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PROCEEDINGS

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Pupils' Factor as the Organizational and Methodological Principle of the Educational Process

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Abstract

Pupilage, as an attribute and a social role of a school age child, should be regarded as a factor that changes the sphere of realization of a child as an individual's natural traits. It creates a different environment for a child and, certainly, has a very significant impact on the formation of his/her personality. Otherwise said, based on a child's inherent physical and psychic traits, the learning process forms a certain social model in the form of a pupil. If not, in a pupil with all his/her psycho-physiological trait, with an active attempt to realize his/her potential capabilities, it would be difficult to ensure the effective learning-teaching process and provide high quality knowledge. It means that a pupil is not only an object of the educational process, but also its subject, its active participant.

Therefore, while talking about the impact of the individual's, subject's and person's factors on the educational behavior, first of all, we should imply a pupil as a social being with his/her biological and psychological peculiarities. Educational process should be conducted mainly based on a pupil's interest and the realization of his/her individual traits.

Hence, it is possible to refer to a pupil as the main factor required for implementing the educational behavior. Without taking it into consideration, it would be difficult to ensure the final educational result.

Keywords: Pupilage, factor, individual, subject, learning, teaching

Introduction

The period of teaching foreign language at primary school is the starting stage for the unified process of teaching this course. This implies that the solid foundation for the full realization of the final learning goal should be laid mainly at this stage. Therefore, the main programme objective should be considered as a starting point for determining the exact strategic-tactical course. If this objective is to form conversational skills in pupils, then the first three years of teaching should be considered as the main period of the

formation of a strong communication base, i.e. a period that should provide a minimized solution for the basic objectives related to oral speech. Before determining these objectives, let us briefly discuss the psycho-physiological basis of oral speech.

Oral speech is a complex psycho-physiological phenomenon which with its structural-functional features is also organically associated with complicated human phenomena - language and thinking. It, as a sound expression (vocality) of language, practically fulfills the function of human communication and thinking. Though, in spite of this, language and speech are neither identical concepts nor are they drastically demarcated.

If we specify the aforementioned from the position of the theory of energy, language as a social category is not a mere instrument in the realization of a human's intellectual and emotional-sensitive processes, but a direct creator and participant of these processes. As far back as Arnold Chikobava noted, the traditional formula – language is a tool for thinking – should be specified. We do not have to think that an idea not yet expressed in speech has a definite form. The matter is not so easy, as if a person had developed the thinking and then found the expressive means. A word is not “clothes” for a thought; it is the means to form this idea (Chikobava Arn, 1983, 234-237). In other words, we deal with a reversible relation that creates the basis for the organized action of the linguistic array as the encoding system of a cognitive product, i.e. the conditions for its materialization.

Thus, speech is not an independent phenomenon. It is the fruit of "collaboration" of thinking and language, its synthesis in dynamics which means that speech, as the act, already implies thinking; without the thought, it cannot become a fact. Thinking can also be non-verbal and be manifested in other action. Consequently, in our opinion, while talking about the difference between these two phenomena, we should drop a boundary not between thinking and speech, but between thinking and speech ability, a potential which becomes reality only in the process of thinking.

While considering the energetic essence of language, G. Ramishvili writes that language does not solve a person's only narrow practical objectives, does not only compensate for his/her biological deficiency, but turns the reality into an object of cognition (Uznadze, 105-106). The interrelation between subjects and phenomena of the outside world is reflected in the human consciousness namely by means of language. According to W. Humboldt, language is constantly striving to elevate the impressions from the outside world to clear concepts (Vygotsky, 1984, 304).

Hence, speech should not be considered only as a "technical service" for the realization of an idea and conducting of communication. Essentially, it should be regarded as the potential producing this process.

Consequently, this conclusion should be considered as the starting point while determining the teaching methodology of oral speech of a foreign language. Thus, the formation of communication skills should be considered in relation with a pupil's psycho-physiological behavior based on the context a pupil as a subject of the learning and teaching process is facing. Particularly:

1. Students should develop basic habits for establishing communication in real situations. They should be able to obtain and pass simple information, express their reaction with words, narrate a read or heard story in simple words, etc. In other words, this means that pupils will be able to:

- study the relevant number of lexical units having communication value;
- develop auditory skills and the skills of practical realization and combined use of these units;
- develop basic skills of pronunciation, stress and intonation.

2. Students should master the art of learning and should develop the basic skills of independent work.

Thus, the main goal of the first three years of learning and teaching should be to ensure that students develop a strong conversational base, the quality of which depends on the quality of the final result of teaching.

Therefore, it is essential to accurately determine the parameters of organizational-methodological provision of this stage. For this, we should take into consideration the factors (social, pedagogical, psychological) affecting the efficiency of the mechanism of studying the second language and generally, the level of teaching. We will not discuss them in details as they are widely covered in special literatures. We will only identify one of them which is actually realized within the individual approach to teaching and which we call a pupil's factor.

As a result of many years of observation and experiments, it became clear that despite the nature of the methods and techniques that dominate in teaching, each pupil has his/her own individual tactics of learning the teaching material. It was also obvious that even when the material corresponds to pupils' intellectual capability, their cognitive activity is not high. It was ascertained that the reason is that the teaching material could not arouse a pupil's personal interests, and it does not correspond to his/her spiritual needs and moral values. Otherwise said, educational material cannot provoke a pupil's, as a social individual, psycho-emotional activity.

The personal factor does not determine only cognitive activity. It is the main basis for speech. Due to its nature, the latter serves as the realization of an individual's personal essence, expression of his/her emotions, feelings and personal attitude towards the outside world. Therefore, while determining the efficiency of learning the teaching material, especially oral speech of a foreign

language, the peculiarities of a pupil as an individual, as a subject, and as a person taken separately and together should be taken into consideration.

To be more precise, human-individual or *Homo sapiens* implies the unity of his/her inherited qualities; a human-person characterizes a man as a member of the society and comprises his/her characteristic features/value system; human-subject means the direct participant/performer of social actions.

If we apply this scheme to a pupil, then “pupilage”, as an attribute and a social role of a school age child, should be regarded as a factor that changes the sphere of realization of a child’s as an individual’s natural traits. It creates a different environment for a child and, certainly, has a very significant impact on the formation of his/her personality. Otherwise said, based on a child's inherent physical and psychic traits, the learning process forms a certain social model in the form of a pupil. If not, even for a pupil with all his/her psycho-physiological trait, with an active attempt to realize his/her potential capabilities, it would be difficult to ensure the effective learning-teaching process and provide high quality knowledge. It means that a pupil is not only an object of the educational process, but also its subject, its active participant.

Therefore, while talking about the impact of the individual’s, subject’s and person’s factors on the educational behavior, first of all, we should imply a pupil as a social being with his/her biological and psychological peculiarities. Educational process should be conducted based on a pupil’s interest and the realization of his/her individual traits.

Conclusion

Based on the aforementioned, we can conclude that it is possible to refer to a pupil as the main factor required for implementing the educational behavior. The pupil is exactly the main “cause” of the educational process and, at the same time, the potential on which the final results of this process depends. On the other hand, pupilage is that social role in the process of the realization of which a child is formed as a person and is manifested as an individual.

References:

1. Attneave, F. (1959). *Applications of Information Theory to Psychology: a summary of basic, methods, and results*. A Holt-Dryden Book Nehry Holt and Company-New York, p. 119.
2. Chikobava Arn (1983). *General Linguistics, Major Problems*. Second edition. Tbilisi: State University Press, p. 487.
3. Humboldt, W. (1984). *Selected Works on Linguistics*. Translated from German by Professor G. V. Ramishvili. Moscow: Progress, 396 p.

4. Leontiev, A. A. (1969). Psychological Units and Generation of Verbal Utterance. Moscow: Science, 306 p.
5. Lortkipanidze, D. O. (1985). Didactics. Tbilisi: Tbilisi University Press, p. 305.
6. Newcomb, M. (1965). Theodore, Turner H. Ralph, Conserve E. Philip. Psychology. The Study of 7 Human Interaction. Holt, Rinehart and Winston, inc., p. 591.
7. Ramishvili, G. V. (1981). Linguistics among Human Sciences. Journal "Problems of Philosophy", 6. Moscow, p. 104-111.
8. Uznadze, D. General Psychology. Vol. III-IV. Tbilisi: the Academy of Sciences of the USSR Press. P. 636.
9. Vygotsky, L. S. (1984). Collected Works. Moscow: Pedagogics, p. 431.

Benefits of Emotional Intelligence in Higher Education and Academic Leadership

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Abstract

A person's ability to identify, understand, use, and manage emotion provides the basis for the kinds of social and emotional competencies that are important for success in almost any job. It is said that the more complex the job is, the more Emotional Intelligence (EI) matters. There are a number of practical applications of EI to improve the student experience, increase academic achievement and develop well-rounded graduates with the skills desired by employers. Active use of emotional intelligence and other components contribute to the development of professional and pedagogical qualities, competencies, teacher-training, and improve the system as a whole. Studies have shown that people who score highly on tests of EI have better interpersonal skills and are more positively evaluated by their peers (Jaeger, 2003), which should translate to better social interaction in the workplace. The presented article explores how emotions impact on student's learning and concludes that emotionally intelligent people are change agents, self-aware, empathetic, not perfectionists, balanced, curious, gracious, and they know how to work and make the world a better place. Emotional intelligence is recognized as a highly relevant and important requirement for academic leadership in higher education. Its traits related to empathy, inspiring and guiding others, and responsibly managing oneself are most applicable for academic leadership to run efficiently and smoothly.

Keywords: Emotional intelligence, higher education, academic leadership, student learning, job skills, competences

Introduction

The roots of Emotional Intelligence (EI) can be traced to Robert Thorndike, who wrote about "Social Intelligence" in the thirties [1937], and David Wechsler who stated that non-cognitive aspects of intelligence were important for adaptation. Howard Gardner, in 1983, used the term "multiple intelligence" and highlighted the importance of "intrapersonal" and

“interpersonal” intelligences. Peter Salovey and John Meyer created the term “Emotional Intelligence” in the 1990s. They described emotional intelligence as "a set of four inter-related abilities that involves the ability to perceive, use, understand, and manage emotions". However, it was Daniel Goleman (2002) who popularized this term with his book titled “Emotional Intelligence.” He stated, "When it comes to the question of whether a person will become a star performer, IQ may be a less powerful predictor than EI".

There is a considerable body of research suggesting that a person’s ability to identify, understand, use, and manage emotion provides the basis for the kinds of social and emotional competencies that are important for success in almost any job. It is said that the more complex the job is, the more EI matters.

EI has been criticized by scholars in the psychological community due to lack of a clear definition or empirical evidence that it is anything more than a combination of already known cognitive and personality factors. Despite this controversy, there are many proponents of EI in higher education, who highlight the folly of trying to separate the cognitive from the emotional. They suggested a number of practical applications for EI to improve the student experience, increase academic achievement, and develop well-rounded graduates with the skills desired by employers.

In the western educational system, active use of emotional intelligence and other components contribute to the development of professional and pedagogical qualities, competencies, teacher-training, and improves the system as a whole.

Emotional Intelligence and Higher Education

Despite these criticisms, there has been a growing interest in the application of EI to Higher Education (HE). In his book titled “Teaching with Emotional Intelligence”, Alan Mortiboys (2005) explores the relevance and application of EI to teaching practice. Dacre Pool and Sewell (2007) include EI as an essential component of employability attributes in their “CareerEDGE” model: “EDGE” stands for experience, degree, generic skills, and emotional intelligence. They remark that people with high EI motivate themselves and others to achieve more.

Mortiboys uses counseling concepts to make his case for HE teaching. HE endorses the qualities of acceptance (unconditional positive regard), genuineness (congruence) and empathy (understanding the feelings of the other), drawing from Humanistic counseling psychology developed by Carl Rogers. In doing so, he highlights the relationship between education and counseling. Both processes may be regarded as entailing a transformative journey (Clayton et al., 2009), where the student gains knowledge and learns practical and reasoning skills, which help them function better. Studies have

shown that people who score highly on tests of EI have better interpersonal skills and are more positively evaluated by their peers (Jaeger, 2003), which should translate to better social interaction in the workplace.

Critics suggest that counseling deals with pathological and emotional difficulties that should be dealt with separately when they become a problem (Clayton et al., 2009). Leathwood and Hey (2009) argue that HE sees emotions as private or pathological rather than as part of the social context of the learning environment. This may be due to the dominance of stoical, masculine influences on notions of what higher education should be. Yet, from the perspective of social constructionism, we are all emotional beings and emotions play a role in shaping our understanding and actions. Thus, we do not cease to have emotions when we walk into a classroom or lecture theatre.

Silver (1999) stresses the importance of emotions in the learning process and believes that not including EI in teaching is to fail the students. Even in her discipline, Law, where critical reasoning is vital, she says it is folly to try and eliminate the emotional aspects of the subject. She emphasizes how the teaching process “stirs inner emotions” and that educators must be willing to acknowledge their responsibility for the feelings they arouse.

How do Emotions Impact on Student Learning?

While there is debate over the definition and validity of EI, there is evidence demonstrating positive outcomes from the applications of concepts of EI. Turner and Curran (2006) remind us of what has been known from cognitive psychology for some time, that attention is necessary for learning. They suggest that attention is facilitated by positive emotional engagement. This was impeded by sessions which were dull, boring, not challenging; by poor explanations and communication; and by not feeling able to ask questions. Staff can promote student engagement by making their sessions interesting, communicating well, and allowing time for questions. This requires EI in the sense of awareness of the interpersonal and intrapersonal factors to help manage emotions.

Good staff-student relationships have also been shown to have a positive impact on student performance and retention (Thomas, 2002; Rhodes & Nevill, 2004). Gleaves and Walker (2006) highlight how caring relationships can have a positive effect on aspirations and achievements, helping to nurture the intellect, as well as the affective aspects of learning and teaching.

Conversely, negative emotional states can have a detrimental effect on the learning experience. Stress has been shown to have a negative effect on student engagement and achievement (Turner & Curran, 2006). This is because when in a state of stress, the fight or flight response is activated; hence, all the brain is concerned about is survival. Some of the things which

can cause stress include heavy workloads and assessment loads. In addition, negative feedback from staff can also be demotivating and mood reducing. Lecturers need to be aware of these impacts when developing modules, designing assessments and giving feedback, to ensure they get the balance right.

Another stress-inducing activity is the anxiety produced when having to give presentations. There is social anxiety due to the fear of negative evaluation. Topham and Russell (2012) claim that studies have revealed that between 10% and 16% of students have clinically significant social anxiety. Among a range of suggestions as to how to reduce this anxiety, they include: helping students through the transition of coming to university; promotion of social integration; showing sensitivity to students' reactions; creation of a safe, respectful environment to allow students to air their fears; and providing lots of constructive feedback to make them open to evaluation. The authors, however, caution us not to treat students as unduly fragile; they advocate balancing challenge with support.

When it comes to the question of whether a person will become a "star performer" within that role, or be an outstanding leader, IQ may be a less powerful predictor than emotional intelligence (Goleman, 2002). While social scientists are mainly interested in the main predictive relationship between IQ and work success, practitioners and those who must make decisions on hiring and promotion within organizations are understandably far more interested in assessing capabilities related to outstanding performance and leadership. However, the issue of separating abilities related to cognitive intelligence from abilities, traits, and competencies related to emotional intelligence remains a complex one; however, all definitions of emotional intelligence represent a combination of cognitive and emotional abilities (Cherniss, 2001).

Innovative delivery technologies have expanded the traditional classroom setting to distance or online learning, but whether the characteristics of students who are successful in the traditional classroom setting transfer to success in online classes is unknown. Online education has experienced astronomical growth since the 1990s (Perreault, 2004), although the benefits of online education do not necessarily correlate with the acquisition of knowledge (Bar-On, 2006). Students perceive online learning as beneficial in time saved (the ability to take more courses). As a result, they increasingly opt for online courses, raising the question of whether students' experience in the traditional classroom provides them with the same academic readiness for online courses. In the traditional classroom setting, where learning is based on face-to-face human interaction, student success is grounded on the instructor's ability to perceive nonverbal student cues, modify instructional methods accordingly, and provide timely answers to student questions. In the online environment, face-to-face human interaction and its commensurate benefits

are absent. Instead, the written word is the communication tool. Due to this difference, students' technological expertise, unmet needs for human contact, lack of self-motivation, or feelings of isolation can deter success in online courses (Hill & Rivera, *n.d.*).

As students increasingly opt for online classes, it becomes more important for administrators to predict levels of potential academic success. R. Berenson from American Public University System and G. Boyles and A. Weaver from Argosy University, USA (June 2008), examined the intrinsic factors of emotional intelligence (EI) and personality to determine the extent to which they predict grade point average (GPA), a measure of academic success, among students attending community college. The study revealed that EI emerged as the most significant direct predictor of GPA. Main conclusions are that soft skills are pertinent to academic success and may constitute a useful profile of the successful online student that could be applied to marketing, advisement, quality assessment, and retention efforts. Validated assessments of EI and personality traits may present an efficient and non-threatening way of helping students and their institutions determine whether or not online courses are appropriate for them. Among the students in this study, who did not complete all three surveys, most either completed the personality or EI tests. This suggests that students may be less resistant to personality and EI surveys than other forms of assessment. In addition, EI can be taught, which substantiates the need for students to develop self-awareness prior to enrolling (Tucker et al., 2000). This can be accomplished through a required online orientation course that not only teaches technical skills, but also teaches self-awareness skills.

How educators and students process and respond to emotions influences children's education in ways that affect their social, emotional, and cognitive development. A recent meta-analysis of research on programs focused on social and emotional learning (SEL) shows that a systematic process for promoting students' social and emotional development is the common element among schools that report an increase in academic success, improved quality of relationships between teachers and students, and a decrease in problem behavior (Durlak, 2011).

Salovey and Mayer (1990) describe emotional intelligence as a set of skills that involves the ability to monitor one's own and others' feelings and emotions, to discriminate among them, and to use this information to guide one's thinking and actions. Although there are many components attached to being emotionally intelligent, here are a few ideas of how to use emotional intelligence in the classroom.

- 1) **Create an environment of respect.**
- 2) **Manage your emotions while taking responsibility.**
- 3) **Be honest and own up to your mistakes.**

4) **Validate students.**

When a teacher discovers more about his/her emotional intelligence and improves upon it, he/she is better equipped as an instructor to encourage students to use their own emotional intelligence in learning. If a teacher is able to encourage students to become more self-aware, they will be able to manage their educational responsibilities better -- whether it is working in a group, overcoming exam anxiety, overcoming the stress of talking with an instructor or just the ability to make friends inside or outside the classroom. Thus, most importantly, increasing a teacher's emotional intelligence can lead to a better learning environment for everyone.

The first step in the EQ process is becoming aware of our emotions and naming them. Research posits that naming our emotions allows us to “slow down” and consider them before acting, which provides a link between emotional and cognitive processing in the prefrontal cortex (Barbey, 2012). The amygdala is a kind of reaction center, and often causes us to overreact or choose an action that doesn't help solve the problem we are facing. The emotional brain must be allowed to practice the skills of empathy and understanding, receive feedback from the surrounding environment, and evaluate the correctness of judgments made as a result of emotional input.

Research shows that simply naming feelings begins to sooth the amygdala, reducing our emotional reactivity (Lieberman et al., 2007). Discussion of feelings and understanding differing points of view allows children to foster communication between the emotional brain and the rational brain. The “Six Seconds Pause” serves this purpose, allowing an individual to engage the cognitive brain in a search for six ideas, while calming the emotional brain. Having completed the pause, one can take a deep breath and consider the message of the emotions he or she is feeling, navigate emotions, and choose the best course of action.

Understanding the Message of Emotions

Robert Plutchik's research (2001) on emotions describes eight basic emotions. The figure below represents this model. The cone's vertical dimension represents intensity, and the circle represents degrees of similarity among the emotions. The eight sectors are designed to indicate that there are eight primary emotion dimensions defined by the theory, arranged as four pairs of opposites. In the exploded model, the emotions in the blank spaces are the primary dyads—emotions that are mixtures of two of the primary emotions.

Each emotion has varying intensity and can combine with another emotion to create other feelings. Helping children to understand that emotions are important as it aids them in focusing on their own and other's feelings in a situation. Plutchik points out that an emotion is not simply a feeling state:

emotion is a complex chain of loosely connected events; the chain begins with a stimulus and includes feelings, psychological changes, impulses to action, and specific goal-directed behavior. In other words, feelings do not happen in isolation. They are responses to significant situations in the life of an individual, and often they motivate actions.

In addition, it is important to teach children that more than one emotion can be felt at a time. No wonder it is sometimes difficult to understand what we are feeling! At the Synapse School, the Self-Science curriculum teaches children about emotional messages and facilitates the use of those emotional messages in decision-making.

The Development of EQ Competencies in Academic Leadership

The Six Seconds model of emotional intelligence describes three stages of emotional intelligence development (Freedman, Jensen, Rideout, & Stone-McCown, 1998). At the Synapse School, children learn the eight EQ competencies that make up these three stages.

Know Yourself: The important factors here are the ability to name emotions and develop an emotional literacy. This competency requires practice, just as we must practice to develop our reading and comprehension skills to become literate. At the same time, individuals must be “self-observers” in order to gather data about patterns of behavior that have become a part of an individual’s behavior repertoire.

Choose Yourself: For human beings, choice equals a feeling of control. Feeling in control increases confidence in one’s abilities and capabilities. It is imperative that students feel that they have choices in their classroom; a classroom that doesn’t allow student-choice tells students that they are not capable.

Give Yourself: Connecting to a purpose that is aligned with a student’s goals gives the student the intrinsic motivation to pursue those goals. Classrooms that encourage students to set and meet goals and to understand why those goals were chosen by the student stimulate this connection. Student satisfaction is derived not only from “a job well done,” but also from the knowledge that completing the job satisfied an inner connection to something larger than the self.

Mark J, Epstein and Yuthas K. (2012) offer a few suggestions that can start your classroom or family on the way to becoming aware of, naming, and using emotional messages to inform good decision-making:

- 1. Observe your classroom/home environment**
- 2. Create stories that will become a part of the fabric of your classroom/home**
- 3. Give choice/Encourage Connection**
- 4. Emphasize emotional meaning/Model the importance of emotions**
- 5. Create an active and cooperative atmosphere**
- 6. Make time each day for journaling and reflecting**
- 7. Reframe mistakes**
- 8. Celebrate feelings**
- 9. Take Children's Aspirations Seriously**
- 10. Consciously model and teach EQ Skills**

According to Kelly A. Cherwin (2011), it seems apparent that recognizing differences in teaching and learning styles, as well as being able to connect with students, is important to produce a beneficial outcome.

Although there are many components to being emotionally intelligent, here are a few ideas of how to use emotional intelligence in the classroom.

- 1) Create an environment of respect.**
- 2) Manage your emotions while taking responsibility.**
- 3) Be honest and own up to your mistakes.**
- 4) Validate students.**

The more emotionally intelligent you are, the better equipped you will be as an instructor to encourage your students to use their own emotional intelligence in learning. If you are able to encourage your students to become more self-aware, they will be able to manage their educational responsibilities better -- whether it is working in a group, overcoming exam anxiety, overcoming the stress of talking with an instructor or just the ability to make friends inside or outside the classroom. However, most importantly, increasing your emotional intelligence can lead to a better learning environment for everyone.

Rica Bhattacharyya thinks exposing corporate teams to the significance of emotional intelligence is a key to building a strongly bonded team and suggests the five (5) following ways to foster emotional intelligence: lead by example, organize training, stress on consequences, measure outcomes, and teach through bonding. Finally, no amount of training and strategizing will help in fostering emotional intelligence unless one exhibits his or her own inclination to it. "It is easy to make a strategy or plan to train people on emotional importance and its relevance in the business context. However, to make it effective, there is need for regular interaction between the leader and employees or among the employees themselves. Bonding should happen and that is what makes successful organizations".

Conclusion

Emotions affect how and what children learn. Unchecked emotions raise an individual's stress level and stressed brains find it very difficult to learn (Medina, 2008). Academically and socially, children who learn these skills are better prepared to deal with the adversities of life, to learn from mistakes, to reframe difficult situations, and to adapt to life's constantly changing circumstances. *Psychology Today* says emotional intelligence is:

1. The ability to accurately identify your own emotions, as well as those of others
2. The ability to utilize emotions and apply them to tasks, like thinking and problem-solving
3. The ability to manage emotions, including controlling your own, as well as the ability to cheer up or calm down another person.

Emotionally intelligent people are change agents, self-aware, empathetic, not perfectionists, balanced, curious, gracious, and they know how to work and make the world a better place. Emotional intelligence is recognized as a highly relevant and important requirement for academic leadership in higher education. Its traits related to empathy, inspiring and guiding others, and responsibly managing oneself are most applicable for academic leadership all over the world.

References:

1. Barbey A.K., Colom, R., & Grafman, J. (2012). Distributed neural system for emotional Intelligence revealed by lesion mapping. Downloaded from <http://scan.oxfordjournals.org> by guest on May 28, 2013.
2. Bar-On, R. (2006). The Bar-On model of emotional-social intelligence (ESI). *Psicothema*, 18, supl., 13-25. Model overview retrieved from the *Consortium for Research on Emotional Intelligence in Organizations* website. <http://www.eiconsortium.org/measures/eqi.html>
3. Cherniss, C. (2001). Emotional intelligence and organizational effectiveness. In C. Cherniss & D.
4. Clayton, B. Beard, C. Humberstone, B & Wolstenholme, C. (2009). 'The jouissance of learning: evolutionary musings on the pleasures of learning in higher education.' *Teaching in Higher Education*, Vol 14, No 2, pp. 375-386.
5. Goleman (Eds.). *The emotionally intelligent workplace* (pp. 3-26). San Francisco: Jossey-Bass.
6. Dacre Pool, L. & Sewell, P. (2007). 'The Key to Employability: Developing a practical model of graduate employability.' Centre for Employability, University of Central Lancashire, Preston, UK.

7. Durlak, J. A. & Weissberg, R. P. (2011). Promoting social and emotional development is an essential part of students' education. *Human Development*, 54, 1–3. doi:10.1159/000324337.
8. Freedman, J.M., Jensen, A.L., Stone-McCown, K., & Rideout, M.S. (1998). *Self-Science: The emotional intelligence curriculum*. San Mateo, CA: Six Seconds.
9. Gleaves, A. & Walker, C. (2006). 'How does digital caring differ from physical caring?' In J.
10. Goleman, D., Boyatzis, R., & McKee, A. (2002). *Primal leadership: Realizing the power of emotional intelligence*. Boston: Harvard Business School Press.
11. Hill, D. R., & Rivera, E. (n.d.). *Online Adult Learning and Emotional Intelligence: Oxymorons?* <http://www.ahea.org/Hill&Rivera.paper.htm>
12. http://www.unh.edu/emotional_intelligence/EIAssets/EmotionalIntelligenceProper/EI1990%20Emotional%20Intelligence.pdf
13. Jaeger, A.J. (2003). 'Job Competencies and the Curriculum: An Inquiry into Emotional Intelligence in Graduate professional Education.' *Research in Higher Education*. Vol. 44, No. 6, pp. 615-639.
14. Kelly, A. Cherwin (2011). Using Emotional Intelligence to Teach. <https://www.higheredjobs.com/Articles/articleDisplay.cfm?ID=285>
15. Leathwood, C. & Hey, V. (2009). 'Gender/ed discourses and emotional subtexts: theorising emotion in UK higher education.' *Teaching in Higher Education*. Vol. 14, No. 4, pp. 429-440.
16. Lieberman, M.D. (2007). Social cognitive neuroscience: A review of core processes. *Annual Review of Psychology*, 58:25, 9-89.
17. Mark, J, Epstein & Yuthas, K. (2012). Redefining Quality in Developing World Education - Portland State University PDXScholar, 1-6-2014.
18. Medina, J. (2008). *Brain rules*. Pear Press: Seattle, Washington.
19. Mortiboys, A. (2005) *Teaching with Emotional Intelligence*. London: Routledge
20. Parish, D. R. (2015). The relevance of emotional intelligence for leadership in a higher education context, *Education*, 40 (5), 821-837. http://ro.uow.edu.au/cgi/viewcontent.cgi?article=2730&context=smh_papers
21. Perreault, H. R. (2004). Online course development for business education. In D. Christopher, & S. Jaderstrom (Eds.), *E-World: Virtual learning, collaborative environments, and future technologies*. *National Business Education Association Yearbook*, 42 (pp.1-12). Reston, VA.: National Business Education Association.

22. Plutchik, R. (2001). The nature of emotions. *American Scientist* 89 (2001): 344.
23. Rhodes, C. & Nevill, A. (2004). 'Academic and social integration in higher education: a survey of satisfaction and dissatisfaction within a first year education studies cohort at a new university.' *Journal of Further and Higher Education*. Vol. 28, No. 2, pp. 179-193.
24. Rica Bhattacharyya (2013). ET Bureau De 17, 03. 43. AMIST.
25. Salovey, P. & Mayer, J. (1990). Emotional Intelligence – 1990. Yale University, University of New Hampshire.
26. Silver, M.A. (1999). 'Emotional Intelligence and Legal Education.' *Psychology, Public Policy and Law*. Vol.5, No. 4, pp. 1173-1203.
27. Stone-McCown, K. (2005). Emotional intelligence: The cornerstone for positive change. www.6Seconds.org.
28. Thomas, L. (2002). 'Student retention in higher education: The role of institutional habitus'. *Journal of Educational Policy*. Vol. 17, No. 4, pp. 423-442.
29. Topham, P & Russell, G. (2012). 'Social anxiety in Higher Education.' *The Psychologist* Vol. 25, No. 4. British Psychological Society (BPS).
30. Tucker, M. L., Sojka, J. Z., Barone, F. J., & McCarthy, A. M. (2000). Training Tomorrow's Leaders: Enhancing the emotional intelligence of business graduates. *Journal of Education for Business*, 75, 331-341.
31. Turner, P. & Curran, A. (2006). 'Correlates between bioscience student's experiences of higher education and the neurobiology of learning.' *BEE-j* Vol. 7. No.5, May 2006.

How to Effectively Use News Articles in the EFL Classroom

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Abstract

The Article explores the ways of effectively incorporating News Articles into EFL learning process as they can be a key resource for teaching intermediate and advanced students. However, teaching a news lesson isn't as simple as cutting an article from a newspaper and taking it to the classroom.

Keywords: News, information, source, appropriateness

Introduction

'One of the words that has been creeping into English teaching in the past few years is 'authentic'. It has a kind of magic ring to it: who after all would want to be inauthentic?'

Teachers and students are naturally attracted to authentic texts (by which I mean any text which has not been produced for the purpose of language learning). Finding that you can read something designed for a native speaker is motivating, and developing strategies to deal with 'real' texts enables students to read more confidently and extensively outside the classroom.

Therefore, we also need to consider just how helpful the authentic text we choose actually is for our students. Many of the features of authentic texts, especially newspaper texts, are far more complex than we might realise at first glance.

Why do so many teachers like using newspapers? First of all, newspapers are much more current than coursebooks. There is also a lot of information in newspapers which make them an excellent springboard for lessons. Finally, there are lots of different kinds of texts in newspapers (narratives, stories, letters, advertisements, reports...).

So what do teachers do with newspapers? One of the problems with newspapers is that they are often used as an up-to-date coursebook activity. The teacher applies the same pedagogical principles and exercises that are in the coursebook. Two major problems tend to emerge from this approach:

It can be extremely time-consuming for teachers

- It is not necessarily interesting for learners

Besides this, we as EFL Teacher face the following challenges when introducing the articles to EFL learning.

First Challenge: Text organisation

For example, how clearly is the text organised? This can be a real headache with newspaper texts, which often have very short paragraphs, not necessarily linked clearly to the surrounding text. I remember an activity where the students had to order the paragraphs of a newspaper article. It was virtually impossible, because the links weren't clear enough and because the students weren't aware that the first paragraph of a newspaper article usually sums up the whole story.

Second Challenge: Headlines

Newspaper headlines can also be hard to decipher. They often use puns or cultural references. This is particularly true of tabloid newspapers, which you might think would use simpler language, but are in fact the hardest to decipher. Look at this headline, for example, which appeared on the **Mirror website** (opens in a new tab or window). Not long ago:

It's Bradley Zoo-per! LEMUR grabs keeper's camera to join the selfie craze.

To understand this headline, we need cultural knowledge - to know that someone called Bradley Cooper took a 'selfie' (a popular form of self-portrait using a camera, often a mobile phone) at the Oscars (film awards) recently. We also need to know what a keeper is (a zoo-keeper, who looks after the animals) and we need to be able to understand the syntax of the headline (A lemur took his keeper's camera and used it to take a self-portrait).

Understanding the Genre

If we are going to work with news articles, students need some help and training in understanding the features of the genre. For example, the headline is frequently confusing, but there is often a sub-headline which makes things clearer, e.g.:

After actor Bradley Cooper's Oscars snap went viral, London Zoo's lemur Bekily gets in on the act.

And then the first paragraph usually summarises the story:

This ring-tailed lemur didn't want to miss out on the selfie craze – so he snatched his keeper's camera and took his own.

This first paragraph nearly always contains what journalists call the 5 Ws (who, what, when, where and why). Getting students to try and find the 5 Ws (or as many as possible), just using the headline and first paragraph, is a

way of leading them into the rest of the text, which usually just adds detail to these main points.

Third Challenge: Identifying what certain words refer to

Another common feature is the use of reference devices. Obviously, we find these in all texts, but because of the concise way newspaper texts are written, it can be particularly hard to follow the chain of reference. For example:

Bekily, 12, was watching Tegan McPhail photograph animals at London Zoo at feeding time. Perhaps inspired by Bradley Cooper's mega-selfie with fellow stars at the Oscars he decided he wanted to pose for one himself.

I think a lot of students would assume that the highlighted 'he' referred to Bradley Cooper, because he has just been mentioned (or even Tegan McPhail, mentioned in the previous sentence) when it actually refers right back to 'Bekily'. To help students with this, we could ask them to underline the reference words and then draw arrows to what they refer to.

Fourth Challenge: Idioms

And, as you will have noticed, there are also a lot of idioms, especially in the tabloids. With a short article like this one, you can ask students to underline any idioms they find (go viral, get in on the act, mega-selfie) and look them up. They could then try and rewrite the article (or a section of it) without any idioms, putting the original idioms in a list below. If the students have read different texts, they could then swap and ask their partner to try and rewrite the article using the list of idioms given.

Though all these challenges can be removed as the result of proper planning and consideration. In particular, for effective incorporating of the Articles into EFL learning process, it is important to take into consideration the following criteria:

Selection Criteria

The first place to start when teaching an effective news lesson is with the article itself. Teachers should consider the following when selecting an article:

- **Appropriateness:** Is the topic appropriate? Is it suitable for the class level and age group? Could it be upsetting to some students?
- **Interest:** Will the students be interested in this topic?
- **Length:** Is it too long? Articles that are particularly long should be avoided. Reading news articles is demanding and if they are too long, students will be discouraged. It will also take time to process reducing talk time. Long

articles should be edited (200-300 words is a good length. As a rule-of-thumb, a one page double-spaced essay equals about 250 words).

- **Language:** Does the article contain a useful lexical set (e.g., crime, medicine, etc) or useful grammar components? Is there too much unknown vocabulary?
- **Generative Potential:** Is the article generative? That is, can you think of an effective activity to follow the article? Articles that lend themselves to discussions, debates, or role play are desirable. You would want the students to be able to further practice the language after the reading and listening.

Lesson Structure

As mentioned above, news lessons should be structured. A well-structured news lesson comprises the following six stages: warm up, pre-reading/listening activities, reading/listening to the article, application/follow-up, feedback and correction, and homework. Below I'll present the aims of each stage and suggest some activities. I suggest between 60-90 minutes for a class.

Warm Up

The warm-up should raise awareness of the topic and activate pre-existing knowledge and language. As in regular lessons, Teachers should avoid correcting students here. This allows students to relax, get into English-mode, and to build confidence. Some suggested activities are:

Warm-up Questions: These should be related to the topic. The teacher can write the questions on the blackboard or dictate them.

- **Quizzes:** Quizzes are a good way to test their knowledge of the topic and people in the article.
- **Describing/discussing pictures related to the article:** In pairs or groups, students speculate about the picture. At this point, they shouldn't know what the article is about.
- **Brainstorming:** Have the students brainstorm vocabulary related to the article's topic.
- **Do you agree/disagree?:** Prepare a list of four to five statements related to the article. Students pair up and ask each other if they agree or disagree citing reasons.
- **Ranking:** Students rank a list that the teacher has prepared. For example, if the article were about dieting, the instructor could prepare a list of common dieting fads. The students have to rank them from most effective to least.

Pre-reading/listening

The lesson proper should always begin with pre-reading/listening activities. Unlike the warm-up activities, these activities are directly related to the text and serve to get students interested in the topic, build confidence, and prepare them for the task ahead. It's common for instructors in news lessons to carefully pre-teach the vocabulary. If the focus of the lesson is vocabulary building, this is fine. However, the teacher should ensure that the vocabulary will be recycled in the application. If not, it is not a good use of time. Why are the students spending 10 minutes learning vocabulary they won't use again? However, the focus of the lesson doesn't have to be vocabulary-building. If the article has been well-selected, written, or edited, it is possible for students to focus on other skills such as reading or listening. If they come across an unknown word, it is a good opportunity for them to develop strategies such as asking others, guessing from context, and building their ambiguity filter.

Here are some suggested activities:

- **Synonym matching:** Students match words taken from the article and match with synonyms.
- **Fill-in-the-blank:** Students are given a set of sentences from the article and have to fill-in-the-blanks using a provided vocabulary list. An alternative is to have the students try to fill in the blanks using their imagination first and then repeating this activity while looking at a provided vocabulary list.
- **Story speculation:** The students predict the story from the headline and/or the article's picture.
- **Vocabulary speculation:** Students are given the headline and predict words they expect to read. (As students read the article in the next stage, they can check the words they find. The student with the most correct predictions wins.)
- **Vocabulary selection/sort:** Students are given a list of words; some word are from the article, some words are not. The students read the headline and then decide which ones they think are from the article.
- **Sentence selection:** As in the previous example, but with sentences instead of words.
- **True or False:** The instructor provides the students with a list of sentences about the article. Some are true, others are false. The students read them, and then decided whether they are true or false. The students can check their answers in the next stage.

Listening Tasks

These activities serve to build listening skills. If you want to focus on listening skills, it should be read at least two or three times. Two points to

consider when setting listening activities: it's a good idea to move from extensive listening activities to more intensive; and if the students can get all the answers correct the first time, the tasks were too easy. If you are hoping to improve listening ability, the students' listening has to be challenged. Here are some possible listening tasks:

- **Listening for gist:** The students could summarize each paragraph.
- **Fill-in-the-blanks:** The teacher reads the story aloud. The students listen and fill in the blanks.
- **Checking pre-listening ideas:** The students listen and check their information from the pre-listening stage (true/false statements, vocabulary speculation, etc.).
- **Listening for pre-set comprehension questions:** These can be written on the board or dictated. After the first listen, have the students compare answers. Then read again until they have the answers. Ideally, the questions should be related to the pre-activities.

Reading Tasks

These activities serve to build reading skills and the article should be read two or more times. As in the listening activities, it is best to move from extensive to more intensive tasks. This means the students will gain a deeper understanding with each successive read.

General Comprehension Questions

- **Check pre-reading ideas**
- **Skimming/Scanning:** Skimming is when you quickly read through an article. Scanning is when you are looking for specific information.
- **Detailed comprehension questions:** "Which paragraph says (...)?", "What do (these numbers) refer to?", "What do (these people) think?", "Find a word that means (...)", Find today's vocabulary, "How was the "vocabulary" used?"
- **Student generated comprehension questions**
- **Complete the sentence:** Take the beginning of some key sentences from the article and have the students try to complete the sentences from memory.
- **Write a headline for the story/each paragraph**
- **Summarizing:** The students write a sentence summarizing each paragraph.

Application/Follow-up Tasks

Whatever the focus of the lesson, an effective news lesson should extend beyond the article. The students need to have a chance to use the new vocabulary and/or knowledge in a meaningful, less controlled way. The

students should be reminded to use the new vocabulary and/or target language as much as possible.

- **Role Play:** For example, the students could take on character roles from the article and role play the situation. This could be extended to what they think happened next.
- **Discussion:** The teacher can provide questions related to the topic such as "Have you ever experienced such a situation?", "What would you have done in her shoes?", or "What do you think of what he did?" Of course, students should be encouraged to go beyond the article.
- **Debate:** The students have a debate. One idea: If the students did the "Do you agree/disagree?" activity in the warm up, the teacher could tie it to the debate. The students revisit the same statements and debate using the information from the article.

Feedback and Correction

The last five minutes of any lesson should be reserved for feedback and correction. Together, the warm up and the feedback and correction stages are the bookends of an effective lesson. Just as the warm up serves to get them ready for the lesson ahead, this stage acts as a cool down where the students can reflect upon what they have learned. It also guarantees that the students leave the classroom with a clear idea of what they have achieved. There are three things that can be covered here:

- **Correction:** This is a good opportunity for teacher to bring up any mistakes from the application to the class' attention. The benefit of this is that the whole class can benefit from the correction. Mistakes can include level relevant grammatical mistakes, mispronunciations, or vocabulary usage problems.
- **Review:** It's a good idea to briefly review what was covered. The instructor can review new vocabulary or the article itself. It's best to elicit this information and to call for examples. This will not only reinforce the information, but will satisfy the teacher that the students understand what was covered.
- **Feedback and Motivation:** It's important to give some praise and some advice for further improvement or study.

Homework

Homework is important for students to progress in their studies. Most students have little access to English outside of the classroom. Setting homework encourages them to self-study and to re-visit the lesson. This will build retention of new information. Some suggested homework assignments for news lessons are outlined below.

- **Research projects:** Students have to research the topic using Wikipedia and write a report.
- **Comparison activities:** Students have to read the same topic from different news sites to compare how different sources deal with the news.
- **Letter writing:** The students have to write a letter to someone from the article telling them how they feel.
- **Summarizing:** Students summarize the article.
- **Listening:** If the lesson is from a site where a podcast is available, the students should download the mp3 file and listen to it at least two or three times a day. They also can listen and repeat after the recording to work on the prosodic features (e.g., rhythm, pronunciation, and stress).

Conclusion

News articles can be a great teaching resource in the EFL classroom if they are structured well and have a purpose. Teachers can choose their own articles from newspapers or magazines but should bear the proposed selection criteria in mind. Alternatively, teachers can use one of the suggested EFL sites that prepare news materials. Following this lesson structure will lead to more effective and challenging classes.

References:

1. Antepara, R. 'Using News Stories in the ESL Classroom', *The Internet TESL Journal*, Vol. 9, No 12, 2003 (<http://iteslj.org/Techniques/Antepara-5Ws.html>)
2. Clifton, J. 'Using Newspaper Articles Communicatively in the ESL Classroom', *The Internet TESL Journal*, Vol 12, No 2., 2006 (<http://iteslj.org/Techniques/Clifton-Newspaper.html>)
3. Daly, B. 'Facilitating Discussions of Newspaper Articles in the ESL/EFL Classroom', *The Internet TESL Journal*, Vol 10, No 7., 2004 (<http://iteslj.org/Lessons/Daly-Newspaper.html>)
4. Miller, A. 'Language and Communication'. New York. Mc Graw Hill., 1951.
5. Parret, H. (1980). 'Language and Context'. Cambridge, 1980.

Total Quality Management (TQM) in Georgian Higher Education System

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Abstract

Quality management of higher education becomes especially topical and problematic in such countries that actively implement reforms in different directions and try to achieve the modern standards of socio-economic development. There has been the implementation of several reforms in Georgia's higher education system within the last twenty years. The country was officially involved in the Bologna process; many legislative-normative acts about quality assurance were enacted; quality assurance standards were introduced; criteria and procedures of accreditation and authorization were determined; quality management offices were established in higher educational institutions, etc. Consequently, implementation of the total quality management system in the sphere of Georgian higher education became necessary, as the total quality management system is the combination of those complex events, the implementation of which should maximally satisfy the requirements of the sides involved in the process of higher education.

Keywords: Total quality management (TQM); Higher education Institution; Quality assurance; Accreditation; Authorization

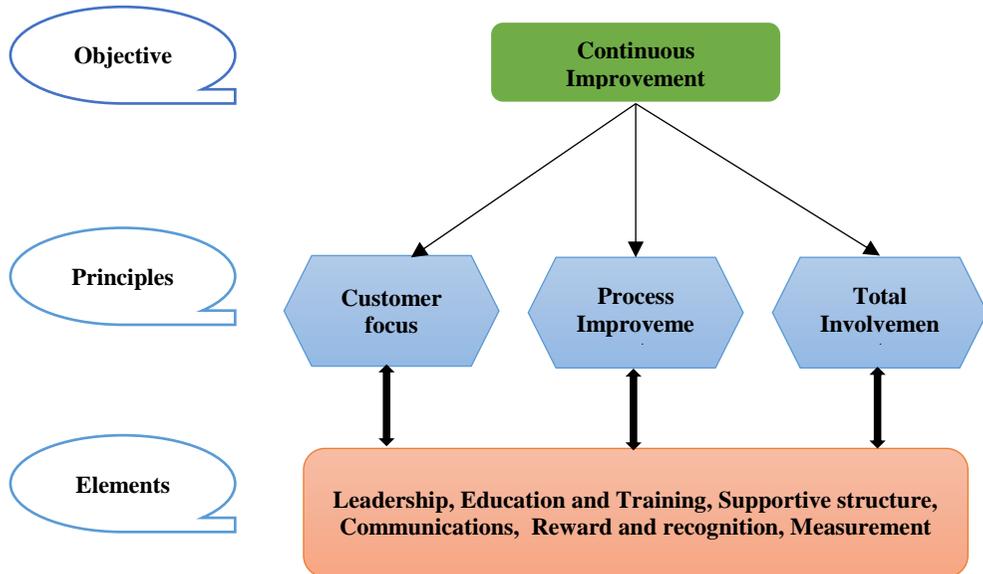
Introduction

Nowadays, in the field of higher education, daily growing competition makes market makers (higher education institutions) constantly try to improve the quality management systems and increase their efficiency. Today, modern philosophy of quality management implies using modern management concepts for quality management processes. These concepts are based on the use of administrative means as well as innovative technologies and approaches. Higher educational institutions achieve realization of these approaches by using the total quality management (TQM) system. The approach of the total quality management (TQM) system implies the use of the concept of continuous development of quality, which, in its turn, means the use of the cycle of continuous improvement of quality (Deming cycle),

while accomplishing the existing processes: working out the plan for improving the processes, implementing and checking it, and taking corrective actions (Plan-Do-Check-Act). Formation of the new system of quality management of Georgian higher education started in 2004 when “the Law of Georgia on Higher Education” was introduced. In the following year, Georgia officially joined the Bologna process on the Bergen Summit where the philosophy and principles of total quality management are reflected in the approaches of the process to ensure the quality of higher education. In today’s Georgia, quality management processes of higher education at the system level are conducted by LEPL “National Center for Educational Quality Enhancement”; but at the institutional level, the processes are managed by quality assurance services of higher educational institutions. At the system level, the mode of authorization and accreditation is applicable to higher educational institutions.

As a rule, the term “quality” is not an absolute concept in higher education; rather, it is a relative term. Accordingly, it may refer to an outcome of complex activities, which should meet to stated national standards; that is, to get desired outcome. According to Deming, quality is the expected state of compliance of low cost relation and homogeneity with market (Edwards W. Deming., 1982). Thus, TQM is used to achieve the mentioned outcomes in higher education. According to ISO 9004, TQM is interpreted as a “mixture of management philosophy and company activities in order to effectively combine material and human resources to achieve goal of an organization” (Russell T. Westcott., 2003). Modern philosophy of TQM is based on the modern concept of management that means using administrative tools, innovations and specialized technical skills (Naser K. J., 1999). According to Harisis (1994), there are different attitudes for implementing TQM in higher education. First one is consumer oriented, which concerns encouragement of students service by staff development and training. The second one concerns staff, which enforces each employed person to be involved in the process of growing the effectiveness of their institutions. The third attitude covers agreements of service and efforts to meet standards at the crucial points of the educational processes (Mohanty R. P., 2008).

Figure 1. TQM System



Formation of Total Quality Management (TQM) in Georgian higher education has been on since its commencement in 2004. There was enacted a bill “Law of Higher Education in Georgia” in 2004. Next year, the country officially joined to a Bologna Process at Bergen Summit and new paradigms of regulation of higher education system was created. LEPL (Legal Entity under Public Law) “National Center for Educational Quality Enhancement” governs higher education system at the systematic level based on the Georgian legislation, while at the institutional level, quality management department of the higher education institutions govern the processes (Kikutadze V., 2015).

Georgia enacted “Law of development of education quality”, which states the juridical bases of mechanisms to enable education quality enhancement and it sets some instruments as well, such as: in and out mechanisms of education quality improvement (education & 1, 2004). According to the law, LEPL National Center for Educational Quality Enhancement was established in September of 2010. The center permanently works to renew the concept of education quality, to elaborate necessary standards and implement development mechanisms. Thus, it is obvious that the government guarantees education (including higher education) quality enhancement and takes control of it. The goal of accreditation is “to establish permanent self-assessment in educational institutions in order to enhance education quality and quality management mechanisms development by determination of compliance of educational programs with accreditation standards”. Accreditation process includes the following steps: (National Center for Educational Quality Enhancement) (see the Table 1).

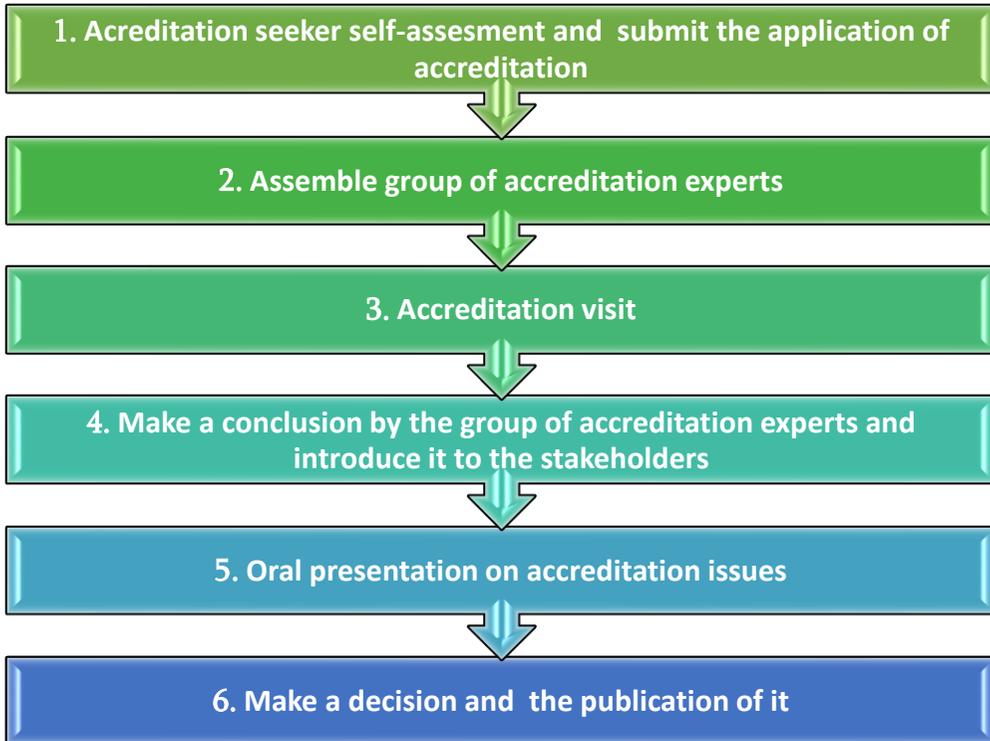
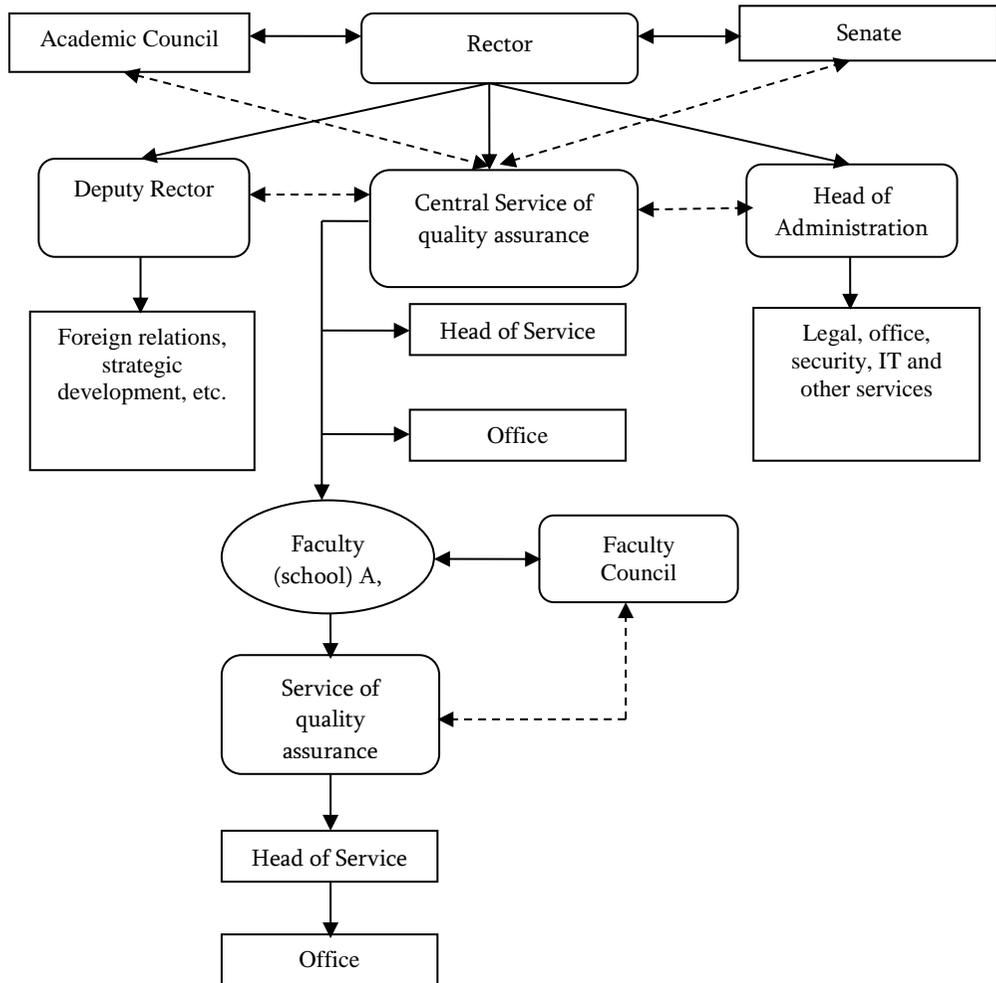


Table 1. Accreditation process in Georgia

Quality management departments in management organization structures are represented in public higher educational institutions as well as in private institutions. These departments work according to “a statute of quality management”. Top management of higher education institutions, especially the academic board and the representative boards, are responsible for elaboration of these statutes. As a rule, quality management is included in the organization management at educational institutions. Quality management departments include Quality Assurance Central Office and branches at the faculty levels. Quality assessment internal system exists in majority of the higher educational institutions that is written in quality management acts of the higher education institutions. In Higher education institutions, quality assurance is usually included in the institution's management bodies and is represented by the central office of Quality assurance and on level of individual faculties (schools) in the form of Quality assurance services (See Figure 2).

Figure 2. Higher Education Institutions Quality Management Organizational Structure



Primarily, in the higher education institutions are distributed/spread quality management linear-functional organizational structures. At the institutional level, the managing of quality assurance and management processes takes place through the Central Service of quality assurance, which is in turn pursuing strictly regulated functions and determines the overall management objectives. Thus, quality management linear-functional organizational structures are widespread in the majority of Georgian higher education institutions. Quality Assurance Central Office guarantees quality and management processes at the institution level, which accomplishes strictly regulated functions and determines execution of the overall goals of institution management. Top management of the higher education institution makes decisions about the quality management policy at the institution.

Internal and external competition on the Georgian education market, accreditation standards and the existing regulations of students financing enforce Georgian higher education institutions to care about the education quality they provide. The main challenge in this process might be concerned to be effective internal mechanisms for quality management. The higher education institutions are focused on building student oriented teaching processes. Because of that, one can find student service centers, academic personal training centers at their managerial structure. These institutions attempt to improve effectiveness by encouraging staff for their own development and their participation in that process. Despite this, the higher education institutions pay special attention to complex issues, such as: harmonization of study-teaching process and research. Some of higher education institutions establish science-research and development departments, implement inner grant system, and finance participating of academic personnel in different science forums. In that way, they are more focus on effective implementation of given issues. Conclusively, TQM in Georgian higher education institution gains bigger and bigger importance as time passes and it develops in accordance with the socio-economic progress of the country.

Conclusion

Modern higher educational institutions create their own systems of education quality assurance in the whole world, including Georgia. The systems identify the problems existing in education quality management and use complex approaches for their solution. At the beginning, higher education institutions develop quality management approaches as part of the company's strategic management and implement continuous cycle of its management within the scope of the concept "Plan-Do-Check-Act" in which all interested people participate, including students and staff. In the present context, in order to achieve the mentioned goals, the system of total quality management (TQM) is actively used in the higher education system. ISO 9004 defines total quality management (TQM) as "management philosophy and the unity of the company's actions with the help of which the organization's material and human resources are effectively used to achieve organizational goals". In majority of Georgian higher educational institutions, the principles of the system of total quality management (TQM) have fragmented character. This is expressed in being oriented on customers, optimization of processes and increase involvement of persons interested in participation in the process. Based on the aforementioned, we can conclude that in Georgia, the system of total Quality Management (TQM) is actively used in the sphere of higher education. Its development paces with the social-economic development of the country.

References:

1. (n.d.).
2. education, L. o., & 1, A. (2004).
3. Edwards W. Deming (1982). *Quality Productivity and Competitive Position, 1st Edition*; .
4. <http://eqe.gov.ge/> - *National Center for Educational Quality Enhancement* . (n.d.).
5. Kikutadze, V. (2015). Management of quality in higher education in Georgia. *Vol. 13 Issue 4*, pp. pp. 45-49 ;.
6. Law of Georgia on higher education; Article 1, . (2004). Tbilisi.
7. Mohanty, R. P. (2008). *Quality Management Practices*,.
8. Naser, K. J. (1999). Islamic banking: a study of customer satisfaction and preferences in Jordan. *17(3)*,, pp. pp. 135-151.
9. Naser, K. J.-K. (1999). Islamic banking: a study of customer satisfaction and preferences in Jordan. *International journal of bank marketing* , *17(3)*,, pp. 135-151. .
10. Russell T. Westcott (2003). *Steppin Up to ISO 9004:2000: A Practikal Guide for Creating a World-Class Organization*.
11. Quality Improvement in Georgia (2010). Achievements and Problems; Research Report - Tbilisi State University.
12. Bregvadze, T. (2013). The International Institute for Education, V - Higher Education and Employment, Tbilisi.
13. On the Approval of the Educational Institutions Authorization Charter and of Authorization Fees; Order N 99/N of the Minister of Education and Science of Georgia. 1 October 2010. Tbilisi.
14. <http://www.mes.gov.ge/content.php?id=131&lang=geo> - Ministry of education and science of Georgia.
15. <http://eqe.ge/geo/static/7/education-system> - National Center for Educational Quality Enhancement.

Online Education in Georgia

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Abstract

The presented article aims to explore the problems of online education in Georgia. It discusses the stages of online learning, its advantages and disadvantages and the steps that have been taken by the State towards the development of online education. The article also analyzes the reasons behind the unpopularity of online learning in Georgia.

Online education is currently and vitally a part of modern life. It facilitates the involvement of people who have lack of time in the learning process. However, online learning will be more effective for students of MA and PhD programs.

At undergraduate level, only online training may not be effective as BA students have less experience. For the development of BA student, it is necessary to have direct contact with professors. Active communication and interaction with public promotes a student's development, and a young person to be formed into an individual. For higher level program students, who already have sufficient experience of being involved in social life, online learning is most suitable.

Keywords: Online education, tendency, higher educational institution

Introduction

Technological development contributed to the development of many new educational programs. Any new system based on today's developed education system easily adapts if it gives an opportunity to the community to get new knowledge.

The laws on the market economy unfortunately or fortunately have incorporated educational system in its "fight". This has resulted in increased competition in each field and education is not an exception.

In addition, the world is quite accelerated, and thus requires more flexibility in the learning process. This leads to the creation and development of new systems. It should be noted that implementation of European

educational standards in Georgia completely changed attitude towards learning. Education has become more international and student-oriented.

Education is one of the most important challenges in life for many people. Years ago, it was hard to imagine obtaining education from home. Nowadays, online education is available throughout the world. Such mode of studies gives the opportunity for many people to get diplomas in time saving ways.

Online learning is a form of education that is specially designed for a student or a group of students who are not physically present in a traditional classroom or the office. Today, the majority of people living in countries all over the world are using cell phones, laptops and other mobile devices to stay connected with family, friends, and their studies.

The term “online education” is used to encompass all forms of teaching and learning via the Internet.

An online course, as defined in Allen and Seaman’s (2016) work, is a mode of study where eighty percent of the seat time is replaced by online activity.

During the last twenty years, online education has become integral to the delivery of instruction in colleges and universities. Today, it is fully integrated into the teaching and learning process.

Schlender states: “The Internet changes everything, I really mean everything” (Schlender, 1999).

Advantages and Disadvantages of Online Education

Online education has many supporters and opponents. As time goes on and technologies are being improved, the proponents of traditional education will constantly have less and less arguments with which to defend their position.

As a result of today’s busy lifestyle, people have little time to obtain more knowledge, develop themselves and be successful in their career. Online education is able to provide people comfortable environment from any location, if there is good Internet facility. This is a rather important benefit for people who have no time to go to universities or colleges.

In general, one can complete a degree online in shorter period of time than they would do to the same course on campus.

Sometimes, online education is more flexible for people even financially. In addition, online learning can be accepted at a Bachelor's level as well as Master’s and PhD levels; it is also possible to take certificate courses.

Advantages of Online Education

- No immigration problems;

- The student is studying according to his/her specialty and has its own schedule (review, consultation, examination, etc.);
- It saves time and money.

Disadvantages

- Students have no opportunity to be adapted with new community;
- Lack of communication with teachers and classmates;
- No social interaction;
- No student life.

In Georgia, online education was established just a few years ago, but it still does not enjoy such popularity as in Europe and America. Although Georgia is trying to develop and conform to European standards, society is not yet ready for such changes. In the last 20 years, Georgia has been undergoing stages which developed countries have already crossed. The society's attitude towards education is different in countries. For example, for approximately 80% of Georgian population, it is important to have Higher Education Diploma.

According to the data of 2017, the population of Georgia is 3, 718, 200. Against the background of a relatively small population, there are still 32 universities and 28 teaching universities in Georgia, which shows that education in Georgia plays an important role in the society. According to the information provided by the National Assessment and Examination Center, 48, 434 pupils were registered at the graduation examinations, 47, 063 participated in the exams and only 34, 260 pupils succeeded. Consequently, the exact number of the failed students is 12, 803. Based on the data of 2016, the number of students in higher education institutions is 140, 300. It must be considered that although Georgia is developing economically, a significant part of the Georgian population is still below the poverty line. According to the data of 2016, 21.3% of the population of Georgia is absolutely poor. These results demonstrate that taking, into consideration all of these factors, interest towards higher education is still high in Georgia. Everyone wants a diploma which would be suitable for getting a job; though, according to the Georgian legislation, our country does not recognize a diploma obtained via online education.

According to the law, a person who is studying online should be in the territory of Georgia. However, this is only a mix of traditional and online learning, which means that a student can use it only in parallel with traditional learning. Diplomas of students studying in online regime in foreign universities cannot be recognized by the State.

In the spring of 2017, a conference on distance learning in Georgia was held. It was organized by the Civil Society Institute with the financial support

of European Union. The goal of the conference was to evaluate the situation in Georgia in the field of online learning, challenges, identification of opportunities and generalization of these issues in general. This was another step towards refinement of online education.

It is noteworthy that online education in Georgia was actively implemented in 2008 when the country joined the project "Electronic Learning in the Caucasus". In the framework of this project, pilot electronic training courses were developed and implemented in more than 20 educational institutions in Armenia, Azerbaijan and Georgia. However, it was only the first step. Online learning has become active in Georgia since 2009. Ivane Javakhishvili Tbilisi State University has also established a Distance Learning Center. However, the number of students enrolling in this program is quite small. However, work in this direction has not stopped. This was not an active work in this direction, but considering that competition in the sphere of higher education increases even more, developing and implementing new methods of teaching, requires new opportunities.

Taking into account all the aforementioned, online education in Georgia is still facing great challenges. In comparison with previous years, the number of people interested in online learning has increased, students in Doctoral and Master Programs in Georgia are interested in obtaining some courses in different directions. Basically, they prefer to take only the courses and not online MA or PhD programs, because online diplomas are not recognized. As it was mentioned above, the Georgian law does not recognize online diploma, but the online training provides them with additional experience.

Conclusion

The tendency towards online learning was established even before the formation of the modern world. Online education was founded a long time ago, when a correspondence course was offered in Great Britain, where the instructor sent lessons and received students' completed assignments by mail. Distance learning was "born" long ago, and today's online courses are modern versions of their humble predecessors.

This is not a difficult procedure if the suitable environment is created in the institution that a student needs in the course of online learning. One of the most important difficulties in Georgia is Internet. There are villages where there is a lack of Internet or its speed is very low. Besides, the lack of computer skills often causes problems during online learning.

Overall, online learning in Georgia is a way of getting additional experience in the field of one's interest. It is important to note that the law prevents us from getting full online education. I believe that it would be better

if the law is improved in order to accommodate and enable further development of online learning.

The system's improvement depends not only on certain organizations and universities, but the state must set up a law that will make online education more relevant for the public.

In this direction, the most practical solution of the problem will be if MA and PhD students are given the opportunity to study blended online course. For example, a student can study one semester only under online regime (on-line studies) and then be allowed for some weeks to study at the same university where he/she passed the online courses (on-campus studies). It will be both theoretical and practical experience for students. In such a case, the diploma should be recognized because their knowledge and research will be complete.

References:

Edition Anthony G.Picciano Online Education Policy and Practice: The Past, Present, and Future of the Digital University 1st (p. 69, 87) First published 2017 by Routledge ISBN-13: 978-1138943636 ISBN-10: 1138943630

Mark A. Maddix, James R. Estep Best Practices of Online Education: A Guide for Christian Higher Education Copyright 2012 Information Age Publishing Inc. (p. 31)

Joanne J. Jung Character Formation in Online Education: A Guide for Instructors, Administrators, and Accrediting Agencies Copyright 2015 by Joanne J. Jung (p. 53)

High Level Group on the Modernization of Higher Education REPORT TO THE EUROPEAN COMMISSION ON New modes of learning and teaching in higher education OCTOBER 2014 Luxembourg: Publications Office of the European Union 2014 – 68 pp. – 17,5 x 25 cm

ISBN 978-92-79-39789-9 doi:10.2766/81897

Jennifer D. Klein Global Education Guidebook: Humanizing K-12 Classrooms Worldwide Through Equitable Partnerships (How to Promote Multicultural Education and Nurture Global Citizens) Copyright 2017 by Solution Tree Press

www.mes.gov.ge

www.geostat.ge

www.sciencedirect.com

The Language of Journalism in English and Georgian Languages (Comparative Analysis)

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Abstract

The language of journalism is a rather interesting field to analyze. It assists people to comprehend how journalists create their stories and reports, how they shape up their standpoints and deliver information.

Even in Old Greece, political power was based on the art of speech. As journalism is considered to be the Fourth Estate, it had rather significant impact on society even in those days. Nowadays, together with the development of technologies and great progress, the influence of journalism on society becomes immense. Namely this conditions the fact that journalists should always be unbiased, objective, faultless and at the same time, rather educated and eloquent. They have to carefully and precisely follow the language norms as very often, incorrect forms are spread exactly from media and unfortunately, are established in language. That is why studying media language is of utmost importance.

The article aims to analyze media language in absolutely different languages – languages belonging to different families – English and Georgian, to find out similarities and differences as well as grammatical, structural and lexical peculiarities used in these languages.

Keywords: Media journalism, neutral vocabulary, emotionally colored, grammatical peculiarities

Introduction

The language of journalism is a rather interesting field to analyze. It assists people to comprehend how journalists create their stories and reports, how they shape up their standpoints and deliver information.

The main purpose of a journalist is to inform and persuade the public, also to reinforce their beliefs using manipulating techniques and, certainly, proper language characteristic peculiar to journalism.

The presented article aims to analyze media language in absolutely different languages – languages belonging to different families – English and Georgian, in order to find out similarities and differences as well as grammatical, structural and lexical peculiarities used in these languages.

Historical Aspect

Even in Old Greece, political power was based on the art of speech. As journalism is considered to be the Fourth Estate, it had and still has rather significant impact on society. The classical model of speech was established in Antique Athens. This model consists of the following components: preamble, narrative, argumentation and conclusion. A political speech made in the Assembly differed from the speech delivered in the Court. The specificity of a journalistic text is rather different; every journalist has his/her style of speaking, but each of them should mind the model of the Antique period.

In ancient Athens, wandering teachers, sophists (from *Sophia* – wisdom), were masters of making speeches. Sophists considered that language owing to its symbolic, cultural and emotional embodiments could never reflect and cover events objectively. They believed that language is a neutral tool that an orator should use to manipulate his audience in order to achieve the desirable result.

Starting from 420 B.C., verbal communication was substituted with written communication and all political or philosophical speeches made for a long time are preserved in manuscripts. This continued until Johannes Gutenberg (XV c.) introduced printing technique to Europe. His invention caused changes of revolutionary character. Information was delivered and disseminated in printed form. In the beginning of XX century, the “almighty power” of print media started to weaken when radio was established. It seemed that the humankind returned to the Antique period, as word and speech again acquired great significance.

Later, in the 30s of XX century, by the mixture of audio and visual devices, the world faced one of the “miracles” of XX century – television, which alongside with other benefits, helped people better perceive information. Very soon, television gained great popularity as it had immense influence on society.

Language of Journalism

It is a well-known fact that every field of studies and every profession has its specific language. Journalism is not an exception.

It is noteworthy that journalists should always be unbiased, objective, faultless and, at the same time, rather educated and eloquent. They have to carefully and precisely follow the language norms, as very often, incorrect

forms are spread exactly from media and unfortunately, are established in language. That is why studying media language is of utmost importance.

There are some general rules that journalist should necessarily follow. These rules should be applied in any language. Every journalist knows that while writing comments, it is advisable to:

- write short simple sentences instead of compound or complex sentences as it is a bit difficult for the audience to perceive subordinate clauses;
- use mostly nouns and verbs, avoid abundance of adjectives;
- use mostly verbs in active voice (not in passive);
- avoid using jargons;
- use mostly simple language and not the elevated one.

Peculiarities of Journalism in the English language

We would like to pay attention to some of the recommendations made by BBC concerning language and particularly terms to be used in journalism. The facts highlighted by a journalist should be accurate and objective; consequently, a journalist should try to avoid making conclusions. He/she has to indicate whom the idea/opinion belongs to, but should be as general as possible not indicating the exact author of the words. For instance, instead of saying explicitly that “the government could not manage...”, a journalist has to state, “according to the opinion of the opposition, the government could not manage...”.

Neutral language should be used rather carefully in order a journalist to keep balance. Though, in certain cases, elevated language cannot be left out without paying attention to them.

It is noteworthy that some words are in themselves contextually loaded and, as such, the use of modifiers is absolutely out of place. For instance, the word “terrorist” (noun) has a negative sense in itself and therefore requires no extra modifiers when it is used, e.g. “bad terrorist”, “terrible terrorist”, etc. The same can be said about the word “regime” from the political point of view. It carries critical character. But, on the other hand, if we apply this word while describing a person’s lifestyle, it has a different meaning. For example, the same word in the sentence “He has a new fitness regime to strengthen his back” has a different connotation. In this context, it means a set of rules about food, exercise, or beauty that some people follow in order to stay healthy or attractive.

Thus, everything depends on the context in which this or that word is used and not on the use of a word itself.

It is forbidden to call a person “murderer” or “swindler” until the court admits his/her crime. A journalist has to use more neutral terms, such as: “suspect in murder or in swindling” or “the accused”. This underlines that his/her crime has not been ascertained yet.

The language of journalism depends on the context of usage. For instance, the language of political magazine articles differs from that of newspaper articles. Thus, elements such as bookish words, neologisms (which sometimes require explanation in the text), traditional word-combinations and parenthesis are more frequent in political magazine articles than in newspaper articles. The vocabulary of journalistic language is for the most part devoid of emotional coloring. Some papers, however, tend to introduce emotionally colored lexical units into essential matter-of-fact news stories.

As it has already been mentioned, the bulk of the vocabulary used in journalistic writing is neutral and common literary. But apart from this, it has its specific vocabulary features and is characterized by an extensive use of the following:

- Special terms, be it political or economic, e. g. constitution, president, election, General Assembly, gross output, per capita production, etc.
- Political vocabulary which are not considered to be terms any longer, e. g. public, people, progressive, unity, peace, etc.
- Clichés, i.e. stereotyped expressions, commonplace phrases familiar to the reader e. g. vital issue, pressing problem, informed sources, danger of war, to escalate a war, war hysteria, overwhelming majority, etc.
- Abbreviations. Among them are abbreviated terms – names of organizations, public and state bodies, political associations, industrial and other companies, various offices, etc., e.g. UNO (United Nations Organization), TUC (Trades Union Congress), NATO (North Atlantic Treaty Organization), etc.
- Neologisms. These are very common in newspaper vocabulary. Neologisms make their way into the language of the newspaper very easily and often even spring up on newspaper pages, e.g. lunik, a splash-down (the act of bringing a spacecraft to a water surface), backlash or white backlash (a violent reaction of American racists to the Negroes' struggle for civil rights), frontlash (a vigorous antiracist movement), etc.

The following grammatical peculiarities of journalistic writing are of supreme importance, and may be regarded as their grammatical parameters.

- Complex sentences with a developed system of clauses, e. g.
"There are indications that BOAC (British Overseas Airways Corporation) may withdraw - threats of all-out dismissals for pilots who restrict flying hours, a spokesman for the British Airline Pilots' association said yesterday."
(Morning Star)
- Verbal constructions (infinitive, participial, gerund) and verbal noun constructions, e.g.
"The former Prime Minister of Japan, has sought to set an example to the faction-ridden Governing Liberal Democratic Party by announcing the

disbanding of his own faction numbering 47 of the total of 295 conservative members of the Lower House of the Diet." (The Times)

- Syntactical complexes, especially the nominative with the infinitive. These constructions are largely used to avoid mentioning the source of information or to avoid responsibility for the facts reported, e. g.

"The condition of Lord Samuel, aged 92, was said last night to be a little better." (The Guardian)

- Attributive noun groups, e.g.

"The national income and expenditure figures." (The Times)

"Labor backbench decision." (Morning Star)

- Specific word-order. Journalistic practice has developed the so-called "five-w-and-h-pattern rule" (who-what-why-how-where-when) and for a long time strictly adhered to it. In terms of grammar, this fixed sentence structure may be expressed in the following manner: Subject—Predicate + Object + Adverbial modifier of reason (manner) + Adverbial modifier of place + Adverbial modifier of time, e.g.

"A neighbor's peep through a letter box led to the finding of a woman dead from gas and two others semiconscious in a block of council flats in Eccles New Road, yesterday." (The Guardian)

It is noteworthy, that in spite of these strict rules, there are still observed a lot of cases of deviation from the norm.

Peculiarities of Journalism in the Georgian Language

The language of journalism is best revealed in social networks and print media. Contemporary Georgian Internet and print media respond to the world standards. This fact, first of all, is proved by the tendency of Georgian linguistics to adopt and adapt to the international words. This is conditioned by the geopolitical location of Georgia.

There were three periods when Georgian experienced the influence of foreign languages.

At first, the Georgian language faced the influence of the East. The influence was so great that today, Georgian people do not remember and some of them even do not know that this or that word is of eastern origin.

Later, Georgian was influenced by the Russian language. The first newspaper was written in Russian and then was translated into Georgian. Therefore, it is not surprising that a lot of calques are still detected in Georgian media language where we meet the word for word translation of the great bulk of words and phrases.

Nowadays, contemporary media language is under the great influence of English. Very often we come across the direct use of English words and phrases even when there is no necessity as their equivalents exist in the Georgian language. It is considered that in Georgian, affixes give foreign

words natural coloring. This opinion can be right to some extent, but very often it is not the case. For instance, the English adjective “sensitive” which is derived from the noun “sense” is often met in Georgian media language as “სენსიტიური” (sensiuri) which in Georgian language is formed by adding the Georgian adjective-forming suffix “-ური” (-uri) to the same English word “sense”. Though, in Georgian, there exists its exact equivalent, the adjective “მგრძნობიარე” (mgrdznobiare) derived from the Georgian noun “გრძნობა”(grdznoba) = sense. Unfortunately, there is abundance of such examples.

On the other hand, there are words, mainly those that are related to modern information technologies, which have no equivalent in the Georgian language. Such computer terms can be attributed to neologisms.

Conclusion

The analysis of journalism language revealed the peculiarities of journalism in English and Georgian languages. Namely, it showed that English journalism language has to follow set rules, though, there are still a lot of observed cases of deviation from the norm. As for the language of Georgian journalism, it experienced the influence of foreign languages: 1) the influence of the East; 2) the influence of the Russian language; 3) the influence of the English language.

References:

1. Tushmalishvili, G. *Mediapolitics on Verbal, Printed and Electronic Communications*. Tbilisi, 2017.
2. Alies, R. *You Are the Message. The Secrets of the Master Communication*. Doubleday, 1988.
3. *Practical Textbook for TV Journalists*. BBC World-Service Trust, 2009.

Artificial Insemination and Georgian Legislation

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Abstract

This article focuses on one of the successful methods in the fight against infertility, artificial insemination, and its legislative regulation in Georgia. Today, infertility is one of the most problematic issues in the society. Human reproduction and improvement of demographic situation is a priority for a number of states, including Georgia. The current legislation in Georgia cannot properly solve the problematic issues that tend to arise during the process of artificial insemination. According to the latest data, the issue is relevant; therefore, it is essential to improve the legal base and maximize the rights and interests of the individuals involved in the given legal relationship. The article aims to introduce readers to the problems related to this issue and the changes to be implemented in order to improve the legislation in the future. The work discusses a number of shortcomings in the legislation. It offers the recommendations and opinions of the author by elaborating on legislative regulation in order to improve the problems.

This work is another step forward in highlighting the high interest of the society for improvement of the legislation, which, I hope, will accelerate its implementation.

Keywords: Artificial insemination, embryo, donor

Introduction

The presented work discusses the issue of artificial insemination and the compliance of our country's legislation with respect to the existing medical technological achievements. It should be noted that this issue is quite topical as the existing legislative base is incomplete and, in many cases, does not respond to modern challenges. Simultaneously, the demographic situation is getting worse in which the number of childless couples plays an important role. Therefore, it is a priority for the country to implement all the medical achievements that will help the country to fight against infertility.

Short Historical and Medical Review of Artificial Fertilization

The first attempt of artificial insemination with a woman took place in England in the 17th century, but in this regard, active work began in the twentieth century. For the first experiments, organisms for which fertilization occurred out of the body were selected, for instance, ascarides. In 1935, rabbit oocytes were obtained (cells from which ovum develops).

The success in the experiment confirmed that it was possible to obtain a viable fetus. Despite significant success in animal artificial insemination at the beginning of the twentieth century, there were still many problems with artificial insemination in humans. **In this regard, it was necessary to solve several important issues, such as: sperm activation; establishment of early conditions for the development of the fetus; determination of the method of transplanting the fetus to uterus.**

Robert Edwards started working on these issues in 1950. His primary problem was the elaboration of the method of collecting oocytes. Not until 1965 did he find out that it was after 24 hours of incubation that the oocytes began to mature and progressed to a stage wherein it would be possible to produce artificial insemination. In 1971, artificially fertilized ovum was obtained. In the early 1970s, Edwards started transplanting it into mother's womb, but success was only achieved in 1976, although pregnancy was aborted (developed out of the womb). The first child, Luis Joy Brown, was born on July 25, 1978. After this achievement, Edwards and Steptou, who both worked together, opened the clinic in Cambridge, where the second and third child were born. They continued working for further improvement of the method. By 1983, 139 children had been born; and in 1986, the figure was nearly 1000.⁶ In 2010, he was awarded Nobel Prize (for the development of in vitro).

In the field of medicine, this achievement has been used for more than fifty years. There are two main methods which are:

1. Artificial insemination with sperm of a spouse or donor,
 2. Extracorporeal or In vitro fertilization.
1. **Artificial insemination** is the simplest form of artificial fertilization. For this type of treatment, it is necessary that the pelvic tubes were transmitting and the sperm criteria satisfactory. The Processed sperm of a partner is injected into the cavity of the uterus and the fetus is fertilized. In this type of artificial insemination, the sperm of a spouse or donor is used.
 2. **In vitro fertilization or extracorporeal fertilization** is a method of treatment for infertility during which the sex cells merge outside of the body and then embryos are transplanted into the woman's womb. In this process, it is important to move the embryo to the body and determine the number of embryos in the uterus. Already fertilized eggs are stored in the incubator, which is a certain vessel containing a special solution (nourishment). The

living organism (embryo) obtained in this way is transmitted to the uterine cavity where it develops during the next nine months.

Georgian Legislation and Artificial Insemination

Legal Norms Regulating Artificial Insemination

Law of Georgia on Health Care adopted in 1997 makes in vitro fertilization, uterine insemination, surrogacy - as the different forms of family planning - permissible. Donor institution is also admissible according to the Article 141 of the same law. The article has it that:

Fertilization by donor's sperm is permitted when:

- A) Infertility is diagnosed; there is a risk of transmission of husband's genetic disease; a single woman decides to be artificially fertilized; a written consent of a childless couple or single woman exists.

In case of a child's birth, a single woman or childless couple is considered as parents, with responsibilities and obligations. The donor does not have the right to be recognized as the father of the child born as a result of fertilization.

- B) Only in the licensed institution where a process is conducted by a doctor who holds a special license.

This article is quite general and vague because almost everything is permitted; only a written consent of a childless couple or single woman is required. It prohibits only one thing, namely, a donor is not recognized as a father. Consequently, a donor has no legal rights to his future child; no property responsibility or supporting obligation. They are almost nothing to each other. Civil law does not say anything when unmarried parents, based on a joint statement, apply the court to identify the origin of the child. It is clear that Georgian law has released a donor from all "paternity" obligations.

The Article 143 of the same law determines the prerequisites for artificial insemination. The law sets the minimum standard within which artificial insemination is permissible.

In the Article 143, extracorporeal fertilization is permitted:

- A) for treatment of infertility, as well as when there is a risk of transmission of genetic disease from a wife or husband, using a couple's or donor's generative cell or embryos if the consent of the couple is obtained.**

- B) If a woman does not have uterus, embryo by fertilization will be transmitted to a surrogate mother. The written consent of the couple is necessary.**

In case of a child's birth, a pair is considered as parents, with all responsibilities and obligations. A donor or a surrogate mother is not entitled to recognize a child as a daughter or son.

It is noteworthy that our legislation gave people the opportunity to have a child using conserved, frozen gametes even after death of the gamete owner. Our legislation trusts the couple to determine the time of conservation. When enabling this progressive medical achievement, our legislator did not take into account a number of accompanying cases of legal and practical character.

Generally, in vitro fertilization method requires more specific legal regulations. One particular issue is the following:

The Article 143 of the Law on Health Care, which deals with extracorporeal fertilization, does not indicate that the necessary condition of intervention is licensing of the medical institution and providing extracorporeal fertilization by the medical personnel. Therefore, the necessary precondition for implementation of in vitro fertilization is the licensing of the appropriate institution or personnel.

There is nothing said about the doctor's responsibility for the damage to the patient, whether or not the issue of legal responsibility should be raised. Even if the damage is caused by an objective necessity, it is important that the damage caused should not exceed the goodness that is accepted as a result of medical intervention; although the civil law regulates the issues related to the damage, it is better to focus on specific cases.

It is also important that, while fertilizing in the test tube, a specialist can define the sex of the embryo, and this brings on new questions. In addition, the provision of the World Medical Association provides recommendations to doctors to refrain from medical intervention in the process of reproduction with the purpose of choosing sex, if it is not done to prevent serious diseases related to sex.

It is necessary to make a number of additions to the legislation in order to regulate these issues.

The Article 144 for artificial insemination says, it is possible to use sex cells and embryos of men and women conserved by freezing. The conservation time is determined by the couple, according to the established rule.

The above mentioned is not enough, embryonic issues are not fully regulated by the acting legislation. Acting legislation requires a number of changes. In particular: the law (on health care), which deals with extracorporeal fertilization, does not mention the embryos in frozen condition. If you consider the occasion when the pregnancy cannot occur on the first time, the frozen fertilized egg can be used in the next cycle.

To avoid a number of difficulties, it is desirable to determine the period of time that the embryos preserved by spouses or couples should be frozen. In other cases, there are many problems. In particular, according to the Article 2 of paragraph 11 of the Civil Code of Georgia, the right to be an heir shall arise

upon birth. It should be noted that up to 3 months from the moment of fertilization, the germ is treated as embryo and in another 3 months as a child. The rule of "the right to be a successor shall arise from birth" is applied to both. At the time of birth, the egg mating is meant.

According to the Article 1307 of the Civil Code of Georgia, legal heirs may be the persons who were alive at the time of death of the testator, and the children of the testator who were born alive after his death" no later than ten months. It is important to interpret whether a frozen embryo can be considered as a legitimate heir after the death of the testator, if born two years later. This is because the conservation method allows the child to be born a few years after the death of the testator. In parallel to this, legislation does not determine the terms of conservation and leaves it to the couple to decide. If the spouses agreed to keep "fertilized eggs" and indicated the date, the conserved embryo becomes a subject of dispute after the expired time in case the couple decides to divorce. Practically, it has already become a matter of dispute and the court must make a decision (Shengelia, p. 156); it is noteworthy that the decision of the Tbilisi City Court made a significant decision on the issue: in particular, by this decision, the violated right of the physical person to biological reproduction was restored. In the mentioned case, the Court discussed the realization of the right of reproduction between ex-spouses in a situation where one of the spouses lacked natural reproduction capability and required a supportive reproductive technology using a gamete of the spouse despite the refusal of the second spouse. When the dispute started, the embryo had already been obtained, but could not be transplanted because of the refusal of the defendant spouse. By the Court's decision, the plaintiff was granted the right to unilaterally agree. Foreign judicial practice on the same issue is also interesting. The cases: Davis against Davis (Tennessee Supreme Court), Kass against Kass (New York Supreme Court), Litovi against Litović, Nachman against Nachman (Supreme Court of Israel). In all cases, the claims are satisfied. The basis for the satisfaction of the claim in all cases was one and the same – the women asked the right to use the conserved embryos because this was the only chance for them to become mothers.

Conclusion

Infertility has a negative impact on both demographic indicators and social events (divorce, reduction in labor productivity). The increase in the number of childless parents, who are willing to give birth to children using the artificial insemination method, is becoming a daily event. Artificial insemination is a great achievement and a gift to humanity. It is a triumph in technology. But technology is a strange thing - on the one hand, it gives a gift, and on the other, it pushes backward. Our legislation allows childless couples to take this action, but our legislation does not answer many legal questions.

It should be noted that the Law of Georgia on Health Care does not completely regulate the issues related to artificial fertilization.

The preconditions for permission of extracorporeal fertilization require improvement.

Extracorporeal fertilization should be permitted when there is a risk of transmission of a genetic or non-genetic disease by a pair and when there is the high probability that the child will be infected.

Surrogacy should be permitted when a woman does not have a womb or a woman's health is incompatible with pregnancy (pregnancy threatens the life or health of the mother or fetus itself).

Absolute infertility should be indicated as one of the reasons for carrying out extracorporeal fertilization.

The Law on Health Care should cover the issue of the hereditary rights of the children born as a result of using conserved human embryos, after the death of the testator. It is also important to interpret whether the "frozen embryo", which is born after the expiration of the ten month period established by the Civil Code of Georgia, is considered as a legitimate heir. In this case, I think that the maximal term of conservation should be prescribed by the legislation and a ten-month period changed. The terms set in both cases should be reasonable. This will give us the opportunity to control the maximum period of embryos in frozen condition, and the right to inherit should be maintained for some of them.

The painful issue, such as the fate of embryos, remains beyond the scope of the Georgian legislation. It is noteworthy that the rights of the embryo are protected by our Civil Law of Georgia, which is expressed in granting the hereditary right according to the law and will. The Law of Georgia on Health Care permits freezing embryos, although there are a number of issues concerning the fate of embryos. It is especially problematic to resolve the fate of such children when there is a dispute between parents, for example divorce; it is possible to directly determine this issue by legislation, court practice shows the same.

Acting legislation does not envisage legal regulations in relation to "excessive embryos". If the maximum number of the eggs in the test tube and the embryos which are ready to be transplanted are determined (not more than three, four), it will be more or less possible to control the number of embryos.

I think it is obligatory to regulate the kind of surrogacy: traditional or gestational, commercial or altruistic. Georgian legislation today defines preconditions only.

It is desirable to increase the circle of persons with the right to use artificial insemination; the current law grants this right to married couples or single women. The right to enjoy this right should be granted to unmarried

couples who want to have children. Moreover, civil legislation envisages the issue of identifying the origin of a child from unmarried couples.

Considering all the above mentioned, it is necessary to refine the legislation and upgrade it. It is important to prepare the legislative normative act to regulate all practically important issues in this field and minimize the faults of reproduction technologies by putting everything in the legal framework, increase the quality of service and maximize the rights of patients.

Finally, it should be noted that the work deals with quite relevant issues. In-depth research and analysis of the topic will allow for an adjustment of the legal base with the medical and technological achievements. It is of utmost importance as it deals with the reproduction of people, in particular the artificial fertility.

References:

1. Civil Code of Georgia. Tbilisi, 2013. Rise.
2. The Law of Georgia on Health Care. Tbilisi, 2013. Bona Causa.
3. V. Kh. Bioethics: Genesis, Essence, the Future. Tbilisi, 2012.
4. Gelashvili I. Legal Status of an Embryo. Tbilisi: Meridiani, 2012.
5. Shengelia R. Family and Inheritance Law. Tbilisi: Meridiani, 2015.
6. Khutsishvili T. Test-tube Children. Proceedings of the First Student Scientific Conference. Tbilisi, 2011.
7. Tevzadze G. Nobel Prize in Physiology and Medicine Awarded in 2010. Newspaper: 24 Hours. January, 2011.
8. Tbilisi City Court Decision. (Case №2/1852/14). 23.07.2015.
9. <http://mkurnali.ambebi.ge/qali/rchevebi/1922-2010-05-20-13-21-37.html>
10. https://matsne.gov.ge/index.php?option=com_idmssearch&view=docView&id=1572063&lang=g_e#
11. http://www.surrogationcenter.com/?m=10&news_id=9
12. <http://netgazeti.ge/GE/94/News/8438/>
13. <http://mkurnali.ambebi.ge/daavadebebi-mkurnaloba/hepatologia/1652-2009-12-18-12-46-24.html>
14. <http://www.livestrong.com/article/145229-artificial-insemination-regulations/>
15. <http://www.donorunknown.com/international/>
16. http://www.asrm.org/uploadedFiles/ASRM_Content/News_and_Publications/Ethics_Committee_Reports_and_Statements/family_members.pdf
17. <http://www.livestrong.com/article/145229-artificial-insemination-regulations/>
<http://www.livestrong.com/article/145229-artificial-insemination-regulations/>

18. <http://knowndonorregistry.com/component/content/article/233-legal/private-donation-laws/us-laws-by-state/114-us-sperm-donation-laws-by-state>
19. http://www.familylaw.com.ua/index.php?option=com_content&view=article&id=69&Itemid=98 &lang=en
20. <http://www.delhi-ivf.com/surrogacy.html>
21. http://www.isha.org.il/upload/file/surrogacy_Eng00%5B1%5D.pdf
http://www.familylaw.com.ua/index.php?option=com_content&view=article&id=69&Itemid=98 &lang=en
22. http://digitalwindow.vassar.edu/cgi/viewcontent.cgi?article=1137&context=senior_capstone
23. http://digitalwindow.vassar.edu/cgi/viewcontent.cgi?article=1137&context=senior_capstone
<http://www.divorce.com/research/dl/children/03mar54.shtml>
24. http://www.medportal.ge/pg2.php?act=intacts_convent&backact=intacts
25. <http://www.healthrights.ge/wp-content/uploads/2011/04/>

Equality of Spouses According to Georgian Law

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Abstract

The present article is about the equality of spouses and their legal status in Georgia. In Georgia, much like it is in every patriarchal culture, the family is a central value. In Georgian patriarchal family, which is based on the gender-age definition and hierarchy, the female head of the family lies under the subordination of men. The socio-economic formations, which are the basis of the development of society, have significantly changed people's awareness, including the approach to the role of women and men in family relations. But still, there are important details in the reality of Georgian family relations towards which attitudes are different.

Keywords: Gender, Christ-oriented countenance, Patriarchal culture

Introduction

The establishment of the family as a social institution with its own legal order took some rather difficult and varied ways throughout the whole history of Georgia. The origin of the family began after the communal family members started separating from the extended family and became interested in their own property. The family members' rights were not equal when separating from the extended family. Their unequal situation was clearly visible in the realization of their rights and duties. If a review is conducted on the Georgian legal history, whether secular or customary law, one will easily notice how that men have always been the dominant figure in the family. What was unpardonable for the woman, was pardonable for man. For instance, a man was not punished if he had a mistress, but, on the contrary, a woman was harshly sentenced to such severe punishments as: divorce; crippling-disfigurement; being punished in pillory; being made to ride on a donkey – which translates to being publically shamed or disgraced; and sending a woman back to her parents, as a sign of termination of marriage. Although the woman was considered as the weaker side of the Georgian family, Georgians, however, considered her to be the source of life, goodness, love, beauty, wealth and prosperity. In Georgia, as in the Virgin Mary's country, there was

always a great deal of respect for women and traditions. There are lots of words in Georgian terminologies that show the symbolic load of the word mother: mother pillar, Mother Nature, mother tongue, plough mother, motherland, and mother earth.

The above notwithstanding, the man remained the main figure in the family. In the mind of Georgian secular and customary law, much like the system or institution visible in the "pater-familias", every family member obey a man, who is head of the family; his word was as binding as a law. But according to the current legislation of Georgia, "spouses in family relations enjoy equal personal and property rights and have equal obligations" (1).

Materials and Methods

The following materials were consulted during the writing of this article: The sixth volume of Javakhishvili's works; N. Natareishvili - "Portrait of Women in the Ancient World"; L. Surmanidze - "Woman in Georgian Mentality"; UN Project "Women in the Development Process"; "The Convention on the Elimination of All Forms of Discrimination against Women"; Civil Code of Georgia.

The typical Georgian man calls the main pillar of a building "mother pillar"; the ploughman, "plough mother"; the native language, "mother tongue"; homeland, "mother land"; earth, "mother earth"; the main city, "mother city"; main idea, "mother idea"; the environment, "mother nature".

These words clearly express how deep the concept of Mother is in Georgian consciousness, and how she has been perceived as equal to God or some form of an earthly extension of God. But despite the fact that Georgians worship mother as Goddess, in Georgian reality, there were a lot of examples of discrimination against women in the past that have been proven with historical sources. Respect within the family and special attitude towards it was characteristic of Patriarchal culture. We cannot talk about the equality of spouses without a brief overview of the hard way of family development as a social institution. Its exact structure and essence is what conditions the nature and formation of the relationship between spouses which originates from secular and customary law.

Plato's "Timaeus" had a special impact on medieval views about women in which he claimed that the souls of coward and worthless men turned into women after death. A. Schopenhauer, F. Nietzsche, O. Weininger and others emphasized the inferiority of women. They stated that nature endowed women only with hypocrisy, cynicism and betrayal. Charles Fourier in his book "The World and the Fate of the Society" notes that the attempt to turn every woman into a housewife speaks about the perversion of the social or societal mechanism. In his opinion, the one who thinks that the duty of a woman is only "to skim the pot and mend the old trousers", is deeply mistaking

(2). Later, Marxism developed the theory of gender equality. The problem of women's education was strongly pushed by philosophical debate about the essence of liberty and the human mind, which resulted in substituting Faith with intellects. "The American Declaration of Independence" (1776) and the "Declaration of Human and Citizens Rights" (1789) reflect the optimism of the epoch of the Enlightenment: all people are intellectual and they should strive to develop their intellect.

It is noteworthy that the earliest form of marriage in Greece was buying a woman from her guardian for the purpose of marriage. One of the forms of Roman marriages is called *coemptio* (buying). The word was associated with the widely spread Roman tradition of buying a wife.

This oldest form of marriage is witnessed in the earliest stage of development of Georgia ("Martyrdom of Shushanik"). While getting married, the groom's family brought the wedding fees to the bride's parents. The bride was obliged to bring dowry to the groom's family. The instituting of dowry, as the precondition for marriage, was evidenced in Georgia. (This term is stated in IX century monument) (3). The majority of the society believes that although dowry is not mandatory any longer, the tradition, though modified, is still relevant, hence it has been preserved. It is considered that the "good" dowry encourages a woman to feel self-confident in her husband's family and the family members express more respect to her. There is also a different opinion that dowry and affluence only tend to devalue the relationship between the wife and the husband, because marriage should be based only on selfless love.

In my own opinion and understanding, dowry bears both material and moral values when the question of a woman's self-esteem in a new family arises. Good dowry gives her a chance to participate in building a new family. In this case, a woman does not feel awkward and materially unequal. In Georgia, as we have already noted, the man in the family dominates over his wife. Husbands could physically punish their wives for disobedience and even destroy her physically in the case of adultery. In the event of betraying her husband, a wife was harshly sentenced to such severe punishments as: divorce; crippling-disfigurement; being punished in pillory; being made to ride on a donkey; and sending a woman back to her parents, but a husband was never punished for having a mistress.

At a glance, it indicated the privileged position of the man, but I think that the woman, who is perceived as the "mother pillar" in the family or thought of as to bear divine and heavenly qualities and endowment, in actuality bore much more responsibility than a man and that is why her betrayal was more jeopardizing to family members; what was pardonable for a man was not for a woman. In the case of a woman's betrayal, she betrayed not only her husband, but also her children, mother-in-law, father-in-law and the entire

family. It brought both bad reputation and dishonor upon a family. The same behavior by a man was punishable, but not so strictly. It was done by the relatives of the woman with whom he had relations. Certainly, there is a difference here and women's inequality compared to men's is clearly seen, even though it was not intentional.

According to Georgian legislation, marriage is a voluntary union of a woman and man for the purpose of creating a family (4). The term "*ojakhi*" that translates into the English word "family" is of Turkish origin and means hearth, house, household. The Georgian language is rich enough to express the exact meaning and significance of this word. I think the Turkish word "*ojakhi*" was adopted by the Georgian language in order to make modern meanings of these words more accurate. Members of family create a solid family unity. They are: husband-wife, children, relatives. In the legal sense, the family is a legal union of their members (5). "*Meughle*", which translates to "spouse" in English, originates from the Georgian word "*ugheli*". It literally refers to one of two yoked animals, and it indicates the equal rights of woman and man in Georgian perception. They share equal personal and property rights and have equal responsibilities (6). Equality of spouses is protected by the law. According to the Articles 1197 and 1202 of the Civil Code of Georgia, parents have equal rights and responsibilities towards their children. None of both parents has a higher obligation, right or advantage over the other towards a child. According to the first paragraph of the Article 1201 of the same Code, if parents are divorced or live separately for whatsoever reasons, it is an issue to be decided between them with whom the juvenile child will live. According to the law, the parent with whom the child lives is not entitled with the power to restrict the rights and obligations of the other parent. As for the property rights of spouses, according to the Article 1158 of the Civil Code of Georgia, the property acquired by spouses during the marriage is their property (they are co-owners), unless otherwise provided by the marriage contract. In accordance with the paragraph 2 of the same Article, the right of the spouses to such property shall arise even if one of them had been engaged in family activities, looked after the children or, for other reasons, had no independent income. Equality of spouses is protected by the inheritance law. In the new Civil Code of Georgia, marriage agreement is an important achievement that greatly contributes to the balance of rights and obligations of spouses, though for the Georgian mentality, it is not yet fully acceptable and desirable. The parties of the wedding contract have the opportunity to agree not only on property rights and duties, but also on non-property rights. Another issue is the court's position on the infringement of rights in case of a dispute" (7). According to the Article 1151 of the Civil Code of Georgia, the rights and duties of spouses arise only in case of registered marriages. The rights and duties of spouses were associated with registered marriages, according to the

marriage and family codes that were active in the past. In particular, the rights and responsibilities of spouses, in accordance with the Articles 19 and 21 of Marriage, Family and Tutoring Code of Georgia (1930 edition) and the Marriage and Family Code Georgia's SSR (1970 edition), could only arise if marriages were registered in the state body of registering acts. As for the ecclesiastical marriage, it does not take any legal consequence in our country.

In the United Kingdom, alongside with civil marriages, ecclesiastical marriages are also permissible. In Spain, ecclesiastical marriage is a necessary form of marriage. It can be said that the marriage law of the former USSR, according to which ecclesiastical marriage, had no legal significance, works as a stereotype in the current Georgian legislation. I think it should be changed because Georgia is a country that have chosen a spiritual path of development. In the country which was allotted to Mother Mary, ecclesiastical marriage should be a must because the marriage: "is raised to heavenly secret and to limit it with only civil-legal framework is not right". Christ-oriented countenance explains why bishops or priests bless this sacred union with special prayer.

I believe that if Georgian legislation adopted amendments and made ecclesiastical marriage compulsory, Georgian families would be strengthened. It would be one more step to approach our consciousness to the absolute norm of Christian life which, from the time of the apostles, in different ways (though without internal contradictions) was expressed in serving God. In today's Georgia, the phrases like gender equality, women in politics and social work, women as active civilians and not only the family "pillar" are very relevant. The globalization process of our time and the new challenges in the world today has imposed significant responsibilities on women in the field of politics and economics. At first glance, the division of people into "weak" and "strong" genders stopped; but in Georgian consciousness, the dominant role of men as the head of the family and of woman as the mother of the family still remains. I do think that pacing with globalization and contemporary challenges does not mean limitless equality in fulfilling a natural role; this will not bring good results to families and society - families will lose mothers and humanity will be threatened with extinction. And stereotypical phrases about women's rights and obligations, according to which women were only obedient to their husbands and their activities began and ended up only with family affairs, became groundless. The most important mission for a woman is motherhood. In this respect, a woman will always be superior to man and I think that the cult of motherhood should be maintained. That's more than equality. A woman should be a mother first and afterwards, together with a person who will alleviate the physical labor for her, get involved in social work; I wish to be a part of the society where motherhood is just as pure and superior as it is preserved in the Georgian culture and literature monuments, even as it is in

every Georgians' consciousness today. I would give mothers opportunity to participate in public work for not more than 4 hours a day. Maybe it's utopia, but I think it's the ideal situation. Then a man will again gain a partially lost function and become a "hunter" again, to bring prosperity to the family, and a woman will be able to self-realize herself, which will be a prerequisite for the equality of the spouses and the decent living. "Nothing connects people more deeply with nature than the reproductive system of women, by which women participate in the eternal process of birth and life support. A woman is the real daughter of nature; this natural wholeness is the source of her strength" (9).

The project "Women in the process of Development", Tbilisi, 2015 (10) and The Civil Engagement Center's research (2015) was dedicated to the gender role of the woman in the society. The research studied the attitude of the Georgian society towards the gender role of the woman. The following tasks were implemented for realizing the purpose:

- Attitude to the gender role of a woman in the family was defined;
- Gender role of a woman in the state/politics, religion, was defined;
- Attitude to the gender role of a woman to labor trends;
- How is the gender role of a woman formed?

Qualitative research was used to accomplish the goals and objectives of the research. Within the limits of the research, perceptive interviewing method was used.

Selection criteria were age and marital status (up to 35 years and over 35 years old, married and single respondents alike), because different age categories have different attitude towards the topic of study. Due to family conditions, there were different opinions. 15 interviews took place where the respondents more or less sincerely talked about the problems in Georgia when it comes to a woman's role. Experts, heads of different HR departments, were interviewed (from 8 different organisations) in order to find out the real situation in the offices, of which gender was set as a priority; i.e., if there are professions where only men are required etc. Interviews was conducted where experts were heads of public resources (8 experts from different services) in order to determine what the position is in services, which gender is the best, whether professions are for men alone and so on. Interviews lasted between 45 minutes and 1 hour. In the process of analysis, 7 levels of Gabriel Capia's analysis were used, which gave a chance to deeply analyze the general trends that the respondents expressed.

Results

The research conducted led to the following results:

The respondents indicated that the stereotypes existing in the past – a man is "breadwinner of the family" and goes away in search of food, while a woman stays at home and looks after her family, takes care of children etc. –

is still a firmly established opinion in society. The research showed that the specific peculiarities of both sexes condition the differentiation of "masculine" and "feminine" professions. Both sexes consider this statement to be natural and pass those stereotypes to future generations, just as had been preserved and passed down to them by their ancestors.

Despite the overwhelming protests that are observed in female respondents, they still cannot help keeping the standpoint that men are predominant in society. Women do not try to "smash the glass ceiling" and become equals with men. My personal opinion about the conducted research is as follows: the research targeted a woman's gender role in the society where the research aimed to study the attitude of the Georgian society towards the gender role of a woman.

At the first glance, it seems incomprehensible what the researcher means under the concept "woman's gender role". If sexual role is implied, then we can admit that a woman and a man have their individual role which nature has prescribed to them. The word "gender" comes from the Greek word "geno" - birth, origin, genus, name, descendant, sex (the form "gender" is a participle form).

"The term "gender" refers to the socially constructed roles of men and women, which are attributed to them according to their sexual character". Thus, gender roles depend on the particular socioeconomic, political and cultural context and are influenced by various factors according to race, ethnicity, class, sexual orientation and age. Gender roles are studied within each culture in ways which reveal their wide differences between cultures. Unlike a person's biological sex, gender roles can be changed. But we can have a different approach to this issue: "the concept "gender" implies cultural-based views on a man's and a woman's intellectual abilities, their personal qualities and behavior. Gender as a construct is created by society as a social model of a woman and a man which determines their role and status in all spheres of public life" (11). Based on the mentioned approach, it becomes clear that the presented research concerns a man's and a woman's social model in Georgian reality, society's opinion about their role and status. However, we admit that it would be better to have an in-depth interview with more respondents.

Conclusion

In contemporary Georgian legal literature, there is an opinion that the first use of the word "family" dates back to 1799-1800 (12).

"Modern family is a union based on sexual passion and multiplication instincts with regards to mutual interest, respect, mentality, spiritual values and values, social norms of people" (13).

The modern family is the union founded on instincts of sexual desire and reproductive instinct considering people's mutual interests, respect, mentality, cultural wealth and values, and social norms" (13). According to acting legislation, spouses enjoy equal rights in the family, personal and property rights and have equal responsibilities.

Amongst personal rights is the right to making a mutual decision on family issues. The family law legislation acting in Georgia does not grant any spouse a privileged position. Any problem that occurs in the family, regardless of its importance, should be solved by mutual agreement. It should be noted that while discussing the family issue, the main factor is a person's psychical attitude and status, his/her mentality, public consciousness, and values.

In Georgian reality, women have never been idolized, since it was the mother of the mother. Georgians have always linked mother to God. As the research outcomes reveal, in spite of the overwhelming protests that are observed in female respondents, they still cannot help keeping the standpoint that men are predominant in society. Women even do not try to "smash the glass ceiling" and be equal to men. This is the result of a Georgian woman's bashfulness, but it should not be abused by men.

A woman is free in all spheres of public relations. The reality is that no matter how Georgian society develops, family still remains as a holiest hearth for Georgians. The Bible says: "Christ is the head of every man, and the man is the head of a woman, and God is the head of Christ" (14). This expression will be passed from generation to generation while the Georgian gene exists.

References:

1. Article 1152 of the Civil Code of Georgia. Tbilisi, 2015.
2. Fourier Ch. The World and the Fate of the Society. Moscow, 1951.
3. Javakhishvili Iv. Scientific Works. Vol. VI. Tbilisi, 1982.
4. Article 1106 of the Civil Code of Georgia. Tbilisi, 2015.
5. Shengelia R., Shengelia E. Family Law. Tbilisi 2003.
6. Article 1106 of the Civil Code of Georgia. Tbilisi, 2015.
7. Article 1153 of the Civil Code of Georgia. Tbilisi, 2015.
8. Article 1152 of the Civil Code of Georgia. Tbilisi, 2015.
9. Tumanishvili G. Marriage Contract. Tbilisi 2010.
10. <http://patriarchate.ge/geo/qorwinebis-saidumlo-da-misi-damabrcolebeli/>
11. Collard Andree. Rape of the Wild. Man's Violence against Animals and the Earth. London, Women's Press, p: 106, 2008.
12. <http://sapari.ge/wp-content/uploads/2016/05/Kvlevis-angarishi-sociologebi-CCI-1-1.pdf>
13. Chikvashvili Sh. Family Law. Tbilisi: Meridiani, 2000.

14. Bible. The First Letter of St. Paul to the Corinthians. Chapter 11.
Palitra, 20015.

Procedures and Criteria for Selection and Appointment of Common Courts Judiciary

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Abstract

The article “**Procedures and Criteria for selection and appointment of Common Courts Judiciary**” was selected taking into account legislative news. In particular, topicality of the issue was conditioned by the amendments to the Law on Common Court made on February 13, 2017 and Decision #3/1/659 of the Constitutional Court on February 15, 2017 which regulated recruitment procedures of the judiciary in a new way and determined new criteria for the selection of judges. The main aim of the findings is to identify flaws of the High Council of Justice activities in this direction and offer recommendations which will support improvement of the judiciary selection and appointment process. The structure of the article consists of introduction, five chapters, sub-chapters and conclusion. Each chapter contains relevant information about that very specific topic. The article is about judiciary selection and appointment procedures in the Common Courts system, as well as detailed review of the stages. It also analyzes international and national normative acts which partially regulate the topic of the research and statistic data about judicial appointments in 2016-2017, studies procedures of evaluation, selection and appointment of judges in the USA and federal part of Germany and presents specific conclusions and recommendations. As the methodology, several methods characteristic for the science have been used, such as general scientific and historic, logical, analysis, and normative and dogmatic methods. Special attention is paid to analysis, normative and dogmatic methods, based on which legislative systems were analyzed. In particular, theoretical material around the topic, as well as statistic data about judicial appointments in 2016-2017 and monitoring reports of the High Council of Justice activities have been analyzed.

Keywords: High Council of Justice; Judicial System, Judge

Introduction

Judicial system reform is a very difficult topic, especially when the executive authorities may be tempted to put the court in their own service, with the principle that judicial independence can be dealt with later. This damages the authority of the court; trust towards it is lost, finally leading to the nihilism from the society and affects the democratic processes in the country.

The justice reform is a combination of complex activities and is a long-term process. Independent, impartial and qualified judiciary is one of the most important parts for independent, impartial and qualified judicial system. Although judicial independence and non-interference in their activities are the principles guaranteed by the Constitution of Georgia, it can be said that these principles are often violated in practice.

Generally, Judicial Council aims to safeguard independence of judicial system and judges. The existence of independence and impartial judiciary is the structural necessity for the state governed by the rule of law.¹ In line with the Organic Law on Common Courts, the aim of the High Council of Justice is to ensure independence of judiciary (judges) and the quality and efficiency of justice, as well as appointment and dismissal of judges and drafting proposals for implementation of judicial reform.²

Appointment and dismissal of the judges of Common Courts is the responsibility of the High Council of Justice, however, with inadequate legal framework. Although the Constitution establishes the obligation to establish the High Council of Justice, main issues are regulated based on the High Council of Justice regulations or/and decisions and rules defined by the Council. It turns out that the High Council of Justice regulates such an important topics as appointment and dismissal, promotion/mobility of the judges, defining number of the common Courts, acceptance of the High School of Justice student, etc., on the basis of the rules set by themselves, which may change anytime taking into account their wishes and situation. In my opinion, this is a very important problem.

Consultative Council of European Judges in its Opinion #10 of 2007 explains that “It is essential for the maintenance of the independence of the judiciary that the appointment and promotion of judges are independent and are not made by the legislature or the executive but are preferably made by the Council for the Judiciary”.³ In the same opinion, the Council members indicate that “appointment or promotion of judges cannot be made individually, by a

¹ Consultative Council of European Judges (CCJE) Opinion #10, 2007. Paragraph 8, approved by CCJE on the 8th session, Strasbourg 2007, November 21-23.

² Organic Law on Common Courts, Article 47, Part 1.

³ Consultative Council of European Judges (CCJE) Opinion #10, 2007. Paragraph 48, approved by CCJE on the 8th session, Strasbourg 2007, November 21-23.

single person – Head of the State, since the very fact that the proposal stems from a political authority may have a negative impact on the judge’s image of independence, irrespective of the personal qualities of the candidate proposed.⁴

Taking into account the mentioned recommendations, and in order to ensure independent, impartial, qualified and efficient judiciary, it is essential that appointment and dismissal, transfer and promotion of judges, defining number of the Common Courts, announcement and implementation of the contests, etc. follow transparent and consistent procedures organized by the normative regulations.

New Regulation on Lifetime Appointment of Judges

As it has already been mentioned, the High Council of Justice holds an important role in forming Court corps. In particular, selection and appointment of judges of Common Courts is the competence of the High Council of Justice of Georgia. The sub-point “a” of the part 1 of the Article 49 of the Organic Law on Common Courts explain that Common Court judges (except the Head and members of the Supreme Court) are appointed and dismissed by the High Council of Judges.

Based on the analysis of the Organic Law on Common Courts, candidates for judges can be divided into two groups, who are undergoing similar ways to the position of a judge, but they are appointed with the different terms. The first group includes the candidates having not less than 3 years of judicial experience⁵. The second group consists of the judges with the judicial experience of more than three years.⁶ Appointment procedures on the position of judge is identical for both groups; however, candidates with less experience are appointed with 3-year probation period, but for those with the experience of more than 3 years, the Constitutional Court has set different regulations. In particular, with the decision #3/1/659 of February 15, 2017⁷, the Constitutional Court announced normative content of point 4¹ of the Article 36 of the Organic Law on Common Courts as unconstitutional. The Article envisaged 3-year appointment of a person as a judge of the Appeals and District (City) Courts, who was an acting or former judge and had judicial experience of not less than 3 years. Based on the mentioned decision, the point 4¹ of the Article 36 of the Organic Law on Common Courts has been declared invalid from July 2017 and new edition was formed, where the legislator did

⁴ Consultative Council of European Judges (CCJE) Opinion #10, 2007. Paragraph 49.

⁵ Note: Justice School students and persons with judicial experience with more than 18 month, but less than 3 years.

⁶ Note: Acting and former judges and acting and former members of the Supreme and Constitutional Court.

⁷ Decision #3/1/659 of 15 February 2017 of the Constitutional Court.

not define 3-year probation period for the acting or former members of Constitutional or Supreme Courts, who have 3-year of judicial experience and for whom 10-year period has not expired from the termination of their judicial duties and determined lifetime appointment for them. In addition, on the session of July 17, 2017, the High Council of Justice approved the draft about amendment to the regulation, regulating the process of the lifetime appointment of those judges who are on 3-year probation period and have not less than 3 years of judicial experience. Amendments to regulation were the result of the changes to the Organic Law on Common Courts, taking place on June 16, 2017. In turn, changes to the Organic law were based on the decision of February 15, 2017 of the Constitutional Court of Georgia. It should be mentioned, that as per current condition, there are about 150 judges on 3-year probation period, having not less than 3 years of judicial experience. According to the amendment mentioned, starting from 17 July 2017, these judges will have the opportunity to apply to the High Council of Judges on the lifetime appointment.

Stages of a Contest Announced for Selection of Judges Normative Regulation of the Topic

The requirements, criteria and procedures of appointment of judges in the Common Courts system is defined by the Organic Law on Common Courts, Regulation of the High Council of Justice and Decision 1/308 of October 9, 2009 of the High Council of Justice on Approval of the Rule of Selection of a Candidate for Judge.⁸ When reviewing the normative base, the first thing drawing attention is the timeline of the non-systematic and non-logical processes of the Organic Law. In particular, the stages and procedures of the contest for selection of judges do not logically interact with each other and it is possible to make stages of consistent process clear and systematically sorted only on the basis of analyzing each Article of the Law. Moreover, we face the case of partial regulation of the case on legislative level and conditions of the sole normative creativity of the High Council of Justice.

Announcement of the Contest and Requirement that the Candidates Should Meet

The Article 34 of the Organic Law on Common Courts sets the criteria that the candidates for judges are required to meet. In particular, in order to take part in the contest for the selection of judges, candidate should meet minimum formal requirements determined by the part 1 of the Article 34 of the Organic Law: age, education, experience of the professional work,

⁸ Regulation of the High Council of Justice and Decision 1/308 of 9 October 2009 of the High Council of Justice on Approval of the Rule of Selection of a Candidate for Judge.

knowledge of a national language, passing qualification exam for judges and completion of educational course of the High Council of Justice.⁹ The issue of conformity of the candidates with these requirements is estimated by the High Council of Justice during the stages of announcement of the contest and the reviewing of submitted applications.

Registration Deadline for Applications

When announcing the contest for judges, the Council of Judges sets a deadline for applications which may not be less than 15 days. It should be mentioned that the edition of the Organic Law which was in force before February 13, 2017, did not determine the deadline for submitting applications from the candidates for judges at all. Although new edition of the Organic Law sets the deadline, cases of extending of the set date are frequent, unequivocally violating third part of the Article 35 of the Organic Law on Common Courts. In order to ensure transparency and impartiality of the processes, normative regulation of this topic is necessary. The law should determine those permissible exceptional cases where the Council is allowed to extend the contest deadline.

Finding Information about the Candidates

Finding information about a candidate for judge is one of the important stages of the selection of judges, regulated by the Article 35² of the Organic Law, stating that, before the interviews with the candidates, the respective structural unit starts finding information about them, in order to fully and fairly evaluate them. Based on the analysis of the following parts of the same article, we find out that trustworthy information the Law is talking about is information about the past legislative/disciplinary or administrative proceedings against a candidate, as well as information about business and professional reputation, information from the former employers and employees, school administration and teachers. This information – analyzed and generalized, is submitted to the Council members. It is noteworthy that Council members, while evaluating a candidate, are not obliged to take into

⁹ Note: There is an exception to this common rule, particularly, according to parts 3, 4, 5 and 6 of the Article 34 of the Organic Law on Common Courts, persons nominated for the post of a judge of the Supreme Court are exempted from studying at the High School of Justice, as well as former judges who have passed qualification exam for judges, was appointed as a judge of the Supreme Court or District (City) Court through a contest and has judicial experience of not less than 18 months. The qualification exam is not mandatory also for acting and former members of the Constitutional and Supreme Courts; person nominated for the position of the Head of the Supreme Court; former judge of the First instance and Court of Appeals, before expiration of 7-year term of judicial authority.

account information about him/her gathered by the Council itself. This, itself, has a significant effect on the importance of the Article.

Interviews with the Candidates for Judges

Interview with the candidates for judges is one of the most important stages in the judicial selection and appointment process. After a structural unit submits gathered and analyzed information about a candidate to the Council, the interview process begins. Decision 1/308 of October 9, 2009 of the High Council of Justice on Approval of the Rule of Selection of a Candidate for Judge states that, during the interviews, the High Council of Justice allocates almost similar time for each candidate and gives possibility to present themselves in front of the Council members. In practice, interview process mostly lasts for 15-20 minutes, during which it is difficult to evaluate candidates' professional and practical skills with homogenous and general questions and finally to assess candidates based on main criteria of for Good Conscience and Competence. Moreover, during the last contest, cases of the closed format interviews were frequent. Although the legislation gives a candidate free choice whether to hold an interview in an open, or closed format, I consider that the open format of the interviews promotes identification of the shortcomings of the process of judicial selection/appointment and making them public in order to eradicate them. In addition, there is high social interest towards the candidates for judges and the Council should change current regulations in favor of open and public format of the interviews.

Criteria for Good Conscience and Competence

According to the current legislation, a candidate for judge is selected based on two main criteria - good conscience and competence. Certain features are connected with each of these criteria. In particular, candidate has good conscience if he/she is distinguished with independence and impartiality, personal integrity is important for him/her, is guided by professional conscience and his/her past life is a proof of his/her high personal and professional reputation. According to the competency criteria, candidate is required to know legislative standards, have competence in legal justification, written and oral communication skills and professional features. Academic achievements and professional activity positively presents a candidate.

The Council members evaluate candidates with the assessment sheet, which includes results of the criteria of good conscience and competence. In addition to this, only those candidates are voted for in the vacant position, who gets not less than 70% of the points of competency criteria and more than half of the whole council member considers that the candidate satisfies or fully satisfies good conscience criteria.

Within the frames of the latest contest for the selection of judges,¹⁰ the High Council of Justice disapproved 24 candidates due to insufficient good conscience and competence, or one of those criteria. Among the candidates were those with multiple years of judicial experience, as well as graduates from the High School of Justice. It is noteworthy that the legislation does not envisage appealing of such decisions, leaving a candidate without a chance of restoring his/her violated moral rights.

Voting and Appointment of a Judge

Voting is an important stage in the judicial selection and appointment process and, according to the Organic Law, is secret. The High Council of Justice will appoint a person as a judge, if he/she is supported for the specific vacant position by 2/3 of the whole Council.¹¹ As the practice shows, cases of annulling the bulletins are frequent,¹² whereas, due to the lack of judges, a specific vacancy still remains vacant.

According to the result of the contests announced in 2016-2017, in none of the cases, the vacant positions were filled fully. Statistics data is as follows: in 2016, two contests were held – on February 12, 2016 and July 14, 2016. 30 vacant positions were announced on February 12, 2016 contest, and 47 candidates were participating. Overall, 22 judges were appointed as a result of the contest, 3 out of which were students of the High School of Justice and 19 were former judges. 65 vacant positions were announced on July 14, 2016, and 122 candidates were participating¹³. Overall, 44 judges were appointed as a result of the contest, 9 out of which were students of the High School of Justice, 14 were former judges and 21 – acting judges. To sum up, an overall of 66 judges were appointed in 2016 and 70 judges dismissed from their positions¹⁴. Accordingly, as a result of the contests held in 2016, total number of judges increased only by 23. As a result of the contest held in May 2017, 64 candidates were appointed on the position of judges, 24 candidates did not satisfied criteria of good conscience and competence; due to no candidates, the contest was not held in 7 courts and none of the candidates could win in two courts. Out of the selected candidates, 6 were students of the High School of Justice, 4 – acting and former judges of the Supreme Court, 1 – former judge

¹⁰ Contest for selection of judges held in May 2017.

¹¹ Regulation of the High Council of Justice and Decision 1/308 of 9 October 2009 of the High Council of Justice on Approval of the Rule of Selection of a Candidate for Judge, Article 14.

¹² Cases when none of the candidate names are circled in the bulletin or it is unclear who the Council member voted for.

¹³ Association – Unity of Judges of Georgia. 2016. *Monitoring report of the High Council of Justice*. Tbilisi.

of the Constitutional Court, 27 are former judges of the District (City) Courts and Court of Appeals and 26 are acting judges.¹⁵

Despite the fact that the Council often points at the lack of the judges and staffing needs and appeals for the overloading judges due to a big amount of cases, past contests show that the number of judges has not significantly changed in the judicial corps. With the lack of judges and challenges in the judicial system, the High Council of Justice shall hold the contests processes in an absolutely transparent and impartial/objective manner, ensure equal competitive environment for the candidates and safeguard independence of judicial system and individual judges.

Following the recommendation of the Consultative Council of European Judges, “Some decisions of the Council for the Judiciary in relation to the management and administration of the justice system, as well as the decisions in relation to the appointment, mobility, promotion, discipline and dismissal of judges (if it has any of these powers) should contain an explanation of their grounds, have binding force, subject to the possibility of a judicial review. Indeed, the independence of the Council for the Judiciary does not mean that it is outside the law and exempt from judicial supervision.”¹⁶

Evaluation of the Judge on 3-year Probation Period

Procedures to assess activities of the judges appointed with the 3-year probation period are also worth attention. Overall, 6 evaluators assess a “probationer” judge for 3 years, at the same time, independently of each other. Evaluators are not allowed to share information and results they have with each other. Council members, by means of voting, choose evaluators. Evaluation criteria include personal integrity, independence, impartiality, fairness, moral and professional reputation, legal justification and writing skills, academic achievement, etc. During evaluation process, minimum of 5 cases reviewed during the past 3 years are discussed, out of which, decisions on minimum of 2 cases are fully or partially annulled by a higher instance court. Finally, after analyzing and compiling several features, each evaluator individually takes decision about the candidate satisfying, fully satisfying or not satisfying integrity criteria. For the competency criteria, judges are evaluated with points.

In case three or more evaluators consider that the candidate for judge satisfies or fully satisfies integrity criteria and the sum of competence criteria is not less than 70%, the Council invites the candidate for an interview and listens his/her opinion regarding the evaluation results. After the interview and

¹⁶ Consultative Council of European Judges (CCJE) Opinion #10, 2007. Paragraph 92.

analyzing the valuation results, the Council votes and with minimum of 2/3 of the whole composition, makes decision for the lifetime appointment of a judge, till the age prescribed by law.¹⁷

If 4 evaluators consider that a candidate does not satisfy the integrity criteria and total points are below 70%, the candidate, with the act by the Council Head, will be refused to participate in the voting for the lifetime appointment.

Procedures to Appeal Decision about Appointment or Refusal for Appointment of Judges

Within the frames of the contest announced, the High Council of Justice has right to make a decision about appointment or refusal to appoint the candidate to the position of judge. The rule to appeal these decisions is different and is regulated by the Organic Law on Common Courts. In particular, a candidate for judge, if refused to be appointed to the position of a judge, has the right to appeal the decision of the High Council of Justice in the Qualification Panel of the Supreme Court¹⁸, which reviews the application and either leaves the Council decision on refusal into force, or annuls it and sends the case back to the High Council of Justice for review. Similar procedures are determined towards the Council decision about refusal of lifetime appointment to a judge.

Different rules apply to the cases of judges on 3-year probation period. If more than half of the evaluators¹⁹ think that “probationer” judge does not meet good conscience and competence criteria, the Head of the High Council of Justice issues a legal act about the refusal for lifetime appointment of a judge by the Council.²⁰ The motivation for refusal before voting is that a candidate does not meet good conscience and competence criteria. The act can be appealed again to the Council and in case the Council leaves the Act of the Head into force, it is final and cannot be appealed, depriving candidate of the possibility to fight for his/her rights and obliging to obey the decision of 4 evaluators about his/her good conscience and competence. This extract of the Organic Law, giving possibility to appeal decision of the Council only to judges on 3-year trial period, is a norm of a special nature, which cannot be used as an analogue. Therefore, acting and former judges, as well as persons without judicial experience are in unequal position. Generally, the norm (the Part 13 of the Article 36⁴ of the Organic Law) has a discriminative nature. It should be mentioned that candidate N.K. taking part in the latest contest for judges, who was refused to be appointed, decided to appeal the Council

¹⁷ Organic Law on Common Courts, parts 19-20 of the Article 36⁴.

¹⁸ Organic Law on Common Courts, part 1 of the Article 35⁴.

¹⁹ Note: 6 evaluators assess a candidate during 3-year probation period.

²⁰ Organic Law on Common Courts, part 13 of the Article 36⁴.

decision in the Council. The Council members themselves did not have unified approach whether such candidate had the opportunity to appeal the Council decision to the Council, or to any other means, in particular, to the Common Courts. The fact is that this extract of the Organic Law is discriminative and creates unequal opportunities to the candidates for judges.

In case the Council annuls²¹ an act of the Head of the Council about the refusal of the Council to be appointed to the position of judge, it makes decision to have an interview with the candidate. The candidate again undergoes evaluation procedures defined by the parts 19-20 of the Article 36⁴ of the Organic Law. Finally, the Council takes decision about lifetime appointment of a person up to the certain age determined by the law, or about the refusal to appointment, which can also be appealed to the Qualification Panel of the Supreme Court.

I would highlight the issue of appointment of judges with 3-year probation period to the position of the Courts and Chambers/Panels Heads. It is noteworthy that within the frameworks of the “third wave” of a judicial reform, general picture of the judicial appointments have not changed. Particularly, in line with an old version of the Organic Law on Common Courts, legislative base did not regulate topics of appointment of judges with 3-year probation period to the position of the Courts and Chambers/Panels Heads. Despite this, the Council established practice, according to which, judges on the probation period were to fulfill the duties of the chairman. Changes of the “third wave” of a judicial reform determined that a judge on a 3-year probation period is not eligible to be appointed as the Head of the District Court, or the Head of the Court of Appeals Panels, except the cases when he/she has 5 years of working experience.²² It is obvious that this extract will not change existing picture or situation. After a reasonable analysis, it is clear that graduates of the Justice school - judges having no experience were not appointed as the Head of Courts and Chambers/Panels even before. Accordingly, the Council will still have possibility to appoint judges on 3-year probation period and having 5 years of experience, as the Head of Courts and Chambers/Panels, with their own will and bypassing the Venice Commission conclusions, as it already happened on July 3, 2017, when newly selected Council had appointed the current Head of the Tbilisi City Court.²³

²¹ Note: Total votes with the majority of 2/3.

²² Organic Law on Common Courts, the part 4, the Article 30, the paragraph a, the Article 32²².

²³ <http://hcoj.gov.ge/ge/tbilisis-saqalaqo-sasamartlos-tavmdjdomared-vasil-mshvenieradze-airchies/3018>

Rules for Judicial Evaluation and Selection in USA and Germany

The procedures established in the United States for assessing and appointing federal judges differ from the Georgian legislation. “In general, the US judicial system consists of federal and state courts. Candidates for federal cassation, appeals and first instance courts are nominated by the President and approved by the Senate. Judges are appointed for the lifetime period and the Constitution does not determine any special requirements to the candidate for judges; however, Congress members and the Ministry of Justice, who review qualifications of candidates, can set their criteria.”²⁴ The US judicial system is very strict towards regulating procedures for candidates. Tim Baland, former judge of the US District Court and expert, talks about this in his research:²⁵ “Persons in the States wanting to become federal judges undergo strict examination and evaluation procedures. Their professional qualification and personal features are discussed and examined by the committees; their personal lives, activities and professional qualifications are examined by FBI and ABA standing committees.”²⁶ “Committees consider that in order to be appointed as a judge of the Federal Court, a person must have minimum 12 years of experience.”²⁷

Like in Georgia, judges in Germany are first appointed with 3-year probation period, and there is a career system implying that after the completion of the probationary period, the judge begins his/her career from the first instance court. For example, on one of the lands in Baden-Vurtemberg, Germany, in order for the judge to achieve lifetime appointment, he/she shall pass a long and upwards career pass, starting as the first instance judge to the Head of the Courts or a Panel in the First instance Courts or Court of Appeals.²⁸ Moreover, promotion stages are also very complicated. For the promotion, judges apply to the Heads of the Courts, who, on their own, assess the activities of a judge and submit application to the Minister of Justice who makes decision based on the assessment done by the Head of the Court. However, Special Committee for Judges shall also agree to the decision of the Minister. This committee makes final decision about the promotion.²⁹ According to Georgian legislation, the High Council of Justice is a sole body taking decisions about the selection, appointment and promotion of Common

²⁴ Judicial selection and appointment in foreign countries“, Maka Bibilashvili, 18 February 2015, page 14.

²⁵ Baland, T. 2016. *Qualities Of Good Judges*. USA.

²⁶ Lifetime appointment of federal Judges in the United States, Tim Baland.

²⁷ Judicial selection and appointment in foreign countries, Maka Bibilashvili, 18 February 2015, page 14.

²⁸ Grashof, M. 2016. *Judges Evaluation in Germany*. Baden-Vurtemberg.

²⁹ *Judges Evaluation in Germany*. Baden-Vurtemberg Federal part ; Malte Grashoff.

Courts judges. The Council has right to single-handedly, independent from any recommendations and evaluations of other bodies, make decision about transferring judges from one instance to another or appointment as the Head of the Court and Panel/Chamber.

The Judicial Assessment System is different in Germany and the Baden-Württemberg federal land. In general, judges are evaluated every 4 years. Judge with the probation period undergoes assessment once in every 6 month for 18 months. It is also interesting that judges older than 50 years are not regularly assessed any more.³⁰

Motivation, flexibility, balance, resistant to criticism, professional competence, broad legal education, purposefulness, negotiation and mediation skills, skills for clear writing and speaking, conflict management – this is the list of requirements the candidate for judge should meet in the federal land of Germany.³¹

Conclusion

Independent, impartial, qualified, unbreakable, fair and competent judge, as established by The Bangalore Principles of Judicial Conduct,³² is a cornerstone of the judicial system. In order to ensure fair and efficient judicial system, it is important to create a model of judicial selection and appointment and rules, which will guarantee quality and efficiency of the system and will be the main indicator of strengthening social trust. This is because social trust towards judiciary is an important component of its legitimacy.

As the High Council of Justice has an important role in the formation of judicial corps, all of its decisions concerning judicial selection and appointment or promotion shall be justified and meet legal requirements. It is important that while making decisions, the High Council of Justice ensures transparency of processes. Council decisions concerning management and administration of judicial system, as well as appointment and mobility of judges, shall contain justification of its grounds, have binding force and be subject to the possibility of judicial review.

In line with the Consultative Council of European Judges Opinion, “Although this appointment and promotion system is essential, it is not sufficient. There must be total transparency in the conditions for the selection of candidates, so that judges and society itself are able to ascertain that an appointment is made exclusively on a candidate’s merit and based on his/her qualifications, abilities, integrity, sense of independence, impartiality and efficiency. Therefore, it is essential that, in conformity with the practice in

³¹ Northern Ireland Assembly. 2012. Judicial Appointments in Germany and the United States.

³² *The Bangalore Principles of Judicial Conduct, 2002, pp. 3-4.*

certain States, the appointment and selection criteria be made accessible to the general public by every Council for the Judiciary.”³³ “It is important to note that the assessment should not only consist of an examination of the legal expertise and the general professional abilities of judges, but also of more personal information, such as their personal qualities and their communication skills.”³⁴

The adequate and adequate number of judges is the most important solution to the efficient, proper and full functioning of the justice system. On one hand, increasing number of judges depends partially on the infrastructural arrangement, however, the High Council of Justice shall make effective steps to, first of all, determine how many judges judicial system needs to ensure fast and efficient justice. In order to overcome challenges to the process of judicial selection and appointment, it is advisable to analyze the practices of the Eastern Partnership countries, make comparative analysis, research and share recommendations and regional challenges.

Council activities during the selection and appointment processes of the judges shall be balanced taking into account principles of transparency and accountability towards society. The Council shall lead its activities by following the legislative requirements and in case of insufficient regulation, ensure efficient bylaws are passed and implemented in practice. It is important that members of the High Council of Justice of Georgia discuss and define main standards and criteria of judicial mobility.

It is also noteworthy that after the amendments to the Organic Law on Common Court were made on February 13, 2017, positive trends are being noted in certain directions (for example, determining registration deadline for judges, obligation to publish biographical data on candidates for judges, improving justification quality of the decisions about promotion or transferring judges from one court to another). However, despite this, there are still several issues not settled normatively – in the judicial selection and appointment processes, lack of judges and low indicator of social trust. Therefore, the selection and appointment processes of judges should be conducted in an objective, transparent, competitive environment, and with full and exhaustive legislative support.

References:

1. Adeishvili Z., Winter G., Kitoshvili D. 2002. Comment of the General Administrative Code of Georgia. Tbilisi.
2. Loria V. 2000. Administrative Law of Georgia. Tbilisi.

³³ Consultative Council of European Judges (CCJE), Opinion #10, 2007, Paragraph 50.

³⁴ Ibid, Paragraph 56.

3. Turava P., Tskepladze N. 2005. Support manual for administrative law. Tbilisi.
4. Georgia. Parliament of Georgia. 2009. Organic Law on Common Courts #2257, Tbilisi: Legislative Herald of Georgia, consolidated publications 16.06.2017.
5. Georgia. High Council of Justice. 2007. Decision #1/208 High Council of Justice Regulation. Tbilisi.
6. Association – Unity of Judges of Georgia. 2016. Monitoring report of the High Council of Justice. Tbilisi. http://ujg.ge/sites/default/files/%E1%83%A1%E1%83%90%E1%83%91%E1%83%AD%E1%83%9D%E1%83%A1-%E1%83%9B%E1%83%9D%E1%83%9C%E1%83%98%E1%83%A2.-%E1%83%90%E1%83%9C%E1%83%92.qqq_.pdf
7. Hague. Roundtable of chairmen of the Supreme Court. 2002. The Bangalore Principles of Judicial Conduct. <http://hcoj.gov.ge/ge/samosamartlo-qtsevis-bangaloris-printsipebi/1672>
8. Georgia. Conference of Georgian Judges. 2001. Resolution #6 Rules of Judicial Ethics of Georgia. <http://www.supremecourt.ge/judges-self-governance/judges-ethics-code/>
9. Warsaw. OSCE. Bureau of Democratic Institutions and Human Rights. 2014. Georgia. Monitoring report of the court proceedings. <http://www.osce.org/ka/odihr/130686?download=true>
10. Strasbourg. **Consultative Council of European Judges**. 2007. on **Judiciary at the Service of Society**. Opinion #10. 8th CCJE session http://hcoj.gov.ge/files/pdf%20files/aqtebi/CCJE%282007%29OPINI ON%2010_GEO.pdf
11. Strasbourg. **Consultative Council of European Judges**. 2005. on **Justice and Society**. Opinion #7. 6th CCJE session http://hcoj.gov.ge/files/pdf%20files/aqtebi/CCJE%282005%29OPINI ON%207_GEO.pdf
12. Strasbourg. **Consultative Council of European Judges**. 2001. on the **Independence and Irremovability of Judges JUDGES**. Opinion #1. CCJE Recommendation #R(94)12 http://hcoj.gov.ge/files/pdf%20files/aqtebi/CCJE%282001%29OPINI ON%201_GEO-revised.pdf
13. Georgia. Constitutional Court of Georgia. 2017 Decision #3/1/659. <http://constcourt.ge/ge/legal-acts/judgments/3-1-saqartvelos-moqalaxe-omar-djorbenadze-saqartvelos-parlamentis-winaagmdeg3.page>
14. Georgia. High Council of Justice. 2009. Decision #1/308. on Approval of the Rule of Selection of a Candidate for Judge. Tbilisi.

- <http://hcoj.gov.ge/files/pdf%20gadacyvetilebebi/gadawyvetilebebi%202009/%E1%83%A8%E1%83%94%E1%83%A0%E1%83%A9%E1%83%94%E1%83%95%E1%83%98%E1%83%A1%20%E1%83%AC%E1%83%94%E1%83%A1%E1%83%98%20308.pdf>
15. Bibilashvili M. 2015. Judicial selection and appointment in the foreign countries. Tbilisi, Parliament of Georgia.
 16. Grashof M. 2016. Judges Evaluation in Germany. Baden-Vurtenberg
 17. Baland T. 2016. Qualities Of Good Judges. USA.
 18. Baland T. 2016. Lifetime appointment of federal Judges in the United States, Appendix #8. Georgia.
 19. Colorado. Colorado Judicial Nominating Commission 2009. Appendix # 1. Materials from Colorado.
 20. Administrative Procedural Law of German, Wolters Kluwer, Moscow, 2007.
 21. Prof. Dr. Günter Hirsch. 2006. Appointing of Supreme Court Judges Examination of Situation in Individual Countries.
 22. http://network-presidents.eu/sites/default/files/Report_Hirsch_eng%5B1%5D.pdf
 23. Bundesgesetzblatt. 2002. The German Judiciary Act. Part I p. 713. Part I p. 2592
 24. <http://www.iuscomp.org/gla/statutes/DRiG.pdf>
 25. Northern Ireland Assembly. 2012. Judicial Appointments in Germany and the United States. NIAR 175-12. <http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2012/justice/6012.pdf>
 26. United States Courts. Judgeship Appointments by President
 27. <http://www.uscourts.gov/sites/default/files/apptsbypres.pdf>

On the Peculiarity of Juridical Decision-Making

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Abstract

The presented article deals with the decision-making mechanism which can be viewed on the basis of different positions. From the standpoint of statics, the main attention is paid to the structure and organization of decision-making, while in the dynamics, the process of evolution of the cognitive activity of the judge is examined. However, the unpredictability of the decision in some cases stems from the dynamic nature of the world³⁵. The dominant model of judicial decision-making is based on a rational choice theory assuming that judges are rational actors. Our assumption is that the rational decision-making model is needed to be modified (supplemented) by taking into account the so called non-rational elements.³⁶ The decision-making process is fundamentally inconsistent with these logical forms of inference.³⁷ The study of the decision-making mechanism makes it possible to identify the following elements in its structure: a question that requires permission, actual circumstances, principles and norms of law, goals, methods, legal consciousness, alternatives, and the decision itself as the choice of an alternative. The structure of decision-making implies not a simple sum of elements; it allows us to trace the relationship between these elements, which can be characterized through the concepts of purpose, means, result, and the process itself.

Theoretical study of the elements of the judicial decision-making process makes it possible to identify the reasons for making incorrect decisions of the objective and subjective order that reduce the effectiveness of justice and violate the rights and interests of citizens.

The division of the decision-making process into stages – such as: 1) preliminary examination of the case materials at the stage of initiation of the case; 2) preparation of the case for trial; c) investigation of evidence during

³⁵http://openscholarship.wustl.edu/law_journal_law_policy p.4.

³⁶http://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1150&context=law_journal_law_policy p.2.

³⁷<http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5261&context=uclrev> p. 2.

the trial; 3) judicial debate; 4) decision-making – allows us to trace the dynamics of the development of the cognitive activity in the judicial process. In the process of making a court decision, it is possible to single out the following stages during which the corresponding determination of the judge's thinking process takes place - an understanding of the problem and an explanation of the purpose and objective in a particular claim; the choice of methods and means of solving the problem that can be used in the course of the trial. Legal doctrine and methodology have a great influence on the outcome of all court cases.³⁸

From a methodological point of view, the essence of the decision reflects the willful action of the judge, including the choice of the goal and adequate means for achieving it. The correctness of this choice is due to the professionalism of the judge.

The functional value of the decision depends on the timing of the decision. From this point of view, decisions can be classified into initial, intermediate and final, depending on the stage of the trial process. In other words, the decision-making is not limited to a single case; it is a multi-stage and multiple sequence that involves resolving specific issues throughout the entire proceedings. The outcome, however, will be expressed in the operative part of the judicial act.

Keywords: Decision making, judicial horizon, formula for contingency, judicial discretion, contra legem

Introduction

Judicial decisions can be classified into intuitive, logical and rational, each of which characterizes a different level of knowledge about the actual circumstances under study.

Intuitive prediction is based on intuition, that is, a sudden, often unconscious "insight" that comes from the depths of life and professional experience.

Logic, of course, is present with free evaluation, but the logical mechanisms themselves are beginning to be used after the law-enforcement agent has intuitively drawn a conclusion about the evidential strength of any of the evidences.

Intuitive decisions are made without comparing the merits and demerits of each alternative, without logical justification and rational thinking. Intuition as a kind of thinking activity contributes to the formulation of versions, but does not constitute a basis for decision-making.

³⁸http://openscholarship.wustl.edu/law_journal_law_policy p. 4.

Knowledge and experience translate the intuitive solution into a more reasonable level of logical solutions. The formal logical construction is used to predict the possible consequences of alternatives and their justification with the help of logical rules.

Rational solutions are the result of a multi-stage analytical process. At the same time, rational choice does not exclude intuition, which is also actively involved in the decision-making process. Thus, in the process of making a judicial decision, all these levels are combined.

These methods are applicable to judicial activities, depending on the presence or absence of standard decision-making techniques.

Routine solutions are characterized by well-known methods of action to resolve the problem. Such programmed solutions, typical of repeatedly occurring situations, are taken in accordance with a previously developed sequence of stages. However, recurring situations in judicial practice are quite rare, and even similar situations can include unique circumstances. New or unique situations require the development of new decision-making procedures.

Justice as a Horizon of Judicial Decision-making

To make a fair judicial decision based on taking into account the individual characteristics of the case and the correct choice and assessment of the applicable norms, the personal qualities of the judge are of great importance. I would like to speak about the horizon of the decision-making instead of rational framework within which the decisions take place. It consists of non-rational elements apart from rational ones.

The concept of justice refers to the very essence of law in its "broadest" understanding. Justice is the most important requirement for the application of law, along with the other requirements of legality, validity, expediency, and truth. A fair judicial decision presupposes an accurate identification of the circumstances of the case, a correct and comprehensive assessment of the situation, and it takes into account its individual characteristics, a correct choice, interpretation, and assessment of the relevant norm of law.

In this connection, Niklas Luhmann writes: "in the research for an answer to these questions, we start from the assumption that the idea of justice can be understood as a formula for contingency of the legal system. The concept of a formula or contingency replaces numerous other central terms such as virtue, principle, idea, or value. It does not replace these terms completely, for only an external observer can talk of the formula for contingency. The system itself has to define justice in such a way that makes it clear that justice must prevail and the system identifies with it as an idea, principle or value. It is stated within the system non-contentiously. It is "canonized".

The concept of the formula for contingency is, primarily, a consequence of the insight that the conditions for an idea of justice based on natural law have vanished. Nature itself is not just in any conceivable sense. In other words, there is no inference from “natural” to “just”, as implicitly assumed by traditional natural law. There may be a kind of balance in the sense of compatibility to nature as a result of evolution. When applied to law, this could mean, perhaps, that the administration of justice has adapted itself to a normal degree on the scale of quarrels and offences. Nevertheless, it does not follow the fact that the corresponding norms and decisions are “just”. Any normative idea needs to maintain a certain degree of independence, that is, it must ask for more than what happens by itself (i.e. naturally). Otherwise, the norm would be superfluous as the proponents of natural law would have us believe that the reference to natural law were only critical for valid positive law. We need not be fooled by this trick, which natural law has stealthily secured itself a certain measure of recognition. The concept of formula for contingency points to different approach.”³⁹

Furthermore, this shows that contingency is something that is neither necessary nor impossible, which can be as it is (will be), but is also otherwise possible. The concept, therefore, denotes what is given (to be experienced, anticipated, thought, and imagined) with regard to possible otherness; it denotes objects in the horizon of possible modifications. So we can speak of a kind of analogy between the horizon and the formula for contingency.

From this point of view, saying that implementation of the idea of justice in judicial practice loses its sense.

On the other hand, considering the decision-making process, not from the natural justice view point, but from the formal logical and socio-psychological positions, it should be noted that the specific feature of the decision-making process in judicial activity is none other than those special features and characteristics that distinguish this process from the decision-making procedures in other types of human activities. From the procedural position, natural right and others that are related to its requirements are nullified.

In making an optimal and qualified judicial decision, certain special procedures for formulating alternatives are required. The specifics of decision-making in the judicial sphere are conditioned by multiple factors which are concluded in the content of judicial functions, as well as in their structure, nature, form, procedure, etc. They are also conditioned by the social environment in which the judiciary operates. As to the social environment, it

³⁹Niklas Luhmann, *Law as social system* p.115.

should not be considered as a part of the judicial system which should be understood as a unity of specific operations.

However, the next distinctive feature of the decision-making process in judicial practice is that it is situational in nature, because the time frame for this process is regulated, and the preparation of conclusions and generalizations on the case under consideration occurs without clear quantitative indicators of the evaluation of the event being investigated. This is due, among other things, to the fact that it is practically impossible to use public practice to determine the "truth of cognition" in the case under study; thus, this is not feasible. Without clear objective criteria for assessing the results of cognition, the judge uses only personal experience, knowledge, relying on his/her own will, morality, social maturity, and law.

Thus, another distinctive feature of the decision-making process in judicial practice is the lack of quantitative indicators of the worldview, attitude, world outlook, and evaluation of the event or the phenomenon being studied. The process of preparation and the formulation of the decision by the court were carried out by means of correlation, comparison, generalizations and conclusions on the investigated case, but without specific quantitative parameters of the implementation of this procedure. As a result, the very decision, for example, regarding the definition of the penalty for the guilty person, in addition to taking into account the legal components, is largely determined by ethical, strong-willed qualities, the degree of social maturity, the content of the prosecutor's civil position, judges.

The judge must take into account not only the requirements of a specific normative legal act, but also non-doctrinal elements of his/her thought and practice.

The decision-making process is seriously influenced by the principle of independence of the adoption of a judicial act. In addition to procedural and substantive legal norms, judges are guided by attitudinal and strategic factors.

The judge should avoid anything that could detract from the authority of the judiciary; in his activity, he must be guided not only by laws, but also by generally accepted norms of morality and rules of conduct. It is known that the judicial decision is affected by many completely diverse factors - psychological, organizational, economic, as well as personal and the likes. They can also include professionalism of the judge; organization of litigation; the composition of the participants in the process; territorial location of the court; procedural form of decision-making - oral or written; time of the year; day of the week; hours of the working day and even days; family and personal circumstances of the participants in the process; etc.

It can be said that the discretion as a legal procedure is largely dependent on the broadness of the horizon of judicial decision-making.

The Structure of Judicial Discretion

Richard A. Posner emphasizes the importance of literature for the understanding and improvement of judicial opinions.⁴⁰ In other words, it broadens the horizon within which a judge makes a decision. It also includes people interested in such decisions.

One of the main aspects of this process is that each judge's decision has an addressee. It always produces consequences for several persons (sometimes for an indefinite circle of people). The main thing is that the decision is always under control, under the close attention of the interested persons. The judge is personally responsible for the decision. The judicial act is always read, evaluated, weighed, criticized, otherwise interpreted, may be canceled, considered unlawful, and verified for the possibility of execution. Here the problem of the assessment of the judicial discretion arises.

Judicial decisions are always accompanied by a kind of uncertainty as to whether the judge has acted in each particular case within the limits of his/her powers (within the limits of judicial discretion) or he/she, according to the complainant, has gone beyond these limits (abused his/her powers). This first of all depends on the answer to the question: did the judge act within the limits of judicial discretion or went beyond these limits (maybe even neglected them, therefore, there is judicial arbitrariness)?

By applying a general legal prescription (rule of law) to the specific circumstances of the case, the judge gives his own interpretation of the rule, makes a decision within the limits of the discretion granted to him/her, and often assesses the circumstances without having enough information (sometimes hidden from him). With such a large dependence of the outcome of the administration of justice on judicial discretion, the delineation of illegal decisions made as a result of the judge's unrelated error and his/her imprudent guilt is a difficult task.

A well-defined formula of judicial discretion is not and cannot be an end in itself or a result of scholastic theorizing. It has many facets, each of which is capable of serving as the basis for the serious consequences of the conclusions and decisions of various social forces.

So, what is judicial discretion? In a very interesting work by a prominent legal scholar, A. Barak, it is indicated that judicial discretion means the authority that the law gives the judge to make a choice from several alternatives, of which each is legal. Based on this definition, a judge, according to Barak will not act mechanically, but will weigh, think, receive impressions, check, and study. However, this conscious use of authority does not determine judicial discretion, but only assumes that the judge must act within his/her

⁴⁰http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2882&context=journal_articlesp.3.

discretion; the very judge's discretion, which is neither emotional nor mental; it is rather a legal condition under which the judge is free to make a choice from a number of variants .⁴¹

On the other hand, judicial discretion is associated with the concept of the judge's internal conviction, which "is a legal category, a fiction that expresses the subjective mental activity of the judge in administering justice in a particular case.

Believing that the judicial discretion is the judge's right to conduct procedural actions, there is a binding nature of which is not established by the procedural law, but is not prohibited by him. The definition of the limits of judicial discretion is expressed in the delimitation of the legislative powers of the legislator, when he/she establishes the rules of procedural law and the lawful powers of the judge in the conduct of his procedural actions and means the establishment of his lower and upper boundaries. Thus, going beyond the law means going against it.

Contra Legem

Some authors argued that the requirements of making just decisions oblige judges to go against the law.⁴² *Contra legem* - "against the law" – is the maxim used to describe an equitable decision of a court or tribunal that is contrary to the law. *Contra legem* is the opposite of *intra legem*, a term used to describe an equitable decision of a court or tribunal that is consistent with the rules of law.

Judges must not make decisions on the basis of interpreting the law as *contra legem*. A judge can use or not use this kind of interpretation. However, there are a lot of cases of finding just solutions to lawsuits by courts using such a method. Interpretation of *contra legem* needs a specific argumentation; because of this, judges always use it with great caution,⁴³ and, as a rule, rarely make use of it. When a judge has to make a distinct decision from the text of the law, it may be felt by him/her as a kind of "opposition" to the system of

⁴¹<http://weblaw.haifa.ac.il/en/JudgesAcademy/workshop1/Documents/Barak.pdf#p=7>.

⁴² See G.Khubua, *Contra legem in the of Georgia?* <http://www.interpressnews.ge/ge/thvalsazrasi/340147-contra-legem-saqarthvelos-sakhelith.html?ar=A> p. 1.

⁴³ There are various approaches to the phenomenon of *contra legem*. One of them is presented by João Mauricio Adeodato in his "Inconsistency strategies in peripheral judicial systems : a form of "alternative" law"; he distinguishes between the dogmatic state law and forms of alternative law; in this connection, he mentions *contra legem* interpretation which according to his view is presented by underdeveloped societies. https://books.google.ge/books?id=fd7Qgh1MviYC&pg=PA123&lpg=PA123&dq=scientific+papers+on+the+contra+legem&source=bl&ots=o9Hf_Aq2Ab&sig=jieDvqndMKnG5N44Sjz0agoR5iU&hl=ka&sa=X&ved=0ahUKEwjPjIrHmKHVAhUEQpoKHTThWAJgQ6AEIWzAI#v=onepage&q=scientific%20papers%20on%20the%20contra%20legem&f=false p. 122

justice. It also needs a pure psychological moment to be taken into account. But this is not a natural or normal state for a jurist.

Prof. G. Khubua thinks⁴⁴ that we have to help a judge to overcome this psychological discomfort. In the first place, this can be done through rational argumentation to let him/her become aware of the fact that they are not violating the law or confronting with legal order in such cases at all. While interpreting law *contra legem*, the judge does not confront with law and order, but he/she acts in the lines of law for defending it.

Prof. Khubua argues that the system of justice must be just. When literal interpretation of law resulted in an unjust outcome, a norm is to be interpreted *contra legem* i.e. counter to literal interpretation of the text. Interpretation *contra legem* gives priority to the law stemming out of constitutional order and provides us with a right and just decision.

Interpretation of *contra legem* should not be made by an instance proportionate law/application of law, but only by the court. But a judge must not decide subjectively, but rather on the basis of present system of justice and according to underlying values.

When the law is at variance with the generally acknowledged principles of justice, a judge should not obey “unjust law”. But he/she has a choice to comply with the constitution. Actually, only the constitution defines essential standards of the system of justice. At the same time, the constitution stands at the top of the hierarchy of positive law. It also establishes the principles of super-positive law embracing the whole system of justice.

The text of the constitution is morally neutral integrating even metaphysical elements in itself. It defines the standards of moral and value assessment on the basis of which a judge considers concrete cases. The constitution has to somehow negate the positive concept of law. But what is a non- positive law? In what way does it exist and is it cognizable? Or to what extent are the value principles obligatory? Here, Prof. Khubua introduces⁴⁵ the concept of the cultural context and argues that by just going through such a context, there has to be the assessment of values and their inclusion into the process of judicial argumentation.

Accordingly, the latter is the standard upon which actual practice is mirrored and measured. Values have relative character and change in time and space. “Anti-positive” attitude of the constitution towards justice is clearly seen from its preamble in which the universal human freedom and values having no existence dependent on the state that are discussed. These principles are not established by the state or granted by it. On the contrary, they have a

⁴⁴ G.Khubua, *Contra legem in the of Georgia?*
<http://www.interpressnews.ge/ge/thvalsazrisi/340147-contra-legem-saqarthvelos-sakhelith.html?ar=p.2A>

⁴⁵Ibid. p.5.

binding force with the latter. The state is bound by them as an immediately acting justice. What juridical consequences do these constitutional statements have for judiciary practice? It is characterized by different interpretation of the same law. The difficulty is compounded when the value assessment interferes in the process of argumentation. A judge focused on values in this process would not be able to act in the purejuridical boundaries. Values are of metaphysical nature as a rule. Thus, it largely depends having on the values he/she is philosophizing in a certain sense. But on the other hand, having obeyed the constitution, a judge obeys supra-constitutional principles established by the constitution.

Obeying constitution at the same time means a commitment to the value order established by the constitution. A judge must not defend antihuman laws that stand opposed to the dominant views on justice and morality. In particular cases, a judge must act against the law, but in favor of justice. In acting this way, he/she acts within the framework of constitution not violating constitutional principles of justice. The peculiarities of the judicial thinking are also taken into consideration. Social reality is always dynamic and changeable. Law, on the contrary, is much more conservative and is always trying to maintain existing situation.

A judge must decide cases on the basis of particular events of reality, but only in the framework of norm. The jurists' world is not real, but a normative one construed by them.

Justice is a standard of interpretation. But how is it possible for the "idea of justice" to be such a standard? Justice is of a controversial category. There is no any objective standard of justice in the pluralistic world. Therefore, it is impossible for a judge to base a decision to the particular case on the idea of justice. But he/she can rely on the standard of justice established by legislator. Legislation reflects the consensus on justice existing in a society. A judge cannot base his/her decision on "the idea of justice". A judge proportioning a law must base his/her decision on the standard of justice defined by law, but not on an abstract idea of justice. Such a standard is not pre-given as recipe, but it must be recognized by a judge from legislation.

There is no "justice in general". The assessment of standard of justice must not be the judges' subjective views, but rather the dominant social moral. In addition, the standard of justice must not rest on the orientation of lofty qualities or concepts, but the "average moral person's" views on justice and injustice must be taken as a criterion.

Conclusion

The peculiarity of judicial decision-making has turned out to be about a lot more than it seemed to be at the first attempt. Recognizing a function of analysis of complex problems of great uncertainty allows us to see what needs

to be preserved if this peculiarity is to be done right. The present approach can be seen as part of the complex problem of modeling of judicial decision-making. When it comes to problems like just decision, we are naturally led to solutions like the second-order observation. The general assumption that judicial decision is nothing special can lead to a misunderstanding of the peculiar structure of decision-making in both justice theory and the law. There is no need to resurrect the natural law in order to understand what the function of a just decision is, regardless of the kind of court or judge that is performing it. Maybe now is the hour where such decisions ought to undergo the multifactor tests effaced by unproductive debates between formalists and contextualists. Therefore, it should be provided as a functional analysis of judicial decision-making because in the absence of such a rationale, justice as a horizon for judicial decision-making will be increasingly difficult to defend.

References:

1. Niklas Luhmann. Law as a social system.
2. <http://bookfi.net/s/?q=luhmann++Law+as+a+social+systemm&t=0>
3. Dan Simon. A Third View of the Black Box: Cognitive Coherence in Legal Decision Making. <http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5261&context=uclev>
4. James Boyd White. The legal imagination. University of Chicago Press, 1985.
5. Gary Peller. The Metaphysics of American Law, 73 Cal. L. Rev. 1151 (1985).
6. <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=2044&context=californialawreview>
7. Richard A. Posner. The Role of the Judge in the Twenty-first Century.
8. http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2907&context=journal_articles
9. Richard A. Posner. The problems of jurisprudence.
10. <http://blogs.harvard.edu/hltf/files/2010/11/POSNER.pdf>
11. Richard A. Posner. Law and literature.
12. http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2882&context=journal_articles
13. Richard A. Posner. The Jurisprudence of Skepticis.
14. http://chicagounbound.uchicago.edu/journal_articles
15. John N. Drobak Douglass C. North. Understanding Judicial Decision-Making: The
16. Importance of Constraints on Non-Rational Deliberation.
17. http://openscholarship.wustl.edu/law_journal_law_policy

18. Edmund Ursin. How Great Judges Think: Judges Richard Posner, Henry Friendly, and Roger Traynor on Judicial Lawmaking.
19. http://www.buffalolaw.org/past_issues/57_4/Ursin%20Web%2057_4.pdf
20. Chris Guthrie, Andrew J. Wistrich, Jeffrey J. Rachlinski. Judicial Intuition.
21. https://law.vanderbilt.edu/files/archive/Judicial_Intuition.pdf
22. Timothy J. Capurso. How Judges Judge: Theories on Judicial Decision.
23. <http://scholarworks.law.ubalt.edu/lf>
24. Gia Khubua. Contra legem in the name of Georgia (in Georgian).
25. <http://www.interpressnews.ge/ge/thvalsazrisi/340147-contra-legem-saqarthvelos-sakhelith.html?ar=A>
26. <http://weblaw.haifa.ac.il/en/JudgesAcademy/workshop1/Documents/Barak.pdf>

Legislative Shortcomings of Private Pension Insurance

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Abstract

Increased number of pensioners and the existing weak social packages have caused the need for alternative pension systems in the country. Applicable legislation of Georgia provides an opportunity for existence of alternative pension funds, although there are lots of deficiencies in the legislation. In the present work, we will talk about these deficiencies, discuss what non-state pension insurance includes, its alternatives and the solution to the problems based on the global practice.

Non-state (private) pension insurance is considered as the savings pension system, as well as the defined benefit pension system, for acceptance of which in the future 1) an employer or an employee must make contributions in favor of an employee or self; and 2) risks must be assessed and reassessed in various manners through which potential pensioners, after attainment of the retirement age, will be provided with a guaranteed social package that will allow them to have financially comfortable old age. In simple words, what you save now, you will receive at the time of retirement age (taking investment profits into consideration). It should be noted as well that the legislator grants the potential pensioner the right to get the accumulated savings at its own schedule or periodicity, made originally.

The purpose of this work is to demonstrate the importance of the existence of private pension schemes, the reasons causing the existing shortcomings and the outcomes of the survey with the theoretical and practical value, as well as the recommendations elaborated by taking them into account, the conditional outcomes of the reforms provided or to be provided through analysis of the reforms package presented by the current government.

Different solutions and other approaches are provided for each shortcoming, which was presented as a conclusion and recommendation in the work according to the available practice.

Keywords: Non-state pension insurance, accumulative pension, pension fund, pension scheme rule, reform, assetsManagement Company, specialized depository, depositor

Introduction

The present work is an attempt to examine one of the most important and prospective issues of today's Georgia, namely, introduction of the pension system alternatives - implementation of private pension system and its involvement in insurance direction.

Private pension insurance direction is an innovation practice for the private law of Georgia due to the lack of its practice, and its purpose is to find a number of shortcomings for readers which we are facing in the existing legislation.

For improvement of the legal norms regulating these relationships and making the legislative proposals, the work will provide the long-term practice of Georgia and Europe developed as a result of these norms; the work will also focus on legal regulation of the ongoing pension reform.

In today's reality, it is unclear what is the source of social security in the future for the employee. That is why this area needs improvement and validation. It should also be taken into consideration that the State must give some impetus to the foregoing and even for the purpose of incentives.

We all agree that the pension system needs a significant reorganization; however, essential steps have not been made yet, as it is a commonly known fact that the non-state pension insurance is at a very low level of development in Georgia and it cannot be revived without the government initiatives.

The main discovery and the outcome is the hard social background and the increase, but still insufficient confidence to the financial institutions prevents the development of the private pension insurance. We will talk about the ways to avoid the above-mentioned obstructions.

In this work, the mixed type of research is selected as a quantitative and qualitative method for research strategy, the methodology for studying and processing of primary and secondary information on the so-called Testing-out and non-state pension insurance issues.

Legislative Shortcomings of Non-state Pension Insurance

“The Civil Code of Georgia regulates private property, family and personal relations based on equality of persons”. Non-state pension insurance is one of the examples of property and personal relations where both, the personal interest of a person using this product to have secured old age and financial interest, are observed. Of course, the secured old age also implies financial support, but the insurance institution is provided here in order to

prevent the risks that may occur in the future and reduce it for the potential pensioner and to help him/her to have sweet and financially secured old age.

Urgency of the work is in its specific nature and problem. Problem of the non-state pension insurance lies in the fact that by the time of adoption of the Law “On the provision of non-state pensions and non-state pensions insurance”, the legislator had not studied the situation on site, had not established the institutions that would support the development of the non-state pension system and significantly boost the quality of its control mechanism. In spite of the latter, it tried to adjust the existing European model to Georgia, while in 60-70% of the provisions of the Law, the state was not ready to fulfill the Law, there were no registered pension schemes due to the existing reality, their registration became available only after a few years, and their efficiency and demand was another matter; however, the problem is imperfect and rough in “incomplete” legislation.

According to the experts in the insurance field, a significant portion of the principle provisions presented in the Law have initially created the basis for thinking that protection of the requirements of the Law and development of the non-state pension insurance would fail; some of the provisions of the Law, from the day of their establishment, are invalid, nourished by the so-called “dead” norms. This Law has never been put into effect as a whole.

In the subsequent part of the work, we will discuss the shortcomings presented in practice in details and get focused on the alternate ways, in the form of recommendations, of course.

First of all, let us start with the shortcomings in terms of the participant and founder of the non-state pension scheme.

According to the Article 2(f) of the Law “On the provision of non-state pensions and non-state pensions insurance”, the legislator says that the pension scheme participant “is a natural person in favor of whom the payment of pension contributions and issue of pension is carried out according to the procedure prescribed by the pension scheme”. The legislator has not taken into account the fact that in case of the Article 16 of the Law, which defines the type of pension scheme called “Pension Scheme of the Association of anEmployers”, the participant of this scheme may also be a legal entity and it may also be possible that the contributions were made in favor of other legal entities, whether it is its subsidiary or branch. It should also be mentioned that the Paragraph 2 of the same Article establishes the obligation of the National Bank to elaborate the rules for implementation of pension insurance for the Association of Employers; although, the latter has not yet been established despite its mandatory nature.

Participation in the pension scheme with vague requirements is the subject of the following discussions in this work. The legislator defines 7 (seven) types of the pension schemes according to this Law, each of which has

its own requirements and wordings; after their compliance, a participant is allowed to be a participant of the following schemes: 1. Occupational pension scheme; 2. Pension scheme of an association of employers; 3. Pension scheme of an employer; 4. Pension schemes of other legal persons to which the employer is deemed a contributor; 5. Pension schemes offered by banks; 6. Pension scheme offered by insurance company; 7. Pension scheme offered by other legal entities.

The legislation states: “The participants of the Occupational pension scheme may be certain categories of employees of the founder (subscriber) or professional groups. The list of those persons, who are able to become the participants of the Occupational pension scheme, shall be defined under the employment agreement. Obligation of enforcement of this particular record is imposed to the employee by the legislator; however, the profession should be specific and different than the other. For example: miner, fireman, people employed in law enforcement bodies, in the field of railway, medicine, etc.”

In this case, the legislator does not separate the professional pension scheme and the pension scheme of employers, as according to the Article 15(1) of the Law: “Occupational pension scheme is the pension scheme created by employer, the subscriber of which is the employer”, while under the Article 17(2) of the same Law provides the following definition of the pension scheme of employers: “An agreement on non-state pension provision and insurance shall be entered into between the employer (the founder and the contributor) and the employee who has the right to participate in the occupational pension scheme”.

Death of the participant also results in questions due to the fact that in the case of death of the participant, his/her savings is transferred as inheritance if he / she has chosen the rule of payment for the specified period; however, 6 months’ term is meant prior to opening of the inheritance, the legislation does not stipulate the fate of the savings, they continue to participate in the investment or are frozen. The way out - the fate of the savings should be directly stated in the legislation and this should not be the prerogative of the employer and depended on its decision.

Attention should be paid to the obligation of the founder who is provided in the Article 38 (7) of the Law, stating that: “In order to protect the interests of the participants, the founder is obliged to take part in the guarantee, compensation, insurance, reinsurance or other funds in compliance with the procedure prescribed by the applicable legislation of Georgia”. This requirement and commitment is welcomed by the founder, but unfortunately, the Georgian legislation does not recognize such funds and there are no relevant normative acts which would govern the above and therefore, even if the founder has a desire, he/she will be physically unable to participate in such so-called “Additional guarantee funds”.

Another shortcoming of effective legislation is in Non-state pension insurance supervisory body. Applicable legislation explicitly stipulates that the supervisor of the non-state pension insurance area is the National Bank, although the National Bank neither has fulfilled for years, nor fulfills its rights and obligations; for example, it failed to fulfill the above Law, has not received a number of regulations, the obligation of which was imposed to it under this Law, including but not limited to the many Subparagraphs of the Article 40 of the Law. This caused inactivity of the Law and exactly due to this situation, the National Bank transferred its functions to the LEPL “Insurance State Supervision Service of Georgia”. Due to poor practice, the latter could not handle the rights and duties imposed on it and failed to carry out the appropriate revision due to certain gaps in the legislation, due to the vague nature of certain case, and it avoids responsibility and redirects its obligations to the National Bank. The latter redirects them back and, at the end, the founder of the scheme is affected in terms of time resource and financial point of view. In this case, the outcome is only the improvement of the legislation and accurate definition of the functions and duties of the regulator.

As mentioned above, the pension savings must be invested in various financial instruments, so that the potential pensioners, after achievement of the retirement age, receive their savings completely without exception. The savings withstand inflation and earn the investment profit simultaneously. Exactly these services are offered by the assets management companies. The legislation strictly defines that the pension assets should be managed only by the assets management companies holding a special license.

For more clarity, taking the present reality into account, such companies include the brokerage companies which are mainly the bank’s subsidiaries in Georgia, and their main task is to manage the bank assets. In fact, there is no demand on them as assets manager in the local market. Since the pension scheme applicable in Georgia today is 3 (three), two (2) of them are represented by the insurance companies. These companies also have the broker license according to the applicable legislation and have the right to manage their own assets and the assets of the scheme participants, unlike the founder of the scheme which is obliged to hand over the assets to the assets manager, in exchange for certain compensation, of course.

Unfortunately, the applicable legislation restricts the assets management companies. Though they are only few in Georgia, the legislator has not taken into account the real situation of the local market at the time of adoption of the Law and imposed the restrictions to the assets management companies; for example, regarding investment, the assets in which the investment defined by the National Bank shall be carried out and what is not considered in the pension assets. For more clarity, the Article 11(3) of the Law states that: “The appropriate assets of the pension savings shall not include: a)

Securities, emitters of which are represented by founders or subscribers, as well as their affiliates, assets management companies, specialized depositories, with which the agreement is concluded concerning management of appropriate assets of pension savings and their affiliates”. Legislative restrictions are complicated almost everywhere with the focus to the “affiliated person”, while the legislation does not provide an explanation of the affiliate person for the purposes of this Law, which is unjustified and causes total ignorance of the local specifics; therefore, it is unacceptable to allow equal prohibition to all categories of affiliated persons.

The solution is that at first, the affiliated person must be defined and only after this the specific list of the affiliated persons should be provided, to which the restrictions will be applied, as well as certain levels or limits shall be determined regarding a specific category of affiliated person, or even the upper limit.

Where the discussion is going to be focused on asset management companies, the focus should also be made on a specialized depository and the focus must be on the shortcomings of this institution. The legislator provides the definition of the specialized depository in the interpretation as follows: “Specialized depository – a commercial organization, providing acceptance, storage of documented securities and accounting of non-documented securities included in the appropriate pension savings assets”.

It should be noted that the Insurance State Supervision Service of Georgia issued a decree on “Approval of the Rule of Determination of the Assets admitted to cover the Insurance Reserves and their Structure” on December 24, 2013, defining the percentage and manner of placement of the insurance assets where the founder lacks the right to acquire the insurance assets. This is another reason that the specialized depository has no functions or unfortunately a fairly formal one.

There is no specialized depository in the State. There is only the central depository which incorporates the functions of the specialized depository. This fact is, unfortunately, contradicting the Article 2(6) of the Decree No.48 of the National Securities Commission of Georgia which states: “The charter of the license applicant should stipulate that the activity of the special depository of the pension savings assets is its only activity.” Accordingly, when we talk about a specialized depository and the right of its appointment, as it is envisaged in this Law, it can be freely stated that this norm does not work as long as there is one depository from the existing reality, and the assets manager does not appoint but directly enters into the contract with it, due to the inevitable situation. Unfortunately, even the central depository does not fulfill its functions and obligations which would be the guarantee of the founder and scheme participant, as well as the leverage of financial sustainability and security, for example, according to the Article 12(8) of the Law: “The asset

management company is obliged to invest the pension savings in the asset management process only through the specialized depository”. Whereas the central depository does not have the relevant equipment, instruments and supervision tools, in order to enforce the requirements of the legislation, hence, only the function of the registration remains to it, despite the number of obligations.

The search for the solution is possible through the amendment to the rules of the National Securities Commission, whereby the above functions may be transferred to other financial institutions, such as banks or compensation by the founder to the depository. This may increase in order to make the depository interested in the financial point of view, which will enable it to renew its financial instruments. It would also improve the supervisory function that will provide additional guarantee for the scheme participant to control the assets of the management companies even more.

Pension System Modification, State Reform

It is welcomed to note that one of the priorities of the state is the pension reform, especially, when Georgia needs this very much, but it would be desirable to give more information to the society in order to reveal more interest. The Ministry of Economy and Sustainable Development posted two types of information document on the web-site in March of 2016; one of them is about the pension reforms and another - strategy of the capital market development. Both of them are very interesting, but the information is very general even for consideration in the context of the Law. Although the state intends to introduce the so called two divisions of the pension system, the first implies modification of the existing one and the other - creation of the new one, participation of which will be mandatory and the founder of which will be the state. As for the first division and its modification, a new draft law is being made that will cancel the old one and will be voluntary. The state claims that the voluntary pension system will be very flexible, and all expected or existing shortcomings will be taken into consideration. However, in order for all these to be taken into account by the state, amendments made to the law and normative acts must have been carried out. However, unfortunately, these have not been implemented yet.

The pension reform document states that after establishment of a mandatory pension scheme (let us conditionally call it “mandatory scheme”), the employee will contribute 2% of his/her salary and the state will add 2% - 2% of the employee, in total, 6% will be saved for the employee, added with the investment profit. The principle of operation of the schemes will be the same for both mandatory and voluntary; difference will be in appointment of managers and control mechanisms.

However, there is one restriction: the state will not add its 2% for the employee whose salary is above 2000 GEL, which is unacceptable and which causes encouragement of the employer to become a participant of the voluntary pension fund and make its employees the participants as well, where the parties will determine the amount of the contribution themselves and where the contribution can be less than 2%, that ultimately damages the participant's financial interests and at the same time dramatically worsens the situation of the employee. According to the pension reform document, the pension contributions shall not charge with income taxes what is a very pleasant fact. However, there are also exceptions, if the participant wishes to withdraw his / her savings early (before the pension age is reached), he/she will pay the income tax as a penalty, i.e. savings will be taxed. This approach is justified because the case concerns the pensions and its main principle is to ensure old age. If the participant is entitled to, I mean a compulsory scheme, simply the scheme will be dropped and the principle and the idea of pensions will not be realized.

Applicable legislation provides for the possibility of delay of the pension, i.e. the above means, that if the participant has already reached the retirement age or has been retired early, he / she has the right to delay the pension time in order to save more and to work simultaneously. In this document, the Government has strictly defined that acceptance of pensions should start not later than the age of 70. Such an approach of the government is hard to say, especially in terms when a fairly large number of employees are getting close to the retirement age or have already reached the retirement age and are still working. In this case, their rights are restricted to what is absolutely inadmissible. Therefore, a proper mechanism and solid arguments should be sought, and it is recommended to determine the upper limit of delay, but as it comes to an employee's savings and his/her property, the right to apply such delay must be his/her prerogative. They should not be deprived of that right, or the suspension of contributions by the state may be recorded in the restriction, after the attainment of certain age.

The state intends to put these schemes into operation and the new legislation will enter into force from January 1, 2018 which will be followed by making the contributions from all three parties. The above savings should be placed in the local market, securities, treasury liabilities, etc. i.e. they should be invested on what is very important to develop the capital market, considering the fact that the state is planning development of the capital market simultaneously. It would be very difficult to manage these processes. It is desirable that development of the capital market preceded the pension reform, but it seems that the state is planning development of market at the expense of pensions, that is unlikely to be followed by important result. It

would be desirable for the state to allow the assets managers to carry out the investments in the international market at the initial stage.

Conclusion

From the date of its adoption, the Law on Non-state Pension Insurance has provided a reasonable doubt that protection of its requirements would be impossible. On the background of the institutions to be established and enforced, this becomes more and more impossible. So, we have 3 active pension schemes despite the years of practice. By taking the improvement of the existing shortcomings into account and sharing the world-wide practices, improvement of the legislation and dosed and deliberate changes made from time to time, it is possible to create a subtle pension scheme in the state that will be a precondition of the strong state.

The aim of this work is to reveal the existing shortcomings at first, to share the recommendations developed at their expense, and the establishment of a different view of some approach on the basis of analysis of future reforms.

Negative result and the hindering factor of the reform is that severe social background are increasing, but insufficient confidence to the financial institutions prevents development of private pension insurance; however, readiness for this reform is observed in the society.

The state has taken the path to the right direction when it decided to create two types of pension schemes which ultimately resulted in a successful and financially profitable reform on the basis of proper management and clear regulations, with which either employer and the employee, as well as the state will be satisfied.

References:

1. Civil Code of Georgia, Parliament of Georgia 1997.
2. On the provision of non-state pensions and non-state pensions insurance, Parliament of Georgia 1998.
3. Approval of the Rule of Determination of the Assets admitted to cover the Insurance Reserves and their Structure, Parliament of Georgia 2013.
4. Pension reforms, The Ministry of Economy and Sustainable Development of Georgia, 2016.
5. Strategy of the capital market development, The Ministry of Economy and Sustainable Development of Georgia, 2016.

Georgia V. Russia Legal Disputes at the European Court of Human Rights

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Abstract

The purpose of the article is to review current and completed legal disputes between Georgia vs. Russia in the European Court of Human Rights. What is the fate of Russia-Georgia disputed complaints on international arena today and what is the view of international courts and tribunals to restore the rights of victims of conflicts and war? What are the steps to be taken by the Georgian government to end legal disputes with the desired result of the Georgian state to restore the rights of victims? The main cause of legal disputes is the aggressive actions of the neighboring state. Every of such aggressive act was damned not only by Georgian statehood, but also by a lot of people - ethnically Georgian or non-Georgian. The closest Georgian history reveals the facts of mass expulsion of ethnically Georgians from the Georgian territories; up to 300000 Georgians are deprived of their right to property and cannot return to their homes. It is important to determine and analyze the decisions made by the International Courts in order to determine future actions for legal disputes which had a place over the years between two countries, for example: Mistakes that were made and the lack of negotiation between the two states.

Keywords: ECHR- European Court of Human Rights; ICJ - The International Court of Justice; ICJ - The International court of Justice Hague; CERD - Committee on the Elimination of Racial Discrimination

Introduction

Georgia has distinguished itself to be a significant geopolitical location. Georgia has been connecting the countries in the North, South, West, and East. It is referred to be the way that connects Europe to Asia - the old Silk Road. This factor serves as a good ground for the political, social, and economic development of the country. However, this factor also brought about the great interest of large and powerful states in the world in order to control this key place.

Georgia has been able to cope with such powerful countries for centuries and has been repeatedly invaded over the years. Also, they are neighboring states that still continue secret or open aggression to expand their influence on the territory of Georgia.

In order to stop the aggression of the neighboring state and restore the rights taken away from Georgia, Georgia does not leave any other options than to seek justice in the international courts.

The materials submitted to the International Court of Justice, the discussed cases, and the decisions made through which many people hope to restore justice is regarded as the only way to restore justice. One of them is Complaint received in the European Court for review in 2009. A number of illegal actions stated in the suit, which led to repeated violations of the rights guaranteed by the European Convention on Human Rights of Georgian Citizens, were recognized as admissible and a decision was also made after a long hearing.

The claim that was not accepted for review is exemplary for analyzing mistakes and for reviewing future actions: The Hague International Court decision has not received Georgian lawsuit of ethnic cleansing from Russian Federation and has named the CERD Article 22 of the Criminal Procedure Code, according to which, the ICJ hearing does not have the authority. Before the suit was filed in the Hague court, Georgia raised this issue in the United Nations Committee on the Elimination of Racial Discrimination and to negotiate with Moscow on this issue.

The first suit against Russia in European Court of Human Rights was based on mass extermination and inhuman treatment of Georgians in 2006-2007. Three Georgians died during the mass deportation of Georgians and 5 thousand Georgians were expelled from Russia.

The European Court of Human Rights filed a complaint in 2009 (Georgia vs. Russia (no.1)): "A series of illegal acts that led to repeated violations of the rights of Citizens in Georgia, guaranteed by Convention, were admissible (Has passed Jurisdiction over the Grand Chamber)".

The decision was made by the European Court of Human Rights on 3rd of July 2014. After several years of review, the judge delivered the final part of the decision.

The basis for the decision is a violation of several articles of the European Convention in 2006: "The Russian side has taken a coordinated policy of arresting Georgians, arrests and expulsion from the country and therefore violated the 4th Protocol of Protocol No. 4 of the Human Rights Convention. During the arrests and detention, Georgians were in degrading and inhuman conditions which violated the Articles 3 and 5".

Russia has violated the European Convention on Human Rights and its numerous protocols. It is also worth mentioning that the suit filed by the case included 130 individual case.

On 31 June 2016, the Ministry of Justice sent a case of 1,775 deportees from Russia to Strasbourg; however, the issue of compensation for 4 600 victims has not yet been decided.

Georgia filed the second suit against Russia in August 2008 at the International Court of Justice Hague (ICJ). Complaining about the violation of the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Russian Federation conducted all forms of racial discrimination against the Convention adopted on December 21, 1965.

The complaint reflects the current situation: The Russian Federation with a member of state agencies, state agents and individuals encouraged by the government of South Ossetian and Abkhaz separatist forces, violated the fundamental requirements of CERD, including the Articles 2, 3, 4, and 6 of the Convention.

Georgia demanded from the court to discuss the circumstances of the dispute and to issue relevant conclusion: "From the beginning of the 1990s, the Russian Federation systematically produces the policy of ethnic cleansing of other ethnic groups living in the regions of South Ossetia and Abkhazia".

Russia submitted four solicitation to the court to annul Georgia's appeal. According to the solicitation filed by the Russian Federation in the Hague Court in December 2009, the jurisdiction of the UN International Court did not include this claim.

Russia has justified the motion with a number of arguments. The first of them states that there was no "dispute between Tbilisi and Moscow" regarding racial discrimination against ethnic Georgian population of Abkhazia and South Ossetia and that Tbilisi had never officially made this issue known directly to Moscow.

The second argument is related to the request not to review the case based on procedures of the Article 22 of the CERD. According to this article, the court does not have the authority to examine the case. Before the suit was filed in the Hague court, Georgia raised this issue in the United Nations Committee on the Elimination of Racial Discrimination and directly negotiated with Moscow on this issue.

Russia's first argument was not shared by the court, and declared, that when Georgia filed a lawsuit, there was a dispute between two countries for Russia's implementation of CERD obligations.

Instead of sharing the second argument before the suit was submitted to the Hague Court, Georgia did not attempt to discuss the issues related to CERD specifically with Russia and did not try to use other mechanisms under the Article 22 of the Convention.

There is no doubt that Georgia's suit has been defective. It was not able to take all the circumstances and the power of the response actions.

The court considered the suit and set it up to ten votes to six: "has no authority to consider suit against Russia".

On April 1, 2011, the plaintiff's chairman, Hisashi Owada, made an announcement at the public hearing.

On October 13, 2015, the International Criminal Prosecutor General, Fatus Benusuda, appealed to the same Court to investigate the crimes committed during the 2008 war and after. The basis of the appeal was the appeals sent by 6335 war victims from Georgia.

The Criminal Investigation Chamber of the International Criminal Court concluded that "it is a reasonable basis for that crimes were committed in the jurisdiction of the Hague Court in South Ossetia and in the surrounding areas".

On January 27, 2016, the International Criminal Court (ICC) allowed the prosecution office to begin investigation.

The International Criminal Court appealed to the Ministry of Justice of Georgia and the Chief Prosecutor's Office to actively cooperate with the International Criminal Court (ICC) in order to effectively and smoothly conduct investigation on the territory of Georgia; "Provide to the Court all investigative materials available to them and ensure the unhindered work of the prosecutors and investigators of the Hague Court on the territory of Georgia. With the cooperation of the Ministry of Justice of Georgia and the Chief Prosecutor's Office, the International Criminal Court must carry out appropriate measures to protect the victims and witnesses. Local authorities and regional organizations should cooperate with the court to ensure the detention of suspects".

Russia is absolutely against investigating this fact, and the fact that Russia is out of the composition of the International Criminal Court is remarkable. Russia signed the Rome Statute on November 13, 2000, but did not ratify it.

Also, the investigation of the case complicates the fact that the Prosecutor's Office of the International Criminal Court representatives cannot enter the occupied territories in favor of Russia.

Hopefully, the International Criminal Court will be able to investigate very serious crimes and punish the perpetrators.

Conclusion

In conclusion, the outcome of the legal disputes and the future shows that significant decisions were made in the European Courts. Also, several lawsuits are at the discussion stage in the international courts. Hopefully, European courts and international tribunals Judgment will be impartial on the

suits submitted by Georgia, to punish the perpetrators and to dignify the dignity of the rightful people.

References:

1. Application of The International Convention On The Elimination Of All Forms Of Racial Discrimination, (Georgia V. Russian Federation), filed in the Registry of the Court on 12 August 2008.
2. Application of The International Convention On The Elimination Of All Forms Of Racial Discrimination, (Georgia V. Russian Federation), Written Statement Of Georgia On Preliminary Objections, 2010.
3. Case of Georgia V. Russia (I) (Application No. 13255/07), Judgment (Merits), Strasbourg, 2014.
4. European Convention on Human Rights, 1950.
5. European Court of Human Rights <http://www.echr.coe.int/>
6. International Criminal Court <https://www.icc-cpi.int/>
7. International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965.
8. Kenneth, N. Waltz (1979). Theory of International Politics.
9. Natroshvili, D. (2015). Conflict in Abkhazia: history and modernity.civil.ge.15.05.2015.
10. Team of authors (2005). International Human Rights Law: dictionary-reference book, Tbilisi.
11. The International Court of Justice, <https://www.ictj.org>
12. Thomas, C. (1967). Schelling, Arms and Influence.

Political Mobilization and Youth

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Abstract

Political mobilization of youth is one of the most important issues among the contemporary political scientists. The goal of the article is to highlight the role of youth in the formation and development of dictatorship and authoritarian regimes on the pattern of “Hitlerugend” in Nazi Germany and “Komsomol” in the Soviet Union. Besides, the study represents the importance of youth political mobilization against authoritarian regimes regarding the political processes of modern period that occurred in Eastern Europe, Ukraine, Georgia and Arab World. (“Otpor”, “Kmara”, “Time” “Arab Spring”). Youth political self-mobilization and civil activities are discussed in the article, like 15M, YO SOY 132, and Occupy movement. There are reviewed types of political mobilization. Content analysis was used in the article. Essential findings were represented on the basis of research analysis. An effective development of state youth policy is a very important issue in order to encourage state development and democratic processes by youth participation.

Keywords: Youth, policy, mobilization

Introduction

Relationships between generations have always been the subject of interest throughout the various state formation processes around the world. The qualified and purposeful development of the mentioned relationships has been the foundation of the public life advancement, evolution of civil society, building trust between generations, and improvement of social welfare.

Political mobilization of youth is one of the most important issues thoroughly examined by contemporary political scientists. Western countries’ researchers mostly consider that mobilization alike should be recognized as the activity evidenced on the individual and group through the influence of political leaders and organizations.

In the article titled “A Functional Approach to Comparative Politics”, democratic systems are divided into the institutions regarding autonomous

articulation of public interests on the one hand and institutions regarding national policies on the other hand (Almond, 1960).

Political mobilization has an influence on social-cultural and institutional transformations. According to K.W. Deutsch, mobilization is the process of changes taking place in different countries under the transition process from traditional models to modern ones. However, these complex changes have a considerable effect on political behavior. Unless there is the change of political socialization, it is impossible to develop the new model of political behavior. It is achievable only in case of civil society mobilization and participation in political life (Deutsch, 1961).

The style of mobilization has been changing significantly in the field of political systems. Scientists define two international types of mobilization: authoritarian and rivalry. Rivalry mobilization type is the most common one in the democratic-political systems. The mentioned system considers the permanent engagement of civilians in political relationships that ensures its stability; hence, it is characterized by spontaneous-political activities of particular citizens. Rivalry type of political mobilization implies autonomous and effective institutions, articulation of social and political interests, and united democratic system as a political culture.

“Authoritarian” type of political mobilization is not common for the democratic system and public that is keen to the political education. This type of political mobilization is built on political propaganda and attracts masses to participate in policy. Mobilization of citizens in the developing society results in the confrontation and opposing mind. The mentioned style of mobilization considers protest that represents antagonistic and hostile way of political fight. Social-political conflict might be real and/or false, e.g. social and economic problems, as well as financial issues of social class may cause citizens’ protest. Meanwhile, the mobilization process may occur based on fabricated issues, e.g. discrimination of national languages, fear of nationalism, etc.

It is clear that the forms of protest are the evidence of social confrontations and conflicts. An American researcher, Rosenau (1974), defines the types of social mobilization and confirms the mentioned theory. The majority of the citizens in mundane life remain politically indifferent in a stable-democratic society. 10-15% of the population is represented actively in the political life of the country – these citizens consider themselves to be involved in the political course; they are interested in the political issues and are actively represented in the political activities or movements. The mentioned ones are the nucleus of the political system. These people belong to the middle class; they have strong political opinions and are well informed. Also, they have competences in civic engagement processes and have highly qualified experiences. These citizens are permanently engaged in political processes, while others are involved in the elections during the period of

political instability only. Unpredicted growth of “interested society” results in the political cataclysm which is characterized as a negative event. The “interested society” for the transformation society consists of less than 10%, while masses are actively and immediately involved in the processes in a protest manner (Rosenau, 1974).

The consolidation of the society is very important for the developing society, since the mobilization in the mentioned society characterizes confrontation and resistance. The problem of youth involvement in the political processes is one of the arguable issues. Political mobilization is a troublesome problem in the modern policy, especially youth participation. A high interest among scientists regarding youth issues highlights the importance of the mentioned social class and commercial organizations and political parties in the country. Nowadays, youth political compassion and their political attitudes and involvement in the social-political system are the core subject of interest.

Globally, youth participation and representation in institutional political processes and policy-making is relatively low. Young people are not appropriately represented in the formal political structures that are evidenced by the low rates of parliamentary involvement, political party participation, and electoral activity among youth worldwide. One of the problems is the lack of regulatory mechanisms promoting youth involvement. In many countries in the world, only individuals aged 25 years or above are suitable to run for parliament (United Nations Development Programme 2013, 11).

The exclusion of young people that are considerable part of the society in the world from formal political processes threatens the legitimacy of political systems. However, this is as far as a huge cohort remains unrepresented or underrepresented which in many cases leads young people to find alternative means of political engagement (United Nations World Youth Report 2016, 63).

When young people feel that their frustrations are being ignored or trivialized and are not given adequate consideration in governance and decision-making, they may, in some cases, resort to violent and extremist activities (United Nations World Youth Report 2016, 66).

In recent years, such groups have become more and more adept at using and manipulating social media and leading online campaigns. Having expanded their reach to a global level, they are able to attract young people from all over the world (United Nations World Youth Report 2016, 66).

Youth engagement tools are actively discussed and fulfilled in the youth political organizations. Their methods cover outer attraction and propaganda forms. Youth organizations mostly utilize these practices; hence, there are cases when the following factors are prevalent: goals of the political

party, programs, organizational structures and coordination with political organizations, and financial resources.

One of the forms of youth political mobilization is a political action in order to attract youth for participation in political organizations. Youth political organizations ordinary use the most glamorous and interesting engaging tools, which is mostly marching on the streets.

The article covers three aspects of political mobilization: 1. Ideological and political mobilization of youth in favor of dictatorship and authoritarian regimes; 2. Youth political mobilization against the dictatorship and authoritarian regimes; 3. Self-mobilization of youth under civic participation principles.

While examining the issues regarding youth political and ideological mobilization in favor of dictatorship and authoritarian regimes, it is worthwhile to do a political analysis of a “Hitler Youth” in Nazi Germany and children and youth organizations like “Oktobrists”, “young pioneers”, and “the communist union of youth” in the Soviet Union.

In the 1930s, German society was not a monolithic society and there was a chance that not everyone was ready to follow the regime. As a result, the political elite took all its resources to attract the attention of the youths.

Nazi party had 30% in the Reichstag when Hitler became a chancellor of Germany. The following actors remained in the German political life: Communists, social democrats, religion organizations, monarchists, and trade unions. Nazi party launched the political repressions and all the actions were legitimizing by the persuasion of the actualization of historical consciousness. The Ministry of Public Enlightenment and Propaganda was founded in 1933 (Minister Joseph Goebbels). The main slogans were: “Fight against unemployment”, “Liquidation of the Versailles Treaty”. The main ideological concept was “Aryan Race”. The core subject of teaching in the educational policy was about the superior race. The German society was not ready for ideological mobilization. There was great unemployment and Germany’s demeaning position after the Versailles peace agreement. The society expressed its dissatisfaction regarding the forced radio broadcast and magazine articles from the Ministry of Propaganda. Anxiety was boosted under the race theories and aggressive antisemitism ideology. Consequently, the emphasis was redirected to the ideological mobilization of youth. The Hitler Youth Nazi Party’s official youth organization became an integral part of *Sturmabteilung* in 1926. Youth were trained on military as well as ideological issues. However, only males from 10 to 18 were eligible to become a member of the organization.

From the very beginning, “Hitlerjugend” represented the symbol of violence and injustice, as they assaulted and violated political opponents. There was arisen the issue of formation of the Hitler Youth into an attractive

Nazi organization. One of the priorities of the Ministry of Propaganda was the youth physical education. Priority was given to certain sports that were intended to promote fighting spirit, e.g. box, motor racing. They formed the special fashion trend in youth in order to develop the representative of new Germany. In 1930, Hugo Boss Company produced the new model – a black uniform, black boots and white gloves – which is the most fashionable form of Nazi to distinguish the superior race representatives from others. They organized marches to make a big impression on youth.

The members of “Hitlerjugend” eagerly participated in the elections. However, they played a great role in Nazis rise to power. Whereas Hitler had forbidden all parties except Nazi party, people who officially supported “Hitlerjugend”. They started athletic and ideological education process of youth and taught hand-to-hand combat, boxing, and use of weapons. Furthermore, there were organized summer camps and it became fashionable to become a member of “Hitlerjugend”. This organization was a springboard for those who were interested in career growth. In 1937, under the agreement between Schirach and Hitler, “Hitlerjugend” turned into a major reserve of SS (<https://www.britannica.com/topic/Hitler-Youth>).

Piecemeal Nazis were not associated with destructive squads or unemployment. Nazis grew into a respectable one for the society and honorable one for the youth. Nazis stressed their ideology in youth notion about race theory, pure blood, and superior race belief. Education reform aims to prepare teachers as ideologists. The new disciplines were emerged in schools as well as in Universities: Nation, Nation and State, People and Race, Family, Ethnology and so on. New subjects were taught in schools. Since 1938, Nazis had officially been used as censorship in schools.

It is worthwhile to review the ideological mobilization process in the Soviet Union. Flags were a popular tool for sociologists to gauge the socialization of children into the national context. At some point during childhood, flags shifted from being a colorful object to being an important symbol in a child’s life. As children mature, they develop a sense of nationality and their national flag becomes an important symbol of that identity.

In the Soviet Union (1922–91), the use of flags by children was quite common and a number of flags were designed specifically for them. Within the Soviet Union, there was no competition among children’s organizations. *Komsomol* - the Communist Union of Youth, controlled all of them. *Komsomol* was the youth arm of the Communist party and was responsible for the development of all organizations for the country’s children. Membership into the organizations was not only supported by the government, but heavily encouraged as well. Two of the primary purposes of the Pioneer Organization in the Name of V. I. Lenin, was to build the children’s character and to teach the children how to function within a collective.

Octobrist groups of little Octobrists - Pioneer Movement for ages 7-10 - were organized at schools. They were taught that “Octobrists are hard workers, love school, and respect their elders; only those who love work are Octobrists.” (Platoff, 2010)

At the age of 10, children were ready to move into the Young Pioneers; their motto was “Be Prepared!” At the age of 14, being a member of Pioneer Organization, children were proposed ideological communist theories. It was impossible without Pioneer Organization membership to become a member of the Communist party, and without the latter, there was no future career for young persons. Correspondingly, the state “forced” everyone from childhood to be involved in the overall mobilization movement.

As for the Youth political mobilization against the dictatorship and authoritarian regimes, it is noteworthy to state that the political processes of contemporary period occurred in Eastern Europe, Ukraine, Georgia, and Arab World.

There were constant protest movements in Serbia during Slobodan Milosevic period, mainly organized by students. In 1998, student groups, activists and other student movement leaders consolidated around the peaceful change of authoritarian regime. They elaborated a concept to establish an organization without a leader and with a vertical management hierarchy. Besides, they should have a logo that would be the source for communication with citizens living faraway. Regarding the fact that Milosevic regime totally controlled the media resources, the members of the organization invented the symbol to depict easily on the walls. The symbol was a clenched fist. In addition, the organization adopted student movement “Otpor” title. The goal of the organization was to change Milosevic regime and the fight method was nonviolent. Police arrested four students because of depicting clenched fist symbol on the building façade. The case generated the development of nonviolent strategy of peaceful protest – performances by the organization. The new concept strategy was used to caricature, criticize, and mock the regime. The mentioned strategy turned out to be admirable for the people and took great sympathy. The organization principles spread across the whole country. The student movement “Otpor” was not eligible to participate in the elections in 2000 and therefore, they decided to influence opposition parties in order to create anti-government force. At the same time, they had been working to create a coalition of Non-government organizations.

After the formation of the viewpoint of the society, the opposition parties signed an agreement on the establishment of “Democratic Opposition of Serbia”. The first meeting was held in February 2000 where a decision about turning the student movement into the People’s movement was made.

Milosevic called an early presidential election in 24th of September in 2000. “Otpor” launched the campaign to call citizens to participate in the

elections and say "NO" to the regime of Milosevic. Under the Otpor initiative, 42 non-government organizations started the campaign - It's Time!

Vojislav Kostunica representative of the Democratic Opposition won in the election, but Milosevic had tried to falsify the election results that caused a spontaneous riot. Consequently, due to pressure caused by the protests, Milosevic resigned.

Otpor played an enormous role in Serbian revolution and demonstrated to all political parties that it is achievable to change a regime using nonviolent ways. "Otpor" activities were based on the creation of organizations like "Kmara" in Georgia which played a major role in the process of youth mobilization in Georgia, followed by Eduard Shevardnadze's resignation and "Rose Revolution", and the establishment of the organization "Time" in Ukraine, followed by "Orange Revolution".

While participating in the fight against authoritarian regimes, youth participation is important in Arab countries. In the Arab world, a protest wave occurred in 2011. "Arab Spring" was a rumor since 2010 in Tunisia, Egypt, and Yemen. Civil war took place in Livia, during the regime and Syrian civil war in Bahrain. Also, there were mass protests in Algeria, Iraq, Jordan, Morocco, and Oman; and less significant speeches in Kuwait, Lebanon, Mauritania, Saudi Arabia, Sudan, Tibet, and Sahara. Controversy occurred in the Israeli border in 2011.

In the framework of the "Arab Spring", the forms of civil resistance, such as demonstrations, strikes, and rallies were actively involved in these processes. Most importantly, social media and internet were used for organizational issues and organization. The government of different states was confronted with the Internet censorship in some countries (e.g. Egypt, then Libya, Internet accessed entirely within its borders, and restrictions on mobile connections.) The slogan of the demonstrators was "people want to overthrow the regime" (<http://www.bbc.com/news/world-12482315>).

By 2012, the Arab Spring had achieved concrete success. Tunisia's President Zine El-Abidine Ben Ali fled; Egypt's President Khosni Mubarak resigned; the Libyan leader's in Muammar Gaddafi's regime was overthrown. The President of Yemen, Ali Abdullah Saleh, left the presidency. Leaders of several countries claimed the postponement of the deadline (Sudanese President Omar al-Bashar, the term of the Presidency expired in 2015, Iraqi Prime Minister Nouri al-Maliki 2014). King Abdallah overthrew the protest rallies in Jordan (<https://www.britannica.com/event/Arab-Spring>).

Special interest involves the analysis of youth self-analysis. The political system is a set of elements, the central issue of the relations of these elements, and the political power. Together with the state and political party, one of the main components of the political system is the public organization.

Their coexistence is the key condition for harmonization and balance of the system.

The public organization is recognized as the constituent part of the political system in the Constitution of almost every country of the world. In the form of participation in power, intensity and specificity, civil organizations differ from each other. The difference is due to the variety of interests that shape the form and content of the public organization.

In the theory of politics, the public organization expresses the concept of "pressure groups", "groups by interests", and "interested groups".

In the modern political concepts, there is a great place for youth community organizations.

In assessing the political role and significance of youth organizations, theorists frequently point out that youth is a driving force of revolution (Sart, Mulls, Aron). This view is a systematic approach to the teaching of H. Marcus.

According to H. Marcus, the proletariat cannot perform a world-historic mission for the middle of the 20th century. A social force ("social agent") recognizes the main source of public progress on H. Marcu. In his opinion, youth is a potential revolutionary force, a vanguard and catalyst for social development. Vanguard, so long as the first will raise the voice and the catalyst in the social group and layers will revolutionize the revolutionary spirit. According to Markus, youth denies the Marxist understanding of class struggle. It supports extremist action of anarchist character.

The Scouts Union is the oldest organization of the International Children's and Youth Movement. The Scouts World Bureau was created in 1907 in Geneva. Most especially, the US and Canadian associations are strong and numerous. According to the charter, scouts swear to "honestly fulfill their duty to God and the country", membership of the same charter is voluntary, and the organization is independent of the state and political parties. Scouting in particular contributes to the development and mutual support of the international relations of youth.

The "Provo" group formed in the Netherlands fought for a number of progressive ideas, such as participation in the Vietnam War, as well as anti-air and water pollution measures. It also entails the protection of historic monuments, the demands of strengthening police humility and much more. They were particularly critical of the hypocrites and the burden of the older generation.

In California, the "hippies" were made up of the whole country. Most of them came out of the bourgeois and aristocratic family. These young people left their families to be "one group". Their aspiration was the distinctive signs of flower, nonviolence, sex, pacifism, passion, ignorance of reality, drugs etc. In recent years, "Hippie" movement has slowly dropped. UNESCO's

International Conference on the Youth Issues of August 1964 in Grenoble is rather noteworthy. We can read in its decision the following:

1. "It was thought earlier that the only purpose of youth was to prepare themselves for future life."

2. It is now clear that the youth should have the right to take part in the political and social life as early as possible and establish their place in the society.

3. Thus, that is why it is necessary that youth should "be involved in society and its representatives should be considered as a young big boy and not as adolescent children".

In modern times, there are some examples of self-mobilization of young people that are based on determining and establishing their place in public and political life.

In 2011, Spain experienced an economic crisis that had one of the highest rates in terms of unemployment in Europe (reached a euro zone record of 21, 3%). In connection with this fact, on May 15, 2011, Facebook and Twitter users in Spain created a platform to encourage young people to embark on street rallies. The Youth organization "Youth without Future" -15M became a civic movement that demanded rapid changes and improvement of the Spanish democratic system since May 2011. This large, horizontal, non-partisan movement, represented mainly by middle and working class, was a clear example of the civil society movement which was based on the multiplicity of the principle of non-violent methods. It was established strictly as a political actor that, in the words of Habermas, mounts a continual siege on the fortress, 'without intending to conquer the system itself'. The protest is aimed at improving the political system with the political program of reforms - without the intention of overcoming the existing political power and intention of coming into power – based on a firm commitment to the idea of its approach to "real democracy" (<http://repositori.uji.es/xmlui/bitstream/handle/10234/80466/53905.pdf?sequence=1>).

The organization called for unemployed and low-paid young people in the risk group to leave on May 15. On the same day, several rallies took place in the streets of many cities, and on the same day, they took up shares in the following cities - Dublin, Lisbon, Amsterdam, Istanbul, Bologna, London, and Paris (130,000 people went out in Europe on May 15). Their website was supported by up to five organizations (Association). They refused to have relations with all political parties and professors. They were protected from all institutional ideologies and political views.

The Spanish Prime Minister, Philippe Gonzalez, considered this organization as an extraordinarily important phenomenon. According to him, representatives of the Arab Spring demanded the right to vote in the Arab world, while the movement does not make sense to vote 15 M.

The social movement YO SOY 132 is noteworthy which was launched by the students of the Mexican Private and State University on May 11, 2012.

This movement began against the candidate of the Institutional-Revolutionary Party Enrique Peña Nietzsche (Presidential Candidate). Thus, this candidate visited IBERO-AMERICAN UNIVERSITY on May 11. When the discussion was over, the student asked the question on the civil protest in the San Salvador Atenco in 2006. (At that time he was the governor of the Mexican state.) The protest was driven off by the police by his order. During this time, many Protestants suffered and died, among them – a child. Peña responded that this was a deliberate action to establish order and peace. The Supreme Court granted him the right to do it. His response was followed by agitation from students. This meeting was recorded by students and was uploaded on social media, but the state television and newspapers reported that it was not students but hired people who started the protest.

131 angry students published the video showing the student cards that they were students of this university. People supporting these 131 students claimed that they were 132 students themselves. The initial tactics was peaceful marches and concerts. Many of them joined the city and received supporting texts from abroad (50 cities around the world).

In 2012, representatives of the Movement gathered at the State University and agreed to form a national force after the elections.

The members of the Movement considered that it was their success that the second presidential debates in Mexico were public (Although they considered them to be untrustworthy and conducted the third debates themselves). The third debates were already organized by 132 members. These debates were made available through the Internet. The movement 132 was compared to the Arab Spring since both were done through social media (communication and organization through social media).

The Movement 132 did not have a leader; it had a horizontal structure of management. The organization was supported by the organization 15 M. In addition, the ideological supporter was WikiLeaks founder Julian Assange (http://scholarship.claremont.edu/cgi/viewcontent.cgi?article=1234&context=scripps_theses).

The international example of youth self-motivation is the organization Occupy Movement which is an international socio-political movement against social and economic inequality and the lack of "real democracy" in the world. The Movement has a lot of different directions, but the main issue is on how big corporations and global financial systems govern the world from which minorities benefit unequally and undermine democracy.

The first protest action, which attracted the attention of broad masses, was Occupy Wall Street in New York, on September 17, 2011. The protest rallied more than 951 cities in 82 countries. While most protests were taking

place in the US, however, by October 2012, all continents were included except for Antarctica. At the beginning, reprisals by police were minimal. However, since October 2011, their number increased when the police drove off the Oakland protest by force.

This Movement was somehow inspired by the Arab Spring. The main motto of the Movement was "We are 99%".

In October 2012, the Executive Director of the Financial Stability of Bank of England noted that the protesters were properly criticizing bankers and politicians and urged them "to act according to the moral principles."

In 2009 and 2010, students of the University of California occupied the campus buildings in protest against the reduction of budget, increase of the tuition fees, and reduction of the number of employees which followed the Great Recession of 2008. According to the newspaper "Dissent", "the slogan "conquer everything, ask for" first appeared in the context of the movement of the California University students."

The activists used web technologies and social media such as IRC, Facebook, Twitter, and Meetup. Indymedia assisted participants in communication issues, claiming that Skype had made calls from 80 places. Members of the Movement expressed their commitment to democracy. It, therefore, supports nonviolent methods (<http://occupywallst.org/about/>).

Conclusion

In conclusion, we can note that the main ideological aim of the Nazi Germany and the Soviet Union was to recruit youth, and to form a warrior spirit in a human. He/she had to be an ideal performer of a command and had to have racial strength and individuality.

The political elite of both regimes used the technology of indoctrination of young people. In a political vision, the metaphor "Savior" is identified with the Bible story. The image of the savior can be appropriate for Hitler and Lenin. They are like the nation's fathers and spiritual leaders (There are well-known phrases: "Form my Fuhrer", "For Lenin", "For Stalin"). In the esoteric religions, the secret communion implies transition from the secular world to the divine way of life. In Nazi and Communist regimes, the ceremony of "baptizing" young people took place while accepting them into children and youth organizations (While joining Hitlerjugend, a teenager was given a knife, a pioneer – a neckerchief, a Komsomol – a badge). We deal with the transformed forms of the Christian initiation of the forms based on the direction of ideology. It is "taking communion with ideology" instead of taking communion with God.

The strategy of the ideological and political mobilization of young people in Nazi Germany and the Communist Soviet Union led to using young

people, as the greatest potential resources, in strengthening the regime and fundamental management strategies.

Depending on this strategy, we can assume that the mind's mind is vulnerable. It acts mechanically and follows the directive. The government maintains the power of youth in ideological, moral, and intellectual leadership. "We are asking ourselves and we think we're dealing with ourselves, we have the rules of life and behavior, and we think that we are free, we are encouraging and we think we do something with our will and carry on our own desires." (Antonio Gram)

In the beginning of XX century, the governments of Germany and the Soviet Union carried out the ideological mobilization of youth to strengthen their own political influence, and youth organizations were regarded to be the power of authority. On the other hand, in the beginning of XXI century, alongside with formation of civil society, the power of dominant groups acquired legitimate and natural character. Leaders of dominant groups are young people; organizations and movements are formed by them. Most young people want to establish hegemony. According to Antonio Gramsci, hegemony can be defined as establishing invisible power by the ruling class. Youth in the modern political prism is the main flagship of the overthrow of dictatorial and authoritarian regimes.

The cardinal changes of political and social-economic character have caused a lot of problems that have done serious harm to youth. It should be noted that reevaluation of value orientations, facing difficulties while trying to understand the essence of life, hopelessness and certain indifference, excessive criminal and other related behaviors can be considered as characteristic features of today's youth. Based on revolutionary liberation from the old dogmas, negative tendencies and false values do not mean that the new conditions automatically generate positive trends for society's development.

Based on the above mentioned, young people's participation should contribute to effective implementation of the state youth policy.

References:

1. Almond, G. (1960). Introduction: A Functional Approach to comparative Politics. *The Politics of the Developing Areas*. Princeton.
2. BBC News (2013). *Arab Uprising: Country by Country – Tunisia*. <http://www.bbc.com/news/world-12482315>. www.bbc.com. (01.07.2017).
3. Casero-Ripolles, A., & Feenstra, R.A. (2012). *The 15-M Movement and the new media: A case study of how new themes were introduced into Spanish political discourse*. MIA. Media International Australia, 144: 68-76.

4. Deutsch, K.W. (1961). Social Mobilization and Political Development. *American Political Science Review*, #55. Sept.
5. Encyclopedia Britannica (2015). *Arab Spring*. <https://www.britannica.com/event/Arab-Spring>. www.britannica.com. (05.07.2017).
6. Encyclopedia Britannica (2017). *Hitler Youth*. <https://www.britannica.com/topic/Hitler-Youth>. www.britannica.com. (15.07.2017).
7. Nikolayenko, O. (2012). Origins of the movement's strategy: The case of the Serbian youth movement Otpor. *International Political Science Review*, 34(2), 140 –158. <http://faculty.fordham.edu/onikolayenko/Nikolayenko%20IPSR2013.pdf>. ips.sagepub.com. (09.07.2017).
8. Occupy Wall Street (2017). <http://occupywallst.org/about/>. <http://occupywallst.org>.
9. Platoff, A.M. (2010). Soviet Children's Flags. *Raven: A Journal of Vexillology*, 17, 63-84. <http://escholarship.org/uc/item/1fv263z8#page-1>. (20.07.2017).
10. Rosenau, J.N. (1974). *Citizenship between Elections. An Inquiry into the Mobilizable American*. N.Y.-L.
11. United Nations World Youth Report (2016). *Youth Civic Engagement*. New York 10017.
12. http://www.unworldyouthreport.org/images/docs/un_world_youth_report_youth_civic_engagement.pdf. (01.07.2017).
13. <http://repositori.uji.es/xmlui/bitstream/handle/10234/80466/53905.pdf?sequence=1>. (11.07.2017).

The Problem of Limiting the Freedom of Expression for National Security Purposes

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Abstract

The presented article deals with the problem of restricting freedom of expression, a measure frequently utilized by governments, for the purpose of preserving national security, and which frequently causes controversy both in scientific circles and society in general.

1. Curtailment of Russian media outlets' capacity for dissemination of information within state borders by the Baltic States. This case concerns restrictions imposed by Lithuanian and Latvian governments on certain Russian mass media outlets, inhibiting their broadcasting for national security and public safety reasons.

2. European legal practice in regard to human rights:

2.1 *The Observer and the Guardian v. The United Kingdom*: This part is dedicated to analyzing the case of two British outlets, the Observer and the Guardian, having their activities restricted for publishing the contents of memoirs of former MI5 agent, Peter Wright.

2.2 *Castells v. Spain*: Analysis of the case that poses a question whether a restriction imposed for the sake of national security can in reality serve the goals of a certain political group.

2.3 *Incal v. Turkey and Surek v. Turkey*: These cases are illustrative of the importance of proper interpretation of national and international legislations, as well as imposing appropriate penalties for particular actions.

3. The Charlie Hebdo tragedy: How did the tragedy of Charlie Hebdo become the most controversial topic for the society at large? Can the magazine's activity be classified exclusively as the freedom of expression or was it a provocation that resulted in a terrorist act? Could imposition of certain restrictions have prevented that act?

Keywords: Freedom of Expression, National Security

Introduction

Freedom of expression is one of democratic societies' chief achievements, although even such societies sometimes encounter cases when their governments resort to curtailing this fundamental right.

Freedom of expression is acknowledged and guaranteed by numerous international legal acts, the first instance being the Universal Declaration of Human Rights, passed on December 10, 1948. The Article 19 of the Declaration states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" (11).

According to the European Convention on Human Rights, the freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to the paragraph 2 of the Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, horrify or disturb the State or any sector of the population. Such are demands on pluralism, tolerance and broad mindedness without which there is no "democratic society" (4).

Freedom of expression implies entitlement to one's opinions and views on any person, free access to information deemed important and necessary, and no limitations on dissemination of expressed opinions and information received. No one has the right to intervene in this process or place it under surveillance, regardless of space or society in which it is taking place.

However, as all rights and freedoms deemed fundamental, they can be limited under certain conditions and in case of necessity.

According to the same Article 10, if prescribed by law and deemed necessary for a democratic society, freedom of expression may be limited. The paragraph 2 of the aforementioned Article states the following:

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society,

- 1) in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime;
- 2) for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence;
- 3) for maintaining the authority and impartiality of the judiciary (3).

Despite this extensive list of conditions under which freedom of expression can be restricted, the Convention emphasizes that for imposition of restrictions by a government, harmonization of international and national legal

norms is necessary; moreover, imposition should serve the goal of averting real threats and be used only in case of necessity and only in the interest of the state and the society.

However, there are cases when governments face difficulty in drawing a clear line between national security and freedom of expression. When does freedom of expression pose a threat to the state's security? Does it always serve state interests, even if dictated by a certain political elite's partisan interests? Does certain government employees' interpretation of law correspond to the demands of international law? Is application of certain articles always appropriate to the situation at hand? Is the threat always correctly evaluated and does the penalty fit the offence?

As a rule, any kind of restriction in democratic countries is met with the society's painful reaction, and backlash frequently reaches international legal institutions, where each individual case is analyzed in details and is responded to. In this regard, the European Court of Human Rights occupies an important place when it comes to protection of those whose rights have been violated.

In order to demonstrate the importance of the problem described above and the sheer complexity of the approach it requires, let us review the examples from various countries, represented by cases of restriction of freedom of expression by their governments, with protection of national security being cited as the purpose. We are also going to take a look at international practice, namely, evaluations of such restrictive actions by national and international courts and other institutions, analyze problems and flaws that emerge during these evaluations, and touch upon measures to be taken in order to remedy them.

Limiting Freedom of Expression for National Security Purposes

1. Curtailment of Russian media outlets' capacity for dissemination of information by Baltic countries (Lithuania and Latvia)

For several years now, Baltic countries have been displaying acute mistrust towards Russian media outlets, considering them to be conduits for deliberate dissemination of information under the guise of freedom of speech and thus representing a threat to the countries' security and sovereignty.

Particular cases in relation to this issue feature temporary restrictions of certain Russian outlets' broadcasting for the purpose of maintaining national security.

In 2015, the Radio and Television Commission of Lithuania imposed a 3-month ban on broadcasting of two Russian TV channels – namely, “RenTV Baltika” in January and “RTR Planeta” in April. This ban was based on the experts' evaluation of content broadcast by these channels, their conclusion stating that the content was hateful and war incendiary in nature

(7). In June of 2015, the European Commission reviewed the measures taken by the Lithuanian government against the Russian channels and established that they were in full accord with the European Union's legislation (2).

On April 3 of 2014, the National Electronic Mass Media Council of Latvia decided to impose a 3-month ban on broadcasting of the "Rossiya RTR" TV channel. The reason for this was the TV channel's blatant violation of Latvian Law on the Electronic Mass Media – namely, the Articles 26.3 and 26.4 of this law, which state that "programmes and broadcasts may not include any call for fomenting of hatred or discrimination against one or more individuals on the basis of gender, race, ethnic origin, nationality, religious belonging or belief, handicap, age or other factors; any call for war or military conflict" (6).

The Council has also declared that Russian media outlets such as "Rossiya RTR" are controlled by the Kremlin and represent the so-called weapon of soft power. They are therefore disseminating tendentious information that has a negative influence on Latvia's national security interests.

The same media outlet was temporarily banned again in April of 2016, this time for 6 months, for calling for violence and violation of the European Union's regulations on audiovisual services and Latvian Law on Electronic Media (5).

Examples of Latvia and Lithuania have shown that imposition of restrictions on media outlets can be caused by what in both cases was represented by blatant violation of both national laws and EU legal regulations. In both cases, restrictions imposed by the respective governments were motivated by national security and social interests, not by those of a particular party or ruling elite. In addition, these countries did not in any way restrict other countries' media outlets or even other Russian outlets active within their borders – a testament to the fact that the countries' populations were guaranteed access to a diverse selection of information.

European legal practice in regard to human rights

The Observer and the Guardian v. The United Kingdom.

This case is a good example of how carefully European countries and European courts treat restrictions of freedom, and of actual existence of democratic and transparent mechanisms for observation of this process.

In the 80's, Peter Wright, a former MI5 officer, published his memoir titled "Spycatcher" without the counter-intelligence agency's permission. The memoir contained descriptions of illegal activities that MI5 was engaged in during the 1950-1980 period, such as unlawful eavesdropping on diplomats, negotiations, international missions and representatives, as well as all

diplomatic conferences taking place in London. Other activities included plotting and assisting in plots against other countries and their officials.

The book was first published in Australia, and court proceedings aimed at its banning started immediately after. It was precisely in that period that British daily publications, the Observer and the Guardian, published articles about the mentioned proceedings; however, the articles contained excerpts from the book. Due to this, the English courts, following the government's request, served gag orders to these two publications – and all other British periodicals – restricting any information disclosing the memoir's contents from being published (9).

However, the public interest towards the book was so high that the courts failed to prevent dissemination of its contents or halt its reprinting and publication. The book's manuscripts were obtained by another publishing house, which started publishing them piecemeal. In July of 1987, the book was published in the United States with its copies reaching Britain by post soon after; British citizens visiting the U.S. at the time were also instrumental in this, bringing back copies they had purchased.

Despite all this, the gag order against the Observer and the Guardian was maintained until October of 1988.⁴⁶

Both outlets lodged complaints with the Human Rights Commission. At the court, the representative of the British government named “national security” as one of the main reasons for legal intervention, explaining that at the moment of gag order's issuance, information contained in Peter Wright's work was a state secret. “Had this information been published, the British Security Service, its agents and third parties would have suffered extensive damage, given that many of the agents' identities would have been revealed; international relations would have also taken a hit, not to mention that institutional and public trust for MI5 would have dropped drastically. The governmental representative also commented that Wright could have inspired copycats among current and former agents. Therefore, after the book was published, the British government used “national security” as the reason for banning it, claiming that national security was indeed in danger, as Britain had to prove its security services' capability for protecting classified information to its allied countries” (9).

⁴⁶The National Parliamentary Library of Georgia. Freedom of Expression, Vol. I. The Observer and the Guardian v. The United Kingdom, 1991. Accessed 15.09.2017. <http://www.nplg.gov.ge/gsd/cgi-bin/library.exe?e=d-01000-00---off-0samartal--00-1--0-10-0-0-0---0prompt-10--.%2E-4----4---0-01--11-en-10---10-help-50--00-3-1-00-0-00-11-1-1utfZz-8-00-0-11-1-0utfZz-8-10&cl=CL4.3&d=HASH0123758f4b6f93f7ebad6979.3.2&hl=0&gc=0>=0>

The European Court of Human Rights started reviewing the case to determine whether the temporary gag order “was a necessary measure in a democratic society” after the book had been published in other countries. Eventually, ECHR established that following the book’s publication in the United States, the gag order was no longer justified, as the information contained within had already lost its confidential status and, thus, no longer required secrecy. Given all that, there no longer was “sufficient necessity” to maintain the gag order. ECHR also concluded that “in the conditions of a democratic society, legal intervention was not necessary post-1987”. Accordingly, the Article 10 of the Convention was violated in the case of the Observer and the Guardian media outlets (9).

A similar conclusion was reached by the European Court of Human Rights in the *Bloop v. The Netherlands* case. In 1987, the Bloop magazine found and published a classified report of 1981 by the General Intelligence and Security Service of the Netherlands (BVD). The report concerned BVD interests and activities (9).

These cases all serve to demonstrate that in democratic societies, government structures often fail to discern the line between national security and freedom of expression. This doubles the need for high level of awareness of international structures as well as their involvement in protection of fundamental rights of various countries’ citizens, should national courts fail to provide the necessary protection of freedom.

Castells v. Spain

This particular case provides an example of how a government imposed limitation sometimes can, under the guise of protecting national security, serve partisan goals of a single political force or group, such as their retention of power and associated comfort.

The case concerns Senator Miguel Castells of the Spanish Parliament whose political organization supported independence of the Basque Country. In 1979, Spanish press published his article named “Disturbing Impunity” in which he accused the government of failing to investigate the murders that had occurred in the Basque Country and in this wise being complicit in these murders. He also claimed that the Spanish government was planning to use all available tools to “hunt down” and liquidate Basque dissidents.

Spanish courts found Castells guilty of insulting the government and sentenced him to a year’s imprisonment. A lot of evidences provided by the defendant during the proceedings were dismissed as inadmissible. After Castells appealed to the European Court of Human Rights, the government named “prevention of disorder” as the legal reason for restrictions imposed on him. Castells, in turn, insisted that national courts acted exclusively in defense of the government’s interests, violating his right to freedom of expression.

The European Court of Human Rights established that the Article 10 of the Convention had been violated and that governmental intervention “was not necessary in a democratic society” and that Castells was free to express the same statements from a parliamentary platform as well as via the press, since “in a democratic society, governmental action or inaction calls for close scrutiny not only from legislative and judicial authorities, but also from the press and public opinion” (1). He, as an opposition leader, had a right to express his opinion about the political process without any restrictions, especially at the time when it was a subject of great public interest. In addition, ECHR also noted that it deemed national courts’ dismissal of the evidence provided by the defendant as another violation (1).

Therefore, the ruling made by the European Court of Human Rights shows us that local governmental structures and national courts sometimes make decisions that do not really correspond to interests of national security and are not dictated by interests of a democratic society, but are instead serving the partisan interests of a particular political elite, group or force, which is utterly in contempt of democratic principles and unacceptable for a democratic society.

Incal v. Turkey and Surek v. Turkey

These cases tell us of Turkish state authorities’ reaction to statements and calls made by those opposition-minded towards the government. Just how difficult is it to draw the line on whether a call represents a threat to national security or is simply an affirmation of where one stands? The latter is a guaranteed right for any politician as well as member of society, regardless of the position one occupies. Fulfillment of this difficult mission requires a significant degree of professionalism and proper interpretation of the law by certain government officials.

In 1993, Ibrahim Incal, the member of the People’s Labor Party that had previously been rendered defunct by the Constitutional Court, started disseminating leaflets that called on the people to raise their voices in regard to the anti-Kurdish campaign perpetrated by the Turkish government. He labeled the campaign as a “special war being conducted in the country at present against the Kurdish people”. The leaflets described the government’s actions as “state terror against Kurdish and Turkish proletarians” (9). Despite the leaflets not containing any hatred and calls for violence, the Turkish Security Police deemed them as calling for unrest and separatism. The national court sentenced Incal to 6 months of imprisonment, in addition to banning him from employment as a public servant, membership in political organizations and trade or other associations.

After reviewing the case, the European Court of Human Rights concluded that several articles of the Convention, including the 10th, had been

violated against Incal and that information disseminated by him did not contain calls towards unrest or terrorism. Accordingly, the restrictions imposed on him did not serve national security interests and were not proportional to actions perpetrated by him (9).

It is noteworthy that in the same year, ECHR reviewed another appeal by another Turkish citizen, Kamil Tekin Surek, establishing that in this particular case, the Turkish government was absolutely adequate in restricting civil rights for the purpose of preserving national security.

The appellant was a major shareholder in a company that published a weekly magazine. Two of the articles published in the mentioned magazine came down on government employees with harsh criticism for allegedly contributing to a mass murder that had occurred in “Kurdistan” (Southern Turkey). The appellant was found guilty of disseminating propaganda against the indivisibility of the State and provoking enmity and hatred among the people. He was subsequently fined.

Surek lodged a complaint with ECHR, but the Court concluded that the articles published by the company co-owned by him contained epithets such as “fascist Turkish army” and “band of murderers” (9). According to the court, the article exaggerated the violence that had occurred and contained calls for vendetta. One of the publications directly named several persons putting them under immediate threat of physical violence. In addition, the publications were made at the time of serious public disturbance and unrest, with state of emergency in effect. Due to all these factors, the publications could have sparked further unrest and violence.

Accordingly, the arguments put forward by Turkish public officials regarding recognizing the appellant as guilty were adequate and sufficient; moreover, the punitive measure taken against Surek – a fine – was proportional to the crime committed. Therefore, the Article 10 of the Convention was not violated (9).

These examples serve to demonstrate the importance of government officials’ scrupulousness in their approach towards protecting fundamental human rights and correct interpretation of laws by national and international courts alike, as well as proportionality of actions and penalties imposed by courts – one of the chief principles of jurisprudence.

The Charlie Hebdo Tragedy

The Charlie Hebdo incident is particularly attention-worthy when discussing public safety and restriction of freedom of expression. The tragedy remains a controversial topic till this day.

The editorial policy of the French periodical, Charlie Hebdo, and the 2015 attack on its employees sparked an irreconcilable debate on the following topics: whether a media outlet should refrain from publishing certain

information that might be deemed offensive to certain (religious) groups of people; whether a satirical magazine publication can endanger national security and public safety; and whether there is a boundary between offensive statements and freedom of expression.

Charlie Hebdo is well known in France for its scandalous and provocative caricatures. The magazine has numerous times mocked Islamic, Christian and Judaic religions and therefore, its reputation among the public was mixed, as it was difficult to discern whether its activity fell under the aegis of freedom of expression. Charlie Hebdo was twice banned in France, although its publication was resumed and continued uninterrupted in the 90's. Its modern iteration continued the trend of no-holds-barred criticism of politicians, religious leaders, etc. Radical Islam and its followers did not avoid the magazine's stinging wit, either.

On January 7 of 2015, the editorial office of Charlie Hebdo was raided by armed assailants who killed 12 people, including 5 cartoonists. The assailants chanted "Allahu ackbar" (God is great), which was a telltale sign of them being radical Islamists and of the attack being their reaction to caricatures of Muhammad that had earlier been published by Charlie Hebdo. Stephane Charbonnier, the magazine's editor-in-chief, had received death threats before, and lived under police protection until his assassination. Neither was the attack unexpected for other four satirists: Jean Cabut, Georges Wolinski, Philippe Honoré and Bernard "Tignous" Verlhac (10).

The phrase "Je suis Charlie" (I am Charlie) that became widespread on a global scale since the shooting is no less known to the public than the attack itself, as it expressed solidarity for those who tragically perished in the terrorist attack. The majority, however, use this phrase for the encouraging of freedom of expression, including that of the infamous magazine. However, despite overwhelming public support, some have expressed doubt in Charlie Hebdo really being the "beacon of free speech" it was portrayed as, along with its status of a martyr (10).

Public opinion on the subject split: some perceived the satirical magazine as a living example of free speech, while others were convinced that it insulted religious feelings of Muslims and therefore, the Islamist attack could be easily anticipated; in essence, they considered Charlie Hebdo to have brought the attack down upon itself.

The cover of the Charlie Hebdo issue that marked the first anniversary of the terrorist attack had an image of God as perceived by Christians and Jews with an assault rifle strapped to his back. The caption to the cartoon said: "One year on: the killer is still at large". (8) This was meant as a sarcastic message delivered in a rather offensive way.

This move by the magazine has sparked an acute reaction from the Vatican as well as numerous publications. According to them, the issue and

its message offending religious feelings did not belong anywhere near the anniversary of tragic death of innocent people.

Conclusion

The analysis of limitation of freedom of expression has shown that it is generally guaranteed by widely acknowledged international legal acts, such as the UN Declaration of Human Rights and the European Convention on Human Rights. Governments have an obligation to protect and provide this right for all persons under their jurisdiction. However, these very acts mention that in certain cases, when deemed necessary for a democratic society, freedom of expression may be limited. Situations in which a government may decide to limit freedom of expression are grouped into three categories.

The example of Latvia and Lithuania has shown how freedom of expression can be limited for the sake of preservation of national security and public safety, while avoiding damage to public interests and preventing threats to democracy, pluralism and freedom of media as well as maintaining international legal norms.

Our analysis has also shown that in some cases, limitation of freedom of expression, in the way it is utilized by governments of some countries, is not necessary to the democratic society and does not correspond to democratic values; instead it serves the interests of the ruling elite and retention of their privileges (*Castell v. Spain*).

Likewise, we have also seen the importance of harmony between national and international legislation, proper and impartial interpretation of existing legal norms and proportionality of penalties imposed for actions committed (*Incal v. Turkey*, *Surek v. Turkey*).

Despite the European Convention on Human Rights having a rather extensive list of reasons for limitation of freedom of expression, it still leaves governments an opportunity to define for themselves the special conditions in which necessity for limitation emerges. Decisions made by governments usually cause controversies, sometimes even breeding radical opposition. A question is constantly asked: if restriction is necessary in one country and for a particular society, what makes it unnecessary in another country, where there is potential of similar threats emerging? Or, alternatively, where is the boundary between national security and violation of basic democratic principles and in what cases should a democratic society agree to restriction of its own rights?

Our analysis shows that when trying to find an answer to the abovementioned questions, every single country and society bases it on its national, social, religious and ethnic peculiarities. In cases such as this, it is vital that both national authority structures and ECHR review them with utmost attention to detail, as there still exist precedents of national courts' and

other governmental structures' inability to discern precisely whether this or that action constitutes freedom of expression or is actually offensive to religious or other protected interests, with the Charlie Hebdo tragedy being an excellent example.

Discussion of freedom of expression and possibilities for its restriction has shown that despite freedoms guaranteed by universal international legal norms, some states and societies interpret necessity of limitation of freedom of expression very differently from each other, not to mention vast utilization of different practices. Even today, this remains a relevant problem and requires additional research, as well as tweaking of legal regulations, harmonization of national legislations to international legal norms and taking the experience of international practice into account.

It is important for every single state to facilitate and assist with protection of every person's fundamental rights, only resorting to their restriction in exceptional cases. Prohibitive and limiting regulations only need to be applied in cases when they are vital to public safety and national security and their application is going to result in greater good and protection of general welfare. At the same time, these norms need to be made as transparent, understandable and controllable by the society as possible.

Decisions of the European Court of Human Rights on particular cases merit further research, study and dissemination, which would significantly assist national judicial authorities with proper interpretation of international legal norms.

When dealing with the problem of interpretation, the term "national security" requires special attention. It is important that this notion is standardized as much as possible, with the highest standards of democracy, fundamental human rights and protection of freedoms taken into account.

References:

1. Castells V Spain. Global Freedom of Expression. Columbia University. Accessed 15.08.2017. (<https://globalfreedomofexpression.columbia.edu/cases/castells-v-spain/>)
2. Commission Decision. European Commission. 13.07.2015. Accessed 10.08.2017. (<https://ec.europa.eu/transparency/regdoc/?fuseaction=list&n=10&adv=0&coteId&year=2015&number=4609&version=F&dateFrom&dateTo&serviceId&documentType&title&titleLanguage&titleSearch=EXACT&sortBy=NUMBER&sortOrder=DESC>)
3. European Convention on Human Rights.
4. 1953 http://www.echr.coe.int/Documents/Convention_ENG.pdf

5. Freedom of Expression (Guidebook to application of Article 10 of the European Convention on Human Rights). The National Parliamentary Library of Georgia. <http://www.nplg.gov.ge/gsd/cgi-bin/library.exe?e=d-01000-00---off-0samartal--00-1--0-10-0--0-0---0prompt-10--..-4---4---0-11--11-en-00---10-ru-50--00-3-help-00-0-00-11-1-0utfZz-8-00-0-11-1-0utfZz-8-10&cl=CL4.3&d=HASH8e99600bfc68f621e01af8.1.1>1>
6. Glacnerova. K. The Baltics Versus Russian Media. *StopFake.org*, April 12, 2016. Accessed August 07, 2017. <http://www.stopfake.org/en/the-baltics-versus-russian-media/>.
7. Latvian regulator issues temporary ban to Russian TV channel Rossiya RTR. European Platform of Regulatory Authorities. 10.04.2014. Accessed 07.08.2017. https://www.epra.org/news_items/latvian-regulator-issues-temporary-ban-to-russian-tv-channel-rossiya-rtr.
8. Lithuania. Nations in Transit. 2016. Freedom House. Report. Accessed 06.08.2017. (<https://freedomhouse.org/report/nations-transit/2016/lithuania>)
9. Shackford S. Associated Press Self-Censors Anniversary Charlie Hebdo Cover. *Reason.com*. 07.01.2016. Accessed 07.08.2017. <http://reason.com/blog/2016/01/07/associated-press-self-censors-anniversar>
10. The National Parliamentary Library of Georgia. Freedom of Expression, Vol. I. The Observer and the Guardian v. The United Kingdom, 1991. Accessed 15.09.2017. [http://www.nplg.gov.ge/gsd/cgi-bin/library.exe?e=d-01000-00---off-0samartal--00-1--0-10-0--0-0---0prompt-10--.%2E-4---4---0-0l--11-en-10---10-help-50--00-3-1-00-0-00-11-1-1utfZz-8-00-0-11-1-0utfZz-8-10&cl=CL4.3&d=HASH0123758f4b6f93f7ebad6979.3.2&hl=0&gc=0>=\)](http://www.nplg.gov.ge/gsd/cgi-bin/library.exe?e=d-01000-00---off-0samartal--00-1--0-10-0--0-0---0prompt-10--.%2E-4---4---0-0l--11-en-10---10-help-50--00-3-1-00-0-00-11-1-1utfZz-8-00-0-11-1-0utfZz-8-10&cl=CL4.3&d=HASH0123758f4b6f93f7ebad6979.3.2&hl=0&gc=0>=))
11. Vaclair J.W. Local Laughter, Global Polemics: Understanding Charlie Hebdo. *European Comic Art* 8. no. 1. 2015. Accessed 07.08.2017.
12. http://www.academia.edu/14504282/Local_Laughter_Global_Polemics_Understanding_Charlie_Hebdo
13. Universal Declaration of Human Rights. United Nations 1948.

Genocide as an International Crime

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Abstract

Genocide is one of the most severe international crimes that have bothered mankind for a long time. The modern world knows a number of examples of this grave crime. It is a black spot of the human history. We do not know exactly where and when the first genocide happened. The ancient evidences are contradictory and vague. Cooper used to say: "the word itself is new, but the crime ancient." He was focusing on terrible bloodsheds that took place in the Assyrian Empire in VIII -VII cc. B.C. He recounted many genocidal conflicts from the Bible and the chronicles of Greek-Roman historians.

In order to prove that a person is guilty of genocide, the charge must meet the requirements, the most important among which is the intention with determined purpose. The purpose of the intention is to be determined like all other elements of the composition of the crime. Therefore, it is difficult to punish someone for committing genocide until its intention and special purpose has been proven. This is really a big problem. This is one of the difficulties in identifying genocide according to international law.

Since World War II, much work has been done to define legal character of genocide and set the mechanisms for its prevention. In practical terms, however, millions of people have been killed and for the crime committed against humanity, only one sanction has been issued, though it was not brought to completion. This leads to the fact that genocide still remains a problem for humanity until an effective mechanism for justice is developed.

Keywords: Genocide, the Rome Statute, International Criminal Law, Holocaust

Introduction

Genocide is one of the most severe international crimes that have bothered mankind for a long time. The modern world knows a number of examples of this grave crime. It is a black spot of the human history. We do

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What exactly is genocide? When people hear this word, the first thing that comes to their minds is a terrible historical tragedy that developed in Armenia, Rwanda, Bosnia, Germany and many other places.

People often think that genocide simply means "massacre", "but the creator of this word is firmly convinced that it is something more (10).

In the 20th century, known as the "Century of genocide", a number of scientific research institutions, international criminal justice bodies, international legal acts were established. All these activities were directed towards the prevention of genocide and the trial of those who committed genocide (8, 191).

Despite the fact that there were number of genocides in the world, nobody has ever been punished. As the subjective sign of the genocide lies in intention, it is difficult to charge somebody of this offense until intention, together with other elements of crime, is revealed and proved. In addition, we face problems in execution of sanctions against persons accused in genocide. All this leads to the fact that genocide still remains a challenge to the 21st century.

A Brief Historical Review of the Establishment of International Criminal Court and the Rome Statute

The History of the Establishment of International Criminal Court

After the end of World War I, a Treaty of Versailles was signed, where the winners agreed that because of committed war crimes, the German Emperor, Wilhelm II, would be brought to the International Tribunal. Other German military high officials would also be brought to trial. This idea could not have been practiced because the Emperor took refuge in Holland and was not extradited.

The German side also did not hand over military offenders (9, 81) in 1948, after the world witnessed the gravest international crimes and the Convention on the Prevention and Punishment of Genocide was adopted. The United Nations General Assembly recognized the need of establishment permanent international court in order to create a mechanism of trial and persecution of serious international crimes (15, 3). In December 1981, the General Assembly asked the International Commission of Justice to return to the issue of establishing a Code of Crimes. The end of the Cold War in 1989 increased the number of UN peacekeeping operations and the idea of creating

a criminal international court became more active (14). In June 1998 in Rome, UN hosted a conference on the development of the International Criminal Court's Statute. In July, at the end of the conference, 120 states adopted the Statute. In total, 160 states, 17 interstate organizations and more than 250 NGOs participated. Article 126 of the Rome Statute determined that it would enter into force if ratified by 60 states. This number was reached in April 2002. On July 1, the Statute acquired official power and in 2003, the Court (location - The Hague) started operating. Its jurisdiction has been extended to Georgia since December 1, 2003 (9, 81).

The Rome Statute

As noted above, in 1998, 120 states founded the First International Criminal Court, based on the Treaty. The treaty adopted at this conference is known as the Rome Statute of the International Criminal Court. It determines crimes under the jurisdiction of the ICC, the rules of procedures and the mechanisms of cooperation between the states and the ICC. States which have adopted these rules are regarded as participants of the Rome Statute and are members of the Assembly of Participant States (15, 3).

The Statute creates legal basis for the establishment and functioning of a permanent criminal justice body for the first time in world history. The Permanent International Court, which is located in The Hague, is authorized to exercise justice only to individuals who are accused of committing the following unlawful acts: "genocide", "crime against humanity", "war crime" or "aggression"(14). In the presented article, we will consider one of these four international crimes, genocide, known as "crime of crimes."

Types of Genocide and its Legal Characteristics Genocide

In the first half of the 20th century, during World War II, the international community regarded the term "genocide" as neologism. Etymologically, the word "genocide" consists of the Greek "γένος génos" (race, family, tribe) and Latin "cide, cidium, caedere" (I kill, I murder) and, in general, means killing, complete or partial destruction of the nation, ethnicity, race, or a religious group.

R. Lemkin (1900-1959) is considered as the author of the term 'genocide'. He used this term for the first time in 1944 (8, 192). After the end of World War II, leaders and actors of the winning countries worked on establishing new international standards, laws and treaties in order to avoid the crimes similar to what Nazi Germany threw upon the humanity.

Long before World War II ended, a Polish Jew lawyer, Rafael Lemkin, had worked hard to make the the world recognize mass killings as an international crime. He was amazed by the fact that there was no special norm of international law, which would have been used to punish the leaders who

committed these crimes. He asked the question, "Why was the murder of millions of people less serious than killing of a single individual?" After World War II, the Lemkin Mission acquired necessary character (18).

Earlier, the term "denationalization" was used to describe what we now call genocide. Lemkin noted that the term "denationalization" was not a matching term because it did not mean destruction of biological character and did not show how the oppressor impeded on the development of national model. It could simply be understood as "confiscation of citizenship". This way, Lemkin came about the word "genocide" which led to the establishment of the Genocide Convention (10).

The Convention adopted in 1948 entered into force in 1951, The convention clearly stated that genocide is the jurisdiction of international law requiring prevention and punishment (10). However, the definition of genocide is quite narrow and it does not ensure prevention of massive murders and violation of human rights by dictators (2, 8). Stephan Glaser, Israel Charney, Dadrion, Helen Fein, Frank Chalk and Kurt Yohansson tried to expand the definition of genocide and ensure that all kinds of groups were protected by the Convention, e.g. political, economic, social, gender, linguistic, etc. (2, 117-118). However, the definition of genocide in the Convention is formulated as follows: "Genocide" in the present Convention means any of the following acts committed to the whole or partial destruction of a national, ethnic, racial or religious group:

- (a) Murder of the members of the group;
- (b) Causing severe bodily injuries or mental disorder to the members of the group;
- (c) Setting conditions aimed at whole or partial physical destruction of the group members intentionally;
- (d) Implementation of measures aimed at preventing childbirth within the group;
- (e) Transmission of children from one group to another.

According to the Convention, the following actions are punishable:

- (a) genocide;
- (b) conspiracy to commit genocide;
- (c) direct and public incitement to commit genocide;
- (d) an attempt to commit genocide;
- (e) participation in genocide (1).

Types of Genocide

The genocide technique developed by the German Occupant in many countries was a concentrated and coordinated attack on all elements of nationality. Consequently, genocide has been implemented in political, social, cultural, economic, biological, physical, religious and moral areas (5, 79-95).

Dadrian identified five types of genocides such as:

- a) Cultural genocide where the goal of the violator is to assimilate;
- b) Latent genocide, the outcome of actions that were not intended while invasion, for example, spread of diseases;
- c) Retributive or punitive genocide that aims to punish the segment of the minority that confronts the dominant group;
- d) Utilitarian genocide, use of massive murders in order to achieve control over economic resources;
- e) Optimal genocide characterized by a group massacre in order to achieve its complete elimination (11).

Genocide has 2 phases: 1. destruction of the national model of the oppressed group; 2. Making affected population who can be allowed to stay in the occupied territory accept the national model of the oppressing group (12).

Legal Characteristics of Genocide

Genocide is a particularly grave crime. One of the essential elements of its composition is to intentionally destroy a whole or part of a national, ethnic, racial or religious group (14).

The greatest effect on the creation and adoption of the term genocide is to give it legal character, which means that any one who commits one of the actions that is determined by the Convention commits the Genocide Act. The Convention emphasizes that the persons who have committed genocide or any of the actions listed in Article 3 shall be punished regardless of whether they are civil servants or individuals. In view of this, the creation and adoption of the term “genocide” played a major role in the prevention of many possible genocide acts that could have taken place. However, to stop all the acts of genocide was not possible. For instance, Rwanda's genocide was committed in 1994, many years after the establishment of the Convention (10).

Genocide may have both an international and an internal character when armed conflict exists. Some authors indicate that internal genocide took place in Abkhazia, where thousands of Georgians were killed and even more became refugees in their own country (7, 449). It would be more accurate to assess this crime with the modern terminology of international criminal law as the crime against humanity.

Genocide does not necessarily mean immediate destruction of any social group that is protected by the Convention; exceptions are situations when the mass murders of members of this or that social group are committed. Here, more attention should be paid to the coordinated plan which is directed to the various actions that aim at destroying the essential basis of life of other social groups which are protected by the Convention; the final aim of these actions is to completely destruct the group.

The objective of such a plan may be to destroy the lives of people belonging to political and social institutions, culture, language, national sensitivity, religion, economic sustainability of national groups, personal security, freedom, health and dignity. Genocide is directed against a national or other social group (protected by the Convention) as one unity; acts are directed against individuals, not because of their personal qualities, but because they are members of this group (12).

Objective Composition of Genocide

The objective composition of genocide may be expressed in various acts such as murder of members of a group, serious physical injury or mental damage to members of such group; it can also be expressed as setting such life conditions that are aimed at their complete or partial physical destruction, carrying out such activities that are aimed at reducing or decreasing childbirth in such groups; enforcing transfer of children from one group to another, etc. (14).

Murder of Group Members

This objective sign is revealed if even one member of the group is killed. This is indicated in the "elements of the crime" (at the same time, the special purpose of the whole or partial destruction of the group is necessary)(6, 93).

Causing grievous bodily injury or mental disorder to the members of the group

Causing serious bodily damage or mental disorders does not imply a permanent damage to the victim. Its goal is to keep the victim under constant pressure and humiliation that deprives people of a normal life. This damage can be both physical and mental. Such damage comprises physical or mental torture, sexual abuse, humiliation, etc. (13, 7).

Intentionally setting such conditions to the group that aims at its whole or partial physical destruction

This objective sign is known in the scientific literature as "slow death" (13, 8), which implies that national groups may be deprived of elementary tools to protect health and life, such as providing warm clothes or blankets during the winter, firewood for heating, medicines, clean air, etc. (5, 88).

Taking measures aimed at preventing childbirth within the group

Prevention of childbirth is possible in several ways:

1. Genetic Engineering;
2. Forced castration;

3. Castration in reproductive age;
4. Forced contraception and others (7, 450).

Transferring children from one group to another using force

Transferring children from one group to another using physical or psychic force implies separating them from the previous group (5, 94). It results in depriving the parent of the possibility to raise the child in the living conditions appropriate to the group (7, 450).

Subjective Composition of Genocide

The subjective composition of this offense is expressed by the intention of a person – to carry out the objective composition of this offense for the purpose of total or partial destruction of national, ethnic, racial or religious groups (14).

The main point of the crime is its purpose - the total and partial destruction of the group united on certain grounds for the implementation of the agreed plan. This sign distinguishes genocide from the military operation and armed conflict where weapons of mass destruction prohibited by international treaties are used. It also differs from crimes against humanity such as murder, health and other injury (7, 451).

However, genocide can also be considered committed even when relatively small number of people having decisive importance to the group is murdered.

Genocide is an antithesis of the Rousseau-Portalis doctrine. The doctrine is that the war is directed against troops and not against civilians. In its modern sense in a civilized society, the above doctrine means that war can be conducted against countries and military forces and in no way against the population (12).

Well-known Facts of Genocide in the World Holocaust

The most famous genocide in the world history - the Holocaust - was systematic destruction of Jews and other ethnic groups. The term "Holocaust" (Greek "hoos" - "full", kaustós - "burn") means the destruction of 6 million European Jews, which was planned and conducted by the Nazi Germany National Socialist Workers' Party by Adolf Hitler (22).

The enemy under German control must be destroyed, dispossessed and weakened in many ways over the next decade. After the war, Germany planned to rule European people biologically with superiority; thus, conducting such policy of genocide would have a far more destructive effect on the people than they had in real war. German people would be stronger than others, even if the German army was defeated. In this regard, genocide is a

new technology of occupation, aimed at finding benefits even if the war is lost (12).

The Holocaust was gradually carried out - before the start of World War II, a law was adopted, according to which the Jews were no longer considered as part of civil society and they were distinguished by race. On November 9-10 1938, the whole Germany shared anti-Semitic hysteria and all Jewish synagogues and shops were destroyed. This night entered the history as "Crystal Night" (due to the glass debris in the streets of the city). Concentration camps were established where Jews were kept in slavery. When the third Reich conquered Eastern Europe, Special Forces were directed to kill masses of Jews and other political opponents. The Jews and Gypsies were placed in ghetto until they were transported to the "death camps" by a freight train. Majority were killed in gas chambers. Besides, inhuman and horrible experiments were conducted in concentration camps (22).

According to the preliminarily prepared plan, the occupant developed the system aimed at destroying the nation. Even before the war, Hitler considered genocide as an opportunity to ensure Germany's biological domination in Europe. Hitler's genocide concept was based on cultural and biological origins. He believed that "Germanization" could have been carried out only from the ground (12).

From the 50s of the last century, scientists have been able to determine the relatively accurate statistics of the victims of the Holocaust as a result of hard work and research. The main statistical source of the catastrophe of the European Jewish community is the pre-war descriptions of the population and their comparison with the post-war statistics. The results of the scientific analysis were drawn up at the "Holocaust Encyclopedia" by the "Yad Vashem" Museum. According to the encyclopedia, the number of victims of the Holocaust is more than six million (16).

Genocide in Rwanda

Rwanda's genocide is known as the massacre in Rwanda (the Republic of Central Africa, the former colony of Germany), during which 100 days from April 6, 1994 to mid July of the same year, about 800,000 to 1,071,000 people were destroyed by the Hutu tribal extremist groups. The victims of genocide were mainly representatives of the ethnic group of Tutsi and moderately opposed Hutus tribes (19).

The genocide was carried out during the Civil War, between the Hutu government and the Patriotic Front, which had a terrible impact on Rwanda and its neighboring countries. During the genocide, there have been cases of rape which resulted to the increase in the number of HIV infections. Destruction of infrastructure and strict depopulation caused severe damage to the country's economy (22).

A bit of historical deviation is needed to identify the killings in Rwanda as genocide.

Everything started with the fact that on the night of April 6, 1994, a plane crashed in Rwanda's main airport. Habyarimana and Burundi's President Cyprien Ntaryamira were sitting there. Hutu extremists blamed Tutsi for killing the president. Genocide started the next day. The paramilitary organization "Interahamwe" and the Rwandan army terrorized both Tutsi and moderate Hutu (for example, April 7th, Rwanda's female Prime Minister Agatha Kiwukunda was killed). In response, the "Patriotic Front of Rwanda" initiated an active attack and in July set up control in the whole country. Rwanda's genocide became one of the most terrifying accidents in the history of the world. (21)

Also, an important issue that was widely discussed during the Rwandan genocide is the issue of revenge on the Hutus by the Tutsi, which encouraged a lot of people to start speaking about the "dual genocide". "Dual genocide" literally means genocide conducted on the guilty side that previously carried out genocide on them. While Hutus were carrying on mass killings of the Tutsi, the Rwandan Patriotic Front was conquering more territories. After studying these issues, interviews and statistical analysis, one fact that was discovered was that a million people were killed and most of them were Hutus. It was also clear that the Tutsi also committed genocide on the Hutu, which means we have a "double genocide" fact (10).

The Genocide in Sudan

The genocide of Sudan is the latest international crime in the history of mankind. Everything started in February 2003 after the "Liberation Army of Sudan" (SLA) and "Justice and Equality Movement (JEM)" launched armed attacks against the government. They accused the government of suppressing the Sudanese Black African population and supporting the Sudanese Arabians.

On the one side of the conflict, there was the Sudanese military police and the army of the Janjawady (the Sudanese Arabian population, which supported the Sudanese government to clean the southern Sudan territory from the Black Africans), and on the other side, there were rebel groups (17).

The genocide in Sudan deserves special attention on legal grounds, as the International Criminal Court decision of March 9, 2009, Sudanese President Omar al-Bashir, was not considered guilty of genocide offense. In the abovementioned court, Luis Moreno Ocampo accused Al-Bashir of the genocide offense, the crime committed against humanity and war crimes - only the last two suits were satisfied. As for the genocide crime, Omar Al-Bashir was not found guilty due to the lack of evidences (3, 8–9). However, since the prosecutor, Luis Moreno Ocampo, presented enough evidences in the trial, a precedent of imposing punishment to genocide leaders was instituted (20).

According to the prosecutor's evidences, the Sudanese government killed thousands of civilians on Darfur's entire territory. As a result of an unlawful and thought out attack, the Sudanese government carried out all over Darfur region: rape of thousands of civilians, torture of civilians, forced resettlement of hundreds of thousands of people. By reinforcing genocide policy, the Sudanese government occasionally poisoned wells and waterways of towns and villages.

They exiled hundreds of thousands of civilians and encouraged tribes which were in close relations with the government of Sudan to settle in the villages and occupy the lands that belonged to the above-mentioned population. All this was done by the Sudanese government in the territories inhabited by the Fur, Masalit and Zagawa tribes (4, 7-8).

Based on the above, on July 12, 2010, the International Criminal Court issued a ruling to sanction arrest of President Omar Hassan Ahmad al-Bashir ("Omar al-Bashir"). According to the Rome Statute, of the Article 25 (3) (a), Omar al Bashir shall be imposed criminal liability as an indirect actor or as an indirect coactor for the following crime:

- i. Genocide murder, in accordance with the Article 6 (a) of the Statute;
- ii. Genocide with serious body injury and spiritual trauma in accordance with the Article 6 (b) of the Statute;
- iii. Setting such severe conditions that results in physical destruction, in accordance with the Article 6 (c) of the Statute (4, 9-10).

Despite the issued sanction, Omar al-Bashir has not been held before the Court; moreover, he freely travels to different countries and takes part in international meetings.

Conclusion

It can be said as a conclusion that genocide is indeed the destruction of a nation, ethnicity, racial or religious group, but the research shows that this issue has the following disadvantages:

1. In order to prove that a person is guilty of genocide, the charge must meet the requirements, the most important among which is the intention with determined purpose. The purpose of the intention is to be determined like all other elements of the composition of the crime. Therefore, it is difficult to punish someone for committing genocide until its intention and special purpose has been proven. This is really a big problem. This is one of the difficulties in identifying genocide according to international law. (10)

2. Since World War II, much work has been done to define legal character of genocide and set the mechanisms for its prevention. In practical terms, however, millions of people have been killed and for the crime committed against humanity, only one sanction has been issued, though it was

not brought to completion. This leads to the fact that genocide still remains a problem for humanity until an effective mechanism for justice is developed.

References:

1. Convention on the Prevention and Punishment of Genocide Crime; <https://www.matsne.gov.ge/ka/document/view/1219170> (19.08.2017).
2. William A. Schabas (Genocide in International Law, the Crime of Crimes, SECOND EDITION, CAMBRIDGE UNIVERSITY PRESS, 2009).
3. https://www.icc-cpi.int/CourtRecords/CR2009_01800.PDF (10.08.2017).
4. https://www.icc-cpi.int/CourtRecords/CR2010_05419.PDF (10.08.2017).
5. LEMKIN R. (AXIS RULE IN OCCUPIED EUROPE, Clark, New Jersey 2005).
6. <https://books.google.ge/books?id=y0in2wOY-W0C&printsec=frontcover#v=onepage&q&f=false> (11.08.2017)
7. Turava M. (International Criminal Law, Tbilisi 2015).
8. Lekveishvili M., Todua N., Mamulashvili G. (Private part of Criminal Law, 2nd Book, Tbilisi 2012).
9. Tsulaia D. (Genesis of Genocide, Journal of Law No. 2, 2013).
10. <http://www.library.court.ge/upload/samart.pdf> (12.08.2017).
11. Jishkariani B. (International Criminal Court and its Competence; Contemporary Law Review, Tbilisi 2013) <http://www.library.court.ge/upload/02062014.pdf> (13.08.2017).
12. <https://thediaryoflostlives.wordpress.com/2017/02/19/genocide-essay-marcus/> (07.08.2017).
13. <http://statecrime.org/state-crime-research/a-critical-introduction-to-genocide/> (09.08.2017).
14. <http://www.preventgenocide.org/lemkin/AxisRule1944-1.htm> (16.08.2017.)
15. http://graduateinstitute.ch/files/live/sites/iheid/files/sites/international_law/users/vessier9/public/Cassese%20-%20Genocide.pdf (08.08.2017).
16. <http://www.nplg.gov.ge/gsd/cgi-bin/library.exe?e=d-01000-00---off-0samartal--00-1----0-10-0---0---0prompt-10---4-----0-11--11-ka-50--20-about---00-3-1-00-0-0-11-1-0utfZz-8-00&a=d&c=samartal&cl=CL4.5&d=HASH01be2bedca2f017714024820.14> (13.08.2017).
17. International Criminal Court, Review;
18. <http://www.ombudsman.ge/uploads/other/4/4501.pdf> (11.08.2017).

19. <http://www.tolerantoba.ge/index.php?id=1281619861&kat=324> (15.08.2017).
20. <http://prohumans.weebly.com/43134317431643244314431243254322430843054312.html> (17.07.2017).
21. <https://www.facinghistory.org/holocaust-and-human-behavior/chapter-11/raphael-lemkin-and-genocide-convention> (12.08.2017).
22. http://www.wikiwand.com/ka/%E1%83%A0%E1%83%A3%E1%83%90%E1%83%9C%E1%83%93%E1%83%98%E1%83%A1_%E1%83%92%E1%83%94%E1%83%9C%E1%83%9D%E1%83%AA%E1%83%98%E1%83%93%E1%83%98 (14.08.2017).
23. https://ka.wikipedia.org/wiki/%E1%83%9D%E1%83%9B%E1%83%90%E1%83%A0_%E1%83%90%E1%83%9A-%E1%83%91%E1%83%90%E1%83%A8%E1%83%98%E1%83%A0%E1%83%98 (18.08.2017).
24. <https://www.militarium.org/ruandis-genocidi/> (14.08.2017).
25. <http://intermedia.ge/%E1%83%A1%E1%83%A2%E1%83%90%E1%83%A2%E1%83%98%E1%83%90/76326-10-%E1%83%A7%E1%83%95%E1%83%94%E1%83%9A%E1%83%90%E1%83%96%E1%83%94-%E1%83%A8%E1%83%94%E1%83%9B%E1%83%96%E1%83%90%E1%83%A0%E1%83%90%E1%83%95%E1%83%98-%E1%83%92%E1%83%94%E1%83%9C%E1%83%9D%E1%83%AA%E1%83%98%E1%83%93%E1%83%98-%E1%83%9B%E1%83%A1%E1%83%9D%E1%83%A4%E1%83%9A%E1%83%98%E1%83%9D-%E1%83%98%E1%83%A1%E1%83%A2%E1%83%9D%E1%83%A0%E1%83%98%E1%83%90%E1%83%A8%E1%83%98/49/user:Lerato:show:channel> (15.08.2017).

The Role of Rhetoric and Persuasion in Hillary Clinton's Speech

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Abstract

This article is based on the analysis which represents a distinctive way of political speeches, where rhetoric and persuasion play an essential role, as ancient rhetoricians believed that language was used for persuasive reasons. Why did ancient teachers of rhetoric insist on this practice? Well, they knew that training their students in different rhetorical arts prepared them for effective communicative and persuasive possibilities that exist in language. Politicians, nowadays, employ the choice of linguistic strategies while discussing and debating the advantages of their political stance over those of their opponents. Its application to the analysis of political discourse is discussed in relation to two key concepts: the rhetorical and persuasive skills of social interaction.

Keywords: Rhetoric, persuasion, political discourse

Introduction

In order to trace back the connection between persuasion and rhetoric, there are five methods classified on both classical and contemporary research.⁴⁷

1. Rhetoric as an instance of speech-making or oratory.
2. Rhetoric as persuasive technique.
3. Rhetoric as a tactical function of language use.
4. Rhetoric as an educational agenda or program that includes the art or skill of the rhetoric.
5. Rhetoric as a theory about human communication.

As may be inferred from this, the study of persuasion originated through the study of rhetoric. The ancient Greeks were the first to advocate the importance of rhetoric, oration, persuasion, and communication for exchange of opinions and counterarguments within the political arena, which

⁴⁷ Persuasion, the Essence of Diplomacy Milos Radaakovic, 2010.

would guarantee arrival at a political consensus on the basis of persuasion and free choice.

Theorizing the Interrelationship between Rhetoric, Persuasion and Political Discourse (Data and Methodology)

Nowadays, modern rhetoricians use terms derived from Aristotle to refer to these three means of persuasion, even though these terms have acquired somewhat broader definitions:

Logical argument is called logos;

The projection of the speaker's character is called ethos;

Awakening the emotions of the audience is called pathos.

When we think of politics, we think of it mainly in terms of struggle for power in order to secure specific ideas and interests and put them into practice. In this process, language plays a major role. Analysis suggests that audience responses to political speeches are strongly influenced by the rhetorical construction of political messages.

Political scientists are mainly concerned about the consequences of political actions. In order to be successful, political leaders have to convince the voters that they are sound enough and strong enough to fulfill their expectations and keep their pre-election promises. Linguists, on the other hand, have always been particularly interested in the political language constructed through discourse analysis, as well as in language structure used to get politically relevant messages.

Political discourse is defined by scholars V.N. Bazylev and E.A. Sheigal et al. as a wide notion; however, the most accepted is the definition of Baranov A. (1998: 131-145). According to Van Dij T.A. (1998: 52), it is "the set of discourse practices identifying the participants of political discourse and forming the definite range of themes of political communication." Political discourse is a class of genres restricted by the social sphere, and particularly by the sphere of politics. Political discourse is the institutional type of discourse accompanying the political act within a political context (1998: 43). Wodak R. states that political language is between the two poles of functionally-conditioned special language and the jargon of the social group with the peculiar ideology. So that the political language has to fulfill contradictory functions; from one side, be understandable, and, from the other side, oriented to the relevant group (1998: 24).

The data consist of the transcriptions of a speech, dedicated to pre-election by Hillary Clinton in the Democratic National Conventions.

The 2016 Democratic National Convention was a presidential nominating convention, held at the Wells Fargo Center in Philadelphia, Pennsylvania, July 28, 2016. Former U.S. Secretary of State, Hillary Clinton, was chosen as the party's nominee for president by a 59.67% majority of

delegates. It is one of the strongest speeches during the pre-election campaign that is considered as a powerful tool presented in order to convince the electorate of the advantages of their political platforms over those of their opponents.

As is known, while presenting their political views, politicians frequently compare them with the opposing parties, platforms, in order to make their advantages clearly visible to the public. This process becomes especially acute and obvious during the pre-election campaign and is frequently accompanied by a number of face-threatening and face-damaging acts such as direct and indirect accusations, sarcasm, irony and even abuse.⁴⁸

There are different persuasive techniques: humor, repetition, the rule of three, warm and fuzzy, charisma, flattery, generalities, brand new, nostalgia, rhetorical questions, extrapolation, analogy, scapegoating, which are all commonly used by politicians.

Persuasion techniques are fundamental, and can be applied in all walks of life. It doesn't only possess convincing function, but it can control and manipulate a person effectively. We will illustrate the example where the first three sentences have a positive answer. The next three sentences have a meaning already known to us and finally the speaker will tell us the solution. "*Ladies and gentlemen, are you angry about high food prices? Are you tired of astronomical petrol prices? Are you sick of out-of-control inflation? Well, you know the Other Party allowed 18 percent inflation last year; you know crime has increased 50 percent nationwide in the past 12 months, and you know your pay packet hardly covers your expenses anymore. Well, the answer to resolving these problems is to elect me, John Jones, to the Senate.*" The given examples clearly demonstrate the above mentioned.⁴⁹

The passage given below is full of commutability, communicative emotionality, ability to contact, way of maintaining of communicative contact, the way of ending the talk, communicative affability, communicative democracy, communicative self-feeding, etiquette of communication, communicative pressure, communicative control, thematic range of conversation, controversy, preferable theme for conversation and type of interlocutor, orientation on the collocutor, communicative distance, physical

⁴⁸Rusieshvili-Cartledge, Manana. (2012). Face- attack in Georgian political discourse (using examples from TV debate between female politicians during the pre-election campaign for the Parliamentary elections of 2012).

⁴⁹ <http://time.com/4120295/hillary-clinton-foreign-policy-isis/>

contact, correlation of verbal and non-verbal communication, gestures, facial expressions, loudness, rate of conversation (A. Sternin, 2003:106).⁵⁰

Discussion and Conclusions

The data analyzed in this article shows the role and importance of rhetoric and persuasion in politics generally and in Hillary Clinton`s speech.

In order to be successful, political leaders have to convince the voters that they are sound enough and strong enough to fulfill their expectations and keep their pre-election promises. Rhetoric and persuasion guarantees the participants to pursue short-term and long-term goals. Political leaders have to pursue long-term goals: to win the electorate and to convince them that they are audacious enough to act as leaders.

References:

1. Sternin, I. A. (2003). The problem of description of gender communicative behavior // Gender, Language, Culture, Communication: The 3rd International conference 27-28 November 2003. (pp. 106 110). Moscow: Moscow State Linguistic University.
2. Rusieshvili-Cartledge, Manana (2012).Face- attack in Georgian political discourse (using examples from TV debate between female politicians during the pre-election campaign for the Parliamentary elections of 2012).
3. Persuasion. The Essence of Diplomacy Milos Radaakovic, 2010.
4. Schaffner Christina, Vol. 3, 1996. Language and Society. Aston University, Birmingham, UK.

Trascription Conventions

(.) indicates a pause of two seconds or less

(-) indicates a pause of three seconds

[] closed brackets indicate simultaneous speech

⁵⁰Sternin, I. A. (2003). The problem of description of gender communicative behavior // Gender, Language, Culture, Communication: The 3rd International conference 27-28 November 2003. (pp. 106 110). Moscow: Moscow State Linguistic University.

The Importance of Place Marketing and Destination Branding for Georgian Regions

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Abstract

The concept of strategic place marketing, developed by Kotler (1993), was among the first to adopt a clear position that places must organize as business and promote themselves if they are to respond adequately to the threats of global competition, technological change, and urban decay. Place marketing is still seen as a tool to sell products, services, and attractions in a more efficient way. Today's tourists face a vast choice of destinations; a handful of major countries attract 75% of the world's tourists; most destinations are niche players competing for the remaining 25%; and Small Destination Marketing Organizations have to deliver maximum value in a noisy and crowded marketplace on restricted budgets. From a purely economic perspective, it would appear imperative to understand cities and their shifting demographics in order to understand how to reach urban consumers, attract visitors to cities, handle the coexistence of both sets of people, and to be prepared for the upcoming challenges.

Keywords: Place marketing, Destination branding, Georgian regions

Introduction

From a global perspective, the tourism sector is a growing conglomerate of industries with potential for expansion and future development (UNWTO, 2017). In the period 2011–2030, it is estimated that world tourism growth will average 4.4% annually; the number of international tourists is expected to reach 1.8 million by 2030, and the tourism sector is projected to generate 9.6% of world GDP with 300 million direct jobs (UNWTO, 2017).

By 2030, five billion people are expected to be living in cities, and these city dwellers seem inclined to visit cities when travelling. This can be seen from the 47% increase in the last five years of city trips worldwide.

Cities, without a doubt, are center stages for their residents (the majority of the world population) and to the tourists who choose to visit them.

As such, cities are performing and competing in a fierce, global market, and are therefore in need of tools that help them monitor and evaluate their progress.

It is believed that the expansion of international tourism will create a new market structure that will provide opportunities for subnational tourism destinations, while international competition will simultaneously increase (UNWTO, 2017).

According to comparative data on the diversification of destinations, in 1950, 97% of international market share was concentrated in 15 countries (UNWTO, 2014). Today that percentage has dropped to 51.8% (UNWTO, 2017), and there is greater diversification, thus, opening opportunities for other regions and cities worldwide. Equally, those world regions that have enjoyed such high market shares in the past are bound to react so they do not lose their significant market shares. In this sense, given that tourism is an economic and social phenomenon that incorporates a key commodity – a territory, a place or more specifically, a destination – the current context of fierce global competition stresses even more the need for highlighting the uniqueness of each destination down to the local level.

In the latest report of the Economist Intelligence Unit within the ten most competitive cities in 2025, there are cities as large as Tokyo and as small as Zurich, in terms of population. Such emphasis on regions and cities is also supported by “the perceived relative decline of the nation state with respect to power and decision-making and the emergence of subnational structures and systems of local control”, hand in hand with cities or city-regions turning into hubs taking the center stage.

Each country possesses specific economic, geographic, and cultural factors that characterize its image. Georgia’s reputation is primarily marked by its impressive countryside, its diverse touristic offers, its high-quality agricultural products, and its millennia-old winemaking tradition.

As defined by Buhalis, a destination represents an ‘amalgam of tourism products, offering an integrated experience to consumers’. Within this context, a DMO can be defined as ‘any organization, at any level, which is responsible for the marketing of an identifiable destination’.

Destination Marketing Organizations (DMO) previously referred to destination branding deals with the promotion and marketing of their place to a specific audience of business or leisure travelers. In recent years, both the media landscape and consumer expectations have changed dramatically, forcing destination marketers and managers to rethink their strategy. They offer expert insights, examples, and advice on destination branding as a strategy that goes way above and beyond catchy advertising, slogans, and logos.

Communication in a world where we are inundated with advertising and personalized communication, it is vital to build brand relationships; moreover, the power of social media means that today's tourist can tell the world about your destination's shortcomings through YouTube or Facebook by a click. Thus, the interface between DMOs and tourists has completely changed. No longer is the marketing mix about product, promotion, path, pricing, packaging, and push. It is the consumer 2.0 marketing mix based on conversations and context, connectivity, creativity, collaboration, and co-operation.

A majority of the world's population lives in cities and travels to cities for business and/or leisure (UNWTO, 2012); therefore, these cities do not only have their own residents, but also floating populations, including visitors. City tourism's significance is equally relevant at a country/region level since visitors tend to use the city as a hub and explore beyond the city limits. Thus, the economic activity spillovers are felt in neighboring areas.

In sum, not only are cities becoming the unavoidable hubs for any type of economic sector, but they also play a crucial role in the case of tourism. This is reflected in their territory administration, private sector, international institutions and research bodies interested in covering the gap of proper measurement and analysis, relying on tools to make better-informed decisions for cities to remain competitive.

Tourism destinations of all sizes, including cities, have long had the need not only to measure their own performance, but also to compare themselves with domestic and foreign competitors.

Destination branding is about packaging and marketing a set of images in order to promote a particular destination. However, there are consequences that extend beyond marketing, for example, the brand vision can become an instrument for transforming the place and social engineering local cultures. The branding process also requires mobilizing support and cultivating consensus in realizing the brand as a place identity.

In travel and tourism, many brands are now household names, either nationally or globally. Well-known examples are Accor, Disney, Marriott, Cathay Pacific, TUI, Sandals, Thomas Cook, and Center Parcs. These brands and the products they deliver are under full management control. In contrast, leading destination brands, such as London, New York and Singapore, even though they have become brands with their own developed and heavily promoted images, have to rely on persuasion and cooperation rather than the full management control available to individual organizations. It is, therefore, very much harder to make the destination branding work effectively.

A strong brand provides added value, brings a powerful identity benefit, drives consumers' behavior, influences their perceptions of reality, opens doors, creates trust and respect, and raises expectations of quality and

integrity. In short, we are talking about strong place reputations. A strong destination brand must deliver distinctive, compelling, memorable, and rewarding experiences to its target audience.

The more local the destination brand, the weaker it is likely to be, at least, because of the level of budget available to research and communicate the brand as well as gain local support for it will be insignificant in international terms.

On the other hand, destination interests and corporate interests in the same location are increasingly likely, at least, to recognize interests in common. If customers expect to relate to the destinations, they choose rather than be cocooned in a resort environment. Also, the rationale for joint branding and marketing, also known as co-branding and co-marketing, is obvious. Collaboration is also encouraged by the development of sustainable tourism awareness noted earlier. In most cases, sustainable futures in travel and tourism mean better collaboration between the commercial and public sector players at any destination. This convergence of interests at the destination, supported by the growing modern emphasis on co-creation of value in which the lead is taken by customers, not businesses, points to closer collaboration between businesses and destinations. In practice, this means co-branding and co-marketing of tourism products.

Destination Reputation is based on three principles: 1) Communication - reputation is something you talk about and is produced through storytelling; 2) Evaluation - reputation is something you critically assess; 3) Distinction - reputation makes you different.

The mission of any Destination Management Organization (DMO) is to promote its destination to a wide range of stakeholders and audiences.

Place marketing can be a powerful strategy, complementing the efforts of the authorities to promote the attractions of a region. Ideally, the brand a place communicates should be the shortest translation of those particular things an area is proud of or wants to stand for.

Leaders face major communication challenges: place reputation is derived from a host of sources, not just tourism marketing. They cannot control the place story or the image and they do not 'own' the destination. They are under pressure especially as a result of the digital revolution and their cost. Relevance and value-for-money has come under greater scrutiny. The global media plays a powerful role in shaping place reputation.

The Joseph Stalin Museum is a museum in Gori, Georgia, dedicated to the life of Joseph Stalin, the leader of the Soviet Union, who was born in Gori. The Museum retains its Soviet-era characteristics.

Museum complex consists of memorial house where Stalin was born, exposition building with tower and Stalin's personal coach with interior, by which he travelled to Tehran, Yalta, and Potsdam. Museum houses Stalin's

personal things, study room of Kremlin, manuscripts, gifts from all over the world, Stalin's mask. The museum has three sections, all located in the town's central square. It was officially dedicated to Stalin in 1957. With the downfall of the Soviet Union and independence movement of Georgia, the museum was closed in 1989, but has since been reopened, and is a popular tourist attraction.

In the meantime, however, thousands of tourists are likely to visit the Stalin Museum each year to see the displays that have barely changed since 1979. They pay for a guided tour around his personal armored rail coach, a walk round one of Stalin's death masks, and hundreds of reverential paintings and photographs chronicling his rise.

The Stalin Museum is surely one of the most bizarre museums in the world. It is a "must see" in every guidebook to Georgia. Each year, some 50,000 foreign visitors head to the blameless town of Gori, the birthplace of the man of steel, to incredulously wander through its colonnaded halls, and perhaps get to be temporarily transported back in time to the Soviet past that is both familiar and disconcerting.

Conclusion

Leaders need to use their power effectively to create a genuine partnership with those who might possess a major stake in the reputation of their place. They need to align, engage, and mobilize stakeholders from the private and community sectors and into the leadership of their places for the creation and management of their reputation.

Whilst places which have strong brands have an easier time attracting businesses and talents within the knowledge economy, it is difficult to differentiate places. Factors such as a place's environment, its people, entertainment, and leisure services and traditions in art and culture tend to give more importance to potential investors and tourists.

Thus, the Stalin museum and Stalin are presented as attributes of the brand - after all, the brand of the territory places emphasis on its authenticity. Thus, this is the authenticity - the birthplace of the city of Stalin plays a special role in the attraction of tourists; Stalin, a red tyrant for some, and for others, a symbol of victory over fascism. For most tourists, he is a historical and epochal person.

There is need to expand and identify the impact of the Joseph Stalin Museum in Gori, as a catalyst for change and impacts to all stakeholders. In addition, there is the need to improve and upgrade its visitation and these happens to be the benefits and challenges for Gori.

References:

1. Buhalis, D. (2000). Marketing the competitive destination of the future, *Tourism Management*, 21(1), pp. 97–116.

2. Middleton Victor, T. C. (2009). Alan Fyall and Michael Morgan, with contributions from Ashok Ranchhod, Marketing in Travel and Tourism, Fourth edition, 2009 Elsevier Ltd.
3. Morgan, N. (2011). Introduction to Destination Brands, University of Surrey.
4. UNWTO Tourism Highlights 2016 Edition.
5. UNWTO World Tourism Barometer, August 2017, Volume 15.

Main Factors Affecting Consumer Behavior

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Abstract

The presented study contributes to a deeper understanding of the impact of different factors on consumer buying behavior. It analyses the relationship between several independent variables, such as cultural, social, personal, psychological, marketing mix factors, and consumer behavior (as the dependent variable) in the electric appliances market. The purpose of this study is to determine the factors affecting consumer preferences and behavior in the electric appliances market in Iraq. The data employed to analyze the factors influencing consumers purchase decision-making processes were obtained through a questionnaire that was conducted in December 2011 in Basra - the city in southern Iraq. The major findings of the study indicated that, overall, the set of independent variables are weakly associated with the dependent variable. However, the in-depth analysis found that social and physical factors as well as marketing mix elements are strongly associated with consumer buying behavior. These analyses made it possible to discover consumer decision-making rules. The results may assist producers and retailers in understanding consumer behavior and improving consumer satisfaction.

First of all, I would like to mention that recognition of a consumer`s behavior is necessary to developing effective marketing plans. Offering appropriate marketing mix for specific target market requires recognition of consumers preferences and their decision making processes. Therefore, this article was aimed to studying the impacts of psychological factors on consumer`s buying behavior. Statistics of this study is based on Iranian chain stores at Kerman. The results indicate that awareness of quality, awareness of price, innovative characteristics, diversity, loyalty to store, and planning influence on consumer`s buying behavior have direct and significant relationship with consumer`s decision-making. Also, other variables including financial limitation, buying enjoys, instantaneous decision making, loyalty to brand and time limitation do not influence consumer`s buying behavior. Finally, some empirical suggestions have been offered for marketing managers and related professionals.

Keywords: Financial crisis, psychological factor, consumer behavior, financing structure

Introduction

In order for companies to attain commercial success, it is important that managers understand consumer behavior. The relationship between consumer behavior and marketing strategies depends upon managers understanding of consumer behavior. Understanding of consumer behavior is especially important during a recession (Kotler & Caslione, 2009). Consumer's buying decisions indicate how well the company's marketing strategy fits market demand; thus, marketing begins and ends with the consumer. The study of costumer behavior is based on consumer buying behavior, with the consumer playing three distinct roles: user, payer and buyer. The research has shown that consumer behavior is difficult to predict, even for experts in the field (Armstrong & Scoot, 1991).

Consumer behavior involves the psychological needs, finding ways to solve these needs, making purchase decision (e.g., weather to purchase a product and, if, so, which brand and where), interpret information, make plans, and implement these plans (e.g., by engaging in comparison shopping or actually purchasing a product). Consumer behavior research attempts to understand the buyer decision-making process, both individually and collectively. It studies individual consumer characteristics such as demographics and behavioral variables in an attempt to understand peoples wants. Consumer behavior research allows for improved understanding and forecasting concerning not only the subject of purchases, but also purchasing motives and purchasing frequency (Schiffman & Kanuk, 2007). Basic characteristics of their behavior, studying consumer behavior helps to ascertain who the costumers are, what they want, and how they use and react to the product. The wants of the costumer are carefully studied by conducting surveys on consumer behavior.

We can see quite different picture in the case of corporations as **competition** between corporations has been significantly increased, and achieving **consumer's** continuous and long term loyalty requires investment on sale promotions and **advertisements**. Also, corporations in order to do this should implement many researches to associating consumers to themselves, understanding status of their products and services in competitive world, and increasing sale. Consumer behavior is one of the new issues at the marketing areas. Also, this concept is one of the controversial and challenging issues in our competitive world. This concept includes consumer's buying product and services behavior, why and how to buy, marketing and marketing mix, and market. Based on Wiki and Salmon, consumer behavior consists of psychical,

emotional, and subjective efforts. Here, the main question is that how do consumers react to different marketing motives and drives that are used by corporations. Corporations could achieve competitive advantage compared to their competitors if they understand their consumers' reaction to products and service characteristics, prices and marketing promotion (Kotler, 2000). Thus, the aim of the article was to study impacts of psychological factors on consumer's buying behavior based on consumer's deal-proneness.

Here are few categories to differentiate consumer:

1. The Upper- Uppers (less than 9 percent): These are wealthy consumers from well-known families. They are often seen as reference groups for others. They live in big homes and buy expensive, luxury products.
2. Lower-Uppers (about 2 percent): These people are the new rich. Most of them have more money than the upper-uppers and want to be in the group of the upper-uppers.
3. Upper-Middles (12 percent): These are professional people who have a strong desire for success and are well educated; also, they are civic minded and joiners. They buy products that signify status.
4. Middle Class (32 percent): This class consists of blue-collar and average-pay-white-collar workers. They have good homes and buy popular products.
5. Working Class (38 percent): Here are mostly persons who lead a working class lifestyle. They live in small houses, have bigger TV set than middle class and drive large cars.
6. Upper-Lowers (9 percent) or Working Poor: They work, but are poor. They are ill-educated and perform unskilled labor for low pay.
7. Lower-Lowers (7 percent) or "Welfare Poor": Usually, they are not working and are on welfare, visibly poverty stricken.

When an individual purchases any product, he/she goes through a decision process which consists of five stages. The consumer buying decision processes are as follows (Lewis E.L., 1990):

Stage 1: Need of recognition

At this stage, a customer recognizes a problem or need (awareness of need) – difference between the actual condition and the desired state. Needs, can be categorized in different ways. These are: physiological needs, security or safety needs, love and acceptance or social needs (Solomon, 2004). Needs are placed in order of importance, but the family's basic or primary needs that must be satisfied are food, shelter, clothing, air and water.

According to Tichenor T. (1999), the primary needs of the family must be satisfied before consideration is given to anything else in terms of other decisions and that need is a gap or difference between where we are, what we

have and where we want to be. For example, a hungry or sick person is in a state of need; of course he/she wants food or good health.

Security or Safety Needs: The family should feel safe and needs protection from physical harm and economic deprivation. These needs also include: threat, freedom from fear, danger or deprivation.

Social Needs: A family needs to be praised and accepted by the community in which it lives. A family needs support, assurance and warmth.

Esteem Needs: A family needs recognition and self-respect.

Self-Actualization: It is not easy to achieve, because it is the highest need. If one wants to reach this level, all other needs should be satisfied. Individuals in the family learn to develop them (Kotler, P., Armstrong, G., Harris, L. & Piercy, N., 2013).

Stage 2: Search for information

When customer finds the need, he/she tries to collect information which helps him/her to satisfy this need. It can be memory (internal search) or if he/she needs more information (external search), he/she can ask friends, family (word of mouth) or obtain information from commercial sources. The degree of influence and usefulness of this information depends on product and customer.

Stage 3: Product evaluation

At this stage, a consumer must choose between different brands, services and goods. He/she develop evaluation criteria to help narrow down his/her choices.

Stage 4: Product choice and purchase

This stage is the point at which one decides which brand to buy, choose buying alternatives, including store, product, package, etc.

Stage 5: Post purchase use and evaluation

At this stage, a customer decides if he/she has made a right step, because everyone wants to feel good about his/her purchase. Customers do not go through all buying stages when they are considering purchasing product. It depends on the type of consumer buying behavior. One thinks about what he/she wants or needs, but never buys them. On the other hand, one looks at dozens of products, compares them and then does not buy any of them. But sometimes, one skips first three stages and buys a product on impulse. Buying products without planning is called impulse buying.

Impulse buying established a concept that is called the level of involvement. It means how interested one is in buying a particular product. For example, a person can see a bag of cookies and realizes that he/she is hungry. It is an item

one wants, but it is not necessary for him/her. Such items are called **low-involvement products**. Mostly they are inexpensive and have low risk for buyers, if they make mistake by purchasing them.

When costumers make automatic purchase decision, have no information about the product they want to buy, it is called **routine response behavior**. For example, if a person always buys Pepsi at lunch, he/she is engaged in routine response behavior, because he/she cannot even think about any other drink. On the other hand, we have **high-involvement products**, which have high price tag and carry high risk for buyers if they fail (house, car, etc.). A customer engaged in **extended problem solving**, spends a lot of time comparing different products.

Another type of customer behavior is **limited problem solving**. It is when consumers have some information about the product, but they continue to search for a bit more information.

Conclusion

The aforementioned study contributes to a deeper understanding of the impact of different factors on consumer buying behavior. The major findings of the study indicated that the overall set of independent variables was weakly associated with the dependent variable. However, the in-depth analysis found that social and psychical factors as well as marketing mix elements were strongly associated with the buying behavior of Iraqi consumers. These analyses make it possible to discover consumer decision-making rules. Moreover, our analysis helped us to identify several promising directions for future research. The primary goal of the future research will be to develop methodological bases for consumer behavior analysis using multi-agent based simulation and simulation tests using the developed methodology. As a result of our research, we plan to develop a computer simulation model that will allow us to investigate consumer behavior. The simulation model of the electric appliances market will be elaborated with a multi-agent approach.

In conclusion we can admit that recognition of consumer behavior is necessary for developing effective marketing plans. Therefore, the article was aimed to studying impacts of psychological factors on consumer's buying behavior.

References:

1. Abood Al-Janabi, T. (2000). Impact of buyer and competitive for determining marketing share in business companies. (Master's thesis.). Al Kufa: Kufa University.
2. Armstrong, J.S. (1991). Prediction of consumer behavior by expert and novice journal of consumer research, 18(2), 251-256.

3. Burns, R.B. (2000). Introduction to research method. London: Sage publication.
4. Impulse buying (2012).in business dictionary. Retrieved from <http://www.businessdictionary.com/defination/impulse-buying.html>.
5. Carrigan, M. & Attalla, A. (2001). The myth of the ethical consumer – do ethics matter in purchase behavior? *Journal of consumer marketing* 18 (7). 560-578.
6. Del Vecchio Devon (2005). Deal-Prone Consumers' Response to Promotion: The Effects of Relative and Absolute Promotion Value, *Psychology & Marketing*, Vol. 22, No. 5, pp. 373–391.
7. Foret, M. & Prchazka, P. (2007). Buying behavior of household in the Czech Republic. *Agricultural economics – Czech Republic. Agricultural economics – Czech*, 54. (7), 318-324.
8. Hair J.F., Black W.C., Babin B.J., Anderson R.E., & Tatham, R.I. (2006). *Multivariate data analysis* (6th ed). New York, NY Prentice-hall.
9. Hasslinger, A., Hodzic, S., & Obaza, C. (2007). Consumer behavior online shopping.
10. Hawkins, D., Best, R., & Coney, K. (1998). *Consumer behavior, Building marketing strategy*. 7th ed, International edn, McGraw-Hill, U.S.A.
11. Hoyer, W. D. & MacInnis, D. J. (1997). *Consumer Behavior*. Houghton Mifflin Company, U.S.A.
12. Kim, B.D., Srinivasan, K., & Wilcox, R.T. (1999). Identifying price sensitive consumers: the relative merits of demographic vs. purchase pattern information. *Journal of Retailing*, Vol.75, No 2, pp.173–193.

Analysis of Establishment and Development of the International Legal System and International Standards to Fight Against Legalization of Illicit Incomes / Money Laundering

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Abstract

The present article deals with establishment and development of the international legal system and international standards to fight against legalization of illicit income / money laundering. Organized crimes and terrorist activities of transnational character require a special effort from the international community to effectively fight against these dangerous forms. The priority of international co-operation in this area is the organization of the system of the actions directed against legalization of illicit income/money laundering/ based on the Unified International Standards, which is the subject of consideration of the given article.

The article briefly reviews formation and development of the above-mentioned system of universal international standards; among them, recommendations that are given in the United Nations documents are of utmost importance.

The issues analyzed in the article will allow us to ascertain how the state should conduct an effective fight against transnational crime, such as legalization of illicit income, in line with the principles of international standards.

The purpose of the present study is to adjust the local legislative system related to the legalization of illicit income in accordance with the international standards. This will contribute to the effective fight against transnational organized crime.

Keywords: Legalization of illicit income; International legal system; International standards; Recommendations; United Nations documents

Introduction

The presented paper discusses the international legal systems of fight against money laundering, basis and sequences of their formation, recognized international standards, recommendations and the United Nations documents.

Materials and Methods

The article is based on the material taken from national and foreign legal and criminal literature, and also on data from mass media. However, the key to the correct view of the problem under investigation first of all can be found in the works of criminologists, criminalists. These works, together with the particular crime-related issues, discuss overall economic criminality as well as the issues concerning crime and punishment, crime investigation, and the problems of detecting and eradicating causes and circumstances supporting crime.

The international legal base of the used materials is represented by international conventions. Among them are: United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988); International Convention for the Suppression of the Financing of Terrorism (New York, 1999); United Nations Convention against Transnational Organized Crime (Palermo, 2000); United Nations Convention against Corruption (Merida, 2003); Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg, 1990); Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw, 2005). Others include some resolutions of the United Nations General Assembly, directives of the European Commission, resolutions of the Council of Europe, recommendations of FATF (Financial Action Task Force), etc.

In the process of preparing the article, the philosophical methods of cognizing different phenomena and social life were used.

While discussing the international aspects of the fight against legalization of criminal income, the historical method was used to analyze foreign criminal norms regulating "money laundering" - a comparative legal method. Content analysis was used while studying social literature, legislation and analytical materials.

The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which was adopted in Vienna (Vienna Convention) is considered to be the basic document among the documents set out against laundering illicit income.

The Vienna Convention established the principles of the United Nations global approach to organizing activities against money laundering and defined the concept of "laundering of illicit income laundering".

According to the Vienna Convention, “laundering of illicit income” is defined as the conversion or transfer of property and income, also, hiding the real nature of the property and income derived as a result of the illegal turnover of drugs, the sources of origin and their disposition.

Vienna Convention established different norms what can be called a norm or principles of organizing the international fight against laundering of illicit income. For the first time in international law, such concepts as "criminal incomes", their "freezing" and "extraction", as well as the principle that such incomes are necessary, even if they are transferred to other property or mixed with legal assets, were defined as mandatory provisions for all countries participating in the Convention.

In the theory of international public law, the actions against laundering of criminal incomes are considered to be one of the forms of fighting against international crime and also as a method of impounding and seizing funds received from criminal offenses. Not only laundered funds are subject to seizure, but also any other values of the criminal origin which is established.

Due to the specifics of laundering of the criminal incomes, any financial operation associated with them will be their laundering (provided that the amount of laundered property is sufficient for the objective standpoint of the offense). Owing to the fact that it is possible to export incomes received from criminal offense, including noncash form, only through financial transactions related to them, any asset which is subject to seizure, according to the international rules, becomes the subject of laundering.

The typical law adopted by the United Nations in November 1993 on money laundering received from drugs was a new step on the way to development of the system of actions against laundering of criminal incomes. This law is based on legislation of various countries and contains recommendations on preventing money laundering, revealing such actions and determining appropriate sanctions. It also includes formulations of two predicate compositions of offenses related to money laundering received from drug trafficking (Article 20). The following individuals are subject to responsibility:

- 1) Individuals who convert or transfer funds or property obtained directly or indirectly from trafficking of drugs, psychotropic substances or precursors for the purpose of hiding illegal source of the property or funds or for assisting a criminal who participated in one of the crimes in order to avoid liability;

- 2) Individuals who contribute to concealing or hiding the nature, source, location, disposal, movement of resources, property or related rights that are directly or indirectly derived from illegal circulation of narcotic drugs, psychotropic substances or precursors.

According to the typical law recommended by the United Nations, various actions committed by workers of credit and financial organizations, in particular, the actions of those persons who professionally carry out cash exchange operations and, also, the actions of other persons who violate the rules of the financial operations and other requirements should be considered as a crime.

At a high level meeting on World Economic Issues held in Paris in June of 1989, a group was established to eradicate the serious shortcomings identified by the countries of the "Group Seven" and the European Commission Working Group (named as "Money Laundering") and to protect money markets from organized crime groups. In the future, the Financial Action Task Force on Money Laundering (FATF) had to evaluate the international standards of fight against money laundering, disclose deficiencies and, first of all, coordinate international cooperation. In course of time, FATF actually became a driving force in the international struggle against money laundering: almost a year after its establishment, on April 19, 1990, FATF issued the theses with 40 recommendations intended for the whole world community. At present, 34 countries and 2 regional organizations are the members of FATF. Some countries and international organizations (the International Monetary Fund, Europol, Interpol, Organization for Economic Cooperation and Development, etc.) have a position of a supervisor in FATF. Besides, regional groups are created which take into consideration the distress and the different levels of development of the world's separate regions. At the first stage of FATF's activities, its participants became the representatives of 15 countries, including the "Group of Seven", 8 member states of the Organization for Economic Cooperation and Development, as well as the European Union Commission.

The report presented by FATF was approved on the "Group of Seven" Summit held in Houston (USA) in July of 1990. The Summit confirmed the obligation of the countries of the "Group of Seven" to fully and urgently fulfill 40 recommendations on fight against money laundering given in this report. FATF's recommendations contained an appeal to all countries of the world to ensure the compliance of their legislations with the Vienna Convention. FATF tried to spread the composition of money laundering on any serious predicate offence as the investigating authorities had difficulty in separating "money laundering" and predicate offense. Moreover, FATF is required to establish a criminal liability institution of legal entities in all countries in order to put pressure on banks. However, this requirement is still incompatible with the criminal system of some countries.

The most important thing in FATF's 40 recommendations was that they contained the appeal to financial service providers to create a catalogue of obligations that would contribute to fight against money laundering.

All countries were recommended to acknowledge laundering of money derived from drug trafficking as a criminal offense in accordance with the Vienna Convention. At the same time, they were instructed to discuss the issue of criminalization of laundering of incomes separately from other serious crimes.

FATF's recommendations were applied not only on banks, but also on nonbank financial institutions. It was noted that the legislation on the secrecy of information on financial institutions should not prevent the realization of these recommendations.

The 21st recommendation was of great significance for further dissemination of the corresponding international standards. According to the mentioned recommendation, financial institutions had to pay particular attention to business relations with those persons who were from those countries where FATF's recommendations are not fulfilled or are fulfilled inadequately.

In the part of international cooperation, FATF gave recommendation, alongside with legal assistance in money laundering cases, to develop exchange between competent authorities, the information about suspicious financial transactions, as well as the persons involved in them.

40 recommendations had a serious impact on the formation not only of anti-money laundering national regimes in the countries involved in FATF, but also of the entire international system - it established the unified international standards. The most essential feature of FATF's recommendations is their comprehensive character that is expressed in the following:

- 1) Complex use of criminal and preventive measures;
- 2) A wide circle of involved persons, including financial institutions, supervisory and law enforcement agencies;
- 3) Taking into consideration the statutes of other international acts on fight against money laundering.

The carried out inspections and fulfillment of FATF's recommendations resulted in their improvement. Recommendations covered four directions: criminal, law enforcement, financial and other international cooperation, which, according to FATF, make it possible to create an effective universal system against money laundering.

FATF's recommendations are important not because they contain the standards of the statutes of the legislation established at the international level that are needed to fight against the crime, and that in the period of their development, i.e. in the first half of the 90s of the 20th century, these statutes were mostly revolutionary. In our opinion, FATF's main merit is the principle of voluntary participation of the member states of the organization, the

principle of voluntary presentation of information for the purpose of mutual control and the voluntary eradication of the identified deficiencies.

FATF showed the whole world that the true effectiveness of the changes in the legislation can be achieved only when the state itself has thought out the necessity of such changes and it not dictated by others.

FATF recommended the fundamental measures for international fight against laundering of criminal incomes on which legislations of developed countries are currently based. Even today, when most of the measures offered by FATF clarify the process of resolving the issue, their significant portion is not fully implemented and many details given in the law do not work in practice. Although there is a significant progress in controlling deals and financial institutions, little success is observed in international cooperation when seizing laundered money and pursuing criminals detected in money laundering.

In June 1995, the representatives of 24 authorized countries founded the International Union of Financial Intelligence Subdivisions –the group “Egmont” which aims to promote the development of financial intelligence subdivisions and exchanging of operative financial information.

According to definition given in the regulations offered by the group “Egmont” in 1996, the financial intelligence subdivision is a central national body which is responsible for obtaining and analyzing disclosed financial information, and also transferring the information to the competent authorities:

- 1) on suspicious incomes that are the result of criminal activity;
- 2) which is required according to the national legislation or normative act for the purpose of fighting against money laundering.

For the purpose of implementing the United Nations Economic and Social Council Resolution, in 1996, the 51st United Nations General Assembly adopted the Declaration on Crime and Public Security within the Criminal Justice Commission. The Declaration called on all UN member states to cooperate with each other to prevent transnational organized crime and money laundering

Since June 1996, FATF has started publication of annual reports on its own investigations about the money laundering methods and trends that were carried out from the start of FATF activities.

In 1996-1999, the second round of mutual assessment of FATF member states was held. Its main purpose was to examine the efficiency of the use of 40 recommendations.

In this period, FATF did not accept new members; though, the international standards for fighting against money laundering started spreading due to establishment of FATF-type regional groups. The most indispensable condition for efficiency of international standards in fight

against money laundering is their coordinated use by all countries. At the same time, it is clear that all states do not have the necessary resources to implement such standards.

In order to solve this problem, in 1997, a United Nations program for the fight against money laundering was launched which considers international cooperation in the fight against money laundering, providing technical assistance to states in the development and implementation of relevant legal mechanisms, including creation of financial intelligence subdivisions.

In May of 1998, the "Group of Eight" Summit held in Birmingham noted that globalization is accompanied by a sharp rise in organized crime, which acquires various forms: drug, weapon and human trafficking, abuse of new technologies, fraud and avoiding of fulfillment of the requirements of the law, laundering of criminal incomes.

In response to these challenges and threats, the "Group of Eight" in the final Communiqués supported the working out of the United Nations Convention against transnational organized crime and approved FATF's decision to extend its activities with the FATF-type regional groups.

At the same time, the provisions of the financial intelligence were based on the countries where they were not yet available for meeting and analyzing information about money laundering and for interconnecting with other countries. "Eight" recognized the need to learn the methods of fighting corruption, which promotes important flows of criminal money.

At the same time, the agreement to establish financial intelligence subdivisions in countries where they did not exist was approved, the aim of which was to collect and analyze the information on money laundering and also to establish interrelations with the similar structures of other countries. The "Group of Eight" recognized the need of learning the methods of fighting corruption, the sources of which were important flows of criminal money.

On June 10, 1998, the 20th Special Session of the United Nations General Assembly adopted a Political Declaration and an action plan for fighting against money laundering. Base on the Political Declaration, the States which do not have legislation to combat money laundering are advised to adopt such legislation and programs that are in line with the provisions of the Vienna Convention.

In February of 2000, the FATF Plenum agreed to create four regional groups of assessment (USA, Asia / Oceania, Europe, Africa / Middle East) for the purpose of development of the initiative to identify the countries and territories, and they adopted 25 special criteria for non-compliance with the main provisions of FATF's 40 recommendations (lack of control of financial institutions or insufficient control; lack of an effective compulsory system for notification of suspicious transactions; contradictions in determining the

beneficiary of real benefit; limited practice in the sphere of international cooperation; non-recognition of money laundering as a criminal offense; lack of the authorized body, etc.).

In order for the Banking Union to acknowledge the necessity of preventive measures against the use of financial system for laundering of criminal incomes, in October of 2000, the Wolfsberg Group, which united the world's 12 largest banks, adopted the principles of fighting against money laundering in private banks. These principles refers to identification of a client's identity, including identification of real account owners and actions in case of detecting unusual or suspicious transactions.

Results

Based on the theoretical and empirical research, the statutes of theoretical and practical significance were established. Particularly:

1. Money laundering and its main indicators are not clearly defined in the international law, in particular, in the statutes of the United Nations Convention on the Legalization of Illicit Incomes.
2. The issue of determining the circle of predicate offenses is not solved.
3. Criminal law of different countries does not have a unified approach to the issue of qualification of the crime related to money laundering, what complicated their interaction in case of necessity.

Conclusion

Thus, we have discussed the dynamics of the establishment and development of the international standards, the international legal system to fight against the legalization of illicit incomes, analyzed the recommendations and the documents of the United Nations Organizations. I consider that to settle the arisen problem, it is appropriate to bring the local legislative system related to the legalization of illicit incomes in line with the international standards of what will facilitate the process of effective struggle against transnational organized crime.

References:

Periodicals

1. Mamulashvili G. (2012). Legalization of illicit incomes – the problems of criminalization and law enforcement of modern manifestation of organized crime in Georgian criminal law. Tbilisi.
2. Arnone M., Borlini L. (2010). International anti-money laundering programs: Empirical assessment and issues in criminal regulation – Journal of Money Laundering Control, Volume 13, Number 3. Emerald Group Publishing Limited.

3. Bell E. (2002). An Introductory Who's Who for Money Laundering Investigators – Journal of Money Laundering Control, Vol.5,No.
4. Delahunty L., Schifferli P. (2002). Money laundering law in England and Wales and Switzerland and the Second EU Directive – International business lawyer, Vol. 30, AFL. 4.
5. Dilley B., Pesce T., Gill G., Olcina E. (2007). How banks are facing up to the challenge – Global Anti - Money Laundering Survey. KPMG.
6. FATF Report (2010). Money laundering vulnerabilities of Free Trade Zones. FATF & GAFI.
7. United Nations Convention against Transnational Organized Crime New York, 15 November 2000.
8. United Nations Convention against Transnational Organized Crime (2004). New York, <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

Books and monographs

9. Comment of Criminal Court practice. Economic crime. (2004). Ed.: O. Gamkrelidze. Tbilisi: Meridiani.
10. Beare M. (2007) Money Laundering in Canada: Chasing Dirty and Dangerous Dollars. University of Toronto Press.
11. Pradel J., Danti-Juan M. (2001) Manuel de droit penal special. Paris.

Other Sources

12. Heinrich B. (2011) Vorlesung Strafrecht – Besonderer Teil – Arbeitsblatt Nr. 40.
13. Money Laundering and Financial Crimes. U. S. Department of State. – <http://www.state.gov/j/inl/rls/nrcrpt/2013/vol2/205251>.
14. Money Laundering in the EU. – <http://people.exeter.ac.uk/watupman/u>

Managerial, Economic and Environmental Issues of Land-Based Solid Waste Disposal

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Abstract

The most prevalent method of disposing of solid wastes is to first collect them from the source and then bury them in a landfill. Landfills have always managed a significant portion of solid waste stream, although their use fluctuates with changes in the use of alternative waste management methods and approaches of a country or state towards waste management. The use of alternative methods tends to increase when landfill costs increase, when landfill capacity decreases, or when serious environmental and health problems of landfills happen. Three types of issues are related to land-based solid waste disposal. The first group can be referred to negative environmental and health effects of landfills. Groundwater and surface water contamination, methane gases emissions, releases of toxic materials, and other health threatening material, noise, and traffic congestion are in this first group. The second group of concern to land-based solid waste disposal is related to management of land for competing unwanted uses including siting sanitary landfills nowadays and open dumps in the past. Management related concerns of land-based solid waste disposal are siting issues such as public reaction and NIMBY (not-in-my-backyard syndrome), optimal site selection, declining landfill capacity, long-term preparation, and uneven distribution of landfills. Main economic concerns of land-based solid waste disposal are the high cost of establishing, running and closure of modern sanitary landfills. In this paper, several environmental, managerial, and economic issues of land-based solid waste disposal are examined in a systematic manner. Solid waste disposal policies, practices, approaches, and issues greatly vary from country to country and continent to continent. Paper ends with an evaluation of land-based solid waste disposal policies and practices in a comparative manner several countries, especially from managerial and political perspective.

Keywords: Solid waste disposal, landfilling, economic impacts of landfills and landfilling, management of solid waste storage, economy of waste landfilling

Introduction

Land is an important natural resource in need of protection. For a long time, the United States and Canada has viewed as a country with much land comparing European and South Asian countries. Contamination of land, negative externalities of land use and possible future land scarcities, at least in densely populated areas, loss of prime agricultural land, and other issues only recently, after mid-1960s, considered as important policy issues.

The lack of landfill capacity and skyrocketing municipal and industrial solid waste disposal costs of the late 1980s and early 1990s is believed over during late 1990s (Darcey 1992; Goldstein and Glenn 1997; Repa and Blakey 1996). It seems that new concerns are added to the U.S. landfill in particular and solid waste disposal crisis in general; these crises had started as environmental and health / sanitation concerns; however regional capacity (Darcey 1992), resource conservation, cost, intergenerational justice crisis and concerns have been added gradually. Lodge and Rayport (1991, 128) stated that “the U.S. is running short of landfill capacity and local communities, states, and regions face mounting and critical environmental choices.” Regionally, some parts of the country like the Northeast, New York-New Jersey, Florida, and Hawaii suffer from chronic landfill crisis (Goldstein and Glenn 1997; Repa and Blakey 1996). It seems that when issue is limited to municipal solid waste disposal, there is enough suitable land nationwide in the USA for solid waste storage. With the disposal of other wastes (industrial, mining, and agricultural solid wastes, hazardous wastes, sewage and sludge) land-based waste disposal and its adverse impact on land, water, and air reached critical negative levels since early 1960s, especially during 1980s and early 1990s.

Municipal solid waste is a small portion (200 million tons) within the annual 8 billion tons of solid waste stream in the United States during early 1990s. The ratio of municipal solid wastes to total waste stream remains almost constant during decades. Disposal of municipal and construction solid wastes get major attention because of its high visibility to laypersons through curbside collection, recycling bins, and municipal solid waste landfills as compared with other wastes. Not only are landfill capacity but environmental and health impacts of solid waste landfills and open or wild dumping before 1970s also are/were of great importance (Denison and Ruston 1997). Reese (1983, 288) stated that waste disposal and its land use problems are major pollution concerns. Siting new landfills is difficult and the need to conserve landfill space. With the fear of water pollution from landfills, many residents are concerned about old and new landfills.

Land is an important natural resource that needs to be protected (Reese 1983, 288). Solid waste disposal practices resulted with costly negative externalities like pollution of water with leachate from landfills. Not only

groundwater, but also land is contaminated and toxic materials are released to air, water, and land from waste disposal facilities. Now, as a result of past practices, federal and state governments (together with private entities) have spent billions to clean inactive leaking municipal waste storage sites under the Superfund program (Hird 1993; Lawrence and Khurana 1997).

Economic Considerations of Solid Waste Landfilling

Landfills have become increasingly more expensive, owing to the rising costs of permits, construction, and operation. In other words, new federal legislation to protect environment and health has increased the costs of building and operating landfills. Increasing costs, together with very limited landfill capacity, force many densely populated cities to ship their waste to distant privately owned super dumps where lower tipping fees attract them (Wilt and Davis 1996). Landfills across the country have been filling up. Therefore, communities and private waste companies have been searching for new places to bury their garbage. They have been looking at places like South Dakota, where the air, water, and soil have not been polluted yet. Some poorer distant local communities may be willing to take tremendous amounts of garbage in exchange for money. States and local governments are almost powerless to stop the flow of garbage across their borders (Wilt and Davis 1996). One waste company had tried for many years to open a huge landfill in South Dakota that would hold nearly twice as much municipal solid waste as the entire state produces.

The inadequate local landfill capacity and uneven distribution of landfill capacity are major issues in many states. For example, the remaining years of landfill capacity is more than 13 in Illinois and Texas (Texas Center for Policy Studies 1995). Ten or more years of landfill capacity is assumed to be long enough for American states. More than half of the counties in both states have no landfills. The number of active nonhazardous (municipal, industrial, construction and demolition) solid waste landfills in Illinois had fallen from 146 in 1987 to 59 in 1994 (Illinois Environmental Protection Agency 1996). Since 1987, the annual waste landfilled has decreased by 3.1 million cubic yards, or 6 %. In Illinois, problems in waste handling capacity during the next five years are more likely to occur at local or regional levels, rather than as a statewide disposal crisis. In 3 years, 72 counties in Illinois will be without a landfill if no new capacity is built (Biocycle 1996, 10; Illinois Environmental Protection Agency 1996).

The worst general shortage of landfill space is in the Northeast, with the large cities of the northern Midwest close behind. As public and private landfill operators in these regions have recognized the true value of their remaining landfill capacity, tipping fees have risen dramatically. In New Jersey, for example, typical tipping fees escalated from \$30 to \$125 per ton

between 1983 and 1987; a tipping fee is the charge levied for unloading solid waste at a landfill, incinerator, or transfer station (New York Times 1988). Not only tipping fees have increased in recent decades, but also total cost of solid waste disposal has risen dramatically.

In 1980, the annual cost of collection and disposal exceeded \$4 billion. Among the various expenditures for public services, this amount was surpassed only by the costs for schools and for roads at the local government level. In the early 1960s, local governments spent approximately \$1 billion; in 1940 the figure was only \$300 million (Melosi 1981, 194). Due to capacity shortages and strengthened environmental regulations, the cost of municipal waste management continues to increase dramatically in most areas of the country. This has caused a crisis for many communities. The average national price for landfills has dramatically increased from \$10 per ton in 1983 to around \$35 per ton in 1992. In the Northeast, the prices can be more than \$125 per ton. In South Dakota, the landfill tipping fee is less than \$10 (SRI International 1992, 98). On top of these prices the new federal and state solid waste landfill controls may cost between \$12 and \$17 per ton on average. The variation between individual landfills is large, and the incremental cost of new controls can range from as low as \$1 per ton at an extremely well-located landfill to more than \$41 per ton, according to USEPA in its Regulatory Impact Analysis performed to support the proposed Subtitle D rule, December 1988. These figures are strictly for the incremental cost of implementing the new federal solid waste landfill regulations. The lack of capacity continues to drive prices even higher because value for remaining capacity is based on the cost to create new capacity. As long as the siting process remains in a bottleneck, the value of remaining capacity continues to increase (Williams 1994, 2.3). According to a report prepared by SRJ International (1992, 98) “the higher costs in some states result from the scarcity of suitable landfill sites, dense population concentrations in metropolitan areas, tighter state environmental regulations, fees, and higher transportation and labor costs.”

The increasing cost of land-based solid waste disposal can be explained by the two-way relationship between solid waste practices and federal and state regulations. The spiraling costs of landfilling, as well as the complexities of siting new landfills are the key legislative intents of the RCRA and Congress. One of the primary goals of the RCRA is to drive up the costs of landfilling so as to reflect its true economic costs to society, as well as to support newer technologies for the treatment, storage, and disposal of solid waste. Therefore, one of two focuses of solid waste disposal is who pays for the cost of improper garbage disposal. The second focus is whether USEPA and Congress have the courage to impose the true costs of land disposal on the owners and operators of landfills so as to make the new waste treatment, storage, and disposal technologies more competitive (Kovacs 1986, 23).

All the above trends are supported by other studies related to recycling and solid waste management. For example, McClain (1995) pointed out that there are political, social and economic factors related to recycling and per capita solid waste generation and disposal. She found that tipping fees, disposal space and siting costs affect recycling, and recycling affects landfilling. To McClain, higher tipping fees make recycling more economically viable. The revenues from the sale of recyclable materials may be small or even negligible, as long as the net cost of operating the recycling program is less than the landfill tipping fees, and local officials promote recycling as an alternative to land-based solid waste disposal. Similarly to McClain, SRI International (1992, 98) stated that “cost variations from state to state and region to region can strongly influence the degree of desirability of choosing alternative strategies for MSW management.” Closure of landfills with no replacement pressurizes state officials commit to more recycling and source reduction. The decline of capacity in a community, not the decline of the number of active landfills, pressure states and localities to use alternative disposal methods (Ozgur, 1998).

Subtitle D of the RCRA directed the USEPA to set federal standards for the management of industrial and municipal non-hazardous solid waste in sanitary landfills. Under the amended Subtitle D of the RCRA, stricter federal pollution controls have been established for landfills. These include restriction on the location of landfills and prescription for landfill liners, leachate (water that goes through waste) collection systems, methane gas monitoring, groundwater monitoring, closure, post-closure care and financial assurances.

There are many examples of regional solid waste problems and unbalanced distribution of landfills. For example, in 1986, 250 of Texas' 254 counties had at least one landfill; in 1995 only 130 counties had at least one landfill. A similar problem happened in Tennessee, New York, and other states. Stricter landfill regulations to protect the environment and human health are forcing local communities either to ante-up with new dollars for redesigning their current landfills, or close them (Texas Center for Policy Studies 1995). Landfill closures, like those in Texas, create potential problems all around the United States. Among these are the increasing cost of disposal due to the long-distance transportation of waste, building and operating waste transfer stations, and illegal --potentially harmful-- dumping. Moreover, transfer sites themselves may pose the same problems as to landfills: groundwater pollution, siting problems, vectors and odor.

Uneven distribution of landfills or landfill capacity does not occur only within state but also among the states. In general, more urbanized areas and the Northeast face the most severe landfill capacity problems. Since urban and suburban land is expensive and public reaction is higher in urbanized areas possibly due to more organized and informed residents, interstate shipment of

solid waste happens, in general, from more urbanized and prospective areas to poorer and less densely populated rural areas. The noise, odor, and other unpleasant characteristics of solid waste disposal facilities cause them to be located well away from the highly populated areas. Along with the increased operational costs associated with tighter environmental regulations on these facilities, landfill availability and other factors cause solid waste disposal facilities to be located in poorer distant rural areas (Arnold 1995, 213).

The more heavily populated regions of the country produce more solid waste per square mile. As a result of economic factors and landfill scarcity, these states have been shipping solid wastes out of their own jurisdictions and into landfills in states that for the moment have some capacity to receive it. Greater capacity remains in the underpriced and under-regulated landfills of the industrial Midwest, the South, and the Rocky Mountain states. As tipping fees rise, however, garbage becomes fluid, flowing from high-cost disposal options toward cheaper ones. New Jersey, once a destination for Philadelphia's trash, started shipping more than half of its solid waste to other states. Solid waste from the Northeast is turning up in Arkansas, Alabama, and Virginia. Under one scheme, baled garbage from the Northeast would be shipped by rail to a huge proposed landfill in New Mexico (Schroeder 1989).

Managerial Issues of Landfilling: The Public Opposes to Landfill Sites and Issues of Dump Site Closures

States have different levels of responses --policies and programs-- to the lack of land area for waste sites and to federal regulations on the subject. Adoption of policies and programs by American states depend upon pressure from public opposition and state physical conditions in addition to other determinants. State institutional capacity also affects the level and quality of state responses to solid waste disposal issues (Ozgur, 1998: 13, Chapter 8). Some states like California, New Jersey, Minnesota, and Oregon respond quickly and effectively to both the issue of declining landfill capacity and possible negative externalities of solid waste disposal. Others, like Louisiana and Ohio, are less eager to attack solid waste problems in spite of their willingness to promote alternative waste disposal solutions.

Disposal practices, such as landfilling require special land areas and adversely affect adjacent land. Moreover, many localities or regions have a problem finding nearby place to locate a landfill. For these reasons, many states or local authorities claim the need for alternatives to land-based disposal of municipal solid wastes. Among the alternatives, recycling is the most frequently utilized (Ozgur, 1998). Recycling is also accepted as less polluting than incineration and landfilling.

Federal policymakers responded with new and stricter legislation to the severity of the solid waste issues. The most significant regulation was the Resource Conservation and Recovery Act of 1976 (RCRA) and its

amendments. As a result of this legislation, more than 17,000 landfills have been closed during last two decades. Both closure of landfills and public opposition to landfills create pressures to find alternative disposal methods. Pressures from solid waste and other environmental issues force states to promote alternative disposal methods: incineration, composting, recycling, and source reduction. Recycling is the most frequently used method to reduce the dependence on landfilling in solid waste disposal. All states have more or less focused on recycling and source reduction together with various regulations to decrease landfilling and preserving potential land for future final land-based disposal of solid wastes.

Most of the countries have regional or community scale landfill capacity problems. For example, the number of landfills in the United States declined from 20,000 in 1978 to nearly 3,000 in 1996 (Goldstein and Glenn 1997). Shortage of landfill capacity is very acute in the Northeast of the USA. The sharp decline is the result of landfills either reaching their capacity or closing because they do not meet county, state, or federal landfill standards, which increase the cost of designing, running and closing landfills (Ackerman 1997; Kovacs 1993). New landfill design and regulations cause existing landfills to fill up quickly. For example, government regulations typically require that each day's garbage must be covered with at least six inches of soil, which consumes as much as 30 % of landfill capacity (Finegan 1990).

It is expected that where landfill capacity is adequate (more than 10 years) the landfilling rate may not be lower. Some states in the West coast (Washington and Oregon) seem to be exceptions to this assumption because they have relatively low landfilling rate despite more than 10 years of remaining capacity. Methods and rates of disposing municipal solid wastes may radically change from one state to the next. Reasons for these differences are partially explained by variances in available local landfill capacity and the local cost of landfilling (Ozgur, 1998). Remaining years of capacity is associated with landfill closures due to regulations or other factors, siting issues and increasing total volume of garbage generated. When more garbage is generated, existing landfill capacity is consumed faster.

Communities where a capacity crisis is a serious issue are not rare. Seventy-five percent of current landfill capacity will close within 10 to 15 years. Some will close because they are full, but others will close because they are poorly located, poorly designed, or poorly operated and thus pose environmental problems. These capacity problems are strongly driven by two factors: the failure to site new capacity and the unwillingness of communities to accept waste from other communities, particularly those that are distant.

The number of landfills had decreased from more than 20,000 in the early 1970s to less than 4,000 in 1996. The accuracy of this number is not known because few records were maintained by states [']. However, it was

probably an overestimate. In 1986, USEPA attempted to quantify the number of municipal solid waste landfills in the United States to support its Subtitle D rulemaking efforts. At that time, USEPA estimated that some 6,034 active municipal solid waste landfills existed, and that landfill numbers were expected to decline by more than 2,000 by 1992 (Repa and Blakey 1996). In 1996, New York City Mayor Rudolph Giuliani and New York Governor George Pataki announced an agreement to close the city's last landfill, the Fresh Kills Landfill.

Not everybody supports the idea that there is a landfill capacity problem and landfilling should be avoided. For example, Arnold (1995, 213) wrote, "recent evidence suggests that landfill space is far from scarce. Indeed, much of the nation now possesses considerable excess solid waste disposal capacity, enough to last for many decades in many cases." It is true that some states have larger capacity despite fewer landfills. Very large regional landfills built by the private sector have increased remaining landfill capacity in some states. Despite relatively larger capacity in some parts of the country, states with severe landfill crisis continue to promote alternative disposal methods and distrust on landfilling. Contrary to general belief, Kharbanda and Stallworthy (1990, 56) pointed out that "if the proper procedures are used, it is not only possible to dispose of wastes quite safely by landfill, but the environment can be protected as well." Under the 1984 amendment of Subtitle D of the Resource Conservation and Recovery Act of 1976, stricter federal pollution controls have been established for landfills. Because of stricter state and federal landfill regulations concerning methane gas generation and groundwater contamination, thousands of landfills have closed.

In the 1980s, the USA had experienced revolutionary changes in the management of municipal solid waste. Federal and state regulations concerning the land, air, and water gradually change and strengthen (Belue et al. 1997). Many land disposal facilities have been replaced by waste-to-energy plants, which increased their capacity to manage waste tenfold during the 1980s, and now manage 15 % of the nation's municipal solid waste. But the growth of waste-to-energy has now stalled due to increased costs and environmental concerns (Blumberg and Gottlieb 1989). In response to declining landfill capacity, the number of operating resource recovery plants also has increased from 25 in 1980 to 160 in 1989. The traditional method of disposing of garbage in landfills is declining.

Solid waste issues have been a major public concern over the last few decades. Since 1984, two-thirds of the nation's municipal landfills have closed; the burning of municipal solid waste to generate steam or electricity has increased six-fold; and more than 7,000 local governments have begun to curbside collection of recyclable materials. Local governments play the lead role in solid waste management and decide how waste will be managed --

whether by landfill, incineration, recycling, compost, or some combination-- and set standards for the resulting facilities under the range and guidelines of USEPA regulations and the RCRA Subtitle D.

The failure to site new landfills is caused by the unwillingness of residents to accept nearby waste facilities. In the 1980s, it became difficult to find sites for new dumps when old ones reached the end of their natural lives. Public controversies and complex design requirements have directly affected the length of time to site new landfills and the costs of building them. For example, it took five years to start building a new landfill to replace the existing Halifax-Dartmouth Metropolitan Area (Canada) landfill. It is not unusual to take ten years or more to gain permit approvals, not because of the technical process, but because of public opposition. When a landfill may pose public health risks, the permit process becomes lengthy, controversial, and costly. Therefore, many private companies seek locations in lower income, poorer small communities, where public resistance may be more limited.

The problems caused by municipal solid waste landfills have become a source of public concern in recent years. As Starkey and Hill (1996, 5) stated “although states have the opportunity to site new disposal facilities, citizen’s concerns about the environmental and health consequences of new facilities have kept many from being sited, especially in heavily populated areas.” As Americans become more aware of the potential threat to health an environment from toxic substances, they also become more concerned about the generation and management of solid waste --sometimes to the point of refusing to allow new landfills near their homes. The resistance of citizen groups and neighbors to the selection of disposal sites is a factor that exacerbates the problem of solid waste disposal.

As people become more concerned about the environment, so they are more likely to oppose disposal facility siting within their jurisdictions. Opposition stemming from environmental concerns about air and water quality may be mitigated by state environmental regulations which require state-of-the-art disposal facilities with sophisticated environmental control equipment (Gomez-Ibanez, Meyer, and Luberoff 1992). Furthermore, people tend to support environmentally favorable solid waste management options such as source reduction and recycling programs, which are viewed as “pivotal strategies for slowing environmental degradation” (Ladd and Laska 1991, 304).

Siting and permitting time frames for landfills and combustion facilities range from 4 years to 10 years, if they occur at all. Even recycling and composting facilities typically take several years to site and permit. Public and private institutions responsible for managing solid wastes do not have the public’s confidence because of past environmental problems like groundwater contamination caused by landfills. Both Canada and the United States have

suffered from declining rates of public confidence in public and private institutions. While not-in-my-backyard (NIMBY) politics in certain respects contributes to that lack of trust in prevailing structures, it also illustrates the willingness of the general citizenry to become informed and actively involved on pertinent social issues.

Some analysts of the NIMBY phenomenon contended that siting resistance stems from a public that badly misunderstands uncertainty. Only few state and local governments have established effective dispute resolution techniques, preemption techniques, or voluntary partnership programs (Williams 1994, 2.3). Different perceptions and effective dispute resolution may shorten the time spent to overcome public reaction. Not all analysts agree that fear and public view about land-based waste disposal stems from misunderstanding, Rabe views NIMBY differently. To Rabe (1994, 14), “rather than view NIMBY as a millstone around the neck of regulatory efficiency, it can be viewed as an opportunity to move toward a more open, effective environmental regulatory system in North America.”

Environmental and Health Impacts of Landfills and Landfilling: Groundwater Contamination, Release of Harmful Gas Emissions

Groundwater is one of the major sources of drinking water. Nearly half of the country’s population obtains its drinking water from groundwater. Groundwater has also been used extensively for agricultural, industrial, and recreational purposes. Landfills cause contamination of this valuable resource if they are not designed to prevent leachate releases. Cleaning up contaminated groundwater is extremely costly; and, there is no proven technology. Therefore, federal and state regulations are designed to ensure that new or expanded landfills do not contaminate groundwater.

If the landfills are not properly designed, built and managed, runoff and leachate can contaminate surface water and groundwater supplies (Information Plus 1994, 15). Leachate can contain a broad range of chemicals, including metals such as lead, cadmium, mercury, and organic chemicals such as benzene. Precipitation levels, site topography, facility design and operation, and the type of final vegetative cover influence the amount of leachate generated by a landfill.

To lower environmental and health risks posed by leachate, landfills that receive waste must now install a groundwater monitoring system and set aside money to pay for groundwater cleanup. In 1993, fewer than 1,500 of the 5,800 operating landfills had groundwater monitoring systems and only about 900 had liners. As of late 1980s, many of the estimated 93,500 landfills potentially contaminated groundwater because of their locations on marshlands, former strip mines, or limestone sinkholes. It is also estimated that there are more than 20,000 abandoned leaking waste storage sites across the United States (with groundwater contamination occurring at a majority of

those sites).

Historically, landfills have been associated with some significant problems, including groundwater contamination, which partly explains the public's resistance to new facilities. Nearly half the country's population draws its drinking water from aquifers and other groundwater bodies. Groundwater also is used extensively for agricultural, industrial, and recreational purposes. Landfills may increase contamination of this valuable resource if they are not designed to prevent waste releases into groundwater or detect them when they occur. Groundwater contamination problem from waste disposal sites (industrial, household, and hazardous) have yet to be solved despite better technological applications and stricter rules in managing the sites.

Leachate can contain a broad range of chemicals, including metals such as lead, cadmium, and mercury, and organic chemicals such as benzene. Precipitation levels, site topography, facility design and operation, and the type of final vegetative cover influence the amount of leachate generated by a landfill. To lower environmental and health risks posed by leachate, landfills that receive waste after October 9, 1993 are required to install a groundwater monitoring system and set aside money to pay for groundwater cleanup. Of the estimated 5,800 operating landfills in 1993, fewer than 1,500 of them had groundwater monitoring systems and only about 900 had liners.

A groundwater monitoring system consists of a series of wells located near the landfill. The presence and migration of contamination can be detected so that pollution of groundwater sources can be prevented. Managing leachate to protect the groundwater is one of the most important issues communities must address in the design, operation, and long-term care of landfills. Leaching is a problem facing almost all landfills. USEPA documented widespread contamination of both groundwater and surface water that had resulted from the inadequate design, location, or operation of municipal landfills; USEPA's survey in 1986 documented these negative trends (USEPA 1988).

Cleaning up contaminated groundwater is a long and costly process, and in some cases, may not be totally successful. Affected communities often bear both the cleanup costs and the expense of prevention. Rising public resistance to siting new landfills compounds the problem of managing the increased volume of municipal solid waste. The regulations are designed to ensure that new or expanded landfills do not contaminate ground water and thus become community burdens.

Environmental releases from landfills consist of uncaptured emissions of trace amounts of a variety of hazardous gases, as well as larger quantities of methane and of carbon dioxide, which are generated in the landfill in volumes approximately equal to that for methane. Methane is both toxic and

explosive. Other volatile, carcinogenic compounds, such as benzene, chloroform, and carbon tetrachloride also are released from landfills. These emissions occur both through leakage and through separation from the captured landfill gases. Collection system limitations and the permeability of covers leaked the gases into the atmosphere.

Most of the practitioners and legislators in solid waste management see recycling as a promising alternative to reduce landfilling rate. It seems that there is a relationship between the strength of recycling programs and landfilling rate. In this dissertation, it is expected that the extent of local and state recycling programs affect state landfilling rate. Recycling rates were compared among the states and related to land-based solid waste storage. Few political scientists working in environmental regulation field seem to believe that truly effective environmental regulation is very unlikely, if not impossible (Bardach and Kagan 1982; Lewis-Beck and Alford 1980). A group of political scientists content that environmental regulation simply does not work. A small group of other researchers like Evan J. Ringquist (1993, 1023) believe that regulation does work. Existence of disposal bans was used in this dissertation to statistically test whether there is a relationship between particular environmental regulations and landfilling rate. In other words, it is hypothesized that particular solid waste management regulations affect both directly and indirectly a state's landfilling rate.

Early regulations of municipal solid waste addressed the negative externalities associated with various disposal methods. In the 1980s, legislation was directed at controlling the disposal of the waste stream. In the 1990s, attention shifted toward legislation that encouraged the demand for recyclable materials, including tax credits and minimum content laws. Recent federal and state legislation focuses on procurement policies and disposal bans. Banning specific items from landfills and incinerators is one of the most frequently used regulations in solid waste management. Disposal bans may focus on either reducing toxicity (e.g., battery ban, used oil disposal ban) or volume (e.g., yard waste ban) of the solid wastes. Yard waste bans, white goods bans, and tire bans are important from a volume perspective; used oil, battery ban, and household hazardous waste bans are important from a toxicity perspective.

Higher recycling rates at reasonable cost and ease cannot be achieved only by relying on disposal bans. Comprehensive recyclable collection programs and adequate recycling markets also are required. Source separation (prevents contamination and makes recycling easier), density, participation, and technical design of recycling programs also impact recycling rate. Recycling rate is negatively related to landfilling rate.

During the 1970s, because of growing discontent and leachate problems around landfills, a new terminology arose to signify the new hopes:

“resource recovery”. It evoked the old Progressive dream of capturing part of the waste stream in some new form. This included recycling concepts, or materials recovery and, most significantly, to many of the public officials and waste industry executives, energy recovery linked to the burning of waste. The latter, known as “waste-to-energy” or “refuse-to-energy” was little more than a variation of an old theme: Burn it instead of burying it (Blumberg and Gottlieb 1989, 21). With the addition of the source reduction concept, USEPA's disposal hierarchy looks like a modified version of this old Progressive dream although USEPA has never implied or expressed it.

In comparison with facilities that either collect landfill gas and flare it or allow the gases to escape into the atmosphere, landfill gas-to-energy operations reduce the environmental releases of methane while providing an energy benefit (SRI International 1992, 97). When landfill gases are released to the air or accumulated in higher amounts and exploded, it is considered as environmentally unwanted. Landfill gases become environmentally safe and desirable when they are collected and processed. Landfills and incinerators produce methane, which is an energy source similar to natural gas, but with about one-half the heating value. Collection and processing of methane gases are more economically feasible in newer and larger landfills. In 1992, more than 100 facilities of the USA had recovered methane. The number of landfills collecting or actively planning to recover landfill gas has increased approximately to 200 in the second half of the 1990s (Starkey and Hill 1996, 17).

An optimal collection system working under ideal conditions can recover up to 80 % of the methane produced by a landfill. Recovered methane can either be used as a low-grade fuel or upgraded to pipeline-quality methane. If a market does not exist, the gas can be used at the landfill in boilers, furnaces, or electric generators. Recent USEPA source performance and emission guidelines require the collection of methane from large landfills -- those with 2.5 million metric tons design capacity-- with emissions of greater than 50 mega-grams per year. Starkey and Hill (1996, 17) claim that “the amount of revenue received from the energy (methane) collected and used, however, may not outweigh the costs associated with building and operating a methane energy collection and storage facility. Therefore, most landfill operators manage methane by flaring it.”

Conclusion

Through the decade of the 1970s, various environmental and health issues of solid waste disposal, particularly contamination of the land through landfills, became a central issue that contributed to the growing solid waste dilemma. In addition to environmental problems, managerial problems associated with landfill closures and capacity issues made USEPA's Office of

Solid Waste Management one of the largest parts of the mushrooming environmental bureaucracy of the 1970s. This Office is basically devoted to reviewing and dealing with the problems of land disposal sites (USEPA 1973).

Landfills that meet federal standards can lessen environmental risks. Subtitle D of the RCRA requires landfill owners and operators to monitor water sources and to maintain a leachate collection system and a final cover for a minimum of 30 years after the landfill closes. This long-term maintenance requirement is critical, since even the most well designed landfills may eventually fail due to the natural deterioration of liners, leachate collection systems, and final cover materials (Starkey and Hill 1996, 16-17).

Modern landfills are relatively safer. However, despite safer and newer technology, more than 20 % of the 1,200 cleanup sites on the American Superfund National Priority List are landfills. Modern landfills are not environmentally benign, but technical improvements made in landfill design and operation, combined with today's stricter standards, have lessened their negative environmental impacts. Improvements in landfill design and technology have not made siting a landfill easier. Contrary to the general belief that siting landfills is getting more difficult, Murphy (1993, 94-95) claimed that newer and safer technology has helped to renew public confidence in this waste disposal option. Siting a disposal facility, particularly a landfill, is an increasingly difficult challenge due to public reaction and distrust to technology. Moreover, the technical constraints and regulatory standards are big hurdles in themselves --and the political issues involved are particularly volatile. The siting of new landfills also is hampered by the poor environmental track record of older dumps.

Before a landfill is constructed, an environmentally appropriate and politically acceptable site must be selected. Federal regulations help to guide communities in this process by creating specific requirements to improve the siting, design, and operation of new landfills. The RCRA's Subtitle D of the USA restricts the siting of landfills in flood plains, wetlands, earthquake prone areas, near airports, or where the ground cannot support the weight of a landfill. State and local governments can influence the selection of a site by requiring building permits, regulating the landfill size, and enforcing zoning ordinances. Landfill design criteria also are outlined in the new regulations. New federal legislation in the USA to protect the environment has increased the cost of building new landfills. Moreover siting landfills has become increasingly difficult because the public opposes having such a facility nearby. The sharp decline is the result of landfills either reaching their capacity, or closing because they do not meet state or federal landfill design and operation standards.

Many of the smaller local landfills have been closed; however, larger active private and public landfills provide enough capacity in most of the

country, so that the country's overall landfill capacity is not declining. Transporting waste to larger regional facilities and uneven distribution of landfill capacity now are the major problem. The closure of landfills and opening new large regional landfills, however, raise questions. It may be easier to site and build a landfill in the open spaces of New Mexico than in crowded New Jersey, but that does not help communities in New Jersey or the Northeast faced with decreasing landfill capacity unless they are willing to pay high transportation costs. It does not address the fact that people who live in those open spaces do not want to be the dumping grounds for other people's garbage (Murphy 1993, 94).

Goldstein and Glenn (1997) claimed that the solid waste disposal crisis of the late 1980s and early 1990s has vanished based on the information gathered by yearly "State of the Garbage Survey" of 50 states. Their survey shows that most of the states report adequate landfill capacity; and the national average landfill tipping fees have actually declined. Survey also shows that growth in recycling and composting programs is leveling out. Another sign that the crisis has ended is the minimal number of solid waste management laws coming out of state houses across the country. Bills that have passed primarily target specific waste streams or make minor changes to existing laws. There is some focus on the development recycling market. If disposal costs go significantly higher, then recycling and source reduction is expected to increase, and landfilling to decrease (Kimball 1992, 9).

References:

1. Ackerman, Frank. 1997. *Why do we recycle?: Markets, Values and Public Policy*. Washington D.C.: Island Press.
2. Arnold, Frank S. 1995. *Economic analysis of environmental policy and regulation*. New York: John Wiley and Sons Inc.
3. Bardach, Eugene, and Robert Kagan. 1982. *Going by the book: The problem of regulatory unreasonableness*. Philadelphia: Temple University Press.
4. Belue, Mack, Gerry Newcombe, Lou Guilmette, Tom Horton, and Teree Caldwell-Johnson. 1997. Talking trash: Five solid waste pros tell you what they think you should know. *American City and County*. 112, no. 11 (October): 40-55.
5. Biocycle. 1996. Illinois takes close look at landfill capacity. *Biocycle*. no. 1 (January): 10.
6. Blumberg, Louis and Robert Gottlieb. 1989. *War on waste: Can American wins its battle with garbage*. Washington D.C.: Island Press.
7. Darcey, Sue. 1992. Coping with the landfill crisis, *World Wastes*. 35, no. 5 (May): 26-34.

8. Denison, Richard A., and John F. Ruston. 1997. Recycling is not garbage. *Technology Review*. 100, no. 7 (October): 55-60.
9. Finegan, Jay. 1990. Anatomy of a start-up: Down in the dump. *Inc.* 12, no. 9 (September): 90-100.
10. Goldstein, Nora and Jim Glenn. 1997. The state of garbage in America, part II. *Biocycle* 38, no.5 (May): 71-75.
11. Gomez-Ibanez, J.A.; J.R. Meyer, D.E. Luberoff. 1992. Solid waste disposal: Public and private. *Chemtech*. 72, no. 2: 78-85.
12. Hird, John A. 1993 *Superfund: The political economy of environmental risk*. Baltimore: John Hopkins University Press.
13. Illinois Environmental Protection Agency, Division of Pollution Control. 1996. Available disposal capacity for solid waste in Illinois: Ninth annual report. Springfield, Illinois.
14. Information Plus. 1994. *Garbage and other pollution*. Wylie, TX: Information Plus.
15. Kharbanda, Om Prakash, and E.A. Stallworthy. 1990. *Waste management: Towards a sustainable society*. New York: Auburn House.
16. Kimball, Debi. 1992. *Recycling in America: A reference handbook*. Santa Barbara, CA: ABC-CLIO.
17. Kovacs, William L. 1986. Legislation and involved agencies. In *The solid waste handbook: A practical guide*, ed. William D. Robinson, 9-30. New York: John Wiley & Sons.
18. Kovacs, William L. 1993. Solid waste management: Historical and future perspectives. *Resources, Conservation, and Recycling* 8, no. 1-2 (January): 113-130.
19. Ladd, A.E.; S. Laska. 1991. Opposition to solid waste incineration: Pre-implementation anxieties surrounding a new environmental controversy. *Social Inquiry* 61, no.3: 701-16.
20. Lawrence, Carol M, and Inder K. Khurana. 1997. Superfund liabilities and governmental reporting entities: An empirical analysis. *Journal of Accounting and Public Policy*. 16, no.2 (Summer): 155-186.
21. Lewis-Beck, Michael, and John Alford. 1980. Can government regulate safety? The coal mine example. *American Political Science Review* 74, no.3: 745-756.
22. Lodge, George C., and Rayport, Jeffrey R. 1991. Knee-deep and rising: American recycling crisis. *Harvard Business Review*. 69, no. 5 (September / October): 128-139.
23. McClain, Katherine T. 1995. Recycling programs. In *Handbook of environmental economics*. Reprinted, ed. Daniel W. Bromley, 222-239. Cambridge, MA: Basil Blackwell Ltd.

24. Melosi, Martin V. 1981. *Garbage in the cities: Refuse, reform, and the environment: 1880-1980*. College Station, TX: Texas A&M University Press.
25. Murphy, Pamela. 1993. *The garbage primer*. New York: Lyons & Burford; League of Women Voters of the United States.
26. New York Times. 1988. Hauling costs soaring, Jerseyans turn to dumping trash illegally. *New York Times* March 18: A1, B2.
27. Ozgur H., 1998. *A comparative state study of reducing land-based municipal solid waste storage: Determinants, policies, and frameworks*, The University of Texas at Arlington, School of Urban and Public Affairs.
28. Rabe, Barry G. 1994. *Beyond NIMBY: Hazardous waste siting in Canada and the United States*. Washington D.C.: The Brookings Institution.
29. Reese, Craig E. 1983. *Deregulation and environmental quality: The use of tax policy to control pollution in North America and Western Europe*. Westport, Connecticut: Quorum Books.
30. Repa, Edward W., and Allen Blakey. 1996. Waste disposal trends. *Waste Age* (January): 43-54.
31. Ringquist, Evan J. 1993 Does regulation matter?: Evaluating the effects of state air pollution control programs. *Journal of Politics* 55, no.4 (November): 1022-45.
32. Schroeder, Joan V. 1989. Northern Trash. *New York Times*, 16 (August): op-ed page.
33. SRI International. 1992. *Data summary of municipal solid waste management alternatives, Volume 1: Report text*. Golden, Colorado: National Renewable Energy Laboratory.
34. Starkey, Deb and Kelly Hill. 1996. *A Legislator's Guide to Municipal Solid Waste Management*. Washington D.C.: National Conference of State Legislatures.
35. Texas Center for Policy Studies. 1995. *Texas environmental almanac*. Austin, TX: Texas Center for Policy Studies.
36. USEPA. 1973 environmental assessment of gas and leachate problems at land disposal sites. Washington D.C.: USEPA, Office of Solid Waste. EPA 530/SW-1 10-OF 1986. *Census of state and territorial subtitle D non-hazardous waste programs*. Washington D.C.: Office of Solid Waste and Emergency Response.
37. USEPA. 1988. *Report to Congress: Solid waste disposal in the United States*. Washington D.C.: US Printing Office. EPA/530-SW-88-011.
38. Williams, Marcia E. 1994. *Integrated municipal solid waste management*. In *Handbook of Solid Waste Management*, ed. Frank Kreith, 2.1-2.16. New York: Mc-Graw-Hill, Inc.

39. Wilt, Catherina A., and Garry A Davis. 1996. Local control wasting away: Will Congress level the solid waste playing field? *Policy Studies Journal* 24, no. 1 (Spring): 123-134.

Subjective Vs. Objective Assessment of Financial Literacy

- Do the Beliefs Meet the Reality?

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Abstract

This paper investigates the problem of financial literacy, which is analysed from two perspectives. The first is the knowledge about saving and loans, and the other – subjective vs. objective knowledge. The analyses were done on the basis of quantitative studies conducted with the structured face-to-face interviews method. The sample consisted of 438 persons from Wielkopolska (Poland). The results suggest that there is a higher differentiation of knowledge about saving compared with the knowledge about loans and a slightly higher level of knowledge about loans. The study also featured a group of respondents who self-assess their knowledge on the level close to the objective knowledge, as well as those who overestimate and those who underestimate it. These segments were described taking into account demographic and economic features.

Keywords: Objective and subjective financial knowledge, financial behaviour

Literature review

The level of financial knowledge and the ability to make financial decisions is a subject investigated by many researchers, in particular in the context of the lack of knowledge, the ability to do basic calculations, and the possible consequences of financial exclusion (Bernheim, 1995, 1998; Moore, 2003, Jappelli et al., 2005), as well as the inability to assess financial instruments and their usefulness to a consumer (Benartzi, Thaler, 2001; (Choi i in. 2009; Lusardi 2008; Lusardi i Mitchell 2007; Białowas 2013; Olejnik 2016)). Authors find also other mixed evidence that financial education interventions affect behavior, good reviews are provided by (Hastings i in. 2012; Lusardi i Mitchell 2014).

According to the definition of the (OECD 2015), financial literacy is “A combination of awareness, knowledge, skill, attitude and behaviour

necessary to make sound financial decisions and ultimately achieve individual financial wellbeing.”

When writing about financial literacy, the difference between subjective and objective assessment should be borne in mind. Subjective knowledge results from a consumer’s self-assessment and it is usually measured this way (Alba, Hutchinson, 2000; Bearden, Hardesty, Rose, 2001; Moorman et al., 2004; Carlson et al., 2009).

Objective knowledge, on the other hand, is measured with a set of questions in which the correctness of respondents' answers is evaluated.

Naturally, the result of the measurement in both cases to a great extent depends on its method. In order to render the results comparable, standardised tests are frequently used, e.g. the questionnaire compiled by the (OECD 2015) or the Big Three Questions proposed by (Lusardi i Mitchell 2008). A comprehensive overview of financial literacy measurement methods is offered by (Huston 2010)

The influence of financial literacy on financial decisions was studied by Disney et al. (2015) checking the effect of financial literacy on the credit decisions, and by Bucher-Koenen and Lusardi (2011) finding the strong correlation between financial literacy and recognition of the need and the financial benefits of saving for retirement. The research conducted by Lusardi and Mitchell (2011) also confirmed the strong relationship: about 70% of the households who have planned for retirement give correct answers to all of the questions (and only 54% of non-planners).

The study of Clark et al. (2015) proves a positive relationship between individuals’ financial literacy and their propensity to participate in a retirement plan. Some additional papers also confirm the relation between financial literacy and savings behavior (Chan and Stevens 2008; Behrman et al. 2012), and the fact that financially literate individuals are more eager to plan ahead.

The influence of financial literacy on lending behaviours is much less documented. Popular publications on this subject the most frequently study the relationship between the increased exposure of consumers with a lower level of literacy to disadvantageous loan contracts, high fees and interest rates (Disney and Gathergood 2013) and an increased propensity to take out payday loans (Lusardi and de Bassa Scheresberg 2013) on the American market, and Disney and Gathergood (2013) confirming the same findings for the UK.

Methodology

The study was conducted in 2015 on the sample of consumers from Wielkopolska (Greater Poland) region in Poland. The interviews were in a form of a structured face-to-face interview questionnaire, and the sample consisted of 438 individuals. Subjective knowledge was tested by means of two questions: one of them was self-assessment of one's knowledge about

saving, and the other – self-assessment of one's knowledge about loans. In both cases a five-point ordering scale was applied.

Objective knowledge was assessed by means of checking the ability to calculate the value of a long-term deposit (2-period compound interest) and loan interest.

Results

Subjective assessment was analysed as first. It was broken into two aspects: one concerning savings and the other – loans. A half of the consumers believe that their knowledge is average, a third – lower than average, and every fifth person believes that they are knowledgeable or very knowledgeable about saving. Interestingly, the self-assessment is considerably higher in the case of loans. Below average, the percentage is the same (33%), however, the percentage of those who believe that their knowledge is average is relatively lower (36%), and of those believing that they know a lot about loans - 30%.

As anticipated, both components of financial knowledge self – assessment are strongly correlated (Spearman's rank correlation coefficient is 0.66 and it is significant when $\alpha = 0.01$). Describing the segments of low, medium and high level of knowledge would be quite obvious (depending mostly of incomes and education), however, it is less obvious and more intriguing to extract based on the asymmetry in their assessment of financial knowledge:

- groups with a better knowledge about deposits than loans (1)
- groups with a comparable knowledge about both (2)
- groups with a better knowledge about loans than deposits (3).

Table 1 presents this system, to simplify it, the number of variables was reduced from 5 to 3.

Table 1 Knowledge about saving and loans – structure

	Total	Knowledge about saving - 3 levels		
		low	average	high
Loans knowledge - three levels				
low	33.4	71.4(2)	18.9(1)	2.4(1)
average	35.9	23.1(3)	53.4(2)	15.5(1)
high	30.7	5.4(3)	27.7(3)	82.1(2)

Source: own calculations

The Chi-squared test confirms the anticipated correlation between variables (chi square = 238.4 df=4). The segment about comparable knowledge is the biggest (two thirds), every fourth person has a higher level of knowledge about loans, and every eighth – a higher level of knowledge about saving. When analysing the features of particular segments, it turns out that in the case of better knowledge about saving, it relatively more often

concerns individuals living in households consisting of one or two people. In the case of a higher level of knowledge about loans, it more frequently concerns those aged 30-50 (every third) and those living in households consisting of 4 people (29%).

The next step of the analysis was to test objective knowledge in both areas. In the case of knowledge about saving, the verifier was the question:

There is a PLN 200 in a bank deposit. The interest is 10% annually. How much money will be in the deposit after 2 years?

Only a half of the consumers is able to correctly calculate the future amount of the deposit 51%). Relatively prevalent are men (60%), younger people (62%), with a university degree (66%).

Knowledge about loans was tested with two questions of different level of difficulty.

The interest on a loan of PLN 5k is 10%. It is repaid in a single payment, after a year. How high will be the amount to be repaid?

and

The interest on a loan of PLN 100k is 12% annually. The borrower pays back PLN 800 a year. How many years will it take to repay the loan?

Over 75% of consumers are able to answer the question correctly. The other, more difficult question was answered correctly by 17% of the consumers. The profile of those responding correctly to both questions is consistent with the profile of those knowledgeable about saving, although it should be noticed that in the case of knowledge about loans, the difference is much less significant – the ranges per category are no higher than 10 percentage points.

Finally, in order to answer the question from the title, both types of knowledge assessment (subjective and objective) were put together. First, a short description of the aggregated indices. For self-assessment, an index being an average self-assessment of knowledge about loans and saving was applied (subj_index). For objective knowledge, a four-level scale (0-3) was applied, meaning the number of correct answers (obj_index). Basic statistics for both indices are presented in Table 2. In order to facilitate the comparison, the table also contains the standardised values of both indices

Table 2 Basic characteristics of the indices of subjective and objective knowledge

	subj_index	obj_index	Zscore(subj_index)	Zscore(obj_index)
Mean	2.830	1.450	0.000	0.000
Median	3	2	0.175	0.594
Std. deviation	0.970	0.926	1.000	1.000
Skewness	-0.050	-0.070	-0.050	-0.070
Kurtosis	-0.496	-0.865	-0.496	-0.865
Minimum	1	0	-1.887	-1.566
Maximum	5	3	2.237	1.675

Source: own calculations

As anticipated, the indices are positively correlated (correlation of 0.231, significant at the level 0.01. More interesting is the extraction of groups:

- (A) assessing their knowledge as higher than actual;
- (B) assessing their knowledge as lower than actual;
- (C) assessing their knowledge adequately

The groups were extracted by dividing the range of each index into three equal parts.

The structure is presented in Table 3.

Table 3 Relationship between subjective and objective knowledge

	Objective knowledge			
	Total	small	average	high
Subjective knowledge	Col%	Col%	Col%	Col%
small	28.8	45.6(C)	26.2(B)	18.5(B)
average	53.9	49.4(A)	55.1(C)	53.7(B)
high	17.4	5.1(A)	18.7(A)	27.8(C)

Source: own calculations

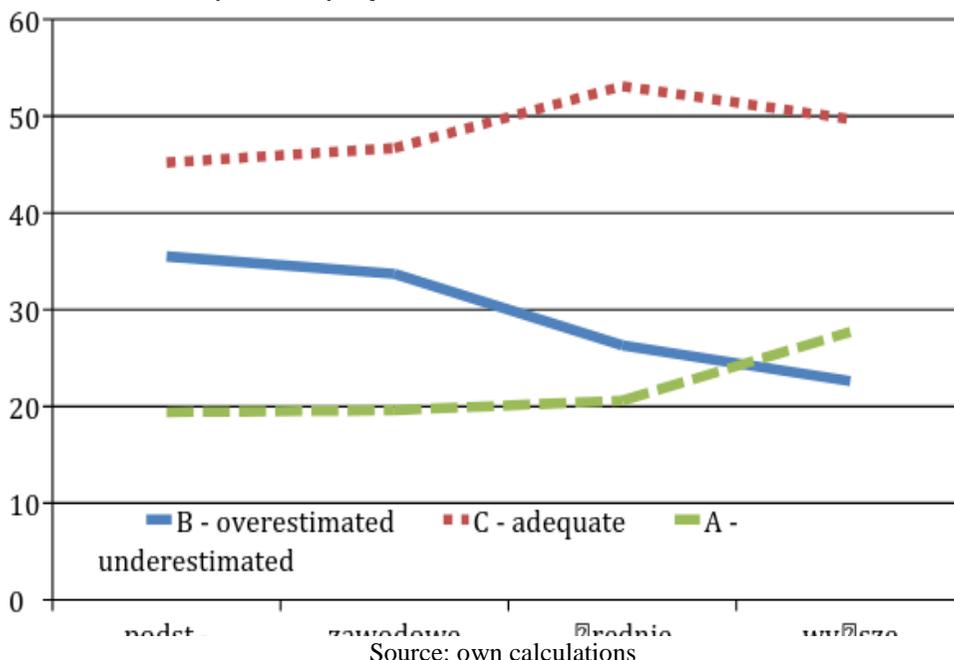
A half of the consumers assess their knowledge adequately (C). 27% of consumers overestimate their knowledge (A), and 23% of them (B) underestimate it.

Interestingly, contrary to expectations, the segments are not very diverse in terms of demographic and economic traits. The ability to accurately assess one's financial knowledge (C) is slightly more common in women (56%), and top earners (56% as well), but also among office workers (67%) and pensioners (57%).

The propensity to overestimate one's financial knowledge considerably falls with incomes (from every third person of among those earning the least to every eleventh person of those earning the most) Relatively more often this propensity is seen in the case of people with primary/vocational education (every third), teachers (every third) and labourers (also every third).

The propensity to underestimate one's financial knowledge rises with incomes and education (from 19% of those with primary education to 28% of those with a university degree, and from 16% of those with the lowest incomes to 35% of those with the highest incomes). Relatively more frequently businesspeople underestimate their financial knowledge (every third).

Graph 1. Adequacy of financial self-assessment vs. education



Discussion and Conclusion

The results of the research suggest that when considering deposits and loans, the inhabitants of Wielkopolska assess higher their knowledge about loans. It may partly result from the obvious financial circumstances and partly from the Polish culture - deposits and investments are rarely discussed, while taking out a loan does not have negative connotations. 50% of consumers are able to correctly assess their own financial knowledge. The groups of those who overestimate and those who underestimate it are similar in size (27% and 23% respectively). Demographic and economic features influence the skill to adequately assess one's knowledge, however to a more limited extent than expected. The features which most considerably influence this skill include: education, sex and incomes.

References:

1. Białowąs, S. 2013. *Zachowania oszczędnościowe w polskich gospodarstwach domowych. Postawy, determinanty, model*. Poznań: Uniwersytet Ekonomiczny w Poznaniu.
2. Choi, J.J., Laibson, D., Madrian, B.C. i Metrick, A. 2009. Reinforcement Learning and Savings Behavior. *The Journal of finance* 64(6), ss. 2515–2534.
3. Hastings, J.S., Madrian, B.C. i Skimmyhorn, W.L. 2012. Financial literacy, financial education and economic outcomes. *National Bureau*

- of Economic Research Working Paper 18412*, ss. 1–42.
4. Huston, S.J. 2010. Measuring Financial Literacy. *Journal of Consumer Affairs* 44(2), ss. 296–316.
 5. Lusardi, A. 2008. Household saving behavior: the role financial literacy, information and financial education programs. *NBER Working Paper Series* (February), s. 13824.
 6. Lusardi, A. i Mitchell, O.S. 2007. Baby Boomer retirement security: The roles of planning, financial literacy, and housing wealth. *Journal of Monetary Economics* 54(1), ss. 205–224.
 7. Lusardi, A. i Mitchell, O.S. 2008. Planning and financial literacy: How do women fare? *American Economic Review* 98(2), ss. 413–417.
 8. Lusardi, A. i Mitchell, O.S. 2014. The Economic Importance of Financial Literacy: Theory and Evidence. *Network for Studies on Pensions, Aging and Retirement* 52(1), ss. 5–44.
 9. OECD 2015. 2015 Oecd/Infe Toolkit for Measuring Financial Literacy and Financial Inclusion. *2015 OECD/INFE financial literacy and financial inclusion measurement* (March), s. 1.
 10. Olejnik, I. 2016. *Zabezpieczenie emerytalne. Modele i determinanty zachowań polskich gospodarstw domowych*. Poznań: Wydawnictwo UEP.

Off-Pump Coronary Artery Bypass for Multivessel Disease in a High-Risk Patient (Case Report)

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Abstract

The purpose of this paper is to describe a 54-year-old female patient with a typical Multivessel disease and report of off-pump coronary artery bypass grafting using the internal mammary arteries and vena magna. She has stenocardia NYHA III, diabetes mellitus, obesity 2 grade, and hypertension. Doppler of carotid artery 35% showed stenosis of both internal carotid arteries.

Coronary angiography revealed complete occlusions of the left main (LM), left anterior descending coronary artery (LAD), Circumflex artery (CX), the obtuse marginal branch (OM), right coronary artery (RCA) 70% stenosis, and PDA- 85% proximally stenosed.

The patient underwent myocardial revascularization via an off-pump technique.

Result: The patient felt well, was discharged from clinic by fast track method in 5 days, and had no signs of ischemia at 6 months postoperatively.

Conclusion: The results indicate that off-pump coronary artery bypass is effective and safe for the treatment of in a high-risk patients with Multivessel Disease.

Keywords: Off-pump coronary artery bypass, Multivessel Disease

Introduction

Coronary artery bypass surgery on cardiopulmonary bypass is associated with significant morbidity and mortality which may be more marked in high-risk patients (1). Resurgence in beating heart surgery began in the early 1990s in an attempt to decrease the morbidity associated with CABG without jeopardizing benefits, and was spurred by the observed benefits of avoiding CPB and its associated deleterious effects. Early development of off-pump coronary artery bypass was hindered by crude instrumentation (2), as well as limited exposure through small incisions. Technological advancements

have significantly facilitated the performance of beating heart surgery through a sternotomy (3).

Off-pump coronary artery bypass (OpCABG) was associated with reduced adverse events compared with on-pump coronary artery bypass after adjustment for 30 patient risk factors and center and surgeon identity. Patients with higher Predicted Risk of Mortality scores had the largest apparent benefit (4).

Case Report

A 54-year-old female patient underwent coronary angiography in 2017 and was sent to cardiac surgeon. She has been suffering from stenocardia NYHA III for 5 years. The patient's comorbidities were diabetes mellitus (in 2005), obesity 2 grade. High numbers of blood pressure 180/130 mm/hg last 15 years, left ventricular ejection fraction of 58%, no signs of MI by ECG.

Doppler of carotid artery 35% showed stenosis of both internal carotid arteries.

Coronary angiography revealed complete occlusions of the left anterior descending coronary artery (LAD) (Figure 1), Circumflex artery (CX), the obtuse Marginal branch (OM), left main coronary artery (LMCA) (Figure 2) associated with 70% stenosis right coronary artery (RCA), and PDA- 85% proximally stenosed (Figure 3).



Figure 1. Preoperative coronary angiograms show complete occlusion of LAD

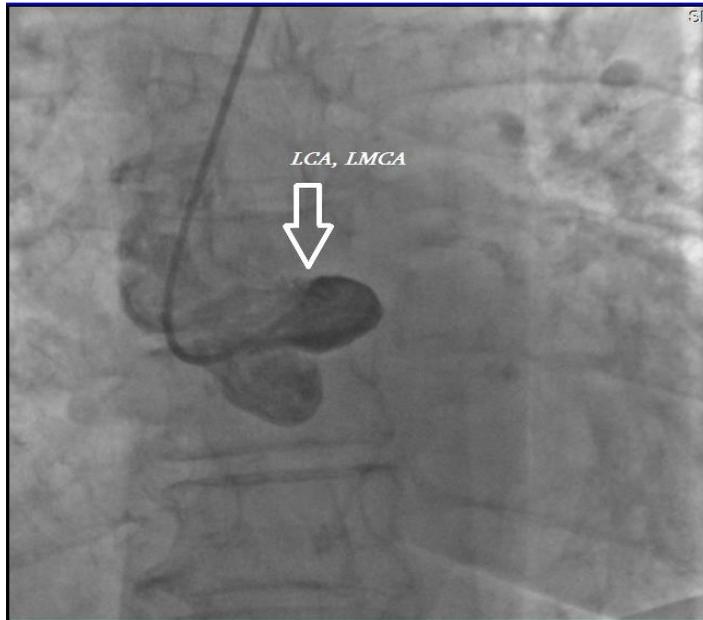


Figure 2. Preoperative coronary angiograms show complete occlusion of LMCA left coronary artery (LCA)

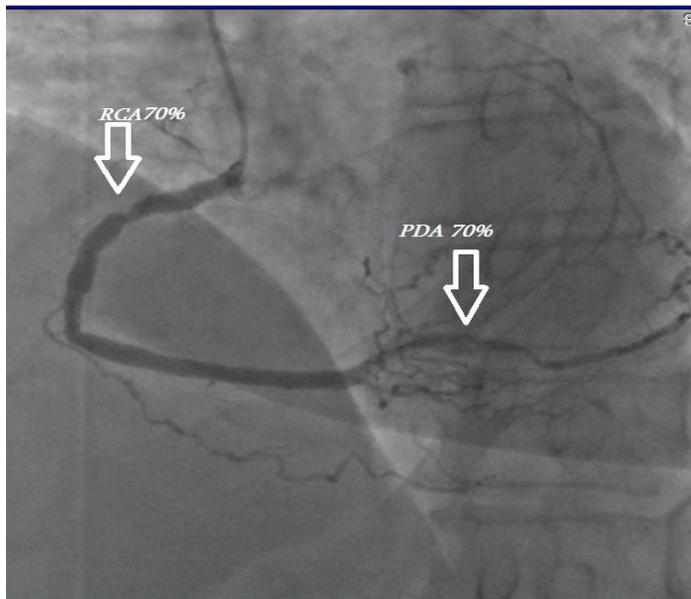


Figure 3. Preoperative coronary angiograms show 70% stenosis right coronary artery (RCA), and proximal stenosis PDA- 85%

The patient underwent myocardial revascularization via an off-pump technique.

Tactics Coronary Artery Bypass Grafting

In cardiac operation theatre with heart lung machine on standby, median sternotomy was performed, internal mamarian artery and vena saphena magna were harvested at the same time. Heart was stabilized and fixed with stabilizers and the target coronary arteries were identified. LAD, DB, PDA. CX-was sclerosed and revascularization was not possible. Care was taken to not disturb heart too much during anastomosing, because if heart arrest happen, it would be very hard to win patient from conventional heart lung machine. Bypasses were performed. Proximal anastomoses were performed (Figure 4,5,6,7). After hemostasis and sternoplastics, the wound was sutured and the patient was transferred to ICU.

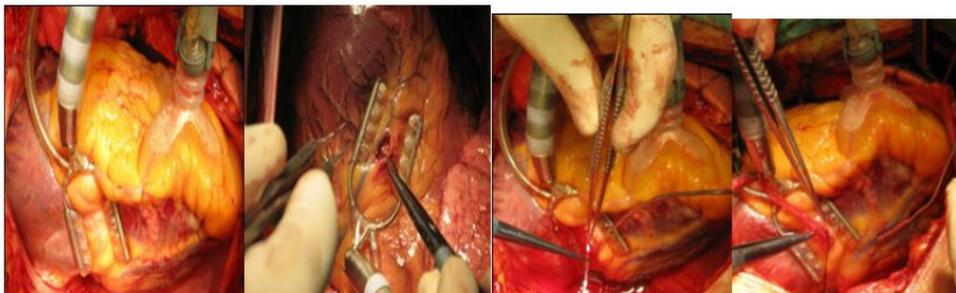


Figure 5.

Figure 6.

Figure 7.

Figure 8.

The patient felt well and had no signs of ischemia at 6 months postoperatively.

Discussion

Off-pump coronary artery bypass grafting is associated with lower operative mortality than coronary artery bypass grafting on CPB for higher risk patients. This mortality benefit increases with increasing PROM (5). The results suggest that off-pump has long-term morbidity outcomes comparable with those of on-pump following CABG surgery (6). OPCAB is associated with a significant reduction in the odds of cerebral stroke compared with conventional CABG. In addition, benefits of OPCAB in terms of death, MI, and cerebral stroke are significantly related to patient risk profile, suggesting that OPCAB should be strongly considered in high-risk patients (7).

The patient was discharged from hospital by fast track method in 5 days, and had no signs of ischemia at 6 months postoperatively.

Conclusion

The results indicate that off-pump coronary artery bypass is effective and safe for the treatment of in a high-risk patients with Multivessel Disease.

References:

1. Meharwal, Z. S., Mishra, Y. K., Kohli, V., Bapna, R., Singh, S., & Trehan, N. Off-pump multivessel coronary artery surgery in high-risk patients. *The Annals of thoracic surgery*, 2002, 74(4), 1353-1357.
2. Abu-Omar Y, Taggart DP. The present status of off-pump coronary artery bypass grafting. *Eur J CardiothoracSurg* 2009; 36: 312-21.
3. Mitchell J. Magee, Laura P. Coombs, Eric D. Peterson and Michael J. Mack. Patient Selection and Current Practice Strategy for Off-pump Coronary Artery Bypass Surgery. *Circulation*. 2003;108:II-9-II-14.
4. Polomsky M, He X, O'Brien SM, Puskas JD. Outcomes of off-pump versus on-pump coronary artery bypass grafting: Impact of preoperative risk. *J ThoracCardiovasc Surg*. 2013;145:1193–8.
5. Puskas, J. D., Thourani, V. H., Kilgo, P., Cooper, W., Vassiliades, T., Vega, J. D., ... &Lattouf, O. M. Off-pump coronary artery bypass disproportionately benefits high-risk patients. *The Annals of Thoracic Surgery*, 2009. 88(4), 1142-1147.
6. Chaudhry UA1, Rao C1, Harling L1, Athanasiou T2. Does off-pump coronary artery bypass graft surgery have a beneficial effect on long-term mortality and morbidity compared with on-pump coronary artery bypass graft surgery? *Interact CardiovascThorac Surg*. 2014 Jul;19(1):149-59.
7. Kowalewski M, Pawliszak W, Malvindi PG, Boksanski MP, Perlinski D, Raffa GM4, Kowalkowska ME, Zaborowska K, Navarese EP6, Kolodziejczak M, Kowalewski J8, Tarelli G, Taggart DP. Off-pump coronary artery bypass grafting improves short-term outcomes in high-risk patients compared with on-pump coronary artery bypass grafting: Meta-analysis. *Anisimowicz L2.J ThoracCardiovasc Surg*. 2016 Jan;151(1):60-77.e1-58.

Impact of Sleep Deprivation and Quality on Health

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Abstract

Sleep as one of the most important psychological and physiological regulatory mechanism is one of the most important aspects for human psychological and physical health. Technological progress and modern lifestyle had a negative impact on sleep regime. Currently, there is a sufficient evidence to say that even small level of chronic sleep deprivation has a negative impact on human health. Sleep disorder is a multidisciplinary issue. Therefore, approach to this issue should be comprehensive and the measures should be taken by the state as well as civil society organizations.

Keywords: Sleep duration and quality disorder, psychological and physical health and diseases, sleep disorder prevention

Introduction

The issue related to sleep disorders is becoming increasingly topical all over the world. In the modern world, the attitude towards sleep has significantly changed. The abundance of bright electric light and artificial lighting eliminate the needs to go asleep and get up with the sun (the "Edison effect") and significant number people do not get enough sleep. According to the World Health Organization (WHO), an adult needs six to eight hours of sleep a day. Children need more sleep than adults, and the most useful beneficial time to sleep is from 23 pm to 2 am (2).

The modern standards of living in large mega cities have resulted in 20 percent reduction of sleep time over the last hundred years. There are many reasons that lead to lack of sleep. The most common reason is a voluntary refusal of sleep due to social or economic reasons (6).

The quality of sleep can be affected by the stresses of everyday life. Stress, information flow, and high-speed communication force us to live our life based on a schedule which might contradict our internal biological clock. Sleep deficiency is associated with work at night shifts (legal advice, medical

care, etc.). Use of modern technologies, such as electronic equipment with lights, computers, tablets, smartphones, consumption of large amounts of caffeine, nicotine, and alcohol also contribute to the lack of sleep. Lack of sleep among school-age children and students is of a particular concern. According to the study conducted by the National Sleep Foundation in the United States of America, almost $\frac{3}{4}$ children (72%) from the age 6 to 17 years sleep with an electronic device switched on nearby. Children who sleep with an electronic device, turned on at the nearby location, sleep an average of one hour less than the others. One of the most common causes of sleep disorder among adolescents is a stimulating mental or physical activity before bedtime (doing homework, watching television, working and playing on the computer) (5). Sleep deprivation leads to a significant decrease in cognitive functions; although this might remain unnoticed by the individual him/herself, this has a strong reflection in his/her physiological and mental state (4). Negligence towards sleep deprivation may lead to lower academic performance among children, as well as increases aggressive behavior, higher risk of self-injury, and suicidal thoughts (3).

Graduate studies is a highly stressful process which requires changes in daily routine and lifestyle, might be accompanied by the change of place of residence, of the circle of communication and the redistribution of leisure time among young people. Most of the students do not pay attention to planning their daily routine. This, however, affects their studies. The main reasons for the lack of sleep among students are a large amount of academic work, late classes, spending time on the Internet. Many of them compensate for lack of sleep with prolonged sleep on weekends (13). Cognitive results of sleep deprivation include bad mood, decreases communication, errors, memory worsening, lack of attention, limited capacity to resolve tasks, increased risky behavior.

All those aspects, naturally pose a question: is sleep deprivation or inappropriate conditions for sleep a disease, a new standard or simply a bad habit? Sleep is a necessary process for the human body (4). At present, somnology, the science of sleep, is one of the fastest growing branches of the science of the nervous system. Sleep is the physiological process (5) of rest and relaxation that sets on after certain intervals of time. During this process, consciousness almost completely ceases activity and the reactions to external stimuli decrease. Physiological processes, periods of sleep and activity are closely linked to day and night shift (11). These circular rhythms are synchronized on 24-hour shift. Hypothalamus responsible for those circular rhythms plays a role of "biological clock". Secretion of hormones and many other biological active substances in the body has 24-hour cycle and is closely related to sleeping cycle (11). Besides hypothalamus, epiphysis, the upper adjacent of the brain is responsible for the perception of environmental

rhythm. With its help, information about external light is translated to the internal environment of the body and forms and regulates a physiological rhythm.

In the daytime, the body transforms amino acid tryptophan into serotonin which turns into melatonin at night. After its synthesis in the epiphysis, melatonin enters the cerebrospinal fluid and blood. The amount of hormone produced in the epiphysis depends on the time of the day: about 70% of all Melatonin is produced at night. Production of melatonin in the body depends on the level of light: in case of excessive illumination, the synthesis of the hormone decreases; but if illumination decreases, hormone synthesis increases. Hormone production processes begin at around 8 pm, and the peak concentration is reached after midnight to 4 am. Therefore, it is very important to sleep in a dark during this period (14). An adult body synthesized about 30 mkg melatonin daily. The main function of the hormone melatonin is to regulate the daily rhythm of the human body. Thanks to this hormone, we can fall asleep and sleep. The studies on the influence of melatonin on the human body revealed that melatonin affects the production of other hormones in the body; it ensures effective functioning of the endocrine system of the body, stimulates the protective functions of the body's immune system, helps the body to deal with stress and with manifestation of seasonal depression, contributes to the adaptation of the organism to the change in time zones, has an antioxidant effect, slows the aging process, regulates the cardiovascular system and blood pressure, affects the digestive system of the body (8, 11). During sleep, the amount of dopamine in the brain increases, which contributes to the production of somatotropin that is responsible for the renewal and rejuvenation of cells. Growth hormones are released at the higher concentration in the first half of the night, and the stress hormone, cortisol, reaches a peak concentration in the morning. With the dawn, melatonin production ceases. With the first rays of the sun, the body starts producing a hormone – serotonin which is responsible for making a person feel better after a deep sleep. During sleep, the body gradually "dumps" negative memories. The level of the stress hormone in the blood reaches its minimal concentration which allows the brain to rework all the experiences and problems. Therefore, people who go to sleep after two o'clock in the morning often feel broken and sleepy despite having slept for at least seven hours. Currently, doctors and researchers have proved that even small chronic disorders of sleep and wakefulness are very dangerous for health and have serious consequences (11). Most often, sleep problems begin because they are not considered as a problem. Those who suffer from lack of sleep often do not realize the presence of a sleep disorder and, therefore, do not give proper attention to rest (D. Kaplan, Center for Studies of Sleep Disorders, Mayo Clinic).

Lack of sleep is a serious problem. Lack of sleep for a short period of time can lead to poor performance and vigilance (a decrease in sleep by 1.5 hours, may cause a decrease in performance by 32%), to deterioration of concentration and attention, to weakening of memory and cognitive functions - the ability to think and process information, and it will affect the intellectual indicators, academic performance, leisure activity, and quality of life (16).

Lack of sleep affects the relationships between people and it has an impact on their mood (cause unreasonable anger or depression). Almost a quarter of working adults (28%) reports that during the last three months, due to lack of sleep, they have missed work, important events, or made mistakes at work. It is especially difficult to cope with sleep deprivation for those who work night shift, as their working capacity falls and accidents occur. It is proven that the lack of sleep increases the risk of premature mortality (10).

All of the above demonstrates that sleep is an important and significant process to preserve both psychological and physical health; therefore, it is essential to correctly allocate time and have sufficient time and regime for sleep. It is important, where possible, to avoid night shift, and to improve working schedule (for healthcare staff, police, military) to help them to adhere to the more normal pattern of sleep and wakefulness. In the US, since the 1990s, the issue of sleep disorders became a matter of national security. The US Congress passed a number of laws on sleep disorders and allocated funds to finance basic and applied research in key areas of sleep science. The American Academy of Sleep Medicine (AASM) has issued consensus recommendations on the duration of sleep that is necessary to maintain optimal health and to avoid health risks associated with the lack of sleep. As stated in the statement of the expert group that developed the new document, sleep is one of the key components of a healthy lifestyle, and it is very important to promote healthy habits in this area from early childhood. It is important to increase attention to this problem in our country as it is a public health issue. Sleep disorder is a multidisciplinary issue. Therefore, approaches should be comprehensive and should include state institutions, as well as public society organizations.

It is important to change the mindset among adults and youth. For many years, it was assumed that health is the government's responsibility, and human behavior towards health and prevention was to seek treatment when the disease strikes, but not a prevention. However, it is important to enhance individual responsibility to health and for this purpose, a system of priorities have to be formulated and the importance of healthy lifestyle should be promoted. Therefore, government should develop relevant regulation.

Conclusion

Where possible, it is important to avoid night shift, and also to improve the schedule of workers (healthcare staff, police, military personnel) to help them maintain a more normal pattern of sleep and wakefulness. The role and place of educational organizations in the modern world is great. The competence of none of the employees of the education system does not include the value of sleep. It is necessary to significantly increase efforts to solve this problem. Since the lack of sleep reduces cognitive activity, self-control, academic performance and health, it is necessary to minimize the risks associated with student's health and in order to maximize the quality of learning productively. However, a differentiated approach to the formulation of study loads should be employed; promotion and support of healthy lifestyle among students is essential (1, 9.12). It is necessary to increase the number of social educators who work efficiently in this area and simultaneously possess the skills in psychology and medicine.

References:

1. Hasenkampf K. A., Schneider N. A., Dmitrenko D. V. Impact of disorder of sleep duration and quality on a student's physiological health and academic progress. // International Journal of Applied and Fundamental Researches. №12. 2015. Pp. 257-260.
2. Dorokhov V. B. Somnology and safety of professional activity. // I. P. Pavlov Journal of Higher Nervous Activity. V. 63, № 1. 2013.Т. 63. P. 33.
3. Kubarko A. I. Normal Physiology. Part. 2. Manual for HEI. Moscow: Visshaya Shkola, 2014. 587 p.
4. Kurganov S. A., Smorchkova V. P. Somnology constant in the paradigm of pedagogical sciences. // Professionalism of a Teacher. Part 2. Moscow, 2016. P. 520.
5. Levin Y. I. Clinical somnology: problems and solutions. // Neurological Journal. V. 9, № 4. 2004. Pp. 4-13.
6. Luban-Plozza B. Health Sleep.1990. P. 29.
7. Prokopenko L. A., Chertsova A. I. The reasons of a lack of sleep in case of students and the ways to fight against them. // International Journal of Applied and Fundamental Researches. №4. 2016. Pp. 1220-1223.
8. Pchelina P. V., Polyektov M. G. How to treat insomnia of early childhood. - Как лечить инсомнию раннего детского возраста. // Effective Pharmacotherapy. Series of Neurology and Psychiatry. Special edition – Sleep and Its Disorder. Pp. 52-58.
9. Timoshenko S. O., Nazarov S. B. Complex characteristics of a night sleep of senior pupils and students of medical higher educational

- institutions. // *Journal of Scientific Articles: Health and Education in XXI Century*. V. 9, № 3. 2007. P. 285.
10. Schneider N. A., Dmitrenko D. V., Kantimirova E. A., Medvedeva N. N. Impact of disorder of sleep duration and quality on students' psychophysiological health and academic progress. // *International Journal of Applied and Fundamental Researches*. № 12, part 2. 2015. Pp. 257-260.
 11. Ipke D.F., Garfinkel L. Mortality associated with sleep duration and insomnia. // *Arch Gen Psychiatry*. №59. 2002. Pp.131-136.
 12. Hastings M, O'Neill JS, Maywood ES. Circadian clocks: regulators of endocrine and metabolic rhythms. *J Endocrinol*. 2007; 195: 187-198. *J Clin Neurol*. 2012 Jun; 8(2): 146–150. Adverse Effects of 24 Hours of Sleep Deprivation on Cognition and Stress Hormones.
 13. Lima P.F. Sleep-wake pattern of medical students: early versus late class starting time / P.F. Lima, A.L. Medeiros, J.F. Araujo // *Brazilian J. Med. and Biol. Res*. 2002. Vol. 35, № 11. P. 1373-1377.
 14. Liu C., Fukuhara C., Wessel J.H. III, Iuvone P.M. Localization of Aa-nat mRNA in the rat retina by fluorescence in situ hybridization and laser capture microdissection // *Cell and Tissue Research*. -2004. - № 315. - P.197-201.
 15. Taheri S, Lin L, Austin D, Young T, Mignot E Short Sleep Duration Is Associated with Reduced Leptin, Elevated Ghrelin, and Increased Body Mass Index. *PLoS Med*. 2004; 1(3): 62.
 16. Veldi M. Sleep quality and more common sleep-related problems in medical students / M. Veldi, A. Aluoja, V. Vasar // *Sleep Med*. 2005. Vol. 6, № 3. P. 269-275.

Association Between Enamel Hypoplasia and Dental Caries in Different Medical Conditions

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Abstract

Objectives: Estimating the role of perinatal and prenatal conditions in the etiology of hypoplasia, and assessing the association between dental caries and hypoplasia among school children in the capital of Georgia (Tbilisi). **Methods:** The following study was designed to assess the prevalence of hypoplasia and dental caries among children between the ages of 12 and 15 in Tbilisi. The types of enamel hypoplasia were categorized by basing it on Silberman classification. Caries prevalence was defined according to Decayed, Missing and Filled Teeth (DMFT Index). The parents of each participant filled in the survey according to the risk factors related to these diseases. **Results:** The results indicate that dental caries occurred predominantly in teeth with enamel hypoplasia. Also, carious lesions without the presence of enamel hypoplasia occurred infrequently. Children born from mothers with toxemia, acute and chronic infections, anemia during pregnancy, and children with low birth weight, prematurity, and childhood infections had greater number of hypoplastic teeth compared with those who were born without those conditions. **Conclusion:** The relationship between hypoplasia and caries is statistically significant. Also, the relationship between any particular prenatal and perinatal health factors and enamel hypoplasia tends to be positive.

Keywords: Hypoplasia, Caries, Prenatal and Perinatal Conditions

Introduction

One of the developmental enamel defects is manifested as enamel hypoplasia (EH). This defect might be displayed as dots, grooves, and/or variation in color. Enamel hypoplasia is a quantitative defect associated with reduced thickness of enamel formed during the secretory stage of amelogenesis (Seow, 1991; Suckling, 1989).

The general prevalence of EH in the primary dentition varies from 2-99% of children. It depends on the ethnical, nutritional, or socio-economic status of the child, birth weight, the type of classification system used, and the method of examination (Seow, 1997; Yonezu et al., 1997). Recent investigations have indicated that 3-15% of children show signs of enamel hypoplasia in their permanent dentition (Montero et al., 2003). The prevalence of EH in children from developing countries is immense (Li et al., 1996).

According to the previous researches, enamel hypoplasia has been speculated to increase the risk of dental caries. This is due to the provision of suitable local environment for the adhesion of cariogenic bacteria. Herewith, defective enamel has higher acid solubility than normal one and is more susceptible to caries attack (Lopes et al., 2013).

Dental caries historically has been considered as a global oral health problem in the world. It is still a major health problem in most industrialized countries since it affects 60–90% of school-aged children (Petersen et al., 2005). Caries etiology is multi-factorial. The epidemiological data have shown the role of both socio-demographic and biological influences on caries prevalence (Lopes et al., 2013; Peres et al., 2009). Later, a lot of studies underlined the role of enamel defects in the etiology of dental caries (Targino et al., 2011). Some authors speculated that children with enamel hypoplasia are more receptive to the risk of caries development, than children who have no developmental defects of enamel (Jafishvili et al., 2005).

However, most of these investigations have not considered the important factors, such as prenatal (maternal) health factors and prevalence of medical conditions in perinatal periods.

In Georgia, studies about the association between enamel hypoplasia and dental caries have not been done. In 2005, medical and biological, social, and hygienic factors were assessed (Li et al., 1996).

The aim of this study was to ascertain the prevalence of enamel hypoplasia and dental caries, estimate possible etiological factors in developing enamel hypoplasia, and determine whether there is an association between enamel hypoplasia and dental caries among 12-15 year-old children.

Materials and Methods

Analytical case-control study was performed in Tbilisi (Georgia) public schools. A total of 1399 school children were examined from January

2014 to September 2014. The list of all Tbilisi public schools in the local government areas were supplied by the Ministry of Education. 12 schools were chosen using a random sampling method.

The sample size included 772 girls and 667 boys (age - 12-15). The children in this study were relatively homogeneous in terms of socio-economic status. Hypoplastic and carious teeth were used as cases, while healthy teeth were used as controls. General information was obtained through interviewing the parents.

Intra-oral examinations were performed by both authors in each school. Classrooms with maximum light and ventilation were selected to carry out the type III examination (using a mouth mirror and explorer under adequate illumination). All the clinically visible surfaces were examined, and the findings were entered into standard examination forms. Assessment of dental status was identified according to WHO standard method and criteria. Categorizing the types of enamel hypoplasia was based on Silberman classification.

Permission for the study was obtained from the Ministry of Education and school authorities. The official consent was taken from each study participants and their parents. The questions from interview included the issues about medical conditions during the prenatal and perinatal periods.

Statistical Analysis

Data were analyzed using SPSS (Version 21). Both the descriptive and analytical, parametric and nonparametric techniques were used for the data analysis. The Student's T test and ANOVA were used for comparing the groups. The Chi-square test for etiological variables was used to compare proportions among study populations. Pearson's Correlation Coefficient was used for testing any kind of correlation between enamel hypoplasia and dental caries. Enamel hypoplasia risk assessment was tested by logistic regression model. P value less than 0,05 was considered to be statistically significant.

Results

67.8% out of the 1399 examined children was hypoplasia free and 32.2% had enamel hypoplasia. The prevalence of Type I hypoplasia was 133 (9,3%), Type II hypoplasia – 274 (15.9%), Type III hypoplasia – 108 (7%). Gender distribution showed that hypoplasia was higher in females (33.8%) than in males (30.4%). However, according to One-way ANOVA results, gender differences were not statistically significant ($p=0,440$). Prevalence of hypoplasia in 12 year age group was 32.2% in 15 year age group – 39.6%. Analyzing both groups of age 12 and 15 with One-way ANOVA and LSD post-hoc test showed statistically significant difference between age groups ($p=0.001$) (Table 1).

Dental caries prevalence in Tbilisi school children was 89.3%. Mean of decayed, missing and filled teeth (DMFT Index) was 3.7 ± 2.1 . When children with caries were examined, it was found that caries experience in males (88.7%, DMFT Index - 3.6 ± 2.1) and in females (89.9%, DMFT Index - 3.8 ± 2.1) was not statistically different ($p=0.389$), but significantly differed between 12-13 and 14-15 year age groups ($p=0.001$). The percentage of the spread of caries in 12-13 year age group was 90.1% and intensity was 3.3 ± 1.9 . In 14-15 year old group, caries prevalence was 86.3%, and caries intensity was 5.5 ± 2.4 (Table 1).

To determine the association between enamel hypoplasia and dental decay, hypoplastic lesions presenting with and without dental caries were compared. The results indicate that dental caries occurred predominantly in teeth with enamel hypoplasia, and that carious lesions without the presence of enamel hypoplasia occurred infrequently (Table 2). The association between enamel hypoplasia and caries was statistically significant ($p=0.001$, $r=0.09$).

The prevalence of various medical conditions in the prenatal and perinatal periods that may be associated with enamel hypoplasia was surveyed. In order to determine the putative effects of medical conditions on the development of enamel hypoplasia, school children with or without any pre or perinatal illness were compared.

The influence of various prenatal health factors such as toxemia, acute and chronic infections during pregnancy and anemia on the development of enamel hypoplasia was studied by comparing hypoplastic teeth in children born from mothers with different frequencies of these conditions. As shown in the Table 3, children born from mothers with toxemia, the acute and chronic infections and anemia during pregnancy had greater number of hypoplastic teeth, compared with those who were born from mothers without these conditions. There was a significant association between any particular prenatal health factor and enamel hypoplasia ($p=0.001$).

Table 4 demonstrates the influence of perinatal conditions on the development of enamel hypoplasia. The results indicated that children with low birth weight, prematurity, and childhood infections differ significantly in the mean numbers of affected teeth compared with those children who do not have any perinatal risk-factor ($p=0.001$).

Logistic regression model was also used to demonstrate any kind of relationship between different medical conditions and enamel hypoplasia. As shown in the Table 5, correlation is significant in all cases ($p=0.001$).

Discussion

This study was conducted to determine whether the presence of enamel hypoplasia was associated with dental caries experience among 12-15 year-old school children. The main findings show that enamel hypoplasia was

associated with dental caries experience. Pearson's Correlation Coefficient has demonstrated that the relationship between these two diseases was statistically significant. The results were somewhat consistent with previous studies, which suggested that enamel defects increase the risk of dental caries in the affected teeth (Milgrom et al., 2000; Oliveira et al., 2006; Mackay et al., 2005).

The results of this study indicate that enamel hypoplasia is a significant predictor for dental caries in childhood. Despite these important results, several factors should have been studied. We did not address the impact of other biological (oral bacteria, saliva) or socio-demographic characteristics which may be associated with dental caries experience. Future research is recommended to prove our findings, including the studies of longer duration, with larger and more diverse samples.

Alongside these limitations, this study has a number of key strengths. Having established a relationship between enamel defects and dental caries experience, it is important to identify the etiological risk factors associated with enamel defects. This research revealed such important factors as prenatal (maternal) health factors and prevalence of medical conditions in perinatal periods. As shown by Chi-square test and linear regression model, there is a statistically significant association between enamel hypoplasia and any kind of prenatal and perinatal conditions.

The association between prenatal and neonatal variables and enamel defects is a widely acknowledged fact in scientific literature. Previous study confirms that the risk of developmental defects in low birth weight children is definitely higher. Our results are in accordance with the study of Mackay, TD. (2005), which demonstrated that low birth weight infants were more prone to the occurrence of enamel hypoplasia and should be carefully monitored because they were at the risk of developing early childhood caries (Seow, 1987). Seow WK (1987, 2005) also mentioned that children born prematurely and those with low or very low birth weight have a higher prevalence of enamel hypoplasia compared to children born at full term with normal birth weights (Seow & Thong, 2005; Seow. 1997).

Anemia is also considered to be one of the main etiological factors for the development of DDE (Developmental Defects of Enamel), including enamel hypoplasia (Ford et al., 2009).

Infectious diseases caused by bacteria and viruses such as infections of the urinary tract, otitis, and upper respiratory disease have been associated with DDE (Yoshiyuki et al., 1981). Pregnancy toxemia in case of hypoxia also demonstrated close correlation with enamel hypoplasia (Beentjes et al., 2002).

Few authors have analyzed that there are no significant relationships between birth weight, prematurity, anemia, and enamel hypoplasia (Franco et al., 2007). Franko (2007) also mentioned that association between hypoplasia

and prenatal conditions, such as acute and chronic infections during pregnancy (urinary tract infection, sepsis, antibiotics taken), were not statistically significant.

Conclusion

The major findings of this study show that dental caries significantly depends on enamel hypoplasia. Dental caries occurred predominantly in teeth with enamel hypoplasia, and carious lesions without the presence of enamel hypoplasia occurred infrequently.

Study results also show that prenatal health factors are significantly associated with enamel hypoplasia. Children of mothers with toxemia, acute and chronic infections and anemia during pregnancy, had greater number of hypoplastic teeth compared with those who were born from mothers without these conditions. Children with low birth weight, prematurity, and childhood infections differ significantly in the mean numbers of affected teeth compared with those who didn't have any perinatal risk-factors.

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References:

1. Beentjes, VE., Weerheijm, KL., & Groen, HJ. (2002). Factors involved in the aetiology of molar-incisor hypomineralisation (MIH). *Eur J Paediatr Dent.* Mar; 3(1):9-13.
2. Ford, D., Seow, WK., Kazoullis, S., Holcombe, T., & Newman, B. (2009). A controlled study of risk factors for enamel hypoplasia in the permanent dentition. *Pediatr Dent;* 31:382–388.
3. Franco, K., Line, S., & Moura-Ribeiro, M. (2007). Prenatal and neonatal variables associated with enamel hypoplasia in deciduous teeth in low birth weight preterm infants. *J Appl Oral Sci.* Dec; 15(6): 518–523.
4. Jafashvili, E. (2005). Medico-biological and social-hygienic factors of risk for the development of caries and hypoplasia. Synopsis for PhD.
5. Li, Y., Navia, JM., & Bian, JY. (1996). Caries experience in deciduous dentition of rural Chinese children 3-5 years old in relation to the presence or absence of enamel hypoplasia. *Caries Research.* 30(1):8-15.

6. Lopes, RM., Domingues, GG., Junqueira, SR., de Araujo, ME., & Frias, AC. (2013). Conditional factors for untreated caries in 12-year-old children in the city of Saõ Paulo. *Brazilian Oral Research*. 27:376–81.
7. Mackay, TD., & Thomson, WM. (2005). Enamel defects and dental caries among Southland children. *New Zealand Dental Journal*;101:35–43.
8. Milgrom, P., Riedy, CA., Weinstein, P., Tanner, AC., & Manibusan, LB. (2000). Dental caries and its relationship to bacterial infection hypoplasia, diet and oral hygiene in 6- to 36-month-old children. *Community Dent Oral Epidemiol*; 28: 295–306.
9. Montero, MJ., Douglass, JM., Mathieu, GM. (2003). Prevalence of dental caries and enamel defects in Connecticut Head Start children. *Pediatric Dentistry*. 25(3):235-9.
10. Oliveira, AFB., Chaves, AMB., & Rosenblatt, A. (2006). The influence of enamel defects on the development of early childhood caries in a population with low socioeconomic status: a longitudinal study. *Caries Res*; 40: 296–302.
11. Peres, MA., Barros, AJ., Peres, KG., Araujo, CL., & Menezes, AM. (2009). Life course dental caries determinants and predictors in children aged 12 years: a population-based birth cohort. *Community Dentistry and Oral Epidemiology*. 37:123–33.
12. Petersen, P., Bourgeois, D., & Ogawa, H. (2005). The global burden of oral diseases and risks to oral health. *Bulletin of the World Health Organization*. 83:661-669.
13. Seow, WK. (1991). Enamel hypoplasia in the primary dentition: a review. *ASDC J Dent Child*.58(6):441-52.
14. Seow, WK. (1997). Effects of preterm birth on oral growth and development. *Aust Dent J*.42(2):85-91.
15. Seow, WK., Humphrys, C., & Tudehope, DI. (1987). Increased prevalence of developmental dental defects in low birth-weight, prematurelyborn children: a controlled study. *Pediatr Dent*; 9:221–225.
16. Seow, WK., & Thong, KM. (2005). Erosive effects of common beverages on extracted premolar teeth. *Aust Dent J*; 50:173–178.
17. Suckling, GW. (1989). Developmental defects of enamel-historical and present-day perspectives of their pathogenesis. *Adv Dent Res*.3(2):87-94.
18. Targino, AG., Rosenblatt, A., Oliveira, AF., Chaves, AM., & Santos, VE. (2011). The relationship of enamel defects and caries: a cohort study. *Oral Diseases*. 17:420–6.

19. Yonezu, T., Hayashi, Y., Sasaki, J., & Machida, Y. (1997). Prevalence of congenital dental anomalies of the deciduous dentition in Japanese children. *Bull Tokyo Dent Coll.* 38(1):27-32.
20. Yoshiyuki, F., Yuchi, K., & Toyoji, H. (1981). Dental observations of low birth weight infants. *Pediatric Dentistry*; Vol 3, No 1.

Tables

	Hypoplasia	Prevalence of Caries	DMFT Index
Female	33.8%	89.9%	3.8±2.1
Male	30.4%	88.7%	3.6±2.1
12-13 Year age group	32.2%	90.1%	3.3±1.9
14-15 Year age group	39.6%	86.3%	5.5±2.4

Table 1. Prevalence of enamel hypoplasia and dental caries

Hypoplasia (N; %)			
present	N=512 (36.6%)	caries	N=392 (76.6%)
		caries free	N=120 (23.4%)
absent	N=887 (63.4%)	Pearson Correlation (r)=0.09 p=0.001	

Table 2. Association between enamel hypoplasia and dental caries

Prenatal Conditions	Number of affected mothers	Hypoplastic Teeth (N,%)
pregnancy toxemia <u>Yes</u> <u>No</u>	363	311 (85%)
	1037	202 (19.5%)
$\lambda^2=791.128$ p=0.001		
acute and chronic infections during pregnancy <u>Yes</u> <u>No</u>	462	222 (48%)
	937	290 (31%)
$\lambda^2=590.138$ p=0.001		
anemia <u>Yes</u> <u>No</u>	192	178 (92.7%)
	1207	334 (27.7%)
$\lambda^2=467.671$ p=0.001		

Table 3. Prenatal conditions and enamel hypoplasia

Perinatal Conditions	Number of patients	Hypoplastic Teeth (N,%)
Low birth weight		
<u>Yes</u>	333	224 (67 %)
<u>No</u>	1066	289 (27 %)
$\lambda^2=557.619$ $p=0.001$		
Prematurity		
<u>Yes</u>	244	231 (94 %)
<u>No</u>	1155	281 (24 %)
$\lambda^2=610.112$ $p=0.001$		
Childhood Infections		
<u>Yes</u>	453	322 (71 %)
<u>No</u>	946	190 (20 %)
$\lambda^2=479.475$ $p=0.001$		

Table 4. Perinatal Conditions and enamel hypoplasia

predictors	R ²	P value
pregnancy toxemia	0.640	0.001
acute and chronic infections during pregnancy		0.001
anemia		0.001
Low birth weight		0.001
Prematurity		0.001
Childhood Infections		0.001

Table 5. Correlation between different medical conditions and enamel hypoplasia

Physical Activity and Non-Contagious Diseases

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Abstract

Scientific and technological progress characteristic of XX century grants human beings tremendous opportunities. However, on the other hand, it has often made them face a lot of problems. According to the World Health Organization (WHO) data, non-communicable diseases (NCD) have become a serious problem of modern world since it has become a major factor of population's mortality in the last decades. Donor funding is the best option to prevent NCD, particularly in low income countries. Due to increasing trends of NCDs risk factors and considering the recommendations from the world organizations, it is urgent to establish a distinct policy that promotes physical activity, as well as to develop an action plan and execute events in order to enhance physical activity in Georgia.

Keywords: Non-contagious diseases, risk factors, promotion of physical activity

Introduction

Scientific and technological progress peculiar to XX Century grants human beings tremendous opportunities. However, on the other hand, it has often made them face problems to a large extent. Many diseases considered as incurable, nowadays are curable, while many crucial problems – new diseases and syndromes, related to technological expansion and tensed mode of life – have generated.

According to the World Health Organization (WHO) data, non-communicable diseases (NCDs) have posed growing threats to the modern world, as they have become the major factor of population mortality over the last few decades.

36.1 million people die every year from cardiovascular diseases, different types of cancers, diabetes and chronic acute respiratory diseases, which equals to 60% global death rate. Over 80% of deaths caused by NCDs occur among lower and medium income countries, which hinder their productivity, economic development and bears social problems. In Georgia, 96% of death rate is conditioned by NCDs and traumas, but 75% of mortality is caused by cardiovascular diseases. NCDs risk factors are as follows: mode of life and conditions (48-50%), environmental factors (20-22%), genetic factors (18-20%); as for the health care, it only amounts to 12-14%. 93% of population suffer from one or more NCD risk factors. 35% of population falls under 3 or 5 risk factors. Donor funding is the best option for the prevention of NCD, particularly in low and medium income countries. Major diseases which are the main causes of death globally are stipulated by such risk factors which could be tamed or control. They are as follows: tobacco and alcohol consumption, unhealthy food, adynamia (25 %). 19,% of children below 5 and 17% of adolescents and adults suffer from excess weight, 7% - from obesity; people between 18-64, that comprise 1/3 of the population, have excess weight (31%) and ¼ of population (24%) suffers from obesity.

70% of population does not consume healthy food, 30% of people are tobacco consumers. According to the official data, more than 300 000 people (among them school children) are drug addicts. 20% of school children from 9 to 11th years of education use drugs (among them 33% are boys, while 8% are girls) in Tbilisi.

Indicators of physical activity among the population between the age of 18 to 64 comprise 21, 6% (where majority of them suffer from excess weight). Only about 40 thousand of Georgian population engages in physical activity and sport, which is approximately 10 times less in comparison to the number of drug consumers. Men spend more time on physical activity than women. The rate of physical activity is higher in rural areas than in Tbilisi. Herewith, urban population leads less healthy lifestyle than the rural population.

Many scientific researches have proven that low physical activity is one of the main factors of worsening health conditions (NCD risk factors – Health Care). It is noteworthy that physical activity prevents many of the major non-communicable diseases (NCD), which all lead to premature death and disability. According to the World Health Organization (WHO), insufficient physical inactivity was identified as the 4th leading risk factor in the prevention of NCD; and annually, they are the reasons for more than 3 million preventable deaths globally. It has been considered that physically inactive mode of life is the basic problem of adolescents and adults. However, according to the Health Care Organization (WHO), physical inactivity poses a serious health threat to the middle-aged and older people. That is the reason

why the international recommendations, together with the prevention of some other risk factors, lay special emphasis on the facilitation of the development of regular physical activity skills in children and adolescents. Sports and physical activities are interrelated and have a positive impact on the reduction of some other risk factors. Physically active men reduce or refuse to take in tobacco and consume alcohol. As a rule, they eat healthy food and respectively have no problems with obtaining excess weight.

Physical activity improves blood circulation, stimulates functioning of immune system, prevents stress and depression, improves sleep quality, and upgrades self-esteem. Regular physical activity facilitates in the reduction of cardiovascular diseases and cancer, the risk of hypertension, excess weight, prevention of diabetes, regulation of metabolism, and improves muscular and cardiorespiratory fitness, as well as cures and strengthens the body.

Thus, today, based on epidemiological and experimental evidences, physical activity is considered as one of the major factors in strengthening health. This notwithstanding, a clear policy regarding physical activity, has not been established in many counties.

A comprehensive system to reduce the impact of NCDs has not been developed yet. Sufficient mobilization of resources for the reduction of issues associated with NCD risks have not been registered, while some risk factors other than NCD have been given priority. Health complications caused by NCDs pose a heavy financial burden on many affected households, whereas according to “Euro Barometer” survey results, 1 Euro spent on physical training, education and sport enables one to save 12 Euros.

Conclusion

Due to high tendencies of occurrence of NCDs risk factors in Georgia and taking into account the recommendations of international organizations, it is urgent to develop relevant policy to promote physical activity. The plan has to be created in order to enhance physical activity of the population, since physical activity has significant place in the national health care system as well as medical treatment. A long-term investment has to be made; strategies ought to be developed in order to promote involvement of population in physical activity and increase their engagement in it; international recommendations should, by all means, be taken into account. The Toronto Charter for “physical activity”, 2011 – “a powerful investment in people’s health, the economy and sustainability” – provides recommendations for the country to invest funds for the enhancement of physical activity in the following directions: 1. School programs: organizing of physical training and sport classes to promote students involvement in physical activity after school classes; 2. Transport: organizing infrastructure for walking, cycling and public transport; 3. Develop and integrate programs related to physical activity to prevent NCDs and their

treatment; 4. Educate population on the importance of physical activity; 5. Organize a large-scale public activity; 6. “Sport for everybody”: facilitation of organization of cycle racing systems and relevant programs; 7. Urban design: that promotes and increases access to public space.

References:

1. Studying of the non-communicable disease risk factors (report of The National centre of disease control and health care). 2011.
2. Studying of thenoncommunicable disease risk factors, 2012. Health of teenagers and youth. Georgia, 2012.
3. Mandjavidze T. Tendencies of the proliferation of noncommunicablediseases in Georgia and the importance of physical activities in the reduction of NCD risks. The Ministry of Sport and Youth. Georgia. Tbilisi, 2014.
4. Health of teenagers and youth in Georgia.Digest-2012.
5. WHO recommendations on physical activities. <http://www.who.int/dietphysicalactivity/leaflet-physical-activity-recommendations.pdf>
6. National survey in nutrition. Georgia, 2009.
7. Danael G, Finucane MM, Lin JK, et al. On behalf of the Global Burden of Metabolic Risk Factors of Chronic Diseases Collaborating Group (Blood Pressure). National, regional, and global trends in systolic blood pressure since 1980: systematic analysis of health examination surveys and epidemiological studies with 786 country-years and 5·4 million participants. *Lancet* 2011; 377: 568–77.
8. Farzadfar F, Finucane MM, Danael G, et al. on behalf of the Global Burden of Metabolic Risk Factors of Chronic Diseases Collaborating Group (Cholesterol). National, regional, and global trends in serum total cholesterol since 1980: systematic analysis of health examination surveys and epidemiological studies with 321 country-years and 3·0 million participants. *Lancet* 2011; 367: 578–86.
9. Finucane MM, Stevens GA, Cowan MJ, et al. On behalf of the Global Burden of Metabolic Risk Factors of Chronic Diseases Collaborating Group (Body Mass Index). National, regional, and global trends in body-mass index since 1980: systematic analysis of health examination surveys and epidemiological studies with 960 country-years and 9·1 million participants. *Lancet* 2011; 377: 557–67.
10. WHO Global Status Report on noncommunicable diseases 2010. Geneva: World Health Organization, 2011.
11. WHO .Mortality and burden of disease estimates for WHO Member States in 2008.Geneva: World Health Organization, 2010. www.who.in

Water Fluoride Levels and Related Factors in the Etiology of Dental Caries and Fluorosis

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Abstract

Background: Estimating the role of water fluoride levels, hygiene and eating habits in the etiology of dental caries and fluorosis among school children in the capital of Georgia (Tbilisi). **Methods:** The following study was designed to assess the prevalence of dental caries and fluorosis among children between the ages of 12 and 15 in three different districts of Tbilisi. Caries prevalence was defined according to Decayed, Missing and Filled Teeth (DMFT Index). The spreading of fluorosis was assessed by using Tooth Surface Index for Fluorosis (TSIF). Each participant filled in the survey according to the risk factors related to these diseases. **Results:** Maximum caries reduction and highest prevalence of fluorosis was detected in the district with maximum fluoride level. However, correlation between caries prevalence and fluoride levels in drinking water is weak, as well as the correlation between fluorosis and fluoride levels in the water. DMFT is significantly related to sugar and NaF tablet intake. As for statistics, association between TSIF and fluoride supplement is significant. **Conclusion:** Although the prevalence of caries and fluorosis among children is related to the fluoride concentration in drinking water, the correlation is weak. Dietary habits and fluoride supplements are significantly related to both diseases.

Keywords: Caries, Fluorosis, Fluoride, Drinking Water

Introduction

The epidemiology of dental fluorosis and its relationship to dental caries have been widely studied worldwide. The Fluoride concentration in drinking water and its correlation with dental caries have been scientifically reported since the beginning of the last century (1). Dean's classical studies in the USA provided the basis for the generally accepted rule that the protection from dental caries and minimal dental fluorosis is associated with different levels of fluoride in drinking water (2).

Dental caries has been historically considered as the most important global oral health problem in the world. And it still remains a major health problem in most industrialized countries since it affects 60–90% of schoolchildren (3). World Health Organization pathfinder survey in Georgia revealed that the levels of caries were DMFT=2.04 (sd 2.02) among 12-year-old children (31.1% caries free) and DMFT=3.51 (sd 3.14) among 15-year-old children (17.7% caries free) (4). However, over the last decades, the prevalence of dental caries among children has decreased. World Health Organization working group on Oral Health Research and Epidemiology has noted that the common factor in all those countries with substantial reductions in caries prevalence was fluoridated water (5). Other investigators have also shown that water fluoridation plays a dominant role in the decline of caries prevalence (6). According to the guideline of drinking water quality, by World Health Organization, the protective concentration of fluoride is between 0.5 and 1 mg/l, and the guideline value is 1.5 mg/l (7). On the other hand, the high level of fluoride in drinking water is the main cause of the development of fluorosis (8).

Fluoridation has been widely implemented, but yet there are limited findings regarding the association between fluoride level in drinking water and the caries experience (9). A weak but non-significant correlation between dental caries and water fluoride levels was demonstrated in another study (10). Selwitz et al. (1998) reported that the cases of dental caries and fluorosis is increased proportionally in non-fluoridated rather than in fluoridated communities (11). A scientific study by Curzon et al. (1986) also revealed significantly negative relationship between fluoride level in drinking water and prevalence of dental caries (12).

Thus, according to the data, there is no clear correlation or other provoking factors in the prevalence of dental caries, fluorosis and fluoride levels in the drinking water. As the impact of varying fluoride levels in drinking water on dental caries and dental fluorosis has never been studied in Georgia, the main **goal** of this research was to determine the prevalence of dental caries and fluorosis among Tbilisi school children and its relationship with fluoride levels in drinking water.

According to the literature, fluoride concentration in drinking water is not the only factor that can cause dental caries. As for several authors, the risks for caries include physical, biological, environmental (including air pollution with toxic elements), behavioral, lifestyle-related factors, inadequate salivary flow, and poor oral hygiene. In 2012, the influence of eco-pathogenic factors on mineralization of teeth was studied among 3 and 4-year-old children. The average rate of dental caries for the group living in the regions with ecologically favorable conditions was relatively lower than the ones living in the regions with unfavorable conditions and it equaled 39.6% and 63.6%, respectively (13).

Another purpose of this research was to evaluate the impact of the age and sex, diet, and hygienic norms on the development of these diseases.

Materials and Methods

Study Design

A community based, cross-sectional, descriptive epidemiological study was carried out to assess the prevalence and severity of dental caries and fluorosis among 12 and 15- year-old children, who were life-long residents in the areas with varying levels of fluoride in drinking water.

Study Area and Study Population

According to the national organization of water supply, “Georgian Water and Power” (GWP), Tbilisi, is provided with drinking water from three different reservoirs. The district of Vake-Saburtalo (Vk_Sb) is supplied from the Aragvi ravine, the district of Isani-Samgori (Is_Sg) from the Samgori ravine and the district of Gldani-Nadzaladevi (Gld_Ni) from the Ghrma-Ghele. According to GWP data, fluoride levels in drinking water varied in each district. Fluoride concentrations in drinking water are assessed monthly with Ion Chromatography System (Dionex ICS-1100). We have analyzed water fluoride levels over the last four years, and also have calculated the mean value of fluoride concentrations in each district and have also compared the results. According to these results, fluoride concentration in drinking water in Gld-NI was 0.09 ± 0.002 , in Is-Sg 0.11 ± 0.007 and in Vk-Sb 0.12 ± 0.007 .

Permission for the study was obtained from the school authorities. Each participant expressed their readiness to take part in our research.

Taking into account different types of water, three districts were selected in Tbilisi. The list of all Tbilisi secondary schools within the areas was provided by the Ministry of Education. Twelve schools were randomly chosen from the three districts. The first group included 489 school children (267 girls, 222 boys) residing in Vake-Saburtalo district; in the second group, there were 463 participants (238 girls, 225 boys) from Isani-Samgori district; and in the third group, there were 447 school children (228 girls, 219 boys)

from Gldani-Nadzaladevi district. A total of 1399 school children were examined from January 2014 till September 2014. The total number of investigated children equaled 1399 (732 girls and 667 boys of a 12-15-age group).

Clinical Examination

Intra-oral examination was conducted by two examiners (M.A; E.T) in each school. Classrooms with maximum light and ventilation were selected to carry out type 3 examination (using a mouth mirror and an explorer under adequate illumination). The assessment of dental status was identified according to the World Health Organization standard method and criteria (14). Caries experience was evaluated according to the number of decayed, missing and filled teeth (DMFT) and Enamel Fluorosis by using Tooth Surface Index for Fluorosis (TSIF) (15).

The school children filled out questionnaires after the clinical examination. The questionnaire included items related to diet, such as sugar, dairy product and NaF tablet intake and hygienic norms, including the frequency of tooth brushing and the use of the fluoride toothpaste. These variables were measured by the following way: the participants marked relevant answers in their questionnaire forms. Diet related questions included the information on the frequency of sugar and dairy product intake daily (once, twice) and whether NaF tablets were consumed or not. And it included also, the questions concerning hygienic norms, about the frequency of tooth brushing and the use of the fluoride toothpaste.

Statistical Analysis

Data were transferred and analyzed using Econometric Views (Eviews) version 8. Bi and multivariate analyses were performed using IBM SPSS statistics (Version 21).

Student's t-test and One-way ANOVA were used to compare differences between fluoride concentrations in different districts of Tbilisi.

Statistical analysis of DMFT results was made by Least Squares linear regression method allowing us to evaluate the spread of disease according to the regions. According to the regions, the comparison of DMFT values was performed by two-way ANOVA followed by LSD post hoc analysis for different areas. In addition, the correlation index of DMFT with fluoride concentrations in water was also revealed (R^2).

As for TSIF, Binary Probit and Z tests were used for data processing, allowing us to evaluate how the usage of water in different areas of Tbilisi provoked or did not provoke the occurrence of the diseases. At the same time, two-way ANOVA followed by LSD post-hoc analysis was (utilized) used to

compare TSIF values for different districts. Statistical significance was always less than $P < 0.05$.

Pearson Chi-Square Tests were used to assess dependence of caries and fluorosis on related etiological factors such as diet and hygiene.

Results

According to GWP data, there are significant statistical differences (processed with paired t-test) between the fluoride concentrations in drinking water in Gld-NI, Is-Sg and Vk-Sb districts ($P < 0.05$). However, one-way ANOVA with LSD post-hoc comparisons shows the difference between Vk-Sb and the two other regions and the tendency of the difference between IS-Sg and Gld-NI ($P = 0.1$; Figure 1).

One-way ANOVA showed that sex was not an important factor to identify the prevalence of caries. However, linear regression showed higher level of the diseases in females (coefficient=0.24).

The highest prevalence of caries among children was observed in Gld-NI (93,1%), where fluoride concentration of drinking water was the lowest of all and the caries intensity was $4,22 \pm 2,2$. As to the district Is-Sg, the prevalence of caries was 89,4%, while caries intensity in this district was $3,8 \pm 2,3$. Caries prevalence was the lowest (86,3%) in the district with maximal fluoride level (Table 1). And the intensity of caries in Vk-Sb district was $3,09 \pm 1,6$. The comparison of total DMFT indexes between the districts shows an absolute difference ($P < 0.001$; Figure 2,A); however, correlation between the caries prevalence and fluoride levels in drinking water was close to average ($R^2 = 0.389$; Table 2).

The age of investigated children varied from 12 to 15 (years) and we checked how the indexes of caries experience and caries intensity varied in different age groups. Caries experience in a 12-year-old group was 90.1%, caries intensity was 3.31. There was 86.3% of caries experience and 5.5 of caries intensity in a 15-year-old group. Correlation between the caries experience and the fluoride concentration in 12 - 15 year old children groups was low ($R^2 = 0.107$ and $R^2 = 0.138$ correspondingly).

Analysis of DMFT index related to fluoride levels in different districts (Figure 2, A), showed that DMFT dependence on the fluoride level was the highest in Vk-Sb ($R^2 = 0.575$), followed by Is-Sg ($R^2 = 0.44$) and the lowest in Gld-NI ($R^2 = 0.089$, Table 3).

The prevalence of fluorosis (TSIF) among children was 12.8% in all districts. The prevalence of TSIF was in accordance with fluoride levels in each district. Distribution of percentage of TSIF in Gld-NI was 16,8%, in Is-Sg 10.7% and in Vk-Sb 9,6%. The comparison of total TSIF between the districts showed statistically significant difference (One-way ANOVA, LSD post-hoc): Gld-NI versus Is-Sg, $P = 0.03$), Gld-NI versus Vk-Sb $P < 0.0001$, Is-

Sg versus Vk-Sb $P < 0.0001$ (Figure 2, B). However, correlation between the fluorosis prevalence and fluoride level in drinking water was weak ($R^2 = 0.126$; Table 2).

Comparing the districts according to the prevalence of fluorosis showed that the prevalence of the cases of the diseases was higher in Vk-Sb unlike the two other districts (coefficient=-0.49 in Gld-Nl and -0.35 in Is-Sg) and, in general, females were more vulnerable to these diseases, but the correlation was weak (coefficient=0.108).

The prevalence of TSIF tended to be higher in 12-age group girls ($P=0.074$) but lower in 15-age group boys. Analysis of TSIF, in relation to fluoride levels in different districts (Figure 2, B), showed that TSIF dependence on the fluoride concentrations in the water was extremely low in all the districts (Table 3).

Linear Regression showed that the total of TSIF negatively corresponded to total DMFT. However, the correlation is weak (Coefficient=-0.36, $R^2 = 0.273$). The analysis showed that the coefficient of correlation was higher in 12 age-group ($R^2=0.312$) and lower in 15 year-age-group ($R^2=0.023$). As for the districts, these correlations were weak ($R^2 < 0.1$).

Analyzing DMFT index in relation to diet and hygiene norms showed that DMFT dependence on sugar and NaF tablet intake is significant ($P=0,0001$; $P=0,01$). The frequency of teeth brushing, using fluoride tooth-paste and dairy product intake, didn't have statistically significant influence on the development of dental caries ($P=0.1$; $P=0.1$; $P=0.45$, correspondingly).

TSIF showed statistically significant dependence on using fluoride tooth-paste ($P=0.0001$) and NaF tablet intake ($P=0.0001$). Other risk factors, such as sugar, the frequency of teeth brushing and dairy product consumption are not related to fluorosis ($P=0.788$; $P=0.817$; $P=0.06$ correspondingly).

Discussion

The prevalence of caries and fluorosis has been studied over the past decades by many different researchers. The aim of these studies was to determine safe levels of fluoride in drinking water for maximum caries protection and minimum risk of fluorosis. The debate about relationship between the fluoride levels in drinking water and dental caries and fluorosis began with Dean's studies during the 1930-1940 in USA. Since then, many scientific articles have been published on this issue. A number of scientific reports have shown that the relationship between dental caries and water fluoride concentration is not as clear, as it was in the past (16).

In Georgia, the studies, in relation to dental caries and fluorosis at varying fluoride levels in drinking water, have not been reported. The reason for this may also be the fact that Georgia belongs to low fluoridated areas. However, according to the GWP data, Tbilisi, the capital of Georgia is

provided with three different reservoirs with different levels of fluoride in drinking water. According to this, the purpose of this study was to assess the prevalence of dental caries and fluorosis and their relationship with different levels of fluoride in drinking water.

The results of this research showed that the highest prevalence of caries occurred in the district with low fluoride level in drinking water. In addition, the risk of dental fluorosis was higher in the areas, with more fluoride content in drinking water. The index of DMFT was reducing, while the fluoride concentration was increasing. Also, the number of children affected with dental fluorosis increased in accordance with fluoride concentration levels in drinking water. These findings coincides with other studies reported in the literature (17).

The present study shows that the relationship between water fluoride levels and caries experience is weak and is not statistically significant. There is only a weak and not significant association between slight decrease of caries and water fluoride levels, which is also demonstrated in Iran (10,8). Many studies about correlation between caries experience and fluoride concentration in drinking water were carried out in different parts of Iran. All of them demonstrate weak and statistically not significant relationship between the decrease of DMFT index and the increase of fluoride level in drinking water. But in Iran, fluoride concentration in drinking water ranged from minimum to optimal level (19). There was a positive correlation between the water fluoride ion and the prevalence of fluorosis in the study conducted by Kumar, D. (2013) (20). In the study conducted by Kumar, correlation between the water fluoride ion and the prevalence of fluorosis was positive. The prevalence of dental fluorosis increased, as fluoride levels increased in two districts of Haryana, India (21). Conversely, there are studies in the scientific literature, which demonstrate no influence of fluoride ions on the prevalence of caries and fluorosis (22).

According to the well-documented fact, caries is a multifactorial disease. From the variables, only sugar and NaF tablet intake have significant influence on caries development. Sreebry (1982) reported a significant linear relationship between sugar supply and dental caries in a cross-sectional study of 12 year- old- children across 47 countries, which was similar to our result (23). A two-year study on English school children revealed a significant relationship between the consumption of sugar and caries (24). However, there are studies that have failed to demonstrate the relationship (25).

Caries reducing effect of NaF tablets was revealed after discovering fluoride as a preventive factor of dental caries. Cochrane Oral Health Group's trials register was searched by two authors to evaluate the efficacy of fluoride supplements for preventing dental caries in children. We have analyzed all the 11 studies. The analysis suggests that the use of fluoride supplement

(including NaF tablets) is associated with a reduction in caries increment when it is compared with no fluoride supplement in permanent teeth (26).

Despite the fact that fluoride concentration is low in the capital of Georgia (less than recommended concentration), the prevalence of fluorosis is high. The increase in the occurrence of mostly mild dental fluorosis in Tbilisi can be explained by the fact that more sources of fluoride have become available nowadays to detect tooth decay. These sources include fluoride toothpaste and dietary prescription supplements in tablets or drops. Furthermore, the prevalence of fluorosis demonstrates significant dependence of the participants on the usage of fluoride toothpaste and NaF tablets.

Conclusion

The major findings of this study are that dental caries and fluorosis significantly depend even on the small variations of fluoride concentration in drinking water. Maximal prevalence of dental caries and minimal prevalence of dental fluorosis is associated with relatively lowest fluoride concentration from the three sources of investigated drinking water. Accordingly, maximum caries reduction and highest prevalence of fluorosis occur at a maximum fluoride level. Study results also show that fluorosis negatively correlate with dental caries.

In addition to the above mentioned, age, sugar consumption and fluoride supplements such as NaF tablets are the main reasons for prevalence of dental caries. The development of fluorosis is significantly dependant on fluoride supplements, including fluoride toothpaste and NaF tablets.

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References:

1. Ruan JP, Yang ZQ, Wang ZL. Astrom AN, Bardsen A. Dental fluorosis and dental caries in permanent teeth: rural schoolchildren in high-fluoride areas in the Shaanxi province, China. *Acta Odontol Scand* 63:258-265, 2005 cited in Dandi K.K. Patterns and distribution of dental caries and dental fluorosis in areas with varying degrees of fluoride ion concentration in drinking water. *Oral Hyg Health*. 1:108, 2013.
2. Dean HT. Endemic fluorosis and its relation to dental caries. *Public Health Rep*. 53:1443-1452, 1938.

3. Petersen P, Bourgeois D, Ogawa H. The global burden of oral diseases and risks to oral health. *Bulletin of the World Health Organization*. 83:661-669, 2005.
4. Sgan-Cohen HD, Margvelashvili V, Bilder L, Kalandadze M, Gordon M, Margvelashvili M, Zini A. Dental caries among children in Georgia by age, gender, residence location and ethnic group. *Community Dent Health*. 31(3):163-6, 2014.
5. Renson GE, Crilaers PJA, Ibunkle SAJ. Changing patterns of oral health and implications for oral health manpower' *Int Dent J*. 1:81-7, 1985, cited in BardalP. Dental caries and dental fluorosis in 7-12-year-old schoolchildren in Catalão, Goiás, Brazil' *J. Appl. Or Sci*. vol.13 no.1, 2005.
6. Brunelle J.A, Carlos J.P Recent Trends in Dental Caries in U.S. Children and the Effect of Water Fluoridation. *Journal of Dental Research* 69 Spec No:723-7, 1990.
7. World Health Organization. Guidelines for Drinking-water Quality. 2008; Available from http://www.who.int/water_sanitation_health/dwq/fulltext.pdf. December 22, 2014.
8. Arif M, Husain I, Hussain J, Kumar S. Assessment of fluoride level in groundwater and prevalence of dental fluorosis in Didwana block of Nagaur district, Central Rajasthan, India. *The International Journal of Occupational and Environmental Medicine*_4(4):178-184, 2013.
9. Al Dosari AM, Wyne AH, Akpata ES, Khan NB. Caries prevalence and its relation to water fluoride levels among schoolchildren in Central Province of Saudi Arabia. *International Dental Journal* 2004; Volume 54, Issue 6, pages 424–428.
10. Rahmani A, Rahmani H. Child Dental Caries In Relation To Fluoride And Some Inorganic Constituents In Drinking Water In Arsanjan, Iran. *Research report Fluoride* 43(3)179–186, 2010.
11. Selwitz R.H, Nowjack-RaymerR, Kingmaa A, William S. Dental Caries and Dental Fluorosis Among Schoolchildren Who Were Lifelong Residents of Communities Having Either Low or Optimal Levels of Fluoride in Drinking Water. *Journal of Public Health Dentistry*. Volume 58, Issue 1, pages 28–35, 1998.
12. Curzon ME, Richardson DS, Featherstone JD. Dental caries prevalence in Texas schoolchildren using water supplies with high and low lithium and fluoride. *Journal Dental Research*.65(3):421-3, 1986.
13. Shishniashvili T., Margvelashvili V., Suladze N., Kobakhidze K. Correlation Between the Etiological Risk Factors and Significant Index of Caries in Yong Children. *Georgian Medical News*. N5 (206), 30-33, 2012.

14. World Health Organization. Oral Health Surveys, 2013. Available from http://www.who.int/oral_health/publications/9789241548649/en/ December 23, 2014.
15. Horowitz HS, Driscoll WS, Meyers RJ, Heifetz SB, Kingman A. A new method for assessing the prevalence of dental fluorosis – the tooth surface index of fluorosis. *J Am Dent Assoc* 109:37-41, 1984 cited in Bohaty S, Warren A, Parker N, Zimmerman E. The prevalence of fluorosis-like lesions associated with topical and systemic fluoride usage in an area of optimal water fluoridation. *Pediatric Dentistry*, 1989; Volume 1, Number 2, 125:127.
16. Narbutaitė J, Vehkalahti MM, Milciuvienė S. Dental fluorosis and dental caries among 12-yr-old children from high- and low-fluoride areas in Lithuania. *Eur J Oral Sci.* 115(2):137-42; 2007.
17. Shanthi M, Reddy BV, Venkataramana V, Gowrisankar S, Reddy BV, Chennupati S. Relationship Between Drinking Water Fluoride Levels, Dental Fluorosis, Dental Caries and Associated Risk Factors in 9-12 Years Old School Children of Nelakondapally Mandal of Khammam District, Andhra Pradesh, India: A Cross-sectional Survey. *J Int Oral Health.* 6(3):106-10, 2014.
18. Rahmani A, Rahmani H. Child Dental Caries In Relation To Fluoride And Some Inorganic Constituents In Drinking Water In Arsanjan, Iran. *Research report Fluoride* 43(3)179–186, 2010.
19. Dobaradaran S, Mahvi A. H., Dehdashti S, DariushRanjbar, VakilAbadi, Tehran Iran. Drinking water fluoride and child dental caries in Dashtestan, Iran. *Research report.* 41(3)220-226, 2008.
20. Kumar K. Patterns and distribution of dental caries and dental fluorosis in areas with varying degrees of fluoride ion concentration in drinking water. *Oral Hygiene and Health.* 1:108, 2013.
21. Charu M. M, Ashokkumar B.R. Exposure to High fluoride drinking water and risk of dental caries and dental fluorosis in Haryana, India. *Asia-Pacific Journal of Public Health.* 26(3), 2012.
22. Grobleri SR, Louw AJ, van Kotze TJ. Dental fluorosis and caries experience in relation to three different drinking water fluoride levels in South Africa. *Int J Paediatr Dent.* 11(5):372-9, 2001
23. Sreebry L.M. Sugar availability, sugar consumption and dental caries. *Community Dent Oral Epidemiol.* 10, 1-7, 1982.
24. Rugg-Gun A.J., Hackett A.F., Appleton D.R. Relationship between dietary habits and caries increment assessed over two years in 405 English adolescent school children. *Arch Oral Biol.* 29, 982-92, 1984.
25. Sundin B. Dental Caries and sugar-containing products. Thesis. Malmo, Lund University, 1994.

26. Tubert-Jeannin S, Auclair C, Amsallem E, Tramini P, Gerbaud L, Ruffieux C, Schulte A.G, Koch MJ, Rege-Walther M, Ismail A. Fluoride Supplements (tablets, drops, lozenges or chewing gums for preventing dental caries in children (Review). The Cochrane Library, Issue 12, 20.

Tables and Figures

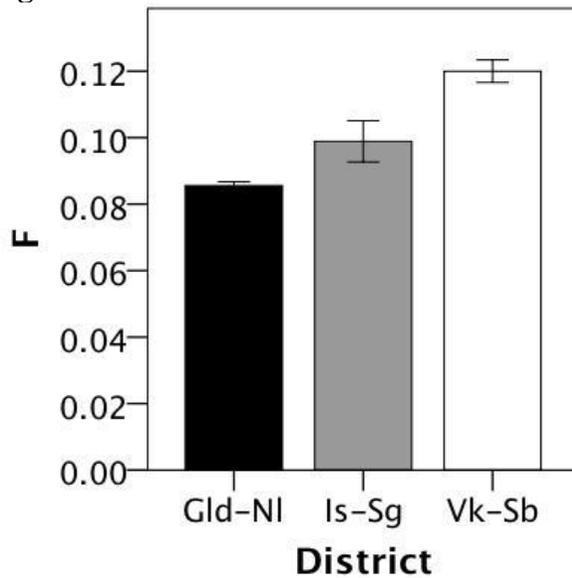


Figure 1. Fluoride concentration in Tbilisi districts

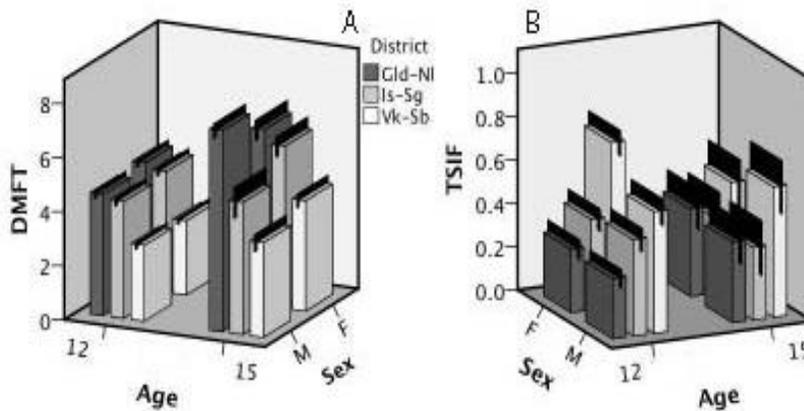


Figure 2. Prevalence of dental caries and fluorosis according to age groups and sex

District	Caries Prevalence	DMFT Index	Fluorosis
Vk-Sb	86.3%	3.09±1.6	16.8%
Is-Sg	89.4%	3.8±2.3	10.7%
Gld-Ni	93.1%	4.22±2.2	9.6%
p<0.001			

Table 1. The prevalence of caries and fluorosis in different districts of Tbilisi

Tbilisi	Mean of Fluoride Concentration (ppm)	Caries Prevalence	Fluorosis
	0.1	89.3%	12.8%
R ²		0.389	0.126

Table 2. Correlation between the caries prevalence, fluorosis and fluoride levels in drinking water

District	Fluoride (ppm)	DMFT Index	Fluorosis
Vk-Sb	0.12	3.09±1.6 (R ² =0.575)	16.8% (R ² =0.030)
Is-Sg	0.11	3.8±2.3 (R ² =0.44)	10.7% (R ² =2.318)
Gld-Ni	0.09	4.22±2.2 (R ² =0.089)	9.6% (R ² =0.002)

Table 3. DMFT index and fluorosis in relation to fluoride levels in different districts

Persona and Depression

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Abstract

Over the last years, depressive disorders have been increasingly considered as a major public health problem. The article is an attempt to show the relationship between depressive disorders and over-identification with Persona, which is concerned with the relation to object and social roles. Persona can be seen as a "Social Archetype". When the Ego is not differentiated from Persona, it might not have conscious relation to the unconscious processes.

Over-identification with persona leads to psychic rigidity and fragility, to the impersonal self-world relation, to inauthentic realm of conformity, anonymity and facelessness. People with rigid persona inwardly are as weak, malleable and self-centred as they are inflexibly rigid outwardly. They are vulnerable towards the loss of role identity and consequently to depression.

In the paper, some similarities in the understanding of mechanisms of depression between Analytical Psychology and Heidelberg's Phenomenological-Anthropological School in Psychiatry are discussed.

Keywords: Depressive disorders, Persona, Ego, universe, model

Introduction

Over the last years, depressive disorders have been increasingly considered as a major public health problem. Over one year, about 4% to 8% of men and 8% to 20% of women are clinically depressed, and it has become too frequent to ignore it. Suicide cases in the whole world reached 11.1 per 100,000 population (1996). Importantly depressive disorders are not distributed at random; there are groups at higher risk. For instance, more women have depression, while more men compared to women drink alcohol in excess due to depression.

The word "*Persona*" is derived from the Latin "*persōna*", which means "mask, character", usually worn by an actor, which indicated the role he played; or Etruscan *persu*, referring to the masks worn by Etruscan mimes

(“*per sonare*” means “to sound through” – as the Etruscan mask had a tube inside, from the actor’s mouth into the mouth of the mask, to amplify the sound). *Phersu* also might be borrowed from the Greek *prosopon*, which primarily meant mask, and secondarily - the role played in drama.⁵¹

Thanos Vovolis states that also in the Greek theatre, mask served as a resonator for the head, enhancing vocal acoustics and altering its quality. This led to increased energy and presence - allowing the actor for more complete metamorphosis into his character. In a large open-air theatre, like the Theatre of Dionysus in Athens, the classical masks were able to bring the characters' face closer to the audience, especially since they had intensely over-exaggerated facial features and expressions. They enabled an actor to appear and reappear in several different roles, thus preventing the audience from identifying the actor to one specific character. Thus, their variations help the audience to distinguish sex, age, and social status.⁵²

Persona, like Collective Unconscious, is universal, general. It is a segment of the collective psyche that thinks it is personal. Taking into consideration the fact that *Persona* is an arbitrary chosen segment of collective psyche, it could be considered that *Persona* is individual, but in reality it is just, as its name says, only a mask of collective psyche; a mask, which plays a role of individual and makes others and its owner think/believe that it is an individual, when it is only acting a role, emerged from the collective psyche.⁵³

While analyzing the *Persona*, we take off the mask and discover that what seemed to be individual appears to be collective. *Persona* is not real. It is only a compromise between individual and social. *Persona* is like a secondary reality, in which others take part much more, than the person himself/herself.

A psychological understanding of the *persona* as a function of relationship to the outside world makes it possible to assume and drop one at will. It is one's social role, derived from the expectations of society and early training.

Persona is a social face that the individual presents to the world – “a mask, designed on the one hand to make a definite impression upon others, and on the other to conceal the true nature of the individual...”⁵⁴

As Murray Stein states, individuals tend to be sensitive towards other people’s *expectations*. Specific areas of an individual’s life, like family, school and workplace, require from him/her to adapt to specific *attitudes* – “a priori orientation to a definite thing, no matter whether this be represented in

⁵¹ Abraham H. Khan. *Identity, Personhood and Religion in Caribbean Context*. In: *Nation Dance: Religion, Identity, and Cultural Difference in the Caribbean* (Bloomington, Indianapolis: Indiana University Press, 2001), p. 139.

⁵² Thanos Vovolis. Articles. <http://independent.academia.edu/ThanosVovolis> (27.04.2016)

⁵³ Jung, *Two Essays on Analytical Psychology*, par. 245.

⁵⁴ *Ibid.* par. 305.

consciousness or not.”⁵⁵ These attitudes can be unconscious, but it is ruling a person’s behaviour. The more frequent the behaviour is used, the more habitual it becomes – as behaviourism would define it – behaviour becomes reinforced by the environment.

There are two sources of persona: I – humans tend to behave according to social norms; II – individual’s social ambitions. The Persona is created only if Ego is motivated to accept its features and the norms/roles the society requires from this individual, if not – they would be avoided. An agreement must be reached between the individual and the society and then the persona is created. Otherwise the individual becomes isolated from the society. Besides, the more prestigious the social role is, the stronger is the wish of an individual to identify with it.⁵⁶

According to M. Stein, the psyche of a person is like an inner universe, with not only one planet, but a whole solar system, with multiple potentially divergent attitudes and orientations, which can fall into oppositions with one another and lead a person to neurotic personality styles.

According to Jung, *ego* is “a complex of ideas which constitutes the centre of... field of consciousness and appears to possess a high degree of continuity and identity.”⁵⁷ The relation between persona and ego is not simple because of their contradictory character – these two main functional complexes have absolutely different goals. The ego has a tendency to individuation, autonomy, “I-ness”, which can function independently; but there is another part of Ego, which is moving into the opposite direction – to the object world. This conflict between individuation/separation and social conformism in the ego creates ego’s basic anxiety – the source of fundamental conflict lies between ego and persona development.⁵⁸

Potential pitfalls in developing of Persona are: Regressive Restoration and Over-identification.

“A strong ego relates to the outside world through a flexible persona; identification with a specific persona (doctor, scholar, artist, etc.) inhibits psychological development...”⁵⁹

Identification of ego with persona creates the chronic conformist who experiences him/herself as whatever he/she "should" be; his/her reactions are determined by collective expectations. The dissolution of the persona (restoration to the unconscious) is vital for individuation. From the dissolution arises individuality as a pole that polarizes the unconscious.

⁵⁵ Carl Gustav Jung. *Psychological Types*. C.W., V. 6 (London: Routledge, 1990) par. 687.

⁵⁶ Stein. *Jung’s Map of the Soul*, p. 115.

⁵⁷ Ibid. C.W., V. 6, par. 706.

⁵⁸ Stein. *Jung’s Map of the Soul*, pp. 116-17.

⁵⁹ Jacoby, Mario. *The Analytic Encounter: Transference and Human Relationship* (Toronto: Inner City Books, 1984), p. 118.

Over-identification with persona leads to psychic rigidity and fragility, to the impersonal self-world relation, to inauthentic realm of conformity, anonymity and facelessness. These people with rigid persona inwardly are as weak, malleable and self-centred as they are inflexibly rigid outwardly. They are vulnerable towards the loss of role identity or Persona.

This description considers persona in a negative way. It seems to be a tendency to give the persona bad reputation and consider it as a negative one.

The aim of this article is to show that persona has positive side and its loss or disturbances can lead to illness, to depression in particular. The following illustration of investigations and studies in the field of psychopathology demonstrates and confirms the correlation between depressive disorders and over-identification with the persona.

The psychodynamic studies and personality research to provide a more and more consistent picture of depressive patient where the stress characteristics of many situations are emerging more clearly as perceived by the individual. The individualistic personality models in the comprehension of depression are limited and the significance of certain social parameters for the precipitation of endogenous depression can best be investigated within the framework of models covering both the individual and microsocial environment. Such a model is represented by the concept of role, since it emphasises the connection between a character and social structure.

In this context, the theory of identity implied that the role and concept of the new socio-psychological role theory (Goffman, E., 1961; Krappman, L., 1973; Dreitzel, H.P., 1968) is of primary importance. Although a social role establishes the social identity of a person, a human being is clearly more than the roles he fulfils. According to Dreitzel (1968), this distinction between person and role helps us to distinguish the Ego identity with the role identity. The role identity is the part of personality that develops in response to the demands of a social role. Therefore, there is an important antagonistic relationship between Ego Identity and Role Identity.

As mentioned above, over-identification with persona leads people to psychic rigidity and fragility, to the impersonal self-world relation, to inauthentic realm of conformity, anonymity and facelessness. They are vulnerable towards the loss of role identity or Persona. This over-identification with persona or social roles shows itself in the extreme dependency of depressive patients on the maintenance and stability of their roles. The description of various forms of depression - bereavement depression (Verlustdepression Lorenzer 1959), retirement bankruptcy Pensionierungbankrott, Stauder 1955), Rootlessness depression (Entwurzelungsdepression, Burger-Prinz, 1951), promotion depression (Beforderungsdepression), empty nest depression when children are leaving home (Deykin 1966) - showed this dependency on certain role of relationships.

In depression precipitated by such situations, the depressive patients can be seen rigidly clinging to their roles; even if the situation actually demands a change, they are imprisoned in their own roles.

The clinical studies of the precipitating life events of endogenous depression have been proved by the following empirical investigations: In an investigation by Glassner et al. (1979), out of 25 bipolar manic depressive patients, 56% of the cases versus 16% in the control group had experienced role losses before the onset of their psychosis. Finlay-Jones & Brown (1981) showed that the majority of severe events which involve severe long-term threat for the development of depression, involved the loss of a role or of a persona. In a long-term study of working-class women, Brown et al. (1987) found a threefold greater risk of depression if the severe event matched an area of high commitment like motherhood, marriage or work. In these cases, over-identification with the particular role took the places of a structural feature of the identity formation - persona formation. The general importance of a loss of role for precipitation of depression was also shown by Paykel (1987) in his investigation of 23 comparative analysis comparing depressive patients with controls. Several studies confirmed the significance of recent experiences of separation and some of these investigations showed higher rates of separations in depressive patients than in controls. But not only external role losses are important: internal role losses or damage triggered by role conflict may have the same consequences. Not only loss of a role but also the advent of new roles may precipitate depression: childbirth or a job promotion, for example, it may require that a previous role-identity be given up. At the same time, a new-role identity has not yet been developed: for example, post-natal and promotion or success depression (Perris & Espvall, 1973).

There are some similarities between Kraus's phenomenological study of melancholics, especially his concept of identity, Hermes Kick's research on the phenomenon of dynamic constriction, and C.G. Jung's principles concerning the mechanism of origin and development of illness. Let us briefly explain these relations. According to A. Kraus (1990, 1995), monopolar depressives (D.S.M - IV Major depressives (D.S.M.- IV disorders) and partly also bipolars manic-depressive are characterised by a cancellation of the ability to a certain degree to stand non-identity, to take upon themselves the role distance through a concomitant overdeveloped, or what A. Kraus calls over-identifying identity formation. This over-identification with the social roles shows itself above all in Hypernomic behaviour (nomos-Law, rules). This term means that depressive patients see themselves mainly as the recipients of norms and that they are striving for the most exhaustive fulfilment of all role expectations. This type of patients have been described as being over-conscientious; their essential traits are exaggerated orderliness, fussy exactness and extraordinary diligence (Tellenbach, 1983). The similar

descriptions were given by S. Freud (1967) and K. Abraham (1971). Empirical research by von Zerssen et al. (1982), Cadoret et al. (1971), Hirschfield and Klerman (1979), Kendell and Discipio (1970), and Possl and von Zerssen (1990) confirmed similar personality traits in depressives.

Compared to hypernormic behaviour, the behaviour of normals is far from fulfilling all possible normative expectations of a social role. Since social norms are often equivocal, inconsistent and conflicting, they may require situational interpretation. Normal social behaviour is in fact not completely norm confirmative. Hypernormic behaviour lacking perspective and flexibility towards norms is especially unfit to make decisions on the basis of interpretations of norms and are, therefore, unsuitable for solving norm conflicts. Due to this over-identification with social roles and accompanying weakness of-Ego-identity, they are also especially vulnerable and prone to depressions in situations involving role loss (death or separation from an intimate person, retirement or following promotion, when children leave home, etc.). Another significant personality variable of depressives is an emotional and cognitive intolerance of ambiguity (A. Kraus, 1990, 1995). It means inability to have at the same time feelings of love and hate towards one and the same person, and inability to perceive positive as well as negative character traits in the same objects or person.

The sociologists - Frenkel- Brunswik's (1949, 1950) studies on tolerance /intolerance of ambiguity in relation to the authoritarian syndrome stimulated the interest of psychologists and sociologists in this general variable of personality. Frenkel-Brunswik distinguishes two aspects of tolerance/intolerance of ambiguity: a cognitive and emotional one. The definition of cognitive tolerance of ambiguity is as follows: the capacity to perceive and recognise contrasting qualities of an object. The emotional tolerance of ambiguity is the capacity to develop positive as well as negative feelings in relation to the same object, e.g. affection or dislike. Tolerance of ambiguity is the integrative capacity which differs from Bleuler's (1922) notion of ambivalence. In ambivalence, the contrasting cognition, emotions or wishes are especially prominent and are dissociated, rapidly alternating with one another.

H. Kick (1995) describes too dynamic constriction which means fixation and narrowing concerning the whole psyche in a non specific way. The possibility of reacting flexibly to altering situations is limited. The constriction is characterised by deficiency of the meaning of the (outside) world.

The same approach can be observed in Jung's concepts of the persona and transcendental function. Cognitive and emotional ambiguity and concepts of constriction correspond to one-sidedness of Ego-consciousness in Jungian terms which can be overcome through transcendental function.

The transcendental function represents the uniting symbol. It facilitates the unity of opposites by restoring balance between Ego and the unconscious.

Here, *transcendental* is understood not as denoting a metaphysical quality, but merely the fact that this function facilitates a transition from one attitude to another. The transcendental function is the progressive synthesis of conscious and unconscious data, thesis and antithesis leading to the individuation – the most central notion of Jung's psychological system and therapy which C.G. Jung indicated with the term self-becoming – Selbstwerdung.

Since Jung's understanding of the Self is something which forms the beginning of psychic life and is also the goal towards which all things are oriented, he conceives self-realisation as a developmental process "by which a man becomes the definite unique being he in fact is" (C.G. Jung, 1948).

C.G. Jung considers psychic illness by no means merely as a negative thing. From Jung's point of view, psychic illness is hidden a bit of yet undeveloped personality, a precious fragment of psyche without which a man is condemned to resignation, bitterness and anything else that is hostile to life.

Therefore, both theories transcend this strict medical model. They consider psychic disorders not only as damage, disability, malfunction, deficiency, but as the realisation of the Self and life. Speaking concretely, the loss or disturbance of the Persona has its positive aspect and it bears hidden possibility to transcend one-sidedness.

Conclusion

Psychotherapy should help the patient realise the meaning not only of his/her life, but also of his/her illness. In contrast to analytically-reductive causalistic viewpoint which leads back to instinctual causes to primitive and elementary aspects and additionally to disintegration, the constructive-prospective point of view is characterised by a tendency to synthesis and growth with a forward-looking prospect. The constructive stand point asks how, out of this present psyche, a bridge can be built into its own future (C.G. Jung, 1914). Jung noticed: "A man is only half understood when we know how everything in him came into being Life has also a tomorrow, and today is understood only when we can add to our knowledge of what was yesterday the beginnings of tomorrow" (C.G. Jung, 1917). At the same time, Jung did not by any means disavow the importance of exploring causes and of going back to past events. So, the desired synthesis can take place whenever the contents of the unconscious are too weak or inhibited. In this case, the therapist will help the patient to stimulate them to emerge and will then help him/her to confront them with the conscious Ego and integrate them into daily life situation.

References:

1. Abraham, K. (1911). Ansätze zur psychoanalytischen Erforschung des manisch-depressiven Irreseins und verwandter Zustände. In: Klinische Beiträge zur Psychoanalyse. Leipzig. Internationaler Psychoanalytischer Verlag.
2. Bart, P. B. (1971). Depression in the Middle Aged Women. In: Women in Sexist Society. N.Y. Basic Books.
3. Bleuler, E. (1922). Die Probleme der Schizoidie und der Syntonie. Zeitschrift für die Gesamte Neurologie und Psychiatrie. 78.373-399.
4. Brown, G.W., Bifulco, A., & Harris, T.O. (1987). Life Events. Vulnerability and Onset of Depression: Some Refinement. British Journal of Psychiatry, 150, 30-42.
5. Burger-Prinz, H. (1951). Psychiatrie und Probleme der Umwelt. Studium Generale, 4, 227-234.
6. Cadoret, R. J., Baker, M.D.J., & Winokur, G. (1971). Depressive Disease: personality Factors in Patients and their Relatives. Biological Psychiatry. 3,85-93.
7. Deykin, E.Y. et al. (1966). The Empty Nest: Psychosocial Aspects of Conflict between Depressed Women and Their Grown Children. American Journal of Psychiatry Depression. 22,1422-1426.
8. Dreitzel, H.P. (1968). Die Gesselshaftlichen Leiden und Das Leiden an Der Gesselshaft. Stutgard: Enke.
9. Finlay-Jones, R. & Brown, G.W. (1981). Types of Stressful Life Event and the Onset of Anxiety and Depressive Disorder. Psychological Medicine. 11, 581- 599.
10. Frenkel-Brunswik, E. (1950). Intolerance of Ambiguity as an Emotional and Perceptual Personality Variable. Journal of Personality. 18, 108-143.
11. Freud, S. (1967). Mourning and melancholia. In: The Meaning of Despair: Psychoanalytical Contributions to the Understanding of Depression. N.Y. Science House.
12. Glassner, B., Haldipur, C.V. & Dessauersmith, J. (1979). Role Loss and Working Class Manic Depression. Journal of Nervous and Mental Disease, 167,530- 541.
13. Goffmann, E. (1961). Encounters Indianapolis. New York.
14. Hirschfeld, R.M.A. & Klermann, G.L. (1979). Personality Attributes and Affective Disorders. American Journal of Psychiatry. 136,67-70.
15. Jacoby Mario (1984). The Analytic Encounter: Transference and Human Relationship. Toronto: Inner City Books.
16. Jung, C.G. (1948). The Relations between the Ego and the Unconscious. p.174.
17. Jung, C.G. (1917). On the Psychology of the Unconscious. p.47.

18. Jung, C.G. (1989). *Psychological Types*. Vol. 6 of *The Collected Works of C.G. Jung (C.W.)*, Rev. R. F. C Hull of the translation by H.G. Baynes. London: Routledge.
19. Jung Carl Gustav (1990). *Two Essays on Analytical Psychology*. C.W., 7. Trans. R. F. C Hull. London: Routledge.
20. Kendell, R.E. & Discipio, W.J. (1970). Obsessional Symptoms and Obsessional Personality Traits in Patients with Depressive Illnesses. *Psychological Medicine*, 1, 65-71.
21. Khan Abraham, H. (2001). Identity, Personhood and Religion in Caribbean Context. In: *Nation Dance: Religion, Identity, and Cultural Difference in the Caribbean*, ed. Patrick Taylor, 139. Bloomington, Indianapolis: Indiana University Press.
22. Kick, H. (1995). Schizophrenic Residual Syndrome as Dynamic Constriction. In: *The Actual Problem of Psychiatry*, Tbilisi, 1995, p.121-122.
23. Kraus, A. (1990). Identity Disorder and Identity Therapy of Manic-Depressive Patients. In: *Mental Health in a Changing World*. Warsaw, p.221-230.
24. Kraus, A. (1995). Psychotherapy Based on Identity Problems of Depressives. In: *American Journal of Psychotherapy*, V. 49, No.2. Spring, p.197-210.
25. Krappmann, L. (1973). *Soziologische Dimnsionen der Identitat*. Stuttgart: Klett.
26. Lorenzer, A. (1959). DieVerlustdepression. *Arch.Psychiat.Nervenkr*,198,649-658.
27. Paykel, E.S. (1987). Psychosoziale Faktoren. In: *Affektive Psychosen*. *Psychiatrie der Gegenwart* 5 Berlin.Stuttgart, pp 181-201.
28. Perris, G. & Espvall, M. (1973). Depressive-Type Psychic Reaction Caused by Success. *Psychiatria Clinica*, 1973, 6, 346-356.
29. Possl, J. & von Zerssen, D. (1956). A Case History Analysis of the "Manic" and the "Melancholic Type" of Premorbid Personality in Affectively III Patients *European Archives of Psychiatry & Neurological Science*. 1990, 239,347-355 27. Stauder K.H. *Über die Pensionierungsbankrott Psyche*, 9,481-497.
30. Stein Murray (1998). *Jung's Map of the Soul*. Chicago and La Salle, Illinois: Open Curt.
31. Tellenbach, H. (1983). *Melancholie Problemgeschichte, Endogenitat, Typologie, Pathogenese*, Klinik Berlin Springer.
32. von Zerssen, D. (1982). Personality and Affective Disorders. In: *Handbook of Affective Disorders* London.
33. Vovolis Thanos (2016). *Articles*. <http://independent.academia.edu/ThanosVovolis> (27.04.2016).

The Essence of Spin and the Tendencies of its Use in Georgian Politics

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Abstract

A lot of researches on various types of communities, their cultures, narratives, and the ways of influencing people have been conducted in different parts of the world as well as in Georgia. It would, however, be interesting to analyze the use of political “spin” that is widely spread in the world, but which is comparatively new in Georgia. The political agenda is set by the politician with the intention of influencing society both visually and verbally. The best way to influence the society verbally is through the use of political “spin”. In order to understand the various trends of using "spin" in Georgian politics, messages delivered by the politicians through the mass media should be analyzed. Taking into consideration the above mentioned, we studied the essence of "Spin" and the tendencies of its use in Georgian politics.

Keywords: Spin, message, politics, politician, influence on society

Introduction

In the modern world, where rapid development of mass media and intervention of electronic media in people’s life is apparent, a politician can successfully make use of all the forms of mass media if he/she is well aware of “spin”. Without this awareness, it becomes absolutely impossible for him/her to employ the mass media for political purposes.

Materials and Methods

The present research is based on the analysis of the audio-visual materials within which the “spins” used by Georgian politicians during the Rose Revolution of 2003 were studied. Scientific works and publications about political “spin” were also used.

The word “**spin**” originates from the games “cricket and baseball” and it means the delivery of a ball which spins in the air and confuses an opponent – uncivilized and aggressive “promotion” that is used by one political class against opposition. Consequently, it is a light form of propaganda which helps

politicians to provide information to the media in a manner that serves the provider's political interests (Braun, 2017). "Spin", with its essence and methods, is related to propaganda. Nowadays, it is defined as light propaganda. The word "light" indicates the fact that "spin" takes place in a democratic environment. Here, I would like to focus on several techniques of "spin", for instance: "decorating" - giving a special appeal to the word, "passing" - ascribing a word to the opponent: "Didn't you say that ...", "cherry picking" - delivering or covering facts or quotations selectively, "non-denial" - making arguments to deceive a listener "We will leave this accusation without an answer!" Specialists who are called "spin doctors" try to change the topic of conversation in a way to make an employer's speech seem sensible. This can be achieved by sending press releases which explain arguable or ambiguous passages and which secretly agrees with journalists or organizers of new conferences. Politicians also hire "minders" who try to predict and neutralize a risk. "Speech writers" write politicians' speech when they make speech on new conferences or congresses. Also, speech writers try to provide necessary information with acceptable theses (Spencer, 2017). The concepts of cognitive dissonance - researchers have discovered that people choose messages that correspond to the beliefs and values of their nearest surroundings. It means that a person strives to maintain his/her own opinions and avoids the information that can change him/her.

The political "spin" had a message that Western media sparked in news during the August war of 2008, intensively covering the Russian-Georgian war since its beginning. Houston Chronicle (HoustonChronicle.com) wrote that the message was the same everywhere: "This is a cold-blooded murder of a small, free and independent country by a big neighbor" (Bakradze et al., 2008).

It can be said that "spin" is different from rhetoric, but there are some similarities between these two concepts, e.g. rhetoric is the art of conviction and consequently influences that which uses a spoken and, more rarely, written word as a tool. Principles of rhetoric are used to create a slogan, a motto, or a political speech; they are also used during political debates, etc. (Braun, 2017). The goal of the eloquent word is to convince the listener or the reader and make them act. Rhetoric is the art of speech that comprises the means for influencing recipients, and the flexible use of which creates some certainty. The theory of conviction is based on the instrumental analysis necessary to convince the listener or the reader. Rhetoric has the dual function to be the art of the eloquent word and science at a time - to say something eloquently that is well-structured, understandable, and convincing (Kentchiashvili, 2012). According to Aristotle, a rhetoric word consists of three parts: introduction, content, and conclusion.

Furthermore, he determined three (3) sides of the rhetoric speech: 1. the orator; 2. the subject matter of which the orator speaks; 3. the one who the orator addresses - the listener (Aristotle's Rhetoric 2002). He also developed systematic analysis of rhetoric: *Inventio* – invention; *Dispositio* – disposition; *Elocutio* – style; *Memoria* – memory; *Pronuntiatio* - delivery of speech.

Aristotle determined three types of rhetorical evidence and conviction: *Ethos* - (habit, character) how an orator influences audience, how convincing he is. *Pathos* - an emotional appeal to assure audience. *Logos* - (say) use of logic and argumentation to assure the audience (Course of studies “Rhetoric”. Institute of Public Affairs).

Umberto Eco in the article "Strategies of Lying" (1985) describes President Nixon's appeal to people after the Watergate crisis on April 30, 1973. Nixon's appeal is the best sample of rhetoric about how the President was misled by his surroundings. Nixon apologized to people for not being able to administer efficiently enough as he was busy with the problems of China and Vietnam at that time. He expressed his gratitude and underlined that American people and the press detected such a terrible crime.

Before Nixon's appeal, only a small part of the American population was against him. After the appeal, Nixon's opponents grew by 50%.

According to Umberto Eco, if the appeal had been printed in the newspapers, Nixon's fate would have been different. Nevertheless, this was a TV appeal during which a frightened man delivered a brilliant speech.

In Georgia, the best example of rhetoric is the statement the Imedi TV journalist made during the anti-government rallies on November 7, 2007. I would like to remind you that there were a lot of people in the streets and TV Company "Imedi" created anti-governmental opinions in society which worked quite well.

The main organizer of these issues at the peak of the general discourse made a perfect use of the phrase "What is said is as important as where it is said". While broadcasting, the Imedi journalist said that there were bloodsheds in the churches, which meant that the churches were raided by the government. After that, the government made an undemocratic move, At that time, this was the only decision that could save the government - they let the special forces raid the TV station as the journalists' rhetoric could turn the opinions of the whole society into a general discourse. The Church is above all for the Georgian people and to defend it, they will avoid nothing, including the political revolution and the takeover of the government.

Unlike rhetoric, “spin” is just one sentence that brings some smartness to politicians and is quite convenient while delivering a speech. As for the similarity, both rhetoric and “spin” is the best way of influencing societies.

In November, 2003, Georgian politicians often used the media to deliver political messages to the people. During the Rose Revolution, every

politician used the “spin” through the media, e.g., TV interview given by Eduard Shevardnadze in November: N1: this problem cannot be solved in one or two days. N2: Some of them talked to me, I was aware of certain problems but did not know about all of them. N3: I am repeating, President cannot be involved in all matters. N4: Elections are over in Ajara, there should not be any misunderstanding between the center and the Adjarian region. N5: I am not an impolite man. N6: Not everyone was asking for this, but some of them. These are the “spins” that Eduard Shevardnadze used during the interview. It is apparent that he tried to influence people’s minds and said: N1 - this problem cannot be solved in one or two days, i.e. people had to stay in the frozen streets. N2 - using “spins”, he made clear that he did not know about the problems. This means that others were guilty, but not the president. N3 – the “spin” shows that he repeated the same things, i.e. he tried to influence people’s minds. N4 – the “spin” shows that he threatened people with the possibility of the clash between the centre and the Ajara region in case of his resignation. N5 – the “spin” emphasizes that his opponent is impolite. N6 – the “spin” indicates that only one opponent out of three required his resignation.

Below are the “spins” from the text of Mikheil Saakashvili, where he addresses the people gathered at the rally. However, this appeal was made for people who did not attend the meeting at that moment and were watching from TV.

Mikheil Saakashvili's appeal to protesters: N1 – Today, Mikheil Saakashvili will not leave this place. If we go, their revenge will be severe. Now they are hiding in the offices, afterwards Mamaladze will break into your houses. N2- My friends! Children! All of you who are here. N1- He frightens people. N2 - the “spin” emphasizes that children and grandmothers are also attending the meeting.

These “spins” are from Mikheil Saakashvili’s TV appeal from Rustavi 2 which was broadcasting the rally where he spoke to the journalist emotionally: N1 - Aslan Abashidze will become the governor of this country; we will not be able to protest it in Tbilisi. N2 - This is a historic chance; we will not have such chance again. N3 - People were shot in Zugdidi; the minister could not dare to do it without Shevardnadze. N4 - We are a lot, organized, we will prevent all obstacles. N5 - Aslan (patronymic name Ibrahim) Abashidze. N6 – stand for two or three days, close your shops and when everything is over, you will be free of taxes. - Do not go to the universities and then study at European higher education institutions. N7 - Mamaladze says that the citizens of Tbilisi will not participate.

Analyzing Mikheil Saakashvili's “spins” used while making speech on Rustavi 2, we can explain what kind of information he wanted to be delivered to the society. N1 - He frightens the society that Aslan Abashidze

will become the governor of the whole country, which was an advantageous position for Saakashvili. This was because Aslan Abashidze was considered to be a dictator in Ajara region. Saakashvili emphasized the fact that Shevardnadze would no longer be, though Abashidze would become the governor of the whole country. N2 – using the spin, he still scares the society but this time, he means losing the historical chance. N3 – he accuses Shevardnadze of shooting the people in the streets of Zugdidi. N4 - he emphasizes the strength of people and motivates the public. N5 – it is clearly seen that he is well aware of the public’s opinion; he underlines that the majority of the population is Christian, though Ibrahim is an unchristian name. Through this way, he could create the negative attitude towards the opposite side just by calling Aslan Abashidze’s patronymic name. N6 – using this “spin”, he opposes the “spin” used by Shevardnadze - *N1: this problem cannot be solved in one or two days (i.e. people had to stay in frost for a long time)*. Saakashvili called on the people to solve the problem in two days and promised the youth to give them a chance to study in European universities. He also encouraged the older generation to stand for this rally and he promised to free them from taxes. N7- he motivates the Tbilisi residents to join the action.

Therefore, it can be said that during the Rose Revolution, Mikheil Saakashvili's political “spins” worked, and Eduard Shevardnadze's spins had little impact on the society.

Conclusion

Based on the research which was conducted to study the tendencies of the use of political "spin" in the Georgian media by the politicians brought up in the Soviet period, we conclude that the "spin" influenced the Georgian electorate. However, the “spin” of those days is weaker and less successful compared to the “spin” used by modern politicians. It is so because "spin" is successful when it is tailored to the narrative and opinions of the society towards which it is directed.

That is why the verbal communication and message boxes of politicians brought up in the Soviet era matches with the Soviet opinions and narratives. This differs substantially from the opinions of the modern Georgian society. As a result, "spin” designed for the Soviet Georgians cannot influence modern Georgians.

References:

1. Bakradze, L., Danelia, N., Toria, Z., Keshelashvili, A., & Tsomaia, T. (2008). Russian-Georgian War Covered by the Foreign Mass Media. Tbilisi.

2. Audio-visual Materials on the Course of Studies “Public Opinion”. Institute of Public Affair Affairs.
3. Umberto Eco (1985). “Strategies of Lying”.
4. Braun, S. (2017). Political spin. <https://www.britannica.com/topic/political-spin> (19.08.2017)
5. Spencer, R. (2017). The greatest political speeches. <https://www.theguardian.com/commentisfree/2013/nov/19/greatest-political-speeches-former-writers-favorites> (19.08.2017)
6. Kentchiashvili, N. (2012). Rhetoric in Antique Philosophy. 2012/09/01
7. Aristotle's Rhetoric (2002). First published Thu May 2, 2002.
8. Course of studies “Rhetoric”. Institute of Public Affair Affairs.
9. <https://natiakentchiashvili.wordpress.com/2012/09/01/%E1%83%A0%E1%83%98%E1%83%A2%E1%83%9D%E1%83%A0%E1%83%98%E1%83%99%E1%83%90-%E1%83%90%E1%83%9C%E1%83%A2%E1%83%98%E1%83%99%E1%83%A3%E1%83%A0%E1%83%A4%E1%83%98%E1%83%9A%E1%83%9D%E1%83%A1%E1%83%9D%E1%83%A4/> (19.08.2017)
10. <https://plato.stanford.edu/entries/aristotle-rhetoric/> (19.08.2017)

Social Media as an Instrument of Waging Hybrid Warfare

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Abstract

Social media in the contemporary information age takes on special importance in terms of prompt and effective communication facilities. Social media is equally important in terms of capabilities to form and manipulate public opinion through propaganda, misinformation, hybrid and information-psychological warfare. In addition to providing a definition of information and hybrid warfare, the presented article characterizes the function of social media and the scale of its capabilities to wage hybrid warfare. The article is a study that, through analyzing of the operations of the Russo-Georgian War of 2008, forms a vision of hybrid warfare waged through social media. As a result, the study showed that information warfare is a major instrument to form public opinion. The main area where information spread faster in the modern environment is social media. The study also highlighted the importance of social media as a potent weapon in achieving military-political goals.

Keywords: Hybrid warfare, information war, Russo-Georgian War, information environment, cyberattack

Introduction

Information comes up as a leading resource of strategic importance in the contemporary information environment and society. Those who possess information, possess power as well. However, information in itself is nothing if the instruments of its dissemination and the relevant infrastructure are lacking.

The highest manifestation of human conflict is referred to as a war by diplomats, who have pointed out that war is a failure of diplomatic relations (Waltz Edward, 1998).

It is generally accepted that information in times of conflict is a fundamentally important weapon (Waltz Edward, 1998; Europe for Georgia 2017).

The 21st century is the century of information technologies, which gives rise to people increasingly placing their trust in electronic information.

The subject of research of this article is to define the role of social media within the context of hybrid warfare and also to consider or speculate hybrid warfare in the light of the Russo-Georgian War of 2008.

The theoretical and methodological grounds of the study comprise Georgian and foreign theses, publications and electronically available resources. Accordingly, the study will make use of a comparative method of analysis.

New Information Environment and Hybrid Warfare

Rapid development of technologies has absolutely changed the daily information environment. Today, information technologies enable everyone to record, video, edit and share events and information. People have access to all information even if the conventional media do not report any event whatsoever. This allows a person to become an author of information and the disseminator of prevalent or trending messages around the globe.

This new information environment has the following characteristic features of its own:

- Accessibility (modern technologies make it possible to create and dissemination information in real time);
- Speed (social media allow for a quickest dissemination of information);
- Anonymity (people can express their opinions and attitudes, fabricate information visually and textually and spread fake news without accountability);
- Quick modification in information flows (dissemination of information flows is comparable to a river with multiple tributaries. Some of them are important for the general audience, while others matter to a narrow circle only. Consequently, in an environment of obviously excess information, it is becoming increasingly difficult to separate the needed information from the so-called “noise”);

Information without frontiers (people learn world news and get involved in current developments through social media) (NATO Strategic Communications Centre of Excellence 2016; Lagazidze Khatuna, 2015; Mchedlidze Davit, 2017).

According to the statistics, in January 2016, 3.4 billion people, that is, half of the world population, were active Internet users. 1/3 of the world population, that is about 2.3 billion people, was connected to a variety of social networks.

It is noteworthy that the number of mobile Internet users is increasing with each passing day (NATO Strategic Communications Centre of Excellence 2016; Mchedlidze Davit, 2017).

Interestingly, the term “hybrid warfare” was first used in a thesis by William J. Nemeth in 2002, as he described the involvement of Chechen rebels in a guerilla war by using modern military tactics and, for the first time, mobile and Internet technologies. According to Nemeth, despite a high level of preparedness of Chechen fighters, they still had the need of such components of information warfare as psychological warfare and information operations (NATO Strategic Communications Centre of Excellence 2016; Lagazidze Khatuna, 2015).

According to the US and European theorists, information warfare that encompasses psychological operations along with electronic and cyber warfare will be the main type of future warfare (NATO Strategic Communications Centre of Excellence 2016; Avalishvili Levan, 2017).

As Robert Bross, the US scholar, explains, cyber warfare involves manipulation of communication systems.

Within the context, the Russo-Ukrainian conflict is noteworthy as cyberattacks launched in the conflict did not only knock out engineering systems, but also exerted mental pressure on the audience.

When considering social media, scholars view it as part of a cyberspace, though it has become increasingly difficult to distinguish when social media acts as a communication platform from when it discharges its core function of creating content.

As the specialists of NATO Strategic Communication Center point out, considering the contemporary information environment, social media today are necessary and must be used in operations to achieve special military goals (NATO Strategic Communications Centre of Excellence 2016).

In Daniel Ventre’s opinion, recent years have shown a sharp increase in military conflicts. The author particularly emphasizes wars waged in cyberspace, citing the examples of the Russo-Georgian War of 2008, and the Arab Spring Wave of 2010-2011, the wars in Libya, Syria, and the Russo-Ukrainian War (Daniel Ventre, 2016, **XIV**).

Winn Schwartau, a security expert, differentiates between three levels of information warfare:

- Interpersonal information warfare (blocking and manipulating personal, confidential information);
- Intercorporate information warfare (industrial espionage, theft, and sabotage);
- International information warfare (designed to influence industries, political spheres, global economic forces by destroying a country’s communication and transport systems with the use of information systems).

Technologies are used against technologies. This is an alternative form of a conflict waged in cyberspace that creates chaos) (Daniel Ventre, 2016; NATO Strategic Communications Centre of Excellence 2016).

Martin Libicki defines information warfare as a series of activities triggered by the need to modify information flows while protecting one's own information field. Libicki identifies seven distinct categories of information warfare: command-and-control warfare, intelligence-based warfare, electronic warfare, psychological warfare, "hacker" warfare, economic information warfare, and cyberwarfare (Daniel Ventre, 2016; Europe for Georgia 2017).

What is hybrid warfare? Hybrid warfare is a joint, coordinated, open or secret use of diplomatic, military, economic, and information resources as well as conventional and irregular (i.e., guerilla and asymmetric) terrorism, criminal and cyber fight methods for the purpose of achieving military or political ends (Europe for Georgia 2017).

There is one thing that is truly common to the prevalent views on hybrid warfare: this is warfare through controlled chaos using one of the core components, of which is information warfare, in order to fully demoralize the opponent. The following elements of hybrid warfare are commonly singled out: selecting "reliable groups" in a target state and using them for provocations, rocking the boat and inspiring a crisis in a victim state; degrading, impoverishing and breaking up the country; bringing the political force suiting the aggressor in power in the target state. The initial steps of hybrid warfare are seemingly so innocent and seamless that they can be detected only when the war is raging in full swing (Lagazidze Khatuna, 2015).

Russian military theorists have contributed significantly to the development of the theory of hybrid war. One of the noteworthy papers published in 2013, namely *Methods of Waging New Generation Warfare* belongs to Chief of the Russian General Staff, Valery Gerasimov, (although, Gerasimov in particular does not use the term "hybrid warfare"). Reviewing the Arab Spring events, the paper concludes that the New Generation Warfare will use military force latently, without official declaration.

The so-called Gerasimov Doctrine describes the New Generation Warfare features that Russia used subsequently in Ukraine (when creating hotbeds of instability on the Crimea and in Donbas).

According to the doctrine, the New Generation Warfare has the following distinguishing features:

- a) Military actions are launched in a time of peace when no war is officially declared. Instead of large-scale military actions, the conflict is limited to small-scale, local fights;
- b) Special Operations units and armed civilians are used in military actions;

c) Warfare is waged in 4, not 3, spaces: on the land, in the air, at sea and on the information field.

Thus, the Russian theory of Hybrid Warfare attaches considerable importance to operations in the information space as one of major instruments of New Generation Warfare (Europe for Georgia 2017).

Carrying out hostilities in cyberspace or the Internet is not so difficult. If any propaganda or PR requires strategy, planning and scenarios, cyberattacks are conducted by using only tactics and soldiers. The tactics is simple: a network consisting of tens of thousands of infected computers (the so-called botnet) launches a simultaneous attack against a server. The attack involves sending information packages consistently in order to overload and effectively shut down the server. For instance, DDOS attacks and TDS attacks are the most widespread methods of infecting computers. The main function of the Trojan virus is to penetrate your system and allow the virus owner to control your computer.

However, examples of such attacks or cyber wars abound around the world. The first most widely rumoured war in our immediate neighbourhood broke out between Russia and Estonia in 2007. The cause of the cyberattack was related to the relocation of the monument of the Russian Soldier from downtown Tallinn (Mchedlidze Davit, 2017).

Russo-Georgian Hybrid Warfare 2008

Georgia was the next neighbouring state to be embroiled in a war not less in scale with Russia. “As it turns out, the July attack may have been a dress rehearsal for an all-out cyberwar once the shooting started between Georgia and Russia. According to Internet technical experts, “it was the first time a known cyberattack had coincided with a shooting war,” said The New York Times about the mass cyberattacks carried out in parallel with the hostilities between Russia and Georgia.

The information war waged between Russia and Georgia in parallel with the land and air battles between the two countries in 2008 was no less intense. Sometime before August 8, series of Georgian government and news Internet sites were subjected to organized cyberattacks that effectively disabled the sites (3,195-196).

The main thrust of the cyberattack was directed against the websites of the Parliament of Georgia and Ministry of Foreign Affairs. Hackers also broke into the websites of the Supreme Court, Ministry of Education and Ministry of Defence, defacing the information uploaded to such sites. Cyberattacks were carried out against the websites of news agencies, including an Azeri website (day.az).

The cyberattacks effectively shut down a few websites, including Media.ge. Government agencies opened standby blogs,

<http://georgiamfa.blogspot.com/> and <http://stateminister.blogspot.com/>. The largest cyberattack was carried out on the anniversary of the Russo-Georgian War in August 2009. This time, Cyxymu, an author of a Georgian popular blog, was the target. The wave of the cyberattack was so powerful that it disabled Twitter and facebook. It should be mentioned that soon after the attack, in the days of the war, NATO cybersecurity experts arrived in Tbilisi to help repel the hacker attacks. It is believed that groups of Russian hackers and RBN - Russian Business Network (a Russian organization) masterminded the cyberattack (Mchedlidze Davit, 2017).

Interestingly, the Moscow propaganda machine started reviving following the war of August 2008. The funding of Russia Today in 2015 reached \$300 million compared to the \$30 million it had in 2005. It was mostly for the information support campaign that Russia Today conducted during the war of August. During the war, the methods that the Russian side employed were quite primitive, yet tested and endorsed during the Soviet era. For example, say and spread as many lies and unconfirmed information as possible, try to influence the emotions of people, not their mind, and although real facts will rebut most false information in the future, some of the perceptions you have purposefully spread will hold out in the minds of the objects of such influence.

A good example of a successful information campaign conducted during the war of August is the spreading of an unreal number of civilian deaths on the second day of the conflict. The purposefully disseminated information on 2000 civilian deaths in Tskhinvali formed a daily background to all Russian news, including Russia Today, the English version of Russian news. At the same time, to accomplish foreign political objectives, the myth was used to blame Georgia in the genocide of the Ossetian population and justify subsequent military and political actions (interestingly, even the “investigation” conducted by the Russian side made it clear that the true death toll was at least ten-fold lower than what had been reported at the beginning and that military accounted for most of the toll).

To influence its own and international communities, the Russian side resorted to spreading concocted clichés on a mass scale. “Bombing a sleeping town” can serve as an example. The propagandistic cliché puts the main accent on the words “sleeping town.” In unsuspecting viewers, the cliché arouses sympathy for people sleeping in a “peaceful town” that has come under bombardment.

Another cliché spread in the days of the war was “чистое поле” [in the open fields], a name made up for the Georgian operation. The cliché was intended to underscore the inhumane and criminal nature of the Georgian military operation. Just like the Soviet Union used the term “international solidarity” to justify interventions in foreign countries, this time, considering

the modern realities, the Russian side used the term Peacekeeping Operation to Force [Georgia] to Peace.

A real information war involving cyber operations and propaganda to form public opinion was waged in the Internet space. Overall, we can say that the strong information support to the military intervention in the neighbouring state contributed enormously to legitimizing Russia's aggressive policy (disappointingly, even in the eyes of a certain segment of the Georgian population) and significantly weakened Georgia's international positions. It was against the background of such success that Moscow reformed its own information capabilities to present entirely new challenges to the international community (Avalishvili Levan, 2015).

Although the international community has not yet developed a uniform approach to the definitions of cyberattacks and cyberwarfare, states will have to reach consensus on the above definitions as well as on the cyberoperations to be carried out in times of cyberattacks.

Thus, as the forms of warfare are evolving in the modern era, we need to think about cyberdefence capabilities. Such need did not escape the notice of NATO when endorsing the new strategic concept at the Lisbon summit. Since then, the alliance stresses the need for strengthening cooperation with member and partner states on cybersecurity issues.

Further development of information and communication technologies in the future will likely extend the scales of cyberspace. This would require states, including Georgia, to pursue an effective cyberpolicy that involves developing a fresh cybersecurity strategy and protecting information systems from cyberattacks that, in turn, constitutes an integral part of the national security policy (Burkadze Khatuna, 2015).

Conclusion

Having analyzed the above issues, we can conclude the following: it is not for any reason that the 21st century is referred to as Information Age. The creation and development of social media made the dissemination of information instantaneous. Experts and analysts are still arguing over the issues of concern associated with the speed of information transmission, as well as the massiveness and universality of information.

Cyberattacks carried out on the international arena (against Georgia and Ukraine, in the US elections, etc.) have further emphasized the significance/dangers of cyberspace and encouraged a discourse on the imposition of certain limits to the exchange of information.

It is worth mentioning that contemporary world is impossible to imagine without social media, but yet the community is currently facing a daunting challenge. This involves, on the one hand, free information environment and freedom of speech, in which one can access any type of

information and express his or her opinion, and, on the other hand, the information environment complicated by free exchange of information that an “opponent” sees only as another “real” opportunity for materializing his or her evil intentions.

It was the information flows that played a decisive role, through social media, in the development of the Russo-Georgian War of 2008. Accordingly, based on the facts discussed in the present paper, the war can be categorized as hybrid warfare.

References:

1. Avalishvili Levan (2015). Portal Georgian Review.ge. Information Security–New Challenges and Georgia <http://georgianreview.ge/2015/05/inf-usaftrxoeba/?lang=ge> (last accessed 28.08.2017).
2. Burkadze Khatuna (2015). Portal Georgian Review.ge Computer Networks and Cyberattacks <http://georgianreview.ge/2015/10/komp-kselebi/?lang=ge> (last accessed 1.09.2017).
3. Daniel Ventre (2016). Information Warfare. London. UK.
4. Europe for Georgia (2017). Hybrid Warfare in Russian Military Theory <http://eugeorgia.info/ka/article/637/hibriduli-omi-rusul-samxedro-teoriashi/> (last accessed 28.08.2017).
5. Lagazidze Khatuna (2015). Hybrid Warfare and Georgia. The Kviris Palitra. 9 February. <https://www.kvirispalitra.ge/politic/24177-hibriduli-omi-da-saqarthvelo.html> (last accessed 1.09.2017)
6. Mchedlidze Davit (2017). Portal Media.ge. Information Warfare. <http://www.media.ge/ge/portal/news/26362/> (last accessed 1.09.2017).
7. NATO Strategic Communications Centre of Excellence (2016). Social Media as a tool of Hybrid Warfare. Riga.
8. Waltz Edward (1998). Information Warfare Principles and Operations. Boston. London.

The Estate Inheritance Issues, Georgian Legal Norms and Jurisprudence

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Abstract

The establishment of a stable civil society requires the consistent and harmonious regulation and development of private legal relations. The legal analysis related to the estate inheritance adoption is important both for the substantive law and the implementation of legislative amendments in practice. Modern inheritance law system is customized to our reality, but we cannot say that this system is flawless and perfect, because some norms of the existing inheritance law require improvement due to vagueness or inaccuracy. The inheritance law implies a certain opposition between substantive-legal and procedural-legal norms that affect the material-legal nature of the subjective right to inheritance. During the practical realization of the norms established by the Civil Code, one of the issues is related to the inheritance adoption and its timeframe. It is due to the fact that the development of the inheritance law in Georgia is characterized by a historical factor, as well as negative prejudices, stereotypes and traditions that impede the law functioning. Customary justice is still relevant today and is much more effective than the legislation, although expert lawyers do not consider this as a flaw of the law. The present research deals with the criteria for the legality of the activities related to the inheritance adoption, its use and amendment issues on the basis of the Georgian legislation, and judicial practice existing in Georgia.

Keywords: Civil, inheritance, adoption of inheritance, timeframe, notary

Introduction

The development of the inheritance law in Georgia is characterized by its own peculiarities, which are primarily caused by historical factors – for more than half a century, the citizens were imposed by a specific mentality. This resulted in the general legal illiteracy of the population and, therefore, many legal disputes over inheritance in the courts require their optimal solution on the basis of adequate legislation.

The right to inheritance is a matter of the Constitution protection. The Article 21 of the Constitution recognizes the inviolability of inheritance (Constitution of Georgia 1995).

The peculiar place in today's society belongs to the law governing civil relationships, the Civil Code of Georgia; although, another which have no less significant issue is the practical implementation of the relationships defined by the Civil Code. The hereditary justice is one of the oldest institutions. This fact is confirmed by the old Sumerian and Egyptian sources (Metreveli, 1995, 95-99; Nadareishvili, 2005, 148-154; Kosarev, 2007; Mosin, 2011; Novitsky, 1964). It is also confirmed especially by the Justinian law's provisions which formed the basis for the hereditary justice in many countries, including Georgia. "The reception of the Greek-Roman law occurred in Georgia" (Zoidze, 2000, 69), but "the Georgian hereditary justice was formed as a national law" (Zoidze, 2000, 63).

There is no doubt that each national law, even when it comes to civil law, represents a certain originality that is revealed only in peculiarity to its institutions (René David, 1993, 86-87).

At first glance, the hereditary justice consists of well-organized and perfect provisions, but the analysis of court practices reveals that today, some of the current hereditary justice's norms need to be improved. All the above mentioned created a lot of problems in the practice. The problems, arising in the process of practical implementation of the norms established by the Civil Code, are related to adoption of inheritance, inheritance timeframe, and inheritance certificate.

The rule of transferring a testator's property to other persons is largely conditioned by moral, ethical, religious, and family aspects. The current world's legal doctrine to the present issue allocates two approaches. The first one is typical to continental European countries (Blinkov, 2009, 13). According to this approach, the inheritance is considered as a kind of universal succession which originates from the Roman private law (Nadareishvili, 2005, 222). Such an approach was shared by the legislation and doctrines of many European countries' national legislation which considers an inheritance as a distribution of a deceased subject's property between his heirs by law and (or) a bequest.

The German Civil Code (Section II) gives a modern definition of "inheritance" in the hereditary justice, namely, it is a legal status of an heir, the adoption and renunciation of inheritance; the procedure for the custody of inheritance established by the Court of Hearing Settlement of Heritage Cases.

A special attention in the German Civil Code is paid to the legal norms of the adoption and renunciation of inheritance. The adoption of inheritance is also related to the timeframe established for refusing to accept an inheritance. According to the Paragraph 1943, an heir cannot renounce the inheritance if

he or she has already received it or if the timeframe set for the renunciation of the inheritance has already expired. The inheritance is considered accepted if the timeframe has expired (The German Civil Code 2010).

Unlike the Georgian Civil Code, the German Civil Code (the GCC) (§1948 and §1949) takes into consideration the grounds for invitation to inheritance and a mistake made on the grounds of invitation.

However, similar records were not found in legal sources of other countries.

Acceptance or denial of an inheritance cannot be determined by conditions or timeframes (the GCC, §1947 and the RSFSR Article 546) (21 Civil Code of the RSFSR.11.06.1964). The legislation of almost every country determines the same rule for the adoption of an inheritance.

In accordance with the Russian Civil Procedure Code, in particular, the Articles 310, 311, and 312 of the Code regulate the rules of appealing notarial actions. A similar record is given in the Article 1426 of the Georgian Civil Code.

The analysis of the legal norms of the German and Russian Civil Code makes it clear that Georgian Civil Law is in the scope of the above-mentioned Civil Law systems. Furthermore, German Civil Law is in the sphere of influence of the aforementioned Civil Law systems. The Georgian Civil Law is also considered to be an heir to the German Civil Law.

At all stages of its development, the Georgian civil doctrine traditionally considers the process of inheritance as a universal succession which can be either limited or unlimited. The Georgian Law, as well as the German one, recognizes the limited responsibility when the heir's responsibility is limited to the property of the inheritance.

The relevance of the topic is also determined by the fact that every citizen faces the issues of registration of inherited property.

Frequently, there are cases when a person desires to get an inheritance, but does not know what to do or how to go about it. Below, we briefly describe how a legitimate successor - an heir can receive an inherited property.

The research is based on the general scientific methodology. The most widely used method is the abstract-logical one, which includes analysis and synthesis, induction and deduction. The comparative method, the empirical method, the method of comparison, and interpretation are also used in the paper.

The work highlights the scientific literature available on the topic of study: dissertation Papers, numerous Internet sources, and normative material. In order to correctly identify problematic questions related to the task, it is important to use the court practice that determines today's reality. So, the research covers the decisions of the Supreme Court. The court practice indicates the problematics of the question itself. Therefore, it is essential to

analyze the shortcomings, existing in the court practice, and to establish general practice related to these issues.

Adoption of Inheritance

The loss of a family member is, of course, a very undesirable and unpleasant fact, but there are some issues that need to be addressed. The death of a person directly results in the question of transferring his/her property to the ownership of an heir, i.e. the adoption of inheritance.

The issue of inheritance transfer is considered open from the day of a person's death. The death of a testator does not automatically cause the transfer of an inherited property to heirs. The necessary condition of this procedure is the adoption of inheritance, which means that a person, inheriting property, consciously expressed his/her will to enter a hereditary-legal relationship. From this moment, an heir (a successor) is considered to be an owner of the inherited property, a creditor and a debtor of a testator's obligations.

The procedure for inheritance adoption is the same both when the inheritance is received by law and by testament. **An heir by law or testament** is entitled to inheritance within six months from the death of a testator. The adoption of inheritance from a legal point of view represents a manifestation of one-sided will. However, the presence of only one will is not enough for the achievement of legal results as a will is an internal, subjective component and a law enters into legal force only when the objectively conscious process of expression is confirmed. There is only one case when a law does not require an agreement to adopt an inheritance. It happens when an inheritance becomes the property of the treasury. The inheritance is not considered to be adopted without the consent of an heir. The fact of inheritance adoption should be derived from the factual circumstances indicated in the case and the legal norms regulating the specified relationships referred to the case.

The inheritance adoption means that an heir inherits an inheritance. If an heir does not subsequently present his/her rights to inherited property (for example, does not live in the inherited house) or does not take measures to register in his/her name in a document confirming his/her rights (for example, a document on property ownership), it will have no effect on the adoption of an inheritance that has already occurred.

Only a capable person has a right to the adoption of inheritance. Incapacitated and disabled people are entitled to the inheritance through their legal representative. A person who receives a support gets an inheritance with the help of a supporter, who is empowered by a court decision to implement property rights (Civil Code, the Article 1422) (Judgment of the Grand Chamber of the Supreme Court of Georgia, March 04, 2002 No3k / 441-01; the Judgment of the Georgian Supreme Court Grand Chamber of

March 04, 2002 No3k / 441-01). A special case is the adoption of inheritance by deal.

The Ways of Inheritance Adoption

The adoption of inheritance can be done in two ways: by filing an application in a notary body and by possessing or managing an inherited property, i.e. by using conciliatory actions which confirms an heir's willingness to adopt an inheritance (in accordance with the Article 1421, Paragraph 2 of the Civil Code), but in a certain period of time - within six months after the death of a testator. A similar regulation was included in the Article 556 of the Old Civil Code as well. If an heir is absent and does not actually own and manage the inherited property after the established 6 months, he/she should appeal to the Court for the renewal of inheritance.

Procedures Related to the Adoption and Possession of Inheritance

A question that arises logically is – what does an actual ownership and management of the inherited property mean? The actual ownership and management of the inheritance imply the actions of an heir that is aimed at the use, possession, and disposal of the inherited property, keeping it in a normal condition and complying with the timely payment of obligatory and other taxes (Chikvashvili, 1999, 122-123).

In practice, the following circumstances have been established for determining the fact of actual possession/management of an inheritance:

- a) If a testator and an heir had one and the same registered place of residence even for a short period of time from the moment of inheritance adoption and before the end of its term.

I would like to point out that this approach is illegal and unfair, because a registration does not mean the fact of being (residing) at a specified address or/and possessing the property. Therefore, if an applicant-heir is only registered at the address, although, neither at testator's lifetime nor after his/her death, he/she does not possess and does not use his or her property (or its part); he/she should not be entitled to obtain the inheritance on this ground. Such a vicious practice should be altered, i.e., notaries should not be entitled to issue an inheritance certificate on this ground. This question should be examined by the court and the fact of inheritance adoption should be confirmed as well. And only on the grounds of the court decision notaries should an inheritance certificate be issued.

- b) An actual possession of those documents, belonging to a testator, which confirm the existence of a vehicle, an amount of money on the bank account, included in the list of inheritance; however, this approach has some negative consequences as well, as an heir, whose inheritance validity has expired, can

try to obtain existing documents in an illegal way (for example: by stealing, threatening, etc.).

c) Certificate of tax authority, certificate of insurance company, bank certificate. Moreover, these obligations must be fulfilled within the timeframe of the inheritance adoption.

d) Utility service certificates or receipts, if possible, with a taxpayer identification on them.

The actual ownership and management of a property "undoubtedly" prove the adoption of an inheritance. However, an inheritance certificate should not be issued without applying to the notary body; hence, an heir cannot become an owner if he has not applied to the notary.

On the grounds of one of the circumstances of the above actual possession/management fact, it is interesting to know whether a notary is authorized to consider the application for adoption of inheritance upon the expiry of the period of its adoption and issue an inheritance certificate.

In practice, notaries still issue an inheritance certificate; however, this is after the court recognizes it to be invalid and indicates the law violation. For example, according to the GSCDC of 17.07.2009, case #AS-233-494-08, the matter of controversy was a cancellation of an inheritance certificate.

The District Court referred to the Articles 1424 and 1426 of the Civil Code as the legal basis for the decision and noted that after the expiration of the term of the inheritance adoption, the notary was not authorized to review the claim of an heir to the inherited property and issue an inheritance certificate. The Court considered that the notary had issued the inheritance certificate in violation of the law, due to which it was declared invalid.

The District Court refused a plaintiff not because he/she was not an heir and an owner, but it actually explained to the plaintiff that he/she had appealed to a notary and had received an inheritance certificate; and on that basis, he was deprived of his property.

I would like to agree with the notary, Mrs. Lela Intskirveli's opinion, that the rule established by the Civil Code contains the conflicts and the potential for inevitable formation of disputes:

An inheritance certificate can be obtained by a person who has appealed to a notary, while an heir of the property, who has not submitted an application, does not receive an inheritance. An heir with an inheritance certificate is entitled to alienate the property including the property which is owned by another heir. At this time, a conflict is inevitable. Besides, it is impossible to document the fact of actual possession of a property. Obviously, this rule should be thoroughly reviewed and the mechanism of conflict prevention should be established. For example, to abandon an heir to alienate the inherited property for some period of time after the inheritance adoption and the claim of other heirs will not be accepted after its expiration (Intskirveli,

2004, 115-116). At this time, notaries cannot perform the function of preventive justice.

Validity Period of Inheritance Adoption

The validity period of inheritance adoption represents one of **the most problematic issues** in the hereditary law. If an heir does not receive an inheritance within six months, he/she loses the right to receive it. This is because the term for obtaining the property belongs to the preliminary term. The expiry time results in cancellation of an heir's inheritance rights, unlike the limitation period, whose expiration not only cancels the validity of any specific right, but also excludes any possibility of its protection (Shengelia & Shengelia, 2015). The tenure of the property does not apply to the rule of start, stop, and termination of electricity validity period typical to the limitation period (Sukhitashvili, 2004).

In addition to the period of 6 months from inheritance adoption, it is also interesting to consider the issue of a special timeframe. In the case of violation of a specified period, the first sentence of the Article 1426 (1) of the Civil Code provides the following statement: “the term for obtaining the inheritance may be extended by the court, if there is a valid reason for overdue of the term.”

For the case # **AS-1153-1099-2013** adopted by the Supreme Court, the court did not satisfy the plaintiff's claim. The Chamber considered that the general relation of an heir to his attached property after his father's death does not mean that he had inherited property (The Civil Chamber of the Georgian Supreme Court 2014). The ownership of the inherited property implies the factual ownership of the estate, the disposal of things, etc. In a similar decision, ruled in case # **AS-1-1184-1113-2012**, the plaintiff's claim was not satisfied and it pointed to the fact that the expression of an heir's will to the adoption of inheritance was manifested by the **actual acceptance and disposal of the attached property**. According to this viewpoint, during the actual disposal of property, the following elements of legal significance are defined: the inheritance adoption—the actual action directed towards the right and the fulfillment of such an action in a period of time within six months after a testator's death. Only an overnight stay cannot be result in an inheritance adoption – (what is unclear) (The Civil Chamber of the Georgian Supreme Court 2012).

The law specifies the inheritance term exactly – in months. It does not establish a specific day, a week or a month (from a testator's death), when an heir can enter into the right to dispose the inherited property. It is clear that this is always permissible, but only within the six months. Therefore, according to the Court's assessment, the decisive factor is a valid reason for

the overdue of the term within the first six months after the opening of the will. This, however, is regardless of the farther longer term delays.

There are cases when an heir cannot inherit the estate. This means that other heirs will have the right to get an inheritance. In this case, if there is less than 3 months remaining within the 6 months term, or the timeframe has already expired, then the period of inheritance adoption for these heirs should be determined up to three months.

The subject of the court assessment is the validity of the reason for overdue of the term. The concept "overdue" itself refers to the conditions existing at any period of time after the expiration term. A legislator does not specify the criteria for validity as it is an evaluative category, which requires an individual approach for each particular case and the consideration of those facts and circumstances, which confirm the reliability of the fact that an heir could not enter into the rights of the inheritance or apply to the notary for objective reasons (the examples of a valid reasons may be a prolonged illness, a long business trip, etc.).

However, due to the general principles of legislation, the validity reason for overdue of the inheritance term shall be determined on the basis of two important grounds: a. if an heir did not know and could not know about opening of the will; b. if an heir has exhausted the term for any valid reason and applied to the court for the restoration of the term after the happened fact. [In this regard, see the Judgment of 16.02.11 by the Civil Cases Chamber of the Supreme Court of Georgia on the case # **AS - 851-800-2010**; the Judgment of 21.02.11 on the case # **AS-89-79-2011**; the Judgment of 01.03.11 on the case # **AS-1294-1139-2011**; the Judgment of 25.05.11 on the case # **AS-392-372-2011**; the Judgment of 06.06.11 on the case # **AS-477- 451-2011**].

The second ground precisely represents one of the legislative defects, namely, the fact that there is no indication of the period in which an heir may apply to the restoration of the term.

The Civil Code of Georgia has not established the time limit which could determine the request for restoration of the timeframe for a delayed heir by time limit for appeal to the court. This timeframe could establish the period of time for appeal to the court about the elimination of a valid reason. Naturally, the heirs who have inherited the estate should not live constantly in the fear that an heir, who has exhausted the term, could file a suit and the conditions for the distribution and division of the inherited property can be altered at any time.

To extend the validity period for the inheritance adoption, the law should specifically define the term of temporary restrictions and it should be in such a period of time that allows an heir to appeal to the court with the request for restoration of the inheritance adoption timeframe; it also ought to begin from the moment of the valid reason elimination and when the

circumstances preventing the timely adoption of inheritance do not exist anymore. The reasonable validity of a timeframe should be clearly determined by the law.

In case of the valid reasons existence, the court will extend the term of inheritance adoption and decide on the issue of recognition of the plaintiff's right on his part of the property.

The decision **N AS-477-451-2011** of the Supreme Court is quite important for the extension of the term for inheritance adoption, where the Court has explained that the elimination of the valid reasons should be followed by an immediate appeal to the court; otherwise, the extension of the term would not be allowed.

One of the Cassation Chamber of Affairs defined the criterion for validity: in each particular case, the subject of assessment and that which is related to its conclusion should be motivated by the need for the protection of the legitimate interests of each heir. This can be done by examining the subjective or objective reasons for overdue of the timeframes and from the viewpoint that the overdue of the timeframes is not due to the absence of the will to adopt an inheritance, but because of the impossibility of expressing such a will [See # **AS -480 -454-2012**, 30 April 2012 year], what I completely agree with.

According to the Court of Cassation, in order to determine whether a party has deferred the established timeframes for a valid reason, it should be assessed not only by the fact of the impossibility of property possessing or appealing to the notary body within the period of time established for the inheritance adoption, but also by the validity reason of the term, when the term of implementation of these actions was overdue (A significant judgment on the inheritance frametime extension of the Chamber of Civil Cases of the Georgian Supreme Court. 07 July 2011 Decision / judgment, Case # 1-177-167-2011) in order to fill the gaps in the legislation. All the decisions and judgments adopted by the Court of Cassation have been reflected in the legislation (15, 678). Nevertheless, there are still some gaps due to the expiry of the inheritance timeframe.

The Judgment/Decision of the case # **AS-421-398-2014** was adopted by the Civil Chamber of the Supreme Court on July 5, 2015. According to the Judgment/Decision, the Chamber clarified the Part 1 of the Article 1426 of the Civil Code. It states that the adoption of inheritance is a one-sided civil deal and it does not imply only objective existence of a person's will to create, change or terminate certain legal relations, but the necessity to reveal that will as well. For the recognition of the overdue of term validity, it is not enough to appeal on an heir's will only within this period, but there should be a confirmation of a formal justification - inability to reveal the will. The validity of the overdue of term means the combination of objective and subjective

circumstances that exclude the possibility to reveal a person's will to adopt inheritance. Moreover, the valid grounds for the overdue term should exist not only within 6 months from the will opening, but from the expiry of the 6-month period established by the law for the inheritance adoption, until the date of actions taken for the inheritance adoption (The Supreme Chamber of the Georgian Supreme Court 2015).

The court practice has shown that the courts are rarely refusing to extend the term, even if the reasons for overdue of the timeframes are not valid. The wrong thing in my opinion is the fact that the term of the inheritance adoption should not always be extended.

Notary Mr. Otar Zoidze gave an interesting opinion on this matter, pointing to the tendency to introduce incorrect interpretation of the Article 1426 of the Civil Code. The most important are the court interpretations of the first sentence of the Article 1426, which contradict the correct understanding of the essence of the norms established by the Code (Zoidze, 2004., 10-13). However, I would like to mention the analysis of the norms established in the second sentence of the Part 1 of the Article 1426 by the Notaries, namely, "the inheritance can be adopted even after the expiration of the term without the application to the Court, if all the heirs of the inheritance come to agreement on this point". This sentence is incorrectly interpreted and correspondingly used by some notaries in practice, or they do not use it at all.

The non-expression of will to inheritance in the term of the inheritance adoption was created by the presumption of non-existence of the will to adopt inheritance, and, consequently, after the expiration of this term, an heir's right to adopt the inheritance without the consent of other heirs does not cease.

The interpretation of the Article 1500 of the Civil Code is significant as well, in particular, the issue of "inheritance certificate", which is the main exclusive obligation of notaries and which represents a document confirming the right to property inherited.

The notarial practice is based on the correct analysis of the Articles 1424, 1426 and 1500 of the Civil Code. Notaries refuse to issue an inheritance certificate by the resolution if there are three conditions: 1) when an applicant has deferred a six-month timeframe for the inheritance adoption; 2) when the fact of actual possession or management of the property is not documented; 3) when the inheritance has not been adopted by other heirs.

In practice, an applicant appeals to the notary's resolution. The Court points to the norm established by the second sentence of the Part 1 of the Article 1426 and considers that the appeal to the Court is not required. Consequently, it offers an applicant (an heir) to appeal to the notary to issue him an inheritance certificate. Such an interpretation is superficial and false. An analysis of the norm, stated in the second sentence of the Part 1 of the Article 1426, clearly shows that this norm applies to a number of conditions,

namely, when: a) an heir has deferred the timeframe for the inheritance adoption; b) the appeal to the court with the request to restore the term of inheritance adoption is not necessary if there is at least one heir who has adopted an inheritance within the established term.

It is interesting to consider the judicial process that occurs as a result of applying to the court.

It should be noted that the court practice in this case is characterized by serious shortcomings. The Court is limited to a formal (fictitious) review of an heir's appeal and it superficially establishes the grounds for considering a term of inheritance adoption to be valid. Sometimes there occur some curious cases when the court sets out the fact of actual possession of inherited property and, on this basis, considers the validity of an overdue term of inheritance adoption, which is a complete nonsense. The actual possession of inheritance precisely means that the term is not overdue.

The full implementation of the right of the material law by the given norm depends on the notary body and the court. The submission of application for inheritance adoption in the notarial body implies a fulfillment of an action. At the same time, the fact of actual possession or management of an inherited property requires a confirmation; the court has an authority to verify the facts of legal significance by the rules of undisputed production and the notary has this authority on the grounds of the instruction of notarial acts. However, the material law norm, i.e. the Part 2 of the Article 1421 of the Civil Code does not distinguish these powers.

The Judgment/Decision of December 15, 2015 was adopted by the Civil Chamber of the Georgian Supreme Court on the case # **AS 655-621-2015**. The Court of Cassation clarifies the grounds for the use of the last sentence of the Part 2 of the Article 1426 of the Criminal Code of Georgia, which enables the party to adopt inheritance without the application to the Court, regardless of the expiry of the inheritance adoption term if all the heirs come to agreement. The court can extend the term set by the law only in case it undoubtedly recognizes the validity of the term. The criteria for determining the latter should be established considering the peculiarities of each case and the specific circumstances of the case.

The Chamber notes that the Court's inner belief should be based on a complete and objective review of the evidence (the Article 105.2 of the Criminal Procedure Code) (The Civil Chamber of the Georgian Supreme Court 2015).

The analysis of court practices reveals that some norms of the current hereditary justice require the improvement due to vagueness or inaccuracy. Considering the imperative request of the procedural norm for the possibility of hearing the case in the indisputable proceedings way, according to which the facts of the legal significance are adopted by the court in the case of

impossibility of obtaining documents confirming these facts or restoring lost documents (Article 313 of the Civil Code of Georgia), it is unclear what is meant by the Paragraph 2 of the Article 1421 of the Civil Code – whether a person should apply to the notary body for the actual possession and management of the inherited property or use the rules of undisputed production and apply to a court.

The Part 2 of the Article 1421 of the Civil Code represents the basis of the conflict between the notary body and the judicial powers, which quite often causes a danger of restriction for a person's rights or a formation of incorrect judicial practice. "The Court adopts the fact of legal significance by indisputable proceedings only if it does not have the necessary documents adopted by notarial rule in order to determine this fact".

Proceeding from all the above, if the inheritance adoption has not been done within the timeframe established by law, an heir should appeal to the notary body and the request to recognize the validity of the term established by law and determine the legal fact of actual inheritance adoption, which contradicts the Article 1426 of the Civil Code, according to which "the term for inheritance adoption can be extended by the court if the reasons for overdue of the term are considered to be valid. After the expiration of the timeframes, the inherited estate may be adopted without the application of the Court if all the heirs come to an agreement".

It is interesting to examine what kind of application should be considered by the court in the way of indisputable production. According to the norms of the material law, the court can consider the application for the extension of the timeframes for inheritance adoption in the way of undisputed production, which should contain the issue of both the evidence proving the fact of actual possession of the adopted inheritance and the validity of the overdue term of the inheritance adoption.

Georgian citizens are not informed about the 6-month period and they appeal to the court in order to get an inheritance certificate after the expiry of this term. There are frequent cases when a number of problems arise:

The above mentioned norm in Georgia is very poor and it creates quite a number of practical difficulties due to its general character. Therefore, this has caused the formation of vicious practices among notaries and courts.

I would also like to note that the society is not informed about the refusal of the notary concerning the inheritance adoption and the resolution "on the refusal to issue the inheritance certificate". This is not the final stage, because, as I have already mentioned, according to the Article 1426, an applicant (an heir) has the right to appeal to the Court on the restoration of the term of the inheritance adoption for a valid reason. The court should submit the notary's resolution on refusal to issue an inheritance certificate (Intskirveli, 2002).

It is important for a party to exactly define the claim at the time of appealing to the court. What is specifically the subject of litigation - the disputable term for the inheritance adoption – limitation for the term of complaint; the timeframe of the inheritance adoption – the extension of the term; the inheritance adoption by an actual possession or others?

In this regard, it is interesting to examine the Decision/Judgment adopted by the Civil Chamber of the Supreme Court:

In one of the cases, the main claim of the appellant is directed towards the limitation for the term of a complaint. The Court of Cassation points out that the limitation of the term is entitled to the right to request another person to fulfil any action or to abstain from it by another person (the Article 128 of the Code of Georgia). The Article 1450 of the CG provides a special term in the case if a person wants to challenge an inheritance certificate. The adoption or denial of an inheritance can be challenged within two months from the date when the interested person learned about the existence of a reasonable ground for it (the Judgment # **AS-43-43-2016**, 23.03.2016) (The Civil Chamber of the Georgian Supreme Court 2016).

The Court of Cassation clarifies the Articles 1421-1451 of the Citizen Code of Georgia. The Article 1450 of the Code of Georgia establishes precisely the period of limitation regarding the refusal or adoption of an inheritance and not the term for appealing to the heir's certificate (the JSCG, 30.10.2015, # **AS-111-104-2015**; JSCG, # **AS-72-68-2013**) (The Civil Chamber of the Supreme Court of Georgia 2015, 2013).

According to the case # AS-223-208-2014, the subject of litigation is the recognition of an inheritance certificate to be invalid. A plaintiff was refused to satisfy the claim because the request was out of date, as the two months term of the request under the Article 1450 of the CCG is overdue; the Decision clarifies that the plaintiff was aware of the fact of issuing an inheritance certificate in the name of the defendant (The Civil Chamber of the Georgian Supreme Court 2014).

The Court of written or legal law in classical countries such as Germany, in the XIX-XX centuries, played a major role in the development of law (Chanturia, 1997.). In the work titled "The General Part of the Civil Law" by Lado Chanturia, the author notes that unlike the countries of the common law, where the law was mainly developed on the basis of judicial law, the law only corrected this development; the judicial law of the continental European countries was created as a result of the development of the legal law and its services: it supports, completes, and develops the legal law.

Conclusion

The analyzed issue, which could seem to be simple at first glance, however, is quiet difficult and unregulated by the civil legislation. This disorder resulted in a superficial analysis of the cases of this category by courts and notaries, and the formation of incorrect practices caused by the total irrelevance with the institution of inheritance adoption. The problematic issues, which are typical to hereditary justice, should be altered.

The legal guarantee of the fulfillment of material rights is represented by their court protection. This article aims at the further development and improvement of the legislative regulation of civil litigation. Theoretical conclusions and practical recommendations can be used in law enforcement activities; they can also help to eliminate errors while discussing and resolving problems related to inheritance and also increase the effectiveness of court protection of inheritance rights.

The Georgian Civil Code and the European Union legislation have shown that the inheritance adoption depends on the legal fact, in particular, on the death of a testator, as well as on factual possession and management of the inherited property and/or application to the relevant body (the notary). At the same time, it is important to establish the timeframe for the inheritance adoption under national legislation. The legislation of different countries envisages different timeframes.

Finally, this article is a modest attempt to show in a slightly different way the possible cases of inheritance adoption by an heir and, therefore, to demonstrate its legal consequences before its current comments (Akhvlediani et al., 1999, 362-491; Akhvlediani, 1997, 51-64; Shengelia & Shengelia, 2007, 158-165) most of which are absolutely shared by us.

References

1. Akhvlediani, Z. (1997). *Inheritance Justice*. Tbilisi: Justice.
2. Akhvlediani, Z., Zoidze, B., & Chanturia, L. (1999). *Comment of the Georgian Civil Code, Book fifth*. Tbilisi: Justice
3. Blinkov, O.E. (2009). *Division of inheritance in the states-members of the Commonwealth of Independent States and the Baltic States*, Journal "Actual issues of advocacy practice". Moscow, 2009, p. 4.
4. Chanturia, L. (1997). *Introduction to the general part of Georgian Civil Law*. Tbilisi.
5. Chikvashvili Sh. (1999). *Inheritance Justice*. Tbilisi. Meridian.
6. Intskirveli, L. (2002). Journal "Georgian Notary". # 1 (5).
7. Shengelia, E., & Shengelia, R. (2007). *Inheritance Justice*. Tbilisi: Meridiani.
8. Shengelia, R., & Shengelia, E. (2015). *Family and Heritage Law. (Theory and Practice)* Tbilisi. Meridian.

9. Sukhitashvili, D. (2004). Justice and Time.
10. Intskirveli, L. (2004). Collection of Georgian Private Law. Book 1
11. Kosarev, A.I. (2007). Roman Private Law. Textbook. Moscow: Jurisprudence.
12. Liluashvili, T., & Khrustali, V. (2007). Comment of the Georgian Civil Procedure Code. Tbilisi Second Edition.
13. Metreveli, V. (1995). Roman Law. Tbilisi. Meridian
14. Mosin, O.V. (2011). The study of the peculiarities of inheritance storage and a section of separate types of property in the Russian Civil Law. www.samlib.ru 01.12.2011.
15. Nadareishvili, G. (2005). Roman Civil Law. Tbilisi: Bona Kauza.
16. Novitsky, I. (2011). Roman Law. Ch. III, §3. www.pravo.vuzlib.net 01.12.2011.
17. René David (1993). "Basic Legal Systems of Modernity". Tbilisi, Ganatleba.
18. Zoidze, B. (2000). The Old Georgian Heritage Law. Tbilisi: Upleba.
19. Zoidze, O. (2004). Collection of Georgian Private Law. Book 1.

Legislative Sources

20. A significant judgment on the inheritance frametime extension of the Chamber of Civil Cases of the Georgian Supreme Court. 07 July 2011 Decision / judgment, Case # 1-177-167-2011.
21. Civil Code of the RSFSR. 11.06.1964.
22. Constitution of Georgia. Tbilisi, 1995, Article 21.
23. Judgment of the Grand Chamber of the Supreme Court of Georgia, March 04, 2002 No3k / 441-01.
24. The German Civil Code (**BGB**) as of **March 1, 2010**.
25. The Civil Chamber of the Georgian Supreme Court December 2012 Decision / Judgment # 1184-1113-2012.
26. The Civil Chamber of the Georgian Supreme Court 08 April 2013 Decision / Judgment # 72-68-2013.
27. The Civil Chamber of the Georgian Supreme Court 27 January 2014 Decision / Judgment # A-1153-1099-2013.
28. The Civil Chamber of the Georgian Supreme Court, 02 June 2014, Judgment # 1-223-208-2014.
29. The Supreme Chamber of the Georgian Supreme Court July 5, 2015 Decision / Judgment # 421-398-2014.
30. The Civil Chamber of the Supreme Court of Georgia 30 October 2015 Decision/Judgment # 111-104-2015.
31. The Civil Chamber of the Georgian Supreme Court of 15 December 2015 Judgment / Decision # 655-621-2015.
32. The Civil Chamber of the Georgian Supreme Court 23 March 2016 Decision / Judgment # 43-43-2016.

Binding Power of Legal Principles in Georgian Court Practice

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Abstract

Rights and freedom are of utmost importance in a human's life. Accordingly, nothing, especially law, should limit and violate a person's rights, freedom, material or immaterial property. Moreover, the law should serve private individuals to make unrestricted use of their property. But in private legal relations, a casual moment, when established human rights can be violated for the purpose of restoring justice, may appear. Until the development of the legislation catches up with the development of civilization, the judiciary system is based on the principles of law. It also establishes binding power which is mandatory in fair trial proceedings, so that the court's decision does not go beyond the boundaries established by the principles of justice. Binding power of legal principles in Georgian court practice is revealed at judicial trial as the judge is able to make decisions considering the legal principles and not the law.

Keywords: Binding power, court practice, legislation, fair trial

Introduction

According to Gustav Radbruch, to obtain justice, everything that is legalized i.e. legal should be legitimate as well, though, as he admits, legal is not always legitimate.⁶⁰

Rights and freedom are of utmost importance in a human's life. Accordingly, nothing, especially law, should limit and violate a person's rights, freedom, material or immaterial property. Moreover, the law should serve private individuals to make unrestricted use of their property. But in private legal relations, a casual moment, when established human rights can be violated for the purpose of restoring justice, may appear.

"Law is a combination of the rules of general behavior that defines the rights and obligations of individuals and the standard of public relations,

⁶⁰Davit Batonishvili Institution - Corpus juris, p.10.

characterized by normativity, formal definiteness, systematicity; its performance is ensured by state influence.”⁶¹

According to the above mentioned, it seems that the law regulates all kinds of private legal relations. But there are examples of private legal relations that are not adjusted to the norms. Certainly, it is unbelievable that the law determines the relationships that have not yet occurred in real life.

Justice and law improve and grow together with the civilization to ensure that human rights are protected in accordance with the requirements set by modern society.⁶² It is natural that the legislative space should correspond to real life challenges and therefore, it can be said that justice is a mandatory attribute of a civilized state.⁶³ For example: artificial insemination, surrogacy and donation is a modern innovative phenomenon that required legal adjustment; laws to regulate this innovation improved and developed in parallel with it. Naturally, it would not have been possible until the precedent occurred.

It is interesting to know what kind of decision the court will make on the above-mentioned cases if there is no regulatory norm of a particular private legal relationship and whether the decision will be fair. If we consider the decision made on difficult cases is just, then what criteria should be taken to judge the decision fairly?

What judicial principles of law does the court take to make a decision on the relevant cases and how it proves its fairness? Of course, until the development of the legislation catches up with the development of civilization, the judiciary system is based on the principles of law, and moreover, it also establishes binding power which is mandatory in fair trial proceedings, so that the court's decision does not go beyond the boundaries established by the principles of justice.⁶⁴

Law, as the theory finds its place in its practical application, and is governed by the legal principles and laws established by the legislature.⁶⁵

Positive justice has established the basic principles of law, which is the main axis of the legislative field and from which the whole legislation is derived.⁶⁶ Legal principles at the same time fill the gaps that are not taken into account by the law and thus, do not regulate private legal relations in practical use. Such gaps are not often seen in our court practice. Examples are offered below.⁶⁷

⁶¹G. Khubua. Theory of Law. 2015, p. 41.

⁶²E. A. Aponasin, A. Didikin. Philosophy of Law. P. 69.

⁶³G. Khubua. Theory of Law. 2015, p. 166.

⁶⁴G. Khubua. Theory of Law. 2015, p. 200.

⁶⁵E. A. Aponasin, A. Didikin. Philosophy of Law. P. 64.

⁶⁶G. Khubua. Theory of Law. 2015, p. 42.

⁶⁷G. Khubua. Theory of Law. 2015, p. 159.

At Judicial civil proceedings, the judge is bound to make adequate compliance of the law to the given legal relationship and prove its rightness according to the law.⁶⁸

However, the positive law entails the gaps, the burden of filling which is fully transferred to a judge because there is no regulatory norm which would guide him/her when making a decision. In such situations, the gaps are the real life cases left beyond the legislative spaces and legislators.

The question arises: if the judge is obliged to rely on the law to justify the decision and in the majority of cases he/she does so, what can he/she use as a guide when there is no regulatory norm of private legal relations? Binding power of legal principles in Georgian court practice is revealed at judicial trial of such cases as the judge is able to make decisions considering the legal principles and not the law.

Exactly binding power of legal principles obliges a judge to stay within the limits of legal principles and make a fair decision.⁶⁹

According to Dvorkin, the private legal relations that are not regulated by the legislation but in real life require legal decisions, are called "difficult cases".⁷⁰ The term "difficult" is not accidental, since in reality the judge faces some difficulties when making decisions, including intersection of legal principles and positive law.

In such cases, law philosophers offer judges their opinions about how judges can act when making a decision at the trial of a civil case.

According to Hart, the judge takes a decision on a wide range of difficult situations through a broad interpretation of the law, depending on his/her personal opinions, intuition or views. Professor Ronald Dvorkin of Harvard university considers that basis of the legal system is not the norm but the fundamental principles and strategies of the law, which are further specified by the legislation.⁷¹ In his opinion, considering the principles of justice, the judge may play a role of a lawmaker. In such a case, He/she is entitled to create a new regulation based on legal principles. Moreover, a judge can ignore the law if it does not help him/her make a fair decision. Dvorkin calls a judge with such power a Judge Hercules.

Positive legislative space has been created and perfected by people and for people, because the main task of the positive legislation is to protect people's basic human rights and their private property and not vice versa.⁷² Justice is the unity of fundamental values⁷³. That is why, the feeling of justice

⁶⁸Organic Law of Georgia on General Court. Article 7.

⁶⁹G. Khubua. Theory of Law. 2015, p. 204.

⁷⁰R. Waks. Philoophy of Law. Brief introduction. Tbilisi University Presss. 2012, p. 58.

⁷¹R. Waks. Philoophy of Law. Brief introduction. Tbilisi University Presss. 2012, p. 64-68.

⁷²R. Waks. Philoophy of Law. Brief introduction. Tbilisi University Presss. 2012, p. 82.

⁷³Davit Batonishvili Institution - Corpus juris, p.10.

and strives for it is constant.⁷⁴ The necessity of modern civilization required the expansion, refinement and adjustment of the legislative space. According to Dvorkin, when a legislator creates a law, he/she does not know what will happen to it in the real life and how it can be used to regulate a particular private legal relation. It is impossible to determine how fair the law will be when it is used in the real situation.⁷⁵ In accordance with the abovementioned, the judge, minding the reality, is obliged to contribute to the method of assessment of real relations and not logic; he/she shall provide the law with appropriate interpretation and make it relevant to a particular case.⁷⁶

While hearing the difficult cases, legal principles ensure that the judge does not go beyond the limits of justice and he/she restores the justice on the basis of legal principles.⁷⁷ The judge adhering to the principles of justice, shall make a decision in accordance with legal principles. If the law contradicts the restoration of justice, then he/she is authorized to give the priority to the principles of justice and ignore the law which prevents the restoration of justice.⁷⁸ Finally, if there is no legislation that regulates private legal relations, then it is obligatory to make decisions based only on the principles of law.⁷⁹ Professor Gia Khubua explains that the law and order should be fair. When the literal explanation of the law provides unfair result, then the norm must be explained by *contra legem* i.e. against the literal meaning of the text. *Contra legem* explanation gives preference to the law derived from the constitutional order and provides a fair and just solution for a specific case. Minding the abovementioned, a judge can consider a "difficult case" and make a fair decision on the basis of legal principles.⁸⁰

If the law contradicts the legal principles, the judge makes a decision on the private legal relations considering legal principles; for example, Rigs and Palmer's famous case⁸¹ where the grandson killed his grandfather and then got the property which the grandfather bequeathed to him. Professor explains that it is unjust to get the property of the killed grandfather, but at the same time, the law dictates the opposite, namely, a decedent has a right to get and dispose inheritance. In this particular case, legal principles, principles of justice and the law cross each other.

Hereby we present the decision made by the Tbilisi City Court, which in its contents, belongs to difficult cases in the civil law.

⁷⁴Davit Batonishvili Institution - Corpus juris, p.11.

⁷⁵G. Khubua. Theory of Law. 2015, p. 229.

⁷⁶G. Khubua. Theory of Law. 2015, p. 236.

⁷⁷R. M. Dvorkin. Philosophy of Law. P. 50.

⁷⁸G. Radbruch. Five Minutes of the Philosophy of Law. P. 239.

⁷⁹G. Radbruch. Lawful unrighteousness and supercanonic law. P. 322-324.

⁸⁰G. Khubua. Theory of Law. 2015, p. 193.

⁸¹R. M. Dvorkin. Philosophy of Law. P. 42.

The Court Case on Ovum⁸²

According to the factual circumstances of the case, Lia Gegeshidze and Igor Chkhaidze were in registered marriage from February 3, 2010 till December 1, 2014. In April 2010, L.G. had undergone a cesarean section of the 33 week pregnancy. Accordingly, her diagnosis was infertility. In vitro fertilization and reproductive health clinic "in vitro" indicated that Lia Gegeshidze's child bearing capacity was very low.

The statement of October 18, 2013 confirms that I. Ch.'s Representative Manana Baperidze applied to the "In vitro fertilization center" LTD and demanded termination of the artificial fertilization and transfer of donor's embryo and the destruction of embryos emitted by the respondent's biological material.

On July 19-22, 2013, 1 embryo was created by L.G.'s ovum and I.Ch.' sperm and it was cryopreserved.

The Court notes that according to the Law of Georgia on Health Care, extracorporeal fertilization and subsequent transmission of the embryo to a surrogate mother's womb is made based on the couple's agreement.

However, the law does not regulate the question of how the dispute should be resolved in case of disagreement between the parties and what should be done with the already fertilized egg - embryo. In addition, according to the Article 4 § 1 of the Civil Code of Georgia, the court has no right to refuse to exercise justice on civic cases even if there is no legal norm or it is vague and so the court is obliged to consider and resolve the dispute. As the Court explains, the dispute is highly sensitive and contains not only legal but also ethical and moral dilemmas. In this case, two diametrically different rights face each other- to become a parent and not to become a parent. The interests of the parties in this case are totally incompatible, since if the embryo will be used, the defendant will be forced to become a father and in the opposite case, the plaintiff will be deprived of the possibility of becoming a biological mother. It must be noted that both rights are identically important. Consequently, while making a choice, the context should be evaluated and the reasons why these rights are competing with each other should be determined. In the present case, the problem has been caused by the fact that it was possible to get a human embryo artificially outside the mother's womb. Accordingly, it is possible to have a lump of time between the creation of embryos and its implantation in the uterus. This period of time requires a proper regulation. In addition, the assessment of the given issue should be carried out on the basis of the analysis of the the parties' rights and opposite interests. Fair balance should be maintained.

⁸²Decision of the Civil Affairs Board of Tbilisi City Court of July 23, 2015 on the case №2/1852-14.

The Court noted that the decision to become a parent or not, is the part of a person's right to private life. Each of them is an important component of the freedom of choice of a person.

The Court notes that, on the one hand, having descendants is the natural purpose of a human being, social mission to him/herself, society and humanity in general.

Human's self-realization, awareness of the essence of life and individuality is best revealed in his/her descendant. Having a child is a very important factor that results in revaluing human values and priorities, aspiration for personal development and moral perfection. It is also a way of transmitting human knowledge, achievements, values and morals to the new generation. Moreover, the existence of a biological descendant has an additional value and creates a sense of eternity of human existence as the human genetic code continues to exist. Therefore, realization of this aspect of personal life is of utmost importance. After having a baby, parents have to change their social life - the way of life and conditions. They have to suppress personal "I" and put other people's needs on the foreground. Consequently, having a child is a choice that depends on each person's individual assessment and his/her world outlook.

In its decision, the Court indicated that the plaintiff had had a near-total amputation of the uterus and the left ovary, and her diagnosis was infertility. Transferring an embryo obtained by fertilizing her ovum to the surrogate mother's uterus is the only chance for a plaintiff to become a mother and have a biological child. Without the above-mentioned, the plaintiff will be deprived of the main purpose of human existence - the right to private life.

The Court notes that the conflict between the parties (man and woman) was not excluded even before the embryo was obtained artificially. In case of natural fertilization, there may occur a threat of collision of a man's and a woman's rights –to become a parent or not.

In the latter case, the legislation embodies the destiny of the embryo in the mother's discretion. Consequently, the legislation considers the cases when the personal aspect of a man's personal life is limited by the rights and interests of a woman or an embryo.

The dilemma raised in cases of natural and artificial fertilization is not identical. The court focuses only on the issue of the rights of a prospective father, as the restriction of the private life of a man is not new for the legislation. Considering the aforementioned, the Court decided that there was a basis to satisfy L.G.'s claim.

Conclusion

The court case on ovum is considered as a "difficult case" in the field of justice in Georgia.

In order for the judge to make a decision, solve a difficult case, he/she should call for moral, political standards, principles and standards of justice. The judge does not create justice, but explains what is already a part of legal materials. In addition, the legal arguments and analysis are "explanatory" because they are trying to establish the best moral content of the legal practice. Such decisions show that besides the rules, the law includes the principles. In this particular case, the Court faced the dilemma. In this process, the mother's right to use the only chance to have a biological child was opposed by the father's right not to become a parent.⁸³

The role of a fair trial in this process is immense, as the court is not only law-adjusting, but it is also lawmaking. Based on general principles and internal belief and considering moral categories, the Court established a proper, legal, purposeful court practice.

While discussing the aforementioned "difficult case", the Court faced a serious dilemma.

There is no norm regulating this particular case and the court decision was based on the legal principles. More specifically, the principle of fair trial became the foundation for judicial decision. It is true that the binding power of the legal principles ensured a fair decision made by the judge. The judge also deals with moral grounds⁸⁴ which played a crucial role in justification of the decision.

References:

1. Davit Batonishvili Institution - Corpus juris.
2. Khubua G. Theory of Law. 2015.
3. Aponasin E. A., Didikin A. Philosophy of Law.
4. Organic Law of Georgia on General Court. Article 7.
5. Waks R. Philosophy of Law. Brief introduction. Tbilisi University Press. 2012.
6. Dvorkin R. M. Philosophy of Law.
7. Radbruch G. Five Minutes of the Philosophy of Law.
8. Radbruch G. Lawful unrighteousness and supercanonic law.
9. Decision of the Civil Affairs Board of Tbilisi City Court of July 23, 2015 on the case №2/1852-14.

⁸³G. Khubua. Theory of Law. 2015, p. 74.

⁸⁴E. A. Aponasin, A. Didikin. Philosophy of Law. P. 77.

Definition of Non-Material Damage and Frames of its Demand

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Abstract

Personal non-material rights in some countries of continental law are judicial institutions which are formed as a result of court practice, based on which their reception was done in the code. Each of them strengthens the status of private judicial relations. Non-material rights are also referred to as personal rights. This is a right formed from the right of dignity, honor, and development of the individual and which imposes the obligation of respect to each person (among them the state). Non-material (moral) damage's institute is one of the most important news of the Georgian Civil Code. The legislation of the Soviet Union did not consider possibility of monetary compensation for physical and moral torture. Definition of non-material damage and frames of demand is one of the problems in the history of justice. Subjective perception of judicial norms, definition of the frames of a side's demands in wrong way, refusal of the satisfaction of suit without any legal evidence as well as impossibility of presentation of the evidence raises some questions in the judicial procedures. These issues and the mechanism of their solution will be discussed in the presented article.

Keywords: Non-material property, moral damage

Introduction

In the defense of the non-material property right, compensation for moral damage has a long and interesting history. Civil Roman Law was well-known in the slave-owning world. As having exact norms in the issues related to the moral norms, these norms were of high standard from the very beginning. The first written source of the Roman Law which considered responsibility for the personal humiliation is twelve matrix law. Particularly, according to the matrix 8, the court could charge payment of the fine for the humiliation in favor of the damaged. The amount of money was defined by the damaged. The judge (praetor) evaluated fairness of the requested amount of money according to his consideration.

According to the Roman Law, the amount of compensation for moral damage was defined by the court. As it seems, this process was so accurate that it has not undergone fundamental changes so far. The court practice of different countries connected with this issue can serve as its good example.

Within the laws of Hammurabi was established the payment of money for the non-material damage; for instance: if a citizen with full rights hit another equal-right person, he/she had to pay “500 gram of silver”. The norm given in the laws of Hammurabi gives us the evidence that the defense of moral norms at every stage of the development of the society was a very important issue; though, this nuance was not spread on a slave, as he/she was not a subject of law. Consequently, in the slave-owning epoch, a slave did not have any right to request compensation for the damage.

Though, according to the old “Egyptian Law”, a slave had a certain right, namely: “if a slave was treated in a very bad way and terribly humiliated, he/she had the right to complain to the owner or to shelter in the church, where the jurisdiction of the former owner was not spread on him/her as the person sacrificed to God”.

Court practice of Georgia has such kind of approach towards this issue: “the amount of compensation for moral damage is defined by the court based on the request of the suer. A suer has the right to state the amount of money in a legal statement by which he/she demands compensation for spiritual and physical damage; but this demand is only a suer’s consideration and the amount for the compensation must be determined by the court.

Personal non-material rights in some countries of continental law are judicial institutions which are formed as a result of court practice, based on which their reception was done in the code. Each of them strengthens the status of private judicial relations. Non-material rights are also referred to as personal rights. This is a right which is formed from the right of dignity, honor, and development of the individual and which imposes the obligation of respect to each person (among them the state).

According to the Article 413 of the Civil Code, monetary compensation for moral damage should be done “in the form of a reasonable and fair compensation”.

Personal non-material rights settled in the norms under discussion, according to its essence, can be different from the settled non-material rights that are in special law. For example, the issue of formation of personal non-material rights considered by the Civil Code differs from the issue of formation of non-material settled in the copyright, etc. Any physical or juridical person has non-material rights.

The basis for demarcation of non-material rights from material can be determined by damage compensation issue. Protection of non-material right is possible when material as well as moral norms are violated. While

dealing with compensation for material damage, it is easy to determine the establishment of the compensation; but in case of compensation for non-material damage, the damaged person and his/her spiritual state should be taken into consideration. To say it in other words, material damage is presented in more material way and its volume can be determined according to the evidences from the particular facts. In case of non-material damage, it is enough to prove only the fact of violation of such a rights. For example, measure of the evaluation can be property which is based on the objective factors independent of the damaged person.

Non-material (moral) damage means provoking negative changes in a human's psychics which, according to its heaviness, can be spiritual (moral), pain (torture), etc. For instance, on the one hand, inviolability of private life can be a precondition of the protection of an individual's dignity and, on the other hand, based on it, a person can suffer non-material damage.

a. Blame: The civil law considers blame as the relation of a person's particular action and its results. The meaning of **blame** in the Georgian civil doctrine is not given clearly; though, there is an opinion in science, based on which there is given definition of **blame**.

Blame is an important subjective element in the composition of law violation. In establishing its meaning, special attention should be paid to civil state, which should be strengthened by particular evidences. If in the process of ascertaining the blame corresponding facts (evidences) are not presented, a person's action will not be considered against law, as blame implies the existence of illegality.

Blame defined in the civil law differs from **blame** defined in criminal law, based on which there is no classification of intention. Though, intention and carelessness play a coincidental role, as the court, while solving the issue, it first of all determines the degree of blame.

b. Illegality: In order to make compensation for non-material damage, alongside with blame, illegality should necessarily be observed based on what resistance means to law. It is necessary to determine the obligation for damage compensation. Illegality is not depended on the fact whether a person (violator of the right) realized his/her action (except the exceptional cases determined by the law); it depends on the result.

c. Causal link is one of the elements of law violation. From the standpoint of damage compensation, it is a very important fact which should be established between an action and its result. For example, the causal link determines the damage which is caused after the action. In case of its non-existence (in case there are no facts, when there is no confirmed link between an action and a result), decision on the issue should be done in the favor of the defendant.

d. Moral Torture (Spiritual Pain): It is expressed in mental disorder, such as: fear, worry, negative emotions, obsession, doubt, etc. The depth of each person's moral torture is individual. Accordingly, it can be determined based on the state of a damaged person, but should be determined objectively. For example, while publishing a photo in the newspaper, it is not necessary for everyone to recognize this person. However, it is enough for only that very person to see the photo to suffer spiritual pain.

The Chamber of Cases of the Supreme Court of Georgia made important definition connected with the 413 article of civil code, in particular "monetary compensation for nonproperty damages may be claimed only in the cases precisely prescribed by law". As a result of different relations considered by the private law, there can be moral or spiritual torture, but its compensation will be done in the cases determined by the law; i.e. the law directly establishes which case non-material damage can be compensated.

Thus, the aim of law is to reduce and limit the expansion of ungrounded results considered by this norm to ensure stability and order of civil rotation.

Here, we can suggest that non-material (moral) damage causes much heavier results compared to other material damage. It should be said that moral damage is often harder to endure for the damaged when compared to material damage. It can distort a human's whole life and this is followed by nervous disorder. The latter can cause serious illnesses and even death in some cases.

As it has already been mentioned, one of the reasons for inflicting moral damage can be mental coercion.

Obligations arising from damage are beyond the sphere of civil law competence: a) it includes a big circle of issues, decision of which essentially differs from the settlement of issues within the sphere of contractual relations; b) there are concentrated not only on civil-legal relations, but problems of the whole law science (for example, the concept of the law violation, responsibility of law subjects, the problem of damage and loss, etc.).

Obligation of compensation of the damage that is caused as a result of non-material (moral) damage belongs to almost all type of law relations; it is within the competence of private as well as public sphere. It can be proved by the fact that these rights are protected with different normative acts in Georgia.

As it has already been noted, one of the characteristic features of moral damage is negative influence in the sphere of a human's mental and spiritual nature which is what has been expressed in mental and moral torture. One of the types of moral damage is spreading false information about a person. Therefore, the decision made by the USA court concerning the issue of slander should be taken into consideration. "This case was discussed by the Court of California with the defendant's appeal. The main suit filed for defamation and compensation for moral damage was demanded. The Court made the

following decision - compensation of 20 000 USD for defamation and 16 000 USD for moral damage. The ground of the suit was slander of the defendant, spreading false and humiliating information among his colleagues what made his colleagues think that he was of different orientation”.

The decision made by the court concerning spreading humiliated information about the suer was disputable. It is not clear why the court charged the slandered with two kind of obligations if slander is one of the types of moral damage. This fact clearly shows that the court's decisions have flaws in respect to this issue.

According to the Civil Code of Georgia, for the purpose of protection of personal non-material rights, the person regarding whom the information was spread is authorized to set up a claim and not the person who thought that this information concerned him/her (the Article 19 is not meant). The forms of protection of non-material rights are: recognition of non-material rights, termination of injurious actions or refusal, and also compensation of non-material damage. In order for personal non-material right to be violated, one or several forms listed above should necessarily exist.

Violation of personal non-material right implies spreading such statement or fact which violates one or several rights from the non-material rights listed in the Article 18. However, this includes proof of violating law or moral norms or committing unworthy behavior, such as: blaming of robbery, murder, etc. While making such kind of statements, facts should necessarily exist and if the suer proves that he/she has not committed such an action, he/she will be authorized to set a claim. Violation of the right should be based on the legal ground. It is well stated in the Law of Georgia “on the Freedom of Speech and Expression” according to which, any doubt that does not prove violation of right, should be decided against limitation of right. This kind of action is directed toward protection of the right of the freedom of speech and expression.

Inadmissibility of the demand of **apologize** is imperatively defined by the special law. Accordingly, it is not a legal base for the suit. An individual does not have the right of such judicial demand even in the cases of slander.

The Article 993 differs from the general settlement of violating non-material rights, based on which material damage should necessarily exist.

While violating the non-material right, the aim of the declarant, in relation with the compensation for the damage, is to humiliate a person before the society. According to the principles of the freedom of expression (speech, information), right on receiving such compensation can be limited, if there is legal public interest; such can be activity of a political figure, etc. In its turn, the Article 993 matches with the legal frames of the right considered by the Constitution of Georgia and, on the other hand, with the rule given in the special law.

The Civil Code of Germany is rather interesting according to which, “out of the personal non-material rights, only right is strengthened. Though, the claim on compensation for the damage arising after violation of this right is satisfied by the court practice based on the tort suit”.

The institute of compensation for moral damage was first developed in England. “English system of compensation for moral damage causes astonishment from its vital flexibility and practical point of view”.

Establishment of the concept of moral damage in the German law had a long procedure. In accordance with the Civil Code of Germany, the term “moral damage” is used as non-material damage. “The Article 847 of the Civil Code of Germany, which regulates the issue of compensation for moral damage, is a special norm. The general article which refers to the compensation for damage is the Article 253”.

As it has already been noted, the issue related to moral damage were developed slowly in Germany. Accordingly, it was not as flexible and accurate as it was in England. “Due to the amendments made in the Civil Code of Germany (19th of July, 2000), significant changes were implemented in the legal regulation of the moral damage compensation.”

The criteria determined by English legislators are rather important. “Having introduced schedules, they managed to determine the amount of compensation. Here compensation of different damages is made in different ways. In German and France, it is implemented with the court practice.”

Conclusion

Based on the aforementioned, while discussing the issue related to the violation of personal non-material right, court should be more attentive while determining the amount of moral damage compensation. They have to prove based on which circumstances the amount of damage is determined. Court should discuss the possibility of presenting the evidence and in case of refusal to satisfy the suit, should make decision based on firm arguments.

References:

1. Barabadze, N. (2004). Criteria of definition of the amount of money for compensation of moral damage. Journal: Human and Constitution, #2. Editor John Khetsuriani. Tbilisi.
2. Bejashvili, Z. (2011). Legal regulation of personal date proceeding and publicity in connection with author’s legal protection.
3. Bitchia, M. (2012). Protection of private life according to the civil court. Tbilisi, University Press.
4. Dogonadze, L., & Khabalishvili, N. (2009). Non-material (moral) damage according to the legislation of Germany. Journal: TSU, #1(9), Pg 86. Editor A.Totadze. Tbilisi.

5. Dunstone, T., & Yager, N. (2009). *Biometric System and Data Analysis*. Australia, Springer.
6. Felici, M., & Fernández-Gago, C. (2014). *Accountability and Security in the Cloud*. Spain: Springer.
7. Gegenava, D. (2012). *Constitutional justice in Georgia. Basic problems of justice*. Tbilisi: Davit Batonishvili Institute of Law.
8. Griffiths, A., Miller, J., Suzuki, D., Lewontin, R., & Gelbart, W. (2000). *An Introduction to Genetic Analysis*. New York: W. H. Freeman.
9. Karanja, S. (2008). *Transparency and Proportionality in the Schengen Information System and Border Control Cooperation*. Netherlands: Martinus Nijhoff Publishers.
10. Kindt, E. (2009). *Privacy and Data Protection Issues of Biometric Applications*. Netherlands, Springer.
11. Kirchberger, K. *Cyber. Law in Sweden*”, By Christine, USA, “Kluwer Law”.
12. Kvirialashvili, Kh. (2007). *Protection of personal information, analysis of foreign countries’ legislation*. Tbilisi.
13. Moniava P. (Temur) (2004). *Personal non-material rights*. Tbilisi: “Meridiani”.
14. Phaphiashvili, L. (2015). *Inviolability of private life connected with the search of mobile phones. Survey of the Constitutional Court, VIII*.
15. Sh. Chikvaishvili (1998). *“Moral damage in civil law”* editor Tedo Ninidze, publication “Meridiani” Tbilisi.
16. Shiminova, M. (1970). *Property responsibility on moral damage*. Journal: *The Soviet State and Right*. №1. January.
17. Solove, D. (2002). *Conceptualizing Privacy*. California “Law Review”, Issue 4.
18. Tchanturia, L. (2002). *Authors’ collegium. Comment of Georgian Civil Code. Book 1*. Tbilisi: “Law”.
19. Topchiashvili, M. (1999). *Compensation of moral damage according to the new Civil Code*”. Journal: *Human and Constitution*, #1. Editor-in-Chief L. Aleksidze. Tbilisi.
20. Tugushi, T., Burjanadze, G., Mshvenieradze, G., Gotsiridze, G., & Menabde, V. (2013). *Human rights and practice of justice in the Constitutional Court of Georgia*. Tbilisi. Publication of Youth Lawyers Association of Georgia.
21. Vershinin, A. (1991). *Protective material-legal relations and the right for judicial protection*. Proceedings of the Scientific Conference: *Questions and theory about protection relations*. Yaroslav.
22. Yesil, B. (2009). *Video Surveillance: Power and Privacy in Everyday Life*. El Paso, LFB Scholarly Publishing.

23. Zeits, A. (1927). Compensation for moral damage according to the Soviet law. Journal: Weekly Publication of the Soviet Justice, №47.

Legislative Resources

24. Constitution of Georgia.
25. General Administrative Code of Georgia, with the state of 25.06.1999.
26. General Administrative Code of Georgia. Edition of 27.10.2015.
27. Criminal Law of Procedural Code of Georgia.
28. Civil Code of Georgia.
29. Criminal Code of Georgia.
30. Law of Georgia of March 14, 2008 “on Making Additions into the Civil Code of Georgia.
31. Law of Georgia of May 25, 2012 “on Amendments to the Criminal Code of Georgia”.
32. Law of Georgia of May 2, 2014 “Criminal Code of Georgia”.
33. Law of Georgia “on Constitutional Process”.
34. Law of Georgia “on the Freedom of Speech and Expression”.

Notary's Writ of Execution – Pros and Cons

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Abstract

The work on this article was amended based on the amendments introduced in the Civil Code of Georgia and the number of legislative acts in 2006 and 2009, thus issuing the notary writ of enforcement. The Constitution of Georgia, Convention for the Protection of Human Rights and Fundamental Freedoms, Civil Code of Georgia as well as other legal acts are hereby utilized by the author of this article. On the same basis, positive and negative aspects of legislative matters are considered and suggestions on legislative changes are presented for further improvement. The article notes that the notary writ of enforcement is an opportunity for the creditor to satisfy his/her demand without spending finances and time in the court. In this regard, legislative amendments can be positively assessed. Despite the positive sides, the work has a well-grounded position on essential deficiencies. It is noted that the legislation is incomplete in regards to a number of issues that are unequal to the other side of civil relations – a debtor (owner of mortgage subject) – and violates his/her rights. The hypothetical example is presented for justification of the position and discusses the negative consequences of the creditor's dishonest actions for the debtor. According to the conclusion, the right of all subjects of civil relations deserves the protection and, for this reason, the amendments to the Law of Georgia on Notary and the Rule for Execution of Notarial Action should be amended.

Keywords: Notary, writ of execution, creditor, debtor

Introduction

The reason why I decided to prepare this article arises from the amendments of 2006 and 2009 in the Georgian Civil Code and a number of other legal acts introducing a writ of execution issued by a notary. The article deals with the pros and cons of the legal novelties and comes up with proposals towards the refining of the laws.

As a result of the amendment made in it under the Law of Georgia №3879, 8.12.2006 on Making Changes and Amendment to the Georgian Civil Code, the Article 284 (1) of the Georgian Civil Code was reworded as follows:

“The pledgee and the pledger may provide in a written agreement that the pledged item may be assigned to the pledgee and sold based on the writ of execution issued by a notary. In such case, the agreement between the parties shall be notarised.”

Under the Law of Georgia №2284, 4.12.2009, the Article 302 of the Civil Code of Georgia was supplemented with the Paragraph 3¹ of the following content:

“Under the agreement made in the writing between the creditor and the mortgagor, the parties may take into consideration that the mortgaged immovable thing be transferred to the creditor and sold based on a writ of execution issued by a notary. In such case, the transaction between the parties must be notarised.”

Pledge and mortgage are the instruments by which claims are secured, and serve as a creditor’s safeguard in enforcing his/her claim and foreclose or sell at an auction the pledged or mortgaged property, where the debtor has defaulted on or improperly performed his/her obligation. Therefore, the above legal amendments can be deemed positive, as it allows a bona-fide creditor seeking to enforce his claim to apply directly to the notary for a writ of execution, thus, saving human and financial resources as well as time relating to judicial proceedings.

The legal amendments entail a positive element also for courts, as the enforcement of a claim by virtue of a notary’s writ of execution saves time and the human and financial resources of courts.

Despite the positive aspects, I believe the legislation contains some essential flaws which require refinement by taking into account the interests of all the parties to a civil relationship.

The obligation must be performed duly, in good faith, and at the agreed time and place. The general provision of the Civil Code is the formula of a subjective attitude of the parties to a civil contract to the obligations they have undertaken.

However, obligations are often breached for many subjective and objective reasons, such as the inability to perform the obligation due to a worsening financial condition of the debtor, the non-performance of the creditor’s action, etc.

Considering the character of the breach of an obligation, the nature of the obligation to be performed and causes of the breach, the civil legislation prescribes different consequences. For instance, if a party to a contract breaches his/her obligation under a bipartite contract, the other party may terminate the contract after the expiry of an additional period of time afforded

in vain by him/her for the performance of the obligation (3, the Article 405); if the obligator breaches any obligation, the obligee may claim damages arising from the breach (3, the Article 394); if the debtor does not satisfy the claim secured by the mortgage, the mortgagee may demand the sale of the immovable thing unless otherwise provided for by the mortgage contract (3, the Article 301).

Civil relationships creditors, not debtors, may happen to breach their obligations. For instance, under a loan contract, the lender transfers to the ownership of the borrower money or some other generic thing, and the borrower undertakes the obligation to return a thing of the same kind, quality and amount (1, the Article 623), but let us assume that despite the borrower's request, the lender withholds the information necessary for the borrower to perform his/her loan obligation such as the bank account number (for wire transfers) or avoids meeting the borrower (for cash payments). The same goes if the debtor as a bona-fide party to a loan contract fails to perform his/her obligation due to the creditor's omission. In such a case, the obligee must pay the damages incurred to the obligor because of the obligee's fault in not accepting a performed obligation when due (3, the Article 391).

This article is about the satisfaction of the creditor's claim due to a breach of the debtor's obligation by virtue of a writ of execution issued by a notary.

The Civil Code of Georgia starts as follows: This Code regulates property, family and personal relations of a private nature based on the equality of persons (3, the Article 1). A notary issues a writ of execution to ensure the execution of the contract provided for by the Civil Code. Therefore, let us see whether the legal provisions dealing with the issue ensure equality of arms.

The Paragraphs 1 and 2 of the Article 40 of the Law of Georgia on Notaries states as follows:

“1. The notary issues a writ of execution based on a written application from the creditor (his assignee). The application must be attached with the notary document, against which the applicant seeks a writ of execution. The creditor's (his assignee's) application for a writ of execution must contain:

- a) the name of the notary that the applicant applies to;
- b) names of the parties and their representatives;
- c) details on the amount of outstanding principal and additional obligations;
- d) the indication that the outstanding claim, for the execution of which a writ of execution is sought, does not depend on the applicant's performance of a counter (substitute) obligation or that he has already performed such obligation.
- e) the applicant's signature.

2. On the grounds set forth by this article, the notary issues a writ of execution without requesting any documents evidencing the non-performance of the obligation.”

As we can see, under the current legislation, the creditor’s application alone is set as a sufficient ground for the notary to issue a writ of execution, with the notary being prohibited from requesting any information on the existence and amount of the obligation – rather, the notary has only the creditor’s faithfulness to rely on when assessing the validity of the obligation.

I think such regulation is unfair and unlawful, as it encroaches upon the rights of debtors (owners of pledged or mortgaged assets). The Civil Code deals with, *inter alia*, the cases, in which the assets of the third person (who is not a personal debtor to the creditor) could be used to secure the obligations of the debtor. In addition to rights, the legislation assigns them obligations, too. For instance, if the owner of a real thing (mortgagor) is not concurrently a personal debtor for a mortgage claim, he/she may still assert against the mortgagee the counterclaim to which only the personal debtor is entitled, including a counterclaim arising out of offset monetary obligations and defences against the claim (3, the Article 291); the owner of a real thing (mortgagor) may satisfy the creditor when the claim has already matured or when the personal debtor is entitled to perform the relevant actions (3, the Article 292); the pledger not being a personal debtor of the claim secured by pledge can raise against the pledgee the counterclaims or defences to which a personal debtor is entitled, including the counterclaims or defences that the pledgee’s personal debtor has waived since the origin of the pledge (3, the Article 263).

For illustration, let us expound on a hypothetical example of the above loan contract (that is quite often the case in real life) and assume that A has loaned \$2000 to B for a one-year period, on a condition of monthly repayments. The immovable property worth \$30000 owned by C was mortgaged to secure the performance of B’s loan obligation, with the parties agreeing that if B defaults, the immovable property of C would be transferred to A or sold at an auction based on a writ of execution issued by a notary.

As a creditor, A did not perform his/her obligation to provide B with the bank account details necessary to repay the loan. In the situation, B decided to perform his/her obligation (repay the loan) by way of depositing (“if an obligee delays accepting the performance or his/her whereabouts are unaccounted for, then the obligor may place the object of the performance on deposit with a court or a notary office, and deposit money or securities to the deposit account of the notary” – 3, the Article 434). As the repayment schedule was breached, A applied to the notary explaining that B had failed to pay the amount under the loan contract and, to obtain satisfaction of his/her claim,

requested, under the Article 302.3¹ of the Civil Code, a writ of execution to transfer the mortgaged property to him/her.

Under the Article 40 of the Law of Georgia on Notaries, the notary is required to issue A a writ of execution and not request information on the alleged default from either the personal debtor (B) or the owner of the mortgaged property (mortgagor). As a result, A – a mala-fide creditor – becomes the owner of the property worth \$30000 by virtue of a writ of execution.

C has no option but to hire a lawyer, incur financial expenses, and waste time on court proceedings in an attempt to recapture the costly property lost as a result of A's mala-fide action. However, the property may well become impossible to recapture if A resells the property to a third person, who becomes a bona-fide buyer of it.

The Constitution of Georgia guarantees the right to defence (1, the Article 42.3). Under the clause, the Constitution establishes the obligation of the state to create a legal system of defence focused on fairness and equality of arms.

The European Convention on Human Rights and Fundamental Freedoms states that everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity (2, the Article 13). The remedy must be effective in terms of not only legal regulation, but its practical implementation as well. The above provision of the Convention applies not only to the court, but also to administrative authorities, including notaries.

The above example has highlighted a case, in which a mala-fide creditor may take over the property of others. The owner of the mortgaged property would have to face no easier legal challenges if the writ of execution issued by a notary called for a sale of the mortgage property at an auction, because under the Article 40.5 of the Law of Georgia on Notaries, execution is performed “according to the procedure laid down by the Law of Georgia on Enforcement Proceedings.” Besides, lodging an appeal against the writ of execution and/or the notary document, for the execution of which the writ of execution has been issued, does not suspend the execution.

Under the Article 70.1 of the Law of Georgia on Enforcement Proceedings, “starting from the day a compulsory auction is announced, it shall be impermissible to terminate, suspend or postpone the auction (enforcement proceeding) or discharge the property or return a writ of enforcement/enforcement decision on the ground provided by the Article 35 of this Law, except where a prosecutor in a criminal case files with the National Bureau of Enforcement a reasonable written request or due to a special circumstance such decision is made by the Chairman of the National

Bureau of Enforcement.” As we can see, the legislation relates the suspension of an announced auction only to the discretion of the Chairman of the National Bureau of Enforcement to make sure the property is not sold by virtue of a writ of execution improperly issued by a notary.

Another issue falling beyond the scope of a notary’s powers arises out of the Article 72.1 of the Instruction for Performing Notarial Acts stating that the notary issues a writ of execution for the execution of the notarial act when the execution of the obligation under which is permitted by law based on a notary’s writ of execution and the statutory limitation period for the performance of the obligation has not expired.

The question of limitation in relation to the existence of an obligation is a matter of fact and must be proved. The process of proving, in turn, entails the submission of evidence by the parties to a dispute, a thorough and effective examination of such evidence and a determination on whether the claim is time barred or not. Besides, limitation does not preclude at all the chance for performing the obligation. The debtor alone, no other person, is entitled to contest the limitation of the obligation. Moreover, if the debtor performs a time-barred obligation, he/she can no longer claim the recovery of the performance on motive of limitation. Therefore, the notary is not a person to determine whether an obligation is time-barred or not, especially in a legal situation where, when issuing a writ of execution, the notary does not request information on whether the obligation exists or not.

Conclusion

In conclusion, I would like to mention that to make sure the interests of all the parties to a civil contract are safeguarded, it is necessary to make the following amendments to the Law of Georgia on Notaries and the Instruction for Performing Notarial Acts:

1. The notary must be under obligation to give the debtor a notice of the creditor’s application for a writ of execution according to the notification procedure laid down by the Articles 70-78 of the Georgian Civil Procedure Code. Along with the notice, the notary must send the debtor the creditor’s application together with the documents attached to it;

2. The notary must inform the debtor that the latter is required to submit, within 10 days of receipt of the notice, his/her written position on the creditor’s claim to the notary. The notary must further inform the debtor that if the latter fails to submit a written position within the above term, the writ of execution will be issued regarding the creditor’s claim;

3. If the debtor acknowledges, in the written position submitted to the notary, the existence of the claim or fails to submit his/her position within the established term, the notary will issue a writ of execution;

4. If in the written position submitted to the notary, the debtor contests the creditor's claim, the notary must withhold a writ of execution and inform the creditor that he/she must apply to the court or, subject to an arbitration clause, to the arbitration to seek satisfaction of his claim.

I believe that such amendments, if accommodated, would remedy the current legal gaps and protect the equality of arms of the parties to a civil contract.

References:

1. Constitution of Georgia.
2. European Convention on Human Rights and Fundamental Freedoms.
3. Civil Code of Georgia.
4. Georgian Civil Procedure Code.
5. Law of Georgia on Enforcement Proceedings.
6. Law of Georgia on Notaries.
7. Instruction for Performing Notarial Acts.

Problems of Legal Regulation of the Transport Expedition Agreement in Georgia

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Abstract

Development of economic integration provided that with the standard concept of cargo shipping, using the conventional construction which involves the participation process of one carrier and one transport document, modern shipping has been established as a difficult processes which includes participation of various stages, subjects, transparency types and legal systems. In this regard, there are invented new subjects of the transport process: **expeditors**. In special literature, transport expeditor is called the architect of shipping, which is located in the center of organizational, economic, technological and legal relations with a range of subjects in production and service distribution⁸⁵.

Stability of civil circulation in the transport process means dividing the legal status of each of its participants and the establishment of the appropriate construction of the legal relationship.

I will analyze the regulation problems of the legal parties' relations, based on the contract of transport expedition, on the basis of existing legislation and accumulated practices in Georgia.

In achieving this goal, the method of analysis, comparison, generalization and synthesis were used.

Keywords: Expeditor, consigner, shipping, responsibility, transport document, law

Introduction

There are no less than three hundred companies⁸⁶ and private entities involved in land cargo forwarding. The number of subjects interested in service is even more. It is not clear why, despite the possibility of the number of participants in the legal relationship and the dispute between them, the

⁸⁵ K.W. Kholopov: Forwarding documents of FIATA in international and foreign trade. St. Petersburg 2014 (Translation of an author).

⁸⁶ Information is extracted from the Georgian Association of Expeditors. 25/08/2017.

number of court disputes is small. The scarce court practice proves low efficiency of judicial regulation of these types of disputes in Georgia.

My aim is to generalize the problems of private legal relations of contracting parties of the transport expedition agreement.

Regulating Legal Sources of Transport Expedition Agreement

a) Internal state sources - It represents

- Georgian Civil Code: Private part, book one, paragraph - 12: "Transport expedition".

In Georgian internal law, there is no any other special rule or normative act about private legal regulation issues of transport expedition agreement.

b) International sources

- Convention: "On international cargo shipping agreement". (CMR) 19/05/1956 and additional protocol 05.07.1978.⁸⁷

- UN Convention: "On marine shipping of cargo". (Hamburg Rules), 1978.⁸⁸

- Customs Convention: "On international cargo shipping, using TIR book". Geneva, 14.11. 1975. ⁸⁹

- UN Convention: "On international mixed cargo shipping". 1980.⁹⁰

- UN Convention: "On the responsibilities of transport terminals' operators, in international trade". 1991. ⁹¹

Today, in the world, there is no special international shipping-expedition convention⁹². From the presented sources, the first three are legally active and, accordingly, are part of Georgian law. Moreover, according to the Georgian rule of "Normative acts",⁹³ the Article 7, section 3 / subsection C,

⁸⁷ http://www.un.org/ru/documents/decl_conv/conv_transport.shtml Entered the force. In Georgia, it is active since 02.11.1999.

⁸⁸ http://www.uncitral.org/uncitral/ru/uncitral_texts/transport_goods/Hamburg_rules.html Entered the force. In Georgia, it is active since 01/04/1997.

⁸⁹ <https://www.unece.org/tir/welcome.html> Entered the force. In Georgia, it is active since 24.09.1994.

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http://www.uncitral.org/uncitral/ru/uncitral_texts/transport_goods/1991Convention_operators.html Did not enter the force. Georgia joined in 21.03.1996.

⁹¹

http://www.uncitral.org/uncitral/ru/uncitral_texts/transport_goods/1991Convention_operators.html Did not enter the force. Georgia joined in 21.03.1996.

⁹² K. V. Kholopov: Forwarding documents of FIATA in international and foreign trade. St. Petersburg 2014 (Translation of an author).

⁹³ http://www.un.org/ru/documents/decl_conv/conventions/law_treaties.shtml Entered the force. In Georgia, it is active since 08.07.1995.

they implement hierarchically favored norms in comparison with domestic legislation.

The last two conventions have not been enforced yet. Thus, according to international practice established by Vienna convention “on Justice of International Agreements” (the Article 38), until legal enforcement of these documents, for Georgia, they are the source of additional law, particularly “international legal custom”.

c) Custom

Statute of the UN International Court, the Article 38, paragraph b, explains **international custom** as “common practice evidence, recognized as the norm of law”.⁹⁴

In Georgia, practically we cannot find two special **international custom** using cases for regulating transport expedition. I speak of:

1. UNTCAD⁹⁵/ICC rules, 1993 “on the documents of mixed shipping”. (Hereafter - **UNTCAD/ICC rules**).⁹⁶

2. “FIATA⁹⁷ Typical rules⁹⁸ of transport expedition activity”. (Hereafter – **Typical rules**).

FIATA Typical rules are recommended⁹⁹ as an example for the purposes of creating general or national expedition conditions and also transport expedition regulating interstate norms. These documents are used in the practice of mixed shipping as they are optional. Despite the fact that these documents are not officially recognized by Georgia, making such reservation is enough. **Typical rules** become the constituent part of the agreement.

Although they are not formally formalized by Georgia, it is enough to make a reservation on their contract. As a result, typical rules will become part of the contract.

⁹⁴ Irina Getman-Pavlova: International Private Law. Moscow; 2009 Page. 61 (Translation of an author).

⁹⁵ UN Convention on trade and development. <http://unctad.org/en/Pages/Home.aspx>

⁹⁶ http://unctad.org/en/PublicationsLibrary/tradewp4inf.117_corr.1_ru.pdf

⁹⁷ <http://fiata.com/home.html> International federation of expeditors’ association. International NGO, established in 31/05/2916 by sixteen European states regional and national associations. Nowadays, FIATA unites 5000 expeditor subjects and national expeditor associations from 150 states.

⁹⁸ FIATA MODEL RULES FOR FREIGHT FORWARDING SERVICES – entered the force in 02.10 1996, on international congress of FIATA (Caracas). Liked by UNCKAD and ICC. - https://hu.kuehne-nagel.com/fileadmin/country_page_structure/EE/Hungary/Documents/FIATA_model_rules_s_zabalyzat.pdf

⁹⁹ N. Morozova: Model Forwarding Rules and Civil Code. Internet Article - <https://www.lawmix.ru/comm/7052> (Translation of an author).

In Georgia, the so called **General Rules** of the expedition still do not exist. According to the existing international practice, these **rules** will be developed within the framework of the National Association of Expeditors. These rules will legitimately turn into interstate business custom.

d) Court practice

In general, court practice concerning transport expedition issues is quite scarce in Georgia. It is possible to outline some definitions made by the Supreme Court of Georgia about the concept of expediting (forwarding) service¹⁰⁰ and about the qualification issue of transport expedition agreement¹⁰¹.

The court has also established the controversial criterion confirming the forwarding relationship. In this case, the Supreme Court considered the exact party as an expeditor based on the circumstance that the invoice contained a trademark of the particular party and not of an air carrier.¹⁰²

Definition made by the Supreme Court: “In the theory of law, as well as in the practice, two types of expedition agreement are distinguished: Consensual agreement and Actual agreement. The principal difference that marks off these two types of treaties is that in case of Consensual agreement, the function of the expeditor is limited to organizing only forwarding services. However, in case of Actual agreement, the expeditor carries out the services on goods”.¹⁰³

e) Documents used in the transport expedition

In this case, all documents created by the parties within the transport expedition are considered, including the agreement containing regulation rules of a specific level of contractual relations.

(a) National documents

In Georgia, in case of the absence of unified documents, expeditors use either forms created by them which differ from each other both in content and form, or they have to purchase the so called FIATA blanks.

(b) FIATA¹⁰⁴ unified documents¹⁰⁵ of transport expedition

¹⁰⁰ The judgement # 3/572–2000, by the Supreme Court of Georgia, 6 October, 2000.

¹⁰¹ The judgement #739-695-2012, by the Supreme Court of Georgia, 14 January, 2013.

¹⁰² The judgement #3/855, by the Supreme Court of Georgia, 8 June, 2001.

¹⁰³ The judgement on case № 85-455-434(23-09), by the Supreme Court of Georgia, 22 October, 2009.

¹⁰⁴ <http://fiata.com/about-fiata/fiata-documents.html>

²² K.V. Kholopov: Forwarding documents of FIATA in international and foreign trade. St. Petersburg 2014 (Translation of an author)

The ideology of **FIATA** documents is based on the fact that the documents accompanying goods and commodity disposing documents do not serve only commodity circulation and transportation purposes. Transport documents in modern international economics and trade perform various important direct and indirect functions.¹⁰⁶

In transport-expedition sphere, active documents of **FIATA** are:

1. FIATA Forwarding Instructions – FFI - confirm giving an assignment to an expeditor on any forwarding service, standardization and unification of international trade and shipping documents. **FFI** is a legal basis for signing the expedition agreement.

2. Forwarder's Certificate of Receipt - FIATA FCR - represents the confirmation of the expeditor about taking the responsibility for the cargo, with irrevocable obligations – send the burden to the recipient or keep the burden by the order of the recipient.

3. Forwarder's Certificate of Transport - FIATA FCT - is a circular document and security. By issuing the document, the expeditor takes responsibility to provide the freight to the recipient through the selected carrier and considering the conditions set by this carrier.

4. Shippers Declaration for the Transport of Dangerous Goods - FIATA SDT - is used for transportation of hazardous cargo by motor and marine transport.

5. FIATA Warehouse Receipt – FWR - is a circulating document confirming the execution of the agreement of the purchase and sale of goods. It can be used as a pledged document to provide a loan.

6. Shippers Intermodal Weight Certification – SIC – is filled by the consignee and is given to an expeditor to specify the exact weight in the transport documents.

7. Non-Negotiable FIATA Multimodal Transport Waybill – FWB – is used for transportation of all types of transport, in direct and mixed shippings.

8. Negotiable FIATA Multimodal Transport Bill of Lading -FBL - represents an expeditor's transport document who turns out as contract carrier or mixed shipping operator. By giving bill of lading, expeditor takes an obligation to deliver the burden to a receiver; additionally, he takes the responsibility on cargo itself as well as on safe delivering process.

The forwarding documents regulate relations between cargo owners. Their action does not increase the legal relation¹⁰⁷ between an expeditor and a carrier or any other person who is in legal relations with an expeditor. Each

¹⁰⁷ Yu. Metelyova: Legal regulation of transport expedition. Moscow 2006. (Translation of the author).

of them interacts with an expeditor within the scopes of different contractual relationship.

The analysis of the transport expedition agreement according to the Georgian legislation

The analysis covers the following issues:

a) General legal character of transport expedition agreement;
b) Comparative analysis on the basis of the Civil Code and the norms of **typical rules of FIATA**;

c) Main rights – obligations of the agreed parties;

d) Exclusion of an expeditor’s responsibilities.

a) Legal character

Transport expedition agreement is on the “crossroad”¹⁰⁸ of various civil-legal relationships. Despite this, transport expedition agreement is an independent legal institution.

The Civil Code significantly limits legal space of transport expedition agreement concept to instructed relations.

The Supreme Court of Georgia has made a broader definition of the **forwarding service** notion which states: “forwarding service” means any service related to the shipping of cargos, or organizing the service from sending the cargo until it is received. Agency services, customs services in ports, terminals, cargo operations in the warehouses, financial services, marketing services and others, can be considered as such services”.¹⁰⁹

According to the **Typical rules**¹¹⁰: “forwarding service means any kind of service, related to: cargo shipping, consolidation, keeping, warehousing, processing, intended delivering, and also providing all kind of support and consultancy services, related to the above-mentioned activities, including customs clearance related to goods and transportation, tax issues, declaration, insurance, implementation of payments and preparation of extracting documents.

The obligations of the client (cargo owner) and the expeditor are set by the Articles **731** and **732** of the Civil Code of Georgia.

Expeditor, with good faith based on an expeditor’s diligence, has to send the cargo and choose the entities participating in the shipping process. He/she has to defend the interests of a sender and follow his/her instructions. This all, naturally, can happen only after delivering cargo to an expeditor.

¹⁰⁸ A.S. Kokin, GA Levikov: International Transport Expedition. Moscow 2005. (Translation of the author).

¹⁰⁹ The judgement of the Supreme Court of Georgia, case #3/572–2000, 06 / 10 / 2000.

¹¹⁰ FIATA MODEL RULES FOR FREIGHT FORWARDING SERVICES. article 21. (Translation of the author).

Client, according to the requirement of an expeditor, should hand the information about cargo on time; he/she should also give instructions which are necessary for signing the transfer documents. The client has to give the expeditor important information, with proper proven documents for crossing Georgia's customs border, established by the Tax Code of Georgia, for implementing other activities and in case of necessity - paying import taxes.

Concerning the cargo, the **client** is obligated to properly warn the **expeditor** if there is any type of threat from the cargo and indicate the safety rules in case of necessity. He/she should also pack it taking into consideration the type of cargo and the shipping requirements.

According to the **Typical rules**, the client is obligated to provide precise and full information about the cargo on time while handing over the cargo to the expeditor. For this purpose, a client must pay attention to features related to the general character of cargo: its marking, weight, volume, quantity and if necessary, the quality of the threat that can be caused by cargo. However, what is most important is that all of this must be delivered by a client, without an expeditor's request.¹¹¹

Taking into consideration the essence of the commitment of the parties and the sequence of its creating, in the first case, the forwarding agreement is **real**, and in the second case - **consensual**.

b) Comparative analysis on the basis of the Civil Code and the norms of typical rules of FIATA

(1) Insurance

Concerning insurance, the Civil Code distinguishes **two points**: insurance of cargo and insurance of damage (responsibility) which an expeditor can cause to a client. In both cases, the insurance is performed by an expeditor, but on the client's expense.

The obligation for **cargo insurance** is imposed on the expeditor only after receiving the appropriate instructions from the client. In the absence of special instructions, the expeditor is obligated to insure the cargo according to the usual conditions.

Insurance of expeditor's responsibility: if the client does not express his/her refusal in the written form, the expeditor is obligated to insure the damage that he/she can cause to the client while performing his/her activities, but it is done on the client's expense. Also, the expeditor must inform the client about the entity that has signed the insurance contract.

The expeditor cannot perform the insurance process by **Typical rules** unless there is a precise instruction from the client. In addition, insurance is

¹¹¹ FIATA MODEL RULES FOR FREIGHT FORWARDING SERVICES. article 16. (Translation of the author).

carried out with regard to the exceptions and conditions of insurance companies' or guarantors' insurance policies which take the risks. Unless there is not anything else agreed in the written form, the expeditor is not obligated to insure each party separately. Although, the expeditor can state that the insurance was performed by open or general policy¹¹².

c) Responsibilities of the agreed parties

(1) Responsibility of the expeditor

Modern expeditors practice their activities in two directions. **On one hand**, they can act as a client's agent (non-principal), mediator between a carrier and a client, or as a person who performs the shipping process, following the orders of a client. All claims will be submitted to the carrier directly by the customer. Despite this, the expeditor has the liability for carefully selecting the carrier¹¹³.

On the other hand, the expeditor can act as the carrier (principal). The expeditor can carry the cargo using private transport source, or hire another carrier, but still, he/she will be in charge of the whole shipping. In this case, transport expedition agreement has signs of shipping agreement.

According to the Civil Code, the expeditor has the right to transfer the cargo using own transport if there was not any other agreement beforehand. Thus, performing of these rights should not be against the client's rights and interests. If the expeditor uses these rights, he/she automatically will be imposed by rights and obligations of the carrier¹¹⁴.

According to the **Typical rules**:

- **Expeditor non-principal**, while performing the client's instructions, is obligated to act eagerly and with responsibility. He has responsibility taking into consideration the exceptions and limitations indicated in the Article 8 of the Typical rules and is obliged to reimburse losses and damage to the goods if he/she does not reveal the proper effort and does not take appropriate reasonable measures at the time of the assignment. Naturally, in these circumstances, the responsibility for cargo is on the expeditor.

An expeditor is not responsible for actions or non-actions of the third party (carriers, warehouse owners, workers or other expeditors) if the expeditor made a relevant effort and revealed responsibility while choosing

¹¹² FIATA MODEL RULES FOR FREIGHT FORWARDING SERVICES. Article 5. (Translation of an author).

¹¹³ Yu. Metelyova: Legal regulation of transport expedition. Moscow 2006. (Translation of the author).

¹¹⁴ The Civil Code of Georgia, article 739.

the third party, while giving certain assignments to them and while controlling the performance of the assigned task¹¹⁵.

- **Expeditor principal** is obligated by carrier's responsibility not only when he/she actually performs shipping using own transport source (actual carrier), but also when he/she signs transport document or when he/she expressed his/her intention to take the carrier's responsibility (documental carrier).

In relation to other services which do not include the transportation of goods such as storage, warehousing, processing, packaging, distribution of goods and also the services connected with the services mentioned above, the expeditor is imposed with responsibilities of a principal when: this service was performed by him/herself, using his/her funds and workers, or when the expeditor expressed a clear and direct intention to take responsibility as the principal.

Active expeditor as the principal, according to the Article 8 of the **Typical rules**, considering exceptions and restrictions, is responsible for action and non-action of the third party that was hired by the expeditor for performing certain activities. The expeditor is responsible for them, as he/she would be responsible for him/herself in case of his/her action and non-action.
116

According to the Civil Code, the basis of the expeditor's responsibility is a guilt¹¹⁷, damage, caused by intentional or gross negligence. The expeditor is also responsible for the damage caused by a guilt of an associate as "the fact that an appeal to the applicant does not require the client's consent is due to the fact that the expeditor is responsible for the operation".¹¹⁸

According to the Civil Code, obligation of integrity lies on the expeditor when sending the cargo, while selecting persons involved in shipping, protecting the client's interests and performing the instructions. Due to the general legal understanding of the principle of good faith and integrity, every behavior of the expeditor in compliance with this principle is the subject of assessment.¹¹⁹

During one case¹²⁰, the Supreme Court of Georgia spread the issue of the expeditor's good faith on delivering the information to the client. The

¹¹⁵ FIATA MODEL RULES FOR FREIGHT FORWARDING SERVICES. article 6. (Translation of the author).

¹¹⁶ FIATA MODEL RULES FOR FREIGHT FORWARDING SERVICES. Article 7. (Translation of the author).

¹¹⁷ The Civil Code of Georgia, article 740.

¹¹⁸ T. Zambakhidze: Comments of the Civil Code of Georgia, part one, Tbilisi, 2001.

¹¹⁹ Shorena Gabichvadze: Some issues, justice and law of civil law regulation of transport expedition. Tbilisi, 2014.

¹²⁰ The judgement of the Supreme Court of Georgia, case #33/855, 08.06.2001.

court considered that considering the requirements of the Article 731 of the Civil Code of Georgia and rules of international air transport, the Chamber believes that an expeditor should consult with an inexperienced client about the conditions by which he/she operates. The expeditor is obliged to warn the client about the existence of the articles liberating from liability under standard conditions of cooperation. The more inconvenient these articles are, the more effort is needed to make the other party pay attention to their existence.

(2) Responsibilities of the client

According to the Civil Code, together with the obligation of providing information on cargo and transportation to the expeditor, the client is obligated to pay provision for provided forwarding service. This payment method is not clear, because passing the burden to the transport company can be interpreted differently.

The Civil Code does not regulate conditions of paying other expenses by the client to the expeditor which can occur while performing the assignment. The obligations of the client are more specified in **the Typical rules**. Besides paying for the expeditor's service, the client is obligated to pay:

- Every kind of expense during the expedition route, made by the expeditor, except the situation when the expeditor (principal) is responsible for all the expenses him/herself;¹²¹

- All damages, damage costs, official fee made by the expeditor or other expenses in favor of any person to whom the expeditor may have a certain responsibility, caused by the client or any other entity, who acted on behalf of the client for providing inefficient information or irrelevant assignment ;¹²²

- Additional expenses incurred in the interests of the client in the unexpected circumstances by the expeditor.¹²³

In order to ensure the client's request, the expeditor, at any time and within the applicable legislation, has the right to lease goods and accompanying documents for any amount that is owned by the expeditor and is provided by the client, including warehousing and storage expenses, and also compensation of all expenses incurred by the expeditor.

¹²¹ FIATA MODEL RULES FOR FREIGHT FORWARDING SERVICES. Article 17.1. (Translation of the author).

¹²² FIATA MODEL RULES FOR FREIGHT FORWARDING SERVICES. Article 18. (Translation of the author).

¹²³ FIATA MODEL RULES FOR FREIGHT FORWARDING SERVICES. Article 13. (Translation of the author).

d) Excluding the responsibility of expeditor

According to **FIATA rules**, expeditor is given a great freedom of action. He/she can impact on client's risk when the latter has not precisely approved impelling some actions. In case of disagreement with the contract, the expeditor can act as he/she deems necessary even if his/her actions are different from what is provided in the agreement and also is provided as irrelevant assignment.¹²⁴

If it is impossible for the expeditor to fulfil his/her obligations because of the different conditions, resistance, any risks, including the threat of the condition of the goods that are not caused by the error or negligence of the forwarding and cannot be avoided by reasonable means or attempts, expeditor is authorized and can refuse the transportation of goods within the scopes of Transportation Expert Treaty and within the scopes of possibility to deliver the goods or some parts of goods to any place the expeditor thinks is safe, convenient and suitable for this. Thus, the responsibility of the expeditor should be discontinued in relation to these goods. He/she is authorized to get the compensation according to the agreement and the client is obligated to pay for all the expenses, regarding to the circumstances mentioned above.¹²⁵

Together with the exclusion of liability, according to the **rules**, the responsibility of the expeditor is decreased in cases when he is obligated to pay compensation for any damage he/she is responsible for. According to the restriction of responsibilities, any compensation for such damages shall not exceed 2 International (SDR)¹²⁶ units, for every kilogram of the lost or damaged goods gross¹²⁷ mass¹²⁸.

The Civil Code does not take into account direct restriction or exclusion of an expeditor's responsibilities. Moreover, an expeditor cannot rely on the rules that exclude or restrict his/her liability, or carry the proving burden if he/she has inflicted damage or gross negligence. The same rule applies to non-contractual responsibility of the associate entity if according to the first part of this article, he/she was charged.¹²⁹

¹²⁴ FIATA MODEL RULES FOR FREIGHT FORWARDING SERVICES Article 5. (Translation of the author).

¹²⁵ FIATA MODEL RULES FOR FREIGHT FORWARDING SERVICES. Article 4. (Translation of an author).

¹²⁶ Special Drawing Rights (SDR) - special right of loans, International Monetary Fund (IMF) reparation unit. Its weighted value is determined by the leading currencies of the world. SDR cost of US dollar is daily announced on IMF site: http://www.imf.org/external/np/fin/data/param_rms_mth.aspx

¹²⁷ The Gross weight - Cargo weight with packaging and tar.

¹²⁸ FIATA MODEL RULES FOR FREIGHT FORWARDING SERVICES. Article 8.3.1

¹²⁹ The Civil Code of Georgia, article 742.

Conclusion

Taking into consideration all the theoretical and practical materials, it is possible to conclude that:

Transport expedition is an independent type of civil relationship which determines providing / organizing services of cargo shipping issues. For the purposes of rights / obligations, provided by the expedition agreement, it is essential that client's reference should be on the certain service.

The main difference between cargo shipping and transport expedition agreement is that an expeditor's responsibility for violation of contractual obligations is not restricted by the special rules of transportation, but by general norms.

In the Civil Code, there are special norms for regulating; but despite them, lots of important issues are still in disorder. Thus, approach of the Civil Code to the specific issues is different from international standards. The concept of expeditor is interpreted narrowly which, actually, in the scopes of mentioned legal relations, leaves behind the special regulation services which are provided by the transport expedition agreement.

One more reason for the problem of legal relations is that the practice of using the so-called **UNTCAD/ICC** rules or **FIATA** general rules does not exist in Georgia. There are no national forwarding rules and unified documents within its scope.

Therefore, we can conclude clearly that the existing deficiencies of transport expedition normative regulation directly reflect on Georgia's development in this industry. Also, we must admit that today we are on the lower point.

References:

Normative Material

1. The Civil Code of Georgia.

International Acts

2. UNTCAD/ICC rules on mixed shipping documents. 1993.
3. T FIATA MODEL RULES FOR FREIGHT FORWARDING SERVICES.

Periodical Editions

4. Gabichvadze Sh. Some issues, justice and law of civil law regulation of transport expedition. Tbilisi, 2014.
5. Morozova N. Model Forwarding Rules and Civil Code. Internet Article.
6. Yu. Metelyova: Legal regulation of transport expedition. Moscow 2006.

Books and Monographs

7. Zambakhidze T. Comments of the Civil Code of Georgia, part one, Tbilisi, 2001.
8. Kholopov K.V. Forwarding documents of FIATA in international and foreign trade. St. Petersburg, 2014.
9. Getman-Pavlova I. International Private Law. Moscow; 2009. P. 61.
10. Unification of Law 1967. Year-Book 1966, pp. 413 .
11. A.S. Kokin GA Levikov: International Transport Expedition. Moscow 2005.

Legal Practice

12. The judgement on case # 33/572–2000 by the Supreme Court of Georgia. June 6, 2000.
13. The judgement on case #3/855 by the Supreme Court of Georgia. June 8, 2001.
14. The judgement on case № 88-455-434(23-09), by the Supreme Court of Georgia. October 22, 2009.
15. The judgement on case #88-739-695-2012 by the Supreme Court of Georgia. January 14, 2013.
16. The judgement on case # 2–394 –2016 in Batumi City Court. August 29, 2016.

Resources on the Internet

17. <http://www.brokert.ru/material/smeshanaya-mezhdunarodnaya-perevozka>
18. <http://www.unidroit.org/about-unidroit/membership>
19. <http://www.afg-navte.ge/contact.php>
20. <http://unctad.org/en/Pages/Home.aspx>
21. http://unctad.org/en/PublicationsLibrary/tradewp4inf.117_corr.1_ru.pdf
22. <http://fiata.com/home.html>

Peculiarities of Criminal Liability for Attempted Crime THROUGH Omission

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Abstract

The present article deals with "the peculiarities of criminal liability for the attempted crime in omission delicts". Its concept and forms are analyzed, classification of its main features and elements are given, and the structure and the peculiarities of the attempted crime due to omission are studied. Consequently, the theoretical research of attempted crimes due to omission has not only a dogmatic nature, but also practical significance, since, as a result of the worked out recommendations, the uniform model of assessment of this institution is created for court practice. The purpose of this work is to discuss the main and controversial issues that are related to the liability to penalties for the attempted crime due to omission, and to develop recommendations for precise assessment of the Article 19 of the Criminal Code based on the objective and subjective sides of the action.

Keywords: Crime, attempted crime, omission, guilt, delict

Introduction

Under the Criminal Code, the concept of crime is based on a three-digit structure. Consequently, the normative theory has been established, which has moved from the theory of intent to the guilt theory.

As a result of establishing the normative theory, a more severe attitude appeared towards the issue of attempted crime. Many issues moved to the guilt level and consequently, with respect of judicial law, gave rise to the problematics related to the use of criteria of attempted crime and assessment issues, particularly, concerning the delicts due to omission, which happens to be the topic of our discussion in this work.

Many issues that were established in Georgian legal science and therefore recognized, were still subject matter of discussion when the concept of attempted crime by an eventual intent was revealed.

The problem of determining the attempted crime acquired a different shape when the concept of an attempted crime with the purpose of eventual

intention stated its significance. Under these conditions, the science faced a complicated challenge. First of all, the methodological nature of the problem arose with respect of delicts of attempted crime due to omission.

A number of problems related to attempted crime arose in practice that should be resolved at the level of guilt.

The Issue of Attempted Crime in Omission Delicts

In criminal law, the issue concerning the possibility of preparing and attempting to commit a crime in pure and mixed omission has long been regarded as an arguable problem. In case of pure omission, the fact of restraining oneself from activity is punishable notwithstanding the observed result. In this respect, it is possible to just prepare the offense (for example, the Article 376 of the Criminal Code of Georgia – Non-Reporting of Crime) and the attempt is excluded.

According to the opinion prevailing in the criminal law dogmatism, mixed omission may include both preparation and attempt of crime. Mixed omission can be prepared through activity as well as omission.

In the legislation, the composition of some crimes is described so that it is very problematic to prove the attempt in such composition. This concerns the compositions both with and without the result. However, in modern criminal law dogmatism, the opportunity of completed attempt in some formal crimes is allowed.

It is recognized that in the delicts of pure omission, it is impossible to document the attempted crime, as the moments of the beginning and ending of the composition of the action in such crimes coincide with each other. Therefore, as soon as the perpetrator avoids the execution of the imposed duty, the action is considered to be a crime. For example, the parent avoids paying the alimony (the Article 176 of the Criminal Code) (Criminal Code of Georgia 2004).

In contrast to this view, it can be noted that in the delicts of pure omission, it is possible to prove the attempt. This idea is based on the following definition, which seeks to determine the moment of initiating the attempted crime. According to the above mentioned concept, attempted crime occurs in the particular case when the deliberate intentional action of the offender is expressed in the particular threat of damage of legal goodness having violated the social-adequacy boundary and thus violated the socio-ethical order of historically established public life.

For instance, the Article 390 of the Criminal Code of Georgia considers the liability of a military serviceman, who avoids the compulsory military service by self-inflicted injury or other methods (Criminal Code of Georgia 2004). For example, in order to avoid the military service “A” shot firearms in the direction of his legs in the presence of his friends, the bullet

missed “A” and the friends did not give him the chance to re-fire. In such a case, a pure delict act was carried out through active action and such an act should be assessed as an attempt to evade the military service (the Articles 19, 390 of the Criminal Code of Georgia - Attempt to commit a criminal offense of pure omission through activity).

In addition, in the Criminal Code, there are such delicts through pure omission that are focused on the outcome; for example, the Article 383 of the Criminal Code of Georgia envisages liability for the subordinate in case of non-compliance with the order issued by the senior that has come as a substantial prejudice to the interest of the military service (Criminal Code of Georgia 2004).

Therefore, the opinion that it is impossible to document the attempt in the delicts of pure omission cannot be accepted.

It is possible that initiation of the attempted crime was preconditioned by the activity of other individuals.

In the case of mixed omission, the attempted crime is as possible as in the case of committing the crime through activity. Any attempt through omission consists of subjective and objective elements just like the attempt through activity. These elements are: non-compliance with the action prescribed by law (objective side of omission) and knowledge of the outcome, as well as willingness and awareness of the action forbidden under the norms (the subjective side of omission).

From the beginning of the 19th century, the idea emerged in the criminal dogmatism that the offense could be committed to delicts through omission. Classification of the omission delicts into mixed and pure omission delicts was first observed in the case of Lude.

In criminal law dogmatism, there was an opinion that challenged the issue of punishability of attempted crime through omission. Since omission is not an action, the dogmatism of the earliest period considered punishability for omission as the violation of the principle of prohibition of analogy.

The possibility of attempts in crimes committed through mixed omission does not lead to dispute in criminal law dogmatism and judicial practice. However, it is a matter of dispute at what instance the attempt of crime is initiated in the delicts through mixed omission. There are different opinions about this issue:

- There is the attempt upon the exhaustion of the first chance of the victim to survive.
- The attempt is initiated only after the last chance of the victim to survive is missed.
- The third view focuses on the provision of the guarantee, which means that the omission is observed when, according to the offender’s point of view, the omission creates a serious threat to protected legal goodness.

- Increased danger emerges when the offender loses control over events.
- According to the fifth view, the main thing is the opinion of the offender and it does not matter for the assessment of the omission as attempted crime, whether there is a threat or not.

In addition, in omission delicts, it is disputable whether it is possible to tell the difference between incomplete and complete endeavors that occurred in the delicts committed through activity. Some theories have emerged in this respect that justifies this issue in a certain way.

A part of the scientists thinks that in omission delicts, incomplete attempts are unacceptable. They indicate that at the time of omission, the person is always at the stage of complete attempt and that is why such division loses its significance (3.333). That is why, according to the theory of "complete attempt", the difference between incomplete and complete attempts of mixed omission is either impossible or simply not necessary. In addition, the idea has been developed that the attempt at the time of mixed omission is similar to the attempted action completed during the active activity.

The obligation to protect a legal goodness by a person is violated when it is necessary to intervene to save the legal goodness, i.e. when the failure to fulfill the obligatory act leads to a threat or strengthens it.

Contrary to the foregoing theory, which indicates that the attempt committed through inactiveness exists only in complete form dogmatically, the attitude was developed that distinguishes complete and incomplete attempts at the time of omission and, at the same time, provides its justification of assessment of giving up voluntarily. This view, in particular, finds the significant outcome of the differentiation that the offender represents the risk of avoiding the outcome only at the end of the attempt (5.9) (5.10). Differentiation of attempts into complete and incomplete attempts in omission delicts is rather effective and shows that there might be different scales.

Differentiated doctrine originates from Schröder and Lyon. Schröder believes that incomplete attempt is observed in omission delicts when the perpetrator is still able to prevent the outcome in such a way that for conditioning the result, further omission is necessary from his/her side. As for the complete attempt, it is observed when the offender thinks that he/she is unable to avoid the outcome despite his/her involvement. Of course, in such case, we cannot speak about giving up voluntarily. The differentiation of the attempt defined by Schröder was modified by Lyon in a certain way (2.72) (2.73).

According to the "Differentiated Theory", modern dogmatism recognizes an incomplete attempt in omission delict when, according to offender's opinion, the outcome is avoided through rescue actions.

As for the omission delicts, the immediate initiation of the implementation of the action composition in the omission delicts is already

observed when the first opportunity to assist with the provision of the guarantee has already been missed. However, sometimes it happens that the offender does not even know when the victim will face the danger.

Evidently, according to this theory, the behavior that has not been sufficiently dangerous for legal goodness will turn into a criminally relevant omission. Since this view moved the judgment to the very early stage, it was not accepted by the scientists. It is obvious that this theory is somewhat closer to the so-called criminal justice of opinion (4.338).

In omission delicts, according to the “last possible act”, the attempted crime is observed when according to the opinion of the guarantor the last chance of assistance has already been exhausted. This opinion leads to the conclusion that in omission delicts, there is no incomplete attempt. A completed act is always observed in such a case as the initiation and finishing of the attempt always coincide with each other.

This view was impossible to be introduced in the science of criminal law because it extends the area of timing of omission and, as a result, begins to protect the legal goodness too late. This means that during the omission, it does not hurry to start the attempt, and it waits for the last moment of the possibility to assist. In this respect, the doctor will not be punished for the attempted murder if he/she does not give the patient food when according to his/her opinion, there are still several weeks remaining for the outcome to be observed (2.56) (2.57). This is the criminal-political drawback of this view. The guarantor is required not only to avoid the outcome, but also to avoid the threat to the outcome.

The dogmatic drawback of this theory is that it considers it impossible to give up the omission voluntarily. This, in turn, contradicts the requirement of the law, which envisages the possibility of giving up voluntarily in all cases of attempt.

The science of criminal law has developed a view that names creating a specific threat to the victim as the only criterion for initiating attempt in omission delicts. The author of this view is Fogler.

According to his conception, if the driver crashed into the pedestrian due to violating traffic safety rules and caused serious damage to him, and after that he intended to kill the victim and disappeared from the scene, this will be the fact of the attempted murder not at that time when the driver left the accident scene, but at the time when the victim faced the threat of death due to absence of assistance (6.427).

Consequently, according to this view, the boundaries of punishability of attempts in omission delicts is too broad, and it cannot be accepted.

The theory has been developed about the initiation of attempt in omission delicts that is actively used for determining the initiation of attempt

in the crime committed through activity. This theory is known as the "Alternative theory."

According to this opinion, the attempt starts at the moment when the guarantor launches the attempts from the area under its control. But if the development of the causation is still under the control of the guarantor, it is considered that omission has not gone further than the crime preparation stage. In addition, the attempt is observed when there is a direct threat against the victim.

In science of criminal law, the attempted crime, except for the mixed omission delicts, as well as in the so called pure omission delicts, is considered acceptable in the form of both worthy and unworthy attempts. In case of worthy attempt, it is reasonable to take into account that if the composition of crime committed through omission does not depend on the outcome, it is inadmissible to speak about the worthy attempt as omission is a crime that has been completed. Therefore, the person, who does not help others, commits the foreseen composition of the crime, particularly the failure to assist, because the existence of the attempt was not recognized by the legislator as legal. Consequently, the other is the case when the delays of the pure omission delict foresee the outcome.

In the omission delicts, it is more possible to observe worthless attempt.

It is a matter of worthless attempt in the crime committed through omission that is disputable in the criminal law dogmatism. Some scientists believe that in this case, the use of judgments is about "to bring the thought down to criminal justice," because the threat does not exist objectively and the offender has not decided to commit any act damaging the legal goodness; so, only his/her evil idea is left as the basis for the punishment. But the argument about the irrelevance of punishment raised at the time of worthless attempt through omission does not prove anything as the attempt through worthless omission is as dangerous as at the time of the attempt committed through active activity.

Conclusion

Studying the attempt of crime allowed us to make the following conclusions:

1. At the time of interpretation of signs of attempt of the crime, it should be taken into account that the knowledge about the attempt of the crime had been accumulated in Georgian criminal law on the basis of criticism of formal-objective, subjective and mixed concepts focusing on the problems of subjective concept of the composition of the act. In this period, formal-objective concept suffered evolution in German doctrine and developed into

eventual intent, the crime attempt concept that is easily established within the frameworks of mixed concepts accepted by the majority of scientists.

2. At the level of the composition of act, it is important to meet those provisions according to which, the crime is considered to be completed when all the signs of the composition of the crime intended by the offender have been carried out.

3. At the time of subsuming the crime attempt, it should be taken into account that the attempt might be carried out only through a direct intention when the person started realizing his/her intent, but was unable to complete the action.

References:

1. Criminal Code of Georgia. Tbilisi, 2004.
2. Ahmed, A. (2007). "Rücktritt vom versuchten unechten Unterlassungsdelikt" Strafrecht in Forschung und Praxis, Band 106. Hamburg, S.72-73.
3. Freund, G. (2009). "Strafrecht Allgemeiner Teil" Berlin, S.333.
4. Herinrich, B. (2012). "Strafrecht Allgemeiner Teil" Stuttgart, S.338.
5. Küper, W. (2000). "Rücktritt vom Versuchten Unechten Unterlassungsdelikt" zstw S.9-10.
6. Roxin, C. (2003). "Allgemeiner Teil Besondere Erscheinungsformen der Sraftat 2'" München S.427.

Why Cash Optimization is Critical in Georgian Companies

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Abstract

Cash flow management is one of the most important instruments to support company's financial viability and sustainability. The main objective of the present study is to carry out a literature review regarding cash flow strategy and practical approaches in Georgian companies, identifies challenges and hidden opportunities. The article also discusses the rationale related to cash management knowledge and practices that contribute to increase profitability and sustainability of Georgian companies. The contribution to current state of research is providing three main problems in the cash flow management in Georgian companies: low accuracy of forecasting cash flow; technological low level of management; and the lack of measures to effectively manage cash flow (failure to use the short-term surplus cash flow in financial activities, minimizing alternative expenditures).

Keywords: Cash flow; Cash flow management; Cash flow strategy; Forecasting cash flow; Measures to effectively cash flow management

Introduction and Purpose of the Study

The significance of cash flow in the practice of international business is established on the basis of various investigations. In modern conditions, cash flows are the main indicators of effective functioning of companies as investors believe that this indicator reflects the best picture of the firm's values.¹³⁰

¹³⁰ Allman-Ward M., & Sagner J. *Essentials of managing corporate cash*. New York: John Wiley & Sons, Inc. 2003. The Art of Cash Management. inc. com. magazine.<http://www.inc.com/magazine/19981001/1019.html>. Quinn, M. Forget about profit, cash flow is king. Wall Street Journal, accessed July 15, 2012, Rigby D. Winning in Turbulence, Harvard Business press 2009. Yong-Un Lee. Wertstromdesign als Instrument der wertorientierten Unternehmensführung. HHL Leipzig Graduate School of Management.

The establishment of the strategy of cash flows management requires conducting complex activities and obtaining accurate information on the company's activities. In order to define an effective strategy, it is necessary to analyze the current and forecasting activities of the firm and clarify the state of the firm, as well as what should be achieved in the future or in the current period.

An important part of the literary sources on the economy related to the study of cash flows is the assessment of bankruptcy and default risks according to the company's cash flows. Over the past three decades, the main cornerstone of the finance theory appears to be the risk concept. The default risk is the risk associated with financial markets. Many researches have been devoted to the formulation of credit risk theories and the development of models which would allow to measure this risk. The risk is considered to be a major factor impacting financial behavior and decisions. That is why a great effort is needed for such mobilization and use resources which leads to risk reduction. The credit risk is defined as "the degree of instability of the borrowed instruments and the quality of instability of the financed instruments induced by low credit capabilities and quality".¹³¹

It is generally considered that the companies having positive cash flows attract additional resources from the cash and capital markets, while those companies which have negative or inadequate cash flows are unable to attract additional funds and therefore are facing credit risk. Thus, the financial condition of the firm can be defined as its corrected cash position or full liquidity at any time. The given model confirms that the bankruptcy possibility depends on liquidity resources. If the current cash flows indicate the financial position of the corporation, then based on past and current flows, it is possible to predict the firm's bankruptcy time¹³² (2).

The investigation carried out to determine corporate bankruptcy has confirmed that the bankruptcy risk appears to be a function of cash flows, the higher is the net cash flow, and the lower is the risk of bankruptcy¹³³. The

2014. CASH FLOW MANAGEMENT. BDC VIEWPOINTS STUDY. Research and Market Intelligence at BDC. 2014. https://www.bdc.ca/en/Documents/analysis_research/CashFlowManagement_Apr2014.pdf

¹³¹ Evaluating Credit Risk Models by Jose A. Lopez, Marc R. Saldenberg/ FRBSF Working Paper No. 99-06

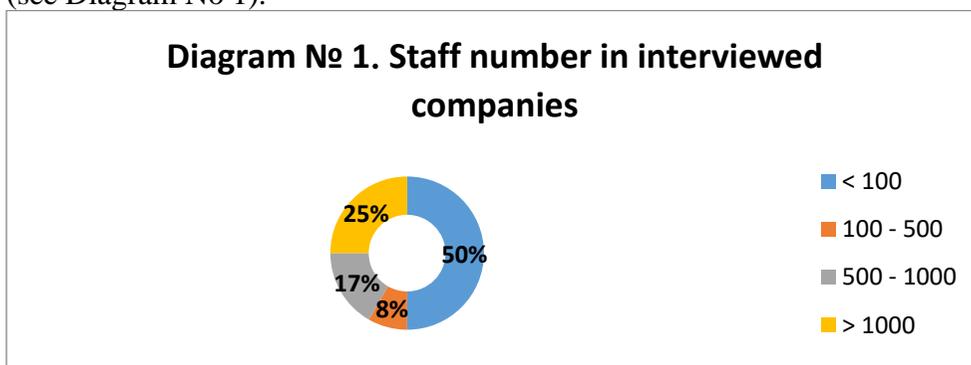
¹³² Gentry, J., P. Newbold, and D. T. Whitford, 1985, Predicting Bankruptcy: If Cash Flow's not the Bottom Line, What Is?, *Financial Analysts Journal* 41, Casey, C., and N. Bartczak, 1985, Using Operating Cash Flow to Predict Financial Distress: Some Extensions, *Journal of Accounting Research* 23., Aziz, A., D. Emanuel, and G. Lawson 1988, Bankruptcy Prediction - An Investigation of Cash Flow Based Models, *Journal of Management Studies* 25.

¹³³ Cash flow excellence (Studie zu Cashflow-Planung und -Reporting als Grundlage einer cash-orientierten Unternehmenssteuerung). Cash flow management (BDC view points study

examinations have also been conducted which reflect the management of cash flows and provide the information on their potential improvement ¹³⁴(4). Based on these studies, it can be concluded that the management of cash flows helps the company to reinforce its liquidity, optimize and achieve the estimated target values. The automation of this process is considered to be a potential of improvement in reporting preparation, leading to spending less resources on data processing. The cash flows can be planned in a range of various time: short term, average term and long term. The planning of working capital and balance is the prerequisites for planning the high quality cash flows.

After the consideration of international business practice, it can be concluded that the cash appears to be a necessary component of any business. The management of cash flow is a changeable process, including several important parts: human resources, financial indicators, management techniques and the relevant technological level. The successful business is due to the optimization of cash management. Even the profitable business may face the danger of bankruptcy, especially when the business belongs to fast growing or seasonal industry.

The study of Georgian business practice in cash flow management has been conducted in the following areas: the topicality and purpose of the cash flows reporting; the methods for cash flow reporting, the frequency, instruments and automation quality; the value and quality of cash flow forecasting, as well as the indicators for efficient management of cash flows. About 30 companies have been studied to look at the current situation in these areas which belong both to the sectors of economics service and industry. The classification of the surveyed companies was performed according to the number of personnel employed which included from 50 to 1.000 employees (see Diagram No 1).

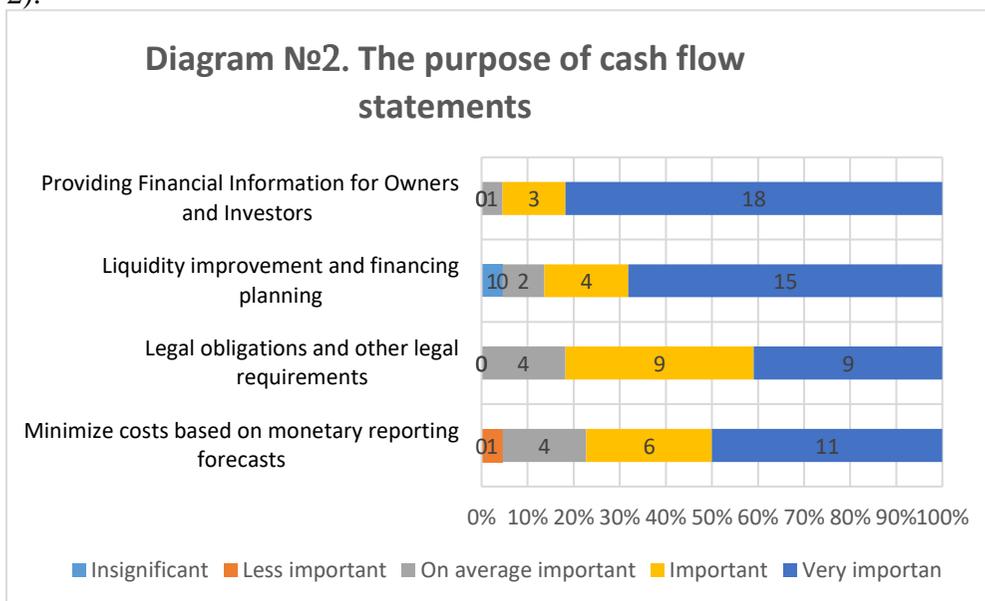


research and market intelligence at BDC). Default probability for the Jordanian companies: a test of cash flow theory“ R. Zeitun, G. Kian, K. Keen, 2007.

Topicality and purpose of reporting of cash flows

The respondents were asked to assess the following four parameters from the smallest to the most important, using a five-point scale: Providing financial information to owners and investors; the improvement of liquidity and the financial planning; legislative and other legal requirements; the minimization of costs based on reporting and forecasting.

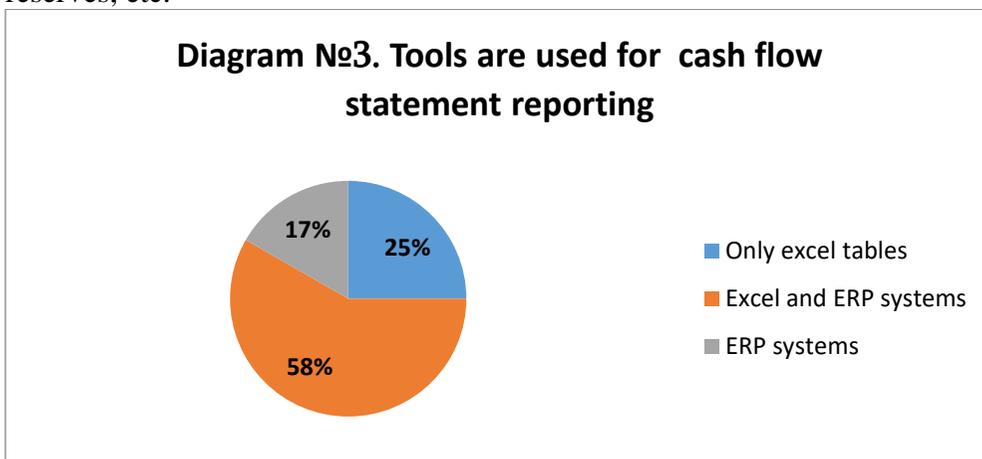
The results of the survey have shown that the difference from international indicators is very insignificant and "the providing financial information to owners and investors" is considered to be the major motive for the creation of cash flow reporting in Georgian business-practice. The 82% of respondents assessed it very significantly, 13% - significantly, while 5% of them thought that at the financial reporting, it had an average value. Due to the difficulties associated with the capital financing, the companies are facing a big challenge which means to justify funding the opportunity of own liquidity and internal financing for investors. Also, the improvement of liquidity and the financial planning have a great importance (see Diagram No 2).



Based on the legislative and other legal requirements, although the above parameters in itself mean the need for the providing information, the representatives of the companies do not think it is significant. Thus, for the respondents, the main purpose of cash flows reporting is to inform owners and investors, as well as improve planning and efficiency; and the purpose of the compulsory procedure required by the legislation is less important.

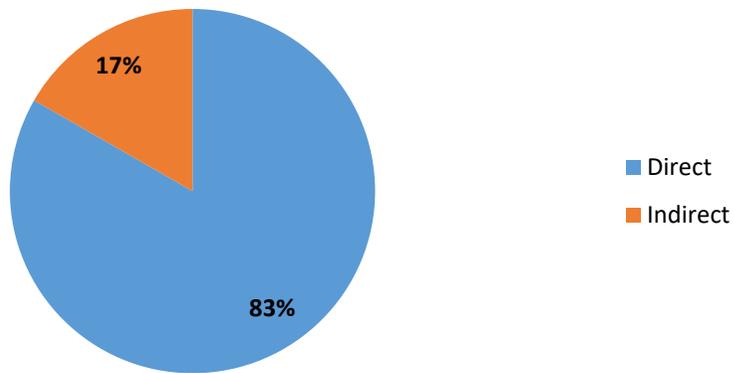
The methods of cash flow reporting, the frequency, the quality of instruments and automation

Cash flow reporting can be used both for internal and external purposes. As for reporting, it depends on the quality of automation. In this regard, of course it is possible to note that the Georgian corporate market has quite good position. The 25% of surveyed respondents think that the system is fully automated and 75% - partially. It will not be surprising that the level of automation together with the growth of the company will be much higher. As for the instruments used during cash flow reporting, the 58% of companies use networks and ERP systems jointly. The prognosis is mechanically performed on the base of Excel tables (50%). In the 28% of companies, the given process is partially automated, which implies the combined use of ERP system and Excels, while the full automation and the reporting based on ERP system are performed only in 17% of companies (see Diagram No 3). The forecasting of cash flow reporting is the basis for the indicative plan. Also, the forecasting allows the elimination of cash flow reduction trends which will provide the search for additional financing, the change in the terms of discretionary expenses, the decrease in the expenditures, and the provision of sufficient cash reserves, etc.



Also, the methods for the processing of cash flows are important. The majority of the surveyed companies, which makes up 83.3%, prefers the direct method, while only 16.7% use the indirect method (see Diagram No 4).

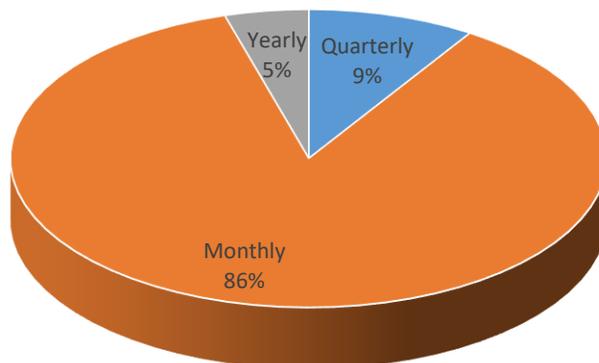
Diagram №4. Methods used to generate cash flow statements



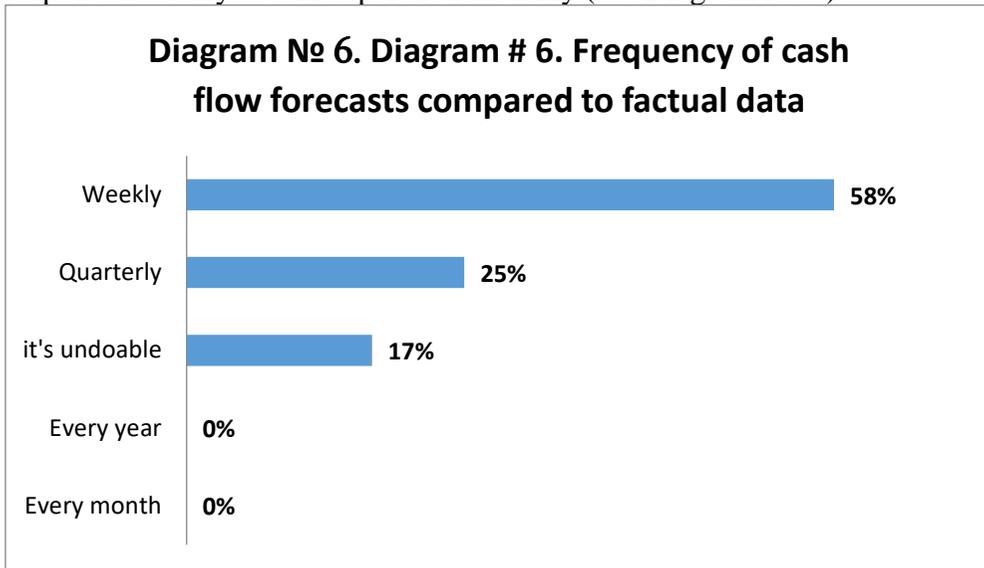
It is important to understand that, along with the cash flow reporting, for successful business, the analysis of key indicators (KPI) has no less importance which appears to be the supporting instruments of cash flow management.

As a result of the survey, it has been established that most of the companies, which comprise 86%, perform the monthly processing of cash flows factual data, while 5% of the companies are preparing the main indicators quarterly (see Diagram No 5).

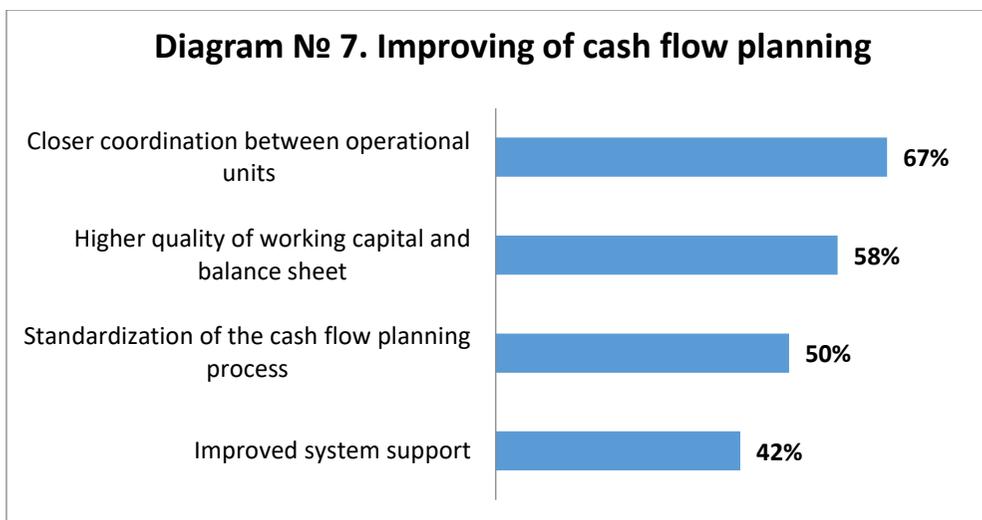
Diagram № 5. Statements of cash flow reporting periods



At the same time, it should be noted that the predictions have given the opportunity to assess the successes and efficiency by the comparison with factual data, as it may be possible to define and correct the failures in order to make the subsequent periods more beneficial and successful. In the Georgian business practice, the companies are well aware of the importance of the comparison of the forecasting with the factual data and 58.3% of the respondents carry out this operation monthly (see Diagram No 6).



In general, the methods used for the analysis of cash flows (this issue was discussed above) and for prediction coincide with each other. The respondents have expressed their dissatisfaction with regard to the quality of forecasting. In their opinion, the main factor of quality improvement appears to be the closer coordination between operational units, leading to a high level (58.3%) of working capital and balance planning (see Diagram No 7).



Key financial indicators of the effectiveness of cash management

There are several indicators that are used to assess the companies performance in economic literature and practice, namely: FCF (Free Cash Flow) that is the net position of cash flows from operating, investment and financial activities; EBITDA (Earnings Before Interest, Taxes, Depreciation and Amortization) that is a non-profit interest rate without any tax deduction or depreciation; ROCE (return on equity) that is calculated as net profit margin to equity; EVA (Economic Value Added) that is the net profit excluding alternative capital cost of the capital.

The assessment of the efficiency of the company by means of net cash flow is based on the fact that just the net cash flow gives the opportunity for investment or distribution of dividends for the profits expansion. The FCF are the most efficient way to determine the company's short-term and long-term perspectives. Besides assessing the efficiency rate, it has turned out that the net cash flows discounted in Georgian business practice are actively used to evaluate the value of the company. In this regard, 55% of the surveyed companies are using discounted cash flows. It is noteworthy that the assessment of companies with discounted cash flow is mainly used for the investment and in case the company is at the initial stage of its activities. In addition, the main flow of income should be received in the future. This gives us the basis to assume that Georgian companies have long-term vision and relevant strategy of operation.

The research has confirmed that about one-third of companies in the Georgian business practice (31.8%), regardless whether or not they perform the minimum cash control, have a surplus cash balance on the account. It is possible to maximize profit on the above mentioned funds. Only 27% of the surveyed companies receive benefit from the money deposited in the bank. It

is noteworthy that proceeding from Georgian financial sector, the only convenient way to receive benefits from the cash flow appears to be a banking sector. Before the demand offered by the banking sector, based on the opportunities of the transferring money from the deposit structure and a current account deposit, as well as its refund, the companies characterized by a minimum required level of the cash and having presented this level, should receive the benefit. However, as the survey has shown, this does not take place. From 77% of the companies that have the minimum required level of money, only 27% receives the benefit, mainly those companies that regularly have excess cash flows.

Proceeding from the above-mentioned, it can be said that the cash flow reporting is a very important issue in both international and Georgian business practice and the care of its development should constantly be on the agenda.

Conclusion

Thus, it can truly be said that the cash flow management is a necessary condition for successful business. The sustainability and creditworthiness of companies are largely dependent on a comprehensive reporting-planning system of cash flow that promotes not only the optimal use of internal financing power, but also the timely promotion of suspicious issues and adequate reaction on them. The harmonization of financial growth and the loss depends on this system, as well as the elimination of the reduction of cash flow risk. For this purpose, it is necessary to operate and manage efficiently the cash flow. The management of cash flow helps the company to reinforce liquidity, optimize and achieve estimated target values.

The conducted survey reveals the growing importance of cash flow in Georgian business practice which has the potential for more development.

Based on the research, the main approaches and challenges of Georgian companies related to the management of cash flow are evident. There are three main problems in the management of cash flow in Georgian companies: low accuracy of forecasting cash flow; technological low level of management; and the lack of measures to effectively manage cash flow (failure to use the short-term surplus cash flow in financial activities, minimizing alternative expenditures).

Through the solution to these three main problems, the Georgian companies can correctly manage the cash flow and see the real picture in this regard. Considering all the above mentioned, the practical and theoretical sides will promote to discover the problems and hidden opportunities in Georgian companies, to make the right decisions, and to achieve further development.

References:

1. Allman-Ward, M., & Sagner, J. (2003). *Essentials of managing corporate cash*. New York: John Wiley & Sons, Inc.
2. Aziz, A., Emanuel, D., & Lawson, G. (1988). Bankruptcy Prediction - an Investigation of Cash Flow Based Models, *Journal of Management Studies* 25.
3. Cash Flow Management. BDC Viewpoints Study. Research and Market Intelligence at BDC. 2014.
4. https://www.bdc.ca/en/Documents/analysis_research/CashFlowManagement_Apr2014.pdf
5. Casey, C., & Bartczak, N. (1985). Using Operating Cash Flow to Predict Financial Distress: Some Extensions, *Journal of Accounting Research* 23, 384-401.
6. Clancy Tom, Carl Stiner, & Tony Koltz (2002). *Shadow Warriors: Inside the Special Forces*. New York: Putnam.
7. Cohen Andrew, & Granatstein, J.L. (1998) eds. *Trudeau's Shadow: The Life and Legacy of Pierre Elliott Trudeau*. Toronto: Random.
8. Evaluating Credit Risk Models by Jose A. Lopez, Marc R. Saidenberg/ FRBSF Working Paper No. 99-06.
9. Gentry, J., Newbold, P., & Whitford, D. T. (1985). Predicting Bankruptcy: If Cash Flow's not the Bottom Line, What Is? *Financial Analysts Journal*, 41.
10. Meidenbauer, Jörg (2004) ed. *Discoveries and Inventions: From Prehistoric to Modern Times*. Lisse: Rebo,.
11. Quinn, M. (2009). Forget about profit, cash flow is king. *Wall Street Journal*, accessed July 15, 2012, from <http://online.wsj.com/article/SB10001424052970204524604576609740825745286.html>.
12. Rigby D. *Winning in Turbulence*, Harvard Business press.
13. *The Art of Cash Management*. inc. com.
14. magazine.<http://www.inc.com/magazine/19981001/1019.html>.
15. Yong-Un Lee (2014). *Wertstromdesign als Instrument der wertorientierten Unternehmensführung*. HHL Leipzig Graduate School of Management.
16. Zeitun, R., Kian, G., & Keen, K. (2007). Default probability for the Jordanian companies: a test of cash flow theory”.

Legal Regulations on the Initial Impossibility of Performance

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Abstract

The present article discusses the legal consequences of non-performance of the agreement as the act oriented on performance. Cases, circumstances that make it impossible for debtor to perform the conditions agreed in the treaty, basic obligations, as a condition excluding the guilt, generate grounds excluding or mitigating liability (considering the form of the guilt). Types of force-majeure and impossibility of performance are listed and discussed.

The main part of the article concerns the initial and subsequent impossibility of performance, the difference in determining the validity of the treaty between them in terms of legal regulations. The question arises whether these two, absolutely contradictory cases, make legislative inconvenience.

The purpose of the article is to provide correct answers to all questions raised in the article. In order to provide answers, the article is compiled by a comparative legal research in connection to the questions raised.

Keywords: Treaty, releasing from liability, impossibility of initial performance, impossibility of subsequent performance

Introduction

Contractual freedom is one of the major and most important achievements in modern obligatory and judicial relations. The desire of the public to regulate issues arising on the way of life, on the basis of a private agreement, is given a great freedom and desirable ground by private autonomy consolidated by norms of Civil Law. In accordance with the part one of the Article 319 of the Civil Code of Georgia, “subjects of private law can freely conclude treaties and define the contents of these treaties under the law (1,134) and the main point and purpose of the treaties signed under the law is to perform them. Freedom of signing a treaty does not mean the freedom of its performance, since the modern law and order recognizes the obligatory nature of the treaty and provision of their performance by rule of the court” (4.23).

The Article 1134 of the Civil Code of France provides the well-known formulation - legitimate treaties are law for persons signing it (2, 1134). That is, the scope, agreement of the treaty itself, which the contracting parties have put into the contractual framework have already the force of the law.

“The law provides the legal authenticity, protection and legal compulsion for agreement performed within the framework guaranteed by the law. Contractual freedom exists only within a defined scope and to a certain level, and the scope and the level are defined by imperative norms” (12,263). It should be noted that the disposable norms in the legally established treaty already have an imperative nature and the power of law is given to the contractual parties. According to the accepted opinion, “the law is protection and its restriction at the same time.”

Like in the countries of the continental law system, in the reality of Georgia, the Civil Code is the act oriented on performance. Its entire organism, both general and private, is based on performance mechanisms (6,285). Principle of Treaty Supremacy - “Pacta sunt servanda” - is a fundamental division of all laws and order (6,296), which imperatively establishes the obligation of performance of the contractual obligations for ensuring the stability and contractual equilibrium of civil circulation. However, a number of circumstances may arise in the practice that make it impossible to perform the basic obligations by the debtor, which, as condition excluding the guilt, generates grounds excluding, or mitigating liability (considering the form of the guilt).

Types of Impossibility of Performance

The problem of impossibility of performance is very important in all developed legal systems. Natural disasters, unforeseen political or economic factors, social changes - inflation, economic crisis, armed conflicts, embargo, prohibition of export, failure of procurement source, etc. may impede or make impossible to perform the obligation. For example, impossibility to perform the obligation may be caused by a destruction of a specific subject, death of the debtor or incapacity, failure of the source of supply, natural disasters, strike, boycott, lockout, suspension of the labor process ... (10,105-106).

The doctrine of impossibility of performance is derived from Roman law. The obligatory law of the Old Rome was considering such concepts as “the impossibility of performance”, such as “occurrence of impossibility of performance”, “acting with objective factors, without the will, force-majeure”, “possibility of performance change”, “alternative obligation”, “contractual risk distribution” (5,358-359), etc. which are considered as restrictive circumstances of contractual liability.

Old Roman Law establishes the legal definition of the obligation as follows: “The obligation is a legal bond by force of which we are obliged to

perform something in accordance with the laws of our country” (5, 361) and considers the obligation “more as possibility of a creditor than a debt of a debtor” (5, 362). But it gives the contractor a possibility to “avoid” such severe kind of liability, while according to the Old Roman Law, the liability was not imposed on the debtor in case when “there was a circumstance caused by force-majeure or irrespective of the will of a contractor (beyond his/her control)”... The lawyers were also talking about “force-majeure or overwhelming circumstance that cannot be fought due to human weakness” (5, 409). In addition, the concept of obligation of force-majeure (floods, earthquakes, death) comprised also legal cases, namely: actions of other persons such as, invasion of the robbers or escape of the slaves. (5,409).

The doctrine of impossibility was mainly developed by the German Civil Law Science. That is why it is given special attention in the positive legislation and legal doctrine of Germany (10,104). The concept of impossibility of performance is developed in details by the 19th century German scientists, Mosman and Winsheid (9,178). Specifically, the concept is based on the Doctrine of Friedrich Mosman which distinguished types of initial and subsequent, absolute and relative, objective and subjective, natural and legal, permanent and temporary, complete and partial performance (10,107).

This concept of Mosman, which distinguishes types of impossibility of performance, is shared to some extent by modern civilized doctrine which mostly allocates such types of impossibility as: subjective and objective impossibility of performance, physical and legal impossibility of performance, initial and subsequent impossibility of performance...

Attempt in order to distinguish circumstances that make it impossible to perform the contractual obligations, hinder performance, and finally eliminate the goals of the treaty, are needed only for bringing the abovementioned circumstances into the system, granting more clear content and typification (9, 209).

Listing the circumstances of impossibility of performance, due to the specifics of the treaty, is rather important owing to the fact that the parties may have an opportunity to indicate only the circumstances of the probability of occurrence which is greater in the given relationship (11,374-375). In addition, the division of the impossibility into types finally leads to the outcome which implies determination of correctness of liability for each particular case. In other words, it determines to what extent the liability of a debtor shall be mitigated, or whether he/she shall be released from it completely, or whether the specific type of impossibility of performance gives possibility of mitigation or exclusion, because everything depends on the nature of the impossibility of performance (11,371). In addition, the principle of Treaty Supremacy strengthens the provision in which the contractual obligation for

the party is binding even in case of extreme complication (10,70). Therefore, the impossibility of performance and non-performance was made as an exception of the principle of absolute liability (10,48).

Initial and Subsequent Impossibility

It is especially important to consider initial and subsequent impossibility in details, since not only the issue of determination of damage and imposition or non-imposition of liability is identified, but we may talk about the definition of authenticity of treaty.

The Georgian Legal Doctrine considers the initial and subsequent impossibility in the following way: “Such division is essentially dependent on the time factor. If performance of obligation was impossible from the moment of its conclusion, such a performance would be initially impossibility. And if it becomes such afterwards, then we will have the subsequent impossibility. Both of them may exist in the form of subjective and objective impossibility (11,377).

Almost the same opinion was shared by Zweigert and Koetz: “The contradictions that make it impossible to perform the treaty, according to the German Civil Code, differ from “next” resistance which was made later. During “subsequent impossibility” of performance of treaty, like of “initial impossibility”, neither the objective nature of non-performance has decisive importance when it is basically impossible to perform the treaty, nor the subjective nature of non-performance when a particular debtor cannot perform the treaty (9,180).

If the initial and subsequent impossibility is substantially distinguished by the time factor, then the issue shall be raised in the following way: what does this difference give us, what result does such division of impossibility of performance lead us to?

We may consider as subsequent impossibility of the treaty any case, force-majeure circumstance, that makes performance impossible and not aggravating. These are cases that cannot be taken into consideration in advance (11, 372). These circumstances can be Invincible power – force-majeure circumstances, as well as the abovementioned types of impossibility of performance.

As for the initial impossibility of performance, it is the basis for the invalidation of the treaty if the absolute non-performance, impossibility, failure to perform the basic obligations agreed by the parties is discussed at the moment of concluding the treaty. When the conclusion of the treaty becomes absurd due to the fact that the obligation is predestined for non-performance at the beginning of the treaty, then the fact of concluding the treaty itself lacks any legal or practical sense. This is justified by the Article

91 of the Civil Code which states that “if the agreement is impossible from the very beginning, such agreement should be considered as invalid” (1,70).

The same thesis on obstacle is developed by Uniform Justice in the form of the Vienna Convention, since the initial impossibility of the treaty strengthens the strict liability principle, but at the same time, in case of appropriate preconditions, recognizes the possibility of excluding liability. In particular, under the Article 79 of the Vienna Convention, the Party shall not be held liable if he/she proves that at the stage of treaty conclusion, there is a possibility of reasonable consideration of origination of non-performance (3, Article 79). The Article 79 of the Vienna Convention applies only to the obstacles arising after conclusion of the treaty, since the initial impossibility of the treaty affects the authenticity of the treaty and this issue, according to the Article 4 of the Convention, is excluded from its sphere of regulation. Thus, the Article 79 does not include regulation of the impossibility of performance (10, 59).

It is also interesting that this belief recognized in the legal doctrine on the initial impossibility that directly threatens the validity of the treaty is somewhat contradicted by the legislative exception that is made by the civil law due to the principle of private autonomy, when the contractual parties are given the opportunity to agree on the legal consequences of non-performance directly while concluding the treaty, namely, limit or exclude their liability for non-performance of obligation. More precisely, according to the new edition of the Article 410 of the Civil Code, “Preliminary renunciation of the right to claim compensation for damages due to a violation of the obligation shall be permitted if it is envisaged by law or by agreement of the parties” (1,162).

As noted above, the fact that on one hand, in civil doctrine, only preliminary unforeseen and debtor unrelated contradictions are recognized as releasing from the liability (which could not be foreseen in advance not only for the ordinary person, but the debtor, who asks for the release of the liability on this basis. Because, if the debtor knew when concluding the agreement that the circumstances will occur, which will cause impossibility of performance of obligation, in this case, he/she will not be released from the liability (11, 272-273)) is interesting and noteworthy. Whereas, on the other hand, it is possible to speak at the moment of concluding the treaty and to provide as wording of the treaty circumstances excluding liability. Furthermore, if in one case (subsequent impossibility of performance) imprevisio (9,216), absence of “foreseeable damage” is a basis of releasing from damage recovery; in other case, exactly the “preliminary impossibility”, “preliminary consideration”, and contractual wording releases the debtor from the liability.

Naturally, the question arises: Does these two, absolutely contradictory cases in legal terms, make legislative embarrassment? Moreover, the Georgian Civil Doctrine assesses quite negatively such possible contractual wordings.

Professor Besarion Zoidze notes: “A special attention is given to this issue in the international commercial practice. The party may at any time refuse the request as this is his/her immanent rights, but wording this as condition in form of agreement is not permitted. Such an agreement undermines the organic unity of the obligation. The obligation, the substance of which is realized together with liability, shall remain without it according to this agreement. Such wordings result in the distortion of civil categories. No one forbids the creditor to refuse the right, but it is inadmissible for this agreement to become an obligation..... Such an agreement may result in an obvious imbalance between the obligations imposed by the parties and to promote unequal circulation (11, 459-460).

This approach is shared by David and Tea Sukhitashvili in the book titled “Civil Legal Liability”. According to the authors, “In connection to the issue, the problem is made by the Article 410 of the Civil Code, which establishes completely unfairly big privileges for one party of the agreement and in fact imposes additional obligation to another party. While the direct purpose of the Civil Code is to promote the normal development of civil circulation and to protect the contractual parties from preliminary unjustified agreements” (7,298-299).

However, according to Ortman's “psychological theory” presented by Konrad Zweigert and Hein Koetz, the content of thinking of parties is important at the moment of signing the treaty. More precisely, he was demanding the ideas of future developments of events (which can't be realized in future) to belong not only to one side, but to be shared by both parties. Exactly these ideas shared by both parties or the idea introduced to the other party that does not cause his/her resistance, according to Ortman, is the basis for making a deal (9, 213). That is, according to Ortman's theory, the events that can't be realized in the future may be taken into consideration when concluding the treaty that causes mitigation or exclusion from liability.

At first sight, from a legal point of view, it is really difficult to imagine that the law gives the opportunity to contractor to avoid liability in advance during conclusion of the treaty. According to this approach, similar treaties may be considered one-sided, unrealistic, unenforceable as if during the conclusion of the treaty, the party is legally authorized to take into account and to put as condition wording of the treaty circumstances restricting and excluding from his/her own liability; according to this opinion, he/she hallmarks non-performance of such treaty and puts the other contracting party in unequal conditions (8.4). But this article should not be understood as an anarchic regulation that allows the parties to have extraordinary powers beyond the legislative framework as non-performance of obligations and means to avoid liability, as well as to put the contracting party in the unequal

conditions. This norm does not include the absolute, unmatched, unconditional bases of the release from liability (8,5).

According to the order of this law, the pre-contractual wording shall apply only to exceptional cases, which could be a force majeure, impossibility of performance, obstacle ... Obviously, these types of cases cannot be foreseen in details, thoroughly in advance, but it possible to foresee with more or less accuracy the subsequent possible difficulties and the legal consequences of these difficulties by considering the type of the treaty. At the same time, as K. Zweigert and H. Koetz explain - "The solution of the difficulties of performance of the treaty at first is largely dependent on how the parties distribute the risk of occurrence of similar circumstances by taking into consideration the type of treaty concluded (9,213). If while concluding the treaty, the issue of risk distribution between contracting parties was correctly agreed within the framework of the Article 410 of the Civil Code, there shall not be a problem of imbalance of the rights of parties, of being in unequal conditions. In addition, as stated above, the law does not permit the unlawful, unconditional, absolute basis for the release of liability of the contracting parties. It is inadmissible to make such agreement on the essential condition of the treaty, non-performance of which constitutes a substantial breach. The basic obligation of the treaty participants is to comply to the essential condition defined by the parties or the law (3,292).

The great importance to the solution of this issue is given by the form of guilt. In accordance with Part II of the Article 395 of the Criminal Code of Georgia, "A preliminary agreement of the parties on releasing the obligor from liability for damages in case of intentional breach of an obligation shall not be allowed" (1,155). That is, the intentional guilt, as an imminent principle of civil liability (7,118), excludes the possibility of releasing from liability. However, the law allows mitigation or/and exclusion only in simple and certain cases of gross negligence.

Conclusion

Thus, according to the legal norms, scientific researches and opinions discussed in the article, it is revealed that though the new edition of the Article 410 of the Civil Code allows the possibility to limit or exclude their liability for non-performance of the obligation which includes elements of initial impossibility of performance, it should not be regarded as such heavy condition of the deal, which is predestined for non-performance upon the conclusion of the treaty (which, of course, poses a threat to the validity of the treaty and challenges its legal strength). This is because as it is considered in the work, such preliminary wordings do not include absolute unconditional bases of release from liability. Since these wordings refer only to exceptional circumstances, it allows to correctly distribute the risk between parties, and,

not only cause imbalance between them and putting in equal conditions, but also give to the contracting parties the advantage to define their rights and obligations more specifically, in details, by considering the type of treaty at the initial stage of treaty.

References:

1. Civil Code of Georgia.
2. Civil Code of France.
3. Vienna Convention.
4. Boling H., Luttringhaus P, *Systemic analysis of the basics of the individual requirement of the Civil Code of Georgia*, Bremen-Tbilisi 2004-2009.
5. Garishvili M. Khoperia M. *Roman Law*, Tbilisi, 2013.
6. Zoidze B. *European Private Law Reception in Georgia*, Tbilisi, 2005.
7. Sukhitashvili D. Sukhitashvili T. *Civil Legal Liability*, Tbilisi, 2016.
8. Tabatadze T. *Limitation of contractual liability in the tourism treaty*, journal “Academic Herald” N4 Tbilisi , 2015.
9. Zweigert K, Koetz H, *Introduction to Comparative Law Studies in Private Law Sphere*, Volume 2, 2001.
10. Chitashvili N. *Adjusting the Changed Circumstances for Performance of Obligations and Possible Secondary Requirements of Parties*, Tbilisi, 2015.
11. Chanturia L., Zoidze B., Ninidze T., Shengelia R., Khetsuriani J., *Commentary of Civil Code of Georgia, Book 3*. Tbilisi, 2001.
12. Chanturia L. *Introduction to the General Part of the Civil Law of Georgia*, Tbilisi, 1997.

Descriptive and Explanatory Principles: Investigation of Work Sets

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Abstract

Work peculiarities are viewed based on methodological aspects of the general theory of set. Descriptive and explanatory principles and corresponding empirical data were discussed. In particular, the notion of work subject, specific interaction between variables, hierarchical structure of sets, forms of work sets, general and work values, organizational culture, interrelation between work satisfaction and life satisfaction, and established mental mechanisms that causes the formation of satisfaction feelings were analyzed.

Keywords: Uznadze general theory of set, work sets, work values, work/job satisfaction

Introduction

According to D. Uznadze General Theory of Set (1998), set is the main determinative factor of individual's behavior and it constitutes psychic processes. Set formation, in turn, is determined by needs and concrete situations. As for work activity, it is conditioned by the functioning of work set systems. Theoretical and practical value of the research of these systems is apparent.

Productive study of work sets implies taking into consideration relevant descriptive and explanatory principles. The present article aims at discussing these principles exactly.

Methodological Principles

Descriptive studies aim at providing a full picture of any situation, person or event, as in reality, and show how they are interrelated. Though there might be some shortcomings, in particular, such an approach does not give explanations on, for example, why the event happened. Unlike this,

explanatory studies tend to explain the described information which is reflected even in the name of this type of research.

The Interactionist Perspective

To examine work behavior, it is important to understand that this activity occurs within the particular situation or context. However, the behavior is always a result of *interaction* between individuals' needs and actual situations. To predict behavior in organizational setting, we should examine the content and structure of these antecedent variables that determine formation of the particular behavioral set. In the course of empirical study, specific gravity of these causal factors is established.

Subject of Work

According to the author of general theory of set, to comprehend work activity, the peculiarities of the concept "subject of work" should be foreseen. D. Uznadze admits that in the course analysis of subject's work activity, the will behavior qualities are taken into consideration and discussed. He noted that without the will, the work activity could not be developed as a full value. On the other hand, the will would not be able to achieve human developmental level if work activity does not create perfect conditions for it. Thus, the subject of work does not react passively on job and organizational influence, but displays active personal position in organizational "life". If suitable job and organizational conditions for workers is created, then their majority adequately realizes significance of their work behavior and they will not be alienated from this activity.

Hierarchical Structure of Sets

The principle of the set's hierarchical structure was developed by S. Nadirashvili. Human activity levels are separated here: A) The first level is an action of individual. When organism is transformed into individual, it becomes a "functional system." The interaction with environment proceeds in a form of "individual-condition." Here we deal with practical and physical forces of set realization; at this level, playing, entertainment and other analogical forms of behavior takes place; B) In the process of interaction with environment, we often experience loss of balance and here an aroused state of "objectivation" takes place. In this case, cognitive needs are satisfied and the interaction takes the form of "subject-condition"; C) On the highest level of activity, the need is possibly to be satisfied in the future and the link "subject-subject" occurs.

In a whole, at the first level (individual level), fixed work facilities and habits effectiveness are present; at the second (subject level) - cognitional operations and specificity of decision making, and at the third (personality) - peculiarities of formation and change of valuable work sets.

Work sets

Types of Work Set

Work activity is certainly one of the most significant values. The workers' evaluative positions towards some dimensions of work behavior are work sets. We focus on the following types of work set: work satisfaction, work involvement, and organizational commitment. The importance of *work satisfaction* is obvious. Work satisfaction is the person's positive position towards his/her job and job experience. The managements should be particularly interested in their employees' job satisfaction for at least the following reasons: a number of research indicates that the work satisfaction feelings contribute to general mental health; workers with high work satisfaction show lower rates of shirking as well as turnover; specifically, work satisfaction is strongly and consistently related to an employee's decision to stay or leave the organization. As a result, it is important to note that there are links between job satisfaction and work behavior which is reciprocal. In addition, efficient/effective performance causes satisfaction and vice versa.

The criteria for estimation of human resources effectiveness in organizations are productivity, absenteeism, turnover, and work/job satisfaction. Unlike the previous three criteria, work/job satisfaction is unique because it rather represents work set than work behavior. Researchers with humanistic values argue that work satisfaction should be a legitimate objective of an organization. They argue that organizations have the responsibility to provide their employees with jobs that bring challenge and are intrinsically rewarding.

Work involvement is the degree to which a person psychologically identifies himself/herself with his/her job experience and considers perceived performance level to be important to self-worth. The workers with a high level of job involvement strongly identify themselves with their work activity and really care about it. At the same time, high level of work involvement relates to fewer absences and lower resignation rate, and it predicts the lower level of turnover and absenteeism more consistently.

Organizational commitment is an employee's identification with the particular organization and its goals, his/her wishes to maintain and keep his/her membership in this organization.

Goal Setting

In general theory of set, together with unconscious processes, the property of reason ability is also underlined. In the determination of work activity, the decisive role is put on goal setting. Taking into account temporal parameter, two types of set can be indicated in this regard: *prospective* (orientation on results of future event) and *situational* (orientation on results of current event). In the course of the work behavior, achievement of some

final goals by workers is possible only through achievement of intermediate goals. It is clear that this process requires from the worker adequate consciousness of instrumental significance of goals for the achievement of the common expected result.

Goal setting is the process intended to increase the work effectiveness by specifying the desired results which the person should realize. Here, we focus on the significance parameter of goal setting. The goals can be implicit or explicit, vague or clearly defined, self-imposed or externally imposed. Whatever their types are, they serve to structure the worker's time and effort. It is worth noting that the goals should be challenging; if they are too easy to achieve, workers may procrastinate. On the other hand, they may not accept a goal, if it is very difficult and, thus, not even try to challenge it. Moreover, the goals should be clear and specific to be useful for directing efforts. Thus, the workers will know what it expected to accomplish. According to empirical data, clear and challenging aims lead to higher work productivity rather than general goals. Nonrealistic high goals that cannot be reached may not be accepted and may lead to high productivity only in a short run. The goal setting can be used to effectively enhance creativity when such a goal is assigned to workers. In order to be creative, workers need to have their attention and effort focused on either a do-your-best or difficult creative aims. With clear and challenging goals, accordingly with functioning prospective work sets, the workers efforts are more likely to be focused on the job-related tasks, high level of job behavior, and achievement of the goals. The important factor that influences establishment of challenging goals is the workers self-efficacy which is the person's belief that he/she can effectively perform in concrete situation. It can be assumed that workers with high goals have higher self-efficacy than those who set lower goals.

Conceptions of Work Motivation

Motivation represents the forces within a person that determine the person's behavior in a specific goal-oriented manner. Workers' specific work motives have influence on their productivity. The basic motivational principle states that worker's performance is based on the level of their ability and motivation. Ability refers to a person's talent to perform goal-oriented tasks. This talent might include intellectual competences (verbal, spatial skills) and manual competencies (physical strength, adroitness). However, ability alone (regardless how intelligent, skilled or adroit per the worker may be) is not enough to attain high levels of work activity. The worker should also desire to achieve this level of activity. Basic work motivation processes are concerned with the issue of what drives job/work behavior, what direction it takes, and how to maintain high levels in this regard.

The conceptions of work motivation differ in their predictive and explanatory strength. *The need* conception of work motivation reminds us that individual differences are important and that our efforts will always be channeled toward survival before social fulfillment. Different people have different needs and desires. In regard to relationships between achievement and productivity, the need conception attempts to explain and predict work satisfaction. *The equity* conception of work motivation emphasizes that individual issues are a part of his/her surrounding, a product of what people that are around do. Individuals are social creatures, and they do not exist in solitude. Therefore, the quality of our work is determined by interpersonal relations as well. The equity conception is the strongest to predict absence and turnover behavior and it is weak when predicting differences in workers' productivity. *The expectancy* conception of work motivation raises motivation to a level on conscious decision. Peoples deliberately choose how hard to work based on the gains they expect to receive from the realized effort. If they do not see any benefit to be gained from the realized efforts, they will not be motivated. The expectancy conception is focused on performance. It has proven the powerful explanation of worker's preferences set by specific target objectives. Such goals can prevent an ineffective diffusion of efforts. According to the abovementioned data, clear and difficult goals lead to high levels of productivity. Goal setting conception of work motivation provides powerful explanations of this psychical process. *Reinforcement* conception of work motivation states that motivation is higher when people are rewarded on units of work activity as opposed to units of time. The reinforcement conception predicts reliable factors like quality and quantity of work behavior, persistence of efforts, absenteeism, and accident rates.

Significance of Environmental Factors

In the determination of work activity, the peculiarities of situational factors have decisive meaning. We have marked the following situational factors: physical (job conditions), social (interpersonal and intergroup relations), and imaginary (person's specific interpretation external conditions). The first two situations are objective, but the third is completely subjective. Besides, it should be noted that organizational settings, work set functioning, and work behavior are characterized by some levels of uncertainty and complexity. In this regard, stationary (deterministic) and probabilistic (risking) conditions should be taken into consideration. In stationary conditions, behavioral alternatives have identical results. In probabilistic environments, outcomes of behavior are characterized by some levels of uncertainty. As we see, the contexts of work set functioning and work behavior determination have fairly compound structure in some conditions. It

should be underlined that formation of concrete work behavioral set is determined by adequacy of imaginary situation.

Organizational culture represents a complex pattern of beliefs and expectations, shared by its members, which distinguishes this organization from other organizations. Organizational culture is composed of observed behavioral regularities, dominant values, norms, rules, philosophy, ideology and value sets. It includes some unity of variables that gives the organization its own unicity. Organizational culture has aspects that are subjective (ability, expectations) and objective (observed behaviors, organizational rituals). Thinking, talking, and acting are shared ways of members of organization. Organizational culture influences not only the behavior of its members, but also the way they perceive and interpret some events. Since new employees are socialized into organization, they acquire its culture. People become socialized into group as a result of their interactions with other members of this group. Through common social activities, new members learn the generalized totality of values, beliefs, and evaluative work sets common to all members of the organization as a social system. This socialization process makes it possible to control individual behavior and direct it towards the common organizational goals. One explanation for the development of any particular organizational culture is that this is a response to problems of external adaptation and it is also a necessary demand of internal integration. It is important to have in mind that formation of organization's culture is also influenced by the culture of larger society within which the organization is functioning. Organizational culture influences its employees' job behavior and their commitment to the organization. However, there are some evidence that organizational culture may be related to organizational performance. Finally, organizational culture can have tangible influence on its employees' moral behavior.

Value Relations between Work Sets

Value System

Value represent the belief shared among members of a group or society, concerning qualities thought to be desirable or esteemed. They contain a judgmental element in caring for people's ideas regarding what is right, good, and desirable. Values have content and intensity qualities. Content attribute says that a mode of conduct or end-state of life is important. The intensity attribute specifies how important it is. By ranking values in terms of their intensity, we obtain a value system. *Value system* is ranking of personal value according to their relative importance. This system is identified by the relative importance to such objects of values, such as motherland, freedom, equality, self-respect and so forth. Values are important regarding investigation of work activity because they help to understand work behavior

and work motivation. Six types of general values are identified: theoretical (importance of the truth), economic (useful and practical), aesthetic (form and harmony), social (human's dignity), political (power and the influence on needs and values), and religious (unity of experience and links with cosmos).

Work Satisfaction and Life Satisfaction

Possible relationships between work satisfaction and various work behavior as well as other outcomes represent particular interest. Usually, positive assessment occurs when work is in harmony with employee's values and needs. Here we bring two approaches in exploring work satisfaction: intrapersonal comparison and interpersonal comparison. According to *intrapersonal comparison principle*, the degree of satisfaction experienced by person results from some comparison between his/her standards and his/her perception of the extent to which these standards are met. The degree of satisfaction is the difference between the standard and what is actually received from job. The lower the difference, the greater the degree of satisfaction feeling. This principle is called intrapersonal because the comparison occurs at individual level. On the other hand, the basis of *interpersonal comparison principle* is the belief that people compare themselves to others in assessing their own feelings of job satisfaction. Rather than being intrapersonal (based on values and needs), this kind of comparison is made within a social setting, i.e. interpersonally. An individual observes others with similar job assignments and concludes on how satisfied they are. The person compares himself/herself with these people to derive satisfaction feeling, i.e. "we assess ourselves through our perception of others."

To turn our attention to the relationships between work satisfaction and life satisfaction, three exploratory principles are distinguished for correlation between work and non-work satisfactions in theory. The first is *compensation*. High satisfaction in one area (work, job) may compensate for less satisfaction (or dissatisfaction) in another area (non-work, out of job). The second principle is *generalization*: high satisfaction (or dissatisfaction) in one domain spill over into the other domain. Thus, one would expect roughly equal satisfaction in both domains. The third exploratory principle is *segmentation*. This principle postulates that social experiences in individual's life are segmented: the world of work and the world of leisure are psychologically separate. There is no definite empirical support for any of these exploratory principles, and each principle receives some empirical support. In a whole, it can be concluded that work satisfaction is one of the aspects of life satisfaction and one of the most valuable constituents of organizational behavior. Even if its links to good performance is not considered, work satisfaction is still very important for organizational management. At the same time, for those whose

work activity is central in their life interests, work satisfaction is more pronounced.

Conclusion

To understand work behavior in complex social settings, such as organizations, the principle of interaction should be taken into account. Both, person and situation characteristics, should be examined. *Interactionist* approach is increasingly important for understanding work activity and functioning of work sets. Moreover, in experimental conditions, specific gravity of causal factors should be established. According to the notion of *subject of work*, employees display active personal position in organizational activities and show good level of productivity in suitable job conditions. According to the principle of *hierarchical* structure of sets, effective investigation of work sets at the level of personality's activation should be carried out. The role of *situational* factors in the determination of work behavior has been researched less than the contribution of personality variables. We focus on imagery, stationary, probabilistic situations, and organizational culture as very important social settings for the formation of work sets and the determination of work behavior. *Work satisfaction* is one of the aspects of life satisfaction which also contributes to general mental health status. Researchers explore the factors that relate work satisfaction to different spheres of life.

References:

1. Charkviani, D. (2001). Psychology in industrial organizations. Publ.: Nathia, Tbilisi.
2. Charkviani, D. (2009). Theoretical and methodological problems of research psychological phenomena, Publ.: Universal, Tbilisi.
3. Charkviani, D., & Dzidziguri, D. (2002). Conceptual and practical criteria of evaluation professional activity. Journ. Psychology, 55-59, Tbilisi.
4. Lutens, F. (1995). Organizational behavior. McGraw-Hill, New-York.
5. Uznadze, D. (1998). General psychology. Publ.: Agmashnebeli, Tbilisi.

Enforcement of a Sentence

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Abstract

The topic of the current research is the enforcement of a sentence and all the characteristics and peculiarities related to it. The topicality of the issue is explained by the fact that without an actual enforcement of a sentence, some stages of the criminal process, like preliminary investigation, judicial inquiry and decision of criminal case, would lose their significance. Exactly, at the stage of enforcement of judgment, the court implements the control on correct and timely enforcement of the court verdict and starts realization of decisions related to direct enforcement of a sentence. Moreover, the topic of enforcement of judgment is interesting due to the fact that it is not limited to criminal legislation and judicial structure, but is also connected to the organizations, such as national bureau of investigation, bureau for enforcement of non-custodial sentences and probation, penitentiary, investigative bodies as well as other state structures which should finally accomplish the process of judgment enforcement. Herein, in case of direct enforcement of judgment of the court, the Law of Georgia on “Enforcement Administration”, “the procedure for enforcement of non-custodial sentences and probation”, and other normative act regulations should be taken into account.

Keywords: Sentence, enforcement, court, process, stage

Introduction

In the science of criminal law, there was a frequent attempt to exclude enforcement of judgment from the number of criminal process stages. For instance, A.I. Vishnevsky assumed that giving a verdict means that the work of the court has been performed, but enforcement of judgment is the act that should be carried out beyond the court, which is implemented by administrative bodies in compliance with special norms which exceed code of criminal procedure (Vishnevsky, 1950). As for T. N. Dobrovolskaia, it is true that she admitted the stage of enforcement of judgment in the criminal process, but she limited it to direct enforcement of judgment, leaving to the trial court

the solutions of those issues which turned up during the enforcement of judgment for special administration inasmuch as this administration exceeded criminal process, that is the criminal case was resolved eventually (Dobrovolskaia, 1979).

Despite the fact that views are different in relation to this subject matter, it is undeniable that the verdict is a document that should be enforced and it will not be implemented without interference with rights and freedom; therefore, it is important to keep efficient judicial control from the very beginning of the administration, and at every stage. It is also required by European Convention of Human Rights, the Article 13. In terms of enforcement administration, judicial means should ensure the fact that, on the one hand, enforcement is not procrastinated and requirements of the creditor are implemented quickly and thoroughly. On the other hand, the debtor, or the third person interested in it, should have the opportunity to protect himself/herself from interference as foreseen by the law. Enforcement system will never exit and work in an organized way unless there is independent and efficient justice (Shushke, 2011).

In accordance with the Part 14 of the Article 3 of the Criminal Procedure Code of Georgia, verdict is the decision of the first instance, appeal and cassation court, which finds the person guilty or not in committing the crime. According to the Paragraph “B” of the Article 2 of the Law of Georgia on “Enforcement Administration”, enforcement covers consummated incriminating sentence on criminal case about imposing a fine or/and confiscating the property of a physical person or/and legal entity.

The stage of enforcement of judgment is launched from the moment when the verdict comes into force and it involves judicial procedures and court decisions, which ensure the realization of judicial acts.

The issues of court judgment enforcement are regulated by the criminal procedure code of Georgia, chapter XXIV. According to the Article 279 of the above mentioned code, the verdict comes into force and is directed for enforcement as it is announced publicly. As for the verdict, it is in force as it is announced publicly – but if the case is without an oral hearing, it goes into force as the sentence is passed.

The Article 280 of the Criminal Procedure Code of Georgia makes more precise revision of direct enforcement regulation, particularly: 1. Direct enforcement of verdict/verdicts is an obligation of a court which made this decision. The order about enforcement of judgment attached with the copy is sent by the court to the body which is obligated to enforce it. 2. The body enforcing the judgment immediately informs the court which had passed the sentence about its enforcement. 3. If the verdict foresees disentitlement of a sentenced person’s state reward or military, honor or special title, the court

sends the copy of the verdict to the body which rewarded the sentenced person or granted him with military, honor or special title. 4. In case of imposing a fine and other part of property payment, enforcement paper is written for implementation. 5. If the court made decision to assign under-age child and any dependent of convicted imprisoned person to a relative, other person or relevant institution for solicitude, it informs the trustee body and the convinced person about this fact according to the residence of the child. 6. Resolution (verdict) about the termination of prosecution must be enforced immediately in the part which concerns the release of the prisoner.

Practical implementation of each paragraph of the above mentioned article implies formation of relevant acts by the court and sending them to different administrative bodies after verifying them in accordance with proper rules. In constitutional states, enforcement can be made only on the basis of the relevant document. Accordingly, enforcement norm and type is not the subject of agreement of parties, but their form and content should be determined at the level of law.

With passing the sentence by the court, the resolution on enforcement of judgment is simultaneously created, and together with the verdict, it is sent to the body which should enforce this or that paragraph of the verdict.

The process of composing the enforcement paper is especially noteworthy in the part of penalty and other property tax, in order to enforce the verdict. In order to enforce different kinds of financial or property duties right on time and efficiently, while making an enforcement paper by the court, there should be protection by the Law of Georgian law “Enforcement Procedure”. The Article 21 determined enforcement paper requisites, particularly in the enforcement paper, should be mentioned:

- a) Name of the court of body who gave this enforcement paper and made execution decision;
- b) Case because of which is given enforcement paper;
- c) The date of making the decision;
- d) Resolution part of the decision;
- e) The date of giving out the enforcement paper;
- f) The name and requisites of the creditor and debtor; also their personal ID numbers or identity numbers of tax payers, and other contact information of the body who gives out enforcement paper.

It is worth to pay attention to the Article 28 of the Law of Georgia on “Enforcement Procedures”, which is about the rule of fine as a means of suppression in case of mortgage. According to this rule, within 10 days after the writ of execution has been lodged with an enforcement bureau, the National Bureau of Enforcement shall, by a written consent from the convict and the bailor (or where the bailor is a convict himself/herself or bail has been posted on behalf of the convict - without his/her consent), enforce a claim upon

the amount of bail deposited to the deposit account of the National Bureau of Enforcement as provided by this Law. In case of fulfilling this item by the bureaus of enforcement, it is possible to cause dissatisfaction of the mortgage payer, who pays on behalf of the sentenced. That is why it is important to warn the mortgage giver about the expected results in accordance with the relevant rule. Also, National Bureau of Enforcement has to be informed on time about the appeal of the verdict of the court of first instance, in case of change of the verdict or abolishment not to drawl giving back the money to the owner which was transferred to the state budget.

About the enforcement of penalty, relevant rule of verdict and instruction approved copies are sent to the relevant penitentiary institute, and in case of suspended sentence – National Probation Bureau according to the address of a sentenced (factual or legal address).

According to the Article 281 of the Criminal Code, Penitentiary Institute is obliged, after getting sentenced, to inform the court and close relatives within not later than 1 day, also with the request of the sentenced – to other person or/and to the lawyer of the sentences according to the rule of imprisonment code. This rule is spread in case of changing the place of serving the sentence.

The Criminal Procedure Code of Georgia envisages the cases of rescheduling enforcement of the verdict. According to the first part of the Article 283 of this Code, the sentenced whose freedom is suppressed, the enforcement of a sentence can be rescheduled on the basis of the conclusion of court-medical expertise, with the same verdict, after making the decision – with sentence, if the sentenced is inflicted with serious illness, which prevents him/her from serving the sentence – before his/her recovery or improvement of health essentially; if the sentenced is pregnant for the moment of serving sentence – up to one year from the time of delivery.

It is of a big practical value that the Article 286 of the Criminal Procedure Code of Georgia regulates the enforcement of the verdict and other non-enforced verdict. In this case, we have verdicts which have to be under legal regulation because towards one person, several verdicts cannot be enforced separately. Such regulation is suggested in the article according to relevant penitentiary department director or with the intercede of head of national probation agency, and according to the place of serving the sentence without verbal hearing of first instance of court making sentence for sentenced about determination of all mentioned verdicts. According to this sentence, the verdict is considered to be final.

The legislator, while passing the verdict, allows probability of inaccuracy or vagueness, which can make the stage of enforcement of the verdict difficult. The Criminal Procedure Code of Georgia gives opportunity to solve such inaccuracy and vagueness while protecting some terms.

According to the Article 287 of this Code, the decision maker court has the right without verbal hearing to solve inaccuracy and vagueness in the verdict, which will not case its abolition or change, particularly: a) specify dates of arrest and imprisonment, as well as the term which is considered during a verdict; b) correct personal data of process participant; c) specify and divide process expenses; d) decide issue of evidences; e) specify issue of property sequestration; f) make other specifications which will have no influence on the conclusion of the court in order to qualify the activity of the sentenced, about verdict activities. Sentence by the court about the above mentioned issues is the inseparable part of the verdict.

About the enforcement of a sentence is the Article 96 of the Criminal Procedure Code of Georgia, according to which complaint stops the enforcement of complained decision. In other case, complaint stops the enforcement of complained decision, if the person or body who looks through the complaint thinks it is appropriate and necessary. According to this code, appealing complaint or because of newly revealed circumstances reappraisal of the verdict does not stop the enforcement of a sentence.

Conclusion

Asides this work, there are many issues related to the enforcement of the verdict, which are also worthy of attention, but it needs wider format. I think I could cover those main issues which are related to on time and efficient enforcement of the verdict. As a conclusion, it can be mentioned that in the resolution part of the verdict formed, court statutory subordinates to the enforcement. While creating the resolution part, the judge must always realize that with this verdict, he/she not only fulfills the case of the criminal law, but also creates the basis and the first precondition for forced enforcement. It is of significant importance that each verdict has to be stated according to all aspects and it does not have to create difficulty in their enforcement process. It should be envisaged that at every stage of the verdict enforcement, the court does not have right to change the content of the verdict and correct it essentially.

References:

1. Dobrovolskaia, T. N. (1979) Activity of the court related to the execution of sentences. Moscow.
2. ShushkeWinfried (2011). Enforcement law, *short summaries*, Tbilisi.
3. Vishnevsky, A.I. (1950). Theory of judicial legislations in the Soviet right. Moscow.

Legislative Resources

4. The Criminal Procedure Code of Georgia, 9 October, 2009.
5. The Law of Georgia on Enforcement Procedure. April16, 1999.

6. Law on Procedure Execution of Non-custodial Penalties and Probation. Georgia, June 19, 2007.

The Need for a Common View on the Theoretical Issues of Modern Criminology

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Abstract

Researches on the definitions of the main terms of criminology have shown that the criminological schools and scientists of foreign countries, due to their nature under the influence of various sciences, are discussing the basic views, concepts, and terms of criminology. This, however, is caused by the lack of a common vision on the basic theoretical issues of modern criminology. The noted situation inhibits and makes teaching and researching criminology ineffective. It also impedes using criminology in practice and, most importantly, in the formation of criminology as an independent science and its systematic development. Considering the current globalization processes in the modern world, when the national criminology became international criminology, globalization of criminology has occurred. We believe that the criminological society of the world, who pays a lot of attention to the research of the specific forms and types of crime, should be more interested in the formation of a common vision in the study of the basic theoretical issues of criminology.

Keywords: Criminology, crime, globalization, prevention, victim, sociology, law, safety

Introduction

Researches on the definitions of the main terms of criminology (Badzaghua, 2016) have demonstrated the problems that are caused due to the lack of common vision on the major theoretical issues of modern criminology. This situation hinders and makes teaching and researching criminology ineffective. It also impedes using criminology in practice and, most importantly, in the formation of criminology as an independent science and its systematic development.

The reasons for the current situation and its supportive conditions taking into account the external and internal factors of the country are

subjective and objective. The article focuses on the main causes conditioned by global factors. In particular, criminological schools of foreign countries and some scholars, under the influence of philosophy, sociology, law and other sciences, consider the place of criminology in the science system to be ambiguous. It is seen as a part of different sciences. In some countries of Continental Europe, including Georgia, criminology is a complex science studying social-legal aspects of criminality being originated in criminal law. In Anglo-American countries, it is considered as a social science. We face the corresponding situation, while comprehending the main criminological terms and concepts (Glonti, 2008; Schmallegger, 2002, 15).

One of the main factors is related to the origins of criminology. Criminology, as an independent science, was established in the second half of the 18th century. Its origin is related to the European School of Criminal Justice. This has influenced the etymology of criminology, which implies “doctrine of crime”. The term *criminology* at every stage of its development – in classical, positive, pluralistic and modern periods – acquired the broader meaning. Thus, the modern world has become a global unified cyberspace, a complex of interrelationship of information and technological infrastructure. In everything, this has influenced the structure of criminality and the systemic development of the specific types of organized crime: theft, money laundering, corruption, terrorism, etc. (Rotman, 2000).

The results of globalization are particularly evident in Europe, among them in Georgia than in the rest of the world, as the collapse of the "Communist regime" in central and eastern Europe and the inconsistent formation of capitalist society, actual abolition of borders in Europe, visa-free entry, and the rapid growth of the tourism industry had negative influence on the safety systems (Badzaghua Malkhaz & Badzagua Mikheil, 2012). Everything this contributed to the globalization of local criminality is what affected its state and the structure and turned national criminology into international criminology. Thus, the globalization of criminology occurred (Tsulaia, 2003); it in turn underlines the necessity to establish a common vision on the main issues of modern criminology. A good example of this is the process of approximation between the system of Continental Europe and the Anglo-American system. The deductive rule of the legal thinking of Continental Europe – from general to particular – is gradually approaching the inductive rule of the Anglo-American legal thinking – from particular to general. This process has also affected criminology.

Opinions on criminology as a science are developed contradictorily together with the evolution of society. This is acceptable and beneficial for the further development of criminological studies. As for teaching, it has a negative impact on it. According to the scientists working in the theory of

criminology, it requires methodological accuracy (Yong, 1988). As mentioned above, they choose different philosophical positions and based on the nature of capitalism, they are confined to the analysis of certain areas of social life (Todria, 2008).

The research of the evolutionary processes in criminology has revealed the correctness of the basic essence of constitutional criminology according to which, in general, criminality cannot be studied separately from the ongoing processes in society. Therefore, in spite of the divergence of opinions in contemporary criminology, in the Anglo-American and continental countries, scholars mostly agree that "criminology" as a science is a complex, interdisciplinary social-legal course (Schmalleger, 2002). This is because the subject of its research in a broad sense is the scientific understanding of all forms of criminal behavior, its reasons, contributing conditions, offenders and victims, and searching for the ways of avoiding and controlling crime.

Due to the aforementioned reasons, criminology schools and scholars of foreign countries discuss the main concepts and terms in different ways. In this context, it is relevant to study some of the main concepts and terms, such as "crime", "personality of criminal", "victim of crime" and others at the mass and individual level. Due to their significance in criminology, it is necessary to establish common vision and standards at the international level. This will definitely have an impact on teaching the theory of criminology.

Georgia is facing an ongoing process of integration with the Western educational system. Meanwhile, the current edition of the National Quality Framework is being revised and modified, according to which criminology is considered to be a part of the broad sphere of social sciences. This requires bringing the basic concepts and terms existing in the theory of international criminology in conformity with uniform standards.

Conclusion

Considering the current situation, we believe that the criminological society of the modern world, who devotes much attention to the study and investigation of specific forms and types of crime, should be more interested in formation of a common vision in the study of the basic theoretical issues of criminology.

References:

1. Badzaghua, M. (2016). *Definitions of Criminology Key Terms*. Tbilisi.
2. Badzaghua Malkhaz & Badzagua Mikheil (2012). *Criminological Aspects of Tourism Safety*. Journal "Criminologist", 1 (7-8), Tb. 2012-2013; P. 46-51.

3. Glonti, G. (2008). International and Comparative Criminology. In: Criminology and Legal System in Georgia. Tbilisi, p. 75.
4. Rotman, E. (2000). Globalization of Criminal Violence. Cornell University "Journal of Law and Public Policy". Fall 2000, Volume 10, Number 1.
5. Schmalleger, F. (2002). Criminology Today (third edition). USA, Upper Saddle River, New Jersey.
6. Todria, G. (2008). Criminology and Its Evolution. In: Criminology and Legal System in Georgia. Tbilisi, p.22.
7. Tsulaia, Z. (2003). Criminology. Tbilisi, p. 41.
8. Yong, T.R. (1988). Theory and Method for Criminology In the 21st century. Archives of the Transforming Sociology Series of the Red Feather University for Advanced Studies is Sociology. N 126.

The Role of Gamification in Implementing a Lingua-Professional Approach to EPP Course in an Economic University

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Abstract

The paper focuses on the issues concerning implementation of gamified activities into an English for Professional Purposes (EPP) course in an economic university and accentuates their role in developing lingua-professional approach to teaching foreign languages. The research highlights the dual nature of the gamification of an EPP course which may result in increasing students' intrinsic motivation as well as unintended behaviours. Special emphasis is made on the particular role of the EPP teacher, and seven contextual “Knows” to help the EPP teacher comprehend the specific requirements of the gamified activities are introduced.

The paper also focuses on the applicability of gamification, possible limitations and issues of controversy, and makes conclusions that carefully-chosen gamified activities can bridge the gap between the stakeholders of the educational process and have a positive impact on learner outcomes.

Keywords: Gamification, EPP, higher education, foreign languages

Introduction

A visionary game designer McGonigal (2011) concludes that with 174 million gamers in the United States alone, we now live in a world where the contemporary and subsequent generations will be gamer generations. E-games are widely used for escapist entertainment and everywhere around us we can see young people glued to their electronic gadgets being deeply engrossed in beating their own or other people's records.

Gamification permeates the contemporary society and comes in various disguises in most unexpected places. Reviewing a century of game theories in the social sciences and analyzing the uses of games in workplaces,

Savignac (2017) concludes that gamification is supposed to abolish the separation between constraint of work and pleasure of leisure. Werbach and Hunter (2012) referred to gamification as a “management craze.” Fuchs, Fizek, Ruffino and Schrape (Eds.) (2014) emphasise that gamification marks a major change to everyday life and despite its use by corporations to manage brand communities and personnel it is more than just a marketing buzzword. Used as a new tool for governing populations more effectively gamification makes every single one of us fitter, happier, and healthier. In their view, it seems like all of society is up for being transformed into one massive game. Reinhardt (2013) makes an observation that gamification takes advantage of the fact that some people are highly motivated just by the opportunity to earn points and show them off, even if those points are not really worth anything material. Thus, workers can build their skill repertoire more efficiently if they are given badges to put on display, or if their names are put on leaderboards for everyone to see. Zichermann and Linder (2013) view gamification as the hottest new strategy in business which helps companies establish a good rapport and create unprecedented engagement with both their employees and customers. Using the latest innovations from game design, loyalty programs and behavioral economics, companies aspire to transform themselves into lean and mean machines ready to face the battle for user attention and loyalty. Burke (2016) points out that modern organizations are facing an engagement crisis of their key constituent groups (customers, employees, patients, students, citizens, stakeholders, etc.) and they need the edge to engage them. Gamification has emerged as a way to gain that edge and organizations are beginning to see it as a key tool in their digital engagement strategy.

Gamification has proved to be much more than a fleeting fad: it is a global movement and we can now witness a gamification revolution in the workplace which abolishes traditional opposition between work and leisure and creates synergy from the synthesis of rationalism of professional activity and irrational odds of gaming.

As far as higher education is concerned, digital natives are arriving on universities campuses now and they will engage and learn in ways far different than their predecessors. Thus, unless universities practitioners take this new reality into account, they will produce graduates unprepared for a post-industrial digital society that puts emphasis and values creativity, adaptability, collaboration and autonomy.

Eschenbrenner, Nah & Siau (2008), Chen, Siau & Nah (2012) and Siau, Nah, Mennecke & Schiller (2010) point out that educational institutions in different geographical locations demonstrate interest in gamification of education, where educators create gamified learning environments to enhance learner engagement and improve learning outcomes.

Hence, gamification is now identified as one of the emerging technologies that will have a great impact on educational establishments of the most technologically advanced countries in the world and is considered a new approach that can bridge the generation gap between teachers and students. Using different theoretical backgrounds offering insight into some of the questions that have yet to be addressed, and analyzing the students' and lecturers' feedback to gamified constituents of an EPP course in an economic university, we are intent to spotlight the use of gamification within tertiary education sector and cover educational aspects like improved learning outcomes, motivation, and learning retention.

Literature Review

The term «gamification» was coined in 2002 by a British-born computer programmer and inventor Nick Pelling (Marczewski, 2012), but it did not gain widespread usage until 2010 (Zichermann & Cunningham, 2011).

By analyzing the different definitions of gamification in the international literature, Faiella & Ricciardi (2015) have noticed a substantial agreement among contributors who consider gamification as an approach that uses game features (elements, mechanics, frameworks, aesthetics, thinking, metaphors) into non-game settings. The term gamification is used in relation to many issues - the pervasiveness and ubiquity of computer games and video games in everyday life; the need to arouse and maintain students' interest in learning - with the aim of involving users and encouraging them to achieve more ambitious goals, following rules and having fun. Therefore, gamification is recommended for applications in the areas of daily life where boredom, repetition and passivity are prevalent to encourage a desired type of behavior.

Biran Burke (2016) notes that the key to gamification success is to engage people on an emotional level and motivate them to achieve their goals. McGonigal (2011) disabuses some inherent prejudices and assumptions made about people who spend hours playing video or online games and argues that they are wrongly maligned for “wasting their time” or “not living in the real world”. Quite the opposite: McGonigal finds that gamers are working hard to achieve goals within the world of whatever game they are playing, whether it's going on a quest to win attributes to enhance their in-game characters or performing tasks to get to a higher level in the game. Games inspire hard work, the setting of ambitious goals, learning from and even enjoying failure, and coming together with others for a common goal.

Though in some ways the term ‘gamification’ is a reconceptualization of an old idea, from the onset it was referred to the application of game design elements to non-game activities and has been applied to a variety of contexts including education (Nah, Telaprolu, Rallapalli & Venkata, 2013) with the aim of improving user engagement, organizational productivity, flow,

learning, employee evaluation, ease of use, usefulness of systems, and more (Huotari & Hamari, 2012). A Gamification pioneer Yu-kai Chou (2015) declares that the new era of Gamification optimizes for motivation and engagement over traditional forms of educational design.

Basing on the extensive literature review on gamification, Nah, Zeng, Telaprolu, Ayyappa & Eschenbrenner (2014) identify several game design elements that are used in education and which include points, level/stages, badges, leaderboards, prizes, progress bars, storyline and feedback. Kumar and Khurana (2012) indicated that the goal of gamifying an educational scenario or a pedagogical approach is not fulfilled unless the objective of “learning with fun” is incorporated into the game. They suggest assigning students’ different levels of expertise, such as “Beginner”, “Intermediate”, “Advanced” and “Expert” in order to motivate them and their academic excellence.

Kapp (2012) argues convincingly that gamification is not just about adding points, levels and badges, but about fundamentally rethinking learning design and notes that the balance between learning and gameplay is a key success factor for a gamified educational project.

Raymer (2011) puts forward the idea that providing frequent feedback, measuring progress, offering character upgrades, rewarding effort and utilising peers as a source of motivation can help to increase learner engagement.

Apostol et al. (2013) identify eight elements of games that are used for the gamification of learning, such as: rules, goals and outcome, feedback and rewards, problem solving, story, player(s), safe environment, sense of mastery and concludes that the best way for an instructional designer or a teacher to select the elements of game is to consider the educational objectives and the desired outcomes of the learning process. Boller and Kapp (2017) see the gaming potential to bridge the gap between instructional design and game design and speculate on the idea that when trainers use games, learners win big.

Data and methodology

By the time the students of economics start doing the elective EPP course in an economic university they have already had 15+ years of studying behind them. Having been previously exposed to various teaching methods and techniques, initial loud declarations about the courses outcomes cease to impress them and many of them have already become quite skeptical and frustrated about the usefulness of certain traditional approaches to higher education. As a result, an EPP teacher may face the problem of low student involvement and demotivation. Whereas some students enjoy the process of

knowledge acquisition, the majority tend to reject the pressure which the formality of educational system imposes on them.

To gamify English for Professional Purposes course we used game-informed pedagogy to engage students and give them meaningful choices in directing their own learning. Revisiting the issue of incorporating gamifying activities in the EPP classroom, we started researching how to form professional and linguistic competences of students of economics by modelling characteristic situations of professional communication, Gavrilova and Trostina (2014). Besides desk research, the survey data were collected from monitoring students' attendance when the gamifying activities were scheduled to contrast the standard classroom methodology. The results show that despite the fact that gamified approach has had a positive influence on seminar attendance, there is no evidence that gamification significantly improved student grades. The survey administered to the participants of the course shows there is a substantial divide between the students who rank gamified activities positively, and those who are not generally interested in such a gamified environment and do not find it helpful. The scope of application of gamified activities in an EPP classroom may range from "never" to "always", the comfort zone ratio lying between 15-30% of gamified classroom time to 70-85% in a more traditional format.

To identify the areas of the pedagogical concern, the following questions were addressed the EPP teaching staff during the interviews and panel discussions:

- Do you apply gamification in your EPP teaching practice?
- How does gamification benefit the EPP course in an economic university?
- Can gamification of the EPP course develop students' intrinsic motivation?
- What is the role of the EPP teacher in a gamified classroom environment?
- What are the possible controversies of it?

The objectives of the research concerning gamification of EPP classroom were:

- to evaluate its validity and summarize the benefits and controversies of gamification of an EPP course;
- to question the possibility of creating an alternative method to make the learning process more engaging, enjoyable and productive;
- to develop the recommendations for EPP teachers attempting to gamify the EPP classroom.

Discussion

Results of empirical studies and our practical experience in implementation of gamification in the EPP classroom in an economic university let us advocate that this pedagogical approach rewards in:

- contributing to both professional and linguistic authenticity. Carefully-selected professionally-relevant role-plays, simulations, case-studies and presentations contests as well as various gamified tasks using abundant internet resources unobtrusively develop students' professional as well as linguistic competencies.
- creating more relaxed atmosphere at an EPP classroom, where students' creativity and ingenuity are welcomed and praised. Letting students have some fun at their lessons teachers establish a good rapport with the students and increase their interest to the subject.
- encouraging cross-fertilization of ideas, when students brainstorm their ideas, find innovative solutions (sometimes accidentally and randomly) and learn from each other to support their point of view with convincing arguments.
- developing students' psychological stamina and teaches students not to lose 'face' when the odds are against you, since any game is not completely rational and even the most brilliant player may lose. Life is full of ups and downs when you often do not get what you deserve but may unexpectedly receive a generous windfall from the seemingly adverse skies.
- providing team-working and developing team-building skills, which are seen as the ones among the core competences in a modern graduate's portfolio.
- introducing new forms of Extra-Curricular Activities (ECAs) which are not the components of academic curriculum but an integral part of educational environment. Games are a great tool for ECAs in foreign languages as making worthy contributions to the achievement of educational aims and sub-professional goals and fostering students' autonomy.

EPP teacher's role

Implementation of gamified activities in an EPP classroom attributes a great significance to the language teacher. Danowska-Florczyk and Mostowski (2012) see the role of the foreign language teacher as the author of the story, the creator of rules, behavior synchronizer and a diligent optimist. However, though these findings are applicable to any foreign language classroom, as far as the EPP teacher's role in a gamified classroom is concerned, we have developed our own specific requirements which we call "The 7 Knows".

Know your students. English for Professional Purposes in an economic university is delivered to both bachelor and master undergraduates. In order to customize their course and decide which of the classroom and homework activities can be presented in a gamified format, the teacher should take into consideration the students' age (which may vary from 20 to 40+), social and educational backgrounds, psychological peculiarities (introvert vs extrovert), motivation (intrinsic vs extrinsic) as well as the needs analyses. As a game-designer a practicing EPP teacher has to predict and motivate students' behaviors so that to get the desired results.

The better teachers tune themselves with the particular students' group, the higher students' academic achievements will be. Besides, the teachers will have more possibilities of immediate feedback which in turn will provide them with the dynamic adjustment of the course design and a more rapid practical mastery of all functional opportunities and subtle aspects of the educational games. Designing the player-centered customized EPP course, the teacher promotes greater connectivity and sustains students' engagement throughout the learning process.

Know your students' subject matter. For the EPP course in an economic university there is no one-fits-all study plan. Therefore, the choice of gamified activities must be biased towards the students' future professional life, i.e. be professionally-relevant. For this aim it's desirable that an EPP teacher should approach alumni working in a certain sphere of economics and consult them about gamification elements practiced in their company. Then an EPP teacher can produce something on benchmark analogy.

Know your role. Introducing gamification into the classroom, language teachers must be ready for the drastic change of their role. The traditional roles of a knowledge-provider and an assessor shift towards facilitator and animator. Involving students in challenging gamified tasks a teacher willingly dismisses him/herself and lets the students work autonomously, express themselves and compete for better results.

Know the balance. Even if you teach the whole group of extrovert party animals able to amuse themselves 24/7, it's important to strike a balance between work and play. Gamification is a perfect tool for developing students' communication skills, though such routine but necessary types of classroom work as testing and assessment shouldn't be neglected. So, even the most persistent adepts of gamification in the classroom must harness their personal enthusiasm and watch against any tendency of replacing all traditional centuries-proven activities by games.

Know internal environment, i.e. the university where you work. If none of your colleagues has ever practiced gamification in their classrooms, you should be careful with introducing it in your university. If your university positions itself on an educational market as a serious research establishment,

your efforts of turning a classroom into a playground may be misunderstood and misinterpreted by the university authorities. Therefore, before implementing gamification in the classroom, it's a good idea to discuss it with like-minded colleagues and department heads and then start it as a pilot project.

Know external environment, i.e. what your counterparts in other universities do. Since the term "gamification" came into general use in the 2010-ies, research on it is still in infancy. Practitioners from various geographical locations and student body share their experience in introducing new methods as well as their concerns about the appropriateness of some of them and you are welcome to participate in the dialogue via professional networks and various platforms for scientific exchange. Networking at research conferences can trigger brainstorming and generate diverse collaboration projects to facilitate the gamification implementation.

Know your constraints, i.e. be aware of the possible limitations of gamification. There is a concern that it may trivialize the subjects to be learned and learning works can be taken as just a game. Certain games are better suited for encouraging the learner to operate with concepts and notions rather than to assimilate them. Games alone are not enough to enhance performance and learning difficulties cannot be overcome just with games. Thus overusing games may be endangering the successful academic performance.

Controversies

Collection of research on gamification shows that a majority of studies on gamification find it has positive effects on individuals. However, many researchers point out the existence of some individual and contextual differences. Berkling and Thomas (2013) note that students who underwent a traditional classroom style of education for more than 12 years do not automatically get enticed to the new ways of learning. Reinhardt (2013) points out that gamification in the classroom is not always appropriate as some people do not necessarily like to play games all the time, especially certain types of competitive games. He believes that though there is developmental value in open-ended, goal-oriented gamified activity when the reward is the doing and not in the winning, if somebody is forced to play a game that they do not want to play, the best qualities of the game are lost. Biro (2013) analyses the possible barriers and threats by gamification in the context of higher education, suggesting how to avoid them while gamifying the tertiary education specifics. He urges that content-orientation might be a solution to direct the students' motivation and commitment to the anticipated outcome.

As far as the gamification of an EPP course is concerned we see the gravest controversy in the fact that career-minded and success-oriented students of today directly link their academic achievements with future

employability and thus, implementing gamification in the classroom, the EPP teacher should watch against any tendency of unhealthy competition among students, especially when awarding scores which may affect their final course results. In this case instead of the desired relaxation and fun, games will add up tension and suspense.

So, our observations show that too much gamification is not seen by students as fun, may create an artificial sense of achievement and result in unintended behaviors.

Conclusion

Considering the changing student body in tertiary education we conclude that a new approach to teaching the coming generations of learners is demanded, the one that moves toward inclusive, hyper-personalized learning environments that have much in common with games and social media. Exploring game design, pedagogy and intrinsic motivators, we would necessitate the creation of level playing field to produce rigorous learning environments that are as addictive to all participants as the latest apps and social media systems.

Gamification enhances traditional learning activities, builds goal-orientation, promotes competition, but develops collaboration, and thus carves a spark of pleasure in the seemingly most cheerless and bleak contexts. Teacher-directed games shift students from escapist form of entertainment towards students' learning autonomy, has positive impact on learner outcomes and maximizes learning.

Re-framing a 'difficult' or 'boring' activity into a 'challenging' one can boost student engagement and progression. Gamification is not about making the hard easy but making learning engaging and developing the professional and linguistic competencies that students may need in their future professional life.

Finding an element of fun and exploiting it strategically requires that the EPP teacher should have a fresh insight into the course syllabus, recognize and exploit the game-like, playful elements latent in familiar class activities. When an EPP teacher sweetens the course with gamification, it becomes more engaging, empowering and effective.

Gamification makes any educational process and EPP studies in particular more functional, enjoyable and motivating. When students learn by doing on their own experience, gamification makes them act without too much thought. Any game increases the level of attention, dedication and mental agility. Competitive games incite the players to go to the winning end. To make an EPP course more innovative, gamification reshapes the traditional and predictable classical system to more comprehensive and fun but at the

same time more thought-provoking. In turn, this increases interactivity and further develops students' autonomy.

Nevertheless, despite the fact that gamification is a must-have tool in the arsenal of innovative teacher which can accessorize and add new fizz into an EPP course, it shouldn't be seen as a magic elixir or panacea for students' engagement and academic progression. There is little evidence that gamification could improve student scores and some additional data to analyze are to be collected and processed. Appealing too much to the gamified format may not only overburden the lesson with hardly controlled activities but lead to topic diffusion which will result in unproductiveness and poor knowledge uptake.

Subsequently, the question of what and how many game features should be used for the gamification of learning in a particular tertiary classroom is still debated and further research is needed. To keep pace with the young generation's style of life and aspirations, educators now have to face this new trend and accordingly reshape and gamify their course design. Despite the evident credibility of the above advantages of gamification, if they do not reflect your educational demands, gamifying particular language courses should be implemented with caution.

References:

1. Apostol, S., Zaharescu, L., & Alexe, I. (2013, May). Gamification of learning and educational games. In *The International Scientific Conference eLearning and Software for Education* (Vol. 2, p. 67). "Carol I" National Defence University.
2. Berkling, K., & Thomas, C. (2013, September). Gamification of a Software Engineering course and a detailed analysis of the factors that lead to its failure. In *Interactive Collaborative Learning (ICL), 2013 International Conference on* (pp. 525-530). IEEE.
3. Biro, G. I. (2013). Ready, Study, Share: An Inquiry into the Didactic Approach of Gamification with a Special View to the Possible Application in Higher Education. *European Scientific Journal, ESJ*, 9(19).
4. Boller, S., & Kapp, K. (2017). *Play to Learn: Everything You Need to Know About Designing Effective Learning Games*. Association for Talent Development.
5. Burke, B. (2016). *Gamify: How gamification motivates people to do extraordinary things*. Routledge.
6. Chen, X., Siau, K., & Nah, F. F. H. (2012). Empirical comparison of 3-D virtual world and face-to-face classroom for higher education. *Journal of Database Management (JDM)*, 23(3), 30-49.

7. Danowska-Florczyk, E., & Mostowski, P. (2012). Gamification as a new direction in teaching Polish as a foreign language. *ICT for Language Learning*.
8. Eschenbrenner, B., Nah, F. F. H., & Siau, K. (2008). 3-D virtual worlds in education: Applications, benefits, issues, and opportunities. *Journal of Database Management (JDM)*, 19(4), 91-110.
9. Faiella, F., & Ricciardi, M. (2015). Gamification and learning: a review of issues and research. *Journal of e-Learning and Knowledge Society*, 11(3).
10. Fuchs, M., Fizek, S., Ruffino, P., & Schrape, N. (2014). *Rethinking gamification*. meson press.
11. Gavrilova, E., & Trostina, K. (2014). Forming professional and linguistic competences of students of economics by modelling characteristic situations of professional communication. Формирование профессиональной и языковой компетенции студентов в вузе экономического профиля методом моделирования типовых коммуникативных ситуаций профессионального общения. In *Информационно-коммуникационные технологии в лингвистике, лингводидактике и межкультурной коммуникации* (pp. 170-180).
12. Huotari, K., & Hamari, J. (2012, October). Defining gamification: a service marketing perspective. In *Proceeding of the 16th International Academic MindTrek Conference* (pp. 17-22). ACM.
13. Kapp, K. M. (2012). *The gamification of learning and instruction: game-based methods and strategies for training and education*. John Wiley & Sons.
14. Kumar, B., & Khurana, P. (2012). Gamification in education-learn computer programming with fun. *International Journal of Computers and Distributed Systems*, 2(1), 46-53.
15. Marczewski, A. (2013). *Gamification: a simple introduction*. Andrzej Marczewski.
16. McGonigal, J. (2011). *Reality is broken: Why games make us better and how they can change the world*. Penguin.
17. Nah, F. F. H., Zeng, Q., Telaprolu, V. R., Ayyappa, A. P., & Eschenbrenner, B. (2014, June). Gamification of education: a review of literature. In *International conference on hci in business* (pp. 401-409). Springer, Cham.
18. Nah, F. F. H., Telaprolu, V. R., Rallapalli, S., & Venkata, P. R. (2013, July). Gamification of education using computer games. In *International Conference on Human Interface and the Management of Information* (pp. 99-107). Springer, Berlin, Heidelberg.

19. Raymer, R. (2011). Gamification: using game mechanics to enhance eLearning. *eLearn*, 2011(9), 3.
20. Reinhardt, J. (2013). Gamification: Sweetening the work of foreign language learning. *The FLTMAC*.
21. Savignac, E. (2017). *The Gamification of Work: The Use of Games in the Workplace*. John Wiley & Sons.
22. Werbach, K., & Hunter, D. (2015). *The gamification toolkit: dynamics, mechanics, and components for the win*. Wharton Digital Press.
23. Chou, Y. K. (2016). *Actionable gamification: Beyond points, badges, and leaderboards*. Octalysis Group.
24. Zichermann, G., & Cunningham, C. (2011). *Gamification by design: Implementing game mechanics in web and mobile apps*. " O'Reilly Media, Inc."
25. Zichermann, G., & Linder, J. (2013). *The gamification revolution: How leaders leverage game mechanics to crush the competition*. McGraw Hill Professional.

Some Aspects of Theoretical Reasoning in Giorgi Tsereteli's Creative Work

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Abstract

The article aims at discussing the theoretical reasoning found in Giorgi Tsereteli's literature. It reveals the reasons and necessity that prompted the 60s to gather around the "Sakartvelos Moambe". The article also analyzes those values which were the basis for their program of socio-national view. It must also be noticed that Giorgi Tsereteli's approach to Ilia Chavchavadze's Troupe "Macdasi" was changed after the "Second Troupe" appeared. He considered "Is He a Man?!" and "Letters of a Traveler" both to be a deviation from colored embellished realism. It must be noticed that its usage in Giorgi Tsereteli's creative practice forced him to an extreme. Therefore, some critics thought that such approach to the issue by the poet was as a creative defect for the writer. Giorgi Tsereteli was outlined as a representative of naturalism, but their opinion lacked credibility and proper justification.

Keywords: Second Troupe, naturalism, national-patriotic belief, Uncolored Realism

Introduction

The article discusses the theoretical reasoning in Giorgi Tsereteli's literature. It reveals the reasons and necessity behind the gathering of the 60s around the "Sakartvelos Moambe". The article also analyzes those values which were basis for their program of socio-national view. It must also be noticed that Giorgi Tsereteli's approach to Ilia Chavchavadze's Troupe "Macdasi" was changed after the "Second Troupe" appeared. He considered both "Is He a Man?!" and "Letters of a Traveler" to be a deviation from colored embellished realism. It must be noticed that its usage in Giorgi Tsereteli's creative practice forced him to an extreme. Therefore, some critics thought that such approach to the issue by the poet was as a creative defect by the writer. Giorgi Tsereteli was outlined as a representative of naturalism, but their opinion lacked credibility and proper justification. Inspired by our

national and world literature, the truth of fiction, fantasy, deception, false wisdom were simply what he turned into supreme values.

History of the world literature development reveals that it expressed the most complicated processes and the controversy of future trends or interests exactly at the time when the socio-political and economic relationship between people were conflicted and tensed. At the revolutionary-reformative stage of history, the writing revealed great internal changes. We think that one of such polyhedral event eras was the second half of the nineteenth century in Georgia. Georgia was a direct participant in the socio-historical changes, which were going on in the Russian Empire at that time. Of course, our national existence had its own different problems which were insignificant for Russia. One of which was that Russia was not facing the problems of losing and recovering its statehood.

The demand of regaining national independence, recovering and returning statehood remained for the Georgian people an issue with the first priority, which stood above the social-rank matters. It is true that this demand arose as soon as the Georgian people realized the results of Kartl- Kakheti kingdom abolishment.

This discontent was marked as the great rebellion at the beginning of the 19th century, and our romantic writers expressed their national-patriotic belief not only with the practical participation in rebellion-conspiracy, but also by their artistic creation content. Such writing and public consciousness, in general, sparkled on the historical stage of new intensified power; namely, during the 60s of the nineteenth century, the “Tergdaleulebi” expressed with a tenfold stronger power and laid the foundation of national fighting program. Georgians became a life purpose for the Sixties. They addressed all their physical and intellectual forces and resources toward restoration of national independence and, after this, toward establishing equitable relationship of titles. The generation of the Sixties – Ilia Chavchavadze, Akaki Tsereteli, Niko Nikoladze, Giorgi Tsereteli, Sergei Meskhi and others – united to start the joint public purposes. They gathered around the editors, “Sakartvelos Moambe”, Ilia Chavchavadze, and publicly aired out their beliefs on the pages of this magazine. Within one year, the magazine managed to express socio-national Program Vision of a new generation. Mainly, the conception of the Sixties was looming polemically about socio-cultural life. It is clear that separate figures in the new generation did not vary from each other by different opinions. The main thing in this case was that the cardinal national issues highlighted by Ilia were considered as a basic principle. The diversity of the positions in assessing the merits of individual events was related to the methods of their approach and quality.

In “Sakartvelos Moambe”, Giorgi Tsereteli published his first polemical post “Tsiscar”, which made him cackle. By this way, he demonstrated that he stood at Ilia’s standpoint in terms of art importance, language, translations, education, press debt and literature influence. The writer essentially estimated the journal “Tsiskari” in such a way that it was not difficult for readers to detect Ilia’s like-minded person in this article. G. Tsereteli demanded from magazine “Tsiskari” to have active contact with the live reality and ongoing social problems. He tried to persuade the magazine about the new breeze that was blowing; the magazine had to feel it and explain the problems brought by time. G. Tsereteli as well as Ilia Chavchavadze thought that sensitive issues of life must be explained by writers’ artistic thought and not to separate from creative life, they should never be handled by idle, worthless, empty, beautiful words. He believed that translations of foreign works, reflecting the past, and having nothing to do with today’s problems did not have much importance.

After the journal “Sakartvelos Moambe” was closed, a joint work of the Sixties’ group was weakened. The responsible work required much time from them, and this became a reason that many of them were separated from the common public work. In such conditions, Giorgi Tsereteli revealed great energy and skill. In 1866, he established the newspaper “Droeba” and again revived public opinion. Shortly afterwards, he established a new newspaper “Sasoplo Gazeti”, and after it the magazine “Krebuli”. As it seems, exactly on the inculcation era of Periodical Edition, Giorgi Tsereteli’s new standpoint was matured. The writer found it necessary to create “New Youth” group, i.e., the Second Troupe in order to declare his and like-minded individuals’ different views. This troupe was established under the initiative of Giorgi Tsereteli, S. Meskhi and N. Nikoladze in 1869. The Second Troupe figures mainly expressed their views via “Droeba” and “Krebuli”, but they actively cooperated with other Georgian and Russian press. From many problems of life, “New Youth” gave priority to the point of view of the “Third Title” class radical, Utopian - Socialist expression. Exactly this fact became the main reason of an ideological confrontation between the 70s of the nineteenth century and the Sixties, which mainly were followed by the different understanding and explanation of socio-economic problems. The activity program of the “Second Troupe” mainly had Bourgeois content. The tasks and goals of the “First Troupe” were no longer satisfactory for them. They followed the principles of positivism, natural science materialism, and “Uncolored Realism” headed by G. Tsereteli.

G. Tsereteli and his like-minded individuals principally denied nobility and leadership and they thought that the leading force of future social life were hard-workers, educated people, and small proprietors, who were united in associations. In G. Tsereteli’s works, nobility permanently was

considered as an economically, legally and morally fleeting factor, and a force that was out of date. Whether or not they wanted, the “Second Troupe” representatives were in fact treated in the area of fundamental, comprehensive programs of National-Liberation Movement of the Sixties. Tendentious and radical expression of the interests of ascending bourgeoisie in the sphere of mentality and artistic thinking could not create some special place for the “Second Troupe”, and likely this was a reason due to which differentiation of their positions started after 10 years from its setting up. Giorgi Tsereteli had some kind of sympathy in respect of the “Third Troupe” coming out on the creative area in the 90s.

Giorgi Tsereteli tried to take special place in the sphere of literature thinking. He wanted to differentiate the “Second Troupe” literary-publicistic activity from the “First Troupe”. Therefore, Giorgi Tsereteli and Niko Nikoladze developed their own principles of “Uncolored Realism”. Although they were implementing the joint program, they often differed from each other by the content of their views. It was due to their characterization of “Uncolored Realism”. Both figures relied on the theoretical-critical thought of Russian democrat revolutionaries, but differed from each other. Both of them had a deep knowledge of European-Russian writing and often this great erudition conditioned their original positions, and controversy opinions. In artificial or finely expressed literature, he established real, uncolored, unimpaired realism.”¹³⁵ When talking about the peculiarity of “Uncolored Realism”, Giorgi Tsereteli uses and cites the prominent theoretician of his troupe, Niko Nikoladze’s views, which he had on Ilia Chavchavadze’s “The Story of a Beggar”. Niko Nikoladze used this concept and where is implied life’s truth, and the demand accurately reflected the reality. Based on the view of critics, “The Story of a Beggar” by Ilia Chavchavadze is deliberately enhanced, colored, cleaned, and adorned, and his Gabro looks as if he was brought up on German sentimental literature than an ordinary Georgian peasant. The critic thinks that “this does not meet a real life” and, as such, compulsive tendency harms the dignity of the work. According to Niko Nikoladze, “The Story of a Beggar” experiences the influence of Russian Literature, but there we can find many natural, convincing pictures. He considers that the embellished, colored faces, which we can meet in this story instead of uncolored realism, is caused by his youthful inexperience. But “Letters of a Traveler” and “Is That a Man?!” in accordance with the critic’s opinion were recognized as uncolored, flawless works, which express reality of life. It is an important fact that when Niko Nikoladze was discussing “Kikoliki, Chikoliki and Kudabzika” by Giorgi Tsereteli, despite their

¹³⁵Giorgi Tsereteli, Kita Abashidze, and “Our Youth”, Newspaper “Kvali”, 1897, #46, p. 814.

friendship, he did not avoid to talk about many drawbacks of the story. The main thing was that the critic shows how he differed from Tsereteli, including in terms of understanding “Uncolored Realism”. According Niko Nikoladze, in writing for the accurate defense of life’s truth, one must not be assimilated with the usual forms of publicistic discussions. The critic thinks that “belletrist must judge the life by the pictures and not by words; he must be a painter and not a reasoner. He is a member of the circle to whom Preaching and Publicism are not only unclear but also boring... In “Chikolik, Kikolik and Kudabzika”, one can notice that the author is not ashamed to explain his own pictures; gradually the author became a commentator for himself. It is a terrible deficiency in the arts writing. Belletrist poet must affect readers only through images.”¹³⁶ As it seems, the desire to demonstrate “Uncolored Realism” can lead the poet to the other extreme, and instead of expressing his opinion through the images, it gets to put him on the criticism of publicistic opinions.

In order for the “Second Troupe” to be clearly separated from the “First Troupe”, Giorgi Tsereteli highlighted Niko Nikoladze’s discussion and “Letters of a Traveler”; “Is He a Man?!” by Ilia Chavchavadze was considered as a deviation from colored, embellished reality.

According to Giorgi Tsereteli’s words, colored reality and compulsive tendency is a defect of “Is He a Man?!” and “Letters of a Traveler”. His Luarsabi and Darejani are represented mostly like caricature of Georgian nobility than typically alive creatures originating from the same nature and environment.¹³⁷ In accordance to the views of Giorgi Tsereteli, the provisions of “Tergdaleulebi’s” program were published in 1863 in the magazine “Sakartvelos Moambe”, but the magazine “Iveria” published in 1877 was just a subsequent release of the previous one and did not say anything new. It seems that, Giorgi Tsereteli did his best to differ his Troupe from the Sixties, in order to highlight the thematic, stylistic, and linguistic distinctiveness and peculiarities of these two groups.

Based on Giorgi Tsereteli’s view, in a new era of Georgian Literature (1861-1890), Cultural-Literature movement put forward two Troupes: One of them had humanitarian direction led by Ilia Chavchavadze; and another progressive-democratic Troupe led by “Droeba-Krebuli” workers. The writer firmly declares: “As a reader sees, though these two Troupes have emerged on the arena of literature and life, they were as different from each other as water and fire, and they always fought principally at Literature.”¹³⁸

¹³⁶N.Nikoladze. The first work of Giorgi Tsereteli. “Moambe”, 1894, #3, p.152.

¹³⁷Giorgi Tsereteli, Kita Abashidze, and “Our Youth”, Newspaper “Kvali”, 1897, #46, p.814.

¹³⁸Giorgi Tsereteli, Kita Abashidze, and “Our Youth”, Newspaper “Kvali”, 1897, #46, p.817.

Giorgi Tsereteli calls Ilia's Troupe humanitarian and thinks that it is liberal; it describes reality with embellished, colored manner; therefore, it does not meet life's demand, and thus cannot express the truth. In return, the radical-democratic aspirations, where the truth is presented accurately and uncolored by the "Second Troupe", are considered as a commendable novelty. Giorgi Tsereteli was so fascinated to show positive values of "Uncolored Realism" that he was plunged into extremities by using it in his creative artistic practice. Some critics considered such abduction as a defect of the writer. It was stated that his works were full of the publicism which was unacceptable for artistic thought. There were revealed such critics who argued that Giorgi Tsereteli was representative of naturalism, but they could not substantiate the claim. It is clear that it was an exceeded criticism. Of course, Giorgi Tsereteli was familiar with naturalism, but he could not have been a naturalist writer due to the influence of his literary tradition and his position on world outlook. It was also determined by the fact that despite his opposite arguments, he was from the Sixties and in terms of literal-theoretical thoughts, he followed after the realistic way and method, which was set by journal "Sakartvelos Moambe". He tried to express the truth in his works in the same way as Ilia Chavchavadze did. In the literary criticism, it is fair to notice that by the accurate description of the mentioned, consciously or unconsciously, he repeats the same plot as Ilia Chavchavadze's prose. However, Giorgi Tsereteli himself considered that Ilia was distinguished from the "Second Troupe" representatives by his tendency to color and prettified life and people in his works and he thought it was Ilia's prose defect.

Conclusion

When we are talking about Giorgi Tsereteli's approach on the literary thought of the Sixties, it is natural to take into account not only his views, but rather to demonstrate what the opposite side of the "Second Troupe" thinks. Therefore, Ilia's viewpoint on the mentioned issue has special importance. In accordance with the description of "Uncolored Realism" by Giorgi Tsereteli, Ilia Chavchavadze expressed impartial truth, which is a characteristic of him. In order to clarify his views, Ilia Chavchavadze used the title of Sulkhan-Saba Orbeliani's Proverbs Book "A Book of Wisdom and Lies". He mentioned that the name of the book is an example of Sulkhan-Saba Orbeliani's greatness of mind. Ilia used Sulkhan Saba Orbeliani's name to prove that without using artistic fiction, poetic falsehood, fantasy, there is no "Uncolored Realism" in nature. According to his opinion, verbal art is based on the elegance and mentality of fiction throughout its existence.

According to Ilia's words, "A Book of Wisdom and Lies" by Sulkhan-Saba Orbeliani is an example of made-up literature of fine-worded literature. Fine-worded literature everywhere and always demonstrated the truth with

made-up stories and falsehood. It is sinless, it is not evil, it is naive, and honest it does not rival and condemn anyone. Moreover, it is charitable, because it describes the opinion, it is broadcaster, it is the way and bridge of understanding and it is a live icon not of human making, with great magic.”¹³⁹ According to the “Uncolored Realism”, G. Tsereteli thinks that “Is That a Man?!” and “The Story of a Beggar” by Ilia Chavchavadze are colored, embellished stories, and they are useless for life. He considered Luarsabi and Darejani not as natural creatures, but as a caricature of real people. It is obvious that in this situation the writer’s opinion was brought about in order to highlight the privilege and self-existence of the “Second Troupe”. Inspired by Sulkhan-Saba and World Literature, Ilia Chavchavadze put forward Truth Immortality with embellished fantasy and fiction. He showed that no New Generation can be successful in its public works if it does not use its foreign knowledge, if it does not lay its deep knowledge as a cornerstone for its own people in everyday life and literature.

References:

1. Tsereteli Giorgi, Abashidze Kita, and “Our Youth”. Newspaper “Kvali”. Tbilisi, 1897.
2. Nikoladze N. The first work of Giorgi Tsereteli. “Moambe”, #3. Tbilisi, 1894.
3. Ilia Chavchavadze. Our Recent “A Book of Wisdom and Lies”. Selected works in 5 volumes, volume III. Tbilisi, 1986.

¹³⁹I. Chavchavadze, “Our Recent “Wisdom and Lies”, Selected works in 5 volumes, volume III, 1986, p.376-368.

Features of the Marketing Strategy of the University

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Abstract

Aggravation of competition, which is a natural consequence of the development of a market economy, dictates the necessity of a tool for improving the competitiveness of an educational institution. For this purpose, the use of the concept of marketing in the management process of the activities of a higher educational institution is a must.

The concept of developing a marketing strategy includes ten steps of investigating various factors related to the study of markets, the actions of competing universities, as well as the study of one's own higher educational institution. This allows us to analyze the alignment of forces, their correlation in the market, draw up a plan of action and, taking into account the specific conditions and objectives of the University's activity, create one's own individual marketing concept.

Keywords: Marketing, Strategy, Competition

Introduction

In the last decade, the educational services market has undergone a significant transformation: new formats of education have appeared, requirements of labor market to quality of education of graduates have become tougher; public policy in the field of higher education has changed. Everything this leads to is a substantial enhancement of competition between universities and consumers. In this regard, universities have to intensify the development and implementation of effective marketing strategies and promotional tools to develop advanced educational services.

The issue of the necessity to work out a strategy for the development of the university is not perceived by researchers as unambiguously as it might seem. A number of researchers, including Lord Dahrenford, who headed the London School of Economics for many years, declared against the idea of strategic planning for universities, considering it as a tool used only in emergency situations. Their argument was the lack of control of the university

on the development of the external situation. And since this control does not exist, the higher educational institution can only use operational planning - making an annual budget or preparing for periodic certification.

Other researchers believe that the university needs strategic planning although, within the framework of the influence of the so-called "historical forces". Keller, Blau, Duderstadt and others in their works not only substantiated the need for strategic planning for universities, but also highlighted the most important components of this process. Keller discussed three internal aspects (traditions and values, strengths and weaknesses, opportunities and priorities of management) and three external ones (environmental trends, directions of market development, and competitive situation). Blau emphasized the need for a structural organization for the creative activity of the university and noted the possible conflict between the academic bureaucracy and the creative potential of the university. Duderstadt, identifying the main drivers of strategic planning (financial imperatives, changing society's needs, technological progress and market conditions), noted the differences between professional and classical higher education. For vocational education, he considered it not only necessary, but also natural, to follow the changes taking place in those professional spheres to which universities are preparing their graduates, and consequently, to take into account these changes in their long-term planning. The president of the well-known Swiss business school IMD, Peter Lorange, distinguishes several key directions for establishing significant consumer values in the university: scientific researches i.e. creation of new knowledge; training i.e. dissemination of knowledge; and the role of responsible citizens.

The university can implement these directions using a variety of strategic alternatives. Thus, strategic marketing planning determines how resources should be used to stimulate supportive reactions of the target audience.

Let us consider all ten steps to developing a marketing strategy.

Step 1. Development of the image of the university. Formation of the image of the university provides the following positive results in the management of its activities: a mechanism for regulating stressful situations is formed; the system of protecting the university from crisis situations is strengthened; the atmosphere becomes more humane and benevolent; the sense of collectivism is strengthened which contributes to the creation of a university culture and a high level of responsibility to the consumer.

Individuality and image of the university assume two interrelated target areas: a) making a whole picture of the university and its external environment; b) the formation and development of employees' sense of team spirit. Employees, understanding the image and basic principles of the

university, its goals and its own role in the process of their implementation, can present the university ideally.

Culture of the university includes the norms and values established in the higher educational institution. The traditional culture of the university that develops over the years is stronger than its physical capabilities.

Step 2. Analysis of the external environment. We live in the time of rapid changes. The methods of management applied yesterday will not guarantee success tomorrow. The change in the external environment is fraught with risk, but it also implies significant chances of success. Its analysis allows us to determine in advance the chances of success and the degree of risk.

In order to highlight those changes that are of the greatest importance, we have to focus on the most significant of the following areas: economic, technological, legal, political, environmental, and demographic.

Step 3. Analysis of competitors. This step involves studying the strengths and weaknesses of competitors. Marketing is not only consumer orientation, but also protection of the university for a long time from competitors with the help of a constant system of information about their behavior. Control over a competitor makes it possible to meet the specific needs of the buyer. Knowing the strengths and weaknesses of competitors will allow us to accurately orient our plans, ensure the concentration of our own forces against the opponent's weaknesses. Control over the activities of competitors is an important tool of the marketing strategy. Knowledge of the strengths and weaknesses of competitors makes it possible to better justify the strategic directions of activity.

Step 4. Analysis of consumers. The main thing in the analysis of consumers is the search for unsolved or poorly solved, but important for them, problems of effective market deficit. Anyone who better satisfies the needs of consumer groups, for a long time, has the right to a long existence on the market. At this stage, consumer market potentials and consumer requests are investigated, and the information suitable for the direct use is obtained.

The most significant spheres of marketing are specialization and concentration which lead to long-term success. The most important rule of marketing is as follows: "Concentrate your strengths on the competitor's weakness." The main goal of marketing is: "To satisfy needs is better than competitors".

The development of marketing goes not from production to the market, but from the market to production. Success is ensured where the needs of the market are better served ensuring the implementation of innovations if they are beneficial. The optimal solution of problems is achieved provided that it is possible to look at the market through the eyes of the consumer.

Step 5. Analysis of one's own situation. It is necessary to know the strengths and weaknesses of our own institution. It is necessary to answer the question: "What prevents us at the moment to meet the needs of the market better than it is done by competitors?" This analysis makes it possible to run the university at a higher level. The steps 1-5 are mainly related to the analysis of the situation. Analysis of one's own situation is most difficult. To find out for yourself, One of the most important prerequisites for success in business is to recognize oneself, be it an individual or an institution. Problems bear the chances of success, but it is possible to take this change only by eliminating the problem.

The main principle of the analysis of weaknesses is that all spheres of the university should be subjected to constant analysis. At the head of the hierarchy of problems of marketing strategy is the image of the university - the ideal that managers are guided by in their activities. Goals are developed namely on the basis of the image and the strategy is formed on the basis of these goals. To implement the strategy, it is necessary to know one's potential as well as strengths and weaknesses of the institution.

Step 6. Determination of the position of products in the market. Development of the university depends on many factors, out of which it is necessary to choose the "minimum factor" which will allow the university to achieve rapid success. But to determine it, it is necessary to study the market requirements, strengths and weaknesses of competitors, as well as the entire set of minimum factors. In addition, one university differs from the other by a number of key and minimal factors and the use of which will help to solve the narrow issues. One university also differs from another by the advantage it has over competitors, by using its potential, degree of awareness, differences between competitors, etc.

Step 7. Formulation of the goal. Formulating a particular and motivated goal in a written form creates the basis for a clear orientation of the institution. However, we must remember that plans, goals and concepts are realized by people. Success is the type and degree of achievement of the goal. In other words, the definition of a goal is a necessary prerequisite for success. Without a goal, there is no success. Goals should be real, motivated, and logical. Formulation of the goal provides a description of the actual state of higher educational institutions indicating different degrees of risk, formulation of three alternative solutions with the indication of the expected result.

When formulating a goal for each area of activity, the image of the institution, its culture, location, image and marketing strategy are of utmost importance. The logically formulated goal provides for its content (what I want to achieve), the amount (how much I want to achieve), the time constraints (when I want to reach).

Step 8. Providing the visibility of information. The visibility of information and the specificity of the goal should awaken the employee's interest to solve the problem. The goal of forming connections and methods is a purposeful change in behavior or motivation.

Step 9. Developing marketing policies and strategies. All eight previous stages of the preparatory work are directed to accomplish the present stage. Initially, marketing planning is carried out for a year and for achieving more short-term goals (developing measures in the field of implementation of marketing policies).

While establishing a higher educational institution, founders often say the following: "My idea is better than the ideas of other entrepreneurs." This idea can become a source of efficiency of the university. It determines its purpose and, as a result, leads to success.

Strategic marketing is based on two conditions: a strategic advantage in terms of the buyer (price) and strategy (the purpose of the enterprise).

There are three possibilities in the marketing strategy: leadership in prices (management of low costs), differentiation (management of the best achievements, i.e. quality) and concentration (specialization management).

There are also seven main provisions of the university management strategy in the market: control of the saturation of the market; definition of the situation with the goods; setting goals for business fields; formulating the marketing and sales strategy; flexible formulation of the strategy; control over the management and organization of the case; monitoring of the implementation of the strategy.

Step 10. Marketing control. Using the adopted concept and based on the developed plans, we control the execution of the plan, concentrating on the satisfied needs of the market in order to maximize its potential and succeed. Control should be carried out in order to pay attention to bottlenecks and future purposes. Marketing slogans are: "Always go only ahead", "Always advance and advance". Strategic control is the systematic knowledge of future chances and the ability to use them.

At present, marketing of education is a tool through which universities actively promote their product to applicants, parents and society. Advertisement reflects the position of the university, forms its image in the minds of potential consumers of educational services. In a situation of severe competition, the quality and effectiveness of advertising activities is extremely important. Effective advertising of educational services of the university is, first of all, the result of a thorough market analysis, marketing research and planning of advertising activities.

While planning the advertising activity of a university, it is necessary to take into account the position taken by it, the specifics of the educational services provided to the consumer, which determines the specificity of the

university's advertisement. Among the features of educational advertisements are predominance of information on emotionality, inclusion of regional features of the market, preference given to extensive printed information, etc.

The main goal of universities' advertising activities is formation of a positive image in the minds of society. To achieve this goal, the universities carefully plan their advertising activities, develop their specific strategy and tactics, adhering to the general concept of training highly professional specialists of the future. According to the classical laws of marketing, when forming a successful position of any enterprise, three basic elements must be taken into account: the consumer's benefit, the target market and competitors.

In addition, universities have to constantly study their main competitors who most dynamically act on the market, the features of the educational services and programs provided by them, their price policy, methods of promoting their "goods", etc.

Universities have to actively use all kinds of mass media - TV, radio, newspapers, various educational directories, catalogues, computer databases, international exhibitions of education, etc.

The main thing in marketing is the ability to make proper prognosis. One of the main components of the success is the desire to foresee the demand for specialists, effective advertising activities of universities.

Conclusion

The choice made by the university in developing its enhancement strategy should not be focused on one of the mentioned approaches, but in their balanced use. Mass production, i.e. creation of consumer values in the classroom for many years, will remain the foundation of the educational activity of the university. But in order to withstand the aggravating competition, the university must determine which partner networks or individual programs are ready to be offered in the market. Creation and effective use of the network of foreign partner universities allows to strengthen the mass programs of the university, since it meets the growing needs of target consumers in obtaining knowledge and skills applicable in the internationalization of economy and business.

References:

1. Cheryl Slover-Linett, Michael Stoner. Higher Education Marketing and Communications Challenges for 2009: Dealing with New Issues or Struggling with Old Ones? 2008.
2. File J. M., & Salerno C. S. Reflections on "Estonian Higher Education Strategy, 2006-2015". Enschede: Center for Higher Education Policy Studies (CHEPS), 2005.

3. Paul Christ. KnowThis: Marketing Basics, Second Edition. A division of KnowThis Media LLC. 2012.
4. Antonovich N. S., Konopyanova G. A. Peculiarities of marketing strategy of the University. Bulletin, №4, 2006.

Cases of Bullying Among Pupils Undergoing Puberty

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Abstract

The article addresses cases of bullying among pupils undergoing puberty. The goal of the article is to determine which type of bullying cases is prevalent among pupils who are undergoing puberty and which mechanisms exist to respond to them. Important issues, such as definition of bullying terms, bullying expression forms, its causes and preventive measures, have been discussed in the article. Due to the topicality of the issue, the results of questioning of pupils from different schools of Georgia take an important place. The questioning on cases of bullying was conducted among pupils. 100 pupils undergoing puberty participated in the questioning. 87 of them were from public schools, whereas 13 were from private schools. All of which consist of 51 boy- and 49 girl-respondents belonging to different cities and regions of Georgia¹⁴⁰.

Looking at the topicality of the issue, the society actively talks about themes of violence against children and, in most cases, discusses the issue only in the context of violence carried out within the family, when the conflict between adolescents is not less relevant and dangerous. During puberty, when adolescents are no longer completely under the influence of their parents, the individual establishment of learning age is mainly in the hands of professionals (teachers). As a result of the research, 78% of pupils who are undergoing puberty indicate that the most common type of bullying is mockery. Whereas, the conversation of the director, the form-master and the Resource Officers, with the parents of the children who usually engage in bullying other kids, are mostly used as a mechanism to respond to the bullying. Schools were recommended to hold events supporting tolerant dependence by encouraging self-governance of pupils and their involvement. Creation of a tolerant environment will reduce the cases of bullying by mockery; the school management shall record all cases of bullying with the help of the Resource Officers and the form-master. The Ministry of Education shall also conduct

¹During the preparation of the Article, the learning process at schools of Georgia was suspended. Therefore, the survey was conducted in the tourist city of Kobuleti, and also in summer camp of boarding school of village Salibauri, Kelvachauri region.

research on the mentioned issue with the universities and start working towards making future changes only on the basis of the research.

Keywords: Bullying, violence, aggression, puberty, reaction

Introduction

The article examines bullying cases among pupils undergoing puberty. Taking into consideration the importance and significance of the issue, during the research of bullying as a social event, the theoretical grounds were studied, as well as questioning of pupils undergoing puberty, which was done by questionnaire and interviews with school directors and representatives of the Resource Officers, as were conducted in the course of the survey¹⁴¹.

Bullying is a long physical and mental violence of one individual or a group of people against another individual who cannot protect himself/herself in a certain situation. Bullying is a social phenomenon, which is mainly a characteristic of organized collection of children and, first of all, this event takes place most frequently in schools. This can be explained by the fact that certain role relationships are developed at schools, namely groups of "Leader and Outcast". Consequently, any child may be a victim of violence in a society of children, but based on the reality, the most vulnerable group is a group of children who differ from their peers both physically and mentally. It can be said that the "risk group" includes children having physical defects, peculiar behaviors, other nationalities, etc. We have cases of bullying in all age groups, but it is especially prominent during puberty.

Definition of Bullying

The terms used in scientific literature to describe the ill-treatment are: bullying (Eng. Bully, abductor), mobbing (mob, mobbing, narrowing). Bullying (mobbing) implies intimidation, physical and psychological persecution in order to cause fear and obedience in another person. It used to be only a concept, but in the last 20 years, it has become a socio-psychological and pedagogic term, behind which social, psychological and pedagogical problems exist.

Scandinavian scientists were first to take interest in the problem of bullying (Heinemann, 1973; Olweus, 1984; Pikas, 1975, 1989; Roland, 1983, 1989). Teachers and educational institutions paid less attention to cases of expression of child cruelty. The attention of school administration was mainly paid to aggressive behavior of children and missed lessons. The situation has changed since the works of Tatum, Lein, Roland and Muntus (Rolland &

¹⁴¹ The data of questioning are processed in the program (SPSS). Accordingly, both qualitative and quantitative research methods were used.

Munte, 1989; Tattum & Lane, 1988) were published. Today, it is openly spoken that there is a problem such as school bullying (mobbing).¹⁴² Today, the definition of Roland is widely accepted (Roland, 1988). Bullying is long physical and mental violence, of one individual or group against another individual, who cannot protect himself/herself in a certain situation.¹⁴³ Bullying occurs in different forms of physical and psychological oppression. It can be a systemic mockery (of victim's appearance or personal characteristics), damage of victims' subjects, extortions of money or personal belongings, disparagement, or humiliation etc.

Bullying Expression Forms

Different types of bullying are given in literature: a) physical bullying: a bullying case that results in different bodily injuries; b) verbal: such as addressing with mockery name, verbal humiliation, homophobic and racist expressions, etc.; c) hidden/masked bullying: this refers to the case, when it is difficult to understand when it happens. The violator acts behind the back of the "oppressed" person in order to bring harm to his/her reputation and humiliate him/her publicly; d) Cyber-bullying: when a person is carrying out bullying by using digital technologies for the purpose of hidden or obvious intimidation. It may include placement of offensive photos or videos in social networks, dissemination of obscene rumors, sending harmful short messages, creating pages and accounts using the name of others.¹⁴⁴

According to the survey, bullying is found both among boys and girls. Different forms of bullying are used among boys and girls. As the study shows, boys often refer to physical bullying (kicking, jogging, etc.), and girls use indirect forms of pressure (dissemination of rumors, breaking relationship, etc.). Bullying is most often found in middle childhood and early adolescence.¹⁴⁵

The study found out that it is possible to identify the typical characteristics of such children who are often victims of bullying: they are hanged, locked, sensitive. They have high anxiety, low self-esteem, tend to be depressed and often contemplate suicide compared to their peers. They do not have close friends. They deal better with older ones than with their peers.

Cases of bullying are also frequently encountered in families, work places and especially in schools. According to studies conducted in the USA, every fourth school pupil is a victim of bullying. According to UCLA data, the bullying is triggered more by social status and popularity in secondary schools. 1,895 pupils were interviewed at 11 secondary schools in Los

¹⁴² (19-p.1)

¹⁴³ (19-p.1)

¹⁴⁴ (21-p.2)

¹⁴⁵ (19-p.1-3). (25.07.2017)

Angeles. According to the results of the questionnaire, a stereotype/trend was detected: a child who is often considered as "authority" often oppresses others and, therefore, the oppressor is always associated with the "cool" man, who becomes the oppressed. According to the data of DHHS, 2014 (Department of Health and Human Services 2014), 6% of adolescents from 70% recognize that they were present at bullying cases and about 30% indicate that they have been victims of bullying.

Pupils During Puberty

Based on the essence of the article, it is important to identify what period is actually associated to be for pupils the onset of puberty. The transition from childhood to maturity is called puberty. This age begins from 10-11 years for girls and for boys from 12-14 years and lasts until 14-18 years. This age division is conditional and approximate. There is always a varied difference for time of onset of puberty in most cases; it may start sooner or later. During this period, there are physical and nervous-psychological transformations in the body; this is the major reason for the change in adolescent's behavior. They change radically, become stubborn, restless, and very confident. The question arises: why does it all happen? The reason is in the following: there are changes that occur in the blood, resulting in the circulation of sex hormones, which in turn gives rise to sexual urges. In the first instance, it is usually expressed by curiosity, and then with interest towards the opposite sex. The adolescent desires to know the intimate secrets of nature. They then begin to have aspiration towards the opposite sex.¹⁴⁶

Puberty, or maturity, when the adolescent tries to establish himself/herself, is expressed in several different forms, sometimes by aggression, sometimes by excessive "freedom". They think that they know everything and that the behavior conducted by their knowledge is right at all times, as well as the excessive drive for leadership.¹⁴⁷

Nowadays, the quite most relevant problem in adolescents is aggression, the forms and results of its expression; therefore, it is of crucial importance to know what its basis is and where the aggressive behavior comes from. In recent years, aggression of adolescents has greatly increased; thus, it is necessary to determine what causes the aggression and how we shall fight against it. There are many causes of aggression among adolescents, starting with physiological changes that are very active during the onset of puberty and ending with psychosocial conflicts that can be observed in adolescence. That is why the age of adolescence is known to be very a difficult and a critical one. A list of supporting factors can be very great and can be linked to social and

¹⁴⁶ (8-p.484)

¹⁴⁷ (15-p.139)

economic conditions, as well as the emotional and cognitive attitudes of an adolescent.

It is logical to assume that the emotional and cognitive attitudes of an adolescent have great influence on his/her adaptation in environment and define the peculiarities of conduct, including the frequency, means and forms of aggression.¹⁴⁸

Causes and Prevention of Bullying

The causes of violence in school can vary differently. One of the causes of violence in school is the indifference of teachers and pupils towards the ongoing processes at school. Isolation of pupils from school life, lack of connection with teachers and decision-making persons often leads to vandalish behaviors, because students cannot identify themselves with the school's daily life. There is a causal link between the violence exhibited among pupils and the difficulty of mastering the school program. Failure in school subjects (which may negatively affect the future prospects of employment) causes psychological stress, alienation from school and successful peers. This is the basis of aggression and violent manifestations. Those students who have problems in mastering the school program should be offered prolonged groups, including the help of classmates or senior students.

In addition, the objective assessment of pupils by teachers is important. A pupil should not have feeling of unfaithfulness and non-recognition from teachers. Non-compliance with relevant pedagogical obligations, including non-compliance with the standards of assessment, has a very negative effect on the pupils' social activities at schools and then in other public spheres.

The family has been attributed with the major role in the aggravating of factors leading to aggression in adolescents, because the child who has been to school already has some norms of behavior that can naturally be developed in the family. One of the most important issues among adolescents is the lack of attention, less pedagogy of parents and inadequate involvement in school life.

After family, the responsibility is given to school, which has a great role to play in the formation of an adolescent's personality. The school is a place where adolescents spend most of their time. Violence and degrading treatment in educational institutions, school education deficit, lack of incentive measures, proper attention and supervision, unfriendliness between teachers and students, are factors that add to adolescent aggression in the personality of adolescent, cause behavioral problems and lead adolescents in negative directions, like committing a crime. The school has lost its educational function. Today, it is the only educational institution where the

¹⁴⁸ (7-p.2). (21.07.2017)

teacher cannot actually and adequately provide for the educational needs of the attendees.¹⁴⁹

In 2009, at Avchala Juvenile Special Establishment, a survey of the educational needs of juvenile convicts was carried out. The survey revealed that 56.74% of respondents (80 pupils) changed their school. 33.33% of them named the reason for school change: exclusion (was named 17 times), as well as the reasons for which the school was taking this decision were named: “I was excluded, bad behavior, naughtiness, conflicts with teachers, I was excluded by administration because of bad behavior and bad attendance, conflict with classmate, conflict with teacher, lack of education”. It is obvious from the survey that the school used exclusion as a punitive sanction. But there are also reasons why the school was taking this decision. But the question arises, how positively did it reflect in or affected the personality of the adolescents.

In connection to reaction to the cases of bullying, the cases that took places at one of the schools in Kobuleti region are noteworthy. However, none of the cases were documented. In particular, a girl of VIII grade mocked her peer because of secondary clothes. This scenario ended up in a physical confrontation. Over a period of time, there was a hostile attitude between them. Finally, both pupils moved to other schools differently.

At one school, a group of class mates during a conversation with another girl from the same class via Skype, took a photo of her upper body in unpleasant or offensive state and spread it all over social network. This issue resulted in a confrontation not only from adolescents, but also from their parents. This incident eventually ended up with moving of pupils to another school.

The usual reaction of moving kids from one school might not be the logical way to solve the problem. While observing real cases, such steps were not proffered to be taken as solutions, both on the school’s path and that of the Resource Officers. Even the incidences were not recorded. Cases of referral by the Resource Officers with the relevant services after an incidence of bullying were very rare, despite the fact that the legislation obliges such an action to be taken.

Consequently, it is important to take effective measures against violence and aggression using mediation and other educational resources within the school. Mediation has a special effect in conflict resolution. In Western systems, this institution is often used at schools in order to prevent or regulate conflicts. In addition, the skills obtained through mediation will help adolescents in the post-school period. Consequently, the use of Mediation Institution in Georgia may be very effective in school.

¹⁴⁹ (13-Chapter V)

In this regard, it is important to use more effectively the Institution of Resource Officers in schools and to take care of qualification enhancement for this purpose; instead of coercive mechanisms, it is important to involve pupils and teachers in solving problems. For this purpose, teachers should be given the appropriate knowledge in order to solve the conflicts raised among pupils. The aim of the mediation programs is to reduce the violence in schools, to raise morals and self-consciousness in pupils. At the same time, teachers are given the opportunity to pay more attention to education than discipline. The actual goal of mediation is to develop the ability to solve conflicts through non-violent means amongst pupils. They are thereby encouraged to use these set of skills acquired at schools in solving other life conflicts, including the reduction of conflicts at the initial stage and prevent the risk of conflicts arising; the role of parents should be enhanced as well through special trainings. They may eventually become trainers themselves. The support of the society is indispensable for the success of this program; the unity and cooperation of the society can be realized if the school can involve exemplary persons (e.g., representatives amongst the teachers, NGO personnel, proficient students from the universities, public figures) in the school mediation process. In this regard, it is possible to sign memorandums of cooperation with relevant organizations.

The survey of social, emotional and mental state in secondary schools of victims of bullying was conducted at the University of Western Australia and the following recommendations were elaborated upon: to create new groups, social networks of peer support and relationship, which will play a major role in reducing bullying. Steps should be taken as follows: a culture of supporting schools; safe school environment; interconnection of school-family. It is acknowledged that if pupils consider school personnel as unreliable and less competent, they are less likely to ask for their help. If the school staff is trying to prevent and reduce the cases of bullying, it will increase the feeling of safety of pupils. The rapid and persistent response of the staff is a simple and deliberate action that can be a basis for prevention of bullying in enclosed boarding school. Involvement of pupils in as many activities as possible outside the school and in the meeting should be made. Encouragement of empathy amongst pupils, the positive action of the outsider, the support of peers is considered to be crucial in the prevention of bullying.¹⁵⁰

Child Protection Referral System

In 2012, the surveys of UNICEF studied cases of violence in schools and found that 80% of children surveyed in Georgia suffered physical or psychological violence at least once.

¹⁵⁰ (17-p.154)

In 2007, the national research on child abuse was held. During this research, the forms of violence prevailing in the country were studied. The research revealed that 80% of boys and girls suffered physical and psychological violence of different forms in Georgia.¹⁵¹

In 2010, the Government issued a decree on child protection referral, in order to respond to these results and develop the child protection system in Georgia. This was a joint decree of three Ministries – the Ministry of Labor, Health and Social Affairs of Georgia, the Ministry of Internal Affairs of Georgia, and the Ministry of Education and Science of Georgia. It aimed at elaborating appropriate coordination mechanisms in order to identify cases of violence against children, assess the needs of victims and establish justice.

Two years have passed since the issuance of the decree. The number of reviewed cases increased from 40 to more than 150 cases per year. Nevertheless, the parties (including sectoral ministries, partner NGOs and different groups of society) are concerned about the efficiency of the referral system and talk about the need to study the system. Among the problems mentioned by them, there is a problem of lack of knowledge about particular procedures, lack of ability to recognize signs of violence, weak coordination between contracting parties, low level of coverage of victims and lack of services for bio-psychosocial rehabilitation of children victims of violence. The Parties also consider that in addition to studying the referral system, it is necessary to study the knowledge, dependence and practice in relation to violence in order to develop strategies, policies and information dissemination campaigns to solve the problem in Georgia based on the information obtained.¹⁵²

UNICEF conducted the work - survey on "Violence against Children in Georgia". These are two independent, but interrelated by their content, researches, and united as one publication where issues of violence against children are analyzed differently. 3345 people participated in the research.

In the first survey, called "Violence against Children in Georgia - National Survey of Knowledge, Attitude and Practices", the attention was paid to the level of knowledge in the adult population of Georgia; to the attitudes that are basis of the spread methods of child upbringing and that are revealed; and in the process of detection and response to the cases of violence against children.

In the second survey – "Violence against Children in Georgia– Analysis of Child Protection Referral Procedures and Recommendations Developed for Government" – the referral procedures of child protection were analyzed and was established in 2010.

¹⁵¹ (5-p.14)

¹⁵² (10)

As a result of the survey, it turned out that there is an alarming situation of violence against children in Georgia, because almost half of Georgian population considers violence against children as acceptable. 60% of the population believed that harsh parenting is more effective than non-violent parenting methods.

Sometimes, a parent thinks that bullying is a school trick, but the practice shows that most of those who were oppressed during adolescence further choose a criminal path, since the aggression in it does not disappear and the experience obtained in childhood determines our personality.

If a child experiences physical violence, there is a greater probability that he/she will also commit violence against others in adult age.¹⁵³

Aggression and violence often are not only immoral, but they also end up with violations of legal norms and take the form of crime. According to the data of the Ministry of Internal Affairs of Georgia, the frequency of registered offenses since 2001 has been characterized by a sharp increasing trend and reaches a peak. If we take into consideration the factors that aggression does not always take the form of crime, and the number of unregistered crimes is unknown to us, the incidences of aggression by adolescents are likely to be much higher than the number of officially registered offenses.¹⁵⁴

On the one hand, the problem is to identify the victims of violence, and on the other hand, to take effective actions towards rehabilitation and against violence. There is a problem of child physical punishment, as well as bullying of children in educational institutions.¹⁵⁵

It turned out that knowledge of neglecting signs of interests of children and of necessary actions reduces the probability of school intervention. Furthermore, if the person considers that the child victim of violence shall receive assistance from the Church/Religious Institutions or the Court, the delivery of information to the school will be reduced by about 30%. These results can be caused by developing and still obscure social functions of schools in Georgia. The discussion can be caused by the issue that religious institutions are more reliable in connection to violence than school, whereas noteworthy cases for courts seem to be more acute in order to be solved by the school. The results indicate that it is necessary to strengthen the function of school in respect to violence, and that the society shall learn more about the specific ways by which the school personnel can contribute to identifying cases of violence against children.

¹⁵³(3-p.66)

¹⁵⁴(13-p.Chapter-IV)

¹⁵⁵(9-p.6)

Legislative Regulation of Bullying

In Georgian legislation, various legislative acts provide important mechanisms for protecting pupils. The Law of Georgia on "General Education" regulates the important rights of the pupil; in particular under the paragraph 8 of the Article 9, the pupil has the right to be protected from ill-treatment, inattention and insult. The Article 20 of the same law establishes guarantees of inadmissibility of violence at school and of safety of pupils.

Violence against any pupil or any other person at school is inadmissible, whereas in case of such violence, the school is obliged to immediately make the appropriate response (the paragraph 1 of the Article 20 of the Law on "General Education").

The legislation also establishes the obligation of the teacher to provide information to the appropriate authorized person determined by the director of the school on violence against women and/or possible facts of domestic violence if there is a danger of recurrence of violence (the paragraph 1, the Article 20¹, of the Law on "General Education").

For the purpose of protecting children from violence, a joint decree was issued by the Ministry of Labor, Health and Social Protection of Georgia, the Ministry of Education and Science of Georgia, and the Ministry of Internal Affairs of Georgia on May 31, 2010. This decree determines effective and quick response mechanisms in the case of violence against child, rights and obligations of the competent authorities, relations that are related to child protection.

According to the above mentioned order, detection of violence against child is obligatory for all institutions dealing with children, including schools, medical institutions, village doctor, and specialized institution for children, agency, local service or patrol police.

According to the legislative regulations, the school administration is obliged in case of doubt of violence against child to identify the emergency situation of violence in relation to the child and of the reasonable doubt of commitment of violence and manage the case within the framework of the competence specified by referral procedures of child protection (Joint Decree №152 -№496-№45, the Article 6).

An important regulation for protection of public order in public schools is Resource Officers of Educational Institutions. An important function of the Resource Officers is to create a safe environment for health and life of pupils in general educational institutions, eliminate mutual confrontation among teenagers, perform role of mediator among opposing adults, identify and resolve conflict situations.

One of the main responsibilities of this service is to create an information-electronic database on the violations identified at schools.

Results of the Questioning of Pupils from Different Schools of Georgia

In the process of preparation of this article, there was a temporary suspension of the learning process in Georgian schools. Therefore, the research was conducted among the summer camps at the tourist city of Kobuleti, as well as in the summer camp of the boarding school of Salibauri village of Khelvachauri region. The fifth-tenth grade pupils were selected for the survey, mainly because students found within these grades are most likely undergoing puberty already. The survey was attended by representatives of ethnic minorities and socially vulnerable students, in total by 100 respondents. These adolescents in total were from 87 public and 13 private schools. 51 boys and 49 girls represented different cities and regions of Georgia (Tbilisi, Batumi, Kutaisi, Gori, Kobuleti, Mtskheta, Telavi, Signaghi, Surami, Zugdidi, Gali, Akhaltsikhe, Akhmeta, Gurjaani, Dedoplistskaro, Lagodekhi, Sagarejo, Dusheti).

The number of respondents by the grades was: from fifth grade, 4%; from sixth grade, 8%; from seventh grade, 22%; from eighth grade, 23%; from ninth grade, 26%; and from tenth grade, 16%.

The first part of the questionnaire was about the case, the victim and the types of bullying. The first question was: how many cases of bullying were known to you during the past year; the answers were evaluated by 4-point scales. *None* was stated by 20%, *one* by 35%, *two* by 17%, and *more* by 27%. 80% of respondents stated the existence of a single case of bullying. The following question was to ascertain which type of bullying the case known to them belonged to. Hence, the pupils had to choose among the following answers: physical violence; seizure of money and other items; intimidation, a sense of fear of being in danger; mockery, addressing with humiliating, damaging words; telling lies about a pupil and trying to make other pupils to hate him/her; cyber bullying, sending and disseminating humiliating and harmful messages or photos via internet. 78% of pupils named mockery with other types. Due to this fact, it seems that the most common type of bullying is mockery. The next question was open-ended whether he/she suffered from bullying and how could they describe it; however, 88% did not want to talk about this aspect. Only a few pupils talked about the bullying they had suffered and the issue of mockery dominated their written comments too, although due to various factors: nationality, bad learning, obesity, appearance, etc. The results show that pupils during puberty refuse to speak about the bully experience they had or went through.

The second part of the questionnaire was about the support of peers, because the latter shows the fact that bullying exists. The question “How often do your classmates help you when you do not understand something during study?” was answered in the following way: Never, 5%; Always, 65%; Sometimes, 29%. “How often are you assisted in case if you are injured?” –

Never, 1%; Always, 78%; Sometimes, 20%. “Do your peers want to work with you?” – Never, 1%; Always, 65%; Sometimes, 33%. “Do your classmates lend you things when you need them?” – Never, 2%; Always, 80%; Sometimes, 17%. The question- “I feel lonely, I am excluded from school environment” – Agree, 6%; I do not agree, 92%.

The questionnaire included a part concerning communications and affection. The answer “I feel that I am part of the school” was given in the following way: Never, 7%; Always, 65%; the rest of the answers was distributed thus - Sometimes or Usually. “I am happy at school” – Never, 7%; Always, 41%. Here we see the difference between the involvement in school life and the pleasure of staying at school. Teachers treat us fairly - 3%; I'm not sure - 2%; Sometimes -21%; Always - 66%.

This next part contains response about actual bullying. 33% of pupils say that the bullying was not responded at school, which is quite a high indicator. The remaining 67 percent were distributed on such mechanisms of response: 1. Conversation of the director, form-master and Resource Officers with the parents of a child; 2. Moving to another school; 3. Exclusion from school; 4. Address to psychological service. From these mechanisms, according to the survey results, the first mechanism is used at schools. The pupil should tell the form-master, the Resource Officer when he/she is oppressed. Agree, 70%; I'm not sure, 16%; Disagree, 13%. That means that a third of the respondents negatively react in respect to disclosure of the act of bullying. However, when answering the question about whether the pupils found engaging in bullying act be punished or not, a majority of the pupils supported punishment.

In the process of data processing, cross tabulations of two variables were made about the recognition of the act of bullying. About 39% of girls say they should tell the form-master and the Resource Officer when they are oppressed, and 31% of boys indicated that boys in comparison to girls are reluctant to disclose acts of bullying.

Conclusion

Based on the results of the current theoretical material and the results of survey, there is no official statistics of the cases of bullying in the Ministry of Education and Science of Georgia. There is no known work in progress towards the reaction to and prevention of bullying or any type of change in the Ministry. In regard to the fight against bullying, the state has considered the introduction of the Resource Officers as enough; however, what is happening in our country in this direction was not officially researched in Georgia until now. This is stated by the fact, that the number of documented facts of bullying cases and work carried out in this field are very small. The facts of bullying are actually much more than the school administration confirms; the part of

pupils during puberty does not support disclosure of the fact of bullying, which is a hindering factor in the identification of the bullying cases. The problem is obvious when it comes to responding mechanisms for bullying. In most cases, it is desirable to use the mechanism for psychological service, but only a small part of the surveyed students confirm it. Based on the results of the survey, it is possible to say that schools often have mockery, the frequency of which depends on the indicator of support of peers.

Recommendations have been suggested based on the conclusions:

- The Ministry of Education and Science should start working towards the processing of the statistics of bullying cases;
- For disclosure and prevention of acts of bullying, all form-masters should complete the sheet of individual characteristic of a pupil and consider the assessment of all pupils together with a psychologist. A comparison with previous characteristics shall be made. If the assessment will be lowered in some way, it is necessary to start a research about the factors. In case of disclosure of an act of bullying, necessary measures shall be taken for its elimination.
- The school administration should record all acts of bullying with the help of the Resource Officer and form-master; and also take decisions in respect to the problem, as well as apply to law enforcement bodies.
- The form-masters should have frequent individual conversations with pupils, and be friendly in order to enhance openness on the part of the pupils to enable them disclose their experiences with ease.
- By implementing the self-governance of pupils and by their involvement in events which should be held in order to promote attitudes of tolerance. Creation of tolerant environment will reduce acts of bullying, especially through mockery;
- Form-masters should systematically work with their parents to be able to address the objective assessment of acts of bullying and not be against an involvement of psychological methods if necessary.
- The Ministry of Education should conduct research with the universities and start working only in the direction of the research towards future changes.

References:

1. Berishvili, J. (ed.) (1995). Pedagogy. Tbilisi: Tbilisi University Press.
2. Dzotsenidze Ketevan (2016). Effective communication mechanism with adolescents, the age of adolescence 11-17 (18) years. Works. Kutaisi.
3. Gagua, V. (1996). Pedagogy. Tbilisi.
4. Gogichaishvili, T. (2005). Psychology of development. Tbilisi.

5. Kartlelishvili M. Aggression as one of the reasons causing crime of juvenile, prevention of crimes committed on the aggressive background. Iliia State University. Tbilisi. 2010.
6. Kurdadze, I. (2013). Proper organization of teaching process and prevention of crime of juvenile. Works, Kutaisi.
7. Leanne Lester and David Mander. Health Promotion Evaluation Unit, University of Western Australia, Perth, Western Australia, Australia.
8. Margishvili, A. (2017). Aggression in adolescents and their attitudes toward parents. https://sangu.ge/images/2015/1_anamargishvili.pdf (21.07.2017.)
9. Metreveli, L. (2016). Puberty. Works. Kutaisi.
10. National Defender of Georgia (2016). The situation of rights of children in Georgia.
11. The joint decree of the Ministry of Labor, Health and Social Care, Ministry of Internal Affairs of Georgia, Ministry of Education and Science of Georgia (N 152 - N496 - N45) on approval of the procedures for child protection referral; May 31, 2010.)
12. UN World Report on Violence against Children in the World (2006). <http://www.unicef.org/violencestudy/3.%20World%20Report%20on%20Violence%20against%20Children.pdf>.
13. UNICEF (2013). Violence against Children in Georgia. National Survey about Knowledge, Attitude and Practices. July.
14. UNICEF (2008). About Violence against Children in Georgia, 2007-2008. http://unicef.ge/uploads/The_National_Study_on_Violence_against_Children_in_Georgia__in_Georgian.pdf
15. Uznadze, D. (1940). General Psychology. Tbilisi, 1940.
16. Panchulidze Tea (2016). School fear, as indicator of violent behavior among adolescents. Works. Kutaisi.
17. National Strategy on Violence Prevention.
18. The Role of Social, Emotional and Mental Wellbeing on Bullying Victimization and Perpetration of Secondary School Boarders.
19. <https://www.radiotavisupleba.ge/a/normad-kceuli-dzaladoba/25154835.html> (27.07.2017)
20. <http://education.ge/index.php?do=definition/view&id=1891>.(25.07.2017)
21. <https://ialinda.wordpress.com/2014/07/23/%E1%83%91%E1%83%A3%E1%83%9A%E1%83%98%E1%83%9C%E1%83%92%E1%83%98%E1%83%AB%E1%83%90%E1%83%9A%E1%83%90%E1%83%93%E1%83%9D%E1%83%91%E1%83%90%E1%83%A0%E1%83%9D%E1%83%9B%E1%83%94%E1%83%9A/> (24.07.2017)
22. <http://intermedia.ge.AniJalabadze.Bullying>. December 25, 2014.

Supporting the Target Population Groups with Business Grants (Case of the Project “Life Georgia”)

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Abstract

Business grants support is one of the components of “LIFE Georgia”¹⁵⁶ project. The results clearly demonstrated that the scheme, used to support the business grants, is the best way for the long-term livelihoods of target groups. The main advantage of business grants support is that after the reception of support on the initial stage, results of business activities and beneficiaries' social condition depend on the personal efforts of beneficiaries. “LIFE Georgia” project gave the beneficiaries the opportunity not to be in a constant dependence on the good will of other people or governments' obligation to provide any citizen with minimum of livelihood.

The article outlines the main approaches and results of supporting business grants for various socially vulnerable groups. Business grants are discussed in three directions: small scale grants, the medium scale grants and provision of basic tool-kits to start small businesses. Within the project, different complementary activities are considered for business grants support.

Keywords: Business grants, tool kits, Social Assistance Allowance

Introduction

Many projects for support of vulnerable groups have been implemented in Georgia. The case discussed in the article is part of practical realization of the strategy of the Government of Georgia in relation to internally displaced persons. Namely: On February 13, 2014, the Georgian Government issue the resolution No 257 "Strategy of providing availability of livelihoods for IDPs and refugees". Its objective is the social and economic development of refugees by the joint efforts of state institutions, donors, international organizations, national and local non-governmental organizations and a private (business) sector by creating opportunities for the

¹⁵⁶ “LIFE Georgia” - Livelihood Initiatives to Foster Employability and Entrepreneurship of IDPs and host populations in Georgia.

realization of the potential for the refugees and host communities. In accordance to the present resolution, the strategy of providing availability of livelihoods for the refugees must support transition of refugees and their host communities from the dependence on the IDP allowance to the self-sufficiency and increasing their role in the country's further economic development.

Practical realization of the strategy of providing availability of livelihoods for the refugees was supported by the project, implemented by the consortium within the grant program of EU: Livelihood Initiatives to Foster Employability and Entrepreneurship of IDPs and host populations in Georgia - "LIFE Georgia".

Organizations, participating in the consortium, are represented by: "Action Against Hunger"/ACF, "Association Rural Development for Future Georgia"/RDFG, Association "Atinati", "Education for Development" NELP /EfD, Social Programs Foundation/Legal Aid Georgia/SPF/LAG and "World Vision Georgia". Consortium was led by the International Organization "Action Against Hunger"/ACF (Spain).

The objective of the LIFE Georgia project implemented within the consortium was employment, creation and development of opportunities of livelihood for refugees, local population, especially for young people and women. The specific objective of the project was support of long-term livelihood opportunities for the refugees and local population of Samegrelo and Shida Kartli, by means of the availability of professional development and employment. Besides, development of their socio-economic integration approaches in close cooperation with the Government and Civil Society.

One of the main components of the project was the support of SME in refugees and the local population by means of business projects, funded by the associations¹⁵⁷. The project was implemented in 6 municipalities of Samegrelo and Shida Kartli.

The consortium carried out works in target regions in accordance with the pre-designed plan. Among the activities carried out in terms of support of business grants, a wide range of activities were executed within the project. In particular, procedural scheme for the support of business grants has covered the following stages: Capacity, Skills, Development and Training Needs (CSDT) Assessment; Awareness raising and information dissemination; Development of training materials, programs, application forms; Selection of beneficiaries, willing to participate in the project; Trainings of beneficiaries; Consultations on entrepreneurial issues; Development of business plans; Initial evaluation of business plans conducted by experts; Internal

¹⁵⁷ Business grants management and administration were conducted by "Association Rural Development for Future Georgia"/RDFG and Association "Atinati".

organizational evaluation of business plans; Presentation of business plans and selection of winner applicants; Signing grant agreements with selected applicants; Procurement of devices, equipment, tool kits, etc., in accordance with the established procedures and handing over to beneficiaries; Monitoring of implementation of obligations, imposed by the grant agreement.

Survey Results in the Target Regions

Within the LIFE Georgia project, capabilities, skills, development and training necessity of the target group (CSDT)¹⁵⁸ in Samegrelo and Shida Kartli has been assessed. The research results and findings created a solid basis for proper planning and implementation of business grants support activities.

The research covered many aspects of the social-economic conditions of the target groups. The research showed that in Samegrelo as well as in Shida Kartli, an important source of an income for IDP families was IDP allowance. Besides, it has to be noted, that in both regions, the sale of agriculture products was the source of income for local residents as well as for IDPs. Employment income component in families' total income, according to the segments, was different and varied from 32% to 48%.

According to the research results, very small part of the target group was engaged in small and medium business; this is proved by the fact that only 4 % of income for local and IDP population was from private business (does not imply trade).

It can be said that the results of the research have fully reflected business development situation in the target regions, especially if we will take into account the official statistics of business sector in Georgian regions. According to the data¹⁵⁹ of Statistics Service of Georgia, for 2006-2014, 71.8% of turnover, 64.6% of output and 63 % of employment in small and medium enterprises (2014 year) were only in Tbilisi. Besides, it has to be noted that not only in targeted regions, but also in the whole country, small and medium enterprises are not still playing a significant role in economy. This is based on what is confirmed by the low share of small and medium enterprises in the gross domestic product (2014 - 18 %).

There can be many reasons that is hindering the development of small and medium businesses. According to the opinions of the research respondents, the projects of small and medium business facilitation are not executed in the target areas. Local population did not have the proper motivation and knowledge, and the existing business units were not interested in the development of entrepreneurial activities within the region.

¹⁵⁸Survey Report. Capacity, Skills, Development and Training Needs (CSDT) Assessment. Prepared by: ACT. Prepared for: ACF SC. July, 2015. Tbilisi, Georgia

¹⁵⁹<http://www.geostat.ge>

At the local level, there are certain/single cases of the business development, such as business incubators, greenhouse farming, hazelnut production and fisheries. However, the involvement of IDPs in startups is minimal. At the target areas, small business exists as local shopping facilities in which IDPs are actively involved.

In the opinion of local non-governmental organizations, in the target regions, a number of small businesses is very small and they do not have the motivation for expansion and development direction, which is an important factor that is hindering the economy development. The reason for the mentioned issue may be the lack of availability of cheap credits for the owners of small businesses. In Shida Kartli, climate and inadequate irrigation system with limited access on a land resources are considered as a main barrier of agribusiness development. Whatever is the reason that is hindering the development of small business, it is clear that **in the target regions, small business cannot equip the enterprise with modern technology in order to independently increase the market competitiveness.**

The research determines important obstacles for the entrepreneurship and small business development which is notable not only for the successful implementation of the LIFE Georgia project, but for the whole country's long-term social-economic development. Particularly, “except for traditionally negative or cautious dependence on a business risks, **internally displaced persons often refuse business grants on the ground that it will lead them to automatic termination of their only stable source of income – IDP/Social Assistance Allowance (SAA).** We have to assume, that not only the internally displaced persons, but also any other category of population - recipients of Government allowance, similarly consider business grants and other entrepreneurship support programs as a danger. They voluntarily refuse to participate and get additional benefits. Therefore, **people lose the stimulus to improve their social conditions with legal business or with additional revenue reception activities**”.¹⁶⁰

The research shows that the level of public awareness about the labor market was low. The target groups did not know what the labor market requested from them and what the requirements could be in the future. In the target regions, half of internally displaced persons considered themselves as unemployed, but did not think that the lack of their knowledge and skills was one of the causes of unemployment. However, in the target regions from the research of potential employers, quite an opposite result has been received, in particular - the employers have had problems with finding the work force, with proper qualification and skills.

¹⁶⁰ Kvirkvaia M. Methodological Guide for Business Grant Support Schemes. http://rdfg.ge/wp-content/uploads/2016/11/MKVLEVI_J_01en.pdf p.14

Business Grants Support within the “LIFE Georgia” Project

There are few alternative opportunities of receiving funds necessary for starting and expanding the business. Potential sources of funding may be:

- Bank loans;
- Loans, received from Micro Financial Organizations;
- Programs of central and local government;
- Grants.

In accordance to the fundamental market principles of business development, the most effective way for a businessman and a financial institution will be to independently find ways of mutually beneficial cooperation. However, the “current market rate of financial resources (money value) will not affect the individual and social benefits received for the vulnerable groups by means of business activity. In particular, financial institutions are not obliged to take into account the long-term social consequences of the specific business activities. Therefore, when it comes to SMEs, especially when the business is considered as a resource to increase the livelihood for vulnerable groups, classical economic approaches do not work properly and require additional external stimulus”¹⁶¹.

Internationally recognized methods of external stimulus are presented by governmental programs and grants. In most cases, the essence of governmental programs basically lies in providing SMEs with grants and different benefits (low interest loans, tax benefits, and so on).

On the basis of the successful examples of social policies worldwide, it can be said that by means of stimulating business activities in regard of vulnerable groups for the improvement of livelihood sources, desired results are achieved only in case if these activities are accompanied with the well developed mechanisms of business grants support.

In case of Georgia, SWOT analysis¹⁶² and the research¹⁶³ of SME sector has shown not only financial, but other support necessity for SMEs. The analysis has pointed out the weak sides of SMEs which hinder their development, in particular: the lack of entrepreneurial skills and experience; The low level of competitiveness; Low productivity; Finances / limited availability of long-term investment resources; Low level of innovations and researches; The lack of cooperation between research and development institutions and a private sector; Limited technology implementation; Lack of competitiveness of human capital; Low awareness about foreign markets; Low

¹⁶¹ Kvirkvaia M. Methodological Guide for Business Grant Support Schemes. http://rdfg.ge/wp-content/uploads/2016/11/MKVLEVI_J_01en.pdf p.25

¹⁶² http://gov.ge/files/439_54422_706524_100-1.pdf

¹⁶³ Obstacles to Entrepreneurship in Albania, Georgia, Morocco, Nigeria, and Pakistan European Scientific Journal December 2016 edition vol.12, No.34 ISSN: 1857 – 7881 (Print) e - ISSN 1857- 7431. P.403

level of the knowledge of foreign markets; Limited ability of export and internationalization; High costs of new technologies and essential assets procurement; High cost of consulting services for SMEs; the complexity of closing the business, etc.

Many programs and activities for entrepreneurial activities support are implemented in Georgia. Also, special agencies and structures are created which have specific goals for the business support across the country. For example, Enterprise Development Agency (implementing the state program "Produce in Georgia"); Innovation and Technology Agency; The project "Business Incubator" (FabLab); "Cheap credit" program, etc.

Just like the mentioned structures and programs, one of the goals of "LIFE Georgia" - entrepreneurial activity support is to support the sources of livelihood. However, unlike the other projects and programs, LIFE Georgia project is focused on vulnerable target group of Georgian population. To achieve the project results, it uses specific schemes of business grants support.

On the basis of the assessment of project goals, the situation in Georgia and the needs of target groups, LIFE Georgia project implemented business grants support in three directions: Provision of small grants; Provision of medium size grants; Provision of basic tool kits.

Small Scale Grants

Small grants were intended for those who want to start a business or individual entrepreneurs, who are at the initial stage of business development.

IDPs and local population from the certain settlements of Shida Kartli and Samegrelo regions could participate in small business grant competition. In particular, residents of 11 Shida Kartli IDP settlements (Metekhi, Teliani, Khurvaleti, Shavshebi, Berbuki, Karaleti, Verkhvebi, Saqasheti, Skra, Akhalsofeli, Mokhisi), and in Samegrelo region IDPs and local residents of Zugdidi and 12 villages (Ingiri, Kakhati, Darcheli, Odishi, Chkadushi, Upper Etseri, Chkhorlia, Chkadushi, Anaklia, Ganmukhuri, Jvari and Potskho-Etseri), received the right to participate in grant competition.

Beneficiaries, wishing to receive small business grant for the implementation of their business plans, could receive 1500-2000 Euros equivalent in GEL. Also, the co-financing of winners had to be 10% of a total budget.

Small business grant applicants were to present their business plans with a short description of business activity, experience of relationships with donors and other financial institutions, location of business, description of the product to be produced and a service to be provided, prerequisites which an applicant's opinion would support implementation of entrepreneurial activities, detailed description of business production, description of resources at applicant's disposal and required within the project, estimated

organizational structure, in case of involvement of PWDs - description of their functions and provision of involvement, action plan of the project, market analysis and description of the future development prospective of the business, project budget and planned indicators of production, justification of project sustainability. A special form for the assesment of business plans has been created.

Within the project, small business grant applicant beneficiaries filled out 273 business plans in total; among them, 148 in Shida Kartli region and 225 in Samegrelo region. In both regions, 188 small grants have been issued¹⁶⁴: 59 in Shida Kartli and 129 in Samegrelo region. Out of the small grants issued in Shida Kartli, 38 were received by IDPs and 21 – by local residents. Out of the small grants issued in Samegrelo region, 70 were received by IDPs, and 59 - by local residents. 4 of the issued grants in Shida Kartli involved PWDs. 22 of the issued small business grants in Samergelo region involved 22 disabled persons (8 small business grants were received directly by PWDs, and 14 – by family members of disabled persons/guardians). Total amount of grants issued in Shida Kartli region is approximately 90 Thousand Euros equivalent in GEL, and in Samegrelo region – approximately 97 Thousand Euros equivalent in GEL.

Medium Scale Grants

The medium size grants were for those representatives of the medium-sized businesses, who wanted to expand their business. Medium business grant support has been implemented for the representatives of IDP settlements and local communities in Kaspi, Kareli, and Gori municipalities of Shida Kartli¹⁶⁵.

The maximum amount of the grant for the expansion of the existing business was 7800 Euros. However, the condition of co-financing was the provision of 50% of the total budget. Co-financing could have monetary or the other form.

Applicants, wishing to expand their business, initially had to fill in and present the business idea form. At the present stage of selection, one person had a right to become a business partner only within one business idea. Selection on the basis of business ideas was executed by the same criteria used at the selection of small business ideas. After the business ideas competition, beneficiaries went through 3 days intensive training course on business and entrepreneurial issues. The legal issues of business and entrepreneurship were considered as a single module of the training course.

¹⁶⁴ Statistical data of the project, used in the methodological guide for business grants support schemes, reflects condition, existing for the beginning of August 2016.

¹⁶⁵ Same settlements as in case of small grants.

53 business plans were submitted for revision within the Shida Kartli region in order to receive medium business grant. 12 grants have been issued. Among them, 4 medium grants were received by the local residents of the region, and 8 medium grants were received by IDPs. PWDs were involved in 4 of the awarded grants. Total sum of the issued medium grant funds was approximately more than 60 thousand Euros (equivalent in GEL).

Provision of Basic Tool Kits to Start Small Businesses

There is a wide spread practice in Georgia, when the significant/important part of economically active population is involved in some kind of economic/business activity as self-employed¹⁶⁶. This category of self-employed people does not hire a work force and independently runs its economic activity.

This kind of self-employment activity has a manner of a small business. Since this category accumulates some experience, they know well the segment of the narrow market that is relevant to their activity, they develop the skills of communication with their clients etc. We have to consider the activities of these people as a good basis for starting a small business in the future.

Thus, handover of the tool kits to the beneficiaries within the “LIFE Georgia” project is a very important component for the support of starting a business in target groups. For the implementation of this direction of the project, criteria for the selection of tool kits applicants have been determined. In accordance to these criteria, the preference was given to part of the population which receives social allowance.

In order to ensure purposefulness of the resources allocated for the grant, the group of people receiving social allowance was narrowed into the separate groups. Finally, the criteria for the tool kits handover was determined as a part of population receiving social allowance, including members of large families, single mothers/fathers, the families that lost their breadwinners and PWDs.

Beneficiaries took the training course on business and entrepreneurial issues. Finally, developed business ideas and the interested part filled out the special application forms created for tool kits applicants.

In both regions, 129¹⁶⁷ beneficiaries (Shida kartli – 79, Samegrelo – 65) expressed the desire to receive tool kits and accordingly filled out application forms in complete. Finally, on the basis of information received from the revision of applications and field monitoring, selection commission,

¹⁶⁶ This does not includes the category of self-employed, which by the National Statistics Service are referred to the "entrepreneur, tenant employer" category.

¹⁶⁷ Statistical data of the project, used in the article, reflects condition, existing for the beginning of August 2016.

with the criteria established, selected 51 beneficiary¹⁶⁸ in Shida Kartli (37 IDPs, 14 local residents) and 54 beneficiaries in Samegrelo region (28 IDPs and 26 local residents). Selected beneficiaries were given tool kits in a private possession.

For the purchasing of the tool kit for one beneficiary in Shida Kartly, 135 Euros equivalent in GEL was spent. But in Samegrelo, it was approximately 115 Euros equivalent in GEL. Totally, in Shida Kartli, tool kits worth of 7 thousand Euros equivalent in GEL were purchased and delivered to / handed over to beneficiaries, and in Samegrelo, tool kits worth of 6 thousand Euros equivalent in GEL.

During the project, constant communication with tool kits recipients was retained. They have been receiving consulting services and were running their business in accordance to the conditions determined by the grant agreements.

PWDs in the Scheme of Business Grants Support

Involvement of PWDs in Life Georgia project was considered at the initial stage of the project. Further, supporting activities, sub-activities and the budget of PWDs involvement were clarified. Within the consortium, separate agreement was signed with WV Georgia which has big experience of working with vulnerable groups and for the implementation of inclusive approaches in the project, conducted trainings, meetings, consultations and other activities.

During the selection of grant applicants, no quota system was used in regard of PWDs. However, in order to stimulate participation of PWDs in the grant competition, another approach has been used. In particular, additional scores were granted to those business ideas which were presented by PWDs or which were considering the employment of PWDs¹⁶⁹. In case of submission of two equal business ideas, preference was granted to the idea which was presented by PDWs or considered as an involvement of PWDs in activities¹⁷⁰. Within the business plan assessment form, a high proportion of the scores was granted to the scores which assess the engagement of PWDs.

Stimulating the involvement of PWDs in the business grants support scheme increased their interest for the participation and the number of grants issued to PWDs, their family members/guardians. In particular:

¹⁶⁸ Among the selected beneficiaries – 34 are women and 17 are men. Among the beneficiaries, receiving the grant – socially vulnerable are 37, from large families 12, single parents 5, PWD 1, persons who lost a breadwinner 4.

¹⁶⁹ Approach was initiated by "World Vision Georgia" and was unanimously approved by the consortium management team.

¹⁷⁰ M.Zakareishvili, L.Barabadze, V. Midelauri. Employment of PWDs. Guide. Pg.97-98. "LIFE Georgia". 2015.

- Within the small business grants competition, 26 projects with the involvement of PWDs (or their family members/guardians) were financed. Among them, 4 in Shida Kartli, and 22 in Samegrelo. Among the 22 small grants, financed in Samegrelo, 8 were going directly to PWDs, while 14 of them were going to PWDs family members/guardians;
- Among the 12 medium grants, issued in Shida Kartli region, 4 of them consider involvement of PWDs;
- In samegrelo region, 24 PWDs and 37 family members/guardians of PWDs, participated in business training courses;
- Tool kits in both regions were handed over to 8 PWDs (or their family members/guardians). Among them, 1 in Shida Kartli, and 7 in Samegrelo. Among 7 tool kits, handed over in Samegrelo, 1 was received directly by PWD, and 6 tool kits were received by their family members/guardians.

It has to be noted that within the project, grants were issued to those applicants who were not PWDs, their family members/guardians, but who employed PWDs during their entrepreneurial activity.

Complementary Activities for Business Grants Support Scheme

Besides the SME grants issuance, many other activities of business development support were carried out. Such activities did not consider direct monetary or material support of starting the business or expanding the existing businesses, but supported establishment of a solid basis for the business development in the region. One of such activities was the activity carried out with the purpose of the establishment of mutually beneficial ties between business grants applicants and representatives of financial institutions. An attempt of consortium members to connect financial institutions and grant applicants brought certain positive results. Few participants of grant competitions addressed financial institutions in order to receive co-financing funds and received loans (for example, 6 applicants from Shida Kartli, generally beneficiaries of medium grants). Start of such relations will have a bigger impact on the development of entrepreneurial activity in the region.

In the target regions, as well as in the whole country, one of the factors hindering the business is the lack of skilled work force. Thus, the activities carried out in support of professional development and employment represent indirect SME support. These kind of activities in “LIFE Georgia” project were: professional and personal development trainings for job seekers with consideration of labor market requirements; “Employment Shuttle” innovative pilot program for employment; Ensuring professional internship of beneficiaries in different organizations; Informing the beneficiaries about the labor market conjuncture; Establishing contacts with potential employers; Consulting beneficiaries on legal issues of employment possibilities;

Alternative professional training course on the basis of beneficiaries' requirements, etc.

Numerous activities (meetings with representatives of local and central government, conferences, forums, presentations, workshops) along with solving the other problems served the improvement of business environment and the establishment of systematic approaches for business support.

Conclusions and Recommendations

The experience, gained from the project and the received results, gives an opportunity to make conclusions and develop recommendations and consideration of which will bring benefits to the future projects and programs of the business grants support. Namely:

- The project has basically helped those target groups who were in need of support by all the criteria. In addition, used scheme of business grants support is in full compliance with the strategy of support of entrepreneurship in the country and European Small Business Act Think Small First¹⁷¹ principles;
- Long time unemployment and vulnerability forces people to get out of work force and become economically inactive. They are skeptical in regard of any initiative which may somehow improve their condition. Therefore, the basis of the business grant support project must be stimulating this kind of people to get actively involved and use new opportunities to improve their financial and social conditions;
- In order to implement business support scheme on the practice with the purpose of pre-designing the project, it is necessary to prepare the following documents: needs analysis methods; business and entrepreneurial skills training plan; business plans application forms with the consideration of grants directions; business grants assessment forms with the criteria of detailed selection; project monitoring forms; procurement procedures and regulating documents for the grant; forms of individual grants agreements, etc.;
- If business grants support scheme considers PWDs as a target group, in that case in order to increase their involvement, business plan assessment must include special criteria of assessment. At the same time, preferably, in case of equal scores, business plans presented by PWDs is to be preferred. In order to increase the involvement of PWDs in projects, it is possible to use other proven approaches;
- The category of beneficiaries which receives government's allowance is very cautious about business grants or refuses to participate at all. The reasons may be: first, avoidance of risks related to business activities; second, the lack

¹⁷¹ "Small Business Act for Europe"2008.

of resources necessary for the co-financing; third, more real cause is the fear of beneficiary to loose monthly social allowance in case of the grant reception. Inactivity of beneficiaries caused by the fear of loosing the monthly social allowance is a more complex problem for the country compared to certain challenge of a specific project. Therefore, it is necessary for the social support system and social policy in general not to mute individual incentives. Otherwise, a large number of people will have to live in poverty for a very long time;

➤ The indicators of the effectiveness of business grant support (upon their implementation) are the new or expanded business objects which successfully conduct business activities. In case of “LIFE Georgia”, the specific results of a business grant support are functional sewing shop, car repair shop, food production enterprise, beauty shop, bakery, construction blocks workshop, fast food object, production of bee hives, production of doors and windows, manufacture of furniture, Ajika production, grocery store, fitness club, knitting workshop, etc.;

➤ Newly opened or expanded enterprises employed beneficiaries as well as the other individuals. Employed people have more knowledge and experience after the participation in the project. The income of these people is higher than what they had, before the participation in the project;

➤ Within the grants support, a part of beneficiaries received the tool kits they have requested in a personal possession. With this activity, the program gave the beneficiaries an opportunity with the status of a self-employed to become actually employed. In addition, we have to consider their activity as a good basis for starting a small business in the future;

➤ Business grant support has improved business activities in the target regions. In addition, within the project, other activities have been carried out which has indirectly promoted the development of entrepreneurship. For example, personal and professional development trainings; internships of beneficiaries; employment program - “Employment Shuttle”; consulting beneficiaries on legal issues of employment opportunities; organizing meetings with representatives of financial institutions, etc.;

➤ Issuance of business grants to the beneficiaries was not the only benefit of “LIFE Georgia” project. The knowledge beneficiaries gained during the business trainings was important as well, since they will be able to use it in a real practice, or in any other project and program. The fact that some of the beneficiaries received funding from the other programs perfectly demonstrates the above mentioned. There were beneficiaries of the project who took the trainings, prepared business plans, but unfortunately did not receive LIFE Georgia project grant; however, after that they have addressed to the other foundations, they successfully passed the selection process and received requested financing;

- Business grants support scheme must include the mechanism of maximum motivation, so that not only beneficiaries/grantees, but also other beneficiaries, will receive benefits from the project. The good example of such motivational mechanism was the approach of “LIFE Georgia”, when the medium grant applicant the salaries paid to other beneficiaries and expenses. Also, cover up for the trainings and internship of beneficiaries were considered as co-financing;
- When the business grant support is purposed for the vulnerable part of population (for example IDPs, PWDs, etc.), well developed control and monitoring system is necessary in order for the project to be effectively managed. Otherwise, there is a possibility that the condition of vulnerable groups will be used by others and instead of receiving some small benefits, they will become more dependent on the care of others;
- IDPs, residing in the different regions of Georgia in regard to livelihood, have similar problems. However, the development of business support scheme must take into account the specifics of IDP accomodation in different regions of Georgia, the length of the displacement and the socio-economic characteristics.

References:

1. Kvirkvaia M. Methodological Guide for Business Grant Support Schemes. ISBN 9789941093302. “CEZANNE PRINTING HOUSE”. 2016 (European Union. Project - “Livelihood Initiatives to Foster Employability and Entrepreneurship of IDPs and host populations in Georgia - LIFE Georgia”. Association Rural Development for Future Georgia (RDFG).) http://rdfg.ge/wp-content/uploads/2016/11/MKVLEVI_J_01en.pdf
2. Zakareishvili M., Barabadze L., Midelaury V. Employment of PWDs. Guide. “LIFE Georgia”. 2015.
3. Abesadze O. A Base line Survey. LIFE Georgia (Livelihood Initiatives to Foster Employability and Entrepreneurship of IDPs and host populations in Georgia). Tbilisi, Georgia. March 2015.
4. Interim narrative report. LIFE Georgia (Livelihood Initiatives to Foster Employability and Entrepreneurship of IDPs and host populations in Georgia). January – December 2015.
5. ROM report. LIFE Georgia (Livelihood Initiatives to Foster Employability and Entrepreneurship of IDPs and host populations in Georgia). Georgia. 08/03/2016.
6. Survey Report. Capacity, Skills, Development and Training Needs (CSDT) Assessment. Prepared by: ACT. Prepared for: ACF SC. July, 2015. Tbilisi, Georgia.
7. “Small Business Act for Europe”. 2008.

8. William M. Pride, Robert J. Hughes, Jack R. Kapoor. Business. 12th Edition. South-Western, Cengage Learning. 2014.
9. Samuel C. Certo, S. Trevis Certo, Modern management: concepts and skills/Samuel, 12th ed. Pearson Education. 2012.
10. Barbazette J.. Training Needs Assessment: Methods, Tools and Techniques. 2006.
11. <http://geostat.ge/>
12. <http://www.accioncontraelhambre.org/>
13. www.rdfg.ge
14. www.atinati.org
15. WWW.EDDEM.GE
16. <http://georgia.smetoolkit.org/georgia/ka>
17. <http://startup.ge>

The Challenges of SMEs and Supporting Mechanisms for Developing Business Environment in Georgia

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Abstract

Notwithstanding the fact that a cycle of structural and legal reforms has been carried out in Georgia in recent years, the difficulties related to running a small enterprise still remains a huge challenge. In many cases, people start their business activities, but due to financial and other reasons, they fail to develop.

The objective of the paper is to overview the business environment around small and medium enterprises (SMEs) in Georgia. The paper will identify the common challenges that young and motivated generation faces nowadays. The work will display the foundations where these challenges are derived from and how they could be addressed. Responding to these challenges, the article will also encompass the mechanisms how government, including local self-government, particularly Tbilisi City Hall, is supporting SMEs to develop their activities and what kind of supporting programs they elaborate for sophisticating business climate in the city.

Being the issue of utmost importance for our society, lots of relevant references gave interesting information about the challenges of SMEs. Information provided in the paper is based on the materials of different organizations, government structures, and agencies. I have explored relevant reports of the World Bank, considered researches of Colliers International, and some research papers. In collecting information about municipal programs, I have looked through Tbilisi City Hall's reports and presentations. An interesting source of information comes from Michael Porter's Harvard Business Review Book "On Competition" which provides information about business climate and competitiveness. The statistical data is mainly based on the source of National Statistics Office of Georgia.

Keywords: Small and Medium Enterprises (SMEs), business, challenges, government, reforms

Introduction

Since the 2000s, Georgia is experiencing important advancements in almost every field. Private sector is among them as well. In the last fifteen years, there have been important changes in the country that affected the masses of population. The changes were related to structural reforms, but meanwhile included significant amendments in the legislation. Government initiated a cycle of reforms to change the entire system of business registration, collecting revenues, custom procedures¹⁷². One-Stop-Shop principle has been introduced that provided people with high quality services related to business or property registration, simplified availability of public services and citizens' relations with the public sector¹⁷³.

Important supporting mechanisms have been carried out to facilitate doing business process; bureaucracy has significantly reduced and excessive administrative burden has been removed from investors. A huge relief was felt through the abolishment of numerous licenses that took even months to obtain. Overall, 70% of business-related licenses and 90% of business permits were abolished during a certain time period¹⁷⁴. Another dynamic effect that influenced business environment is related to taxation. The total number of taxes reduced from 21 to 6. As a result of the reforms, the following rates have been defined¹⁷⁵:

- VAT - 18%
- Corporate Profit Tax - 15%
- Personal Income Tax - 20%
- Property Tax - Up to 1%
- Import Duties - 0%, 5%, 12%
- Excise Tax – on few selected goods

The comparative advantage that Georgia possesses and can propose to foreign investors is that zero-rates have been defined for number of taxes. Nullifying of the rates strongly motivates investors to invest in the territory of Georgia, thus determining the level of Foreign Direct Investments (FDIs)¹⁷⁶. The facilitation resulted in:

- No payroll tax or social insurance Tax
- No capital gains tax
- No wealth tax and inheritance tax
- Personal income tax for interest, dividend – 5%

¹⁷² Colliers International. Market Research: Georgian Real Estate Market Overview. Tbilisi, Georgia, 2014.

¹⁷³ Public Service Hall, 2017.

¹⁷⁴ Tbilisi Municipality City Hall, Investment Climate in Tbilisi. Tbilisi, 2017

¹⁷⁵ Invest in Georgia, 2017.

¹⁷⁶ Colliers International. Market Research: Georgian Real Estate Market Overview. Tbilisi, Georgia, 2016.

- Foreign-source income of individuals fully exempted
- Accelerated depreciation on capital assets
- Loss carry forward for corporate profit tax purposes (10 years)
- No restrictions on currency convertibility or repatriation of capital and profit
- Double taxation avoidance treaties with 52 countries

On the other hand, Tbilisi Municipality has introduced E-Systems for facilitating the communication with the City Hall related to municipal property management and Tbilisi architecture service¹⁷⁷. Four electronic service has been proposed for businesses to facilitate their relations and acquiring necessary information in the shortest time possible:

- Businesses gained the possibility to receive the permit for construction online procedures
- Online auction for municipal property purchase has been introduced
- The city announced tenders electronically for executing government procurements
- Interactive Map has been published that enables businesses to view any private or municipal land of Tbilisi online

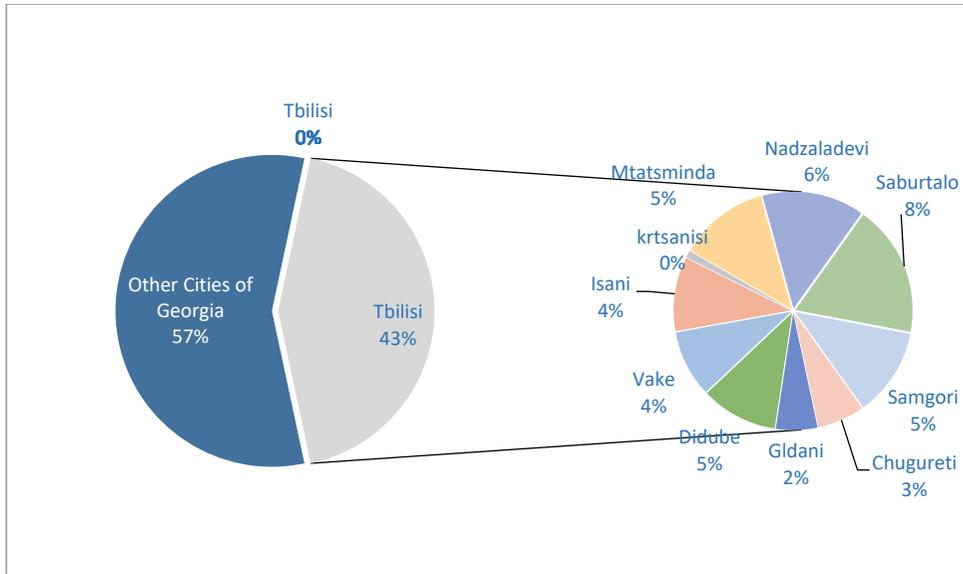
As a result of the reforms, the progress has been fully translated into increased amount of foreign direct investments, expanded export activities that are, in general, directed to sustainable economic growth. As for enterprises, it can be said that for the period of June, 2017 according to Geostat data, there are over 600,000 Economic entities in Georgia, out of which 167,554 are active¹⁷⁸. It is worth mentioning that from the active economic entities, just 4% is fully owned by foreign person.

If we look from the regional perspective, it is not surprising that the majority of the companies are registered in the Capital. More than 40% of the companies are established in Tbilisi¹⁷⁹.

¹⁷⁷ Tbilisi Architecture Service, Tbilisi City Hall. Tbilisi, 2017.

¹⁷⁸ National Statistics Office of Georgia. Tbilisi, 2017.

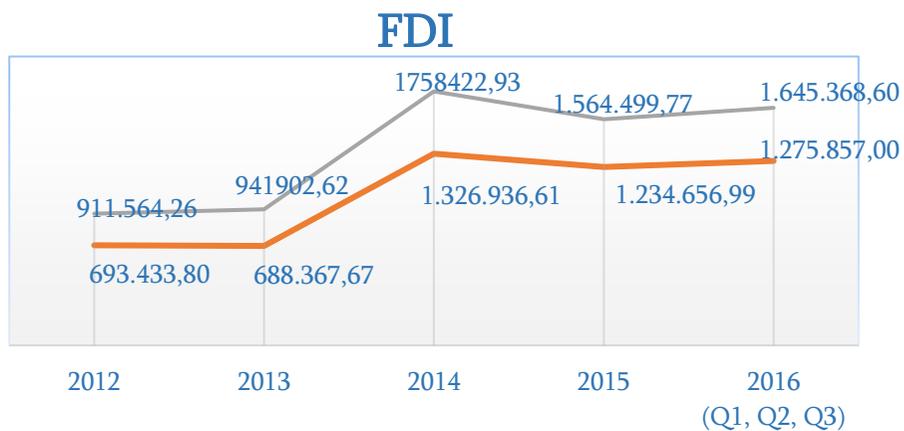
¹⁷⁹ Tbilisi Municipality City Hall, Investment Climate in Tbilisi. Tbilisi, 2017.



Source: Tbilisi Municipality City Hall, Investment Climate in Tbilisi, 2016.

Herewith, it should be also mentioned that the capital tends to be an ideal place for small businesses; the statistics show that over 80% of operating business entities are small enterprises, while medium enterprises amount just 10%.

Another interesting statistics that clarifies the attractiveness of the capital in comparison with other cities of Georgia is provided by Tbilisi City Hall based on the data of the National Statistics Office of Georgia. It is interesting to draw our attention that more than 77% of the Total Foreign Direct Investments is connected to Tbilisi.



Source: Tbilisi Municipality City Hall, Investment Climate in Tbilisi. Tbilisi, 2017.

Broad overview of the reforms implemented since 2003 gives us the possibility to evaluate the results that have been reported for 2003-2017 period. However, recent progresses have not fully translated into benefits for the whole Georgian population what is absolutely natural: with unemployment remaining at high levels, the problems associated with start-ups and the lack of supporting tools still remained tangible. Starting a new business and running a small enterprise in Georgia still remains a huge challenge. In many cases, people start their business activities, but they fail to develop. Below I will try to identify what are the main reasons that determine their failure and what factors sink newly established businesses: is that associated with lack of knowledge and business skills or financial resources and investments? How do technological advancements affect small businesses? Do they reinforce them or just withdraw them from the market since they cannot be competitive and cannot respond to strict market requirements?

The Challenges of SMEs

Current economic situation of Georgia clearly points on slow development of Small and Medium Enterprises. SMEs face a number of barriers that pose obstacles to business operations. In this part, I would like to overview some of the main challenges and the possible solutions how they could be addressed. One of the interesting sources on which the following information is based, represents the scientific paper “Obstacles to Entrepreneurship in Albania, Georgia, Morocco, Nigeria, and Pakistan” by Alaoui, Shopovski, Kvirkvaia, Alam, Ofili¹⁸⁰.

It will not be a surprise if I name the finances as the most crucial problem for every business. Especially in Georgia, *access to finances* remains the unresolved problem unlike other European countries where venture capitals are well-developed and people with new business ideas have the change to get finance in case of having a promising and creative idea. Commercial banks of Georgia look sceptically to start-ups and introduce more than 10 requirements that are almost insuperable for new companies while they are having high costs for everything. Banks usually are requiring real estate as a collateral which obviously could not be possessed by young start-ups. Even if they possess, the interest rates are extremely high and hard to repay by new companies who have not yet started collecting high revenues. On the other hand, another problem is that there almost is no alternative source of borrowing business credit from. Venture capitals are not developed at all in Georgia. And as for the government, the local legislation does not allow public

¹⁸⁰ Alaoui .A.E., Shopovski J., Kvirkvaia M., Alam N., Ofili O.U. Obstacles to Entrepreneurship in Albania, Georgia, Morocco, Nigeria, and Pakistan. European Scientific Journal, December 2016 edition vol.12, No.34 ISSN: 1857 – 7881 (Print), e - ISSN 1857-7431.

bodies to provide grants to start-ups. Government is allowed to implement special programs for strengthening business activities in the country; however, they have no direct tool to transfer money.

Consequently, another important problem that hampers the development of SME sector and labour market is the *irrelevant knowledge* and the absence of necessary skills. Inadequately educated workforce is the most problematic factor for doing business in Georgia, particularly among small and innovative firms. Notwithstanding the fact that the literacy level in Georgia is quite high, over 99% of people do not possess necessary skills for dealing with certain duties; in addition, the system of vocational education and training (VET) is not so sophisticated and people are not really interested in receiving vocational education accordingly¹⁸¹. The service level is also poor, especially in hospitality industry (however, Georgian people are very hospitable). Small enterprises, small boutique hotels and cafes cannot meet high requirements of international guests, thus resulting in bad economic fallouts.

It is also worth mentioning that having hired unskilled personnel, small companies are not allowed to train the staffs due to budget limitations which are what ruins the company. Another problem associated with the inadequate knowledge level is bad management. Nobody doubts that a successful company needs a good manager who will be an excellent team leader with all the managerial skills. No matter how good your business idea is, the point is that you must know how to put the processes in one chain and thrust it to one and only direction.

Still related to the problems of education, we should mention the low level of IT knowledge. Small businesses are hardly catching up with technological advancements and big companies are able to easily withdraw them from the market. The latter is related to the third most crucial problem that is *limited Research and Development (R&D)* activities. Small companies have no financial capabilities to invest in R&D; thus, they reduce provision of innovations. The problem is even more strengthened with the limited capabilities of universities. Having not enough financial resources for researches, universities are unable to carry out vital scientific works, even more there is weak connection between small enterprises and universities; they do not usually cooperate and there is a lack of technology transfer. Subsequently, we receive the shortage in R&D results.

The next and obvious challenge is associated with *little sales*. Being a new and small company means few production and little sales. The paucity of

¹⁸¹ Samarguliani N. Scientific paper: CHALLENGES OF INCLUSIVE EDUCATION IN GEORGIA. 3rd EURASIAN MULTIDISCIPLINARY FORUM, EMF 2015. Georgia, 2015; pp. 112-118.

sales is derived from the fact that people do not know much about the company and its product. So, it is quite difficult for the company to introduce its innovative products and make people “fall in love” with them. Good solution for increasing sales considerably can be achieved through evolving in export activities. However, it is also a big luxury for small companies to achieve that since with little experience and not so high quantity of production, they are unable to meet foreign market demand. In addition, they are unaware of foreign markets’ requirements and local competition. Thus, they can be easily beaten with strong rivals.

Last but not least challenge of small and medium enterprises is linked with *little Public Relations (PR) and promotion activities*. New and small companies have a narrow network and necessary business contacts; they have little chances to engage in serious business arrangements, sign important agreements and involve in considerable processes. The companies are required to have strong PR campaign to build network not only with potential consumers, but with other stakeholders as well. Marketing and promotion activities require huge efforts – financial and human resources that are scarce for SMEs.

The list of challenges does not just end with the above mentioned ones; in contrast, every day, small and medium enterprises face more and more barriers. Since competition increases in a globalized world of today, rivals find more and more methods for competing and everyday life for businesses get harder and harder¹⁸². But in parallel to the competitive world, people should keep pace with innovations and win over competitors. On the other side, government should constantly work on simplifying the circumstances for businesses, give them more development possibilities and support them to overcome every-day difficulties. The next part exactly illustrates government mechanisms and supporting programs for enforcing labour force and reducing unemployment.

State Supports SME Development

In the world of globalization where borders do not matter anymore and countries are not limited just with internal trading, SME development possibilities are huge. However, on the other hand, the everyday challenges stay severe and needs to be addressed. In the long-term process of solving these problems, the state’s role still remains very important. Policy makers influence the business environment significantly; however, their involvement is quite negligible.

For developing countries, where resources are scarce and economic growth is slight, government’s efforts and its support is extremely important.

¹⁸² Porter M. E. A Harvard Business Review Book. *On Competition*, 2008.

Policy makers should clearly define their vision and should follow SME Development Strategy which serves as a guarantee of sustainable economic growth.

In Georgia, particularly in Tbilisi, the support for developing SME sector is provided both - by state and by local governments. The business assistance at the central level is mainly under the obligation of the Ministry of Economy and Sustainable Development of Georgia. For addressing the challenges that SMEs and start-ups face, the Ministry has established two agencies - Enterprise Georgia and Georgia's Innovation and Technology Agency (GITA).

Enterprise Georgia's mandate covers a wide range of services including supporting SMEs financially, providing training and ensuring their participation in different trade fairs and missions. The agency also assists companies in market research and development, provides technical advice in international marketing, product and market requirements, etc. Huge positive effect that is achieved via the agency's participation is related to agency's program "Produce in Georgia"¹⁸³. According to the program, the Ministry of Economy and Sustainable Development of Georgia participates in repaying the interest rates of business loans of small and medium companies under certain criteria. Hence, businesses operating in Georgia received a great relief since instead of 13%, they paid just 3% annual rate (the principle of the support program was that if the business loan was provided at 13%, 10% would be paid by the government during the first two years, while the company should pay just the rest 3%).

On the other hand, the governmental institute - Georgia's Innovation and Technology Agency (GITA)¹⁸⁴ was established to give innovative business ideas the possibility to flourish. GITA built the Tech Park which provided a huge space and innovation facilities to create numerous things, prototypes, etc. The Tech Park is mainly oriented to technological advancements, thus, providing start-ups with lots of machines, laser equipment, etc. However, on the other hand, the agency is also taking care of educational activities, trainings, provides mini-grants to individuals and ensures more targeted financial support for innovative SMEs.

Creation of the above mentioned institutions in 2014 was a part of a long-term processes which were pondered under "Georgia 2020 – Socioeconomic Development Strategy"¹⁸⁵. The document was created in 2013, approved in 2014 and developed in close collaboration with policy makers, international experts and relevant stakeholders. It emphasises the need

¹⁸³ Enterprise Georgia. Georgia, 2017.

¹⁸⁴ Georgia's Innovation and Technology Agency (GITA). Georgia, 2017.

¹⁸⁵ Government of Georgia. "Georgia 2020 – Socioeconomic Development Strategy". Georgia, 2014.

for inclusive and sustainable economic growth and prioritises strengthening the private sector, developing human capital and deepening access to finance.

Besides having a clear and well-defined supporting programs under the mandate of state agencies, business development support is also taken care at the local level. The Economic Development Office (EDO), under Tbilisi Municipality City Hall, is the responsible body for supporting entrepreneurship and creating business-friendly climate in the city. Facing almost 22% unemployment rate in the Capital, City government sets short-term development goals and implements Small Business Development Programs. Like every governmental structure, City Hall is unable to provide grants. However, during 2006-2015, the Economic Development Office implemented Cheap Loan Accessibility Program¹⁸⁶ via elaborating flexible mechanisms. The program enabled start-ups and small entrepreneurs to receive cheap loans at 6% annual rate. The mechanism of cheap loan accessibility program was that City Hall cooperated with Georgian Commercial Banks and mutually evaluated business ideas. Economically and commercially productive businesses had the possibility to get financing for developing their business ideas. The finances were coming from government but via commercial banks. In total, over 100 businesses benefited from the city program, more than 1000 working places were created and certain number of social enterprises were developed¹⁸⁷.

In parallel to accessing finances, the Economic Development Office actively works on educational components. EDO periodically organizes trainings to enhance qualifications of citizens. Trainings are available for those who wish to advance knowledge in financial accounting, management, taxes, public procurement. Office contributes huge efforts to inclusive education. It is worth mentioning the programs for people with disabilities is purposefully being implemented. They are trained to get equipped with necessary skills for being employed. In the direction of enhancing qualification in tourism field, the department also implements trainings for hospitality industry.

But herewith, along with the numerous governmental programs, it should be definitely mentioned that it is quite complicated to indicate any clear outcome of the results of which have been reported consequently to these programs. Obviously, the program organizers can hardly estimate how these programs can affect the economic situation of SMEs, or how they can contribute to the long way of business development, reduce unemployment. But it is obvious that everything starts from tiny steps and if we want to achieve prosperity, exactly such small programs should be intensively initiated. That builds the system in general.

¹⁸⁶ Tbilisi Municipality City Hall. Cheap Loan Accessibility Program. Tbilisi, 2017.

¹⁸⁷ Tbilisi City Hall, 2017.

Conclusion

In understanding the importance of today's challenges and realizing the responding approach of the Government of Georgia, it can be clearly stated that Georgia needs to design and implement a set of policies that will be specifically targeted to development of small and medium enterprises. There are enough reforms to be considered at the 16th position according to the World Bank's Doing Business Report (among 190 countries)¹⁸⁸. This stipulates good business climate, safe environment for investing, low entry barriers and little bureaucracy. However, these reforms do not ensure high sales and revenues, good profits and success of SMEs. To achieve the high rate of start-up successes, the reforms should guarantee the implementation of specifically targeted programs for competitiveness of SMEs. Deriving from "Georgia 2020 – Socioeconomic Development Strategy", short-term action plan should be clearly defined which will encompass public-private dialogue, Public Private Partnership (PPP) projects. It is important that all relevant stakeholders - government structures, private sector and civil society, associations be actively involved in every phase of elaboration and implementation of the action plan. In parallel, public discussions and consultations should frequently take place, so that it will bring society's voice close to government structures and ensure the participatory planning process.

References:

1. Government of Georgia. "Georgia 2020 – Socioeconomic Development Strategy". Georgia, 2014.
2. Porter M. E., A Harvard Business Review Book, On Competition, 2008.
3. World Bank. Report: "Doing Business 2017". 2017.
4. Organisation for Economic Co-Operation and Development (OECD) Working Group on SME Development Strategy. Supporting SME Competitiveness in The Eastern Partner Countries; Recommendations for Georgia's SME Development Strategy 2016-2020, 2016.
5. Alaoui A.E., Shopovski J., Kvirkvaia M., Alam N., Ofili O.U. Obstacles to Entrepreneurship in Albania, Georgia, Morocco, Nigeria, and Pakistan. European Scientific Journal December 2016 edition vol.12, No.34 ISSN: 1857 – 7881 (Print) e - ISSN 1857- 7431.
6. Samarguliani N. Scientific paper: CHALLENGES OF INCLUSIVE EDUCATION IN GEORGIA. 3rd EURASIAN MULTIDISCIPLINARY FORUM, EMF 2015. Georgia, 2015; pp. 112-118.

¹⁸⁸ World Bank. Report: "Doing Business 2017". 2017.

7. Colliers International. Market Research: Georgian Real Estate Market Overview. Tbilisi, Georgia, 2014.
8. Colliers International. Market Research: Georgian Real Estate Market Overview. Tbilisi, Georgia, 2016.
9. Tbilisi Municipality City Hall. Cheap Loan Accessibility Program. Tbilisi, 2017.
10. Tbilisi Municipality City Hall, Investment Climate in Tbilisi. Tbilisi, 2017.
11. National Statistics Office of Georgia. Business Register by ownership type. Georgia, 2017.
12. http://geostat.ge/index.php?action=page&p_id=236&lang=eng
13. Invest in Georgia, 2017. <http://investingeorgia.org/en/>
14. Public Service Hall, 2017. <http://psh.gov.ge/main/page/7/405>.
15. Tbilisi Architecture Service, 2017. <http://tas.ge/>
16. Tbilisi Municipality, LEPL Property Management Agency, 2017 <http://auction.tbilisi.gov.ge/>
17. Georgia's Innovation and Technology Agency (GITA). Georgia, 2017 www.gita.gov.ge
18. Enterprise Georgia. Georgia, 2017 <http://enterprisegeorgia.gov.ge/>

Demographic, Social and Economic Trends of Georgian Population

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Abstracts

The purpose of this paper is to identify the main trends of demographic, social and economic changes occurring in Georgia in recent years and to analyze their influence on selected Health Indicators. In the last 30 years, Georgian society and Health Care system went through the numerous formation stages of what have drastically influenced the formation of the current socio-economical and health care status of the country. Dramatic shifts have been observed in demographic structure of the Georgian society showing 28% population decrease in the last 3 decades. Changes in the reproductive behavior of the society as well as the change in the family values negatively influence the population growth tendencies and engender the risks of depopulation. The paper discusses the effects of social-economic situation on demographic structure and tendencies occurring in the country in general and in particular on various population groups, such as IDPs, socially vulnerable groups, etc.

Keywords: Demography, Economics, Health care

Introduction

The social-economic situation, existing in the recent years in Georgia, greatly affected the health status of the population and the main trends of its demographic development.

Based on the population census of 2015, Georgian population has decreased by 28% vs. the 1980s (http://geostat.ge/?action=page&p_id=151&lang=geo) and is mainly attributed to the increase of immigration rates predominantly to Russian Federation, the US and Europe. Unstable political situation, high unemployment rates and large number of internally displaced population

were the main factors accelerating the immigration of working force to other countries. Crude birth rate stabilizing at 13 in the last 5 years shows slight improvement of the rapid fall in previous years; however, the population growth remains at 0%.

Economic conditions of the population have been improving over last decade; however, GINI index remains relatively high at 40.1 (<https://data.worldbank.org/indicator/SI.POV.GINI?locations=GE>) which is among the highest in the region. On the other hand, according to the World Bank estimates, Georgia has shifted from low to lower middle-income countries, indicating the positive movement towards economic growth.

Main social indicators have also been changing over the last several decades showing the positive tendencies in empowering women, decrease of unemployment, etc. On the other hand, it should be noted that the matrimonial structure and behavior of the society are going through serious transformation, showing 5-fold increase in the divorce rates since 2007. These changes affect the demographic structure of the population and set the new challenges to the Georgian society and government.

As for the Health Care sector, in the last several years after introducing the State funded Health Care insurance system, some of the main health indicators have been improving due to the dramatic increase in the p/capita HC expenditures. However, indirect health indicators show that the situation is yet to be improved, e.g. risk of catastrophic expenditures for surgical care is 59% (<http://www.lancetglobalsurgery.org/>), which is comparable to the countries with low income and underdeveloped health care systems

(https://data.worldbank.org/indicator/SH.SGR.CRSK.ZS?view=chart&year_low_desc=false).

Health Care situation greatly differs among population groups and shows the significant hurdles in socially vulnerable and IDP groups.

Results and Discussion

Demographic decrease and structure of the Georgian population is one of the main concerns which require the thorough analysis of the current trends and tendencies. According to the census of 2015, the population of Georgia has decreased dramatically over the past three decades.

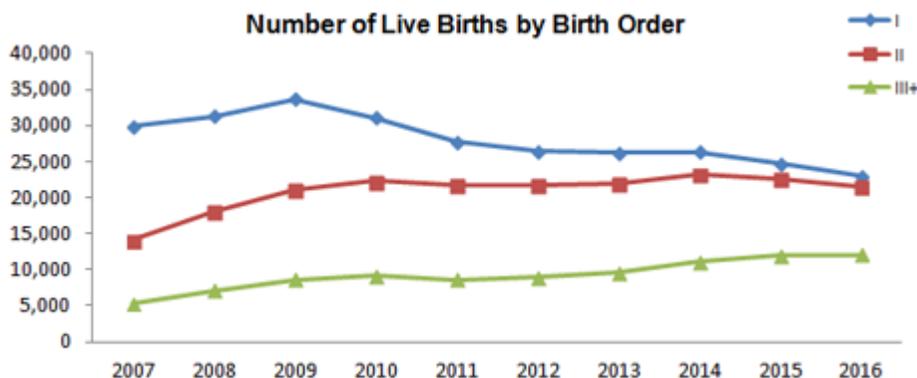
Table 1. Mid-year population in Georgia and neighboring countries

Countries	1970	1980	1990	2000	2010	2014	2015
Armenia	...	3102900	3351600	3226899	3256066	3013839	3017712
Azerbaijan	5172050	6160500	7020366	8048600	9054350	9535100	9649300
Georgia	...	5041500	5438850	4418300	4469200	3727000	3727000
Russian Federation	129941000	138127008	147912992	145189152	142849472	143429440	143456912
Turkey	35293832	445222296	551200000	642520000	731421520	775237920	786658320

Apart from the massive immigration, which took place due to the political instability and economic disparities of the past years, Georgian population shows negative trends in the reproductive behavior. After several years of the rapid fall of crude birth rate, the last several years show the tendency for stabilizing. However, based on the forecast of 2017, the population growth rate remains at 0% rising slightly from -0.2% in 2015.

As shown in Figure 1, the absolute number of the 1st children born is steadily decreasing, though the number of the 2nd and 3rd children is somewhat increasing. The growth of the 3rd child frequency can be explained by several initiatives undertaken by Georgian church which have ended in the long term positive result as shown in Figure 1.

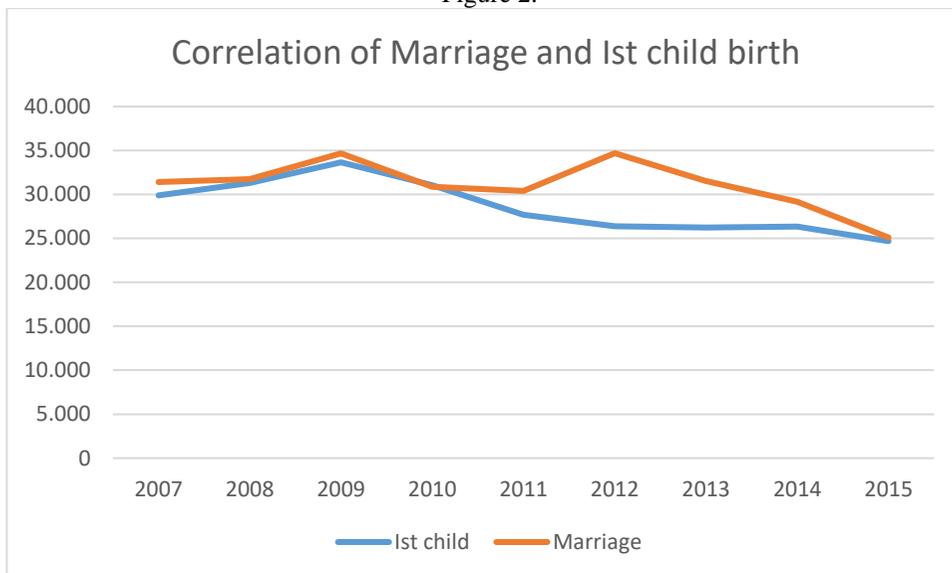
Figure 1.



As for the decrease in the first child absolute figures, it is important to underline that unlike Western cultures, Georgian society has a strong tradition to have a first child soon after wedding. Absolute majority of children are born in the wedlock and this number is not changing in percent over the last two decades. Figure 2 shows the number of weddings over the birth of the first child in the family. However, it should be noted that the number of

weddings have been shifted by one year. There are several points to be noted based on the data below, among which is the gap between the number of marriages and first childbirth in the period from 2010 to 2015, which can be attributed to various socio-economic factors and should be studied further. Another factor to be of a close consideration is that the number of marriages is steadily decreasing and, in connection with the local traditions of childbirth, this tendency may incur in the long term negative influence on overall demographic status.

Figure 2.



Another factor which may be greatly contributing to the demographic situation in the country is the low number of women willing to have three or more children. Reproductive Health Study conducted in 2010 shows that only 21% of women having 2 children consider the possibility of having the third child, whereas number of women having 3 children considering to have another child is less than 8%.

Taking into consideration the reasons causing the increase of the number of families with one or two children, it is clear that in order to maintain the positive reproduction, it is crucial to reach the rate of 2.5 and above.

It should be stressed also that the tendency of families with three and more children is maintained in several regions of the country (Zemo Adjara, Kvemo Kartli), but it has no significant influence on the general indicators. In 1980, the number of the second, third and fourth children made up 60% of the total number of children born during the year. In 1990, their share decreased to 45%, while according to the data 2016, it reduced by 38%. It

means that in case of maintaining the existing tendency, the family is unable to provide enlarged reproduction.

Table 2. Total fertility rate in Georgia and neighboring countries

Countries	1970	1980	1990	2000	2010	2014
Armenia	3.2	2.3	2.63	1.11	1.56	1.65
Azerbaijan	4.7	3.3	2.8	2	2.3	2.2
Georgia	2.6	2.3	2.15	1.5	1.83	2.19
Russian Federation	2	1.9	1.9	1.2
Turkey	4.9	4.3	3.07	2.38	2.06	...

Due to the socio-economical events of 1990-1992, immigration of non-Georgian population (mainly Russians, Greeks, Ukrainians and other nationalities) sharply increased causing the absolute decrease in population. The same period was characterized by the immigration of Georgian population in search of the work to Russia, US and Europe. The main body of immigration was represented by the male and female population in the labor age. Due to this movement, the structure of age-sex pyramid has changed, increasing the share of children and youngsters in the population; however, the absolute number of births has not increased.

In line with many other countries, Georgia experiences the strong urbanization trend. Among the main reasons, there are the high unemployment rate in regions and IDPs mainly settling in the capital and other large cities of Georgia. The war activities in Abkhazia and Samachablo triggered a new wave of internal and external migration which affected almost 20% of the country's population. Economic and social influence of these events had a long-term negative effect on the population growth trends. Among other problems, migration of the population to the cities sets the new challenges to the Health Care and Public health systems. It is important to mention that the group of IDPs from Abkhazia has a high proportion of young people who have suffered physically and mentally during war years as children, had a post-traumatic syndrome during military conflict and did not undergo any rehabilitation. Due to severe economic crisis of 1992-1997, Georgian government could not provide IDPs with respective living conditions and economic support what negatively influenced their health state. Studies show that drug abuse, psychiatric and psychological disorders, unemployment rates are higher in this group than in overall population.

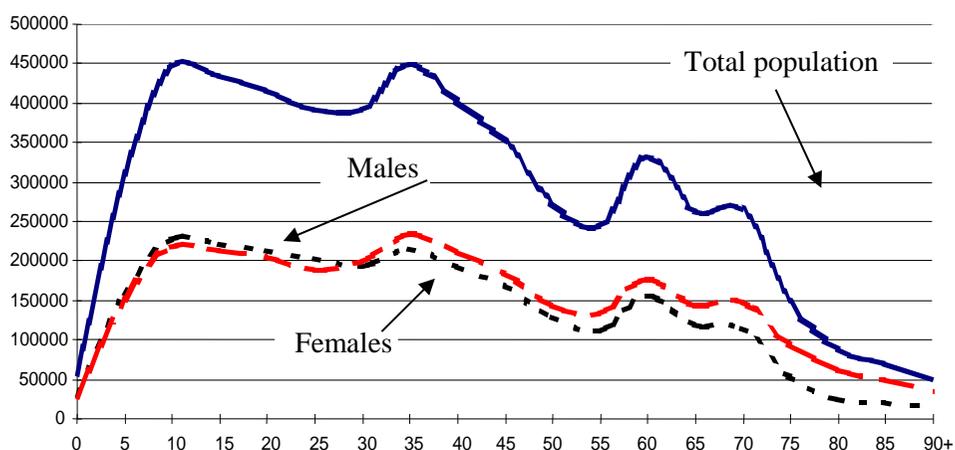
Unlike neighbor countries (Turkey, Azerbaijan) where the number of natural children makes up 25-60% of the total number of newborns due to the Georgian traditions, the share of natural children in our country is 6-10% (by different regions nationalities). Thus, taking into consideration existing

specifics while calculating the prognostic indicators of the population and planning the demography policy, it is necessary to strengthen the institute of family.

Although the number of registered divorces increased five times in the last 10 years, different studies confirm the number of unregistered divorces to be even higher. Increase of the share of incomplete families denotes the same fact.

The above-mentioned demographic trends affected the age-sex structure of population and stimulated the process of the population aging which, from our viewpoint, will have negative influence on the economy of the country (Figure 3).

Figure 3. The quantity of Georgian population according to the sex and age



The number of population over 60 is 900 000 in Georgia. This rising number of economically less active population is a growing burden for the State. In this aspect, the new and rapidly changing demographic trends, such as deterioration of traditional multigenerational structure of Georgian families and increase of the portion of the so-called nuclear families, are increasing this burden.

On one hand, the state is compelled to deliver old people social and medical care, which was mainly provided by the member of multigenerational families (care, feeding, primary medical care, etc.).

On the other hand, the young generation of nuclear families may become an issue for the society and state, being left unattended, not forming the social and traditional bonds with older generation, and experiencing considerable lack of control and supervision.

Mortality dynamics of the population is significantly different in urban and rural regions. Mortality dynamics in rural population is

characterized by more positive trends. For example, contingent mortality level is much lower among children under one year and adult population. The peak is shifted to elderly population.

The existing trends of the population morbidity and mortality indicators are gradually approaching those of the developed countries, although some of the indicators typical for developing countries will be preserved. This is supported by the fact that referral of patients with some chronic diseases to health facilities significantly reduced. The registered reason for their death is not the disease which really caused the death, but some diagnosis of previous years or a disease adjusted to the age. This explains the extremely high rates of mortality from some pathologies which do not correspond with the real situation. The existing situation requires immediate intervention and appropriate measures due to its negative effects on various aspects of the Health Care system.

Influence of the population life conditions on the medico-demographic indicators

According to the data obtained from the State Department of Statistics, the average number of adult population over 15 was 713,9 per 1000. 631 out of them work (226,3 were employed, 368,4 self-employed) and unemployed - 51,8. Despite the high level of unemployment, many of them are not officially registered. The study revealed that males had 20-50% more income than females. This difference was not so obvious in the past. It is noticeable that monthly income of one household was much lower than the established cost of consumers' basket. In addition, incomes from farming in rural regions were 30-40% less than in urban regions.

According to the structure of monthly expenses calculated by the State Department of Statistics, expenses on food of the country's population made up 40,8%, on transport - 6%, heating - 6,7%. Expenses on education, cultural activities and leisure sharply reduced. This situation has negative effect on the health of population. It must be stressed that population spends only 2,5% of the total expenses on health (including purchasing of medications, covering ambulatory and hospital expenses through co-payment, etc.).

Table 3. Private households' out-of-pocket payments on health as % of total health expenditure

Countries	2000	2010	2014
Armenia	77.35	55.87	53.51
Azerbaijan	63.27	69.18	72.08
Georgia	82.51	69.11	58.58
Russian Federation	29.97	43.3	45.85
Turkey	27.65	16.31	17.75
EU	17.63	16.18	16.68

It is interesting that expenses on health are nearly equal to the expenses on purchasing tobacco and alcohol. It denotes that people are not practicing health behavior.

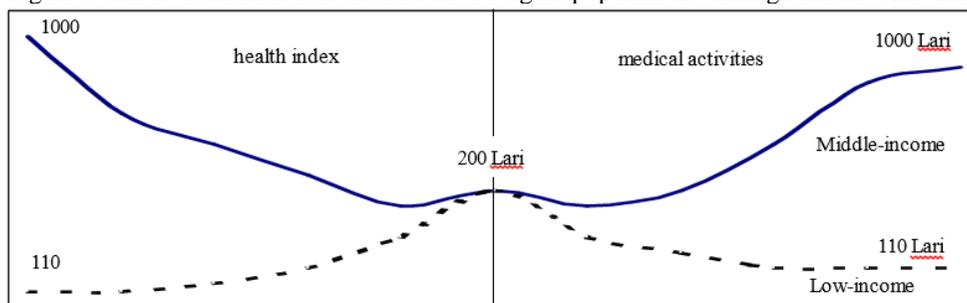
Extremely high levels of poverty exist among single people. This takes into consideration that this category is mainly represented by elderly population; the state has to make big contributions in their medical care and social security. The carried out studies revealed that in the structure of the expenses of the poorest population, expenses on food had the leading position, while the least amount of money was spent on education and cultural activities - 1,6%, and on transport- 2,3%. Population expenses on transport increased to 7,2%, on rest - 3,9% and purchasing utensils and other goods - 10%.

The country's population undergoes rapid division into different social layers. The differences are not only in economic, but also in socio-cultural characteristics of this layer. In 2016, the number of families with middle income increased to 7,4% in comparison with the last year indicator 6,9% compared to 1.2% of high income households.

Difference in basic health indicators became obvious as well, especially between the low- and middle-income populations. According to studies, middle-income population group spends 20-30% less on treatment and purchasing of medications. It is quite understandable as poverty is always accompanied by high level of morbidity and correspondingly, with the increase of medical expenses.

A special study, aiming to compare the health state of two groups of Tbilisi population of lower and high income, was held (Figure 4).

Figure 4. Index of medical activities of the Georgian population with high and low incomes



The study shows that health indicators of the low-income group were much worse than expected. It would be reasonable to assume that the referral of this group to the Health Care facilities should be very high; on the contrary, the study findings show that the referral to medical services is extremely low.

At the same time, the representatives of the high and middle-income groups are not only healthier, but are characterized with higher medical

activities, practicing comparatively healthy life-style, referring to medical services for treatment and prevention purposes.

It is important to underline that many of those who belong to socially vulnerable group are not an invariable part of population as some of them are at least partially employed. Income is closely connected with socio-economic situation existing in the country. This group includes public workers, IDPs, retirees, etc. Variation of their incomes is connected with timely and full paying of salaries, pensions and premiums from the state budget.

The dynamics of food products consumption significantly changed in the recent years and greatly depends on the above mentioned factors. According to the available data, everyday diet of the most part of the population includes mainly bread and bread products (65-85% according to the different social groups), vegetables (including potato) - 8-14%, fruit (by seasons) - 2-12%.

Besides, consumption of milk and dairy products (2-8% according to the different groups), meat and meat products (5-12%), sugar and confectionery (2-6%) significantly reduced.

There is a tendency of caloricity reduction in other countries. This process is more accelerated in CIS countries than in Georgia. Besides, caloricity of diet in South-Caucasus countries is lower than the established physiologic standard (according to some authors, it makes up 3200-2800 calories).

Making up for the deficiency of meat and dairy products ingredients amino acids, proteins and vitamins, the traditional Georgian diet includes beans, different cereals, vegetables and fruit. However, impoverishment of the diet conditioned by lack of meat and dairy products significantly affects the health of the population.

This situation partially conditions the process of deceleration (retardation of children's and adolescent's physical development). It has reflected in low indicators of physical development of young population. Besides, pathologic conditions connected with malnutrition became very frequent. In this regards, the condition of IDPs from Abkhazia is extremely severe. Special study proved that low income, bad living conditions, malnutrition and unemployment cause social isolation of a person and increase of frequency of respective somatic and psychic disorders. The respective study shows the significant statistical increase of morbidity and mortality indicators in this group. It is important to mention that this population group is provided with adequate and free medical care; however, the referral to the medical institutions is extremely low. The structure of the referral shows that the main reason for referring to the health care professionals is not the onset of the disease, but the occurring disability resulting in the risk of unemployment.

Despite the fact that the majority of IDPs had been working in different fields of national economy during the pre-war period, 26% of them do not have permanent source of income, 73% - do not work by specialty. The strong dependency of IDPs from Abkhazia on external conditions, such as temporary working place, social premiums, humanitarian aid, etc. is reflected in their responses to the question on how they evaluate their economic conditions: 32% consider them to be severely poor, 44% as hard, 21% as satisfying and only 1% consider that they live in good economic condition. Heavy dependency on the social welfare and high rates of unemployment are thus the main determinants of the economic wellbeing of this population group, predominantly those living below the poverty line.

Difficult social and economic conditions are among leading contributing factors in the high spread of tobacco, alcohol and drug abuse. Poorly regulated markets of developing countries, such as Georgia have become prime targets for tobacco and alcohol producing companies in last several decades. The imperfect legislation, taxation and quality control attract international tobacco companies and create the favorable situation for the increase of smokers and alcohol users.

To grow the market share, advertisement is targeting young people, women. Unlike most of the European countries, Georgia allows the advertisement of tobacco in the streets; it is not restricted to sell tobacco and alcoholic beverages near schools. Smoking and tobacco sale restriction law enforcement is mostly uncontrolled, the price range is still very affordable, and there is no major anti-tobacco campaigns conducted.

It is important to note that in the last decade, in comparison with Europe, the demand for tobacco products per adult reduced by 7%, in USA and Canada by 6%, it increased in Africa by 42%, in South America by 29% and in Asia by 22%.

Situation in CIS countries and among them in Georgia became very complicated. The number of tobacco abusers, especially among the young population, rapidly increases. Several studies revealed that the average age of stable tobacco consumers decreases. This indicator significantly increased in women. The data number of smokers among adult males in Georgia is nearly 60%, which is much higher than the same indicator of the European countries where demand for tobacco products steadily reduces.

Ancient tradition of moderate consumption of wine and other alcohol drinks conditioned low level of alcoholism until the 90s. However, these numbers are underestimating the importance and spread of the so-called "social" alcoholism what is mostly typical for the Georgian society. Certainly, it negatively affects the health indicators, increasing the morbidity of the population (cardiovascular, endocrine, digestive and other systems).

In the previous years, the situation became more complicated due to hard political and especially economic situation, selling of alcohol drinks in damping prices, ineffective legislation, and production of low quality wine and other alcohol drinks. One of the serious problems is the tradition of alcohol consumption and therefore acceptance of young drinking age by the society. These factors significantly promoted the increase of alcohol consumption among young population and women. The study revealed that 90% of females respondents under 18 consider that alcohol consumption is a bad habit, 50% of them consumed alcohol irregularly, 80% from 300 female respondents above 18 consumed alcohol (70% periodically, and 10% systematically), 70% of them also considered that it was a bad habit.

Conclusion

Demographic changes in the Georgian society occurring in the last decades were heavily dependent on the social-economic environment of the country. Despite the fact that the changes are stabilizing in the last few years, we believe that the changes in the reproductive behavior continue to develop in the negative direction. As compared to the previous years, the number of desired children has been decreasing and only 8% of Georgian women desire to have three or more children. In addition to this tendency, the number of marriages decreases year on year and the number of divorces has increased dramatically over the last ten years. All of the above changes are contributing factors to the demographic changes and are expected to have a serious long-term negative effect on the population structure of the country.

Taking into consideration the reasons causing the increase of the number of families with one child, it becomes clear that in conditions when enlarged reproduction of the country's population needs each family to have 2.5 child, there should be 3 children in each second family.

It should be stressed also that the tendency of multichildren families is maintained in several regions of the country (Zemo Adjara, Kvemo Kartli), but it has no significant influence on the general indicators.

In 1980, the number of the second, third and fourth children made up 60% of the total number of children born during the year. In 1990, their share decreased to 45%, while according to the data 2016, it reduced by 38%. It means that in case of maintaining the existing tendency, the family is unable to provide enlarged reproduction.

According to the data of the general census of population carried out in 1979, 150 women per thousand had one child, 240 - 2 children, 329 - three and more children. The census of the population carried out in 1989 revealed the trend of reducing the number of women with three or more children (300 per 1000 married women). At present, the number of families with three

children reduced twice. This can be considered as an indicator for potential depopulation of the country.

The country's population undergoes rapid division into different social layers. The differences are not only in economic, but also in socio-cultural characteristics of this layer. This situation causes serious problems in the social and medical financing of the growing poor population. It should be noted that the cause for delay of medical interference for them is not just a financial problem, but an issue of a low literacy level, peculiarities in the flow of disease, transportation problems, etc.

Difference in basic health indicators became obvious as well, especially between the low and middle-income groups of population. Poverty is always accompanied by high level of morbidity and correspondingly with the increase of medical expenses.

In most cases, poor patients receive practically no conservative treatment but need urgent surgical operations. It is without question that charges for treatment of urgent pathology are too high not only for a patient's family, but for the state Health Care system of the country.

References:

1. Abdushelishvili, NG., Gerzmava, NO., & Kitovani, DV. (2005). Complex study of the problem on accessibility to high quality medical care in the population of Georgia. *Georgian Med News*. 127:91-5.
2. Belli, P., Gotsadze, G., & Shahriari, H. (2004). Out-of-pocket and informal payments in health sector: evidence from Georgia. *Health Policy*. 70/1:109-23.
3. Country Cooperation Strategy: At a Glance: Georgia. (2013) World Health Organization. http://www.who.int/countryfocus/cooperation_strategy/ccsbrief_geo_en.pdf
4. Djibuti, M., Gotsadze, G., Mataradze, G., & Menabde, G. (2008). Human resources for health challenges of public health system reform in Georgia. *Hum Resour Health*. 6/8. Doi: 10.1186/1478-4491-6-8.
5. Dzhakeli, IV., Edzhibadze, OI., & Gerzmava OKh. (2009). Management problems of improving the quality and efficiency of primary health care system of Georgia. *Georgia Med News*. (172-173):96-9.
6. European Health for All Database (HFA-DB) (2013). <http://www.euro.who.int/en/>
7. Fuenzalida-Puelma, H. (2002). Role of the State in Transition Healthcare. *Journal of Health Sciences Management and Public Health*

8. Hauschild, T., & Berkhout, E. (2009). Health-Care Reform in Georgia. A Civil-Society Perspective: Country Case Study. Oxfam International Research Report. 13-14
9. Kaiser Family Foundation. Health Coverage & Uninsured. www.statehealthfacts.org
10. Kvizhinadze, N, & Gerzmava, O. (2013). Peculiarities of medication safety. Georgian Med News. 216:56-60.
11. Rockers, P et al. (2011). Determining Priority Retention Packages to Attract and Retain Health Workers in Rural and Remote Areas in Uganda. Capacity plus Project. February
12. The World Health Report (2014). Geneva: WHO: World Health Organization. 2015. "Exposure to Stress: Occupational Hazards in Hospitals". NIOSH Publication No. 2008–136. National Institute for Occupational Safety and Health (NIOSH). 2 December 2008.
13. Tobias Hauschild & Esme Berkhout (2009). Health-Care Reform in Georgia. A Civil-Society Perspective: Country Case Study. Oxfam International Research Report. 1-46.
14. World Bank (2008a). Georgia Country Brief 2008. Retrieved from: <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EC AEXT/GEORGIAEXTN/0,,menuPK:301755~pagePK:141132~piPK:141107~theSitePK:301746,00.html>
15. World Bank (2008b). World Development Indicators Database. <http://web.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,,contentMDK:20535285~menuPK:11926294~pagePK:64133150~piPK:64133175~theSitePK:239419,00.html>
16. World Health Organization (2010). Classifying health workers. Geneva http://www.who.int/hrh/statistics/Health_workers_classification.pdf
17. The World Health Report (2014). Geneva: WHO: World Health Organization. 2015. "Exposure to Stress: Occupational Hazards in Hospitals". NIOSH Publication No. 2008–136. National Institute for Occupational Safety and Health (NIOSH). 2 December 2008.
18. The World Health Report (2014). Geneva: WHO: World Health Organization. 2015. "Exposure to Stress: Occupational Hazards in Hospitals". NIOSH Publication No. 2008–136. National Institute for Occupational Safety and Health (NIOSH). 2 December 2008.

Review of Georgia's 2016 Agricultural Foreign Trade and the Existing Foreign Regimes

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Abstract

The total foreign trade turnover of Georgia reached 9 350 million USD, and trade balance was accounted to be negative with -5122 million USD in 2016. The agricultural products' trade turnover in Georgia is summarized as 1750 million USD, which is 18.7% out of the total foreign trade turnover. The export, compared to 2015, increased to 13% and amounted to 692 million USD. The import went down by 4% and is made up of 1 058 million USD. At the same time, the foreign trade balance was negative and is made up of 366 million USD. The basic exporting products were: The Hazelnut (178.9 million USD), Wine (113.5 million USD), Spirituous beverages (91.8 million USD), Mineral waters (79.8 million USD), canned fruit and vegetables (10.3 mln USD), Citrus (12.1), Fruit and Vegetable Juices (5.5 mln USD) etc. However, the major exporting partners were Germany, Netherland, the Czech Republic, France, Poland, Latvia, Lithuania, etc. The basic imported agriculture foods were: Poultry (58.4.million USD), Sugar (65.4 million USD), Plant oil (39.6 million USD), Spirituous beverages (23.3 million USD), Wheat (86.1 million USD), Rice (4.9 million USD), etc. The import was basically delivered from Germany, Netherland, France, Hungary, Rumania, Italy, UK, Austria, etc.

Keywords: Agricultural, Foreign, Products

Introduction

The Government of Georgia implemented reforms in tariff policy as well as in technical regulations sphere. As a result, nowadays, Georgia has one of the most liberal foreign trade policies in the world which implies the facilitated foreign trade regimes and customs procedures, low import tariffs, and minimal non-tariff regulations.

In 2016, the foreign trade turnover of Georgia, compare to 2015, decreased by 1.4% from 9935 million USD to 9350 million USD. The export

reduced by 4% from 2 205 million USD to 2 114million USD. Also, import went down by 1% from 7 730 million USD to 7 236 million USD.

The export of major agriculture foods within EU made up 220.5 million USD (6% more than in 2015).

On the other hand, the import of major agriculture foods made up 222.2 million USD (9% less than in 2015).

The Export of Basic Agricultural Products

The export increased by the following products:

- Canned fruit and vegetables – export was up by 14% with a total of 8.8 million USD. The product was exported in Germany 69%, Spain 8%, Italy 6%, and Slovakia 6%;
- Legumes' flour - increased by 70%; the amount reached 6.8 million USD and was exported in Germany 72%, France 16%, and the Czech Republic 7%;
- Spirituous beverages – increased by 60%; the amount reached 21.8 million USD. The product was exported in France 46%, Netherlands 29%, and the United Kingdom 14%;
- Wine – export increased by 14% with a total of 14.2 million USD. The product was exported in Poland 35%, Latvia 20%, Estonia 11%, and Lithuania 11%;
- Mineral waters – increased by 14% with a total of 12.2 million USD. The product was exported in Lithuania 97%.

The export reduced by the following products:

- The Hazelnut went down to 3% and totally reached 145.5 million USD. The basic exporting countries were Italy 33%, Germany 33%, France 6%, Spain 6%, Czech 6%, and Slovakia 4%;
- Fruit and Vegetable Juices went down to 38% and amounted to 2.1 million USD which was exported in Greece 34%, Germany 32%, Hungary 11%, Italy 10%, and Netherlands 8%.

The Import of Basic Agricultural Products

The import increased by the following products:

- Dairy butter – import increased up to 60% and made up 6.5 million USD;
- Chocolate – increased up to 11% and made up 12 million USD;
- Pastries with sugar, without cocoa – increased up to 64% and made up 4 million USD.

The import reduced by the following products:

- Spirituous beverages – went down by 36% and reduced by 15.9 million USD, which were imported from France 33%, Netherland 16%, UK 14%, Latvia 14%, and Finland 7%;
- Pork – made up 6.7million USD but reduced to 42% when compared with the previous year. The product was imported from Spain 38%, Germany 14%, Hungary 8%, Netherland 8%, and France 7%;
- Pigs – made up 1.1 million USD and reduced to 71%. Product was imported from Bulgaria 40%, Hungary 30%, Romania 20%, and Denmark 10%;
- Cotton-cake – reduced to 72% and made up 1.3 million USD. It was imported from Romania 100%.

Existing Foreign Regimes in Georgia

Most Favored Nations (MFN)

Majority of the trade partners of Georgia are members of the World Trade Organization (WTO). Thus, among the WTO member States (158 countries), trade relations are regulated on the basis of MFN principles.

Generalized System of Preferences (GSP)

Georgia is the beneficiary of GSP regime of the following countries: the European Union, USA, Japan, Canada, Switzerland, and Norway.

Free Trade Regime

Georgia has free trade regime with all CIS countries and with Turkey.

Conclusion

Multilateral International Agreements on Free Trade

Free trade regimes among the CIS countries, except the Russian Federation, are regulated by the Multilateral Agreement on Creation of Free Trade Zone among the CIS countries (1994). In the bilateral format with those countries, Georgia has signed the bilateral agreements also.

Georgia is also a member of the multilateral Agreement on Creation of Free Trade Zone in the frame of the Organization for Democracy and Economic Development GUAM (2002).

Bilateral International Agreements on Free Trade

Georgia has signed Free Trade Agreements with the following countries: the Russian Federation, Azerbaijan, Armenia, Ukraine, Moldova, Kazakhstan, Uzbekistan, Turkmenistan, and Turkey.

Thus, the existing free trade regimes with the Russian Federation and Turkey, unlike other countries, envisage exceptions, in particular, and the removal of certain goods from the free trade regime.

References:

1. http://www.geostat.ge/?action=page&p_id=751&lang=geo
2. <http://www.economy.ge/ge/economic-sectors/trade>
3. https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm

Agro-Tourism Perspectives of Adjara Region and International Tourist Market Requirements

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Abstract

Depending on the current economic situation of Georgia, the amount of investments which are invested in tourism sector is quite solid. Modern technologies are accessible for the majority of the world tourists, but only a small number of potential tourist resources are utilized. The accelerated rhythm of modern life has a great influence on the spiritual or physical condition of a person. That is why we often wish to relax in the quiet environment of the city and be restricted to agro-tourism. However, in terms of increased demand on tourism, which is focused on a small resource base, tourist destinations are under pressure. Partially this is because tourism is not developed equally or accidentally in space - so pressure is concentrated in seasonal and unique locations. This requires effective planning of tourism resources, and agro-tourism is remarkable with its working period throughout the year.

The perspectives of agro-tourism in the Adjara region are very large. We will look at the tourism potential of the Ajaria region of our country to analyze the situation in general where there is quite a large tourist potential: resort space, mineral water treatment, historical and architectural monuments, national parks, nature monuments, protected landscape, etc. Based on the existing resources, development of agro-tourism in our country will be promising.

In the development of agro-tourism, the practical and effective coordination between all stakeholders, including government, private enterprises and local authorities is of utmost importance.

It is necessary to create appropriate legal and organizational mechanisms for the support and effectiveness of local residents. Agro-tourism should support the protection and improvement of natural areas. Professionalism in Georgia is an important condition for the development of tourist activities and mainly agro-tourism.

Keywords: Agro-touristic; Adjara Region resource potential; Agro-products; International tourism market

Introduction

Development of agro-touristic projects in Adjara Region and its introduction to the international tourism market carries significant character.

Depending on the current economic situation of Georgia, the amount of investments which are invested in tourism sector is quite solid. Modern technologies are accessible for the majority of the world tourists, but only a small number of potential tourist resources are utilized. The accelerated rhythm of modern life has a great influence on the spiritual or physical condition of a person. That is why we often wish to relax in the quiet environment of the city and be restricted to agro-tourism. However, in terms of increased demand on tourism, which is focused on a small resource base, tourist destinations are under pressure. Partially this is because tourism is not developed equally or accidentally in space - so pressure is concentrated in seasonal and unique locations. This requires effective planning of tourism resources, and agro tourism is remarkable with its working period throughout the year.

Agro-tourism, one of the main directions of tourism, was established in large industrialized countries in Europe in the second half of XX century, where a significant part of the population constitutes the third generation of population from the village.

These, however, were people who were willing to settle down in rural areas, and all of them selected attractive regions abroad and were paying rent. Consequently, the host families were earning income. This sector does not diminish the economic crisis. In Italy, for example, the recession in many areas has reduced, but the income of the farmers who were involved in agro-tourism remained unchanged. In addition, 20% to 40% of tourism earned in the world comes from tourism in rural areas.

In some European countries, for example, in Cyprus and Bulgaria, the villages have been rescued with their originality by agro-tourism. Here, the restoration of agricultural houses and the design of the national style with modern comfort and coziness were carried out.

Tourists are able to get familiar with the local culture, traditions, folklore, and they rest on top of the mountains in region of Adjara, in Machakhela valley villages, and at the seaside resorts where the particular microclimate is distinguished, spa resort. It is located in the south-west of Akhaltsikhe Island, the Kolkheti valley. From this point of view, it will be important to maintain one of the important programs of its kind in Georgia, particularly in the above mentioned regions.

The development of agro-tourism is almost invaluable in one of the most beautiful parts of Georgia, Adjara, with its diversity, contrast nature, rich flora and fauna, large hunting and fishing spaces, magnitude and uniqueness

of forest fund, mountain skiing tracks, and rich historical, ecological, and architectural ensembles.

The main objective of the development of agro-tourism is to satisfy the needs of the population in the village and increase the living standards of the villagers. In order to effectively solve the rural population through the organization of problematic service delivery, it is essential to form an agrarian service market. This means that tourism services should not be performed in the village episodically; it must be depended on casual guests. The level of income of the rural population, at the expense of tourism, is the solution to the growing of the agro-tourism mass market. This would provide a sufficient number of consumers for its solid functioning. But the agro-tourism flows are the prospect of the future, as far as in Georgia, there are wide spread relatively cheap forms of vacation which serve as an alternative to agricultural service. This is the way of having a free time in gardens and shelters in the area where the towns have the opportunity to rest in the unruly environment, and it is possible for them to engage in agricultural work for their own pleasure. More and more people in recent times consider their cottages not as a resting place, but as a source of additional foodstuffs which are associated with economic growth and the revenue of the population. This leads to the provision of practically fully satisfied food products.

According to the data of 2010, 53% of the population of Georgia is urban, while the rural population is 47% of the whole population. According to the data of 05. 11. 2014, the census of the population, 23.8% of the residents of the villages have decreased and the corresponding tendency is gradually rising.

The perspectives of agro-tourism in the Adjara region are very large. We will look at the tourism potential of the Ajaria region of our country to analyze the situation in general where there is quite a large tourist potential: resort space, mineral water treatment, historical and architectural monuments, national parks, nature monuments, protected landscape, etc. Based on the existing resources, development of agro-tourism in our country will be promising.

Currently, agro-tourism is developing in Georgia. In recent years, foreign visitors visited mainly the sea resort. They arrive to see historical and cultural monuments in Adjara High mountainous regions - Machakhela Gorge, Mtirala National Park. There are possibilities that special agriculture traditions are being developed in agro-tourism. Agro-tourism has already begun developing and, hopefully, more tourists will arrive and agriculture will be promoted.

Planning and development of agro-tourism in the region should be taken into account in the basic principles of sustainable development:

1. Ecological conditions provide joint development of biodiversity and biological resources of market ecological processes;

2. Social and cultural sustainability - ensures the sustainability of the lives of people whose joint culture and values are fully protected and cultural identity is further evident;

3. Economic sustainability - ensures economic efficiency of development, when the existing method of using of resources guarantees the maintenance of future resources for future generations.

For the development of agro-tourism, the practical and effective coordination between all stakeholders, including government, private enterprises and local authorities is of utmost importance. It is necessary to create appropriate legal and organizational mechanisms for the support and effectiveness of local residents.

Agro-tourism should support the protection and improvement of natural areas.

Professionalism in Georgia is an important condition for the development of tourist activities, and mainly in agro-tourism.

Tourists, who prefer the above-mentioned species, need more information about the international tourism market, preferably by tourist firms, before departure and after departure. Full and modern information is one of the main elements of professional activity in tourism. In addition, this information may be provided in various forms such as brochures, booklets, maps, and Internet portals. This is because the villagers have not yet been able to sell direct marketing, advertising financing or internet products.

Conclusion

There is a real perspective for development of agro-tourism in the Adjara region of Georgia. Therefore, the state should take into consideration the experiences of other countries in the fields of its customs and traditions. In this field, they must increase motivation for a long-term period.

Agro-touristic products should be exported to the international tourism bases mostly by tourist firms, because the rural population has no direct marketing to sell advertisements or internet products abroad.

References:

1. Metreveli, M. Fundamentals of Tourism and Hospitality. Tbilisi.
2. Koblianidze, T. Meladze M. Tourism and Hospitality Management. Tbilisi.
3. <http://www.woof.net>
4. http://www.geostat.ge/?action=page&p_id=151&lang=geo
5. <http://agrokavkaz.ge/agrokavkasia>
6. <http://gobatumi.com/ge/where-to-go/mountainous-ajara>

Brief Review of Georgia's Agriculture and Support of Agrobusiness

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Abstract

Georgia's climate and soil conditions have made agriculture one of its most productive economic sectors. The value of agrobusiness in Georgia stood on 1602.5 mln USD, representing 9.3% of the national GDP in 2016. Rural population reduced from 48.2% to 42.6% since 2001. 38 % of the agricultural output came from plant growing, 56% from animal husbandry, and the remaining 6% from services. A big share of agricultural products in Georgia are produced by small land-users. Maximum size of the land under their ownership does not exceed 1.25 ha.

Keywords: Agriculture, Product, Business

Introduction

According to GeoStat figures, the crop productivity is low and represents for wheat – 2.6 Mt/ha; for maize – 1.7 Mt/ha; for potato – 8.1 Mt/ha; and for vegetable – 6.7 Mt/ha. The number of livestock comprised of 962.7 ths; pigs – 136.2 ths; sheep / goat – 936.5 ths; and poultry – 8237.2.1 ths.

Within 2016, the self-sufficiency ratio, including different agricultural products, was as follows: wheat - 19%; maize - 79%; potato - 92%; vegetable - 74%; grape - 150%; meat - 48 %; milk/dairy product - 82%; egg – 100 % etc.

Existing Research and Extension

To improve productivity, there is the need to develop new genetic resources, modern technologies, and introduction of Know-how achievements and approaches.

Scientific-research practice in agriculture declined much since the nineties of the last century and nearly stopped except for some little local projects.

Research

Recently, scientific-research activities started developing after the establishment of a new LEPL “Scientific Research Center of Agriculture (SRCA)”.

The goal of the Center is to rehabilitate agricultural science, to develop agricultural sector and food production, to support agro-biological diversity of plants and animals, to restore selection centers and those for testing different species of plants, to facilitate artificial insemination of animals, to develop the system for standards and certification of seeds and saplings, to introduce and distribute new technologies, to ensure risks assessment in the spheres of food safety and protection of plants and animals, to develop bio methods and support the development of bio-farming, to provide extension service to the number of those involved in agriculture, etc.

Georgia is famous with a wide range of local agro-endemic spices and varieties, e.g. there are 525 endemic grape, 5 endemic spices and 150 forms of wheat, 200 varieties of maize, 50 spices of fruit, as well as the different spices and varieties of local legumes, etc.

The SRCA have been elaborating, researching, and working on different scientific- research directions including 50 themes.

The structural sub-units in the Scientific Research Center of Agriculture have been working actively to achieve the goals set by the Center.

Research and retrieval of annual and perennial cultures aims to retain the gene pool of annual and perennial crops; it also aims to develop innovative methods of their cultivation and growth.

Bio-agricultural production includes development of survey methods for bio-ecological and economic efficiency of bio production.

Searching for local agricultural animals and useful insects focuses on restoration and improvement of local varieties and population of cattle, poultry, fish and useful insects, and the development of the gene bank.

Standards for seeds and planting materials and their certification involves the development of controlling mechanisms for the standards of technical (biometric) characters of plants’ seeds and planting materials. Consequently, it also entails the development of phytosanitary control mechanisms for seeds and planting materials.

Integrated systems for plants protection aim to develop modern measures for combating plants pests and diseases (fungus, bacterial, virus, viroid and photoplasmic) and weeds. It also works out the chemical and biological methods (new pesticides) for the protection of plants.

Modern scientific study of storing and processing agricultural products is based on study of organoleptic and economic-technological characteristics of agricultural products; searching for the technologies to produce environmentally safe products.

Assessment of food-related threats was initiated by risk management bodies and scientific-academic circles. The goal is to identify and describe threats and in setting up reasonable level of risks.

Agricultural engineering have been conducting research for modern technologies for performing agricultural activities and their classification to diversify soil and climate conditions of Georgia; search for modern technologies and equipment for production; and storage and processing of agricultural products.

Soil Fertility Research Service focuses on improving and restoring soil productivity; improving the structure of degraded soil; regulating the system of soil fertilization; studying and revealing soil-related risk factors.

Extension

Consultative services have been established within the system of the Ministry of Agriculture. The Services have been functioning in all municipalities and in all over Georgia.

The main goal of the above Services is to improve the knowledge of farmers in the spheres of land cultivation, grow and care for agricultural crops, cattle breeding, and the use of modern technique and technologies.

In 2015, regional units were established in order to efficiently implement their functions and responsibilities and improve management system. The regional units were established based on 9 (nine) information-consultative services. The above units coordinate not only information-consultative services under the region, but the activities of all the territorial offices under the Ministry of Agriculture. The information-consultative services in near-real time provide farmers/peasants and all the interested people with the information on the activities implemented by the Ministry of Agriculture in order to facilitate agricultural sphere. In addition, the above services regularly provide farmers with qualified consultations (through telephones, extension service's mobile vehicles, etc.), and disseminate the topic-related printed and video-materials. The role of different structures under the Ministry of Agriculture of Georgia, the Academy of Sciences, and donor organizations should be noted in providing information.

However, a Farmer's Guide was developed in 2015 with the financial support of UNDP and SIDA. The book includes all important issues concerning the fields of agriculture, plants protection, veterinary science, and food safety that are interesting and important for the people engaged in agriculture. The above guidebook is available in all information-consultative services.

In addition, with the support of Food and Agriculture Organization of the United Nations (FAO), LEPL Scientific Research Center of the Ministry of Agriculture developed forty (40) different information booklets on various

subjects. Also, USAID-funded SEAS project developed and published a guidebook – “Main Pests of Vegetables and Horticulture and Fight against Them in Georgia”. The book includes and describes modern methods of fighting against all the key pests and diseases. Many brochures and booklets were printed by all structures under the Ministry of Agriculture in different fields and on various topics.

It is important to mention that the employees of the Information and Consultative Service of the Ministry of Agriculture have undergone 150 training sessions to receive information on new technologies, its processing and dissemination, and information on the peculiarities of the work of the Information and Consultative Service.

In addition to the above, in 2015, a guideline was developed by municipalities on the prospects of agriculture development based on which regional roadmaps of investment potential of agricultural sector of Georgia was developed.

Plant the Future Project

123 applications were submitted within the project, including 4 applications to co-fund nurseries and 119 applications to grow perennial plant orchards. In 2015, 117 applications were approved and the Agency provided GEL 4,393,890 [GEL - Georgian Lari (National Georgian Currency)] [Exchange rate - Gel = 0.42 USD (December 2015) Georgian National Bank] to co-fund saplings and drip irrigation systems. The 835,87 hectares of new perennial plant intensive and half-intensive modern orchards were /are being developed.

Preferential Agro Credit Project

Within the framework of the Preferential Agro Credit Project, 24,250 credits in the amount of GEL 681,808,919 and 1,402 credits in the amount of \$ 178,379,311 were granted in 2013-2015. In total, 25,652 credits, inter alia, 3,964 credits in the amount of GEL 182,381,989 and \$ 57,037,861 were disbursed in 2015.

Small Farmers Spring Works Support Project

The number of the Small Farmers 2015 Spring Works Support Project was 767,018. In 2015, GEL 48,368,778 worth inputs were provided to the beneficiaries and 225,200 hectares of land were cultivated.

1503 farmers from 44 villages located along the occupation line who plowed grains on their less than 5 ha land plots, “Mekanizatori” Ltd provided a free service for harvest. The harvest related costs were subsidized by the Agricultural Projects Management Agency. As a result, 1,503 beneficiaries

were provided GEL 155,239 worth of services. In total, grain crops were harvested on 1,764 hectares of land.

Co-funding Project of Agricultural Processors and Cold Storage Operators

The program was launched in February 1, 2014 (the end date is not defined). It provides a financial support and technical assistance to companies (including cooperatives) that intend to establish a new agricultural processing enterprises.

The financial support is provided through preferential credits/leasing/co-funding by the Agency.

The project has 2 components: 1) a co-funding component for agricultural processors and 2) a co-funding component for cold storage operators.

In total, 139 new enterprises are funded within the framework of the Preferential Agro Credit Project and Co-funding Project of Agricultural Processors and Cold Storage Operators.

The Agricultural Insurance Project

Within the framework of the Agricultural Insurance Project, in 2015, 7,634 policies were issued and GEL 40,218,786 worth crops and 4,944 ha land plots were insured. In total, 28,690 policies were issued in 2014-2015. The Agency subsidized GEL 13,808,674; the insured value of crops was GEL 193,343,048, and 23,667 hectares of land were insured.

In total, the damage within the project amounted to GEL 14,845,857, out of which GEL 12,433,711 was reimbursed by insurance companies. The damage in the amount of GEL 2,412,146 is to be reimbursed.

Tea Plantation Rehabilitation Program

The following initiatives will be undertaken within the program:

- Co-funding of rehabilitation works of privately and state owned tea plantations;
- Co-funding of 60% of the costs of rehabilitation works of tea plantations owned by beneficiaries and 80% of the costs of rehabilitation works of tea plantations owned by agricultural cooperatives;
- Co-funding of rehabilitation works of state owned tea plantations - 70% of the costs of rehabilitation works of state owned tea plantations under lease and 90% of the costs if leased to agricultural cooperatives.

Popularization of Georgian Wine

It is important to state that three key messages on Georgian wines are used for communication with wine professionals and amateurs at the international markets:

The Cradle of Wine - Georgia is one of the oldest wine making regions in the world that is evidenced by numerous historical and archaeological facts and sources.

Land of 8,000 Vintages - Georgia is the only country in the world where wine production started 8,000 years ago and has never been abandoned.

More than 500 Indigenous Grape Varieties - Georgia is distinguished and unique among key wine producer countries in the world by diversity of grape varieties. More than 500 local varieties of grapes have been listed and cultivated in Georgia.

In 2015, in line with the marketing strategic plan developed with the business sector participation, the National Wine Agency supported presentations of Georgian wines in 13 countries of the world - France, Italy, Great Britain, Germany, Poland, Lithuania, Latvia, Estonia, USA, Japan, China/Hong Kong, Kazakhstan, and South Korea.

In 2015, 36, 071, 399 bottles (0,75 l) of the total value of \$ 98, 102, 614 were exported from Georgia to 46 countries.

Agricultural Cooperative Development

The support to cooperative enterprises and cooperatives in the agriculture sector is crucial to a rapid increase of income of farmers that, in its turn, facilitates introduction of modern standards and technologies, promotes production of agricultural products, and strengthens its competitiveness.

On June 4, 2015, the Government of Georgia approved the Hazelnut Production Development through Support to Agricultural Cooperation Program. This government program aims to create a unified cycle of hazelnut production, processing, and sale in a bid to reduce production costs and increase its export.

Except for hazelnut, the Government of Georgia approved the Beekeeping Agricultural Cooperative State Program that aims to improve the material-technical base of beekeeping units of cooperatives. This is with the aim to increase the quality and quantity of honey and other beekeeping products, to provide capital investments to agricultural cooperatives, and to upgrade the skills of shareholders.

98 agricultural cooperatives registered to participate in the Beekeeping Agricultural Cooperative State Program and 7588 beehives were requested.

Organization of trainings and study tours aims to upgrade the knowledge and skills of cooperative shareholders.

Market Information System

Information system of the market of agricultural products will facilitate the competitiveness of farmers, entrepreneurs, and exporters operating on the territory of Georgia.

The employees of Information-Consultative Services of the territorial units of the Ministry of Agriculture of Georgia collect weekly information about the prices in the market.

Price collection methodology was developed within the frames of the projects implemented by FAO and the European Neighborhood Program for Agriculture and Rural Development (ENPARD). Respective training sessions have been conducted. For the purpose of developing the unified data system, a special electronic program/software has been developed.

The updated weekly information on wholesale and retail prices on agricultural products is provided on the monitors installed in the buildings of the executive bodies of municipalities. In addition, the work on the design of a special web-site is ongoing. This web-site will provide more accessibility to and availability of the prices on agricultural products.

Conclusion

Economic analysis of food demand and supply is one of the main directions for the policy development in the sphere of agriculture. In order to carry out such analysis, it is important to have reliable and timely data on the yield of agriculture.

Taking into consideration the above, the USA Department of Agriculture (USDA), together with Georgian experts and specialists of the sphere of agriculture, is carrying out the study of the yield forecast. The studies are being carried out within the frames of a four-year project – Policy Initiation of Georgian Agriculture and are funded by the US Agency of International Development (USAID).

For the purposes of forecasting corn yield, random sampling was conducted in 2015. In addition, field works were carried out in Imereti, Kakheti, and Samegrelo-Zemo Svaneti regions. Pilot surveys on the same topic were conducted on wheat, citrus, and apple.

References:

1. http://www.geostat.ge/?action=page&p_id=751&lang=geo
2. <http://www.economy.ge/ge/economic-sectors/trade>
3. https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm
4. Ministry of Agriculture of Georgia, Annual report 2016. www.moa.gov.ge

Types of Social Control: Psychological Aspects

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Abstract

High level of legal culture manifests itself in prevalence of social integration over social regulation (Krohn, 2000). To ensure normative behavior, these types of social control rely on the system of attitudes and expectations. Despite their similarity, the named types are supposed to differ based on domination of either form of behaviour motivation - intrinsic or extrinsic. From another viewpoint, motivation is just one of the constituents of the process of set formation and it influences behaviour through them. According to D. Uznadze set theory (1966), it is the set that makes the basis for initiation and regulation of behaviour. The given article represents an attempt to explain the specifics of social control types through variety of underlying sets.

Legal culture, together with legal consciousness, implies the ability of implementation of normative behaviour on its basis. Moreover, high level of legal culture suggests performing behaviour not only in response to social demands (social regulation and respective reaction), but it also gives a possibility to initiate normative behaviour (social integration and “proactive” action). Social integration, as such, could not be considered as psychological mechanism that ensures normative behaviour, but it is a precondition that forms the specific types of the set. We consider that *dispositional set* (Nadareishvili & Chkheidze, 2013) and its components represent a) the main psychological constituent of legal consciousness and b) the mechanism and the source of energetical provision and regulation of the parts of legal culture. Social integration, as a type of social control, is realized by means of dispositional sets.

Keywords: Social control, Legal culture, Attitude, Set, Dispositional

Introduction

For stability and sustainable development of social systems, it is crucial to have (1) full-fledged system of social norms (e.g. law) and (2)

society with psychological readiness (sets, attitudes and expectations, constituting legal culture and legal consciousness) in order to properly apply the given system.

It is considered that one of the functions of social system, so called latent function (Parsons, 1970), which is secured by general culture (and, *inter alia*, legal culture), lies in acceptance and preservation of values and norms. From psychological viewpoint, it is extremely important not just to preserve cultural patterns constituents,¹⁸⁹ but to keep their motivational loading, affective influence towards them or, in other words, to preserve and strengthen mental constructs and processes, oriented towards them (e.g. “motivational dispositions” (Allport, 1961) or “dispositional sets” (Uznadze, 1964)). It is known that there exist various viewpoints on relation/differences of disposition, attitude, personal disposition and personal trait, and their functions¹⁹⁰. The attempts to explore certain aspects of dispositional set from the position of the Georgian Psychological School also exist (Nadirashvili, 1985; Nadareishvili & Chkheidze, 2013, 2015).

In our earlier article (Nadareishvili & Chkheidze, 2013), we suggested that in order to ensure social activity, together with other conditions, it is required to sufficiently develop resources for unconscious mental regulation (i.e. the presence of the system of dispositional sets ready for self-actualization as well as the initiation and regulation of activity). Stable, permanently dynamic dispositional sets, impede the formation or actualization of incompatible, non-normative sets. The above-mentioned implies that unlike social regulation which, if in a way simplified, lies in neutralization of already existing sets, oriented on deviant behaviour, and their respective running behaviours (which is time-consuming and, therefore, a less effective option), social integration suggests the existence of sets and activities that are always actualised, permanently stimulate normative behaviour patterns and their

¹⁸⁹ In such a case, existence of only cognitive and evaluative components of set could be confirmed, against improperly formed affective and conative components. These specific components characterise the set of incomplete structuralisation which cannot initiate activity and, in its best, can have only “stylistic” (Allport, 1961) impact over activity.

¹⁹⁰ “Both *attitude* and *trait* are indispensable concepts in psychology. Between them, they cover the principal types of disposition with which the psychology of personality deals. In passing, however, we should point out that since *attitude* has to do with people’s orientations to definite facets of the environment (including people, culture, and society), it is the favored concept in *social psychology*. In the field of personality, however, we are interested in the structure of the person, and hence *trait becomes* the favored concept” (Allport, 1961, p. 348). In relation to dispositions, personality traits and character, D. Uznadze in his “General Psychology”, issues in 1940, wrote that what we, generally, call “character”, is in reality a person’s dispositional set, ability to actualize certain sets. (Uznadze, 1964, p. 244).

dynamics performs the function of prevention of deviant sets formation. High level of legal culture implies this very type of normativeness¹⁹¹.

Stemming from the above, we can assume that specifics of social integration (Nadareishvili & Chkheidze, 2015) and its advantage¹⁹² over social regulation are determined by specifics of its underlying sets. The basis, foundation of social regulation, is a) fixed set which is re-actualised by an external stimulation (e.g. social demand; expectation of social sanction) or b) situational set subjective factor of which is social demand, formed as “must”. This demand exists only during the period of voluntary effort. In contrary to the above-mentioned, social control, performed through the form/method of social integration, is based on fixed set that has ability of proactive activity or ability to perform action – ability to produce normative behaviour without any external influence. Such a set, as stated above, is dispositional. Dispositional set is distinguished from other types by number of specific features¹⁹³, including high indicator of re-actualisation. This term needs to be explained. D. Uznadze uses the term “excitability” (excitability, fixation) but with two meanings –the stage of formation of fixed set and “readiness to recurring actualisation” (Uznadze, 1964, p.99). These two meanings of the term are to be distinguished:

1) “Excitability” in a sense of set *formation*:

¹⁹¹ In this article, we do not touch the issue of relation between social integration and the “theory of self-control” (Gottfredson & Hirschi, 1990).

¹⁹² The named prevalence lies in the following: 1) both social regulation and social integration can block non-normative behavioral tendencies. In case of regulation, this blockage lasts for only until that time-period while the source of regulation acts directly. However, with integration, the blockage acts at the expense of resistance towards incompatible tendencies of inner resource - dispositions and, therefore, is actually everlasting and consequently more effective, 2) legal culture does not imply only blockage, but it also suggests initiation of normative activity. In case of regulation, this could be only induced by direct and simultaneous influence. The behavioral pattern, produced in such a way, stops acting as soon as there is no stimulus/source of external influence since it is based on one-time psychological construct (e.g. situational set). In other terms, it acts only during the period of existence of unstable and unfirm mental formation. In case of integration, normative activity is determined by permanent dynamics of realization of the inner tendency/dispositional set and that is why it does not depend on outer stimulation, it is endogenic and ever-lasting inducer/energetical resource.

¹⁹³ Adaptive activity running on the personality level (or the level of normative activities) implies the existence of a form of fixed set - dispositional set (Nadareishvili, 2010), having the following specific attributes: 1. existence in permanently active state; 2. ability to self-actualize (relative independence from external stimulation); 3. ability to affect a very wide range of events; 4. ability of being actualized by a very wide range of events; 5. dispositional set is social value oriented; 6. is characterized by a high level of stability (Nadareishvili & Chkheidze, 2013).

(1^a) Excitability of fixed set means formation of fully structured, stable (time-durable) and firm (resistance towards countertendencies) type of set, which is associated with differentiation of set (Nadareishvili & Chkheidze, 2015). The indicator of formation of this type of set is the ability to induce assimilative and contrast illusions. It should be noted that the term of excitability used by D. Uznadze, as interpreted here, implies characteristic of exactly fixed set. We assume that the types of set that precede formation of the fixed set should be described by the same characteristic. Or in other words:

(1^b) Excitability of diffuse set – formation of primary modification, following relatively neutral state of psyche;

(1^c) Excitability of diffuse set – which means that another - differentiated, independent and definite - construct has been formed from the states of diffuse set;

(1^d) Excitability of situational set – is actually the same as formation of differentiated set, but we single it out here for analytical purposes;

2) “Excitability” in a sense of *re-actualisation* of fixed set. Up-to-now, we talked about formation of different types of set. At the moment, it distinguished another interesting phenomenon - renewed actualisation of already fixed set and level of easiness-difficulty of its re-actualisation – parameter of *re-actualisation* ability or “readiness for renewed actualisation”. Re-actualisation ability, except for other factors (e.g. relevance or intensiveness of irritant), depends on readiness of concrete mental construct, i.e. on the level of its fixability – what was pointed out by Uznadze (1964). Three varieties are to be singled out here:

(2^a) Ability of fixed set to re-actualise;

(2^b) Ability of attitude/fixed social set to re-actualise;

(2^c) Ability of dispositional set to re-actualise.

The ability of dispositional set to re-actualise exceeds the re-actualisation ability of the two, above-mentioned “ordinary” fixed sets (Nadareishvili, 2013). Re-actualised fixed constructs should also be distinguished based on the achieved *actualisation level* for the concrete moment, or in other words, according to realisation of realisability level which, in its turn, defines their influence level on activity.¹⁹⁴ The following three groups are distinguished here:

a) Actualisation level of fixed set;

b) Actualisation level of attitude/fixed social set;

c) Actualisation level of dispositional set.

¹⁹⁴ Analogical to Allport’s stylistic and motivation attitudes (Allport, 1961, p. 372) with one distinction: meaning not different sets but one set which, at a concrete moment and based on the level of actuality, either fully determines behaviour or just suffuses it in a specific way.

Sets should also be distinguished according to localisation of their *source of activation*:

1) Actualisation or, practically, *reaction*/reactive activity as a result of influence of external stimulation of fixed mental constructs;

2) Re-actualisation of dispositional set should be split into a separate group. The phenomenon is induced by existence of its inner dynamics, its inclination/striving towards realisation, i.e. intrinsic stimulation. This – exactly – dynamics is meant by initiation of autonomous resource of behaviour, presented already in set; or in other terms – on the basis of independent (from external influence) activity – ability to perform action or “proactive” behaviour.

Possibility of realisation of disposition/readiness into action is determined through high index of actualisation level of re-actualisation ability. In other words, if fixed set (relatively static construct) reaches maximum level of actuality for the concrete moment (e.g. ranging from 0 to 1), then in case of index 1, it will be transformed into dynamic formation (situational set). In its turn, situational set can initiate behaviour directly¹⁹⁵. This is not readiness/potential for behavior, but it is possibility which has already been transformed into reality, readiness for activity which has been realised into activity¹⁹⁶. Let us suggest that the specifics of legal set lies in its ability for reactualisation and highest indications of the level of its actuality. As mentioned, actualization of such set does not depend on external/situational determination. Dispositional set seeks itself the situations where it could be realized. Based on the resources of its components, it determines formation of situational set and corresponding behaviour. In the context of the present article, this means that a human being, himself/herself, produces or finds “stimuli”, social situations/relationships, where it is necessary to act in order to bring real result to legal consciousness – normative behaviour and corresponding product, e.g. stability, security and social well-being.

Suggested classification, together with the existed one (Uznadze, 1977), implies distinction of sets based on the following: a) whether there is a need of external influence for their reactualization; b) taking into consideration easiness-complexity of reactualization or the ability of reactualization; c) level of actualization at the concrete moment, which determines transformation of the fixed set into situational set and its realization into corresponding behaviour.

Hence, we consider that dispositional set, unlike other, “ordinary” fixed formations, is characterised by strong ability of re-actualisation,

¹⁹⁵ Situational sets should be also differentiated according to level of actualisation.

¹⁹⁶ On transformation of dispositional set into situational set and their differentiation see Nadareishvili (2013).

autonomous energetical component and maximal index of actualisation indicator, which implies permanent state of actuality (Nadareishvili, 2007). We can argue that dispositional set, being permanent mental construct, each time determines activity differently. It always performs the function to ensure the above-mentioned normativity and to prevent non-normative tendencies. These are the sets that give social integration the advantage which is expressed in sustainability of this form of normative regulation and which determines stability of social system.

Conclusion

We have distinguished dispositional set among other types. To describe its specifics, this time the focus is put on its characteristics (a) “actualisability”, which lies in high level of readiness/its ability to reactualize and (b) actualness, which denotes the level of realisation of given ability/possibility in concrete period. Existence of described dispositional sets ensures the possibility to perform one type of social control - social integration. The advantage of social integration, if compared to social regulation, lies in: 1) efficiency – (A) Activity’s unconscious regulation by set does not need permanent voluntary effort and, therefore, uses less psychological resource; (B) less material spendings and (C) less human resources; 2) consistency with the principles of civil society and legal state management (provision of democratic principle – legality demands corresponding level of legal culture); 3) stability (it is based on stable and firm mental, psychological constructs); 4) it can provide autonomous proactive normative behaviour.

Scepticism towards the method of social regulation (e.g. time, necessary for formation of fixed, stable and firm mental, psychological constructs) is neutralised through elaboration of the effective methods of planning and implementation of socialization process (including, *inter alia*, the process of formation of normative behaviour sets and expectations). And as for its advantages, these are confirmed by sustainable normativity and, respectively, by high potential to secure social stability.

References:

1. Allport, G.W. (1961). *Pattern and growth in personality*. New York: Holt, Rinehart & Winston.
2. Gottfredson, M. R., & Hirschi, T. (1990). *A general theory of crime*. Stanford University Press.
3. Krohn, M. D. (2000). *Control and deterrence theories*. In Sheley J. (Ed.), *Criminology* (3rd. ed., pp. 373-400), New York: Wadsworth.
4. Nadareishvili, V. (2007). *Psychology of Adaptation, Stability and Deviation. Scientific Bulletin of the Academy of Sciences #1*, Tbilisi.

5. Nadareishvili, V. (2010). The Individual and Normative Behavior. *Collected Papers "Psychology"*, Vol. XXII, 162-184.
6. Nadareishvili, V. (2013). Set and Volition in the Individual's Activity. *Journal of Georgian Psychology, International edition*, 66-87.
7. Nadareishvili, V., & Chkheidze, T. (2013). Normative and Deviant Behavior in Terms of D. Uznadze Set Theory Based Strain Model. *European Scientific Journal*, vol. 2, special edition, 542-547. ISSN: 1857 – 7881 (Print) e - ISSN 1857- 7431.
8. Nadareishvili, V., & Chkheidze, T. (2015). Legal culture and legal consciousness in terms of set and attitude. *European Scientific Journal, special edition, Vol. 2*. 123-129. ISSN: 1857 – 7881 (Print) e - ISSN 1857- 7431.
9. Nadirashvili Sh. (1985). *The Psychology of Set*, vol. 2, Tbilisi: Metsniereba.
10. Parsons, T. (1970). *The Social System*. Taylor & Francis e-Library, 2005 . ISBN 0-415-06055-9.
11. Uznadze, D. (1977). Vol. VI, Tbilisi: Metsniereba.
12. Uznadze, D. (1964). *General Psychology*, Vol. 3-4. Tbilisi: Georgian Academy of Sciences Publishing House.
13. Uznadze, D. (1966). *The Psychology of Set*. New York: Plenum.

Composite Materials Used for Construction of Patterns in Romanian Foundries

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Abstract

The paper presents some ideas to study the possibility of using composite materials such as resin reinforced with glass fiber and manufacturing technology for foundry patterns. The technology for obtaining classical patterns is quite cumbersome for prototypes and small series production is impractical. The solution presented is easily applicable in industries, especially in small workshops that have no special technological equipment. New technologies and material performance always represent a requirement, determined by dynamic evolution of material goods production. We propose to use a composite material, such as a crust, with an adequate thickness for the size of the pattern, light and easy to make, even handicraft-patterns. These materials have better physical and mechanical properties reported to the wall thickness compared to conventional materials also having a very wide spread in many areas of activity with a low production cost. The article also presents a new method for applying the modern software in order to simulate different tests applied to patterns.

Keywords: Patterns, foundry, technology, composite materials, computer simulation

Introduction

Of all the advantages offered by composite materials, their ability to be molded to complex shapes is perhaps the most popular. When a shape needs to be reproduced numerous times, it is most efficient to build a tool or mold within which the part can be fabricated. Molded parts emerge perfectly shaped every time and require little post-finishing work.

Molding or "stamping" has been used for years to shape metal products like car bodies, home appliances, and industrial fixtures. Metal stamping dies are cumbersome and cost thousands of dollars to produce. Only large companies can afford to build, operate, store, or even move these tools. Composite materials offer a cost effective way for anyone to make even large production runs of identical plastic parts in molds they can produce themselves.

This paper will describe the necessary steps to create accurate, high-quality, low-distortion molds for the production of composite parts. It is intended to help the novice through intermediate builders obtain successful results with their first project. While many of the principles described are the same as large-scale industrial techniques, the suggestions offered are meant to be used in small shops, garages, or workshops to help individuals produce big results.

To characterize patterns made from composite materials (resin reinforced with fiber glass) a series of tests were made, namely:

- static load on patterns and measuring the deformation occurred;
- manual forming,
- behavior of the patterns obtained during machine compressed molding and for impact, compressed molding respectively
- virtually tests for static loading compared to machine compression molding and impact tests using a specialized software.

Patterns manufacturing

For our prototype the following materials were used for patterns:

- ***Patterns MT 2;***

Resin – Sirca;

Insertion – Tissue 500 g/m²;

number of layers: 3 of insertion and 4 by resin.

- ***Patterns MS 1***

Resin – Sirca;

Insertion – Stratimat 300 g/m²;

- number of layers: 3 fibers of insertions and 4 of resins.

- number of layers: 3 of insertions and of resins.

- ***Patterns MT 3***

Resin – Sirca;

Insertion – Țesătură 500 g/m²;

- number of layers: 5 of insertion and 6 of resins.

- ***Patterns MS 2***

Resin – Sirca;

Insertion – Stratimat 300 g/m²;

- number of layers: 5 of insertions and 6 of resins.

For every molding we used a unique loam, with humidity controlled at each new use (93% recycled loam, Aghireş sand 5%, bentonite 2% , moisture $W = 4\%$, $\sigma_c = 0.025$ MPa).

The technology used to obtaining patterns

Over wood pattern previously varnished and polished 2 coatings of wax were applied and after drying, it was polished. Then, one layer of resin and one layer of insertion were successively applied. Extraction of pattern was performed after 24 h. The pattern was repaired with mastic in areas where it was needed, and a layer of resin (after repair) was applied and polished.

In figure 1 you can see the MS2 pattern and the obtaining stages.

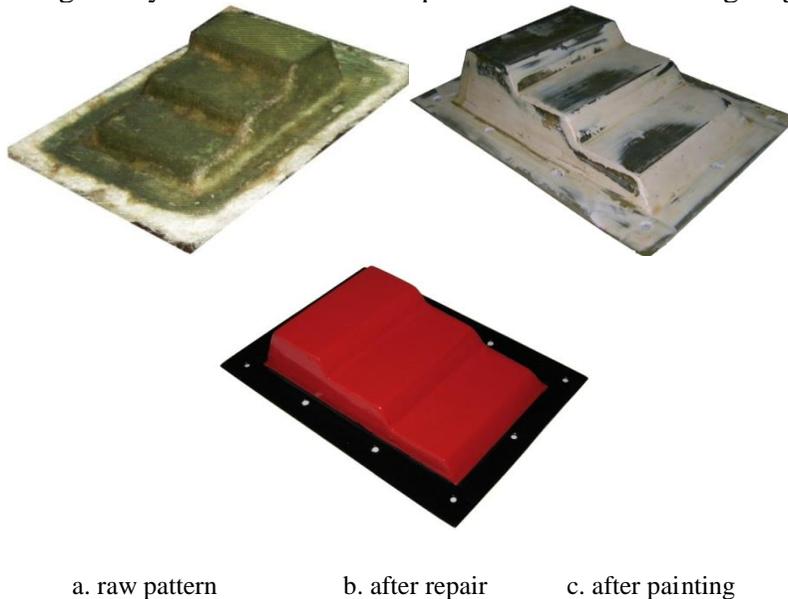


Fig. 1. MS 2 Pattern

Observation:

- During manufacturing the MT2 pattern difficulties were encountered with bonding on the pattern of tissue insertion, which is the cause of the loops on the active surface of the pattern; these loops affect the dimensional accuracy;
- The Insertion Tissue is recommended for large and relatively simple patterns, taking into account the high mechanical resistance that they confer to the composite; [6].
- The producing pattern with fiber glass Stratimat was easier, with fewer defects, lower execution time and greater dimensional accuracy, compared with the model obtained with Tissue fiber glass.

Hand-molding technology

In the hand-molding process all the classic stages of molding were followed and several substances (both in solid form - powder - talcum powder and cement and liquid - gas oil) were tested, to avoid loam bonding on the wood pattern.



Fig. 2. Box mold: a - under face the mold with cement; b - under face the mold with gas oil.

The best results were given by lubrication of patterns with gas oil (figure 2), avoiding the broken edges.

Following the hand-molding, the following conclusions were drawn:

- All tested patterns have a very good behavior, resulting forms corresponding in terms of quality and dimensional precisions;
- The recommendation is to use the gas oil as lubricant.
- In the case of large samples under the pressure of the molding, it is possible to detect some deviations of forms but we can reinforce them with some cross ribs glued inside which can be used to anchorage the pattern to the mold plate.

Static loading tests and simulation for patterns using SolidWorks software

For static loading tests, each pattern was loaded with 2 kg to 58 kg masses, pressing being applied on the middle floor of the pattern through a wooden plate with a seating area of 19.24 cm². (5.2 x 3.7) cm.

The pressure surface is lower than the surface of the middle level (14x5 = 70 cm²), avoiding direct pressure on a vertical wall.

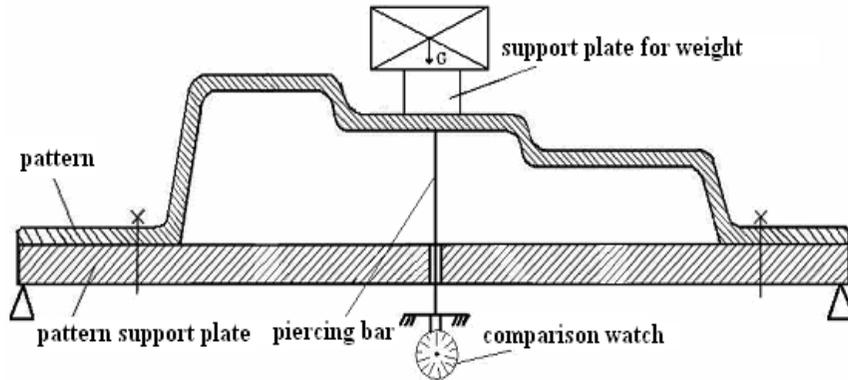


Fig. 3. Static load of the pattern

It is noted that the maximum hypothetical pressure is $p = 0.29$ MPa, pressure which can be developed by a pneumatic pressing machines ($p_{mas} = 0.2 \dots 0.5$ MPa).

After the tests, the following conclusions were carried out:

- there is different behavior for the all four types of patterns;
- the best results were obtained for the pattern MT (3 and 5 layers of Tissue reinforcement and 4 and 6 layers of Sirca resin);
- a worst behavior was obtained for pattern MS (3 and 5 layers of Stratimat reinforcement and 4 and 6 layers of Sirca resin);

The simulation in Solidworks software was also developed, for four types of patterns (MS1, MS2, MT2, MT3) which were tested - the same patterns which have been subject to static loading. After processing the computer data, a virtual variant of model resulted is given in figure 4.

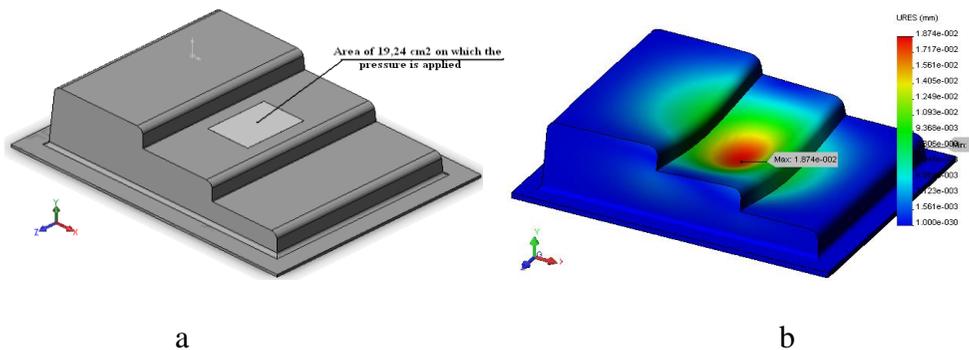


Fig. 4. Virtual pattern. a) Virtual pattern, b) Application of static pressure on pattern MS2 (Hypothetical pressure exerted $p = 0.295$ MPa)

With SolidWorks software physical-mechanical characteristics of cave models (MS1, MS2, MT2, MT3) were scaled, for composite materials and previous data was obtained .

After processing the data by computer, four virtual variants for the resulted models were obtained. Each model was subjected to similar pressure on an area of 19.24 cm² located on the 2nd floor of the pattern, similar with the static loading.

SolidWorks software presents the deformations in the form with a color code as follows:

- red color corresponds to the maximum deformations;
- blue color corresponds to the minimum deformations;

Depending on the maximum / minimum deformations for each pattern a new resizing could be done.

An analysis of the obtained results indicates several conclusions:

- general models have an acceptable performing at the request of central strains, the deformations having the values within reasonable limits (0.01 ... 1.60 mm);
- it is observed that a single model (MS1), has strains greater than 1.5 mm at higher load of 58 kg., and the use of lower pressure (less than 0.55 MPa) is recommended;
- the deformation determined by simulation with SolidWorks software has the deformation values close to the real values for the weakest models (MS1,MT2);

Simulation of deformations on patterns obtained by using molding machine using SolidWorks software

For each pattern the condition on the molding machine was simulated at the maximum pressure over the entire pattern.

In figure 5 you can see the deformation obtained by simulation on the MS 2 pattern.

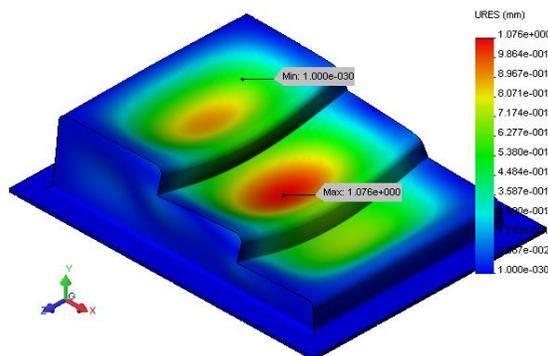


Fig. 5. Pattern MS 2 (pressure $p = 0,713$ MPa).

An analysis of the obtained results indicates several conclusions:

- for MT 2 and MS 1 patterns, the maximum deformation occurs in the flat floor area of second and third floor. The walls of the vertical plane are

stiffening the pattern so that at the edge of the floor 1, only a minor deformation (insignificant) is observed.

- A maximum deformation of 1,97 mm (for MT 2 pattern) and 3,745 mm. (for MS 1 pattern) is recorded at the maximum pressure of 0.571 MPa.
- for MT 3 and MS 2 patterns the maximum deformation occurs in the flat floor area of the second floor. The walls of the vertical plane are stiffening the pattern so that at the edge of floors 1 and 3 only a minor deformation is observed.
- A maximum deformation of 0,583 mm (for MT 3 pattern) and 1,076 mm. (for MS 2 pattern) is recorded at the maximum pressure of 0.713 MPa.
- the simulation gave similar results in practice. Larger differences are possible due to measurement error.

General conclusions

The quality and the precision of the patterns depend to a large extent on the quality of the insertions and resins used, and the skills of the worker.

Obtaining this type of models (resin reinforced with fiber glass) is easy, the technologies can perform in laboratories or workshops with minimal mechanical equipment.

Stratimat fiber glass is a material widespread for obtaining various pieces, with good physic-mechanical and technological properties;

It is easily molded in cases of complex patterns;

To increase surface quality of the model, applying a supplementary layer of resin is necessary;

The Tissue fiber glass provides mechanical strength superior compared to other types of insertions;

Unfortunately, for cutting and molding for complex models it is difficult, especially at sharp edges;

The deformation determined by simulation with SolidWorks software, has the deformation values close to real values for the weakest models (MS1, MT2);

With this software, different cases encountered in practice can be simulated, with "good reading" and convenient interpretation of the results.

The real material has a better behavior than the simulated one. Differences may be due to favorable interference between components of the composite materials.

It can be appreciated that: by using these composite materials to manufacture, models will reduce the time required to manufacture patterns and cost.

The quality and the precision of the patterns depend to a large extent on the quality of insertions and resins used and the skills of the worker.

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References:

1. Florin STEFANESCU, s.a: Composite Materials, Didactical and Pedagogical Publishing House, Bucharest, 1996.
2. Gheorghe SIMIONESCU, Constantin CERNAT, M. PANA: Engineering of molding process, Elvarom Publishing House, Bucuresti, 2000.
3. Mihai Alin POP, Alexandru CONSTANTINESCU: Utilization of composites for shell-type patterns manufacturing. *Metalurgia International* vol. XIII (2008) – no.9, ISSN 1582-2214.
4. Mihai Alin POP: Researches regarding modern technologies and materials for pattern sets manufacture. Doctoral Thesis, Brasov, Transylvania University 2009.
5. Diana Elena APOSTU, Mihai Alin POP, Alexandru CONSTANTINESCU: Static loading of molding thin-walled cave patterns manufactured of composite materials. *Metalurgia International* vol. XIV (2009) – Special Issue no. 10, ISSN 1582-2214.
6. Mihai Alin POP, Alexandru CONSTANTINESCU: Determination of material properties for thin-walled composite resin reinforced with glass fiber. *Metalurgia* (62) no. 8– 2010, ISSN 0461-9579.
7. <http://www.industrial-coatings.eu/en/nestrapol-96-0>. Accessed: 22/03/2017.

Reading Xenophobia in Turkish Media Through Syrian Refugees: Samples of Yeni Akit and Sözcü Newspapers

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Abstract

In Turkish press, prejudiced and discriminatory discourses which lack of right-based approach take part on columns and the news that subjected to Syrian refugees. In this study, Sözcü Newspaper as an anti-government national press representative and Yeni Akit Newspaper as a pro-government representative were selected as samples; Xenophobia was examined within the discourses of humanist and anti-humanist; a seven-month process from the Joint Action Plan signed on November 29, 2015 with the European Union to the statement of President Recep Tayyip Erdoğan about the citizenship which will be granted to Syrian refugees living in Turkey on July 3, 2016 (1 December 2015 to 15 July 2016) was revised. A total of 67 newspaper reports that related to the subject, including 37 Yeni Akit and 30 Sözcü were examined by using the keywords “*Syrians, Syrian Refugees, Syrian Immigrants, Xenophobia*”. Out of the 13 columns, only 2 news were in Yeni Akit and the remaining 11 news was located in Sözcü Newspaper. 13 positive reports were in Yeni Akit, while only 1 positive report was found in Sözcü Newspaper. Findings were evaluated in three main case frameworks. These are; security oriented point of view, social based and economic based cases. In the research; 2 reports related to security oriented point of view was found in the Yeni Akit

Newspaper and 7 reports in the Sözcü Newspaper. While 5 news in the Yeni Akit Newspaper was considered economically based, there are 7 related news was found in the Sözcü Gazetesi. According to social based perspective, it was seen that 4 news were in the Sözcü Newspaper and 28 news were in the Yeni Akit Newspaper. In the findings, the news headlines of Yeni Akit Newspaper were addressed the religious and humanitarian sentiments of the society in favor of the pro-government opposition line at the frontline. Conversely, when the news of the Sözcü Newspaper were examined, security and economic based cases has seen to be at the frontline and social based news were in the background.

Keywords: Syrian Refugees, Xenophobia, Sözcü Newspaper, Yeni Akit Newspaper

Introduction

As it has recently been witnessed in Turkey, hate speech, discourses bearing prejudice, discriminative tones such as “we and others” which alienating and triggering xenophobia have been everyday language of media organizations, politicians and social media and numbers of ethical codes have been violated by such contentions. Social restlessness make refugees’ lives harder, who have already experiencing difficulty since they run away from a civil war and trying to adjust to a foreign culture; and refugees, target of discriminative discourses remained defenseless against this pressure and mostly exposed violent hostile perception.

Media is considered as the most fundamental and efficient communication tool. The objective of this study is to address xenophobia concept on the rise and legitimization of discriminative language and hate speech through media. In this study, Sözcü Newspaper, voice of nationalist groups, and Yeni Akit Newspaper, voice of Islamic groups, were investigated within the outline of hate speech or xenophobia as well as humanist and dehumanized speeches. This study reviews the 7-month period beginning with the Joint Action Plan executed by EU and Turkey on November 29th, 2015 and ending with public statement of President Erdogan about naturalization of Syrian refugees on July 3rd, 2016. Keywords (xenophobia, hate speech, violence against Syrian refugees etc.) were utilized to search national and international press; discourses of leaders were examined; and files related with xenophobic cases of Syrians were investigated. In this process, the present study is grounded on the incidents related with the hate speech against Syrian refugees and the reports prepared by the *Hrant Dink Foundation* under the framework of Monitoring of Hate Speech in Media.

The Concept of Xenophobia

The concept of 'xenophobia' derived from the combination of Antic Greek word of 'xenos' meaning foreigner and another word of 'phobos' meaning fear. While this concept refers distrust, fear and hate felt against strangers, it is directly related with racism. It could also predicate hostile perception against foreigners as well as the potential change that might occur in a local culture by alien culture. Additionally, it could stimulate prejudice, stereotype and discrimination (Yılmaz, 2008: s.29).

According to Alkan, projection lies under psychological foundation of concepts of xenophobia and prejudice (Alkan, 1983: P.134). "Individuals reflect the qualities that they ashamed of in themselves, 'sins', depressed feelings, hostilities congregated as a result of ambivalent attitudes towards the ruling group, self-hatred, aggressive instinct, and sexual impulses that they hesitate to fail keeping under control to "outside" groups." This is what exactly happened to Turks who went to Germany for employment. According to Alkan, Turks were made "scapegoat" by Germans who need to cope with stress caused by high unemployment and depression in the country (Alkan, 1983: s.136). In personal identity development, core identity of individuals is internalized together with group identity of the society in which they live. Over the time, prejudiced attitude and behaviors could be developed against the alienated groups unconsciously. According to the theory suggested by Vamik Volkan, attitude and unconscious self designs which remained fragmented threaten overall core identity of an individual. These externalized contents could return to individuals back or they could constitute foundation of serious prejudice such as xenophobia, racism, gender discrimination and terrorism (İlhan and Çevik, 2013: P.61). In this context, causes of xenophobia and prejudice were indicated as below;

- Bringing ethnic identity to forefront in government policies (chosen, divine race etc.),
- Past negative experiences with foreigners or immigrants,
- Using humiliating phrases about foreigners and immigrants in their everyday life and self-righteousness (nicknames, humiliating or insulting jokes),
- Comments made about cultural differences which do not reflect reality,
- Association of behaviors of a group of people with whole society through generalization (Beçene, 2012).

Economic distress and unemployment lie on the foundation of xenophobia experienced by Turks in Germany in 1980s (Alkan, 1983: P.140). This situation is not only limited with Germany in this period; it was observed with Western European and African countries. Developments results of social, economical and behavioral causes have evolved from each other; and streams such as terrorism happiness replaced by xenophobia. Undoubtedly, this

tendency will be replaced by another concept. In parallel with the advancements in technology, instead of ‘national’, international identities will play significant role in socialization. As it was addressed by Alkan, human beings could not be considered without their value judgment similar to the individuals who could not be thought without their prejudices. However, the important thing is to determine the things between prejudiced and unprejudiced behaviors as well as between conforming and non-conforming (Alkan, 1983: P.143).

Syrian Refugees and Xenophobia

In parallel with rise of xenophobia and right-wing political parties around the Europe, it has found greater place in media recently. The number of Syrian refugees has increased to 4 millions since the entry of the first refugee group comprised of 252 Syrians in 2011. While number of Syrians in Turkey was 2 million in 2014, their population increased to 2.73 million by March 2016 according to the public statement of Vice Prime Minister Yalçın Akdoğan (www.hurriyet.com.tr). Within the scope of the “Open Door Policy” adopted towards Syrians, refugees were supplied shelter, health services, education and vocational training. Based on the Global Humanitarian Aid 2016 Report, Turkey was ranked as “the most generous country” in the world with its aid summed up to 3.2 Billion USD (AFAD, 2016).

Turkey experienced with a new concept of xenophobia since it has not been target of such intensive refugee movement before. In deed Turkish society was familiar with this concept in Germany in terms of xenophobia and prejudice effected Turkish citizens who went there for employment. Sometimes it peaked through political statements as part of an effort of foreign politicians to steer public perception and through elevated street violence against Turkish immigrants in abroad. Anatolia, home of thousands of civilizations and proud of being tolerant to everyone, once again experienced harmonization process with Syrian refugees who were Turkey’s guest in the period from April to October 2011 but then entitled with an interim protection status (Özer, 2015:P.46).

In the EU-Turkey Summit held on November 29th, 2015, the Joint Action Plan was put in action in order to strengthen cooperation to prevent illegal human trafficking over Turkey to the EU and supporting Turkey in this regard (www.ab.gov.tr). According to the report, Turkey was expected to strengthen capturing capacity of the Coast Guard Commandership and sustain fighting against illegal human smuggling. Moreover, since Turkey has already spent more 7 Billion Euro for refugees so far, it will be supported by a 3-Billion Euro fund from the budget of the EU and its member countries so that humanitarian aid, education and infrastructure projects could be conducted (www.avrupa.info.tr).

After the Readmission Agreement was executed on December 16th, 2013, it took affect on October 2014. Nevertheless, it was interrupted in spite of the endorsement of the President Erdogan at the end of the 3-year long transition period in the exchange of visa because of the 72-criterion obligation to be fulfilled by Turkey (www.hurriyet.com.tr). President Erdogan and Mevlüt Çavuşoğlu, Minister of Foreign Affairs, have given public statements on this issue addressing their sensitivity time to time and warned their European counterparts. 197 198

President Erdogan stated in a Ramadan Dinner event in Kilis on July 3rd, 2016 that Syrian refugees will be conferred citizenship (www.bbc.com). Until July 15th, 2016, the military coup trial, aforesaid citizenship allegations have been discussed by various politicians, media and civil society organizations. Majority of these public statements released to appeal to their basic audience but humane and ethical values were ignored unfortunately. Numbers of media organization stir up racism and xenophobia; and lynching campaigns erupted on social media (www.change.org). 199 Refuge Solidarity Association (*Mültecilerle Dayanışma Derneği*) remarked the hate and racist environment created within the society afterwards of citizenship rumors by their public discourse published on July 14th, 2016, and notified about the racist campaign on social media initiated under title of “I do not want any Syrian in my country”. 200

197 İstanbul'da yapılan Dünya İnsani Zirvesi'nin sonunda Birleşmiş Milletler Genel Sekreteri Ban-Ki moon ile birlikte basın toplantısında konuşan Cumhurbaşkanı Erdoğan; “Şu anda 1 Haziran itibarıyla geri kabul anlaşmasına yönelik bir adım vardı, 30 Haziran itibarıyla da vize noktasında adım atılacaktı... Bu konuyla ilgili olarak arkadaşlarımız görüşmeleri yapacaklar... Bu görüşmelerde netice alındı, alındı. Alınmadığı takdirde kusura bakmasınlar. Türkiye Cumhuriyeti'nin parlamentosundan geri kabul anlaşmasına yönelik uygulama sürecine yönelik adım atılmasına ait karar, yasa çıkmaz.” (www.bbc.com)

198 In his Brussels speech, Minister of Foreign Affairs, Mevlüt Çavuşoğlu said “We will send our last study to them. Then, we will meet once again to finalize the issue. After that, we clearly expressed the extent of our relationship with the EU; and voiced our disturbance... Especially, EU countries ignored the significance of Turkey because of numbers of reasons such as internal policies, populism, xenophobia, anti-Islamism...” (www.ntv.com.tr)

199 “In my country, some campaigns like “I do not want any Syrians in my country” have been started; number of groups has supported these sorts of campaigns. (<https://www.change.org/p/%C3%BCIkemde-suriyeli-istemiyorum>)

200 “After, Syrians took refuge in Turkey, they have been mentioned in social media platforms frequently. The dispute between ruling and opposition parties on Syrians is continued on internet environment more roughly. Especially, university entrance right awarded to Syrians without the requirement of entering in general exam became top agenda on the social media and individuals used hate speeches on the internet comfortably. For example, on the *Ekşi Sözlük* platform, a campaign called “We do not want Syrians in

From the Republican People's Party (CHP), Selin Sayek Böke addressed that "It would cause such economic consequences that they could not be prevented. It would shatter social structure. Republic of Turkey is not property of any sect or group of people. Syrians must be given their own country instead of Turkish citizenship". Böke also emphasized that such discourses result in xenophobia in society (www.hurriyet.com.tr). The Vice President of CHP, Yasemin Öney Cankurtaran, stated that "...the interesting point with Syrians is that all Turkey is against the citizenship that could be conferred to Syrians at the same time. Turkey came to an agreement on an issue for the first time. But this is not something good, it takes us to racism. The most important thing in here is avoiding racism discourse..."; and reflected opinion of the social-democrat wing of the party (www.hurriyet.com.tr).

The Co-President of the People's Democratic Party (HDP), Selahattin Demirtaş, mentioned about the citizenship proposal for Syrians as well; and stated that "First of all, we need to recognize the people fleeing from Syria as refugees. Status of refuge means recognition of employment, residence, education and health rights. Thereafter, any Syrian who fulfill requirements and who request citizenship must be awarded this right. Syrian, Iraqis, Afghani, Pakistani, Somalian, whoever came to our country. Our country is also their country." (www.hurriyet.com.tr). These public equalitarian and humanist statements which represent opinions acknowledging fundamental rights put common-identity emphasis of the HDP and refused ethnic identity.²⁰¹

On the Justice and Development Party (AKP) wing, Party Spokesman, Nurettin Canikli, clarified the statement of the President and implied that Syrians who would contribute into economy will be given priority so that informal employment could be prevented. He used the expression of "There will not be such a case that Syrians will steal jobs of Turkish people" to break

Turkey!" was launched; and hate speeches and relevant comments were left under this campaign title. For example, under the expression of '*We do not want Syrians*', Syrians were reflected as unwanted creatures; a comment was made such as '*they do not have any competency...*' which humiliate them; in a comment of '*they clashed with police and took the flag down...*' they were considered as threat to integrity of the country. In another comment of '*Some details of escape of Syrians from prostitution place in Urfa City are more interesting*', Syrians were tried to be depicted as immoral human portrait who try to distort family structure and serious hate speech campaign is maintained against Syrians." (<http://www.multeci.org.tr/haberdetay.aspx?Id=146>)

²⁰¹ Demirtaş, in a solidarity dinner organized by his political party in Inciraltı County of İzmir City, stated that "This is our common identity; citizenship of Republic of Turkey. We cannot come together on a single identity. The one, who does not recognize this reality and who do not believe in in this, could only be fascist. We all could not be Turk; we could not be Kurd".

the perception in the public opinion somehow (www.yeniakit.com.tr). The BBC Turkey Correspondent, Rengin Arslan, revealed that conferring citizenship to Syrians is not desired because of especially economic drawbacks, social and cultural reasons according to the public opinion pool conducted among the AKP voters (www.bbc.com). In the same pool, one of the respondents who was in Germany before as worker and returned to Turkey remarked that he is of the opinion that Syrians deserve citizenship; and brought the competition dimension of the issue to the agenda by saying “if Germans are capable of doing this, we could!” (www.bbc.com).

As the academic world is divided upon citizenship issue, PhD. Ferhat Kentel from Sociology Department of İstanbul Şehir University said to Sami Akbıyık, Correspondent of Haberturk Newspaper that “conferring Syrian engineer, doctor and lawyers Turkish citizenship means that kindness language transforms into an interest language. Like Europeans do, not only qualified Syrians must be accepted, an inclusive and kindness language must be preserved.” PhD. Fatmagül Berktaş, a Faculty Member from the **İstanbul University, Department of Political Sciences, remarked that citizenship to Syrians is an issue which requires careful consideration** (www.haberturk.com). PhD. Haluk Levent, Faculty Member from the Istanbul Kemerburgaz University, explained that immigration law must immediately be enacted and said “one of the most substantial issues of Turkey is loss of multi-cultural structure of society afterwards of foundation of the Republic. Xenophobia is consequence of this loss. In spite of the common perception of traditional Turkish hospitality, it is just a word” (www.iha.com.tr).

In the period between President’s statement regarding possible citizenship of Syrians and July 15th, 2016 military coup initiative, various groups declared their opinions on this issue. Some implications could be drawn out of these statements. According to the report with title of “Social Recognition and Harmonization of Syrian Refugees in Turkey” published by CHP on June 2016, it was seen that opinions of Turkish society deteriorates as Syrians’ staying period in Turkey extends (www.chp.org.tr). In 2014, while percentage of “yes” votes for citizenship was 8%, this rate decreased to 1.7% by 2016. While 33.4% of AKP voters are against conferring Turkish citizenship to Syrian refugees, 66.6% of CHP voters think in the same way. Against the tolerant approach of Islamic sects regarding citizenship for Syrians, social democrats are more rigid and of the opinion of intensifying controls and of sending refugees back to Syria.

Another reason for deep conflict on naturalization of Syrians is that they are exploited as potential voters in the next election and they become instrument in political tricks in an unethical approach in terms of humanism. For instance, long before President’s public statement on citizenship, *Oda TV* broadcasted two different news on this subject in 2013; and brought this

possibility to the public agenda in two different times. As these news stimulated xenophobia, comments made for these news evidenced xenophobic approach.²⁰²

Hate Speech as an Expression of Xenophobia

Another instrument of racist ideology, prejudice and xenophobia is hate speech. Hate speeches propagated on ethnical and racist aspects and encountered in mainstream press and social media frequently have intensified recently and the groups from other ethnical heritage have been humiliated. “The concept of hate speech is described as all sorts of expressions which propagate, provoke or legitimize various forms hate based on various intolerance approaches including religious intolerance, racist hate, xenophobia, anti-Semitism, violence, nationalist and ethnic-centered, discriminative and hostile behaviors against minorities, immigrants and refugees. In this sense, hate speech is required to contain contentions targeting a certain individual or group of people” (Weber, 2011: s. 3).

Within the scope of the study conducted by *Hrant Dink Foundation* concerning Monitoring of Hate Speech in Media, the series of reports under title of **“Hate Speech in Media and Discriminative Language” published quarterly and revealed elevating tone of hate speech in media. In this line, data relevant with xenophobia and racism has been published on the website of nefret.org. For instance, in the last quarterly report of 2014, hate speech in the national press led by newspapers on the Islamic track (see, Table 1), and it was seen that these news articles were made with an approach which does not view Syrian refugees as righteous subjects. Moreover, in the media news articles concerning accommodation, employment, education and health issues of Syrian refugees and local residents, an approach founded on humanitarian aspect of security is lacked; and such approach downsized economic and social rights of these people to a level which could be resolved by security and police forces (www.nefretsoylemi.org).**

202 Another example of comments: *“Other countries’ fugitives could not be conferred Turkish Citizenship for political reasons. This must be considered as indictable offense. Especially, a massive population like 350,000 Syrians would shatter social balance in Turkey. They must be sent back to their country as soon as possible. Turkey’s destruction could not be allowed like this. We do not recognize them as citizen. The war ignited by the US-Israel-EU but, refugees need to be sent to them...”*

<http://www.odatv.com/n.php?n=350-bin-suriyeli-multeci-secimde-oy-mu-kullanacak-2504131200.html>

<http://odatv.com/suriyeli-siginmacilar-turk-vatandasligina-gecirilip-akpye-oy-kullandirilacak--0503131200.html>

Similarly, Tülay Yazıcı reports interesting results from her study conducted on hate speech used in *Ekşi Sözlük*, one of the social media instruments. Yet, as the researcher confirms that “the hate speech is widely used in the new media”, substantial entries using hostile and violent language were compiled and it was revealed that refugees are seen as war criminals instead of victims of civil war. According to Yazıcı, “...Prominent themes are those expressing that Syrian refugees are threats to Turkish State and people in terms of social, cultural and economic ways as well as internal and external security; and that critics against Turkish independence and government/ruling political party” (Yazıcı, 2016: P.19).

Xenophobia in Turkish Press: A Case Study on *Sözcü* and *Yeni Akit* Newspapers

In printed media, news articles and columns concerning Syrian refugees lack a point of view based on rights and they widely used stereotypes, discriminative discourses with prejudice. In this regard, the present study includes *Sözcü* Newspaper, an opponent public voice, and *Yeni Akit* Newspaper a pro-government media as sampling group. The study covers the period from December 1st, 2015 to July 15th, 2016. Medias in subject group were reached for keywords of “*Syrians, Syrian Refugees, Syrian Immigrants, and Xenophobia*”; and it was found that *Yeni Akit* and *Sözcü* Newspapers published 37 and 30 individual news, respectively. While totally 67 news articles were analyzed, it was seen that only 2 of 13 columns were published by *Yeni Akit*. Finally, it was seen that whereas *Yeni Akit* published 13 positive news, *Sözcü* published only 1 positive news.

In the light of these findings, newspaper articles and columns were evaluated on the basis of 3 basic phenomenon; Security-Oriented View, Economic-Oriented Phenomenon and Socially-Oriented Factors.

Security-Oriented View

In the news headlines researched, it was seen that *Yeni Akit* and *Sözcü* Newspapers published 2 and 7 security-oriented news, respectively. For example, the news published by *Sözcü* under title of “*Guests (!) are like a Crime Machine*” on May 15th, 2016, provides criminal statistics of incidents involved by Syrians through an alienating language and dehumanization. In another news published by *Sözcü*, a conflict that arose between Syrian group and local residents in Kayseri was reflected as a result of “stealing of a bicycle”, the same incident was reflected by *Yeni Akit* as an “allegation”. While labeling implications trivialize and discriminate one of the parties, expressions using “us” and “others” cause alienation as well.

Economically-Oriented View

Whereas 5 news reported by Yeni Akit were oriented on economic subject, the number of news published in Sözcü were 8. The news of Yeni Akit bearing title of *“Esad Regime Made 500 Million Dollars out of Refugee Crisis”* was published with picture of 3-year old Syrian Aylan Kurdi who drown while he was infiltrating the border between Greece and Turkey through air raft on September 2nd, 2015. Indeed this news is economic-oriented, a social vision was tried to be reflected to the public opinion so that humane senses of society could be touched. According to another news of Sözcü, with headlines of *“Employment Permission to 3 Million Syrians while There are 3 Million Unemployed in Turkey”*, *“If Refugees to Become Citizens, GDP will Fall Roughly”*, status of Turkish society was brought to agenda rather than nominating Syrians as “victims” as Yeni Akit does. The language of Yeni Akit used in economy-oriented news, similar to the tone used in the headline of *“Syrians will be Permitted to Work in Certain Cities”*, is the one addressing to their own audience and does not ignore concerns of society.

Socially-Oriented View

With respect to the third and final phenomenon of Socially-Oriented View, Sözcü and Yeni Akit published 4 and 28 news, respectively. At this point, Yeni Akit comes to prominence with its headlines addressing to religious and humane senses of society in relation to pro-government line. For instance, in news such as *“Heart-Wrenching Tragedy of Syrians Escaping from Syria”* and *“Tearful Testament of Syrian Girl”*, dramatic stories were drawn and refugees were approached from the concepts of “victim” and “common sense” rather than right-based points of view.

When news published by Sözcü is assessed, it could be seen that security and economic-related concerns stood out as social news remained secondary. For example, birth rate of Şanlıurfa City for 2015 was made an issue in news. In sum, social dimension of Syrians who introduced economic burden remained in the background.

Result

Syrians who took refuge behind Turkey and considered as “guest” since 2011 have incurred various violence until July 2016; and they felt threat because of discourses stimulating xenophobia. According to the results of the report on investigation into hate speech in media, it was seen that these discourses emerged primarily through religious sense of belonging; hate speech has been generated about 12 different groups with non-Islamic faith, non-Sunni or Atheist in totally 281 contents; 270 articles containing hate speech based on ethnic and national belonging targeted 22 different groups. Even at that time, hate speeches against Syrian refugees increased and

encountered in 16 different articles (Table 3). The number of incidents have recently increased significantly and turned into a conflict material between ruling and opposition parties (www.nefretsoylemi.org).

The remarkable point at this point is that the xenophobia observed with the public newspapers representing Islamic groups was targeting Jews, Christians and Armenians instead of Syrians. Likewise 2014, until the naturalization of Syrians comes to the public agenda and tensions between Syrians and local people emerge, the news concerning Syrians remained quite limited and superficial in the media (see, Graphic 1). According to the 55 news articles and 13 columns in *Sözcü* and *Yeni Akit* Newspapers, pro-government *Yeni Akit* addresses humane senses and concentrated on socially-oriented news and put economic- and security-oriented issues in secondary place. While *Yeni Akit* centered on “Victim” Syrians concept, it makes call for “common sense” and spend effort to legitimize government policies. On the other hand *Sözcü* Newspaper, as voice of opposition, critics the government in every occasion. Furthermore, it does not reflect fundamental rights of Syrians in their attitude. As *Sözcü* concentrated on economy-based news, it reflected prejudiced attitude and behaviors on “others” Syrians though criticizing of government and reflected them as scape goat.

In general, the discourse which finds audience in the mainstream media and social media is “us” and “others”. Tolerance and commonsense towards Syrians, “our guests”, left their place to intolerance upon the occurrence of public perception that they become permanent, which was emerged as a result of naturalization discourses. In society, xenophobic and racist discourses have raised; hate speech started to be embraced in social media extensively. If alienation discourses continue to persist, hate crimes could not be avoided across the society. Therefore, media organizations and relevant parties are required to be advised to use a language respecting fundamental human rights and minorities. In this context, advanced methods are to be developed to fight against discriminative and racist discourses so as to progress in human rights and individual freedoms; social awareness must be raised regarding living peacefully in a multi-cultural environment with differences. In this path, government undertakes primary responsibility in terms of developing policy for international immigrants.

References:

1. Alkan, T. (1983). *Saldırganlık, Önyargı ve Yabancı Düşmanlığı*. Hil Yayınevi, İstanbul
2. İlhan, R. ve Çevik, A. (2013). *Önyargıların Psikolojisi: Psikodinamik Bir Gözden Geçirme*. *Nesne Dergisi*
3. Özer Y. Y. (2015). *Türkiye ve Fransa Örnekleriyle Uluslararası Göç ve Yabancı Düşmanlığı*. Derin Yayınları, İstanbul

4. Volkan, V. D. (1988). *The Need to Have Enemies and Allies: From Clinical Practice to International Relational Ship*. Northvale, NJ: Jason Aronson
5. Weber, A. (2011). “Nefret Söylemi El Kitabı”, Çeviri: Metin Çulhaoğlu, Avrupa Konseyi Yayınları
6. Yazıcı, T. (2016). *Yeni Medyanın Nefret Dili: Suriyeli Mültecilerle İlgili Ekşi Sözlük Örneği*. Global Media Journal TR Edition, 7 (13) , Güz
7. Yılmaz, F. (2008). *Avrupa’da Irkçılık ve Yabancı Düşmanlığı*. Vol.6. Uluslararası Stratejik Araştırmalar Kurumu, Ankara
8. Beçene, M. (2012). *Zenofobi Nedir? Belirtileri Nelerdir?* <http://www.aktuelsikoloji.com/zenofobi-nedir-belirtileri-nelerdir-11590h.htm> (Erişim Tarihi: 20.12.2016)
9. <http://www.anadoludabugun.com.tr/konyada-suriyeli-eylemi-yogun-katilim-bekleniyor-157458h.htm> (Erişim Tarihi: 20.12.2016)
10. <https://www.afad.gov.tr/tr/2372/Afet-Raporu-Suriye> (Erişim Tarihi: 18.12.2016)
11. http://www.bbc.com/turkce/haberler/2016/05/160524_erdogan_ab (Erişim Tarihi: 18.12.2016)
12. <http://www.bbc.com/turkce/haberler-turkiye-36780544> (Erişim Tarihi: 18.12.2016)
13. <https://www.change.org/p/%C3%BCIkemde-suriyeli-istemiyorum> (Erişim Tarihi: 15.12.2016)
14. <https://www.chp.org.tr/Public/0/Folder//65204.pdf> (Erişim Tarihi: 25.12.2016)
15. <http://avrupa.info.tr/tr/bilgi-kaynaklari/haber-arsivi/news-single-view/article/muelteci-krizinin-yonetimi-komisyonusun-ab-tuerkiye-eylem-planinin-uygulanmasina-iliskin-raporu.html>(Erişim Tarihi: 15.12.2016)
16. <http://www.denizlionlinehaber.com/denizli-suriyelilerle-tavasli-lar-birbirine-girdi> (Erişim Tarihi: 17.12.2016)
17. <http://www.dw.com/tr/11-suriyeli-sivilin-%C3%B6ld%C3%BCr%C3%BCld%C3%BC%C4%9F%C3%BC-iddias%C4%B1/a-19341173> (Erişim Tarihi: 17.12.2016)
18. <http://gocmendayanisma.org/2016/10/15/onderde-neler-oluyor-raporu-2-16-temmuz-irkci-saldirilar/> (Erişim Tarihi: 20.12.2016)
19. <http://www.haberturk.com/gundem/haber/1265945-suriyelilere-vatandaslik-verilmesiyle-ilgili-farkli-gorusler> (Erişim Tarihi: 17.12.2016)
20. <http://www.haberturk.com/gundem/haber/1218010-izmirde-9-yasindaki-suriyeli-cocuga-taciz-iddasi> (Erişim Tarihi: 17.12.2016)

21. <http://www.haberturk.com/gundem/haber/1265587-konyada-suriyelilerle-kavgada-olen-mehmet-bayraktarin-ailesi-konustu> (Eriřim Tarihi: 20.12.2016)
22. <http://www.hurriyet.com.tr/chpli-boke-suriyelilere-vatandaslik-degil-vatanlari-verilmeli-37308424>(Eriřim Tarihi: 20.12.2016)
23. <http://www.hurriyet.com.tr/demirtastan-suriyelilere-vatandaslik-aciklamasi-40144578> (Eriřim Tarihi: 25.12.2016)
24. <http://www.hurriyet.com.tr/suriyelilere-karsi-irkciliga-goturuyor-40146392>(Eriřim Tarihi: 22.12.2016)
25. <http://www.hurriyet.com.tr/turkiyenin-vize-muafiyeti-icin-yerine-getirmesi-gereken-kriterler-40067034>(Eriřim Tarihi: 20.12.2016)
26. <http://www.hurriyet.com.tr/yalcin-akdogan-suriyeli-gocmen-sayisini-acikladi-40066673>(Eriřim Tarihi: 20.12.2016)
27. <http://www.ihha.com.tr/haber-yabanci-dusmanligi-tehlikeli-boyutlara-cikabilir-402585/> (Eriřim Tarihi: 20.12.2016)
28. <http://www.multeci.org.tr/haberdetay.aspx?Id=146> (Eriřim Tarihi: 19.12.2016)
29. <http://www.mynet.com/haber/guncel/suriyeli-cocuklara-siddet-gostererek-iftar-cadirindan-kovdular-2489626-1> (Eriřim Tarihi: 17.12.2016)
30. www.nefretsoylemi.org (Eriřim Tarihi: 17.12.2016)
31. <http://www.ntv.com.tr/dunya/cavusoglu-ab-ile-geri-kabul-anlasmasi-ve-vize-serbestisini-gorustu,aVWFHQtMy0-C1ClEuhAycQ> (Eriřim Tarihi: 17.12.2016)
32. <http://www.sabah.com.tr/galeri/yasam/suriyeli-cocugun-bogazini-keserek-oldurdu/2> (Eriřim Tarihi: 15.12.2016)
33. <http://www.yeniakit.com.tr/haber/suriyelilere-vatandaslik-ve-is-imkani-aciklamasi-193722.html> (Eriřim Tarihi: 15.12.2016)

Surrogacy Basis for Issues for Legislative Regulation

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Abstract

In order to be eligible for any ART procedure, a couple must be deemed medically “infertile”. The definition most commonly used is *the inability to achieve pregnancy after one year of regular sexual intercourse without contraception*. The cases of infertility among couples are difficult to ascertain, with estimates ranging from 10 to 20%.²⁰³ An estimate of approximately 15% of couples actively, but unsuccessfully, trying to conceive is an appropriate one. The causes of infertility are many. They have been all categorized into three: environmental, physical and psychological factors. In some cases, there may be a combination of factors. The “fault” lies with the male partner in about one third²⁰⁴ of cases, with the female partner in about one third of cases, and then with both partners also in about one third of cases. However, in about 25% of couples, no obvious cause can be found for their infertility.

Keywords: Surrogacy, artificial technologies, reproduction legislation, child, motherhood

Introduction

Surrogacy implies that a woman becomes pregnant and gives birth to a child with the intention of giving away this child to another person or couple, commonly referred to as the ‘intended’ or ‘commissioning’ parents (Shenfield et al., 2005). A surrogate mother is the woman who carries and gives birth to the child, and the intended parent is the person who intends to raise the child. The definition from the European Society for Human Reproduction and Embryology (ESHRE) (Shenfield et al., 2005) does not state the sexuality of the intended parents. There are two main types of surrogacy, traditional and

²⁰³For example, Douglas Cusine, in his book *New Reproductive Technologies* (n 13) That between 10 and 15 per cent of all marriages are infertile (page 5). Another estimate is given in G Macpherson (ed), *Blacks Medical Dictionary*, 38th ed (London, 1995), p. 252, that between 15 and 20 per cent of couples have difficulty conceiving.

²⁰⁴Cusine, n 13, p. 5.

gestational. The first traditional surrogacy arrangement is believed to have happened about 2000 years before the birth of Christ and is being mentioned in the Old Testament of the Bible. Sarah and Abraham were unable to conceive. So, Sarah hired her maid, Hagar, to carry a child for her husband. Subsequently, Hagar gave birth to a son, Ishmael, for Sarah and Abraham.

Regulation of Surrogacy made the following recommendations:

There should not be a specific ban on surrogacy arrangements. Surrogacy arrangements should be rendered unenforceable. These arrangements should be assimilated as far as possible into an adoption model, thereby allowing the birth mother at least ten days after birth to decide whether to proceed with the agreement. There should be no money or consideration of any kind payable with respect to these arrangements. All payments for adoption should be deemed to be illegal. A legislated exception should be made to the presumption of paternity provisions and to the consent to adoption provisions, in the case of a surrogacy arrangement which the birth mother decides to respect, so that the intended social parents are the legal parents and other presumptive parents have no status. The meaning of written agreement in the family law legislation as it pertains to custody matters should be amended to exclude surrogacy agreements, except as invoked by the birth mother. In all respects, the intended social parents in a surrogacy arrangement should be in no better position than other proposed adoptive parents. The proposed adopting parents should have no rights of access if the birth mother chooses not to respect the agreement and does not relinquish custody. If the birth mother chooses to respect the surrogacy agreement, offers to relinquish custody to the proposed adopting parents, is turned down for any reason, and does not otherwise relinquish custody of the child, she should be entitled to claim maintenance on behalf of the child from the proposed adopting parents and their estate.

Commercial surrogacy is prohibited under law. Its arrangement or advertising is a criminal offence.

RT procedure may be provided pursuant to a surrogacy arrangement only if assessed by a registered medical practitioner, who is not responsible for the RT procedures regarding the surrogacy, by taking into account the following considerations: (a) marital status; (b) history of pregnancy; and (c) physical and mental fitness of the woman in carrying a baby. A woman who is at a higher risk of suffering from complications of pregnancy should not be allowed to be a surrogate mother. A woman under the age of 21 shall not act as a surrogate mother. Surrogacy should require the consent of both the surrogate mother and her husband, if she is currently married. The commissioning couple and surrogate mother should be informed that the surrogacy arrangement is unenforceable under law. Counseling must

be provided by a multi-disciplinary team of the RT centre for the commissioning couple and surrogate mother (and her husband, if any) to ensure that all parties concerned understand the medical, social, legal, moral and ethical implications of surrogacy. The multi-disciplinary team for counseling in surrogacy should at least comprise: (a) 2 non-attending registered medical practitioners, who both recommended the arrangement, to explain the medical implications and consequences; (b) a legal advisor familiar with family matters, to explain the legal implications to both the surrogate mother and the commissioning couple; (c) a social worker familiar with medical related issues to explain the social and moral impacts; (d) as well as with the addition or alternative of a clinical psychologist, when appropriate to make assessment. In assessing the surrogate mother (with her husband, if any) and the commissioning couple, the welfare of the child is of paramount importance. The assessment should take into account their physical, mental and social well-being, including the following factors: their commitment to having and bringing up a child or children; their ability to provide a stable and supportive environment for any child born as a result of surrogacy; their medical histories and the medical histories of their families; their ages and likely future ability to look after or provide for a child's needs; their ability to meet the needs of any child or children who may be born as a result of surrogacy, including the implications of any possible multiple births or disability; any risk of harm to the child or children who may be born, including the risk of inherited disorders, problems during pregnancy and of neglect or abuse; and the possible attitudes of other members of the family towards the child.

Arguments Against Surrogacy

The bond between mother and child *in utero* should be encouraged and not broken by surrogacy; it is undesirable to force a woman to surrender a child against her will; surrogacy arrangements threaten the sanctity of marriage, and it is against human dignity for one woman to use her womb for profit.

Arguments for Surrogacy

Having a child by surrogacy may be the only course open to a woman who cannot have a child of her own, either because she does not produce eggs, or because she has some condition which prevents her conception. Surrogacy may be the only option for a woman, who is advised against pregnancy for health reasons, and surrogacy could be seen as an act of generosity on the part of the surrogate, and there is no reason to expect that surrogates would enter into such agreements lightly. The fact that a surrogate is paid does not, in itself,

necessarily point to the fact that there is any form of exploitation either by her or the commissioning party.

Overseas Regulation of Assisted Reproductive Technology United Kingdom

Reproductive technology in the United Kingdom is regulated by the *Human Fertilization and Embryology Act 1990* (“the HFEA”). The regulatory framework contained therein took effect from 1st August, 1991. The HFEA divide ART procedures into three categories: the first category includes those activities such as cloning, which are illegal (criminal), and cannot be licensed. The second category contains those activities which are illegal unless carried out in pursuant to a license granted by the Human Fertilization and Embryology Authority, which was established under the HFEA and whose function it is to implement the statute. Activities falling within this second category include the storage of gametes and embryos and the creation of an embryo *ex utero*. The final category of activities contains those activities which are not covered by the HFEA and therefore do not require a license. Such activities include artificial insemination by the husband of a woman, using the sperm provided by him. For a comprehensive examination of the operation of the HFEA, see 150 Kennedy & Grubb, *Medical Law: Text with Materials* (2nd ed.), pp. 768-819.

Canada

The Royal Commission on New Reproductive Technologies was completed at the beginning of 1994. At this stage, there is still no specific legislation concerning the regulation of ART federally in Canada. Nor does it appear that there is comprehensive legislation in any of the Canadian Provinces. The Medical Research Council of Canada (NMRC) is the major federal agency responsible for funding biomedical research in that country²⁰⁵. There are two other relevant Councils in Canada: the Natural Sciences and Engineering Research Council of Canada (NSERC), and the Social Sciences and Humanities Research Council of Canada (SSHRC). The NMRC’s *Guidelines on Research Involving Human Subjects* were first issued in 1987 and since that time have become the nation’s accepted standard on human biomedical research. The other two Councils have adopted the *Code* as the standard of research ethics for the conducting of research involving human participants. The Councils require that funded researchers and their institutions comply with the spirit of the ethical principles contained therein, those which are relevant to ART are contained in Section VIII - ‘Human

²⁰⁵The Medical Research Council of Canada’, <http://www.mrc.gc.ca/whatis/foldeng.html>, p.3 of 4.

Genetic Research’ - and Section IX - ‘Reproduction, Infertility, Embryos and Fetuses’.²⁰⁶

Article 8.1: The genetics researcher must seek informed choice from the individual and report results to that individual. As genetic research involves the family and/or the community in terms of family history, linkage, and other studies, a potential tension exists between the individual, their families, and the group. Therefore, informed choice must also involve those social structures as far as it is practical and possible.

Article 8.2: The researcher and the REB (Research Ethics Board) must ensure that the results of genetic testing and genetic counseling records are protected from access by third parties, unless consent is given by the participant. Family information in data banks must be coded by number codes that are beyond the possibility of identification by participants within the bank itself.

Article 8.3: Researchers and genetic counselors involving families and groups in genetic research studies must reveal potential harms to the REB and outline how such harms will be dealt with as part of the research project.

Article 8.4: Genetics researchers and the REB must ensure that the research protocol makes provision for access to genetic counseling for the participants, where appropriate.

Article 8.5: Research on gene alteration must be limited to somatic cells and tissues. Neither research on germ line gene alteration nor non-therapeutic use of gene alteration in humans is permitted.

Article 8.6: [There is no Article 8.6; however, there is a subsection between the Articles 8.5 and 8.6 titled “Eugenic Concerns”.]

Article 8.7: Because the banking of genetic materials poses potential harms to individuals, their families, and the collectivities to which they may belong, researchers must satisfy the REB and prospective research participants that they have addressed the issues involved in banking of genetic data including confidentiality, privacy, storage, use of the data, and results to come, withdrawal by the participant, and future contact of participants, families, and collectivities.

Article 8.8: At the outset of a research project, the researcher must discuss with the REB and the research participant the possibility that the genetic material and the information derived from its use could have potential commercial uses.

Of particular relevance are the Articles in Section IX, which deal specifically with research into artificial reproductive technology:

²⁰⁶*Code of Ethical Conduct for Research Involving Humans*, Section VII, <http://www.mrc.gc.ca/ethics/code/english>.

Article 9.1: The researcher must obtain informed consent from the individual from whom human reproductive cells were obtained for the research use of those cells and tissues.

Article 9.2: No research will be carried out on ova or sperm that have been obtained through commercial transactions.

Article 9.3: Research must not be carried out with the intent of creating hybrid species, which could survive by such means as mixing human gametes with cells or tissues of other species or vice versa.

Article 9.4: Human zygotes and embryos must not be specifically created for research purposes; however, research that involves human zygotes and embryos will be ethically acceptable if:

(a) the ova and sperm from which they were formed are obtained in accordance with articles 9.1, 9.2 and 9.3;

(b) the research does not involve the genetic alteration of human zygotes/embryos; and

(c) zygotes or embryos exposed to any manipulations not directed specifically to the ongoing normal development will not be transferred for continuing pregnancy.

Article 9.5: In keeping with international consensus, the researcher must restrict research on human zygotes and embryos to the first 14 days of development.

Article 9.6: Ectogenesis, cloning of human beings, formation of animal/human hybrids, or the transfer of zygotes/embryos between humans and other species are all unacceptable. Of course, such guidelines are not binding and are only enforceable in situations where an individual or institution receives funding from one of the three Councils. In a situation whereby a clinic operates commercially and utilizes profits from that commercial operation to fund research, the impact of the *Code* would be dependent upon the ethics of the individual researchers and of the clinic itself.

Spain

K. Dawson calls Spain's ART legislation "the most detailed law undertaken so far on this subject". Law No 35/1988 covers such diverse areas as artificial insemination, IVF and 154 GIFT. The law establishes the National Commission on Assisted Reproduction to oversee the provision of ART procedures and, in some cases, to authorize research projects. The law specifies conditions applicable to gamete donors, persons undergoing the procedures as well as the status of resultant children. It permits sperm and embryo freezing, but prohibits egg freezing until the technique is proven to be safe. In relation to experimentation, the law generally permits experimentation as long as the gametes are not used subsequently for fertilization. Intervention on the embryos *in vitro* and *in utero* is allowed with the informed consent of

the woman. *In vitro*, but not *in utero*, experimentation on embryos are generally permitted in appropriate situations. A number of offences are provided for including fertilization of ova other than for procreation, and maintaining embryos for longer than 14 days.

Conclusion

International commercial surrogacy raises many complicated legal questions. The major challenge for authorities and courts faced with international surrogacy cases is ensuring that the welfare of children born via surrogacy can be safeguarded, while respecting their countries' policies and laws on surrogacy. Both case law and legislation are limited on international commercial surrogacy at this point, leaving a gap that will need to be filled in the future by judges, immigration authorities, national and international lawmakers, or a total ban on international commercial surrogacy. However, a total ban on international commercial surrogacy is not the way to go. It will drive the problem underground and mean that exploitation of surrogates will be more likely, and the protection of a child's rights to his or her identity will be severely undermined. The most crucial issues any potential international legal framework needs to address are to ensure that surrogate mothers receive a fair payment for their services and that their health and wellbeing are protected. It is also essential that the child's right to know his or her identity, particularly his or her genetic identity, is preserved. This becomes even more important in the future, where genetic medicine may become the dominant diagnostic tool in many healthcare systems.

1. There should be legislation directly on the subject of surrogacy arrangement involving all the three parties i.e. the surrogate mother, the commissioning parents and the child.
2. There should be a substantial regulation designed to protect the interests of the child.
3. The surrogate mother should not undergo more than 3 trials for a pregnancy and it has to be monitored.
4. In case of foreign commissioning parents, the citizenship right of the surrogate baby is also of crucial importance. The Indian government needs to take a stand in terms of conferring the surrogate baby a dual citizenship, as and if he/she is born in the womb of an Indian (the surrogate mother) and in India, but commissioning parents belong to a foreign country.
5. There is a need for debate and discussion on the stance that public policy and the law should take toward surrogate mothering. Actually, there exists a range of choices from prohibition and regulation to active encouragement.

6. A specialized court called “Surrogacy Court” can be created. It can comprehensively look at all the problems related to surrogacy arrangement for adjudicating disputes.

7. Legislation itself should recognize a surrogate child to be the legitimate child of the commissioning parent(s) without there being any need for adoption or even declaration of guardian.

8. Surrogacy Arrangements brokered by commercial or profit agencies should be outlawed. It emphasizes the greatest possible regulation and prevention of commercial arrangements with the goal of diminishing exploitation of the statutory scheme and the parties involved.

Most studies reporting on surrogacy have serious methodological limitations. According to these studies, most surrogacy arrangements are successfully implemented, and most surrogate mothers are well motivated and have little difficulty separating from children born as a result of the arrangement. The perinatal outcome of the children is comparable to standard IVF and OD and there is no evidence of harm to the children born as a result of surrogacy. However, these conclusions should be interpreted with caution. We have not found any publications on the outcome for families and surrogate mothers involved in commercial cross-country surrogacy in less well developed countries where surrogacy is a growing industry. Furthermore, there are no studies on children growing up with gay fathers. Long-term follow-up studies on surrogacy children and families will be needed in the future.

References:

1. Lorenceau ES, Mazzucca L, Tisseron S, Pizitz TD. A cross-cultural study on surrogate mother’s empathy and maternal-foetal attachment. *Women Birth* 2015; 28:154–159.
2. Parkinson J, Tran C, Tan T, Nelson J, Batzofin J, Serafini P. Perinatal outcome after in-vitro fertilization-surrogacy. *Hum Reprod* 1998; 14: 671–676.
3. Kleinpeter CB. Surrogacy: the parents’ story. *Psychol Rep* 2002; 91: 201–219.
4. Jadv V, Blake L, Casey P, Golombok S. Surrogacy families 10 years on: relationship with the surrogate, decisions over disclosure and children’s understanding of their surrogacy origins. *Hum Reprod* 2012; 27: 3008–3014.
5. [Last accessed on 2012 May 2]. Available from: http://surrogacylawsindia.com/legality.php?id=%207andmenu_id=71
6. National guidelines for the accreditation supervision and regulation of ART clinics in India. [Last accessed on 2012 April 30]. http://www.icmr.nic.in/art/art_clinics.htm

7. [Last accessed on 2012 April 30]. Available from: <http://www.timesonline.co.uk/toI/news/world/asia/article/7113463.ec>
c
8. The Associated Press (2007-12-30) “India's surrogate mother business raises questions of global ethics”. Available from: <http://www.nydailynews.com/news/world/india-surrogate-motherbusiness-raises-questions-global-ethics-article-1.276982>
9. ART Regulation draft bill 2010. Available from: <http://icmr.nic.in/guide/ART%20REGULATION%20Draft%20Bill1.pdf>
10. <http://www.mp.gov.in/health/acts/mtp%20Act.pdf>
11. Central adoption resource authority. Available from: <http://www.adoptionindia.nic.in>

Agritourism as an Important Element of Village Renewal. Case Study of Poland

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Abstract

Transformation of Polish economy (started at the turn of the eighties and nineties of the 20th century) has changed many socio-economic conditions of the development of all regions in Poland. The various processes which were based on transformation of the previous structures created in the central-steered management system and on the development of new structures, have been observed in many regions of Poland. The development of rural areas was directed into a multi-functional form. Apart from main agricultural functions, dominating in the central steering period, different forms of non-agriculture activity started to develop in rural areas. Beginning from 1996, however, considerable changes started in tourist sector. The possibility of obtaining the EU aid funds through TOURIN II Programme played a major role in the development of tourist sector then. In new conceptions of rural areas development, of important meaning has tourism, including agritourism. It is a real chance for farmers, to ameliorate their difficult economic situation. The author of this article performs an analysis of the agritourism development in Poland in aspect of village renewal theory. At present tourist function is treated as a new quality for rural areas.

Keywords: Rural areas, agritourism, village renewal, case study

Introduction

Modern tourism is becoming one of major branches of the world's economy. It provides substantial revenue in budgets of many countries and regions. Management transformation which started in Poland at the turn of the eighties and nineties of the 20th century has changed socio-economic conditions of the development. The transformation of state-controlled management system required adjustment of various socio-economic and spatial structures to the new rules of market economy. The processes of

transformation of the previous structures created in the centrally-steered management system and on the development of new structures are being observed in Poland, also in rural areas.

Actually, the problems of rural areas are becoming very popular in scientific researches (Iyilikci, 2016). The main reason of that is fact that 56% of population in 27 EU countries live in rural areas. Besides, rural areas concern 91% of total territory of all EU countries.

In recent years the multifunctional development of rural areas has been discussed much more frequently than before. Non-agriculture enterprises are more and more popular. As a result of dynamic development of non-agricultural and accompanying processes, resolving issues of multidirectional rural development are becoming increasingly important.

Nowadays, the role of a new approach to rural development is increasing. As a result of political transition the areas which by now were characterized by mono-functionality (production of food), are facing the problem of economic, social, spatial and environmental degradation (Żebrowski, 2004).

Following the EU in Poland, the issue that appears more often is the one of the multifunctional development of rural areas. The strategy for Poland is that, in addition to agriculture in rural areas, tourism, including agritourism will be developed (Tschirschnitz, 2011).

At present one of the most popular forms of development of rural areas is agritourism. In 2003, at the First European Rural Tourism Congress in Spain, it was accepted that rural tourism and agritourism are a stable and strong segment of European tourism. It was assumed then that the countryside received nearly 25% of European holiday-makers and that in Europe there were over 200 thousand agritourist and rural tourism service providers, who offer over two million bed-places (Wojciechowska, 2006).

Tourism in rural areas is perceived an important option as it provides farmers with an additional source of income. Polish rural areas have a high potential for the development of these new forms of tourism, such as agritourism or ecotourism, especially those which have woodlands and valuable natural features.

Agritourism is regarded as an alternative form of tourism, closely connected with agriculture and operating in active farms, thus mainly in rural areas (Drzewiecki, 1995).

Agritourism business activities are performed mostly by farmers themselves or in collaboration with other village residents. Local, regional and central governments support agritourism by implementing rural areas development policies.

The main aim of this paper is an analysis of the agritourist function in Poland in aspect of village renewal. The article also raises the issue of rural

area revitalization. The author presents the results of research and implementation works, concerning the possibility of introduction in Polish conditions of village renewal programs.

The paper is of a theoretical-application nature, using results of empirical identification.

The concept of revitalization of rural areas is linked back to individual cultural features of the village, its customs and local history. In addition to rural renewal programmes, revitalization of rural space is related to the restoration and presentation of traditional rural buildings.

In that paper special attention was paid to Polish rural areas. The development of rural areas is becoming more and more important key problem, because these areas concern 93.2% of Polish territory and nearly 14.810 thousand of total number of inhabitants, which is 38.8% of population in this country.

The investigations focused on the set of agritourist farms operating in Poland. To realize the main aim of the problem in this article it was necessary to make regional studies of all series of agritourist farms.

Those are a matter of interest for researches representing a range of different fields. One of those is geography, which investigates both the distribution of certain phenomena in the geographical space and the interpretation of the causes of their territorial differentiation. Comprehensive understanding of this branch of science makes it justifiable for geographers to play an important role in performing analyses of the spatial structure of rural areas. The issues related to agritourism constitute a research area that can be both investigated theoretically and applied in practice. Those issues have attracted much discussion and become subject of considerations related to, among others, socio-demographic and economic determinants.

It should also be noted that as the research area evolved, the terminology used for the description of facts, phenomena or processes has become inconsistent, making it difficult to conduct coherent investigations.

The present study makes an attempt at organizing, in an orderly manner, empirical analyses of spatial differentiation of social and economic components.

It is important to define the notions that refer to research in this area. The Polish literature on the subject provides a lot of definitions of agritourist. Terms such as agritourist, alternative tourist, rural tourist, green tourist, farm tourist etc. are often used to describe the tourist function in rural areas. This function creates an opportunity of getting alternative incomes. Generally, the term 'agritourism' denotes an alternative form of tourism, closely connected with agriculture (Bednarek-Szczepańska, Bański, 2014). The services are provided on active farms in rural areas. Agritourist and rural tourist

conditional achievement the state of satisfying some of life's needs. Tourist also refers to a degree, to which material and spiritual needs are fulfilled.

Researchers all over the world have been concerned with the agritourist function. Definitions and descriptions can be found in the studies written by, among others, Patmore (1983), Dernoï (1991), Gilg (1991) and Tschirschnitz (2011).

Investigations into the role of agritourism in the village renewal have been conducted within economic sciences (e.g., Bosiacki, 2016, Chudy-Hyski, 2009, Dębniowska and Tkaczuk, 1997), social sciences (e.g., Borowiec, 1994, Bramwell, 1991, Muszkieta, et al. 2009, Sikorska-Wolak, 2008) and geographical sciences (e.g., Bulgakowa, 2003; Drzewiecki, 2001; Jalinik, 2013; Pałka, 2015; Sznajder and Przezbórska, 2006; Świetlikowska, 2000; Wojciechowska, 2009 or Zawadka, 2010).

Background of agritourism in Poland

Non-agricultural activities of farms are resulted mainly from the need for additional income. Along with the restructuring of agriculture in Poland after 1990 the financial situation of farm families has radically changed. The population of the countryside has begun looking for new sources of budgets replenishment, mainly by starting their own business, by developing non-agricultural activities. The development of agritourism business in the countryside has become one of the new sources of income.

Agritourism involves recreational activities pursued in rural areas. It is based on accommodation facilities and experience related to a farm its vicinity, the latter providing the natural environment, production and services. There are some features that differentiates agritourism from other tourism types. One of the most important is that vacation takes place on an active farm (Wiatrak, 1995). Because of that tourists can get involved in the life and operation of the farm. A relatively high percentage of activities and services provided by farms relies on the household members themselves performing various jobs. That results, among others, from the fact that agritourism is a sideline, generating money that is additional to the primary income source, i.e. that from agricultural production (Sznajder and Przezbórska, 2006).

The phenomenon of tourism in the rural areas of Europe has over 150-year-old tradition. The progressing mechanization and modernization in agriculture and that took place in the 1950's and 1960's resulted in reducing employment in this sector. The outflow of the countryside inhabitants to the cities was very popular. Because of that, this phenomena caused depopulation of the rural areas. It became crucial to find ways to stop the detrimental changes in the countryside and then to revive it socially and economically. The most important remedies was tourism (such forms like: rural tourism, agritourism, ecotourism, green tourism or farm tourism).

The idea of agritourism, in new, modern form, started to be introduced to Polish rural areas in 1991, mainly by state institutions. Those institutions cooperated with farmers, as well as local, regional councils and related ministries. They supported the development of agritourism in different ways, such as, preparing special courses for farmers, advices for farmers etc.

According to the data collecting from GUS (Central Statistical Office in Poland) and Eurostat (tab. 1) 12.046 thousand of farms were located in all countries – members of EU. In total, 1.212 thousand of farms (10.1%) took up other than agricultural activity (including agritourism). In Poland over 33% of all farms take other than agricultural activity (Table 1).

Table 1. Individual farms by activity, also other than agricultural (including agritourism) in EU countries (EU 27)

Member countries of EU	Total number of individual farms (in thousands)	Total number of farms with other than agricultural activity (including agritourism) (in thousands)
Austria	141.5	56.1
Belgium	44.2	1.9
Bulgaria	489.8	10.3
Cyprus	38.4	0.4
Czech	19.8	3.4
Denmark	43.7	10.5
Estonia	17.9	2.7
Finland	57.6	16.9
France	365.5	48.4
Greece	859.5	12.8
Spain	929.7	20.81
Netherland	68.1	17.8
Ireland	139.6	12.9
Lithuania	199.2	1.5
Luxembourg	2.3	0.4
Latvia	81.8	4.2
Malta	12.3	0.3
Germany	27.0	92.1
Poland	1.502,2	49.7
Portugal	297.4	15.2
Romania	3.913,7	617.7
Slovakia	22.2	1.5
Slovenia	74.4	12.5
Sweden	65.9	24.1
Hungary	567.6	47.3
Great Britain	214.5	55.3
Italy	1.603,7	76.2
UE-27	12.046	1.212

Source: own elaboration on the basis of statistical data from GUS (Central Statistical Office in Poland) and Eurostat, 2013

Tourism in the rural areas in Poland has a long tradition. Agritourism, as an actual phenomenon, has been growing in popularity in different parts of Poland since 1990. Then Poland opened to the West and the introduction of the market economy made it possible to create new forms of employment. Following the example of the West European countries, agritourism started to be treated as an alternative source of farmers' income, and a possibility to spend cheap holidays by the tourists.

The statistics say that approx. 2-3 million rural households operate in Poland at present, a third of which, i.e. 700,000 have large houses. Those offer a large amount of unused space, which with relatively low financial outlays can be converted to become tourist accommodation or reception areas.

Many authors have emphasised that agritourism provides residents of overpopulated rural areas with a viable alternative to generate extra incomes. It can also contribute to the improvement in living standards of rural communities.

Poland has favourable conditions for the development of agritourist. That refers primarily to the regions that are poorly industrialised or urbanised with a high unemployment rate and low income of inhabitants. Other important factors include high-value tourist amenities and accommodation capacity which is, to a large extent, decisive for the ability of those regions to provide agritourist services.

In Poland a considerable development of agritourist farms, with that of cooperating institutions, like agritourist associations, consultative teams and agritourist chambers is recently observed.

Agritourism farms in Poland are not distributed uniformly over the area of the country (Figure 1). The highest number of agritourism farms is found in the most attractive tourist regions such as the Małopolskie and Podkarpackie voivodeship (south-east part of country), Pomorskie and Warmińsko-Mazurskie voivodeship (north and north-east parts).

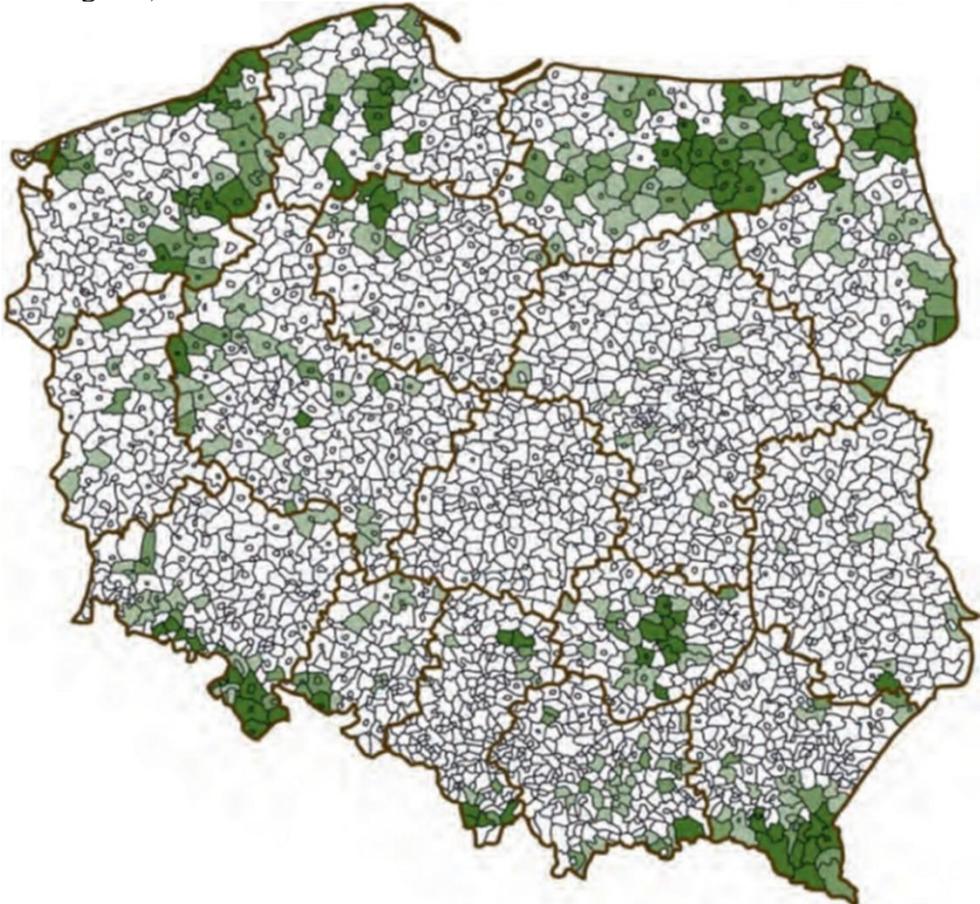


Figure 1. Spatial distribution of agritourist farms in Poland
Source: Bański (2010).

In 2007, the Ministry of Economy generated a voluminous document on tourism development in Poland for the years 2007-2013. The Tourism Development Strategy recommended implementing various activities to stimulate the tourist function in Poland. The next document for the years 2014-2020 discusses all innovative approaches that can be adopted to eliminate differences in providing tourist services at regional and local levels and to enhance Poland's tourist attractiveness.

Przezbórska-Skobiej and Sobotka (2016) made the agritourist regionalization and delimitation of agritourist regions in Poland (i.e. regions with well-developed agritourism infrastructure). It was based on the number of agritourism farms and on administrative criterion (Figure 2). The analysis was based on the statistics provided by relevant regional agricultural advisory centres. Poland was divided into agritourism regions by delimiting larger territories, i.e. regions and sub-regions, comprising communes featuring a big number of agritourism farms. Within the 12 thus delimited agritourism

regions, the larger ones have been divided into sub-regions (the total of sixteen sub-regions).



The number of agritourist farms in the commune:

- 6–10
- 11–15
- over 15

Figure 2. The distribution of agritourist farms in communes of Poland
Source: Przebórska-Skobiej and Sobotka (2016)

At present times economic aspects of tourism are more and more important. Modelling a tourist product is considered an important task. All the activities aimed at making tourism products innovative and competitive, and, at the same time, compliant with the principles of sustainable development, will be supported in Poland. The activities will rely of funding from the state's budget, that of territorial self-government units, private resources and EU funds available within operational programmes.

Main challenges for village renewal in Poland

Village renewal is a special direction and innovational concept of development in rural areas. That model arose in the western countries of the European Union. At the beginning it occurred in Germany at the turn of 70s and 80s XX century as a reaction to the increasing crisis in rural areas. It combines respect for rural traditions with the need to search for the place of the village in a changing world. As Wilczyński (2003) reported village renewal is a process of constant adaptation to social, economic and other internal and external changes. This process also lead to the overall development of living conditions of the rural population.

According to Pijanowski (2016), on a global scale two main, typical trends are observed:

1. Number of rural residents is decreasing (also people employed in agriculture);
2. More than a half of population in the world has been living in cities for several years.

Thanks to the membership in the EU, the model of multifunctional development of rural areas became established in Poland. Its implementation was reduced to the diversification of economic activity. The first step is process of recognition of the value in rural area and creating the need for revitalization. The essence of village renewal is the inclusion of the local community for the implementation of projects for the benefit of their village. The Programme of the Village Renewal (PoVR) is a popular well-known tool of rural development in European countries like: Austria, Germany (especially Bavaria), Ireland, Netherlands, later in Hungary, Poland, Czech Republic and Slovakia. The main objective of the Programme of Village Renewal is to retain life in the village, to increase its standard with the preservation of its identity. Participation of village citizens in the process of PoVR targets implementation is an important part of PoVR. Local government provide support in different forms (Idziak and Wilczyński, 2013). The most popular are: employment of specialists for the development and realization of projects, animation of formulating the main vision of village renewal and provision of subsidies from the different sources.

In Poland renewal of villages is known thanks to the Opole Program of Village Renewal, which was initiated in 1997. It is the biggest and the longest active regional program of local societies activation. The most developed rural areas in process of village renewal are located in the Opolskie, Dolnośląskie and Pomorskie voivodeship in Poland. The villages and communes where regional village renewal programmes are functioning have many advantages. This programmes are additional sources of funding the development of rural areas and help to stimulate the involvement of residents to various projects implementation. Activation of local population is

accompanied by the use of different resources and implementation of the development vision connected with using methods of strategic and spatial planning.

In Poland village renewal is regulated by normative acts. The most important of them is the Rural Development Programme (RDP) for 2014-2020. This programme is a part of the activity named “Basic services and renewal in rural areas”, which has budget of nearly 1 billion EUR. Projects prepared for about 2.7 thousand of Polish villages include this programme.

The village renewal programmes include different scope of actions. The most important are:

- shaping of public space,
- projects related to the objects of cultural functions,
- supporting the development of infrastructure,
- improving local conditions of life,
- protection of cultural heritage,
- improving economic development and environmental protection.

Village renewal in all EU countries is based on an article 20 of the Regulation EU No 1305/2013 adopted by the European Parliament and the Council on Support for Rural Development by the European Agricultural Funds for Rural Development.

The scope of village renewal consists of the following activities connected with some parts of operations:

1. Investments associated with restoration of cultural and natural heritage of the village, sites with high natural value, rural landscape.
2. Studies in the creation and development of different local services (including culture and recreation) for the rural population.
3. Investments related to the creation or expansion of different types of infrastructure.

These tasks seem to meet the challenges of village renewal taking in Poland. In Polish Rural Development Programme (RDP) for 2014-2020 there are not set rules for the implementation of village renewal. So it is not easy to create the village renewal projects in different regions of the country.

The modern rules of implementation of village renewal

Thanks to the membership in the EU, the idea of multifunctional development of rural areas became established in Poland. In practice its real implementation was reduced to the diversification of economic activity. Village renewal, in many EU countries, is a special project coordinated and connected with other projects in a commune. Village renewal projects help to achieve the development of rural areas. They also stimulate different bottom-up initiatives (Magel, 2015). Other activities carried out thanks to village renewal have significant impact on the villages and their development. Many

investments closely connected with village renewal help to stop the outflow of people, to settle new residents and to create the new companies on tourist market in rural areas. New infrastructure renewal, often observed in rural areas, has a significant impact on economical, social and spatial development. Unfortunately, it can't be observed in all Polish rural regions.

The idea of village renewal comes from Austria and Germany (Mouque, 1999). In Kolipiński's opinion (2011) from the point of view of the investors and the consumers, Polish rural space can be described as unpredictable, ineffective, conflict-generating. Village renewal projects in Poland were firstly adapted in the Opolskie voivodeship (west part of the country), where rural built-up areas are the most similar to German ones. The success of village renewal in the Opolskie region owes largely to the arrangement of rural areas, as most often found in Austria or Bavaria. The Opolski program much better carried out the aims of the village renewal mainly in social and spatial sphere. Unfortunately, the linear villages of the Świętokrzyskie, Lubelskie or Małopolskie voivodeship (south-east part of Poland) are less suitable to adapting the village renewal and to achieve such effect.

Further development of tourism in Poland's rural areas will considerably depend on, among other, upgrading infrastructure, enhancing the quality of accommodation offered and extending the range of services related to tourism. The examples of other EU countries show that tourism provides a stimulus to the regional development. Therefore, the development of tourism services in rural areas of Poland should be compliant with regional development strategies because tourism not only intensifies the attractiveness of the region but also substantially contributes to economy recovery. Well organised local communities planning their activities around agritourism business, together with adequate policy of the local government may result in the increase in the population income and, indirectly, that of communes. The tourist function in rural areas is treated as a part of revitalization of rural areas. The efficient functioning of process of revitalization is a value appreciated in European Union countries. Revitalization helps to preserve special character of rural areas. The program of Village Renewal, through positive thinking of the parts participating in it, brings effects such as increase in social and local activity, improvement of standard and quality of lives of village inhabitants, together with preservation of the identity of the place, tradition and the landscape surrounding.

Conclusion

According to the investigations it is obvious that most rural areas in Poland have a potential for the development of new kind of tourism, such as agritourist. It is treated as a new, exogenous form of tourism, contrary to the

evolutionary form developing in the West European countries. Agritourism generated supply and demand over a short period of time (about 25 years) and became a part of the national tourism system.

Poland has the right conditions for the implementation of a modern model of the village, because the Polish rural areas are one of the least deprived in Europe. To maintain this state it is necessary to apply, in practice, the principles of a balanced development. A variety of natural resources, farming systems, national tradition and folk culture are the key factors of multidirectional development.

Creating and improving agritourist infrastructure should be a priority matter in all activities according to tourist offer in rural areas. Local authorities and private investors have the big role in this realization. Also in order to succeed in agritourism, the enterprise must be run according to the rules of marketing.

Membership in the EU is a great opportunity for Polish rural areas. Agritourism is the division of the economy, which is particularly suitable for implementation in rural areas in Poland in accordance with the principles of a balanced development.

The innovativeness of agritourism, both in Western Europe and in Poland, consists in offering an alternative to the changing role of the farmer, as well as creating a new style of tourists' recreation by showing the advantages of the countryside and farming and offering them agritourist products.

References:

1. Bański, Jerzy. Atlas Rolnictwa Polski. Warszawa: IG i PZ PAN, 2010.
2. Bednarek-Szczepańska, Maria, Jerzy Bański. Lokalizacyjne uwarunkowania oferty gospodarstw agroturystycznych w Polsce. *Przegląd Geograficzny*: 86, 2, 2014.
3. Borowiec, Aleksandra. Agroturystyka a społeczność wiejska w regionach dotychczas niewykorzystywanych turystycznie. [In:] *Agroturystyka-pierwsze doświadczenia i perspektywy*. Centrum Doradztwa i Edukacji w Rolnictwie. Kraków: 1994.
4. Bosiacki, Stefan. Agroturystyka markowym produktem turystycznym Polski – mity i rzeczywistość. [In:] *Turystyka wiejska – zagadnienia ekonomiczne i marketingowe*. Wydawnictwo Uniwersytetu Przyrodniczego. Poznań: 2016.
5. Bramwell, Bill. Sustainability and Rural Tourism Policy in Britain. *Tourism Recreation Research*: nr 16 (2), 1991.
6. Bulgakowa, A.N. Osobienosti razwitja sielskogo turizma v Zarubieznoj Ewropie. [In:] Aleksandrowa J. (Ed.). *Teoriya i praktyka*

- miedzunarodnego turizmu. Sbornik stati. Moskovskiy Universitet Gosudarstvenny. Moskwa: 2003.
7. Chudy-Hyski, Dorota. Uwarunkowania turystycznego kierunku rozwoju górskich obszarów wiejskich Polski. Infrastruktura i Ekologia Terenów Wiejskich PAN: z. 1, 2009.
 8. Derno, Lane, Canadian Country Vacations: The Farm and Rural Tourism in Canada. Tourism Recreation Research: No. 1, 1991.
 9. Dębniwska, Maria, Maria Tkaczuk. Agroturystyka-koszty, ceny, efekty. Wydawnictwo Poltex, Warszawa: 1997.
 10. Drzewiecki, Maciej. Agroturystyka. Instytut Wydawniczy Świadectwa, Bydgoszcz: 1995.
 11. Drzewiecki, Maciej. Podstawy agroturystyki. Oficyna Wydawnicza Ośrodka Postępu Organizacyjnego, Bydgoszcz: 2001.
 12. Gilg, Andrew. Introduction to rural geography. Edward Arnold, London-New York: 1991.
 13. Idziak, Waclaw, Ryszard Wilczyński. Odnowa wsi. Przestrzeń, ludzie, działania. Warszawa: Fundacja Programów Pomocy dla Rolnictwa FAPA: 2013.
 14. Jalinik, Mikołaj. Agroturystyka w wielofunkcyjnym rozwoju obszarów wiejskich. Uniwersytet Mateja Bela. Banska Bystrica: 2013.
 15. Iyilikci, Necip Ozgur. The suggestion of an economic growth model: the analysis of production in ancient rural settlement. European Scientific Journal, special edition: 2016.
 16. Kolipiński, Bartłomiej. Ład przestrzenny w Polsce- stan i problemy. Warszawa: Ministerstwo Rozwoju Regionalnego. 2011.
 17. Patmore, Jeff. Recreation and Resources. Blackwell, Oxford: 1983.
 18. Magel, Holger. Where is the rural territorial development going? Reflections on the theory and practice. Geomatics, Landmanagement and Landscape: (1), 2015.
 19. Monque, D. Sixth Periodic Report on the social and the economic situation and development of the European Union. The European Commission: 1999.
 20. Muszkieta, Radosław, Walery Żukow, Marek Napierała, Mariusz Barczak (Ed.). Społeczne i ekonomiczne aspekty turystyki i rekreacji. Wielkopolska Wyższa Szkoła Turystyki i Zarządzania, Poznań: 2009.
 21. Pałka, Ewa. Uwarunkowania i procesy rozwoju agroturystyki. Przykład województwa świętokrzyskiego. Wydawnictwo Uniwersytetu Jana Kochanowskiego. Kielce: 2015.
 22. Pijanowski, Jacek. Village Renewal as an Important Element of Integrated Rural Development. Barometr Regionalny. Analizy i prognozy: 14, 3(45)/2016.

23. Przezbórska-Skobiej, Lucyna, Sławomir Sobotka. Propozycja delimitacji regionów agroturystycznych w Polsce. *Wieś i Rolnictwo*: 2(171)/2016.
24. Sikorska-Wolak, Izabela. Ekonomiczne i społeczne aspekty rozwoju turystyki wiejskiej. SGGW, Warszawa: 2008.
25. Sznajder, Michał, Lucyna Przezbórska. *Agroturystyka*. Warszawa: PWN, 2006.
26. Tschirschnitz, Hanna. Place of agritourism in a balanced development of rural areas. *Ecological Questions*: 15, 2011.
27. Świetlikowska, Urszula. *Agroturystyka*. Warszawa: SGGW, 2000.
28. Wiatrak, Andrzej. Czynniki określające rozwój turystyki na obszarach wiejskich. *Problemy Turystyki*: nr 2, 1995.
29. Wilczyński, Ryszard. Odnowa wsi perspektywą rozwoju obszarów wiejskich w Polsce. Fundusz Współpracy i Krajowe Centrum Doradztwa Rozwoju Rolnictwa i Obszarów Wiejskich. Poznań: 2003.
30. Wojciechowska, Jolanta. Geneza oraz ewolucja turystyki na obszarach wiejskich w Polsce. *Folia Turistica*, nr 17: 2006.
31. Wojciechowska, Jolanta. Procesy i uwarunkowania rozwoju agroturystyki w Polsce. Wydawnictwo Uniwersytetu Łódzkiego. Łódź: 2009.
32. Zawadka, Jan. Ekonomiczno-społeczne determinanty rozwoju agroturystyki na Lubelszczyźnie (na przykładzie wybranych gmin wiejskich). Wydawnictwo SGGW. Warszawa: 2010.
33. Żebrowski, Wojciech. Rewitalizacja obszarów wiejskich jako wizja ich rozwoju. Wojewódzki Fundusz Ochrony Środowiska i Gospodarki Wodnej. Olsztyn, 2004.