committing the crime, remaining a victim); victim more guilty than the criminal (who instigates or provokes the criminal act); most guilty victim overall (the criminal who, during his action, suffers victimization by the antagonist who responds in self-defense).

The expression "second victimization" is preferable to that of "secondary damage", proposed by Bandini and others, because it is more faithful to the original expression "secondary victimization" and, then, because "it is... a real second victimization and not a damage secondary to the crime suffered, precisely because it is based on an interaction that is completely autonomous and distinct from the first event and with peculiar characteristics and elements" (Saponaro, 2005, 186).

The victim of the crime, observes Riponti (1995, 56 ss.), "is not a 'party' of the proceedings except in a restrictive and subordinate sense, lacking in many respects real faculties and powers, subordinately to the purpose of asserting a 'civil' right to compensation, which in the best of cases will be satisfied in incredibly long times, but which in most cases will remain unsatisfied in the criminal proceedings".

Once the criminal proceedings have begun, in fact, the real protagonists become the criminal and the State in a dispute between the need to exercise the right-duty of the latter to "punish" and the need to guarantee the offender.

The core of judicial action "will appear to have become not so much ascertaining the truth, establishing guilt for the harm inflicted and remedying it, as protecting the rights of those who are being judged" (Ponti, 1995, 4).

Over time, attention has been focused on the offender, with criminological research that has favored the spread of attitudes not only of understanding (in some cases shareable) but,

even, of de-responsibilization and solidarity with consequent "scotomization" of the victim. A part of left-wing political and legal thought, in fact, "has favored a vision antagonistic to the repressive system, according to which the accused was the first victim of adverse socio-economic conditions or in any case of a system of repression that placed him in the role of victim, such that every other became secondary or in any case hetero-determined by conditions of production of deviance not attributable, or not entirely attributable, to the person who was the perpetrator of the crime" (National Coordination of Democratic Jurists, Final motion of the conference: The victim of the crime this unknown, Turin 9 June 2001). If, therefore, the retributive perspective has often been softened by the concern to guarantee the offender (an understandable and acceptable attitude as long as it has not translated into impunity), that of the resocialization of the offender completely ignores that the victim may require equally supportive interventions.

The victim can also suffer a "third victimization", in the case of "unjust" acquittal of the guilty party. This new offense causes the victim further suffering and pain to the point of undermining trust in justice and in society in general.

The involvement of the victim in the criminal justice system ends up, therefore, constituting a traumatic experience in itself, as it is not supported by any aid and support.

The penal system, moreover, does not have as its primary function that of responding to the needs of the victim: it has its own concepts of justice, truth, damage and follows other imperatives.

Thus, as Pavarini (2001, 9) observes, "In the "theater"… the victim cannot have a role other than that of an undifferentiated extra and, as such, also little protected because on that stage another script is represented which is the one originally borrowed from the origin of the modern penal system, the crimen laesae maiestatis: there, the actors are the king against those who have violated the precept of the sovereign, there are no social relationships".

On this point, Mendelshon, in underlining the disinterest of the political and social world for the needs of the victim, had already called for a penal system that could be more "victim-oriented".

To the residual role of the victim in the criminal justice system, another factor has been added that has pushed scholars and operators to seek other forms of justice. Over time, in fact, the great promise of law, and in particular of criminal justice, to resolve the social problem of violence has failed. Its inability to dominate the increasingly changing social complexity has been evident for some time now (Beck, 2001; Beck, 1986).

Over the years, in fact, the inability of the criminal justice system to achieve general and special prevention objectives as well as to satisfy the victim of the crime has emerged, weakening the sense of trust in criminal law and institutions in general (Christie, 1977). The Norwegian Christie warned that the law and procedures are far from the lives of ordinary people, observing the experience of some villages in Tanzania, where crimes, from the most minor to the most serious, are resolved through mediation.

The different social reactions to crime, in fact, from the request for punishment of the guilty party to the request for defense and security of citizens, from the isolation of the perpetrator of the crime to the idea of his necessary re-education, no longer provide a

guarantee for the recomposition of the personal and social rift. Over the years, moreover, it has emerged that the main instrument of criminal law, the penalty, has served neither retributive purposes, nor for the reintegration of the offender into society, nor to satisfy the victim.

In order to overcome the reo-centric dimension of the penal system and to promote a process of resocialization of the offender and recognition of the victim as a person, from many quarters (Faget, 1993; Pisapia, Antonucci (eds.), 1997; Ceretti, 1998; Bazemore, Walgrave (eds.), 1999; Mannozzi, 2003; Vianello, 2004; Johnstone, Van Ness (eds.), 2006; Gavrielides, 2007; Palermo, 2009) the use of restorative justice has been urged, as a "procedure that allows those who have been harmed by the crime and those who are responsible for such offence (harm), if they freely consent, to actively participate in the resolution of the issues arising from the crime (offence) through the help of a specially trained impartial third party (facilitator)". Council of Europe, Committee of Ministers, Recommendation CM/Rec (2018)8 of the Committee of Ministers to Member States on restorative justice in criminal matters. We also recall the definition proposed by the aforementioned Directive 2012/29/EU (art. 1, letter d) which defines 'restorative justice' as: "any process which allows the victim and the offender to participate actively, if they freely consent, in the resolution of issues arising from the crime with the help of an impartial third party".

Restorative justice is, therefore, "a process in which all parties involved in a particular crime come together to collectively decide how to deal with the consequences of the crime and its implications for the future" (Marshall, 1999, 5).

The expression restorative justice was coined by the criminologist Albert Eglash (1997), although the first systematic reflections are attributed to some American Protestant movements, in particular, the Mennonites and the Quakers.

Restorative justice, as Zehr, considered its ideologist, has highlighted, revolves around three fundamental principles: 1. the crime causes harm to the victims and harm always generates needs; 2. harming someone creates the obligation of the offender to remedy the situation as much as possible; 3. the need to involve victims and perpetrators in the management of the conflict (principle of commitment): the more you involve them, the better the results. Restorative justice, with its ability to provide adequate responses to the needs of the individual, to his need for recognition and security, appears to be a useful tool also to promote a recovery of the individual-institution relationship.

Restorative justice is, therefore, an "other" justice, which is independent of the definitions and roles that law crystallizes in the criminal process, as well as from the application of punishment. It is a "symmetric" justice - in the most ancient meaning of the term *συμμετρία*, which derives from *σύν* (with, together) and *μέθρον* (measure) - which precisely indicates a relationship of commensuration that allows two or more elements to be put in relation "through the identification of a common measure", but also, in its more modern meaning, a "relationship of equality between opposing parties". A justice, therefore, that abandons the victim-offender, winner-loser logic, and deals with relational conflict.

Restorative justice is based on five fundamental principles: relationship, respect, responsibility, repair and reintegration. The principle of "relationship" constitutes the prerequisite for restorative justice: the existence of a relationship "damaged" by criminal

conduct. Respect is the basis of every restorative program and guarantees the parties involved to live a safe experience. The principle of responsibility refers to the need for each party to be honest with themselves, to look deeply to see if they had a role in the conflict and to take responsibility for it. The principle of reparation concerns the commitment and will of the offender to repair the consequences of his conduct, also to promote the overcoming of feelings of anger and revenge of the victim and the recovery by the offender of respect for himself and for others. Finally, reintegration involves the community, which should allow the person who has caused harm to reintegrate with confidence.

It does not consider crime in the abstract, as an element that disrupts social balance, as an offense against society, which requires punishment, but rather as an expression of a specific micro-conflict, which causes suffering, deprivation and which requires the activation of forms of communication and, possibly, reconciliation and repair, also with a view to strengthening the sense of belonging and collective security.

Promoting dialogue and interaction between criminal justice and restorative justice, encouraging an effective and efficient reorganization of the penal system, could make the management of the conflict connected to the crime more concrete and complete, dealing with both the latent and manifest levels, with important consequences both on recidivism and on the credibility and reliability of the entire system delegated to intervene when a crime is committed.

The idea is thus becoming more and more consolidated that, in addition to a necessary punishment of the person who has committed a crime, it is increasingly appropriate to intervene in terms of reparation for the damage, a reparation that is not only, and necessarily, material, but can also be simply symbolic, a reparation that is, therefore, symptomatic of a process of making the offender responsible, of becoming aware of his conduct and of the effects it has produced on the victim.

CONCLUSIONS

The debate on the function of punishment, always current, and the awareness that today societies are no longer characterized by the use of political strategies imposed from above, but tend towards an "open" policy, and that the penal system, rather than dominating social complexity, finds itself to be complexified have produced further reflections on the need to look beyond.

It is therefore necessary, with Hulsman, to underline "the need to reconsider the issue of crime by examining it from a new perspective, which emphasizes the problematic nature of illicit behavior and considers it as the result of a conflict between two people, with the aim of addressing and resolving it in a constructive way", combining criminal justice and restorative justice, with a view to supporting the intervention of the bureaucratic and repressive apparatus of the State, with an intervention capable of returning the management of the conflict to the protagonists. On these assumptions it is increasingly necessary to intervene towards the offender not only with a punitive perspective, but also with interventions that make him responsible and resocialize him, such as those that, through restorative justice, can lead to the repair, even symbolic, of the damage.

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A TALE OF TWO COUNTRIES: THE EFFECTS OF HOMOPHOBIA ON THE RIGHT TO ADOPT OF CIVIL PARTNERS IN ITALY AND THE CZECH REPUBLIC

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Abstract: *Since 1989 there has been a steady increase in the number of countries that allow for civil partnership to exist. It has been and still is a constant fight for people that belong to the LGBTQ+ community to gain equal right to a heterosexual couple. In this specific article, we will see how two countries that are relatively homophobic by international standards have created laws that allow for civil partnership but do not grant equal or fair rights regarding the adoption of children*

Keywords: *adoption, LGBTQ+ rights, political opposition, Czech family law, Italian family law*

Introduction

Even if there is a growing number of countries that allow the creation of civil partnership or outright grant the right of marriage to homosexual couples, there are still many aspects of a traditional marriage that may be unavailable to the civil partnership or harder to achieve in comparison to a heteronormative marriage.

One of these relatively normal practices of having and raising children. There is of course the biological issue, since both partners share their gender and most probably their biological sex, neither can produce offspring by natural means.

This leaves the average spouses of a civil partnership with 2 options, in-vitro fertilization or adoption. Both options come with their own predicaments and both occupy a more or less shady side of legal dealings.

Whilst on paper, most laws present a simple process for adopting a child, the reality may often be cruel and eventful. A child that is adopted will have had a few years living in an orphanage. Due to these unfortunate circumstances, there will already be a hurdle in the accommodation of the supposed progeny.

These are universal issues regarding the adoption procedure which daunt on every couple, heterosexual or otherwise. In this article, we wish to understand how certain countries have approached the issue of adoption when it comes to the rights of civil partners to adopt a child. When it comes the idea of adoption, most countries have a similar procedure. A child may be adopted based on a social inquiry that examines the safety and the conditions of the house and family. Based on this social enquiry and subsequent visits by the country specific authority, the couple will keep the child and set progeny shall gain all the rights of a naturally born child.

Since civil partnership has started appearing as a legal institution only after the year 1989 and slowly spread across Europe and the world, there is no specified doctrine regarding civil solidarity pacts. Due to this, general rules of marriage apply to the institution.

However, due to the political climate of each individual country some differences appear. Most countries that allow for civil partnership also allow for the couple to engage in the typical adoption procedure. Countries like Germany or France simply allow for civil partners to go through the general procedures for adoption. Some countries have implemented different rules or even deny the right of adoption to homosexual couples (http://conflictoflaws.net/2020/change-in-german-international-adoption-law/?print=print).

There are 2 other situations regarding the right to adopt. In a few countries the state only allows for stepchildren adoption and in some rare instances countries do not allow for any form of adoption from civil partners.

We will focus on the countries of Italy and Czechia as they are atypical in the realm of adoption rights granted to civil partners.

The Legislative Context: Law No. 76 of 2016 (Cirinnà Law)

Italy was the last major Western European country to introduce legal recognition for same-sex couples, primarily due to strong political and religious opposition. The Law No. 76 of May 20, 2016, "Regulation of civil unions between persons of the same sex and discipline of cohabitation contracts" (commonly known as the "Cirinnà Law," after its proponent Senator Monica Cirinnà), marked a historic breakthrough. This law granted same-sex couples almost all the rights and duties of marriage, including mutual assistance, cohabitation, property rights, and inheritance (Lucchini Guastalla, 2016).

However, the Cirinnà Law was a product of intense political compromise. One of the most contentious points, which ultimately led to significant concessions, was the issue of children and adoption. The original draft of the bill included a provision for "stepchild adoption" (adopting the biological child of one's partner). This provision faced fierce opposition from conservative parties and the Catholic Church, leading to a political deadlock.

Press coverage at the time vividly illustrates this "back and forth." *MercatorNet*'s "Italy in heated debate about 'civil unions'" (2016) highlighted the "highly polarized atmosphere" and the contentious nature of "stepchild adoption" and surrogacy, noting the thousands of amendments proposed by opponents. Similarly, *CTV News* (2016) reported on the Senate's approval, emphasizing that "last-minute changes removed references to 'faithfulness' in the relationship lest it be construed as equivalent to marriage" and, crucially, that the "stepchild adoption clause was sacrificed" to ensure the bill's passage. This deliberate omission meant that, upon the law's enactment, civil partners in Italy did not automatically gain the right to jointly adopt children, nor was stepchild adoption explicitly permitted by statute.

The Absence of a Statutory Right and the Role of Jurisprudence

Following the Cirinnà Law's passage, the legal doctrine became clear: civil partners had no *explicit statutory right* to adoption. Unlike heterosexual married couples who can adopt jointly under Law No. 184/1983 (the adoption law), same-sex civil partners were left in a legal void regarding parental recognition for children raised within their unions. This void

necessitated recourse to the courts, making Italian jurisprudence the primary driver of limited parental recognition:

1. Recognition of Foreign Adoptions:
   One of the early areas of judicial intervention involved the recognition of adoptions finalized abroad by same-sex couples. Italian courts, particularly the Supreme Court of Cassation, began to rule that adoptions by same-sex couples finalized in other countries (where such adoptions are legal) should generally be recognized in Italy, provided they do not conflict with fundamental public order principles. This established a precedent for acknowledging the existing parent-child relationship, even if it could not have been formed in Italy.
2. The "Special Cases" of Stepchild Adoption:
   Despite the legislative omission in 2016, Italian courts began to interpret existing adoption laws (primarily Law No. 184/1983, which governs ordinary and "special" adoptions) in a manner that allowed for stepchild adoption by a non-biological civil partner under very specific circumstances. This was not a general right but an application of the existing provisions for adoption in "special cases" (adozione in casi particolari), which aims to protect the best interests of a child already integrated into a de facto family unit.
   Key rulings by local courts and appeals courts affirmed that if a child's best interests were served, and a stable, loving parent-child relationship already existed with the non-biological partner, stepchild adoption could be granted. These decisions often invoked Article 8 of the European Convention on Human Rights (right to respect for private and family life), drawing parallels with the European Court of Human Rights' jurisprudence, such as *Oliari and Others v. Italy* (2015), which had pushed Italy to legislate civil unions in the first place.
   Press coverage reflected these judicial developments. *Il Fatto Quotidiano* (e.g., "Adozioni gay, la Cassazione apre: ‘Adottare il figlio del partner non lede l’interesse del minore’," June 22, 2016) reported on key Cassation Court decisions affirming that stepchild adoption does not harm the child's best interests. These articles highlighted the courts' role in gradually expanding rights where the legislature had failed to act.
3. The Continued Battle for Birth Certificates:
   Despite these judicial steps, Italy continues to face challenges, particularly regarding the automatic registration of children born abroad to same-sex parents (e.g., through surrogacy, which is illegal in Italy, or assisted reproduction). Local councils initially registered children with both parents in some cases, only for the Ministry of Interior to issue circulars pushing back, leading to legal disputes and uncertainty. Al Jazeera's report "Protests in Italy as government restricts same-sex parent rights" (2023) vividly illustrates the renewed political and legal "back-and-forth" under the Meloni government, which has actively sought to limit the recognition of same-sex parents. This struggle demonstrates that even after the Cirinnà Law and positive court rulings, the legal status of children in same-sex families remains contested.

This is a clear example of society not following the law and having to deal with human rights that it never was equipped to confront. The only real reason that civil partners can’t adopt

children unless they are the biological progeny of one of the partners is a general sense of queerphobia that leads to unfair political calculations.

The life of the queer becomes a political coin for politicians to bank when they feel the need to rally or gain social capital. Politicians can demonize the queer community whilst the opposition offers meek support leading to a standstill at best or a degradation of a national minority at worst.

When it comes to the Czech Republic the story has different beats and yet it shares in this similar oeuvre of queerphobia. In comparison to Italy, the right to create a civil partnership was given in 2006 without the intervention of the ECHR. Even if this was offered there were a lot of issues from the jump. In its original form, the law did not allow for many of the benefits typical to a marriage. In the original law there is no right to inherit, there is no right to have a widow's or widower's pension, the property regime of community was not automatically applied and most important, there was no right to adopt any children by the couple.

In 2016 the Constitutional Court of Czechia has granted the right to individual adoption of children. By this we mean that one of the civil partners could adopt a child and have full parental rights while the other partner would have no legal bound to the child. In 2025 there were new modifications to the original law. Some huge improvements of life are: the automatic right to inherit as a first-class heir, the right to a widower's pension and the right to adopt the biological children.

The Czech Republic became the first post-communist country in Central Europe to legalize same-sex civil partnerships with the enactment of Act No. 115/2006 Coll., on Registered Partnership and on Amendment to Certain Related Acts, effective July 1, 2006. This legislation, a result of a protracted political struggle and a narrow override of a presidential veto, granted same-sex couples a bundle of rights akin to marriage, including inheritance, mutual maintenance, and hospital visitation (Global Regulation, n.d.). However, a significant and highly contentious exclusion was the explicit prohibition on adoption.

Article 13, paragraph 2 of the original Act No. 115/2006 Coll. starkly stipulated: "A person living in a registered partnership cannot be an adoptive parent of a child." This provision meant that not only could same-sex couples not jointly adopt, but even an individual in a registered partnership was barred from adopting a child on their own, a right that was otherwise available to single individuals, regardless of their sexual orientation (Global Regulation, n.d.). This created a paradoxical situation where entering into a legal partnership actually *removed* a potential individual adoption right.

The press at the time reflected this nuanced outcome. While LGBTQ+ advocates celebrated the passage of the Registered Partnership Act as a historic step, many simultaneously decried the "half-measure" that withheld crucial rights, particularly concerning children. News reports from outlets like Radio Prague International ("Czech lawmakers pass gay partnership bill," 2005, and "Czech Senate approves registered partnership law," 2006) highlighted the compromises made to overcome conservative opposition and secure parliamentary passage after years of failed attempts (Radio Prague International, 2005; 2006). The subsequent successful override of President Václav Klaus's veto on March 15, 2006, by a single vote, underscored the fragility of the political consensus and the depth of the divides on the issue (The New York Times / Associated Press, 2006; The Washington Post / Associated Press, 2006).

The blatant discrimination embedded in the original act's adoption clause did not go unchallenged. Advocacy groups and legal experts persistently argued that the ban was unconstitutional and violated fundamental human rights, particularly the right to respect for private and family life. This persistent pressure culminated in a landmark decision by the Constitutional Court of the Czech Republic in June 2016.

The Court, in a pivotal ruling, struck down Article 13, paragraph 2 of Act No. 115/2006 Coll. It declared the blanket ban on individual adoption by persons in registered partnerships to be discriminatory and a violation of human dignity and equality, as enshrined in the Czech Charter of Fundamental Rights and Freedoms. The Court reasoned that denying an individual in a registered partnership the right to adopt, while allowing a single person to do so, was illogical and unjust (Dostupný advokát, 2025; Reuters, 2016).

Press outlets widely reported this breakthrough. Reuters, for instance, published "Czech court clears way for those in same-sex unions to adopt children" on June 28, 2016, emphasizing that the ruling "overturn[ed] a ban that it called discriminatory" (Reuters, 2016). However, it was crucial to note that this ruling *only* allowed individual adoption by a registered partner; it did not open the door for joint adoption by same-sex couples. The "non-legal" parent in such a family still lacked a formal legal relationship with the child.

The Legislative Evolution: Stepchild Adoption in 2025

Despite the 2016 ruling, the Czech legislative landscape for same-sex families remained complex. The absence of joint adoption rights and, more specifically, the lack of explicit provisions for stepchild adoption (where one partner adopts the biological child of the other) continued to create legal uncertainties and practical difficulties for families with two parents of the same sex.

The persistent lobbying by LGBTQ+ organizations, such as "Jsme Fér" (We Are Fair), alongside evolving public opinion, eventually led to further legislative action. After renewed parliamentary debates, which again saw the defeat of a full same-sex marriage bill, a compromise amendment to the Civil Code was passed. This significant amendment was signed into law by President Petr Pavel and came into force on January 1, 2025 (Expats.cz, 2025; Dostupný advokát, 2025).

While the specific article numbers within the amended Civil Code dealing with this change would require precise legal consultation, the core effect of the 2025 amendment is that a registered partner can now legally adopt the biological child of their partner (Expats.cz, 2025). This is a monumental step, providing legal security and recognition for numerous "rainbow families" in Czechia where one parent is biological and the other is a social parent.

However, the 2025 amendment still does not grant the right to joint adoption for same-sex couples from the outset, such as adopting a child from an orphanage or foster care system as a couple. This means that while stepchild adoption is permitted, the path to parenthood for same-sex couples remains distinct and less comprehensive than that for heterosexual married couples. As reported by sources like Expats.cz ("Same-sex partnership law takes effect in Czechia: What are your rights as a foreigner?", 2025), this amendment is viewed as a significant "compromise" and a "step forward," but not yet "complete equality."

Comparing notes

Now that we have analyzed the process by which both countries passed on legislation allowing homosexual couples to enter civil partnerships, we must ask ourselves why is there still a level of distance between marriage and civil partnership.

Unfortunately, the answer is not one that is bound to law or doctrine itself, is the lawmakers taking these decisions. After the later 2010's round of ECHR decisions that solidified an interpretation of article 8 of the European Convention of Human Rights by which it is a violation of human rights to not allow gay couples to form a family bound by law there has been a myriad of countries adopting regulations in this regard.

Even if the world saw an increase in the number of countries that allow for civil partnership to occur there has been a notable decrease both in the safety and the acceptance of non-heteronormative couples and family structures. This present danger creates a divide between not only the people belonging to the LGBTQ+ community and heterosexuals, but it also creates an internal mismatch between courts and the legislative apparatus.

In both cases we can see that the courts had to intervene to allow for the right to adopt the children of one partner by the other in order to create a fully functional family, or its equivalent.

In the case of Italy courts had to find a novel interpretation of a 1983 law. The general rule is based on article 44, paragraph 1 letter d) which gives the right to adoption in cases where pre-adoptive placement is impossible. The interpretation of the Court of Cassation states that in the case of same sex civil partnerships the impediment to pre-adoptive placement is legal.

A simpler mechanism could have been the interpretation of article 44, paragraph 1, letter b) where it is stated that there are some exceptions to the general rule that adoption which such as the child being adopted by the partner of the parent. By the term partner we refer to a general notion of partnership, not at the strict sense of civil partner. This may include husbands, wives and even de facto concubines.

In both cases, this can be considered legal wizardry. It's an overly complicated interpretation at the edge of common language from the supreme judicial authority of Italy. This example of bizarre interpretation is the result of the morality of judges that interact with the people via cases confronting political calculations which we already established as deplorable from both the practical and moral reasons.

The Czech Republic has followed a similar path regarding the right to adoption. In the original Registered Partnership Act 115/2006, article 13, paragraph 2 forbids any person in a civil partnership to also adopt or be an adoptive parent.

This rule creates a bizarre predicament by which a person that has already become an adoptive parent would lose the right to be a father or a mother. The law in its original form allowed for a faulty simulacrum of a family without some of the essential elements of marriage.

In 2016, the courts had to do another act of legal wizardry. In this specific instance, the Supreme Court of the Czech Republic has decided that the notion of loosing your right to parent a child due to becoming a civil partner is illogical and a clear infringement of human rights.

The court agreed and at the time allowed for an individual that is in a civil partnership to adopt a child or to maintain the rights of an adoptive parent, however, the ruling did not grant the right to adopt the children of the partner.

This again leaves us in the strange predicament of an individual that is the adoptive parent of the child, but its civil partner does not have any legal bond to that adopted progeny.

It's a step forward in a lost race, giving another simulacrum of familial life to a minority which by most European standards has more than reasonable requests to have a normal family life.

Only this year a new law regulating how civil partnerships operate. And in that law another such loosing step was taken. Now it is possible for the civil partner of any person to become the adoptive parent of the biological kid from a previous marriage or in vitro insemination.

Another possible threat regarding this adoption procedure lies at article 13, paragraph 1 which states that the civil partner is obligate to preserve the dignity, physical, emotional and intellectual health of the adopted child and that they do not endanger the moral development of the child.

In normal circumstances this is a perfectly reasonable condition regarding adoption, yet, due to the slow and steady rise of homophobia in Czechia as it can be seen using the rainbow-map data (https://rainbowmap.ilga-europe.org/countries/czechia/) it is safe to presume that at some point a possible ruling invoking traditional values may threaten the rights of civil partners to co-parent a child.

Of course, there is no mention of the 2016 decision, making the sea of civil law murky again. Only further jurisprudence can clarify the issues at hand and we must be hopeful that the judges will come to reasonable and helpful decisions.

In both countries there has been a sort of moral resistance against the lack of foresight or the sheer incompetence of the politicians but it as been limited by the separation of powers in the state, as all court decisions should be. We should not get to this point in the European Union. The lack of consistency on the European Union's territory gives birth to such incongruencies. In some countries, civil partners are fully entitled to adopt children whilst a handful of countries only allows exceptional adoptions or banned the right of civil partners to adopt altogether such as Hungary.

There is ECHR jurisprudence regarding the rights of recognizing parental rights, however, some countries refuse to accept it. As such, there is no clear unity regarding the rights of civil partners to have children

In a theoretical scenario, two civil partners that have children would intermittently gain and loose the parental rights if they decided to travel across Europe. If they were Belgian residents going through Czechia, they would either loose their custody of the child temporarily or if they go trough Hungary they will technically not be allowed or recognized as the parents of that children.

Conclusions

In the midst of a rising far-right typology of politics, the rights of civil partners exist in a strange space of growth. Even if there is a steady increase in the number of countries allowing for civil partnership either because of the advocacy of certain non-governmental organizations or because of ECHR decisions, the general sentiment of people living in the European Union is getting more and more hostile towards all minorities, regardless of their nature.

Be it immigrants or homosexuals, the new realm of politics is slowly eroding a half a century long battle for equal rights that has been carried since the Stonewall Riots. A first step into at least preserving such rights would be a unitary EU regulation that grants the right of recognition to all civil partnerships at an international level. Not base on ideologica reason, but based in sheer practicality.

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TWO COUNTRIES, SAME FEAR: WHEN WOMEN DIE DUE TO PATHOLOGICAL LOVE

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Abstract: *Violence is nothing more than the intentional use of physical force by people with the aim of causing harm to other living beings or to material goods that manifests itself through injury, pain, disability, damage, death. The World Health Organization shows that violence is "the intentional use of physical force or power - threatened or actual - against oneself, another person, or against a group or community, which results in or has a high likelihood of resulting in physical harm, death, psychological suffering, impaired development or deprivation" (World Health Organization, 2015). It follows from this definition that violence is not limited to obvious physical aggression. It includes subtle and systemic forms of exercising power. Violence causes psychological trauma, economic inequality and/or social marginalization. Intention is the essential element, the fundamental distinction between an act of violence and an accidental event lies in the will or conscious acceptance of the risk that harm may be caused. Even in the absence of immediate bodily harm, violence has serious consequences, lasting consequences on physical, mental and social health (Krug et al., 2002).*

Keywords: *violence, women, family, harassment, law, inequalities, abuse, rape.*

Introduction

Violence has been written about, is being written about, and will continue to be written about in the future. What could be the reason? Are we not learning anything from all the violence we see around us? Is the legislation neither sufficient nor effective? Is the education we received at home, at school, in society wrong, misexplained, misunderstood? The questions are many, we could fill hundreds of pages with questions alone. Some have answers, some don't. Violence is a major problem in today's society. It can take various forms: physical, psychological, sexual, economic (Morozan, 2014:181), etc. The Romanian civil legislation sanctions with nulity any legal paperwork that was agreed upon under physical and psychical that is directed at one of the contracting parties or someone close to them such as a husband, a wife, any ascendents or descendents.

Violence against women and girls has become a global problem. Domestic violence has become the most common form of violence faced by women and girls, and statistics show that the percentages are increasing year by year. Although legislation has become stricter, there are policies and programs that help women in this type of situation. Romanian NGOs complain that public authorities in Romania do not have an integrated system for collecting data on

domestic violence or the forms that violence against women takes, making the scale of the phenomenon very difficult to monitor.

We must also mention that the phenomenon is underreported, which makes estimating the real number of cases extremely difficult. Not all women have the courage to report the violence they endure. Some out of fear, some don't trust that the authorities will help them, some because they feel ashamed of going through such experiences, or for many other reasons.

There is information that more educated women, with above-average salaries, report domestic violence situations much less frequently so as not to affect their personal prestige.

It is true that the decision to report a case of domestic violence is very difficult, but victims should consider that it is about personal safety, the safety of children, who may also be in a situation of risk.

Romania

The press in the country and abroad make us aware of "hard" cases, cases that are shocking due to the way they operate or because of the women who are victims of violence and that arouse in us a range of feelings, from sadness, pity, horror, to revolt, and more.

One such case shook the entire country. The case of Teodora Marcu, the 23-year-old woman who was shot while holding a child and was pregnant. Another femicide.

Murdered by her ex-boyfriend. This is how this young woman who had her whole life ahead of her met her end.

The details of the crime are outrageous and deeply disturbing.

The problems and questions in this case are many. How is it possible for a young woman to be murdered in broad daylight on the street? Where did her ex-boyfriend get the weapons? Why didn't the authorities anticipate the danger this young woman was in, who had repeatedly complained that she was afraid of this individual, that she feared for her life? Why didn't the authorities follow the profile of the murderer?

The authorities announced that in this case, in 2021, a protection order was issued in the name of the aggressor for a period of 4 months, an order that was supervised by the Bacău Police, which did not find any violation of this order during the aforementioned period.

The victim later moved from Bacău, perhaps to escape the constant harassment she was subjected to. The Ilfov District Court, where the young woman had her new address, did not register any complaint regarding those involved, nor was a protection order issued.

Experts point out that the problem in Romania is not the lack of legislation, but the way the law is applied. It is about the lack of specialists, specialists who understand the victim, who know how to relate to them.

Unfortunately, most of the time, women who ask the authorities for help are treated superficially, and the representatives of the authorities, those who should understand them, empathize with them, and come to their aid, lack empathy and respect.

More sad and worrying is the fact that comments have appeared online that show that the victim is being blamed. Some reactions are downright shocking in their cruelty. Today we are witnessing a desensitization at the level of society. There are people who are completely devoid of empathy. Comments such as: "I've saved the world from a prostitute before", "she wasn't a good girl", "who knows what she did, maybe karma", etc. The young woman was also criticized for having a relationship with the aggressor who was much older than her. We notice

that the social reaction is directed towards blaming the victim. The victim thus becomes responsible for the abuse she was subjected to, she is guilty of what happened to her because the actions and decisions she took or the way she reacted in her relationship with the aggressor do not suit some people. Even the way the victim looks can become a reason for a certain part of society.

There are many prejudices in our society regarding domestic violence. There are women who, when they discover that their daughters are victims of their partners, say "let alone my husband beat me too", "no one died from a slap".

If a woman can think like that, it means her education leaves something to be desired.

Right from school, the place where we all acquire the necessary tools to discern between good and evil, where we learn what respect, equality are, we learn to become autonomous and respect the autonomy of those next to us, teachers must educate the coming generations about gender acceptance and equality.

It is necessary, from the school, to insist on the implementation of programs to prevent the commission of acts of violence. Teachers, pedagogues, psychologists, doctors, representatives of non-governmental organizations and other specialists in the field, all to participate in educating the new generations to prevent acts of violence.

In the case presented above, the victim and her husband have been complaining since 2021 that they are being harassed and threatened by the criminal. Teodora Marcu was constantly threatened, living in constant terror. She informed the authorities that the aggressor possessed two firearms.

The attacker was not present at the first attack. Teodora was not the first woman harassed by the attacker. However, the authorities let him go free. Free to kill.

So many indications that the young woman was in danger, repeated violence, death threats, the abusive relationship since the victim was only 14 years old, multiple instances of physical and verbal aggression, the existence of other women abused by the aggressor. However, the authorities let him go free every time.

What follows from this? What can we understand from all this?

We are convinced that victims of violence do not receive understanding, perhaps they are not believed, they are asked for evidence upon evidence. It is imperative that the Romanian state insists on training specialists in the field. Police officers, prosecutors, judges must be specialized in such cases, trained and taught to understand how to interact with assaulted women, to understand the dynamics between the victim and the aggressor, what is the victim's reaction in the case of violence, etc.

It is necessary for every locality to have accessible services, psychological and legal counseling services, and shelters for victims of domestic violence who decide to leave abusive relationships and who can rely on the help of the Romanian state authorities.

We need urgent and immediate measures, measures that respond to every type of violence. Statistically, we are in 4th place in the EU in terms of violence against women in the family or by a partner.

It is true that abused women can be protected for a period of time by a protection order and since August 31, a protection order can be obtained for any act of violence regardless of the nature of the relationship between partners. Any person can request the issuance of a protection order in certain situations (if they are being followed at home or at work, if they are

being harassed online and in situations where they feel threatened, if they are being intimidated).

Protection orders can be violated and in such situations, victims of assaults must see that state authorities, namely the police, the courts and all those involved in this process, treat the violation of the protection order with the utmost seriousness, victims must see that aggressors pay when they violate the protection order.

Yesterday, June 23, 2025, Law no. 116/2025 amending Law no. 286/2009 on the Criminal Code and amending and supplementing Law no. 26/2024 on the protection order was published in the Official Gazette.

In art. 8 paragraph (8) it is stated that: "In the event of the submission of the provisional protection order according to the provisions of paragraph (7), the initial duration for which it was ordered is extended, by law, until the resolution in first instance of the application for the issuance of the protection order. The prosecutor shall immediately notify this to the police unit that submitted the provisional protection order, which shall take measures to immediately inform the persons who were the subject of it". In art. 18, paragraph (2), a new paragraph is introduced, paragraph (3) which states that: "If the acts provided for in paragraphs (1) and (2) are committed by a person who has previously committed a crime of violation of the measures ordered by the protection order or the provisional protection order, the special limits of the punishment shall be increased by half".

Art. 25 paragraph (1) is amended and has the following content: "The person against whom a measure has been ordered by the protection order and the person for whose benefit a protection order has been issued may request the revocation of the order or the replacement of the ordered measure".

In Teodora Marcu's case, it was not the legislation that was the problem, but the way the authorities responded to the entire situation, the complaints of the victim and her husband, the profile of the aggressor, the inability of the authorities to anticipate the danger even though the signs were obvious, all of these led to the tragedy that occurred.

In this case, as in many other cases, an assessment of the risk to which the victim was exposed was necessary, given the repeated violence to which she was subjected, the death threats, the abusive relationship in which the victim had lived in terror since the age of 14.

It is necessary that in the future the authorities involved in such cases analyze the situations of women who ask for help, precisely in order to identify, taking into account the cases they have had previously, the existence of the danger to which the victim is exposed. Such situations can no longer be treated superficially, the victims need understanding and for this we need specialists.

It is also necessary to organize information campaigns. Victims of domestic violence and not only, victims of aggression of any kind, must be informed about all the protection tools they can use in case of need.

Moreover, women who do not have the courage or do not want to or cannot, must be encouraged so that in cases where they feel that they are in situations that put their lives in danger or in situations where they are actually tired of being assaulted by their life partners, they can confidently turn to the state authorities, to know that the state authorities can defend them, can support them in their journey towards a life free of violence.

In Romanian legislation, namely Law no. 217/2003 on preventing and combating domestic violence, Law no. 174/2018 on amending and supplementing Law no. 217/2003 on preventing and combating domestic violence; Methodology on the method of participation in special psychological counseling programs, organized by public or private specialized services of 07.12.2018; Decision no. 365/2018 for the approval of the National Strategy on promoting equal opportunities and treatment between women and men and preventing and combating domestic violence for the period 2018 - 2021 and of the Operational Plan for the implementation - 2021 of the National Strategy on promoting equal opportunities and treatment between women and men and preventing and combating domestic violence for the period 2018; Decision no. 476/2019 amending and supplementing the Methodological Norms for the application of the provisions of Law no. 197/2012 on quality assurance in the field of social services, approved by Government Decision no. 118/2014, and Government Decision no. 867/2015 for the approval of the Nomenclature of social services, as well as the framework regulation for the organization and functioning of social services; Decision no. 867/2015 for the approval of the Nomenclature of social services, as well as the framework regulations for the organization and functioning of social services; Order no. 28/2019 on the approval of the minimum standards for the prevention and combating of domestic violence; Order no. 146/2578/2018 on the method of managing cases of domestic violence by police officers; Procedure for emergency intervention in cases of domestic violence of 07.12.2018; Directive No. 29/2012 establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA.

The above list demonstrates the existence of regulations that support victims of violence.

Statistics, however, show an alarming increase. Between January and April 2025, over 40,000 cases of domestic violence were reported nationwide. During these four months, police issued 3,788 temporary protection orders, of which 1,464 were converted into protection orders by the courts. 1,690 of these protection orders were violated.

Even though the electronic bracelet is a relatively new tool, the Romanian Police informs us that this year, from January to April inclusive, 726 people were monitored with such bracelets. This type of monitoring is in the process of expanding in our country and it is expected that by the end of 2025, the system will be operational in all counties of Romania.

In Law no. 174/2018 amending and supplementing Law no. 217/2003 on preventing and combating domestic violence, in art. 8 paragraph (3) it is stated that: "The National Agency for Equal Opportunities between Women and Men, based on its role as a central structure with a methodological coordination role of decentralized specialized structures that can ensure intervention and the provision of social services for victims of domestic violence, in partnership with other central public authorities that can intervene or provide social services for different categories of victims of domestic violence, including children who witness domestic violence, and together with local public administration authorities with responsibilities for ensuring the provision of social services, will monitor local inter-institutional cooperation to prevent and combat domestic violence."

Also, in art. 9 paragraph (1 and 2) of the same law it is stated that "The Ministry of Family, Youth and Equal Opportunities, in collaboration with the Ministry of Labor and Social Solidarity, the Ministry of Internal Affairs, the Ministry of Education, the Ministry of Health,

the Ministry of Justice and the Ministry of Research, Innovation and Digitalization, annually develops and disseminates documentary materials on the prevention, causes and consequences of domestic violence" and that the Ministry of Health is obliged to develop instructions to ensure that family doctors and specialist doctors in the public or private health system note suspicions of domestic violence in the patient's file and that information about information and counseling services for victims of domestic violence such as an emergency telephone line - helpline is displayed in each health unit.

In art. 13 paragraph (1) the legislator indicates that: Local public administration authorities have the obligation to take the following specific measures: a) to include the issue of preventing and combating domestic violence in regional, county and local development strategies and programs; b) to provide logistical, informational and material support to departments with responsibilities in preventing and combating domestic violence; c) to establish directly, in public partnership or, as the case may be, in public-private partnership, social services for preventing and combating domestic violence and to support their functioning; d) to develop programs for preventing and combating domestic violence; e) to support family aggressors' access to psychological counseling, psychotherapy, psychiatric, detoxification and alcohol withdrawal treatments; f) to develop and implement projects in the field of preventing and combating domestic violence; g) to provide in its annual budget amounts to support social services and other social assistance measures for victims of domestic violence and for other measures aimed at preventing and combating domestic violence; h) to bear, from the local budget, in cases of domestic violence found following the registration of the victim by the public social assistance services, the expenses for drawing up legal documents, as well as those necessary for obtaining forensic certificates for victims of domestic violence; i) to bear, from the local budget, in cases of domestic violence found following the registration of the victim by the public social assistance services, the expenses for medical assistance for victims of domestic violence who are not medically insured; j) to collaborate in the implementation of a system for registering, reporting and managing cases of domestic violence. k) to display at their headquarters and publish on their websites information on the ways to access social services for preventing and combating domestic violence and on the programs they implement in this field; l) to annually prepare and publish on their website a report summarizing the measures taken and the programs implemented for preventing and combating the phenomenon of domestic violence and what expenses were incurred from the local budget for fulfilling the obligations under letters g), h) and i); m) to display in public transport stations the number of the emergency telephone line - helpline and any other information on accessing social services for preventing and combating domestic violence or the programs implemented; n) to include in contracts with public transport service providers their obligation to display in the means of transport the number of the emergency telephone line - helpline.

Law no. 1/2025 on the amendment and completion of Law no. 217/2003 on the prevention and combating of domestic violence states that: "The Ministry of Education has the obligation to ensure that information about information and counseling services for victims of domestic violence such as an emergency telephone line - helpline is displayed in each educational unit."

We have presented above only a small part of the measures that have been taken to support victims of domestic violence. As can be seen, from a legislative point of view, the necessary measures have been taken to support victims of domestic violence.

In practice, however, the authorities failed.

Not long after Teodora's murder, less than two weeks later, on June 16, 2025, a new case shocked Romania. A new Teodora case.

A 22-year-old woman, Andreea, also pregnant, is killed with an axe by her partner, right in front of her children and mother because she decided to break up with him. The 26th femicide this year. In this case too, the Police were alerted to the possibility that the man might become aggressive and have violent behavior. However, the man was released.

Italy

The newspapers continue to present us with cases of extremely young victims of a distorted conception of love. This is Martina's story, but also the cry of many others. And our silence is no longer an option.

On May 26, 2025, Martina Carbonaro, aged just 14, disappears without a trace. Her mother is waiting for her at home, in Afragola, near Naples. Martina had gone out with a friend and said she would be back soon. This does not happen. The search mechanism is activated. The entire city mobilizes. For two days, flyers, calls, posts on social networks, her voice amplified by newspapers and television. Then, the discovery. Martina's lifeless body is found under a mattress, in the garage of her ex-boyfriend's house, a 17-year-old who had not accepted the end of the relationship. According to reconstructions, Martina had refused a hug. A simple gesture, of freedom, that cost her her life.

Another femicide. A crime that brings to light a social problem that crosses time and generations: love transformed into obsession, affection diverted into possessiveness. Martina Carbonaro's femicide is not an isolated case, but part of a large and systemic phenomenon that affects Italy and many other countries. The murder of a minor for a refusal – a denied hug – reflects the collective failure to prevent the culture of possessiveness, which masquerades as love and develops in everyday indifference. When sentimental education is lacking and violence becomes language, the risk is that even the simplest gestures become fatal.

This case requires serious reflection not only on an emotional level, but also on a legal and cultural level. Society must ask itself: why can a teenage girl die because she simply refused a physical gesture? Where does the educational, emotional, and legal system get stuck? What tools do we have – and which ones do we not use?

School plays a fundamental role in preventing gender-based violence. In the school environment, the first relationships are formed, the limits of respect, of healthy affectivity, of consent are learned. Introducing a structured and mandatory affective education means providing tools for interpreting and managing emotions, contributing to defuse toxic dynamics from an early age. Respect cannot be an option. It must be a foundation. Educating in the sense of affectivity means educating in the sense of limitation, of recognizing the other as an autonomous subject, of accepting refusal. It means learning that healthy love does not possess, does not coerce, does not humiliate, does not threaten.

Recent statistics indicate that one in three girls between the ages of 16 and 24 has already suffered some form of violence in the emotional sphere. In this age group, mechanisms

of dependency and idealization are strong, and the absence of correct educational models favors the consolidation of control and abuse dynamics. In addition, the early and unregulated use of social networks has amplified the influence of toxic relationship models, based on romantic idealization, digital control, emotional manipulation and jealousy as proof of love. In this context, the training of teachers and school staff is also essential; they must know how to recognize the signs of relationship discomfort and promptly address risky situations.

The "Codice Rosso" (Red Code) – introduced in Italy by Law no. 69 of 19 July 2019 – is a measure aimed at strengthening the protection of victims of domestic and gender-based violence. It provides for an accelerated procedure for complaints of mistreatment, stalking, sexual violence and other crimes, with the obligation for the prosecutor to hear the victim within three days. However, its effectiveness depends largely on the actual implementation and training of operators. The lack of a truly interdisciplinary approach between prosecutors, law enforcement and territorial services generates delays, fragmentation and often exposes victims to additional risks. The existence of a law is not enough if there is a lack of will and competence to apply it coherently and in a timely manner. Often, women report and then remain alone, without support, forced to give up due to fear, economic dependence or isolation. The risk is that the state will fail in its task of protection, leaving room for resignation and silence.

One dies for a denied embrace when affection has been understood as possession, when refusal is perceived as an unbearable wound for the fragile and violent ego of the one who has internalized affective supremacy. In educational contexts poor in healthy examples and models, refusal is experienced as annihilation. The phenomenon of femicide never appears out of the blue. Often, it is the result of underestimated signals, of relationships marked from the beginning by jealousy, isolation, control. The traditional romantic narrative – based on the idea that love justifies everything, including suffering – only fuels these toxic models. It is necessary to deconstruct certain stereotypes, including through the media and cultural products. Language holds enormous power: saying "crime of passion" instead of "murder of a woman" is already an act of cultural complicity. Just as reporting femicide based on the alleged emotional state of the man who kills – "he was desperate", "he didn't accept the breakup" – risks shifting responsibility, almost justifying it. We need to change the narrative, from newspaper headlines to classrooms and television programs.

We need a justice system that knows how to listen, understand, protect. A justice system that does not allow itself to be deceived by the manipulative strategies implemented by those who exercise violence, such as blaming the victim, minimizing behaviors or instrumentalizing children. At the international level, among the most important references is the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979), which provided a legally binding definition of the concept of discrimination and created a Committee of Experts tasked with monitoring its implementation. Together with the 1999 Optional Protocol, the Convention represents the main international legal instrument on the subject, also transposed by Italy in 1985. No less significant is the Beijing Declaration and Platform for Action (IV UN Conference on Women, 1995) and General Recommendation no. 19 of the CEDAW Committee (1992), which provided a broad interpretation of violence against women as a form of structural discrimination.

However, the formal adoption of normative instruments is not enough. In Italy, the UN Committee has repeatedly signaled a "serious cultural deficit" and a "failure to fully realize the

principle of equality". The law must be translated into daily practice, into concrete action. This means investing in prevention, training, listening and, above all, in an accessible and competent territorial network.

A similar denunciation appears in the volume Ma il problema sono io. La vittimmizazione secondaria ad opera del sistema giudiziario. Violenza domestica e allontanamento dei figli dalle parti, which documents how women who denounce are often discredited, accused of manipulating children, even punished with the loss of parental responsibility. A system that, instead of protecting, strikes. The so-called "secondary victimization" – that is, the reiteration of violence by the institutions themselves – represents one of the most serious and subtle forms of injustice, because it compromises trust in the law and in justice itself. The voice of women must be believed, listened to, protected. Not judged twice.

The objective must not only be to punish those who commit violence, but to prevent the commission of violence. Prevention means culture, listening, training, concrete support for victims. It also means financing anti-violence centers, supporting shelters, guaranteeing stable resources for exit routes. Because every woman must have the real possibility of saving herself before being killed. And every minor must be able to grow up in a healthy context, in which love is not synonymous with fear.

Every step forward, every norm or convention, every protocol or guideline remains ineffective if it is not accompanied by a real cultural change, rooted in education, respect, freedom. The fight for equality and against gender violence is far from over. And every victim, every story like Martina's, asks us not to remain silent.

On 13 January 2020, GREVIO published its first Evaluation Report on the level of implementation of the Istanbul Convention by Italy, which, by acceding to it, has undertaken to combat all forms of gender-based violence. It should be recalled, however, that there is an infringement procedure against Italy, as well as for twenty other Member States, for the deemed incomplete reception of the directive. The GREVIO Group of Experts is an independent body that operates according to a procedure for evaluating the level of compliance with the Convention, a procedure that is developed mainly on the basis of the responses to the questionnaires administered to the States and a visit by the Group to the country evaluated. It also collects information by consulting various other sources, including non-governmental associations, representatives of civil society and other European entities. The document contains a broad appreciation of some of the actions undertaken and measures adopted by the Italian authorities in implementing the Convention. The recommendations contained therein, however, highlight aspects of protection that are not fully functional or adequate.

Conclusions

I have presented two above.ways of regulating domestic violence in two European countries, two cases, two victims: the case of Teodora Marcu, mother, daughter, wife, friend, colleague... and the case of Martina Carbonara, daughter, granddaughter, friend, colleague... . I made this list of qualities to highlight the fact that in such situations, not only the deceased victims are victims. In reality we are talking about more victims. All those who loved them, admired them, lived with them, are the victims of the aggressors. All these people are forced to learn to live without those they loved.

Unfortunately, domestic violence is and remains a complex problem because there are multiple factors that contribute to its occurrence. We recall the following factors: tensions in the couple, to which both partners contribute, behavioral patterns acquired in the family or community, mental health problems, economic difficulties (poverty), jealousy, alcohol consumption, lack of education, environment of origin, urban/rural, etc.

Even though the number of cases of violence increases from year to year, it is proven that Romanian society is quite tolerant of such situations and this only contributes to the increase in the rate of domestic violence.

As we have shown above, any legislative measure remains ineffective as long as efforts are not made for real changes, from education, culture, freedom and respect to the training of involved and dedicated specialists. Otherwise, there is a risk that the state will not be able to fulfill its mission as a protector of citizens in crisis situations.

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EXAMINATION OF ELECTORAL COMPLAINTS IN THE REPUBLIC OF MOLDOVA

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Abstract: *The examination of electoral complaints is a vital aspect of the democratic process and represents a crucial way to ensure the fairness and integrity of elections. In the current political context, where elections are fundamental to the functioning of democratic institutions, the process of examining electoral complaints takes on particular importance. The examination of electoral complaints is essential for maintaining the integrity and trust in the electoral process. This process allows for the identification and correction of potential irregularities and abuses, ensuring that the results reflect the authentic will of the voters. It also provides a legal avenue for resolving disputes, preventing the escalation of political and social tensions. Without an effective mechanism for examining complaints, democracy risks being undermined by electoral fraud and other illicit practices.*

Keywords: *democratic process, electoral observers, civil society organizations, electoral complaint, electoral competitor, etc.*

Introduction

The electoral process is a cornerstone of any democratic society, being essential for the functioning and legitimacy of the political system. In a democratic society, the transparency and fairness of the electoral process are essential for maintaining public confidence in the political system. The examination of electoral complaints is one way to address concerns about potential violations of electoral rules or fraud. In this regard, electoral authorities play a crucial role in ensuring that the examination process is carried out impartially and in accordance with electoral legislation.

In the Republic of Moldova, the procedure for examining electoral complaints is regulated by the Electoral Code (1997) and the decisions of the Central Electoral Commission. It involves a series of procedural steps, from filing the complaint to evaluating the evidence and making a decision. The institutions involved in this process include the Central Electoral Commission, the courts and other relevant authorities, each with specific roles and responsibilities. The process of examining electoral complaints has profound implications for the legitimacy of election results and citizens' trust in the democratic process. By allowing citizens and political parties to challenge the results or report irregularities in the electoral process, the examination of complaints provides a way to remedy potential problems and contributes to strengthening the credibility of elections. It also serves as a mechanism for holding electoral authorities and those involved in the conduct of elections accountable, ensuring that they act in accordance with democratic principles and respect the will of the people expressed through voting.

The degree of investigation of the problem at the current time, the purpose of the research

At the current time, the importance and purpose of developing this scientific endeavor, arises from the author's intention to highlight some landmarks of the process of examining electoral complaints. At the same time, there is also the urgent need to carry out a comprehensive analysis regarding the essence of the research subject.

Materials used and methods applied

In the process of developing the scientific article, we were guided by several and 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 and legal basis of the scientific approach includes defining material such as national legislation, as well as various sources from national and international specialized literature, the local legal framework and open sources from the online environment - which directly or indirectly address the essence and content of the subject under research.

Results obtained based on conducted scientific analyses

The examination of electoral complaints is a process strictly regulated by electoral legislation and regulations established by the competent authorities. In this section, we will explore in detail the legal basis for the examination of electoral complaints and the procedures and rules relevant to this process.

The legal basis for the examination of electoral complaints is established by the electoral legislation of each state or jurisdiction. These include laws, regulations and rules governing the filing, processing and resolution of electoral complaints. Electoral legislation is designed to ensure that elections are conducted in a fair, transparent and democratic manner, and the examination of complaints is an essential element of this process.

The legal bases for examining electoral complaints may include: provisions regarding the conditions and procedures for submitting electoral complaints; the terms and conditions under which complaints must be submitted and resolved; the modalities for communicating complaints and notifying the parties involved in the process; the rights and responsibilities of electoral authorities in the process of examining complaints; mechanisms for appealing and resolving complaints that are not resolved at first instance, etc.

It is important that the legal bases are clear, precise and equitable, to ensure that the appeals review process is carried out fairly and impartially. The relevant procedures and rules for the process of examining electoral complaints are established by the competent electoral authorities and are designed to guide the conduct of this process in an efficient and consistent manner. These may include: the requirements and procedures for filing electoral complaints, including the complaint form and the necessary supporting documents; the deadlines for filing complaints and how they are calculated; the modalities for communicating and notifying complaints and decisions taken following their examination; the procedures for analyzing and evaluating complaints, including hearing the parties involved and gathering relevant evidence; the modalities for making decisions and communicating the results of the

examination of complaints; the appeal rights and procedures available to parties dissatisfied with the decisions taken following the examination of complaints, etc.

The relevant procedures and rules for examining electoral complaints must be transparent, accessible and in line with democratic principles, in order to ensure public confidence in the electoral process and its results.

Filing electoral complaints is the first stage of the review process and involves the formal presentation of a complaint or appeal regarding the electoral process. This process can be initiated by political parties, candidates, electoral observers, or individual citizens who believe that there have been violations of electoral law or irregularities in the electoral process.

Filing electoral complaints may involve the following aspects:

- **formulating the appeal**, the person or entity filing the appeal must clearly and precisely formulate the reasons and arguments in support of the appeal, as well as present relevant evidence or proof to support the allegations;
- **documenting the appeal,** the appellant must complete the forms and provide the necessary supporting documents, such as voting minutes, video recordings or other evidence supporting the appeal;
- **timely filing,** electoral appeals must be filed within the deadline established by legislation, which may vary depending on the jurisdiction and the type of appeal;
- **transmission to the competent authorities,** the submitted complaints must be transmitted to the competent electoral authorities to be evaluated and resolved in accordance with legal procedures (Munteanu, 2022, p.78-93).

Once electoral complaints have been filed, the electoral authorities are responsible for analyzing and evaluating them in accordance with electoral legislation and established procedures. This stage involves:

✓ *verification of the legality of the appeals*, the electoral authorities examine the appeals to ensure that they comply with the legal and procedural requirements to be taken into account;

✓ *analysis of evidence and arguments*, electoral authorities analyze the evidence and arguments presented by challengers to assess the validity of the challenges and determine whether there are sufficient grounds to justify an investigation or further action;

✓ *hearing the parties involved*, in some cases, the electoral authorities may decide to hear the parties involved, including the challengers, representatives of the electoral authorities and other interested parties, in order to obtain further clarifications or to examine the contested issues more closely;

✓ *issuing a preliminary decision*, based on the analysis and evaluation of the complaints, the electoral authorities may issue a preliminary decision on the validity or invalidity of the complaints and may decide whether it is necessary to continue the investigation or take additional measures.

The final stage of the electoral appeals review process involves making decisions and communicating the results to the parties involved. This may include:

➢ issuing a final decision, based on the analysis and evaluation of the complaints, the electoral authorities issue a final decision on their validity or invalidity and, depending on the circumstances, may take corrective or punitive measures;

- communication of decisions, electoral authorities communicate their decisions to the parties involved, as well as to the general public, to ensure the transparency and integrity of the electoral process;
- implementing decisions, if violations of electoral legislation or irregularities are found in the electoral process, electoral authorities may take corrective measures, such as annulling contested results, recounting votes or imposing sanctions against those involved in the violations found (Decision No. 49/2023 of the Central Electoral Commission of the Republic of Moldova on the regulation on the examination of electoral complaints).

These stages of the electoral appeals review process are essential for ensuring the fairness and integrity of elections and for protecting democratic principles and the electoral rights of citizens.

Electoral authorities have a central role in the process of examining electoral complaints and are responsible for managing and resolving them in accordance with electoral legislation and established regulations. The main roles of electoral authorities include:

- **receiving and registering complaints**, electoral authorities are responsible for receiving and registering electoral complaints submitted by interested parties, ensuring that they are registered in accordance with established procedures;
- **analysis and evaluation of appeals,** electoral authorities carry out the analysis and evaluation of appeals, investigating the grounds and evidence presented by the appellants and making decisions on their validity;
- **decision-making,** based on the analysis of the complaints and the available evidence, the electoral authorities make decisions on their validity or invalidity and, if necessary, impose corrective or punitive measures;
- **communication of decisions,** electoral authorities communicate the decisions taken following the examination of complaints to the parties involved and the general public, ensuring that the process is transparent and that the results are accessible to all (Institute for European Policies and Reforms (IPRE), ,,Monitoring the elections in the Republic of Moldova", Chisinau, 2023).

Political parties and candidates have a legitimate interest in the process of examining electoral complaints and can play an active role in this regard. Their involvement may include:

- *filing of appeals*, political parties and candidates can file electoral appeals to report violations of electoral legislation or irregularities in the electoral process;
- *providing evidence and arguments*, political parties and candidates may provide electoral authorities with evidence and arguments in support of their challenges, as well as request further hearings or investigations to support their case;
- *process monitoring*, political parties and candidates can monitor and follow the electoral appeals examination process to ensure that it is conducted fairly and transparently and that decisions made comply with relevant legislation and regulations.

Election observers and civil society organizations have an important role in monitoring and ensuring the fairness and transparency of the electoral process, including the examination of electoral complaints. Their participation may include:

- monitoring procedures, electoral observers and representatives of civil society organizations can monitor the procedures for submitting and examining electoral complaints to ensure that they are carried out in accordance with relevant legislation and regulations;
- reporting irregularities, electoral observers may report irregularities or violations observed during the process of examining electoral complaints to the competent authorities or the general public in order to draw attention to them and request their remediation;
- monitoring the implementation of decisions, electoral observers and civil society organizations can monitor the implementation of decisions taken following the examination of electoral complaints to ensure that they are properly applied and that citizens' electoral rights are respected (Law No. 1381-XIII of 21.11.1997 on electoral districts and referendum).

By involving and monitoring these stakeholders, the electoral complaints review process can benefit from greater transparency, impartiality, and integrity, thus contributing to strengthening democracy and public trust in the electoral process.

Examples of electoral complaints and how they were examined

This section will present case studies that illustrate various types of electoral complaints and how they were examined and resolved by electoral authorities. These examples may include:

1. **electoral fraud complaints**, situations in which political parties or candidates have filed complaints alleging electoral fraud, such as multiple voting, vote falsification or other illegal practices. The electoral authorities have examined these complaints by analyzing the relevant evidence and documents and have taken measures to investigate and sanction any violation of electoral legislation;
2. **complaints regarding violations of electoral norms**, situations in which violations of electoral norms were reported, such as improper distribution of campaign materials, voter intimidation or other practices affecting the fairness and accuracy of elections. The electoral authorities examined these complaints to verify whether there were sufficient grounds to justify the intervention and took corrective or punitive measures to remedy the situation;
3. **electoral rights complaints**, situations in which citizens or civic groups have filed complaints regarding violations of their electoral rights, such as restrictions on access to voting or other obstacles preventing the free exercise of voting. Electoral authorities have examined these complaints to ensure respect for citizens' electoral rights and have taken measures to remedy any deficiencies in the electoral process (Moldova State University, Comparative study of electoral legislation and practices of examining electoral complaints in the Republic of Moldova and other European countries, Chisinau, 2021).

Causes of electoral challenges

Electoral challenges can be generated by a variety of factors, and understanding these causes is essential for improving the integrity and transparency of elections. The main causes of electoral challenges include:

a) *divergent interpretations of electoral rules*, in some cases, contestations may arise as a result of different interpretations of electoral rules and laws. Ambiguity or lack of clarity in electoral legislation may lead to disputes and contestations regarding how these rules should be applied;

b) *alleged electoral fraud*, one of the most frequent causes of challenges in the electoral process is alleged electoral fraud, such as multiple voting, voter intimidation, falsification or manipulation of results or other illegal practices intended to influence the outcome of the election;

c) *technical and logistical problems*, technical or logistical problems in the conduct of the electoral process, such as malfunctions of voting equipment, communication problems or delays in the distribution of electoral materials, may create premises for challenges regarding the fairness and regularity of the election;

d) *violation of legal procedures*, challenges may also be triggered by violations of legal procedures by electoral authorities or personnel involved in the organization and conduct of the election. These violations may include irregularities in the voter registration process, incorrect administration of polling stations or inaccurate counting of votes;

e) *limited access to voting*, in some cases, challenges may arise as a result of restrictions or impediments to citizens' access to the voting process. Problems related to voter registration, identification restrictions or other obstacles that prevent the free exercise of the right to vote may generate challenges to the legitimacy of the election.

The consequences of contestations on the electoral process and on democracy. Contestations in the electoral process can have significant consequences on the democratic process and can affect citizens' trust in democratic institutions. Some of these consequences we will list in the following order:

- political polarization and tensions, contestations in the electoral process can amplify political polarization and accentuate social divisions. When political parties and their supporters contest election results or accuse electoral fraud, this can intensify political tensions and create premises for conflicts and instability in society;
- undermining trust in the electoral process, when there are serious challenges or disputes regarding the fairness and legality of elections, citizens' trust in the electoral process can be affected. This can lead to skepticism and suspicion regarding the election results and the legitimacy of elected political institutions;
- delays in government formation, in some cases, challenges to the electoral process can lead to delays in government formation or in establishing a political consensus. When election results are contested or when there are protracted legal disputes, this can delay the process of forming a functioning government and affect its ability to act effectively;
- discouragement of political participation, repeated and contested challenges in the electoral process can discourage political participation and diminish citizens' enthusiasm for civic engagement. When citizens perceive that their votes do not count or that the electoral process is corrupt or unfair, they may be less motivated to participate in future elections or other political activities;
- impact on international prestige, electoral disputes can also have an impact on a country's international prestige. When elections are marred by political disputes and contestations, this can affect the country's image and reputation in the eyes of the international community and weaken its credibility in promoting democratic values.

Conclusions and recommendations

Contestations in the electoral process are an inevitable component of modern democracies, reflecting the concern for the fairness and transparency of elections.

Following the research conducted, we submit the following recommendations to improve the process of examining electoral complaints:

- **establishing clear and realistic deadlines**, recommending the establishment of clear and realistic deadlines for the submission and resolution of electoral complaints, to ensure an efficient and prompt conduct of the process;
- **improving access to information,** recommending providing better and more comprehensive access to information about the appeals review process, including through the publication of decisions and their reasons;
- **strengthening institutional capacity,** recommending strengthening the capacity of electoral authorities and other institutions involved in the appeals review process, by providing adequate training and resources;
- **improving investigative procedures,** recommending improving investigative and evidence-gathering procedures within the appeals review process, to ensure a complete and objective analysis of the allegations;
- **promoting civic participation and monitoring,** recommending promoting the active participation and monitoring of civil society and electoral observers in the appeals review process, in order to strengthen its transparency and integrity.

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COMPETITION LAW IN THE DIGITAL ERA: LEGAL AND JURISPRUDENTIAL CHALLENGES IN DIGITAL MARKETS

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Abstract: *The accelerated transformations of the digital environment have profoundly reshaped the structure of the global economy, generating remarkable opportunities as well as significant challenges for the effective enforcement of competition rules. This article provides a detailed analysis of sophisticated anticompetitive practices within the online sphere, addressing issues such as the abuse of dominant position by digital platforms, algorithmic collusion, and the strategic impact of economic concentrations in digital markets. It thoroughly examines legislative and judicial responses at both the European and national levels, with special emphasis on relevant Romanian case law. The discussion is extended through a comparative analysis of strategies adopted in other major jurisdictions, thereby contributing to a deeper understanding of international trends in the enforcement of competition law in the digital context. The paper explores in detail key doctrinal debates in both Romanian and international legal literature, offering a critical reflection on current challenges. The necessity of implementing flexible legal mechanisms and strengthening cross-border cooperation is highlighted as a response to the rapidly evolving dynamics of digital markets, in order to ensure effective protection of competition and consumer rights. Within a multidisciplinary framework that integrates legal, economic, and technological perspectives, the article proposes coherent solutions aimed at fostering a competitive and fair digital ecosystem.*

Keywords*: competition law, anticompetitive practices, digital markets, online platforms, abuse of dominant position, mergers, algorithms, Digital Markets Act, gatekeepers.*

Introduction

The digital transformation of the global economy is undoubtedly one of the most profound socio-economic shifts of our time. The emergence and rapid expansion of the online environment have fundamentally redefined the way we interact, produce, and consume, opening up innovative opportunities for business development and ubiquitous access to information. However, the unprecedented dynamism of the digital sector, coupled with the consolidation of immense economic power in the hands of a limited number of global players, has simultaneously created a complex array of challenges for the effective application of fundamental competition law principles. These dominant entities, frequently termed "gatekeepers," operate essential online platforms, ubiquitous search engines, influential social

networks, and large-scale virtual marketplaces. Their pervasive presence grants them a decisive influence over the entire digital ecosystem. This privileged position, intrinsically linked to the unique characteristics of digital markets—such as potent network effects, data-driven economies of scale, and an accelerated pace of innovation—has fostered the emergence of novel forms of anti-competitive behavior. These new practices often defy easy categorization within the classical typologies of traditional competition legislation. The spectrum of anti-competitive conduct in the digital realm is vast, dynamic, and continuously evolving: from subtle manifestations of abuse of dominant position, concretized through the favoring of proprietary services (known as *self-preferencing*), to sophisticated forms of collusion facilitated by intelligent algorithms, or even strategic acquisitions of innovative start-ups designed to preemptively eliminate potential future competition (*killer acquisitions*).

The primary objective of this article is to provide an in-depth analysis of the complex legal and economic challenges that the online environment poses to the effective enforcement of competition law. It will rigorously assess the normative and judicial responses adopted at both European and national levels, with particular emphasis on the proactive decisions and initiatives of Romanian authorities, including notable investigations targeting eMAG. By incorporating detailed and recent case studies, the article aims to build a comprehensive understanding of these phenomena, propose refined solutions, and identify strategic directions for ensuring robust legal protection of competition and consumer interests in the dynamic digital age.

The Specific Nature of Anticompetitive Practices in the Digital Space: Towards a New Legal Typology?

The digital space does not merely amplify or reshape traditional anticompetitive practices; it introduces intrinsic features that give rise to entirely new forms of competition-restricting behavior. These distinct characteristics call for a fundamental reassessment of the analytical and normative tools employed in competition law—a need increasingly emphasized in the specialized literature, including significant Romanian scholarly contributions (Vasiu, 2019; Popescu, 2020).

A foundational aspect is the pervasive influence of network effects. This economic phenomenon dictates that the value of a product or service escalates exponentially as the number of its users or participants on a specific platform grows. For instance, the utility derived from a social network or a messaging service increases directly with the number of friends or contacts utilizing that same service. This mechanism can swiftly lead to the establishment of a quasi-monopolistic dominant position for a single platform, simultaneously erecting substantial barriers to market entry for prospective new competitors. Once a critical user mass is achieved, network effects inherently transform into an formidable entry barrier, leading to "winner-takes-all" markets where the leading player captures a disproportionately large market share (Competition Council, 2018). The overwhelming dominance of search engines like Google or major social networks vividly exemplifies this phenomenon, as their market position is reinforced by a vast user base. This creates prohibitively high switching costs for consumers and simultaneously reduces the utility of the network for those who remain on the original platform. Doctrinal debates increasingly focus on whether such network effects are a natural

outcome of market dynamics—acceptable without intervention—or whether their unchecked expansion warrants regulatory measures to preserve competitive tension (Evans & Schmalensee, 2016).

Another key driver of the digital economy is the central role of data. Frequently referred to as the "new oil" of the digital age (Păunescu, 2018), data constitutes a critical asset and a primary source of competitive advantage. Dominant platforms possess an unprecedented ability to collect, aggregate, and process massive volumes of granular data, granting them unique insights into market dynamics and consumer preferences. Abuse of dominant position through data control can manifest in diverse forms: from the refusal to grant access to essential data for competitors (a phenomenon known as *data hoarding*), to the leveraging of data collected from platform users to disproportionately benefit proprietary services (*data leveraging* or *self-preferencing via data*), or even the imposition of inequitable conditions for data access on commercial partners. At the European level, a highly relevant case illustrating the implications of data management, even if the primary focus was on self-preferencing, was the Google Shopping decision. The European Commission found that Google abused its dominant position in the general internet search market by systematically favoring its own comparison shopping service in search results, to the detriment of competing services (European Commission, 2017). Although the core of the argument focused on the manipulation of search result rankings, Google's anticompetitive strategy also encompassed control over data flows and the preferential visibility granted to its own services, clearly illustrating how a dominant platform can exploit data and its control over access to information to unfairly advance its commercial interests. Doctrinal discussions highlight the complexity of defining "essential data" and establishing criteria for mandatory data sharing, aiming to balance competition concerns with intellectual property rights and data privacy (Geradin & Lianos, 2020).

The proliferation of algorithms and artificial intelligence introduces an unprecedented dimension to collusive practices, fundamentally reshaping the ways in which market behaviors can be coordinated. Algorithms can be programmed to set prices, optimize sales strategies, or closely monitor competitors' behavior, operating with a level of precision and speed unattainable by human agents (Ezrachi & Stucke, 2017). Algorithmic collusion can primarily manifest in two forms: facilitated collusion, where companies utilize algorithms as a sophisticated tool to implement a pre-arranged, explicit anti-competitive agreement; and tacit collusion, where algorithms, through advanced machine learning, independently learn and adapt to each other's strategies, ultimately converging on an anti-competitive outcome (e.g., higher prices) without any explicit prior human understanding. This latter form presents an formidable evidentiary challenge, as it typically lacks the *mens rea* (criminal intent) in its classical legal sense, thereby straining the traditional paradigms of competition law enforcement. In Romania, while clear public decisions directly addressing algorithmic collusion are yet to emerge, the Competition Council is actively monitoring this nascent phenomenon. Their participation in dedicated European working groups underscores a growing awareness of this emergent risk (Competition Council, 2023). Internationally, a compelling illustration was the e-commerce price-fixing case in the USA involving dynamic pricing software, where online vendors effectively used algorithms to coordinate prices for specific products, unequivocally demonstrating the anti-competitive potential of these technological

instruments. The doctrinal debate here centers on whether algorithmic coordination, even without human intent, should fall under existing cartel prohibitions or necessitate new legal frameworks, and how to attribute liability in such complex scenarios (Stucke & Ezrachi, 2019).

Finally, the analysis of mergers and acquisitions within the digital sector unveils another significant and evolving particularity. Beyond conventional mergers, dominant companies frequently engage in strategic acquisitions of innovative start-ups. These acquisitions, often involving entities with minimal or even non-existent current revenues, are not primarily driven by immediate operational synergies but rather by the strategic objective of neutralizing a potential future competitive threat (known as *nascent competition*). Such transactions are aptly termed "killer acquisitions" (Shelanski, 2019). The acquisition of Instagram by Facebook (now Meta) in 2012 and WhatsApp by the same company in 2014, while the targets were not generating substantial revenue at the time, have become emblematic cases. These acquisitions effectively eliminated powerful emerging competitors, thereby consolidating Meta's already dominant position across the social media and instant messaging markets (European Commission, 2020). These landmark cases have underscored for competition authorities worldwide the critical need for a more forward-looking assessment of future competitive potential in merger reviews, beyond current turnover figures. This prospective approach is fundamental to safeguarding what is referred to as "nascent competition." Doctrinal arguments increasingly question whether current merger control thresholds—often based on turnover—are sufficient to capture so-called "killer acquisitions," and instead advocate for alternative criteria, such as transaction value or the size of the user base (OECD, 2020).

Regulatory and Jurisprudential Responses: European and National Perspectives

Regulatory authorities, fully aware of the unique and complex challenges that the digital space poses to competition, have responded with a dynamic approach. Their actions encompass both the adaptation of existing legal frameworks and the introduction of new regulatory instruments, marking a significant evolution in competition law in the digital era.

At the European Union level, the approach has been notably proactive and innovative, skillfully combining the rigorous application of traditional competition law principles with the adoption of groundbreaking *ex ante* regulations. The application of Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) has been instrumental in sanctioning abuses of dominant positions by major digital platforms. A seminal case was that of Google Shopping, where the European Commission, in a decision issued on June 27, 2017, imposed a fine of €2.42 billion. The Commission found that Google had leveraged its dominant position in the general internet search market by systemically favoring its own comparison shopping service (Google Shopping) in its search results, thereby disadvantaging competing comparison shopping services. The motivation behind this decision was rooted in the principle that a dominant company cannot use its market power in one market to unfairly promote its services in a related market, thereby distorting competition and harming consumers by limiting choice and innovation. The legal implications were profound, establishing a clear precedent regarding the concept of *self-preferencing* and its direct applicability to vertically integrated digital platforms (European Commission, 2017). This decision was subsequently upheld by the Court

of Justice of the European Union (Curtea de Justiție a Uniunii Europene, 2021), reinforcing the Commission's broad powers in addressing digital abuses.

Another landmark case was Google Android, in which, on July 18, 2018, the European Commission imposed a record fine of €4.34 billion on Google. The Commission found that Google had imposed three types of illegal restrictions on manufacturers of Android mobile devices and mobile network operators: 1) requiring manufacturers to pre-install the Google Search app and the Chrome browser as a condition for licensing Google's Play Store; 2) paying manufacturers and operators to exclusively pre-install the Google Search app; and 3) preventing manufacturers from selling devices running on alternative versions of Android ("Android forks"). The motivation was to protect Google's dominance in general internet search and to prevent the development of competing mobile operating systems and browsers, which could have threatened its core revenue streams. The legal implications underscored the importance of interoperability and consumer choice within mobile ecosystems, affirming that tying complementary products and services can constitute an abuse of dominance if it stifles competition (European Commission, 2018).

Furthermore, the investigation initiated by the European Commission against Amazon in 2020 specifically targeted the alleged abusive use of non-public aggregated data collected from independent sellers operating on its Amazon Marketplace platform. The Commission suspected that Amazon leveraged this sensitive data to unfair advantage its own retail business, directly competing with these very sellers. The investigation also scrutinized the criteria used for selecting sellers for the "Buy Box," suspecting that these criteria might disproportionately favor Amazon's own retail offerings over those of its competitors (European Commission, 2020). The motivation was to address concerns that hybrid platforms (acting both as marketplace operators and direct retailers) can exploit their dual role to the detriment of third-party sellers, leading to unfair competition. This case highlights the legal challenges of data leveraging and platform neutrality.

Recognizing the inherent limitations of a purely reactive (ex post) approach in traditional competition law when confronted with the fast-paced evolution of digital markets, the European Union introduced a forward-looking legislative initiative: Regulation (EU) 2022/1925 on contestable and fair markets in the digital sector, universally known as the Digital Markets Act (DMA) (European Parliament and Council of the European Union, 2022). The Digital Markets Act (DMA) represents a paradigm shift, establishing a precisely defined set of ex ante obligations and prohibitions for so-called "gatekeepers"—large digital platforms identified by their significant economic influence, their role as essential intermediaries between end users and businesses, and their entrenched and durable market positions. Gatekeepers are designated based on clear, quantitative criteria, including thresholds for turnover, market capitalization, and the number of active users. Among the key obligations imposed by the Digital Markets Act (DMA) are: the explicit ban on self-preferencing, prohibiting gatekeepers from favoring their own products or services over those of business users; the obligation to allow users to uninstall pre-installed applications; the requirement to ensure interoperability with third-party services, such as messaging apps; and the prohibition on using non-public data collected from business users on the platform to compete directly against them. The motivation behind DMA is to proactively create a level playing field, foster greater contestability, and ensure fairness in the digital ecosystem, thereby preventing anti-competitive behaviors before

they cause irreparable harm. Its legal implications are profound, shifting the burden of proof in certain instances and establishing a new regulatory toolkit distinct from traditional competition law enforcement, focusing on structural and behavioral obligations for a select group of powerful digital firms.

In Romania, the Competition Council, as the national competition authority, has been actively involved in monitoring and investigating digital markets, meticulously adapting established principles of competition law to the specificities of the local digital economy. The Council has notably conducted and continues to conduct extensive sector inquiries into various digital markets, including e-commerce, online advertising, and food delivery services. These inquiries serve to proactively identify potential competitive vulnerabilities and gather crucial market intelligence (Competition Council, 2021a). Such studies are indispensable for gaining a comprehensive understanding of complex market dynamics and for laying the groundwork for well-informed, proportionate, and effective enforcement decisions. A concrete example of the Competition Council's proactive involvement includes its investigations into food delivery platforms. The authority has meticulously analyzed certain contractual clauses imposed by major platforms such as Glovo, Tazz, and Foodpanda on their partner restaurants, specifically scrutinizing the potential anticompetitive effects of parity clauses (where restaurants are prevented from offering lower prices on other channels) and exclusivity clauses (where restaurants are restricted from partnering with other delivery platforms) (Competition Council, 2022). These investigations highlight the critical importance of maintaining a fair contractual balance between dominant platforms and their business users, preventing the platforms' significant bargaining power from resulting in unfair conditions that could stifle competition and innovation in the restaurant sector.

A particularly instructive and well-documented case in Romanian national jurisprudence, which vividly illustrates the complexities associated with abuse of dominant position in the online retail environment, is that of Dante International SA (eMAG). Following an extensive investigation initiated in late 2017 and meticulously concluded in 2020, the Competition Council sanctioned Dante International SA, the operator of Romania's largest online retailer and the eMAG Marketplace platform, with a substantial fine of approximately €6.7 million for abuse of dominant position (Competition Council, 2020a). The facts of the case revealed that, during the period spanning January 2013 to June 2019, eMAG systematically favored its own product offerings over those of independent third-party merchants who sold their products on the very same eMAG Marketplace. This self-preferencing was achieved primarily through the more advantageous positioning and display of eMAG's proprietary products within search results and on product detail pages, thereby significantly limiting the visibility and accessibility of partner offers to consumers. The motivation behind the Competition Council's decision was to prevent a dominant online marketplace from exploiting its dual role (both as a platform operator and a direct retailer) to unfairly disadvantage its own business users, thereby distorting competition on the marketplace. The legal implications were far-reaching for the Romanian e-commerce sector. The Competition Council, in addition to imposing the fine (which was reduced due to the company's full acknowledgment of the infringement), mandated a series of crucial corrective measures. These measures specifically targeted the algorithms employed by the eMAG

platform, requiring eMAG to fully and accurately inform its partner merchants about the intricate functioning of its product listing and positioning algorithms and to stringently limit any manual interventions in their operation. Furthermore, the decision mandated organizational restructuring, the establishment of a robust system for managing data collected and stored via the platform to ensure non-discriminatory access to aggregated data for partners, and significant improvements to the policy for resolving complaints with partner merchants (Competition Council, 2020a). This case serves as a benchmark, highlighting the inherent complexity of proving abuses on digital platforms, which often necessitates the forensic analysis of internal, frequently opaque mechanisms, and demands specialized technological and economic expertise.

Beyond this abuse of dominant position case, eMAG was also implicated in another significant Competition Council investigation, concluded in 2024, concerning an anti-competitive agreement related to resale price maintenance (RPM) in the market for the commercialization of televisions and mobile phones. Alongside Samsung Electronics România, Altex România, and Flanco Retail, Dante International (eMAG) was collectively fined a substantial sum of 123 million lei (approximately €25 million). The investigation definitively revealed a vertical agreement whereby Samsung, as a manufacturer, imposed a minimum resale price on its retailers, including eMAG, thereby illegally restricting the ability of these retailers to independently set their own prices. All companies involved acknowledged their participation in the infringement, subsequently benefiting from reduced fines as per leniency programs. This case critically underscores the persistence of classic anti-competitive practices like price-fixing even within the dynamic landscape of online commerce, demonstrating that the digital environment does not inherently eliminate the necessity for vigorous traditional market oversight.

Furthermore, the Competition Council has conducted a comprehensive investigation into the online advertising market to identify and address potential practices that could stifle competition and innovation, including possible abuses of dominant position by major players (Competition Council, 2021b). This proactive action is vital to ensuring a healthy and fair competitive environment in a market crucial for the overall growth of digital businesses in Romania. On the legislative front, Competition Law no. 21/1996, as republished and subsequently amended, remains the foundational legal instrument for sanctioning anti-competitive practices in the online environment, through the flexible interpretation of its provisions concerning anti-competitive agreements and abuse of dominant position. Romanian legal doctrine has also made significant contributions to these ongoing challenges, fostering the development of a specific national perspective on digital competition law (Popescu, 2020; Vasiu, 2019).

Comparative Perspectives on Digital Markets: Regulatory Challenges and Doctrinal Debates in Major Jurisdictions

The challenges arising from the functioning of digital markets are global in nature, prompting diverse yet often converging regulatory responses across major jurisdictions. A comparative analysis reveals common concerns regarding competition, as well as distinct approaches in legal frameworks and enforcement priorities, fueling intense doctrinal debates in the legal literature, both internationally and nationally.

United States (US) Approach

Historically, US antitrust enforcement has maintained a more cautious stance regarding intervention in dynamic markets, often prioritizing consumer welfare narrowly defined by price effects. However, the rise of powerful tech giants has spurred a significant shift. The US approach, while still primarily ex post (relying on Section 1 and Section 2 of the Sherman Act), has seen increased focus on monopolization cases against platforms like Google and Meta. The Federal Trade Commission (FTC) and the Department of Justice (DOJ) have launched multiple high-profile lawsuits alleging abuses of market power, for instance, the DOJ's antitrust case against Google for monopolizing digital advertising technologies, alleging that Google systematically acquired rivals and leveraged its dominance to foreclose competition in ad tech (DOJ, 2023). This mirrors, in part, the EU's concerns regarding vertically integrated platforms. Doctrinal debates in the US often center on the need for a "new Brandeisian" antitrust philosophy, advocating for broader structural remedies and a focus on power rather than just efficiency, challenging the long-standing "consumer welfare standard" (Khan, 2017). This contrasts with traditional Chicago School thinking that viewed dominant firms as a natural outcome of efficient competition. The debate also extends to whether the US should adopt ex ante regulations similar to the DMA, a proposal gaining traction in Congress but facing significant political hurdles.

German Approach

Germany has been at the forefront of adapting its national competition law to address digital market specificities, often predating EU-wide initiatives. The 10th amendment to the German Act Against Restraints of Competition (GWB), effective from January 2021, introduced a crucial provision in Section 19a. This provision grants the Bundeskartellamt (German Federal Cartel Office) the power to intervene against companies with "paramount significance for competition across markets" (überragende marktübergreifende Bedeutung für den Wettbewerb), allowing for early intervention against potential abuses even without a formal finding of dominant position in a specific market. This mirrors the DMA's gatekeeper concept but operates at a national level. The Facebook (Meta) data processing case by the Bundeskartellamt is a landmark example. In 2019, the authority prohibited Facebook from combining user data from various sources (Facebook, Instagram, WhatsApp, and third-party websites) without users' explicit consent, arguing this practice constituted an abusive exploitation of its dominant position (Bundeskartellamt, 2019). The motivation was to protect consumer choice and data privacy as dimensions of competition, rather than solely focusing on price. This decision has spurred significant doctrinal debate regarding the interplay between competition law, data protection (GDPR), and consumer protection, questioning whether competition authorities should explicitly consider non-price factors like data privacy in their analysis (Jaeger, 2021). This broader interpretation of "abuse" extends beyond traditional economic harm and resonates with calls for a more holistic approach to competition in digital markets.

Comparison with Romanian Cases

The eMAG case, with its focus on self-preferencing on a dominant platform, shares significant conceptual similarities with the EU's Google Shopping and Amazon investigations. The motivation of the Romanian Competition Council to intervene against eMAG's internal

favoring of its own products mirrors the EU's drive to ensure fairness for third-party sellers on hybrid platforms. The emphasis on algorithmic transparency and non-discriminatory data access in the eMAG decision is directly aligned with the principles embedded in the DMA. This indicates a convergence of enforcement priorities across jurisdictions regarding the behavior of vertically integrated platforms. However, Romania, lacking a specific ex ante regulatory framework like Germany's GWB Section 19a or the EU's DMA, relies on the broader interpretations of its existing Competition Law (Law 21/1996) for these interventions. The eMAG case demonstrates the flexibility of traditional abuse of dominance provisions to address digital specificities, but also highlights the proactive approach of the Romanian authority in adapting these provisions to new challenges.

The doctrinal debates surrounding the eMAG case in Romania largely mirror the international discourse on the regulation of digital platforms. Key questions under examination include:

a) Defining dominance in digital markets – How should market power be assessed in environments where services are offered for free, and value is generated through data and network effects? Romanian scholars frequently refer to the "two-sided market" theory to analyze this framework (Popescu, 2020).
b) The scope of abuse – Should self-preferencing be inherently considered abusive, or only when it results in demonstrable anticompetitive effects? This raises broader concerns about the extent to which authorities should intervene in platform design and algorithmic functioning.
c) Data as an essential facility – To what extent should data be considered an “essential facility” that dominant platforms must share with competitors? This issue requires balancing competition policy objectives with intellectual property rights and data privacy considerations.
d) Enforcement challenges – The eMAG case, with its algorithmic intricacies, highlights the practical difficulties faced by competition authorities in evidence gathering and in implementing effective remedies in the context of complex and opaque digital systems.

The resale price maintenance (RPM) case involving eMAG, Samsung, Altex, and Flanco, although situated within a digital context, constitutes a classical form of vertical restriction. Its enforcement demonstrates that traditional anticompetitive practices continue to thrive in the digital sphere, requiring ongoing regulatory vigilance.

Doctrinal debates on RPM in digital markets often question whether its effects differ substantially from offline settings, considering the role of pricing algorithms and the potentially greater price transparency, which might, in theory, mitigate some harms (Motta & Peitz, 2020). However, the Romanian case clearly shows that RPM remains a significant concern, capable of restricting intra-brand competition and harming consumers by removing downward price pressure.

In conclusion, while common themes—such as the economic power of platforms, the strategic use of data, and algorithmic influence—dominate the global discourse, comparative analysis reveals significant differences in the intensity of regulation and the underlying philosophical principles guiding enforcement. The European Union, through the Digital Markets Act (DMA), is moving toward a structural, ex ante approach, whereas the United States has traditionally relied on ex post enforcement, although it is increasingly exploring new

regulatory tools. Germany offers a notable example of national-level ex ante intervention through amendments to its competition law (GWB). The eMAG case situates Romania firmly within the European enforcement trend, showcasing the national authority's adaptability in addressing complex digital abuses, while also confronting the practical and doctrinal challenges inherent to this rapidly evolving regulatory landscape.

Solutions and Recommendations for Effective Legal Protection in Digital Markets

Ensuring robust and effective legal protection against anticompetitive practices in the online environment requires a holistic and highly adaptable approach. This entails a strategic combination of modern legislative tools with a significantly enhanced capacity for rigorous and timely law enforcement.

A flexible and forward-looking regulatory framework is absolutely essential. In the face of rapidly evolving digital markets, it is critical to continuously develop and refine rules that can swiftly adapt to emerging technological realities. The focus should lie on broad principles and fundamental objectives—such as ensuring market contestability and effectively preventing abuses of economic power—rather than on overly prescriptive and rigid technical solutions, which are highly susceptible to rapid obsolescence.

The Digital Markets Act (DMA) is a commendable and pioneering example in this regard, with its ex ante approach and the designation of gatekeepers based on dynamic, general economic criteria, rather than static market share thresholds (European Parliament and Council of the European Union, 2022).

However, ensuring the DMA's continued relevance and effectiveness requires ongoing monitoring of its practical impact and regular revision, in light of fast-paced technological advancements and the emergence of new business models.

Doctrinal debates surrounding the DMA frequently revolve around concerns of overregulation, unintended consequences for innovation, and the practical challenges of enforcement (Korah, 2023).

The continuous development and support of multidisciplinary investigations, along with the advanced use of technology, are of critical importance for effective competition enforcement in the digital economy. Investigation teams within competition authorities must evolve from traditionally homogeneous, lawyer-centered structures to diverse teams that include legal experts, economists, data scientists, and artificial intelligence specialists.

Substantial investment in state-of-the-art technological tools is essential for analyzing large volumes of data (big data), detecting sophisticated anomalies in algorithmic behavior, and accurately reconstructing complex competitive scenarios (Competition Council, 2023).

A crucial aspect of this transformation is the development of robust internal capacities in digital forensic analysis and the judicious use of AI to support and streamline investigative processes.

From a doctrinal perspective, the admissibility and evidentiary value of algorithmically derived findings raise complex legal questions regarding procedural fairness and the standard of proof in digital competition investigations.

Consolidating international cooperation is fundamentally indispensable, given the inherently cross-border nature of digital markets. Substantial improvements in information

exchange protocols, meticulous coordination of complex investigations, and, wherever feasible, the harmonization of analytical approaches and enforcement practices among competition authorities from disparate jurisdictions are absolutely essential measures. These objectives can be achieved through the negotiation and implementation of robust bilateral or multilateral cooperation agreements, the establishment of dedicated joint working groups, and the significant reinforcement of the role played by global networks such as the International Competition Network (ICN). A unified and coherent approach at the global level would crucially reduce jurisdictional fragmentation, significantly enhance predictability for economic operators, and effectively deter anti-competitive *forum shopping*. Current doctrinal debates revolve around finding the optimal level of harmonization versus the need to preserve national sovereignty and flexibility to address unique market conditions.

A vital and increasingly recognized issue is the vigorous promotion of genuine algorithmic transparency and robust data governance. It is imperative to explore and actively implement mechanisms that ensure authentic transparency of the algorithms used by dominant platforms, while safeguarding legitimate trade secrets. Such mechanisms could potentially include independent algorithmic audits, the imposition of standardized reporting obligations concerning their functionality and competitive impact, or even the creation of regulatory "sandboxes" where algorithmic behavior can be safely tested in controlled environments.

Furthermore, establishing stricter data governance frameworks and ensuring fair access to essential data for competitors are fundamental measures to prevent abuses of power based on control over critical information.

Doctrinal perspectives vary widely—from advocating for open-source algorithms to imposing stringent requirements on data portability and interoperability—while navigating the complexities of privacy regulations such as the GDPR.

The role of private actors and the effectiveness of private enforcement must be substantially strengthened. Actively encouraging private litigation as a strong complement to public enforcement of competition law can significantly contribute to deterring anticompetitive practices and providing meaningful compensation to victims. Simplifying procedural requirements, clarifying the rules for accurate damage assessment—especially in the nuanced context of "free" services—and vigorously supporting collective actions could greatly enhance the effectiveness of private enforcement in the digital sector, offering a more accessible and efficient remedy for competition-related harm (Popescu, 2020).

Doctrinal discussions focus on the specific challenges of collective redress in digital markets, considering the dispersed nature of harm and difficulties in proving causation and quantifying damages.

Finally, education and fostering broad awareness play a crucial role. Significantly increasing awareness of the various anticompetitive risks prevalent in the online environment—targeting specifically economic actors (especially small and medium-sized enterprises often dependent on dominant platforms), the general public, and future legal professionals—is vital. A deeper and more widespread understanding of the complex dynamics of digital markets and the associated legal obligations can proactively contribute to preventing violations and enabling quicker, more effective detection by all market participants.

This educational imperative also extends to legal research, which must continuously evolve to provide clear and relevant analytical frameworks for these complex challenges.

Conclusions

Legal protection against anticompetitive practices in the online environment undoubtedly represents one of the most urgent and multifaceted challenges facing competition law today. The intrinsic nature of digital markets—characterized by strong network effects, a deep reliance on data, and rapid innovation—has given rise to new types of behaviors that restrict competition. These practices are inherently difficult to categorize and sanction using traditional legal tools designed for conventional markets. From subtle yet pervasive abuses of dominant positions, manifested through self-preferencing and manipulation of data flows, to sophisticated algorithmic collusion and strategic "killer acquisitions" aimed at eliminating nascent competition, the spectrum of risks is vast, complex, and constantly evolving.

The evolving normative and jurisprudential responses, both at the European level through the adoption of innovative regulations such as the Digital Markets Act, and at the national level through the sustained and proactive efforts of authorities like Romania's Competition Council, clearly demonstrate a growing awareness of the urgency and complexity of this issue. Concrete cases—from landmark European Commission decisions against Google and Amazon to thorough investigations conducted by the Romanian Competition Council in the domestic e-commerce and online advertising markets, including significant precedents set by the eMAG cases—vividly illustrate the challenges of applying competition law in such a dynamic and rapidly changing environment.

The future trajectory of competition law in the digital era is critically dependent on its capacity to be exceptionally agile, profoundly proactive, and, above all, inherently multidisciplinary. Enhanced international cooperation, sustained and substantial investments in specialized technological expertise, and a nuanced, comprehensive understanding of the economic dynamics governing digital platforms are all indispensable elements. These are crucial to ensure that the online environment continues to serve as a powerful engine of innovation, a vibrant space for fair and equitable competition, and a tangible benefit for both consumers and businesses alike. Only through a truly integrated and adaptive approach—one that skillfully combines intelligent and proportionate regulation with vigorous and effective enforcement, underpinned by a broadly cultivated awareness—can we realistically guarantee that the myriad advantages of the digital economy are equitably distributed and not unjustly captured by a limited number of dominant actors.

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DIGITAL TRANSFORMATION IN HEALTHCARE SYSTEMS: CHALLENGES AND OPPORTUNITIES

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Abstract: *The rapid advancement of digital technologies has significantly impacted healthcare systems worldwide. Digital transformation in healthcare aims to improve patient care, optimize operational efficiency, and enhance decision-making processes. This paper explores the key challenges and opportunities associated with digital transformation in healthcare. While innovations such as artificial intelligence (AI), telemedicine, big data analytics, and blockchain hold great potential, their implementation faces obstacles such as data security concerns, regulatory compliance, resistance to change, and high implementation costs. By analyzing global trends and case studies, this research highlights strategies for overcoming these barriers and leveraging digital transformation to create more efficient, accessible, and patient-centered healthcare systems.*

Keywords: *Digital Health, Healthcare Innovation, Health Information Technology (HIT), Telemedicine, Healthcare System Reform*

1. Introduction

In recent decades, the rapid advancement of digital technologies has led to profound changes in the structure and functioning of healthcare systems. Tools such as electronic health records, telemedicine platforms, artificial intelligence-based diagnostic solutions, and integrated information systems are reshaping the delivery and management of healthcare services. These developments not only reflect technological progress but also demand fundamental transformations in how healthcare systems are organized, financed, and governed.

Despite their transformative potential, digital health initiatives face numerous challenges. These include disparities in digital infrastructure, insufficient digital competencies among healthcare professionals, limited institutional capacity, and concerns related to data security and regulatory readiness. In many developing and transitional economies, these barriers are more pronounced, often resulting in fragmented implementation and limited long-term sustainability of digital health solutions.

While existing literature offers insights into the technical and clinical aspects of digital transformation, there remains a significant gap in understanding its economic efficiency, managerial implications, and contribution to sustainable development goals within healthcare systems. Particularly underexplored is how digital technologies impact healthcare service delivery from a system-wide perspective, especially in contexts where institutional readiness and strategic governance are still evolving.

The aim of this study is to provide a comprehensive theoretical assessment of the challenges and opportunities associated with digital transformation in healthcare systems, with a specific focus on its economic and managerial dimensions. The paper seeks to identify key enablers and barriers to successful digital implementation, evaluate its potential for improving system-wide efficiency and quality, and contribute to strategic discussions on how digital health can support sustainable and resilient healthcare models.

2. Literature Review

Digital transformation in healthcare has become a critical area of academic and policy interest, reflecting the growing need for innovation in service delivery, patient engagement, and system efficiency. The literature on this subject can be broadly categorized into three thematic areas: technological capabilities and benefits, implementation challenges, and theoretical approaches to technology adoption.

A significant body of research emphasizes the role of emerging technologies in enhancing healthcare services. Artificial intelligence (AI) is widely recognized for its ability to support more accurate diagnoses, streamline administrative processes, and personalize treatment pathways. Similarly, blockchain is discussed as a promising tool for improving data security and transparency in electronic health records. Other digital tools, such as telemedicine platforms and mobile health applications, are credited with expanding access to care, especially in remote or underserved areas.

Despite the clear potential of these technologies, the literature also reveals several obstacles that hinder their widespread adoption. High initial costs, lack of institutional infrastructure, limited digital literacy among healthcare workers, and concerns about data privacy are frequently cited as key barriers. In many health systems, particularly those in low- and middle-income countries, digital initiatives are introduced without adequate regulatory support or long-term integration strategies, resulting in fragmented and unsustainableoutcomes.

To understand how digital tools are adopted and used within healthcare systems, scholars have employed a variety of conceptual frameworks. One of the most widely used models is the Technology Acceptance Model (TAM), which posits that perceived usefulness and perceived ease of use are the primary factors influencing the acceptance of new technologies. More complex adaptations of this model also consider external variables such as user attitudes, organizational readiness, and cultural factors. These frameworks provide a useful lens through which to evaluate both individual and systemic responses to technological innovation in healthcare.

In summary, while the literature clearly demonstrates the transformative potential of digital technologies in healthcare, it also underlines the importance of addressing systemic challenges and employing robust theoretical models to guide implementation. This study builds upon these insights by focusing on the economic and managerial dimensions of digital transformation, particularly in emerging healthcare systems.

3. Method

This study adopts a narrative literature review approach to synthesize existing theoretical and empirical knowledge on the digital transformation of healthcare systems. A

narrative review was chosen to allow for a broad and interpretive analysis of diverse sources, capturing complex and evolving themes that cannot be adequately explored through a systematic or meta-analytical method.

3.1 Search Strategy and Databases

The literature search was conducted across four major academic databases: Scopus, PubMed, Web of Science, and Google Scholar. The search was limited to studies published between 2010 and 2024, in English. The following keywords and Boolean combinations were used during the search process:

- "digital transformation" AND "healthcare"
- "health information systems" OR "e-health" OR "telemedicine"
- "technology adoption" AND "health services"
- "AI in healthcare" OR "blockchain in healthcare"
- "barriers to digital health implementation"
- "technology acceptance" AND "healthcare systems"

3.2 Inclusion and Exclusion Criteria

To ensure the quality and relevance of the selected materials, the following inclusion criteria were applied:

- Peer-reviewed journal articles, policy reports, or case studies
- Focus on healthcare systems at the organizational, national, or global level
- Discussion of digital innovation, adoption, or governance in healthcare
- Published between 2010 and 2024

Exclusion criteria included:

- Studies focused exclusively on clinical outcomes or individual medical interventions without system-level analysis
- Articles not available in full text
- Non-academic sources lacking rigorous review or methodological transparency
-

3.3 Screening and Selection

An initial pool of over 250 documents was identified through the keyword search. After removing duplicates and applying the inclusion/exclusion criteria, a total of 48 sources were selected for in-depth review and thematic synthesis.

3.4 Analytical Framework

The analysis was guided by the Technology Acceptance Model (TAM) as a conceptual lens, supported by thematic synthesis to identify recurring patterns, challenges, and implications across different studies. The focus was placed on theoretical insights and reported findings related to the economic efficiency, managerial integration, and sustainability of digital health innovations.

Although this study did not follow the formal PRISMA checklist due to its qualitative and narrative nature, the overall structure reflects an emphasis on transparency, replicability, and academic rigor.

4. Results

This literature-based study identified several key themes related to challenges and opportunities in digital transformation within healthcare systems. These themes emerged through a thematic synthesis of findings from peer-reviewed studies, policy analyses, and case reports, reflecting a broad spectrum of healthcare contexts and stakeholder perspectives.

4.1 Challenges in Digital Transformation

4.1.1 Data Privacy and Security

Multiple studies consistently emphasize data privacy and cybersecurity as primary concerns in healthcare digitalization. The increased use of electronic health records (EHRs) and interconnected systems heightens the risk of data breaches and unauthorized access. For example, Jones and Patel (2021) analyzed multiple incidents of healthcare data breaches, revealing that over 60% were due to insufficient encryption protocols or human error. Compliance with regulations such as GDPR and HIPAA introduces significant operational challenges, as healthcare providers must balance accessibility with stringent data protection requirements. The implementation of comprehensive cybersecurity frameworks, including regular audits and staff awareness programs, has been identified as critical for mitigating these risks (Smith et al., 2020).

4.1.2 Organizational Resistance

Resistance to digital innovation is frequently reported as a significant barrier to adoption. Greenhalgh et al. (2017) found that in many healthcare settings, reluctance among staff stems from fears of job displacement and a lack of confidence in using new technologies. Limited digital literacy further exacerbates this issue, especially among older healthcare workers. Organizational culture plays a key role, with successful digital transformation often linked to institutions that actively involve staff in planning and provide ongoing training. For instance, a case study in a UK hospital demonstrated that comprehensive change management strategies reduced resistance and improved adoption rates by 35% over 12 months (Brown & Clarke, 2019).

4.1.3 Financial Constraints

The literature identifies financial limitations as a recurrent challenge, particularly regarding the high costs of technology acquisition, implementation, and maintenance. Cresswell et al. (2013) highlight that smaller clinics and rural hospitals face significant budgetary restrictions that delay digital adoption. In one comparative study across European healthcare systems, facilities with limited funding showed a 40% slower uptake of electronic health systems compared to well-resourced urban centers (Müller et al., 2021). Such disparities emphasize the need to consider economic contexts when evaluating digital transformation progress.

4.1.4 Interoperability Challenges

Interoperability issues arise from the lack of standardized protocols for data exchange. A survey conducted by Adler-Milstein and Jha (2017) involving 150 healthcare institutions in the US found that 65% reported difficulties integrating multiple electronic health record

systems, which hindered coordinated patient care. The absence of universal standards leads to fragmented digital environments, reducing the potential benefits of integrated data analytics and clinical decision support systems.

4.1.5 Regulatory and Ethical Considerations

Emerging technologies such as AI and blockchain raise novel regulatory and ethical questions. Reddy et al. (2019) discuss challenges related to algorithmic transparency, emphasizing that opaque decision-making processes in AI can lead to bias and reduce clinical trust. Additionally, issues of data ownership and informed patient consent are frequently highlighted in the literature as requiring clearer governance frameworks to ensure ethical deployment and safeguard patient rights.

4.2 Opportunities in Digital Transformation

4.2.1 Improved Patient Care

AI-driven diagnostics and digital monitoring tools have demonstrated significant potential to improve clinical outcomes. For example, a study by Reddy, Fox, and Purohit (2019) reported that AI-assisted imaging improved diagnostic accuracy for certain cancers by up to 20%. Wearable devices facilitate continuous patient monitoring, enabling early intervention and personalized treatment plans, which enhances patient engagement and self-management (Kruse et al., 2017).

4.2.2 Enhanced Operational Efficiency

Digital solutions contribute to optimizing workflow processes, reducing administrative burden, and minimizing human error. In a multi-center study, Kruse et al. (2017) showed that automation of appointment scheduling and electronic prescription systems reduced processing times by 30%, improving overall service delivery.

4.2.3 Broadened Access to Healthcare

Telemedicine has expanded healthcare access to remote and underserved populations. Wani and Malhotra (2018) demonstrated that mobile health applications increased follow-up rates among chronic disease patients in rural India by 25%, reducing the need for travel and associated costs.

4.2.4 Predictive Analytics and Big Data

The integration of big data analytics supports proactive healthcare management by identifying population health trends and forecasting risks. Wang, Kung, and Byrd (2018) described how predictive models were used to anticipate influenza outbreaks, enabling timely resource allocation and vaccination campaigns.

4.2.5 Blockchain Technology

Blockchain applications enhance data security and interoperability by providing immutable records and decentralized control. Esmaeilzadeh (2019) showed that blockchain-based platforms improved trust among patients and providers by ensuring transparent and secure data sharing, especially in multi-institutional healthcare networks.

5. Future Trends and Recommendations

Emerging technologies such as the Internet of Medical Things (IoMT), 5G connectivity, and personalized medicine are anticipated to accelerate the pace and scope of digital transformation in healthcare. IoMT devices enable continuous patient monitoring, improving real-time data collection and chronic disease management (Wang, Kung, & Byrd, 2018). The deployment of 5G networks is expected to enhance telemedicine capabilities by providing low latency and higher bandwidth, facilitating more reliable remote consultations and real-time data transmission (Reddy, Fox, & Purohit, 2019). Personalized medicine, driven by big data and AI, promises tailored treatment strategies that can improve patient outcomes while optimizing resource utilization.

However, successful adoption of these innovations requires that policymakers and healthcare leaders address structural challenges. Investment in robust digital infrastructure must be complemented by clear ethical guidelines for AI deployment, ensuring transparency, accountability, and patient autonomy (Adler-Milstein & Jha, 2017). Additionally, capacity-building initiatives focusing on digital literacy and skills development for healthcare professionals are crucial to overcoming resistance and maximizing technology benefits (Greenhalgh et al., 2017).

Given the disparities in digital readiness between developed and developing countries, a context-sensitive approach is essential. For low-resource settings, phased implementation strategies, public-private partnerships, and leveraging mobile health solutions adapted to local needs should be prioritized to bridge the digital divide (Cresswell, Bates, & Sheikh, 2013; Wani & Malhotra, 2018).

6. Discussions and Conclusions

This study corroborates previous research by reaffirming the dual nature of digital transformation in healthcare—presenting significant opportunities alongside persistent challenges (Greenhalgh et al., 2017; Cresswell et al., 2013). A notable contribution of this review lies in its synthesis of multifaceted themes spanning technological, organizational, financial, and ethical dimensions.

Nonetheless, the absence of empirical data limits the ability to generalize findings universally, particularly across diverse regional contexts. Comparative analysis reveals that while developed countries demonstrate rapid digital integration, facilitated by stronger infrastructure and governance, developing countries confront systemic financial and infrastructural barriers that hinder equitable adoption (Kruse et al., 2017). This discrepancy underscores the importance of tailoring digital health strategies to local realities.

Integrating existing theoretical frameworks such as the Technology Acceptance Model (TAM) or Diffusion of Innovations theory could enhance understanding of the behavioral and organizational factors influencing adoption rates, providing a foundation for targeted interventions (Venkatesh & Davis, 2000; Rogers, 2003).

From a policy perspective, evidence-based, actionable recommendations include:

- Prioritizing investments in cybersecurity and interoperable digital platforms to ensure secure and seamless data exchange.
- Developing comprehensive training and change management programs to address resistance and build digital competencies among healthcare workers.

- Establishing ethical frameworks aligned with evolving technologies to safeguard patient rights, transparency, and algorithmic accountability.
- Encouraging international cooperation and knowledge sharing to support developing countries in overcoming adoption barriers.

In conclusion, digital transformation in healthcare is both inevitable and necessary. Its effective realization requires a holistic, inclusive, and well-regulated approach that integrates technological innovation with human and organizational readiness, ethical governance, and context-aware policies.

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POST-COLD WAR SECURITY DYNAMICS; NATO'S TRANSFORMATION AND U.S. -TÜRKIYE MILITARY RELATIONS

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Abstract: *This study examines NATO's post-Cold War adjustment to the international security order and its effects on defense relations between the US and Türkiye. The main objective of the study is to analyse Türkiye's and the United States' approaches to the alliance and their mutual security priorities in light of the change in NATO's strategic orientation. In qualitative research, official NATO reports and secondary sources were analyzed with the help of document analysis. Additionally, critical events such as the F-35 fighter aircraft program and Türkiye's purchase of the S-400 air defence system were studied using case studies. The findings show that NATO's transformation process has facilitated integration and cooperation as a whole but, at times, strategic differences among members can lead to deep tensions. The S-400 crisis itself is the very best example of the challenges the alliance is facing in the matter of cooperation in defence production, technology sharing and mistrust issues. In conclusion, NATO's long-term success depends on its capacity to balance the differences in strategic interests among its members through constructive diplomacy and flexible adjustment mechanisms.*

Keywords: *Nato, security, military, defense system, cooperation*

1. Introduction

The North Atlantic Treaty Organization (NATO) continued to evolve after the Cold War era. Initially created to counter the Soviet threat, NATO's purpose, membership, and modus operandi were reconfigured as global security trends evolved. When the Soviet Union disintegrated in 1991, NATO was confronted with new opportunities and challenges. The alliance's response to these events, particularly its enlargement and adaptation to new security issues, has had long-term implications for its member states, including the United States and Türkiye.

The United States and Türkiye, two of the innermost members of NATO, have followed varying but interdependent security policies under the framework of the alliance. The U.S. has dominated NATO's agenda after the Cold War, promoting enlargement and emphasizing collective defense. Concurrently, Türkiye, being positioned geographically between Europe, the Middle East, and Asia, has been mindful of safeguarding its regional interests while balancing a tightrope between its commitment to NATO. The shifting dynamic between these two countries, particularly in the wake of NATO enlargement, illustrates cooperation as well as tension.

This article examines NATO's post-Cold War transformation in response to new threats and how such changes have impacted U.S.-Türkiye defense relations. Through a review of key policy shift reversals most significantly the S-400 missile defense system crisis. Also this study aims to cast more light on the issues facing NATO in the 21st century.

2. Transformation of NATO in Response to Post-Cold War Threat Perceptions

The end of the Cold War in 1991 transformed global security dynamics. This revolution forced NATO, an alliance created primarily as a collective defense organization against the Soviet Union, to reconsider its mission, structure, and strategies. The collapse of the Soviet Union, as well as the emergence of new global security challenges such as terrorism, regional conflicts, and the growth of new major powers, led NATO to realign itself within the international order. (Ereker,2019, 1-4)

Throughout the early part of the post-Cold War era, the focal point of NATO's concerns changed from the traditional threat of Soviet invasion to the need to deal with an extensive range of non-classical security threats. One of the first signs of this shift was NATO's and later in Kosovo (1999) signaled its willingness to engage in out-of-area operations, a deviation from its original mandate of collective defense of Western Europe (Fazla, 2022, pp.320-330)These missions constituted a dramatic departure from NATO's traditional Cold War mission, the first sign of the alliance's increasing focus on peace support, crisis management, and stabilization operations in the broader non-core area.

This evolution was formalized in the 1999 NATO Strategic Concept, which formally enshrined NATO's new mission. The paper stipulated that the alliance's core tasks would no longer be limited to defending territory, but would also involve crisis management and cooperative security (NATO, 1999). The notion emphasized NATO's role in "out-of-area" operations, which facilitated military interventions in troubled regions, even if such regions were not necessarily connected to member states' defense. This conceptual shift laid the foundation for NATO's future conflicts, particularly regarding the War on Terror and the post-9/11 global order.(Bağbaşlıoğlu, 2018,pp.15-17)

The terrorist attacks on the United States on September 11, 2001, emphasized NATO's need to modernize and realign itself in response to evolving security concerns. For the first time in NATO history, the alliance invoked Article 5 of the North Atlantic Treaty, which requires member nations to defend each other in the event of an armed attack. The action was significant in the evolution of the alliance because it recognized the importance of dealing with challenges posed by non-state actors, such as terrorist organizations. Following the 9/11 terror attacks, NATO fought in Afghanistan, its first out-of-area engagement. The operation, originally designed to eliminate the Taliban administration and destroy al-Qaeda, turned into a long counter-insurgency and nation-building effort. (Nato, 2023).

Furthermore, NATO's enlargement following the post-Cold War era was responsible for the alliance's development. Following the demise of the Soviet Union, Warsaw Pact nations and Soviet republics began to join NATO in order to ensure their independence and security in the face of a resurgent Russia. NATO's expansion, which included former Eastern Bloc members Poland, Hungary, and the Czech Republic in 1999, followed by the Baltic States, Romania, and Bulgaria in 2004, redirected the alliance's geographic focus. The expansion was

controversial and led Russia to believe that NATO's growing proximity was an open challenge to its sphere of influence (Nato, 2024) Despite these problems, NATO continued with its policy of enlargement, viewing it as a means of spreading democratic values and stability to Central and Eastern Europe.

The evolution of NATO extended beyond its geographical and operational expansion and also involved its internal structure and decision-making. NATO was subjected to radical reform in order to accommodate the new strategic environment. The establishment in 2002 of the NATO Response Force (NRF) illustrated, for instance, NATO's eagerness for rapid-deployment capability to facilitate crisis management and collective defense. The NRF, consisting of multilateral units deployable at short notice, demonstrated NATO reacting to the growing uncertainty of the nature of modern global conflicts (NATO, 2002). Moreover, NATO's partnership with international organizations and non-members, such as the European Union and the United Nations, also came to the fore. These partnerships aimed at enhancing NATO's ability to respond to global security threats through leveraging broader international cooperation.

However, NATO's transformation has not been without its share of challenges. The alliance has been criticized for its capacity to counter new types of warfare, such as cyberattacks and hybrid warfare, which are blurring state and non-state actor lines. The development of cyberattacks and the increasing roles of Russia and China have forced NATO to reassess its capabilities and strategies over the last few years. Additionally, the 2010 Strategic Concept and the 2018 Brussels Summit highlighted the need for a more flexible and agile NATO that could handle a variety of challenges, such as cyberattacks, terrorism, and the growing military capabilities of China and Russia. (Szenes, 2019,p.151)

In short, NATO's response to post-Cold War threat perceptions has been distinguished by a move from a purely defensive to an increasingly interventionist posture, seeking to address a wide range of security concerns. While the process of adapting to rising issues such as terrorism, regional instability, and cyber warfare has broadened the alliance's operational range, it has also raised questions about its future orientation. With the evolving world security environment, NATO finds itself being pushed to balance the dynamics of keeping the member states together and pushing back against intensifying threats in a more multipolar universe.

3. NATO's Enlargement Policies After the Cold War

The end of the Cold War marked a turning point in both global geopolitics and NATO's strategic objective. NATO, previously defined by its anti-Soviet attitude, was in a unique position to reconsider its role in the new and uncertain global order. One of the most major developments in the post-Cold War growth of NATO has been its enlargement, which has seen the alliance grow from 12 members when it was founded to 32 members by 2025. The policy of enlargement not only reshaped NATO's spatial boundaries but also remapped its political and military agendas, creating opportunities as well as challenges for the alliance.(Nato,2024)

It was during the early 1990s, following the Soviet collapse, that NATO faced a strategic vacuum in Central and Eastern Europe. The ex-Soviet republics and the Eastern Bloc nations, having broken away from the Soviet sphere of influence, sought assurances of security against potential threats, particularly from an emerging Russia. The enlargement policy of

NATO was subsequently transformed into a means of stabilizing these newly independent states and nurturing democratic values while, at the same time, enhancing the alliance's strategic standing in the area. The first phase of NATO enlargement, in 1999, included Poland, Hungary, and the Czech Republic. These countries, having suffered from Soviet domination, yearned to join NATO as a means of ensuring their independence and integration into the Western political and economic bloc (Smith, 2005).

The process of enlargement for NATO was not without controversy, particularly its implications for Russia. The eastward expansion of NATO was perceived by Russians as a direct affront to their sphere of influence and security. Tensions between Russia and NATO were heightened in 2004 when countries that had previously been part of the Soviet bloc, such as the Baltic States, Estonia, Latvia, and Lithuania, were invited to join the group. The majority of Westerners view this expansion as a way to bring stability and democratic governance to Eastern Europe, but Russia views it as an infringement on its strategic interests.. The Bucharest Summit of 2008, where NATO assured Ukraine and Georgia eventual entry into the organization, worsened this divide with Russia viewing these moves as explicit provocations (Mearsheimer, 2014,p.2).

Despite the tensions with Russia, NATO continued to extend its enlargement scheme. One of the key motives for NATO's expansion was that it subscribed to the "security community" thesis, which states that the optimum way of acquiring stability in Europe was by inviting the nations of Eastern Europe to join the alliance (Risse-Kappen,1995). This policy was aimed at preventing the re-emergence of nationalist and authoritarian powers in the region and to offer a collective defense mechanism to protect the interests of these newly democratic states. NATO enlargement was also considered by it as an extension of its own inherent values, and these values were democracy, human rights, and the rule of law (Schimmelfennig, 2024, pp. 30-33).

NATO enlargement had not only geopolitical benefits but also economic benefits. Member states were advantaged by joining NATO through access to Western economic and political institutions, stabilization of their economies, and the promotion of foreign investment. NATO membership also served as a mechanism for increasing their military capabilities through the alliance's shared defense mechanism. Integration of Central and Eastern European states was therefore offered as the "modernization" of their political and military institutions. NATO membership also gave these countries a feeling of security, since Article 5 of the North Atlantic Treaty, requiring collective defense, ensured that an attack on one member would be considered an attack on all.(Nato, 2022)

NATO enlargement also had significant challenges. Since new members were joining, NATO was required to transform its military organizations and command structures to accommodate a wider, more diverse membership. This found expression in terms like interoperability between different national forces, modernization of both the military and politics, and maintaining the union of the alliance. Furthermore, the expansion of NATO generated suspicion in the alliance regarding the probable cost of expanding membership. It was argued that enlarging NATO would be causing Russia to respond and increase tension, particularly in regions where interests of NATO met those of Russia (Kupchan, 2010).

In recent years, NATO has continued to project its influence beyond Europe, with countries such as Montenegro (2017) and North Macedonia (2020) joining the alliance. All this further strengthens NATO's commitment to its "open-door" policy, whereby membership is open to any European state that meets the criteria of democracy, governance, and military capabilities. However, the issue of NATO enlargement remains a controversial one, particularly in regard to potential membership by Ukraine and Georgia, two countries that have had prolonged conflicts with Russia. Despite NATO having indicated support for their aspirations, the alliance is cautious about full membership of these countries because of the potential further antagonism of Russia and the complexity of the ongoing territorial issues of the region (Lynch, 2016, pp. 432-450)

Overall, NATO's transition from a primarily defensive alliance to a more expansive geopolitical organization that upholds stability, democracy, and security throughout Europe has been greatly aided by its post-Cold War expansion strategies. The expansion project has been crucial in bringing Central and Eastern Europe under the Western security umbrella, despite strong opposition to it, particularly from Russia. NATO's enlargement plans will continue to influence the alliance's interactions with both member and non-member states in the years to come, especially when it comes to geopolitical issues like China's rise and Russia's activities in Ukraine, which will continue to reshape the global security agenda.

4. US and Türkiye's Security Policies and Their Approaches to NATO in the Post-Cold War Era

The security policy of the United States in the post-Cold War era has been focused primarily on "reinforcing global stability under American leadership." While there was speculation about the potential revival of the Monroe Doctrine following the Cold War, the United States has demonstrated its commitment to a policy of global leadership through its interventionist actions. NATO has been at the heart of the advancement of US strategic interests worldwide, with military interventions in Iraq, Somalia, Bosnia, Kosovo, and Afghanistan, often conducted with or through NATO assets and capabilities. In this sense, NATO has remained a key element of US defense and security policy. The initiation of the reinvention of NATO following the Cold War, as well as its activism in peace operations, may be viewed as efforts to sustain US hegemony in global affairs. (National Archieves, 1823)

According to the Baskın Oran, with the disappearance of the Cold War, the United States had to have NATO and the continuation of its activities in order to position itself as the world hegemon. This became feasible primarily due to the proliferation of regional conflicts in Eurasia and, more specifically, the abuse of human rights in the Balkans. These developments enabled NATO to expand its operations beyond Article 5 obligations, facilitating the justification of out-of-area humanitarian intervention. Here, the U.S. laid out a new national defense strategy in August 1991 that addressed a range of non-conventional and abstract security issues. Although the paper had said that the United States, as the sole superpower, would not be the "world's gendermaria" and would act selectively, this policy was altered by the mid-1990s. A more internationally oriented and regionally directed security policy was developing on the premise that regional crises could jeopardize global security at its roots.

Therefore, the United States sought to maintain its strategic interests through close alliances with key allies in key regions of the world (Purtaş,2005,pp.9-14)

With the termination of the Cold War and the removal of the Soviet threat, Türkiye's status as being on the eastern periphery of NATO no longer existed (Smith, 2004). However, the shift in U.S. foreign policy from globalism to regionalism necessitated the establishment of vital alliances in various parts of the world, with an aim towards the defense of American security interests (Jones, 2006). Türkiye, by being on the side of the U.S. during the Gulf Crisis, strengthened its role in the Middle East (Klein, 2007, pp.142-159).

The post-Cold War era witnessed the Middle East, the Caucasus, and Central Asia, as energy-rich regions, emerging as areas of prime concern in Washington's security policy (Peterson, 2009). Türkiye, because of its cultural and historical closeness to the majority Turkic-speaking republics of the region and its ability to provide alternative pipeline routes, became a critical partner in U.S. efforts (Mitchell, 2011). In this regard, Türkiye was considered a frontline ally in the region due to its geographical position and its readiness to collaborate (Taylor & Roberts, 2013).

The September 11 attacks resulted in a drastic overhaul of U.S. security policy. After the attacks, President George W. Bush's speeches ushered in a new security approach, which was later formally stated in the "National Security Strategy of the United States," released on September 17, 2002 (Bush, 2002). This policy, which included the controversial concept of "Preemptive Action," gave preference to NATO enlargement, NATO member states' contribution of military forces to coalition warfare, and the periodic upgrading of military forces to maintain compatibility with emerging technological realities (Williams, 2005).

The new realities resulting from the end of the Cold War not only introduced new foreign policy challenges and opportunities to Türkiye but also resulted in new rising security threats, causing a paradigm shift in its security perceptions. Like all countries, the security and defense policies of Türkiye are guided and driven by the geography in which it is located. Positioned at the crossroads of the Caucasus, Balkans, and Middle East, Türkiye was surrounded by instability after the Cold War. Caucasian ethnic disputes, the continuous military, political, and economic instability of adjacent Middle Eastern countries, ethnic strife and minority issues in the Balkans were all harsh issues to Turkish security (Yılmaz, 2010).

Thus, after the defeat of the Soviet threat, security needs of Türkiye were not lowered but heightened more. In such circumstances, even NATO and America were still in the focal point of Türkiye's security and defense strategy during the post-Cold War era (Öztürk, 2009). In response to happenings such as the exacerbation of separatist issues and the fall of the Soviet Union, Türkiye reshuffled its national security policy in 1992.

In mid-1992, the announcement of the National Security Policy Document marked a significant shift in Türkiye's defense strategy. The defense concept, which had previously been tailored towards Greece and the Russian Federation, was altered to include an assessment of "internal threats" (primarily separatism) for the first time, while the sources of external threats were identified as Syria, Iraq, and Iran (Gürbüz, 2014,pp.78-91). In the updated National Security Policy Document, concluded in February 1997, "reactionary movements" were prioritized as the number one threat, with the source of this threat reiterated as coming from the South.

In this context, Türkiye's NATO membership, which had been the cornerstone of its defense and security policy for half a century, retained its significance. Even as the risks following the Cold War became increasingly diversified and instability persisted, collective defense remained as crucial as ever (Çelik, 2012). Türkiye's defense strategy, shaped by its NATO membership and its air force's strike capacity, continued to focus on deterrence.

During the Gulf Crisis, U.S. and NATO anti-missile batteries were deployed in Türkiye's southeast in response to potential Iraqi missile threats. Similarly, in late 1998 and early 1999, when Saddam Hussein threatened to attack Türkiye if American and British aircraft continued to use the Incirlik Air Base, these batteries were temporarily redeployed. In a context where there was no threat from the Eastern Bloc, NATO considered Türkiye as a state that could act as a buffer against the instability spreading from the Maghreb to the Gulf. NATO's then Secretary General, Manfred Wörner, emphasized that Türkiye, directly exposed to risks such as migration, radicalism, terrorism, and instability, had the potential to play a key role in combating these threats (Şahin, 2013, pp.123-137). The multifaceted security risks transformed Türkiye from a wing state during the Cold War into a frontline state in the new era. Consequently, Türkiye's expectations from NATO and the U.S. grew significantly.

5. The Role of the US and Türkiye in NATO's Enlargement Process

Following the Cold War, the consolidation of new democracies in Central and Eastern Europe in the Atlantic community was the central foreign policy objective of the United States. The content of this policy was to provide peace and stability on the continent of Europe by facilitating the integration of these nations. NATO's revitalization was viewed as a critical instrument for securing American leadership in the region.

In 1994, the United States initiated the Partnership for Peace (PfP) program, which paved the way for NATO enlargement. During the 1997 Madrid Summit, NATO issued invitations to Hungary, Poland, and the Czech Republic to join the alliance, a significant achievement in the post-Cold War security order (NATO, 1999). Türkiye, a NATO member since 1952, played a crucial role in this endeavor. (Ataöv,2006,pp.194-196) Apart from the United States, Türkiye also encouraged the integration of these countries into the alliance and emphasized the importance of a united European security structure.

Turkish efforts played a crucial role in the success of the pfp program. Since 1995, Türkiye has taken an active role in the discussions regarding the enlargement of NATO, providing constructive criticism and recommendations. Its activities emphasized that Türkiye was dedicated to a wider security concept, which went beyond its defense orientations to include political and economic aspects.

In the subsequent years, Türkiye continued to be supportive of NATO enlargement and transformation. The inclusion of countries such as Albania, Romania, and Bulgaria further enhanced the influence and extent of the alliance. Türkiye's support for these enlargements was based on the perception that expansion of NATO would enhance the alliance's effectiveness and contribute to regional stability without diluting its inherent defensive purpose.

The 2020s saw a historic step in NATO expansion when Finland and Sweden joined. In response to the Russian aggression on Ukraine, both countries joined the ranks of the North Atlantic bloc, a historic shift in their security policy. Türkiye was at first wary, with Türkiye

protesting the two countries' leniency towards groups regarded as terror groups by Ankara. But through diplomacy, this was resolved, and Türkiye later withdrew its protests (BBC News, 2022).

Türkiye's acceptance of membership of Finland and Sweden in NATO was conditional in nature, i.e., as a pledge towards counterterrorism collaboration and overhauling their jurisprudence. As a payback, Türkiye received defense acquisition arrangements and agreement on its accession application to the European Union. This incident denotes Türkiye's pragmatist response towards NATO's enlargement, skilfully balancing country interests vis-à-vis alliance requirements.

Overall, Türkiye's role in NATO's expansion has been characterized by proactive involvement, visionary thinking, and commitment to regional and international stability. During the 1990s and the 2020s, Türkiye has remained a strong advocate for NATO's expansion, making sure that the alliance adapts to the new security environment while maintaining its fundamental principles.

6. The Impact of NATO's Transformation on US-Türkiye Military Relations

The transformation of NATO since the end of the Cold War has had transformative implications for the United States-Türkiye bilateral military relationship. As the NATO alliance transformed from a strictly defensive organization dedicated to containing Soviet expansion to a broader security community addressing global challenges terrorism, cyber warfare, and regional instability Türkiye was reacting to a changing strategic context. This transformation has strengthened the cooperation while creating new tensions in the US–Türkiye military relationship founded on varying perceptions of threats and overlapping but not necessarily identical regional interests (Larrabee, 2008,pp.8-10).

In the 1990s, Türkiye embraced NATO's evolving role and supported its enlargement and partnerships, such as the Partnership for Peace (PfP) program. As a key proponent of NATO's outreach to former Soviet and Warsaw Pact countries, Türkiye was closely attuned to U.S. strategic goals. It hosted NATO-led operations and took part in peacekeeping missions in the Balkans, i.e., in Bosnia-Herzegovina and Kosovo, depicting operational integration within U.S. forces under NATO command (Ülgen, 2010). Türkiye's advocacy for an even geographical expansion, including countries like Romania, Bulgaria, and Albania, reflected its concern to make sure that NATO's expansion would serve to enhance the alliance's strategic depth in regions adjacent to its borders (Cornell & Karaveli, 2011).

Apart from that, Türkiye also led the way in the institutional development of NATO's post-Cold War framework. The establishment of the Partnership for Peace Training Center in Ankara in 1998 and its leadership of various NATO Contact Point Embassies, particularly in Central Asia and the Caucasus, solidified its status as a "security provider" rather than a mere taker (Gürzel, 2019). These developmentsserved to enhance Türkiye's military cooperation with the United States, particularly in the areas of training, logistics, and intelligence sharing.

While, however, the strategic redirection of NATO in the 2000s, particularly after September 11, created further reasons for tension between the United States and Türkiye, the two countries were solidly dedicated NATO allies. Rival perceptions of threat started increasingly to strain their military alignment. For instance, the utilization by the U.S. of

Kurdish militias such as the YPG in Syria to combat ISIS has been a contentious issue from the center, as Türkiye views these forces as being connected to the PKK, which is a terrorist organization in its view (Stein, 2017, pp.2-7). This discrepancy has stretched the limits of alliance cohesion and rendered it challenging for bilateral defense to cooperate, particularly in common NATO operations.

These tensions have manifested themselves within recent years in the decision-making procedures of NATO. Türkiye's early resistance to Finland and Sweden's entry into NATO in 2022 demonstrates Ankara's growing tendency to utilize its role in the alliance to negotiate concessions on matters it considers critical to its national security. Türkiye raised grievances regarding the perceived softness of the Nordic countries toward Kurdish formations and imposed weapons restrictions. The final outcome, that of trilateral memoranda and counter-terrorism cooperation assurances, attested to Türkiye's deft use of the NATO mechanisms so as to reconcile the expansion of the alliance with its domestic agenda (Güler, 2023)

Despite such discrepancies, Türkiye continues to be a principal military provider for NATO operations. It controls strategic bases like Incirlik Air Base, which is a critical hub for both American and NATO air operations in the region. Also, it helps NATO's missile defense system and hosts components of NATO's Airborne Early Warning and Control (AWACS) systems. Further, its significant troop contributions to the NATO Response Force (NRF) and to Black Sea and Eastern Mediterranean security initiatives reaffirm its long-term value to the alliance (NATO, 2023).

The durability of US–Türkiye defense relations in NATO will likely rest on the ability of both sides to reconcile alliance obligations with national interests. Türkiye's increasing quest for strategic autonomy illustrated by its defense acquisitions from non-NATO actors, such as the S-400 missile defense system from Russia has been a source of anxiety in Washington about interoperability and cohesion in the alliance (Kardaş, 2020). But these developments also show that Türkiye wishes to balance its role as an autonomous actor in NATO.

Overall, the development of NATO has deepened and made more complex the U.S.-Türkiye military alliance. As shared security interests and institutional mechanisms continue to keep the two allies together, shifting regional dynamics and divergent perceptions of threats have introduced new complexities. Türkiye remains a key player in NATO's new strategic environment, and its future with the United States will depend on how both navigate cooperation and confrontation in the alliance context.

7. Case Study: The F-35 Program and the S-400 Crisis in the Context of Nato Cohesion

The controversy surrounding Türkiye's acquisition of the Russian-made S-400 air defense system and its subsequent suspension from the U.S.-led F-35 Joint Strike Fighter Program is one of the most serious tests to NATO cohesion in recent decades. The episode embodies the intrinsic tension between alliance solidarity and national sovereignty, and the challenge of reconciling competing strategic agendas within a multilateral defense alliance.

In 2017, Türkiye signed a deal with Russia to purchase the S-400 Triumf missile defense system amid delays and restrictions in purchasing comparable Western systems, specifically the U.S. Patriot batteries (Saygın, 2020). The S-400 purchase was, for Türkiye, a

step in strategic autonomy—a attempt to diversify its defense partners and reduce its dependency on Western suppliers. Yet the move was promptly rejected by NATO allies, the United States in particular, on the basis that including a Russian-built system in the alliance's defense infrastructure would compromise interoperability and possibly open sensitive F-35 technology to Russian spying (Stein, 2019,pp. 2-6).

The United States retaliated by expelling Türkiye from the F-35 program in 2019, halting delivery of the jets and excluding Turkish participation in the collaborative manufacturing process. Not only did this ruling affect Türkiye's airpower modernization strategy, but it also had broader consequences for alliance unity. The F-35 program had come to represent NATO defense integration, and the exclusion of Türkiye raised questions about the alliance's ability to balance national procurement choices with collective defense imperatives (Kardaş, 2021). The incident highlighted the tension between NATO's emphasis on interoperability and member nations' sovereign right to make independent defense decisions.

Türkiye, for its part, deplored the exclusion as political and asserted that the decision had overlooked its rightful security needs, particularly the absence of alternative systems offered under satisfactory conditions. The dispute strained U.S.–Türkiye defense relations and complicated defense cooperation across other NATO platforms. Also, Türkiye's hold on the S-400 system has become a source of long-term tension, as the U.S. sanctioned it under the Countering America's Adversaries Through Sanctions Act (CAATSA) in 2020 a rare instance of punitive action among NATO allies (Erşen, 2021, pp. 39–52)

The S-400 crisis is an expression of a broader shift in NATO dynamics, where internal tensions are no longer restricted to political divergences but increasingly extend to major defense procurement matters. While as an organization, NATO has attempted to remain neutral, the lack of a shared stance on the issue demonstrates the alliance's limited success in enforcing cohesion within procurement decisions. The episode is a warning tale of how bilateral squabbles, if left unchecked, can erode trust and interoperability within the broader NATO framework.

In short, the F-35 and S-400 drama is more than a bilateral dispute; it is a demonstration of the alliance's struggle to reconcile collective defense requirements with member states' strategic autonomy. Overcoming such crises hinges not only on technical solutions but also on political dialogue based on mutual respect and shared vision for alliance values.

Conclusions

In the aftermath of the Cold War, the strategic shift by NATO to counter new worldwide threats fundamentally reshaped the form and purpose of the alliance. From collective defense against one common enemy to dealing with a diverse range of security challenges, from terrorism and cyber attacks to regional instabilities, there had to be radical change. This change impacted not only NATO's operational strategy but also its enlargement policies, as the alliance sought to extend stability across Europe and beyond. These events opened the door to new dynamics in the bilateral military relations between Türkiye and the United States, as both countries redefined their security priorities within the alliance framework.

Throughout the post-Cold War period, the United States and Türkiye shared convergence and divergence in their reactions to NATO's evolving mission and enlargement policies. Both nations preferred the idea of a more vigorous and enlarged NATO, but they were at variance regarding the tempo and nature of enlargement and involvement in out-of-area operations. The intricate dynamics of national security interests, regional interests, and alliance obligations became more pronounced, especially as Türkiye adopted a more independent foreign policy stance. This divergence came to the forefront during such controversies as the F-35 program and the S-400 missile defense acquisition, which underscored the difficulties in sustaining alliance solidarity in the face of changing geopolitical realities.

Ultimately, NATO's reformation has imposed profound and frequently contentious implications on US-Türkiye defense relations. Despite each country being committed to the alliance's foundational principles, there have been flashes of tension that have uncovered tensions regarding sovereignty, strategic independence, and faith. The F-35 and S-400 crisis case study is an excellent example of how differing views of threats and defense visions can strain even traditional alliances. In the future, having a good dialogue and reinforcing mutual understanding within NATO will be essential to ensuring the strategic alliance between the United States and Türkiye in an ever more multipolar and uncertain World.

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EVALUATING THE IMPACTS OF SCIENTOMETRIC INDICATORS: A GENERAL APPROACH TO AZERBAIJAN UNIVERSITIES

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Abstract: *In recent decades, scientometric indicators have become essential tools for assessing research productivity and impact in academic institutions worldwide. This paper examines the impact of these indicators on Azerbaijani universities, providing a comprehensive and contextual evaluation of their current status and implications. The main objective of the study is to analyze the relationship between scientometric indicators and the performance of higher education institutions in Azerbaijan. The research employs a bibliometric analysis using data from international databases such as Scopus and SciVal, focusing on key metrics including publication count, citation count, h-index, Field-Weighted Citation Impact (FWCI), and collaboration patterns. The results show that Azerbaijani universities have significantly increased their scientific output, with a notable 27% surge in publications in 2024 alone. While the overall FWCI (1.34) indicates above-average citation performance globally, challenges persist, including limited academic-industry collaboration and an overemphasis on quantitative indicators at the expense of qualitative assessments. The study highlights the need for national guidelines on responsible metric use and recommends capacity-building initiatives, interdisciplinary collaboration, and diversified evaluation frameworks to enhance research quality and integrity. These findings are valuable for policymakers, university administrators, and researchers seeking to align Azerbaijan's research ecosystem with international standards while addressing local needs and priorities.*

Keywords: *Scientometric evaluation, Azerbaijani higher education, research impact, academic collaboration, citation analysis*

1.INTRODUCTION

In contemporary times, the monitoring and analysis of scientific indicators have become a significant methodological approach, maintaining its relevance in contemporary academic and policy discourse. Specifically, the evaluation of scientific performance across countries and the provision of statistical accountability have emerged as critical issues. Ensuring such accountability enables the establishment of strategic target plans, facilitates tracking the pace of development, and provides a foundation for building an effective model for organizing and managing new scientific activities, based on the results derived from these indicators.

The positive evolution of scientific indicators clearly reflects the influence of science on the social and moral development of society. Over the past decade, scientometrics, the field focused on the calculation of scientific indicators, has increasingly relied on precise mathematical computations, statistical analyses, and indexing systems. The key evaluation

parameters commonly employed include the Number of Publications, Number of Citations, Citations per Publication (C/P), Field-Weighted Citation Impact (FWCI), Collaborations, Top 10% Citation Percentile, Top 10% Journal Percentile, Source Normalized Impact per Paper (SNIP), Journal Rank, SDG's among others. In its essence, scientometrics is a field that examines the evolution and current state of science, encompassing the structure and dynamics of scientific activity, the flow and mass of scientific information, through various mathematical-statistical analyses and both quantitative and qualitative indicators.

Furthermore, it is important to highlight that, The United Nations Sustainable Development Goals (SDGs) serve as a global roadmap to address critical challenges and build a more equitable and sustainable future (United Nations, 2015). Universities play a multifaceted role in advancing these goals and are key actors in promoting social change.

Firstly, through education and awareness, universities equip students with the principles of sustainable development, preparing them to become responsible global citizens (Leal Filho et al., 2018, pp. 112–129). Additionally, academic institutions conduct research addressing major SDG targets such as climate change, poverty reduction, renewable energy, public health, and gender equality, providing innovative solutions to global challenges (Sachs et al., 2022, pp. 805–814). Universities also collaborate with local and international partners to implement SDG-related projects and social initiatives, contributing to inclusive and sustainable community development (Findler et al., 2019, pp. 59-73). Finally, by adopting sustainable practices within institutional governance and operations—such as energy efficiency, waste reduction, and promoting diversity and equity—universities work towards creating sustainable campuses (Lozano et al., 2015, pp. 10–19).

This context highlights the importance of SDGs in universities' research and strategic development and provides a foundation for exploring their role within the academic environment in Azerbaijan.

Generally, scientometric indicators have become indispensable tools in evaluating research productivity and impact across academic institutions worldwide. In Azerbaijan, where higher education institutions are increasingly integrated into global academic networks, understanding the implications of these indicators is essential for policy development, institutional strategy, and performance assessment.

*Research Gap:*While scientometric indicators have been widely adopted globally, there is a lack of systematic research assessing their application, interpretation, and strategic use in Azerbaijani universities. In particular, there is a need to explore how local academic institutions utilize these indicators for policy development, strategic planning, and quality assessment.

Objective: This article aims to provide a comprehensive and contextual evaluation of the impact of scientometric indicators on Azerbaijani universities, addressing both quantitative and qualitative dimensions.

Research Question: How do Azerbaijani universities currently apply scientometric indicators, and what are the implications and limitations of these indicators in shaping institutional strategy, performance assessment, and sustainable development?

Drawing from international literature and local data sources, this article analyzes the current scientometric performance of key institutions, evaluates the potential and limitations of commonly used indicators, and proposes a general evaluative approach tailored to Azerbaijan's

academic context. Finally, the study presents recommendations for policy improvements and strategic planning to guide future developments.

Additionally, scientometric indicators play a pivotal role in assessing the performance of academic institutions, researchers, and publications (Bornmann & Marx, 2014, pp. 1228–1232). Metrics such as citation counts, h-index, Field-Weighted Citation Impact (FWCI), and journal impact factors now inform decisions regarding funding, promotion, and institutional rankings. In Azerbaijan, the emphasis on scientific output has intensified in response to national development goals and participation in global education frameworks (UNESCO, 2021). However, the integration and interpretation of scientometric indicators within local academic policy remains an underdeveloped area.

2.METHODS

2.1. Overview of Scientometric Indicators

Scientometric indicators serve to quantify the output, impact, and visibility of scholarly research. These metrics provide valuable insights into research productivity and influence, and commonly include:

- ✓ *Publication count:* This metric measures the productivity of research output.
- ✓ *Citation count:* Reflects the influence and impact of publications within the academic community.
- ✓ *h-index:* A metric that combines both research productivity and citation impact, as introduced by Hirsch (Hirsch, 2005. pp. 16569–16572).
- ✓ *Field-Weighted Citation Impact (FWCI):* This indicator compares the actual citations received by a publication to the expected citations within the same field.
- ✓ *Source Normalized Impact per Paper (SNIP) & SCImago Journal Rank (SJR):* These metrics normalize journal impact based on the subject field and citation behavior.
- ✓ *The United Nations Sustainable Development Goals (SDGs):* assess the impact of scientific activity on society's sustainable development and to strengthen the role of science in building a more sustainable and equitable future.

Globally, such indicators are widely employed by organizations such as QS, Times Higher Education (THE), and Scimago to rank universities and influence public perceptions of academic institutions. However, the application of these metrics without a proper contextual understanding can result in unintended strategic behaviors. For example, excessive focus on publication quantity, publishing in predatory journals, or misinterpreting indicators of quality can undermine the integrity of academic work (Moher, Naudet, Cristea et al., 2018).

2.2. Data Sources and Sample

This study focuses on universities in Azerbaijan that are included in global databases such as Scopus and Web of Science. Data were collected on key scientometric indicators (publication count, citation count, h-index, FWCI, SNIP, SJR, SDG) for the period [2019–2025]. The sample includes the top 4 universities with the highest research output based on available data.

2.3. Data Collection Procedure

Data on scientometric indicators were extracted from Scopus and Web of Science databases using institutional affiliations. Data cleaning procedures included checking for duplicate records, verifying author affiliations, and standardizing institutional names to ensure consistency.

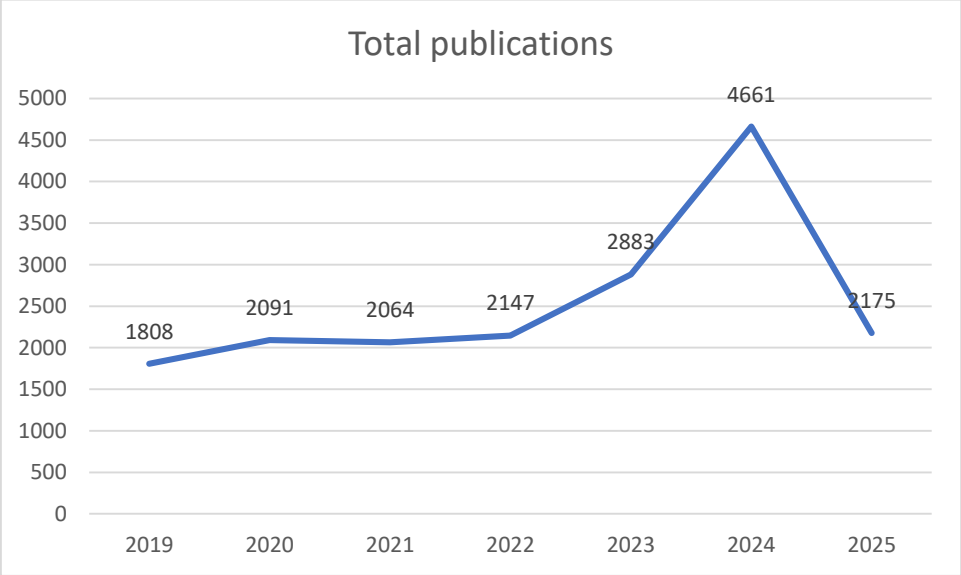
2.4. Analytical Approach

Descriptive statistics were used to summarize the main scientometric indicators for each university. Comparative analyses were performed to assess differences in research output and impact among institutions. Additionally, potential limitations of these indicators in the Azerbaijani context were identified through qualitative analysis of institutional research policies and national higher education strategies.

RESULTS

According to SciVal, an analytical database based on Scopus, Azerbaijan produced 17,445 scientific publications over the past seven years, with 27% of these published in 2024 alone, indicating a recent surge in research output (Figure 1).

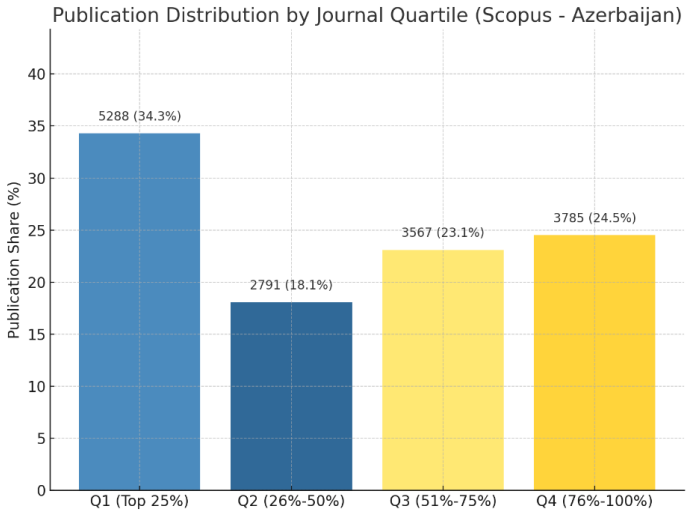
Figure 1. *Total scientific publications*



Source: Prepared by the author

Over the past seven years, scientific publications affiliated with institutions in Azerbaijan and indexed in the Scopus database have accumulated a total of 157,278 citations. The average Field-Weighted Citation Impact (FWCI) for these publications stands at 1.34, indicating that Azerbaijani research outputs perform above the global average in terms of citation impact. Furthermore, 1,929 publications (approximately 11.2%) are among the most highly cited research outputs globally, while 2,852 publications (18.5%) appear in the top 10% of journals ranked by CiteScore metrics. These figures demonstrate both the growing global visibility of Azerbaijani research and the increasing quality of its scholarly output (Figure 2).

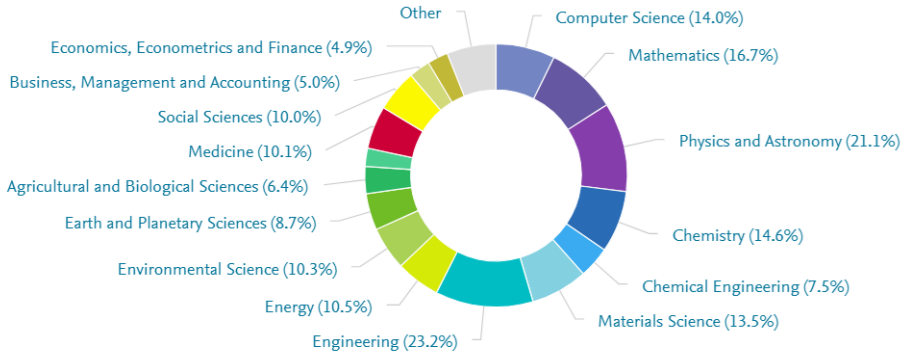
Figure 2. *Journal Quartile*



Source: Prepared by the author

The scientific journals in which Azerbaijani researchers have most frequently published include Azerbaijan Medical Journal, Lecture Notes in Networks and Systems, Azerbaijan Chemical Journal, and SOCAR Proceedings, among others.

Figure 3. *Subject Areas*



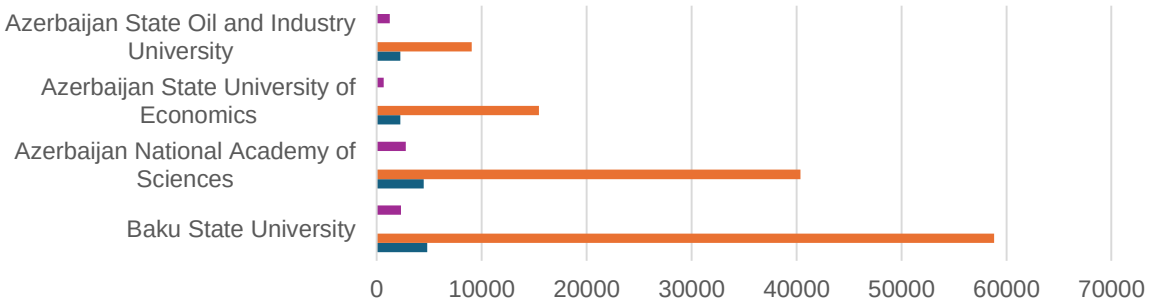
Source: SCIVal database

As illustrated in the figure, most scientific publications authored by Azerbaijani researchers are concentrated in the fields of Engineering, Physics and Astronomy, Mathematics, Chemistry, and Computer Science (Figure 3).

Azerbaijan has made strides in modernizing its higher education system, especially in scientific research. Universities such as Baku State University, Azerbaijan State Economic University (UNEC), and Khazar University are increasingly visible in international databases like Scopus and Web of Science (Elsevier, 2022).

Currently, thirty research and higher education institutions in Azerbaijan have institutional profiles in the Scopus database. Over the past seven years, the Azerbaijan National Academy of Sciences ranks first in terms of the number of authors, Baku State University leads in the number of scientific publications and citations, Azerbaijan State University of Economics is first according to the Field-Weighted Citation Impact (FWCI), and Khazar University ranks highest in the citations per publication indicator (Figure 4).

Figure 4. *Trends in the metric indicators of Azerbaijan's leading research and higher education institutions*



	Baku State University	Azerbaijan National Academy of Sciences	Azerbaijan State University of Economics	Azerbaijan State Oil and Industry University
Authors	2319	2760	673	1229
FWCI	1.18	0.85	2.09	1
Citations per publications	12.2	9	6.8	4
Citations	58837	40360	15441	9055
Scholarly output	4813	4466	2263	2251

Source: Prepared by the author

In recent years, there has been a noticeable rise in Azerbaijan's scientometric indicators. One of the main contributing factors is the financial support of the Ministry of Finance of the Republic of Azerbaijan and the organizational support of the Ministry of Science and Education of Azerbaijan, which have enabled country-wide subscriptions to leading global scientometric databases and the regular monitoring of these results.

Universities are not only centers of teaching and research but also key actors in driving progress toward the SDGs by fostering knowledge, innovation, and social responsibility. Azerbaijani universities contribute to Sustainable Development Goals (SDGs) through scholarly output, with Good Health and Well-being (SDG 3) showing the highest number of publications and citations over the past seven years (Table 1)

Table 1. *Azerbaijan's SDG indicators*

SDG	Scholarly Output	Field-Weighted Citation Impact	Citation Count
SDG 1: No Poverty (2025)	128	2.73	1,514
SDG 2: Zero Hunger (2025)	306	4.06	2,915
SDG 3: Good Health and Well-being (2025)	1,229	3.91	57,289
SDG 4: Quality Education (2025)	211	2.41	7,948
SDG 5: Gender Equality (2025)	58	1.86	1,226
SDG 6: Clean Water and Sanitation (2025)	245	3.22	1,629
SDG 7: Affordable and Clean Energy (2025)	1,195	2.22	10,069
SDG 8: Decent Work and Economic Growth (2025)	1,098	2.26	7,859
SDG 9: Industry, Innovation and Infrastructure (2025)	885	1.81	4,592
SDG 10: Reduced Inequality (2025)	294	1.88	3,318

SDG	Scholarly Output	Field-Weighted Citation Impact	Citation Count
SDG 11: Sustainable Cities and Communities (2025)	340	1.06	1,399
SDG 12: Responsible Consumption and Production (2025)	503	2.14	9,664
SDG 13: Climate Action (2025)	719	2.59	9,646
SDG 14: Life Below Water (2025)	163	0.68	599
SDG 15: Life on Land (2025)	202	1.45	1,267
SDG 16: Peace, Justice and Strong Institutions (2025)	182	1.87	1,063
Total	4,734	2.27	77,876

Source: Prepared by the author

Collaboration in scientific research is a key indicator of academic integration and influence. According to the Scopus database, a significant portion of Azerbaijan's scientific output over the last seven years demonstrates active international collaboration. Approximately 53% of the publications involve co-authorship with researchers from other countries, reflecting an increasing trend toward global academic engagement. The most frequent collaborating countries include Turkey, Russia, the United States, the United Kingdom, and Germany. These partnerships have notably contributed to the visibility and citation impact of Azerbaijani research, as evidenced by a higher Field-Weighted Citation Impact (FWCI) of 1.34, which exceeds the global average. The emphasis on collaborative projects, particularly with institutions ranked in the top quartiles (Q1 and Q2), indicates a strategic shift toward improving research quality and global academic standing.

An analysis of collaboration patterns in Azerbaijani scientific publications indexed in Scopus over the last seven years reveals that only 16.7% of publications involved national collaboration (between institutions within Azerbaijan), while 12.7% were limited to intra-institutional collaboration (authors from the same institution). Notably, 17.5% of the publications were single-authored, indicating no form of collaboration. These figures suggest that while international collaboration remains the dominant mode of scientific production, internal cooperation within the country and between domestic institutions is relatively limited and may require targeted policy intervention to strengthen national research networks.

Despite increasing efforts to internationalize scientific activity, the integration of academic research with industry remains minimal in Azerbaijan. According to data retrieved from the Scopus analytical tool SciVal, only 3.2% of scientific publications from Azerbaijani institutions over the last seven years involved academic-corporate collaboration, while a dominant 96.8% of the output was produced without any industrial or corporate partnership. This data highlights a significant gap between academia and industry, suggesting the need for policies and incentives aimed at fostering stronger university-industry linkages. Academic-corporate collaborations are essential for the practical application of research outcomes, innovation, and commercialization. The underrepresentation of such partnerships may limit the country’s capacity to convert research into tangible socio-economic benefits.

DISCUSSIONS/CONCLUSIONS

This study highlights a significant research gap: While scientometric indicators have been widely adopted globally, there is a lack of systematic research assessing their application, interpretation, and strategic use in Azerbaijani universities. In particular, there is a need to explore how local academic institutions utilize these indicators for policy development, strategic planning, and quality assessment (Hicks et al., 2015, pp.429-431; San Francisco Declaration on Research Assessment [DORA], 2013).

The analysis revealed that Azerbaijani universities have increasingly integrated into international scientometric databases, demonstrating notable achievements in scholarly output and citation impact. However, these gains have often been accompanied by challenges stemming from an overemphasis on quantitative metrics (Moed, 2005, pp.247-257; Abramo, D'Angelo, & Di Costa, 2019, pp. 920-936). As the objective of this article states—to provide a comprehensive and contextual evaluation of the impact of scientometric indicators on Azerbaijani universities, addressing both quantitative and qualitative dimensions—it becomes evident that current practices require a more balanced approach (Hicks, 2012, 251-264; Moed et al., 2019, pp. 837-862).

In addressing the research question—How do Azerbaijani universities currently apply scientometric indicators, and what are the implications and limitations of these indicators in shaping institutional strategy, performance assessment, and sustainable development?—the findings suggest that while Azerbaijani institutions use scientometric indicators for visibility and performance benchmarking, several limitations persist:

Limited academic-industry collaboration: Only 3.2% of scientific publications involve corporate partnerships, hindering the translation of research into practical applications.

Uneven international research partnerships: Despite a strong presence in global collaborations (53%), domestic collaboration remains low (16.7% national, 12.7% intra-institutional), which can fragment the national research landscape.

Overreliance on metric-driven publishing: A tendency to prioritize quantity over quality has led to academic inbreeding and potentially superficial publication strategies (Hicks, 2012, pp.251-265; Abramo et al., 2019, 920-936).

Low patent performance and minimal engagement with alternative impact frameworks (e.g., Altmetrics), highlighting a disconnect between institutional performance evaluation and broader societal and policy relevance (Sugimoto, Work, Larivière, & Haustein, 2017, pp. 2037-2062; Larivière, Sugimoto, & Tsou, 2015, pp. 1420-1435.).

To bridge these gaps and align with best practices, several strategic recommendations are proposed:

Formulate National Scientometric Guidelines: Azerbaijani universities need comprehensive guidelines for the responsible use of research metrics, drawing from frameworks like the San Francisco Declaration on Research Assessment (DORA) and the Leiden Manifesto. These guidelines should emphasize multidimensional research quality rather than narrow quantitative targets (Hicks et al., 2015, pp.429-431; San Francisco Declaration on Research Assessment [DORA], 2013)..

Strengthen Research Training and Capacity Building: Systematic investments in researcher development—including training in publication ethics, journal selection strategies,

and impact measurement—are essential to align with global standards and foster integrity (Moed, 2005, pp.247-257).

Foster Interdisciplinary and Collaborative Research: Incentivizing interdisciplinary and international collaborations, especially with high-impact institutions, can enhance innovation and global competitiveness. This approach aligns with SDG targets and broadens the societal impact of research (OECD, 2021).

Diversify Evaluation Metrics: Adopting a balanced evaluation framework that incorporates both quantitative and qualitative indicators—such as peer recognition, policy relevance, and societal impact—can shift the focus from metric-driven publishing to meaningful scientific contributions (Hicks, 2012, 251-264; Moed et al., 2019, pp. 837-862).

Overall, scientometric indicators can serve as powerful tools in advancing academic excellence in Azerbaijan. However, they should be applied thoughtfully and contextually to ensure that the academic system contributes not only to global competitiveness but also to local development and societal well-being. Establishing a transparent, nuanced, and nationally relevant approach to scientometric evaluation is essential for shaping institutional strategies, guiding performance assessments, and fostering sustainable research ecosystems.

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HOW CHILDHOOD LANGUAGE LEARNING SHAPES FUTURE LEADERS IN A GLOBALIZED WORLD

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Abstract: *This article studies the impact of language learning in childhood on the development of leadership traits in the future. The research, explored the correlation between multilingualism and leadership characteristics and was conducted with 62 children aged 5 to 11. This investigation followed two-year period of mixed-methods design aimed at effectively implementing the study. The study used SSIS, SDQ, narrative transcripts, visual information, and behavioural coding tools to analyse how early exposure to multiple languages affects leadership development. Empirical evidence demonstrates that children raised in multilingual settings show cognitive flexibility, compassion, and interpersonal competence, all of which are critical attributes for effective leadership. The findings point to the significance of educational methodologies and the advancement of the leadership of forthcoming generations within a globalized educational and professional context.*

Keywords*: Developing leadership, Multilingualism, Cognitive Developing, Language learning in early age, Communication skills*

1. INTRODUCTION

With an increasing degree of globalization, cultural competency and multilingualism have become critical components of effective management and leadership (King, 2018). An important subject for research is the impact of multilingualism on the development of managerial competencies. Research indicates early language instruction correlates with favourable social, professional, and cognitive outcomes (Roulstone et al., 2011). Previous research investigated language acquisition's academic, personal, and comprehensive cognitive benefits (Yüksel et al., 2021). These studies demonstrate that multilingualism augments student performance and cognitive capabilities while enhancing memory and problem-solving skills. Hailey and Fazio-Brunson (2020) illustrate development of leadership qualities, improvement in empathy, self-confidence, and social skills in early infancy, as well as children's adaptation to social interactions and in-group leadership roles. By gathering data via structured classroom observations that concentrate on verbal and social behaviours pertinent to leadership, this study presents observational data indicating initial manifestations of transformational leadership, such as children's behaviour throughout challenging circumstances. The current paper is crucial for comprehending the possible impacts of multilingual education on leadership development for multiple reasons. First, research indicates that early language acquisition enhances linguistic abilities and children's social, emotional, and leadership development (Isler et al., 2017). While prior studies have explored the correlation between multilingual proficiency and leadership characteristics, further empirical study is essential to gain more insights into this relationship and its practical implications (Gardner, 2006).

In addition, numerous studies have demonstrated advantageous effects of multilingualism on successful communication and cultural adaptation, particularly with an emphasis on cognitive flexibility, empathy development, social interaction, group management, and problem-solving skills (Edwards, 2012; Thomas & Inkson, 2017). Thomas and Inkson (2017) observed that multilingual individuals exhibit high cultural empathy and adaptability in global contexts. However, interpersonal and cultural dimensions are the primary focus of the cited studies. In international settings, Edwards (2012) investigates the role of multilingualism in the development of cultural intelligence. Thomas and Inkson (2017) focus on the development of intercultural understanding that multilingualism can provide. However, they do not consider the impact of these abilities on core leadership functions, including strategic planning and decision-making. At the same time, a paucity of research focuses on competencies such as strategic analysis, team coordination, and decision-making, which are essential components of leadership characteristics. As a result, more research is needed over the years to determine the impact of language acquisition on leadership development. In summary, further research is required to assess the influence of language acquisition on leadership development, as the attributes of multilingualism are crucial for understanding the emergence of future world leaders and need greater scholarly focus.

This research examines the benefits of multilingual managers and the influence of linguistic abilities on the evolution of future managerial capabilities. This study has both theoretical significance and practical importance. The language acquisition is intrinsically linked to and flourishes within social interaction (Vygotsky, 1978). Moreover, children raised in a multilingual environment from an early age—characterized by consistent exposure to and use of two or more languages at home or in educational contexts—exhibit enhanced perspectives, problem-solving abilities, and collaboration capabilities (UNESCO, 2011). Furthermore, Gardner's theory of multiple the intelligences posits that language skills are intrinsically connected to verbal-linguistic and social intelligence, hence facilitating the enhancement of leadership competencies in youngsters. Children with robust verbal-linguistic and interpersonal abilities frequently facilitate peer discussions and exhibit elevated levels of empathy, aligning with Gardner's hypothesis of leadership intelligence. These two forms of intelligence can be employed in social contexts to enhance managerial skills and further cultivate the capacity to motivate others. Consequently, the multilingual individuals possess elevated cultural intelligence (CQ). Early social interactions significantly influence the development of successful leadership abilities across various cultures (Ang & Van Dyne, 2008). These folks can readily adjust their communication approaches, comprehend diverse ideas, and develop inclusivity.

Initially, this article assesses the cognitive and social consequences of multilingual exposure, evaluates its influence on leadership capabilities, and provides the recommendations based on the accumulating evidence, which can benefit educational institutions, leadership training academies, development initiatives, and various other organisations. Methodologically, language proficiency assessments are integrated with the behavioural coding of students' leadership characteristics in interactive, play-oriented learning environments, which is the unique aspect of this research. This study integrates these two research domains in an age-appropriate and practical manner. This paper presents a novel

contribution to the subject by integrating cognitive-linguistic development with early leadership development in genuine, child-centered situations, an approach seldom examined in the current literature. This dual approach effectively addresses a significant gap in existing skills research, which often systematically analyses language development and leadership. Moreover, it is possible to formulate an alternative perspective on the importance of multilingual contexts in fostering children's leadership development. Moreover, the study is enhanced by using child-centered data acquired over two years. This method deepens our understanding of early developmental trajectories and provides practical insights for educators and policymakers aiming to foster leadership potential through early language acquisition. This investigation examines multilingual children's cognitive-linguistic skills and early leadership abilities in real-time, play-based group activities.

It also illustrates how young pupils employ language for communication, initiative, problem-solving, and leadership. This multimodal approach enables educators to foster the development of leadership skills and the acquisition of language skills in child-centered, authentic environments. Language skills were previously distinguished from interpersonal abilities using techniques. Adaptability, determination, curiosity, empathy, initiative, social and cultural awareness, and multilingual communication abilities are essential for young learners. This research emphasises the significance of leadership skills in the development of young learners. Personal characteristics determine the capacity of responsible citizens and competent professionals to engage, adapt, and resolve issues. This research integrates educational leadership and psycholinguistics to offer educators a practical and replicable framework for the development of leadership skills and language competency. The initiative aims to ascertain the long-term impact of early exposure to foreign languages on leadership skills and multicultural competency. The report assesses the current body of evidence regarding the determinants of language development and suggests three potential solutions. The methodologies will be scrutinized in greater detail. This is followed by the presentation of the conclusions and findings. The paper will conclude with research recommendations and constraints. Such foundations have a significant impact on the development of future-ready, globally competent individuals.

1.1 Literature Review and Hypotheses Formulation

Socio-economic factors significantly impact children's access to educational resources, which in turn impacts language development (Hartas, 2011). According to research conducted by the OECD, students from upper-income families are more likely to benefit from enriched language environments, which include access to books, digital tools, private tutoring, and parental support. These resources facilitate cognitive development and linguistic proficiency. (OECD, 2011). In contrast, children from low-income households may encounter obstacles in their exposure to these environments, potentially impeding their language acquisition (OECD, 2018). This study intends to better understand the intersection of economic factors with multilingual development and the emergence of leadership-correlated skills in early childhood by incorporating participants from various socio-economic backgrounds. The financial literacy and behavioural patterns of adults, particularly parents and carers, influence the capacity of children to confront financial obstacles, make informed decisions, and cultivate leadership-oriented self-management skills in the future. This results in children being unable to sustain

themselves financially (Refregieri & Manolescu, 2022). Financial self-sufficiency is significantly lower among students from low-income households (Scott, 2024). According to this evidence, hypothesis 1 is formulated as follows: Students from low-income families are less likely to develop strong leadership skills than their peers from well-off families, as evidenced by their lower likelihood of scoring higher on my scale.

Along with socioeconomic position, Hart and Risley (1995) found that parents' educational backgrounds greatly affect children's language development. Parents with higher education involve their children in more linguistic activities. They can foster young children's reading and language skills. According to Lareau (2003), children's language development and interpersonal abilities are influenced by their parents' social-linguistic environment and vocations. Thus, Hypothesis 2: Children whose parents work in communicative, diverse contexts will have greater social and leadership abilities due to exposure to different language styles and collaborative role models. The present study shows that children of communicatively and socially diverse work groups are more likely to have advanced social and leadership skills in early infancy. Next, family size matters. Hoff-Ginsberg (1991) claims that single-parent and two-parent homes affect children's language acquisition. Two-parent households interact more with their children than single-parent families, with have only one dedicated adult. Large families also benefit from language acquisition since children interact more Pearson (2014) believes children's linguistic development in large households may be affected for various reasons Multilingual families help children develop cognitive and leadership skills. These kids have more adaptive cognitive ability, which helps them lead. Hypothesis 3 expects: Children in multilingual households, regardless of family size, to be more likely to acquire leadership and cognitive flexibility than those in monolingual households.

2. METHODOLOGY

This study longitudinally investigated the influence of multilingualism on leadership potential, as indicated by the research methodology. The longitudinal approach is employed to monitor the management abilities of participants, as language acquisition for young learners is gradual. Cross-sectional designs are less effective than longitudinal designs in capturing developmental changes. Program duration: September 28, 2022, to September 26, 2024. The study involved 62 children aged 5–11 to concentrate on early childhood development, with a particular emphasis on language and leadership skills. Participant selection demonstrates this. Convenience sampling was implemented to recruit them. For a period of two years, the researcher conducted surveys in both private and public institutions in Baku, Azerbaijan. A sample of students from both institutions was taken. Private school students were evaluated during my tenure as a private school educator. Employing my volunteer connections, I recruited students from public schools. The distribution of genders was equitable. The financial circumstances of the public and private institution participants constituted socioeconomic heterogeneity of the sample. Some children were born into affluent families, while others were born into middle-class or impoverished families. This investigation examined variables' influence on language acquisition and leadership development. These factors helped shape the results to be meaningful and measurable.

2.1 Data Collection Methods

Over the course of two years, this investigation employed structured tasks and observational techniques to accumulate data. Interactive, game-based learning exercises (The Jigsaw Puzzle by Piaget) are used to assess students' verbal and directional abilities. In each session, CCTV cameras captured the subjects' responses and conduct during the exercises. This was the preferred option due to the fact that the classrooms were already equipped with CCTV surveillance. Language and leadership abilities were evaluated using standardised linguistic evaluations (PTE) and behavioural rubrics, respectively. The mixed-method study utilised quantitative data (Bass & Avolio, 1995) to evaluate management skills and qualitative data (visual data) to analyse linguistic development of children during their childhood. We conducted semi-structured trainer interviews in addition to visual and task-based data collection to more effectively evaluate the leadership qualities and progress of students. Young people were interviewed about their actions, social interactions, and problem-solving using open-ended queries to obtain comprehensive responses. In order to comprehend the leadership attitudes of children, the responses were recorded and analysed in conjunction with observational data. In an effort to evaluate respondents' leadership capabilities, the SDQ, SSIS, and narrative task evaluations and questionnaires were implemented. Managerial abilities were evaluated through teacher observations. In addition, documentation of student leadership and teacher supervision were necessary.

Children were prompted to engage in dialogue, share duties, devise solutions to challenges, and inspire one another during 30-minute sessions of group play. A teacher can notice a pupil aiding their peers. The validity of the data was enhanced by comparing the leadership attributes of learners with those of their peers and their self-reports. The leadership capabilities of each youngster were assessed by their peers utilising their professional skills following observation. This study compared the evaluations and observations of the teachers. Self-reports facilitated the assessment of self-control and self-confidence, aiding in the identification and demonstration of leadership capabilities in youth. The communication, teamwork, and decision-making skills of the juvenile learners were assessed through these observations. Conversely, the SDQ assessed an individual's emotional and behavioural development, while this instrument examined their leadership and social competencies. We assessed the participants' communication skills with PTE activities. The PTE is an assessment that measures the linguistic competencies, vocabulary, comprehension, and oral skills of adolescents. Team-based scavenger hunts, role-playing, and problem-solving exercises provide participants opportunity for self-expression. Students were assessed on their ability to solve problems, collaborate with others, and engage in self-challenge within groups. The study's data was collected through systematic participant observations conducted over a two-year period.

The observations were conducted four times, with each session lasting 30 minutes, every eight months for a period of two years. The four tracking periods were implemented to obtain a thorough understanding of children's behaviour across time and to evaluate the consistency of the impacts across various phases. Behavioural data collected during interactive group games and problem-solving activities revealed differences in role assumption and team regulation tactics. Cooperative games encompassed activities such as group puzzles, collaborative assignments, and joint storytelling, whereas problem-solving exercises necessitated children to collaborate in resolving disagreements or surmounting challenges. The

rationale for this was to meticulously monitor the evolution of children's leadership attitudes. Furthermore, the primary rationale for selecting an eight-month interval for each monitoring session during the natural group activities in the classroom was to ensure that there was an adequate period for the improvement of observable behaviour and linguistic skills, as well as to routinely monitor progress throughout the study. The observational assessments that were conducted prior to the administration of the Social Skills Improvement System (SSIS) and Strengths and Difficulties Questionnaire (SDQ) tests facilitate a more comprehensive comprehension of the information collection process. The order of data acquisition is a significant factor in the more precise interpretation of the relationship between authority traits and social-emotional competences.

An additional factor that could contribute to a more comprehensive understanding of management evaluations is the inclusion of the engaging activities. A description of the problem-solving games is an example of this. This would provide insight into the various types of activities that are intended to evaluate children's leadership skills while playing because it is a location where students collaborate to identify solutions to issues. Furthermore, activities that foster critical thinking, decision-making, and collaboration are essential components of guidance. The Pearson English Test was designed to evaluate the fundamental language proficiency of children, and it was customised to accommodate the cognitive and developmental phases of the participants. This talent encompassed both the ability to communicate effectively and their ability to listen attentively. The lesson was conducted in a suitable environment, and the type of assignment used was determined by the child's age group. Depending on the circumstances, either paper-based or electronic assignments were applied. A competent supervisor facilitated the meeting. This was necessary to guarantee that the children comprehended the instructions and were at ease with the procedure. The data which were gathered through observation and subsequently assessed and evaluated in accordance with the video materials provided by the instructors.

2.2 Data Analysis Techniques

The documentation of participants' interactions during game-based learning activities is one of the primary characteristics of visual data. Pupils' non-verbal cues, including the body language, gestures, and facial expressions, were effortlessly captured during group play and leadership-related duties through observational recordings. In order to evaluate leadership behaviours and communication skills and to verify the veracity of the research, these visual assessments were analysed in conjunction with verbal responses. Through thematic analysis, the behavioural patterns of the individuals were identified and categorised according to their leadership characteristics. For instance, a child who was engaged in group activity was classified as a leader in the leadership initiative. Additionally, we analysis of the young learner's conduct during problematic periods and cross-referenced results with assessments from peers and teachers to guarantee the validity of the findings. In addition to leadership initiative, other categories included "communication skills" for students who effectively articulated their ideas, "empathy" for those who emotionally supported their peers, and "problem-solving" for children who exhibited the capacity to resolve conflicts or challenges within the group. Additionally, the leadership abilities of young learners were evaluated using

a coding system founded on the Social Interaction and Leadership Behaviour Framework (Güntner, 2023).

2.3. Variables

SSIS Social Skills Scores and SDQ Peer Relations Scores served as dependent variables, whilst multilingualism and the previously indicated background characteristics constituted the independent variables. This study controlled for familial and socioeconomic influences, while simultaneously enabling the isolation of the distinct impacts of multilingualism on children's social and peer development. Multilingualism was regarded as a categorical variable, and control variables were incorporated in a stepwise manner to evaluate their impact on leadership outcomes. The final model indicated that multilingualism made a statistically significant contribution more than socioeconomic determinants. Socioeconomic situation, parental educational attainment, family composition, and occupational history were accounted for, and multiple regression models were employed to assess the distinct impact of multilingualism on the development of leadership traits. Participants selected their household type from a multiple-choice question, encompassing single-parent, two-parent, and extended family configurations, hence facilitating the assessment of family structure. The responses were encoded and utilised as variables in the regression model. To evaluate socioeconomic status, families were requested to choose an income level from the low, middle, and high-income categories, and this variable was incorporated into study. While family structure and socioeconomic status were analysed, data regarding parental education or employment history were not collected, representing a limitation of the study.

2.4 Ethical Considerations

Ethically, the author should explain how participant confidentially was maintained during video recordings. The author should clearly describe the procedures used to protect participant confidentiality during video recordings. The parents or guardians of all study participants were consulted for ethical consent before data collection. The permission process informs parents of the study's goals, assessments, and data collection. Before the observation began, the parents or legal guardians of all the children in the study and the school administrations were told and provided formal consent papers. We gave parents or legal guardians of the youngsters receiving written consent a consent form and information sheet we prepared. The mother and father signed the agreement after receiving procedure information and answering their questions. Even when institutional verbal consent was impossible, the researcher was able to get and document it. The researcher contacted the parent directly to acquire verbal consent. They talked about the study's goal and protocol. Interviews were recorded in the notebook with dates and times after consent. The school administration and parents authorised the video recordings. The participants' anonymity and confidentiality were maintained during the observation. The video recordings were only used for academic analysis and preserved in safe, restricted digital environments.

3. RESULTS

Of the 62 children aged 5 to 11 (M = 8.2, SD = 1.4), 52% were female (n = 42) and 48% were male (n = 38). Approximately 63% of participants came from multilingual

households. The remaining 37% were solely monolingual. Based on socioeconomic status, 40% of households reported low-income, 35% reported middle-income, and 25% reported high-income. Consistent with Hypothesis 2, parents of children who demonstrated superior social and leadership skills worked in a various professional settings and were communicative and socially active. SSIS assessments indicated statistically significant improvements in prosocial behaviour among this group ($d = .71$, $p < .01$). These children more frequently took initiative, demonstrated collaborative problem-solving skills, and confidently managed group tasks. They also demonstrated improved interpersonal skills with exposure to a variety of communication models and professional role models at home. Additionally, consistent with Hypothesis 3, children from multilingual households scored significantly higher on measures of cognitive flexibility and leadership. On average, multilingual participants performed better ($M = 3.9$, $SD = 0.5$) than their monolingual counterparts ($M = 3.1$, $SD = 0.7$), suggesting a possible advantage associated with bilingualism. Difference was not significant ($d = 0.62$, $p > 0.05$). The Strengths and Difficulties Questionnaire and Peer Relationship Score examined how multilingualism affected monolingual and multilingual children's relationships. The average monolingual and multilingual scores were. No significant difference between groups ($P > 0.05$). The study examined how multilingualism affects children's peers and society. Social progress requires youth leadership. Multilingual kids enjoy interacting and expressing new ideas. Multilingualism improved leadership and socialisation.

Table 1. *Comparison of leadership results between multilingual and monolingual students*

Variable	Multilingual	Monolingual	p-value	Effect size (Cohen's d)
-	N=29	N=33	-	-
SSIS Social Skills Score	M=4.3 (SD = 0.6)	M=3.5 (SD = 0.8)	< 0.1	1.08
SDQ Peer Relations Score	M=3.9 (SD = 0.5)	M=3.1 (SD = 0.7)	< 0.5	1.26
Leadership Observation *High* *Low* -	(n=24) n=5	(n=8) n=25	-	-

All four evaluation periods showed benefits, which may explain this. Multilingual kids have diverse pals and social skills. Group engagement rose for multilingual kids and teens, raising SSIS and SDQ. This study found multilingualism improves leadership and social skills. Cohen's d values are "d" ($p < 0.05$). Effects lasted four monitoring sessions. Group differences require p-values and effect sizes. It was shown that youngsters who spoke more than one

language had a significant propensity to initiate collaborative projects, divide up group duties, and respond in an adaptable manner to dynamic team interactions. They adjusted to alterations in group dynamics, including the incorporation of new members or responsibilities, by modifying their roles or approaches. Monolingual peers had diminished engagement and necessitated increased adult oversight. Table 1 indicates that composite evaluations for social responsiveness and peer leadership enhanced at all research intervals among multilingual children. These data substantiate hypothesis that multilingual environments enhance both language acquisition and social leadership skills. The results indicate that exposure to language, especially in multilingual environments, enhances children's leadership and social influence skills. Table 1 indicates that bilingual students surpassed their monolingual peers in social skills and interpersonal interactions. Cohen's d values over one signify that the differences are statistically significant and substantively relevant.

Behavioural categorisation and inter-coder reliability: The student conduct is categorised into four distinct categories by this approach: communication, collaboration, conflict resolution, and decision-making. The category of each behaviour was the determining factor. For instance, students' feedback and instruction were regarded as "decision-making." The classification's reliability was confirmed by Cohen's Kappa coefficient of 0.85.

Language proficiency and behaviour correlation: The linguistic proficiency of each child was evaluated using PTE data and correlated with their leadership behaviours.

Regression analysis: The most critical components of the dependent variable, which is the leadership capacity of children, were identified through the use of SPSS linear regression. Socioeconomic status, familial history, and native language are regarded independent variables in this paradigm. The results of the model are statistically significant F ((3, 46) = 9.21, p <.001). A model that is robust and elucidates 6.3% of the variation in leadership qualities, as demonstrated by R^2 = 0.63. Leadership capacity was positively correlated with either familial background (β = .30, p = .020) or socioeconomic status (β = .52, p = .001), as indicated by the standardised beta coefficients in the study. The dependent variable did not exhibit a significant effect of native language in the study (β = .10, p = 0.3). The data indicates that familial heritage is the second most significant predictor of children's leadership abilities, following socioeconomic class. The native language's influence is restricted. The analyses were largely consistent. For instance, participants possessing robust verbal skills showed enhanced communication efficacy, whereas those with deficient linguistic ability exhibited reduced propensity to engage in conversation, hence, a significant correlation between linguistic advancement and the cultivation of managerial competencies. The findings of the PTE were analysed to ascertain each child's language proficiency level, which was then compared to their observed leadership-related behaviours.

The analysis and categorisation of verbal and nonverbal management cues uncovered trends in participants' leadership responses. Behavioural coding analyses leadership conduct during interactive tasks or group activities. These behaviours were essential for assessing children's progress. Independent sample t-tests with p-values indicated significant mean differences between the multilingual and monolingual cohorts. Individual t-tests were employed to compare the SSIS Social Skills Score and SDQ Peer Relationship Score between monolingual and bilingual groups. Descriptive statistics for each cohort were computed utilising JASP. Subsequently, individual t-tests were conducted. Following that, separate t-

tests were carried out, each of which was conducted separately. The results of the study that was conducted at a significance level of 0.05 revealed that the mean SSIS Social Skills Score for the multilingual participants (N = 29) was 4.3, with a standard deviation of 0.6. This was the conclusion reached by the researchers. There were a total of 33 monolingual individuals, and their average score was 3.5. The standard deviation for this group was 0.8. According to the findings of this research, the p-value for comparison of children who come from households where only one language is spoken to those who originate from families where more than one language is spoken produces a value that is lower than 0.1 as shown in Table 2. This indicates that there is a possibility of a trend in which exposure to multiple languages may have a positive influence on the development of leadership abilities.

Table 2. *Standardised Beta Coefficients of the Regression Model Predicting Leadership Ability*

Variables	Model 1	Model 2	Model 3	Model 4	Model 5
Multilingualism	β = .10 (p = 0.30)	β = .12 (p = 0.25)	β = .15 (p = 0.20)	β = .18 (p = 0.15)	β = .20 (p = 0.10)
Socioeconomic Status	β = .52** (p =0.001)	β = .50** (p = 0.001)	β = .48** (p = 0.002)	β = .45** (p = 0.003)	β = .43** (p = 0.004)
Family Structure	β = .30* (p = 0.020)	β = .28* (p = 0.025)	β = .25* (p = 0.030)	β = .23* (p = 0.035)	β = .20* (p = 0.040)
Leadership Behaviour Scores	β = .30* (p =0.020)	β = .28* (p = 0.025)	β = .25* (p = 0.030)	β = .22* (p = 0.035)	β = .20* (p = 0.040)
SSIS Social Skills Score	β = .36* (p =0.010)	β = .34* (p = 0.012)	β = .32* (p = 0.015)	β = .30* (p = 0.020)	β = .28* (p = 0.025)
SDQ Peer Relations Score	β = .33* (p =0.014)	β = .31* (p = 0.017)	β = .29* (p = 0.020)	β = .27* (p = 0.023)	β = .25* (p = 0.027)
R^2	0.55	0.57	0.59	0.61	0.63

N=62

4. DISCUSSIONS

The present study showed that multilingual cultural intelligence (CQ) test scores were superior to monolingual students ($p < 0.05$), and early exposure to more than one language statistically significantly improved children's understanding of diverse cultural norms and behaviors. Multilingual children also demonstrated greater competence in interpreting culturally sensitive topics during group conversations and improved communication skills with classmates. In conclusion, the idea that multilingualism fosters cultural awareness, which is one of the basic elements of leadership, has been confirmed. Children from multilingual backgrounds possess enhanced abilities to comprehend and analyse cultural differences,

enabling them to engage effectively with individuals from diverse backgrounds. Multilingual youth were 15% more likely to understand cultural differences than their peers ($p = 0.03$). The results are consistent with previous studies (Livermore, 2015) showing that multilingual youth across a range of settings are more likely to demonstrate the open-mindedness and global awareness necessary for future leadership. Children who scored 18% lower on leadership potential scales had poor rapid problem-solving and critical thinking skills ($p = 0.04$). Children who grew up with multiple languages from a young age demonstrated improved verbal skills, as well as the ability to think quickly, manage conflict, and show initiative—qualities essential for effective leadership.

In group games and problem-solving tests, multilingual children outperformed monolingual children, implying that linguistic diversity is intrinsically linked to enhanced emotional control and social skills; multilingual young people also showed better mediation and empathy when confronted with misunderstandings during cooperative activities. "The capacity for empathy and improved social skills among multilingual individuals seem interconnected." Results showed that children growing up in a multilingual environment develop leadership abilities early on ($d = 0.65$, $p < 0.05$). Multilingual participants in organised narrative exercises often took initiative and guided peer involvement and communication. Children with strong emotional intelligence are typically exposed to more than one language at an early age, this investigation revealed ($p < 0.01$). Therefore, we might argue that multilingualism not only boosts cognitive flexibility but also promotes the interpersonal and emotional qualities required of good leadership. While some studies, such as those by Garcia and Wei (2020) and De However (2018), have found no clear link between leadership and multilingualism, many studies have shown a noteworthy relationship between multilingualism and social flexibility and cooperation. This could be from educational settings, or societal views that restrict the chances for leadership for young bilingual people. In environments where multilingualism is disregarded or monolinguals is promoted, language competency may not improve leadership development.

Children's leadership development is influenced by a various factor, such as their environment, social and cultural influences, education, and language access. In the development of multilingualism, the importance of social and pedagogical factors is underscored by Garcia and Wei (2020) and De Houwer (2018). Despite this, most of their research is theoretical, and there is a lack of understanding regarding the impact of these characteristics on leadership. In this study, De Houwer investigates the impact of cultural biases on interlingual communication. In contrast, García and Wei investigate the influence of rigorous educational standards on translanguaging. This study investigated the impact of children's multilingualism on the development of contextual leadership. By conducting an analysis of the type of educational institution, familial language attitudes, and native language, this research alleviates these limitations. When evaluating these encouraging results, it is essential to take into account the limitations of the study. The investigation's sample size ($N = 62$) was insufficient to ensure statistical power and generalisability. In light of this, it is essential that future research utilise a more diverse and comprehensive sample. A larger sample size than that of the current investigation will be required in future research. The research was considerably impeded by the absence of clarity regarding the reporting of spontaneous actions.

Consequently, variable planning resulted in heterogeneity in the data, and variables that influence parental development and leadership characteristics, such as the level of education of the parents and the participation of children in extracurricular activities, were not studied. It was as a consequence of this that the data were heterogeneous. This was due to the fact that there were limitations imposed on the scope of the data collection, in addition to ethical concerns regarding the fact that the participants were sensitive. The findings suggest that early exposure to language, particularly in socially inclusive school environments, appears to be advantageous to developing leadership qualities. This is the conclusion that can be drawn from the examination of the findings. Furthermore, when multilingualism is combined with the empirical evidence that has been provided, it strengthens and verifies the existing body of literature that establishes a connection between it and improved leadership abilities. The development of leadership qualities is something that can be accomplished over time. Early infancy appears to be a vital era for the development of social, emotional, and cognitive abilities that are needed for the formation of effective future leaders. These talents are essential for the formation of effective future leaders (Cummins, 2000).

5. CONCLUSION AND FUTURE RESEARCH

Several constraints emerged during the data collection process. The absence of a defined period for observations may have caused discrepancies in the time of observations, leading to inconsistencies in the data. While this had a minimal effect on the overall trustworthiness of the results, implementing a definitive tracking plan in future studies would be crucial for a more consistent data collection process. The study's sample size of 62 participants may have constrained the generalisability of the results. A more comprehensive and diverse sample could broaden the range of the results. Furthermore, contextual variables including socio-economic position and cultural background were excluded from this study. Future research should incorporate data on participants' socio-economic position and familial origins to analyse the potential impacts of these factors on language acquisition and leadership development. This would mitigate the influence of external circumstances and augment the trustworthiness of the results. The findings suggest that it is crucial further to explore the correlation between language acquisition and leadership. The results indicate multilingual youngsters possess enhanced leadership attributes, particularly in decision-making, adaptability, and team management. In group activities, children with advanced language skills exhibited superior communication and problem-solving capabilities, indicating a direct correlation between language development and leadership qualities. It is imperative to cultivate these attributes in young individuals to facilitate their development as responsible citizens and effective professionals (Russo, 2024).

The cultivation of social and emotional competencies is equally crucial in the development of leadership abilities. Focussing intently on this subject in study can provide substantial and fruitful outcomes in both scientific and social domains. The study's results unequivocally indicate that multilingual education programs can establish a robust basis for cultivating leadership qualities in children. The results indicate that early multilingual education in multicultural settings can significantly influence the development of future leaders. Future research should assess the incorporation of more extensive environmental

empirical data to enhance the trustworthiness of the findings. Subsequent studies should enhance its comprehensiveness by investigating broader environmental influences, including family dynamics and socio-economic status. Furthermore, it is essential for the future research to investigate in greater depth how the interplay between language and leadership influences various communities and cultures. In the future, a beneficial measure for this domain and intercultural adaptability is to develop educational programs and cultivate leaders with elevated cultural intelligence (CQ) levels. This may significantly affect cultural contexts where there is a growing demand for culturally astute leaders. Educational institutions and leadership training programs should offer support in this domain, promote the multilingual environments for children, and enhance their language learning experiences.

Multilingual early childhood education programs may promote leadership, according to policymakers. Multilingual students develop leadership skills better in school, study finds. Language and cognition-enhancing curricula may aid. Bilingual reading resources for early learners and an upper-grade framework with bilingual scientific and social science coursework increase language and cognitive flexibility. Give each child a primary language group assignment, encourage self-confidence and teamwork through language acquisition and leadership, and let multilingual youngsters lead a storytelling circle. To increase understanding, vocabulary, and leadership, student-led "language gatekeepers" may help peers grasp instructions during collaborative work or shared reading in various languages. Policymakers should also utilise specific methodologies. Through seminars, team exercises, cultural storytelling, multilingual discussion forums, and collaborative interlingual communication, multilingual summer camps educate children leadership and social skills. RPGs that teach leadership may boost summer programming. Policymakers can improve and fund language programs by hiring multilingual educators in underprivileged schools, providing language-rich classroom materials, collaborating with community organizations to establish after-school language clubs, developing multilingual digital content, and promoting heritage language initiatives that develop children's language and leadership skills political and educational leaders should fund linguistic, peer-led, and multilingual curricula in underprivileged schools. Language study enhances intercultural leadership. Further research on family dynamics and socioeconomic status may resolve this issue.

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THE COACH'S SOFT POWER: COMMUNICATION SKILLS AS A KEY TO DEVELOPING SPORTS TEAMS AND ATHLETES

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Abstract: *In the contemporary sports landscape, team success increasingly depends not only on technical and tactical preparation but also on the effectiveness of communication within the team. A coach's ability to communicate is now recognized as one of the key competencies, nearly as vital as professional sports expertise. Today's coaches must engage with a wide array of stakeholders—including athletes, coaching staff, media, fans, parents, and other relevant actors—requiring well-developed soft skills such as active listening, providing constructive feedback, and fostering teamwork. This paper highlights the necessity of continuous development of communication skills as an integral component of a coach's professional growth, with particular emphasis on the challenges posed by digital communication and the multicultural composition of sports teams. The quality of coach' communication should be regarded as a key factor influencing team dynamics, athlete motivation, and overall sport team success. Furthermore, assessing the effectiveness of a coach's communication should be established as a standard in contemporary sports systems.*

Keywords: *coaching communication, coach-athlete relations, team dynamics, athlete development*

Introduction

The relationship between athletes and their coach plays a crucial role in shaping behavior, enforcing discipline, instilling values, and ultimately influencing the quality of training, performance in matches, and overall results (Davis et al., 2019). Traditionally, coaches focused primarily on developing technical and tactical sports knowledge, often overlooking the importance of soft skills. However, in recent years, there has been a growing awareness among coaches of the need to strengthen these interpersonal competencies. Of particular importance are communication skills, which have proven essential for building trust, fostering motivation, and enhancing team cohesion (Ishak, 2022; Mergenthaler, 2023). Soft skills encompass personal and interpersonal abilities that facilitate effective communication, collaboration, and relationship management. In contrast to technical or professional competencies—often referred to as hard skills—which involve specialized knowledge and expertise within a specific domain, soft skills are universally applicable across diverse contexts. Their adaptability makes them essential for fostering productive interactions and enhancing overall effectiveness in various professional and social environments (Laker & Powell, 2011). Soft skills play a crucial role in fostering strong interpersonal relationships, enhancing team collaboration, managing stress, and improving both personal and professional effectiveness. In sports, as in many other disciplines, these skills are just as essential as technical expertise. They enable coaches and athletes to communicate effectively, build

mutual understanding, and work cohesively toward shared objectives, ultimately contributing to overall performance and success.

This paper aims to underscore the significance of communication skills in sports team coaching, positioning them as an essential component of the modern coaching profile. Effective communication is not only fundamental to managing team dynamics but also serves as a key determinant of coaching efficiency and athletic performance. The importance of this paper lies in the fact that it emphasizes communication as a fundamental coaching skill, equally vital as technical and tactical expertise for team success. By highlighting the importance of soft skills, particularly in increasingly digital and multicultural team environments, it contributes to the evolving understanding of what constitutes effective coaching practice.

The critical role of communication in sports teams

Communication is any behavior that results in the exchange of messages (Robbins et al., 2020). It represents the exchange of facts, ideas, opinions, attitudes and emotions between two or more people (Bisen & Priya, 2009). Effective and efficient teamwork in sports requires open, unrestricted, and two-way communication among team members. Communication should be grounded in fundamental principles of effective interaction, ensuring clarity, trust, and collaboration. Additionally, team members must possess well-developed communication skills to foster cohesion, enhance performance, and facilitate the smooth exchange of ideas within the team. Team communication is important for several reasons. These are (Lazarević & Lukić Nikolić, 2024):

- Improving interpersonal relationships between team members. Professional team communication that fosters mutual respect and appreciation of all team members leads to better interpersonal relationships.
- Increased satisfaction and engagement of team members. Effective team communication means that all members are aware of the goals they need to achieve and that team leaders provide them with constructive feedback and recognition.
- Improving the well-being of team members. Open communication and discussion of all problems and difficulties lead to the growth of team members' well-being and their mental health.
- Growth in the number of innovations due to different opinions, perspectives and cultural factors.
- Growth in transparency. All team members should be familiar with events in the team.
- Growth in the level of cooperation in the team. Cooperation allows to gather and exchange knowledge and experience between the team members themselves and to identify opportunities for improvement.
- Reduces harmful conflicts in the team. Effective communication leads to successful resolution of conflict situations in the team.

Numerous authors have tried to define the key activities and steps by which it is possible to improve communication skills and knowledge. In the sports field, five steps to improve communication skills, based on the Coaches Guide to Sport Psychology are (Martens, 1987):

1. Recognize the need to improve communication skills.
2. Identify the specific behaviors that will improve communication skills.
3. Practice these behaviors regularly.
4. Get feedback on how well people are doing with communication.
5. Make improved communication skills a natural part of everyday interactions.

The effects of good communication are manifold. They are shown in Table 1.

Table 1. *Effects of good communication*

Reduced	Improved	Increased
Stress	Decision-making process	Degree of cooperation
Conflicts	Problem solving	Motivation
Gossip/rumors	Flow of work tasks	Productivity
Errors	Interpersonal relations	Sale
Misunderstanding	Professional reputation	Profit

Source: Adapted from Taylor & Lester, 2009

Oral verbal communication plays a crucial role in sports teams, with attentive and active listening standing out as a fundamental component. The skill of listening extends beyond merely hearing spoken words—it encompasses the ability to fully grasp the message, interpret situations, perspectives, attitudes, relationships, and emotions, retain key information, and respond appropriately (Lukić Nikolić, 2024). Effective listening fosters mutual understanding, strengthens team cohesion, and enhances overall communication efficiency. Table 2 presents the habits and behaviors of both effective and ineffective listeners within the communication process.

Table 2. *Habits and behaviors of good and bad listeners in the communication process*

Good listeners	Bad listeners
Active listening	Passive listening
Open and positive	Closed and often negative
Focused on the conversation	Unfocused, distracted
They make notes	They do not take notes or take them incorrectly
They maintain eye contact	They do not look at the interlocutor
They keep their emotions under control	They let emotions rule the conversation
They paraphrase key elements of the conversation and hold attention	They do not paraphrase and do not try to hold attention
They provide non-verbal feedback	They do not provide non-verbal feedback
They ask questions when the interlocutor finishes his conversation	They interrupt the interlocutor with questions and comments
They encourage the interlocutor to ask questions and to actively participate	They do not encourage the interlocutor to ask questions and actively participate in the conversation
They are focused on the message, not on the presentation style of the interlocutor	They condemn the presentation style of the interlocutor and often behave inappropriately and critically
They distinguish between key points and additional information	They do not know how to distinguish the key things from the extra information
They look for learning opportunities in conversation	They act like they know everything

Source: Adapted from Bovee & Thill, 2020

There are certain rules that are necessary for an efficient and effective team (Belbin & Brown, 2022; Maznevski & Chui, 2023):

- All team members understand and accept their tasks and goals
- Team members know what is expected of them and responsibly assume their roles and responsibilities
- Compatibility of different skills and knowledge of team members
- Informal, pleasant and relaxed atmosphere
- All team members actively participate in discussions
- Team members respect and trust each other
- There are certain disagreements, but the team members are aware of it and accept it
- Most decisions are made by consensus
- Systemic and critical thinking is encouraged
- Individuals are encouraged to express their opinions and ideas
- Mistakes are tolerated and team members learned from them
- The leader does not stand out excessively and does not put himself before other team members.

In addition to adhering to fundamental principles, the formation of a high-performance sports team requires several key conditions. These include clearly defined roles for team members, a shared purpose and well-articulated goals, an optimal team size, and task structures that necessitate collaborative effort. Effective communication between the coach and the athletes is essential to fulfilling each of these conditions, ensuring cohesion, strategic alignment, and overall team efficiency.

Methods

The key research questions (RQ) imposed in this paper are:

RQ 1: What are the fundamental principles of effective communication in a high-performance sports team?

RQ2: What communication strategies are most effective for coaches in developing inclusive and high-functioning teams?

RQ 3: What are the effects of different types of feedback (person-focused, result-focused, process-focused) on athlete development and team performance?

RQ 4: What future trends are likely to shape the role of communication in sports coaching?

This study is theoretically based on a narrative review of relevant academic literature. Its primary aim is to explore and synthesize existing knowledge on the role of communication in sports teams, focusing on both intra-team interactions and coach-athlete relationships. The study draws from a variety of sources, including peer-reviewed journal articles, academic books, and foundational theoretical texts in the fields of sports psychology, communication studies, and team dynamics.

Effective coaching communication: a key to building successful sports teams

The coach serves as a leader in the structured process of developing athletes and guiding their training. Beyond technical instruction, the coach acts as an educator and mentor,

playing a pivotal role in fostering conditions that support athletes' positive personal growth. Within a team environment, it is essential for coaches to cultivate an inclusive atmosphere where every member feels valued, welcomed, and supported in their development (Lachance & Ménard, 2022; Holden et al., 2025). Effective communication is a defining characteristic of successful sports teams. Many scholars emphasize that coaching is, at its core, a continuous process of communication—facilitating collaboration, fostering trust, and ensuring alignment between coaches and athletes (Cherubini, 2019). Through clear and strategic interactions, coaches shape team dynamics, enhance motivation, and contribute to overall performance and success (Bačanac et al., 2011). In addition to their responsibilities within the team, coaches must engage with a diverse range of stakeholders, including journalists, media representatives, athletes' parents, professional staff, referees, and fans. To be recognized among successful coaches, mastering effective communication skills is essential, enabling them to navigate these interactions with confidence, professionalism, and strategic clarity.

Effective communication is essential in various critical moments within sports, including coach-athlete interactions, discussions among teammates during high-pressure situations, pivotal moments that determine the outcome of a game, and post-game analysis of the opponent's performance. The coach, as a team leader, must implement a comprehensive communication strategy that conveys objectives, roles, and instructions clearly while fostering an environment of active listening, precise message delivery, and constructive feedback (Backman et al., 2024). Furthermore, successful coaching communication entails respecting athletes' perspectives, demonstrating empathy, building trust, and offering encouragement, all of which contribute to team cohesion and competitive success (Lazarević & Lukić Nikolić, 2024). These elements of communication play a pivotal role in guiding a team toward new victories.

Psychologist Yukelson suggests to coaches the following principles for communication with their team (Yukelson, 1993):

- Coaches must clearly outline rules, expectations, and work procedures while ensuring that team members understand the overarching goals. This includes articulating the team's mission, detailing strategic approaches, and providing comprehensive action plans that guide athletes toward achieving team objectives and fulfilling their roles effectively.
- Communicate with enthusiasm, ensuring honesty, directness, and sincerity in all interactions. Inspire athletes by fostering a sense of pride, dedication, and belief in their abilities while strengthening team spirit. Strive to create an environment where every team member feels valued, respected, and integral to the collective success of the team
- Offering athletes constructive feedback on their progress toward personal and team goals, highlighting their achievements and areas for growth. Encourage them to embrace new challenges, continuously refine their skills, and strive for further improvement in pursuit of excellence.
- Clearly explain team dynamics, expectations, and operational processes to ensure alignment and understanding among athletes. Communicate openly about the level of dedication required to achieve collective goals, emphasizing the importance of commitment and perseverance. Encourage athletes to take responsibility for their actions, maintain focus, and remain driven in pursuit of the team's objectives.

Developing strong soft skills enables a coach to go beyond simply imparting knowledge—it allows them to actively shape the character, attitudes, and behaviors of athletes. Over time, this influence not only enhances athletic performance but also fosters the growth of mature, resilient, and team-oriented individuals.

The impact of feedback communication in developing high-performance sports teams

Feedback serves as an essential communication tool, providing insight into the outcomes of a specific goal, process, activity, task, event, or behavior in sports team (Otte et al., 2020). Fundamentally, feedback is the result of evaluation and can take two forms: positive—offering acknowledgment, encouragement, or praise for successfully completed work—and negative—providing constructive criticism, recommendations, and guidance for improvement in performance or behavior (Lazarević & Lukić Nikolić, 2024). Regardless of whether feedback is positive or negative, it should always be constructive and purposeful.

Effective feedback fosters teamwork, enhances performance, and supports a culture of continuous learning within the team. By providing clear guidance and encouragement, it can drive positive behavioral changes, strengthen collaboration, and contribute to overall team development (Paredes-Saavedra et al., 2024). Feedback plays a crucial role in motivating team members, fostering confidence, security, morale, and productivity. Positive feedback, in particular, fulfills fundamental psychological needs such as belonging, respect, and self-actualization. It reinforces a sense of value and inclusion within the team, helping individuals feel recognized and engaged in their personal and professional development (Mason et al., 2020).

In sports teams, feedback manifests in various forms, each serving a distinct function in enhancing performance and team cohesion (Lachance & Ménard, 2022):

1. Feedback to person. This type of feedback targets the individuals, focusing on their personality traits or behaviors. Coaches often give this kind of feedback when they are emotional, making impulsive comments without thinking about the impact of their words. It is important to be cautious when directing critical comments at a specific person, as athletes may take them personally, and it can harm their self-esteem.
2. Feedback to result. This type of feedback is focused on the outcome of a performance, usually pointing out poor execution. Commenting on results is fairly straightforward. The coach observes something happening and offers feedback based on what they see.
3. Feedback to process. This type of feedback focuses on the steps, procedures, and methods that lead to a performance outcome. Process-oriented feedback gives athletes a deeper understanding of why their behaviors led to a certain outcome.
4. Feedback among athletes. Athletes can have a powerful influence on one another, so it is important to introduce them to this concept. By equipping athletes with the skills to give constructive feedback, coaches may help improve team dynamics and effectiveness. Consequently, coaches not only need to be expert communicators by selecting the right type of feedback to give, but they must also teach athletes how to provide effective feedback to each other.

One of the most illustrative examples of effective coaching communication in professional sports can be found in the leadership approach of Gregg Popovich, head coach of

the San Antonio Spurs. His communication style highlights how strategic dialogue, emotional intelligence, and adaptability can shape both team culture and performance. Gregg Popovich's communication style is widely recognized for its honesty, empathy, and strategic adaptability, distinguishing him as one of the most respected figures in professional sports leadership (Madu, 2018). Rather than relying solely on authority, Popovich builds trust through open, respectful dialogue with his players—demonstrated in moments such as personally explaining difficult decisions to veterans to avoid conflict and maintain cohesion. His approach reflects a deep awareness of both team dynamics and individual needs, enabling him to balance discipline with autonomy depending on the team's maturity and context (Helin, 2017).

Popovich communicates with clarity and purpose, fostering an environment where players not only understand their roles but also feel personally motivated to fulfill them. He emphasizes player empowerment by stepping back during critical moments, encouraging athletes to take ownership of their decisions and solve problems collaboratively—an approach he believes strengthens both confidence and competitive character (ESPN.com, 2014). By prioritizing mutual respect, self-awareness, and adaptability, Popovich has cultivated a team culture rooted in trust, accountability, and sustainable success.

The future of communication in sports coaching

Every professional should be equipped to adapt to future career pathways and emerging job opportunities and requirements (Bîrlădeanu, 2024). Current trends increasingly recognize communication skills as one of the key competencies for sports coaches, on par with professional sport expertise. Effective communication serves as a powerful tool, enabling coaches to foster team cohesion, inspire motivation, and contribute to the long-term success of both individual athletes and the team as a whole. Without strong communication abilities, even the most advanced technical knowledge may remain underutilized. In response to this growing emphasis, many academic institutions in the fields of sports science, education, and physical culture are expanding their curricula to incorporate courses on communication skills. Universities are either introducing new subjects dedicated to communication or integrating relevant lessons into existing subjects, equipping students and future coaches with the necessary expertise to engage effectively with athletes and optimize coaching outcomes. Many coaching academies, specialized courses, and informal education providers are increasingly incorporating soft skills training into their programs. These competencies—such as communication, teamwork, and leadership—are now recognized as essential components of modern coaching. Additionally, as digital technologies become deeply embedded in both personal and professional life, coaches must develop proficiency in various digital communication tools. These include video analysis of recorded matches and training sessions, applications for tracking athletes' individual progress, and platforms for team communication. This need is particularly evident among coaches working with younger athletes, who have been immersed in digital technologies from an early age and rely on them as their primary mode of communication.

Furthermore, the multicultural nature of sports teams presents another challenge, requiring coaches to effectively communicate with athletes from diverse cultural backgrounds

and value systems. Navigating these complexities demands adaptability, cultural awareness, and refined communication strategies to foster a cohesive and inclusive team environment.

Just as performance evaluations play a crucial role in organizational settings, the assessment of coaching communication quality is expected to emerge as a key measure of coaching success in the future. Through structured evaluation processes, coaches will gain direct feedback on their communication effectiveness, enabling them to refine their skills and continuously enhance their professional competencies. Some of the areas that should be taken into consideration during the evaluation are presented in Table 3.

Table 3. *Key areas for evaluating coaching communication skills*

Evaluation Category	**Evaluators**	**Sample Questions**
Clarity and precision	Athletes Assistant coach Support staff The coach themselves Parents (for youth teams)	- Does the coach clearly explain rules, expectations, and strategies? - How effectively does the coach convey instructions during training and competition? - Are messages concise and easy to understand?
Active listening and feedback	Athletes Assistant coach Support staff The coach themselves Parents (for youth teams)	- Does the coach encourage athletes to express their thoughts and concerns? - How effectively does the coach provide constructive feedback? - Does the coach actively listen and respond to athletes' questions and comments?
Motivation and team morale	Athletes Assistant coach Support staff The coach themselves Parents (for youth teams)	- How well does the coach use communication to inspire and motivate athletes? - Does the coach create a supportive and encouraging environment through their words and actions? - How effectively does the coach reinforce the team's values and goals through communication?
Adaptability and emotional intelligence	Athletes Assistant coach Support staff The coach themselves Parents (for youth teams)	- Does the coach adjust their communication style based on individual athletes' needs? - How well does the coach manage conflicts and difficult conversations? - Does the coach show empathy and understanding when addressing athlete concerns?
Use of digital communication	Athletes Assistant coach Support staff The coach themselves Parents (for youth teams)	- Does the coach use digital communication to streamline logistics and team coordination? - How effectively does the coach use digital tools (videos, progress-tracking apps) for communication? - How well does the coach integrate digital tools into the overall coaching strategy?
Use of nonverbal communication	Athletes Assistant coach Support staff The coach themselves Parents (for youth teams)	- Does the coach use body language and nonverbal cues to reinforce their messages? - Does the coach's facial expressions, gestures, and posture effectively convey confidence, encouragement, and authority? - How consistent is the coach's verbal and nonverbal communication?

Interaction with external stakeholders	Parents Media and public relation officers The coach themselves	- Does the coach communicate professionally with parents, media, and officials? - How well does the coach represent the team in public and media appearances? - Does the coach foster positive relationships with all stakeholders through communication?

Source: Author

To ensure a comprehensive assessment of a coach's communication effectiveness, evaluation questions should be directed to a diverse range of individuals who engage with the coach regularly. Gathering feedback from multiple sources allows for a well-rounded evaluation, offering valuable insights into different aspects of the coach's communication style, impact, and areas for improvement.

Conclusions

Contemporary sports science highlights that success is not solely determined by technical and tactical preparation but is also profoundly shaped by the quality of interpersonal relationships within a team. These relationships, largely influenced by the communication dynamics between coaches and athletes, play a critical role in fostering motivation, shaping behavior, instilling discipline, and enhancing overall engagement in training. As a result, the strength of the coach-athlete bond directly impacts both individual performance and the collective success of the team.

There is increasing recognition that effective communication skills are essential for coaches, enabling them to manage teams successfully, strengthen interpersonal relationships, and engage with a diverse range of stakeholders—including athletes, coaching staff, parents, media, and fans. These competencies should be regarded as a fundamental pillar of professional development, playing a crucial role in the overall functionality and success of sports teams. By delivering clear messages, providing constructive feedback, and fostering open dialogue, coaches cultivate a positive team culture that enhances performance and supports athlete development.

This paper contributes to the growing body of literature that recognizes communication as a critical, yet often underemphasized, factor in sports team performance. By synthesizing theoretical perspectives and recent findings, it underscores the centrality of communication in shaping effective coach-athlete relationships, promoting team cohesion, and navigating the increasingly complex demands of modern sports environments.

As this paper is based solely on a review of existing literature, it does not include empirical data from coaches, athletes, or other stakeholders in sports teams. This limits the ability to draw causal conclusions or assess the real-world applicability of the theoretical insights discussed. The selection of literature, while purposeful and focused on relevance, may not encompass all available or emerging research. Additionally, due to the conceptual nature of the paper, specific contextual differences—such as sport type, competitive level, or cultural setting—were not explored in depth, which may affect the generalizability of the conclusions.

A promising direction for future research on this topic is to conduct empirical studies involving athletes as key participants, in order to gain direct insights into how they perceive and experience communication within their team. Such research could explore the relationship between the quality of coach-athlete communication and variables such as athlete motivation, trust, team cohesion, and performance outcomes. By using surveys, interviews, or focus groups, researchers can gather data that will help validate and expand upon the theoretical concepts presented in this paper.

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SMART GOVERNANCE IN THE DIGITAL AGE: BENEFITS, CHALLENGES AND FUTURE DIRECTIONS

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Abstract: *Smart governance – one of the key pillars of smart city, improves public administration, transparency, and citizen involvement by combining digital technologies, data-driven decision-making, and participatory frameworks. In addition to discussing important issues including data privacy, cybersecurity threats and the digital divide, this study looks at the possible advantages of smart governance (such as increased effectiveness, accountability, and service delivery) as well as challenges that the urban planners and concerned authorities have to encounter before adopting smart governance. Hence, the main objective of this paper is to investigate the benefits, challenges and future directions of smart governance. In order to evaluate how governments throughout the world are putting smart governance techniques into practice and their effects on social inclusion and policy success, this paper uses a literature review methodology to examine previous research and case studies. The results highlight how technology may revolutionize governance while highlighting the necessity of ethical and well-balanced regulatory frameworks.*

Keywords: *Digitalization, Governance, Smart City, Smart Governance.*

Introduction

By 2050, 68% of the world's population is expected to live in cities (United Nations, 2018), exerting further pressure on them to promote sustainability, inclusivity, and efficiency. Modern digital solutions must be adopted since traditional governance models frequently fail to handle the increasing complexity of urban administration.

To improve public administration, increase citizen involvement, and promote transparent governance, smart governance is a modern approach that uses digital technology, data-driven decision-making, and participatory platforms. Smart governance is essential to ensuring that technical innovations are used to build more responsive, effective, and people-centred government systems as cities enter the digital age (Kaur, 2023).

This study analyses the body of research on smart governance using a literature review methodology, emphasizing both the obstacles to its effective application and its transformational potential. The paper investigates how smart governance can be successfully incorporated into smart cities while addressing ethical, legal, and technological concerns by examining a variety of research papers, case studies and credible studies. Policymakers, urban planners, and researchers pursuing more sustainable and citizen-centred governance models

can use the analysis's insights into best practices and future orientations. Even while previous research has looked at many facets of smart governance, there is still a lack of thorough studies that look at its benefits, challenges and potential future paths through one lens. By delivering a comprehensive analysis that links these aspects, this study seeks to close that gap and present a nuanced viewpoint on how smart governance might be maximized for safe and inclusive urban growth.

Following research questions are addressed in order to direct the current study:

1. What are the potential benefits of smart governance?
2. What are the main obstacles to putting smart governance into practice, specifically with regard to data security, privacy, and the digital divide?
3. What tactics and industry best practices can be used to guarantee inclusive and successful smart governance in resolving urban issues?

By answering the above research questions, the current study seeks to present a thorough grasp of smart governance in the digital era, shedding light on its advantages, disadvantages, and prospective applications for sustainable urban growth.

1. Literature review

1.1 Smart governance – a pillar of smart cities

According to Kaur et al. (2024), the smart growth movement and the idea of smart governance first appeared in the latter half of the 20th century. Along the lines of digitalization, the transformation of traditional production plants also took place. This led to the evolution of the old factories into smart factories, where the flow of materials primarily depends on operational data that is analysed with the help of digital tools. Since the amount of data that needs to be managed has increased, there is a growing demand for data governance. Such controls help the organizations to avoid any type of future errors. Following the path of private sector, city administration also recognized its significance and started incorporating digital technologies for improving public services (Tufano, 2023).

Additionally, the rapid increase in urban population also put a pressure on the authorities to adopt a new strategy for addressing the growing urban issues such as traffic congestions, pollution and public safety (Shin et al., 2021). Although urban governance is already a well-established academic field, it is increasingly being linked to fields that emphasize innovation and technology. In order to create strategies that can make cities smarter, innovation and electronic government are being linked to urban governance (Meijer & Bolívar, 2016).

Due to the increased productivity and profitability brought forth by automation, data analytics and networked systems, digitalization became strategically necessary. However, adoption of advanced technological tools is not as easy in public sector. Because of budgetary restraints, regulatory restrictions, and the requirement for inclusive, long-term planning, cities—being intricate, bureaucratic entities—face slower acceptance. For instant benefits, commercial sectors could quickly test and implement digital tools, but cities had to deal with issues like data security and privacy. But once cities adopted digitalization, they used it in more

extensive and revolutionary ways, like data-driven urban planning, e-governance, and smart infrastructure, which ultimately improved public services and citizen participation.

Since many cities are increasing their attempts to become smarter, the idea of a "smart city" has been gaining attention from scholars (Pereira et al., 2018) and urban planners. Smart city is a relatively new concept that emerged as a result of ever-increasing urban problems in the rise of technology (Zeng et al., 2023). Meijer and Bolívar (2016) claim that over half of the world's population resides in urban areas, and city governments must address a variety of issues, including sustainability, health, in addition to unemployment. Cities should be safer, greener, and culturally dynamic and because these benefits are associated with smart cities, the idea should be further promoted to facilitate resource management and increased efficiency.

Pereira et al. (2018) define smart cities the clever application of ICTs (Information and Communication Technologies) to improve city services and address the above-mentioned escalating urban issues brought on by growing urbanization without the appropriate implementation of well-being-focused policies. Improving the city's quality of life is one of the primary goals of smart cities. According to earlier research, in order to efficiently handle the changing dynamics of smart cities, an updated governance model and close local government coordination are required to assist the management of intricate cooperation procedures with a range of stakeholders, especially people.

A previous scholar (Lopes, 2017) identifies a smart city with factors such as *e-participation* and *e-services*. These characteristics are usually found in *e-governance*. Hence, one may conclude that by interacting with technologies, cities can be facilitated to become smart. In other words, *smart governance* is found at the center of all smart city programs. Similarly, Kaur et al. (2024) claim that smart governance, which encompasses the other pillars - smart economy, smart environment, smart mobility, smart people and smart living, is the foundation of a functional smart city. This implies that smart cities were developed with people's interests and quality of life in mind.

Over the past 10 years, scholars (Pereira et al., 2018) from a wide range of application and research domains have given the still-developing words "smart government" and "electronic government" (e-government) a lot of attention. Many viewpoints exist about smartness and smart governments, which mostly reflect the idea of broad governance or the application of emerging ICTs. Similarly, according to Hanisch et al. (2023), the term “smart governance” may sometimes also be confused with “digital governance” as they are closely related but have different meanings. While smart governance is the usage and/or application of smart technologies to boost efficiency of governance processes, digital governance majorly focuses on digitalization of services and incorporation of advanced technologies in administrative function.

A study (Pereira et al., 2018) also shows agreement with the idea proposed by Kaur et al. (2024) and adds that, *“although there are numerous definitions and viewpoints in the field of smart cities, governance plays a significant role in the majority of them, particularly by facilitating citizen-government initiatives and maintaining transparency in the decision-making process.”* The paper further adds that smart governance can be referred as the ability

to use electronic tools and smart activities in information processing and decision-making. Similarly, Tomor et al. (2019) describe it as *"a government-citizen cooperation facilitated by ICT to promote urban sustainability."* However, it is not an easy task for a wide range of stakeholders to collaborate and be in consensus, which is why it is essential to avoid conflicts and maintain public trust.

In context of a city, the cooperation of private citizens, corporations, developers, local government, and public institutions may define cities as a whole. While each of them has distinct objectives when seen separately, smart governance views them as a single entity and harmonizes their objectives so that they can benefit from one other's efforts (Kaur et al., 2024). With the main objective of societal welfare and better government services, it is used to resolve economic, social and environmental issues (Zeng et al., 2023).

Zhao and Zou (2024) describe good governance as the process of governing that maximizes the public value and seeks protection of public interest. Giuliodori et al. (2023) claim that smart governance, which has its origins in past notions of "good governance," has developed beyond efficiency and technology to encompass a multifaceted framework that prioritizes innovation, proactive management, transparency, stakeholder engagement, and citizen-centric problem-solving.

Kaur et al. (2024) assert that *smart governance* is one of the six pillars (or dimensions) of smart cities and produces the social and environmental outcomes that citizens desire because of its guiding principles of participatory governance, transparency, and accountability. With the aid of technology, smart governance refers to changes, reforms, or adjustments made to traditional governance. Similarly, Pereira et al. (2018) defines the concept as "*investing in emerging technologies coupled with innovative strategies to achieve more agile and resilient government structures and governance infrastructures"*

The growing interest in smart governance is caused by technological advancements. Lately, it has been incorporated in different domains, like emergency management, transportation planning, public surveillance. Moreover, in the past few years, several cities pursued smart governance by investing in smart city programs. It may also be described as a governance strategy with the objective of improving the quality of people's life (Zhao and Zou, 2024). Similarly, Kaur et al. (2024) claim that smart governance is a prime example of a contemporary governance strategy that can boost economic growth by raising the caliber and effectiveness of public sector services. Giuliodori et al. (2023) also affirm this by stating that there is a favorable correlation between economic welfare and smart governance, which encompasses components like transparency, inclusion, and innovation. Hence, it is imperative to incorporate smart governance as it acts as a backbone of cities by displaying efficiency and increasing the quality of living for the citizens.

1.2. Potential benefits of adopting smart governance

Previous researchers (da Silva & Fernandes, 2020; Kaur et al., 2024) believe that in addition to the typical ecological and socioeconomic problems, smart governance plays a key role in the enhancement of public services and the decision-making process of government

representatives. According to Pereira et al. (2018), one strategy to enhance decision-making and raise the standard of public service delivery is to develop smart governance frameworks for urban policies. This is because smart governance promotes citizen participation in the decision-taking process, thereby improving the relationship of government with citizens. Furthermore, this adds value by fostering trust among general public for the government. In this context, Pereira et al., (2018) adds that participatory government is a concept that is closely linked to the new governance model (as a method) in fostering interaction, communication, collaboration, participation in decision-making, and direct democracy. Similarly, collaborative government is a significant component of smart city governance as it promises transformation in the relationship between citizens and the government.

Based on the above arguments, the concept of "smart governance" is proposed by Giuliodori et al. (2023) as a critical, transversal mechanism that can positively influence all three pillars of sustainability—economic welfare, social equality, and environmental quality. Originating from earlier ideas of "good governance," smart governance has evolved beyond technology and efficiency to include a multi-dimensional framework emphasizing transparency, stakeholder collaboration, proactive management, innovation, and citizen-centric problem-solving.

Since smart governance involves a wide range of participants, including public institutions, private sector organizations, government representatives, investors, people, communities, and so on, it is thought to be one of the most difficult aspects of creating a successful smart city. All of these actors have personal interests, which may be conflicting or complementary to one another. To carry out various operations successfully, they all cooperate and work in tandem with one another (da Silva & Fernandes, 2020; Kaur et al., 2024). For more than ten years, researchers (Pereira et al., 2018) have been examining how ICT techniques might enhance and progress the relationships between citizens, corporations, and the government. A successful e-government can electronically connect residents, businesses, and all tiers of government in a country, opening up new avenues for public participation in governance. There is still a need for citizens to participate more in public life, which adds to the demand from many stakeholders to make the government more transparent and open.

Governance provides a supportive setting that makes it possible for the government to respond to the requirements of its constituents by requiring sufficient legal frameworks and effective procedures. The interaction and cooperation of various stakeholders in the process of making decisions is another definition of governance. The idea is frequently used to explain the process or approach of running a state, an organization, or any group of people (Oprea et al., 2023). This demonstrates how governance and government are connected but distinct ideas. According to Pereira et al. (2018),"*the ability to employ intelligent and adaptable activities when looking after and taking decisions regarding something*" could be one way of defining smart governance. Previous scholars (Pereira et al., 2018; Kaur et al., 2024) assert that smart governance serves as the foundation for intelligent, transparent, accountable as well as participatory government.

It is anticipated by some scholars (Pereira et al., 2018) that a smart government will foster cooperation between the government and other outside groups as well as between residents. Better measuring procedures, agency information sharing, increased resource utilization, and performance evaluation are anticipated to emerge as part of this expectation and more collaborative environments, thereby promoting public involvement in monitoring and decision-making.

Governments may innovate social governance by comprehending contemporary technology. These days, smart governance uses modern technologies like big data, artificial intelligence (AI), and the internet of things (IoT) to create future regulations that are best for the people. They provide a helping hand to government in reaching for a long-time good governance initiative (Liu & Qi, 2022; Kaur et al., 2024). Previous scholars (Mandić & Kennell, 2021; Kaur et al., 2024) claim that governments are starting to adopt digital technologies at the same rate as towns and organizations. Some governments have started using tools and cutting-edge technologies in recent years to facilitate communication with businesses and citizens. The decision-making and monitoring processes can be made simpler and better by implementing clever and flexible governance techniques. Better information technologies supported by collaborative governance are necessary for this aim.

Participation in consultative and democratic society processes can be mediated, expanded, and transformed via ICT-based instruments. But the opposite is also true, "*e-participation and citizen engagement are greatly influenced by the institutional setting."* In other words, the institutional environment—which comprises the technological, political, and legal frameworks set up by governing bodies—largely determines to what degree are e-participation and public involvement effective. Institutions that place a high value on open governance, transparency, and digital accessibility foster an atmosphere in which citizens can actively engage in the decision-making process. User-friendly digital platforms, data security, and freedom of speech policies all support more inclusive and meaningful interaction. Conversely, citizens may find it difficult to participate in decision-making due to bureaucratic inefficiency, a lack of digital infrastructure, and prohibitive legislation.

Amsterdam Smart City is an example of how urban governance is currently focusing on making the city smarter. Developing the Amsterdam Metropolitan Area into a smart city with an emphasis on living, working, mobility, public services, and open data is the aim of this "*unique partnership between businesses, authorities, research institutions, and the people of Amsterdam*." The city markets itself as an "*urban living lab*" where companies may test and showcase new goods and services. In addition to producing tangible projects centered on sustainable energy, creative health solutions, improved transportation, and increased (digital) public participation, this cooperation establishes a framework for knowledge sharing and learning amongst all of these actors (Meijer & Bolívar, 2016).

Previous researchers (Giuliodori et al.,2023) claim that addressing complicated urban issues like inequality, climate change, pollution and homelessness also requires smart government. Its inclusive strategy encourages cooperation between sectors and jurisdictions while empowering cities to embrace long-term, participatory solutions. To counteract climate

change, for example, creative and adaptable governance frameworks that can handle its multilevel and multi-actor dynamics are required.

Likewise, addressing societal challenges such as racial discrimination necessitate the exchange of knowledge and the inclusion of human capital. As SDG 16 emphasizes the significance of inclusive and accountable government, these initiatives depend on robust political institutions and efficient policymaking. Accordingly, it is hypothesized that smart governance—both at the national and municipal levels—is crucial to advancing social equality, economic welfare, and environmental quality in urban settings. Giuliodori et al. (2023) also promote smart governance as a cross-cutting tool to successfully handle these issues.

1.3.Potential challanges of adopting smart governance

According to Zhao and Zou (2024), it is essential to highlight that smart governance doesn't always lead to good governance. This is because implementing smart city initiatives is a complex process and can pose several challenges. Similarly, Hanisch et al., (2023) express that although digital advancement in the last years provided us with several opportunities to expand our horizon of knowledge, it also posed several challenges for governance. Zhao and Zou (2024) also agree with the aforementioned statement and claim that even though smart governance is considered beneficial, one must not forget about its potential negative impacts on society. They further exemplify this statement in their research by mentioning how controlling large amounts of data may raise privacy-related concerns and even data security risks.

Unfortunately, while applying technology-driven solutions in a city, contradictions may arise. For instance, smart governance encourages transparency and access to data. Nevertheless, facilitating large amounts of data tends to compromise individual privacy. Therefore, in order to achieve good governance within a smart city, one must keep into consideration the paradox theory, which emphasizes the need for continuous tradeoffs. In other words, good governance requires the resolution of opposing interests and the creation of public benefit, which can be accomplished by striking a balance between the paradoxes inherent in smart governance (Zhao and Zou, 2024). Conflicting interests between different stakeholders, such as governments, corporations, and citizens, must be balanced and resolved as part of smart governance. Different groups frequently have conflicting interests in a democratic society, such as national security versus individual privacy or economic growth versus environmental sustainability. Data-driven decision-making, online public consultation platforms, and open policies to resolve these disputes are all necessary for effective smart government.

Smart governance, for instance, can assist in resolving disputes in urban planning between locals who support green spaces and real estate developers who want to maximize profits. To discover an appropriate solution, a city may employ digital tools like geographic information systems (GIS), online public forums, and AI-powered policy simulations. Local governments may adopt laws that promote sustainable development while taking economic interests into account by examining data on the effects on the environment, the advantages to the economy, and the preferences of the populace. This strategy exemplifies how inclusive

decision-making and technology are used by smart governance to address and balance conflicting interests. Therefore, researchers (Zhao and Zou, 2024) suggest that in order to maximize the benefits of smart governance, one must address these concerns.

Meijer and Bolívar (2016) assert that developing a smart city necessitates a political knowledge of technology, a procedural approach to managing the developing smart city, and an emphasis on both financial benefits and other public objectives. City managers should understand that technology alone can't make a city smarter as it also requires a collaborative approach involving different government agencies, citizens as well as private sector companies. For instance, if there are serious conflicts between citizens and government, this may result in resistance from the residents. Sidewalk Labs smart city project is a classic example of how public backlash over privacy-related concerns can scrap any smart city initiative. Therefore, it is crucial to consider citizen consultation and public opinion before implementing such large-scale projects.

According to Zhao and Zou (2024), digital technologies proved immense capacity in smart governance for affordable housing but at the same time bring forth a number of negative externalities that have to be balanced. For instance, adopting smart governance in a given city requires bottom-up participation, which means actors in the society (besides government agencies) should be able to actively participate in the decision-making processes. However, excessive control of data may unintentionally encourage "technocratic governance", which means that the data can be easily manipulated or controlled by certain residents. In this case, the social actors responsible for controlling digital platforms may succeed to monopolize the decision-making power. Furthermore, it is crucial to note that certain residents may feel threatened due to privacy-related concerns. If this would be the case, subsequent residents might avoid active participation due to privacy fears. Therefore, government agencies and the concerned authorities should establish clear privacy protection laws so as to protect the residents from such threats.

Government-citizen collaboration to jointly shape public issues is rarely facilitated by ICT. This is because both the government and the general public lack the skills and will to truly participate in wise governance for urban sustainability. Routines, traditions, and structures from the past still predominate. It is clear that the presence of technology infrastructure alone does not ensure a significant shift in public administration as well as the civil society's mindset toward the growth of co-creative collaboration to build more sustainable cities (Tomor et al., 2019).

Secondly, despite efforts by governments worldwide to use smart city tools while working with citizens and businesses in different sectors, some citizens still appear to disagree with the adoption of new technologies, expressing their dissatisfaction. Depending on how they choose to express it, citizens' dissatisfaction may be either active or passive. Based on a study (van Twist et al., 2023; Kaur et al., 2024), two possible responses of the government in such an instance may be *"overcoming or embracing resistance".*

Overcoming resistance is a response that concentrates on resolving the doubts of citizens through incentives, persuasion and education. On the other hand, embracing resistance

is an optimistic approach as it considers that any form of resistance is valuable since it signifies citizen engagement and represents an opportunity for further improvement. The biggest advantage of embracing resistance is that it builds trust for government and authorities among public. Therefore, there are benefits to both embracing and overcoming resistance. A more effortless shift to smart governance may result from a balanced strategy in which governments address citizens' genuine concerns while simultaneously educating the public and providing incentives for adoption. While governments that embrace resistance may create more inclusive and successful smart governance systems, those that reject it escalate the risk of dissatisfaction among citizens. Therefore, governments are using advanced technologies to gain the trust of general public by increasing inclusivity and engagement in decision making processes.

Another aspect that one should consider while adopting smart governance is that it may enhance management efficiency but leads to challenges like *dataveillance*, which means that people's lives will be excessively monitored. Therefore, one may argue that the incorporation of digital technologies in governance processes comes at the cost of people's restricted freedom (Zhao and Zou, 2024).

Besides, restricted freedom, privacy and data security risk, there are other serious social challenges that need to be addressed. Adoption of advanced digital technologies often marginalizes older generations who are not accustomed with such facilities. This clearly reveals that smart governance can potentially cause "digital divide". Digital divide is described by Zhao and Zou (2024) as a gap that prevails between the people who are not accustomed with technologies and the ones who are capable of utilizing smart facilities. According to Shin et al. (2021), the digital divide poses a serious threat to smart cities, especially in the age of 5G technology. Besides, smart cities mostly depend on sophisticated digital infrastructure, necessitating a certain degree of technological competence from their residents. This presumption, however, ignores underprivileged populations that might not have the requisite digital knowledge and abilities, therefore denying them access to smart city advantages.

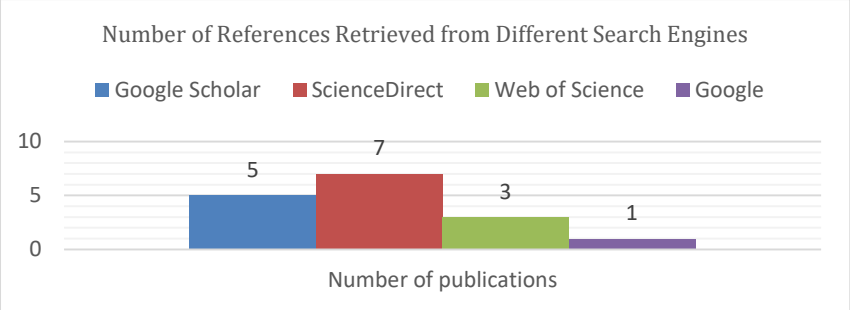
Additionally, with growing differences resulting from socio-demographic characteristics including age, education, and geography, the digital divide is a challenge that has the potential to cause social exclusion. If a significant percentage of the population is unable to use digital technology efficiently, smart governance—which depends on citizen engagement—may be undermined. As a result, the active participation of people, which was to be used as a solution to fight unfairness or exclusion, is actually promoting the same challenges in the form of digital divide (Zhao and Zou, 2024). Hence, one may conclude that the policymakers as well as the urban planners should take into account these risks and address them to ensure the effectiveness of smart governance. This can be done with the help of a human-centric approach for accomplishing long-term city objectives.

Risks of adopting smart governance models are not only limited to public sector. In fact, digitalization of organizational processes, in general, also contributes to cybersecurity risks. This is why huge technology companies show serious concerns about cybersecurity becoming a strategic challenge, which not only demands prevention from malicious attacks but also serious actions to avoid reputational damage (Hanisch et al., 2023).

2. Selection and analysis of relevant literature

To study smart governance as a fundamental component of smart cities and its function in improving public administration of a city, this study uses literature review methodology. The paper analyzes the advantages as well as concerns or risks of implementing smart governance by synthesizing the body of existing academic literature, policy reports, and case studies. Figure 1 presents the number of references retreived from search engines / scholarly databases.

Figure 1. *Number of References Retrieved from Different Search Engines/Scholarly Databases*



Secondary sources, such as conference papers, peer-reviewed journal articles, and credible institutional publications, provided the data for this study. Digital academic databases like Google Scholar, Web of Science, and ScienceDirect are used to choose sources, guaranteeing their reliability, relevancy, and applicability to the objectives of this paper.

Due to the rapid pace of digitalization, it is imperative to reply on recent research. The range of publication year for the cited sources is between 2016-2025 (see Figure 2), which signifies that the selected studies are relatively recent and capture the new progress, best practices and trends of smart governance, to ensure an updated analysis of the topic.

Figure 2. *Number of cited publications by year*

Findings from the literature are categorized and interpreted using a thematic analysis technique, which focuses on important themes including definitions of smart governance, its potential benefits as well as challenges. A strict selection procedure is used, with a focus on peer-reviewed and very influential sources, to guarantee the validity and dependability of the results. Triangulation is often used to verify consistency in findings by comparing insights from several sources. Although the literature review methodology offers a comprehensive understanding of smart governance, it has some drawbacks, such as a reliance on secondary data, possible gaps because smart governance is a rapidly evolving field, and issues in generalizing the results across distinct smart city models.

3. Role of smart governance in public administration

Governments everywhere are facing challenges to operate in a connected environment, include stakeholders in resolving social issues, and become more innovative while cutting expenses. In this regard, ICT use in government has evolved into a tactic supporting administrative reforms at all governmental levels. Therefore, e-governance, also known as digital governance, can be viewed as a transformative endeavor that uses ICT in government organizations to accomplish a number of goals, such as enhancing the effectiveness of public sector operations and service delivery; changing government operations, internal structure, and practices using a citizen-centric approach; boosting transparency; encouraging openness, and lowering the corruption rates.

As a result, governments are implementing e-government tactics to enhance ICT utilization. Three "generators" of additional value—administrative productivity and interoperability, service improvement, and citizen centricity—are at the core of these new tactics (Pereira et al., 2018).

Administrative efficiency exploits the automation effects of ICT in various levels of government, in values such as efficiency, effectiveness, productivity, performance of administrative functions, relations and information sharing between different departments of the public administration.

The improvement of public knowledge and services delivery through organizational procedures and technological advancements that make information more widely available and accessible among all government agencies is what defines e-government. Residents can profit from such investments in a variety of ways, in addition to the higher standard of public services provided by e-government.

As per existing literature, advantages of using e-government include: lowering the cost of registering and submitting forms (such as those pertaining to permits), lowering errors and improving data accuracy as human error is decreased, enhancing direct and speedy communication with institutions, saving time from lengthy in-person meetings, offering citizens (local) government services around-the-clock, every day of the week and delivering government services from any location and accessible from any device. In this regard, mobile applications and technologies play a critical role in enhancing the effectiveness of e-government service delivery. In order to enhance the efficacy of user-to-government communication and fortify the bond between the government and its constituents, mobile e-government services are currently integrated.

On one hand side, it is believed (Giuliodori et al., 2023) that smart governance affects environmental quality at the local level and social equality at the national level. On the other hand, it is claimed (Kaur et al., 2024) that even though the primary goal of smart governance was to build a sustainable city where residents could readily access high-quality public services (Kaur et al., 2024), there is little and conflicting evidence which supports that smart governance plays any role in promoting sustainability (Tomor et al., 2019).

The transition from traditional government structures to smart governance models that incorporate cutting-edge technologies like AI, machine learning, data analytics, blockchain,

and the IoT is made possible by ICTs, which are essential to modern administration. These technologies aid governments in effectively processing vast volumes of data, which enhances citizen services and decision-making. In addition to increasing operational effectiveness, smart governance fosters the growth of transparent, responsive, and well-equipped smart cities and nations that can better serve the demands of their citizens.

ICT integration for administrative efficiency, meeting public demands, and advancing technology-enabled governance practices are all essential elements of smart governance. In addition to increasing operational effectiveness, smart governance fosters the growth of transparent, responsive, and well-equipped smart cities and nations that can better serve the demands of their citizens. Furthermore, it highlights the significance of normative, legal, and ethical criteria including transparency, inclusion, and public participation.

Conclusions

Smart governance represents a key pillar of smart cities, which uses digital technologies to improve policymaking, citizen engagement and administrative efficiency. This research has examined various facets of smart governance through a thorough literature analysis, highlighting its potential to promote social inclusion, transparency, and participatory decision-making. Governments may enhance public services, build confidence, and develop a more responsive governance structure that meets the changing demands of urban populations by incorporating digital platforms. The results emphasize that promoting an inclusive, citizen-centric approach to government is just as important as adopting new technologies.

Despite its many advantages, there are a number of obstacles to smart governance implementation, such as data security problems, privacy threats, and the digital divide, which can result in social exclusion. According to the literature, digital transformation increases government efficiency, but it also brings up issues with accessibility inequities and ethical data management (Bulău et al., 2024). Strong legal frameworks, cybersecurity safeguards, and digital literacy initiatives are needed to address these issues and guarantee inclusive and equitable smart governance. To minimize risks and optimize the advantages of smart governance efforts, policymakers must give equal weight to technology innovations and human-centered approaches.

A balanced strategy that incorporates technological innovation with moral, legal, and social issues is what smart governance will look like in the future. The next stage of smart governance will be shaped in large part by enforcing universal digital access, strengthening data privacy rules, and encouraging cooperation between the public, private, and civil society sectors. An inclusive and secure smart governance framework is considered essential for achieving long-term objectives of sustainable and human-centric smart cities.

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THE INFLUENCE OF NATIONAL CULTURE ON LEADERSHIP STYLE IN PROJECT MANAGEMENT

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Abstract: *This study examines the impact of leadership styles and organizational culture on project management efficiency in NLB Bank. Findings indicate that democratic leadership, collectivism, and gender equality positively influence productivity, emphasizing teamwork and participation. Formal processes and standards create a stable environment essential for project success. However, areas for improvement include consistent goal-setting and greater employee involvement in decision-making. The study highlights the importance of leadership adaptability and the role of organizational culture in shaping leadership effectiveness. Future research should explore leadership styles' impact on team performance, emotional intelligence in leadership, and cross-industry comparisons. The findings provide insights into how organizational culture influences leadership and offer recommendations for enhancing project management in financial institutions.*

Keywords: *National culture, leadership style, project management, cultural dimensions, collectivism, project efficiency.*

1. INTRODUCTION

Leadership and organizational culture are critical factors in successful team and project management, particularly in dynamic sectors such as banking. NLB Bank, as a leading financial institution, fosters an environment where leadership styles and organizational culture have a direct impact on the efficiency, motivation, and success of employees across various projects. The leadership style applied by managers, along with the values and norms promoted by the organization, shapes the daily work dynamics, employee relations, and the organization's ability to achieve business goals.

Although there is extensive research on the impact of leadership and organizational culture on project management efficiency, the specific context of NLB Bank and its unique challenges have not yet been sufficiently explored. Most existing studies generalize the impact of national culture on leadership styles in organizations but overlook how these dynamics function in specific sectors such as banking. NLB Bank, as a leading financial institution, faces specific challenges in applying leadership and organizational culture, including cultural dimensions and business practices that differ from other industries. The gap in this research

field is the lack of a detailed analysis of how national culture influences leadership styles within the financial sector, especially in the context of unique organizational values and norms that shape work dynamics and team efficiency.

The aim of this paper is to examine how leadership and organizational culture impact project management efficiency at NLB Bank, with a particular focus on factors such as collectivism, participatory decision-making, and gender equality. This paper will fill the research gap by analyzing the specifics of cultural dimensions that shape leadership styles in the banking context, thus providing a deep understanding of the role of culture in project management and leadership. Additionally, this research aims to identify areas for improvement and offer recommendations for enhancing project management practices in organizations with similar.

2. THEORETICAL PART OF RESEARCH

In modern business world, understanding national culture and its impact on leadership styles is becoming essential for successful project management, especially in a global and multicultural environment. The theoretical part of this research provides an overview of key concepts and theoretical frameworks that explain how different cultural dimensions influence leadership styles and the effectiveness of project management.

2.1. National Culture

National culture shapes the attitudes, norms, beliefs, and behaviors of its members, influencing their worldview and interactions with their environment. According to Hofstede (2002), national culture can be described as ”mental programming” that individuals acquire in childhood and retain throughout their lives, while Janićijević (2013) defines national culture as a set of values, norms, and attitudes, expressed through symbols, that help community members understand the world and navigate their behavior within it.

Companies face cultural differences both globally and domestically (Dessler, 2013). When operating in international markets, businesses encounter significant variations in consumer assumptions, beliefs, and values, which influence their needs and consumption habits. Even within companies operating solely within national borders, workforce diversity is increasing (Thomas & Peterson, 2018).

Employees increasingly come from diverse cultural backgrounds, bringing their own beliefs, values, norms, and attitudes. This creates a situation where employees must collaborate with colleagues and managers who have different cultural foundations. Such multiculturalism or workforce diversity can be an asset, especially when the values and norms of different cultures are effectively integrated (Sweeney & McFarlin, 2015; Hofstede, 2002). However, if cultural diversity is not properly managed, conflicts and misunderstandings may arise, negatively impacting the organization.

2.2. National Culture within Globalization Process

Process of cultural integration leads to the convergence of different countries and creates new forms of cultural values. This process can be driven by political, economic, or

social factors. A key element in the integration of national cultures is multilingualism, which enables people to access information and communicate with members of other cultures. This is especially important in the IT industry and online work, where knowledge of different languages facilitates collaboration and knowledge exchange (Farxodjonova, 2010).

Global changes in national cultures open numerous opportunities for progress and development. The exchange of knowledge and ideas among scientists worldwide enables significant scientific achievements, which would not be possible without a cultural climate that fosters cooperation and innovation. This process of synthesizing national cultures is particularly difficult to control in the post-industrial era, where technology and globalization accelerate interactions between people and cultures (Umarov & Jabborov, 2010).

Research shows that flexible work methods can reduce employee burnout, increase their commitment to the organization, and improve mutual trust in the workplace. However, the effects of these methods vary depending on the cultural context. In some cultures, employees will enthusiastically adopt and fully utilize flexible work methods. In other cultures, however, employees may be less inclined to use these methods due to social norms or expectations (Donaldson, 2001).

Therefore, managers must be aware of cultural differences and adapt their approaches when implementing flexible work methods to ensure their effectiveness. This may include adjusting communication strategies, providing additional support to employees, and creating a work environment that respects the cultural values of all employees (Stavrou, 2005). In this way, companies can fully leverage the benefits of flexible work methods and enhance their operations in a global context.

2.3. National Culture as an Important Factor of Organizational Culture

Leadership plays a crucial role in shaping and developing corporate culture within organizations. The way leaders manage and communicate with their teams directly impacts the atmosphere, values, and norms that evolve within the organizational environment. For example, research on leadership in Asian countries shows that Asian managers often prefer leaders who are competent in decision-making, effective in communication, and provide full support to their subordinates (Robbins & Coulter, 2005).

Creating organizational culture that is open and adaptable to change is essential in today's business environment. While it is possible to cultivate a culture that is naturally more receptive to change, particularly in practice and academia, this can be challenging in geographically dispersed and multicultural organizations. It is important to understand that cultural change is not straightforward and that culture itself cannot be directly altered simply by attempting to change it. Instead, other organizational factors must be influenced to indirectly shape culture, such as processes, structure, leadership, and organizational values. This requires a systematic approach and the engagement of all levels of the organization to create an environment that fosters continuous adaptation and innovation.

2.4. Leadership Styles

Leadership is defined as an individual's ability to recognize the need for change and take the initiative in implementing evolutionary and adaptive changes within an organization or society. This entails a leader's ability to transcend the boundaries of their own culture and effectively communicate a vision and goals that will contribute to the improvement of the organization or community. Key elements in this process include understanding the needs and expectations of different cultural groups, as well as the ability to articulate a common goal that will be accepted and supported by the broader community (Schein, 2010). Personality and leadership style are key factors that shape team dynamics and efficiency, as the leader not only directs team processes but also directly influences the motivation and productivity of team members through their approach (Nedeljković & Ostojić, 2024). Leaders need to adapt their management styles in accordance with cultural specificities, economic conditions, and social expectations (Batsenko & Halenin, 2024).

Leadership is a complex set of abilities, skills, and knowledge that enables an individual not only to influence others but also to motivate and teach them to actively contribute to the efficiency and success of the organization in which they work. A crucial aspect of leadership is continuous learning and adaptation to maximize the potential of each team member and the organization as a whole (House et al., 2004). Leadership is a social phenomenon based on interpersonal relationships and collective existence. An important aspect of leadership is the unequal distribution of power within a group, as a leader must have sufficient authority to influence and direct the efforts and behaviors of their followers toward achieving shared goals. The various strategies and actions that leaders employ to achieve these goals are referred to as leadership styles. A leader's effectiveness will largely depend on how successfully they adapt their leadership style to the specific cultural preferences and expectations of their followers.

Different approaches and theories on leadership in the literature offer various perspectives on the nature and characteristics of leadership. Contingency theory emphasizes that the effectiveness of leadership depends on situational factors and circumstances. Participative leadership (participative theory) encourages collaboration and the involvement of team members in the decision-making process. Transformational leadership focuses on motivating and inspiring the team to achieve high goals and drive organizational culture change. Finally, exchange theory (transactional leadership) deals with the exchange between leaders and followers, where desired outcomes and behaviors are rewarded (Jogulu, 2010).

2.5. Influence of a National Culture to the Lidership Style

Cultural dimensions significantly influence interpersonal relationships within a team. In cultures with high power distance, hierarchical relationships are more pronounced, meaning that team members respect the leader's authority and are less likely to express disagreement or provide suggestions. Cultural dimensions also have a substantial impact on decision-making styles. In cultures with a high degree of uncertainty avoidance, decision-making processes are often formal and strict to minimize risks and uncertainties. Cultural dimensions shape the core values and norms within an organization, directly affecting leadership styles. In performance-oriented cultures, leaders set high standards and goals, motivating team members through achievement-based rewards. Conversely, in cultures with a strong emphasis on gender equality,

leaders adopt participative leadership styles, fostering teamwork and equality among team members. A leader's adaptability to different cultural contexts is a key factor in achieving high performance and shared goals (Janićijević, 2013).

3. EMPIRICAL RESEARCH – CASE STUDY OF NLB BANK

In modern business environment, globalization and cultural diversity increasingly impact project management, making it more complex. National culture shapes leadership styles, communication, decision-making, and conflict resolution. However, numerous managers are either unaware of these influences or do not know how to effectively integrate them into project management practices.

The research presented in this paper aims to highlight the impact of national culture on leadership styles in project management, with a focus on cultural dimensions such as power distance, uncertainty avoidance, collectivism versus individualism, and gender equality. The study will analyze their influence on team dynamics and project efficiency, with special emphasis on the perceptions of employees at NLB Bank.

The primary objective of this research is to identify key cultural dimensions that affect leadership in project management. By enhancing the understanding of cultural influences on leadership, the study seeks to contribute to the development of more effective strategies for project management in a global context.

3.1. Method

The research presented in the paper included a sample of 195 employees in NLB Bank who perform activities in different sectors and hierarchical levels. The attitude of the employees was examined through a questionnaire consisting of nine questions. Through these questions, various aspects of cultural dimensions and leadership styles in the bank were evaluated, where special emphasis was placed on examining the influence of national culture on leadership styles in project management. The questionnaire also analyzed the demographic structure of the respondents, where data was collected on the gender, work experience and level of education of bank employees. Data were collected through an online survey questionnaire created using Google Forms.

The objectives of the conducted research are:

- Determine how national culture influences leadership styles in project management at NLB Bank. On the basis of this question, it is determined how cultural dimensions such as power distance, uncertainty avoidance, gender equality and collectivism versus individualism influence the use of leadership styles in NLB Bank and how they contribute to team cooperation and project implementation efficiency.
- How different leadership styles have an impact on team efficiency in NLB Bank? Through this objective, the role of different leadership styles applied in the bank, such as democratic, autocratic and laissez-faire, is determined in achieving the efficiency of project implementation, defining the advantages and disadvantages of each of the aforementioned leadership styles.

- How do cultural dimensions in NLB Bank affect the working environment and project results? Through this research objective, it is pointed out how employees see different cultural dimensions in the bank, such as collectivism, gender equality and participative decision-making and their contribution to team cooperation, workplace satisfaction and the efficiency of project implementation.

3.2. Results

The research on the impact of national culture on leadership styles in project management was conducted on a sample of 195 respondents, including 101 women (51.8%), 81 men (41.5%), and 13 respondents (6.7%) who did not specify their gender. Data was collected through a Google questionnaire in Serbia between June 1 and August 5, 2024, providing insights into employees' perceptions and experiences regarding leadership styles in their organizations.

As an example of a detailed analysis, data from employees at NLB Bank (195 respondents) was highlighted, where a slightly higher representation of women, a high level of education, and a stable workforce were observed.

Table 1. *Structure of Respondents*

Category	**Sub-category**	**Number of respondents**	**Percentage (%)**
Gender	Female	101	51.8%
	Male	81	41.5%
	Not specified	13	6.7%
Years of service at NLB Bank	Less than 1 year	27	13.75%
	1-3 years	44	22.5%
	3-5 years	75	38.75%
	More than 5 years	49	25%
Education	High school	2	1.25%
	Faculty (undergraduate studies)	100	51.25%
	Master studies	71	36.25%
	Doctoral studies	22	11.25%

Source: Author's research

The results indicate that employees with higher levels of education dominate in NLB Bank - more than half have a university degree, and a significant percentage hold a master’s degree. The majority of employees have between 3 and 5 years of work experience, suggesting organizational stability, while the gender structure shows a slightly higher representation of women (51.8%) compared to men (41.5%).

Such demographic analysis provides valuable insights into the structure of employees within the organization, which can influence leadership styles and project management in multicultural and team-oriented environments.

In response to the question, "How would you rate the management style in your company?", the answers from 195 employees at NLB Bank were distributed as follows:

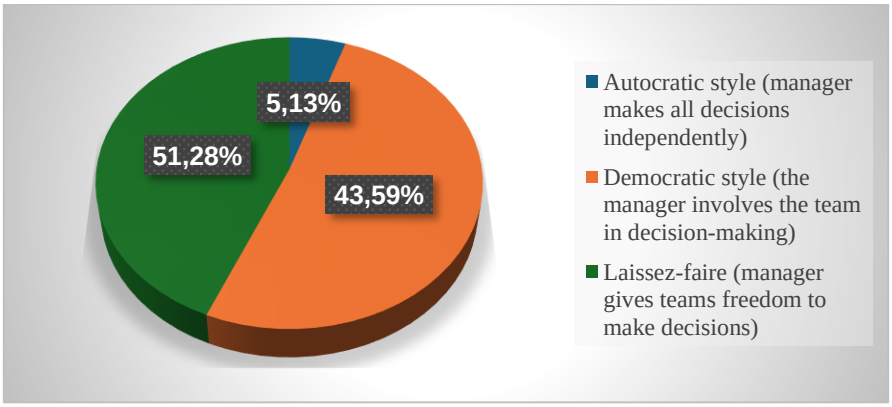
The democratic management style was the most prevalent, with 100 employees (51.28%) identifying it as the dominant approach. This result suggests that the majority of employees recognize a managerial approach that encourages teamwork and collective decision-making. Such a leadership style often contributes to higher levels of motivation, job satisfaction, and employee engagement, as employees feel involved in the process.

The laissez-faire management style was identified by 85 respondents (43.59%), indicating significant team autonomy in decision-making. This could reflect managers' trust in employees' expertise and capabilities, as well as a task structure that allows for flexibility in performing work responsibilities. However, excessive freedom may sometimes lead to a lack of coordination or direction.

The autocratic management style was noted by a smaller number of employees, 10 (5.13%), showing that this traditional and centralized decision-making approach is rare within the company. While such a leadership style can be effective in urgent situations, its low prevalence suggests a modern and inclusive organizational culture.

These results provide insight into the various management styles within the organization and highlight a dominant orientation toward democratic and participative approaches. This can be particularly significant for enhancing team efficiency and employee satisfaction.

Picture 1. *Leadership styles in NLB Bank*



Source: Author's research

The responses to the question, "How do you feel about current power distance in the company?", revealed the following percentage distribution:

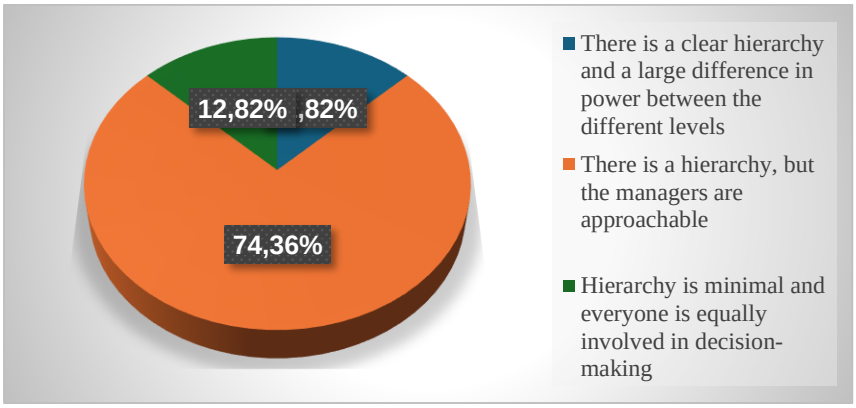
The most commonly recognized perception among employees was a hierarchical structure with accessible managers, identified by 145 employees (74.36%). This suggests that the organization has a clearly defined power structure, but managers actively foster open communication and accessibility. Such a leadership style enables employees to feel supported and included, which can positively impact their motivation and engagement at work.

Minimal hierarchy and equal decision-making were recognized by a smaller percentage of employees, 25 (12.82%). This indicates the presence of teams or departments where participative decision-making is dominant, fostering a sense of collaboration and shared responsibility for outcomes.

A clear hierarchy with a significant power gap was identified by 25 employees (12.82%), suggesting that some parts of the organization operate with centralized leadership, where a notable gap exists between management levels and employees. Such a perception may pose challenges for employee motivation and autonomy in decision-making.

The results indicate that NLB Bank successfully balances a formal hierarchical structure with managerial accessibility and openness. This approach supports effective management and increases employee satisfaction, while maintaining a balance between structure and flexibility.

Picture 1. *Power distance and hierarchy at NLB Bank*



Source: Author's research

Research results for the question, "How do you think the current leadership style affects project efficiency in your team?", yielded the following response structure:

The vast majority of employees at NLB Bank, 149 (76.41%), believe that the current leadership style positively influences project efficiency and goal achievement. This result suggests that managers successfully apply leadership styles that support productivity, teamwork, and clear goal setting. Key factors contributing to this positive effect may include clear communication of objectives and tasks, constructive collaboration between managers and teams, and employee motivation through support and recognition of achievements.

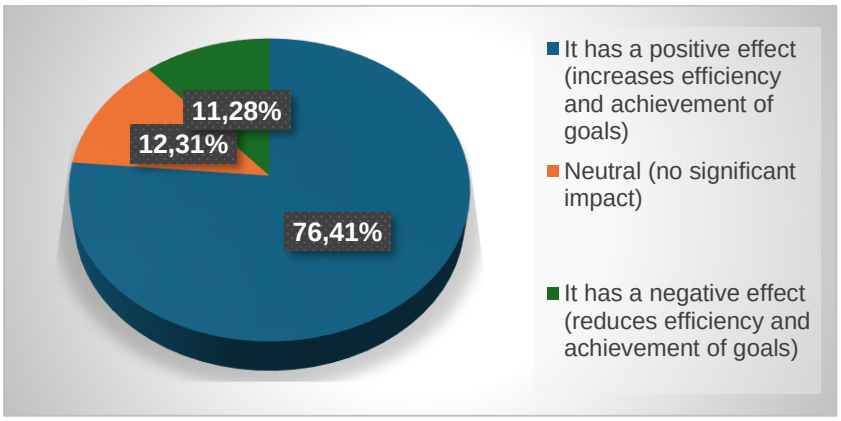
On the other hand, 24 employees (12.31%) feel that the current leadership style has no significant impact on efficiency and goal attainment. This may indicate a perception that leadership style is not directly linked to project success, or that other factors, such as resources, technology, or team structure, play a more crucial role. It is also possible that the leadership style appears standardized and does not leave a strong impression on certain employees.

The smallest percentage of respondents, 22 (11.28%), believe that the current leadership style negatively impacts efficiency and goal achievement. This dissatisfaction may stem from a lack of clear direction and planning, an excessive focus on hierarchy, or insufficient flexibility in decision-making, as well as a perceived lack of support or transparency from leadership.

The results indicate that the current leadership style at NLB Bank generally has a positive impact on project efficiency, reflecting the successful implementation of leadership strategies that support teamwork and productivity. However, a small percentage of employees highlight potential issues, which could serve as a signal for improving certain aspects of

leadership, such as flexibility, a more personalized approach, and additional employee support. These findings provide valuable insights for the further development of leadership within the organization.

Picture 3. *Influence of leadership style to the efficiency of projects within NLB bank*



Source: Author's research

The analysis of the survey conducted among 195 employees at NLB Bank provides a deeper insight into the impact of national culture on leadership style and project management practices. Through a series of questions, the research examined the use of formal processes, level of collectivism, gender equality, participative decision-making, goal setting, and interpersonal relationships within teams. The results are presented in a table and analyzed to gain a clearer understanding of the current state and potential areas for improvement.

Table 2. *Structure of responses of the employees of the NLB bank*

Question	Always / Rather high	Part-time / Moderately	Rarely / Low
How often are formal processes and standards used to avoid uncertainty?	100 (51.25%)	68 (35%)	27 (13.75%)
How would you assess the level of collectivism in your team?	149 (76.25%)	22 (11.25%)	24 (12.5%)
How would you assess gender equality in your company?	173 (88.75%)	22 (11.25%)	0 (0%)
How often does your manager set high goals and develop detailed plans to achieve them?	17 (8.75%)	166 (85%)	12 (6.25%)
How often does your team use participative decision-making methods?	34 (17.5%)	109 (56.25%)	52 (26.25%)
How would you assess the interpersonal relationships within your team?	95 (48.84%)	68 (34.88%)	32 (16.28%)

Source: Author's research

Results of survey highlight several key trends in management and team dynamics at NLB Bank. The use of formal processes and standards is widely prevalent, providing structure and reducing uncertainty in daily operations. This practice contributes to stability and predictability in project management. At the same time, the fact that a significant portion of employees perceives the use of standards as occasional suggests room for greater consistency.

Collectivism emerged as a dominant characteristic of the team culture, emphasizing shared goals and teamwork. This environment strengthens collaboration and coordination among team members. The observed balance between high and moderate levels of collectivism suggests that some teams still rely on individual goals, which can contribute to diversity in work approaches.

Gender equality was rated extremely high, reflecting the corporate efforts to create an inclusive and equitable work environment. The absence of responses indicating low gender equality further confirms that NLB Bank actively prioritizes this area, ensuring equal opportunities for career development.

Participative decision-making is a frequently used practice, but it is not consistently applied across all teams. This result suggests a need for additional training or the introduction of structures to ensure greater employee involvement in decision-making processes. Regarding setting high goals and detailed planning by managers, most employees report that this occurs occasionally, indicating an area for leadership improvement. Interpersonal relationships within teams were mostly rated positively, which is a crucial factor for effective collaboration and trust. However, a certain percentage of employees perceiving relationships as problematic suggests a need to strengthen team dynamics and interpersonal communication skills.

This study demonstrates that NLB Bank has a strong foundation in project management but also identifies opportunities for improvement, such as greater consistency in participative methods, strengthening interpersonal relationships, and more frequent setting of ambitious goals.

3.3. Discussions

Research results indicate a stable and structured leadership environment at NLB Bank, with a strong emphasis on the application of formal processes, a high level of collectivism, and gender equality. The use of formal processes and standards has been recognized as a key characteristic of teams, contributing to stability, predictability, and reduced uncertainty in projects. The high level of collectivism, which characterizes most teams, further enhances team collaboration, coordination, and a shared focus on goals. This suggests a healthy team dynamic, while also allowing for flexibility in certain areas, where team and individual goals are balanced.

The research by Janićijević (2019) emphasizes the impact of cultural dimensions such as authoritarianism and participativeness on leadership styles. This topic is also present in our study, where the influences of collectivism, gender equality, and participatory decision-making on team efficiency at NLB Bank were examined, confirming that national culture shapes leadership approaches and team dynamics.

Gender equality was rated exceptionally high, reflecting organizational values focused on inclusion and equal opportunities for all employees. This result confirms that NLB Bank fosters a positive work environment, serving as an example of best practices in the business sector. However, the findings also point to certain challenges in participative decision-making processes and the consistency of goal-setting by managers. While there is a significant level of employee involvement in decision-making, the results suggest that participation is often

occasional rather than systematically applied. Similarly, the occasional setting of high goals and detailed plans by managers highlights the need for greater consistency in an ambitious and strategic approach to project management.

The research by Ilić et al. (2019) highlights the importance of power distance and uncertainty avoidance in shaping leadership. These factors were also analyzed in our study, where it was observed that certain leadership styles (e.g., autocratic vs. democratic) have different effects on team efficiency depending on the cultural context. These findings further confirm the importance of understanding national culture in defining optimal leadership styles.

Although interpersonal relationships were mostly rated positively, a smaller percentage of employees identified issues in this area, which could affect team cohesion and efficiency. This indicates that, despite overall stability, there is room for improvement in communication, trust, and collaboration within certain teams.

The study by Barukčić (2024) explores how national culture influences communication in business environments. This topic is linked to our research, which analyzes how employees at NLB Bank perceive the role of collectivism and participatory decision-making in the workplace and its impact on project outcomes.

Leadership style at NLB Bank reflects a democratic approach, where managers strive to involve employees in decision-making processes and create an environment that values teamwork and shared goals. While a hierarchical structure is present, employee perceptions indicate managerial openness and accessibility, enabling two-way communication and the quick resolution of challenges. Leaders at NLB Bank generally combine participative and structured approaches, occasionally relying on flexibility depending on the specific circumstances of projects. This combination of leadership styles allows for effective management, but research findings suggest the need for further leadership development to ensure greater consistency in setting high goals, participative decision-making, and strengthening interpersonal relationships.

The organizational culture at NLB Bank strongly influences leadership styles, with dominant elements including collectivism, process formalization, and gender equality. The high level of collectivism allows leaders to rely on team collaboration and joint decision-making, while the use of formal processes ensures structure and stability in project management. Gender equality further contributes to an inclusive leadership approach, ensuring that all employees have equal opportunities to contribute and advance.

However, there are indications that hierarchical elements of the organizational culture, although moderate, occasionally limit full employee participation. Flexibility in decision-making and project planning demonstrates leaders' adaptability, but inconsistency in these practices may reduce efficiency in achieving goals.

This research contributes to understanding of how organizational and national culture shape leadership styles in project management, with a particular emphasis on collectivism, formalization, and equality. Identifying key factors that influence team efficiency at NLB Bank provides a foundation for improving managerial practices and making strategic decisions. The study's contribution is also reflected in the practical application of results for the development

of leadership training programs and the strengthening of participative work methods. Furthermore, the research highlights the importance of inclusive leadership and gender equality, contributing to the broader academic discourse on modern management and leadership practices in organizations. These findings can serve as a basis for developing leadership improvement guidelines for organizations with a similar profile, directly contributing to organizational efficiency and employee satisfaction.

For future research, it is recommended to focus on several key areas that could further enhance the understanding of leadership and organizational culture at NLB Bank. Analyzing the relationship between leadership styles and team efficiency can help understand how different leadership approaches (autocratic, democratic, laissez-faire) impact employee performance and motivation. Future research directions could also explore the role of emotional intelligence in leadership, providing insights into how leaders with strong emotional skills influence interpersonal relationships and the overall team atmosphere.

4. CONCLUSIONS

In the final part of this research, key findings have been synthesized, confirming the significance of national and organizational culture in shaping leadership styles and their impact on team efficiency at NLB Bank. The results indicate that a democratic leadership approach, along with a high level of collectivism and gender equality, positively contributes to team collaboration, employee motivation, and the achievement of project goals. At the same time, certain areas requiring further development have been identified, such as consistency in goal-setting, participatory decision-making, and the improvement of interpersonal relationships.

These findings have significant practical implications, particularly in the context of developing managerial practices and leadership training. By recognizing the key factors that shape team efficiency, managers can implement strategies that further enhance participatory work methods, improve communication, and encourage flexibility in project management. Additionally, the research results can serve as a foundation for further studies that will explore in more detail the relationship between specific leadership styles and team performance, as well as the role of emotional intelligence in leadership.

In an academic context, this research contributes to a better understanding of the impact of national culture on organizational behavior, providing insights into how dimensions such as collectivism, uncertainty avoidance, and participatory decision-making shape leadership styles and team dynamics. Further comparative research with organizations from different sectors would allow for a deeper understanding of the adaptability of leadership strategies and the identification of best practices that can be applied in various business environments.

Finally, it is essential to emphasize that the aim of this paper was to explicitly analyze the interdependence of organizational culture, leadership styles, and team efficiency within a financial institution. Through a systematic analysis of key cultural and leadership dimensions, this study provides relevant recommendations for improving managerial practices while paving the way for further research in the field of leadership and organizational development.

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THE FUTURE INTERNATIONAL ORDER AND THE EUROPEAN UNION'S SOFT POWER DILEMMA

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Abstract: *The change in the balance of power on the global stage marks the end of an era, and a new beginning in the International System, devoid of a central power. For 80 years, the United States has been a guarantor of peace and democracy. Moreover, thanks to the American initiative, the precursor organizations of the current European Union were born. With the re-election of the American President, Donald Trump, the post-war order began to erode. A reorganization is taking shape on the world stage, and a trade war is intensifying day by day. In this system, however, a dilemma arises for the European Union. Can the EU continue its activity only through soft power, or is there a need for a revitalization of the current mechanism? The study in question aims to develop an analysis in which it will establish a potential scenario of the future world order, and a potential paradigm shift in the dynamics of the European Union. The work is based on official speeches, specialized literature in the field of international relations and strategic documents.*

Keywords: *Soft Power, Hard Power, Smart Power, International Order*

1. INTRODUCTION

Classified as anarchic by realist theorists, the international system is shaped by the decisions of the great powers, which act in accordance with their own interests.

With the end of the Cold War and the collapse of the USSR, a unipolar global order was established. The USA became the only entity with world power. In this new system, it fought for peace and democracy, and in this whole equation, the European Union was an essential partner. The two actors collaborated for the democratization of Eastern Europe and integration into the European community after the fall of the Iron Curtain. Additionally, new NATO expansions took place towards Poland, the Czech Republic, Hungary. A strategic rapprochement was that of the invocation of Article 5 of the North Atlantic Treaty by the USA after the terrorist attack of September 11, 2001. The European Union supported the United States in the "War on Terror".

Essentially, until Donald Trump's first term, US-EU relations were based on a close partnership. The United States was a guarantor of security, while the European Union promoted democracy and human rights, exercising its influence through values, rules and

standards, not through force, in the logic of soft power, as Joseph Nye shows. The two actors complemented each other. A substantial rupture, however, occurred with the appearance of Donald Trump on the scene as President of America. With him, disagreements regarding trade relations and strategic autonomy emerged. New realities are taking shape on the international stage. The United States hesitates from the perspective of supporting democracies against aggressors, the most relevant example being the Russian-Ukrainian war. In order to obtain military and financial support against Russia, Ukraine accepted the signing of an agreement for the exploitation of rare minerals on Ukrainian lands by the Americans.

The situation on the world market is equally unsatisfactory. The United States is imposing colossal tariffs on products imported from the EU, China and Canada, which has led to a tense economic climate. In a press statement, Trump said "The European Union has been very unfair to the United States" (Euronews, 2025), and announced 25% tariffs on European cars. Currently, the general tariff applied to almost all goods imported into the US is 10%. We can see how relations between the two actors are gradually deteriorating. In this regard, the EU will have to make decisions regarding the security of the community and the gradual liquidation of dependence on the United States.

This paper aims to analyze a potential evolution of the future world order, from the perspective of Offensive Realism. At the same time, in the context of these changes, the Soft Power dilemma of the European Union will be introduced. The study aims to demonstrate the attempted transition from soft to hard power of the EU.

2. Theoretical framework

2.1. Soft Power and Hard Power: a conceptual delimitation

Before analyzing possible scenarios of action of international actors, or the EU's transition to Hard Power, it is important to know some theoretical bases of International Relations used in this study. Only through them is it possible to classify actors or explain the actions taken by leaders.

The concepts of Soft Power and Hard Power were first introduced by the representative of the neoliberal school of international relations, the American specialist in foreign policy and professor at the John F. Kennedy School of Government at Harvard University - Joseph Nye. In its early stages, the term soft power was found in Joseph Nye's work "Bound to lead: The changing nature of American Power". It is a theoretical concept that describes "the ability of states or institutions to attract and persuade others through non-coercive means". In other words, soft power is "obtaining results based on positive convictions". In Nye's view, this type of power is based on three main elements: *Culture; Diplomacy; Political ideology.*

The theorist believes that "the state, the holder of this power, will be able to realize its own interests without resorting to direct and hard influence or threats." At the opposite pole is Hard Power, also introduced by Joseph Nye in 1990. In contrast to Soft power, hard power means exercising influence over another actor through coercion (Ejova, 2025:209-210). It involves the use of various instruments of influence such as: economic sanctions, bribery or the threat of military action, to achieve political goals. In short, a coercive power.

2.2. Smart Power in International Relations: Strategic Efficiency and Adaptability

Joseph Nye also later developed the concept of "smart power". Appearing during the Barack Obama administration, it involves a combination of hard and soft tools. A classic approach to the balance between fear and attraction is formulated by Machiavelli in his work "The Prince": "The question is thus put, whether it is better to be loved than feared, or vice versa. The answer is that you should be both. But since it is difficult to reconcile these two things, I say that, when one of the two must be missing, it is much safer for you to be feared than loved." (Machiavelli, 2022:61). This famous quote is easily applicable to the case of smart power. Joseph Nye sees the combination of hard and soft means as an effective strategy for achieving the desired objectives. However, the fusion of the two is difficult to manage, sometimes resulting in failures.

The most relevant example, at present, is the erosion of American soft power. The current Trump administration promotes unilateralism and a transactional approach to international relations, instead of multinational cooperation and diplomacy. The American leader no longer considers soft instruments - cultural exchanges or foreign collaboration - but opts for "hard" mechanisms, i.e. customs tariffs or withdrawal from international agreements.

In this context, the American example justifies the idea that the balance between soft and hard power is difficult to manage, and the existence of the smart power paradigm does not mean its effective implementation in a system.

3. The return to bipolarism and the EU dilemma

3.1. Reconfiguring the world order: A look at international affairs

These new geopolitical changes can be validated by the evolution of actors over time. In the last 25 years, the US has tended to consolidate its position as a hegemon by coercing other state actors that posed a threat to its status: "When a country becomes really strong, in the international system, you can be sure that Uncle Sam will point his gun at that country." (Xuetong et al., 2025). This perspective has led to the projection of American influence in the strategic proximity of China and Russia. Feeling threatened, the two states have decided to consolidate their power. The emergence of the Chinese state on the scene seems to be taking place through soft power. The Belt and Road Initiative is an attempt to bring to light Chinese infrastructural innovations. Moreover, there is a global affirmation of China through the "Chinese Dream", an adaptation of the "American Dream" according to Chinese ambitions. Although it seems to be only soft power, Chinese consolidation actions are also accompanied by an investment in the modernization of military forces. The "Chinese Dream" is a political and ideological concept promoted by the President of China, Xi Jinping, which designates the objective of China's national revival.

In the current circumstances, the Chinese fleet is making its presence felt in the South China Sea. Moreover, in 2022, a university in Amsterdam closed a research center. Although it was supposed to be independent, it was funded by Chinese entities: "Their disinformation is spreading from the internet into the halls of our universities." (European Commission, 2022). The center disseminated human rights research, dismissing evidence of forced labor camps for Uyghurs.

Russia, however, has been expanding its influence through aggressive initiatives. Actions of electoral manipulation, cyber-attacks, and the war in Ukraine, which is currently

underway, are what define the strengthening of Russian authority against American external pressure. Before making a classification of these actions, we must understand that according to realist theory, the international system is devoid of a central power, and survival is the main concern of the actors. Therefore, China and the Russian Federation act according to the principles of offensive realism.

This brief explanation and justification of the actions was necessary to be able to introduce the following scenario.

The future world order will be characterized by a "Cold War 2.0" between American and Sino-Russian forces. The current trade war will turn into an arms race. The Chinese rise cannot be peaceful for the simple reason that the United States does not accept the presence of a new regional hegemon on the scene. In this whole equation, the European Union will have to survive on its own. The dilemma I mentioned earlier is nothing more than the transition from soft power to hard power. Although it was initially built as a soft actor, the challenges on the world stage force the organization to adopt a new policy for its functioning. Since neither of the two actors - China or the USA - demonstrates loyalty in terms of defense and collective collaboration, the EU will have to strengthen its strategic autonomy in relation to other actors.

3.2. The Crisis of the Post-Pandemic International Order

In 2019, the world was hit by an unprecedented health crisis. The COVID-19 pandemic had a profound global impact, affecting not only public health, but also economies, societies and the existing geopolitical order. According to official data from the World Health Organization (WHO), by May 2022, the number of deaths due to the SARS-CoV-2 virus had exceeded six million victims worldwide (https://stats.areppim.com). This was just one of the many devastating effects of the pandemic. To overcome such a global crisis, one would have expected states to cooperate internationally, share resources, and act in a coordinated manner. However, the reality was much more complex and less collaborative. Instead of building a united front against a common threat, the international system, already characterized by a high degree of anarchy and geopolitical competition, was marked by a “self-help” behavior, in which each state acted in its own interest, significantly limiting global collaboration.

A relevant example of this individualistic reaction is the measures imposed by nation states, which have introduced border restrictions and taken control of essential resources, such as protective equipment. The US, for example, under the Trump administration, decided to ban the export of N95 masks, gloves and other personal protective equipment (PPE), arguing that available resources should be used exclusively for domestic needs, thus ignoring the needs of other countries affected by the pandemic. This measure underlined the “zero-sum” principle characteristic of realist theory in international relations, in which “others’ gain is your loss” and each state protects its own interests, to the detriment of international cooperation (Çataklı et al., 2023).

The pandemic has also deepened divisions between major powers, and the rivalry between the US and China has reached a peak. On 7 April 2020, President Donald Trump announced a temporary suspension of US funding to the World Health Organization (WHO), citing the WHO's "China-centrism" and accusing the organization of being too favorable to

Beijing in its handling of the crisis. At the same time, the US administration has suggested that the virus originated in a laboratory in Wuhan, while Chinese authorities have claimed that US soldiers were responsible for the spread of the virus. These mutual accusations and manipulation of information have shown how a global crisis can exacerbate existing geopolitical tensions and harm international cooperation (Çataklı et al., 2023).

On the other hand, another manifestation of geopolitical competition during the pandemic was China's "Mask Diplomacy", which became a key player in providing medical protective equipment to European countries, especially when Europe became the new epicenter of the health crisis (Bram, 2020). China has offered significant donations of masks and equipment, which many European states have interpreted as an opportunity to strengthen bilateral relations with Beijing, at a time when cooperation between the European Union and the United States has been marked by uncertainty and divergent approaches. These diplomatic gestures, however, have been perceived differently by European leaders, who, while acknowledging China's help, have become increasingly aware of the risks of growing dependence on a non-Western power that could exploit the crisis to advance its geopolitical influence.

The COVID-19 pandemic marked a turning point for the European Union, which was forced to reassess its security and strategic autonomy. Instead of relying entirely on traditional partnerships, especially with the United States, for its security, the Union realized that greater autonomy in critical areas was essential to respond effectively to future crises. The crisis demonstrated that, in a volatile and uncertain global context, the EU cannot depend exclusively on other international actors, especially when they prioritize their own interests over a collective global response. The pandemic was thus a revealing moment in the process of strengthening the European Union’s strategic autonomy.

The speech by European Council President Charles Michel at the opening session of the Bled Strategic Forum in September 2021 highlighted this reality. Michel said that the pandemic was the “acceleration of history” and stressed the need for Europe to “speak the language of power”, developing a “common strategic culture” and preparing to become an autonomous global actor, capable of protecting its own interests in the face of external threats. Michel stressed that Europe must build its own capabilities to ensure its security, in order not to depend on other actors who, in times of crisis, might act in their own interests (https://www.consilium.europa.eu/).

The pandemic has also had a significant impact on the European Union's position in international relations, highlighting the need to strengthen internal security, develop a more assertive foreign policy and invest in strategic industries, such as the production of protective equipment, medicines and essential technologies. Although the Union has implemented economic and financial measures to support affected Member States, the pandemic has shown that, in the face of global crises, the EU needs to build its own resources and capacities, without relying exclusively on external actors.

Moreover, the COVID-19 crisis accelerated the process of digitalization and innovation in the healthcare and pharmaceutical industries, but also in key economic sectors, which was essential for strengthening the economic and technological autonomy of the European Union. In this sense, the pandemic was not only a test of the crisis response, but also a turning point that led to a reconsideration of the Union's foreign and security policy.

Thus, the post-COVID context was one in which the European Union understood more clearly that in order to navigate global challenges and assert itself on the international stage, it must abandon its traditional "soft power" policy and invest in a "hard power" strategy. This includes not only the development of military and defense capabilities, but also greater internal cohesion and a more assertive foreign policy, reflecting the strategic interest of the Union.

The COVID-19 pandemic was a defining moment in the process of strengthening the European Union's strategic autonomy, and political speeches, such as that of Charles Michel, emphasized the need for a serious commitment by the Union to become an autonomous global actor, capable of acting in its own interest, regardless of external circumstances.

3.3. The conflict in Ukraine - the threshold of redefinition

Another major event that significantly influenced the redefinition of the European Union as a global actor was the outbreak of the war in Ukraine in February 2022. It represented a decisive rupture in Europe's perception of its security and highlighted the vulnerabilities of the international system to aggression. The war demonstrated once again the unpredictable nature of contemporary geopolitics and the dangers to which regions without a solid and unitary defense are exposed.

In the analysis of this conflict, an essential concept is that of power, which plays a central role in determining the behavior of international actors. Within the realist theory of political science, power is defined as “the capacity of an actor (A) to determine another actor (B) to take actions that B would not have taken voluntarily”. Extending this definition to the level of the international system, power also becomes the capacity of a state to create, transform or destroy worlds and international orders. In the specific case of the Russian Federation, the military power it holds, as well as its use against Ukraine, had devastating effects, not only on Ukraine, but also on the entire region. In this sense, Russia played the role of an aggressor, having the capacity to destabilize an entire society, destroying critical infrastructure and causing large-scale economic and political crises in Eastern Europe, but also in the entire European Union.

This war had a direct impact on the European Union, highlighting a series of strategic vulnerabilities that required a rapid and coordinated response. One of the most obvious effects was the energy crisis, largely generated by the sanctions imposed on Russia and the halt in natural gas and oil supplies to Europe. This crisis clearly demonstrated that the European Union could no longer depend on other actors to ensure the energy security and stability of its region. Faced with this reality, European leaders were forced to find alternative solutions to diversify energy sources and reduce dependence on Russian resources. This was a crucial moment in understanding the need for greater strategic and economic autonomy in the face of an obvious external threat.

In this context, Josep Borrell, as High Representative of the Union for Foreign Affairs and Security Policy, emphasized in an important speech that "the idea of power is 'new in Europe'" (https://www.g4media.ro/). According to him, for the first time since World War II, “danger, threat and fear have materialized in an undeniable way”. This reasoning was supported by the current geopolitical context, which led the European Union to directly

confront its own vulnerabilities in the field of security. The war in Ukraine forced the European Union to rethink its security strategy and re-evaluate its place on the global stage. Thus, the Union began to understand that it could no longer depend exclusively on the "virtue of soft power", as it did in the past, but must also invest in stronger defense and security capabilities, in order to be able to protect its own interests and fundamental values.

A key point in this discussion is that, although the European Union has implemented economic and sanctions measures against Russia, it has not yet fully strengthened its own defense capabilities. Borrell stressed that the process of strengthening defense and security will be long and uneven, but that this step is absolutely necessary for the future of the Union. He noted that there is no quick fix and that this process should be accompanied by greater coordination between member states and a more integrated defense policy. Borrell also stated that the future of the European Union depends on its ability to adopt a more coherent and assertive foreign policy, reflecting current security needs, but also preparing for possible future crises.

The war in Ukraine was a determining factor in reconfiguring the position of the European Union as a geopolitical actor. It showed that, in the face of major external threats, the EU cannot maintain its strategy based exclusively on "soft power" and that it must invest in "hard power" to ensure its long-term security and stability. Thus, the crisis highlighted the need to strengthen the Union's strategic autonomy, which is a strategic priority for European leaders in the context of new global challenges.

3.4. The EU Dilemma: Soft Power in a Hard World

This brief explanation was necessary to introduce the scenario that is looming before the European Union in the current context of geopolitical changes. The future world order will undoubtedly be marked by a confrontation between two dominant blocs – that of the American forces and the Sino-Russian one, a "Cold War 2.0" that will transform the economic and commercial conflict into a veritable arms race. The rise of China, supported by an alliance with Russia, cannot be a peaceful one, given that the United States, as an undisputed global leader, will not accept a new regional hegemon that threatens the established order. In this complex geopolitical equation, the European Union will be forced to navigate alone. The challenges imposed by the crisis in Ukraine, but also by the post-pandemic context, will force the EU to redefine its foreign and security policy.

The dilemma referred to is not just a theoretical one, but represents a concrete reality: the transition from soft power to hard power. Although the European Union was initially built as a global actor based on economic, diplomatic and cultural power, the international context has rapidly evolved into a more conflictual and unstable environment, in which influence can no longer be obtained solely through non-coercive means. The war in Ukraine and the energy crisis caused by Russian aggression have demonstrated that, faced with direct threats, the Union cannot depend exclusively on external partnerships or the "virtue" of soft power. Just as the pandemic has shown that the EU must build its own resources to deal with global crises, in the context of a hybrid war such as the one in Ukraine, the Union will have to build its own defense. In a world where neither China nor the United States offers full loyalty in terms of collective defense, the EU will no longer be able to rely on external solidarity and will need to strengthen its strategic autonomy to ensure the peace and security of its region.

4. The „ReArm EU" Project – Transition to Hard Power?

4.1. From Crisis to Reaction: The Triggers of "ReArm Europe"

In her State of the Union address, Ursula von der Leyen highlighted the need to increase the strategic resilience of the European Union in the field of defence. In her speech on 14 September 2022, she addressed a number of topics that require special attention. Discussing reform, the energy crisis and the war in Ukraine in her address, the Commission President stated: "We will not allow Trojan horses of autocracy to attack our democracies from within…That is why we will present a package to defend democracy." (European Commission, 2022). The President's initiative emphasized the need to mobilize the Union to secure its Member States. In her 2023 speech, Ursula Von Der Leyen noted the idea that "European citizens want a Union that defends them in a time of fierce competition between powers." (European Commission, 2025). Many of these arms and security measures have been triggered by Russia's invasion of Ukraine. However, the incursions were given greater weight this spring - 2025 - when US President Donald Trump showed a tendency to withdraw from economic and security collaborations with the EU.

A series of public statements by the new president have forced a reorientation of European community policies. His expressions, such as: "If they don't pay, I won't defend them" (D. Trump) expressed reservations about the US commitment to defend NATO members that do not reach the established level of defense spending. On March 3, Trump suspended military aid to Ukraine, after a confrontation with leader Volodymyr Zelensky. There have been numerous moments that have made European leaders worry about the reliability of security guarantees offered by the US.

On 4 March, the Commission President presented the "ReArm Europe" plan, which aims to mobilise €800 billion to strengthen Europe's defence capabilities. By implementing this project, Member States will each receive a long-term loan of up to €150 billion. With their contribution, States can support joint public procurement of defence products, with priority being given to: missiles and ammunition, military mobility, air and missile defence, etc. This new EU instrument will be established under Article 122 of the Treaty on the Functioning of the European Union (TFEU), providing "financial assistance to Member States threatened with serious difficulties caused by exceptional events linked to the political situation".

4.2. Support and reservations: Political echoes of the "ReArm Europe" project

When presenting the White Paper on European Defence, Commission President Ursula von der Leyen said, "The era of the peace dividend is long over. The security architecture on which we relied can no longer be taken for granted."(Calea Europeană, 2025), thus signaling the urgent long-term need to strengthen Europe's security and defense.

European leaders welcomed the initiative, but also expressed some reservations. The Polish Prime Minister noted that "Europe, as a whole, is truly capable of winning any financial, economic or military conflict with Russia. We are simply stronger." (Poland Prime-minister, 2025), expressing confidence in the organization's ability to meet the challenges. Antonio Costa, President of the European Council, highlighted the unprecedented consensus among EU leaders "In one month we have given birth to the Europe of Defense" (Euroopean Parliament, 2025), emphasizing the need for strategic autonomy on the continent. However,

the project has also met with criticism. Spanish Prime Minister Pedro Sanchez argued that the term "ReArme" is "an incomplete approach", and that "defense can be explained under a much broader umbrella, which is security". (Grosu, 2025).

For the Americans, however, this measure would mean restricting access to defense contracts for American companies. Secretary of State Marco Rubio has told European allies that restricting the opportunities for American companies to obtain defense contracts would be viewed negatively by Washington. Adding to this, at a NATO meeting in Brussels, Rubio proposed increasing NATO members' defense spending to 5%, claiming that "wealthy Western countries are not investing enough in their own defense capabilities." These statements reflect tensions between the US and the EU over European strategic autonomy - an action viewed quite skeptically by American officials.

In general, this approach, within the structures of the organization, is a logical consequence of the current situation. First of all, it is an expression of the European Union's transition to hard power. The project in question will increase the EU's credibility in the geopolitical plan, making it an independent actor on the stage. Although the plan presents significant political and operational complexity, its implementation will facilitate a consolidation of the position in relation to other major powers.

5. CONCLUSIONS

Ultimately, the global geopolitical climate remains characterized by a constant level of tension. The United States prefers nationalist initiatives to alliances with external partners. The Chinese state demonstrates a significant rise as a regional power. Xi Jinping exercises greater influence over Russian leader Vladimir Putin than Donald Trump could demonstrate. Thus, realignments are emerging between the great powers, a context in which the European Union is forced to navigate autonomously. For this reason, it can no longer act as a soft actor on the stage, but only as a hard power, having strategic independence in relation to other actors and greater influence internationally.

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CHALLENGES OF TRANSFORMING INTELLECTUAL CAPITAL INTO GLOBAL COMPETITIVE ADVANTAGES IN SUSTAINABLE DEVELOPMENT

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Abstract: *This article examines intellectual capital as a key driver of sustainable development and global competitive advantages. It identifies the role of human, structural, and relational capital in enhancing economic systems' wealth and competitiveness. Intellectual capital is essential for long-term competitiveness, enabling innovation, technological progress, and knowledge creation. The study aims to analyze how the development and management of intellectual capital can support the transition to a post-industrial society and help achieve sustainable development goals. It emphasizes the integration of intellectual capital components to improve economic resilience and competitiveness in a globalized economy. The paper also addresses challenges in utilizing intellectual capital and proposes strategies for enhancing innovation, education, and research. Through an analysis of intellectual capital's formation and application, the study offers insights into how emerging economies, like Azerbaijan, can strengthen their global competitive position. Recommendations are provided for policymakers and organizations seeking to leverage intellectual capital for sustainable growth.*

Keywords: *Intellectual capital, sustainable development, competitive advantage, innovation potential.*

INTRODUCTİON

The modern global economy is increasingly shaped by rapid technological advancements, the flow of data, and constant innovation. In this dynamic environment, national economies face constant pressure to maintain and enhance their competitiveness. The traditional forms of capital—such as financial and physical capital—are no longer sufficient to ensure long-term growth and stability. As a result, intellectual capital has emerged as one of the most crucial forms of capital in the contemporary global economy. This intangible asset, which includes human, structural, and relational capital, has become a pivotal resource that drives innovation, fosters economic growth, and contributes to the social and ecological sustainability of economies. Intellectual capital plays a vital role not only in economic development but also in ensuring that nations can thrive in an increasingly interconnected and competitive world. Its effective management is key to gaining and sustaining global competitive advantages. The nature of intellectual capital as an intangible asset presents unique challenges, as it is difficult to quantify and requires tailored strategies for development and application.

This research aims to explore the role of intellectual capital in sustainable development, focusing on its capacity to create and maintain global competitive advantages. The primary objective is to investigate how the development, management, and application of intellectual capital can support the transition to a post-industrial society and contribute to the achievement of sustainable development goals. In this context, the study seeks to answer the following key questions: How can countries effectively utilize intellectual capital to enhance their competitiveness in the global market? What are the critical factors for managing intellectual capital in the context of sustainable development? And how can emerging economies, such as Azerbaijan, leverage their intellectual capital to improve their global position? Despite the growing recognition of intellectual capital's importance, there is a significant gap in existing research regarding the practical application of intellectual capital in emerging economies.

While much of the literature focuses on developed countries, less attention has been paid to how countries in transition, such as Azerbaijan, can harness intellectual capital to achieve sustainable development and competitive advantages. This gap represents a key area for further investigation, and this study aims to fill this void by offering actionable insights and recommendations for policymakers and organizations.The significance of this research lies in its potential to provide a comprehensive framework for understanding how intellectual capital can be effectively utilized to drive both economic and social sustainability. The study also addresses how the integration of intellectual capital components—human, structural, and relational—can contribute to the resilience of economies in the face of rapid globalization and technological change. By examining the challenges and opportunities associated with intellectual capital, the research contributes to the ongoing scholarly discourse on the role of intangible assets in contemporary economic systems.In summary, this study not only aims to advance theoretical knowledge on the role of intellectual capital in sustainable development but also seeks to provide practical insights that can assist governments and organizations in emerging economies to effectively harness their intellectual resources. Through its exploration of intellectual capital’s potential, this research offers valuable contributions to both academic literature and policy development in the field of economic competitiveness and sustainable growth.

1.The Importance of Intellectual Capital

Intellectual capital is an essential resource for countries and enterprises to develop according to modern requirements. Economic growth is not limited to increasing physical and financial capital; it is also linked to increasing intangible resources such as human capital, education, knowledge, and innovation. Each of these components, especially human capital, is a fundamental factor in ensuring long-term development for a country or enterprise.

The development of intellectual capital ensures that countries gain stronger positions in the global economy. To succeed in expanded economic markets, countries must continue advancing not only in traditional areas, such as natural resource extraction but also in technology, innovation, education, and other sectors. This constitutes the foundation of a developed and sustainable economy (Teece, 2010).

This article will explore the role of intellectual capital in ensuring sustainable development, how it is applied in world practices compared to Azerbaijan's experience, and how the country can increase its global competitive advantage.

The role of intellectual capital in the global economy is reflected in its contributions to sustainable development and the continuous growth of economies. Intellectual capital is also important for ensuring the social and cultural development of societies. Knowledge and skills enable societies to compete better in the global market. Strengthening human capital, modernizing education systems, and promoting innovation accelerate the development of countries (OECD, 2020).

The effective use of intellectual capital is especially crucial for gaining a competitive advantage in the global economy. This capital supports not only economic activities but also social and ecological goals, ensuring sustainable development. Economic growth must not only be prioritized, but social progress and ecological sustainability must also be in focus (Morrison & Cumming, 2014).

2.Azerbaijan's Development and Utilization of Intellectual Capital

Azerbaijan has been taking significant steps to develop intellectual capital in response to the requirements of the modern economy. The reforms in this area accelerate the overall development of the country and strengthen its position in the world economy. Azerbaijan's reforms in education, innovation, and technology, alongside the development of the non-oil sector, contribute to strengthening the country's position in international markets.

In recent years, Azerbaijan has placed particular emphasis on developing the non-oil sector. Significant progress has been observed in areas such as agriculture, tourism, information technologies, and startups. The state's investments in these areas increase the country's competitiveness both in the domestic market and internationally.

The development of intellectual capital is linked to strengthening Azerbaijan’s non-oil sector, which is one of the key components of the country's economy. The progress made in these areas further consolidates Azerbaijan’s economic position in the world. Additionally, educational reforms in Azerbaijan, particularly innovations in high-tech areas, create an environment that further develops the human capital in this sector (Əliyev, 2023).

2.1.Components of Intellectual Capital

Intellectual capital consists mainly of three components: human capital, structural capital, and customer capital. Each of these components is essential for ensuring sustainable development. Let’s delve deeper into each component and explain them with practical examples:

Human Capital: Human capital is related to education, skills, experience, and innovation capabilities. It is a significant factor in accelerating the development of countries and enterprises. Strengthening human capital ensures the development of educational systems that support knowledge expansion and creativity. In Azerbaijan, educational reforms play a crucial role in this area. One of the main goals of the "Azerbaijan 2020: Vision into the Future" strategy is to create a high-quality education system, which enhances Azerbaijan's competitiveness both domestically and internationally.

Structural Capital: Structural capital refers to the organizational structure, management systems, technological infrastructure, and innovation systems of a country or enterprise. The development of structural capital helps companies and countries become more competitive and sustainable. Reforms within the framework of Azerbaijan's "Digital Azerbaijan" program have made significant steps in this area.

Customer Capital: Customer capital encompasses customer relations and market reputation. Customer satisfaction, the quality of products and services, ensures long-term advantages for companies and countries in the global market. In Azerbaijan, particularly in relation to the development of the non-oil sector, the strengthening of customer capital and facilitating access to new markets are among the initiatives the government is implementing.

The most significant changes in Azerbaijan's economy have occurred in recent years within the non-oil sector. This sector, especially in agriculture, information technologies, and tourism, is developing. The development of information technologies in Azerbaijan is a result of the government's steps toward diversifying the economy. Investments made by the government in education, innovation, and ICT sectors enhance Azerbaijan's competitiveness both in the domestic and international markets (Sultanov, 2022).

Global experiences confirm that intellectual capital plays a crucial role in the development of countries. For example, countries such as Sweden, South Korea, and Estonia have achieved leadership positions in the global economy by efficiently managing their intellectual capital. These countries have strengthened their positions in the global market through reforms in education, innovation, and technology (UNDP, 2020).

Azerbaijan is learning from these experiences and developing its education system, implementing innovation-oriented programs, and developing its digital infrastructure. At the same time, the government's investments in the non-oil sector and technology sectors ensure the diversification of the economy (Əliyev, 2023).

When comparing Azerbaijan's use of intellectual capital with international experiences, we consider the practices of several countries. For instance, Sweden, South Korea, and Estonia have positioned themselves as global leaders in innovation and education through reforms and investments in these areas.

Table 1 . *Comparison of the Role and Development Perspectives of Intellectual Capital in the Global Economy*

Country	Application of Intellectual Capital	Economic Diversification	Global Competitive Advantage
Azerbaijan	Reforms in education and ICT	Non-oil sector, agriculture, tourism	Educational reforms, digital economy
Sweden	World leader in education and R&D	ICT and green technologies	Strong infrastructure in innovation, education, and ICT
South Korea	Advances in technology, education, and manufacturing	ICT, automotive industry	Global leadership in technology
Estonia	Establishment of a digital society	ICT and e-government development	E-government, digital services

(Source: Prepared by the author).

2.2.Azerbaijan's Experience and International Comparison

Azerbaijan: In recent years, Azerbaijan has been focused on the development of intellectual capital, especially in the non-oil sector. Reforms in education, innovation, and the technology sector have strengthened the country's competitiveness both in the domestic and international markets. Notably, the emphasis has been placed on diversifying the economy, enhancing ICT infrastructure, and boosting non-oil sectors such as agriculture, tourism, and information technologies (Azerbaijan's education and ICT reforms, 2020).

Sweden: Sweden is recognized for its strong education system and robust R&D investments, making it a global leader in innovation. Its advancements in ICT and green technologies provide Sweden with a competitive edge in the global market, making it one of the top performers in leveraging intellectual capital for economic success (Sweden's innovation ecosystem, 2021).

South Korea: South Korea's commitment to technological advancement, education, and manufacturing sectors has propelled its economic success. With a focus on ICT and automobile manufacturing, South Korea has become a global leader in technology and manufacturing, utilizing intellectual capital to ensure sustained economic growth (South Korea's technological leadership, 2022).

Estonia: Estonia has made significant strides in digital transformation, establishing itself as a leader in e-government and digital services. Its use of intellectual capital in the form of digital infrastructure, ICT, and e-government systems has led to greater global competitiveness (Estonia's digital transformation, 2023).

Azerbaijan is striving to further develop its non-oil sector. However, unlike these countries, Azerbaijan still faces certain challenges, particularly in innovation and technology, where more investment is needed. Turning intellectual capital into a global competitive advantage is not solely dependent on reforms in education and innovation. It also requires the development of technological infrastructure, the support of existing legislation, and the expansion of international collaborations.

2.3.Suggestions for Strengthening Azerbaijan's Intellectual Capital

1. Strengthening the Education System: Azerbaijan must align its education system with international standards by incorporating more global collaborations and modern teaching methods (Quliyev, 2022).
2. Innovation and Technologies: Azerbaijan should invest more in R&D, create a favorable environment for startups.
3. International Cooperation: Azerbaijan must expand its international relations and strengthen the use of intellectual capital in various fields to position itself more firmly in the global economy (Əliyev, 2023).
4. Efficient Use of Intellectual Capital: Not only in education, innovation, and technology but also in strategic planning of organizations and governments, public policies, and international collaborations.

Table 2. *Factors Influencing the Transformation of Intellectual Capital into a Global Competitive Advantage*

Factor	Current Situation in Azerbaijan	International Experience
Educational Reforms	Aligning with modern standards in education	Sweden and South Korea: World-class education
Innovation and R&D	Government investment in R&D	Estonia and Sweden: Sustainable development with R&D
Technological Infrastructure	"Digital Azerbaijan" program, development of ICT sector	South Korea: ICT infrastructure and technology
International Cooperation	Development in international relations	Sweden and Estonia: International innovation platforms

(Source: Prepared by the author).

Azerbaijan's progress in these areas will help increase its global competitive advantage and strengthen its position in world markets.

Azerbaijan has given great attention to developing its intellectual capital by focusing its economy on the non-oil sector and investing in various technological sectors in recent years. However, compared to other countries, Azerbaijan still needs more progress in terms of its international position and innovation capabilities.

Table 3. *Impact of Intellectual Capital on Competitive Advantages in Azerbaijan and Foreign Countries*

Country	Strengthening the Role of Intellectual Capital	Future Economic Development Prospects
Azerbaijan	Strengthening digital transformation and educational reforms	Development of the non-oil sector, startups, and innovation
Sweden	Long-term investments in R&D, innovation, and education	Green technologies, smart cities, global leadership in R&D
South Korea	High-tech development, education, and industrial reforms	Global leadership in ICT and manufacturing
Estonia	Digitalization, e-government, and development of technological ecosystems	Leadership in digital services and innovation

(Source: Prepared by the author).

This table shows that Azerbaijan needs to take more strategic steps to increase its global competitive advantage.

Intellectual capital is the foundation of the modern economy, and its development helps countries gain competitive advantages both domestically and internationally, build sustainable economies, and ensure social and ecological sustainability. This capital forms through human capital, education, innovation, and technological development. In a rapidly changing global economy, the importance of intellectual capital is growing. Countries can accelerate their development and strengthen their positions by effectively using this capital (Vəliyeva, 2022).

Azerbaijan has made significant progress by focusing on the development of intellectual capital and directing its economy towards the non-oil sector in recent years. The

state's investments in education, innovation, and technology have increased the country's competitiveness in both domestic and international markets. However, Azerbaijan's economic development is not limited to increasing investments, but also involves reforms in education and humanitarian sectors, the creation of an innovation ecosystem, and the development of technological infrastructure. The progress Azerbaijan has made in these areas not only makes its economy more resilient and sustainable but also strengthens its position in the international economy (Rəhimov & Hüseynov, 2022).

CONCLUSIONS

The findings of this research underline the crucial importance of intellectual capital in enhancing the competitiveness and sustainability of economies, particularly in the context of global economic dynamics. International experiences demonstrate that countries that effectively manage their intellectual capital can achieve significant economic and global leadership. For instance, Sweden, South Korea, and Estonia have positioned themselves at the forefront of the global economy by investing in education, innovation, and technology, thereby transforming their intellectual capital into long-term economic advantages.

Azerbaijan can follow a similar path by leveraging its intellectual capital more strategically to improve its economic standing on the world stage. Azerbaijan, however, must make additional, focused efforts to further develop and utilize its intellectual capital. The country needs to align its education system with international standards, invest more heavily in research and development, and foster a supportive environment for startups and innovation. By strengthening its technological infrastructure and expanding international cooperation, Azerbaijan can not only increase its competitiveness in the global market but also build a sustainable, diversified economy. This will enable the country to better respond to the challenges of a rapidly evolving global economy.

The development of intellectual capital, however, is not limited to economic growth alone. It plays a significant role in improving the social and ecological dimensions of sustainability. As countries develop their knowledge-based resources, they create systems that promote not only economic prosperity but also social welfare, environmental sustainability, and justice. In this regard, Azerbaijan's efforts to enhance its intellectual capital will not only fortify its economy but will also contribute to the social and ecological well-being of its citizens.

Therefore, intellectual capital is a foundational element for comprehensive development in the modern world. This research contributes to the existing body of knowledge by offering a deeper understanding of how intellectual capital can be leveraged to achieve sustainable competitive advantages. It presents a model for emerging economies, particularly Azerbaijan, to follow, drawing on the best practices of successful countries. The study also highlights the need for a more integrated approach to managing intellectual capital, where human, structural, and relational components are developed simultaneously and in alignment with sustainable development goals.

Looking ahead, there are several potential areas for further research and development. Future studies could explore the specific policies and actions that governments can implement to create an environment conducive to the growth of intellectual capital.

Additionally, more research could focus on how the private sector and academic institutions can collaborate more effectively to generate and apply intellectual capital in key industries. Further investigation into the role of digital transformation and artificial intelligence in enhancing intellectual capital would also provide valuable insights for future development. For policymakers, economists, and business leaders, this research offers practical insights on the significance of intellectual capital for long-term economic and social sustainability. By incorporating these findings into decision-making processes, governments and organizations can better shape their strategies to ensure competitiveness in the global economy.

For international organizations, understanding the interplay between intellectual capital and sustainable development can help guide interventions and partnerships aimed at fostering innovation and growth in emerging economies.

In conclusion, the effective utilization of intellectual capital is essential for Azerbaijan's future growth and competitiveness. By learning from the experiences of global leaders, implementing the right policies, and fostering innovation, Azerbaijan can significantly strengthen its position in the global economy. The long-term development of intellectual capital will not only elevate the country's economic performance but also ensure a sustainable future in which social, economic, and ecological development are harmoniously integrated.

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SECURITY THREATS TO EUROPEAN SOCIETIES. CASE STUDY: THE CONFLICTS ON THE ROMANIAN BORDER

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Abstract: *The international security environment is in a state of continuous transition. Some changes are predictable and linear, whether they have their source in the objective development of the security environment or are the effect of strategies and programs. Others have unexpected qualities, of essential discontinuity, seismic and are accompanied by a significant dose of uncertainty in nature, magnitude and duration. The multiplication of new risks and threats intensifies the aspects of uncertainty and insecurity of the global environment, so that, in the vision of the next 10-15 years, the world order will look different, taking into account the fact that the new dynamics of international relations advantage the attempts of the Euro-Atlantic community which aims to build a new international balance, capable of ensuring the expansion and consolidation of freedom and democracy (CSSAS, 2004).*

Keywords: *security, threats, European, societies.*

1. Introduction: International security environment. Threats

To identify threats to the identity of a state, we must establish the values around which the community, in this case the nation, coalesces, including objective factors, such as the national language, territory and other identifying elements, specific to the state in question (Bogzeanu,2010). Barry Buzan identifies three major types of threats to societal security, namely:

• migration – when a people receives too high a percentage of foreigners, their identity can be affected by the change in their social composition (Daud, 2017);

• horizontal competition – the cultural and linguistic characteristics of a society can be affected by the influence of neighboring cultures, with clear effects on the identity of that people;

• vertical competition – sometimes, integrationist or secessionist projects make people stop identifying with people Z (e.g. Catalonia, Kosovo, etc.)

In addition to the three types of threats, three more threats to societal security are currently identified, namely:

• depopulation has an ambivalent character and for this reason it is mentioned separately. Depopulation has an ambivalent character, because it does not represent a threat to the identity of a society, but, first of all, to individuals, who are the bearers of the identity of a nation. It becomes a threat to societal security when it threatens to destroy society;

• discrimination;

• terrorism.

2. Risks and threats to Romania

The last decade of the 20th century was a turbulent period for the entire world, characterized by profound transformations at a global level, transformations that relate to both the redrawing of borders and changes in regime and ideology. The redrawing of borders meant an increase in the number of state actors at a global level, and the changes in regime and ideology generated new types of actors and surprising forms of their manifestation (CSSAS, 2004). Non-state actors (multinational and transnational corporations, NGOs, etc.) have gained increasing importance due to their role on the global stage (CSSAS, 2004), whose actions are sometimes difficult to predict. Other disturbing phenomena tend to undergo major mutations, gaining full status as an actor on the international stage, an actor whose face is increasingly difficult to identify, as is the case with terrorism. Risks and threats have acquired an internationalized aspect, "managing" to ignore, in their manifestations, state borders, which has resulted in a rapid blurring of the differences between internal and external security. The expansion of NATO and the EU to the east can also be included in this direction, these being processes that visibly influence the system of international relations, with the most important implications on the international security environment and on which we will focus in the following, for at least two reasons.

The first would be the fact that both processes bring about transformations of the geopolitical and geostrategic situation in the regions close to Romania (Central and South-Eastern Europe, the Western Balkans, the Black Sea and Caucasus regions) (Buzan, 2000:147).

The second reason is that the evolution of these processes is directly related to the achievement of Romania's security objectives, the state of our country's internal security environment depending to a large extent on them. Although there have been no immediate and concrete reactions, it is expected that, in the absence of adequate motivations from the main world actors, opposition reactions of a geostrategic and geopolitical nature will occur in the near future. The emergence of the idea of a "New Europe" (in which the Secretary of State for Defense Donald Rumsfeld included states such as Romania, Bulgaria, Poland, the Czech Republic, to give just a few examples, states with recent membership status in the North Atlantic Alliance) may suggest new ways of approaching Euro-Atlantic relations, but less a strengthening of them (Mostoflei, 2009).

In this context, we can appreciate that, in general, the risks to which Europe's stability and security are subject are residual risks, originating from the legacy left by the end of the Cold War – from states that belonged to the former USSR, or were in its sphere of influence (both in terms of existing tensions that can generate violent conflicts, but also of the high potential they have to become suppliers of weapons and combat equipment for certain non-state actors whose manifestation is increasingly felt on the international stage - terrorist organizations such as Al Qaeda, for example, or other types of paramilitary groups). Such residual risks do nothing more than increase the chance of the emergence of transnational dangers, which could lead to the degradation of the state of stability, often precarious in some European regions, located on the periphery of the continent (Dinu et al., 2000).

3. Regional context

The situation on Romania's eastern border remains an extremely complex case, frequently addressed in current security analyses, which demonstrates that it remains one with pertinent influences on national security. One reason could be that it is sometimes quite unclear in which region this space should be placed, in a space of influence with strong European accents, or, rather, in one whose center of gravity remains the Russian Federation. The enlargement of the Euro-Atlantic space has been presented by Moscow, sometimes with virulence, as a continuation of Cold War practices in which Russia is the ultimate objective (Dolghin, 2004:35).

Despite all the mechanisms for establishing NATO-Russian Federation dialogue, this impression persists. Enough to give the various leaders (most of the independent states resulting from the collapse of the USSR are presidential republics with presidents holding extremely powerful positions) the opportunity to initiate certain "games" between Moscow and the West in order to maintain themselves in power, following a model once practiced by Romanian politics. Although it cannot be said that the West's policy is not pragmatic, the model is still incompatible with its democratic political values, which makes the political elite in the ex-Soviet republics more dependent on Moscow than they may assume.

Also, in the situation where the states in the area have a rather fragile democracy, with a degree of dependence on Russia still unclear, the main aspects of military, political and social security depend on the evolution of relations between Moscow and them. If we were to apply the security models developed by Barry Buzan, we can appreciate that there are three categories of risks and threats to regional security that we can identify in this area, with major implications for the main actors in the region, especially for Moldova, Romania and Ukraine:

Non-military risks and threats (Sarcinschi, 2005:5)

• Territorial problems whose resolution is delayed, thus succeeding in accentuating negative states and phenomena that can constitute dangers and even threats;

• Failure to comply with international commitments, which can lead to the disruption of the regional situation;

• Negative interstate developments, which can degenerate into destabilizing acts, thus leading to the triggering of political and military crises;

• Organized crime, trafficking in arms, drugs and people, corruption, social disorder, used by hostile forces to control and destabilize the region

Military risks and threats (Romanian Government, 2021)

• The presence in the region of approximately 2,000 soldiers and 40,000 tons of military equipment and ammunition belonging to the former 14th Army. Their international status still remains unclear and constitutes a destabilizing factor, even if the military forces consider themselves peacekeepers, which would imply a high degree of impartiality;

• Local armed confrontations, facilitated by the existence of Transnistrian separatist forces ready to resort to military means to prevent "reintegration" into the territory of Moldova.

Asymmetric and transnational risks (Romanian Intelligence Services)

• The possibility of conflicts, favored by the population structure, against the backdrop of the Transnistrian conflict, where separatist tendencies are manifested, to which are added tendencies for Gagauz autonomy. An extremely dangerous situation could result, having among its consequences the revival of various nationalist forces in the region, which, by involvement, could inflame the situation.
• Attempts to destabilize the region through terrorist actions, aiming to shake the confidence in the ability to manage the situation of both the actors in the area but especially of the international and regional security organizations (OSCE).

4. Conclusions: Romania's security as a NATO border state

Maintaining frozen conflicts in the Greater Black Sea Region and the possibility of new such conflicts in Romania's proximity have the potential to generate negative effects at regional level. At the same time, the existence and perpetuation of interethnic tensions and regional or local imbalances in Romania's proximity and interest areas may lead to the outbreak of conflicts (Presidential Administration of Romania). The wider Black Sea area (acronym ZEMN) represents an economic and political space, which includes, in addition to the Black Sea riparian states (Bulgaria, Romania, Ukraine, Russia, Georgia and Turkey), states in relatively close proximity to it - the Republic of Moldova, Armenia, Azerbaijan, being a space of convergence of distinct regions, in terms of their own characteristics.

The fragmentation tendencies in the Wider Black Sea Region (WSR) are increasing year by year, as the evolution towards integration and stability promoted by the EU and NATO seems to be seen as a danger by other actors in the region who wish to assert their distinct economic, political and military strategic interests, to recreate old spheres of influence and/or to impose new ones. The Black Sea constitutes a space of competition for power that continues to unfold even after it seemed that humanity had learned the difficult lesson of the Cold War (Băhnăreanu et al., 2022). Currently, Romania is not facing a direct, imminent and explicit terrorist threat. However, the geographical proximity to areas where the terrorist phenomenon is most prevalent and the transit of the national territory by refugee groups mainly from conflict zones may constitute factors favoring possible terrorist actions, with a high degree of unpredictability (Băhnăreanu et al., 2022).

Also, national contingents participating in missions outside the territory of Romania (Chirlesan, 2013) are exposed to risks and threats generated by the actions of extremist-terrorist organizations and groups. Radicalism originating in the Middle East and North Africa and its connections with organized crime activities on the European continent will increase with the return of "European fighters" to their countries of origin/residence. In close connection with the means and forms of manifestation of terrorism, cross-border crime induces the risk of arms and ammunition trafficking.

The new challenges with an impact on the security environment increasingly prefigure the tendency of state and non-state adversaries (information entities, interest or pressure groups, etc.) to exploit the limited capacity of communities, and society in general, to protect themselves against hostile interference (Presidential Administration of Romania).

Strengthening the military potential in Romania's vicinity, including on the eastern flank (Institutul European din România, 2023), respectively on the NATO border (the

militarization of Crimea and in general, of the Black Sea basin by the Russian Federation, the conduct of military exercises and the consolidation of capabilities through which offensive and defensive operations can be carried out by it), generates major challenges to national strategic interests aimed at securing the EU and NATO borders and, respectively, ensuring energy security and stability in the Black Sea Region (Institutul European din România, 2023).

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GLOBALIZATION AND THE RELIGIOUS FUNDAMENTALISM

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Abstract: *Globalization is a complex phenomenon that involves the economic, cultural, and political integration of countries and regions around the world. At the same time, this process has influenced and been influenced by various religious movements and ideologies, including religious fundamentalism. Religious fundamentalism represents a strong and often conservative reaction to the rapid changes and perceived alien values brought about by globalization. Although globalization brings multiple benefits, including economic development and cultural exchange, it also generates reactions to defend traditional identities, one of the most notable of which is religious fundamentalism.*

Keywords: *globalization, religious, fundamentalism.*

Introduction

Globalization has propelled areas such as economic development, improved access to technology and information, and the promotion of cultural diversity. However, this process has not been without controversy and conflict. Critics of globalization point to growing economic inequalities, the loss of local cultural identities, and negative impacts on the environment. In this context, globalization is perceived by some religious groups as a threat to traditional values and ways of life, which has fueled the growth of fundamentalist movements.

Religious fundamentalism often arises as a reaction to perceptions of threat and alienation caused by processes of modernization and globalization. These fundamentalist movements aim to reaffirm religious and cultural identities through strict adherence to sacred texts and the rejection of external influences considered corrupting. In a globalized context, fundamentalist movements may find new ways to organize themselves and spread their messages, including through the use of the Internet and social media.

1. Globalization versus religious fundamentalism

Globalization does not have a universally accepted and probably definitive definition. The reason lies in the fact that globalization subsumes a multitude of complex processes with variable dynamics affecting various areas of a society. It can be a phenomenon, an ideology, a strategy, or all of them together. Globalization is used to describe a multi-causal process that results in events that occur in one part of the globe having increasingly broad repercussions on societies and issues in other parts of the globe. Globalization is the process

of international integration that results from the exchange of opinions, products, ideas and other aspects of culture worldwide (Guyford, 1972:1-3). Advances in transportation and telecommunications infrastructure, including the development of the telegraph and its successor the internet, are major factors in globalization, generating further interdependence of economic and cultural activities (Albrow, 1990).

The growth of international trade, foreign direct investment flows and the integration of financial markets have developed globalization from an economic point of view. The diffusion of culture, values and ideas through the media and the Internet tend to emphasize the cultural aspect, while the formation of international organizations and treaties regulating relations between states highlight the political aspect.

Although scholars place the origin of globalization in modern times, others trace its history back well before the European era of discovery and travel to the New World. Some even trace its origins to the third millennium BCE (Wolf, 2014:22-25). In the late 19th and early 20th centuries, the connectivity of the world's economies and cultures evolved very rapidly. People had been interacting over long distances for thousands of years, the Silk Road connecting Asia, Africa, and Europe, is a good example of the transformative power of trans-local exchange that existed in the "Old World" (Bentley, 1993:32).

Philosophy, religion, language, art, and other aspects of culture spread and mixed simultaneously with the national exchange of goods and ideas. In the 15th and 16th centuries, Europeans made important discoveries in ocean exploration, including the beginning of transatlantic voyages to the "New World" of the Americas (Bentley, 1993:33). The global movement of people, goods, and ideas expanded significantly in the following centuries. In the early 19th century, the development of new forms of transportation, such as steamships and railroads, and telecommunications that compressed time and space, allowed for increasingly rapid rates of global exchange (Cambridge Core). In the 20th century, road vehicles, intermodal transport, as well as airline companies, made things move even faster (Bentley, 1993:33). The advent of electronic communications, most notably mobile phones and especially the internet, has connected billions of people in new ways (Kamal, 2002:191-235).

The term has been used increasingly since the mid-1980s and especially since the mid-1990s. In 2000, the International Monetary Fund (IMF) identified four basic aspects of globalization: trade and transactions, capital and investment movements, migration and movement of people, and the dissemination of knowledge (International Monetary Fund, 2000). In addition, environmental challenges, such as climate change, transboundary water, air pollution, and overfishing of the oceans, are linked to globalization (Bridges, 2002:61-86). Globalization processes affect and are affected by business and work organization, the economy, socio-cultural resources, and the natural environment (Babones, 2008:146).

The “First Era of Globalization” is thought to have broken down into phases with World War I and then, falling into the gold standard crisis of the late 1920s and early 1930s. The countries that had begun to embrace the era of globalization, including the European core, a few states on the periphery of Europe, and a few European offshoots in the Americas and Oceania, were prospering. Inequality between those states was disappearing as goods, capital, and labor formed exceptionally free flows between states.

Globalization in the post-World War II period was driven by rounds of negotiations initially under the auspices of the General Agreement on Tariffs and Trade (GATT), which led to several agreements to remove restrictions on free trade. The Uruguay Round led to the signing of a treaty creating the World Trade Organization (WTO), which was to mediate trade disputes. Other bilateral trade agreements, including sections of the Maastricht Treaty and NAFTA, were also signed with the aim of reducing tariffs and trade barriers.

There is also an air of skepticism towards global economic processes and optimism towards the possibilities of controlling the international economy and towards the viability of national political strategies. A particularly important effect of the concept of globalization has been the paralysis of national strategies of radical reform, being seen as impossible to achieve from a rational point of view and from the evolution of international markets.

With improvements in transportation and communications, international business has grown rapidly since the early 20th century, encompassing all commercial transactions (private sales, investments, logistics, and transportation) that take place between two or more regions, countries, and nations, across their political borders (Riley, 2005). Such international diversification is linked to firm performance and innovation, positive in the case of the former and often negative in the case of the latter. Typically, private companies engage in such transactions for profit. These business transactions involve economic resources, such as capital, natural and human resources, used for the international production of physical goods and services, such as finance, banking, insurance, construction and other productive activities (O'Sullivan et al., 2003:453).

International trade agreements have led to the formation of multinational enterprises, companies that have a global approach to markets and production, or operations in multiple countries. A multinational enterprise can also be a multinational corporation or transnational corporation (Voorhees et al., 1992:144). Well-known multinational corporations include fast-food companies such as McDonald's and Yum Brands, vehicle manufacturers such as General Motors, Ford Motor Company, and Toyota, consumer electronics companies such as Samsung, LG, and Sony, and energy companies such as ExxonMobil, Shell, and BP. Most of the largest corporations operate in multiple national markets. Businesses generally argue that survival in the new global marketplace requires companies to source goods, services, labor, and materials from overseas to continually upgrade their products and technology in order to survive increased competition.

The close relationship between globalization and religious vitality may have multiple causes, but it is mainly motivated by the instinct and need of man to protect his own identity as best he can. And this is clearly visible not only in the case of the religiosity and religious behavior of individuals or populations that emigrate, but also in that of the religions of native populations.

Religious fundamentalism refers to movements or ideologies that advocate a return to traditional religious values and practices and reject modern influences and secularism. This tendency can occur within any religion and is often associated with a literal interpretation of sacred texts. Rigid attachment to religious doctrines, opposition to modern changes, and the tendency to see one's own religion as the only true one can be noted as key characteristics of religious fundamentalism, and notable examples around the world include fundamentalist

Christianity in the United States, fundamentalist Islam in the Middle East, and fundamentalist Hinduism in India.

The process of globalization also contributes to the intensification of conflicts, already known since the beginning of the 20th century. Like the process of modernization in general, globalization strengthens pluralism within religious traditions. And fundamentalism in all the world's religions bases its dynamics, above all, on the competition between liberal religious currents and traditionalist-conservative ones within the various religions. As José Casanova emphasizes, religion not only does not disappear, but even makes a positive contribution, in the midst of the era of globalization, especially in terms of the coexistence of religions and cultures (Casanova, 1996:181-210). Thus, in recent years, representatives of various religions and religious movements have proven to be among the most consistent defenders of human rights. Any analysis aiming to decipher the relationship between religion and the local or global element must begin with understanding the connection between religion and nationalism or transnationalism, respectively. To approach this extremely complex phenomenon, a starting point could be Ronald Robertson's observation that the depoliticization of religion was only a central myth of the project of social modernization.

The repoliticization of religion that we are witnessing today is nothing more than one of the multiple effects of the globalization process. Considered a socio-cultural category (in other than Western societies), religion has acquired an essential role both in the structuring of collective identity and as a personal need of individuals in the dynamics of globalization (Robertson, 1991:289).

The global sphere, being a secular one, cannot function in the absence of the laity. In its essence, it is multipolar, multicultural, open, confident in secular legal mechanisms and norms that do not depend on the pressure exerted by clerical courts. Public policies, similar to the policies that shape international relations, are based on documents of a different nature than those conceived by various radical religious groups. Religiously motivated violence cannot be placed among the basic characteristics of the global sphere, nor can it be considered representative of the presence and influence of religion at the global level.

The phrase "religious fundamentalism" was used in the US before the 1970s, and after the Iranian Revolution, it was used more and more frequently globally. The analysis of this phenomenon, which has become a definite presence in international relations, leads to the conclusion that fundamentalisms are activated by the revival of spiritual movements or by powerful religious groups (Robertson, 1991:289). It is often stated that the phenomenon of religious fundamentalism has begun to contradict all sociological predictions regarding the expansion of secularization at all levels of society.

The evangelical movements in the USA, the Pentecostal ones in Latin America, the fundamentalist Jews in Israel, the Islamic fundamentalism in Muslim countries, the Catholic fundamentalism in certain European countries, the Hindu fundamentalism in India or the Orthodox Christian in certain post-communist Eastern European countries are sufficient evidence to support the global character of this phenomenon. However, it cannot be said that these movements represent a global revival of the religion to which they are related. It cannot be said that Islam, Christianity, Judaism or any other religion is the actor on the global stage. There is always the possibility of observing which religious groups are pushing the limits of the religion on whose territory they emerged. The interventions and violent manifestations of

certain religious groups at a global level should not be perceived within the framework of religions, but rather as ideological actions within religious fundamentalisms. Or more precisely, one could say that the conflict situation maintained by ideological groups that justify their violence regarding religion must be viewed from the perspective of the metamorphosis of religions into ideologies.

And whenever religious consciousness is mentioned, radical groups are perceived and act as entities with socio-political claims and support a religious conflict in the name of redrawing maps or religious belief.

The term globalization should be understood as describing a planetary phenomenon through which the states of the world are integrated into a more coherent system of relations based on economic, technological, political, etc., something that may imply that these processes of globalization and secularization are simultaneous. But, beyond all this, globalization is a phenomenon that is based on the value hierarchies of secularism, pluralism and respect for otherness. To correctly perceive globalization as a world phenomenon, it is less important that certain processes have a similar dialectic. throughout the globe, but more that the elites of a society situate their own society in a global hierarchy. In the complex process of establishing a hierarchy, the economic factor was considered essential, imposing a certain division of the world but also enunciating a global model of culture, and this became the depository of global standards in the political order.

Reactions to this process, especially of a religious nature, immediately showed their presence. Global culture became the target of fundamentalist movements. Thus, it can be observed that the reaction against modernity has revealed its global implications. Religious fundamentalisms rise up against the configurations of the global structure, acting in the direction of changing power relations and cultural ones, models considered "impure". Religious fundamentalisms are not only a reaction against modernity but also against a global model structured on the model of functioning of Western societies. But Westernization imposes diversity and multiculturalism. Therefore, the type of reaction developed by fundamentalisms is closely related to the balance of ethnological memory of the forces that characterize various cultures, societies or regions (Lechner, 2000:338).

Likewise, fundamentalism could be considered an essential element of globality, of change, imposed by the desire to establish a certain religious tradition, as the basis of the social and global order, as the basis of a cultural identity related to the identity of global culture. In a global perspective, fundamentalism is a form of anti-modernism that is inevitably contaminated by modernism, namely by the global culture represented by the culture of modernism. This means that the problem of otherness should be treated in terms of a repertoire globality, of a common society that orients entities towards each other in the process of action (Lechner, 2000:339-341). At the same time, as an active vector in modernization processes, fundamentalism should have an increasingly limited role in the context of the development of liberal modernity, even if fundamentalism starts from the real dissatisfactions of individuals, from the tensions induced by globalization, from a series of real contradictions between local and global cultures.

If the force of fundamentalism dissipates, then this would be a fulfilled condition for the vitalization of authentic religiosity. On the other hand, the rebirth of religiosity would be

a failure if it did not take into account the fact that in modernity religion is losing its traditional social and political role.

For a detailed analysis of the phenomenon of religious fundamentalism, it is necessary to take into account the relationship between the two essential components of the globalization process: the discourse and institutional construction that create the global situation and the focus on the preservation and development of local structures. The global-local interconditioning was analyzed from the perspective of appealing to the search for foundations as an ideal of authenticity in the conditions of the "compression" of the world in a way unprecedented in history. The global character of the search for foundations makes fundamentalism a global phenomenon. There is mention of a number of ideas disseminated at a global level, ideas that come from tradition, identity, indigeneity, the fact of feeling at home, all of which constitute true lines of force that are at the basis of the processes of reflexivity and choice in a global context (Robertson, 1991:170).

2. Types of religious fundamentalist movements

Fundamentalist Islam evolved as a reaction to colonialism, modernization, and Western influences perceived as a threat to traditional Islam. Key organizations that support it include the Muslim Brotherhood, Al-Qaeda, and the Islamic State (ISIS) (Juergensmeyer, 2003). Fundamentalist Islamic movements seek to re-establish an Islamic state based on strict interpretations of Sharia and reject Western values, moving towards implementing Sharia law in regions controlled by ISIS and attempting to establish an Islamic caliphate. The impact of fundamentalism on Muslim communities can be profound, often leading to internal conflict and polarization, as exemplified by the conflicts between moderate and radical Muslims in countries such as Pakistan and Iraq (Tibi, 1998).

Fundamentalist Christianity in the United States emerged in the late 19th and early 20th centuries as a reaction to modernism and the theory of evolution, with key organizations such as the Family Research Council and the Westboro Baptist Church, seeking to maintain literal interpretations of the Bible and promote traditional Christian values. It opposes abortion, same-sex marriage, and sex education in schools. Christian fundamentalism has had a significant impact on American politics and culture, influencing legislation and social debates, and leaving its mark on presidential elections and public policies regarding abortion and education.

Fundamentalist Hinduism grew in India as a reaction to colonial influences and secularization movements, with key organizations being the Rashtriya Swayamsevak Sangh (RSS) and the Bharatiya Janata Party (BJP). Fundamentalist Hinduism seeks to promote a Hindu national identity and marginalize religious minorities, and advocates anti-conversion laws and cow protection policies. Hindu fundamentalism has significantly influenced Indian politics, contributing to the rise of religious nationalism and interfaith tensions, resulting in violence against Muslim and Christian minorities.

Conclusions

Globalization and religious fundamentalism are interconnected phenomena that shape the contemporary world in complex and often contradictory ways. Globalization, through economic and cultural interconnectedness, can generate reactions to defend traditional

religious and cultural identities, manifested through fundamentalist movements. Understanding these dynamics is essential for developing effective strategies to promote peace, stability, and peaceful coexistence in today's globalized world. Religious fundamentalism can lead to violations of human rights, including the rights of women and minorities. Fundamentalist movements can undermine democratic governments and cause regional and global instability.

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RISKS AND THREATS TO EUROPEAN SECURITY – THE MASSIVE FLOW OF REFUGEES

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Abstract: *At a global level, the situation of refugees is treated as a national and international responsibility to provide a democratic context for their development, including respect for basic rights such as the right to shelter or food, as well as ensuring adaptation to the social environment of the country that received them, mentioning access to the labor market or access to education. According to resolution SG/SM/8417-SC/7523 of the Secretary-General of the United Nations, pursuing national security by violating or limiting human rights is a "unilateral, contradictory, and in the long term, undermining democracy" perspective (Bianchi et al., 2008:416).*

Keywords: *risks, threats, European, security, refugees.*

Introduction

The image of the refugee is a pejorative one of a person "without documents" in a socio-political context marked by the need to record and monitor every detail of daily life. Compared to citizens of a state, refugees are seen as "frozen" entities, rarely able to integrate into the local labor market or the local community, preferring a solitary existence in special centers, through which they can preserve their collective identity, as is the case of the numerous campuses in the Middle East, sheltering over 3 million Palestinians. The Palestinian exodus, starting in 1948, motivated the United Nations to create a specific agency to monitor and improve the situation of Palestinian refugees, being the first global approach to managing the phenomenon of migration, implicitly of refugees and asylum seekers (Burgess et al., 2011:105). Although it is a social stereotype, the image of the Palestinian refugee since the end of World War II tends to negatively orient public discourse at the national and international levels.

In the case of the European Union, in the public space the theme of managing the flow of refugees, without acting inhumanely, has become recurrent in the last five years. There are member states such as Italy or Germany, which have become a favorite target of refugees in search of social or political protection, as well as in the guise of a possibility of economic or educational development. Germany and France, as founding member states of the European Union, have constantly expressed their supportive position, considering that receiving refugees represents the respect of fundamental human rights, but member states such as the United Kingdom of Great Britain have expressed their skepticism regarding the need for the EU to "open" the doors to certain social categories, which may present an imminent risk of not adapting to the social, political, economic or social realities of the space (Bilgic, 2013:24).

Migration crises across Europe

Europe has been affected by difficult situations, even refugee crises, in the last decade, with a constant concern of both European authorities at the level of the community space, but also of national authorities, to properly manage their situation. In the last decade, decisive moments of European strategies to deal with refugees are reminiscent of the exodus of Balkan refugees at the time of the separation of the Republic of Yugoslavia. In the case of Bulgaria, for example, over 218,000 Bulgarians left the country, migrating mainly to Turkey, being one of the highest levels of European migration in the Balkans in the post-communist period, after 1989.

Another crucial moment in the case of European migration was represented by the three waves of Afghan refugees in the UK as a result of the civil war that affected this state, creating social tensions within the British state, with both representatives of parties or civil society who viewed Afghan refugees as a threat, but also representatives of the principle of respecting democratic treatment, based on fundamental human rights. On the other hand, in the case of the USA, the refugee issue was essentially influenced by post-Cold War political strategies, creating a feeling of social insecurity, since after 1970 asylum applications or the reception of refugees became a "generous" process (Christopher, 2006:64) from the American authorities, although the population would have liked a slower absorption rate. Specifically, over 96% of asylum applications or assistance granted to refugees went to people from communist countries or states of the Near East, the US wanting to consolidate its position as a decisive factor in Eastern Europe and Asia.

With the most recent enlargements of the European Union, the topic of migration, including the situation of refugees, has become a favorite topic in the discourse of European forums, but also of candidate countries. Before being admitted to the EU, Poland, Hungary or the Czech Republic had to highlight how they would manage migration, once the state changed to an EU member state, becoming a point of attraction for people from Eastern Europe as a better labor market or a better educational level, compared to their native country. Another coordinate of the migration strategy included the situation of migration from outside the community space or Europe, the new member states being required to take concrete measures to manage the situation in social, political, economic, but also cultural terms, including religious aspects.

On the other hand, founding member states such as France tend to adopt protective measures against immigrants, refugees or asylum seekers (Burgess et al., 2011:66), for example, the case of legal violations in areas considered "waiting", at the borders of the French state benefits from a period of judicial control of four days and a grace period of maximum twenty days, in which the person accused by the authorities for various violations of French law can demonstrate, gather evidence to support his innocence. In the case of immigrants, refugees or asylum seekers from other areas of France, the provision does not apply, as they fall directly under the incidence of French laws. The aforementioned provisions violate the Refugee Convention statute, but also French jurisprudence, since normally a person accused of a crime can be detained for an initial period of 24 hours, with the possibility of extension up to 48 hours as a measure of judicial control, and in the case of special situations such as drug trafficking or terrorism, the period of custody can be extended to four days. In the case of immigrants, refugees and asylum seekers, an exacerbation of the

tendency for self-protection on the part of the French authorities can be observed, especially in the border areas, considered the most vulnerable, as they are likely to attract the interest of persons who violate the law, under the apparent protection of the status of immigrant, refugee or asylum seeker in the French state.

Compared to other historical periods, the refugee situation in 2015 constitutes a unique event, being the largest displacement movement of communities since the Second World War. Over 1 million refugees risked their lives, in precarious conditions such as improvised boats, to cross the Mediterranean Sea or traveled by car, in conditions of asphyxiation, to reach the territory of an EU member state, in the hope of obtaining protection. Refugees, towards which the EU has adopted a contradictory position, with member states supporting this influx, but also member states that consider that Europe is not prepared to host refugees from Asia or Africa, represent a social problem, which could become a diplomatic problem, in the absence of effective measures to manage the crisis that exists at this time. The masses of refugees arriving in Europe include both mature men and women, but also children, elderly people or people with disabilities. In this context of categories with special needs, such as pregnant women, elderly people or children with certain deficiencies, their placement in transit camps can create a social problem, as they do not receive the assistance they need, thus their rights are violated, and the countries hosting them risk severe sanctions. For example, during 2015, especially during periods of maximum refugee transit, such as June-December, over 250,000 children were registered by the Turkish or Greek authorities in refugee camps, in need of specific assistance, especially medical and psychological counseling, to overcome the traumas associated with the risky journey they were subjected to Europe (Boccardi, 2015:24).

The European Union, as well as international forums such as the United Nations, seemed to be taken aback by the influx of Asian refugees to Europe in the fall of 2015, acting contradictoryly in terms of adopting effective measures to manage the situation. Due to the hesitation of the authorities, the situation in some refugee camps was on the verge of becoming a diplomatic crisis, as they were not given the humanitarian assistance they needed, there were deficiencies in terms of shelter or food conditions, while their counselling was considered a secondary objective, the authorities being particularly interested in their registration, resettlement and monitoring. The collection of data on refugees is not an objective to be neglected, as it supports a state's efforts to objectively assess their situation, but respect for fundamental human rights should have taken precedence in all refugee camps, to the detriment of the particular interests of the authorities.

The Member States of the European Union, through their contradictory attitude towards refugees, have maintained a climate of insecurity, likely to create a diplomatic crisis. Some Member States, such as Hungary, have responded to the "threat" of refugees by increasing security measures, such as strengthening border security measures, creating protective fences or other obstacles necessary to prevent the transit of immigrants through their territory. Initially assumed as an internal protection measure, Hungary's decision to build protective fences on the borders with Yugoslavia or Romania can be considered a violation of fundamental human rights, assumed by the EU Member State. The effect of these measures, considered fair by the authorities of the respective state, was contrary to

expectations, as thousands of refugees tried to destroy the protective fences, driven by the urgent need to reach the territory of an EU Member State in order to obtain protection. If the refugees did not react in the manner already mentioned, they headed to neighboring states such as Croatia, forcing the authorities in this country to find solutions to the refugee crisis (Pallida, 2015:35).

After the first moments of the refugee crisis, namely October and November 2015, when most cases were registered, states in the Balkans and Eastern Europe, such as Turkey, imposed more rigorous control of transit, in order to be able to monitor and intervene as efficiently as possible in the conditions of humanitarian crises. For example, the Turkish authorities allow transit through the territory of the state only to people from Afghanistan, Iraq and Syria, who cannot present identity documents, based on the context in their native countries. For other people, who wish to reach Turkey, the authorities request the necessary documents, and in their absence they can temporarily host applicants or expel them, if they pose risks such as a history of illegal actions.

Monitoring, which transit states have invoked to better manage the refugee crisis, can be considered a violation of human rights, as it has led groups of refugees to remain in camps without adequate conditions, awaiting answers from the authorities, or to try to reach Europe by transiting through a country other than the one initially chosen. People in the first situation, such as the refugees between the Greek border and Macedonia, were forced in December 2015 to accept relocation to camps whose conditions were precarious, some of them preferring to try transiting through another European country. In this context, the authorities' increased focus on monitoring methods can create diplomatic crises, as refugees are indirectly encouraged to head to another transit point, putting their lives at risk or affecting their already precarious situation. In the absence of effective strategies for managing the refugee situation for the coming period, moments such as the influx of refugees in November 2015 may be repeated, with negative effects that are difficult to anticipate or resolve under time pressure. The situation is all the more difficult, as children or adolescents who cannot make decisions for themselves are implicitly influenced by the attitude of their parents or guardians, who consider that reaching Europe is not enough, and that it is necessary to reach countries with developed economies in order to obtain certain benefits, much more significant than in the case of countries bordering Asia or Africa. In this context, the states hosting refugees must find pertinent solutions to manage their situation. The establishment of strict rules, similar to detention, cannot create the expected effects, as they limit the freedom of movement of refugees, but neither the attitude of non-involvement, considering that it is the duty of the state where refugees will settle to respect their rights, is beneficial in the case of an efficient management of the refugee crisis.

In addition to macro-level issues, such as the security policy of a state or the position of the European Union, the refugee crisis also has effects at the micro-level, of the local community. The continuous flow of refugees implies costs for the local community, such as waste management, the provision of electricity services or the supply of drinking water. In addition, stringent services such as medical or psychological assistance, as appropriate, as well as the provision of educational opportunities, given that refugees wish to learn the language of the local community that hosts them. In this context, local authorities must find the necessary solutions to provide these services, necessary to respect the rights of refugees.

The public image of refugees

The image of refugees, reflected in the media (newspapers, television, internet, to a lesser extent radio) is contradictory, suggesting ambiguous reporting by the local community or the state itself regarding the refugee situation. According to the analysis of the British Information Centre for Refugees and Asylum Seekers, carried out between 1999 and 2004, the community perceives refugees in three ways: elements incapable of affecting the existing social balance; neutral presences or presences that negatively affect the evolution of the community or, more generally, the evolution of the host state (International Policy Institute, 2004:28).

Regarding the stance of accepting the presence of refugees, the analysis of the British Information Centre for Refugees and Asylum Seekers on visual documents (photos of articles, images from TV materials or online creations such as banners) suggested that refugees are caught in poses that suggest vulnerability or the lack of negative intentions towards the community. Thus, the refugees smile at the journalist and implicitly the audience of his journalistic material. In the text accompanying the visual document, journalists usually show a tone of sympathy, focusing on the difficult situation in their homeland, as well as on the possibilities of improving their lives, given the assumption of the social and political rules existing in the host country. The journalists' favorite images focused on the case of Ugandan refugees, who settled in the UK, forced to leave their homeland due to the authoritarian Amin regime. In the host country, they have managed to be accepted by the community, proving that they are meritorious elements of it through honest behavior and involvement in the labor market or in the educational system as students. The case of neutral presences, who have not yet been accepted by the community, being in search of a job or waiting to be accepted into the British educational system is reduced, suggesting the existence of a duality between being accepted and being rejected by the British state, in the form of the local community in which refugees are trying to establish themselves.

Refugees who are not accepted by the community are portrayed as people who do not want to respect the social balance of the community, being responsible for illegalities such as robbery, prostitution, begging, deprivation of liberty, illegal introduction of people into British territory or even murder. In the case of these refugees, journalists prefer to use visual documents that suggest the efficiency of the British justice system, such as the escort of the defendants in handcuffs or their presence in courtrooms. In this sense, journalists give the public the impression that they are safe, since the authorities monitor and punish any behavior that is not approved by the community.

Other frames, which journalists use to create the context of social fear or the need to avoid contact with refugees, are represented by images that are intuitively associated with negative values, such as begging that suggests the intention of refugees to work, to receive aid from the British state or passers-by. Similarly, people suffering from incurable diseases are illustrated, respecting their right to image by covering their faces, but the impact is overwhelming on the public, suggesting that refugees could be the sources of diseases that affect the community. In this case, the text that accompanies the visual document is also alarming, indirectly creating the scenario of an unwanted invasion of foreigners, by using

words such as "millions", "increasingly more", "massive groups" or "explosion" (International Policy Institute, 2004:29).

The image of refugees has become a constant topic of the media, starting with the case of Aylan Kurdi, a three-year-old Syrian boy, found dead on a beach in the Mediterranean Sea, in September 2015, at the time of a Syrian refugee crisis, trying to reach Europe at all costs, in the hope of a better life. The image of the lifeless boy belongs to a Turkish photojournalist, becoming a topic taken up by media institutions around the world. Also, on social media, the event created an acute interest of users to know more details about immigrants and refugees. For example, before the news about Aylan Kurdi, approximately 6,000 users on Twitter were searching for information or engaging in discussions about immigrants and refugees every day. Immediately after the tragic announcement of his case, user interest increased to 5.3 million searches on the topic of immigrants and refugees.

The case of Aylan Kurdi, which aroused the sympathy of some audiences targeted by the media, was cancelled as an impact by the terrorist attacks of November 13, 2015, in Paris. If until that moment, public opinion mostly viewed the situation of Syrian refugees as difficult, demanding active intervention by the authorities to improve their situation, after the Parisian incident involving a Syrian refugee, public opinion suggested a different approach to the problem of refugees, especially Syrian ones. The media suggested the possibility of closing the borders or limiting the right of access to the territory of European countries considered favorite targets of refugees.

A similar, but nuanced, approach was taken by public institutions such as the European Council regarding measures to manage the refugee crisis, while the Hungarian government adopted drastic measures such as permanent control at its borders, trying to convince neighboring states such as Yugoslavia to create impenetrable barriers for refugees. Although the measures adopted by Hungary were based on the need to defend the integrity of its border communities, its intentions to create impenetrable fences raised questions about the ability of the Hungarian state to respect fundamental human rights in this context of the Asian refugee crisis.

Moving the discussion from the level of acceptance or refusal, it is interesting to analyze what is the impact of refugees, once integrated into local communities in Europe. In this sense, there are two possibilities of analysis: they are a profitable source for the community or, on the contrary, they are a cause for concern. After the dramatic episode of Alan Kurdi, the European Union decided that member states must receive a number of 32,000 refugees and asylum seekers, with this figure to gradually increase to the level of 160,000, in order to avoid the recurrence of similar events.

By 2015, the peak of the influx of refugees and asylum seekers, more than 362,000 illegal immigrants were arriving in Europe annually, hoping for a peaceful social climate, better job opportunities or educational opportunities that were non-existent in their home countries. In this context, the European perspective was ambiguous: initially, limiting the access of refugees, considering that they could become a financial “burden”, and finally stimulating their access, based on respect for fundamental rights or to integrate a cheap workforce and adapt potential experts to European culture in the case of young refugees who want to settle in Europe (UNCHR, 2016).

Conclusions

European legislation on asylum seekers and refugees was created in the early 1990s to provide answers to a small number of cases. At present, the existing legislation is outdated, as Europe is facing a refugee crisis, for which there is no legal framework designed to provide a solution. In the 1990s, a refugee or today's applicant usually settled in the first European country they reached, for example if they were a Yugoslav immigrant they could choose Hungary as their host country, where they were fingerprinted, introduced to adaptation programmes on professional or educational skills. At this point, refugees or asylum seekers may decide not to settle in the first European country they reach, benefiting from the prerogatives of freedom of movement within the European space, leading European authorities to create strategies that guarantee their rights in any European country they choose at a given time as a host country. The tendency of refugees and asylum seekers is to transit border countries such as Romania or Yugoslavia, considered not as attractive in terms of economy and personal development possibilities, as countries in Central or Western Europe, such as France, Germany or the United Kingdom, corresponding to their interests.

Since 2014, the trend of refugees and asylum seekers heading to Europe has been increasingly pronounced, based on the displacement of people from conflict zones. For example, in 2014, over 60 million people were affected by armed, economic or other conflicts, a record number for the last seven decades. Of this volume of affected people, 14.4 million were refugees, a figure that indicates an increase of over 25% compared to 2013.

Regarding their image perceived by the local population, sociological surveys have highlighted attitudes such as fear or repulsion towards the refugee groups that have arrived in the respective community or that may arrive, which suggests the premises of a possible social conflict between the two social groups. The perception of local populations in transit areas such as Bulgaria or Greece is that the authorities that should represent their interests, such as the Government, are not capable of analyzing and intervening effectively in the refugee crisis. The feeling of social fear towards this social category is also fueled by the image of the terrorist attacks in Europe in recent times, metropolises such as Madrid or London being affected by illegal actions of immigrants of Asian origin. On the other hand, European authorities such as the European Parliament call for social dialogue and solidarity, arguing the difficult situation of these social groups, who arrive in Europe in search of fundamental rights that are affected in their native countries, such as the right to equal treatment with regard to race, religion or any other criterion.

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ERDOĞAN'S TURKEY: BETWEEN THE DREAM OF DEMOCRACY AND THE AUTHORITARIAN TEMPTATION

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Abstract: *Over the past two decades, Recep Tayyip Erdoğan has profoundly reshaped Turkey's political and social landscape, influencing the country more than any leader since Mustafa Kemal Atatürk, the founder of the modern republic. Becoming prime minister in 2003 and president in 2014, Erdoğan was initially praised for his economic reforms and negotiations with the European Union, positioning Turkey as a model of democracy in the Islamic world. However, his path has been marked by an authoritarian drift, characterized by control over the press, undermining the independence of the judiciary, and suppressing the opposition. The 2016 coup attempt accelerated the consolidation of power, transforming the presidency into a dominant executive role. A recent example is the 2025 arrest of Istanbul Mayor Ekrem İmamoğlu, on terrorism and corruption charges, which triggered massive protests and criticism from the European Union and Western allies. This paper analyzes how Turkey under Erdoğan evolved from a promising democracy to an authoritarian regime, examining the role of the instrumentalization of Islam and political repression. By exploring the historical context, the stages of the regime's evolution, and the impact on democracy, the paper investigates the tension between the democratic aspirations of Turkish society and the authoritarian temptation that defines the country's present.*

Keywords: *Turkey, democracy, authoritarianism.*

Introduction

The modern history of Turkey is marked by tension between secularism, an ideology that promotes the separation of religion from the state and Western-style modernization, and Islamism, a movement that advocates the role of Islam in politics and society. The Tanzimat reforms of 1839 initiated the modernization of the Ottoman Empire, introducing Western institutions and practices to strengthen the state. Under Mustafa Kemal Atatürk, the founder of the Republic of Turkey in 1923, secularism became the central ideology, inspired by the French Jacobin model. His policies, such as the banning of religious symbols and the replacement of Islamic traditions with positivist science, marginalized religious communities, especially in rural areas of Anatolia, where Islam was deeply rooted, transforming it into a symbol of resistance (Yavuz et al., 2019:1-9). During the multi-party period (1950–1980), Islam was co-opted to mobilize political forces, and under Turgut Özal (1983–1993), it was used to legitimize neoliberal economic reforms. Military coups, especially the one in 1980, exacerbated political

instability but created opportunities for Islamist movements, which provided social services and solidarity, gaining influence (BBC News, 2012). The rise of Recep Tayyip Erdoğan was possible in this context of polarization. Born in 1954, Erdoğan became involved in Islamist circles in the 1970s, joining Necmettin Erbakan's Welfare Party. In 1994, he was elected mayor of Istanbul, but in 1998, he was sentenced to four months in prison for reading a nationalist poem that the authorities considered to be incitement to religious hatred. In 2001, together with Abdullah Gül, he founded the Justice and Development Party (AKP), which won a parliamentary majority in 2002. Becoming prime minister in 2003, Erdoğan promoted economic reforms, reducing poverty and expanding the middle class through infrastructure projects, attracting international praise and support from liberals and groups marginalized by the Kemalist order. However, signs of authoritarianism gradually emerged, amplified by the Gezi Park protests (2013) and the attempted coup in 2016, which provided the pretext for consolidating power and suppressing dissent (BBC News, 2023). This historical context set the stage for Turkey's transformation under Erdoğan, from democratic aspirations to an authoritarian regime.

Erdoğanism and the drift towards authoritarianism

The concept of "Erdoğanism", proposed by Tanıl Bora, describes a political regime centered on the personality cult of Recep Tayyip Erdoğan, combining nationalism, political Islamism and populism into a flexible ideology, whose main goal is to perpetuate power by undermining democratic mechanisms (Bora, 2025). Unlike classical authoritarianism, Erdoğanism operates by maintaining a democratic facade—elections, formal institutions, an apparently free press—while emptying these structures of substance, transforming Turkey into a hegemonic authoritarian regime. The arrest on March 23, 2025, of Istanbul Mayor Ekrem İmamoğlu on trumped-up charges of corruption and links to terrorism, illustrates this transition, eliminating Erdoğan's main rival for the 2028 presidential election and signaling the end of any real electoral competition (BY, 2025). A central pillar of Erdoğanism is the use of the judicial system to neutralize the opposition. The cases of Osman Kavala and Selahattin Demirtaş illustrate this strategy. Kavala, a philanthropist and human rights activist, was arrested in 2017 and sentenced to life in prison in 2022 for allegedly attempting to overthrow the government, without substantial evidence, on charges of links to "terrorist organizations." Similarly, Demirtaş, the former leader of the Peoples' Democratic Party (HDP), has been imprisoned since 2016 for speeches deemed subversive, although the European Court of Human Rights (ECHR) called for his release in 2018 and 2020, decisions that Ankara ignored. These cases demonstrate how the judiciary is used to eliminate political opponents, consolidating Erdoğan's power through intimidation.

The crackdown extends beyond prominent figures. According to a report by the Republican People's Party (CHP), in just one month, 288 people were arrested during 45 protests, and numerous public events were banned. The media is facing similar pressure: journalists from the newspaper Cumhuriyet have been convicted on terrorism charges, although the evidence is often inconsistent or absent. For example, Kadri Gürsel and Ahmet Şık were tried for their earlier warnings about the influence of the Gülen movement, charges that are clearly paradoxical (https://www.veridica.ro). These tactics create a climate of fear, discouraging civic activism and political opposition.

Erdoğanism is distinguished by its combination of institutional repression and an emotional populism that mobilizes the masses. Erdoğan's discourse appeals to nationalist and religious sentiments, portraying opponents as traitors or agents of foreign powers. In 2014, Erdoğan publicly declared that "foreigners" are enemies who want to destroy Muslims, reinforcing an anti-Western narrative that justifies authoritarian measures. This rhetoric was intensified after the 2016 coup attempt, when Erdoğan used the event to justify massive purges: over 40,000 people were arrested and 130,000 were dismissed from public office (https://www.indyturk.com).

Emotional manipulation extends to foreign policy. The blocking of Finland and Sweden from joining NATO in 2022, motivated by their alleged support for "Kurdish terrorism," reflects a strategy to divert domestic attention from economic issues and to reinforce Erdoğan's image as the protector of the nation. This hybrid approach, which combines nationalism with victimization, maintains support from the electoral base, even in the context of a fragile economy, in which "millions of Turks live below the poverty line (BBC News Türkçe, 2025).

Despite the authoritarian drift, polls indicate a significant desire among the population, especially the young, for a democratic and pro-European Turkey. A 2022 German Marshall Fund survey shows that 76% of 18-24 year olds have a positive opinion of Europeans, and 61% would vote for Turkey to join the EU, with the percentage rising to 75% among young people.

However, the Erdoğan regime is countering these aspirations, undermining judicial independence and the rule of law, as defined by the Copenhagen criteria.

Erdoğanism is a hybrid model of authoritarianism that combines a democratic façade with systematic repression, emotional manipulation, and an aggressive foreign policy. As Turkey moves away from democratic and Western values, its political future and relations with international partners remain uncertain, with major implications for global democracy. This section examines the mechanisms of Erdoğanism today, focusing on the repression of the opposition, soft authoritarianism, emotional manipulation, and global implications, thereby highlighting the hybrid nature of the regime and its threats to democracy.

Electoral authoritarianism

A central pillar of Erdoğanism is the neutralization of the opposition through electoral authoritarian tactics that allow elections but lack a competitive character. The arrest of Ekrem İmamoğlu, the leader of the Republican People's Party (CHP) and a symbol of democratic hope after the electoral victories in Istanbul in 2019 and 2024, is a culmination of this strategy. Accused of corruption and alleged links to terrorist organizations, İmamoğlu was disqualified from the 2028 presidential race, where polls had indicated him as the favorite. This action, preceded by the cancellation of his university degree – a legal requirement for presidential candidacy – demonstrates Erdoğan's abusive use of the judiciary to eliminate political opponents (Avrupa, 2025). Barış Özkul compares this tactic to the practices of authoritarian leaders such as Vladimir Putin or Nicolás Maduro, who "do not enter elections that they risk losing", transforming the electoral process into a "ritual spectacle" to legitimize power (BY, 2025).

The crackdown extends beyond İmamoğlu. Leaders of the Peoples' Democratic Party (HDP) such as Selahattin Demirtaş have been imprisoned since 2016 on similar terrorism charges, and the practice of appointing government administrators in place of elected mayors, initially applied to Kurdish municipalities, is now a threat to CHP-controlled cities such as Ankara and Izmir. Control over 90% of the mainstream media, achieved through the takeover of media trusts by AKP-loyal companies, limits the opposition's access to the public. During the 2023 campaign, state broadcaster TRT allocated 32 hours of coverage to Erdoğan, compared to just 32 minutes for opposition candidate Kemal Kılıçdaroğlu, illustrating the uneven playing field of the electoral competition (https://www.populismstudies.org/). These practices, combined with the manipulation of electoral districts and vote surveillance, ensure electoral victories that give the regime a semblance of legitimacy, without allowing for a change of power.

Soft authoritarianism and emotional manipulation

Dr. Ulrike Flader describes Erdoğan's regime as "soft authoritarian," a hybrid system that avoids totalitarian repression but undermines democracy through subtle mechanisms such as rigged elections, selective censorship, and legal pressure. Unlike classic dictatorships, soft authoritarianism allows opposition to exist but manages it so that it does not become a real threat. A key mechanism is the emotional manipulation of the opposition, trapped in a cycle of hope and apathy. Local electoral victories, such as İmamoğlu's in Istanbul, create the illusion that democratic change is possible, mobilizing opposition supporters. But subsequent repression, such as İmamoğlu's arrest, shatters this hope, inducing apathy and discouraging alternative forms of resistance such as mass protests or civic organizing. İmamoğlu's arrest illustrates this strategy of "opposition management." By eliminating a charismatic leader, Erdoğan aims to weaken the CHP and prevent the formation of a united front against him.

The massive protests in Istanbul, which began in March 2025 after the arrest, were violently suppressed, with hundreds of arrests and the use of tear gas, which amplified the feeling of helplessness among the opponents. Flader emphasizes that this tactic is "brilliant" because it keeps the opposition in an emotional limbo: unable to give up electoral hope, but lacking the means to achieve it (Avrupa, 2025). In addition, the regime exploits the internal divisions of the opposition, amplified by media censorship and disinformation campaigns, which portray CHP or HDP leaders as "traitors" or "foreign agents." This dynamic explains the opposition's persistence in participating in elections, even though its chances of victory are minimal, and underlines the sophisticated nature of Erdoğanism.

Global implications and regional challenges

Turkey's authoritarian drift aligns with a global trend of hybrid authoritarian regimes, such as those in Russia, Hungary or India, that combine populism with institutional control. The lack of consistent international pressure plays a crucial role. Under the Trump administration, the US has adopted a transactional approach towards Turkey, ignoring human rights violations in exchange for cooperation on issues such as migration or regional security. The European Union, while critical at a rhetorical level, is constrained by its dependence on Turkey in managing refugees and its role in NATO, which limits effective sanctions. Russian arms purchases (e.g. S-400 systems) and diplomatic rapprochement with Putin reflect a

strategic distancing from the West, complicating Turkey's position in the global security architecture (BY, 2025).

Erdoğan's pragmatic flexibility is another factor that allows him to navigate these challenges. For example, occasional negotiations with the Kurds, such as those in 2013-2015, have been used to divide the opposition, while an alliance with the Nationalist Movement Party (MHP) has secured the support of ultranationalists, consolidating domestic power. However, the intensification of repression – including the arrest of secular journalists, artists and teachers – and the possible systematic marginalization of the CHP risk eliminating any trace of democratic competition, moving Turkey closer to uncompetitive authoritarianism. This trajectory has significant regional implications. As a key player in the Middle East and the Caucasus, Turkey plays a crucial role in conflicts such as those in Syria and Nagorno-Karabakh. An unstable domestic authoritarian regime can intensify regional tensions, especially in the absence of a transatlantic balance.

The 2025 protests, although repressed, suggest the existence of latent civic resistance. Thousands of citizens, especially young people and urban intellectuals, took to the streets in Istanbul and Ankara, demanding İmamoğlu's release and democratic reforms. These movements, although fragmented, indicate the potential for mobilization that, if supported by international pressure or a more united opposition, could counter the authoritarian drift (Avrupa, 2025). However, the success of such resistance depends on the opposition's ability to overcome the hope-apathy cycle and build a coalition that includes both secularists and ethnic and religious minorities.

Ultimately, Erdoğanism, as an expression of hegemonic authoritarianism, combines the repression of the opposition, soft authoritarianism, emotional manipulation, institutional control to ensure the perpetuation of Erdoğan's power. İmamoğlu's arrest symbolizes the elimination of any electoral threat, transforming Turkish democracy into a facade. In a global context favorable to authoritarian regimes, Turkey faces the risk of becoming a system in which pluralism is completely eradicated. The urgency of coordinated civic resistance, supported by international pressure, becomes crucial to prevent this drift, which threatens not only domestic freedoms, but also regional stability.

Representatives

Recep Tayyip Erdoğan - (b. 1954, coming from a modest family in Rize, with a sailor father, he grew up in the poor neighborhood of Kasımpaşa. A graduate of Marmara University (1981, Economics), he was active in Islamist circles, influenced by Necmettin Erbakan (the father of modern Islamist politics in Turkey). His ideals – conservatism, political Islamism, nationalism – aim for a "New Turkey", with the family as the socio-economic pillar, promoting birthrate and patriarchy (MERIP, 2018). His authoritarian behavior, marked by polarizing rhetoric, reflects a "Black Sea temperament" – direct, stubborn. As a former mayor of Istanbul (1994-1998) and AKP leader, he consolidated power through institutional control, repressing opposition.

The Rise to Power and Transformation of Turkey

After a career in local government, Erdoğan became prime minister in 2003 after his party, the AKP, won the 2002 elections. He immediately began transforming the parliamentary republic into a presidential system. In 2010, he achieved that the president would be directly elected by the people, and in 2014, he himself became president. This change culminated in the 2017 referendum, which abolished the position of prime minister and greatly expanded presidential powers, transforming Erdoğan into a near-autocratic leader. The system of democratic checks and balances has been dismantled, with the president now having authority over the government, the electoral commission, the courts, the police, and the military (https://bipartisanpolicy.org). This consolidation of power has distanced Turkey from hopes of peace with the Kurds and Cypriots, as well as from the prospect of joining the European Union (Civicus, 2025).

One of his greatest successes is transforming Turkey into a regional power and a major player on the world stage. Erdoğan has taken advantage of the partial withdrawal of the United States from the Middle East to position Turkey as a key player alongside Iran, Russia, and the Gulf states. Even though it is a member of NATO, he has not hesitated to obstruct the expansion of the alliance. Turkey has become a key partner for Europe, managing the flow of Syrian refugees and brokering the grain deal between Ukraine and Russia. This ability to maintain relations with various powers has helped stabilize the country's economy (Barkey, 2025).

„New Turkey"

It reflects a society with a more pronounced Islamic identity. Under his leadership, bans on wearing the veil and hijab in schools and the workplace have been lifted. A major symbolic act was the conversion of the Hagia Sophia, a former Byzantine cathedral and museum, into a mosque, thus reversing Atatürk's secular decision. Erdoğan has openly criticized feminism, denied gender equality, proposed criminalizing adultery, and urged Muslims to abandon family planning (MERIP, 2018).

This orientation has led to a deep division in society, between supporters of his vision and opponents who fear the establishment of an "Islamic sultanate". Minority groups and followers of the secular state have become "internal enemies", as evidenced by the successive purges carried out in the state apparatus after the attempted coup in 2016.

Economically, the first decade of Erdoğan's rule brought a significant increase in welfare, with annual economic growth of 8% and a tripling of per capita income by 2013. This was due to liberal economic policies, foreign investment and infrastructure projects. However, the second decade was marked by a slowdown in growth, stagnation of GDP per capita and high inflation, as a result of Erdoğan's interventions in monetary policy (BBC News, 2025).

Ekrem İmamoğlu -(b. 1970, comes from a conservative family with a father who is a member of ANAP, studied Business Administration at Istanbul University (1994). Adopting social democratic values in college, he promotes inclusion and dialogue, avoiding polarizing discourse. Managing the family business (construction) and sports clubs, he entered politics via CHP-Republican People's Party (2009), becoming mayor of Beylikdüzü (2014) and Istanbul (2019, 2024). Charismatic, with trans-social appeal, meaning he is supported and appreciated by people from different social classes, he is seen as the hope of democracy (DW, 2025).

His victory in Istanbul in 2019 ended a 25-year right-wing administration in the province (https://europrospects.eu/). Although the initial results were controversially contested and annulled, he won the forced re-election in 2019 by an even wider margin, cementing his status as a leading opposition figure (Al Jazeera Staff, 2025).

During his terms as mayor of Istanbul, İmamoğlu focused on revitalizing public facilities and improving infrastructure. He initiated clean-up efforts on the Golden Horn and expanded the public transportation network by building new metro lines, a priority to solve traffic problems. He strongly opposed the government's plan to build Canal Istanbul (https://www.britannica.com).

His rise, however, was marked by legal challenges, widely seen as politically motivated, designed to undermine his career and suppress dissent (Çevik et al., 2025). In 2022, he was sentenced to two years and seven months in prison and banned from participating in politics for allegedly insulting members of the Supreme Electoral Council following the annulment of the 2019 elections, although the decision is not final. In March 2025, he was arrested on charges of corruption and supporting a terrorist organization, actions perceived as an attempt to eliminate him as a strong political rival (Yacoubian, 2025).

Despite these obstacles, İmamoğlu continues to be a central figure and symbol of democratic resistance, and his legal battles are seen as a crucial test for social democracy in Turkey. He is considered President Erdoğan's strongest challenger in the upcoming 2028 presidential election, having already been nominated as the CHP candidate (Aydin, 2025).

The rivalry stems from opposing visions: Erdoğan, authoritarian, securitizes the opposition, using justice (e.g. İmamoğlu's arrest in 2025 for corruption, invalidated diploma) to eliminate electoral threats. İmamoğlu, with conciliatory speech, attracts diverse support, including Kurdish, challenging the AKP's hegemony (The Independent, 2025).. The differences – authoritarianism vs. inclusiveness (listening to all voices), conservatism (supporting traditions, religion and old values) vs. secularism (separating religion from the state – meaning the state should not interfere with religion and vice versa) – define the struggle for Turkey's future. Erdoğan proposes a "New Turkey" with conservative Islamic values, while İmamoğlu advocates a more open and secular democratic republic, inspired by Atatürk's principles, adapted to the realities of the 21st century (Michaelson, 2024). Experts analyze this rivalry as a fundamental confrontation between two distinct visions of the country's identity and direction.

Case study - The EU–Turkey Agreement as an instrument of authoritarianism.

The EU–Turkey agreement of March 2016 aimed to manage the Syrian migration crisis, allocating ~€10 billion (2011–2024) to Turkey to host 3.1 million Syrian refugees and ~500,000 migrants, concentrated in southeastern Turkey, Istanbul and Ankara. The agreement reduced irregular arrivals to the EU by 33% in 2024–2025 (Council of the European Union, 2025).

Quantitative analysis: Turkey received €6 billion initially (2016-2018), extended to ~€10 billion by 2024, through the Refugee Facility. In 2015, 856,000 migrants crossed from Turkey to Greece; the agreement reduced crossings to 70/day in April 2016. The "1 for 1"

scheme returned 325 migrants in the first week (2016), but only 3,500 were resettled to the EU (Kaya, 2020). The social costs have strained Istanbul, with 15% of refugees in the city.

Qualitative analysis: Under Erdoğan, the agreement was an authoritarian tool. The 2020 threat to "open the borders" to Greece pressured the EU for concessions (e.g. funds, accession negotiations). The funds, managed non-transparently, strengthened state control, without democratic reforms. The opposition (CHP) accuses the instrumentalization of migration to justify repression (e.g. İmamoğlu's arrest, 2025). Amnesty International criticizes the "1 for 1" scheme as "dehumanizing", violating the rights of refugees. The agreement limited migration, but amplified Erdoğan's authoritarianism, giving him diplomatic and financial leverage. Social tensions and lack of reforms undermine Turkish democracy and relations with the EU.

Furthermore, the agreement has placed the EU in an ethical dilemma, with accusations that it is prioritizing border control over its core values of human rights and democracy. This pragmatic approach by the EU has been perceived by many as weakening its influence on Turkey's democratic agenda (Commissioner for Human Rights, 2025). Domestically, the challenges of long-term integration of millions of refugees into Turkish society have fueled anti-refugee and xenophobic sentiments, which political leaders, including Erdoğan, have occasionally exploited to bolster their electoral support (https://syriadirect.org). Paradoxically, by stabilizing immediate migration flows, the agreement reduced a potential incentive for Turkey to implement democratic reforms requested by the EU, thus contributing to the deepening of Turkey's drift towards authoritarianism (https://www.gmfus.org/). In conclusion, the agreement limited illegal migration to the EU, but amplified Erdoğan's authoritarianism, giving him substantial diplomatic and financial leverage. Social tensions generated by the presence of refugees and the lack of democratic reforms undermine the stability of Turkish democracy and long-term relations with the EU.

Conclusions

Under Erdoğan, Turkey oscillates between democratic aspirations and authoritarian temptation. The EU–Turkey deal (2016), which managed 3.1 million Syrian refugees with ~10 billion EUR, reduced illegal migration by 33% (2024-2025), but strengthened Erdoğan's control, with funds being used non-transparently to consolidate power. The arrest of İmamoğlu (2025) and the repression of the opposition (1,500 arrests) illustrate the instrumentalization of crises to eliminate rivals, undermining democracy. However, İmamoğlu's popularity, with his inclusive vision, offers hope. To counter authoritarianism, I propose: 1) International pressure: the EU should condition funds on democratic reforms, monitoring their use. 2) Civil society engagement: NGOs and platforms like X(twitter) can amplify opposition voices, mobilizing peaceful protests. 3) Digital civic education: Programs to combat polarization, inspired by İmamoğlu's initiatives in Istanbul. 4) Regional dialogue: EU-Turkey forums to promote social reconciliation, reducing tensions with refugees. Turkey's future depends on balancing power through free elections and reforms. İmamoğlu can be the catalyst for democracy, if international and civic support becomes firmer.

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