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Research Article

Exceeding Self-Awareness and Being Aware of the External World

Dr. Abbas Kharabi Masouleh

Department of Science and Technology Studies,
Faculty of Science, University of Malaya,
Kuala Lumpur, Malaysia

Dr. Mohd Zufri bin Mamat

Senior Lecturer,
Department of Science and Technology Studies,
Faculty of Science, University of Malaya,
Kuala Lumpur, Malaysia

Dr. Maisarah Bint Hasbullah

Senior Lecturer,
Department of Science and Technology Studies,
Faculty of Science, University of Malaya,
Kuala Lumpur, Malaysia

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Abstract

This paper focuses on the approaches of two rationalist philosophers, namely Avicenna from the East, and Descartes from the West, on the epistemic relationship between the human mind and the external world. The introspective reflection of both philosophers is the starting point on which they establish their epistemic structure spanning a passage over this gap. Their engagement in this introspection bears some considerable similarities and distinctions which allow me to do a comparison between some of their epistemic theories which are based on their rationalism and explain how a person exceeds self-awareness to be aware of the external world. Taking a detailed look at the two thinkers' methodologies and their approaches to self-awareness, the effort tries to analyze systematically their epistemological theories explicating the cognitive relationship between the mind and the external world. In the course of the discussion, Avicenna's theory concerning the actualization of quiddity either with the mental or with the objective existence is compared with Descartes' meditations according to which through a dynamic series of mental exercises the mind follows in its journey from an absolute doubt to an absolute certainty. The discussion leads to raise some fundamental questions of their expositions proceeding from self-reflection to the awareness of the outer world. Although the critical discourses in the history of philosophy on the ideas of the two philosophers assist me in this research, the methodology of this research is concerned with the conceptual analysis rather than historical influences.

Keywords: *Avicenna, Descartes, certainty, inner world, external world*

1. Introduction

The explanation of relationship between self-awareness and being aware of the external world is one of the engagements of some realist philosophers such as Avicenna and Descartes who deemed that the objective world is independent of human mind. As to the very issue, Avicenna's scenario of

floating man (Ibn Sīnā, Shifā 1975; Ibn Sīnā, Ishārāt, 1892; Marmura, 2005)[1] and Descartes' cogito (Cottingham et al., 1985) were widely discussed and compared by modern commentators through different aspects (Butterworth, 1988). However, the problematic process they apply to explain how one proceeds from self-awareness to know the external world evokes still more questions that require some broader systematic analysis in the foundations of their rationalism.

As far as the history of anthropology is concerned,, the issue of self-awareness has been viewed through various perspectives by philosophers and psychologists. Self-awareness which engages in introspective reflection is an ability to recognize oneself as a certain reality possessing consciousness and separating from everything in its environment. In the history of philosophy, particularly that of Aristotelian tradition, we see a tendency according to which issues surrounding the self-knowledge and consciousness have been considered as to focus on their epistemic and psychological aspects. The general tendency to the role of self and self-knowledge continued until Modern Age and went as far as David Hume (1711-1776) who denied self as a real fact and defined it as just a bunch of sense perceptions (Hume, 1896). Based on this general trend, Kant (1724-1804) believed that since the consciousness of self is an empirical and continually changing experience, a substantial and sustained fact as self could not present itself in this continually changing inner experience (Kant, 1981). We could trace the origin of this importance of self-knowledgement in Aristotelian thought which characterized human intellect as an absolute capacity which is not actually anything before it starts knowing other things (Black, 2008). The present paper is particularly to shed light on two exceptional inclinations, namely, Avicenna (980-1037), as a peripatetic philosopher of the Islamic world, and Descartes (1596-1650), as one of the pioneers of modernism, who both centred the foundation of their philosophy on introspection and explained the possibility of proceeding from self-awareness to know the external world.

The problem statement is explicitly specified to make an inquiry whether the two rationalist philosophers could proceed from self-reflection to know the external world or remain in their epistemic introspection, a conclusion which in effect contradicts the realist foundation of their epistemic theories. Descartes' argumentative strategy, in proceedings from self-awareness, is based on a kind of logical deductive inference that verifies the hypothesis that there must be a supreme Being which is not capable of deceiving human beings in their understanding of the external world (Descartes, 1964-76). Hence, Descartes relying on the denial of any systematic impediment of knowing the outside world settles his epistemology on a realist ground. Based on a logical systematic analysis, it is analyzed in this research whether there is a contradiction between deception and perfection that Descartes assumes they cannot be both logically true in a supreme Being. Instead, since Avicenna's metaphysical starting point is not based on doubt (Marmura, 2005), his epistemic optimism is established on the sameness of quiddity (= essence) which is either actualized by the external or by the mental existence, the theory originates from his special ontology. In fact, the nature of correspondence theory is changed into the identity theory in Avicenna's scholarship to explain the sameness of essence of the known object in the mind and in the external world. In spite of this optimistic explanation, the effort is to give a highlight to a question which still nags how we can verify that the quiddity of a known object in our mind is identical with what is in the external world? Of course, this is not an epistemological predicament in Avicenna's doctrine because the issue stems in fact from his ontological explication underlying the sameness between the essence of objects with mental and the external existence. But, as there is not any fundamental skeptical theory in Avicenna's ontology, (Ibn Sīnā, Najāt ,1938; Ibn Sīnā, Ishārāt, 1971; Gutas, 2013) this problem still remains out of question in his epistemology.

2. Discussion

Among the inner realities such as pain or happiness, the state of awareness plays a fundamental role in Avicenna's epistemic and psychological approach. To explain this special awareness,

[1] *These works hereafter cited as Psychology, Ishārāt, Shifā.*

Avicenna proposes an introspective reflection propounded in his specific hypothesis known as floating (flying) man (Ibn Sīnā, Ishārāt, 1971; Inati, 2014). In this thought experience, on one hand, self-awareness is an initial point indicating how Avicenna's epistemology is established on an inner indubitable reality independent of body and continually aware of its existence. On the other hand , it involves the independence of human soul as an immaterial reality separate from body and its physical properties. Hence, Avicenna's thought experience which then became controversial among Latin Scholars and influential on the modern tenets such as Cartesian Cogito can be concerned with two perspectives: epistemology and psychology.

The psychological aspect of this experience which serves as the primary purpose is concerned with Avicenna' disagreement with Ash'arites, Muslim speculative theologians (*Mutakallimūn*), on the question of the nature of what every person refers to by expressing personal pronoun "I". The Arabic word Nafs (soul, self) is commonly used by Muslim scholars in their works to refer to the referent of the pronoun "I". Their problematic question was whether the essence of this referent, as a reality, is an immaterial rational soul as Avicenna maintained or as a material entity as the theologians held (Marmura, 2005). To prove his idea about the reality of human soul, Avicenna appeals to a hypothesis in which the person has to imagine himself at the beginning of his creation with healthy intellect and disposition, supposedly the person is in a suspended space and all his sensory organs are totally deprived and different parts of his body do not perceive each other nor has the person his members (Ibn Sīnā, Ishārāt, 1971; Inati, 2014; Ibn Sīnā, Shifā, 1975; Ibn Sīnā, Ishārāt, 1892). In such a suspended position, the person finds that he ignores everything except an independent substance conscious of itself and independent of his body. In this circumstance, by referring to the soul as the conscious reality and body as the unconscious thing, Avicenna determines the distinction between soul and body, and assigns all material aspects of human being like hands, feet and other physical organs as external objects. Therefore, Avicenna's emphasis in this thought experience is on settling his psychological attitude based on the dichotomy of human soul as an immaterial reality and body as a matter against the Muslim theologians who denied the quality of being immaterial in human soul.

The epistemic aspect of this experience deals with a kind of self-awareness in which Avicenna endeavors to find an indispensable starting point of human knowledge. The concept of self-awareness is the same starting point of human knowledge that plays a primordial role in Avicenna's epistemology (Black, 2008). This experience clearly illustrates how the foundations of his epistemology are settled on a kind of primitive self-awareness in which the real entity of human being, and soul, could perceive itself directly independent of its physical organs. As for the terminology of soul which is the translation from the Arabic word "Nafs", it simply refers to the very reality that one means by saying "I" and in some works of Michael Marmura it is translated as self (2005). Avicenna's experience is that if one imagines himself to be in his first creation, matured and whole in mind and body, while it is supposed that he is in a generality of physical circumstance in which his limbs do not touch each other but are rather spread apart so that he does not perceive the parts of his body, and that he is momentarily suspended in temperate air, he will find that he is unaware of everything except the fixedness of his individual existence (Ibn Sīnā, Ishārāt, 1971; Ibn Sīnā, Ishārāt, 1958). In such an experience, the conscious reality of human being, the soul, is apprehended directly by itself abandoning any effect of external objects, even its body, limbs or internal organs.

Avicenna is of the view that human being at the very outset involves self-awareness which is prior to other knowledge, and essentially is concomitant with human being. That is, if the human soul comes to be, self-awareness simultaneously comes to be along with it too. Such an awareness is a direct one (Alwishah, 2006) as there is no condition, except for the existence of human soul, for it in any way. Nor is human soul aware of itself through anything, but rather it is aware of and through itself. The concomitance between human soul and self-awareness is so strong that Avicenna identifies self-awareness with the soul's mere existence (Ibn Sīnā, al-Ta'līqāt,1973). These concomitance originates from the fact that the act of introspection is caused by the object introspected (Ibn Sīnā, al-Mubāḥathāt, 1992), and this is the only case in which Avicenna accepts the unity between the known object and the knower subject.

Since Avicenna is a realist philosopher who believes in a real, independent world outside

human soul, he explaines the process of proceeding from self-awareness to be aware of the external world (Inati, 2014). Sense perception is the initial step Avicenna takes toward the external world. For Avicenna, the external world which is the source of knowledge for man is divided into two levels: material world including all corporeal objectives such as inanimate objects, plants, animals, and their material properties like color, shape, space or time, and intelligible world containing incorporeal realities such as intellects, angels and intelligible forms. Human's direct contact with the material world is established by what Avicenna calls external senses, namely sight, hearing, smell, taste and touch. Each of the sense organs is influenced by a specific sensible material object, and perceives its form by depending on its special capacity. From the standpoint of Avicenna's view, the human mind at the beginning of life is in the stage of potentiality empty of any kind of thought, and gradually sensory organs receive some impressions by establishing a direct contact with the material world. Here, he puts forward Aristotelian theory of potency to prove that there is a kind of passive and active relationship between human intellect empty at birth and the external objects (Knuuttila, 2008). In fact, sense perception plays a primitive role in knowing the external world and within a cognitive process provides the opportunity of apprehending intelligible forms. Hence, for Avicenna, the knowledge of the external world is of different levels that initiates from sensation and proceeds to apprehension of intelligible forms.

However, considering Avicenna's view about the degrees of abstraction which explains the progress from particular sensible forms to universal intelligible forms shows that we could not simply know Avicenna as an absolute empiricist philosopher. Specially, in spite of initial role of sensation, Avicenna downplays the authenticity of sense experience in representing the essence of an object, and considers its function as the preliminary operation which serves to make human soul ready for apprehending the intelligible forms from an incorporeal level of the world (Inati, 2014; Hasse, 2013; Yaldir, 2009). This explanation in Avicenna's epistemic exposition tends to be towards the Neoplatonic approach to the realities at a higher level of existence and the notion of real knowledge. This is the very point based on which Avicenna's interpreters mainly elicited two empirical and rational explanations from his philosophy (Hasse, 2013). So, Avicenna's epistemic exposition in knowing the external world is neither absolutely empirical nor a rational approach but rather a kind of empirical-rational interpretation.

Around six centuries after Avicenna, in the Western world at the beginning of the modern period, self-awareness in a similar manner was viewed by French philosopher Rene Descartes to establish his epistemology on an absolute certainty. The awesome similarity between the two philosophers is that this philosopher, too, leaves the person in a suspended state, and absolute doubtness, to maintain an initiating foundation to establish the whole certain knowledge on it (Descartes, 1964-76; Cottingham and Stoothoff, 1985). The suspended state is the common approach both the philosophers appeal to, but Avicenna performs it in imagining a physical hanging position of the body while Descartes' entirely absolute doubtfulness leaves the person in a mentally suspended position. In such a suspended state, Descartes seeks an initiating certainty to establish the whole knowledge on it and to argue how a person starts proceeding from self-awareness to know the external reality. Unlike Avicenna, Descartes in his doubtfulness appeals to the idea of a most perfect Being as the departure from the inner to the external world (Cottingham and Stoothoff, 1985; Descartes, 1964-76). However, as Avicenna's metaphysical starting point is not in doubt, in his thought experience he does not prove his existence or seek a certainty to establish his philosophical system on it. For Avicenna and other Muslim scholars, it is certain that there is existence here and the knowledge of soul is included among those cognitions that are necessary.

Before carrying out a comparative study between their epistemic expositions, it seems necessary to make a short synopsis of Descartes' epistemic method. As Avicenna's scenario, floating man, leaves the person pendent in a physically suspending situation to find a stable cornerstone, Descartes' epistemic methodology, too, drowns the person thoroughly in a kind of mental suspended circumstance to seek a stable point secured to establish his knowledge on it. The circumstance in which Descartes attempts to discover a trustful object is doubtful which questions the principles in which the knowledge of his time was based. So, the theory of doubt as a touchstone has an effective role in this philosopher's methodology, and he just admits the propositions which could survive in the flood of doubts. In his meditation, Descartes discovers an

undeniable reality, thinking thing, and asserts that he is something which thinks and that he could not deny or even doubt this reality (Cottingham and Stoothoff, 1985; Descartes, 1964-76). Therefore, the thinking thing, or self, is the first undeniable object that he finds and self-awareness is the first knowledge he admits as a secured point to establish all his knowledge on it.

After proving the existence of self and what belongs to it like thinking as the inner world, Descartes is ready to deal with the outer world and starts seeking whether we could affirm anything outside the self. Descartes draws an obscure line between the inner and external world. My mind and whatever belongs to it, such as thinking and its different forms like desiring, imagining ideas or doubting constitute my inner world, and the external world consists of my body, God if exists, other minds and all material objects. The crucial point here is that how Descartes bridges the gap between these two worlds in a manner that he could certainly acknowledge the existence of what appears to exist. The fact that we experience perceptions from the external world such as different sounds, shapes, colors, smells, tastes and so many others could not be doubted, but we may fall to error just when we attempt to go beyond our ideas and perceptions to seek what are represented by them (Cottingham and Stoothoff, 1985; Descartes, 1964-76).

We know that to bridge this epistemic gap, Descartes appeals to the concept of a supremely perfect Being, God. Relying on the rule of clarity and distinctness, Descartes presented his cosmological argument for the existence of God to prove with certainty that God exists (Ibid). After having proved the existence of God, Descartes' problem is how we could be sure that such a dominantly omnipotent being is not so evil a God that constantly is ingeniously deceiving us in what our perceptions and ideas represent. As the origin of will to do deceit is because of defect, Descartes in his third and fourth meditations denies the possibility of God's deception (Ibid). This argument leads us to conclude that as God exists and is not a deceiver, He may not mislead us in understanding what is real. That is, we could not be created essentially in a systematic error inescapable. In short, according to Descartes, by proving the fact that my self as a thinking thing must exist, that the idea of an absolutely infinite being, God, necessarily has a corresponding objective in the real world, and that such a supreme reality could not be a deceiver, the door would be open for me to exit from self-awareness to be aware of the outer world.

3. Comparing Avicenna's And Descartes' Epistemic Perspectives

The crucial point here is that in the two philosophers' systems, introspective reflection plays a key position in their methodologies. They, however, appeal to this basic point with different purposes. According to Descartes, introspective reflection is the initial point of awareness to establish his rationalist epistemology on it, but Avicenna has more a psychological approach to it to determine the reality and domain of what each person refers to as "I", soul "Nafs", an immaterial conscious fact independent of the body and other physical aspects. This difference originates from the fact that, unlike Descartes, Avicenna did not have essentially any skeptical theory in his epistemology to challenge him to reply his doubtness. Yet since introspection is an acceptable initial principle in the two philosophers' doctrines, it could be a comparable point in their philosophies. They used two different methods to approach this beginning point. Through the scenario of floating man, Avicenna proposed a physically suspended position to discover the self which is immediately aware of its own existence, and is also independent of and separate from the body and material aspects. Descartes' methodology, however, is a kind of mental pending which enables him to recognize himself as a thinking thing whose reality is undeniable. Both the philosophers appeal to two suspended states to seek an indubitable starting point which appears different to them. The indubitable point which Descartes reaches is the state of doubtness itself, but the soul "Nafs" as the substance supporting this state is Avicenna's certain base. In both the scenarios the soul, as an indubitable reality, plays the main role, and self-awareness is the foundation of knowledge. According to Avicenna, the criterion of certainty in self-awareness is its directness and unconditionedness and that is the reason why we could be certain of its truth while the truth of our awareness of the objects in the external world is conditioned, that is, it depends on conformity between the ideas and the objects represented by them. But in Descartes' epistemology, the theory of clarity and distinctness as a touchstone determines the certainty or doubtless.

After proving the inner world as the first principle, the main epistemic problem in the two philosophers' epistemologies is the proceeding from the self to the external world. Descartes wondered whether he could be sure that he is sitting in a particular place, feeling the heat of the fire in front of him, clothed in his winter gown, touching the piece of wax in his hands and other intimations. To proceed further, he appeals to the idea of an existent substance possessing positive attributes in an unlimited degree. He assumes a Supreme Being which, as the most perfect fact, may not be an evil deceiver to mislead us into understanding the real objects in our physical environment. Of course, as it was already mentioned, since there is not any skeptical theory in Avicenna's scholarship, he did not need to appeal to a Supreme Being to open the door to the external world. If Avicenna endeavors to prove the existence of God, instead of finding an epistemologically certain foundation, his main goal is to interpret his religious theism from a rational standpoint.

The two philosophers' approaches to the validity of sense perceptions are also different. Sense perception is the initial step Avicenna takes towards the external world. In comparison with Descartes, we cannot consider Avicenna as an absolute rationalist philosopher. In Avicenna's epistemology, sense perceptions play the fundamental and beginning role. Relying on the validity of sense perceptions, he settles for the abstraction theory on perceiving the particular sensible forms, and thereby he rationalized the process of abstracting intelligible universals and preparation of the human intellect to receive the intelligible concepts through emanation from the Active Intellect. Descartes' skepticism, however, rejects the validity of sense perceptions. He asserts that sensation could be perceived clearly and distinctly if it is considered merely as a sensation or idea, but when it is judged whether it exists outside the mind or how it is, there is no way to prove that our sense impressions are representing the real objects in the external world.

The two philosophers' different approaches to the function of rationalism in knowing the external world is considerable. According to Descartes, just intellectual ideas which are perceived clearly and distinctly are innate and reliable. Descartes' rationalism is based on pure reason providing the primary basis for human knowledge. Geometric definitions, axioms of mathematics and the extent of matter are some of the cases of conceiving something intellectually. For instance, without seeing or touching a spherical object we could understand easily the concept of sphere by its mathematical definition, a three-dimensional surface, all points of which are equidistant from a fixed point. Such an understanding is absolutely a rational perception which is a function of the mind without any relationship with the sense perception and external world, and the idea of the sphere is general and does not have any particular properties of such specific size, color, location or motion (Ibid). In fact, intellectual ideas tell us the eternal truths which are general and not dependent on a corresponding present object. Although, amongst Muslim scholars, Avicenna is known as a rationalist philosopher, the meaning of rationalism in his doctrine is essentially different from what we see in Descartes' scholarship. Abstracting the universal intelligible concepts from particular sensible forms is the basis of Avicenna's rationalism (D'Ancona, 2008). According to Avicenna, the function of rationality is identified in the process of abstraction. That is, the particular sensible forms provided by sensory organs to the extent that are detached by human intellect from material properties such as time, space, shape and others, their relationship to the material world decreases, and after images (*Takhayyulāt*) they are raised to a higher rank of existence, incorporeal realities known as intelligible forms (*Ma'qūlāt*), and are apprehended just by human intellect. In this rank of abstraction, sense perception as a material factor in the process of cognition absolutely loses its function because rational soul or human intellect, which itself is an incorporeal substance, is the substratum of incorporeal intelligibles which emanate from Active Intellect.

Avicenna's theory of abstraction explaines how through a process of abstraction human intellect proceeds from a particular sensible form of something to its universal intelligible concept possessing a deeper level of the reality. Based on Neo-platonic interpretation, it explicates how perception of sensible forms enables human soul to be connected to Active Intellect which is the source of intelligible concepts in a higher order of existence (Ibn Sīnā, Najāt, 1938). In this sense, sense perception is concerned with comprehending a superficial level of a reality, and is a precondition to know an intelligible concept which is a profounder level of the reality. Therefore, according to the abstraction theory, we see a hierarchical order in the reality of which apparent

sensible level is perceived through sensory organs, and its universal intelligible essence coming from a great depth is comprehended by human intellect. That is, in accordance with Avicenna's abstraction theory, in each degree of abstraction, we know some level of reality whilst in Descartes' methodology there is not such a hierarchical order in reality, but our understanding of the reality bears a range from ambiguity to clarity and distinctness, and to know the essence of something, we have to demolish its idea completely to recognize its essential properties which is clear to us and distinct from others. In other words, according to Descartes, to know the essence of everything, we must have a clear and distinct idea of it in our mind, but as determined by Avicenna, in the process of proceeding from particular sensible forms to intelligible universal concepts, different levels of reality are known by the human intellect.

As it was mentioned earlier, to open the door into the external world, Descartes' appeals to prove the existence of an absolutely supreme being whose deception is necessarily impossible. For the purpose, he relies on the method similar to Anselm's argumentation, namely, the idea of the most perfect existent. The first problem of this argumentation is that Descartes by relying on a merely mental idea of a Supreme Being attempts to prove God's existence in the external world. This is the very problem faced by typical rationalist who priviledges the mind and ends up being an idealist, if not solipsist, who could not establish the reality of the external world. Plato was well aware of this, but he regarded the external world as being an imperfect copy of the world of forms which is only accessible through the mind. Hence his ontology is slightly different in that he actually believed in the separate existence of a world of forms, which contemporary rationalists do not subscribe to. The second one is related to God's deception which after proving the God's existence has a fundamental role in Descartes' argument. Since the theory claiming that the source of deception is an imperfection is an ethical assumption, the question arises how we can rely on an ethical principle in our philosophical theories which must be based on bare reason.

4. Conclusion

If we analyze Descartes' argumentative strategy, we could explicate that Descartes through a kind of deductive inference, namely reasoning from general to specific, reaches a conclusion that God is not capable of deceiving.

A. The major premise: The most perfect being cannot be deceiver.
B. The minor premise: God is the most perfect being.
C. Conclusion: God cannot be a deceiver being.

There is not any problem in the form of this argumentation, but the main question is about the matter of this deduction i.e. the major premise: The most perfect being cannot be deceiver. If I asked Descartes how he claimed that the most perfect being cannot be deceiver, he would probably reply that deception originates from imperfection, and as imperfection and perfection are contradictories, they cannot be both true in a fact and since God is perfect He cannot be imperfect, and ultimately since He is perfect, He cannot be deceiver. But it is not justified how Descartes reached the conclusion that since God is perfect, He cannot be a deceiver. Explicitly, what is the contradiction between deception and perfection that Descartes assumed that they cannot be both true in a perfect Being? Can we prove logically a concomitance like causal relationship between deception and imperfection to argue that since there is not the cause of deception in God, there is no deception in God? It seems there is no logical contradiction between the deception and the perfection unless relying on an ethical principle we claim that they are two contradictory attributes which both could not be true in a fact.

While on the contrary, due to Avicenna's ontology, no epistemological skepticism originates from his doctrine. He proposes his epistemic optimism relying on the identical quiddity which either is actualized by the external or by the mental existence; the theory originates from his special ontology. Whenever the quiddity is actualized in the external world, it bears its special properties such as extent, place and others, and when the same quiddity appears with mental existence, being representative is its most important effect. First, this explanation accentuates that not only Avicenna denies that the external world is a projection of our mental states, but also he holds it is a mind-independent fact outside the knower and marks its impression on the human mind. Second, it

indicates that Avicenna relying on the correspondence theory explains the relationship between the known object and the knower.

To examine the weak and strong points of this theory, we have to prove that the forms present to mind accurately represent their objects, and really correspond to them. For the purpose, Avicenna suggests the theory of identical quiddity which is an ontological ground to establish his epistemic optimism. In fact, the nature of correspondence theory is changed into the theory of identity in Avicenna's scholarship to explain the sameness of essence of the known object in the mind and the external world.

The main question of Avicenna's epistemology is how can we prove that the quiddity of an object in our mind is identical with what is in the external world? The nature of this question is the same as the problem propounded in the correspondence theory. Of course, this is not an epistemological question in Avicenna's doctrine because it refers to his ontological explication underlying the sameness between the essence of objects with mental and the external existence. But as there is not any fundamental skeptical theory in Avicenna's ontology, such question still remains incontrovertible in his epistemology.

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Research Article

National Insecurity and the Challenges of Food Security in Nigeria

Agaptus Nwozor, Ph.D[1*]

John Shola Olanrewaju, Ph.D[1]

Modupe B. Ake, Ph.D[1]

[1]Department of Political Science and International Relations
Landmark University, Omu-Aran, Kwara State. Nigeria
**Corresponding Author*

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Abstract

Nigeria has been overly dependent on oil for its foreign exchange earnings and government revenue since the oil boom of the 1970s. Prior to this period, the country was reasonably self-sufficient in food production and carved a respectable niche for itself as a major exporter of several cash crops. However, as agriculture lost its primacy to oil, it went into steady decline due to neglect by successive governments. The neglect led to mass abandonment of farms resulting in extreme peasantization of the sector. A related negative fallout was Nigeria's transition from food self-sufficiency to food-dependency and attendant massive importation to bridge food gaps. However, efforts are being made by the government to reposition the agricultural sector to boost its productive capacity and make it competitive. The major task of this study is to evaluate Nigeria's quest to achieve food security against the backdrop of national insecurity. Considering the categorization of Nigeria as food insecure, the study examines the interconnection between national insecurity and food production as a prelude to the actualization of food security. The study relies on primary and secondary data to evaluate the feasibility of food security in the face of sustained insecurity across the country. The study finds that the achievement of food security would be impossible if the insecurity that pervades and envelopes farming communities is not resolved.

Keywords: *food security, national insecurity, agricultural sector, food insecure, Nigeria*

1. Introduction

The key thrust of Nigeria's agricultural renaissance is to diversify its economy by making agriculture the hub of economic growth while also achieving a hunger-free country. A hunger-free country is one that is food secure. Food security has become a national priority for the country considering that a vast majority of its 198.1 million population is food insecure (FMARD, 2016). Food and nutrition insecurity is prevalent in Nigeria despite its favorable agro-ecological endowments. It has a total landmass of 92.4 million hectares, out of which only about 32 million hectares or 34.63 percent are under cultivation. Nigeria, therefore, lacks both the capacity and capability to cater for the food and nutrition requirements of its teeming population. As such, food insecurity and the prevalence of under-nutrition in Nigeria are among the worst globally (Fadare et al, 2019).

The picture of Nigeria's food and nutrition insecurity has been on worsening trend. According to FAO et al (2019), between 2004 and 2006, the total number of undernourished Nigerians was 9.1 million. This number increased to 25.6 million people or 281.32 percent in the period between 2016 and 2018. As Nigeria's population, which has growth rate of 3.1 percent continues to expand, the food and nutrition requirements of the country would also increase with the likelihood that food

and nutrition insecurity might assume alarming dimensions.

Although Nigeria is yet to devote 10 percent of its annual national budget to agriculture to be on track to achieving 6 percent growth in productivity as projected in the Comprehensive Africa Agricultural Development Program (CAADP) and the ECOWAS Agricultural Policy (ECOWAP) documents, it initiated major agricultural policies from 2010 and has been pursuing them (FMARD, 2016). Although modest progress has been made in the production of cassava and rice, there are still enormous gaps between domestic production and demand for many staple crops. Thus, Nigeria expends huge amount of its scarce resources on food importation. Nigeria's Central Bank sources indicated that the country's monthly import bill in 2015 was US$665.4 million. However, new data from the same source showed that the figure had drastically fallen to US$160.4 million monthly by October 2018 (Popoola, 2018). Notwithstanding these snippets of success, the overall picture is that Nigeria is grossly food and nutrition insecure with the lurking danger that it could slip into acute food insecurity without warning due to the erosion of agricultural productivity by national insecurity.

Undoubtedly, there are immense potentials in Nigeria's agricultural sector, which if properly managed would unleash income growth for farmers, food and nutritional security, and employment opportunities as well as elevate the country to the ranks of leading players in global food markets. (FMARD, 2011). However, there are various barriers to repositioning Nigeria's agricultural sector. These include among others, uncompetitive environment for agribusiness, underinvestment, corruption, lack of access to credits as well as quality agricultural inputs, weak implementation of policies, poor market access and national insecurity (Downie, 2017). The major threat to the agricultural sector is insecurity from both the Boko Haram and Fulani herdsmen. In the northeast of Nigeria, the sustained terrorist activities of the Boko Haram have had negative impact on agricultural activities. Not only are farming activities incapable of being carried out under an insecure environment, domestic agricultural production is stifled, farming communities are displaced and access to regional market is blocked (Eigege & Cooke, 2016). In addition to the Boko Haram group, the Fulani herdsmen have become a major threat to farming communities due to incessant attacks on these communities with attendant fatalities.

In evaluating Nigeria's quest to achieve food security, this study underscores the impediment that insecurity poses to the realization of food security. It highlights that the destructive impacts of insecurity are antithetical to farming activities and, as such, would lead to food shortages and worsen the already bad food insecurity profile of Nigeria. The study employed primary and secondary data to address its major objective of examining the interconnection between national insecurity and the feasibility of achieving food security in Nigeria. It generated its primary data from interviews organized for eight key informants drawn from diverse backgrounds. These informants were chosen through the instrumentality of convenience sampling technique of nonprobability sampling method. The secondary data were obtained from archival materials including official documents from the Nigerian government and international non-governmental and intergovernmental organizations. The study found that national insecurity crowds out agricultural productivity. In other words, the disruptions from the activities of the Boko Haram group and Fulani herdsmen undermine the capacity of farming communities to produce optimally thereby creating food shortages that ultimately deepen food insecurity profile of the country.

2. The Linkages: Exploring the Nexus between Food Security and National Security

For the past twenty years, issues relating to food security have constituted a major focus of the policy thrust of the international community. As a matter of fact, it formed part of the major goals, which the world leaders initially agreed to devote resources to actualizing by 2015 but now by 2030. Thus, from the millennium development goals (MDGs) which the world leaders launched in 2000 to its successor, the sustainable development goals (SDGs), the global focus has crystalized from the desire to eradicate extreme poverty and hunger to the determination to ensure "no poverty" and "zero hunger" by 2030. However, the achievement of these two noble goals among the 17 goals that constitute the SDGs may be difficult to realize in conflict-ridden environments.

The concept of national security has metamorphosed over time. Thus, from state-centric view of the realist school, which is centered on the twin preoccupations of regime survival and the

preservation of the territorial integrity of the state system, national security has expanded and become multilayered as it draws deeper and broader insights from other schools of thoughts and disciplines. Therefore, national security is no longer to be understood from the narrow, restrictive, militaristic and strategic perspective that focuses on the absence of threats to governmental authority and the presence of domestic capacity to contain activities from centrifugal forces whether in terms of internal subversive activities or as external attempts to sabotage and attack the state (Nwozor, 2018).

The refurbishment of the concept of national security has produced a paradigmatic shift in its contemporary definitional criteria as it is now conferred with added quality and dynamism. Nwozor (2013) has pointed out that national security now transcends the traditional frontiers of state-centrism and incorporates man and the environment within the milieu of sustainability. Thus, within the precinct of this conceptualization, national security may be viewed as a multidimensional phenomenon whose leitmotif centers on safeguarding national values, which in turn encompasses all the actions taken by the state in furtherance of its diverse policies concerning its overall security whether symbolic, physical or psychological. These national values may span the environment, economic security or security of the economy, sustainability of the planetary ecosystem, and the reconciliation of the competing interests of the various classes in the state (Nnoli, 2006; Nwozor, 2013).

National security is intrinsically linked to human security. Indeed, human security is at the epicenter of national security. Human security prioritizes the security of the individual over that of the state since there can be no state without its citizens. Louw and Lubbe (2017, p.17) have noted that human security "primarily focuses on protecting the integral worth of people against insecurities" by dealing with "the circumstances that threaten the well-being and survival of the people". Thus, human security emphasizes the "establishment of food and water security, economic and political security for the general population as critical mechanisms to achieve a more stable level of state security" (Lanicci et al, 2017, p.17).

Since almost every state constitutionally pledges to pursue the welfare of its citizens, their national security framework must necessarily incorporate policy thrusts that focus on, and reify issues that are promotive of human security. Thus, the major objective of national security is to achieve complete security for both the state and its citizens by engendering an environment of peace. Therefore, it is a peaceful environment that catalyzes the realization of people's wellbeing. A peaceful environment must reassure the citizens of their safety from every form of symbolic, physical and psychological threats. The reassurance must be anchored on the demonstrated capacity of the state to guarantee an environment where citizens would be safe to pursue their livelihood activities.

One of the major pedestals upon which human security stands is the guarantee that everyone will have access to the necessities of life, of which food is an integral component. Thus, when there is no food or food shortage in a polity, it could lead to all sorts of insecurity (Notaras, 2011; Berazneva & Lee, 2013). The centrality of food in the framework of development underscores the global quest to ensure its availability. The achievement of food security has, therefore, become the major goals of not just nation-states but also the global community.

Issues relating to food security initially only focused on food supply problems with particular reference to the availability of adequate supplies of basic foodstuffs as well as price stability at the national and international levels with considerations also given to adequate nutrition and well-being (FAO, 2003). Since 1974, the concept of food security has undergone series of refinement starting from when it was simply conceptualized in terms of availability and adequacy of food supplies to sustain a steady expansion of consumption to when issues of securing access by vulnerable people and having enough food to lead an active, healthy life became its emphasis. Now, the issue of nutrition has been incorporated as an integral component of food security and it is referred to as food and nutrition security. Thus, food and nutrition security is presumed to exist "when all people at all times have physical, social and economic access to food, which is safe and consumed in sufficient quantity and quality to meet their dietary needs and food preferences, and is supported by an environment of adequate sanitation, health services and care, allowing for a healthy and active life" (FAO, 2012, p. 8).

Several factors contribute to food security in national settings. The key factors include favorable agro-ecological conditions, access to land, good agricultural policies that ensure sustained public and private investment in the sector, availability of farm inputs in terms of quality and quantity and peaceful atmosphere. If these factors are lacking in states, the likelihood of their meeting their food expectations may be a mirage. And if there is a shortfall in the availability of food, such that a cross section of the population could face the likelihood of food crisis, national security could be compromised as it could spark social unrest.

Evidence abounds with regard to food crises leading to unrest and even revolutions, which undermine national security. Historical evidence exists that demonstrates a link between higher food prices and violent riots. This linkage was quite evident during the global food crisis of 2007/2008 when the then record-high food prices prompted riots across several countries in various parts of the world irrespective of the type of government in operation (Notaras, 2011; Berazneva & Lee, 2013; Navarro, 2017).

In Nigeria, food insecurity is worsened by national insecurity as a result of protracted armed conflicts involving sundry groups, especially the Boko Haram group and Fulani herders. The activities of these groups in terms of invasion and sacking of farming communities have resulted in many civilian fatalities, creating acute insecurity. The state of insecurity in many of these farming communities has made it practically difficult for farmers to continue to engage in agricultural production optimally, thus affecting productivity and causing market disruptions with attendant food price shocks (Fadare et al, 2019). Therefore, a peaceful environment is a sine qua non for productive agricultural engagement, which results in food security. Food insecurity, on the other hand, mounts pressure on national security and invariably exacerbates national insecurity. Thus, sustainable food security under peaceful environment is an indispensable requisite to ensuring national security.

3. Reinventing Agriculture for National Development: Mapping Nigeria's Quest for Food Sufficiency

Prior to the discovery of oil in commercial quantity in Nigeria's Niger Delta in 1956, agriculture occupied a central place in the Nigerian economy. There was a healthy economic competition among the then four regions of the country as each exploited its comparative advantage by focusing on the cultivation and production of specific set of cash crops. Thus, Nigeria was reasonably self-sufficient in food production and carved a respectable niche for itself as a major exporter of a bouquet of cash crops ranging from groundnuts, palm oil, cocoa, rubber to cotton, including hide and skin (Smith, 2018; Okotie, 2018).

The dominance of agriculture in the Nigerian economy then could be seen from its contributions. Not only was agriculture able to cater for the 95 percent of the food needs of Nigerians, it contributed 64.1 percent of the Gross Domestic Product (GDP) and employed over 70 percent of the Nigerian population (Paul, 2015). Additionally, at that point, export of agricultural produce accounted for 80 percent of the country's foreign exchange earnings and 50 percent of government revenue (Okotie, 2018). However, the oil boom of the 1970s changed everything as the country became overly dependent on oil for its foreign exchange earnings. Since the mid-1970s, oil began to account approximately 95 percent of the country's foreign exchange earnings (Ikpeze et al, 2004; Okotie, 2018).

The oil boom led to an unprecedented inflow of foreign exchange that the then Head of State, Yakubu Gowon, was delirious with wealth and boasted that Nigeria's problem was not money but how to spend it (Ikpeze et al, 2004). It was estimated that between 1973 and 1981, Nigeria earned over N60 billion (about US$90 billion) from oil and adopted a spendthrift attitude (Ikpeze et al, 2004). A major casualty of the oil boom was the agricultural sector as it was neglected. With the neglect of the agricultural sector, it faded in appeal and most farmers abandoned their farms to participate in sharing from the windfall produced by the oil boom. According to Pinto (1987), the oil boom led to a severe disruption in the agricultural sector, which manifested in a large exodus of labor to the cities. The consequence of this shift was the peasantization of agriculture with attendant declining productivity.

Additionally, lack of government interest also resulted in poor policy intervention, such that farmers relied on obsolete crop varieties and over-aged trees to keep afloat. In other words, Nigeria did not flow with the tide of global best practices in the agricultural sector. As Okotie (2018) has pointed out, not only did Nigeria cease to be a major exporter of those cash crops for which it was previously renowned, such as cocoa, groundnut, rubber, and palm products, agriculture in the country's export profile dropped from 80 percent in 1960 to less than 2 percent. This was so because of the declining productivity in these cash crops. For example, between 1970 and 1982, annual production of these major cash crops, namely, cocoa, rubber, cotton, and groundnuts fell by 43, 29, 65, and 64 percent, respectively (Pinto, 1987).

Another consequence of wholesale abandonment of agriculture was that the share of agricultural imports in Nigeria's total imports expanded from about 3 percent in the late 1960s to about 7 percent in the early 1980s. With this expansion, Nigeria began its journey as a net importer of food. In 2015, Nigeria's monthly food import bill was put at US$665.4 million (Popoola, 2018). Despite the various national development plans that Nigeria implemented as well as some specialized agriculture-oriented policies, the agricultural sector has not recovered its past glory as its practice is still at the subsistence level without modern implements that could maximize productivity. It would appear that notwithstanding these various agricultural interventionist policies, Nigeria was only paying lip service to revamping the agricultural sector. This proposition derived its logic from the disconnect between these policy avowals and the current state of the agricultural sector.

Since the 1970s, successive governments have been emphasizing their desire to diversify the economy and reinstate the agricultural sector as a major driver of the Nigerian economy. However, nothing much has changed as the sector is still backward despite its potentials. Thus, from such agriculture-oriented policies as "Operation Feed the Nation" floated by the military regime of Olusegun Obasanjo in 1976, the "Green Revolution" flagged off by the administration of Shehu Shagari in 1982, the "National Economic Empowerment and Development Strategy" (NEEDS) rolled out by Olusegun Obasanjo in 2004, the "Agricultural Transformation Agenda" launched by the administration of Goodluck Jonathan in 2011 and the "Agriculture Promotion Policy" (APP) introduced by Muhammadu Buhari in 2016, no significant milestone has yet been recorded in the agricultural sector. Oil still dominates the Nigerian economy as the major foreign exchange earner for the country.

As part the global effort to leverage on agriculture towards the actualization of SDGs 1 and 2, the global community has been emphasizing on the indispensability of agriculture. The New Partnership for African Development (NEPAD) believes that the agricultural sector is the engine of economic growth in Africa. Thus, African leaders under the auspices of the African Union (AU) and NEPAD evolved a continental strategy in Maputo in 2003 called the Comprehensive Africa Agricultural Development Program (CAADP) to revitalize and leverage on the agricultural sector to drive development on the continent.

The CAADP is, therefore, a continental platform designed for collaboration among African countries to promote modern and sustainable agriculture that would enhance productivity and competitiveness, thereby guaranteeing food security and providing decent incomes to farmers and other agricultural workers. The key target of the CAADP is to achieve 6 percent growth in productivity with the expectation that African states would devote at least 10 percent of their annual national budgets to agriculture. According to NEPAD (2003), the CAADP is anchored on five mutually reinforcing pillars to rescue and reposition African agriculture. These pillars include: i) extending the area under sustainable land management and reliable water control systems; ii) improving rural infrastructure and trade-related capacities for improved market access; iii) increasing food supply and reducing hunger; iv) investment in agricultural research, including dissemination and adoption of technology; and v) pursuit of sustainable development of livestock, fisheries and forestry resources (NEPAD, 2003; Kolavalli, et al, 2010).

In line with the CAADP, the Economic Community of West African States (ECOWAS) developed its agricultural policy named ECOWAP in 2005. Thus, the ECOWAS Agricultural Policy (ECOWAP) is in tandem with CAADP and its thrust centers on the promotion of modern and sustainable agriculture in order to satisfy the food requirements of the population, contribute to

socio-economic development, reduce poverty in the sub-region and deal with inequalities among countries. Nigeria has keyed into the ECOWAP/CAADP agenda to revamp its agricultural sector as part of the overall of objectives of diversifying its monocultural economy and achieving food security.

Nigeria's two most recent policy thrusts are the Agricultural Transformation Agenda (ATA) that was launched in 2011 and the Agriculture Promotion Policy (APP) (also referred to as the Green Alternative), which was flagged off in 2016. The many years of neglect of agriculture by successive governments created complex contradictions in that sector. The foremost of these contradictions are the twin-problems of inadequacy of food production resulting in the inability to meet domestic food requirements, and the poor quality of crops because of poor knowledge of modern agronomy practices (FMARD, 2016). Both of the aforementioned contradictions are manifestations of the backwardness of Nigeria's agricultural sector.

Thus, the most contemporary agricultural policies of Nigeria, that is, ATA and APP, recognized the deficits and the great potentials in agriculture in terms of boosting employment opportunities, ensuring food security, providing a better quality of life and alleviating poverty and, therefore, were tailored to reposition the agricultural sector. The ATA was a departure from the way that previous interventionist policy instruments were conceptualized and implemented in the bid to restructure the agricultural sector (FMARD, 2011). The point of departure was the conceptualization of agriculture as a business and not a development project where the government would sink in money without clear-cut deliverables and expectations. Thus, within the framework of ATA, the primary role of the government was to create an enabling environment for private-sector leadership in providing all necessary inputs and services (FMARD, 2011). The APP, is the successor policy to ATA. In addition to building on the successes of ATA, the core mission of APP is to create an agribusiness economy with focus on meeting domestic food security goals of the country and delivering sustained prosperity to workers and investors in agricultural sector (FMARD, 2016). Thus, the policy thrusts of APP revolve around four key themes, namely, food security, import substitution, job creation, and economic diversification.

The crux of Nigeria's agricultural policy is to boost agricultural production such that the country would be food secure and cease to depend on food importation as prelude to achieving food security. Thus, the efforts of the government essentially consist of taking advantage of the country's natural endowments and favorable environment to boost food production and agro-allied industrial activities. Nigeria's natural endowments consist of a total landmass of 92.4 million hectares, of which about 79 million hectares are arable. Currently, only about 32 million hectares are under cultivation (FMARD, 2010). Agricultural activities are still stuck at the level of subsistence with majority of actors in the sector being smallholder farmers. Besides the peasant structure of the agricultural sector, it is still dominated by traditional agricultural methods with scant space for modern agronomy practices. Thus, several presidential initiatives, which were implemented, to strengthen the agricultural sector focused on modernizing the sector to ensure increased productivity that would pave the way for competitiveness. These initiatives focused on crop modifications and improvements with such crops as cassava, cocoa and rice among others receiving utmost attention (Diao et al, 2012).

4. The Nature of National Security Challenges in Nigeria

Nigeria is not at war in the real sense of the word but the carnage resulting from various forms of insecurity qualifies it to be regarded as conflict-ridden and at war. Conventionally, the threshold required to classify an armed conflict as a civil war is to record 1,000 battle deaths (Dupuy & Rustad, 2018; Guseh & Oritsejafor, 2019). Nigeria has consistently recorded deaths in excess of 1,000 from various conflicts unleashed by various groups across the country for decades. Both the Nigeria Security Tracker and the Armed Conflict Location and Event Data Project (ACLED) estimated the total number of deaths associated with the Boko Haram Terrorist group alone between June 2011 and June 2018 at 34,261 and 37,530 people (Campbell & Harwood, 2018). Apart from the Boko Haram sect, there are other sources of violent deaths, which include intra-community conflicts, herders-farmers' conflicts, clashes between security agencies and socio-

cultural and religious groups and other criminal activities, especially ransom kidnappings. In 2018 alone, there were about 10,665 fatalities from various types of violence in Nigeria with the highest source of violent deaths resulting from criminal activities, which recorded 3,425 deaths in 1,191 incidents (Ukoji et al, 2019).

In addition to the deadly activities of the Boko Haram sect in the northeastern geopolitical zone of the country, another major threat to national security with serious implications for food security is the menace of Fulani herdsmen. The Fulani herders are mainly nomadic as they traverse the entire country in search of pastures for their herds. The transhumance tradition of the Fulani herders has often pitted them against sedentary farmers as a result of the destruction of the farms of the latter. In the past, precisely before 1999, these conflicts were well managed by the herders and farmers that they never escalated to the level of recording fatalities. However, since 1999, when Nigeria returned to democratic rule, conflicts between the Fulani herders and farmers gradually assumed a different tone, frequency, ubiquity, complexity and lethality with the traditional dispute mechanisms becoming inadequate to contain them. The lethality of violence unleashed by the Fulani herders led the Institute for Economics and Peace to capture them in the global terrorism index and classify them as a terrorist group as well as name them as the fourth deadliest group in 2014 after having been responsible for the death of 1,229 people (IEP, 2015). This classification was instructive considering that in the previous year, i.e., 2013, the group was responsible for only 63 deaths (Burton, 2016).

Since 2014, the Fulani herders are still deadly as they are responsible for various forms of attacks, especially ransom kidnappings and militia expeditions against farming communities considered antagonistic to their herding and pasturing activities. What must have emboldened the spates of attacks by the Fulani herders is the nonchalance of the Nigerian government despite the international classification of these herders as terrorists. The source of the boldness of the Fulani herders is linked to the open support of their socio-cultural organizations, notably the Miyetti Allah Core Kautal Hore, Miyetti Allah Cattle Breeders Association of Nigeria and Fulani Nationality Movement as well as the tacit support of the Nigerian president, Muhammadu Buhari. Despite the perception of Nigerians that the presidency is shielding the herder-killers and their sponsors, the government has not done anything substantial to controvert this perception (International Crisis Group, 2017; Amnesty International, 2018; Ilo et al, 2019).

The boldness of the Fulani herders could be seen in the type of sophisticated weapons at their disposal. In the past, they only carried and relied on long wooden staff, machetes, and bows and arrows. But now, they parade the Soviet assault rifle, Avtomat Kalashnikova (AK47). And, with these weapons, they have been unleashing terror on farming communities across Nigeria. For instance, between 2010 and 2013, the Fulani herders were responsible for killing only 80 people compared to 1,229 people they killed in 2014 alone. Recent estimates paint a very distressing picture of carnage. It is estimated that more than 10,000 persons lost their lives in the past decade from the violence unleashed by Fulani herders on farming communities. Out of this figure, more than 6,000 persons were casualties in the past two years (Kwaja & Ademola-Adelehin, 2018; Ilo et al, 2019). A further breakdown showed that fatalities resulting from conflicts between Fulani herders and farmers in 2016 alone was about 2,500 persons. Similar high trend in fatalities manifested between 2011 and 2016 when more than 2,000 deaths on average were recorded (International Crisis Group, 2017). Updated data from the Nigeria Security Tracker documented that fatalities from Fulani herders-farmers' conflicts in 2017 and 2018 were 1,041 and 2,037 deaths respectively (Campbell, 2018). As the Fulani herders were unleashing violence across the country, so was the Boko Haram sect terrorizing the northeastern geopolitical zone. The record of fatalities linked to Boko Haram conflicts in 2018 showed a death toll of 2,016 persons (Campbell, 2018; Ilo et al, 2019). The combined effect of these conflicts is the disruption of activities necessary for food production with serious implications for food security.

The various conflicts have also created internal displacement. Since 2013, the activities of the Boko Haram group have been responsible for the displacement of 2.4 million people and putting more than seven million people at the risk of starvation (Campbell & Harwood, 2018; UNHCR, 2018). Across the major states in Nigeria where the Fulani herders have unleashed terror, a necessary fallout is internal displacement arising from the destruction of the ancestral homes of the

victims. For instance, estimates put the number of people displaced in Nigeria's Middle Belt states of Benue, Kaduna, Nasarawa and Plateau states at over 620,000 persons (Kwaja & Ademola-Adelehin, 2018). The impact of displacement on these farming communities is that their contributions to food production in the country is lost as they are not in any position to continue with their occupation of farming. The implication is the deepening of the food insecurity challenge in the country.

5. Hanging in the Balance: National Insecurity as Antithesis to Food Security

Nigeria is the most populous country in black Africa. Its population has always been on the increase since it achieved statehood. Prior to 2013, the country's population growth rate was 2.8 percent but since then, the growth rate has been 3.1 percent (CBN, 2018). The implication is that the country's population as at 2018 was 198.1 million with projections for persistent growth due to high fertility rate and improved child and maternal mortality (NBS, 2018; CBN, 2018). What this means is that Nigeria has an ever-expanding need for food in order to meet the food and nutrition needs of its population and achieve food security. The current situation is that Nigeria lacks both the capacity and capability to produce enough food to feed its population despite its favorable agro-ecological conditions. In other words, Nigeria is food insecure. According to FMARD (2016, p. 8), "Nigeria still imports about [US] $3 to $5 billion worth of food annually, especially wheat, rice, fish and sundry items, including fresh fruits". The burgeoning population means that more and more resources would be devoted to food importation in order to meet the basic food needs of the country.

Therefore, Nigeria's quest to rediscover and reposition agriculture in line with ECOWAP/CAADP agenda is two-pronged, namely, to modernize agriculture for enhanced productivity as well as competitiveness, and to develop strategic agricultural value chain approach for crops, livestock (including poultry) and fisheries. Both of these preoccupations are essentially aimed at addressing the food insecurity faced by the country. Nigeria has mobilized enormous investments in the agricultural sector in order to beef up food production and thus bridge demand-supply gaps in various staple foods. These investments have tended to focus on addressing the productivity challenge and the attendant hiatus between domestic production and demand. The productivity challenge is a product of inefficiency arising from continued application of outdated input system and farming models. While making efforts to modernize the agricultural sector, emphasis has also been placed on developing quality crops by revolutionizing seed varieties, fertilizer distribution system, irrigation system and general agronomy practices.

It is generally recognized that the translation of this noble intention of revitalizing the agricultural sector into concrete reality could only be possible when various agencies of government collaborate to provide infrastructure necessary to create a conducive agricultural environment. At the apex of the checklist of actions necessary to create a conductive environment in which agriculture could thrive is "improved security of farming communities to reduce [the] incidence of criminality" (FMARD, 2016, p. 5). Table 1 below shows that Nigeria is food insecure as there is a wide gap between domestic demand and supply. What this implies is that there is substantial foreign exchange flight out of the country through importation to augment the shortfalls. The overall implication is that farmers lose income that would otherwise have accrued to them and the agricultural sector continues to stagnate thereby losing its potential to generate employment.

Table 1: Gaps in demand and supply of selected staple crops (2016 Estimate)

Crop	Demand (tons)	Supply (tons)
Rice	6.3 million	2.3 million
Wheat	4.7 million	0.06 million
Maize/Corn	7.5 million	7.0 million
Soya Beans	0.75 million	0.6 million
Tomato	2.2 million	0.8 million

Source: FMARD, 2016

The insecurity in Nigeria is having a serious negative impact on farming communities as it prevents them from engaging in crop production at optimal levels. Between 2011 and 2015, reasonable progress was made in the resuscitation efforts of the government. For instance, through the initiative known as the Growth Enhancement Scheme (GES), a database of smallholder farmers was created, which facilitated the efficient distribution of farm inputs, especially fertilizer and improved higher yielding crop varieties to these farmers. Similarly, success was recorded in the concession of federal warehouses and storage assets (FMARD, 2016). All of these efforts were aimed at closing the huge demand-supply gap in crop production.

In recent times, insecurity has negatively impacted agricultural production. Agricultural activities in the northeast of Nigeria is completely suspended as a result of the terrorist activities of the Boko Haram group in that geopolitical zone. The devastation, which the activities of Boko Haram has caused, is not only obvious but also far-reaching in its impact on agriculture. Besides the Boko Haram group, insecurity in Nigeria has been aggravated by the criminal activities of sundry groups. The group with the most devastating impact is the Fulani herders whose murderous campaigns have targeted farming communities, with no challenge from the state (Amnesty International, 2018; Ilo et al, 2019). Since 2013, there has been a steady increase in the number of displaced persons as a result of conflicts across Nigeria. United Nations sources estimated that over 2.4 million people have so far been displaced with new records of displacement from conflicts expanding the number (UNHCR, 2018). According to IDMC (2019), between January and June 2019, about 142,000 new displacements were recorded with a caveat that the figure could most likely be an underestimate. Out of this figure, 140,000 people were displaced through conflict and 2,000 people were displaced because of disasters.

The displacement of farming communities as a result of attacks by armed groups, criminal violence and banditry is associated with an alarming rise in food and nutrition insecurity due to non-availability of food. The UNHCR's Deputy High Commissioner underscored the gravity of conflict-induced food insecurity when he was quoted to have said, "the future of young generations in the region is at stake, as food insecurity not only affects the dignity of families, but has serious consequences on the physical and cognitive development of children" (UNHCR, 2018). The overall implication is reinforcing cyclic interconnections that would create and sustain intractable security crisis. The intractability of insecurity would result from the clash of national insecurity and food insecurity. In other words, with national insecurity making it impossible for farmers to engage in their farm activities, food shortages would result. As food shortages result, it would create disaffection, which in turn spawns a new round of insecurity due to the intensification of food crisis and mass reaction to it. Thus, there would be constant insecurity caused by the interplay of national insecurity and food insecurity. Of course, this scenario could be averted through massive importation of food to bridge the gap. But it would have implications for national development due to capital flight and the deepening of poverty.

6. Conclusion

Although there is an ongoing effort by the government through the instrumentality of the APP to reposition the agricultural sector and make it the engine of Nigeria's economic growth, however, the effort can only yield expected dividends if the government does the needful with regards to national insecurity. There is no way the country can promote productivity or achieve competitiveness where symbolically, physically, and psychologically people feel unsafe. The direct implication of national insecurity on food production was captured by Ilo et al (2019), when they recognized that it undermines farming capacity and spawns the likelihood of galloping food prices, all of which exacerbate poverty and hunger and signposts a likely nationwide food crisis.

National insecurity has caused serious disruptions in Nigeria's agricultural activities. While millions of farmers have been uprooted and displaced from their ancestral farming communities, others are perpetually afraid for their lives and as such cannot optimally engage in farming activities. The direct implication is declining productivity with attendant shortfalls, both of which further deepen the contradictions surrounding agricultural production in Nigeria and the prospects of food security. What the Nigerian government must do to be track with its plans to reposition the

agricultural sector is to urgently deal with the insecurity that characterizes the farming communities. There is a far-reaching implication on Nigeria's security architecture if food insecurity is not reversed and resolved. Under different scenarios, food insecurity can create national insecurity or be a consequence of national insecurity. In other words, national insecurity can deepen food insecurity as we are witnessing with the disruptive activities of the Boko Haram and Fulani herdsmen. On the other hand, food insecurity can trigger agitations, which could create security crisis that undermines national security. This vicious cycle may go on and on and produce complex security situations that could ultimately weaken and undermine the state.

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Research Article

Creation and Use of City Parks for Tourism and the Recreation

Oleg Aleksandrovich Bunakov

Boris Mojshevich Eidelman

Liliya Raisovna Fakhrutdinova

Institute of Management, Economics and Finance,
Kazan Federal University, Kazan, Tatarstan, Russia

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Abstract

Tourism around the world continues to develop dynamically, and tourists become more and more exacting. Each tourist destination is interested in attraction as it is possible bigger number of visitors. The institutions which are engaged in development of tourism in this or that territory ask a question: "What promotes increase in tourist flow in our destination?" One of solutions to this problem is creation of the new tourist recreational facilities having unique qualities and meeting requirements of the arriving guests. In recent years city parks become the major tourist recreational facility. Many consider that city parks are the planted trees and shrubs territories located, as a rule, in the downtown and intended for walks on sidewalks and rest in a shadow of trees on comfortable benches. The majority of the Russian parks look thus. However the city park as a tourist recreational facility has to have not only these qualities to draw attention of city visitors. Involvement of tourists is directly connected with tourist and recreational design of parks. Therefore the problem of competent design of city parks is relevant within increase in appeal of the city.

Keywords: *City Parks, Tourist and Recreational Zones, Sustainable Tourism Development*

1. Introduction

At the moment there are several definitions of the term "park". According to the explanatory dictionary by S.I. Ojegov, the park is a large garden or the got grove with avenues, flower beds, reservoirs.

Other point of view says that the park is the planted trees and shrubs territory intended for rest of everyone open which is contained, as a rule, at the expense of the state.

In landscaping the following definition is used. The park - extensive (usually it is more than 10-15 hectares) the planted trees and shrubs territory, arranged well and artly issued for rest under the open sky.

Forest parks can be used for environmental protection, and their placement near industrial facilities, or in the city promotes clarification of air and favorably influences ecology in these areas (Demidenko & Shadrin, 2018).

2. Methods

Now the park is one of the main components of a city system of gardening and a recreation. City parks are most often used as the platform of holding cultural events and exhibitions.

In terms of cultural science and development of the sphere of tourism city parks are important.

They are not just venues of city holidays and mass actions, and subjects of cross-cultural communications. In parks representatives of different social groups, different cultures and generations can contact with each other. Thus, city parks influence communications between people.

The term "park" arose not at once. The term "garden" was originally used. The first gardens appeared in Ancient Egypt. As the main components of the Egyptian gardens served reservoirs, flower plantings and vineyards. In the territory of Mesopotamia in Babylon there were well-known "hanging gardens" of Semiramis which were located on terraces and being considered as the wonder of the world. In India gardens had specific feature – they were under construction on water. In Ancient Greece architects introduced to parks artificial hydroconstructions – fountains and pools. In gardens of Ancient Rome there are sculptures and paths for walks on crews and for foot walks. At the time of the Middle Ages gardens are used only in the utilitarian purposes. In Renaissance gardens in Baroque style appeared, they were considered as continuation of palaces and locks therefore their design was very difficult, existence of water devices was obligatory. In parallel landscape gardening art in the east developed. In China and Japan in construction of gardens stones, water objects are applied, bonsais are used. Such gardens are a place of a unification of the person with the nature. In Russia in the 17th century pleasure gardens appear. One of the best-known – the Izmaylovsky garden including and a botanical garden, both the menagerie, and labyrinths. In the 18th century Peter I considerably advances landscape gardening art in Russia. Palace and park ensembles, for example, Peterhof surprising with the cascades of fountains are created. In the 19th century parks become not just in places for walks, and subjects to cultural display as often in parks theaters, platforms, sports grounds are located. At the beginning of the 20th century recreation parks, children's parks appear. Special attention is paid to memorial complexes and historical parks (parks of the Victory). In the second half of the 20th century theme parks for providing the population with a wide choice of forms of a recreation appear (Bulanova & Ugrekhelidze, 2015; Beiki & Vahidi Elizaie, 2016; Hassan et al, 2019).

Thus, at the present stage of development of landscape gardening art parks are the elements of the urban environment having versatile structure and performing various functions.

There are several classifications of city parks.

On location parks subdivide on: city (city and regional value); rural; country.

Children's parks include such architectural objects as playgrounds and hills, game towns, constructions for sports and scientific and informative objects. Such parks are aimed at the development of thinking and imagination in children and also attraction to preservation and careful attitude to the nature.

Sports (sports and improving) parks provide the population with a zone for sports and physical culture, thereby propagandizing a healthy lifestyle. These parks are equipped with sports grounds, constructions, exercise machines, racetracks and other objects.

Main goal of exhibition parks is to show development of science, art and culture. Such exhibitions attract many tourists that promotes transformation of such parks in tourist to attraction and development of cultural and informative tourism. A necessary condition of existence of these parks is existence of rooms for holding exhibitions and also in summertime – the open areas.

Zoological parks have specific structure that is caused by keeping of animals in these parks. Besides attention to arrangement of open-air cages and cages taking into account the conditions close to the native habitat of animals, special attention is drawn to observance of safety measures. Often in such parks allocate special zones, "parts of the world", according to areas of dwelling of animals (Kamberov et al, 2017; Rasooli & Abedini, 2017).

Versatile parks combine several functional zones which borders are often washed away. Such parks are the most widespread and attract people of different age groups.

Follows from the above that there are both parks of different function, and the parks uniting several functions. Let's understand in more detail functional features of city parks. There are several points of view concerning functions of city parks.

According to the first opinion, city parks create favorable conditions for a recreation of the population and holding cultural events; provide unity of natural ecosystems and the neighboring districts of the city; create space for preservation and restoration of vegetable grounds, cultural

monuments and other sights. A lack of this classification is the generalized division into 3 functions which unites several various functions and does not allow to consider all purposes of parks specifically.

From a different perspective, parks act as the objects promoting socialization and cultural education of citizens thanks to the organization of mass rest and entertainments, carrying out information and educational, recreational and sports and improving work (Bunakov, 2016; Fedotov, 2019; Millanei & Bagheri, 2016).

3. Results and Discussion

It should be noted that modern parks carry out improving, cultural and educational, esthetic, nature protection functions (Bunakov et al, 2018). Influence of a natural and medical factor (clean air) favorably affects health of visitors of parks that characterizes performance of improving function. The multipurpose centers which are in parks provide the population with platforms for holding various exhibitions, festivals, master classes and cultural meetings that, undoubtedly, affects culture and education of guests of parks. Receiving esthetic pleasure from stay in harmoniously created architectural and landscape complex is also carried out thanks to parks. And together with it, park zones promote maintenance of the favorable environment what the last function speaks about.

Thus, one may say, that there is a variety of city parks and their functional loading. Parks are not just the vacation spot and walks, parks are the whole complexes of the interconnected elements which perform a set of functions: from recreational to cultural and educational. Now parks became the most powerful subject to involvement of tourists.

4. Summary

Before design it is necessary to carry out the analysis of the chosen territory and to define whether this territory the potential for breaking in it a landscape gardening complex has. It is necessary to analyse:

- the existing relief;
- green plantings;
- functional and planning elements (pavings, parkings, lighting);
- improvement elements (small architectural forms: children's gaming and sports equipment, street furniture, elements of visual information, limiters of entrances, lawn protections, equipment of economic platforms, etc.);
- technical constructions and engineering infrastructure;
- existence of overhead power transmission lines.

At design of city parks architects have to consider the possible conflicts and manage to prevent them. Thus, the ready project of the park has to correspond to a number of requirements.

First, the park has to be provided with vacation spots of people of different age categories depending on their preferences.

Secondly, that there were no ecological conflicts, the park has to meet standards of recreational loading. This size shows what number of tourists visited unit of area of the park or other natural territory in unit of time. An optimal variant at design of the park is permissible recreational load.

Thirdly, various functional zones should not be crossed. According to the Forest code of the Russian Federation, in the territory of the green space functional zones with the differentiated use mode for protection, protection and reproduction of the woods in various parts of a zone are allocated.

The first zone – the zone of active holiday which is in places of a forest park with the highest recreational loading for their improvement and creation of picturesque natural landscapes of the increased stability. Such zone should not occupy more than 30% of the space of the territory, on the chart the smaller area – 20% is shown.

The second zone – the walking zone which is located in the least visited and silent parts of a

forest park. This zone has to occupy more than 70% of a forest park, on the chart the value of 70% is presented.

The third zone – a faunistic zone which functional value is providing favorable conditions for life of representatives of local fauna. In the Code it is not told about the percentage of this territory therefore we will take, for example, value in 5% of the area of a forest park.

The fourth zone is the recovery zone necessary for long reproduction of forest plantings, the injured fire or other disaster. In the Code percentage from the area of a forest park therefore too we will take 5% is also not specified. Thus, the main part of forest parks has to be allocated under a walking zone, the zone of active holiday can be also present, however it is necessary to remember division of zones and a vulgar ratio. Also you should not forget about the places allocated for restoration and preservation of flora and fauna.

However if to consider city parks, but not forest parks, then in them the zonality is executed in a different way. The percent of a walking zone in city multipurpose parks is much lower, than in forest parks. However parks of the cities have a big variety of zones for visitors, than forest parks. City parks can offer zones for cultural events, zones for rest of children are playgrounds, zones for sports, etc. At design it is necessary to consider specifics of each zone and percentage from the area of the park.

Besides the choice of the place where there will be a park in terms of communication is important. One of criteria of popularity of the park is availability therefore at design of the city park it is worth paying attention to routes of city transport and proximity of highways. The it is easier to reach the park, the more its attendance. The proximity to popular tourist attraktion will become advantage to any park. The location of the park in the central part of the city (for example, the Central park of New York) promotes its entry into a tourist product. The park becomes subject to display for tourists and the place where they spend a free time. Also city parks attract individual travelers as the vacation spot before a new object. Some parks allow similar tourists to put tents and even to spend the night.

At design it is worth knowing that the artistic image of the park has to fit into the surrounding urban environment. It is important that the park and the area surrounding it made the uniform worked image that delicate integration on the developed Wednesday was created. For this purpose it is necessary to observe unity of style and use of similar materials in such a way that the complete architectural image was created.

As tools for an architectural image serve improvement elements. Carry to such elements: benches, ballot boxes, elements of protection of trees, containers for plants, protections, elements of navigation, a bicycle track, the cycle parking, a ladder, ramps, parapets, pavings, the sidewalk, parking, lamps, etc.

Besides, you should not forget about functional zones as elements of their improvement have the specifics. The equipment of playgrounds for children of preschool age includes: sand boxes, low benches and tables, roundabouts, lodges small huts, waterslides, rocking chairs, canopies for a shadow, the pergolas, three-leaved mirrors, arbors twisted with climbers. Children's playgrounds have to be for different age — up to 3 years and up to 7 years.

The road and footpath network provides transit ways and walking routes. The recommended width of paths – no more than 2 m.

On platforms for exercises the sports equipment and exercise machines for various age groups is placed. The gaming, sports equipment and exercise machines are placed with observance of the safety zones specified by the producer. Children's playgrounds and platforms for exercises have to be carried out in a water-permeable shock-proof covering — from a rubber crumb, a rubber or rubber tile. At group of sports grounds they should be united on sports. The blocked sports grounds on the basis of a hockey box are used in the winter for the device of skating rinks for mass driving.

On the open areas for cultural actions summer platforms with places for the audience can be placed (amphitheaters) or be established temporary non-stationary designs for concerts, festivals and so on.

All platforms should be equipped with garden benches and ballot boxes. In the territory of a garden modern decorative support of external lighting have to be established. On sites of lawns

with wood and shrubby vegetation landscape compositions from decorative trees, krasivotsvetushchy bushes and flower plants are created. For the period of holding cultural events in a public zone it is necessary to install the sanitary hygienic equipment — toilets and containers for collecting.

Also important details of the project of the park are navigation elements. Placement in the territory of the park of cards, stands with information and other information equipment promotes simplification of orientation of visitors on the area. Besides, indexes will help guests to learn about interesting locations in the territory and to reach the distant ends of the park which they did not intend to visit in a type of ignorance.

Important component of the received impression of visit of a park zone is the esthetic satisfaction with this natural and architectural complex (Guk et al, 2018). The person, coming to the park, wants to remain first of all alone with the nature, to behold it the nature and to feel its harmony. It is caused by psychological needs of the person. A task of architects – to create a variety of landscapes and a harmonious architectural complex which would be pleasing to the eye and caused pleasant feelings.

But at the same time, the person does not want to lose the habits. Paradoxically, but along with natural unity the habitual comfort and modern devices is necessary for the person. Distinctive feature of each park can become uses in its territory of modern technologies. It can be sources of solar energy, rain and melt water, etc. But the main modern need of people for technologies in the territory of the park is the wireless network Wi-fi without which it is impossible to present stay of the person in any public place. And also power supplies for charging of mobile devices (Hepler, 1995) will be useful addition to it.

It should be noted such need of people as the need for something new and interesting. It follows from this that the park has to have the unique lines distinguishing it from other parks. If we speak about involvement of tourists, then design of the park has to be based on feature and dissimilarity of this object. It is necessary to answer a question first of all: "Why tourists will want to visit this tourist and recreational an object, but not another?". Perhaps, in this park innovative technologies or unusual architecture will be used. If to speak a simple language, then for involvement of tourists in the park there has to be "highlight". Therefore designers of the park have to use the creative ideas and keep up to date. Now very few people you will surprise with the simple fountain and benches. If we install the fountain in the park, then it can be the dancing fountain with illumination or the fountain which form, for example, is executed in the form of a huge spoon.

As for park furniture, you should not put ordinary wooden benches. It will be much more interesting to establish benches of an unusual form or a coloring. Besides, the tendency to arrangement in parks of benches is observed recently not only to sit on them, but also to lie.

Creation of creative work areas in the park will also attract tourists who want to combine work and stay outdoors. Playgrounds are often monotonous and do not cause desire to visit, however, if to use a landscape during creation of game zones, thereby introducing children's attractions to the environment, then interest in them considerably will increase.

5. Conclusion

It is possible to draw a conclusion that modern city parks perform the whole complex of functions, one of which is involvement of tourists and creation for them the comfortable environment of stay. The designing process of the city park has to include careful planning of various zones which will be to interesting different categories of visitors, and everything together to create a uniform zone of a recreation.

Thus, it is necessary to find creative approaches to creation of architectural and landscape space, using unusual small architectural forms and other original elements of landscape gardening that the tourists coming to the park were pleasantly surprised and wanted to come here again, and locals took the qualitative vacation spot all family.

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Research Article

Kazakhstan: Socio-Economic Development, Research and Innovation

Alessandro Figus

Dinmukhammed Shaikin

M. Kozybayev North Kazakhstan State University, Kazakhstan

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Abstract

Today Kazakhstan economically is the dominant nation of Central Asia with an estimate population close to 19 million people. Indeed, it is the region's largest country and has in abundance of both natural and human capital resources. Kazakhstan was a Soviet Union republic the last that in 1991 to declare independence during the dissolution of the Soviet Union; therefore, all planning for its development has been strongly centralised outside of the country rather than in its own new capital Astana, now called Nur Sultan. In 1991 Kazakhstan was. With its independence, the situation in Kazakhstan has changed radically, under new popularly elected leadership, the country has committed itself to achieving a level of socio-political, economic, and technological development comparable to that which exists in most mid-sized economically advanced Western countries. The major vehicle for bringing about this transformation is a series of carefully constructed scenarios whose implementation turned around on extensive public-private investment and partnerships in research and development, especially thanks to the state grants that support of industrial and innovative activities. This article will discuss two scenarios currently under way that have as their shared goal the advancement of Kazakhstan's socioeconomic development through an emphasis on human resource development and innovation.

Keywords: *Kazakhstan, socioeconomic development, research and innovation*

1. Introduction

The rapid advancement of all societies depends on "strategic investments in research and development" (R&D) for both scientific and technological development and advancement of the quality of life of their people (Miller & Morris, 1999).

According to Pisano (2012), such investments may involve the application of already established technologies (secondary R&D) or the creation of entirely new technologies and areas of scientific inquiry (primary R&D). Although these innovations primarily involve "hard" or physical science (Anderson, 2000), they may also involve the social sector, such as new types of political, economic, or familial systems (Sherwin, 2016).

Research and development on the one hand, and innovation on the other, represent the two poles between which the technologically equipped industrial production moves: with the block of the first two terms, we indicate the pure scientific and technological research, with the third we indicate instead research applied to production. These three terms have given rise to a truly consistent literature: not wrongly, the key points for understanding the dynamics that lead from the invention to the success of this invention and to its stable inclusion in the production of goods or services based on a technical support (innovation), and therefore to face the relationship that links technology and economy. Another aspect is the role of the educational system and its impact, the relationship between universities and the business world, between universities and the labour market

(Sustainable “University – Enterprise” partnership, Figus, 2009).

In fact, “sustaining cooperation across different institutional cultures requires a long-term commitment of time, labour, skills and finance. The return on investment can be significant, in terms of human resource development, high value-added innovation, new market creation, but this is not necessarily the case” (Figus, 2009).

Most societies invest in both types of innovations, especially societies that are undergoing dramatic restructuring (OECD, 2018). Such investments have proven to be especially essential to the newly independent countries of the former URSS whose economies have shifted from being centrally planned to become more open and globally focused market systems (Investopedia, 2016).The goal in every case has been to advance the human technological capacity of these countries so that they can compete more successfully in highly competitive global markets. Economic diversity, involving multiple sectors of collective life, has proven especially effective in advancing the global competitiveness of developing post-Socialist societies (Graham &Werman, 2017; Lipovsky, 2016).

Kazakhstan, as a former republic of the former URSS, is really developing “post-Socialist nation” and its approach to introducing R&D is the primary subject of this article (Hiro, 2009; Marvin 2016; Wight, 2018; World Bank, 2016). Now it is the time to give a historical overview of the Republic of Kazakhstan since it regained its independence in December 1991 (Golden, 2011; Lipovsky, 2016). Next step will be to consider the natural and human capital resources available to Kazakhstan to promote its socio-political and economic development. We will be identified the special set of social and economic indicators that are essential for advancing R&D in this country and will be introduced with a particular reference to the aspect of innovation, the economy, the education and labour market relationship. The critical contributions made by R&D in accelerating the pace of Kazakhstani social and economic development will be identified, along with the pathways for accelerating the pace of Kazakhstan’s development over the near term (Socor, Weitz, & Witt, 2016).If we wanted to show the potential that Kazakhstan has Kazakhstan we could say that it has natural resources in very large quantities. This is his great strength. It occupies the 12th place in the world for oil reserves and the 14th for gas reserves. Kazakhstan is also the first world country for uranium production, and second for its reserves. Finally coal, chromium, copper, tungsten, barium, lead, fluorite, molybdenum, silver, zinc, and gold are present in large quantities. Now I understand better what we are talking about (ICE report, Italy, 2018).

2. Modern Geographic and Ethnic Structure of Kazakhstan

The Republic of Kazakhstan is a fully independent nation-state located in Central Asia. A land locked country, Kazakhstan borders with China, Kyrgyzstan, Russia, Turkmenistan, and Uzbekistan. Along with other Central Asian nations, Kazakhstan shares access to the Caspian Sea, consisting of more than 134,000 square miles of surface area of 371,000 kmq.

As reflected in figure 1, the country’s landmass is substantial (2,724,900 sq. km); Kazakhstan is the ninth largest country by land mass in the world. The country’s population (2017) numbered 18.6 million people, the most populous of Central Asian nations. As of 2009, Kazakhstan’s ethnic mix consists of Kazakhs or Qazaqs (63.1%). Other important is the Russians community that is around 24% (CIA, 2017). Also as of 2009, the country’s religious mix was diverse as well: Muslim, around 70% and Christian (mainly Russian Orthodox; around 26%. Kazakhstan has been out of a period of state atheism for only twenty years. During the Tsarist era, the hegemonic creed, especially in urban centers, was the Orthodox Christian one. Over the past 150 years, the Muslim influence, previously felt, has been suppressed or "bureaucratized".

Today we try to return to both Islam and the spiritual cult of "Tengrism", a belief typical of Central Asia, based on shamanism and animism. Monotheistic religions consider “Tengrism” a "pagan" cult. At the state level, Kazakhstan proclaims itself a secular state and promotes no religious superiority, despite the division between "traditional" and non-traditional religions.

The idea of the President Nursultan Nazarbayev to make Kazakhstan as the place of dialogue, a bridge between world religions is a way to avoid religious confrontation; religious communities can therefore compare themselves within the country.

As of 2017, approximately 40.3 percent of Kazakhstan's population was younger than twenty-five years, a demo- graphic pattern that characterizes most Central Asian post-Socialist countries and indeed most developing countries.

Figure1: Map of the Republic of Kazakhstan (CIA, 2016. Reprinted withpermission.)

3. Historical Background

3.1 Kazakhstan's Natural and Human Capital Resource Base

The availability of natural and human capital resources is essential to a country's development. Kazakhstan is particularly advantaged in having a rich array of both (Witte, 2016; World Bank, 2018).All of these resources are being used to accelerate the pace of the country's social and economic development as well as to build a strong network of economic partnerships with other nations in the Central Asian region and with other countries worldwide (Legvolf, 2003; World Bank, 2018).

3.2 Kazakhstan's Natural Resources

Kazakhstan's natural resources are substantial and highly diversified. Along with its vast stores of petroleum and natural gas reserves, Kazakhstan's major industries include the production of a lot of metals as well gold and silver, (Open Energy Information, 2016; Vigar, 2018), all of which add to the country's foreign exchange reserves of US$ 32,837 million of January 2017 ("Kazakhstan's foreign exchange reserves 1993-2017," 2018). Kazakhstan's energy economy, each of these sectors will continue to increase in importance as the country's five-year national development strategy unfolds (U.S. Department of State, 2013).

3.3 Kazakhstan's Human Capital Resources

The exact number of Kazakhstan's full-time researchers and technicians, including those engaged in R&D, is not known with any degree of precision. Their numbers are expected to be substantial, however, especially in the country's multifaceted energy and public enterprises. Many R&D specialists are also working in Kazakhstan's state-centred health industry as well as in its large network of primary and secondary schools and more than 140 state-supported universities and other types of institutions of higher education (Silk Project, 2009).Typically, however, R&D activities are just a part of the job responsibilities of most research scientists, a reality that makes the number of researchers engaged in R&D on a full-time basis even more difficult to measure.

3.3.1 Kazakhstan's General Human Resource R&D Profile

Readers are referred to data collected by the UNESCO (2018), which reports R&D personnel data for most nations of the world. These data typically cover the period from 1996 to 2017 and offer a general picture of the R&D profile in Kazakhstan in comparison to other countries.

3.3.2 National Estimates of Kazakhstani R&D Personnel

Official reports prepared by the Kazakhstani government offer more precise estimates of the number of R&D personnel working across the country's major economic sectors from 2013 to 2017. Table1, for example, summarizes these data by percentage distribution between specialist/researcher and technical personnel. As reflected in these data, the number of Kazakhstani researchers in 2017 decrease to 22,081, to 6.9-percent increase since 2013. This increase occurred in all categories of researchers: to 0.06 percent increase for the specialists/researchers (to 17,205) and to 22.0-percent decrease (to 2,797) for technical personnel (R&D maintenance staff). The number of R&D workers per one hundred thousand people in 2017 was 122.4, a decrease of at least 16.8 percent compared to 2013. The percentage of R&D workers had the same development tendency (Table 2). Thus, the percentage of specialists-researchers in 2017 was 77.9 percent, up 5.4 percent from 2013.

The number of the Kazakhstani researchers with scientific degrees in different sectors of economic activity also shows a positive development tendency (see Table 3). In 2017, the number of R&D workers with scientific degrees was 7,302, which represents a decrease of 0.9 % compared to 2013/14.

3.3.3 Future R&D Personnel Enrolled in Kazakhstani Universities

Kazakhstan recognizes the importance of continuous investments in educating future generations of R&D personnel. Indeed, the nation allocates a substantial share of its total resources to more than one hundred universities and institutions of high education. This is consistent with the nation's strategic goals and the scenarios.

Avery large percentage of these students have declared majors in physics, chemistry, mathematics, and other specializations that con- tribute directly to R&D research staffing (Silk Road Project,2009). Such a larger number of potential workers in the R&D sector adds further strength to the country's efforts to enhance the overall level of socio-economic development and global competitiveness.

Table 1: Types and distribution of Kazakhstani R&D workers, 2013–2017 (Aydapkelov, 2018)

Population of		No. of	No.of R&D workers by specialty Technical personnel			No. of R&D workers
Base year	Kazakhstan (000)	R&D workers	Specialists/ researchers	(maintenance staff)	Others	per 100,000 people
2013	17,035.40	23,712	17,195	3,586	2,931	139.2
2014	17,289.25	25,793	18,930	3,882	2,981	149.2
2015	17,544.15	24,735	18,454	3,692	2,589	141.0
2016	17,794.16	22,985	17,421	3,326	2,238	129,2
2017	18,037.81	22,081	17,205	2,797	2,079	122,4

Table 2: Job classifications of R&D workers in Kazakhstan, 2013–2017 (Aydapkelov, 2018)

Percentage of R&D workers by job classification Specialists/Technical personnel			
Year	Researchers	(maintenance staff)	others
2013	72.5	15.1	12.4
2014	73.4	15.1	11.6
2015	74.6	14.9	10.5
2016	75.8	14.5	9.7
2017	77.9	10.4	11.7

Table 3: Distribution of Kazakhstani University students by area of specialization, 2013–2017
Number of R&D workers with scientific degrees by economic sector

Year	Public	Business	Higher education	Noncommercial	Total (all sectors)
2013	1,484	674	4,847	366	7,371
2014	2,185	852	4,813	430	8,280
2015	1,903	766	4,701	550	7,920
2016	2,023	591	4,494	446	7,554
2017	1,987	510	4,351	454	7,302

Sources: Aydapkelov, 2018; "Kazakhstan—Number of technicians in R&D," 2017.

4. Kazakhstan's R&D Investments and R&D Outcomes since Achieving Independence

The R&D data for Kazakhstan's private sector throughout the article should be regarded as estimates only until more rigorous accounting systems are developed for both the public and private sectors over the near term ("Kazakhstan's annual GDP growth rate 1995–2017," 2018; UNESCO, 2016). The data presented in Table 4 pertain to selected aspects of public and private expenditures on R&D in 2017. Mostly likely, these figures under estimate actual expenditures on R&D, but they are nonetheless suggestive of the general pattern of investment in inventions and technological innovations (UNESCO, 2016). Additional data confirming Kazakhstan's educational and training investments in R&D are reported in detail in the annual statistical reports prepared by UNESCO (2016).

Table 4: R&D expenditures by sector of performance and source of funds in Kazakhstan, 2017

R&D expenditures			Sources of funds	
Amount (million tenge)	Share (%)	Sector	Amount (million Tenge)	Share (%)
20,961.4	30.4	Government	41,964.2	60.9
6,078.2	8.8	Private nonprofit	1,801.4	2.6
13,179.6	19.2	Higher education	863.5	1.3
28,665.0	41.6	Business enterprise	20,841.6	30.3
-	-	Foreign investments	1,197.2	1.7
-	-	Other	2,216.3	3.2
68,884.2	100.0	Total	68,884.2	100.0

In the main, Kazakhstan has been an adopter of technological innovations developed outside the country. Since regaining its independence, however, Kazakhstan has developed its own emerging R&D culture. Today, Kazakhstan ranks third among the CIS in inventions ("Kazakhstan is third in CIS by inventions," 2011): the Institute (NIIP) received 32,857 applications. Kazakhstan is very active in this sector and opens up interesting prospects for the future

4.1 Positive Outcomes Associated with R&D

Since regaining its independence in 1991, Kazakhstan's pace of national development has been rapid and has affected virtually all aspects of the country's collective life. Important reforms, for example, resulted in Kazakhstan's emergence as a democratic society with a strong and diversified open market economic system. Kazakhstan also joined the United Nations as a fully autonomous member and is among the leadership countries of the CIS and other regional associations. Additionally, Kazakhstan is a contributor member of the community of nations that is helping poorer nations of Central Asia, as well as Afghanistan and the Caucasus, to speed up the pace of their development (Golden, 2011). Kazakhstan is a major provider of international technical assistance and has steadily increased its purchase of goods and services from less affluent members of the CIS. These activities are considered essential to attaining Kazakhstan's strategic goals as laid out

by the nation's parliament (Orazgaliyeva, 2014)

Much of Kazakhstan's rapid development is associated with its adoption of new technologies that support its highly competitive energy system. Major national investments in healthcare, educational reforms, arts and culture, human services, and the country's newly emerging not for profit sector are also helping to stabilize the country's rapid development into a fully modern nation state. These important societal achievements are being realized while Kazakhstanis adhering to its highly diverse and traditional multi-ethnic values and norms (Aitken, 2012).

Investments in at least moderate levels of R&D are major drivers of Kazakhstan's increasing development and are intended to enhance the country's comprehensive growth and global competitiveness, including its sparsely populated rural areas.

Increasingly, the country is expected to shift from its historic role as an adopter of technological innovations developed by others to a nation that is providing leadership in the creation of innovations that work to its own benefit and that of other nations in Central Asia (Graham & Werman, 2017; Hiro,2009;Lipovsky, 2016). Given the development priorities identified by the country's national leadership, every reason exists to believe that this level of technological leadership will continue to prevail in Kazakhstan (Witt, 2012; World Bank, 2016).

4.2 Pathways for Accelerating Kazakhstani Development over the Near Term

Although it is developing rapidly across a wide range of sectors, Kazakhstanis is still at an early stage of R&D investment (World Bank, 2016c). Many of the resources allocated forth is purpose are dedicated to the discovery and processing of its energy reserves; comparatively lower but still substantial investments are being made in other market sectors (Rashkin, 2007). However, turbulence in global energy markets makes it clear that investing in a single industry is not sufficient to sustain the country's comprehensive economic growth over the long term (Mahroum & al-Saleh, 2016). It is expected that the dramatic uncertainties and market fluctuations in the value of energy will continue at least over the near term ("Crude oil price forecast," 2017); thus, Kazakhstani economic growth levels are expected to rise and fall in response to broader market forces. As a result, more diversified R&D approaches to a wider range of economic and technological sectors will be needed to offset the current and inevitable future declines in the energy sector. Several approaches for dealing with these new challenges are suggested below (Legvolf, 2003).

A more robust strategic approach to planning and national development is needed at this point in the country's history. At a minimum, public strategic planning for both the short and long term involves the following elements:

- Identifying strategic priorities and goals
- Allocating sufficient human and capital resources to the pursuit of these priorities and goals;
- Initiating specific programs and other activities that support each of the country's identified priorities and goals;
- Developing continuous monitoring mechanisms to ensure that the designated activities have been implemented efficiently and effectively;
- Modifying all aspects of the continuous monitoring mechanisms as necessary to ensure that the designated strategic goals and objectives are being achieved consistent with the plan

As Kazakhstan continues to move forward, there is a broad range of strategic pathways that it can follow. For purposes of this article, these pathways will be referred to as *scenarios*, defined as postulated sequences or series of events that are to be achieved during discrete time periods. Three scenarios have been selected as most practical for the short term:

1. Scenario1: Staying the Course (2017–2025)
2. Scenario 2: Accelerating the National Development Pace (2026–2040)
3. Scenario 3: Dramatically Accelerating the National Development Pace (2041–2060)

5. Strategic Scenario Frameworks

The discussion that follows details two scenarios: Scenario 1 (2017–2025) and Scenario2 (2026–2040), whose central purposes are to strengthen the R&D goals of Kazakhstan. As in the past, both scenarios depend on financing from oil revenues received and budgeted by the country's government across abroad range of sectors.

5.1 Scenario 1. Staying the Course (2017–2025)

Research and development activities in Kazakhstan have been financed primarily by state-funded economic sectors, especially those associated with the petro- chemical sector and related activities. These and other investments have been directed at accelerating the pace of the country's overall development during a period of declining petrodollars. Among the strategic goals of conducting rigorous scientific and technical policy, the primary goal has been the pursuit of innovative leadership that is directly linked to the entry of Kazakhstan into the top thirty countries in the world's R&D industry. The development of young scientists and a large pool of technicians to support their activities is a central feature of this policy that is designed to advance the country's objective and subjective level of living.

5.2 Strategic goals

The goals of the first strategic plan are those articulated by President Nursultan Nazarbayev. Strategic investments in the R&D sector are central to the plan, with a target of 3.0% of GDP expenditures by 2050 (compared to Kazakhstan's current very low expenditure level of approximately 0.17% on R&D). The plan identifies various milestones for realizing the ultimate commitment and at the same time identifies abroad range of supportive activities needed to make efficient use of the eventual target expenditure level.

5.3 Strategic initiatives

The government's program of R&D development during Scenario 1 (2017–2025) emphasizes the implementation of considerable innovative activity in the sciences that, in turn, is expected to stimulate the development of more aggressive investment patterns in the country's extensive network of private businesses and industries. A central goal in this commitment is to reduce the gap in level of adaptability and innovation vis-à-vis the technologically rich and high- income countries of the OECD.

These supportive outcomes include:

(a) Encouraging the development of high-tech industries in developing sectors,
(b) Providing substantial financial incentives to make the demand for innovation grow, and (c) improving the technological and managerial skills of the country's largest and most complex industrial enterprises.

If successful, as an out- come of Scenario1, increased expenditures are expected to achieve the following results:

(a) To increase the share of R&D investments in 20 percent of Kazakhstan's most innovative enterprises (in accordance with the OECD methodology [OECD, 2018])
    a. To increase the share of innovative products inside the total of the gross domestic product (GDP) by more than two points.
    b. To improve country's standard of life and well-being
(b) To substantially increase the share of intramural R&D spending of GD's Low level of business response to technological innovation
(c) Lack of technical and managerial skills
(d) Lack of development to innovative technologies in the educational system
(e) Inadequate systems for monitoring the implementation of innovative projects

All these challenges to Kazakhstan's development must be resolved if the country's strategic

national plans are to move forward. The following sections discuss each of these roadblocks to development more fully, especially as they relate to innovations associated with increased R&D.

In this scenario we must remark that nowadays our society is going through unprecedented changes in the spheres of technology and economy.

These new systems are forcing radical mutations in our working environment, in the realization of our civil rights, of growing new generations. It's fundamental now for the country to prepare and face these modern demands, and in order to do that, the Kazakh government approved the «Kazakhstan-2050 Development Strategy». The country wants to become one of the thirty most developed in the world. In fact, 60 of the 100 steps which constitute Kazakhstan's development plan have already been achieved. The remaining ones are substantially of a long-term nature and are gradually being realized.

5.4 Organizational issues

One organizational issue is that the R&D enterprises in Kazakhstan must follow European OECD standards for implementation of policies in the scientific sphere (OECD, 2018). It is very important that R&D enterprises and control in authorities adhere to the essence and definition of the term *R&D* in the Frascati manual, not only for internal and external R&D expenditures, but also in the development of public policies in other sectors that impact private and public investments in R&D. The problem here lies mainly in the separation of any scientific activity from R&D in accordance with the Frascati guidelines. Thus, the issue is scientific novelty: innovations and new knowledge obtained because of R&D. In foreign countries, this issue is considered by the research/scientific fund or agency, attracting scientists in relevant fields as juries and experts.

6. R&D Actors

Abroad range of economic actors will be involved in the implementation of the strategic scenarios discussed below: government, businesses, not for profit organizations, international development assistance organizations, and consumers (individuals families, and extended kinship systems).The plans are organized to benefit from the experiences of other countries and economic associations of countries in promoting their own R&D activities. The contributions of scholars and distinguished scientists are also expected to figure prominently in the framing of these plans.

6.1 Business and Non-profit Sector

Each year, the state statistics bodies organize seminars for businesses engaged in the implementation of R&D. During these seminars, issues related to record keeping are explained. We believe that these seminars should include experts in the relevant branches of science who will clarify the differences between R&D research activities in accordance with OECD standards. Without proper control (from the Scientific/Research Fund) of organizations conducting R&D, the amount of intramural R&D expenditure and its share of GDP expenditures may be incorrect and distorted.

In several countries that are leaders in innovation, business tax benefits in the form of additional deductions are considered in calculating the corporate income tax. The tax legislation of the Republic of Kazakhstan has similar measures. These measures were adopted in 2018 and are currently being tested. At the same time, there are many controversial issues that are contrary to practices in OECD countries. One is a tax deduction certificate that is received when research results are implemented in production. Often positive research results cannot be obtained initially and therefore the business cannot qualify for a tax credit for the implementation of R&D (although the expenditures have already been made). This may have a negative effect on the growth of the number of companies that would be interested in pursuing R&D. Therefore, the second issue in their focusing goals is the development of indirect measures that would contribute to a positive R&D environment in Kazakhstan.

Again, there are some methodological issues:

- Research and development expenditures need to be allocated consistent with OECD standards
- Research and development expenditures must be made in a manner that reflects both OECD standards and international accounting methods

The introduction of internationally agreed upon standards for assessing R&D allocations is expected to contribute to the growth of R&D entities, as well as the workers they employ, and to achieve positive growth in the level of intramural R&D expenditures relative to the GDP.

6.2 Higher Education (Including Universities, Academies, and Research Institutes)

Every three years the committee responsible for science and education grants funding for R&D projects in the following areas: (1) conscious use of energy and its sources energy; (2) information and communication technologies; (3) life sciences; and (4) increasing the country's intellectual potential. The national research councils were established to examine and approve submitted applications.

Introduction of these research approaches may raise several methodological questions. One regards the novelty of the result (its correspondence to OECD standards). The solution of this problem must begin with the study and implementation of OECD standards among all sectors of performance (OECD, 2018). Today in Kazakhstan young scientists must learn these norms to be competitive in the future.

6.3 Refocusing Goals

The refocusing goals in R&D at this stage should include implementation of measures promoting and contributing to innovative activity. There should be a national plan for R&D (conception) until at least 2025, expressing the concrete steps needed to achieve innovative leadership in Kazakhstan and containing a list of the responsible state bodies. During the fulfilment process, all these bodies should monitor the plan and make modifications for improvement.

To successfully implement Scenario 1, several refocusing goals are needed. First, it is necessary to study and implement European R&D standards (OECD, 2018). The priority should be to train future Kazakhstan scientists in accordance with these norms and regulations to ensure that they understand the meaning and essence of innovations and modern world novelty with reference to an R&D project. Second, in-house R&D departments should be formed within comparable public and private research enterprises that, among other goals, aim to train employees with the help of international R&D experts. Third, a system of direct and indirect incentives for R&D businesses should be developed to stimulate investments in R&D projects.

One of the basic conditions that affect the funding of R&D projects is the potential commercialization of the research results. For several years, when "Ministry of Education and Science of the Republic of Kazakhstan" (http://sc.edu.gov.kz/ru) offered scientific grant funding, many projects were conducted in the five areas outlined in the previous section. These results should now be presented to the market. The corresponding "Law on the Commercialization of the Results of Scientific and (or) Scientific-Technical Activity (http://adilet.zan.kz/rus/docs/Z1500000381) has created new opportunities for the higher education sector to present R&D products to the market. One of the main problems here is to verify the novelty of R&D results. Therefore, the fourth refocusing goal is to continue considering and implementing European R&D standards (OECD, 2018). In conjunction with this goal, the authors note that new developments in various fields of science are presented in journal articles published by leading publishing houses such as Elsevier, Springer, Wiley- Blackwell, and Taylor and Francis.

Currently, Kazakhstan has free access to some journals published by Springer and Elsevier publishing houses. Limited access to these articles and lack of access to journals published by Wiley-Blackwell, Taylor and Francis, and others reduces exposure to new scientific knowledge and slows the growth of scientific-research potential in the Republic of Kazakhstan.

Today, most research of world importance is published in English. Therefore, knowledge of

the English language is essential to scientists working on R&D in Kazakhstan. Scenario 2 is aimed at further diversification of R&D projects. This diversification will be characterized by further creation of innovative solutions in various industries.

6.4 Scenario 2: Accelerating the Pace of National Development

A second substantially more accelerated scenario for the promotion of R&D will follow the conclusion of Scenario 1. Scenario 2 will build directly on Scenario 1 and will lay the foundation for Scenario 3, which will be the subject of a separate article. All three scenarios are built on the ambitious goals for the country's development formulated by President Nursultan Nazarbayev and, taken together, will advance Kazakhstan's scientific and technological development through the year 2050 and beyond.

7. Strategic Goals

In subsequent years, we will continue to improve the innovation environment, developing sectors of performance that will focus on innovation. The new economy that will be brought by R&D results will be based on modern technologies such as mobile and multimedia technologies, nanotechnology and space technologies, robotics, genetic engineering, and research of future energy resources. The expectation is that the successful achievement of the goals of all three scenarios will advance Kazakhstan's R&D position to among the top thirty nations in the world.
The main strategic goal for Kazakhstan is to increase intramural R&D expenditures to at least 1.1 to 1.2 percent of the GDP by 2030. At the same time, the business share of intramural R&D expenditures should be no less than 8 to 10 percent. The current situation is the basis for formulating and refocusing the goals for Kazakhstan for the next ten years.

7.1 Strategic initiatives

The government's programs of R&D development during Scenario 2 (2026–2040) should emphasize the development of branches of science in which R&D products will meet the needs of domestic and foreign clients and thus will be in demand in local and CIS markets. One example is a food industry in which Kazakhstan will certainly possess a leading position. The government and business will continue to encourage development of modern food industries, providing various financial incentive schemes to increase the demand for innovation. As an outcome of Scenario 2, the authors prognosticate (a) a relevant boost in the number of enterprises engaged in food products R&D (in accordance with OECD methodology [OECD,2018]), (b) an increase in the share of innovative food products to1.0 percent of the total GDP, and (c) a substantial increase in food-product-related intramural R&D expenditures to 2.0 percent by 2040.

7.2 Human and capital resource base

During further development of the R&D sphere in Kazakhstan, the share of state participation should decrease to 30 to 35 percent of the total funding for scientific research. The state will primarily fund fundamental and applied research. To keep pace with global competition, more qualified scientific personnel will be needed to carry out R&D projects characterized by originality and novelty in accordance with international OECD standards. A key goal is the creation of new products that are in demand on the market.

The government will support businesses engaged in R&D in implementing various programs. For R&D projects that are to be developed and modified in accordance with OECD standards and principles, special attention should be paid to qualifying criteria, such as novelty, creativity, inventiveness, systematic activity, and transference and reproduction capability.

Depending on market conditions, the share of the state and business participation will be determined separately for each R&D project. For example, 70 percent of funding might be provided by the state and 30 percent by business, with different caps established according to the size of the

business.

7.3 Monitoring progress

One of the main goals is systematic state control and monitoring of the level of innovation development within the Republic of Kazakhstan. Growth is expressed mainly by the level of intramural R&D expenditures in relations to the Gross Domestic Product;

Etarget for expenditures is 1.1 to 1.2 percent of the GDP by 2030. An important aspect of monitoring involves inviting international experts to provide consulting services in the R&D sphere.

7.4 Refocusing goals

At the completion of Scenario 2, the refocusing goals will be centered on the development of final targets for 2026 to 2040, when Kazakhstan is expected to achieve leadership in R&D as one of the thirty top countries in this sector. The primary refocusing goal here will be furthering growth of innovative activity through increased business investment in R&D and an increased level of intra-mural R&D expenditures equivalent to at least 3 percent of the GDP by 2050.

8. Discussion with a Focus on Next Steps

Kazakhstan is on its way to achieving a more enlightened and technologically advanced path to reform its economy toward becoming one of the major global actors. This advancement is especially reflected by the country's steadily increasing R&D activities as well as its growing numbers of university-educated R&D researchers, scientists, and technicians. Kazakhstan has been joined in this effort by other former Soviet Union members, as well as major R&D centres located in Europe and South and South East Asia. Kazakhstan's rapidly expanding numbers of R&D scientists illustrate its new commitment to knowledge development through research, as does the percentage of its national economy currently com- mitted to R&D activities. These important gains are contributing to increases in the standard of living of the country's highly diverse population.

The country's next steps in advancing its R&D profile will be realized through the more complete implementation of its presidentially driven national plans of action for 2020, 2030, and 2050. This process will also involve meaningful partnerships with the country's profit and not-for-profit sectors and, to a lesser extent, with the country's families, who have made multifaced contributions toward strengthening local community capacity for scientific and technological innovation.

Meaningful contributions to economic development by these critical actors will bring about the dramatic scientific and technological changes needed to modernize Kazakhstan. We believe that the country is successfully moving forward toward achieving these goals; its prospects for the future remain positive and forward looking.

9. Conclusion

As we have tried to highlight, the Kazakh government has initiated various development plans focused on the one hand on diversification with respect to dependence on hydrocarbons and on the other on the enhancement of transit potential. The main objectives are therefore the development of the road and rail network, the agri-food industry and manufacturing. The most important issue remains the desire to strengthen the national innovation system and create a managerial class capable of facing the new challenges of the country. Research will become increasingly important, attracting investors and at the same time appropriate managers, a central issue. To do this, the Kazakh government must implement numerous reforms with the aim of encouraging greater openness to international trade and foreign investment. The accession to the WTO, the launch of the "Plan of the 100 Steps" (wide program of structural reforms that aim at a greater transparency of the country system), if we also want to have hosted the EXPO 2017, these are all elements that

show a strong desire for internationalization, and a strong desire to attract foreign investors to the country, which are fundamental to launch a serious research and innovation program.

Simultaneously with Kazakhstan, following the sharp devaluation of its currency (the peak was recorded in December 2016 with 14%) it will also be necessary to focus on technology transfer and training, with possible locally production. Therefore, in the program of the newly elected President Tokayev, Kazakhstan looks at the world market for geological exploration, with the intention of attracting investments from foreign engineering companies to this sector and simplifying the legislation. Already during the previous five-year plan, the country has developed a production capacity in the automotive and aeronautical industry sector, as well as in the railway sector, etc.

Consequently, further development and innovation is expected in sectors such as: nanotechnologies and space technology, robotics, genetic engineering and the exploration of future energies. The Government's fundamental priority is to create the most favourable conditions for companies in Kazakhstan, especially small and medium enterprises.

Finally, as regards the educational system, the country needs a gradual transition of universities leading to academic and administrative autonomy. During the speech to the nation, Tokayev spoke of building a market economy and improving the living conditions of the citizens that have been mentioned, among the main successes of the Nazarbayev presidency. There is a need to dare; Kazakhstan also dares to use the mega infrastructures of maritime transport fielding the proposal of a "Eurasian channel" to ensure that its ships, starting from the Caspian Sea, could be able to directly enter the Black Sea and, through the Bosphorus, the Mediterranean. If implemented, this plan will make Kazakhstan a fundamental logistic platform of "Eurasia", a large centre for the sorting of goods and services and for attracting investments in the "heart of the world".

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Research Article

Evaluative Component of the Artistic Discourse and Its Means of Actualization in the Short Stories by W.S. Maugham

Ekaterina Vladimirovna Smyslova

Lecturer in English, Kazan Federal University,
Kremliovskaya str, 18, 420008, Kazan, Russian Federation

Guzel Rinatovna Eremeeva

Associate Professor, Kazan Federal University,
Kremliovskaya str, 18, 420008, Kazan, Russian Federation

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Abstract

The article focuses on the means of realization of the evaluative component of the syntactic evaluative constructions at the text level. The analysis of the two short stories by W.S. Maugham shows that there are two ways of evaluative component actualization in the discourse. The first level is represented by direct and indirect appraisals towards the characters and the events of the story given by the author explicitly (through the narrator's speech) or implicitly (through the author's indirect evaluations) while the second one is the interaction of the two narrative methods made by the author and the narrator which leads to the unification of the two defined parties and the following integration of its evaluative component into the title itself.

Keywords: *Linguistics, English Language, Evaluative Construction, Artistic Discourse, Subjective Narration*

1. Introduction

Nowadays the study of evaluative components at the text level is of great interest in the modern linguistics development as the problem of correlation and interaction of semantics and pragmatics has assumed importance. Taking into consideration E. M. Volf's concept, it is believed that the semantic and pragmatic aspects are inseparable in the evaluation, since all the components of its functioning (subject, object, evaluation aspect, evaluation stereotype and evaluation scale) reflect the fusion of semantics (the meanings of language units themselves, including the statement as a whole) and pragmatics (conditions for the implementation of the communication process) (Volf 1985). It is worthwhile noticing that in the paper the discourse is considered to be the whole text, thus it supports the standpoint of another significant Russian linguist, M. Y. Bloch (Bloch 2000). Moreover, it seems quite obvious to note that, in fact, the reality of the text is evaluative in its essence as it is a reflection of the author's vision of the world that is the text is already subjective.

2. Methods

While preparing the article such methods as study research, analysis, synthesis, studying and generalization of linguistic research were used. In addition, the paper uses the analysis of the fictional world created in the novels as a means of its consideration.

3. Results

The assessment is often not independent in the text. It is included as a part of description or reasoning with its argumentation and is organically linked to the descriptive side of the text as a whole (Volf 1985: 204). People do not carry out evaluations according to their attitude towards the world. They assess things in accord with the conceptual world of the participants in the communication process, where the assessment puts the object in a certain area of the evaluation scale. In other words, evaluation puts objects in their places in the world picture of values, determining their relationship. In texts, the assessment can be expressed by combining linguistic means with introducing fragments of the values world picture. As a result, the assessment can be regarded as a separate aspect of language expressions, which is superimposed on the descriptive content, where the description reflects the picture of the world as such. Meanwhile, the assessment focuses on its value side, which is determined by the interaction of the world and man with his value orientations. As it has already been noted, evaluation is always present in all types of texts, even if it is implicit. However, linguistic analysis is of interest primarily to those texts where the evaluation is expressed explicitly.

4. Discussion

The text which is under consideration is a short story by W. S. Maugham entitled “The Alien Corn”. It contains an openly expressed assessment and represents a subjective narrative. According to E. A. Goncharova (Goncharova 1984), the subjective narrative is understood as the type of epic text, where the image develops being based on a personal, i.e. subjective opinion, or the narrator’s one. The narrator can be either an irrelevant teller or one of the characters of the story. In this type of the text the narrative structure is based on first-person pronouns. Thus, this narrative method is usually referred to as a first-person narrative.

The term "subjective narration" is referred in this article as the first-person narrative is used in the studied texts. It is conveyed in the psychological core of the narrative, presented in the form of the hero-narrator, speech and reflex plane which prevails in the text. It should be noted that the term "subjective narration" is correlated with the frequently used in linguistics concept of subjective-modal meaning, expressing the attitude of the speaker to the reported (Paducheva 1996). Sharing I. R. Galperin’s point of view on the difference between phrasal and textual subjective-evaluative modality, artistic discourse from the first person is understood as a structural basis for the expression of the subjective-evaluative modality of the whole text (Galperin 2009; Jahani et al, 2016).

In modern linguistic studies, subjective modality is considered in a number of grammatical and semantic phenomena belonging to a broader phenomenon of authorization, which is thought to be a complication of the meaning of the statement due to the implementation of the speaker's position (Agadzhanova 1997, Andreeva 1998, Sakaeva, Sabirova, Yahin 2018; Deyhim & Zeraatkish, 2016). However, it seems necessary to note the duality of the communicative and functional position of the narrator, where he or she takes part in both the depicted reality and its reflection, and is the same object and subject of the narrative. This inherent contradiction of the narrator finds its expression in the technique of narration: the speech of the subject equally contains the characteristics and subjectivity of the statement, with a functionally pragmatic attitude (to see, to portray, to evaluate) and its objectivity (to be the subject of characterological or typological orientation).

In “The Alien Corn” by W.S. Maugham the hero-narrator, whose name remains unknown, tells the reader the story of a Jewish family living in England, thus acting as an objective narrator. This is reflected in the author's use of evaluative constructions that are objective statements when the narrator depicts, for example: English society of that time

(1) “At that period English society was still **a closed body** and it was **not easy for a Jew** to force its barriers, but to Ferdy they fell like the walls of Jericho. He was handsome, he was rich, he was a sportsman and he was good company” (Maugham 2006: 34);

(2) “I give it [the story] here because it is **a curious little** incident concerning persons whose

names at least will live in the social history of the Victorian Era and I think it would be a pity if it were lost" (Maugham 2006: 36);

(3) "Society was **mixed** now, parties were **rowdy**, but Ferdy fitted himself to the new life» (Maugham 2006: 41); city of Munich:

(4) "Munich is **a city that frolics demurely** and except about the Marienplatz the streets were **still** and **empty**» (Maugham 2006: 73); the attitude of the hero of the story, Freddy, for his sons:

(5) "Freddy was **severe** with him [Harry], and often **impatient**, but with George he was **all indulgence**. Harry would go into the business, he had brains and push, but George was the heir. George would be an English gentleman» (Maugham 2006: 47).

However, it should be noted that the objective narrative immediately acquires the subjective character, as soon as the reader encounters first-person plural pronoun we, for example:

(6) "In England we have so much bad weather that it is only fair that a beautiful day should be more beautiful than anywhere in the world and this June evening was perfect" (Maugham 2006: 49).

Despite the fact that this sentence is about English weather, the capricious nature of which is well-known, the first-person plural narrative in this sentence is an artistic form where the narrator's explicitly expressed point of view has priority. It leads to the creation of a common subjective-evaluative modal plane of the narrative. The thing is that the hero-narrator is a close friend of the family told about in the story, and he, like no other, is actively involved in solving and assessing the problem that arose in this family.

The peculiarities of the interaction between the author and the narrator, the structuring of the narrative in the story have been discussed in literary studies and stylistics for a long time. E. V. Klyuev states the author's desire to give the reader the opportunity to feel the isolation and completeness of the psychologically motivated hero-narrator in the genre form of the story (Klyuev 2000). According to him, there are two types of the story distinguished in the paper: unidirectional, where the assessment of the author and the narrator coincide, and multidirectional, in which the assessment lies on different planes.

The texts under analysis belong to the unidirectional type of stories. The hero-narrator carries out the identifying reference of his narration in his own direct statements like in the above-mentioned story by S. Maugham. Motivational relations between the first person personal pronoun and the text itself are built not only on the subject-logical basis, but they also include expressive and evaluative information that is a part of the author's intention of the work.

Integration and completeness are among the most important linguistic and stylistic categories that convey the author's modality. The integration structure of the text of the analyzed story helps to form the completeness of this work of art. However, the most universal means of the story integration in the text is the title. In this case, the author's assessment is realized not only through the repetition of the sign, but also through the influence of the title on other parts of the text, which contribute to a more capacious expression of the author's point of view, as well as the disclosure and understanding of the author's meaning (Puspitasari et al., 2019; Varela et al., 2017; Kord et al., 2017).

One of the problems raised in the novel by S. Maugham is national chauvinism. The main characters, namely the Blands, are shy of their Jewish origin and seek to impersonate the British, imitating them in everything: in the decoration of the house

(7) "Of course it's **very simple**», she [Muriel Bland] said. "**Just an English house** in the country" (Maugham 2006: 45); in manners, education and even in appearance

(8) "After all, **we're absolutely English**, no one could be more English than George, in appearance and manner and everything; I mean, he's such a fine sportsman and all that sort of thing…" (Maugham 2006: 50).

The motive of alienation and rejection of the Jewish nation reveals in the story not only in the proposals directly denouncing it, e.g.

(9) "I felt that **he** and **I** at bottom **were equally alien** in that company, I because I was a writer

and he because he was a Jew, but I envied the ease with which he bore himself" (Maugham 2006: 35) but in the title itself.

It should be noted, however, that entitling his novel "The Alien Corn" the author does not mean a separate English world hostile to the Jewish but the world as such being unfriendly and unwelcoming to mankind as a whole. This author's idea reflection can be found in the image of the main character of the story, i.e. George.

George Bland considers himself to be a stranger twice. At first he becomes aware that he is not doing what he is interested in, but what his parents are so impressed with. Then he realizes that he will never achieve recognition, respect and become a professional pianist. Eventually, the real world's rejection results in the hero's alienation and his subsequent suicide. This is confirmed by the explicit implementation of the author's idea:

(10) "It is strange that men, inhabitants for so short a while of an alien and inhuman world, should go out of their way to cause themselves so much unhappiness» (Maugham 2006: 69) with its further integration into the novel title.

In another work by S. Maugham's "Dream" the subjective-evaluative modal plan of the narrative is realized with the help of evaluative constructions used by the hero-narrator in relation to the protagonist, for example:

While the objective-evaluative plan of the narrative is reflected in the explicit author's thoughts about the human mind and its possible perversion, which manifests itself in the form of certain dreams. According to the plot of this novel, the main character tells the reader the story of his wife's death. For several days she has been dreaming about her own husband killing her, throwing her from the top floor of their big house. The family relationships of the characters are tense due to the wife's excessive jealousy and sarcasm, but the main personage of the story has never come up with the idea about the premediated murder of his wife. However, with each new nightmare of his wife, the protagonist pictures more clearly how it could happen. At the end of the story it is still unknown whether the fall of the hero's wife was an accident, a strange coincidence or a well-planned murder.

5. Conclusions

Thus, the integration of the message of this work and its title takes place at the same level as in the previous story that is the author's explicit idea integrates into the title of the work. At the same time, it seems necessary to note that the title of this story ("Dream") can be treated in two ways ('dream' as a series of thoughts, images, and feelings that you experience when you are asleep and a wish to do, be, or have something) as none of them violates the author's intention and the message of the work.

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Research Article

University Museums of National and Kapodistrian University of Athens from Inside Out - Mapping Teaching Tools

Dorina Xheraj-Subashi[1]

Alexandra S. Sfyroera[2]

Michel Roggenbucke[3]

Ifigeneia Megremi[4]

Andreas Magganas[5]

[1]*Phd in Museum Studies, Tourism Department, Business Faculty, Aleksander Moisiu University, Albania*
[2]*PhD in Classical Archaeology, Laboratory Teaching Staff, Museum of Archaeology and History of Art, Faculty of History and Archaeology, National and Kapodistrian University of Athens, Greece*
[3]*Archaeological Conservator, MA in Museum Studies, Laboratory Teaching Staff, Museum of Archaeology and History of Art, Faculty of History and Archaeology, National and Kapodistrian University of Athens, Greece*
[4]*Ph.D. in Geology and Geoenvironmental Sciences, Laboratory Teaching Staff, Section of Mineralogy and Petrology, Museum of Mineralogy and Petrology, Faculty of Geology and Geoenvironment, National and Kapodistrian University of Athens , Greece*
[5]*Professor of Mineralogy, Petrology and Mineral Chemistry, Director of Museum of Mineralogy and Petrology, Director of the Section of Mineralogy and Petrology, Faculty of Geology and Geoenvironment, National and Kapodistrian University of Athens, Greece*

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Abstract

University museums are being considered as important units in the departments and faculties they belong, and during the last decade they have been discussed for their role in the 21 century regarding the scientific and educational role that their collection play for enhancing knowledge to the community of university students. The aim of this paper is to give an insight of the different tools that university museums of the National and Kapodistrian University of Athens (NKUA (Greece) have involved and adapted in order to make their museum visible and reflect how their achievements have turned them to be places of communication and inclusion based in their collections. Even though this University has several museums managed differently from each other and spread around its campus in different buildings, not all of them operate as open museums for casual visitors or tourist, but this hasn't affected in the many efforts made by museum staff, leading and expanding the role of university museums beyond the traditional cliché "only for research purposes".

Keywords: *University Museums, collections, teaching tools, National and Kapodistrian University of Athens*

1. Introduction

The research conducted by the first author in seven out of fourteen university museums of the National and Kapodistrian University (NKUA)) started on 24 February until May 2019, for a period of 18 days, spent as a guest of: Museum of Archaeology and History of Art, Athens University History Museum, Museum of Anthropology, Museum of Education, Museum of Zoology, Museum of Mineralogy and Petrology; and Museum of Paleontology and Geology, all university museums extensively described in (Mouliou (eds) et alt, 2018), which are also the most dominant university museums providing scientific and historical knowledge in various natural field disciplines and humanities.

Since this research has various purposes such as their approach with the community, aspects of conservation, students approach, management and innovative ways interpreting their collections, it was also spread in different museums around NKUA. I, as the first author but also as a guest in these museums have been able to participate actively with the museum staff observing during daily activities and different programs, activities, workshops, visits conducted by museum staff, and the information accumulated was vital for my future reflections and analyses of the research on mapping the teaching tools. Furthermore I was given permission and access in all museum activities, I wouldn't fulfill this paper in terms of authorship, without the collaboration of museum staff that have designate the case studies discussed further, therefore this paper include also the contribution of the case studies by the co-authors: A.S. Sfyroera, M. Roggenbucke, I.Megremi, and A. Magganas, staff members of university museums.

The history of creation of university museums it is known within museum history with the establishment of Ashmolean Museum, the first university museum created in the mid 17th century, where the key mission was the acquired knowledge through the use of collection, lectures and practical's in laboratory, a combination, for enhancing knowledge of students. As mentioned also in (Kozak, 2016) during the 18th and 19th centuries, the university collections rapidly expanded, partly to affirm this idea of institutional identity, but primarily to facilitate object-based instruction, thus noted professors and academics made contributions to university collections in the form of research collections, papers, equipment and personal artifacts. But XX century museums practices, put U-museums in an overall improvement and constant challenges to better incorporate the new requirements as special places for displaying collections, repositories, identification and interpretation of objects, without being overlooked degradation or losing objects. Moreover university missions are not equity appraised everywhere, and housing a large museum heritage it was indispensable shifting toward challenges where museum management constitutes an important point, despite the financial funds which has always claimed to be an issue for their assessment (Burman, 2006) and here also NKUA has been affected by the lack of funds (Dermitzaki & Doxanaki, 2018), but thanks to the dynamism of museum staff and individuals involved have find solution by overcoming these difficulties. In addition University museums are constantly aware promoting scientific values of collections they dispose by promoting them as places where scientific knowledge takes various forms of communication when combined with introduction of innovative tools, enable understanding the vital role this entities play within university environment.

The importance of all university museums stands in spreading firsthand knowledge for students enrolled in different schools and departments of this university, while they represent important support for scientific knowledge and research for students, scholars and their lecturers, and as (Ntinou & Vafeiadou, 2018) point out, the development of Greek U-museums is parallel to the historical development of the Greek university system. During the last year's University collections, museums have posed as main focus being available and more attractive first for their students and than for the entire community, in order to be inclusive place of learning through their collection and entertain through creative tools deriving from their collection. Of course these aims require not only good collaboration with museum experts but use and application of different theories that would enable museum staff applying those to specific object or group of historical objects, specimens, items, animals and archaeological artifacts, in order to provide creative programs, considering self financial practices of these university museums.

1.1 The Museum of Mineralogy and Petrology

1.1.1 A short overview

The collections of the Museum of Mineralogy and Petrology consists of rocks and minerals specimens, maps, books, archival material and old scientific instruments. The original collections of the Museum were created by the Natural History Society in 1835 and the National and Kapodistrian University of Athens acquired them since its foundation in 1837. Years later in 1979, the collections were transferred to the new University campus. In an effort to repair the 19th century wooden display cases, the collections suffered severe damages (as almost all samples became separated from their labels), and a great number of samples were destroyed. Between 1997 and 1999, the samples were identified and re-classified, so that the Museum could open again in 2000. Today the Museum's collections of samples are exhibited in an independent area in the Geology and Geo-environment Department premises in three halls, while the fourth one is for audio-visual presentations and lectures. This museum not only contains the oldest collection of minerals and rocks in Greece, but it represents also one of the international repute. Issues discussed during teaching were: the contribution of the Lavrion mines to the history of Athens, modern technology and minerals, industrial minerals, volcanoes, radioactive minerals and precious stones. The Museum of Mineralogy and Petrology, is a 'place' where a natural object (such as rocks and minerals) of exceptional rarity and importance in everyday life, the science-based information and one of the main recipients (pupils, students) and subsequent 'carrier' of information, can coexist.

1.2 The Museum of Archaeology and History of Art

1.2.1 A short overview

In the beginning of the 20th century Professors Chr. Tsountas and P. Kavvadias brought to the School of Philosophy in Athens the first collections of ceramic sherds. The Museum of Archaeology and History of Art was officially established in the interwar period, thanks to professor of Classical Archaeology, G. Oikonomos. Currently the Museum includes about 9.000 objects, derived from donations and long-term loans, mainly originals but also copies, classified in eleven Educational Collections. They include various collections dating from the prehistoric to the modern times, having been collected mostly from Greece but also from other regions of the East Mediterranean[1].

1.2.2 The Museum's educational character –then and now

Since its inception, the main character of the Museum has been educational.[2] G. Oikonomos envisioned the Museum as "a precious educational tool", as he wrote in one of his documents. During the last decade, intensive efforts have been made in many directions. One of them was the expansion of its circle of visitors, for example, by the organization of various educational programs for school students or the regularly participation in international cultural heritage celebrations and anniversaries. Another goal was the optimum teaching exploitation of the objects which form part of the Museum on a permanent or periodic basis. The enrichment of the curriculum of the Faculty of History and Archaeology with mandatory and optional tutorials exploiting the Museum's objects had as a result its transformation into a vivid place of archaeological practice and research.[3]

Since 2010 two developments have contributed to the expansion of the educational character of the Museum; namely, the operation of a fully equipped Conservation Unit and the permission

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[1] *For an account of the Museum's history and educational collections see Constantoudaki-Kitromilides, Sfyroera 2018, 337-340.*
[2] *About the character of the Museum see Constantoudaki-Kitromilides, Sfyroera 2018, pg. 341; Sfyroera et all. 2018, pg.120.*
[3] *See Sfyroera et all. 2018, pg. 121-124 about the 'Livari project'.*

granted by the Hellenic Ministry of Culture to the professors of the Department of History and Archaeology to have their archaeological material transported from the excavation sites to the Museum for a determined period of time for reasons of conservation and study.

2. Research Methodology

The research conducted during the period of February - May 2019, in seven university museums of National and Kapodistrian University of Athens, had the purpose of understanding how U-museums are being used for teaching with their collections, their impact and role in students academic achievements. These questions would lead at the end mapping effective teaching practices pursued from U-museum.

Although there is an a vast literature (Chatterjje, H, 2011), (Simpson, A, 2017) and projects exploring multidisciplinary use of teaching and learning with museums exhibitions[4], still University museums try to find ways on being communicative and competitive places, by enhancing critical thinking when developing educational programs or when sustaining department syllabus for their students. As it has been mentioned in (Kozak, 2018) beyond the didactic value these objects and collections bring to their respective academic departments; they help forming the material identity of the university and museum to which they belong.

The fact that they are part of Universities make their values to a greater extent[5] and for this purpose was important seeing them in different perspectives like: a) how they do operate and serve in the tertiary education system, b) what benefits come from their collections, c) in what coherence do they operate as this entity, as their establishment is closely linked with universities. Thus beside understanding the extent of scientific importance that collections provided, it was relevant mapping the innovative methodologies and theoretical approaches designed based on their collections..

Beside the questions posed at the beginning it was relevant including as part of methodology the face to face conversations with scientific staff of museums, in person participation inside U-museums especially when educational activities were undertaken, museum designing theories for new activities, but also from long conversations with museum professors, curators, directors, and staff which generously supported me during this research.

3. Mapping Teaching Tools - Case Studies

Since their first creation the museums of this university have changed and adapted forms of museum management, focusing on object research which apparently have influenced on the promotion of their collections, enhanced the scientific study of collections and enriched the cultural life of their students, becoming more open and receptive to the cultural needs of the public by focusing their activities on educational programs, when object-based learning theory have prevailed[6]. Research on their collections and the persistence of facing students gaps and visitors needs, misconceptions and curiosity has demonstrate that critical observations can bring effective tools and successful cases where objects have been transformed in theoretical issues.

3.1 Misconceptions leading environmental issues

Among many unique and remarkable collections hosted in the Museum of Mineralogy and

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[4] See: http://www.teaglefoundation.org/Impacts-Outcomes/Project-Profile/Profiles/Teaching-and-Learning-with-Museum-Exhibitions, accessed 23.08.2019; https://nma.gov.au/research/understanding-museums /JGriffin_2011.html, last accessed 23.08.2019; Princeton University "Teaching with objects" https://www.youtube.com/watch?v=aGv1OAz1qwI, accessed 23.08.2019

[5] See here Terje Brattli & Morten Steffensen, "Expertise and the formation of university museum collections", pg.96-97, Forskningsprosjekter nordisk museologi 2014 , Nr.1,

[6] For "object based learning" see Chatterjee, H. J. (2017) Object-based learning in higher education: The pedagogical power of museums.;

Petrology of NKUA, the knowledge and information regarding rocks and minerals' significance in our daily lives and their environmental impact is being less conceived. In particular the guided tours of thousands of visitors, pupils of primary and secondary education, university students, various social groups (artists, jewelers) more than 7,000 in total annually led to the following findings: although materials derived from the earth (like soil, stones, sand, rocks, pebbles, etc.) are familiar to young children and capture their interest, however there are great misconceptions (Science Framework of Georgia Performance Standards, 2007) regarding the meanings of mineral and rock, their origin and their usefulness in our everyday life.

Thus communicating their impact into society is somehow a challenge to be interpreted with simple explanatory text, rather than disseminating to different social groups, through interactive educational programs.

The misconceptions at the Museum of Mineralogy and Petrology were the challenges that museum scientific staff faced especially during children's visits inside the museum. This new approach needed to be clarified and at the same point led staff designing new tools of communicating objects[7]. They chose to link minerals and their impact with environmental issues, by creating educational interactive programs in order to help young visitors overcome the false impressions and raise their interest in understanding the inseparable link between the living world and the world of rocks and minerals.

One of the educational interactive programs and the most popular one, organized and implemented by the Museum's scientific staff were performed in front of a showcase of the Museum that hosts a collection of industrial minerals and the products resulting from their industrial processing (like a pencil, cans of refreshments, toothpaste, chewing gums, glass, computers and watches). So initially visitors learn about industrial minerals and their uses in front of this museum's special showcase. A "journey" through daily used items, help people understand how much their life depend on minerals and rocks. Then the knowledge gained is well established through a relay race that combines memory and speed with the purpose of matching minerals and rocks with objects derived from them.

Most of the educational interactive programs (nine of twelve) performed in the Museum are organized and implemented by the Museum's scientific staff. Three of them were the result of the interdisciplinary approach of the objective (interactive activities) through collaboration with the Departments of Informatics and Telecommunications, the interdepartmental postgraduate program in "Museum Studies", both of National and Kapodistrian University of Athens and with the Department of Educational Sciences and Early Childhood Education of the University of Patras. Thus the mineral collector through mobile applications (Androutsou et al., 2018), educational and entertaining tour for pre-school children in the Museum (Fragkiadaki et al. 2014), interviews, sessions and workshops of the staff volunteers and artists concerning the implementation of digital technologies in the museum, (Papadopoulou, 2017) are among the research conducted during collaborations.

Furthermore the educational programs are performed within the frame of events like "Sunday mornings at the Museum of Mineralogy and Petrology" implemented voluntary at Museum's venues by the staff, the students and various social groups, like mineral collectors who exhibited their personal collections originating around the world, writers and artists with projects inspired by crystals' structure, colors and luster of minerals showcased in the museum, in an attempt to emphasize the role of the Museum in education and furthermore in the society.

Since the Museum of Mineralogy and Petrology's reopened, teaching Mineralogy has become more direct and interactive since the physical object of the Museum (rocks and minerals) constituted the main subject of the Department, with which students could come in contact and study at any time. Moreover, observations conducted during guided tours of visitors led to the designing of educational interactive programs (family and individuals, interactive and digital ones) in order to broaden Museum's educational character, connect its exhibits with people's everyday life

[7] *Dorina Xheraj-Subashi, personal information with Ifigeneia Megremi and Stathis Vorris inside Museum of Mineralogy and Petrology*

and establish an interactive relationship between the visitor and the object of observation/study/view and a constant activation of the visitor interest.

Fig.1: Flourescence dark room, copyright Dorina Xheraj-Subashi

3.2 Undertaking tutorials focused on Museum objects-three case studies

During the last five academic years, three archaeological tutorials based on objects of the Museum of Archaeology and History of Art have been planned and implemented. It would be unnecessary to cite here theories that demonstrate the importance of objects in education. It is preferable to discuss some of the challenges that object-oriented teaching offers to students and teachers.

The first tutorial is entitled "*Archaeological description*" and it is part of the mandatory course of Classical Archaeology in the first semester. Although it is optional, more than 120 students attend it yearly. The tutorial attempts to make the first year students leave the bank of the river, where High school was located and cross the river to the other bank, where the University premises are located. There, the perception of education, learning, obligations etc; is radically different. In the Hall of Casts they are invited to have –for their first time- a very close encounter with an ancient sculpture, to confront with it -with its human or bigger size, its indestructible material, the worldview of its creation era, as it is reflected in our eyes. Exploiting pottery collections, they take in their hands an ancient vase or parts of it; they are asked to formulate typical archaeological questions about its material, technique etc, and mainly think about usability features that have survived or are lost in modern vessels of the same purpose. They are taught a method of observation, not just optical but multi-sensory; they touch all the objects, they can smell them, or appreciate the distinct sound produced by each material. They are introduced to basic concepts and terms of Archaeology. They are encouraged to use the proper terminology in their first simple university assignment, the description of a sculpture and a vase, which is orally presented. Last but not least this tutorial aims to show the students that the Museum is not just a Gallery but a place of active and interactive education, vivid learning, and a field offering chances for creativity, inspiration, cooperation, new experiences, and dialogue.[8] All of these general teaching principles are exploited and extended to the other two tutorials.

The second tutorial is mandatory for all the Archaeology students of the eighth semester. It is entitled *"Tutorial in pottery sorting and recording"*. Undeniably its purpose is not to make all the

[8] *M. Mouliou (2018) has shown in vivo how the Hall of Casts can be turned into a lab of experimentation, unlocking the critical and creative potential of students.*

students experts in pottery (it is impossible), but to give the chance to everybody to spend three hours exclusively in a guided close study of pottery sherds. First, they are taught a basic method to sort a big amount of sherds in smaller groups according to some common features (such as, their construction technique, material, decoration, shape, chronology etc) and secondly to record them on a special form. The pottery sherds have originated from the university excavation at Plasi (Marathon, Attica). It is important to realize that it is not enough to simply recognize the shapes and names of ancient Greek vases (rarely does an archaeologist find intact vases in an excavation) but they have to keep moving from the part to the whole, from the sherd to the vase, and vice versa.

The third tutorial is more specialized, being a mandatory part of a seminar lesson on Minoan pottery. Taking advantage of a complete and diachronic collection of Minoan vases and sherds dated from the Neolithic to the Late Minoan III period, students are confronted with the challenging issues of pottery typology. It is much easier for them to understand and remember different techniques, names of shapes and special terms for their parts, having these vases or the sherds in their hands. At the same time, they are provided with a special booklet including shapes and names of Minoan pottery prepared especially for the purposes of this tutorial. In the end, everyone has to prepare a detailed description of a Minoan vase.

In addition to promoting the cognitive abilities of a future archaeologist, all the tutorials trigger the students to confront -in an easy way- the question 'am I really determined to dedicate my life to Archaeology?' In their evaluation, the students rate positively the fact that the tutorials take place in the Museum (not in a classroom) allowing them to take original objects in their hands.

Fig. 2: The Hall of Cast, copyright Dorina Xheraj-Subashi

3.3 The Conservation Unit

The Museum of Archaeology and History of Art of the National and Kapodistrian University of Athens (NKUA) among other things achieved during the last decade and in times of major economic crisis managed to establish a conservation laboratory that offers training to students of the Faculty of History and Archaeology, by teaching them the principles of archaeological conservation.

The "Conservation Unit", as the laboratory is named, was established in September 2010 in the premises of the Museum and it constitutes the first laboratory of this type in a Faculty of History

and Archaeology in Greece. The aim of this laboratory is mainly to enhance the practical experience of students of the Faculty in archaeological conservation and "first aid" on site, as well as other related subjects, such as proper packing, transportation and storage.

During each academic year, "Conservation Unit" hosts the optional seminar *"Conservation techniques. Practical guidelines for archaeological conservation in the excavation and the lab"*, which has already been included in the programme of studies since the winter semester of the academic year 2009-2010, as well as other seminars by the professors of the Faculty, who also organize workshops and other experimental archaeology events.

Basic theory of the optional seminar is being taught during the winter semesters and as part of the mandatory course (undergraduates) *"Excavation and Study of Archaeological Materials-Museology"* (3x3 hours, Archaeological conservation and first aid on site), during the spring semesters. At the same time, students have the chance to practice the theory on site, at the Department's excavation in site Plasi (Marathon) that lasts eight weeks in total, each year.

Additionally, "Conservation Unit" has established a close academic collaboration with the Department of Conservation of Antiquities and Works of Art (University of West Attica-UNIWA), and every year hosts at its premises the undergraduate students attending their mandatory courses *"Conservation of Ceramics"* and *"Conservation of Sculptures"*. The courses are taught by the professors of the UNIWA and the conservator in charge of the "Conservation Unit", who is holding the position of Laboratory Teaching Staff. Furthermore, a number of final year students accomplish their internship at the premises of the laboratory, while others undertake their graduation thesis on museum collection and objects from the university excavations.

During the Academic Year 2018-2019, the laboratory offered also a short training course to Erasmus+ program students as well as the ones of the new one-year Master's program taught in English, devoted to the advanced study of the archaeology of Greece, the wider area of the Aegean, Cyprus and the Eastern Mediterranean, including Mesopotamia. The program combines an in-depth, systematic account of the evidence, the methodologies, and the current debates on Greek and Eastern Mediterranean Archaeology.

It has to be mentioned here that the above undergraduate and postgraduate courses are offered to all the students with no exceptions. A high number of disabled students have the chance to participate without problems due to the effort made by the two Institutions and their academic staff, despite all the long lasting financial problems. The "Conservation Unit" covers a broad field of conservation-restoration training projects via informal education, internships, continual professional development and research in an interdisciplinary working environment, while it manages providing training for young students to be educated in an environment that is at the same time a professional conservation laboratory. This way, students from different fields learn not only the curriculum of each science, but also how to work together long before they graduate. This is a significant difference that makes the certain laboratory a unique case, enhancing furthermore the educational role of the Museum of Archaeology and History of Art of the National and Kapodistrian University of Athens.

Fig. 3: Museum of Archaeology and History of Art, Conservation Unit. Copyright M Roggenbucke

4. Discussion

A considered number of theories are already implemented from certain museums in NKUA, from object based learning, doing digital with collections, puppetry and role drama playing, to game based playing[9], which have changed the way of communication with university students but also with other stakeholders as secondary schools, and turning them in vast environment of learning and entertainment in the same way. These approaches are vital for the identification of U-museums of National and Kapodistrian University of Athens, as important place when learning, self reflection and active participation are crucial for student's wellbeing.

Even though not all University museums of NKUA are opened to be visited freely every day, because some of them need previous confirmation[10], they hold important objects with scientific importance as well numerous valuable objects and specimens with historic, aesthetic, artistic and social significance, which are an inestimable value for the wellbeing of scientific research, contribute for enhancing the critical thinking, improve education and admiration and affect further reflections how to better use this vast patrimony to serve as cultural bridge for students community and its surrounding campuses, for academic collaborations as well toward the criteria encompassing the concept of Third Mission of Universities.

One of the statements given by Nykänen et alt, 2018 reinforce the importance of University museums and collections [as places] filled with historical treasures, glorious works of art and science. Thus, they are able to: "*provide opportunities to ignite the imagination, inspire the soul, and probe the very heart of our shared human consciousness. University museums are templates or platforms as places of investigation, inquiry, and intellectual challenge in an increasingly global society*" And, in this context the two examples of U-museum of NKUA, have contributed for changing the archetype of a merely university museum only for research and academic purposes. With the designation and interdisciplinary museum studies implemented they have turned to be vivid places of learning. The effective participatory programs created by museum staff enabled deep involvement of visitors during educational programs, particularly the practice developed in Museum of Mineralogy and Petrology, which has turned rocks and mineral in communicative objects, facilitated from the fluorescence and phosphorescence dark room incorporated to the museum. This innovation practice shows the transformation of minerals when using ultraviolet lamps with different wavelength, but in the same time provokes curiosity when enhance the comprehension of minerals by offering in the same time a unique experience for visitors. Involving students with tutorials have been demonstrated as an important tool that engage and face students not only with real artifacts, but develop their critical thinking while facing them. Thanks to the impressive collection of casts in realistic scale of original archaeological artifacts distributed in important museums in Europe, students has the unique opportunity seeing, admiring, studding and standing in an parallel environment when museum object –oriented has been considered as an effective practice for critical learning, involving and improving student's knowledge. Moreover the well-equipped conservation laboratory allows extending the practical hands-on as objects are used as teaching tools to give students a deeper understanding of ancient cultures and people.[11] On the other hand, the constant combined efforts of all faculty members of the Department of Archaeology and History of Art for the reinforcement of the multiple characters of the Museum have been acknowledged in the *External Evaluation Report* (2010) and the *Accreditation Report for the Undergraduate Study Programme* (2019) for the Faculty of History and Archaeology. More importantly, these efforts have resulted in the noticeable increase of the importance and reliability of the Museum, both within the communities of the School of Philosophy and the National and Kapodistrian University of Athens, and also in the circle of possible private donors and public lenders of objects which may enrich and refresh the Museum's collections. At the time that these

[9] *D. Xheraj-Subashi, inside observations in some museums, within the period February-March 2019*
[10] *D. Xheraj-Subashi, personal information during museum visits ex. Museum of Anthropology, NKUA, May 2019*
[11] *More for this practice: Princeton University "Teaching with objects" https://www.youtube.com/watch ?v=aGv1OAz1qwI, accessed 23.08.2019*

lines are written, very important building improvements are close to completion and the reception of a large and significant collection of items is expected.

5. Conclusion

Although in the past these entities have been facing financial crises, which have been overpassed thanks to academic community commitment which invested individual dynamism for turning out U-museums as vivid places where theories combined with practice can change perceptions, University museums are able to raise new important questions for scientific purposes but they improve student's cultural life. In this context these museums have made efforts including student's collaboration as volunteers in museum activities. This collaboration has been achieved by constantly involving them, in museum research, educational activities, as museum guides, where theory and practice take action in the Museum of Mineralogy and Petrology, which consider them as a bridge fostering promotion of museum heritage within University itself, but also involving them with museum staff activities. In this way their presence contributes not only facilitating daily museum matters but also increase the reputation of the museum.

But beside the relevant achievements reached so far in innovative teaching tools, still important issues remain open among directors and museum staff of several U-museums of NKUA. Thus the creation of an effective U-museum Network, is considered as an important point that would enable further collaborations between them, would enhance the development of common scientific activities, increase U-museum visibility and participation, would require to U-museum professional posing new questions through common projects regarding 21st Century U-museum challenges. Moreover a possible creation of University museums student's volunteer network would be considered as a step toward U-museum inclusiveness.

6. Acknowledgements

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Research Article

Phonetic and Morphological Analysis of Word Formation of Tatar Names

Damir Haydarovich Husnutdinov[1]

Ramilya Kamilovna Sagdieva[1]

Ramil Hamitovich Mirzagitov[1]

Radik Ramilevich Galiullin[2]

Ayakoz Oteukyzy Baidauletova[3]

[1]*Kazan Federal University, Kazakhstan*
[2]*Naberezhnye Chelny Pedagogical University, Tatarstan*
[3]*LLP Kyzylorda "Bolashak" University, Kazakhstan*

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Abstract

There is a growing need for a scientific study of all types of proper names that represent a certain category of words in the lexical system of any language. The current stage of linguistics development is characterized by the rapid growth of the onomastics research conducted on the material of various languages. This research targeted at Tatar surnames aims to understand their origin and phonetic-morphological changes. The research considers proper names that are formed by adding two or three stems. It distinguishes the following models of word formation of proper names: noun + noun, noun + adjective, noun + verb, adjective + noun. After the ethnolinguistic features and phenomena of interlinguistic contact have been studied, it is found that Tatar surnames originate from nicknames, class titles and names of professions, place names, ethnonyms, appellatives. The methods are chosen due to the purpose and objectives of the research, as well as to the specifics of the material under study. This research mainly uses the methods of grammatical analysis, namely: a descriptive method, a comparative-historical method, a descriptive-analytical method, and the method of continuous sampling. The descriptive method involves collecting the material followed by its systematization that allows considering different forms and types, general and specific characteristics. The comparative-historical approach helps to study the peculiarities of interaction between the Tatar language and other languages.

Keywords: *anthroponymy, anthroponymicon, the Tatar language, appellatives, proper names, surname*

1. Introduction

The process of emerging and spreading the surnames in all parts of the world occurred in different ways and at different times, but it was caused by the same reasons. Communication and other types of relationships, including commercial and cultural links, made it necessary to use surnames. The research discusses the grounds on which the surnames of people of different nationalities can either be classified or separated. It is also found that a surname contains the information that helps to introduce and use the name in communication, provides knowledge and facts about a person and allows studying the word formation and etymology of the surname (Abduali et al, 2017; Fattahova et al, 2016; Husnutdinov et al, 2017; Khaziyeva-Demirbash, 1969; Rezaei & Nemati, 2017).

Anthroponymic researches have made it necessary to compile dictionaries of personal names and surnames as any brilliant theoretical findings in linguistics cannot do without factual basis. To compile the dictionaries their authors used the materials of onomastic expeditions, maps, lists of settlements of the area under study, archival funds, as well as the materials of folklore, inscriptions, chronicles, scribal and memorial books, family trees, local history books and newspapers (Khaziyeva-Demirbash, 2017; Kubryakova, 1978; Varela et al, 2017).

Any language of the world has anthroponymic categories that perform the nominative function, aim to address a person. These categories are first names, nicknames, patronymic names and surnames. Having preserved the elements of the ancient system of language, they have become a link between the past and the present, reflecting the history, views, customs and traditions, material and spiritual culture of ancestors. Names make up a significant part of the vocabulary of any language. Many proper names belong to the international lexicon and they are equally significant for different languages. They have properties and characteristics that mostly remain unchanged in whatever language they are used (Nikonov, 1988; Simamora et al, 2019).

Proper names are recognized as one of the linguistic universals. However, each ethnic group in a certain period of its development has the onomasticon, peculiar only to this group. Many researchers emphasize that a proper name is a "social sign" meaning that it is the result of both social and cultural development. Proper names are associated with various spheres of human activity. One can see the society and culture through the onomastic system; it reflects the cognitive experience of the nation, its cultural and historical development. Although proper names perform a number of similar social functions, they have their own characteristics in each particular language, belonging to the system of this language and developing according to its laws. In onomastics, as a field of language closely related to social phenomena, it is necessary to take into account the interaction between linguistic and extra-linguistic factors that ultimately determine the existence of the word and its functioning in speech (Novikov, 1982).

National peculiarities of anthroponyms can be seen in the anthroponymic formula that is the order in which different types of anthroponyms and nomens follow while formally naming a person of a certain nationality, class, or religion in a certain period of history.

Being variable to some extent, the standard of using anthroponyms is quite traditional for each language.

Anthroponyms can be used with articles, pronouns, adjectives and other determiners due to the peculiarities of the semantics of proper names.

One of the topical issues today is semantics of proper names. The disputable problems are whether proper names have lexical meaning, its character and "volume" in comparison with the semantics of common words; the nature of onomastic meaning; the correlation between linguistic and non-linguistic factors in the semantics of proper names (Sattarov, 1981).

2. Methods

The methods are chosen due to the purpose and objectives of the research, as well as to the specifics of the material under study. This research mainly uses methods of grammatical analysis, namely: a descriptive method, a comparative-historical method, a descriptive-analytical method, and the method of continuous sampling. The descriptive method involves collecting the material followed by its systematization that allows considering different forms and types, general and specific characteristics. The comparative-historical approach helps to study the peculiarities of interaction between the Tatar language and other languages.

3. Results

1. Some researchers deny that proper names have meanings: proper names are considered as labels that are used to describe some objects, distinguishing them from the others. In the middle of the 20th century that approach was known as labeling theory. The approach reduces the function of a proper name to a simple nomination. In the second half of the 19th century there was a change in naming the Tatars. Complex names consisting of two

or more elements were used at that time. That tradition became dominant by the end of 19th–beginning of 20th centuries.

2. The majority of ancient Bulgarian-Tatar personal names consisted of only two or three syllables; they were short, easy to pronounce; and they were mainly names with diminutive suffixes. The traditional forms of personal names that had been used in the Tatar language since the Bulgar times resulted in the accepted anthroponymic models. They strongly influenced the system of names borrowed from Arabic and Persian, and later from Russian.
3. Anthroponymic process of shortening the original Turkic-Tatar names and the borrowed full personal names is explained by the influence of traditional two-syllable national forms of personal names. That process was also targeted at facilitating the pronunciation of multi-syllable borrowed and hybrid names.
4. Tatar surnames originated from nicknames, class titles and names of professions, place names, ethnonyms, appellatives.

4. Discussion

The variations originated due to the phonetic or phonetic-morphological changes or formed by shortening the full names are considered as specific structural types of personal name formation. The phonetic contraction and full name shortening are called regressive ways of name formation, while the phonetic-morphological contraction – regressive-suffixal way of formation. Meanwhile the original forms of such anthroponymic units (resulting from the multiple phonetic and structural modifications) can be completely changed. These forms are allonyms of the full names.

The shortened borrowed Tatar proper names are formed by adding the suffixes of subjective evaluation. The most widespread suffixes are:

-ai/-ei /-i: Gyimadetdin > Gimai, Bilaletdin > Bilei;

-ash/-esh, -ysh/-esh, -ush: Zainetdin > Zainash, or the surname – Zainashev, etc.

There are some other ways of shortening the personal names of foreign origin:

- the first part of the borrowed complex name is completely dropped (aphaeresis): Valiakhmet > Akhmet (Akhmetov, Akhmadiyev);

- the second part of the borrowed complex name is completely dropped (apocope): Nuriakhmet > Nuri (Nuriyev), Safiulla > Safi (Safin);

- vowels or syllables fall out in the middle of the borrowed name (syncope): Bikmukhamet > Bikmet (Bikmetov), etc.

Considering the proper names formed by adding two or three stems, it is necessary to regard the following models of their word formation:

- noun + noun: galim + zhan = Galimzhan, khasan + shakh = Khasanshakh;
- noun + adjective: timer + bai = Timerbai;
- noun + verb: davlet + bakty = Davletbakty, murza + birde = Murzabirde;
- adjective + noun: salim + zhan = Salimzhan.

The Tatar surnames originated from nicknames are in second place after those originated from first names.

According to the functions performed the nicknames used in Tatar and other languages are divided into:

- personal-individual nicknames belonging to one person;
- family-generic nicknames, i.e. particular nicknames belonging to the whole family or related families;
- collective-territorial nicknames belonging to the inhabitants of the whole street or even the village.

Most surnames originated from the family-generic nicknames; the personal-individual nicknames could become surnames and move into the category of family-generic names only in the case if they were given to the members of a family belonging to the vertical line of the family tree. Meanwhile the collective-territorial nicknames, on the contrary, could narrow down to the family-generic ones.

There is the following classification of surnames originated from nicknames:

- surnames denoting physical or psychological abilities or disabilities of people: Aksakov (aksak – lame), Sulagaev (sulagai – left-handed);
- surnames denoting family or social relationships: Abyev (abyi – a brother, an uncle), Tutashev (tutash – a girl);
- surnames denoting animals and fish: Buryaev (bure – a wolf), Bulanov (bolan – a deer);
- surnames denoting birds: Akcharlakov (akcharlak – a seagull), Suyerov (suyer – a capercaillie);
- surnames denoting plants: Aktiryakov (aktiryak – a white poplar), Usakov (usak – an aspen);
- surnames denoting food products and dishes: Sarmayev (sary mai – clarified butter), Tukmachev (tokmach – noodle);
- surnames denoting surrounding objects: Bashmakov (bashmak – a shoe), Kurayev (kurai – a wooden pipe);
- surnames denoting places of living: Urumbashev (uram bashy – the beginning of a street), Urmancheyev (urmanchi – a forester).

Modern Tatar surnames originated from nicknames have lost their cognitive meaning and therefore they have lost the connection between the characteristics of a person and the semantics of the original name. Nevertheless, the results of surnames research are of great value in both linguistic and historical terms. The surnames passed down from generation to generation can be helpful in understanding the out-of-use layer of the Tatar language more than any other anthroponymic category can.

The class titles, as well as the trades and professions were inherited. The surnames denoting titles, trades and professions can be found in the documents of the past.

The Tatar surnames denoting class titles and ranks are as following: khan – a ruler or an official in Turkic and Tatar feudal states in the middle ages (Khanov), morza – murza – mirza – a man belonging to the privileged class; a lord (Morzayev, Murzayev, Murzin), amir – a man giving the order; a master (Amirov), shakh – a master (Shakhov), mullah – a Muslim teacher of law and religion (Mullin), etc.

There are surnames formed by compounding two title names. They obviously confirm the social positions of their bearers and have an expressive effect, e.g.: Khanbikov, Baymurzin, Sultanbekov, Bikbayev, Amirkhanov, etc.

The surnames originated from class titles are of great historical value as they give a picture of public life in the Bulgar state and the Kazan khanate: social classes, administrative bodies, military affairs, religion.

The surnames originated from the names of professions can be explained by the fact that the professions and trades were mostly inherited. As a rule, the professional skills were shared only with the closest relatives: a son or a grandson. At a certain stage of history, the names of professions became surnames, most often by attaching the Russian suffixes -ov/-ev or –in to the words denoting professions, for example: Bakyrchin (bakyrchi – a coppersmith). Many surnames preserved their original forms with the suffix denoting a doer: -chi / -che, i.e., they were transformed into the category of names without any changes, for example, Urmanchi (urmanchi – a forester) (Millanei et al, 2016; Fathi Aghdam & Mahmodi Lafvat, 2016; Simamora et al, 2019).

It can't be denied that some names of class titles and professions being used as personal names could become surnames. For example, the "Dictionary of Tatar Personal Names" by G.F. Sattarov gives some of the above mentioned surnames as personal names. Schematically the transformation of these antroponyms into the category of surnames is like this: the word denoting a profession > first name > the name belonging to the family members > the surname (Sattarov, 1990).

The surnames originated from the place names (toponyms) could appear for several reasons: the representatives of the upper social class took the surnames denoting the local lands they owned. It can be supposed that these surnames are: Aksubayev, Alparov, Mamadyshev, etc. The surnames could originate from the names of other cities, khanates and states due to commercial and political ties with them: Altayev, Atlasov, Bukharsky.

Often the surnames originated from the place names appeared as a result of migration of the

Tatars. Then a person was given the name of a former place of living. The Tatar surnames can denote Bulgarian cities (for example, Bulgarian, Suvarov, Uryumov), as well as modern Tatar settlements: Arsky, Asnakayev, Archaly (Valiyeva, 2007).

In the Tatar anthroponymic system there is a certain number of Tatar surnames originated from the names of tribes, nationalities and nations, i.e. ethnonyms.

The surnames originated from ethnonymic names indicate the historical ties between the Tatars and the neighboring and distant tribes and nations, e.g.: Misharin (mishar – a representative speaking the western dialect of the Tatar language), Nugayev (nogai – a Turkic ethnic group), etc.

Unlike the surnames originated from personal names and nicknames the so-called artificial surnames were formed, as a rule, by their bearers who made use of the melodic words or appellatives. Among these anthroponyms there are such surnames and pseudonyms as Aisky (ai – the moon), Bairakov (bairak – a banner), Vatanov (vatan – the Motherland, Fatherland), Chiberkayev (chiberkai – a pretty woman), etc.

The artificial category of rare Tatar surnames also includes double names. They may be formed either by compounding two names that have passed the natural course of development, for example: Gabitova-Teregulova, Tamindarova-Saifullina or by compounding two names, one of which is formed artificially, for example, Gyizzatullina-Volzhskaya and others.

5. Findings

It can be concluded that variations are one of the features distinguishing the anthroponymic vocabulary from the general vocabulary of the Tatar language. The groundwork for them was laid in the early period of development of the Turkic-Tatar anthroponymicon. But it is in the 20th century when the issue becomes urgent. Due to the influence of the phonetic-morphological system of dialect and colloquial-familiar varieties of the Tatar language, many full personal names (which are the norm in the literary language) mainly borrowed from the Arabic and Persian languages, have undergone certain phonetic and phonetic-morphological changes. These changes result in shortened forms, or allonyms, that constitute a significant part of surnames.

6. Conclusion

The anthroponymic system in modern Tatar linguistics has its own linguistic and cultural traditions. These traditions are closely connected with ethnic culture of the Tatars and create a specific anthroponymic picture of the world. It should be pointed out that the semantics of the names and surnames borrowed from different languages in different periods of history has preserved the ancestors' experience and the national traditions of giving names. Undoubtedly, anthroponymic units do not directly express the ancient views; they are symbols due to their linguistic functions. Proper names contain the cultural code of a nation and its genetic memory. The information that is contained in surnames proves that there is correlation between a certain period of history and its general sociocultural orientation. Thus the onomastics studies become an important part of the semiotic content of the period.

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Research Article

Business Barriers on Doing Business in Kosovo

Prof. Ass. Dr. Drita Krasniqi

Professor at University "Ukshin Hoti",
Faculty of Economy, Prizren, Kosovo

Dr.Sc. Eriona Deda

Professor at Fama University,
Faculty of Economy and Faculty of Law,
Prishtina, Prizren, Kosovo

MSc. Pajtime Shala

Assistant Professor at University "Ukshin Hoti",
Faculty of Life Sciences and Environment,
Prizren, Kosovo

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Abstract

Doing Business is an important issue for countries in developing economy, and to achieve this, we need to note a continuous improvement in the Doing Business Report. In this paper we`ll analyse Kosovo's performance in TBB indicators, such as: business startup, building permit, building electricity, registration security of ownership, receiving loans etc. In particular, we`ll present the business difficulties, such as: (business certificate, fiscal number, municipal permits, professional work licenses, construction permits). Businesses start work based on research products and services, of trade enterprises in Kosovo. Based on the World Bank Report, we`ll see that Kosovo has increased significantly from World Bank rankings in the Doing Business Report.

Keywords: *DB (Doing Business), Indicators, Business, Development*

1. Introduction

The aim of Doing Business Report is to measure rules of doing business for enterprises in a country. State ranks in the Doing Business Report, affect the policy making of these states according to this issue, especially at developing ones.

Key factors evaluated by the Report of Doing Business (D, Dobranja; Canhasi, D; Bodnarova, B;, 2012) for each indicator are number of necessary procedures, time, cost and protection of law. This means that the report of doing business is based on the regulatory aspect and improvements in ranking which are made by reforms in the legal framework of a given country.

Business opening procedures, property registration, building permits, contract enforcement, and investor protection are some aspects that determine the quality of business environment.

This paper aims to analyse importance and impact of the report of doing business in our country. Also, the leading indicators affecting doing business are shown, where each of the indicators turns into a numerical result that makes it easy to form a general result for a particular country. Then, another important issue is analysed in the rankings of Doing Business Report of Kosovo compared with some other countries in region.

2. Literature Review

The aim of literature review is to observe and analyse relevant research literature in that has a significant connection with the topic our paper brings to the reader. Many other authors have handled works, projects, and studies, with topics similar to this one. During our research, we have traced some of them we consider of worth reference. Therefore, in order to reflect their work and our empirical study, we are going to sum up briefly some authors who have treated topics similar to ours:

The authors Mohammad Sharfuddin Rashed & Ashraf Un Nesha (Rashed & Nesha, 2016) published their paper "*Doing Business in and with China*" in the journal *Global Economics and Business Research*.

In their paper "*Doing Business in and with China*", they show that China has become much easier than it was decades ago on its policy of doing business. Thus, China in the last years has entered to unprecedented economic growth since its economic reforms (in 1978) by becoming the second largest economy in world. However, doing business in China has some barriers, such as foreign exchange restrictions, anti-trust laws, intellectual property rights, etc.

Summing up, the authors address the driving factors of doing business in China and hindering factors, considering barriers that make it difficult to do business in China by highlighting the advantages and disadvantages.

Other authors who have treated topics similar to ours, are Seeta Gupta and A. Uday Bhaskar (Gupta A & Bhaskar, 2016) in their article entitled "*Doing Business in India: cross- cultural issues in managing human resources"*. In their work, they deal with the great opportunities that India offers on doing business. They also stress the fact that India has made a great stride in economic growth during the recent years. Apart the opportunities that India offers in doing business, the authors also refer to the main barriers encountered, that are cross-cultural issues and HR management.

3. Research Method

In order to give a clear view of the findings, we used in our work the descriptive method based on comparative analysis, which is expressed in percentage (%). Initially, we focused on the comparative analysis expressed in percentage by size of the small and medium enterprises, and by employment rates measured in Kosovo. Then we focused on the main barriers of Doing Business in Kosovo, based on comparative analysis expressed in percentage. Another issue we focused on was the comparative model in order to highlight the advantages and disadvantages that Kosovo has, compared to some other countries in the region.

3.1 The Purpose of the Paper

This paper aims to analyse the importance of doing business and the main factors affecting doing business in Kosovo, based on the comparative analysis of Kosovo case to several other countries in the region.

3.2 The Research Question

The research question in our paper is related to the purpose of paper itself, which is the determining of the barriers that directly affected doing business in Kosovo. Therefore, the aim of research question is to trace and define the constraining and driving factors that impact directly or indirectly doing business in Kosovo.

3.3 Data and Choice

The data we`ve used in our paper are quantitative secondary data. We retrieved these data mainly from the Business Registration Agency in Kosovo (ARKB) Report for 2010, as well as by SME Development Strategy in Kosovo for period 2012-2016.

4. Analysis of the Results

Initially we gathered data as mentioned above, and then we focused to elaborate them so that to give a clear analysis of the businesses registered in Kosovo, classifying them by size and number of employees.

4.1 Registered Businesses in Kosovo

According to Business Registration Agency (ARBK) in MTI, (Kosovo, 2011) the number of SME-s registered until December 31, 2010 was greater than 100.000, employing up to 216.799 workers, or 79.59% of total employed in the private sector and 62.24% of the total number of people employed in Kosovo.

The size of SME in Kosovo is defined by number of employees, (Official, LAW NO. 02 / L-5 On supporting small and medium enterprises, 2006) (Official, LAW NO.03/L-031 LAW ON AMENDING AND SUPPLEMENTING THE LAW 02 / L-5 ON SUPPORT OF AGREEMENTS, 2008), that is the only criterion used for classifying enterprises by size in Kosovo (Kosovo, 2011). This represents the difference of Kosovo with EU countries, where apart from the number of employees, the annual turnover is also taken into account. The table below shows a spectrum of enterprises registered in Kosovo based on number of employees:

Table 1: Enterprises registered in Kosovo by number of employees **-** 2010

Classification by size	Number of employees	Number of enterprises	Percentage in total
Micro	1-9	102.070	98,37
Small	10-49	1.406	1,35
Medium	50-249	221	0,22
Large	250 and more	58	0,06
Total		103.755	100

Source: Development Strategy of SME in Kosovo, (P. 17)

According to the table presented above, we can see that 98.37% are micro-enterprises; 1.35% is small enterprises; 0.22% are medium and only 0.06% are classified as large enterprises. (Kosovo, 2011)

4.2 Doing Business Report Analysis

The Doing Business Report aims to measure the rules of doing business for small and medium enterprises in a country. This report is based on ten indicators. The categories where businesses face the greatest number of barriers are considered tax payments and electricity security. The states reflect their performance in all ten DB report indicators, and according to this performance, their ranking is set. After the measurements, each of the indicators turns into a numerical result that makes it easy to form a general result for a particular state. Thus, the comparison between states and indicators is simple. The ten DB indicators that are also used for Kosovo, are:

- Business start
- Obtaining a building permit
- Provision of electricity
- Registration of ownership
- Making loans
- Protection of investors
- Tax payment
- Trade across borders
- Enforcement of contracts

- Solving the impossibility of debt

The World Bank mentions a number of major TBB limitations. Stressing that the TBB has a limited range of alignment, among others, it is mentioned that it doesn`t value security, macroeconomic and financial stability. It also does not value the lack of the quality of workforce, referring to the same source. (D, Dobranja; Canhasi, D; Bodnarova, B;, 2012)

4.3 Business barriers on starting work

Business startup is a process that faces different challenges and obstacles. The first significant obstacle for business start-up process is the aspiring one, which in itself shows the aim of the person to become self-employed. Another obstacle is considered the preparing one, which is followed by the entering obstacle. These hurdles represent the challenges that start-up businesses face at their first steps of implementation. Apart from challenges related to fierce competition, market penetration and creation of a good image, businesses also face a range of formal barriers imposed by state institutions. The licenses for professional work and municipal permits pose difficulties for starting a business, while the business certificate and fiscal number don`t present any significant barrier when business startups. Below, in Table 2, we present the difficulties that business faces when starting work, based on the survey of manufacturing, service and trade enterprises in Kosovo.

Table 2. Difficulties in Doing Business at the initial moment of starting work

Difficulties in Doing Business	Manufacturing Business %	Service Business %	Commercial Business %
Business Certificate	10.4	9.9	15.6
Fiscal Number	11.1	11.7	6.7
Municipal Permit	25	23.2	22.2
Licenses for professional work	22.2	28.3	28.9
Building permits	31.3	26.9	26.6
Total	200	200	100

Source: *Report-SME Research*

One of the difficulties is managing the activities the business itself wants to develop. Thus, when a business is initiated with different types of activities, the difficulties are different according to the types of activities.

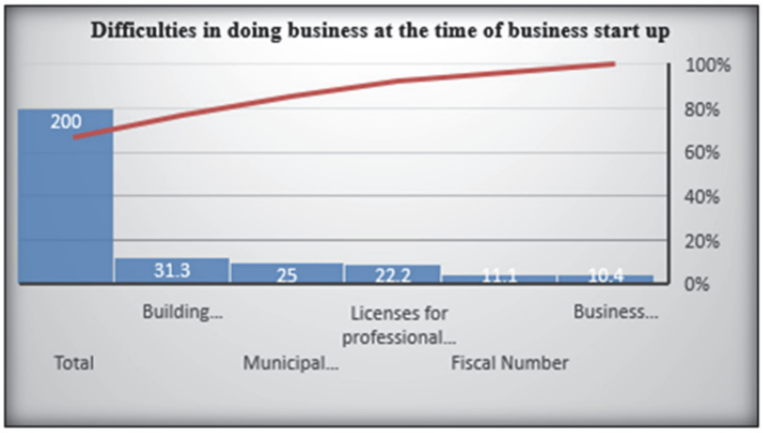
For 31.3% of enterprises with manufacturing activities, the main difficulty in business development is the provision of construction permits; while 25% of them said that it is the work permit from the Municipality; 22.2% of them declared that the obstacle is obtaining professional licenses; 11.1% stated that the hurdle is obtaining the fiscal numbers and 10.4% showed as an obstacle the equipment with business certificates.

If we have a look at the data taken from the Commercial businesses and Service businesses, it comes out that they do have difficulties with building permits. They range more or less at the same level regarding this. Nonetheless, they consider the obstacle of obtaining Licences for professional work as the biggest one, referring to the chart (28.9% of the Commercial Businesses, and 28.3% of Service Businesses, respectively), while it seems to be quite easy for Manufacturing enterprises.

Regarding the obstacle of obtaining the Business Certificate we can notice that Service enterprises consider it as the least obstacle compared to two other types, that of Manufacturing and Commercial enterprises. Meanwhile, it is also worth mentioning that Commercial business suffers the least in obtaining the Fiscal number (6.7%) compared to Manufacturing and Service enterprises that are more or less at the same range.

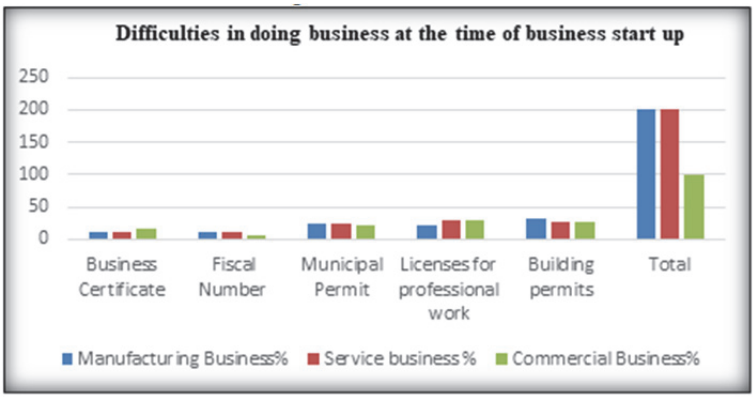
As far as difficulties with municipal permits is concerned, we can notice that the three types of enterprises are more or less at the same level, where Commercial businesses take a slight

advantage compared to the Service ones, and a bit more difficult seems to be for the Manufacturing businesses. Reading these data helps us believe that state procedures are not so business friendly or municipalities keep more or less the same attitude toward different types of business regarding the issue of permits. (Kosovo, 2011)



Graph 1: Here the graph shows difficulties in doing business at the time of start-up

Regarding Graph 1, which presents the difficulties of doing business at the moment of start-up, and considering all three types of businesses, manufacturing, service and commercial businesses, the biggest constrained factors expressed in percentage are assessed the obtaining of construction permits, professional licenses, and municipal permits.



Graph2: Here the graph shows which categories of business types have more difficulties at the time of business start-up.

Chart 2 shows the categories of business types that have more difficulties at the time of business start-up. Business construction and service business meet more hurdles compared to commercial businesses at the time of their start-up. As it is clear from the graph, the biggest obstacles are in terms of obtaining building permits, licenses for professional work and municipal permits. The graph also shows that commercial enterprises face fewer obstacles compared to the other two types of businesses, that of Manufacturing and that of Service. It is worth mentioning that these graphs should serve as a bell for policymakers in order to draft clear-cut strategies to assist different types of enterprises with their start-ups.

4.4 Report on Doing Business in Kosovo

Another report we bring aiming to reflect the situation of Doing Business in Kosovo throughout the years, is based on these ten indicators settled to measure this phenomenon. If we analyse Kosovo's performance in the DB's ten indicators for two consequent years 2012 and 2013, we see that borrowing is the indicator where Kosovo ranks best, and getting building permit is the indicator where Kosovo ranks worst. In the table below you can find Kosovo's doing business (TBB) performance for 2012 and 2013 where slight differences appear in both years for indicators such as *Providing electricity, Registration of property, Payment of fees, Trade across borders, Implementation of contracts and Debt impossibility solution.* We notice that *Receiving the credit* is the indicator where Kosovo ranks best in both years and maintaining the same level.

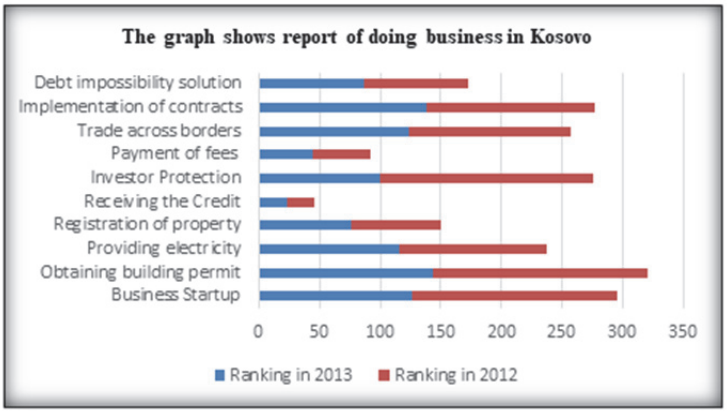
Obtaining building permits, which is the indicator where Kosovo ranks worst, is shown with a significant difference from year 2012 to the year 2013, with a slight improvement. An overall tableau gives us the impression that improvement is evident in all ten indicators, but the biggest improvement from year 2012 to 2013 is for the indicator of Investor Protection. (D, Dobranja; Canhasi, D; Bodnarova, B;, 2012).

Table 3. The report of doing business in Kosovo

Indicator	Ranking in 2013	Ranking in 2012
Business Startup	126	170
Obtaining building permit	144	177
Providing electricity	116	122
Registration of property	76	74
Receiving the credit	23	23
Investor Protection	100	176
Payment of fees	44	48
Trade across borders	124	133
Implementation of contracts	138	139
Debt impossibility solution	87	86

Source:D, Dobranja; Canhasi, D; Bodnarova, B;. (2012). *Limited policymaking doing bussines, Kosovo and Doing Business Report,(P. 7),*

Summing up, we can notice from the table that in terms of doing business for the period taken into consideration, subject of this study, more barriers are highlighted in 2012 compared to 2013, which is reflected in decreased values of these indicators in 2013.



Graph 3. Here the graph shows results from the Report of Doing Business in Kosovo

Graphically, we can see how the indicators of doing business in Kosovo appear for 2012 compared to 2013. We can say that the main barriers of Doing Business in Kosovo are: getting a construction permit, implementing contracts, border trade, investor protection and electricity security. These indicators, represent the main barriers to doing business in Kosovo, are almost at the same range from 2012 to 2013. As already mentioned above, considering the comparison between two consecutive years, there were more obstacles of doing business in Kosovo in 2012 than in 2013.

5. The Doing Business Report in Kosovo. Classification according to World Bank Measurements

The World Bank measurements aiming to report the Doing Business climate (TBB) in Kosovo have started since 2009. However, these measurements focused only in opening new businesses and not any other indicators of this report. Since 2010, Kosovo has been included in the World Bank measurements of Doing Business Report for all categories. This report, published at the end of 2010, ranked Kosovo in 117th place from 183 countries in the world. Taking into consideration the Report, Kosovo has big challenges to face in all the categories. These first measurements are very important for the state of Kosovo because they have to be used as the first milestone of the way ahead. These measurements are used as a basis for further progress in each of the categories of report, eventually. In its first publishing, the Report of Doing Business ranks Kosovo among the last countries in the region. For the year 2011, the best ranked countries in the region were Republic of North Macedonia holding the 38th place, followed by Montenegro in 66th place, Albania in 82nd place, Croatia in 84th place and Serbia in 89th place. It is obvious that Macedonia has made significant progress compared to other countries of the region, devoting itself in doing business reforms as a form of attracting foreign direct investments.

The state of Kosovo has undergone changes in specific categories over the years, even though the state did not take any concrete and effective measures in order to improve indicators. Changes in ranking make us understand that the problem exists out of our efforts or our status quo. This means that, although in Kosovo's case there are no evident changes in the procedures such as time and capital that should be invested in one of the categories; a state may fall in the ranking because of improvements of other states. So, states have to consider it not a mere ranking of measurements, but to feel it as a competitive atmosphere in order to improve from time to time their climate of Doing Business. Policymakers have to consider these measurements compared to other states, for sure, because this situation is also for the upgrades in categories and their result in ranking. As a result, the ranking position of a country does not always depend only on its inner policies and reforms but also on the performance of other countries.

5.1 Impact of Doing Business Report

The Report on Doing Business has an impact, specifically in the countries in developing economies. These rankings mostly affect the policy making of the states. Nonetheless, there is a misinterpretation from policymakers for many countries in developing economies, which dictates that if public policies focus on improving the ranking in the report, they`ll also improve the business environment for the development of the private sector. At the same time, these policymakers think that the Report serves as a guide for potential investors. The higher the state ranking, the higher will be the number of foreign investments. Policymakers consider the Report only as a tool to increase the foreign investments.

According to Independent Evaluation Group (IEG), 85% of policymakers consider their country ranking in Doing Business Report as a drive for reforms to be undertaken, but most of them don`t qualify this Report as an action guide. IEG suggests that policymakers have to shift their attention in considering the ranking of their countries. Turning the values of the Report into milestones of an action guide for the country is more reliable for foreign investments and for the business climate itself. Thus, the impact of the Report of Doing Business is much greater in policymakers of countries than in potential investors themselves.

Apart from these reasonings, the Doing Business Report has a large number of shortcomings.

Although the Report tends to improve the business climate in general, it doesn`t guarantee development. As noticed, the report has its greatest impact on developing countries, on countries that suffer from policies that see the improvement of TBB ranking as a priority through policies that would have economic growth outcomes. However, the Doing Business Report leaves out a number of factors that can cause damage to developing countries in the future. The essence of this report, neither encourages active involvement of women in business, nor promotes the importance of a skilled workforce. On the other hand, the report takes into account only data for a particular category of enterprises operating in the capital, thus circumventing small and medium businesses in other countries, especially rural ones. This also results as a lack of reforms that would help such enterprises in developing countries to be the main holders of the local economy. (D, Dobranja; Canhasi, D; Bodnarova, B;, 2012)

Reforms taken by policymakers for the regulation of business are only one element that might incite competitiveness. They may also pave the path for a solid economic development. However, policymakers have to be aware of other important aims to follow, such as effective management of public finances, adequate attention to education and training, adoption of the latest technologies to boost economic productivity and the quality of public services, and appropriate regard for air and water quality to safeguard public health. (World, Doing Business, 2017) Considering these factors, policymakers have to set their priorities according to the most urgent needs the country itself has.

In addition, DB generally supports the elimination of legislation even if the purpose of this legislation is to regulate rates that might be seen as conducive to investors or would help the country's economic environment. Such rates include economic environment, minorities and gender equality. This also applies to the taxation system. In the Doing Business Report, a system that has lower corporate tax rates is highly rated, but in developing economies, tax revenue is necessary for the functioning of the state apparatus. If a state applies corporate tax cuts, the state has to keep higher personal income taxes that greatly affect social welfare.

In general, the impact of Doing Business Report is much greater in a country's policy than in potential investors perceiving. There are a large number of other reports, apart of investment analysis, which investors consult before making decisions about a state. Regardless the reports, the final assessment of a potential investor is made upon the basis of a real state of affairs in a state, a situation that can only be regulated through comprehensive decisions and actions of the state itself.

5.2 New forms of doing business

Doing Business encompasses six legal forms of it, which are Sole proprietorship, Partnership, Corporation, S corporation and Limited liability. In the era of great technological changes and advancement in informatics and communication, these types of doing business tend to respond to the needs of the market demand. Thus, enterprises install and use electronic platforms in order to facilitate optimize their services. The advancements in technology make it possible for enterprises to utilize various methods of digital information and communication technologies to sustain or modernize business processes, from the very first steps of preparation until thorough implementation. Named as E-business, after an IBM advertising campaign about computerized procedures to automate business processes, (World, Doing Business, 2017) it represents a completely new form of doing business, where various transactions are realized through uses of advanced information technology by means of Internet. E-business is realized online and not in its traditional form people were used to.

It's true that this type of business doesn`t have yet a great spread today in the world, but intersection and the number of firms that use e-business grows faster. (LLaci, 2010)

5.3 Ranking of Kosovo in Doing Business Report

As the World Bank Report on Doing Business shows, Kosovo ranked in the 117th place in 2011. Kosovo held the same ranking level, even in the year 2012. We can consider this ranking, very low in the scale, as stagnation for the country according to this report. Our observation holds the view

that policymakers did not stride towards improvement or take any further steps to encourage and incite the business climate. Meanwhile, considering the Doing Business Report for the year 2013 we notice that Kosovo ranks in the 98th place, marking a significant improvement in the ranking of the Doing Business Report. We consider this increase in ranking very positive for the business climate in general and an incentive for potential foreign investors. The increase in rank position is even higher for the year 2014, going up in the 86th place and leaving behind all the other countries in the region. This business-friendly climate is a significant indicator of the reforms or actions that policymakers have undertaken during the years. However, the challenge is not only maintaining this position in the ranking, but going even higher. As mentioned above, the reason for the increase in ranking does not necessarily mean good job of the policymakers and business actors of the given state, but it might be even because of the low performance in the field from the other states. However, we uphold the idea that actions taken from the policymakers and business actors in Kosovo were very positive and effective, as making it possible that Kosovo is also included in the "Top Five" reformist countries in the world for Doing Business.

6. Conclusions

This paper attempted to present some of the most significant business barriers in Kosovo referring mainly to the World Bank Report of Doing Business. This Report is a useful tool that provides statistics regarding the quality of doing business climate for 190 countries around the world.

Kosovo institutions have used the TBB report as a basic tool for policymaking strategies which focus on facilitating business climate in the country, and make it a very attractive one for potential foreign investors. It is evident that private sector encounters various and traceable obstacles at its very first steps are. There are made significant improvements in the field, based on the Report ranking, though. Nonetheless, state institutions and policyakers have to provide investors and entrepreneurs with efficient systems, processes and procedures. Businesses, on the other hand, have to be competitive, to enable growth by investing in human resources, IT and software (E-businesses) capital, time, energy and innovation.

The Report of the World Bank on Doing Business focuses largely on the regulations and legislative frameworks governing each of the indicators measured in this report. Kosovo has shown great readiness to amend the laws and sub-legal acts to harmonize them with European directives and best international practices. This is one of the reasons why Kosovo has moved up in the scale throughout the years.

We consider that one of the most important goals of an emerging economy, such as ours, is attracting foreign direct investments. Thus, a core element is the improvement of the business climate in the country and be competitive with other countries of the region. Being competitive demands hard, tireless and persistent work by all actors of the sector.

We hold that the aim of Kosovo policymakers and actors of the sector is to remove barriers and to improve the business climate. Acting as such, it becomes easier for local entrepreneurs being successful and meet market demands; it also becomes more inviting to foreign potential investors.

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RICHTMANN PUBLISHING

Research Article

Providing Entertainment for People with Visual Disabilities on Civil Aviation using (Braille-Barcode-Listening) BBL

Yasar A. Al-Jaleeli

Institute of Computational Mathematics and Information Technologies;
Kazan Federal University, Kazan, Tatarstan, Russia

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Abstract

With today's significant development in information technology, global and local airlines are striving to provide the best services to the traveler for convenience, safety, and the right price. A key aspect of choosing and evaluating the performance of airlines can be achieved in long periods of time And up to eight hours, during these trips welcomes the travel to reduce boredom and fatigue of passengers with the length of flights, and here the researcher calls for providing an exceptional service for people with visual disabilities using Braille and information using technology Braille- Barcode- Listening.

Keywords: *Visual Impairment, Blind, Civil Aviation, Barcode, People with Special Needs, People with Disability, Braille- Barcode- Listening*

1. Introduction

In this paper suggests using bar code technology with Braille code and programming application to finding audio material for the passengers with a visual disability on the aircraft. Braille-Barcode-Listening BBL from the name, we can understand what kind of tools we need to use to create and use this method

Some readers may be surprised and ask a question why this focus on the subject of entertainment for people with visual disabilities on flights and any flight takes only a few hours, and everything ends after that!

This is a legal and humanitarian right for people with visual disabilities. With the high level of information technology, the addition of a tool for the entertainment of people with visual disabilities will not be a big problem, especially as it is in line with the law and safety regulations. And self-confidence to engage the disabled in an active and positive society

The tools which are used in the method:

Braille (Hensher, 2015; Verma, 2013; Lawrence, 2015; Rocha et al, 2017).

It is the code used by people with visual impairments in writing and reading. This code is originally made up of six distinct three adjacent points that can be felt by the fingers. The user will touch them to identify what they mean by being letters in line with the UNESCO (UNESCO (1990; Maurel et al, 2012; Kway et al, 2010) Guide (Clutha & Mackenzie, 1953; Alnfiai & Sampalli, 2017; Malamiri, et al; 2016) to Braille, According to historical sources, the invention of this code is due to the French Louis Braille in the nineteenth century AD but official recognition had been late until the mid-twentieth century has been recognized as a language used by blind and visually impaired for reading and writing (Simpson, 2013; Zarchi et al, 2016; Saidi & Siew, 2018).

Bar Code  liner bar code

Fig. 1.

There are many of the passengers are using recreational materials to deal with long many hours on the plane. In my travel I noticed that one of the passengers had visual impairment, in the beginning, he asked the hostess to help him and was very kind to help him, The hostess placed the earphones in his ear, and she helps him to choose audio material but she went to another mission, the audio content that was heard by the passenger for a short time, only! Maybe? Or he needed to change the Audio material, or it was stopped, he tries himself to make the material work again but he cannot. After that, he decided to ask the hostess to help him, but she was busy assisting the staff in other missions. His near hot man tries to help him, but he did not choose his favorite audio material. That was very bad, and the passenger with visual impairment was angry and said (I was paid the full fee for this, why I cannot take the service like the other passengers?

Of course, this is expected because the hostess has the routine tasks are great, and it does its duty. This kind of problems needs to found a solution. in this paper, the researcher put method to make the chooses in the passenger with visual impairment hands himself using (Braille-Barcode-MP3)

Some companies and governments are focusing on providing laws and regulations to implement on the ground by increasing the level of services available to people with disabilities (Alnfiai & Sampalli, 2016; Mardani & Fallah, 2018)

The law of protection of the rights of people with disability of Iraq No. 38 of 2013 (Al-Jaleeli & Galimyanov, 2018)

It is a high level of development in this field.

Fig. 2.

But it did not address the provision of recreational materials provided to the visually impaired passengers like other passengers

Another example of services offered by an airline is taken from the official company page and does not include recreational facilities for people with visual disabilities.

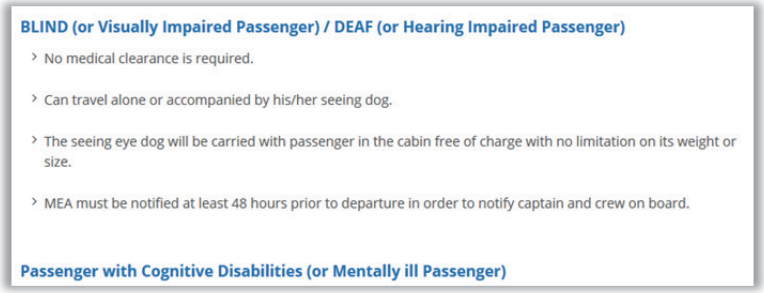

Fig. 3.

What I request in this paper is only the services provided to people with visual disabilities and following the laws and agreements signed. This must be noted in the process of manufacturing and operating civil aircraft on international or local roads where governments and companies are committed to these laws and treaties to provide services to persons with disabilities and reduce discrimination against them.

2. Application Method

Using Linear Barcode and Braille, two methods can be used to display the audio materials for the passengers with a visual disability.

First, we install an entrance that fits the barcode reader on specially selected chairs that can be used for ordinary people and can be used for people with visual impairments. The symbol is a bar code that expresses the access code of the audio material. Bar code boundaries are also defined by Braille codes so that the user knows the exact location of the icon. Users must be trained in advance to use Braille code.

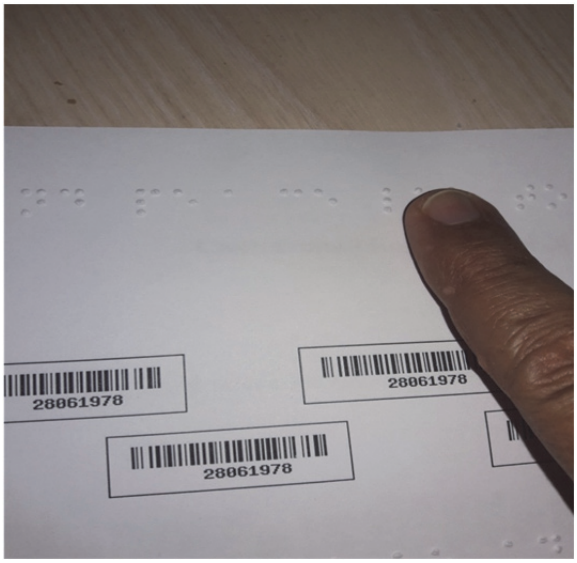

Fig. 4. The first step: read Braille code with the user's fingers.

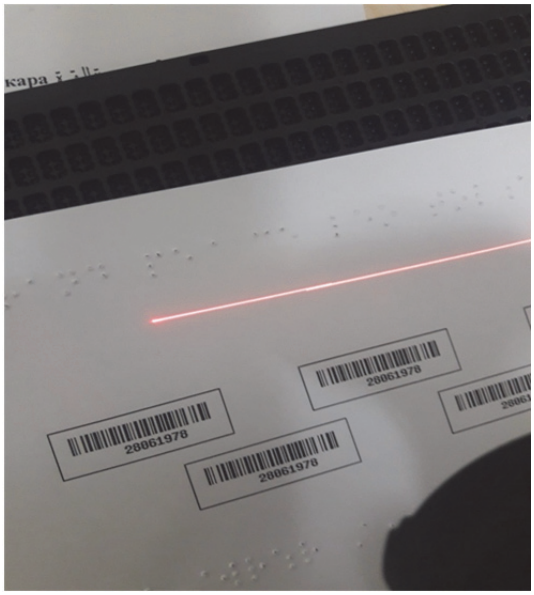

Fig. 5. Step 2: Read the bar code by linear barcode reader

Fig. 6. The process takes place in a dark room or a bright room with the same efficiency

The researcher proposes to design the window according to the shape figure 4.

And choose full screen without zoom out and zoom in to keep the size fixed for the user either with a flexible screen cover on the chair in front of the traveler or a separate device with a touchable screen can be used by children and adults.

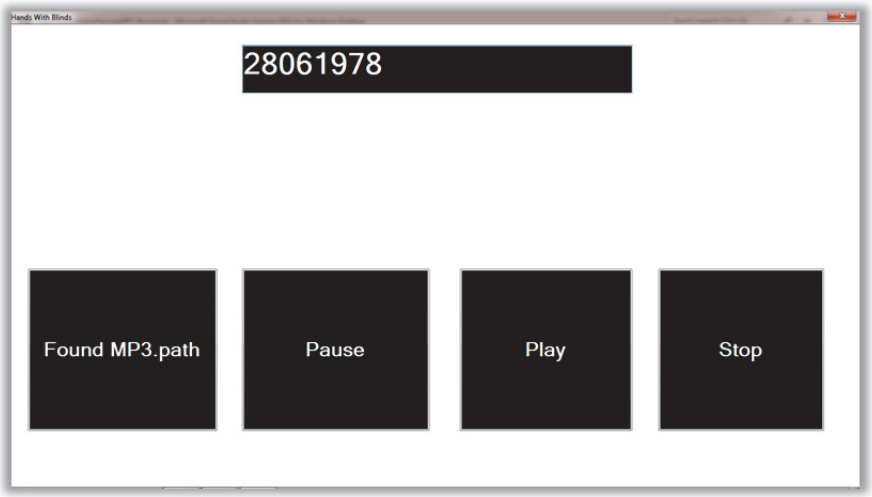

Fig. 7. Suggested window to provide audible audio services for people with visual disabilities Figure 4

The second is to use a flexible cover with Braille indicators on the touch screen in the form of buttons with the design of the entertainment page following these buttons so that once the button is pressed, the audio material is activated. These buttons are compatible with specific sound materials defined in a booklet written by Braille. If the passenger sitting in the seat is an ordinary person who does not have visual impairment we take up the cover away and the passenger can use the touch screen as the other passengers

3. Conclusion

The belief in the values of human justice and the provision of equal access to services necessitates local airlines to change the entertainment tools to suit people with visual disabilities. These travelers pay full wages to companies and are supposed to provide these services because they will not be costly and will provide a fairer system for travelers.

4. Acknowledgments

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Research Article

Circumcisions and Related Practices about Child Birth in Sagamu, Ogun State, Nigeria

Obatunde Bright Adetola

Department of Sociology,
Olabisi Onabanjo University,
Ago-Iwoye, Nigeria

Gbenga Ogunbote

Department of Nigerian Languages and Literature
Olabisi Onabanjo University, Ago-Iwoye, Nigeria

Dare Ojo Omonijo

Department of Student Industrial Work Experience Scheme,
Covenant University/ Department of Sociology,
Olabisi Onabanjo, University, Ota, Nigeria

Jonathan Adedayo Odukoya

Department of Psychology,
Covenant University, Ota, Nigeria

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Abstract

From time immemorial, studies have shown the importance of cultural practices in ensuring human sustenance in every society. Circumcisions and related practices concerning child birth are some of the vital ones in African settings such as Sagamu in Ogun State, South West Nigeria. Surprisingly, it is equally noticeable that there are FGM practicing and non-FGC practicing communities within the same ethnic group of Yoruba, South West Nigeria. In this regard, the Egba and the Ijebu (both in Ogun State) are Oduduwa descendents who may be similar in many areas of life but quite different in their perception of circumcision of newborn babies particularly the girl-child. Each of the communities values its perception with utmost sense of pride and dignity irrespective of their common ancestral origin. The difference from the same ethnic group on this subject matter could be regarded as a research concern since it has been relatively neglected in academic literature over the years. The study employed various PLA tools, such as FGDs, KIIs, Sexuality Life Line [SLL] and Flow Chart to collect data from respondents and analyzed the data through Pair Wise Ranking and Matrix Scoring/Ranking. The study concludes that the practice of circumcision is prevalent in the community under study because of social, cultural factors backing it and makes it very intricate to eradicate since it has a strong connotation with marriage.

Keywords: *Circumcisions, related practices, child birth*

1. Introduction

Male children are circumcised, which means a complete removal of male foreskin, in most societies of the world (Israelistes, 1993; Mwashambwa, Mwampagatwa Rastegaev and Gesase (2013) while

female children are circumcised (i.e all surgical procedures involving partial or total removal of the external genitalia or other injuries to the female genital organs for cultural or other non-therapeutic reasons) in selected parts of the world, most especially in developing societies such as Nigeria, Ghana etc. due to a number of reasons (UNICEF, 2016).

Over the years, male circumcision is almost taken for granted while female circumcision has been described as a harmful traditional practice among many others (Adeokun, Oduwole, Oronsaye, Gbogboade, Alliyu, Adekunle, Sadiq, Sutton & Taiwo 2006). 'The genitals of close to eighty million African women have been mutilated particularly when many of them are still minor and as such could not recognize or resist the damage inflicted on them. FGC is practiced in about 28 African countries as well as in a few scattered communities in other parts of the world. It is one of the most serious forms of violence against the girl child/woman (Okeke, Anyaehie and Ezenyeaku, 2012; UNICEF, 2016)

The practice is noticeable among the Yoruba in south west of Nigeria. Surprisingly, it is equally noticeable that there are FGM practicing and non-FGC practicing communities within the same ethnic group of Yoruba. In fact, it is documented in most literature on Yoruba culture that they originated from a common ancestor- Oduduwa from Ile-Ife in Osun State, south west Nigeria, which is claimed to be the bed rock of Yoruba descendents where the children of Oduduwa migrated to establish all other towns/cities in Yoruba land.

In this regard, the Egba and the Ijebu (both in Ogun State) are Oduduwa descendents. They may be similar in many areas of life they are quite different in their perception of circumcision of newborn babies particularly the girl-child. Each of the communities values its perception with utmost sense of pride and dignity irrespective of their common ancestral origin. The Egba and specifically Owu, Oke Ona and Gbagura practice FGC while the Sagamu, in Ijebu area of Ogun State is a non-practicing community.

The difference from same ethnic group on this subject matter is of interest and of research concern. Further to this, the level of interaction between FGC Practicing individuals and families residing in non-FGC Practicing Communities could be very interesting to the body of knowledge since it has been hitherto neglected in academic literature.

This exploratory study in Sagamu-non FGC practicing Community, south western Nigeria is therefore an attempt to find out the varying perspectives of all stakeholders on FGC using participatory research approach. This, we hope, will shed new light on one aspect of health decision-making related to a harmful traditional practice that affects millions of women and girls.

The goals of the study are;

To identify social processes associated with community change in the practice of female circumcision. Specifically however, the study intends to

1. Identify and describe social, cultural, and political factors that characterize and sustain or discourage the practice of female circumcision in the study communities.
2. Identify individuals and groups involved in the practice of female circumcision and their interrelationships.
3. Compare practicing and non-practicing Yoruba sub-ethnic groups with regards to their practice of female circumcision.
4. To explore the significance of the observed trend towards female infant circumcision in relation to other forms of circumcision.
5. Identify potential mechanisms for social change relative of female circumcision.
6. Convert research data to information that local communities and NGOs can use to design and implement a plan of action for reducing the practice of infant female circumcision.

2. Previous Studies

Circumcision began long time ago and people may not be sure of where and when it originated. What many people historically believe is that circumcision started in Egypt over 4000 years ago Paula, (2010) and the reason Egyptians circumcised their males is rooted in the belief that purity of Priests in Ancient Egypt for the running of the society is a requirement that should not be compromised. The attempt not to compromise this religious service led to the idea of circumcision

because males from who priests are drawn are born with some 'female parts and the removal of the foreskin was meant to remove the female parts of the sexual organ'

> *The belief that the males were born with female parts was widespread among African ethnic groups and they practiced male circumcision for similar purpose. The Dogon, considered of Egyptian origin, of western Africa practice both male and female circumcision, and they believe that every person is born with both male and female parts. For males the foreskin is the female part whereas for females the clitoris is the male part. The Dogon circumcise to make each gender pure (K'Odhiambo, 2016).*

K'Odhiambo submission seems to lay the foundation of the origin of both the male and female circumcisions. However, for Anna, (2008), K'Odhiambo's (2016) view, is more or else an overt view because the real issue, (which is covert) for the origin of circumcision may not be unconnected with the societal desire to control sexual activities of both sexes. Anna argued that 'Control of sexual desires in any culture, be it religious or any ethnic group, is a factor that has immensely contributed to human progress'.

Through sexual control, humans are morally organised, arranged and managed towards the survival of the society. Both overt and covert reasons for the practice of circumcision that is of valuable contributions to the society must have led to its adoption as communities began to spread from one end of the globe to another.

There have been arguments for and against both male and female circumcisions the world over. In fact, the for and against arguments has led to the polarization of adoption or not of male circumcision among countries of the world backed with legislation for whatever line of the divide taken by each country.

> *Some governments such as South Africa have made laws that do not allow circumcision to be done on young persons who, due to their ages, cannot make decisions. Circumcision on minors can only be allowed if it is for the treatment of some disease. In Germany, a court outlawed circumcision done to children when they are still unable, on their own, to make decisions. In 1975, doctors dealing with childhood diseases in America made a ruling that circumcision should not be forced on a child if it is not for medical treatment. Experts agree that circumcision done to infants has long lasting negative effects on brain development, affecting how they behave throughout life (K'Odhiambo, 2016).*

On the contrary, Female Genital Cuttings have not received any conflicting legal status as it is overwhelmingly condemned globally having its support only among traditional communities of the world Omonijo, Anyaegbunam, Okoye, Okunlola, Adeleke, Olowookere, Adenuga and Olaoye (2019). In fact the medical and other disadvantages have documented severally having received attention for many scholarly research the world over. If anything, FGC has received worldwide condemnations based on the consensus on its effects on the female sex. (Adeokun *et.al* 2006, Okeke, Anyaehie and Ezenyeaku, 2012; Ahanonu and Victor 2014; Adetola, 2017; Epundu, Ilika, Ibeh, Nwabueze, Emelumadu and Nnebue, 2018).

3. Methodology

Female circumcision [FC] is a prevalent practice in the south-west of Nigeria (Omonijo *et al*., 2019). However, in an interesting departure from this culture, the Remo people of Ogun State do not practice female circumcision. This project has taken the advantage of this variation to examine the potential for change in the larger Yoruba group. Sagamu LGA has an estimated population of 205, 854 based on the 1991 projected census (National Population Commission, 1991). It is made up of both urban and rural areas. It is a cosmopolitan area with migrant from different part of the country.

3.1 Communities Selected

Three communities were selected in Sagamu LGA for the study. Two small adjacent communities were selected in the urban area [Soyindo and Epe]. Likosi community was chosen in the rural area. These communities are made up of several hundred households with their own identifiable elders

and authorities. The communities were selected based on certain factors such as they have been known to be co-operative and were made up of largely indigenous population.

3.2 Sample Selection

The purposive sampling techniques were used. The participants for the Focus Group Discussion (FGD) and Participatory Learning Approach (PLA) activities were drawn from among the community members. The eligibility criteria for participation included ethnicity [Yoruba], age group, whether they have female children or not and availability during the study period. The basic groups that were involved in the study included:

- Women under 35 years who have daughters.
- Women over 35 years who have daughters.
- Unmarried women 18-25 years with no daughters.
- Men under 35 years who have daughters.
- Men over 35 years who have daughters.

To further gain insight into current forces that may sustain or undermine female circumcision, certain key people in the communities were interviewed. The key informant included opinion leaders such as the king, community leader, and health workers.

3.3 PLA Design and Methodology

The study is a qualitative research using the PLA. The need to understand deeply entrenched issues from local people's perspective and enable them [community members] to play a more active role on issues that relate to their development informed the choice of PLA. The PLA helped to explore different dimensions of the identified problem.

Both verbal and non-verbal approaches were used. The various PLA tools used included FGDs, KIIs, Sexuality Life Line [SLL], Flow Chart, Pair Wise Ranking and Matrix Scoring/Ranking. All the demographic groups were involved in FGDs while some key members of the community were interviewed individually through Key Informant Interview (KII). The team members exhibited flexibility and adaptability in the choice of the PLA tools used for each group. Issues such as traditional practices associated with birth of babies, practice and perception of FGC in the selected communities, effect of inter marriage on FGC/decision at household level, perceived benefits and disadvantages of the practice and their perception of government legislation on FGC were explored.

Some of the methods used are briefly described below:

- FGD: Focus groups are semi-structured discussions with a small group of persons [usually 6-12 people] sharing a common feature e.g. age, gender etc. A small list of open-ended topic, posed as questions or participatory task, is used as a guide for the discussions.
- KII: Qualitative and open-ended interviews rely on broad, open-ended questions to be addressed to knowledgeable individuals in a conversational, relaxed, and informal way.
- Ranking exercises: which may be done with groups or individuals, are a way to enable people to express their preference and priorities about a given issue e.g. pair-wise ranking, preference ranking, and scoring.

4. Data Analysis

The analysis of the information gathered took place at three different stages. The first stage of the analysis occurred on the field during information gathering with the community members. After the output of the non-verbal methods have been completed, the summary of the outcome was reviewed with the participants and discussion of this outcome gives a deep insight into these issues.

The second stage of the analysis took place at the end of each day's activities. The visual outputs of the day derived from the participants were reviewed. Discussion of the visual output was jotted on the individual cardboards.

The third stage of the analysis occurred after the field exercise. By then, the tape-recorded FGDs and KIIs had been transcribed.

The transcribed materials were corrected and emerging themes were noted and quoted. The information was classified and reclassified; some themes were merged and arranged. The finding was discussed along themes and sub-themes and these were correlated with the result of the non-verbal PLA tools

5. Findings and Discussion

The findings of the study are presented under the different themes that emerged from data generated from the groups of stakeholders who participated in the PLA. The various views and opinions of different groups within and across the communities of study are reported detailing areas of agreement and disagreement on different issues/ concerns.

Also, the findings presented here, under each theme, were derived from a combination of PLA tools used with each groups of the participants.

5.1 Traditional Practices Relating to Childbirth

The concerns and subsequent practices associated with childbirth in the study communities predate the arrival of the child into the communities. However, on arrival of a child there are traditional practices that are performed on both the child and the mother. These practices are not uniform as it differs from one family, religious afflictions or community to another. There are however some common practices that cut across the communities and families.

Common to all the members of the community is the practice of naming the new child. However, the days of the actual naming differ. Most will name a new child at the 8th day, while the Orunmila faithful do theirs on the 9th day. Also among the Orunmila believers, on the third day after births, new baby would be taken to the priest to inquire into the destiny or future of the child. It is believed that the enquiry will prepare the parents as to how best to care and guide the child in his/her lifetime. This practice is not reported among other religions in the community.

The use of sharp objects on newborn babies for different purposes and different parts of the body is also common to all community members. In this regard, the male child is circumcised mostly before 8th day naming ceremony or sometimes after. The female children are not circumcised at all in this community irrespective of their religious affiliations. A participant among the women said:

> *Here in Sagamu, we do practice male circumcision. Any male not circumcised would be subjected to ridicule and jest because he has "Atoto" [i.e. foreskin]; he cannot get married in this community and we don't practice female circumcision at all.*

The Muslims however, shaves the hair of the newborn babe whether male or female at birth and particularly before the naming ceremony is performed on the 8th day. It is in fact a pre-condition for naming, failure which naming would not be conducted. Another common practice is the punching of hole in the ear of the female child. This is also done mostly before the eight-day ceremony. The various differences noted in the practices associated with either male or female child are mostly attributed to the different religious documents such as the Bible, Quran, Ifa-oracle or simply traditions. For example, one of the high-chief-a key informants in Soyindo said:

> *In the bible, I only read about the circumcision of the male child, even Jesus Christ was circumcised, and I did not read where Mary the mother of Jesus was circumcised.*

The common reference to one religion or another by the participants shows that religion plays a significant role in the life of a child in the community. It dictates what practices is done or not on a child from birth to death. It is a phenomenon that may either sustain or discourage any practice in these communities.

5.2 Migration (Inter- Marriage) and FGC

One of the objectives of this study is to identify individuals and groups involved in the practice of female circumcision and their interrelationships. The three communities studied in Sagamu i.e. Soyindo, Epe and Likosi are the non-practicing ones. Nevertheless, these communities have had some contact with practicing individuals or groups through some means such as migration, and marriage.

It is observed from the study that migration and marriage sometimes have different impact on the practice of FGC and in other situations similar impact. In the case of marriage, where a practicing woman marries to non-practicing man, the culture or tradition relating to childbirth in the husband's family/community will prevail. In other words, where the husband's family does not practice female circumcision the practicing wife may have to give up the idea of circumcision for the female child more so, when the community concern is patriarchal in nature where men take major decisions affecting the household including the women.

In the same vein, any other traditional practices relating to childbirth in the husband's family/community may have to be observed by the FGC- practicing woman marrying to an FGC-non-practicing man. Some of which also be harmful or not. A case in point of such practices affecting women after birth was narrated to the team:

> *Some people when they give birth to a child, they would not take anything like hot water for some days. At Ibodo community, I have a daughter who got married to them, when you deliver a baby you'll spend some days before you can eat anything that has blood. You will only eat 'eko' (white pastry food)*

Apparently, the participant seems to be expressing her inability to influence what her daughter would do in her husband's family. Generally, the wives, irrespective of their own orientation, often observe the prevailing tradition in the husband's family. Another participant also noted that "we ladies from Soyindo married to the "Oloro's" (Oro cult) family are made to pass through some rituals which, it is believed, paves way for healthy environment for anew born baby" others reported cases of having to eat lizards as part of the preparation for child birth and delivery even though lizard is not a common part of menu among the Yoruba generally.

Still on the issues of marriage, a situation where both couples are from an FGC practicing family/community but resides in a non-practicing community the result may not be same as above. As it was discovered that couples from practicing communities do practice FGC even though they resides in non-practicing communities. They could either invite a circumciser among their fellow migrant to perform the act or travel to their state of origin (home) to perform the circumcision.

However, as such couples stay longer in the non-FGC practicing community they tend to change gradually from practicing to non-practicing of infant female circumcision. For example, when inquiries were made from those migrants from Ekiti State (a practicing State) living in Likosi-(a non-practicing community) if they practice FGC? They responded that "we have some who have imbibed the culture of Likosi community; they don't circumcise their daughters again". One of the participants from to Ekiti State reported as follows:

> *When I gave birth to my first daughter, my wife took her home (Ekiti State) where she was circumcised but when my wife wanted to deliver our second child and we took her to a doctor (here at Likosi) he told me that it is (i.e. FGC) not good. It gives women problem when they want to give birth to a child. And because of this, I have stopped the practice of female circumcision in my household.*

The story narrated above seems to be a pointer to one of the agents that could speedily bring about the eradication of FGC. It therefore suggests that men have as much role to play in this issue as the women who are physically affected and/or infected by the continuous practice of FGC.

Also, the knowledge available to the head of household about any issue may assist in either encouraging or discouraging such issues. Migration from practicing community to the non-practicing one, in the case of the participant's story given above, has a positive effect on the practice of FGC.

5.3 Community Perception of Circumcision, Benefits and Consequences

Circumcision is part of the practices that must culturally be performed on new child born in the communities studied. The communities believe that all male children must be circumcised as a form of traditional rite rooted in the different religions in the communities. All religions approve of male circumcision in all the communities and it is described as 'normal'. A participant argued that "it is according to the Bible and the Qur'an, that male child must be circumcised after birth". Even the traditionalists claimed, the oracles and the traditions that tell them to circumcise male child belong to 'our forefathers' and 'they know how they came about it'. However, the participants seem not to know how some traditional practices came about even though they believe and practice them.

Apart from the religions support given to the male circumcision, other reasons include the fact that if the *'atoto'*(fore-skin) is not cut off it might be a source of infection for the boy. It may withhold lots of dirty materials and thereby causing irritation and infection. Also, if a boy is not circumcised in these communities he will become a subject of ridicule, as he will be jest at by his mates. Such a boy will be referred to as *Alatoto i.e.* "the uncircumcised" and 'he will be treated differently and in the extreme he may not be able to marry any girl within the community.'

Contrariwise, the communities do not practice female circumcision at all. The practice of FGC does not have any religious or traditional backing as the male circumcision. When enquiries were made on why they do not practice FGC, even a high chief from Soyindo who doubled as a Christian and the Aro of Soyindo commented that:

> *Our tradition at Ijebu-remo did not allow for female circumcision, though I personally do not know the reason for this—Here in Soyindo and Remo we don't practice it at all.*

The non-practice among these communities could, as well, be a chance of history and not a deliberate awareness of the danger in FGC. However, since male circumcision is seen as normal female circumcision is definitely not normal. FGC is described virtually by all the participants in the non-practicing communities as a very bad thing'. A chief affirmed that

> *"Female circumcision is not a good thing because God has created the female private part ready for the male private part to do the job". He queried "why should we then use sharp objects to cut the female part, it is bad."*

Although non-practicing communities perceived the practice of FGC as very bad yet, some of the participant [women less than 35] was not aware of the practice at all until the time of the research. They claimed they have" never heard about it at all". The research therefore serves as an eye opener for such participants. The older men and women however, claimed they have heard about the practice particularly among the Yoruba from Oyo, Osun, and Ekiti states. Some of them however claimed that" the practice must be decreasing because" they don't hear people discussing it". This statement may becloud people's knowledge about the reality of the practice, as its non-discussion was perceived as non- existence or reduction of the practice.

The study, though, carried out in non-practicing communities, deliberate efforts were made to inquire from some of the practicing participants residing in a non-practicing community why they are no longer practicing the act. They argued that since their host communities do not do it they also gradually stop the practice. One of the older women from Epe community said that 'we do practice it in my area, but I have not done it for my female child" she went further to say that 'I did not have the chance here in Sagamu, since they don't do it. This somehow discouraged me from embarking on the circumcision". The patriarchal nature of the community might have had an effect here too since under patriarchy, the men is often regarded as the head and decision maker. FGC therefore became a difficult choice for the participants here to carry out.

This change in attitude on the part of practicing participants residing in non-practicing communities was also noticed even among men. Some actually attribute their change in attitude about the practice to the non-practicing nature of the town and others attributed it to the influence of superior knowledge made available to them by doctors particularly during their maternity visits to hospitals. It could therefore be argued that the non-practicing communities have had a positive

effect on the practicing participants irrespective of their sex.

The major reason or the perceived reason by the practicing participants and even the non-practicing participant for the practice of FGC is that it reduces the sexual desire of the women thereby preventing fornication and promiscuity. It is against this backdrop that enquiries were made about the uncircumcised women if they fornicate. A practicing participant affirmed that

> *"yes, any female not circumcised would be sexually aroused at any time and may even call on any man to have sex with her. So, in other to prevent all these, that is why we circumcised our girls."*

Another practicing participant quickly added that ''cutting the clitoris will make the girl to have some body resistance to excessive sexual arousal". These assertions were however rejected by young men non-practicing participant that'' our ladies here don't fornicate in fact, our ladies protect their ego". Yet, another elderly man declares that" I don't think FGC prevent their [practicing participant] female from fornicating it is all lies, they are the greatest fornicators". The two groups within the focus groups discussion sections could not substantiate their discussions on the role of FGC on fornication with facts. It is however noted that fornication is neither inclusive nor exclusive for any group of people be it practicing or non-practicing FGC.

Another reason adduced for the practice of FGC by the practicing participants in Sagamu is that*" if the child head touches the clitoris of the female mother at birth the child would die*". This same reason is perceived by the non-practicing participant as why FGC is done in the practicing communities. This reason is however debunked and substantiated by empirical evidences of many live birth women in the non-practicing communities have had with their clitoris intact un-mutilated or cut in any form or shape. Hear this from young men from Epe community:

> *We do have save delivery because my mother gave birth to me and my siblings and nothing happened to us. I believe their beliefs may be wrong.*

The older men put on the same argument from Epe and Soyindo where some of the men are traditional birth attendance [TBAs]. This is not to suggest that there were no complications arising from childbirth in these communities. Such complications may occur from other factors but definitely not as a result of non-cutting of the clitoris.

Besides the above, the study further investigated the benefit of circumcision on both male and female with greater emphasis of FGC. On the male circumcision, it is noted among the participant that 'it allows for easy penetration**"** into the vagina. Also, it prevents the male child from any future embarrassment or shames since all male are expected to be circumcised. There is no controversy over this at all. So, if any one is not conforming, such becomes a deviant against the acceptable norm of the society. Furthermore, male circumcision is seen as beneficial because it prevent the boy child against infection because if the foreskin is not cut it may be too dirty due to it nature". The entire participant agreed that there are no consequences for male circumcision at all. However some noted that the pain and the loss of blood during and after circumcision might be seen as unavoidable consequences. Moreover, if done at birth, as it is the normal practice the boy child is not aware of it at all.

Contrary to the perceived benefit and consequences of male circumcision suggested by the participant the FGC generated a lot of argument and counter argument among the participant in the different groups and across sexual divide.

First, on the benefit of FGC, the participants said that it brings about safe delivery. The non-practicing communities repeated this position severally as the reason why the practicing communities do FGC. The few participants from the practicing communities in Sagamu study also confirmed this belief. Some others however expressed their views, though, not forcefully that even the non-practicing communities do have safe delivery.

Another perceived benefit is the inability of the woman to be sexually active after FGC. This is expressed as a means of reducing or preventing promiscuity on the parts of the women. This position was however very controversial as hot argument erupted among the groups particularly where there was practicing and non-practicing people. Hear this;

There are lots of benefits. It is because of promiscuity, that we circumcise our female child. [R1]. Even at Ibadan and Osun there are female who fornicate also [R2]

The participants above are men under 35 from Likosi [R1] was from a practicing community and [R2] was from a non-practicing community. The argument was that despite the reason adduced for FGC [R2] and others in the group argued forcefully that FGC do not prevent fornication in the practicing community. The groups also affirm that both practicing and non-practicing communities do engage in fornication and promiscuity at one level or another. The implication of this line of thought is that it may be difficult to establish the effect of FGC on promiscuity and fornication without further investigations.

Finally, many other people within and across groups, gender and communities said that there is no benefit whatsoever in the practice of FGC. For such people it should be stopped. On the consequences of FGC, the group generated a long list and this reflected in the various flow-charts drawn by the groups. The groups as a consequence of FGC mentioned loss of pride as a result of loss of virginity.

A male participant from Likosi community said that;

In those days, we are meant to believe that any female, whose husband meets and find out that she had been dis-virgin beforetime has lost her pride, because the husband is expected to be the one to dis-virgined her, but it would be assumed that she had been fornicating. So, loss of pride, to me, is an harmful effect on the women

Another female participant from Soyindo community also noted that;

Here, our men prefer to meet us with our virginity, that is when the girl has pride in the presence of that husband, but, in this case[i.e. FGC], any circumcised female be assumed to have been fornicating or promiscuous though, she may not.

Another interesting contributions also came from Epe community that;

The child that is circumcised has lost her pride because God created men that when they marry they should be the one to dis-virgined their wife. Why should some people now go and start cutting or dis-virgin the girl without her knowledge.

We have detailed the above instances to present the actual opinion of the different groups, gender and communities in Sagamu area of study so as to appreciate the perception of the people very well. From the foregoing, it is evident that the practice of FGC does a damage to the dignity of the women concerned particularly when her consent was not considered at all in a matter that affect her own body. The effect in this case is not only irreparable physical damage; it is also psychological, illegal and socially damaging. It could also be matrimonially disruptive particularly in the case of inter-marriage between practicing and non-practicing couples.

Yet, contentious issue here is the issue of virginity. Although, the type of practice in Ogun state FGC is not tantamount to loss of virginity, it is however perceived as such by almost all the participants in Sagamu. The differences in the female-vagina structure arising from FGC types 1&2 done in Ogun state [IAC, Nigeria, 1997] in the practicing community and non-practicing community seems to have informed the perception of the participants about who is actually virgin or dis-virgined among the women. It may interest you, as well, to know the story of another respondent;

I know a boy and a girl who promised to marry each other and at their first meeting, the boy discovered that the girl had been dis-virgined and she claimed to be virgin, this brought about confusion that the girl had to go and inquire from her parents what happened to her.

Next on the list of the consequences is the issue of infection. Circumcised women are most likely to be infected at different stages of the FGC. This could be during or post cutting of the vagina. Various infections, sexually transmitted diseases and even HIV/AIDS could be transmitted into an innocent child's body particularly with the use of unsterilized cutting objects. Some

participants saw prevention of women from promiscuity as benefit others however felt that FGC actually encourages promiscuity and fornication. 'I don't believe it prevents female from fornication, all is a lie, they are the greatest fornicator'. As we noted earlier, this issue is a contentious one and it may need further investigations. However, another participant seem to support the earlier one when he said that;

> *The female child that is circumcised would not have fear of anybody because, what would make her complete woman has been removed and those pain she undergoes.*

This participant seems to be suggesting a situation where a circumcised girl may become promiscuous as a result of the fact that she has been opened up. She may not go through any sexual pain during intercourse and as such will not be afraid to meet with all sorts of men of different sizes. The participants that raised the point consider this serious consequence of FGC. Other participants felt otherwise that a woman that is circumcised will rather be frigid rather than promiscuous. She is not likely to be interested in having sex since she does not enjoy the act. Cutting of the clitoris is seen as serving two purposes-one, prevention of the death of the child at birth and two, prevention of sexual arousal: - it is believed that once the clitoris is cut the woman will not enjoy sex and therefore not be so interested in it. The issue of removal of clitoris and subsequent frigid nature of the woman concerning sex could yet have another effect as noted by another participant. She observed that:

> *Any circumcised female has lost a lot of thing because male counter parts often say any female circumcised has nothing to enjoy with because it has all been cut off. For example if any of the ijebu marries any girl from Ibadan or Osun, he [the husband] would say, there is no enjoyment in her, all the important things have been removed:*

It is not unlikely therefore that such a situation above may yet lead to other consequences such as extramarital affairs, serial monogamy or polygamy and in extreme cases divorce or suicide in case of loss of husband by a circumcised woman. Still on the issue of the clitoris, some also observed that the cut part from the clitoris could be used for rituals. In whatever form it is used [be it for good or bad] is described as a bad thing when the owner do not give her consent for the cutting or its use or non-use and how it should be used or by who, where and when etc. The various consequences documented by the participants using other PLA tools were presented in **Table I** while **Table II** presents the flow charts on consequences of FGC and brief details of explanation on some of them in one of the communities.

Table I: The scoring of the consequences of FGC by women in one of the communities in Sagamu.

Condition	Anemia	Disease	Death	Total
Bleeding	O O O O O O	O O O	O O O O O	14
Pain	O	O O	O O	5
Infection	O O O	O O O O	O O O	10
Loss of sexual enjoyment	-------	O	-------	1

Source: Field Work, (2019)

Table II: Consequences of FGC in Ijebu

Consequences	Exploration by participants
Early menstruation	This can result as a result of distortion of natural vagina setting.
Infertility	A circumciser that is not too careful may damage the womb in the process of circumcision
Promiscuity	They may lead to promiscuity- the Ijebu often say of a promiscuous woman- have your clitoris been swallowed by a dog? The dog is perceived as a promiscuous animal among the Ijebu.
Infection	This could occur if same blade is used on two or more people. This can lead to vagina sore.
Unpleasant sexual relationship.	There was no consensus on this issue as some claimed it make sex easier, some said it makes even more difficult.

Source: Field Work, (2019)

5.4 Dynamics and Reasons for Change in Traditions in Sagamu

Potential mechanisms for social change relative to female circumcision are central to this study. Attempt was therefore made in this regard to explore what has changed in the past in the various communities and how they actually happened. The various groups mentioned some customs and traditions they used to observe but no longer do today. Many however have to do will religious activities, rituals, and sacrifices. The groups narrated some striking ones, associated with childbirth. A participant said that:

> *In my own place [Abeokuta], when we give birth to a child, on the third day we used to call something Aboeyin [unriped palm kernel]. It will be prepared with fish, bush-rat, palm-oil. Afterwards, we would pour water on the roof seven [7] times if the child is a female and nine [9] times if the child is a male. The mother will run in and out of the house for those times water is poured carrying along the child in her hand.*

The tradition, though, no longer practiced, it is a culture that is slant in favour of the male over female. Male is accorded higher number [i.e. 9] and female [7]. This seems to be a part of the gender differences rooted in traditional practices in some communities (Omonijo, Uwajeh and Anyaegbunam, 2019). Although reasons for this practice were not probed, one could suspect that same reasons why women must be cut or circumcised could have informed this tradition or vise-versa.

A high chief narrated another interesting one from Sagamu.

> *When a woman delivers she would be asked to go and prepare a fire word, she would light the fire wood and turn her back at the fire just because they believes that the clot blood would melt by the heat of the fire.*

Another tradition says:

> *When a woman delivers she would go to the river to fetch water in a pot for sixteen [16] times, during the cause of fetching anybody who come across her would be praying for her. All these have changed finally with modernization*

Apart from modernization, other reasons given for change of these traditions are the incursion of foreign religions such as Islam and Christianity. A participant said that “people are now civilized if anybody meets you worshiping an oracle they will ask you, is this what you are still doing? You did not go to church or mosque, they will laugh at you”. It could be inferred from the above that if FGC is confirmed not to be rooted in any religion, the religions could be means of accelerating the needed change in the practice of FGC.

The same effect modernization, civilization and religion had on the traditional practices mentioned above was noted concerning body scarifications and facial mark. These two used to be practiced but has since disappeared from the communities affected. More importantly however, the agents of change were explored and Table III was generated to illustrate those identified as agents of change. The people, based on their communities, generated these agents.

Table III also shows the scoring of the decision makers in one of the communities in Sagamu. The king is ranked highest as an agent of change in the community above. And a participant also noted that the chief is ranked second because the chief serves as the supporter of the king in executing the Obas [kings] wishes. Exploring further on the issues of mechanism for change, enquires were made on source of information in the communities. Another scoring was conducted [see the appendix]. The king’s town crier was rated highest scoring 22 followed by radio [17]; television [13] and newspaper [8].

Table III: Scoring of the decision makers in one of the communities in Sagamu.

Categories of People	Authority	King makers	Dissemination	Total
Youth	O	-------	O	02
Elders	O O	-------	-------	02
Chiefs	O O O	O O O O O O O O O O	O O O O	17
Kings	O O O O O O O O O O	O O O O O O O O O O	O O O O O O O O O O	30
Egbe-ibile	O	-------	O O	03
Development association	O O O	-------	O O O	06

Source: Field Work, (2019)

6. Concluding Remarks

Dwelling on the aims of this study, findings and discussion, the study concludes that the practice of circumcision is prevalent in the community under study because of social, cultural factors which may be very intricate to remove since it has a strong connotation with marriage in the practicing communities. Marriage institution is very essential in any society and members will continue to ensure its sustenance. Ensuring its sustainace with respect to this article involves sticking to the practice of circumcision.

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RICHTMANN PUBLISHING

Research Article

The Two-aspect Theory of Legal Responsibility According to the Russian Law

Aleksandr Fedorovich Malyj

Kazan Federal University,
Kazan, Tatarstan, Russia

Azat Albertovich Gafurov

Kazan Federal University,
Kazan, Tatarstan, Russia

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Abstract

The article draws our attention to legal responsibility as a key legal phenomenon. Theoretical aspects of a legal responsibility concept, its prospective (positive) and retrospective (negative) components and contents are considered. Authors discuss issues connected with lack of uniform approach in determining the legal responsibility and the reasons the term is not understood clearly. Discovering key components of legal responsibility, the author's vision of the problem's solution and key definition is offered and a definition of a legal responsibility concept is formulated as authors see it. On the basis of such analysis and on the example of the legislation of the Russian Federation, authors reveal some establishment features and solutions of legal regulation as well as offer the ways of implementing their vision. Authors formulate a conclusion that the legal responsibility is currently a rather voluminous, yet contradictory legal phenomenon which is not possessing sufficiently in legislative regulation.

Keywords: *Legal Liability, Positive Responsibility, Negative Responsibility, Mixed Legal Liability, Resignation, Legal Status, Legal Duties, And Officials*

1. Introduction

Owing to a significant amount of researches, conducted on legal responsibility in the Russian jurisprudence, its principles, purposes, and fundamentals are covered in detail; its implementation mechanisms are studied well. However these researches are very versatile and lead to versatile understanding and determining the legal responsibility, thereby there is a set of controversial and debatable theoretical issues. Some scientists see the essence of legal responsibility in applying sanctions against the offender, others – in a bearing with known social "inconveniences", adverse effects; the third consider it to be a special law-enforcement relation between the state and a person acting illegal and bearing responsibility respectively; the fourth reduce legal responsibility to punishment of a guilty subject, deprivation of certain benefits; the fifth – to a specific duty to be responsible for actions, to smooth down the harm done to society. Therefore, in order to consider the nature of legal responsibility, it is necessary to study its basic concept and to disclose key aspects of the studied concept definition.

2. Methods

The research methodological basis is presented by system general scientific and specific methods of knowledge which allowed considering the research object from a position of its internal logic. Use of a dialectic, historical, sociological, system and structural method allowed analyzing and generalizing theoretical concepts of legal responsibility, building the general theoretical model.

As private-law methods of theory-predictive, legal modeling, the comparative and legal analysis was widely applied. With its help comparison of various points of view concerning responsibility was carried out in regard to its manifestation in the Russian Federation law.

3. Results and Discussion

Legal responsibility is the most important institute of any legal system, one of the intrinsic aspects of the law and a necessary element of the mechanism of its implementation. Legal responsibility can be characterized as a complex, many-sided, interindustry, functional, regulatory and guarding institute of the law entrenchment and (or) making a dynamic impact on the most important public relations; in case of violation, law governs the responsibility relations arising from the legal fact of offense. Responsibility is called legal because it is based on rules of law and is constantly exposed to legal regulation; therefore it has standard legal character. The normativity of legal responsibility, as well as generally normativity of the law, includes a possibility of the state coercion. Hence, legal responsibility appears as a natural response to socially important behavior of subjects and as a result of the standard establishment of the state coercion.

Summarizing the above said, a basic concept of legal responsibility can be defined as the *right realizable activity of the state in the form of applying the corrective action of a compulsory character*.

In legal literature three aspects of responsibility are distinguished:

1) the internal relation of the law subject to the debt regarding the implementation of the law requirements;
2) responsibility of the subject which assumes an opportunity to hold the subject responsible for their actions;
3) applying sanctions (punishment) against the subject of law in connection with the behavior "assessment" (Avakyan, 2017; Kozlova & Kutafin, 2018)

The first and the second aspects are prospective (positive) responsibility, the third is the retrospective (negative) responsibility.

Therefore, the term "responsibility" assumes "assessment" and possible applying sanctions. If responsibility is retrospective it means there is a violation and there is a possibility of applying sanctions. If it is prospective, then there is no violation of the norms, but sanctions, all the same, can be applied for a certain behavior, in general compliance with the law. Personal responsibility includes a self-assessment the person for his own actions, and the assumption of possible positive or negative assessment from the outside. Thus, an assessment which is expressed as coming from the inside (person's own responsibility for his actions) and from within (assessment by law representatives) takes place.

Legal responsibility acts as the closing link and is expressed by bearing with adverse effects for the participant of legal relationship in case of non-compliance with the established duties. Here responsibility can arise, for example, from the fact of an offense or for a perfect act and by that be characterized as being of retrospective (negative) quality.

However, responsibility, as we saw above, exists also before a commission of an offense and is the responsibility for the appropriate execution of duties, for conscientious behavior as a responsible attitude. Thereby legal responsibility is seen as prospective (positive) and a different semantic meaning arises. The one that is most poorly studied as well as debatable.

Retrospective legal responsibility is in details developed by jurisprudence and in detail regulated by the legislation of all countries. It is worth agreeing with opinions of scientists that legal responsibility, from the moment of its emergence, is the responsibility for the past, for perfect illegal behavior (Samoshenko & Farukshin, 1971); its basis is the offense involving an obligation for

punishment execution as requitals (punishment) for its commission (Malein, 1985); at a violation of legal instructions prosecution plays an important legal role as this circumstance predetermines need to be held to the acts violating rules of law (Tarkhov, 1973; Yagudina, 2009).

Some supporters of retrospective legal responsibility hold the opinion that one should not allocate its prospective component. For example, O.E. Kutafin, I.A. Rebane, I.S. Samoshchenko, M.H. Farukshin, R.O. Halfina, etc. note that legal responsibility is by all means retrospective as use of a concept of prospective responsibility leads to the fact that the same phenomenon is called both a duty, and responsibility; the purpose of responsibility as one of the effective behavior regulators is washed away (Kutafin, 2001).

The theoretical analysis of literature allows allocating a set of beliefs concerning the understanding of retrospective legal responsibility, each of these brings a new sense to its definition. These beliefs can be systematized and marked out as the following approaches in understanding the legal responsibility: first, from a position of the state coercion where the offense is followed by applying sanctions with the further approach of negative consequences in the form of various restrictions (Ivanov, 2004). Secondly, from a position of a legal obligation acting as a legal relationship between subjects of the public relations[1].

"Legal obligation" is the measure of due, socially necessary behavior established by the law as well as a type (line) of behavior. It is the imperious form of social regulation leaning on the "power" of the state coercion (Krasnov, 1995; Matuzov & Malko, 2015). Therefore, the duty is expressed in requirements which are imposed on a person and is connected with maintenance of public order. The duty assumes such forms of expression as "active" (a duty to do) and "passive" (duty not to do). So, in case the person neglects the passive duty and does what he should not have done; or neglects the active duty and does not do what he had to do – there is a duty to bear responsibility. Responsibility, in turn, assumes negative consequences. Retrospective legal responsibility has two reasons: formal, which is provided in the precept of law and comes for its non-execution; and actual, as offense commission fact (Santana et al, 2017; Sohrabi, 2017).

Summarizing the presented positions and making a start from the basic definition of the legal responsibility, retrospective legal responsibility can be defined as *a duty of the person to undergo the negative consequences applied by the state in the form of the compulsory restrictions for violating the rules of behavior set by the rules of law*.

Supporters of prospective legal responsibility adhere to other position and consider legal responsibility to be the important and effective remedy which increases socially useful activity and makes an educational impact on the strong-willed, individual qualities of the personality and develops a sense of justice and a social and legal position of the individual (Nazarov, 1981) as "other party (instance of responsibility) controls communication between two subjects of which one party (the subject of responsibility) having free will and the choice undertakes to build appropriate behavior according to the expected model and, measures such behavior and (or) its consequences, and in case of negative assessment and existence of fault has the right to react definitely to it" (Krasnov, 1984); responsible execution of the established duties also means a conscious and vigorous activity of the person (Ivanov, 2004).

In philosophical category prospective legal responsibility assumes the positive relation of the person to the duties and the acts. At the same time, its existence is caused by need, first, to adjust the activity of each subject with actions of others, secondly, to align private interest with the general at a joint performance of certain tasks. It is necessary to support the point of view that prospective legal responsibility has the social and moral, as well as legal nature at its core (Lipinsky, 2005; Noskov, 2007).

Therefore, understanding prospective legal responsibility as internal value judgment and external assessment by other instance is traced. Based on the choice in behavior, a person makes according to the established precepts of law the decision is obvious (Lee, 2019).

Summing the above said, prospective legal responsibility can be presented as a *duty of the*

[1] *For example, Cherdantsev A.F., Kozhevnikov S.N. About a concept and content of legal responsibility/ /Jurisprudence. 1976. No. 5. Page 40-41, 45.*

person to build the behavior model according to legal requirements and to live in strict accordance with the ordered rules in precepts of the law.

In jurisprudence attempts to consider legal responsibility in the unity of the two of its aspects – the prospective and the retrospective - are also made. A.M. Bogoleyko considers them as two forms of realization of legal responsibility, at the same time considering that responsibility is uniform (Bogoleyko, 2005). According to D.A. Lipinsky "legal responsibility … includes responsibility for future behavior (positive, voluntary), and responsibility for past illegal behavior (negative, state, and compulsory responsibility). Restricting the legal responsibility to merely negative reaction of the state significantly narrows a problem of legal responsibility, as well as the essence of law and reduces responsibility to a punishment for offense and also excludes it from the mechanism of legal regulation and formation of lawful behavior" (Lipinsky & Shishkin, 2014). Thus, in essence, the functioning of legal responsibility extends to all scope of the law and in such quality promotes an increase in its efficiency (prospective aspect). Therefore, it is possible to present the sanction in the form of the final expression of legal responsibility, but not as the only area of its manifestation (Eskandarian et al, 2016; Rakhmatulloevna, 2016).

Some researchers claim that legal responsibility proves in dynamics and pass from one aspect (prospective) to another (retrospective) as the law performs a regulatory function, as well as guarding ones (Krasnov, 1984). At the same time, these aspects can be designated as "preliminary" being an educational responsibility; and "subsequent", as being the result of the negative behavior of the person. Moreover, measures of responsibility stimulate respectable behavior (encouragement), desirable for public legal relations, and suppress undesirable and inadequate behavior (punishment) (Olkhov, 2006).

However, opponents of the mixed model specify that in this case there is an identification of negative responsibility to psychological and strong-willed prerequisites or to the understanding of a responsibility (Leist, 1981); the duty provided by the law to take actions is identified with consequences of its non-execution and will conduct to terminological confusion; it focuses on the dissolution of the nature of legal responsibility that in turn creates impressive confusion in the law, at the same time its role in the scientific and practical relation is small (Baiting, 2001).

It is thought that prospective legal responsibility is primary in relation to retrospective and is a necessary condition for its emergence. The last comes before the first when the person commits an offense. Retrospective responsibility exists as a potential threat; it cannot come if the person behaves consciously and legally. The person undertakes prospective responsibility in advance. "In advance" in this case acts as an insurance or a guarantee. Thereby, prospective responsibility is always possible.

4. Summary

1. The public relations which are settled by rules of law are protected by the state. State regulation of the public relations is a prerequisite of establishing legal responsibility which plays a significant role in the formation of the constitutional state, acts as the most important institute of the legal system and the main hand of the law and the integral element of its implementation. Therefore the state estimates degree of danger and the nature of influence then undertake measures to prevent a certain sort of behavior by means of banning it and applying sanctions.
2. Legal responsibility represents the complex of legal system mechanisms and by that is an important element of the law; it promotes regulation of the public relations by means of the instructions established by the Constitution and the laws adopted on its basis. Such categories as normativity, complexity, functionality, protection are inherent in it. It gives the participants a chance for legal relationships, a chance to choose the established norms of the behavior including obligations for their observance.
3. All variety of approaches to defining a legal responsibility concept can be expressed as three basics: 1) responsibility as a measure of the state coercion (retrospective responsibility); 2) responsibility as guarding legal relationship (prospective responsibility); 3) responsibility as an all-social phenomenon (set of retrospective and prospective

responsibility). Structurally legal responsibility consists of prospective and retrospective component representing dialectic unity of forms and measures of realization which are consistently interconnected among themselves.

5. Conclusions

Legal responsibility in its full is the responsibility for the past, the present, and the future. It is worth agreeing that "prospective responsibility without retrospective could not perform the regulatory functions, as it would have formal character. In the same way, it is impossible to present retrospective responsibility without prospective. If no requirements are imposed upon the person, then the condemnation for non-execution of socially useful actions is impossible" (Butnev, 1985). Therefore, the independence of the specified functions of the law causes their mutual addition as in case of insufficiency one of them; another loses the main property – the definiteness – and creates conditions for uniform understanding and application of the law. Therefore its consideration through a prism of two specified aspects which can work both independently, and alternately, will be the most appropriate, full and productive understanding of legal responsibility.

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RICHTMANN PUBLISHING

Research Article

Prenuptial Agreement: Legal Position in Malaysia

Ramalinggam Rajamanickam

Assoc. Professor, Faculty of Law,
Universiti Kebangsaan Malaysia (UKM), Malaysia

Kevin Brendan Kung

Associate, Ariff Rozhan & Co,
Kuala Lumpur, Malaysia

Ahmad Azam Mohd. Shariff

Assoc. Professor, Faculty of Law,
Universiti Kebangsaan Malaysia (UKM), Malaysia

Muhamad Helmi Md. Said

Senior Lecturer, Faculty of Law,
Universiti Kebangsaan Malaysia (UKM), Malaysia

Nur Khalidah Dahlan

Senior Lecturer, Faculty of Law,
Universiti Kebangsaan Malaysia (UKM), Malaysia

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Abstract

Prenuptial agreements are agreements made by couples before marriage concerning their assets. There are indeed many couples opting to prenuptial agreements before marriage. Prenuptial agreements can be very positive experience to some. A plethora of cases in England and other common law jurisdictions shows that prenuptial agreements are enforceable. However, there is a lacuna in law as regards to the position of prenuptial agreements in Malaysia. In other words, the legislation in Malaysia is still unclear on this issue. Being a pure legal study, the conducted research has been based on the qualitative design. Data and materials on prenuptial agreements are collected via library research method. These data and materials are then analysed by way of content and critical analysis methods. This article analyses the enforceability of prenuptial agreements by the common law in England, eventually comparing it to that of the Malaysian legal scenario. It then strives at identifying problems relating to such legal enforcement in Malaysia. This article eventually offers some legal suggestions on how to validate and enforce prenuptial agreements in Malaysia.

Keywords: *Prenuptial Agreement, Malaysia; Common Law*

1. Introduction

Many couples these days agreeing to prenups before getting hitched. These couples are regular couples which do not have considerable amount of wealth. These are couples who intends to put all

their budgetary cards on the table before their big day. A prenuptial agreement is a signed and notarized agreement that spells out how couples would handle their finances if a breakdown of marriage would occur. Having prenuptial agreements before marriage may appear or sound unromantic, but having this financial discussion prior to a wedding ceremony is very much a positive and matured process which experience could be very enriching and satisfying.

Despite the fact that prenups have been prominent in the West for a considerable length of time, in Malaysia, it has rather slow until recently (The Star, 2017). As the number of separations increase, it is important to be aware of the requirements of the same. One may argue that prenups are bad omen of love. This is because some may argue that a marriage starting on the platform of distrust is doomed for failure. On the other hand, others may foresee that having a prenuptial agreement prior to an actual marriage can preserve family ties and inheritance.

This paper discusses on the position of prenuptial agreement in Malaysia. The first part explains on the meaning of prenuptial agreement. The second part discusses on the position of prenuptial agreement in some selected jurisdiction of common law while the last part of the paper analyses the position of prenuptial agreement in Malaysia.

2. Research Methodology

This article used a qualitative method which employed a pure legal research design. Therefore, the data for this article were collected through relevant legislations and cases. Apart from that, the method of content analysis was used to analyse the data from the statutes and cases (Ramalinggam Rajamanickam et al. 2015). Furthermore, the article made a comparative study with selected jurisdiction on the issue of prenuptial agreement. The collected data were critically analysed to discuss the issue of prenuptial agreement.

3. Definition of Prenuptial Agreement

Prenuptial agreement is an agreement or a contract entered prior to a marriage. It is also known as antenuptial agreement or premarital agreement. The substance of the prenup may vary extensively but it normally incorporates arrangements for division of property, spouses and children maintenance, and guardianship of children in the event of a divorce.

The couples entered into an agreement before their marriage with regards to a matter or certain matters which may become an issue after the marriage is solemnised.

4. Literature Review for Prenuptial Agreement in Matrimonial Property

When discussing about divorce among the non-Muslims, it always concerned with the division of matrimonial property. Mohd Norhusairi and Mohd Hafiz (2016) explained that jointly acquired property refers to properties acquired by joint effort of both Muslim spouses during the subsistence of their marriage whereas for non-Muslims, the properties or assets acquired by the spouses during their marriage either jointly or solely by either spouse will be referred to as matrimonial properties (Mohd Norhusairi Mat Hussin and Mohd Hafiz Jamaludin, 2016). The concept of matrimonial property involves the use and extent of how such property benefits the family. If the property does not involve the interest of use of other family members, the property is then excluded from the concept of matrimonial property.

Norliah Ibrahim and Nora Abdul Hak (2007) shared the history of matrimonial property among the Chinese and Indians in Malaya. According to them, no information is available in relation to the history of matrimonial property among the Chinese as if it was not recognised in the Chinese customs due to the lower position of women in their traditional society. Women were often considered as oppressed. They were denied the rights to inherit property and relied solely on their husbands. Similarly, Indian women after marriage, had to devote their lives to their husbands. They depended on their husbands in terms of social and economic aspects. Thus, when a divorce occurred, the issue of matrimonial properties was irrelevant as whatever was acquired by the husband would remain as his sole right (Norliah Ibrahim dan Nora Abdul Hak, 2007). However, the

rights of the Chinese and Indian women to matrimonial property in Malaya and subsequently Malaysia, have been recognised by the law beginning with Married Women Ordinance 1957 and followed by the Law Reform (Marriage and Divorce) Act 1976 (LRA 1976). Based on the decided cases by the courts such as *Chin Shak Len v. Lin Fah* [1962] MLJ 418, and *The Estate of T.M.R.M Vengadasalam Chettiar* (*Deceased*) [1940] MLJ 55, Chinese and Indian women were also entitled, in the eyes of the law, to matrimonial property.

The relevant provisions of the law on the division of matrimonial property under the LRA 1976 is Section 76. The explanation to Section 76 can be seen in many cases decided by the courts, among others in the case of *Yap Yen Piow V. Hee Wee Eng* [2016] 1 LNS 1060. The Court of Appeal through Hamid Sultan bin Abu Backer, JCA, affirmed by Abdul Rahman bin Sebli and Prasad Sandosham Abraham, JCA, clarified that the matrimonial property pursuant to Section 76 LRA 1976 are divided into two parts, namely matrimonial property as described by subsection 1 of Section 76 and also non-matrimonial property as categorised under Section 76(3) and/or (5) LRA 1976. Matrimonial property under Section 76(1) is property obtained through joint effort of both spouses. The division of matrimonial property should be made by the court on the basis of the rights of each of the party. Meanwhile, non-matrimonial property under Section 76(3) is the property acquired as a result of the sole effort of either spouse. Unlike matrimonial property, the division of non-matrimonial property is not based on rights, but the court may still be able to order its division in certain circumstances. There is another category of property under matrimonial property that is the property acquired prior to the marriage, but has been upgraded or enhanced during the marriage by either of the spouses or even both of them as stipulated under Section 76 (5) of the Act. In this case, the Court decided that for the first and second categories, the interests of the minors should be the primary consideration in the division of the property, but not for the third category.

In the case of *Yap Yen Piow* (supra), the Court decided that, among others, despite being registered under both spouses' name, the house in Australia cannot be divided equally between them as ordered by the Sessions Court Judge. This is because that house did not amount to matrimonial property as both spouses had never intended to make the house as such. In fact, both spouses expressed their intention to hand over the house to their daughter. Therefore, the High Court ordered both spouses to keep the property as a trust for their daughter. Besides, it was also decided that the monies in the husband's Employees Provident Fund (EPF) account did not fall under the matrimonial properties that could be divided as it fell short of being categorised as property prescribed by Section 76 (3).

The interest of minors on the issue of division of the matrimonial property has been mentioned by Zuhairah Ariff Abd Ghadas and Norliah Ibrahim (2011) in their article entitled *Best Interest of Children in the Division of Family Business as Matrimonial Property: The Civil and Shariah Courts' Perspectives in Malaysia* (Zuhairah Ariff Abd Ghadas and Norliah Ibrahim, 2011). In this article, it is stated that the interest of minors should also be considered irrespective of whether the properties were acquired solely or jointly. Apart from the couple themselves, the children will also be directly affected and may also experience emotional trauma due to the divorce of their parents. Therefore, to lessen the impact of the divorce on the children, the law places an emphasis on the rights and interest of children. Normally, parents who are granted custody will be given the right to the matrimonial house to ensure that their children can continue their lives with minimal impact on their daily routine after the divorce. In addition, the court may also make appropriate orders such as temporarily suspending the sale of the house until the children reached the age of majority. This situation can be seen in the case of *Lim Tiang Hock Vincent v Lee Siew Kim Virginia* [1991] 1 MLJ 274 (CA). In this case, in ensuring the interests of minors are reserved, the Court of Appeal had affirmed the decision of the trial judge in disallowing the matrimonial house to be sold until the youngest daughter of the couple, Charlene Lim Yu-Shan reaches adulthood. Hence, the father's application to sell their matrimonial house was dismissed.

Apart from minors, Norliah Ibrahim (2008) said that the court should also consider the couple's financial ability especially when it involves the matrimonial house acquired jointly by both parties, but was only registered under either party's name. The court will usually transfer the matrimonial house to one party only, normally the wife, subject to lump sum payment to the aggrieved party,

usually the husband, as compensation for the loss of his share of the house. Therefore, such orders are only suitable for couples having sufficient capital or high income to pay the other party. This order seems to force a party to buy the interests of the other so that he or she may be able to gain full interest of the house (Norliah Ibrahim, 2008). However, for those without the same advantage, a different mechanism and approach needs to be considered to dispense justice for all parties, not only for the couple, but also their children, in particular the minors.

Buvanis Karuppiah (2015) in an article entitled *Matrimonial Property Division of Married Couples in Malaysia* was of the opinion that the Malaysian Civil Courts place an emphasis on financial contributions by the couples in distributing the matrimonial properties. In other words, this kind of approach gives more credit to the contributors of the asset as compared to other contributions to the marriage. There are also circumstances where an equal distribution of property in Malaysia is allowed when there is a clear evidence on the financial contribution towards the acquisition of the property, or at least if the property is registered under both spouses' name. If the property is obtained as a result of the sole effort of either one of the spouses, then equal distribution of the property cannot be made (Buvanis Karuppiah, 2015).

Foo Yet Ngo (2014), in his working paper entitled *Division and Entitlement of Assets: Is the Wife Worse off in Malaysia*? (Foo Yet Ngo, 2014) compared Malaysian laws in the division of matrimonial property with the laws of other countries such as the United Kingdom and Singapore. Based on the decided cases, matrimonial properties include home, cash, cars, jewelries, liquor collection, saving in the Employees Provident Fund (EPF), insurance policy, retirement benefits, shares and even club memberships earned during a marriage. On the other hand, the Malaysian Court has arrived at two different decisions in interpreting the word "acquire" in so far as the inherited properties and gifts gained prior to the marriage from a third party during the marriage period are concerned. In the case of *Doris Howell v Pui Jin Kong & Anor* (1998) 1 LNS 27, the High Court of Kuching ruled that a gift or a will is included in the definition of matrimonial property under Section 76 because the word "acquire" does not prescribed any limit to the form of acquisition. Whereas in the case of *N(f) v C* (1997) 3 MLJ 855, the court stated that the word "acquire" refers to the acquisition of such party through his money, property or occupation. However, since the court is vested with such a broad jurisdiction, it may make due order as long as the court finds that it is fair and reasonable for all parties.

Shamsuddin Suhor (2011) is of the opinion that apart from the distinction of approach taken by these two courts in handling these two properties, the means and the usage of the properties acquired during the marriage would also distinguish both concepts of the properties. In civil law, any property acquired by a party and brought into a marriage which is then utilised by all family members and supports the well-being of the household is considered as matrimonial property. Similarly, the status of a property brought into the marriage and commonly used by the household would be treated as matrimonial property despite its source of acquisition, be it a gift, grant, inheritance, etc. In addition, the income or savings, earned or received during the marriage would also amount to matrimonial properties claimable by the parties to the marriage in the event of a divorce between them. This situation is quite in contrast with the jointly acquired properties for Muslims as the concept of jointly acquired property for Muslims covers properties acquired during the marriage term which has the element of contribution of the parties in acquiring the property. Be that as it may, any property inherited by a party from his or her family shall not be considered as a jointly acquired property, despite being used commonly by the household.

In comparison with neighboring country, Singapore, reference was made to a book, *Family and Juvenile Court Practice* written by a joint effort of Singaporean judicial officers and academicians. In Singapore, pursuant to Section 112 (1) of the Women's Charter, the court was vested with the power to order a distribution of matrimonial properties. Unlike the LRA 1976, Section 112 (10) of the Women's Charter provides a clear definition of "matrimonial asset" as:

> *"(a) any asset acquired before the marriage by one party or both parties to the marriage-*
> *i. ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purpose; or*

> *ii. which has been substantially improved during the marriage by the other party or by both parties to the marriage; and*
> *(b) any other asset of any nature acquired during the marriage by one party or both parties to the marriage,*
> *but does not include any asset (not being matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage (Khoo Oon Soo and et al, 2008).*

In Singapore, the power to distribute the properties is at the discretion of the court. For instance, in the case of *Ong Boon Huat Samuel v Chan Mei Lan Kristine* [2007] SGCA 19, the court refused to exercise its discretion under Section 112 to order the division of a house located in Malvern Springs. Although originally both spouses intended to make and have the house registered under both spouses' name, later on, the wife cancelled the purchase of the house since the husband disagreed with the conditions set forth by his wife leading to disagreement in their marriage. Initially, the wife did not include the Malvern Springs' home as a property to be divided after the divorce. However, during the divorce proceedings, the wife found out that the husband went on with the purchase of the Malvern Springs' house and the price had soared. Therefore, the wife demanded her shares of the rights over the house in Malvern Springs. In this case, the Court of Appeal decided not to exercise its discretion to distribute the Malvern Springs' house because the husband had resumed with the purchase of the house by paying 10% of the deposit as well as the second 10% as instalment using his own money after his wife refused to proceed with the purchase of the house. As such, the wife was not entitled to the Malvern Springs' house.

Debbie Ong (2015) stated that the Singapore courts have arrived at different opinions on the issue of whether a gift during marriage may be considered as matrimonial property based on decided cases in Singapore (Debbie Ong, 2015). For example, in the case of *Wan Lai Cheng v Quek Seow Kee,* [2011] 2 SLR 814 the court decided that a gift from the husband or wife is not a matrimonial asset and must be taken out from the matrimonial assets list for the purpose of distributing matrimonial properties. Whereas, in two other cases, i.e. *Tan Cheng Guan v Tan Hwee Lee* [2011] 4 SLR 1148 and *Sigrid Else Roger Marthe Wauters v Lieven Corneel Leo Raymond Van Den Brande* [2011] SGHC 237 Justice Choo Han Teck decided otherwise. Debbie Ong concluded that any gift during the marriage must be seen from a wider context. The first step to be taken is to include the gift given during the marriage into the list of matrimonial properties. The next step is to determine how to distribute the gift fairly and equally. If it was found that the gift falls within the category under Section 112(e) of the Women's Charter, i.e. the existence of an agreement between the parties that the property is a gift from one party to the other, then the court may enforce the agreement. It, however, should not be a restriction to the court to make any other order as it thinks fair and just since it is vested with such powers.

After examining some of the textbooks and articles from Malaysia, most of them are more focused on how matrimonial properties may be divided based on the decided cases by the courts as compared to the issues and problems that arise after the order is pronounced by the court, especially in terms of its enforcement and its solutions. An example can be seen in a book entitled *Malaysian Law on Division of Matrimonial Assets* by Wee Wui Kiat (2014). The author of this book discussed at length about the division of matrimonial assets including among Muslims, non-Muslims as well as the natives of Sabah and Sarawak. Among the issues raised in this book is the need for the application of discovery under Orders 24 and 25 of the Marriage and Divorce Proceedings Rules 1980 to ascertain the matrimonial properties that are going to be claimed. Besides that, full and frank disclosures by the parties are required in order to prevent the court from invoking an adverse inference against the parties. In this book, Wee Wui Kiat also discusses on the issue of matrimonial properties being disposed when the proceeding of disbursement is still ongoing for the purpose of evading distribution. On this issue, based on the decided cases, Wee Wui Kiat concluded that the property should also be taken into consideration and still be subjected to division. In fact, the court may also pass an order to set aside the disposal of such properties and issue an injunction so that the party disposing the same would not be able to proceed with his or her intention. Of the 540 pages, only a few pages in this book deal with the issue of execution of the order after the judgment of the court is obtained (Wee Wui Kiat, 2014). Among them are committal

proceedings. Order 45 Rule 7 (4) of the Rules of Court 2012 allows the committal proceeding to be initiated against any person deliberately defaulting the orders in the *Decree Nisi*. Nevertheless, if the parties choose to commence an action pursuant to Order 45 rule 7 (4) of the Rules of Court 2012, they must ensure that the *Decree Nisi* contains the "Penal Indorsement" failing which, the committal proceeding would not be allowed to commence. The Majority of the *Decree Nisi* granted by the court are granted on mutual agreement between the parties and often lack such indorsement. Therefore, those applying for committal proceedings will be aggrieved by the requirement of Penal Indorsement. Similarly, there is the absence of a consequential or specific order by the court such as a specific period of time for the sale of the matrimonial property in order to crystallise the property into cash flows to be distributed among the parties. One party may circumvent the execution of the order by manipulating this situation on the grounds that there is no order by the court for him or her to sell the property or the word "immediately" to sell the property indefinitely will give that party an opportunity to escape from being cited for contempt. Hence, based on the decision in the case of *Tan Bee Ang v Siew Chee Choong* [2011] 1 LNS 121 and Orders 1A and 92 Rules 4 of the Rules of Court 2010, Wee Wui Kiat suggested for the aggrieved party to apply to the court to amend the order duly granted earlier to include the consequential terms and specific orders in so far as it relates to its execution so that any injustice can be avoided (Wee Wui Kiat, 2014).

Besides that, other issues raised in another book entitled *Family Law in Malaysia* by Kamala M. G. Pillai (2009) were relate to the monies kept in the EPF, properties obtained after the divorce and the issue of being a trustee of the properties for minors at the time the distribution of the properties is being made (Kamala M. G. Pillai, 2009). However, there is no discussion on the problems faced by parties in executing court orders related to matrimonial properties in this book.

In the context of agreement prior to marriage which is known as prenuptial agreement, there is no significant literatures discussing this issue in Malaysia. Therefore, it is high time to discuss the issue of prenuptial agreement from the perspective of law especially in Malaysia.

5. The Position of Prenuptial Agreements in Selected Common Law Jurisdictions

5.1 England

The England Courts have generally held that premarital agreement is unenforceable on the basis of public policy. England enacted the Matrimonial Causes Act 1973 which was intended to govern matrimonial proceedings, maintenance agreements, and divorce. Prenups are said to violate Section 25 (1) of the Act which provides for the powers of the court. Further prenups are deemed to be void as it restricts the right for an order from the court in relation to financial arrangements as provided under Section 34 (1) of the Act.

However, as time goes by, there are cases that have raised up the issue of prenuptial agreements in UK. The first reported case is F v F [1995] 2 F.L.R 45 where the court gave no weight to the agreement, expounding that "in this jurisdiction they must be of limited significance." In M v M (2002) 1 FLR 654, the court stated that:

> *… the Court should look at any such agreement and decide in the particular circumstances what weigh should, in justice, be attached to it … The public policy objection to such agreements, namely that they tend to diminish the importance of the marriage contract, seem to me to be less importance now that divorce is so commonplace.*

Further, the court stated that:

> *The marriage was fairly short. The prenuptial agreement in my view is relevant as tending to guide the court to a more modest award than might have been made without it. I reject outright the suggestion that it should dictate the wife entitlement; but I bear it in mind nevertheless.*

In K v K (2003) 1 FLR 120, the court held a more decisive decision, 120,000 pounds was granted to the wife as per the Prenuptial Agreement, regardless the husband acquired assets

amounting to at least 25 million pounds. The court stated that:

> *Are there any grounds for concluding that an injustice would be done by holding the parties to the terms of the agreement? My answer is a no; not insofar as capital for the wife is concerned. On the contrary, I think that injustice would be done to the husband if I ignored the agreement one of the circumstances of the case to be considered under S.25 of the English Matrimonial Causes Act 1973? Does the entry into this agreement constitute conduct which it would be inequitable to disregard under s.25 (2)(g)? Yes.*

The court in K v K also stated that when considering the binding effect of the agreement, the following pre-requisite have to be met: (a) whether the parties were properly advised as to its terms; (b) whether the parties signed the agreement willingly, without pressure; (c) whether there was full disclosure regarding assets; (d) whether either party exploited his or her dominant financial position; (e) the length of the marriage; (f) the contributions of a party to the marriage to the other party's wealth; and (g) whether there were unforeseen circumstances arising from the agreement which would make it unjust to hold the parties to it.

In Crossley v Crossley [2008] 1 FCR 323, the court affirms that prenups are contracts entered between two individuals intending to marry which look to pre-decide their monetary liabilities and obligations. In this case, the Court of Appeal upheld the prenuptial agreement between Susan Crossley and Stuart Crossley. The court stated:

> *If ever there is to be a paradigm case in which the court will look to the prenuptial as not simply one of the peripheral factors but a factor of magnetic importance … this is just a case.*

The case of Radmacher v Granation [2010] UKSC 42 held that courts are not bound by prenups. Parties cannot, via an agreement defeat the jurisdiction of the court to decide division of their finances and/or properties. However, the Court expounded that:

> *The court should give effect to the nuptial agreement if freely entered into by each party with a full appreciation of its implications, unless in the circumstances prevailing it would not be fair to hold parties to their agreement.*

In the latter case of BN v MA [2013] EWHC 4250, the court expounded that it is not inherently unfair to enter into an agreement to protect non-matrimonial assets prior to the marriage." In WW v HW [2015] EWHC 1844, the court gave substantial weight to a prenup. The husband claimed against his significant other after the breakdown of their marriage despite having agreed to prenup not to proceed claims against her. His other half had acquired a wealth of amounting to 27 million pounds aforetime the marriage. After getting some legal advice, they have entered into a prenup. The prenup states that if they decide to get a divorce, neither would guarantee against the other. The husband had exaggerated his earnings and assets and wrongly claimed he was financially self-sufficient when the prenup was signed, possibility to bolster his wife. The agreement was given significant weight. She knew the prenup was a prerequisite to her marrying him. The former matrimonial house was worth 4.35 million pounds. The parties' contributions were 86 % and 14% to the wife and husband respectively. The court granted/proportionate 3.75 million pounds for the wife and 0.6 million pounds for the husband. Further, a fund of 1.7 million pounds for housing was granted to him.

Based on the later cases, it can be said that the English courts have been receptive towards prenuptial agreement.

5.2 Ireland

Prenuptial agreement is unenforceable in Ireland for the reasons of public policy. The Constitution of Ireland exhibits how the country esteems families. The Constitution provides fundamental rights, including the family.

This can be seen in Article 41 of the Constitution. The state ensures the families especially establishment of marriage and only grants a divorce in circumstances where there is no way of

compromise and as recommended by the law.

5.3 Australia

An amendment to the Family Law Act on December 2000 formed binding financial agreements which can be agreements entered into before, amid and after marriage. Before that time, prenups were not enforceable. The intention of the amendment is to enable individuals to enter into agreements which were contractually binding upon them and which defeated the jurisdiction of the family courts over any financial related question. The reformation of the law to enable couples to enter binding prenups was a progressive step. To be binding, there must be consent and also the terms that are agreed upon. The lawyer in the current circumstances only has to ensure that the effect of the agreement has been explained to the respective parties (Denis Farrar, 2013).

Another basic requirement is that the agreement must state the section of the Family Law Act that the agreement is made under. In Black v Black (2008) 38 FamLR 503, the Family Law Court stated that there is a strict test to be adhered for financial agreements to be binding. In that case, failure to refer to the correct section was fatal to the agreement. In the case of Hault (2011) FamCA 1023, Murphy J held that a party is entitled to go behind the Statement of Independence Advice of the solicitor if they were not given advice of the effect of the agreement on the rights of the parties. His honour held that he could not be satisfied that the solicitor had provided the advice which she certified in the Statement. The solicitor had not produced file notes or correspondences. In this case, the prenuptial agreement had met all the requirements but nonetheless the agreement was set aside.

In Fevia & Carmel-Fevia (2009) FamCA 816, court set aside a prenuptial agreement between a man who he found at the time of marriage of a very considerable wealth and a woman who was of modest means. The reason for the agreement being set aside was that after his fiancé had signed the prenuptial agreement, his solicitor has added a schedule illustrating his assets and liabilities to which later their client signed it. As a result, it was held that she had not signed the same documents to which her husband had signed to. The parties subsequently married but separated 7 years later. Following the agreement being set aside, the wife had received $20,000,000 more than she would receive had the prenuptial agreement been binding.

5.4 Singapore

In Kwong Sin Hwa v Lau Yee Yen [1993] 1 SLR (R) 90, the Singapore Court of Appeal held that, “an agreement made between spouses, or between intended spouses, is not inherently wrong or against public policy.”

In the case of TQ v TR [2009] SGCA, the Court of Appeal of Singapore has recognised and enforced prenuptial agreement. Based on the facts, the prenuptial agreement was made 16 years ago and was made before they were in Singapore. The factors and principles that were taken into account by the court were general principles of formation of a contract. However, in Singapore the court has complete power to divide assets in a just and equitable manner as provided under Section 112 of the Woman’s Charter which basically means the court is not bound to follow the prenuptial agreement and the court has full means and discretion to decide on the enforceability of prenuptial agreement (Debbie Ong, 2012).

6. Position on Prenuptial Agreements in Malaysia

Law Reform (Marriage and Divorce) Act 1976 (LRA 1976) governs marriage and divorce in Malaysia. The Act accommodates the importation of English principles. There is a misconception that a prenuptial agreement is not enforceable in Malaysia. However, the courts may consider prenuptial agreements when determining the distribution of matrimonial assets, so long as the agreement is not contrary to anything in the LRA 1976. Provided that the terms and conditions are fairly and properly agreed to and do not in any way contradict the LRA 1976, there is no reason why the court cannot value and determine the prenup in deciding the division of the matrimonial assets

on divorce.

To date, there is no decision on the issue of validity of prenuptial agreements. In the absence of case law or decision, English law is looked for guidance. Unlike other countries, Malaysia takes a different approach to govern marriage and divorce by following English law directly (John Sill, 2014). Section 47 of the LRA states as follows:

> *Subject to the provisions contained in this Part, the court shall in all suits and proceedings hereunder act and give relief on principles which in the opinion of the court are, as nearly as may be, conformable to the principles on which The High of Justice in England acts and gives matrimonial proceedings.*

Although the LRA does not say prenups, the outcome of divorce proceedings might be fundamentally the same as the ones in England. The cases like Crossley could be persuasive. Ultimately, the validity of the prenup is still up to the courts. The inherent jurisdiction held by our courts is to see justice taking place. The court can examine various factors such as the bargaining position of the respective spouses and their conduct when deciding on a prenup. Principles laid down concerning postnuptial agreements could be used as a tool/benchmark in determining the prenups.

Further, courts in Malaysian have the power to order for division of property. Section 76(1) of the LRA provides the courts power to decide on division of assets/properties acquired amid the marriage by their joint endeavors and efforts, or to order the sale of such assets to which the proceeds shall be shared by the parties accordingly. Section 76(3) provides that the courts may order the division of any assets acquired during marriage. Section 56 of the LRA allows parties of a divorce to apply to the court to refer prenups drawn between them. The provision allows agreements to be referred to the court for consideration in determining matrimonial division of properties and assets.

7. Conclusion

It is found that couples may enter into prenuptial agreement before they marry. It is often used to formalise property division after the breakdown of marriage whether before or after divorce. Often times, prenuptial agreement deals with property that does not exist yet. Prenuptial agreements serve a valuable purpose. They enable the parties to preserve assets they bring into the relationship.

English courts and few other common law jurisdictions have admitted prenuptial agreement. Although English cases may be persuasive, however there are yet any case laws in Malaysia that have decided on the enforceability and validity of prenuptial agreement. Courts in Malaysia may, however, use prenups as a factor in determining liabilities and assets after the breakdown of the marriage. The weightage and validity of the prenuptial agreement to be decided by the courts.

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Research Article

Hedging as a Method of Price Risk Management

Lilia Mirgaziyanovna Yusupova

Irina Arkadevna Kodolova

Tatyana Viktorovna Nikonova

Bulat Talgatovich Yakupov

Institute of Management, Economics and Finance,
Kazan Federal University, Kazan, 420008, Russia

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Abstract

Derivative financial instruments have great importance in the fight against financial risks. The purpose of applying to derivative financial instruments is to extract profits from price fluctuations of the corresponding exchange asset, as well as to protect (hedge) against undesirable changes in market prices for the corresponding exchange asset. Risk hedging is based on the strategy of minimizing unwanted risks, so the result of the operation can also be a reduction in potential profit, since profit, as it is well known, is inversely related to risk. If earlier hedging was used exclusively for minimizing price risks, then at present the goal of hedging is not to remove risks, but to optimize them. In the article, the authors made conclusions about the existing value of hedging as a tool to reduce the risk associated with the adverse effect of market factors on the price of another instrument associated with it, or on the cash flows generated by it.

Keywords: *Hedging, Financial Risks, Price Risks, Derivatives Market, Derivative Financial Instruments, Futures and Option Contracts*

1. Introduction

In the modern world, there are general trends in economic development, the characteristics of which are increased uncertainties due to globalization of markets, increased competition, complication of technological systems in all aspects of life, volatility in world markets associated with confrontation of interests of individual countries. In this case, there are two “conflict” factors: on the one hand, these causes increase the degree of uncertainty and risks, and, on the other, they contribute to the emergence of new risk management capabilities. In this connection, the problem of improving approaches to the analysis, assessment and minimization of risks is relevant at present (Artamonov & Ayupov, 2015)

It should be noted that, in market conditions, all financial risks, including price risks, inevitably increase. However, at the same time opportunities are being created for the effective management of these threats.

The hedging is one of the main for this purpose. At its core, this simple operation, however, is quite difficult to implement in practice. The reason for this is the intricacies of the market for fixed-term contracts, which have to be resorted to manage price risks.

2. The Essence and Concept of Price Risk

Risks arising from price fluctuations are the most common. They pose a threat to ordinary people, and to large companies, and to the economies of entire countries. Ordinary citizens suffer primarily from inflation, which causes a rise in prices for consumer goods and utilities, as well as due to a decrease in the purchasing power of the national currency. Corporations are constantly faced with the risk of changes in prices for raw materials, energy carriers and manufactured products. States can lose significant amounts of revenue from the export of goods due to the fall in their value on the world market.

Price risk is a kind of payment for the ability to build economic relations on a market basis. To tolerate the danger that is fraught with changes in the value of financial and tangible assets, it is also necessary because such fluctuations can also bring additional gain (Bodrov et al, 2018). For example, a long upward trend in the energy market over the past 20 years has allowed the Central Bank of Russia to increase its foreign exchange reserves by more than 44.5 times: from $ 12.1 billion (as of January 1, 1999) to $ 468.4 billion. (01/01/2019), fig. 1.

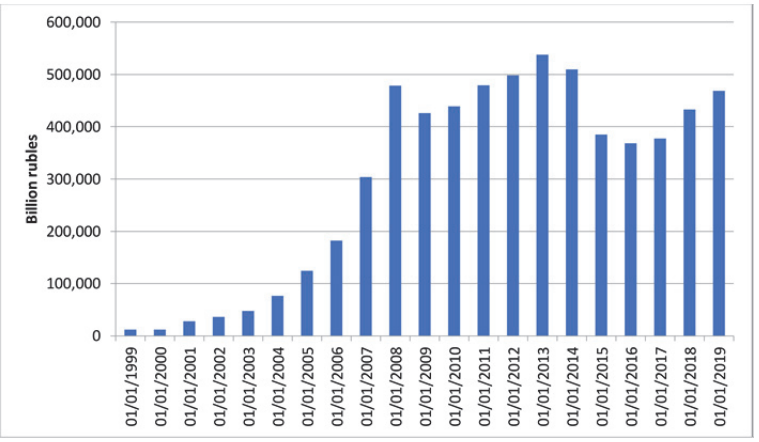

Fig.1. The volume of gold reserves of Russia in 1999-2019, billion rubles (Ivanova, 2009).

However, as world experience shows, losses arising in the event of realization of price risk usually cover all the previously obtained benefits. The consequences can turn out to be truly catastrophic. Thus, a sharp drop in world oil prices played a significant role in the collapse of the USSR. Partly for the same reason, in 1998, the Russian government defaulted on government obligations. According to an assessment by the UN Food and Agriculture Organization (FAO) made this year, the prevailing growth in food prices in many countries can lead to unrest. Moreover, in 50 states they can escalate into starvation riots, fraught with a violent shift of the ruling regimes.

Therefore, price risks are fought as far as possible. Governments are looking for opportunities to diversify their economies. Corporations use a rich arsenal of risk management tools. In an attempt to distribute risks, individuals place their savings on the markets and in different assets.

3. Derivative Financial Instruments as a Way to Reduce Price Risks

One of the most effective ways to manage price risks is associated with the use of a hedging mechanism. Its essence is to fix the price of delivery of the goods or financial assets on a specific date.

For this purpose, as a rule, instruments of the derivatives market are used. Such as forward and futures contracts, as well as options and swaps (Mirgaziyanovna et al, 2017).

For example, a copper manufacturer, who is wary of reducing the cost of this metal on the market, can use futures or option contracts traded on the relevant exchange to provide a

reasonable price when selling its products. In turn, the buyers of this metal have the opportunity to eliminate the risk of a sharp increase in the price of the purchased metal by making counter-transactions on the same stock exchange. At the same time, the period during which this mechanism will operate depends, in fact, only on the decisions of the hedger himself. Derivatives market tools allow you to enter into transactions for quite a long time. If the opportunities provided by the exchange are insufficient, then hedging can be carried out by concluding transactions on the over-the-counter market (Nikonova et al, 2018; Yusupova et al, 2018; Alkhateeb, 2019; da Mota Silveira & Martini, 2017).

In fact, the implementation of two basic conditions is necessary to eliminate price risk. The first one is the desire to take control of this risk. The second condition is connected with the possibility of concluding a transaction in the derivatives market for the asset that is supposed to be hedged. Moreover, its price in the futures and cash markets should change quite consistently. The problem is due to the fact that many products are not represented on stock exchanges. In addition, the qualitative differences between specific tangible assets lead to inconsistent fluctuations in their prices in the futures and real markets. (Okulov, 2015; Yusupova et al, 2017; Einollahi, 2016).

This circumstance is considered the main obstacle to the execution of a hedge. However, many experts believe that even if there are no suitable tools for hedging the price of this commodity on the derivatives market, its value can be modeled artificially. To do this, it is necessary to determine the pricing formula, which includes assets, on the basis of which derivative instruments are created, intended for trading in the relevant market.

Similarly, for example, it is possible to cover price risks when exporting natural gas from Russia, since there are no financial instruments on the world market that can hedge these products. It should be noted that at the same time, the price risks of a variety of goods cannot be eliminated even with the help of similar methods. Let us say it is almost impossible to hedge unpredictable changes in the value of cement, brick or cars. These products have neither reliable pricing formulas, nor urgent financial instruments that reflect the market value of these products. There is an opinion that hedging is necessary primarily for producers. This is a misconception caused by increased attention to the price of commodities - oil, metals, and also food. At the same time, the need for hedging is experienced by processing enterprises, exporters, and end users. For example, airlines, transport and shipping companies, utilities, etc. (Yakupov, 2018; Yusupova t al, 2017; Tosheva, 2016).

Moreover, the overwhelming majority of hedgers, almost 95% of their total number, are not mining, but processing enterprises, as well as end users. According to the experts of the investment bank Morgan Stanley, companies are beginning to apply hedging in cases where price risks can cause quite serious problems for the business. For example, the airline Lufthansa, which makes extensive use of financial instruments, has itself become a very large operator in the derivatives market (Sadeghpour et al, 2017).

Mining companies almost do not hedge their price risks, the expert notes. This is primarily due to the fact that firms thus provide a high potential for profitability of investments in their business. After all, as you know, a significant risk is inextricably linked with increased profitability. This is very attractive for many investors. But at the same time, if the mining company eliminates the threats associated with price risks, the yield of its securities will decline, which will entail a massive departure of investors.

Therefore, eliminating hedging from the firm's risk management arsenal is also a kind of strategy. Moreover, in addition to hedging, there are other opportunities to eliminate the negative impact of price risks. For example, by building a business on a vertically structured model.

4. The Problem of Hedging in Russia

For domestic companies, hedging is still exotic for many reasons. First of all, it is because the use of this mechanism of covering price risk entails the additional responsibility of company managers. Their arguments are simple - the facts of dismissal due to the non-use of the hedge are unknown. At the same time, this happened to those who led these operations.

The second problem is connected with the fact that the derivatives market in Russia is still very poorly developed. In domestic practice, you can apply a hedge only to such goods as gold,

silver, sugar, wheat, diesel fuel, and URALS crude oil. A narrow range of tradable assets, unattractive delivery terms, and insufficient liquidity in a number of instruments — all this creates serious problems. Therefore, the current state of the derivatives market in Russia makes it possible to hedge the price risks for the most part of the products listed above.

Although, at present, the prospects for the derivatives market are growing according to analytical data of the PJSC Moscow Exchange, fig.2.

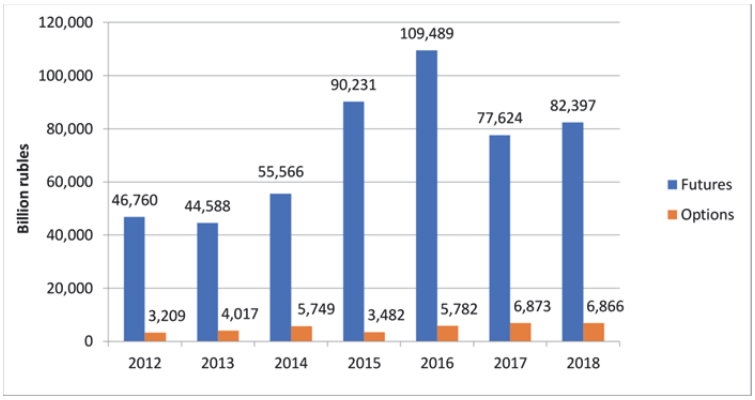

Fig. 2. Trading volumes in futures and option contracts in 2012-2018, billion rubles (Yusupova et al, 2017).

The volume of trading in the derivatives market in 2018 increased by 5.6% compared with 2017 and amounted to 89.3 trillion. rubles. In December 2018, the volume of trading in derivative instruments increased by 36.3% and amounted to 8.2 trillion. rubles (6.0 trillion rubles in December 2017) or 145.6 million contracts (111.2 million contracts in December 2017). The volume of trading in futures contracts amounted to 140.4 million contracts, option contracts - 5.2 million contracts. The average daily trading volume in December was 392.4 billion rubles (287.9 billion rubles in December 2017). The volume of open positions in the derivatives market at the end of December amounted to 454.3 billion rubles (702.9 billion rubles in December 2017). The volume of trading in the market of standardized derivative financial instruments in 2018 increased by more than eight times as compared with 2017 and amounted to 884 billion rubles.

Another major obstacle to domestic companies seeking to use financial markets to hedge price threats is due to tax risks. The current legislation quite clearly defines the tax regime in respect of futures transactions concluded for the purpose of hedging. However, according to experts from the PricewaterhouseCoopers Tax Office, problems in the legal field leave ample opportunities for representatives of tax authorities to interpret certain provisions of the Tax Code at their discretion. So hedge income will be considered income, and the costs of these operations will have to be reimbursed at the expense of profits. Tax risks are especially high when using tools such as options that ironically are most convenient for hedging.

However, in foreign markets the hedging is not so simple. The fact is, that in addition to the traditional problems associated with the liquidity and acceptability of a particular financial instrument for a hedge, this operation itself inevitably creates new risks. Moreover, they are not always obvious both by the nature of the impact on the final result, and by the strength of the impact on it. In some cases, ignoring these threats can lead to substantial losses, if not to the bankruptcy of the enterprise.

5. Qualitatively New Financial Instruments as One of the Solutions to the Problem of Price Risks

Let us give a clear example - agricultural production, in particular crop production. The peculiarity of this business is that the manufacturer cannot be completely sure of how much finished product he

will receive until it is in stock. Since before that, either a strong hail can happen, which is able to knock out grain from ripe ears, or the heat will not allow the grain to ripen, and heavy rainfall will not give an opportunity to harvest, etc. If this projected but not yet received volume of products is hedged in advance when prices are high, then the manufacturer may be unable to ensure the delivery of the declared goods. However, post-harvest hedging is often useless. The problems arising from agricultural producers clearly show the imperfection of the derivatives market. The tools used here are well suited for speculative gains, as well as for investment. However, the global derivatives market still has many flaws that impede hedging operations. The only way to eliminate the drawbacks is to create qualitatively new financial products. With regard to crop production, it can be defined, for example, as "output per 1 hectare in monetary terms".

According to experts, the need for such innovations is already overdue. However, the psychological readiness of participants in financial markets to accept new financial products is doubtful. For example, the widely advertised weather futures, abundantly represented on the stock exchanges of the world, many years after the appearance of these instruments, remain virtually unclaimed by neither speculators nor hedgers.

Nevertheless, despite all the difficulties and problems arising in connection with hedging, it is necessary to apply this price risk management mechanism. The feasibility of such activities is largely determined by the costs arising from the administration of the hedge.

It should be noted that the feasibility of a hedge for companies of different sizes is not the same. According to experts in the field of risk management, the economic benefit arises from firms whose annual turnover exceeds 500 million rubles. At the same time, one should not lose sight of such an essential moment as the individual features of a particular business. In some cases, the economic feasibility of the introduction of hedging in the enterprise may occur with a turnover of 2.5 million rubles per year. This applies in particular to travel companies.

Such firms often need to cover the risk associated with currency fluctuations. Especially if the costs are denominated in a currency that is not common among Russian citizens. In this case, the costs and revenues are multi-currency. Otherwise, you will have to constantly change the cost of travel vouchers, which may lead to the loss of competitive advantages.

This problem is solved by reducing the cash flow of different currencies to a common denominator. It is enough to use a suitable futures contract, option, forward, or turn to the spot market instruments. In any embodiment, such hedge is the easiest to implement, moreover, it is associated with very insignificant costs. Therefore, in this case, the administrative costs are so low that they allow even small firms to derive additional benefits for their business from hedging.

However, there are not many ways to reduce hedge costs. One of the options is to outsource this business process. Companies providing similar services are few, but they exist. Another option involves the purchase of structured financial products that are able to fulfill the task of covering a specific price risk.

6. Findings

There are always financial risks in the activities of any companies. They can be associated with the sale of manufactured products, as well as with the risk of depreciation of capital invested in any assets. This means that in the course of their activities, companies, other legal entities and individuals, are faced with the possibility that they will incur a loss as a result of their operations, or the profits will not be as good as they expected due to an unexpected change in prices for that asset, with which the operation is performed.

Financial risk involves both the possibility of loss and the possibility of winning, but people, in most cases, are not prone to risk, and therefore they agree to give up more profit in order to reduce the risk of loss. Derivative financial instruments are used for this purpose - forwards, futures, options, and risk reduction operations with the help of these derivatives are called hedging (from the English «hedge», which means to enclose a fence, to limit, to avoid a direct answer).

7. Conclusion

Thus, the modern economy is characterized by significant price fluctuations for many types of goods. Producers and consumers are interested in creating effective mechanisms that can protect them from unexpected price changes and minimize adverse economic consequences.

Under market conditions, price risks increase, and at the same time opportunities are created for their effective management. The management tool is hedging, which allows entrepreneurs to insure themselves against possible losses by the time the transaction is liquidated for a term, provides increased flexibility and efficiency of business operations, and reduces the cost of financing trade in real goods.

8. Acknowledgements

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RICHTMANN PUBLISHING

Research Article

Brexit: Historical and Socio-Political Developments

Alessandro Figus

Alessandro Rossetti

Link Campus University,
Rome, Italy

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Abstract

BREXIT is a long and difficult process, authors with this contribution try to analyze it. The Brexit referendum is a long way off, but does the debate focus on the practical decisions to be made, how and when will the United Kingdom really come out of the EU? Will England and especially its capital be able to retain the label of a global business goal? How will British politicians limit the profound and long-term consequences of an inevitable recession? The question is not just economic.

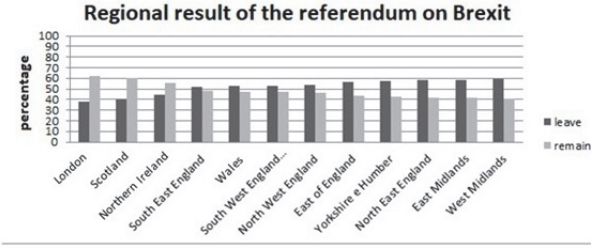
Keywords: *Brexit, European Union, socio-political, referendum, economic*

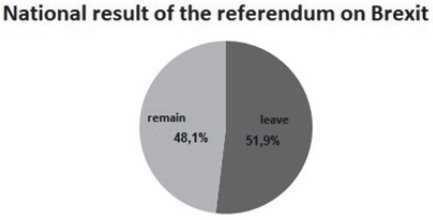
1. Introduction

On 23 June 2016, the United Kingdom voted in favor of leaving the European Union, with 51.9 % of voters in favor of "*leave* ".

The result of the Brexit referendum has produced heavy shock waves all over the world, causing financial markets to collapse and reigniting global debates on nationalism, populism and Europe's skepticism in the meantime the fragility of Europe has been highlighted.

In addition, the vote highlights increasingly deeper divisions that cut the traditional lines of British parties. The Brexit also emphasizes the consolidated British Eurosceptic tradition, as well as the deep rifts that exist between the U.K. political elite and Europe.





Table[1] elaborated by the authors.

As shown in the graph, there are three areas where the vote for the "*remain"* got the majority: London, Scotland and Northern Ireland. It is important to point out that in the eastern part of the British capital; "*leave"* has prevailed instead.

2. Brexit - Socio-Historical Approach

The United Kingdom has always distinguished itself in the European space. For centuries, the Anglo-Saxon cult regarding the independence of political thought had no equal in Europe, not by chance the *Magna Carta Libertatum* of 1215, a legal instrument that at that time had no analogues in the world, appeared right on the British Islands. Individualism, pragmatism and the ability to innovate have always been the foundation of British political construction.

One of the differences between the Anglo-Saxon mentality and the continental one, is its greater mobility, its readiness to accept changes and to abandon the *status quo*. The idea of a united Europe impressed the English for a long time, but, as with many ideas, it ended up becoming obsolete. Consequently, instead of continuing to stagnate, complain about the economic and social difficulties, deplore the funds invested in common European activities, England has announced its withdrawal from the EU. This decision is not proof of decline or crisis, but of a transformation taking place within the Union.

The social changes that led to Brexit, began decades ago. The structure of British electorate has began a slow and inexorable changes some decades ago, the structural changes was due to by one hand the increase percentage of graduates and by other hand the decline of labour class and increase of middle class . According to Paul Botton in the 1960s, "more than half of those who had jobs in the UK carried out manual work and less than 10% of the electorate had a degree"[2]. Analyzing the data of 2000, we can see that the graduates voters was a third from all electorate and labour class had shrunk to a fifth. In consideration of this data, the electoral calculation for the two main parties, Labour and Conservative, was mainly altered. As states M J. Goodwin: "In earlier years, when the working classes had been dominant, Labour could win power by mobilizing its core working-class support, while the Conservatives had to cultivate cross-class appeal. By the 1990s, however, the shift in the country's class structure had reversed this calculus."[3]

Labor has accused or repeated electoral defeats. During the Tony Blair period, the historical ideology and values of the labor class have been minimized; the middle class was emphasized in the "New Job" that was designed to build the managerial and centrist image.

"Between 1997 and 2010, New Labour sought to attract the middle class and university-educated professionals, whose numbers were growing rapidly and whose social values on issues such as race, gender, and sexuality were a natural fit with liberalism. This proved highly successful in the short run, keeping Labour in power for 13 years."[4]

The price for this success was a less participation at elections and growing of called "disaffection" with the political system due to lost confidence and identification in and with the Labor party

Also during the David Cameron era the white working class was not considered in a country where almost 90 % of the population is still white[5] and the questions about immigration policy

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[1] *Data Source: The Electoral Commission's report on the UK's membership of the EU - The 2016 EU referendum. Graphics (see https://www.electoralcommission.org.uk/).*

[2] *Data Source: House of Commons Library, Education: Historical statistics. Last updated: 27 November 2012. Author: Paul Bolton.*

[3] *Data source Matthew J. Goodwin in Brexit: Causes & Consequences, https://www.jef.or.jp/journal/pdf /216th_Recent_JEF_Activity_02.pdf*

[4] *Data source Matthew J. Goodwin in Brexit: Causes & consequences, https://www.jef.or.jp/journal/pdf /216th_Recent_JEF_Activity_02.pdf*

[5] *Data source : Office of National Statistics, 2011 Census.*

would have allowed an orientation of this class to the conservative party. The strategy of David Cameron was "focused instead on trying to "modernize" his party, regaining support from the graduates and middle-class professionals who had drifted away from the Conservatives during the era of Blair."6

The result was the disillusion of voters and finally the apathy of white working class so the apathy of 90% of electoral population. Eventually, in 2016, many of these voters would therefore continue to vote for Brexit. Unlike those who later voted to remain in the EU, the white working class supported not only harsh responses to criminals and terrorists but also much stricter immigration restrictions. Therefore, the same things that liberals celebrate, namely ethnic diversity, the transition to transnational identities and rapid change, are instead perceived in a threatening way by the majority of the British electorate.

3. Brexit - Economic Approach

Having made these remarks, it is necessary to analyze the phenomenon on a supranational scale. The European Union is an association of countries, a unique international entity that combines the characteristics of an international organization with those of a state. All member countries of the European Union, although they are independent, they follow the same EU rules as regards: education, health care, the pension system, the judicial system and legislation in general.

The EU economy appears to be the sum of all the member countries' economies, which contribute with their share of GDP to generate the total; the states that have so far registered the highest revenues are France, Germany, Italy, Spain and the United Kingdom. With the help of a standardized system of laws in force in all EU countries, therefore a common market was created to ensure the free movement of people, goods, capital and services, abolishing passport control within the *Schengen* area.

For many reasons, the United Kingdom has always played a special role in the European Union. This is probably due to the mentality of the English, mainly shaped on the basis of the geographical position. Great Britain is in fact a huge island, which on the one hand belongs to Europe and on the other does not; this is due to the special "insular psychology" of its inhabitants: for the United Kingdom, the idea of abandon part of its sovereignty by transferring it to a supranational body, was a painful decision.

Historically, the peak of British power came in the nineteenth century. However, at the beginning of the Great War, Britain had lost this economic superiority, which re-emerged only in part, with the victory in the Second World War. Thus, while the Anglo-Saxons, the Americans and the Soviets came out winners from the war, the Germans together with other European states, set about sacrificing part of their sovereignty in favor of a peaceful coexistence on the continent. The British on the contrary proud of the victory tried to strengthen their political weight, preserving this position of exclusivity.

The main objective of the country's foreign policy was the establishment of "special relations" with the United States and the preservation of the British Commonwealth. This required, first of all, to preserve complete freedom of action, which should not have been limited by any political obligation imposed by a future integrated Europe. During the negotiations for the creation of the European Free Trade Area (EFTA), the United Kingdom then tried to maintain the integrity of its agricultural sector, through subsidies that allowed British consumers to buy food at competitive prices. However, this plan was not accepted by the other participants in the negotiations, since it provided a more favorable position for Great Britain.

Following this logic, in 1957 the United Kingdom did not sign the treaties of Rome, the main document of the European Economic Community (EEC), concerning the free movement of people, goods, services and capital. In January 1960, the United Kingdom created its own group, EFTA, without the participation of the main European countries: besides Great Britain,

[6] *Data Source Matthew J. Goodwin in Brexit: Causes & Consequences, https://www.jef.or.jp/journal/pdf /216th_Recent_JEF_Activity_02.pdf*

Austria, Switzerland, Portugal and all the Scandinavian countries were part of it. Subsequently, the United Kingdom realized that the country's economic potential could not coincide with global power status; the decolonization process intensified abruptly, becoming evident that a further orientation of foreign trade towards the Commonwealth countries would no longer be sufficient. Indeed, British industry began to feel the dependence on continental Europe, so much so that on 31 July 1961, Prime Minister G. Macmillan announced that the United Kingdom was intending to apply for membership of the EEC. Only on 1 January 1973, after the formation of new governments in France and Germany, Britain, along with Ireland and Denmark, became part of the Community.

Despite everything, in 1973 in Great Britain there was a discussion about a possible exit; in this regard, a referendum similar to that of June 23 was held in 1975, although a different outcome was achieved (67.2% of voters in favor of remaining).[7]

British leaders have consistently emphasized that the country has more important foreign policy objectives than participation in European integration; therefore, since the beginning of its stay in the EU, the United Kingdom has acted as "reluctant partner". For a quarter of a century, it has not launched a single major initiative to develop community integration. This position naturally caused strong differences with other European countries in the preparation of the Maastricht Treaty. The British government has insisted on the adoption of a protocol that would have allowed the United Kingdom not to participate in the third phase of integration, namely the creation of an economic and monetary union (EMU). The ratification of the Maastricht treaty caused a harsh political struggle in the English parliament: in fact, about 600 amendments were proposed to the bill indicated by the government[8].

The change of direction towards the EU took place while Tony Blair was prime minister: his task was indeed to demonstrate that the United Kingdom was a key member in strengthening European integration. The main efforts focused on the development of a new EU economic strategy, the establishment of the European Central Bank with the election of its president, the launch of *Europol* and negotiations with the candidate countries.

At present, there are several contradictions between the EU and the United Kingdom. The anti-integration sentiments of the British are associated both with the country's historical past, with the old conservatives in favor of a "return to the origins ", and with the relations with the European Union regarding issues ranging from supranational control over the economy to finance, to laws aimed at limiting the expansion of the single market by allowing member countries to block the effect of the Brussels directives.

In the United Kingdom, supporters of transatlantic cooperation have traditionally enjoyed a great influence: the country shares much more with the United States in the field of law, traditions and principles, rather than with EU countries, so much so that they are many support the need to direct the development of the British economy towards the American one. The United Kingdom, like the United States, is in fact focused on the development of private property, traditional market relations, freedom, business and competition.

The presence of the same currency for most EU Member States is a vulnerable point of the European Union: the common currency is extremely disadvantageous for economically less developed countries, which are forced to continually increase the own debt to cope with the inefficiency of balance of payments regulation mechanisms. A country that holds a national currency can indeed devalue it to increase the competitiveness of its exports by reducing the volume of imported goods. It therefore happens that within the euro zone, while economically strong countries like Germany close the balance sheets positively, others, with a less competitive economy like Greece, are forced to increase debt through austerity instruments, bringing to the escape abroad of specialized personnel and making then the country even less competitive.

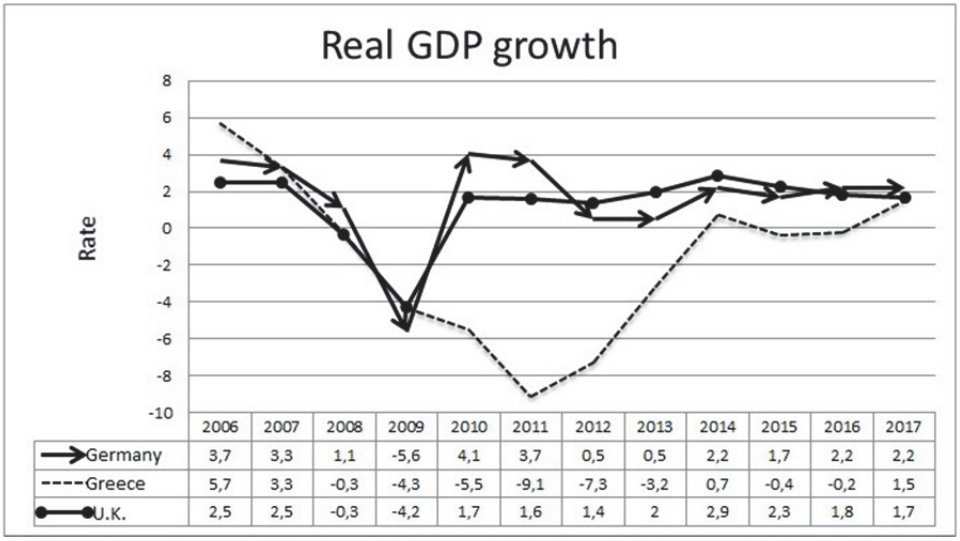
Investments, and capital in general, are notoriously moving where the markets are more

[7] *Data source: House of Commons Library, The 1974-75 UK Renegotiation of EEC Membership and Referendum. Published Monday, July 13, 2015*

[8] *Data Source: legislation.gov.uk - Changes to Legislation (https://www.gov.uk/government/organisations /department-for-exiting-the-european-union).*

capacious, the incomes are the highest, the workers are the most qualified and highly paid and where more added value is created, namely in Germany itself, in France and in many other small but highly developed European countries; this factor also crumbling the EU by increasing inequalities between member states. It turns out then that a periphery is being created within the Union, represented mainly by Greece and other southern European countries, by post-Soviet and post-socialist states (Bulgaria, Romania, Hungary, the Baltic States, etc.); an area that, although must somehow be supported by the EU, does not receive the necessary support due to the political and economic model of the Union which tends to reflect the interests of the most developed Member States, primarily Germany.

Below it is possible to note, besides the situation of the United Kingdom, also the remarkable difference, in terms of growth, between the two member countries economically placed at the antipodes: Germany and Greece.

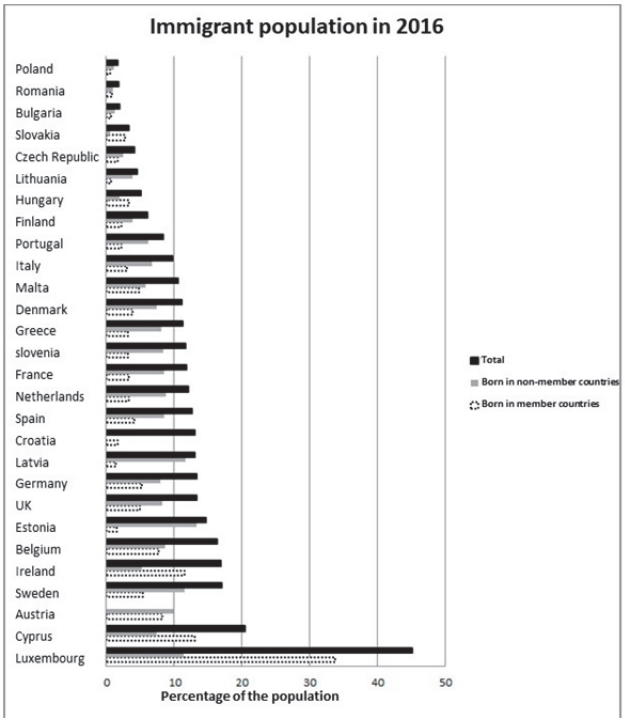


	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Germany	3,7	3,3	1,1	-5,6	4,1	3,7	0,5	0,5	2,2	1,7	2,2	2,2
Greece	5,7	3,3	-0,3	-4,3	-5,5	-9,1	-7,3	-3,2	0,7	-0,4	-0,2	1,5
U.K.	2,5	2,5	-0,3	-4,2	1,7	1,6	1,4	2	2,9	2,3	1,8	1,7

[9]

As regards social and security policies, an integral part of the European integration process is the development of a common immigration policy; the problem is that traditionally this is the responsibility of national governments. The general immigration regime provides for the coordination of the objectives, priorities and scope of the migration policies of the participating countries. The immigration problem has been brought to the fore in the United Kingdom. The main reasons are competition problems for jobs, government services, social housing, education or health care. Issues should be addressed at national level. This therefore leads to a contradiction between international obligations and state competences. In 2012, David Cameron, speaking at the annual conference of the Confederation of British Industry (CBI), declared the need to control immigration also through the introduction of "quotas" or "restrictions" for access to the country even for those that they came from other Member States. From the Union point of view, such a policy is unacceptable; the United Kingdom is indeed obliged to adhere to a pan-European immigration policy. In this regard, a clash broke out between Great Britain and Germany: in particular, the German chancellor A. Merkel repeatedly declared that he did not intend to compromise on the question of free movement, considering it one of the fundamental principles of European integration.

[9] *Data source: Eurostat, Real GDP growth rate - volume [TEC00115].Last update: 09/07/2019. Graphic elaborated by Alessandro Rossetti.*



[10]

The increase of immigration in Great Britain, quintupled between 1997 and 2004[11], and continued to increase enormously in the years immediately preceding Brexit, produced a strong reaction among voters who were very worried about it. At the time of the referendum, the immigration issue was already at the top of the political agenda for over a decade. The majority of voters advocating a reduction in immigration, realizing how much the EU represented a key obstacle to achieving this goal, have consequently become more skeptical about maintaining EU membership. The anxieties about the negative effects perceived regarding the migration phenomenon, were further fomented by a populist press. Although both Labor and Conservatives were acutely aware of this growing concern, neither could find an effective answer, due to the "constraints" imposed by Brussels: in an area of free movement, in which EU citizens were free to work and settle down, strict immigration controls were simply impossible despite the numerous electoral promises. This obviously meant that the campaign in favor of *leave* was particularly focused on immigration, stating that more than half of the net migration came from the member countries

The country's choice to leave the EU is also explained by the fact that the union is no longer solid and successful; in the past it was perceived as a very promising integrative model. However, at this stage, the EU is experiencing a systemic crisis, starting from the financial one that has lasted for many years, to the spiritual one with the destruction of moral values and the growth of radical feelings in society. At the center of the collapse of the Greater Europe project, there is precisely the uncertainty of the policies pursued by the West over the years.

Despite the fact that the EU has achieved rather broad economic and technological successes against the background of this progress, this crisis process is emerging. This tendency, together

[10]Data source: Eurostat – Immigration persons. Code: TPS00176. Last update: 16/04/2019.Graphic elaborated by Alessandro Rossetti

[11]Data source: Office for National Statistics. Explore 50 years of international migration to and from the UK. 1st December 2016.

with all the spheres of public consciousness, also manifests itself in the political sphere with the increase in unemployment, radicalism and intolerance towards other cultures.

The United Kingdom, which has not entered the European monetary system and the Schengen area, is today the most powerful international financial center, foreshadowing a future in which the country could take the lead of an autonomous Atlantic community; Britain is in fact closely linked to states that belong to the Commonwealth, as well as having strong links with former colonies, such as India.

The main reasons for posting between the UK and the EU are:

- Britain's reluctance to subsidize weaker economies
- EU social policy towards migrants and freedom of movement of workers;
- The principle of supranational control over the economy, finances, laws;
- EU agricultural policy;
- Labor law focused on social benefits;
- The growing instability in the world causes dissatisfaction and discontent in the population;
- The EU systemic crisis: financial crisis, economic decline, spiritual crisis, destruction of moral values.

The European Union has never been homogeneous economically, politically and culturally and in recent years this heterogeneity has been accentuated, above all for the reasons we have seen. The most acute migratory emergency following the debt crisis in the euro area, has already led to a sharp decline in intra-EU solidarity; The migrants once again put the compactness of the union to the test: illegal entries in violation of national regulations, the Schengen rules and the Dublin criteria, have led to continuous debates between the various European leaders, mostly interested in "updating" or not the old agreements. Precisely the continuation of this undecided policy of the European authorities has seriously compromised the effectiveness of the legal system, as well as the very idea of European integration, a model far from perfect.

The EU would need a serious institutional modernization to get out of the crisis: the decision-making system behind it is too cumbersome and complex, extremely bureaucratic and ineffective in terms of management. The United Kingdom vote transforms the configuration of forces in Europe and calls into question the whole European future. The referendum had great resonance in society, giving rise to two diametrically opposed factions; specifically, the country's exit will have consequences both internally, in Great Britain, and in Europe: in terms of foreign policy, the United Kingdom will lose its influence over Brussels, Paris and Berlin, a fundamental instrument that guaranteed it achieve their foreign policy objectives more easily.

On the other hand, the EU without the United Kingdom will weaken in favor of France, which will have the burden of representing Europe in the UN Security Council. For Great Britain itself, Brexit makes no difference in this regard, since it will remain a key member of NATO and of the United Nations Security Council.

With Brexit, the EU could see its weight lightened on the world stage: without Great Britain, the Union will have less chance of using sanctions as a means of pressure, given the strong support of the United Kingdom for the use of instruments of this type, as in the case of the Crimea when Prime Minister David Cameron, dragging the other member states with him, established that Russia should pay for its own actions. Furthermore, due to the exit of the United Kingdom, EU positions in Asia, already weakened by the Eurozone crisis, will weaken further. It could happen that the ASEAN countries no longer perceive the EU as a model of regional political integration. In addition, the loss of the second EU economy will lead to a decrease in European negotiating positions in free trade negotiations with countries like Japan and India.

Consequently, the detachment of Great Britain will increase the dominant influence of Germany that could move towards a political union, given the probable risk of a knock-on effect: in the Old Continent, the Eurosceptic sentiment is actually intensifying against the background of the migration crisis already discussed above.

As for the internal problems of the nation, the danger for the United Kingdom, in the event of its exit from the EU, will be the likelihood that Scotland will hold another referendum on secession from Great Britain. Without Scotland, British power will weaken enormously: together with a part of

the population, the United Kingdom will be deprived of important oil reserves and potentially also the possibility of using different naval bases in the country.

On an extra-national level, it is feared that Brexit will reawaken nationalistic and independence passions in Europe, as in the case of Catalonia.

Supporters of Brexit believe that:

- withdrawal from the European Union will strengthen democracy, since the parliament will become fully sovereign, no longer subject to European laws and regulations, although British citizens will most likely lose the advantage of free movement and residence in Europe.
- excessive immigration causes significant social problems
- in the absence of European bureaucracy and its innumerable rules, small and medium-sized enterprises will prosper, which will lead to an increase in employment.

Supporters of the *remain* affirm instead that:

- Despite some difficulties in providing public services, in general, immigration has had a positive effect on the British economy.
- With Brexit, millions of jobs will be lost, as multinational companies will transfer production to other EU countries; this will affect the automotive industry in particular, almost entirely owned by foreign companies.
- With Brexit, there will be serious repercussions on the financial sector, which employs about 1.3 million British[12] and bases its success on its European market.

From a political point of view, one of the first results of the referendum was the resignation of British European Commissioner, Baron Hill, on June 25, 2016. On the evening of Tuesday, June 28, at the summit of the European Council in Brussels, the symbolic descent of the British flag took place in front of the European Commission building. Discouraged by the outcome of the referendum, David Cameron therefore decided to leave the prime minister's seat. On July 13th, the Secretary of State for Internal Affairs, Theresa May, begins the formation of a new government, immediately creating two special ministries, the one for leaving the EU and the one for international trade.

From an economic point of view, on the other hand, the EU is the UK's main trading partner covering 52% of British exports of goods and services[13]. However, the full exit from the European Union will lead to the emergence of trade barriers; this means, for example, that a 15% tariff will be imposed on cars produced in Great Britain and 10% on cars imported from Europe.

The United Kingdom will therefore have to revise the trade agreements with the EU states. However, the supporters of *leave* say that the European Union, as a market, is not as important for Britain as it was in the past, and that the current crisis in the euro area will only reinforce this trend.

With the help of the WTO , the United Kingdom will be able to conclude bilateral trade agreements with countries characterized by rapidly growing economies, such as with China, Singapore, Brazil and India, as well as with Russia. Much will depend on the type of treaties that the British will be able to sign. For Great Britain, there are several options for maintaining trade relations with EU countries:

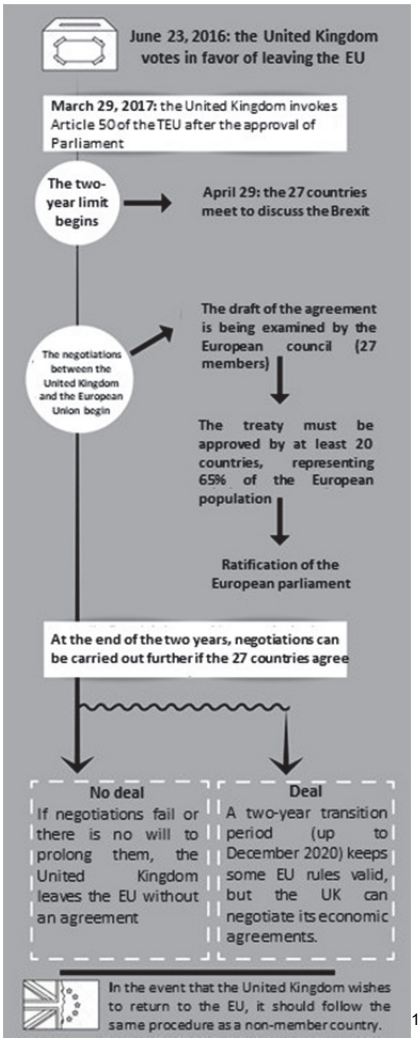
- The Norwegian option: the United Kingdom leaves the EU and joins the European Economic Area, with the possibility of accessing the Community market, exception for part of the financial sector.
- The Swiss option: the United Kingdom will follow the example of Switzerland, which is not part of the EU or the EEA, but concludes separate agreements with Brussels for each economic sector.
- Turkish option: the United Kingdom can enter a customs union with the EU, with free access to the European market, except for the financial sector.
- The United Kingdom could also try to conclude a global free trade agreement with the EU on the Swiss model, but with guarantees of access to the European financial market, as well as a certain degree of control over the formulation and implementation of the general rules of trade.

[12] *Data source: Office for National Statistics. EMP13: Employment by industry. 14 May 2019.*
[13] *Data source: House of Commons Library. Statistics on UK-EU trade. Number 7851, 11 January 2019.*

- The United Kingdom can completely interrupt its relations with the EU and rely solely on WTO rules.

According to "Open Europe Today report", in aworst case scenario, "UK GDP could be 2.2% lower in 2030 if Britain leaves the EU and fails to strike a deal with the EU or reverts into protectionism". However, still according to the same source, "In a best case scenario, under which the UK manages to enter into liberal trade arrangements with the EU and the rest of the world, whilst pursuing large-scale deregulation at home, Britain could be better off by 1.6% of GDP in 2030"[14].

Therefore, while on the one hand, in the long run, London could lose its importance as a global financial center, on the other, by becoming completely independent of EU requirements, it could become one of the major economic powers, such as Singapore.



[15]

[14] *Source: Open Europe Today. "What if...? The consequences, challenges and opportunities facing Britain outside the EU", (https://openeurope.org.uk/intelligence/britain-and-the-eu/what-if-there-were-a-brexit/), 2015.*
[15] *Main steps towards the exit of the United Kingdom. Graphic elaborated by Alessandro Rossetti.*

Regarding European macroeconomic policy, Brexit could play an important role in the energy field, further strengthening German influence in this sector: the United Kingdom has always opposed the European Commission's efforts to intervene in national energy policies aimed at ensuring the security of the Union. Therefore, without the UK, the EU could adopt a more centralized system for regulating the common energy market. Still in the energy field, Brexit could cause a further limitation to the use of coal in combination with a more centralized system of redirection of energy flows, including gas, to the countries that need it. In this sense, Germany's desire to strengthen its control over the EU energy sphere is clearly visible, aiming to become a strategic crossroads for the supply of gas, increasing imports from Russia also through the "Nord Stream" pipeline.

4. Brexit and defense policy

As far as defense policy is concerned, the proponents of exit from the EU tend to overlap the concept of open borders with that of open doors to illegal immigration; for this reason, the closure of the borders will allow a more effective control of the flow of immigrants arriving in the United Kingdom.

On the other hand, opponents of the exit, including some senior military officials, believe that the European Union is an essential element of security, as it allows, through its agencies like *Europol* and *Eurojust*, to share easily sensitive information related to crime. It is therefore likely that with the Brexit , the United Kingdom's foreign security policy is leaning towards NATO.

Without the United Kingdom, the 27 remaining Member States could more easily promote the common defense policy. On the background of these political crises, the EU has understood, in fact, how necessary it is to be guided by its own national interests, and not by the US ones; in this regard, a further expansion of NATO would inevitably lead to the emergence of new and deeper divisions existing in Europe, increasing the fragmentation of the European security space, further complicating relations between Russia and the EU. At the same time, it is obvious that NATO forces can neither stop the flow of refugees nor contribute, for example, to solving the Ukrainian conflict; the countries of the European Union, in front of the inefficiency of the Atlantic alliance, favor the creation of a single European army, a sort of unique political-military bloc structurally different from NATO. Precisely in this regard, Great Britain not only had previously made criticisms, but it had also promised to veto any proposal concerning the creation of a "European army". This was stated by British Defense Minister, Michael Fallon , arguing that there was no possibility of creating this body.

The heads of the military departments of Germany and France have therefore developed new proposals to improve activities in the field of European Union defense policy, such as the creation of a joint command headquarters, a common satellite system and an exchange system of logistic and military medical resources.

Having your own army would allow Western countries to conduct their own operations, without necessary NATO support, in which, among other things, not all members of the European Union are present: Sweden, Finland, Austria, Ireland, Cyprus and Malta are excluded. However, according to the NATO-EU partnership agreement for peace, these countries can also count on the military support of the alliance, despite trying to maintain a state of neutrality. From an economic point of view, finally, the creation of a unified army would significantly reduce military spending. Savings of around € 120 million have been estimated.

However, with Brexit, the EU will lose one of its most important military powers in Europe and one of the few countries that employ 2% of its GDP in defense[16]. In this sense, while Brexit could encourage EU Member States to increase funding for a common European defense project, on the other hand the desire to create defense structures outside NATO will have to come to terms with a not inconsiderable initial cost and not easy to finalize, both from a purely economic and political point of view, given the spread of Eurosceptic and nationalist movements.

[16] *Data Source: House of Commons Library. UK Defence Expenditure. Number CBP 8175, 8 November 2018.*

NATO Secretary General, Jens Stoltenberg, said that the Alliance needs both a strong UK and a strong Europe; the alliance is facing "unprecedented challenges to security, terrorism, instability and unpredictability. A fragmented Europe will only aggravate these problems". NATO is particularly concerned that, after the Brexit, the simplified communication system between Washington and the EU, within the Union and NATO, will be interrupted. The withdrawal of Great Britain would therefore risk collapsing all the western security system built in the past decades.

5. Conclusion

In conclusion, we have seen how the process of disintegration of the EU started by leveraging on various factors, from the economic to the social and political to the identity. For Great Britain, it is conceptually unacceptable that the EU develops behind the federal principle; In fact, this would deprive it of its traditional belief in national identity and sovereignty. Since there have never been similar cases to Brexit, the United Kingdom will inevitably have to face a series of problems, starting with the uncertainty on how to develop future relations with the European Union, by passing for the need to modernize the vulnerable British political-constitutional system: the current government institutions and the governance mechanisms that have formed over the centuries are, in fact, clearly obsolete.

From the EU point of view, Brexit obviously represents a shock, a heavy blow to its reputation, as long considered an exemplary form of integration process. For the European Union, therefore, it is necessary to intensify actively the processes of modernization, from the development of some common strategic objectives, to the reform of existing institutions and bodies.

Whatever approach the government pursues in applying the referendum verdict, it is a fact that the Brexit has accelerated the polarization of values, perspectives and priorities that separate more and more the cosmopolitan university educated by the low-skilled nationalists.

The 2016 referendum has laid bare the deep divisions between these groups, placing them on diametrically opposed sides and forcing the main parties to confront the internal conflicts that persist between the leavers and the remainers, among those who wish to give priority to access to the single market, and those who wish to prioritize the strong obstacles to free movement and migration. All this conditions were a big challenge for the former Prime Minister Teresa May and as we saw the cause of his demission and we can confirm the idea of MJ Goodwig “This puts Prime Minister Theresa May in the difficult position of trying to negotiate a new agreement with the EU that maximizes access to European markets for the City of London, while including the more radical immigration reform that Leave voters clearly want"17. In any case today we are in front of uncertain situation, the future of Brexit is increasingly shrouded in fog with Prime Minister Boris Johnson who, contrary to what was approved by parliament, would be pushing for Britain to come out of the European Union, anyway on October 31st.

A transitional agreement could alleviate these pressures, but it would be unlikely (at least initially) to implement immigration restrictions; on the other hand, if the government had to give priority to this aspect, the economy could suffer consequences as strong as unpredictable, thus opening a new window of opportunity for the populists of the radical right. In the United Kingdom, negotiating an exit agreement with the EU is today the main political challenge for the government. The exit of the United Kingdom will imply a new economic orientation which, for the country, will result in the loss of community privileges with all that this entails: from the payment of duties, to the need to sign new trade agreements. The consequences of the exit will obviously depend on the diplomatic skills of the United Kingdom and the related decisions that will be made by the EU. However, the real future challenge for the country will be to respond to the divisions laid down by Brexit. Brexit is postponed until at least October 31st, prolonging uncertainty especially in the United Kingdom; at the risk of deteriorating confidence with a depreciated pound (-9.5% compared to pre-Brexit levels). Politics does not want to solve the problem, but the economy cannot wait long.

[17] *Matthew J. Goodwin in Brexit: Causes & Consequences, https://www.jef.or.jp/journal/pdf/216th_Recent_JEF_Activity_02.pdf*

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Research Article

Theoretical Aspects of the Organization of Health Resort Treatment in Russia at the Present Stage

Oleg Aleksandrovich Bunakov

Boris Moishevich Eidelman

Valeriya Dmitrievna Prokhorova

Alfiya Albertovna Zinovyeva

Institute of Management, Economics and Finance,
Kazan Federal University, Kazan, Tatarstan, Russia

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Abstract

Today, there are more than a hundred different types of tourism, and their number is constantly increasing. All types are one way or another integrated, at the same time remaining independent objects of research of tourist science. The present paper deals with one of the basic types – primary wellness tourism and mechanisms for its organization in sanatorium-resort institutions of the Russian Federation. Healthy and ecofriendly lifestyle, an increase in the number of stress factors in everyday life that adversely affect physical and mental health, rethinking of approaches to obtaining health and fitness services by the population are the order of the day, which often makes people choose trips to sanatorium-resort institutions as one of the priority areas for recreation. Similar trends are characteristic of Russia. Thus, the results of the study are particularly relevant for developing the system for providing medical and recreational services in the Russian market.

Keywords: *Health Resort Treatment and Tourism, Organization Providing Health Resort Facilities, Development of Health Resorts*

1. Introduction

Primary wellness tourism is considered to be one of the most ancient types of tourism. Its history begins in the times of Antiquity: even then the ancient Greeks, Romans and Indians mastered and used the main natural salutary factors for medicinal purposes – mineral waters, mud and climatic conditions. So, there emerges a special therapeutic area that studies the healing properties of natural resources and factors that can be used for the treatment and rehabilitation of people – balneotherapy. The most famous world resorts appear in the Middle Ages, in Russia - in the time of Peter I. By the 19th century, sanatoriums and institutions effectively developed around the world, however, “water” trips for the purpose of rehabilitation were still available exclusively to the upper strata of the population. However, by the middle of the 20th century, sanatorium-resort institutions became large centers for attracting a wide circle of tourists: various categories of the population use the services of health resorts, from veterans to be rehabilitated to married couples to go to sanatorium-resort areas for preventive purposes. During this period, medical and health tourism becomes a public benefit, sold both on a commercial and on a social basis (Vladimirovna, & Aleksandrovna, 2018; The Organization of Sanatorium-and-Spa Treatment: Manual, 2014).

In the 21st century, wellness centers are places where you can not only improve your health

using high-quality medical facilities under the supervision of qualified personnel. Advanced health resorts of the world have landscaped forest park areas, areas for active sports, and venues for cultural events. The standard set of medical and recreational services in sanatorium-resort organizations is not enough for today's sophisticated tourist, therefore, sanatorium-and-spa resorts need to competently approach the organization of therapeutic and recreational services, taking into account the increasing demands of a medical tourist.

2. Methods

Sanatorium-resort care is one of the key components of health tourism, which is also the most important tourist motivation, as the World Tourism Organization's estimates show. And although this format of medical treatment has existed in the world for several centuries, the authorized travel agencies have not developed a uniform definition of health resort treatment that would meet all existing forms of this phenomenon (Health Resort Business and Health Improving Tourism: Manual, 2009; Bunakov & Rubtzov, 2016).

The situation is explained by the evolutionarily regular polarity of approaches to the implementation of health resort treatment - European-American and Russian. The European-American approach implies a harmonious combination of treatment and rest, it does not constrain the sanatorium-resort regime of the holidaymakers and the medical component of the trip is not an overriding factor in it (Bunakov, 2016). The domestic approach, on the contrary, highlights the medical component as the main goal of the trip and deliberately puts recreational services in the background. In this connection, there are many interpretations of the definition proposed by both foreign and domestic researchers.

The concept of "health resort treatment" is complex and represents a synthesis of several components:

- medical,
- economic,
- legal,
- social.

Let us consider more particularly each of them.

The medical component of the concept of health resort treatment consists in the fact that health resort therapy is medical aid provided on the territory of sanatorium-resort institutions using natural healing factors (Nikolayev, 2017).

The medical need for health resort treatment is determined in an order established by legislation. Booking documents for treatment or recreation begins with diagnosing of the prior and concomitant diseases. The patient must undergo a compulsory health checkup in a medical institution in the home area or upon arrival at a sanatorium-and-spa institution. Note that according to the results of the examination, a medical organization that refers a patient for treatment has the right to prevent him from using a sanatorium-resort treatment if as the results of examination contraindications are revealed. Contraindications to manipulation treatment in sanatorium-resort institutions are provided in the relevant legal document issued by the Ministry of Health of the Russian Federation (Zinovyeva & Murtazina, 2016).

Health examination includes the following steps:

1. seeing specialist doctors (dermatologist, gynecologist / urologist, cardiologist, surgeon, etc.);
2. giving personal biomaterial for biochemical analysis;
3. having a medical report of a therapeutic in a special registration form – a sanatorium and health resort card form.

Sanatorium and health resort card form is a certificate of form 072 / y (for children - 076 / y). It contains basic information about the patient, the organization that issued the document and the diagnostic conclusion, according to which the patient will be referred for a sanatorium-resort treatment (Limonov, 2006). The form is filled in on paper and given to the patient to present it along with a voucher and accompanying documents to a sanatorium and resort institution.

In the very health resort institution, the patient is sent to a physician to ascertain the treatment

program. As a rule, the approved physician is assigned to the patient for the entire period of the patient's taking sanatorium-resort treatment to provide a high level of communication and improve the accuracy of diagnosis of the patient's condition. In reconciliation with the patient, the primary care physician orders an individual program of therapeutic and recreational activities.

Health improving activities are carried out in the prescribed manner with the obligatory monitoring of the patient during the procedures and exercises. The methodological constituent part of the treatment at this stage is extremely important, because if the procedure for providing a particular service is infringed, the patient's health can be significantly damaged, which will reduce the effectiveness of the treatment on the whole.

During the period of health resort care, it is planned to see a general practitioner again in order to assess the progress of treatment of health problems and the general condition of the patient. The complex of rendered medical and health services may be adjusted: the patient has the right to refuse any procedures if they provoke a deterioration of health.

The final stage of health resort care of the patient is the final doctor's appointment, according the results of which the specialist evaluates the effectiveness of medical and recreational measures.

3. Results and Discussion

The economic component of the notion of sanatorium-resort treatment is associated with all stages of health resort care, starting with the booking by the tourist of a place on tour and ending with the payment of additional health and fitness services directly on the territory of the medical institution. Health resort institution is a complex enterprise, in the territory of which there are several independent and nevertheless closely connected service areas, the joint activities of which form a tourist product – medical and health facilities. The list of such services includes:

- medical services (water, phyto, mud and manual treatment rooms, salt mines, etc.);
- catering services (dining room, cafe, bar, etc.);
- accommodation services (room service);
- SPA services (solarium, manicure, aromatherapy, etc.);
- services of a sports complex (gymnasiums, sports grounds, terrain cure, etc.) (Official Site of the National Health Resort Association)

A significant economic aspect for a potential buyer of the package tour to a sanatorium is its cost, since it is often the estimated cost of the holiday that can be a decisive factor in the organization of the trip. So, the basis of the formation of the cost of the voucher is the cost structure for one bed-day, which, in turn, is formed from the prices of food, utilities, purchased mineral water, therapeutic mud, medicines, transportation costs, wages employees of the institution. As a rule, the declared value includes a basic package of services (accommodation, type of food and a standard medical and recreational set). The patient may optionally purchase services for an additional fee in the territory of a sanatorium and resort institution.

The legal component of the notion of sanatorium-resort practice is that the activities of sanatorium-resort institutions in Russia are regulated by a number of regulatory acts (Federal Register of Health Resorts in Russia). In addition, this type of economic activity is registered in the system of Russian Classification of Economic Activities. Thus, health resort treatment is legal, that is, a type of economic activity carried out in accordance with Russian legislation.

The last component of the notion health resort treatment is a social component. It consists in the fact that receiving treatment in sanatorium-resort organizations in Russia is one of the ways to realize the right of Russian citizens to qualified medical care and rest. This applies, in particular, to special categories of citizens (war veterans, liquidators of the Chernobyl Nuclear Power Plant, the disabled, etc.). Provision of facilities in sanatoria and health resorts for these categories of citizens is prescribed by law on preferential terms. In addition, health resort treatment as an activity aimed at restoring the physical and spiritual strength of the body is a way to strengthen the health of the nation. Thus, sanatorium-resort practice in the social sense is a significant element of social state policy (Zeighami & Bahmaei, 2016; Rezaei, 2016; Godino et al, 2019; Kord et al, 2017; Sebaa et

al, 2017).

The components of health resort treatment.

It is known that health resort treatment is a complex process of rendering medical and health services to the population in the territory of sanatorium-and-spa institutions. It includes two main components – medical and recreational, which are implemented in the sanatorium-resort practice, usually interrelated. However, each component should be considered separately.

The therapeutic component of the health resort care is a key component of the health resort recreation. It is based on the principles of using the main natural therapeutic factors for medicinal purposes: climate, water and mud in compliance with biomedical standards. It is significant that the domestic sanatorium-resort practice has in its basis a powerful fundamental scientific base, therefore precedence is given over the medical component of the health resort treatment and rest in Russian sanatoriums – the number of therapeutic procedures in the sanatorium-resort ticket is more than half of all services provided.

As a rule, all medical services can be classified into profiles. Medical profile refers to the specialization of medical services. It follows from this definition that, having determined the medical profile of a sanatorium, one can understand which diseases are treated in this sanatorium-resort institution. The following main medical profiles are distinguished in sanatorium-resort practice:

- musculoskeletal system diseases;
- urogenital system diseases;
- respiratory system diseases;
- nervous system diseases;
- circulation diseases;
- GIT diseases;
- skin diseases, etc.

4. Summary

The majority of sanatorium-resort institutions in Russia have a mixed treatment profile, which makes it possible to obtain a diversified recovery of health within a sanatorium-resort complex.

In accordance with the primary and associated disease, the patient's physician develops an individual program of therapeutic measures for the patient. It should be noted that in this context, we mean by medical measures the medical services provided with special equipment, with the use of drugs and some natural therapeutic factors, such as mineral waters and mud. The standard set of medical services included in the price of the voucher usually includes:

- primary, second and conclusive appointment to a physician
- 1-2 hydrotherapeutic procedures (baths, showers);
- 1-2 procedures of mud cure (baths, applications);
- massage (manual, mechanical);
- phytotherapy;
- instrumental physiotherapy (light treatment, electrical treatment, etc.)
- procedures for the respiratory system (speleotherapy, inhalation, and others), etc.

In addition, if necessary, you can consult specialized medical specialists – a cardiologist, a dentist, a gynecologist / urologist, and other specialists. The necessary relevant examinations are prescribed by a legal document issued by the Ministry of Health of the Russian Federation.

Medical procedure attendance is recorded in the accounting documents: a log book and a patient's spa card. This formality is a means of monitoring the attendance of medical procedures by the patient.

All medical procedures are carried out under the supervision of medical team. Specially trained staff helps the patient to take the desired body position for the procedure, applies the prescribed medical equipment, medications, medical factors, monitors the current state of the patient throughout the process of providing medical services. The patient, in turn, is obliged to keep the order for a treatment procedure in order to maintain the effectiveness of treatment.

There are general guidelines for treatment procedures for patients to undergo:

1. The procedure should be undergone in advance, in comfortable clothes made from natural materials (cotton, linen, viscose, etc.).
2. It is not recommended to have treatment immediately after main meal (breakfast, lunch, dinner), the optimal time for the body to rest after a meal is about 40 minutes.
3. For the time of the procedure one should give up using a mobile phone and a wired headset.
4. It is not recommended during the procedure to be in motion, to speak loudly, to touch the working medical equipment.
5. It is forbidden to attend the procedure while in a state of alcoholic or drug intoxication.

The main purpose of medical procedures in sanatorium-resort practice is to reduce the strokes of the disease diagnosed or their combination.

Indeed, without a therapeutic component, the health resort practice would be simply meaningless. However, taking medicines, massaging the affected areas and lying in a medicinal bath is not enough for recovery: the patient needs to maintain a sufficient level of physical activity every day, enrich the body with oxygen, get the missing dose of vitamins and be in a favorable psychological state. It follows from the listed above that in sanatorium-resort practice one cannot do without special recreational measures aimed at restoring the body reserves.

Improving sanatorium-resort treatment activities are the complexes, exercise cycles and procedures that have a less stringent procedure than medical ones, however, have a positive effect on all functional systems of the body.

The range of health-improving services in the health resort institution is quite wide. The following types of activities and measures fall into this category:

- therapeutic physical training;
- indoor exercises (fitness);
- outdoor sports (football, beach volleyball, starts, etc.);
- terrain cure;
- Nordic walking;
- seasonal activity – skis, skates, rides, scooter riding, etc.
- air and sun baths;
- swimming and water gymnastics;
- oxygen cocktails, etc.

Modern sanatorium-resort organizations, along with the traditional health-improving procedures listed above, offer so-called SPA services.

Their distinctive feature is the creation of a special atmosphere, an individual approach to each client. The set of services of SPA-centers includes not only standard methods of recovery (baths, massage, fitness complexes, etc.), but also the methods of alternative medicine (Asian massage techniques, acupuncture, etc.), cosmetic care procedures (manicure and pedicure, body scrubbing, facial skin cleansing, general detox, etc.).

SPA procedures are usually not included in the standard package of vouchers in Russian health resort centers (if it is not a profile SPA program in a SPA hotel) and are purchased separately for an additional fee immediately at the sanatorium.

It is noted that the SPA-programs for health improving are most popular among women, who are known to have a biologically more complex mental structure, and not only the visible result of the procedure is important for them, but also the psychological microclimate that the medical specialist creates together with the patient. In addition, in the SPA-centers, the client has the opportunity to choose a specialist who he will render this or that service, which cannot always be provided by treatment centers. Here we see the examples of the action of the so-called “economy of impressions” in tourism – the consumer pays not so much for the very service in its practical nature, as for the guarantor of receiving positive emotions from the process. Thus, SPA-services today are becoming an effective marketing instrument for health resorts.

As noted earlier, health-improving measures are less formal than medical ones. However, there are recommendations for patients concerning such services, and they are similar to recommendations concerning therapeutic procedures.

At the junction of the therapeutic and health components of the spa treatment two more items are distinguished – diet and water consumption schedule. These aspects cannot be clearly attributed neither to the first nor to the second category, so we call them therapeutic and health and consider individually.

Diet is an eating pattern, which is characterized by a certain number of meals per day, size and calorie portions, the content of dishes. A dietary regimen is prescribed by a general practitioner at the primary appointment. The standard diet of the sanatorium implies 3-4 meals a day with intermediate eating of fruits, dairy products, lean meat and other dietary products. There is a unified system of therapeutic diets: meals are designated by numbers, starting with №1. Each diet is meant for a specific treatment profile.

The role of the food diet in the health resort treatment cannot be overemphasized. Man gets the main share of the vital micro and macro elements activating the work of regulators of vital activity of the organism from food. The physical and spiritual state of a person depends on what kind of food will be, in what quantity and with what frequency it will be ingested. Thus, the metered intake of healthy, calorie-optimized dishes is one of the key points in the process of recovery within a sanatorium.

Drinking water in the spa treatment in combination with diet ranks not the last. It serves as a regulator of the activity of the conduction systems of the body, enriches the cells of the body with oxygen and minerals. Thus, water is an integral component of the spa practice.

5. Conclusion

In conclusion: sanatorium-and-spa treatment is a complex process of restoration of vital force of the human body, which includes therapeutic and recreational components, as well as a diet and water consumption schedule, considered as integral parts of the therapeutic process.

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Research Article

Special and Differential Treatment in the WTO Agreement on Agriculture and the Benefits for Developing Countries

Agus Surono*

Maslihati Nur Hidayati

Universitas Al Azhar Indonesia
**Corresponding Author*

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Abstract

This paper aims to analyze how developing countries can take full advantage of international trade arrangements and apply the principles and rules of special and differential treatment in the WTO rules of international trade in the context of agricultural sector. This research applied normative legal research as a method that refers to legal norms to understand the application of legal norms to present facts, changing circumstances. This method is also purposively to offer potential solutions to resolve concrete societal issues in order to understand the application of legal norms. The purpose includes to analyze the WTO agricultural agreement by showing the importance of special and different treatment in the context of international trade. This study revealed that there have been a number of special and differential treatment arrangements under Agreement on Agriculture set out in a number of articles. The existence of arrangements concerning special and differential treatment in Agreement on Agriculture (AoA) is expected to provide benefits between all participating countries. The provision provides the obligation for developed countries to pay full attention to the special needs and different conditions of developing countries. This rule includes the recognition of the existing differentiation among WTO members and treatment for all developing member countries. The AoA is implemented by giving more emphasis on agricultural sector, and giving rural development priorities as a main basis for agriculture.

Keywords: *Special and Differential Treatment, Agreement on Agriculture, WTO, developing country, agricultural sector*

1. Introduction

International trade has been very instrumental since the enactment of the General Agreement on Tariff and Trade began in 1947 (then referred as GATT 1947) (Bhala, 2008). The existence of the World Trade Organization (WTO), as an international organization, has an important role in international trade traffic, especially in promoting economic development and poverty reduction (Kelsey, 2004). More specifically, the existence of this organization should ensure the fulfillment of all the needs and advantages of the increased welfare opportunities within the context of the multilateral trading system particularly for developing countries. This is supported by the fact that most of the WTO member countries fall into this category. WTO members declared in Doha Ministerial Declaration recognizing the major role of international trade in the promotion of economic development and the alleviation of poverty.

It is related to the main task of the WTO today as a world trade organization, having an aim to increase the world trade through the reduction of both tariff and non-tariff barriers. In addition, the presence of this organization is expected to organize an effective and efficient world trading system for the world economic actors. On the other hand, this organization is expected to become a

negotiation forum for each member country for their economic interests (Petersman. 1997). The interests and needs of developing countries, especially the underdeveloped countries, have become an enormous need beyond what WTO has done and concerned since 2001 after the ministerial meeting at the Doha Round. At the Doha meeting, WTO members have adopted Decisions on Implementation Related Issues and Concerns, in relation to the problems faced by developing countries in implementing the WTO Agreement which is the result of the Uruguay Round negotiations.

This situation then underlies the development of one of the most important principles in the whole international trade negotiations incorporated by the WTO forum, that is, special and differential treatment. It is hoped that the principle of special and differential treatment was presented in order to ensure that the developing countries, in particular the underdeveloped countries, can continue to join the multilateral trading system and can also enhance their role in international trade. WTO has provided a wide range of special treatment tailored to the needs and their interest in international trade. WTO Agreement has facilitated the provision of special and differential treatment in some treaties in the WTO Agreement (Ierley. 2002).

It is known that most WTO members are of developing countries. At least two thirds of all WTO member countries are classified as developing countries. If we look at the current conditions, developing countries have become part of WTO membership and have played a very important role in the WTO organization itself. In addition to the category of developing countries, the WTO membership also includes the least developed countries. There are at least 34 underdeveloped countries that have become part of WTO membership.

This paper aims to analyze how developing countries can take full advantage of international trade arrangements and apply the principles and rules of special and differential treatment in the various rules of international trade in the context of economic development, especially the agricultural sector. This is worthy noted because the agricultural potential of the developing countries is expected to be a motor of economic progress for the member countries. On the other hand, the developing countries as WTO member states are expected to get benefits from the existence of special and different treatment principles in Agreement on Agriculture

2. Method

This research applied normative legal research as a method that refers to legal norms to understand the application of legal norms to the presented facts. The method is also to offer potential solutions to resolve any concrete societal issues. The study selected this method in order to understand the application of legal norms included in the WTO agreement by first revealing the background of the importance of special and different treatment in the context of international trade in particular.

This research also applies statute approach which is to see the whole rule of international trade law under WTO law especially related to the provision of special and different treatment for developing country in Agreement on Agriculture. Then, in particular, the study will conduct an in-depth analysis of the usefulness of special and different treatment for developing countries in the agricultural industry.

As a normative legal research, this study refers to the analysis of legal norms. Thus, the object analyzed is the legal norm contained in the secondary data collected by conducting literature study, by examining the agreements summarized in the WTO Agreement, in particular the arrangements contained in Agreement on Agriculture (AoA).

3. Special and Differential Treatment: A Brief Overview

The hope from the international trade and its arrangements is that every country will benefit from the existence of international trade. Supachai Panitchpakdi, Director General of the WTO in the period of 2002-2005, as quoted by Peter van den Bossche (2005), stated that the exictence of international trade increases the trade among developing countries in particular, and the world trade in general. Understandably, the trade existence of a country with its own economic interests is

required to enhance the inter-country interaction. The purpose of this interaction process in general is that each country has an equal opportunity to meet domestic needs. It is because that teaches country has different abilities in terms of their economy and technology (Trebilcock & Howse, 1995). Globalization henceforth is needed and it will affect the development of interdependence of world economic actors.

Differences in economic and technological capabilities among the countries result in classification of countries. In general, the existence of countries in the world can be grouped into several classifications. The common classification is the developed countries, developing countries and Least Economic Development Country (LEDC) or commonly known as the underdeveloped countries (Nafziger, 1990). The classification of countries is simply based on the economic capacity of each country. Usually, the assessment of a country economic development and the classification of the state are differentiated from rich and poor countries (Mitchell. 2013).

The economic weakness of developing countries and underdeveloped countries requires the cooperation and economic capability improvement through trade each other (Kwakwa. 2012). One way is to actively engage in international trade activities, particularly through active involvement in the WTO's multilateral trading system (Qasim. 2008). However, the problem that arises is by having weaker economic capability, the developing countries is often in no bargaining position on existing trade liberalization policies compared to the developed countries (Juwana, 2001). Liberalization itself closely related to a view that assumes that to achieve economic progress, the states refrain from interference in economic life. To enhance the capability in trade, the developing countries have requested a system that can provide different treatment. Therefore, the country members having weaker economic capability are able to cover the ability differences. This is because the developing countries are always faced with perceptions of the inability to carry out the burden and obligations arising from trade policies (Kartadjoemena, 1996).

This special and differential treatment is a continuous positive effort to integrate the developing and underdeveloped countries in the world trade system (Sutrisno, 2010). The core of this special and differential treatment is that the developing country is faced with the difference in the ability to carry out obligations arising from the agreements contained in the WTO. The difference in ability is due to the differences in economic capacity possessed between developed, developing and underdeveloped countries (Van Den Bosche, 2005).

Furthermore, Osakwe (2011) explained that this special and different treatment can be divided into six categories as follows:

1. Provisions aimed to increase trade opportunities for members of developing countries
2. Provisions requiring other member states to protect the interests of developing countries members
3. Conditions that permit flexibility of commitments, for actions and the use of policy instruments
4. Period of transition time
5. Technical Assistance
6. Provisions related to members of underdeveloped countries.

The principle of this particular and differential treatment provision is that the needs of developing countries are substantially different from those of developed countries. Thus, the existence of this particular and distinct treatment on certain matters would permit the discriminatory side which the system would inevitably avoid multilateral trade under the WTO (Van Den Bosce, 2005). Furthermore, this special and differential treatment does recognize a gap in economic development between developed and developing countries (as well as underdeveloped countries) that require a special condition.

However, the existence of this arrangement will give benefits to the developing countries, if the developing country utilizes this special and differential treatment. Developing countries believe that the effectiveness of the implementation and enforcement of this treatment will encourage the growth of developing country economies and can integrate them into the multilateral trading system. Nevertheless, the application and enforcement of this treatment is deemed to be ineffective (Ewart, 2007). The WTO agreement itself has facilitated at least 145 provisions on special and differential treatment spread throughout the existing treaties.

The WTO Agreement has facilitated the existence of special and differential treatment spread in various existing agreements, such as Agreement on Textile, Agreements on Trade in Goods, the General Agreement on Trade in Services, the Agreement on Trade-Related Aspects of Intellectual Property, the Understanding on Rules and Procedures Governing the Settlement of Disputes and Agreement on Agriculture. At least, there are 19 articles governing the regulation of special and differential treatment specifically discussed in chapters 15-16 entitled special and differential treatment.

4. Agreement on Agriculture: Most Important Treatment for Developing Countries

One of the important agreements resulting in WTO negotiations is the agriculture or AoA (Agreement on Agriculture). The existence of this agreement is important considering that most of the WTO member countries are developing countries that still emphasize the livelihoods of their people from the agricultural sector. Moreover, in world trade, the agricultural industry has increased sharply, marked with the volume of world agricultural exports over the last few decades. However, this is not the case with the growth rates of the lagging agricultural sector. In 1998, agricultural trade was counted for 10.5% of total goods trade. Nevertheless, considering that agricultural trade is still ahead of other product sectors such as mining, automotive products, chemicals and textiles as well as clothing or iron and steel, since the 1980s, trading in processed agricultural and other products have grown much faster than basic primary product trading. Trade in the agricultural sector in many countries is an important part of overall economic activity and continues to play a major role in domestic agricultural production, including employment. Therefore, it is important to maintain the trade of the global agricultural sector in meeting the needs of the world market.

The focus in agricultural negotiations is on domestic agricultural policy and agricultural export subsidies, sanitary and phytosanitary, the use of food security protectionism, animal and plant health stages. In its development, this negotiation in agriculture is not an easy thing, including talking about political sensitivities (www.wto.org). In the end, the agreement on agriculture has been successfully passed in a unified result of the Uruguay negotiations, including the Decisions and Measures Concerning the Possible Negative Effects of the Reform Program on Least Developed and Net-Food-Importing Developing Countries.

This agreement on agriculture acknowledges the agreed long-term objective of establishing a fair and market-oriented trade in agriculture. The existing reform program consists of specific commitments to reduce support and protection in the areas of domestic assistance, export subsidies and market access, and through the establishment of more operational and effective GATT rules and disciplines. This agreement also takes into account other matters instead of the trade, including food security and the need to protect the environment. It also provides special and differential treatment to developing countries, including increased opportunities and access to agricultural products in the member states of this treaty.

This agreement also affirms the interconnection with other agreements, such as the agreement on IPR that is also applied to this agricultural agreement by maintaining the general principles of applicable law. Furthermore, the agreement covers agriculture products not only basic agricultural products such as wheat, milk and animals, but also derived products, such as bread, butter and meat, as well as all processed products such as chocolate and sausage, wine, liquor and products tobacco, fibers such as cotton, wool and silk, and raw animal skin. However, fish and fish products and forestry products are not included (www.wto.org).

The Agreement on Agriculture establishes a number of generally accepted rules connected to agricultural measures related to trade, particularly in the areas of market access, domestic support and export competition. These rules are related to the country's specific commitments to improve market access and reduce distorting subsidies included in the country's individual schedules of WTO Members as an integral part of GATT. The period of implementation of the country's special commitment is a six-year period beginning in 1995. However, developing countries have the flexibility to implement their reductions and other special commitments over a period of up to 10 years. Members have the option of applying their concessions and commitments on a calendar, marketing or fiscal year basis. For the purpose of the peace clause, the implementation period is a

nine-year period beginning in 1995. There is an Agricultural Committee tasked with overseeing the implementation of the Agreement on Agriculture and provides members with consultation opportunities on any matters related to the implementation of commitments, including rule-based commitments. For this purpose, the Committee usually meets four times per year.

Under this agreement, there has been a fundamental shift in the design of investment, production and trade in agriculture by (i) making the agricultural market access conditions more transparent, predictable and competitive, (ii) establishing or strengthening links between national and international agricultural markets, and thus (iii) the use of scarce resources in the most productive use of both the agricultural and economic sectors. The Uruguay Round Negotiation aims to remove obstacles to tariffs. Therefore, it has been agreed upon regarding a tariff system generated from a certain calculation process. Furthermore, every WTO member has a schedule of tariff concessions covering all agricultural products. This tariff reduction scheduling is included in the tariff system. Members of developed countries have agreed to reduce, during the six-year period beginning in 1995. Their tariffs are 36 percent on average of all agricultural products, with a minimum discount of 15 percent for any product. For developing countries, the tariff cuts of 24 and 10 percent, respectively, will be implemented over ten years.

Conceptually, there are two categories of domestic support: “Green Box Measures" and "Amber Box". All members shall notify the Agriculture Committee of their level of domestic support actions. Special formats have been developed by the Agriculture Committee in order to facilitate the fulfillment of notice obligations. In addition to the annual notice obligations, all members must notify modifications of existing ones or the introduction of new steps in the excluded category. This notice is also checked by the Agriculture Committee on a regular basis.

One of the important rules that become an integral part of this AoA is the Decisions and Measures Concerning the Possible Negative Effects of the Reform Program on Least-Developed and Net-Food-Importing Developing Countries. This decision was adopted as a part of the outcome of the Uruguay Round negotiations on agriculture. The decision recognizes that when the progressive implementation of the overall Uruguay Round outcome will result in increasing opportunities for trade expansion and economic growth for the benefit of all members, as long as the reform program is implemented, the least developed and developing countries net food importers may experience negative effects in terms of adequate supply availability of basic food items from external sources on reasonable terms and conditions, including short-term difficulties in financing the normal rate of commercial imports of staple food.

Under this regulation, there are a number of mechanisms to ensure that the implementation of the Uruguay Round results does not affect the availability of food aid at a sufficient level to continue providing assistance in meeting the food needs of developing countries. This mechanism includes a review of the level of food aid established periodically by the Food Aid Convention and the initiation of negotiations. This review is to establish adequate levels of food aid commitment to meet the legitimate needs of developing countries during the reform program, and adoption of guidelines to ensure that an increase in the proportion of basic foodstuffs is provided in a fully giving form. Moreover, developed member states should give full consideration in the context of their assistance programs for the demand for the provisions of technical and financial assistance to at least developing and net food importers of developing countries to improve agricultural productivity and infrastructure. It also ensures that any agreements related to agricultural export credits make the right provisions for differential treatment in favor of clean food importing countries and underdeveloped member countries. The decision recognizes that in the case of short-term difficulties in financing the normal rate of commercial imports, developing countries as net food importers may be eligible to attract resources from international financial institutions under existing facilities, or facilities as may be established, in the context of an adjustment program in order to overcome the difficulties of such financing. Essentially, the agreement emphasizes the commitment of all WTO members in terms of market access, tariff and import restrictions, domestic support for existing procedures, and export competitions such as export subsidies.

5. Special and Differential Treatment Arrangements in AoA

With the special and differential treatment arrangements in AoA, it is hoped that there are benefits that can be experienced by the developing countries.

First, the provisions require that participating countries should continue to pay attention to the equality of all participating countries. Treaties of special and differential treatment become an integral part of each existing charge and is devoted to exclude the negative consequences that will arise in the application of specific program reforms for underdeveloped countries as well as developing countries in general.

Furthermore, the opening section of AoA explains that there should be provisions aimed at increasing trade opportunities. This provision allows the establishment of further regulation in order to increase trade opportunities, especially in agriculture for developing countries. In this provision, the article in the part of the AoA substance must explicitly affirm the existence of the regulation of special and different treatment for developing countries. This has been affirmed in AoA.

In AoA, there has been a special regulatory section on this special and different treatment arrangement contained in section IX article 15 entitled "special and differential treatment" and section X of article 16. It has also been contained in other articles on this rule. In the development phase, the regulation on special and differential treatment was also formulated in the WTO Ministerial Conference which took place in Bali in 2013 and resulted in the Bali Package. One of the agreements in this Package is to produce special and differental treatment arrangements in agriculture.

Second, the provisions provide the obligation for developed countries to pay full attention to the special needs and different conditions of developing countries. This provision provides full obligation to developed countries for the agricultural interests of developing ones.

Third, the recognition of the differentiation existing among WTO members and better treatment for all developing member countries is to be integrated over any existing negotiations. In addition, special and differential forms of treatment shall be affirmed in other relevant provisions under this agreement and embodied in the timetable of the existing concessions and commitments. It further affirms that recognition of the existence of differentiation existing among WTO members and better treatment for all developing member countries is to be integrated over any existing negotiations. In addition, special and differential forms of treatment shall be affirmed in other relevant provisions under this agreement and embodied in the timetable of the existing concessions and commitments.

Implementations of this rule are as follows:

a. There are other relevant further regulatory rules under this agreement contained in various advanced rules of AoA, such as NFIDC.
b. There is a Committee on Agriculture that specifically monitors the implementation of these special and differential treatment arrangements (discussed in particular in Article 17 AoA).
c. There is an arrangement whereby the obligation of WTO member states to report to the Committee on Agriculture related to the timetable of concessions and commitments.
d. There have been a number of other rules as a continuation of negotiations as endorsed in the Bali Package and 2015 Nairobi Package.

Fourth, provisions affirm that developing countries have the flexibility to implement a tariff reduction commitment up to 10 years, where this rule is not required for the underdeveloped country.

Fifth, provisions regarding the permissibility of domestic support. This is in accordance with the Mid-Term Review Agreement that acts of government assistance, directly or indirectly, to promote agricultural and rural development as an integral part of development programs of developing countries. Investment subsidies generally are available to agriculture in developing country members and subsidized inputs agriculture are generally available to low-income or resource-poor producers in developing country members. The exempt from support of other domestic abatement commitments would apply to such measures, owing to the prohibition of domestic support for producers in developing country members to encourage diversification from planting narcotic crops. Domestic support that meets the criteria of this paragraph is not required to

be included in the current calculations of the total AMS.

Sixth, provisions allow developing countries to provide export subsidies. During the implementation period, developing country members are not allowed to commit in relation to export subsidies. They are not applied in order to avoid reduction of commitments: subsidies to reduce export costs of marketing agricultural products, including handling, upgrades and other processing costs, international transport and goods, and internal transportation costs on shipping terms of export that are more profitable than costs of domestic shipments.

Seventh, the provisions require developed countries to take the necessary action if there is a negative impact on the implementation of reform programs developed for developing (in Net Food-Importing for Developing Countries) and underdeveloped member countries.

Eighth, the provisions require the program of food security in the country of each developing country. It is specifically regulated in Public Stockholding for Food Security Purposes (annex 2).

Ninth, as set out in the Decisions on Measures Concerning the Possible Negative Effects of the Reform Program on Least-Developed and Net-Food-Importing Developing Countries (NFIDC), there are developing countries incorporated in the NFIDC food aid, food program guidelines, and technical assistance.

Tenth, provisions affirm rural development priorities, as affirmed in the *preambule* section of the 2013 Bali Package.

These arrangements were done in order to promote rural development and poverty alleviation, which is specifically addressed to programs such as (a) land rehabilitation, (b) soil conservation and resource management, (c) drought management and flood control, (d) rural work programs, (e) issuing of certificate on land, and (f) farmer resettlement program. The high expectation of developing countries with the existence of a multilateral trading system under the WTO takes sides with the interests of developing countries resulted in the existence of regulation on the principle of special and differential treatment in Agreement on Agriculture. This agreement along with all specific arrangements becomes very important in supporting the economic progress and welfare of society through agriculture. Furthermore, in practice, this arrangement is overseen by the Agriculture Committee to constantly monitor and evaluate the impacts. Thus, continuous efforts will be made in order to fight for the agricultural interests of developing countries.

6. Conclusion

The existence of the World Trade Organization (WTO) is expected to be instrumental in promoting economic development of countries in the world, particularly the developing country members. Various kinds of arrangements, principles and rules have been agreed among the members in order to harmonize all the existing rules applicable for international trade. This is expected to create a multilateral trading system acceptable to all parties. One important principle in the WTO Agreement is the principle of special and differential treatment, i.e. different treatment for developing countries in their obligations to apply the WTO Agreement. Hopefully, the existence of this principle is not contrary to the multilateral trading system that should be always free and fair. Nevertheless, the usefulness of this principle depends on how each of developing and underdeveloped countries capable of utilizing it in order to facilitate the economic development of their country.

This study revealed that there have been a number of special and differential treatment arrangements under Agreement on Agriculture set out in a number of articles, particularly contained in chapters 15-16 entitled "special and differential treatment". The existence of arrangements concerning special and differential treatment in Agreement on Agriculture (AoA) is expected to provide benefits to developing and underdeveloped countries. The benefit, among other, are to provide the similarities of treatment between all participating countries. The special and differential treatments become an integral part of each negotiation. This provision provides the obligation for developed countries to pay full attention to the special needs and different conditions of developing countries and recognition of the existing differentiation among WTO members and better treatment for all developing member countries. Such provisions affirm that the developing countries have the flexibility to implement a tariff reduction commitment of up to 10 years as well as provisions

concerning domestic support. This provision allowed developing countries to provide export subsidies. On other side, developed countries are required to take the necessary action if there is a negative impact on the implementation of the reform program developed for developing member countries. It also requires the existence of food security programs of each developing country. Provisions on the level of food aid, food program guidelines and technical assistance as set out in the Decisions on Measures Concerning the Possible Negative Effects of the Reform Program on Least Developed and Net-Food-Importing Developing Countries affirm the importance of agricultural sector for the economic growth of developing countries and the recognition of rural development priorities as a main basis for agriculture in WTO rules.

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Research Article

The Stability of the Regional Economic System Based on the Innovative Development of the Petrochemical Cluster

I. L. Beilin[1]*

V. V. Khomenko[1]

N. V. Kalenskaya[1]

[1]Kazan Federal University,
Institute of Management,Economics and Finance,
8 Kremlyovskaya Street Kazan 420008, Russian Federation
**Corresponding Author*

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Abstract

The successful functioning and development of the regions is ensured by the symbiosis of cooperation and competition, based on the positive synergistic effects of the territorial agglomeration. Stable partnerships between enterprises provide a solution to the problems of the regional economy, associated with increased differentiation in the level of socio-economic development of individual regions, low adaptability of the regional socio-economic systems of Russia to the impact of crises. There are also problems of inefficient spatial organization of the country, leading to increased costs for the maintenance of a regional infrastructure economy, a low level of interaction between enterprises of the regions forming territorial production complexes. A promising and successfully used in practice by developed countries is the cluster paradigm of socio-economic development of regions, which is based on a cluster approach to the implementation of economic policies, providing innovative orientation in the implementation of regional strategies. Regions containing efficient clusters develop more dynamically. In a number of regions of the Russian Federation, the extraction of minerals, including hydrocarbons, is a strategic factor providing the main share of gross regional product. In accordance with the development strategy, petrochemical clusters should become the most active point of economic growth in the region in the near future.

Keywords: *economics, econometrics, economic and mathematical modeling, theory of economics, regional economy, innovation management*

1. Introduction

Regional clusters are the mechanism that facilitates the import substitution of equipment at the enterprises for the extraction and processing of hydrocarbon raw materials, one of the organizational forms of integration of the capabilities of the parties interested in achieving competitive advantages in an innovative economy. In order to link the development of the industry with the priorities of state policy, including the interests of enterprises in the oil and gas industry, it is necessary to form a regional oil and gas chemical cluster. However, the use of existing organizational models of regional clusters does not lead to the expected results. The insufficient development of theoretical and methodological aspects of the cluster approach to the innovative development of the regional economy has predetermined the need to improve the organizational and methodological support for the formation of a regional petrochemical cluster (Enright, 2003;

Hufbauer et al., 2008; Dimitras et al., 1999; Khazova, 2015).

Issues such as the identification of clusters and the assessment of the cluster potential of the regional economy remain debatable. The cluster approach provides an opportunity for regions to create regional territorial production clusters in the context of avoiding the sectoral principle of industrial management in the territories (Beilin, 2017; Beilin & Khomenko, 2018).

Modern economic development determines the need to find new forms of organization of activities of industrial enterprises, industries and complexes to ensure their development. One of the approaches to the formation of an innovative economy is a cluster one. The most important prerequisites for the formation of clusters are also the following: the presence of interacting and mutually complementary enterprises, organizations united around the production of certain products or a common field of activity and a specialized labor force; gaining economies of scale; proximity to consumer markets; ensuring access to specific natural resources (Beilin, 2017; Khmeleva & Bulavko, 2016; Zobel & Khansa, 2012; Rose, 2001; Deberdieva & Shterbova, 2015).

2. Methods

The advantages of applying a cluster approach to the development of a regional economy are manifested in the following. Regional clusters are based on the existing stable system of dissemination of new technologies, knowledge, products, united in a technological network, based on a joint scientific base. Cluster enterprises have additional competitive advantages due to the opportunities to carry out internal specialization and standardization, to minimize the costs of innovation. The presence in the structure of small enterprises allows forming innovative “points of growth” of the regional economy (Zadeh, 2002; Østergaard & Park, 2015; Khmeleva et al., 2015; Al-Qahtani et al., 2008).

According to the results of a comparative analysis, the following definition of a cluster was proposed. A cluster is an integrated economic regional entity of interacting enterprises and related organizations in a single technological chain of value creation based on proactive partnership relations. They carry out complementary economic activities in order to ensure individual, common and regional development by enhancing the region’s own and competitive advantages, including those arising from the implementation of joint activities (Tardy, 1997; Crowther & Haimes, 2010; Takafumi et al., 2009; Alfares & Al-Amer, 2002).

3. Results and Discussion

Innovative orientation is a distinctive feature of clusters, since effective clusters are created, as a rule, in the area of economic activity where there is or is expected a surge in the field of engineering or / and production technology with access to promising “market niches”. Clustering a region through the formation of a system of indicators characterizes its level of competitive stability. The purpose of the clusters is to use the potential of enterprises in the region for their development on an innovative basis (Braginsky & Tadevosyan, 2014; Deberdieva & Vechkasova, 2015).

The clustering potential is determined by a combination of factors. These are competitive advantages of industries (geographical location, availability of resources, etc.); availability of enterprises and infrastructure organizations in the region; the possibility of combining local competitive advantages of enterprises and organizations for further use in ensuring the development of the region. The most important role in the development of the petrochemical and chemical cluster, the realization of its scientific and innovative potential is assigned to small innovative enterprises, as well as enterprises of the services sector, including logistics, which are a link between enterprises (Corrado & Fingleton, 2012; Chen & Pouzo, 2015; Beilin, 2016).

The effectiveness of the development of industrial clusters is ensured through supporting industries, such as educational institutions, research organizations, innovation centers that increase the level of competitiveness of the region. The process of forming the petrochemical cluster includes many components. This is the creation of the institutional and organizational basis of a regional cluster (formation of a structure, organization of cluster management, a mechanism of responsibility, internal regulatory documents of the cluster) (Beilin & Arkhireev, 2011; Leamer,

2008; Fischer & LeSage, 2015).

It is also the formation of a strategy and targeted development programs based on an assessment of the situation in the market, development directions within the region and the interregional level, means and means of implementing development directions. In addition, they include action planning for the implementation of the cluster strategy (selection of potential participants, formation of financial resources, etc.) It is necessary to take into account the need to develop regulatory impact instruments (regulatory, organizational, methodological, informational, motivational, etc.) and the implementation of a set of actions and monitoring the formation of a regional petrochemical cluster (Fig. 1).

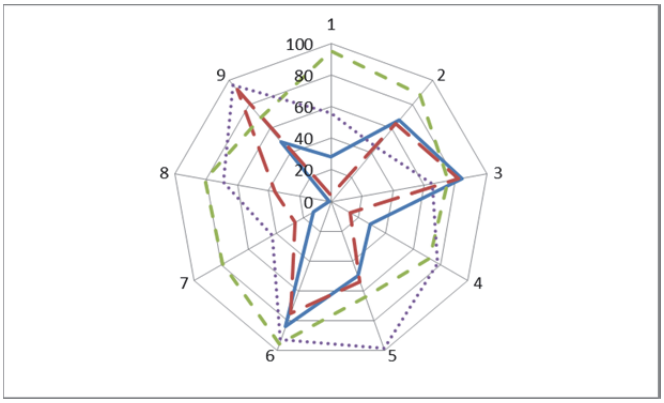

Fig.1. An example of the impact of regulatory, organizational, methodological, informational and motivational tools of regulatory impact in the formation of a regional petrochemical cluster

To implement clustering, a mechanism is needed that triggers, sets it in motion, while applying organizational and economic tools. On the basis of organizational tools, administrative activities are carried out aimed at carrying out the clustering process in the region; Regulatory regulation of cluster policy at all levels and control over the implementation of the clustering process (creation of a special controlling body) is carried out. Institutional support includes the following institutions: government, legal, financial, innovation. In the course of the study of models of innovative development of the petrochemical and chemical cluster, the following components were identified as components of the innovation development mechanism: infrastructure, information, investment, resources, institutional, methodological, organizational support based on regional support (Figure 2).

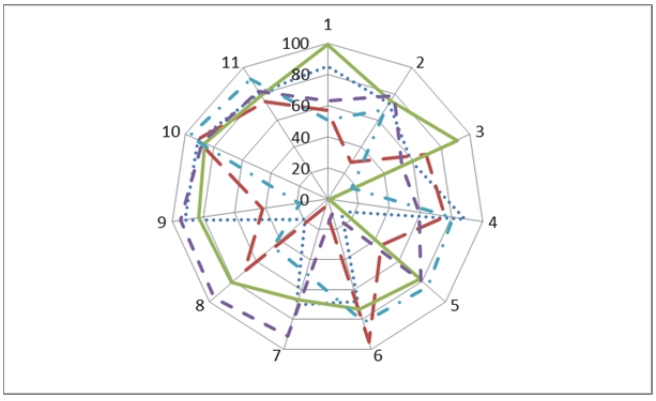

Fig.2. An example of the structuring of the constituent elements of the mechanism of innovative development of a regional petrochemical and chemical cluster

The conditions for the innovative development of a regional petrochemical and chemical cluster are determined by many factors. This is the scale of the activity, the complexity and complexity of the value chain; the focus of cluster innovation activities on technological and process innovations, determined by the content and structure of business processes in the cluster. These include established intra-corporate relations between the “core” and enterprises in the cluster; the presence in the cluster of a corporate scientific and technical complex as part of scientific and design organizations specialized in solving problems of production activities.

Next, we can formulate the requirements for the formation of the mechanism of the cluster's innovative development: the unification of the sphere of science and production; sources of innovation should be the area of known knowledge and the results of basic research. The essential condition for their implementation is the formation of stable links between all the cluster members. The most relevant areas (priorities) of the innovative development of the regional petrochemical and chemical cluster are technologies that provide increased efficiency: main gas transportation, diversification of gas supply methods to consumers; gas processing and petrochemical; gas sales and use; to increase gas storage efficiency; hydrocarbon production at existing fields; prospecting and exploration of hydrocarbon deposits, including the development of unconventional resources.

To assess the effectiveness of the innovation development of the cluster, it is recommended to use key performance indicators: the share of R & D costs in revenue; reduction of operating costs in projects through the use of innovative technologies; reduction of specific consumption of fuel and energy resources for own technological needs and losses; frequency of accidents; increase in the number of used patents and licenses; labor productivity growth; reduction of specific greenhouse gas emissions.

To assess the need for enterprises to join the regional petrochemical and chemical cluster in order to achieve their cluster effect (synergistic, innovative) it is recommended to use the integral indicator of cluster potential. This will solve the problem of determining their status and justify the cluster development strategy, form a system of indicators for assessing the cluster potential, determine the components for a comprehensive assessment of the innovation potential, the financial and economic condition of the enterprise, the factor potential and the quality management system.

The proposed system includes two blocks of indicators, measured using ordinal variables. The first block contains indicators that help identify the status of an enterprise in a cluster by affiliation to a type of activity: basic, supporting, auxiliary. The second block includes general indicators assessing the possibility of including an enterprise in a cluster: innovation potential; financial and economic condition; resource potential; availability of a quality management system; dependence on global markets; territorial proximity to sources of raw materials, consumers of products, labor resources; cooperation with other cluster members; relationship with scientific and educational institutions located in the region. From the point of view of the cluster effect, it is important to assess not only the fact that the enterprise has production factors, but also their significance, based on the specifics of its activities, as well as the effectiveness of its use. One of the most important areas of cluster potential assessment is to determine the possibility of creating integrated quality management systems, including: quality management systems, environmental management systems, and occupational health and safety management systems.

4. Summary

The developed organizational model of the regional petrochemical and chemical cluster includes status groups of enterprises and organizations: “basic”, including the “core” of the cluster; cluster-forming enterprises for the extraction of hydrocarbons; "Supporting" enterprises for the supply of equipment, components, materials, services, carrying out repairs of equipment; "Auxiliary"; specialized institutions and structures that provide information, marketing and consulting services; “Complementary” financial and research institutions, educational institutions, agencies and departments for the development and setting of standards; "Enterprises with weak communication" enterprises in accompanying industries, manufacturers of related products. The sequence of stages in the formation of a regional petrochemical and chemical cluster is substantiated.

5. Conclusions

Thus, this article proposes a mechanism for the innovative development of a regional petrochemical and chemical cluster. It is based on a set of interrelated elements of infrastructure, information, investment, resource, institutional, methodological, organizational support based on regional support. The cluster is formed taking into account intra-corporate relations between the main enterprises and scientific, design, educational organizations in the oil, gas, chemical industries. This approach takes into account the rules and procedures for implementing technological and process innovations. A technique has been developed for assessing the possibility of entering into the regional petrochemical and chemical cluster of the Orenburg region and positioning enterprises in the process of its formation, the implementation algorithm of which includes: developing a system of indicators for comprehensive assessment of innovation and resource-factor potentials, financial and economic status of the quality management system; determination of the integral indicator of the cluster potential of the studied enterprises; preparation of an analytical report for the further development of the portfolio cluster strategy. Evaluation of the integral indicator of the cluster potential will allow solving the problem of determining the status of an enterprise in a cluster.

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Research Article

Does Commercial Banking Activities Exerts on Agricultural Growth in Nigeria? Evidence from ARDL Framework

Adedoyin Isola Lawal[1]

Abiola John Asaleye[1]

Henry Inegbedion[1]

John Dean Ojeka[1]

Stephen Kayode Adekunle[2]

Enoch Olaniyan[2]

T. David Eyiolorunshe[2]

Olayinka Abosede Olabode[3]

[1]*Landmark University, Omu-Aran, Nigeria*
[2]*Redeemer's College of Technology and Management, Nigeria*
[3]*Department of Public Administration, The Polytechnic Ibadan, Nigeria*

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Abstract

The current study examined the Impact of commercial bank loan activities on Nigeria's agricultural productivity with a focus on the impact of the agricultural sector credit guarantee scheme fund, commercial Bank credits to agricultural output, interest rate and the government recurrent expenditure on the agriculture sector. We employed the newly developed augmented regressive distributed lag to examine whether or not commercial lending activities enhances productivity. Our results shows that though a positive relationship exist between agricultural output and each of agricultural sector credit guarantee scheme fund and the government recurrent expenditure on the agriculture sector, the relationship is not significant. The result also shows that a positive but not significant relationship exists between commercial Bank credits to agricultural output, and that a negative but significant relationship exists between interest rate and agriculture output. The implication is that increase in commercial bank lending has not been able to induce positive growth in the agricultural output in Nigeria. Our results provoke insights thinking on the role of commercial banking activities in advancing agriculture in Nigeria.

Keywords: *Agricultural Output, ARDL, Nigeria, Commercial banks*

1. Introduction

Agriculture in the 1960's was the pride of the Nigerian economy (Aminu & Anono 2012), contributing over 70% of the gross domestic product employs around 70% of the workforce and accounts for around 90% of foreign currency earnings and federal government revenues. (Gbaiye, Ogundipe, Osabuohein, Olugbire, Adeniran and Olatunji, 2011). At that time, Nigeria was the second biggest cocoa producer in the world, with world market of 15%, a 60% market share and the biggest exporter for palm oil and a 30% global market share for groundnut (Lawal & Atte 2006).

Also, in the cotton, rubber, hides, and skin markets Nigeria dominated the market. The nation is bless with conducive natural environment like arable land, water resources, and large active populating that can tiled the land at the same time provides good market to stimulate the demand. This success story notwithstanding, farming practice was largely conducted using rudimentary farm implements and tools. The positive narrative began to change in the early 1980 as evidence in departure from self-sufficiency and leading exporter in 1960 to being a net importer (Enya and Alimba, (2008); Folawewo and Olakojo (2010); Udoka (2015). For example, 153,000 tons of palm oil were imported from the nation valued at about ninety two million US dollar ($92,000,000) in 1982; 55,000 metric tons of cocoa in 1983; Tons of wheat 7.07 million, 11.062 million tons of rice and431,000 tons of maize during those periods. Total expenditure to service importation of food items began to gallop, for instance $430million was spent in 1990, $1.25billion was spent in 2000 and $4.2billion was spent in the year 2010 (E1-Rufai (2011), Asaleye et al 2018a, 2018b, Dahunsi et al, 2019, Okere et al (2019), Lawal et al 2018a, 2018b). Nigeria's imports of wheat were 7.07 million tons, rice 1,062 million tons, and maize 431.000. Nigeria spent US$ 430 million on food imports in 1990, a figure which increased to 1.25 billion US dollars in year 2000 and 4.2 billion in 2010 (EL-Rufai 2011). In 1976, Nigeria was once the world's largest exporter and palm oil producer and became a net importer of vegetable oil (Asaleye et al, 2018a; Asaleye et at, 2018b; Lawal et al, 2018a; Lawal et al, 2018b). This downward trend in Nigeria's initial success story has a number of factors, some of which neglect the agricultural sector because of the increase in oil revenues, poor access to modern inputs and technology, and the lack of sufficient credit supplies, amongst other factors (Lawal et al 2019a; 2019b).

The government has initiated several agricultural programs and programs that promote agricultural growth in the country because of the poor performance of its sector in terms of its contribution to Nigeria's overall annual revenues and economic growth. According to Ekpo & Umoh (2015), medium-term policy documents intended to help the country achieve its Millennium Development Goals for 2015, with a national economic empowerment and development (NEEDS) highlighting economic development in its own ' Vision 2020 ' driven by private sector, with agriculture playing a key role.

These reforms aim to make Nigeria one of the world's 20 largest economies by 2020, which means supporting existing domestic production for agriculture. Other policies by the government includes; the Agricultural Credit Guarantee Scheme Funds (ACGSF), National Accelerated Food Production Project (NAFPP), Green Revolution (GR), Operation Feed the Nation (OFN), Root Tuber Expansion Projects (RTEP) etc. (Abolagba, Onyekwere, Agbonkpolor and Umar, 2010; Isola et al, 2015; Babajide et al, 2015).

Modern growth theory opined that the banking system's intermediation role is key to achieving sustainable growth and development for both developed and developing economies. The question then is, has bank credit facilities able to significantly impact on agricultural output in Nigeria? Answering this question is the core objective of the current study. The study also want know whether or not, a significant relationship exist between commercial bank rate and commercial bank lending to agricultural section in Nigeria. It is also the intent of the study to examine the relationship between government facilities to agriculture proxy by the Agriculture Credit Guarantee Scheme loan and agricultural productivity in Nigeria.

The remaining of this study is structured in the following way: Section two focused on the review of literature, section three on methodology and section four on results, while section five presents the conclusion of the study.

2. Literature Review

2.1 Theoretical Framework

The theory that governs this work is rooted in the financial liberalization framework that emphasizes the important of deregulation and free market model in attaining economic growth. This is premised on the fact that government intervention by a way of interest rate control, selective credit allocation among others induces a negative feedback on growth (Merlinda and Nash, (2004); Rajan and

Zingalas (1996); Stightz and Weiss (2010). Mckinnon and Shaw (1973) opined that to attain improved overall savings and investment efficiency as well as sustainable growth, the free market should determine credit allocation mechanism within the context of liberalized financial system Lawal et al 2016; Stiglitz and Weiss (2010). Extant literature exist on the relationship between bank lending and agricultural output both in the developed and developing economies. While some studies like Enang &Frances (2011); Afangideh, (2010) have established the positive impact of bank credit on agricultural output, some have noted that a negative relationship exist between the dual.

(2017) employed large, national farm household level data and two squared least estimation techniques to examine the impact of institutional credit lending on agricultural output for India. By calibrating the input on farm income and farm household consumption expenditure into the model, the study observed that formal credit induces upward surge in both net farm income and per capital monthly household expenditure in India.

The study concluded that bank credit facilities indeed drives increases in agricultural output for India (see also Gautam & Ahmed (2019) Mandel and Seydl (2016), Luan & Bauer (2016).

For some selected Sub-Saharan African economies, Adjognon, Liverpool–Tasie and Reardon (2019) employed recent nationally representative data to examine the impact of bank credit facilities on agricultural output. The study equally observed the sources of input financing. The result shows that bank credit has no impact on agricultural output, and that farm input are essentially product of farm holders savings derived from alternative sources and not bank credit (see also Julien, Bravo-Ureta and Rada (2019); Michalek, Ciaian and Pokrivcak 2018) (**)

3. Materials & Methods

The study data comprises monthly data from publications of the Statistical Bulletin (various issues) of the Central Bank of Nigeria for data covering 1981-2017. We employed the Augmented Regressive Distributed Lag (ARDL) to analyse our data (see Ayopo, et al, 2015; Ayopo, et al, 2016a; 2016b; Lawal et al, 2017a; 2017b; Fashina et al, 2018).

3.1 Model Specification

The model is specified as below:

AGDP= f(CBCA, AGSCF, INT, , GREA) (1)

Where;

$AGDP_t$ = Gross Domestic Product of Agricultural Sector

AGSCF = Agricultural Credit Guarantee Scheme

CBCA = Commercial Banks' Credit

INT= interest rate on commercial bank credit to agriculture

GREA=government recurrent expenditure on the agricultural sector

We regressed Equ(1) as follows:

$$\mathrm{AGDP_t} = \alpha + \beta_t \mathrm{INT} + \beta_1 \mathrm{ACG} + \beta_2 \mathrm{CBC_t} + \mathrm{GREA_t} + \mu_t \quad (2)$$

Where α and β_1 are the coefficients of the parameter, other variables remains as earlier stated.

3.2 Method of Data Analysis

The study employed the ARDL (AUTO REGRESSIVE DISTRIBUTED LAG) co-integration bounds test for stationary testing, unit root test for stationarity that determined the long run relationship and to achieve the study's objectives. The ARDL co integration test was also employed to ascertain the hypothesis of this research work.

4. Results and Discussions

4.1 Introduction

This chapter contains the analysis and representation of data. It shows the empirical analysis of the study which examines the roles of commercial bank in agricultural growth in Nigeria from 1981-2017.

In other to achieve the objectives of this study, the following methods were employed, Unit root test, and Autoregressive distributed lag (ARDL) bounds test.

The variables that were examined on the course of the analysis include: Agricultural gross domestic product (AGDP), Commercial Bank credit to the agricultural (CBCA), Agricultural credit grant scheme fund (AGSCF), interest rate (INT), Government recurrent expenditure on the agricultural sector (GREA).

4.2 Presentation and Analysis of Result

4.2.1 Unit Root with Break Point

Variables	Critical Values at 1%	Critical Values at 5%	Critical Values at 10%	Adf Stat at Levels	Adf Stat at 1st Diff	Order of Integration
AGDP	-5.35	-4.86	-4.61	-23.69	-	I(0)
CBCA	-5.35	-4.86	-4.61	-2.25	-7.66	I(1)
AGSCF	-5.35	-4.86	-4.61	-4.14	-7.15	I(1)
INT	-5.35	-4.86	-4.61	-7.12	-	I(0)
GREA	-5.53	-4.86	-4.61	-6.99	-	I(0)

H_0: series are not stationary
H_1: series are stationary

Source: Authors computation using Eviews 10

Decision rule: Reject H0 if the statistics for the test are greater than the critical value. The above table consists of a combination of stationary I(0) and non-stationary I(1) data. From the above table, the variables are combined with stationary I(0) and first difference I(1) data. Based on the above table, the most suitable technique is the ARDL co integration test

4.2.2 ARDL Co-Integration Bounds Test

Since the variables are I(0) and I(1), the ARDL limit test is most suitable as shown in table 4.1.0. We use the autoregressive distributed lag (ARDL) model, amongst other techniques suitable for cointegration.

Variables	Coefficient	Standard Error	T- Statistic	Prob
CBCA	2.30E-06	0.000607	-0.03796	0.9970
AGSCF	0.037529	0.022478	1.669573	0.1260
INT	-0.010535	0.003671	2.869623	0.00167
GREA	0.005676	0.003841	1.477960	0.1702
ECM	-0.791994	0.039640	-19.97951	0.0000

Source: Author's Computation using Eviews 10

From the table above AGSCF, and GREA shows a positive and insignificant relationship that is an increase in any of these variables will increase the dependent variable AGDP but not a significant increase. INT show a negative and significant relationship that is an increase in this variable will increase the dependent variable significantly. Whereas CBCA shows a positive but not significant relationship that is an increase in this variable will decrease the dependent variable but not

significantly.

The ARDL ECM which is the co-integrating equation is given as -0.791994 and the probability value is less than 5% significance level. This shows the speed of adjustment from the short run to the long run. In other words, 79.1% disequilibrium is adjusted in the next period. The long run coefficient needs to be negative and significant but from the above, its value is positive and as such is not significant. It can therefore be observed that there is a short run relationship between the variables.

4.2.3 F Bounds Test

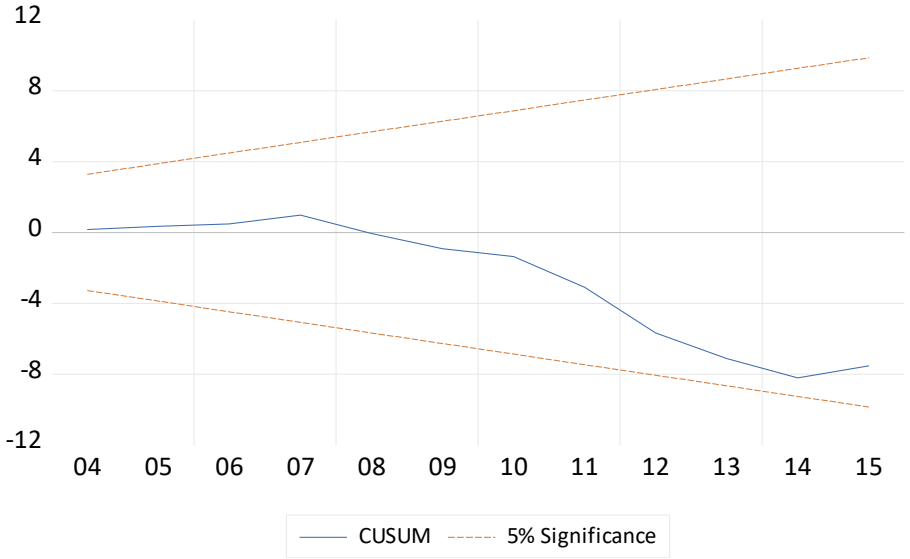
F-statistic value	Significance	I(0)	I(1)	Decision
44.3	10%	2.2	3.09	Long run relationship
	5%	2.56	3.49	Long run relationship
	2.5%	2.88	3.87	Long run relationship
	1%	3.29	4.37	Long run relationship

Source: Author's computation Eviews 10

The table shows the result of the ARDL Bound Test which indicates the existence of a long run relationship between the variables in the model. A long run relationship is said to exist if the value of the F-statistics which in this case is given as 44.3 is greater than the value of the upper bound. From this we can deduce that a long run relationship exist in the model since the value of the F-statistics surpasses the value of the upper bound at all level of significance.

4.3 Residual Diagnostic Test

4.3.1 Stability Test



The graph above uses the combined residual residual cumulative sum (CUSUM) parameter stability test to evaluate the stability of parameters, and the estimates show the stability of the parameter, since the CUSUM plot falls within critical limits at the significance level of 5 %.

4.3.2 Heteroskedasticity Test (ARCH)

Variables	Value
F-statistics	0.006264
Obs. R-squared	0.006710
Prob. F (1, 28)	0.9375
Prob. Chi-square	0.9347

Source: Author's Computation using Eviews 10

The above table demonstrates that the prob.chi-square is 0.9347 which exceeds 0.05, so the null hypothesis of heteroscedasticity is accepted.

4.3.3 Serial Correlation Test

Variables	Value
F-statistics	1.824577
Obs. R-squared	9.710902
Prob. F (2, 8)	0.2224
Prob. Chi-square	0.0078

Source: Author's Computation using Eviews 10

The above table shows the result of the Breuch-Godfrey Serial Correlation Test. The above table shows the Prob. Chi-square value 0.0078 which is less than 0.05. Given the circumstance, we shall reject the null hypothesis which says that there is no serial correlation between the variables in the model.

5. Conclusion and Recommendation

5.1 Conclusion

This study examined the impact of commercial banking lending on agricultural productive and growth in Nigeria based on data sourced from 1981 to 2017. We employed the augmented regressive distributed lag (ARDL) to analysis the data within the concept of financial liberation framework. Our results shows that though a positive relationship exist between agricultural output and each of agricultural sector credit guarantee scheme fund and the government recurrent expenditure on the agriculture sector, the relationship is not significant. The result also shows that a positive but not significant relationship exists between commercial Bank credits to agricultural output, and that a negative but significant relationship exists between interest rate and agriculture output. The implication is that increase in commercial bank lending has not been able to induce positive growth in the agricultural output in Nigeria. This development could be resulting from negative impact of interest rate as the proceeds from commercial bank lending are eroded by increase in interest rate. The results provokes insightful thinking on the role of commercial bank lending in advancing agriculture output in Nigeria. The following recommendations are made.

5.2 Recommendations

From the results obtained in the study, the authors recommend that:

- ✓ Interest rate should be lowered;
- ✓ Bank credit to farmers should be broaden to accommodate more farm holders;
- ✓ Credit policy of the ACGS should be reviewed in order to impact positively on agriculture.

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Research Article

The System of Procedural Groundings to Stay Criminal Procedure in Legislation of the Russian Federation

Igor Olegovich Antonov[1]

Andrey Yurievich Verin[1]

Marina Evgenievna Klyukova[1]

Shagieva Rozalina Vasilievna[2]

[1]*Kazan Federal University, Kazan, Russia*
[2]*State University of Management, Moscow, Russia*

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Abstract

The optimization of individual institutes of criminal procedure legislation contributes to the improvement of domestic criminal proceedings as a whole. One of the most important activities of the legislative bodies in this area is the further rationalization of the criminal case at each stage of the criminal process in accordance with the Russian legislation on the appointment of criminal proceedings. To date, this kind of optimization is impossible without an analysis of established practice and the development on its basis of proposals to improve the institution of suspension of criminal proceedings. In turn, the key place in this legal institution is occupied by the system of procedural grounds for the suspension of criminal proceedings. A balanced, well-thought-out and scientifically justified activity of legislative bodies in this area predetermines the reduction of the risks of reducing the level of protection of the rights and legitimate interests of participants in criminal proceedings. In addition, qualitatively new approaches to solving this problem, improvement of existing and introduction of new procedures in the mechanism of implementation of the Institute of suspension of criminal proceedings can change in a positive way the investigative and judicial practice, minimizing the possibility of artificial (unreasonable) delay of criminal proceedings and adoption of a final decision on it.

Keywords: *Criminal Proceedings, Ground, Suspension of Proceedings, Party to the Process, Criminal Case, System of Grounds, Procedural Decision*

1. Introduction

The basis for any procedural decision in criminal proceedings is evidence that establishes the existence of certain circumstances. In order to make a decision to suspend the criminal proceedings, the interrogating officer, investigator, and judge must also make sure that there is sufficient evidence to confirm the existence of objectively temporary obstacles to legal proceedings and there are no conditions that do not allow it to be accepted. The problem of developing a system of grounds for suspension of criminal proceedings, its optimality and sufficiency for making an appropriate decision to this day remains under discussion, because and under the current Code of Criminal Procedure of the Russian Federation has not found its unambiguous solution.

2. Methods

The methodological basis of our study was, first of all, the fundamental dialectic method of cognition of social and legal phenomena in the field under consideration, analysis methods, as well as system-structural and logical-legal methods. During the study, statistical and comparative legal methods were used, which made it possible to identify the prevalence of the application of the rules governing the suspension of criminal proceedings in legal proceedings.

The key to the study was a method of analyzing judicial investigative and prosecutorial and supervisory practice regarding the suspension of criminal proceedings. Thus, according to the data of the Judicial Department under the Supreme Court of the Russian Federation for 2018, out of 88,701 pending criminal cases, 9,161 criminal cases were suspended, of which 7,792 criminal cases were connected with the search; in connection with a serious illness - 749 criminal cases (Forensic statistics for 2018).

One of the means of studying legal phenomena is considered to be the comparative legal method, since the need to analyze foreign experience in the regulation and application of the institution in question remains relevant for its use in Russia, which predetermined our interest in a wide range of foreign studies in this area. Among them are the works of such scientists as: A. L-T Choo (Choo, 2008), J. Harris (Harris, 2005), H. McDermott (McDermott, 2016), J. McLachlan (McLachlan, 1990), K. Roach (Roach, 1997), J.R. Spencer (Spencer, 2014).

3. Results and Discussion

In the literature, the suspension of criminal proceedings is reasonably associated with the onset of circumstances that impede further criminal proceedings in the usual manner (Ibragimova, 2012). The system of grounds for suspension of proceedings in a criminal case in the legislation of Russia includes two subsystems - grounds for suspension of proceedings at the preliminary investigation stage and grounds for suspension of proceedings at judicial stages.

The system of grounds for suspending the proceedings at the preliminary investigation stage is presented as follows: 1) the person to be brought in as an accused has not been established; 2) the accused fled the investigation or his whereabouts have not been established for other reasons; 3) the location of the accused is known, but there is no real possibility of his participation in the criminal case; 4) a temporary serious illness of the accused, certified by a medical certificate, impedes his participation in the proceedings.

The position of the legislative bodies, according to which it is possible to suspend criminal proceedings at the preliminary investigation stage due to the temporary absence of not only the accused, but also the suspect in the process, since both are the objects of criminal prosecution, equally entitled to protection, the temporary inability to participate in the process of which prevents the proceedings, should be commended.

The Criminal Procedure Code of the Russian Federation found a new legislative basis for the suspension of criminal proceedings - the whereabouts of the suspect or the accused is known, but there is no real possibility of their participation in the criminal case (Clause 3 of Part 1 of Art. 208 Code of Criminal Procedure). But the legislative bodies do not explain what situations should be regarded as the lack of a real possibility of participation of the accused in a criminal case. This uncertainty of the criminal procedure law causes difficulties in law enforcement practice and has led to a variety of opinions on this issue in the literature (Klyukova, 1990).

The analysis of the legislation of the CIS countries regulating the considered basis of suspension of criminal proceedings shows that the legislative bodies of these countries define its content differently. In some cases, it is limited to a specific list of circumstances objectively preventing the accused from participating in the case (Code of Criminal Procedure of the Republic of Kazakhstan, Art. 45). In others, he connects the suspension on this basis with a non-exhaustive list of objective obstacles that exclude the real possibility of the accused participating in the criminal case (Code of Criminal Procedure of the Republic of Belarus, clause 3, part 1, Art. 246). Such an approach when formulating the grounds under consideration seems more preferable in view of the variety of circumstances that may temporarily prevent the accused from participating in the proceedings due to either his prolonged physical absence or the presence of procedural obstacles.

In this regard, it seems necessary to supplement Art. 5 of the Code of Criminal Procedure of the Russian Federation with a definition disclosing the content of such a thing as “the absence of a real possibility for a suspect or accused to participate in a criminal case”.

The basis for the suspension of criminal proceedings has changed due to illness of the suspect or accused. In formulating this ground, the legislative bodies do not distinguish between the illness of the suspect or the accused, which may lead to a decision to suspend criminal proceedings, and mental or other serious, but only a temporary serious illness, certified by a medical report. Given that in accordance with Art. 196 of the Code of Criminal Procedure of the Russian Federation, both the mental and physical condition of the suspect, the accused, when there is doubt about his sanity or ability to independently protect his rights and legitimate interests in criminal proceedings, must be certified by a forensic report, then this is the procedure for confirming the presence of one or another disease should be provided for by criminal procedure law. At the same time, the problem of developing and legislatively fixing clear criteria for the disease, which should determine the decision to suspend criminal proceedings, remains relevant.

The range of circumstances included in the system of grounds for suspending criminal proceedings in the judicial stages of the process is somewhat different than in the preliminary investigation stage.

According to the Article 238 of the Code of Criminal Procedure of the Russian Federation, suspension of a criminal case in preparation for a court hearing, which is carried out in this case in the form of a preliminary hearing, is possible: 1) if the accused has disappeared and his place of residence is unknown; 2) in case of a serious illness of the accused, if it is confirmed by a medical report; 3) if the court sends a request to the Constitutional Court of the Russian Federation or the Constitutional Court of the Russian Federation accepts a complaint regarding the compliance of the law applied or to be applied in this criminal case with the Constitution of the Russian Federation; 4) in the case where the whereabouts of the accused is known, but there is no real possibility of his participation in the trial.

At the same time, the legislative bodies introduced an addition that paragraphs 1 and 4 of part 1 of Article. 238 of the Code of Criminal Procedure of the Russian Federation are not applied if there is a request from one of the parties to conduct in exceptional cases criminal proceedings on serious and especially serious crimes in the absence of a defendant who is outside the territory of Russia and (or) avoids appearing in court if this person It was not brought to justice in the territory of a foreign state in this criminal case.

In addition, the legislature provides for the possibility of a preliminary hearing in the absence of the accused at his request. Therefore, Art. 238 of the Code of Criminal Procedure of the Russian Federation can quite logically be supplemented by the provision that the grounds for suspension of criminal proceedings that are connected with the absence of the accused in the process for objective reasons are not applicable provided that the defendant has filed a corresponding request for a preliminary hearing in his absence. In this case, the proceedings at this stage also, in our opinion, should be continued, and not suspended.

In the light of the new rules of the code of criminal procedure, it seems unjustified from a practical point of view to mention by the legislative bodies of a serious disease as the basis for the suspension of proceedings at this stage. As mentioned above, in accordance with paragraph 3 of Part 1 of Art. 196 of the Code of Criminal Procedure of the Russian Federation, the accused’s mental and physical condition, when there is doubt about his ability to independently defend his rights and legitimate interests in criminal proceedings, is necessarily certified by the conclusion of a judicial examination, the production of which is impossible at the stage of preparation for the trial.

Only for the considered stage is characterized by the basis of suspension of criminal proceedings, not related, as it was previously in the tradition of legislative bodies, with the absence of the accused in the process, namely – the direction of the court of the request to the constitutional Court of the Russian Federation or the adoption by the Constitutional Court of the Russian Federation to consider the complaint about the compliance of the law applied or to be applied in this criminal case, the Constitution of the Russian Federation.

There are different points of view on the basis of the suspension of proceedings. So, some authors believe that this reason for the suspension of the proceedings should be preserved in the

form in which it exists in the current Code of Criminal Procedure and it is not necessary to include it in the preliminary investigation stage (Popov, 2004). Others, on the contrary, justifiably believe that the suspension of criminal proceedings in connection with a court decision to appeal to the Constitutional Court of the Russian Federation or the adoption by the Constitutional Court of the Russian Federation of a complaint regarding the compliance of the law applied or to be applied in this criminal case with the Constitution of the Russian Federation is an independent basis for the suspension of criminal proceedings at any stage of criminal proceedings (Kochetova, 2006; Pavlik et al., 2012). It seems that a citizen has the right to file a complaint with the Constitutional Court of the Russian Federation at any stage of criminal proceedings. In connection with the foregoing, it seems possible and necessary to extend this basis for the suspension of criminal proceedings to other stages of the criminal process, where the institution of suspension of criminal proceedings is provided.

The system of circumstances that are the basis for the suspension at the trial stage, according to the Code of Criminal Procedure of the Russian Federation, includes the following situations: a) the accused disappeared; b) the presence of a mental disorder or other serious illness of the accused, excluding the possibility of his appearance. In accordance with Part 4 of the Article 247 of the Code of Criminal Procedure of the Russian Federation, a trial may be allowed in the absence of the defendant if, in a criminal case of a crime of small and medium gravity, the defendant seeks to consider this criminal case in his absence, which, of course, must be taken into account when deciding on the necessity and possibility of suspending the trial proceedings due to the disease of the defendant. The legislature has rightly distinguished between mental illness and other serious illness. It seems that the same context of this foundation should be laid down in the previous stages considered, since The need has long been ripe for developing a unified approach to the criteria of the disease, which entails the suspension of proceedings, regardless of the stage of criminal proceedings.

At the same time, it seems unreasonable that the legislative bodies did not provide at the trial stage as a basis for the suspension of proceedings in the case when the location of the accused is known, but there is no real possibility of his participation in the trial, since such situations are possible at this stage of criminal proceedings.

4. Summary

As a result of our study, we conclude that the system of grounds for suspending criminal proceedings established in generally corresponds to modern legal realities.

The system of grounds for suspension of proceedings in a criminal case in the legislation of Russia includes two subsystems - grounds for suspension of proceedings at the preliminary investigation stage and grounds for suspension of proceedings at judicial stages.

At the stage of preliminary investigation, the legislative bodies found quite reasonable solutions to a number of procedural problems caused by the implementation of the institution of suspension of criminal proceedings.

It seems logical that the decision of the legislative bodies to extend the action of the analyzed procedural institution not only to the accused, but also to the suspect. At the same time, certain procedural rules of this institution do not look quite convincing. For example, the introduction of such a reason for suspension as the absence of a real possibility for a suspect or accused to participate in a criminal case, when their whereabouts are known, creates uncertainty for the law enforcer, because the legislator did not explain exactly what situations can be considered as such. At the same time, the problem of developing and legislatively fixing clear criteria for the disease, which should determine the decision to suspend criminal proceedings, remains relevant.

The subsystem of grounds for suspending criminal proceedings in the judicial stages of the process, in turn, can be divided into grounds for suspending the proceedings in preparation for the trial and grounds for suspension at the trial stage.

Analyzing the grounds for suspension of the criminal case at the stage of preparation for the trial, one should proceed from the logic of the legislator, which provided for the possibility of holding a preliminary hearing in the absence of the accused at his request. In this regard, it seems

necessary to supplement Art. 238 of the Code of Criminal Procedure of the Russian Federation can quite logically be supplemented by the provision that the grounds for suspension of criminal proceedings that are connected with the absence of the accused in the process for objective reasons are not applicable provided that the defendant has filed a corresponding request for a preliminary hearing in his absence. Accordingly, production in this situation should be continued, and not suspended.

Our analysis of the system of grounds for suspension of proceedings in a criminal case allows us to substantiate the proposal on the need to disseminate such grounds for suspension of proceedings in a criminal case as sending a request to the Constitutional Court of the Russian Federation or acceptance by the Constitutional Court of the Russian Federation for consideration of a complaint about the conformity of the law applied or to be applied in this criminal case, the Constitution of the Russian Federation and at other stages of the criminal process in which the institution of suspension of proceedings is applied wa in a criminal case.

The legislative bodies, quite rightly, in formulating the grounds for the suspension of the criminal case in relation to the stage of the trial, distinguished between mental disorder and other serious illness. It is advisable to develop a unified approach to the criteria for illness, both mental and other serious, entailing precisely the suspension of criminal proceedings, regardless of the stage of criminal proceedings in which the relevant decision is made.

5. Conclusion

Thus, the current legislation has significantly changed approaches to the legal regulation of the institution of suspension of proceedings in a criminal case as a whole and, in particular, the grounds for suspension of proceedings in a criminal case, expanding their list and filling a number of them with new content, which, of course, requires further study and reflection. At the same time, there is a potential for further improvement of the legislation with respect to the system of grounds for suspending criminal proceedings. The realization of this potential will, on the one hand, increase the level of protection of the legal rights and interests of participants in criminal proceedings, and, on the other hand, reduce the likelihood of artificially delaying criminal proceedings.

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Research Article

Analysis on Admissibility of DNA Evidence in Malaysian Syariah Courts

Ahmad Azam Mohd. Shariff[1]

Alias Azhar[2]

Ramalinggam Rajamanickam[1]

Nazura Abdul Manap[1]

Safinaz Mohd Hussein[1]

Muhamad Helmi Md. Said[1]

Asma Hakimah Ab Halim[1]

Ruzian Markom[1]

[1]*Faculty of Law, UKM, Malaysia*
[2]*School of Law, UUM, Malaysia*

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Abstract

Qarinah is a kind of evidence which could be tendered in syariah courts' during trials. Syariah scholars and academicians have long acknowledged and recognized the unique and important role played by qarinah in syariah court proceedings. General acceptance, relevancy and admissibility of qarinah evidence have become the catalyst for admissibility on DNA evidence within the syariah legal fraternity. Amidst the relevancy and admissibility of DNA evidence under the current syariah legal provisions, ongoing debates on its application are brewing among contemporary academicians. Indeed, these debates stems from current legal provisions which are still underdeveloped. This article examines the admissibility of qarinah as well as DNA evidence in the light of the relevant provisions under the Malaysian Syariah Court Evidence Enactment. The research on which this article is based is qualitative and doctrinal in nature. All materials and information are analyzed through methodologies of content analysis and critical analysis. The article then looks into lacunas and gaps in the Malaysian Syariah Court Evidence Enactments as well as the Syariah Criminal Procedures Enactments and suggests on how to improve them.

Keyword: *qarinah, DNA evidence, hudud cases, qisas cases, ta'zir cases, proof, syariah trials*

1. Introduction

Admissibility of forensic evidence is not alien to the modern legal world. Forensic evidence is often tendered in court trials in countries which enforce man-made law. The United Kingdom and the United States of America, to name a few, are exemplary countries which have demonstrated significant developments in the area of forensic evidence.

Malaysia adopts a dual legal system of civil and *syariah*. In Malaysia, positive developments and evolutions could be witnessed too in the area of forensic science. Inevitably, such developments and evolutions have triggered intriguing developments and applications of forensic

evidence in civil and criminal trials in the Malaysian civil courts. One of the well-known areas of forensic evidence which has witnessed positive developments in the Malaysian civil courts is *deoxyribonucleic acid* evidence which is well known as DNA evidence. Indeed, DNA testing, which is one of the achievements of the development of science and technology, is now being tendered as evidence in the Malaysian civil courts as corroborative evidence. Its corroborative evidence and value are presented in trials via the tendering of physical exhibits, as well as through the testimony of expert witnesses. Although the Malaysian development on DNA evidence is not actually parallel to that of their foreign counterparts, it is nonetheless progressing.

While the basic issues of relevancy and admissibility of DNA evidence at the Malaysian civil courts are somewhat settled amidst further refinement on the intricacies of its application, the basic issues on the relevancy and admissibility of DNA evidence at the Malaysian *syariah* courts remain very much open and debatable. It is pertinent to note that while relevancy and admissibility of *qarinah* and DNA evidence have been more or less accepted by the related *syariah* legal provisions as well as by the Malaysian *syariah* legal fraternity (amidst some dissenting views and resistance from some), the related basic legal principles regarding both are very much under-developed, fragile and in need of further refinement (Azam, 2012).

Hence this article focusses on the issue of relevancy and admissibility of DNA evidence in the Malaysian *syariah* courts. In doing so, the article discusses on the relevancy and admissibility *qarinah* in the light of relevant legal provisions under the Malaysian *Syariah* Court Evidence Enactment. Based on such *qarinah* relevancy and admissibility, the article then points out the relevancy and admissibility of DNA evidence in the Malaysian *syariah* courts as agreed upon by many contemporary academicians. However, the article acknowledges the need for further refinement of legal principles pertaining to *qarinah* evidence. It eventually identifies the lacunas and gaps in the current provisions in the Malaysian *Syariah* Court Evidence Enactments and *Syariah* Criminal Procedure Enactments suggest ways on improving the current legal provisions in ensuring smoother application of principles on *qarinah* and DNA evidence.

2. Some Terminologies Used in This Analysis

To add clarity to the ensuing discussion and debate, the article would like to explain on some of the terminologies used throughout the article:

- *Allah*- God believed by in oneness and singularity all Muslims.
- the *Quran*- The words of *Allah* containing the way of life as firmly believed by the Muslims. Its adjective is *Quranic.*
- the *Sunnah*- The guidance taken from the Holy Prophet in forms of his words, approvals or disapprovals. It is also known as *Hadith*.
- *hudud*- The seven criminal cases which definitions and punishments have been specifically defined and determined by *Allah* in the *Quran* and the *Sunnah*. *Hudud* cases are adultery, defamation of adultery, drinking wine, theft, robbery, apostacy and waging war against an Islamic government.
- *qisas*- Criminal cases other than those of *hudud* cases. Cases that fall under this category would be all types of offences against human's life and body. Crimes such as murder or causing grievous hurt would fall under the category of *qisas* cases and the definitions as well as punishments for each type of offence have also been specifically defined and determined by *Allah* in the *Quran* and the *Sunnah.*
- *ta'zir*- Criminal cases which fall out of the ambit of *hudud* and *qisas*. Generally speaking, *ta'zir* offences and punishments are not clearly set out in the *Quran* or the *Sunnah*. As such the enactments as well as punishments of such offences are to be determined by the government in administration according to local customs and practices. Normally, *ta'zir* punishments are lighter than that of *hudud* and *qisas* punishments although sometimes it could be just as severe, depend on the seriousness of the crime committed.
- *fuqaha'/ulama'*- A group of jurists who are experts in *syariah*/Islamic principles.
- *qarinah*- A form of evidence or any fact in issue or any relevant fact taken from the

circumstance of a particular case.

- *yaqin*- Beyond any doubt. Such quantum of proof needs to be fulfilled by the prosecution at the end of the case before the court decides on whether or not the accused is guilty.
- *zan al ghalib/ghalabah al zan*- A possibility which is akin to the truth. This quantum of proof needs to be satisfied by a party in a non-criminal case. As such the quantum is higher than that of 'balance of probabilities', a quantum of proof determined in modern contemporary civil cases. Some argues that the said quantum of proof is also set out for the prosecution in conviction of the accused in *ta'zir* cases.
- *syariah* courts- Courts administering *syariah* or Islamic laws.
- *qiyafah*- A method of proving paternity by way of examining and comparing resemblances and similarities between one's feature over the other.
- *li'an*- The process of oaths taken by both parties in denial of adultery or one's status of being born out of wedlock.
- *nasab*- The paternity of a person.
- *hadhanah*- Custody of a child or children.
- *syahadah*- An oral testimony of a witness which fulfils all the necessary conditions.
- *iqrar*- A confession made by an accused in a criminal prosecution.
- *qaul qadim*- The old Islamic/*syariah* school of thought.
- *qaul jaded*- The new Islamic/*syariah* school of thought.
- *'urf*- Common practices which are in tandem with *syariah*/Islamic principles.
- *mal*- cases which are non-criminal in nature.
- *ra'yu al-khabir*- testimony by experts

3. Research Methodology

The article is built on a research design which is of legal and qualitative in nature. That being so, the research uses library research as well as interviews as methods of gathering data and information on *qarinah* and DNA evidence. Such library data and information are gathered from the *Quran*, *Sunnah* of the Prophet as well as other sources like books, articles, legal provisions and reported cases. In terms of interviews, this research gathers data and information on *qarinah* and DNA evidence through semi-structured as well as non-structured interviews (Anwarul Yaqin, 2007) of various experts in the fields of *qarinah*, DNA evidence as well as *syariah* legal provisions. This study also uses primary and secondary data.

As far as analysis is concerned, methods of content analysis, critical analysis as well as observations are used. The contents of these data and information, gathered from legal provisions, cases as well as other library sources, are carefully and critically analysed (Ramalinggam Rajamanickam et al., 2015). Often, such content analysis and critical analysis techniques involve authentic and creative process of stating, interpreting and clarifying existing laws on legal issues (Mahdi Zahraa, 1998). On the matter at hand, existing laws and legal issues on *qarinah* and DNA evidence are critically analysed. Meanwhile, gathered data and information from interviews are also directly analysed, sometimes using observation techniques of analysis. (Anwarul Yaqin, 2007).

4. *Qarinah* Evidence: Relevancy and Admissibility in the Eyes of *Syariah* Evidential Principles

Qarinah in its literal meaning means signs or things that indicate something (Ahmad Fathi Bahnasi, 1989). Al-Sayyid Sabiq states *qarinah* as a sign that triggers belief, which could become evidence and forms legal basis (Al-Sayyid Sabiq, 1994). Abdul Karim Zaydan defines *qarinah* as signs or proof which are circumstantial in nature that could be used as evidence of conviction or denial (Abdul Karim Zaydan, 1998). According to Wahbah al-Zuhayli, *qarinah* signifies signs connected to hidden or unknown facts. He further explains that such circumstantial signs help to establish and ascertain the truth or falsehood of any disputed fact (Wahbah al Zuhayli, 1989). Clearly *syariah* evidential principles uphold the relevancy and admissibility of *qarinah* as evidence and proof in

syariah mal and criminal cases.

The traditional *syariah* evidential principles view *qarinah* evidence as relevant and admissible in *mal* cases as well as in *syariah* criminal cases of *ta'zir*. Some *ulama'* from the Sunni school of thought, such as Ibn Qayyim, have even stretched out the said relevancy and admissibility to *hudud* and *qisas* cases. Such a strong acceptance of *qarinah* evidence stems out from its strength and accuracy (Azam, 2012).

Such approval is clearly based on a string of authentic *Quranic* verses. Surah Yusuf, verse 18, reads as follows:

> *"They stained his shirt with false blood. He said, Nay, but your minds have made up a tale (That may pass) with you. For me patience is most fitting: against what you assert, It is Allah (alone) Whose help can be sought."*

In the above verse, the Prophet Yaacob was not fooled by the effort made by the perpetrators when they smeared the blood of a goat on Prophet Yusuf's clothes. He could actually see through the smearing of the false blood as circumstantial signs or *qarinah* of the perpetrators trying to hide the truth that Prophet Yusuf was still alive and not dead.

In another *Quranic* verse, Surah Yusuf, verses 25-29, Allah SWT says to the following effect:

> *"So they both raced each other to the door and she tore his shirt from the back: They both found her lord near the door. She said: What is the (fitting) punishment for one who formed an evil design against Thy wife, but prison or a grievous chastisement? He said: It was she that sought to seduce me from my true self. And one of her household saw this and bore witness, (thus) If it be that his shirt is rent from the front, then is her tale true, and he is a liar. But if it be that his shirt is torn from the back, then she is the liar, and he is telling the truth. So when he saw his shirt that it was torn at the back, Her husband said: Behold! It is a snare of you women. Truly mighty is your snare!"*

In the second section of Surah Yusuf, it was clear that there were circumstantial signs or *qarinah* that Zulaikha was the one who was assaulting Yusuf and not the other way round. This was because Yusuf's clothing was torn at the back and not at the front, proving that Yusuf was trying to escape from Zulaikha's assault on him.

Besides the above verses of Surah Yusuf, there were many *Hadith* or *Sunnah* of the Prophet SAW which approves *qarinah* as evidence and proof. One of such examples is when the Prophet SAW used *qiyafah,* a method of proving *nasab* or paternity by way of examining and comparing resemblance and similarities between features of one over another. *Qiyafah* is actually the process of establishing someone's paternity based on *qarinah* or circumstantial evidence (Mohd Munzil et.al, 2015).

The above *syariah* evidential principles as well as *Quranic* verses and *Hadith* prove that *qarinah* is relevant and could be tendered as evidence in *syariah* court trials. The *ulama'* also agree in saying that only strong *qarinah* or *qarinah al zahirah* could be admitted as evidence in *syariah* proceedings. Majority of the *ulama'* are in agreement on this (Azam et.al, 2015).

Following the above admissibility of *qarinah* as evidence by the *syariah* evidential principles, the Malaysian *Syariah* Court Evidence enactments have followed suit in providing for the relevancy and admissibility of *qarinah* or circumstantial evidence in *syariah* court proceedings. These provisions on such relevancy and admissibility are in tandem with the majority approval by the *ulama'* such as Ibn Qayyim, Abdul Karim Zaydan, Ahmad Fathi Bahnasi and many others. The effect of these legal provisions from the states' enactments is that *qarinah* or circumstantial evidence may become relevant, adduced and admitted during *syariah mal* and criminal proceedings (Ruzman, 1993; Ruzman, 1995; Azam et.al, 2015; Abdul Karim Zaydan, 1997).

In Malaysia, DNA evidence has been widely adduced and admitted in the civil courts. Meanwhile, some *syariah* court judges have also begun admitting DNA as a type of *qarinah* in cases of *nasab* confirmation, in determining issues regarding inheritance and child care or *hadhanah*. Some *syariah* courts have even accepted DNA evidences in *syariah* criminal cases of *zina* or forbidden intercourse. Among the early syariah cases which admit DNA evidence as *qarinah* is *the Syarie Prosecutor of Sabah v Rosli bin Abdul Japar* (23/2 JH 237, 2007). Despite such

periodic and occasional acceptance by *syariah* courts and judges, some critics within the *syariah* legal fraternity remain sceptic of admitting such evidence.

5. The Malaysian National Fatwa on DNA: Cautious Acceptance in Issues Relating to Child Paternity or *Nasab*

The central meeting of the National Council for the 101st Islamic Religious Affairs Fatwa Committee on September 27, 2012 discussed the use of DNA evidence to determine the *nasab* or child paternity and the duration of the implementation of *li'an* process in denying the child's *nasab*. The said central meeting made the following decisions:

> *Having examined all evidence, arguments and views, the meeting asserted that Islam is very concerned with the question of nasab and when there had been a case that nasab is denied, then the denial was not acceptable except by the method of li'an because li'an had been mentioned by the Quran , al-Sunnah and al-Ijma' and is a practice of tauhudiah.*

In the said central meeting, it is also explained that *Majma' Fiqh al-Islami* who met on 5th - 10th January 2002 (21 - 26 Syawal 1422 Hijrah) had also decided that in order to nullify the *nasab* of a child, the use of DNA evidence is disallowed in *syariah* court. Such evidence could however be used in solving other cases such as confusions in accidental child exchanges in hospitals or care centres, babies or children losses due to natural disasters, so on and so forth.

The committee in the central meeting further asserted that the *fuqaha'* only approved *li'an* method as a means of nullifying a child's *nasab* and such process should be promptly carried out. This is because should the denial process in a *li'an* was not done within the prescribed period, this could nullify the validity of the whole *li'an* itself.

The said committee also pointed out that referring to the Shafie school of thought, there are the traditional view (*qaul qadim)* and the new view (*qaul jadid)* on whether or not the denial process in *li'an* should be carried out immediately. In *qaul qadim*, Imam Shafie stipulates that such denial should occur immediately upon the birth of the baby as any delay signifies an acknowledgement and admittance of *nasab*. However, in *qaul jadid*, the denial process does not necessarily be performed immediately. According to the new view, since denial is such a significant matter, a denial takes time before a decision is taken as denial of *nasab* of a child is such a huge and important matter, the whole process may be postponed for up to three days or more should the extra delay is caused by health reasons.

In light of both views, the committee is of the opinion that a person who wishes to deny parentage of his child must be accorded a reasonable period of time before making a decision in avoidance of any possible harm. Accordingly, the committee has decided that a father who wanted to deny the *nasab* of his child may be accorded a maximum period of time, starting from the date of confirmation of the wife's pregnancy until three (3) days after childbirth. Any effort and forms of denial after such reasonable period will be rejected and the child will be adjudicated as his.

The said committee has also agreed on enforcement of more stringent DNA testing guidelines by the relevant authorities on the issue of denying *nasab* as DNA evidence is used only to corroborate a claim or denial and should not be used as the main proof.

Although the use of DNA expert evidence is gradually being adopted by the *Syariah* Court, it is proposed that for cases such as *li'an*, the Court should be forever cautious in its approach for the benefits of all concerned parties. For instance, DNA evidence should only be allowed in *li'an* cases if consents are obtained prior to the taking of DNA samples. The court must also ensure that both parties agree to use DNA evidence as proof and as basis for decision in *li'an* cases. Last but not least, the court must ensure that both parties are willing to abide by the decisions made based on the DNA evidence. It is pointed out that although the *syariah* court is not bound to accept DNA evidence as *qarinah*, its decision to accept and admit such evidence should be honoured by all (Mohamad Ridzuan bin Zainudin, 2012). According to (Mohd Zaidi, 2015), the acceptance of the DNA evidence as *qarinah* is dependent on the judge hearing a case. After all expert witnesses as well as exhibits in forms of tested samples are adduced in a *syariah* court, the judge will then

decide on whether or not to regard this evidence as relevant. Should they are deemed relevant and do not raise any doubt whatsoever, then the court may admit them.

All in all, it is observed that the Malaysian National Fatwa Council is cautiously accepting DNA evidence in matters regarding child paternity and *li'an* process.

6. The Role of DNA in Forensic Science

DNA is a major component of life. It contains sets of biological or genetic instructions that make up individual individuality. This information is also derived from one generation to another through reproductive development (National Institute of Health, 2016). All life on earth has unique DNA patterns; to make a man a human and a tiger is a tiger. DNA sources of a human or a rabbit or a tree are inherited from their mother or father or known as the parent.

A human will have a complete set of DNA chromosomes obtained by the combination of his mother's and father's. It is 23 pairs of chromosomes with each of them being from parent to absolute number of 46 pairs of chromosomes (American Prosecutors Research Institute, 2015). This set of chromosomes is lined up by millions of information about one's life as a human being. This information is known as genes. Examples of gene are like eye colour or nose shape (American Prosecutors Research Institute, 2015).

DNA could be found in the nucleus. The nucleus is located in the cell that forms the tissue and the organs. DNA could also be in the mitochondria. DNA is located in cells like white blood cells, sperm, vaginal secretion, mucosal fluid, sweat, saliva, ears, hair roots, bones, teeth and organs such as heart and liver, muscles and also skin. Under normal situations, DNA will be extracted from the nucleus and tested to obtain its sequence as comparison data. In cases such as decayed mortal samples or dead cells, extraction and testing of mitochondrial DNA is more appropriate than DNA nucleus.

In Malaysia, DNA testing is carried out by the Malaysian Chemistry Department under the Ministry of Science, Technology & Innovation (MOSTI). DNA profiling analysis is offered at the Headquarters of Chemistry Department in Petaling Jaya, as well as at its other branches at Kuching, Sarawak and Penang (Mawarni Abdul Rahman, 2015). These labs have been accredited to ASCLD-LAB® ("the American Society of Crime Laboratory Directors/Laboratory Accreditation Board") since 19 October 2005. This section has been accredited and recognized in the field of "Controlled Substances, Toxicology, Biology (Serology and DNA), Firearms/Tool marks and Questioned Documents." The Malaysian Chemistry Department is the tenth laboratory outside the United States to have obtain ASCLD-LAB certification. Such achievement proves that the forensic science service offered by the Malaysian Chemistry Department has met ASCLD-LAB accreditation requirements and is at par with other international forensic laboratories (http://www.kimia.gov.my). This recognition is significant as such accreditation proves its high degree of reliability which is globally recognised and conformity to international standards.

The Malaysian Chemistry Department in their official website of http://www.kimia.gov.my/ outlines the different types of DNA tests conducted by them, among others:

(a) DNA Paternity Test. Paternity Test means a test confirming the relationship between father and child and is usually carried out to ensure or exclude a child's biological father. Paternity test is accurate, fast and reasonably priced with an accuracy of 99.9999%.
(b) Maternity Test. Maternity Test is a DNA test that can give a confirmation related to the mother.
(c) The Ancestry Test is a test that can determine whether a person is a real grandparent to a child.
(d) Sibling Ship Test can determine the relationship between siblings.
(e) Identity Identification. This test aims to determine the identity of an unidentified individual/body.

DNA testing follows a strict controlled process and hence, guarantees result which is of highly reliable. For example, procedure for DNA Paternity Test sampling requires at least 2ml of blood sample or mouth swab (two samples from each individual) to be taken. Then the blood sample must be stored in the EDTA tube. Samples must be clearly labelled with the name/number and date

of the sample taken. All samples submitted for analysis must be accompanied by a paternity test application letter and payment for analysis. Samples must be shipped using a courier company or delivered immediately to the laboratory of the Chemistry Department (Mawarni Abdul Rahman, 2015).

7. Reliability of DNA Evidence

It has been pointed out earlier that DNA evidence has often been tendered as circumstantial evidence in criminal and non-criminal proceedings at the Malaysian civil courts. However, the same cannot be said regarding its application at the Malaysian *syariah* courts. Despite the general acceptance of *qarinah* and DNA evidence within the Malaysian *syariah* legal fraternity, tendering of such evidence at *syariah* courts have been sparse and rare in between. The *syariah* courts are now beginning to be more receptive towards such evidence as witnessed in *Syarie Prosecutor of Sabah v Rosli bin Abdul Japar* [2007] 23/2 JH 237. Indeed, such positive reception may be influenced by its crucial role in determining the truth in a trial, as well as the potential, strength and reliability of the DNA evidence itself.

DNA evidence plays a vast role in proving an identity of an individual in a court trial (Ramalinggam Ramalinggam et al., 2019). DNA evidence has been known to be tendered in cases involving identification of decayed bodies or mass deaths. DNA evidence has also been tendered in cases involving identification of paternal identity of a child or an abandoned child. Such *qarinah* has also been used in resolving the issues of *nasab* of a child for legal inheritance disputes, children being born out of wedlock as well as paternal (or maternal) identification of a child (Mawarni Abdul Rahman, 2015). In addition, DNA evidence has also been tendered in cases such as rape, murder, theft and robbery (Azam, et. al, 2015).

Inspite of the above, DNA evidence is actually capable of playing a much more crucial role in criminal trials. For instance, such evidence is also capable of identifying suspects. It could also be used to acquit them. Furthermore, DNA evidence could also assists investigating officers in identifying victims as well as any other persons who have accessed to the crime scene. In the case of *PP v Pathmanabhan Nalliannen & Ors* [2013] 6 MLRH 19 (at page 32), SP86, the Director of Forensic Division of the Chemistry Department Petaling Jaya, had extracted DNA from the blood samples taken from the zinc sheets, the cricket bat and swabs from the wall in the farm. On analysis, it was found that the DNA samples matched the samples taken from immediate family members of Sosilawati. In this case, DNA evidence has been used to identify the victim(s) of the murder.

In another case of *Public Prosecutor v Haniff Basree bin Abdul Rahim* [2004] 3 MLJ 271, DNA samples belonging to an unknown male and the deceased were found on the electrical cord and bra which were used to tie up the deceased. In addition, the hairs recovered from the deceased's bed sheet and comforter matched the DNA profile of the same unknown male. Fingernail clipping of the deceased simultaneously revealed the presence of the DNA profiles of both the accused and the unknown male which proved that the deceased had come into contact with both men. The DNA evidence was successfully adduced and admitted in court, casting doubts on the accused's guilt. It is clear that in the second case, DNA evidence has been adduced and admitted in court which has led to the accused's acquittal.

The main concept of DNA testing is to find the similarities between DNA profiles found on the scene with DNA profiles from known sources. In actual, DNA evidence are often used in proof of paternity in determination of heritage and child custody as well as investigating and determining human remains in mass disaster (Mawarni Abdul Rahman, 2015). In addition, DNA evidence is often used in identifying an individual from a biological sample left on any surface at crime scenes in search of suspects and criminals. If, for instance, the result of a DNA samples matches the result conducted on the sample of the suspect, then the similarities between the two DNA profiles could actually be used corroboratively to support other evidences in proving that the suspect is indeed the crime culprit (Azam et.al, 2015).

The earlier-mentioned potential, strength as well as reliability are generally reflected from the stringent processes of profiling, testing and determination of DNA samples. The strict DNA

sampling procedures (which results guarantee almost a 100% result in its reliability) makes DNA evidence a strong and reliable piece of evidence when adduced and admitted by the court corroboratively and in its entirety (Mohd Munzil et.al, 2015; Azam et.al, 2015). The following process illustrates the strict process that a DNA sample has to go through from the moment the investigation officer submits such sample to the Chemistry Department for DNA testing. As pointed out by the American Prosecutors Research Institute in 2015, the procedures followed by a scientist are as follows:

1. Identification the genetic profile of the biological samples (for instance, sperm remains in a rape case) obtained at crime scene;
2. Identification of genetic profile from the suspect or suspects samples;
3. Comparison between these two profiles to get a matching or difference;
4. Calculation of the statistical probability of a random individual having the same genetic profile as the genetic profile obtained from crime scene; and
5. Submission of samples and tests' results to investigation officer, enabling the prosecution to use all related DNA evidence during trial in court. Such information helps the court in determining the offender for the relevant cases.

Indeed, the unique processes of forensic investigation involving DNA profiling, testing and determination have proven that DNA evidence is indeed a reliable form of evidence and proof if tendered in *syariah* courts' proceedings. While application and tendering of such evidence is currently a rarity, its potential role and application in s*yariah* courts have never been in doubt. As such, the authors respectfully argue that its relevancy, admissibility, reliability and strength should not be questioned (Mohd Munzil et.al, 2015; Azam et.al, 2015).

8. Adducing and Tendering of DNA Evidence at *Syariah* Court through Experts

Expert opinion or known as *ra'yu al-khabir* refers to a testimony containing an opinion given by someone who is an expert in any field (Ahmah Fathi Bahnasi, 1989; Ramalinggam Rajamanickam, 2017; Ramalinggam Rajamanickam & Anita Abdul Rahim, 2014). Not only that, the testimonials conferred on scientific, technical or professional matters by qualified and authoritative experts testifying on such matters may be categorized as expert information. The expert's opinion is usually issued by those who have undergone training, specific skills or habits of a person on such matters (Mahmud Saedon, 1996). However, its application in the *Syariah* court is seen as less efficient than that of the civil court due to its limited provisions. Moreover, *syariah* cases are not as complex as cases in the civil court.

Procedure of an expert testimony testifying in the court is stated in the case of *Wong Chop Saow* [1995] MLJ 247. It was decided that "before an expert proceed to testify he shall first state his qualifications (such as academic, professional, experiential, research, writing). The expert should also state whether or not he has testified before in other cases and to what degree has his expert testimony been accepted by the Courts."

The expert witness will then proceed to testify in court in tandem with section 33 (1) and (2) of the states' *Syariah* Court Evidence Enactments. Section 33 (1) and (2) read as follows:

> *33. (1) When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity or genuineness of handwriting or finger impressions or relating to determination of nasab, the opinions upon that point of persons specially skilled in that foreign law, science or art, or in questions as to identity or genuineness of handwriting or finger impressions or relating to determination of nasab, are qarinah.*
> *(2) Such persons are called experts.*

However, when there is a discrepancy or conflicting opinions between two experts, both experts' opinions will not be admitted in court and a third expert will be summoned instead to testify in its effort to solve the said issue. Such procedure is seen in section 33 (3) of the states' *Syariah* Court Evidence Enactments:

> *33. (3) Two or more experts shall be called to give evidence where possible but if two experts are*

not available, the evidence of one expert is sufficient. If two experts give different opinions a third expert shall be called to give evidence.

Expert opinions may be given in the form of testimony of experts on forensics and scientific methods as well as results and findings of the conducted tests. Section 33 of the *Syariah* Court Evidence Enactments clearly provides the avenue for those parties to submit views from experts based on the analysis and findings from conducted scientific tests such as the DNA tests. For example, the analysis and findings from a genetic specialist may reveal the truth in the birth and paternal issues of unlawful children. Evidence based on the analysis and findings of the medical expert on injury or death of a victim can resolve a criminal case or corroborate compensation claims for any suffered injury.

In the above instances, there are three aspects of *qarinah* involved. First of all, when the expert testifies verbally in court regarding the DNA testing and scientific findings, such oral testimony of the expert becomes a *qarinah*. Secondly, every DNA sample tendered and verified by the expert would also become a *qarinah.* Thirdly, if the written report of such testing, profiling and finding is tendered in court and its content is verified by the expert, then such report would also qualify as a *qarinah*.

The following illustrations are given to illustrate the afore-mentioned three types of *qarinah*. For instance, in a prosecution of a *syariah* criminal offence of illegal intercourse, a DNA sample, say in the forms of two seminal samples, are tendered as exhibits during trial through the expert witnesses of the examining doctor and the chemist. The reason for such tendering of the said samples is to prove through both experts that there has been a consensual intercourse between the two accused outside legal wedlock. During the trial, the examining doctor verifies that both seminal samples are the ones which are recovered during medical examinations on both male and female accused. The doctor then testifies that the results from both medical examinations on both accused reveal that there is a sign of consensual intercourse on the female accused due to the hymen tear, the lack of abrasion within the inner vagina wall as well as traces of semen found inside the vagina. The doctor also testifies that he performs vaginal swab on the female accused to retrieve samples of semen as well as obtaining seminal sample from the male accused. Meanwhile, the chemist later verifies both seminal samples as actual samples which have been sent to him for DNA testing. He then proceeds to testify regarding the testing, profiling and findings of both seminal samples, concluding that there is almost a 100% degree of similarities between both seminal samples. During both expert testimonies, written reports from both experts are also tendered (Azam et.al 2015).

First of all, it is clear that both experts are testifying under section 33 of the *Syariah* Court Evidence Enactments as *qarinah* and the contents of their oral testimonies which contain testimonies of the testing and findings are also *qarinah*. This is provided for under section 39 of the enactments that state that whenever the opinion of any living person is *qarinah*, the ground on which his opinion is based is also *qarinah*. Secondly, when the seminal samples are tendered and verified by both experts, and both expert findings prove the existence of facts which are relevant to establish identity (namely the relevant facts that there is sexual intercourse between both accused and that such intercourse is consensual) as provided under section 9, this clearly means that both seminal samples are tendered as *qarinah* via section 9. Last but not least, when written reports of the expert findings are tendered through, and verified by both experts during trial, these written reports are regarded as documentary evidence under section 48 of the enactment. Similarly, when the contents of these reports contain findings which establishes the relevant fact that there is a consensual sexual intercourse between both accused, then the content of both reports become a *qarinah* too.

It must be observed that the Act does not define the expertise of a person based on religion or degree of credibility. What matters is that the person must be an expert in his field. Thus, a non-Muslim expert can give his opinion in the *syariah* court. The opinions of an expert, muslim or non-muslim, are simultaneously considered *qarinah* and *bayyinah* as decribed under section 83 (2) of the states' *syariah* court evidence enactments. What matters most is that the test is conducted transparently and with utmost integrity, and also the fact that the chain of evidence is unscathed

from the day the samples are collected right until the day it is presented and adduced in court.

9. Admissibility DNA Evidence in Malaysian Syariah Courts: Problems and Recommendations

The authors identify lacunas and gaps in the current provisions in the Malaysian *Syariah* Court Enactments and *Syariah* Criminal Procedure Enactments regarding application of principles on *qarinah* and DNA evidence.

While there are provisions in the states' *Syariah* Court Evidence Enactments regarding *qarinah*, it is also observed that there is a gap in its definition. First of all, we hereby suggest that the definition of *qarinah* under section 3 should be further clarified and refined to include 'any fact or evidence which surround the circumstance of a case.' We also suggest that the defining provision of *qarinah* should also include different types of *qarinah* which should include scientific evidence. It follows that such an amended definition of *qarinah* should then be followed with a clarification of the status of DNA and other forms of scientific evidence as instances of evidence which may fall under the ambit of a *qarinah*. Most importantly, the authors also point out that there is no provision in the *Syariah* Court Evidence Enactments which clarifies what amount to a strong *qarinah*. In other words, there is an urgent need for the new provision on *qarinah* to illustrate and include corroborative *qarinah* as part of the *qarinah* strength.

The authors also reiterate the importance of further enhancements on several *qarinah*-related provisions. For instance, there should be new provisions in forms of illustrations or explainations on important evidential principles of chain of custody and chain of evidence. This is because both principles form important evidential aspects of *qarinah* admissibility and strength. Simultaneously, since there is no provision available under the Malaysian *Syariah* Criminal Procedure Enactments to empower an investigating officer to bring a suspect under interrogation to hospital for a medical examination, the authors therefore argue that new provisions giving such empowerment should be inserted in the said enactment. Lacuna on such aspect would hamper the process of samples' collection during investigation by *syariah* enforcement officers.

The authors respectfully argue and suggest that all procedures relating to adducing and tendering of such DNA evidence via expert witnesses as well as via exhibits should be refined further. The best way to do this is to insert new *syariah* legal provisions in related enactments. The proposed new provisions under the states' *Syariah* Court Evidence Enactments which defines *qarinah* should also include an explanation stating that all scientific evidence should be adduced in accordance with due process recognised by law. Consequentially, it follows that new standard operating procedures should be enacted by the Malaysian *Syariah* Judiciary Department, locally known as 'Jabatan Kehakiman Syariah Malaysia (JKSM)' in streamlining and guiding the overall process of cumulating and adducing this scientific evidence. For instance, the standard operating procedure for adducing an expert witness in court should be enacted, covering important issues such as how to establish the expertise of an expert witness, when the court allows the calling of a second expert witness and how to address the issues of conflicting analysis by two different experts. On another note, the standard operating procedure for recovery of DNA sample during investigation as well as the standard operating procedure for adducing physical exhibits in court should simultaneously be enacted to ensure transparency, reliability and authenticity. In addition, both standard operating procedures would ensure maintenance of chain of custody as well as chain of evidence of each physical evidence presented in forms of exhibits during trials (Azam, 2012).

10. Concluding Remarks

In conclusion, the authors respectfully hope that the above analysis, findings and recommendations should be taken note of and acted upon. We firmly believe on the importance of acting on every recommendation made in this article on Malaysia's current *Syariah* Court Evidence Enactments and *Syariah* Criminal Procedures Enactments.

We believe that should the relevant authorities do amend the related provision as recommended, it would surely be in tandem with our on-going effort and struggle to increase the

jurisdiction of the *syariah* courts in Malaysia. Surely an increased *syariah* court jurisdiction would warrant a more complete and refined evidential and procedural legal provisions in the enactments.

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Research Article

Global Migration Challenges, International Organizations and European Politics

L.E. Ilikova[1*]

Elena A. Venidiktova[1]

[1]*Kazan Federal University, Kazan, Tatarstan, Russia*
**Corresponding Author*

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Abstract

Migration is a global issue. The period 2015-2016 is associated with the migration crisis, which touched several regions of the world at once and made and continues to make an impact on global world processes. The growth of migration flows leads to the need to understand the causes and the consequences of migration, including global migration trends. The following world migration trends and causes are considered: the growth of world population, overpopulation, climate change, demographic processes, the reduction of natural resources, and unresolved armed conflicts. The global problems of migration cannot be solved by the efforts of individual countries. An effective and coordinated cooperation of both state and supranational entities, such as the European Union, is necessary.

Keywords: *Migration, migration crisis, international organizations, Africa, population growth, European politics, far-right parties*

1. Introduction

The Cold War ended more than a quarter century ago, which almost put the world on the brink of destruction. The confrontation between the two blocs and the arms race became the problems that influenced the whole world and determined world development. Nuclear disarmament was necessary and this issue was resolved with the participation of all the major players in world politics. Since then, many events have taken place that have had a tremendous impact on the political landscape and on world development. This is the collapse of the USSR, the expansion of the NATO bloc, the expansion of the EU, and the world conflicts in the Middle East (Novak, 2019; Colucci, 2019; Ripoll Servent & Trauner, 2014; Heijer et al., 2016; https://www.unhcr.org; http://www.un.org).

Nowadays, the world faces a global problem again - the problem of migration. Migration is a global issue. The period of 2015-2016 is associated with the migration crisis, which touched several regions of the world at once and has had and continues to have an impact on global world processes. According to United Nations High Commissioner for Refugees[1], there were 59.5 million IDPs, 19.5 million of refugees and another 10 million stateless people in the world (2015). Of these, every second (53%) came from three main countries in 2015: Somalia (1.1 million), Afghanistan (2.59 million), and Syria (3.88 million). At that, the crises that started back then remained unchanged. The flow of refugees from Afghanistan began almost 40 years ago, but about two million of Afghan refugees are still stationed in the Islamic republics of Iran and Pakistan, and hundreds more thousands are on the run (http://www.internal-displacement.org; https://www.zeit.de).

2. Methodology

In this work, they used the methods of statistical data analysis, comparative analysis, the methodology of social network analysis was used to analyze the open data of the social network Facebook, as well as the methodology of discourse analysis as a set of analytical methods for text and statement interpretation as speech activity of people carried out in specific socio-political circumstances and cultural-historical conditions.

3. Results and Discussion

According to the UN, by the end of 2017 there were 71.4 million refugees, internally displaced persons, asylum seekers, etc. As of the end of 2017, about 72 million people around the world are asylum seekers, refugees, internally displaced persons and stateless persons cared by UNHCR. Millions of people were displaced throughout the year, fleeing war, violence and persecution in countries including such countries as the Central African Republic, Democratic Republic of the Congo (DRC), Iraq, Myanmar, South Sudan and the Syrian Arab Republic.

According to Vincent Kochetel, UNHCR's Special Envoy in the Central Mediterranean region: "The evacuation of refugees can only be the part of the broader asylum process — management efforts to address the complex movements of migrants and refugees who embark on a dangerous journey across the Sahara and the Mediterranean Sea."1

The growth of migration flows leads to the need to understand the causes and consequences of migration, including global migration trends. Thus, researchers note the difficulties of intra-European politics (Potemkina & Potemkina, 2015; Skleparis, 2018; Campesi, 2018), the lack of solidarity in foreign policy, in particular the European Union (Lang, 2013), the presence of unresolved armed conflicts, financial and economic crises (Trauner, 2016; Maricut-Akbik, 2019), and the causes of migration are associated with climate change, demographic processes, and the reduction of natural resources very often.

Let us consider global migration trends and causes in more detail. The first and main reason pushing the masses of people to relocate regardless of political factors is the growth of world population, overpopulation.

In 1950, five years after the founding of the United Nations, the world population was about 2.6 billion. In 1987, it reached 5 billion people, and 6 billion people in 1999. As of October 2011, the global population was 7 billion people. This milestone in the history of mankind has been marked by the global campaign "Seven Billion Actions." By 2017, the population was already 7.5 billion people.

The main increase of population is conditioned by the African continent. Africa demonstrated the highest population growth rate in 2010-2015, respectively, the largest percentage of young people is also in Africa, the increase in fertility is also expected in Africa, according to various estimates, the increase to 0.9 billion people is expected in the African continent alone by 2050.

At the same time, the opposite trend is in Europe - the reduction and aging of the population. According to the UN, the world population decline is expected during the period of 2015-2050 in 48 countries and regions. In several countries, including Bulgaria, Bosnia and Herzegovina, Hungary, Latvia, Lithuania, the Republic of Moldova, Serbia, Ukraine, Croatia and Japan, the population will be decreased by more than 15% by 2050. In 2017, the planet population at the age of 60 and over reached 962 million, accounting for 13 percent of the global population. The number of elderly people is growing at the rate of three percent per year. Nowadays, the largest number of people at the age of 60 and over live in Europe (25 percent). Aging is accelerating in other regions of the world. By 2050, this group is expected to comprise a quarter of the population of all regions except Africa. The global elderly population will reach approximately 1.4 billion by 2030, 2.1 billion by 2050, and 3.1 billion by 2100.

According to UN forecasts, the number of people on the planet at the age of 80 and over will triple from 137 million in 2017 to 425 million in 2050. By 2100, this figure will be 909 million, which is almost seven times more than in 2017.

That is, it can be assumed that in some regions of the world population will be replaced, for example, young people from Africa will move to Europe, in particular. We can see migration

problems: this is the growing popularity of right-wing parties, anti-immigration sentiments, and the clashes between different groups of refugees and local residents.

Along with the growth of the world population, there is the reduction in food and water resources. In this regard there is the restriction of access to resources and this is the second global cause of migration.

According to the UN, more than 40 percent of the world population suffers from water shortages and this figure is constantly growing. According to experts, 783 million inhabitants of the planet have no access to clean water and more than 1.7 billion people living in river basins need additional sources of fresh water.

The number of people suffering from chronic malnutrition has been steadily increasing since 2014 and reached 815 million in 2017. World food demand is growing steadily amid population increase, record crops, rising incomes and a growing variety of diets.

Such conditions will also entail the increase of migratory flows of people from disadvantaged areas to more stable areas. And this leads to the third global cause of mass migration - climate change.

Climate change is one of the major modern challenges. For example, the unpredictability of weather conditions, which threatens food production, sea level rise, which increases the risk of natural disasters, are the consequences of climate change and are global in nature and unprecedented by scope. Natural disasters, droughts and floods cause people to leave their homes and new waves of migration begin.

The difference in welfare levels in different countries also provokes new migratory flows. According to the Center for Monitoring Internal Displacement1, armed conflicts and natural disasters forced almost 31 million people to become refugees within their countries in 2016, more than 18 million provide new internal displacements related to disasters recorded in 135 countries during 2017. The effects of climate change and natural disasters exacerbate fragile situations in fragile regions. In 2017, UNHCR priority is normative decisions, promoting coherence policies, and developing support tools for national responses, including the areas of climate change, disaster risk reduction, human rights, and planned relocation. The UNHCR Report on Climate Change, Natural Disasters and Migration emphasized the need for a system-wide approach to struggle climate change and natural disasters related to migration. In April 2017, UNHCR issued a specific legal consultation entitled “Legal considerations regarding the protection of refugees and people fleeing from conflict and hunger.” This confirmed the relevance and analysis of the situation.

Another reason for migration that has a global impact on international processes is unresolved armed conflicts. Armed conflicts, “frozen conflicts” and violence in the region lead to refugee flows. According to the UN data, in addition to the currently known case of Syria, the number of conflicts has now decreased as compared to the 1990-ies, but often the causes of conflicts have not been eliminated and the conflicts can only be transferred to a frozen state. Thus, the Democratic Republic of the Congo, Darfur and South Sudan experience the second or even the third wave of conflict. In 2016, new internal displacements made almost 7 million as the result of conflicts and violence. Sub-Saharan Africa has overtaken the Middle East as the most affected region after violent clashes in the provinces of North Kivu, South Kivu and Kasai in the Democratic Republic of the Congo which provided almost 1 million of new relocations. Significant population movements continued in the Middle East, and about two million of new movements occurred during 2016 in Syria, Iraq and Yemen. By the end of 2017-2918, there were 10 countries that hosted the most refugees: Turkey, Lebanon, Ethiopia, Bangladesh, Jordan, Pakistan, Iran, Sudan, Uganda and Germany.

All internal movements cease to be internal when migration flows rush into a stable and prosperous European Union. In turn, migration as a phenomenon has a huge impact on all aspects of public life in the European Union.

Let us examine Germany as the most striking case that influenced the relations within the EU. Since its founding in 1953, about 5.6 million people in Germany have sought for refuge. The number of asylum applications at the Federal Bureau for Migration and Refugees is subject to fluctuations, which are the expression of global refugee movement development. In 2015, an unprecedented number of asylum seekers arrived in Germany. The number registered seekers made about 890,000. Thus, the highest level was registered in Germany with 745,545 asylum

applications in 2016. The number of applications fell to 222,683 in 2017. Since 2003 the tasks of the Federal Office in the field of asylum and refugee protection include the organization of particularly vulnerable refugee perception through the resettlement process. The intake quota has steadily increased from initially 300 vulnerable people a year to 1,600 in 2016 and 2017. Germany promised the EU to accept 10,200 refugee migrants in 2018 and 2019. According to the resettlement procedure in 2015-2017, more than 10,000 of predominantly Syrian refugees from Greece and Italy were distributed to Germany (Italian Ministry of Internal Affairs operation restricting the entry and placement of illegal migrants and refugees in Italy).

Returning to the European migration crisis of 2015-2016m, the migration flow was a real test of strength for the European Union, when many unresolved problems of a single European policy were discovered. There is no agreed policy on migration problem solution, and this became clear when the flow of migrants increased sharply (the same 890,000 people in Germany during 2015, for example). Different EU countries, having failed to reach an agreement, began to solve the problem in their own way. So, Germany still maintains the status of a country open to migrants and refugees, despite the split within the CDU-CSU and the scandal. Hungary and the Visegrad group as a whole took a sharply negative position with regard to migrants, the Dublin Regulation, and the EU migration policy as a whole. The entire Visegrad group ignored the emergency EU summit in June 2018.

Hungary decided not to accept refugees in 2015 (mainly the refugees from African countries and the Arab East), held the referendum on whether to accept refugees on EU quotas and, although the referendum was not recognized, 98% of voted refused to accept migrants and refugees, which was used by the Hungarian government to reinforce its anti-immigration position in negotiations with official Brussels. In order to solve the problem of illegal entry into Hungary, it was decided to build a wall on the border with Serbia. Besides, the law was passed at the national level that all arriving migrants and refugees will be placed in special detention premises. Hungary clearly opposes the admission of foreign cultural migrants. The Prime Minister Viktor Orban has been very consistent and tough on this issue.

Germany is an example of the opposite position, when, on the contrary, the country was ready to let in migrants, and the German Chancellor Angela Merkel said the following in 2015: “EU is a large union which can accept a certain number of these unfortunates. We can handle it!”[1] And Germany still admits, providing asylum, providing temporary housing and pursuing the policy of openness. At that, certain changes have ripened and Horst Seehofer, as the Minister of Internal Affairs in 2018, insisted on the policy of migrant and refugee reception restriction, on their placement in "anchor centers", as well as on strict identification procedures to avoid the accept of economic migrants instead of refugees and asylum seekers. Sweden is also inclined to accept more migrants, despite the fact that, according to various estimates, from 17% to 25% of residents of non-Swedish origin live in the country, and the right-wing party “Swedish Democrats” is gaining popularity gradually. The Austrian Chancellor Sebastian Kurtz changed the rhetoric of migrant integration, announcing that it would be wise to build refugee camps outside the EU. France took a controversial position - officially it supports the EU course in migration policy, but at the same time in the summer of 2017, the Ministry of Internal Affairs closed the ports with an internal circular, virtually refusing to accept the ships with refugees, thus putting Italy in jeopardy. Italy, left alone with the problem of migration, especially illegal, tries different solutions: the first is restrictive, with which the right-wing League went to the polls. This option was embodied in the operation of the Ministry of Internal Affairs “Finita la pacchia!”[1]. This option caused a sharp aggravation of relations within the EU, the convening of an emergency EU summit in June, but did not lead to any decision. Further, Italy proposed the options for refugee camp establishment in Libya, since there are large flows of immigrants from there and from Tunisia. This is a difficult option in Libya, since the situation in the country is unstable, in fact, the authorities do not control the situation. And there is a new proposal from Italy: the preparation of an agreement on cooperation with Nigeria in order to facilitate the creation of the necessary infrastructure within the country, while the amount of 8.5 euros per day will be paid. That is, it is about shifting the focus of attention and assistance to refugees and asylum seekers “in the field”, that is, to the African continent. Subsequently, this practice is planned to be extended to other African countries of migrant origin.

At the moment, the consequences of the migration crisis in the EU have not been resolved.

They did not achieve the unity in the formation and implementation of a single migration policy of the European Union, and the topic of migration itself as the destabilization and disintegration factor of the EU.

4. Conclusions

It is impossible to solve global problems through the efforts of individual countries; an effective cooperation is necessary. It is unacceptable to destroy countries and change regimes in individual countries for the sake of economic and political interests, and it is unacceptable to support terrorist organizations for the political purposes of individual countries.

The destruction of even “distant countries” destabilizes the situation in the entire region, violates the status quo and affects countries that seem to be unrelated to the conflict (Syria affects Turkey, then the eventual impact extends to Germany and even Sweden). Global problems can only be solved with the participation of all actors involved. The policy “Not in my backyard” is not justified in the modern world.

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Research Article

Reflections on Liability and Full Reimbursement of "*Restituito in Integrum*" Damage in Insurance

Dr. Juliana Bylykbashi

Asoc. Prof. Dr. Eneida Sema

University of Tirana, Tirana, Albania

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Abstract

The institute of civil liability in most of the legal systems is mainly oriented towards compensation of damages, which is the main objective. The feature of civil liability is to restore, as precisely as possible, the impaired balance and restore the injured party to the state he would be, if it had not been for the act that harmed him. The existence of civil legal liability for damage caused is an important segment in the context of ensuring a higher level of protection of human rights, legally protected. The state must guarantee not only the constitutional rights of the individual, but also the right to be rewarded, in case anyone trespasses or violates them, guilty or not. Being a constitutional right (Article 44 of the Constitution of the Republic of Albania) rehabilitation or indemnification in accordance with the law, Restituito in integrum aims to restore the former condition of the injured party, as far as possible, through rehabilitation and, if this is not possible, convert this condition into monetary and indemnity. If we refer to the Albanian case law, there have been many cases in the insurance field that have been controversial by the courts of some levels, which relate precisely to the elements of civil liability and damages. This study will focus on and analyze some litigation related to the application of the terms of civil liability and damages, in terms of non-contractual damages. In view of the problems encountered in law enforcement in practice, the question rightly posed is whether: in Albanian case law has it been possible to have a "restituito in integrum" and satisfy the injured party or parties?

Keywords: *material reward, non-pecuniary damage, the causal link, fault, civil liability*

1. Introduction

The path for compensation of damages is wide, but through the treatment of this paper we will mention some aspects related to certain conditions of civil liability and consequently compensation of damages, mainly in the field of compulsory insurance, in compensation of extra-contractual damages, in damages suffered by the third parties. One of the key virtues of the full reimbursement rule is to enable, and even encourage, a continued re-discussion of the indemnity-missing profit (interests) valuation methods to adapt them promptly and concretely with individual situations and new opportunities, to relieve the injured persons resulting from the evolution of science, technique and social conditions. The jurisprudence of the European Court is rich in the content and implementation of the "fair remuneration" applicable in the event of inability to be realized at national level "*restituito in integrum*". This right applies where the indemnification in the narrow sense is impossible and is solely aimed at compensation or mitigation of damages incurred. (Viney G, Jourdain P,1989).

Once a claim for damages has been initiated, the judge, as soon as he finds the existence of the conditions of civil liability, must assess the damage and the interests. For this he often stands on the essential principle that dominates the field, namely: total damage compensation or the

matching between damage and compensation.

This rule is accepted by most legal systems. Based on this principle the courts have derived two types of consequences: they consistently recognize that the damage assessment must take into account all the constituent elements of the damages whose repair is claimed by the injured party, provided that such damage have been caused by a fact of damage and that indemnity must be such as to fully and efficiently compensate such caused damage. But they also specify that indemnity should not exceed the value of the damage and not allow any enrichment of the injured person. In other words, the amount of indemnity and interest must coincide exactly with the loss caused by the fact of impairment.

This paper will deal with several issues such as: the lack of one of the essential elements of causing harm, will the injured party be entitled to claim compensation from the insurance company? Is it necessary to divide liability in the event of a car accident for a right and complete reimbursement to the injured party? In the practice of insurance companies we have encountered the fact of signing a statement or transaction that is made to indemnify the injured. Does this practice violate the principle of "*Restituito in integrum*"? The treatment of these cases will go through the analysis of some court cases.

2. The Value of the Principle of Full Compensation

The right to redress is a right protected by Additional Protocol Nr. 1 of the European Convention on Human Rights. The Strasbourg Court has ruled that a total lack of indemnity for a secure claim would be justified only in exceptional circumstances. A study on "damages in the light of the European Convention on Human Rights" has shown that this Convention has not provided at all for a general right to redress and that its jurisprudence results, on the contrary, that it interdicts the recognition of a right of redress by finding a violation of one of the fundamental rights contained in the Convention. (Marchadier, F 2009)

The principle of "*Restituito in integrum"* has a number of advantages that are uncontested and of great importance. It enables the injured to receive an effective compensation for the damages suffered by third parties. What constitutes the advantage of this rule, in this respect, in relation to the methods of indemnity with limited limitations (Section 26 of the Compulsory Insurance Act 10076/2009) or set forth in formulas (or tables), is not the mere fact that it provides a more complete reparation: even if this rule is more easily applicable and convenient. First easier with the technical progress and modifications of social indemnification data. For health damages, for example, the principle of full reimbursement allows for the inclusion of liability for the treatment and medical care that authorizes medical science and techniques, although more modern methods are far more costly than previously practiced. Likewise, it can be concluded that the principle of complete compensation induces judges to arrange it with particular situations that could not be considered by the more mathematical and rigorous formulas. For example, in a decision the Supreme Court of Paris (Judgment of 6 July 1983) ruled that for the compensation of health damage suffered by a person with a disability, it was more appropriate to abandon the classic proportional compensation formula by the percentage of disability and be replaced by a completely different method. The Court has held that… "The special situation of a person with a disability requires specific compensation for the post-trial period". It is necessary to replace the usual compensation system with a method tailored to real needs in the future, of the person with a disability, to provide him with the conditions for his survival and as satisfactory as possible, taking into account the environment where he lives. It is clear that without the principle of "complete reparation" such an adaptation, which is more than human and socially fulfilled, would not have been accomplished by a judge.

Nowadays, civil liability is not limited to protecting individuals and groups from harming their property. In many places it aims to protect them from a range of non-property damages, such as "pain and suffering", damage to their reputation, personality and even feelings and compassion. This expansion of the definition has forced jurors to go beyond the optics of indemnification for non-pecuniary damage. If we take as an example the Kosovo legal system how they apply the principle of full compensation has evolved, adding to the variety of damages awarded. Given the principle

that compensation should be as fair as possible, the importance of the transgressed good, the purpose that this compensation serves, and the fact that the compensation does not fit the goals that are inconsistent with its nature and social purpose, in addition to compensating for spiritual pain due to reduced general life activities, the bodily injury that the victim has experienced, that he is currently experiencing and will experience in the future, in reducing some of the pleasures and joys that he has been deprived of due to injuries sustained, compensation for the fear experienced. (C.nr.415 / 10 dated 18.09.2013 Judgment of the Basic Court Prishtina). Compensation for the consequences of fear on the injured person is determined by the intensity and duration of the fear (Judgment Basic Court Prishtina C.nr.199 / 11, 04.12.2014), dividing it into two forms; a) primary fear, which is the intense feeling of short duration (a few seconds) demonstrated, perceived and experienced by the person injured at the time of the accident and b) secondary fear is the feeling experienced by the person injured by the traffic accident and after the accident, injuries received and related to the course of treatment, as well as the potential consequences.

In assessing damage compensation, although most EU countries allow for full compensation of past, actual and future losses "*restituito in integrum"* including property and non-pecuniary damage, in practice the level of damages awarded and the limit of compensation can vary considerably from place to place. Based on both liability and insurance regimes, countries have adopted different calculation criteria.

In the US there is the principle of "*Eggshell skull*" (Mataj, R 2017) or the eggshell crack, in tort law operating in Commonwealth countries such as the UK, US, Australia, etc. This principle implies that whatever kind of damage is caused to the injured person, even though it is as delicate by nature as the eggshell, the respondent is obliged to compensate for all the damages incurred despite the fact that other factors belonging to the injured party have contributed to the damage.

3. Legal Analysis of Albanian Case Law on Liability and Compensation for Insurance Damage

If we refer to the Albanian legal system, we find that the prevailing theory of damages is the same as that of default, where the debtor intends to fulfill the obligation in nature and if this is not possible, in money. Monetary remuneration is a subsidiary of the in-kind compensation of pecuniary damage. This means paying a sum of money to balance a claim that cannot be remedied directly.

The Albanian legal framework is based on the institute of civil liability known as aquiline responsibility (*lex Aquilia de damno*) which states that: ... "anyone who violates the legitimate rights and interests of another shall be obliged to indemnify him", as one of the fundamental principles of coexistence in human society, the prohibition to harm one another (*alterum non laedere or neminem laedere*). Its implementation is generally regulated in the Civil Code and in particular in the provisions on tort civil liability provided for in Article 608 et seq., which stipulates that: "A person who unlawfully and blamably causes harm to another person and his property shall be obliged to pay damages."The following are known as non-property damages: moral, existential and biological damage, but also any other damage that infringes rights, values or freedoms recognized by law or good practice.

In Albania, the identification of the types of damage that the injured person and his or her relatives (indirect victims) may suffer and the ways and means of their compensation were significantly consolidated in practice following the unifying decision of the United Colleges of the Supreme Court no. 12/2007. Mostly it is non-property damage as the property damage is clear from the concrete provision of the Civil Code itself for both contractual damages (Article 486 of the Civil Code) and non-contractual damages (Article 640 of the Civil Code).

In the case of compulsory insurance including those to cover the liability of motor vehicle drivers to the thirds, the relationship between the insurance company and the insured is an insurance contractual relationship, which has a special arrangement by *Lex Specialis* in the compulsory insurance. Whereas in matters relating to compensation of damages, the provisions of the special legislation on compulsory insurance and the provisions of the Civil Code on extra-contractual liability apply. (Articles 608 et seq.). The relationship between the insurance company and the insured on the one hand, and the injured on the other hand is a relationship of a non-

contractual nature. In the case law, there have been few cases where the legal relationship between the insurance company, the insured and the injured party has been confused. This has also led to the confusion of the correct application of the full reimbursement of damages as well as the incorrect calculation of the prescription period within which the injured party should file a claim for damages.

Regarding the non-contractual damages compensation cases, the Joint Colleges of the Supreme Court, by decision no.12, dated 14.09.2007, have unified the judicial practice for the application of Articles 608, 609, 625, 643/a and the following of the Civil Code. In this decision, the Joint Colleges have expressed in substance about the entities having the subjective right (active legitimacy) to seek compensation for the property and non-property damage suffered, the figure of biological or health damage (as a special figure of non-property damage), the figure of moral and existential damage, methodology of calculating the amount of compensation etc.

In order for the concept of compensation to exist, the damage must have been caused by guilt as a result of an unlawful act and this harm is directed to the property or human interests of the citizens. In order to accept civil liability there must be cumulatively four legal elements that must compete together which are: the existence of the damage, the illegality of the action or omission, the fault and the causal link between the action/omission and the resulting damage. The cumulative nature of the conditions governing non-contractual liability means that, if one of them is not fulfilled, the claim for damages must be dismissed in its entirety and there is no need to consider the other conditions.

If we refer to the Albanian case law in the field of insurance there have been many cases that have been controversial by the courts of several levels that relate precisely to these elements of civil liability and damages. The question rightly arises: if one of the essential elements of causing damage is missing, which is precisely the fault in causing it, is the injured party legitimated to seek compensation from the insurance company?

To answer this question we will need to analyze some court cases. In the Judicial Case (Decision No. 173, dated 31.03.2015 of the Civil College of the High Court)… ..E.M. as a passenger in the vehicle driven by N.P. suffered extensive bodily injury as a result of the accident. Due to his health condition, he was found by KMCAP (Article 80 of Law No. 7703/1993 on social security) as incapable of working fully and being categorized in the second group of disability. The accident was the result of a fault in the steering system, tire breakage and bad weather conditions. As a result of the judicial inquiry it turned out that N.P. the driver had no responsibility for his fault.

The Supreme Court in another similar case (Decision No. 174, dated 05.03.2013 of the Supreme Court) states:…. While the trial proves that the victim F. A. had no liability whatsoever for the accident. The court of appeals confuses civil liability with the criminal one. Especially in the case of compulsory motor insurance where, the insurance company is not entitled to object to the injured person with respect to the right to compensation.

The object of securing civil liability is not the means (loss or damage of them), but the damages suffered by third parties, from the exercise of their profession and activity by entities that have undertaken to exercise them or which the law has imposed upon them as an obligation to exercise. If there are no grounds for exemption from insurance coverage under the law and the terms of the contract, the insurance company shall be liable for damages caused to third parties by the entities exercising the insured activity with that insurance company.

There is a consolidated case law that recognizes liability for damages caused to third parties even where it is established that the driver is not guilty of causing the accident. However, unlike criminal liability, where e.g. guilt is an indispensable element of criminal liability (Article 13 Criminal Code), in the case of civil liability, there is also illegal behavior or not, which, even if committed without fault, again bring civil liability.

Even the case law of the Supreme Court has reflected this fair interpretation of the law as regards civil liability from the practice of dangerous activity. In this case the insured's liability for the hazardous activity he carries, and not merely the personal liability of the insured who exercises or delegates the driving of the motor vehicle is assured. For this very reason, these persons cannot be the injured third party and cannot seek and obtain damages. (Article 23, a) b) of Law 10076/2009 on compulsory insurance).

Therefore, it is crucial to determine whether there is an insurance case, whether the insurance company should indemnify or not the injured party, to establish the causal link between the activity of the motor vehicle and from motor vehicle and property and non-property damage that anyone has suffered because of this activity.

Thus, as in other legal systems, the Albanian Civil Code, in some of its provisions, provides for the regulation of the legal institute on non-guilty civil liability (otherwise called objective or presumed guilt). The Civil College seeks to identify civil liability arising out of the conduct of a dangerous activity under section 622 of this Code: shall be obliged to pay damages, unless it proves to have taken all appropriate and necessary measures to remedy the damage. "So if a dangerous activity is exercised (source of increased risk) the one who exercises that activity is obliged to indemnify anyone who has suffered damage due to the exercise of that activity. In this case the "danger" lies not with the one who exercises it, but with the very nature of the activity or the objects used. It is a liability that comes based on modern risk theory (Mataj, R 2017) so persons who benefit and bring risks to third parties or use items that are potentially dangerous to the life, health and property of the third party will necessarily retain responsibility for them.

This position was also held by the Civil College of the High Court which in decision no. 70/2010 states that:… "It does not matter, in terms of law enforcement, whether the actions or omissions of the respondent are unlawful or whether they have been committed by him. It does not matter, in terms of law enforcement, whether the defendant has been ordered not to institute criminal proceedings in connection with the event. It doesn't matter, in terms of law enforcement, if the weather was bad, if the motorcycle breakdown was unexpected and other circumstances where the courts of fact are based. These circumstances are not those which, by law, exclude a person who carries out hazardous activities from liability for damage caused. "Similarly, the Civil College of the High Court, in decision no. 73, dated 16.02.2010 in particular for the interpretation of Article 622 of the Civil Code it is stated that: …… also the activity of water transport of passengers and vehicles… .. constitutes a source of increased risk within the meaning of the Civil Code and the Maritime Code, in its Article 7. In the exercise of these activities the liability of the cause of the damage is not subjective, thus linked to guilt in his actions, but it is the responsibility of an objective nature.

The European Court of Human Rights has gone further in its interpretation, finding that (Case No. 57/1996/676/866 dated 25 September 1997) any unlawful act which could constitute a crime or extra-contractual harm, who inflicts moral or property damage legitimizes the injured party to bring a claim for compensation in civil courts against the offender despite the guilt: willful, negligent, excessive self-esteem, etc.

4. Mixed Responsibility

There are numerous cases where as a result of the occurrence of an insurance event (car accident), the cause of its occurrence is the actions or failures of fault of both drivers involved when there is practically the most frequent case where two vehicles collide, or when we have collisions of more than two vehicles, but each driver has a breach or contribution to cause the accident or increase the consequences. These acts specify the violations of each accident participant and then determine the determinant cause, which has been the cause of the accident, and the responsible offender, who subsequently bears criminal or administrative liability and is automatically excluded as the beneficiary of insurance because of his guilt.

In civil trials, where such cases exist and an autotechnical expert is called upon to determine the dynamics of the event, the tasks often left by the Court at the request of the respondent parties (insurance companies) require that the expert make a division or report the guilt of each driver expressed as a percentage of the extent of the accident contribution. The case law recognizes several cases, although not numerous, in which percentage liability has been split and the claimant beneficiary at trial has been deducted from the amount of his or her guilt expressed as a percentage, a deduction made to the full value of damage. The expert in the act of auto-technical expertise has concluded for complicity in the event, in reports 50 to 50, the driver and the passenger stating:…. I find that the determinant cause are the violations committed by both road

users involved in the accident and from a quantitative perspective, the violations have had an impact on the conduct of this road accident, equally 50 by 50. The question that arises in this case is: Will they both be liable and consequently co-indemnifier to third party for the damage he has suffered to health? Will the passenger of the vehicle, which in the second act of expertise has been the cause of the determinations for the consequence, health damage to the third party, be guilty and consequently jointly liable?

In Albanian criminal law, some actions or persons may compete in the consequences and here the problem is compounded. Each person shall be held liable in such cases for the result which has been the necessary consequence of his act or omission. The notion of the vehicle being involved in an accident makes it possible for a driver to be held responsible even though he had no causal role in the occurrence of the injury, (Quézel-Ambrunaz Ch, 2010).

When persons have done joint actions and the consequence has been the result of these joint actions, then the role and significance of the actions of each of them is analyzed. This is done not only when actions are done intentionally, but also by carelessness. (Hoxha D, Kacupi S, Haxhia M, 2018). Whereas in the determination of civil liability and in consequence of the indemnity, the Courts have held that in view of the injured party's guilt report, the extent of the benefit in compensating the injured party must be calculated. Blame escalation is an element considered by the court to increase or decrease the pest's liability compared to other co-defendants or towards the injured party.

In another civil case, the Court stated (Decision No. 1776 of 12 July 2017 of the Court of Appeal, Tirana)… .. "the passenger's behavior is a complementary part of the driver's conduct in relation to the third party. Thus, the responsibility of the vehicle driver is inclusive in the sense that it includes everything that is directed and controlled by it in the driving of the vehicle, which necessarily carries with it the behavior of each individual (passenger) as an integral part of his responsibility. It is precisely the driver of the vehicle, the cause of the accident, who in relation to the third party must be held responsible for the conduct of any physical action related to his vehicle, no matter who does it. The liability for the passenger behavior of a vehicle in the event of an accident may not be shared between the driver and the passenger for the latter's personal conduct in relation to a third party. In this case the cause of the accident was the driver of the vehicle, insured with the insurance company and under these conditions the company has the obligation to pay health insurance to the injured party.

Concerning the culpability implicated in an accident where the cause of the accident was the two motor vehicle drivers' violations and that the ratio between these violations which affected the accident was 70% to 30%, what will be the amount of property and non-property indemnity against the injured with permanent disability in the amount of 35%? The court concludes that the injured party's compensation should be calculated from the injured party's compensation report. The amount of the benefit to the injured party will be reduced in proportion to the extent that it itself has affected the damage at 30%, and the amount of damage it will benefit will be reduced by 35%, as calculated by the evaluation expert (Decision No. 4254 dated 11.05.2018 of the Tirana Judicial District Court and decision no. 236 dated 06.03.2019 of the Tirana Court of Appeal.)

5. Causal Link

One of the important elements of guilt determination is the causal mechanism. The causal connection may not always be easily and clearly established. Thus, in certain cases, the judge presents complicated situations where it is very difficult to ascertain this link between the harmful act and the consequence. Confirmation of causal link is necessary in all cases, whether in personal responsibility, responsibility for others or liability for dangerous objects and dangerous activities. In the case law, it is preferable that in these cases the judge in examining and deciding the case for the award of damages in order to determine the causal link correctly it must be accompanied by experts in certain fields to make the right decision. Confirmation of the causal link is an essential condition, respectively, for the admission of the criminal and civil liability of the perpetrator of the unlawful fact, as well as for the determination of the criminal conviction and the corresponding civil obligation. For the acceptance of civil liability as a consequence of extra-contractual damage, the

material causal link and the legal causal link between them must be established (Unifying Decision No. 12 of the United Colleges of the Supreme Court).

If we refer to another case from practice, with regard to the cause-effect element, how would we reason if we would have been in such a case, when due to an accident on 19.07.2002 the death of a minor child 15 year, mother of the victim, who in depression due to the death of her son was thrown from the bridge and died on 12.10.2002? Will the insurance company know about the insurance case and then reimburse the victim's relatives, where according to the death record it results that death was caused by drowning and cerebral coma? Is her family entitled to claim damages?

"The Civil College of the High Court (Decision No. 199, dated 15.05.2014, Civil College of the High Court) regarding this matter is expressed ……"In the case of the death of the mother it does not appear that the whole set of evidence in relation to the law has been analyzed, no legal argument has been given to support her conclusion that the mother's death is a direct consequence of the unlawful actions of the author of the car accident."

The causal connection is one without which no harm comes to the injured person. So it may be harm, but to link the act or omission to the harm caused must have a direct and determinate link in the consequence or figuratively in the chain linking the unlawful fact and the harm there must be no broken link. (Mataj R, 2017). The main problem that needs to be answered is what is needed to determine that a consequence is the cause of a particular action. The Albanian Criminal Code has not provided any answer regarding the determination of the criteria or conditions that should exist for causal link, leaving all interpretation to the theory and practice followed by the judiciary. In assessing this case it should be kept in mind that causal linkage is not only an objective category but also a process that takes place in time and space (Hoxha D, Kacupi, S Haxhia M, 2018). Although the mother's suicide occurred 2 months after the loss of her son's life, the experience of maternal pain caused by her son's loss, the close relationship that exists in the parent-child relationship, and especially the mother-child relationship, should be analyzed, the affective degree of pain and spiritual suffering that the loss of her child's life has left. The case does not resemble the case, so the degree of pain experienced is individual and unique. The mother's aggravated psychological condition, her immense pain over the loss of her infant son, has resulted in her suicide. A French author (Quézel-Ambrunaz Ch, 2010) argues that… the sequence of causes and effects is not just about material elements, even the psychological state of man may be integrated into the causal chain.

I think that in this case the causal link is not interrupted, but the burden of proof, (*onus probandi*) which belongs to the injured party, mother's family, it is difficult to prove. It must be proved the aggravated psychological condition of the mother due to the death of the minor child, reports from the psychologist, antidepressant medication if used, in the period following the child's death. If attested by relatives, then surviving members of the 15-year-old and his mother enjoy active legitimacy to seek redress in the quality of the injured, for damage to health and other property and non-property interests suffered, as a consequence of the death of their relative by the unlawful fact of the third.

6. Limits of Liability Coverage to Injured Persons

One of the issues to be discussed in this paper is the limit of liability coverage in the event of road accidents. For the first time, compulsory insurance in the field of transport is regulated by Decree no. 295, dated 15.09.1992 "On compulsory insurance of motor vehicle owners for liability to third parties", and subsequently the adoption of Law no. 10076, dated 12.02.2009, "On compulsory insurance in the transport sector", which has provided, *inter alia*, the limits of liability coverage, ie the maximum amount of reparation that injured persons may benefit (the limit of coverage, respectively by the insurance companies or the Albanian Insurance Bureau for one person, is in the amount of 20,000,000 (twenty million) ALL defined in point 2, letter "b" of Article 26).

The imposition of a liability limit in the case of road accidents is justified by the fulfillment of a public interest, protecting the insurance companies' budget and compensation fund to guarantee the functioning of these companies. On the other hand, the creation of such societies constitutes an

assurance of the full compensation of persons injured as a result of a road accident.

This provision sets limits on the value of indemnity, but on the other hand, in point 3 of Article 26, it is sanctioned that when there are some injured parties the value of indemnity can again not exceed the limit of coverage specified in point 2 thereof. including the limit of non-property damage coverage. So either in the case of some injured or logically in the case where an injured person benefits from several persons, including himself, the maximum value of non-pecuniary damage compensation may not exceed the limit of coverage specified in point 2 (b) of section 26 of the Act. No. 10076/2009, "On compulsory insurance in the transport sector".

It is noted that the total amount of compensation per person, from Decree to Law, has remained unchanged at 20,000,000 (twenty million ALL), while the standard of living and overall wage level has changed drastically since 1992 , when the Decree entered into force until 2009, when the latter was replaced by the Law. Keeping the same amount as the coverage limit since 1992 is not justified by new economic circumstances, money buying power, increased standard of welfare, as well as the amount received by insurance companies as a result of payment of insurance premium by all insureds.

In the former situation it is found that, while an injured person in a field other than transport has no limit on the value of the benefit, in the latter, the maximum value of the property and non-property indemnity is 20,000,000 (twenty million) ALL. In the second situation there is another limitation, the value of non-pecuniary damage, which cannot be compensated beyond the limits provided for in Article 26, paragraph 2, letter “b” of Law no. 10076/2009. While setting a ceiling value for total indemnity may be justified by protecting the finances of insurance companies, linked to their solvency, ie their ability to indemnify persons injured by an accident, the existence of another barrier, as is the ceiling value for non-pecuniary damage, is unreasonable and not objective.

The issue at stake relates to whether the extent of this indemnity responds to the actual damage sustained by the injured person. If the limitation of the total compensation value can be considered proportional for the given reasons *ut supra* (protection of finances of insurance companies or of the compensating fund and as a result maintaining their solvency), imposing a double restriction or the limitation on limitation, which relates to the value of non-pecuniary damage compensation, is wholly disproportionate.

The referring court has referred the case to the Constitutional Court (decision no. 13 dated 27.01.2015 Judicial District Court of Fier) to express the constitutionality of Article 26, paragraph 2, letter "b" of Law no. 10076/2009, which violates the principle of legal certainty, as it has worsened the financial position of the compensation beneficiaries of accidents in the transport sector, without a justified and objective reason.

7. Waiver of Compensation by the Injured Party Infringes the Principle of "Restituito in Integrum"*?*

It is often the case in practice that after the indemnification has been effected the injured party agrees with his harmer or insurer to sign a transaction or statement by which the full indemnity is waived. The positions of the courts of various levels, as well as those of the Civil College of the Supreme Court have been different in the interpretation of the proceedings and the legal consequences of the actions performed by the insurer and the injured party in cases where compensation is claimed. The applicable laws and by laws in the field of compulsory insurance provide for the insurer's obligation to provide the injured party with the amount of compensation for the damage caused by the insurance case. In the absence of an adverse written agreement, is the injured party entitled to apply to the Court to seek a different amount of damages and the missing profit if he withdraws the value offered by the insurer? (Decision No. 1 dated 09.01.2008 of the Joint Colleges of the Supreme Court). We are in the situation when the injured party has signed a written statement with the object: Declaration of acceptance of the value of the indemnity, in which he has agreed and accepted the value given by the insurance company in the form of the relevant indemnity. After receiving this amount, the injured party claimed the difference between the payment of pecuniary and non-pecuniary damages.

The question arises: Acceptance and withdrawal by the injured party of part of the indemnity offered by the insurance company constitutes a waiver of the right to claim the rest of the indemnity, which belongs to the injured party under the law and in fulfillment of the full compensation of the damage? And the second question that remains to be addressed: is the insurance company's liability to the injured party extinguished by signing the statement?

Regarding to this issue, several courts (decision 714/2012 of Court of Appeal of Durrës and decision no. 2614/2011 Court of Appeal of Tirana) have taken decisions based on the erroneous reasoning that as long as we have a voluntary agreement regarding the payment of damages that is, the parties agree to settle the case out of court regarding the payment of the damages, then the court finds that we are under contract law, where according to the doctrinal concept of this right it is the agreement of the parties or the concurrence of their will to create, alteration or termination of the property legal relationship (Article 659 of the Civil Code). In this case the courts argue that the insurance company as a debtor has fully fulfilled its obligation to the injured party, releasing itself from the debtor's legal status.

If we were to argue about the legal consequences of resolving the questions raised, we would argue that: First, the written declaration of the receipt of the compensation by the injured party is in itself a limitation on the insurer's liability (Article 479 Civil Code) regarding his legal obligation to pay full damages. By legal acts and by laws, it is clearly stipulated that the amount offered for damages in each case must match the amount of damages. Secondly, the fact that the injured party has withdrawn the amount offered by the insurance company does not deprive them of the right to seek, through the statutory limitation period, the actual value of the damage through the court (Article 115 Civil Code). Third, to consider this statement as a waiver of the lawsuit means to prevent the plaintiff from returning to the state it was before non-pecuniary damage occurred (Principle of *Restituito in integrum*) Acceptance and withdrawal of part of the award by the injured, offered by the insurance company does not constitute a waiver of the right to claim the rest of the compensation due under the law nor the full fulfillment of the obligation by the insurance company (Articles 422 and 455 Civil Code). Fourth, on the basis of the above argument does not stand also point 4, article 70 of law no. 52/2014 on insurance and reinsurance activity with the object of dispute resolution, which runs counter to the principle of full compensation of damages, *restituito in integrum*.

As above, we have also answered the second question, by analyzing the provisions in harmony with each other we conclude (decision no. 517 dated 17.12.2015 of the Civil College of the High Court) that: the debtor (the insurance company) has civil liability for default, even in the case of partial default, so the injured party's acceptance of the amount offered by the insurance company does not constitute a termination of the latter's obligation to pay in full of the compensation due to the injured. In the interpretation of Article 479 of the Civil Code ...” any agreement that excludes or restricts the parties from liability for non-performance of obligations is void.

Another controversial issue with regard to full reimbursement is also the missing profit and the interests that should be rewarded. The question is: Does the missing profit apply to the special mandatory insurance provisions (*lex specialis*) and if the special law sets a statutory limit to this limit will the missing profit also be included?

In some cases the courts have erred in formulating the missing profit by confusing it with the bank interest that the insurance company should repay the injured party because of the delay in paying the indemnity (Decision No. 850, 08.05.2006 of the Court of First Instance, Vlora) If we make an analysis of the provisions of the Civil Code, Article 450 stipulates that the interest received is simply a default interest which becomes payable, because the delay has already taken place and when the claimed interest is claimed, the interest is ripe to be harvested. (Tutulani M, 2016) In other words, interest earned is a type of compensation (to be precise, the portion of the loss related to retained earnings) derived from non-execution in the due time and manner of cash liabilities.

According to the Civil Code legal provisions, the missing profit (Article 486 of the Civil Code) *lucrum cessans* is the impossibility of obtaining a future interest in property, that is, an asset not yet owned by the injured party at the time of the damage. The missing profit is included in the concept of loss suffered consequently it will be included in the statutory limit of indemnity in compulsory insurance by the insurance company. Whereas the obligation to settle bank interests as a result of

the delay in the settlement of a liability, that is, of property or non-property damage suffered in a contractual non – contractual relationship is not included in what constitutes retained earnings under the Civil Code (Decision no. 233, dated 25.05.2010 of the Supreme Court Civil College). Delay in the settlement of the damage (liability) is the responsibility of the insurance company itself, in direct relation to the injured party and has nothing to do with the legal limit of indemnity provided by the compulsory insurance legislation. If the damage suffered exceeds the statutory limit, the injured party has the right to claim the amount above that limit directly only to the person causing the damage.

8. Conclusions

The main purpose of the award of damages is for the victim or injured party to return as far as possible to the state in which they were before the unjust act occurred. This explains the reason why most of the victims compensated by insurance companies address to the Courts for the benefit of the rest of the indemnity.

Often because of the complexity of the relationship of obligation, the main problem has been and remains the question of determining responsibility. In case law the issue of ascertaining the responsibility of the responsible entity often remains very complicated either because of the circumstances of the case or because, in some cases more persons are on the side of the responsible entity who must respond on the basis of the principle of solidarity responsibility, or situations where damage can be caused without fault.

Civil liability has no criminal function and the importance of guilt cannot justify a sentence above the value of the damage caused, which would enrich the beneficiary. The same is true for lack of guilt or ease of guilt, which should not be taken into consideration to reduce compensation.

The Albanian Criminal Code has not provided any answer regarding the determination of the criteria or conditions that should exist for causal connection, leaving all interpretation to the theory and practice followed by the judiciary. This situation may create confusion knowing that causality is precisely "the boundary between civil liability and compensation".

Other causes, such as the victim's own guilt, etc. may reduce the amount of damage compensation by the offenders themselves. Recent sentences of the Albanian courts at various levels are also taking into account the degree of guilt or mixed responsibility, an element being dealt with by the court to increase or decrease the liability of the offender vis-à-vis other co-offenders or the injured party.

Accurate determination of the legal position of the person responsible and the injured party in the legal relations that arise with the infliction of damage turns out to be one of the key values to guarantee legal certainty, within the efforts of legislators, judges and doctrines.

The issue of compensation for damages caused by vehicles is a matter of particular importance, since when determining the amount of compensation for damages, insurers present deficiencies and therefore, the injured parties address to the courts. Courts in their decision-making should consider the real valuation variant, which represents the most realistic, fair and objective values of reparation, as these values have correctly aligned the value of the damage, as with market economy principles with social change.

The approach of national legislation as much as possible with that of the European Union countries in terms of both the limits of indemnity and the method of calculation is a challenge to Albanian national legislation with that of the European Union countries, in which the extent of this indemnity responds to the actual damage suffered by the injured person/s.

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Research Article

Features of the Functioning of Derivatives with the Suffix -Onok in Russian Jargon

Elena A. Makleeva[1]*

Liana M. Akhmetzyanova[1]

Yan Zhike[2]

[1]*Kazan Federal University, Kazan, Russia*
[2]*Hunan Normal University, China*
**Corresponding Author*

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Abstract

The present paper deals with the study of derivational features of noun derivatives with the suffix –онок/-ёнок (-onok). The choice of the formant is determined by the fact that the indicated suffix does not produce a large number of word-formation types and, therefore, rarely becomes an object of special studies. However, its colloquial productivity suggests that this formant deserves a closer look. In the literary language, the suffix–онок/-ёнок (–onok) forms the nouns that name cubs, children as representatives of a nationality, social stratum or profession called the motivating word, and a group of derivatives with the suffix -онок/-ёнок(–onok) that has a diminutive-hypocoristic or only affectionate meaning. The material for the study was the data from Unabridged Dictionary of Russian Jargons by V.M. Mokienko, T.G. Nikitina. As a result of application of the method of continuous sampling, we have revealed 42 derivatives with the suffix –онок/-ёнок (–onok) which were subjected to word-formation and morphemic analysis. It is established that the suffix -онок/-ёнок (–onok) is not very often used in jargon word formation. Two ways of the formation of jargonisms by means of this formant have been revealed: the suffixation proper and semantic derivation. The inclusion of foreign words in the process of formation of derivatives with the formants -онок/-ёнок (-onok) is observed. It has been established that the suffix –онок/-ёнок (–onok) in jargon word formation performs the following functions: nominative, evaluative-expressive, and style-forming. The results can be used, firstly, in lexicography (inclusion of the units with the suffix –онок (–onok) into explanatory dictionaries of word-formation), and secondly, in linguodidactics (as the subject matter for courses in word formation, Russian as a foreign language).

Keywords: *suffix, word-formative type, jargon, modification, derivation, semantic derivation, word-formation analysis*

1. Introduction

According to I. B. Golub, the Russian language is characterized by an exceptional wealth of word-formation resources, which have a wide expressive-stylistic palette. According to the scholar, this is determined by the “developed system of Russian word formation, the productivity of evaluative suffixes that add a variety of expressive colors to words, and the functional-style fixation of some word-formation patterns” (Golub, 2001).

Interest in the study of word formation does not wane, various aspects are reflected in the works by modern domestic scholars (see, for example, Ulukhanov, 2007; Ukhanova & Kosova, 2016; Trofimova et al., 2017; Khabibullina, 2015; Guzaerova et al., 2018; Sheidaeva, 1998;

Spiridonov et al., 2018; and many others.) and foreign researchers (see, for example, (Hippisley, 1998; Steriopolo, 2008; Offord, 2003; Pounder, 2000 and many others).

However, it should be remembered that it is necessary to study not only the literary language, but also the peripheral areas of the language, such as jargons and dialects. The importance of the study of jargon is determined by the fact that jargon as one of the uncodified forms of the national language "is characterized by emotive connotation, expression and special expressiveness, therefore, in the formation of jargonisms, peculiar suffixes are often used, i.e. native speakers of jargon deliberately use the formants that differ from the literary language, which perform a playful or humorous function" (Sung, 2015; Shvedova, 1980).

This paper presents the features of word formation of derivatives with the suffix –онок/-ёнок (–onok) in Russian jargonism. The choice of the formant is conditioned by the fact that the specified suffix does not form a large number of word-formative types and for this reason it rarely becomes the object of special studies. However, its productivity, especially in colloquial speech, indicates that the designated formant deserves close study and a detailed description.

Unabridged Dictionary of Russian Jargons by V.M. Mokienko, T.G. Nikitina has been chosen as the study material, which lexicalizes 42 derivatives with the suffix of our concern –онок (-onok) (and also its phonemic variant –ёнок (-yonok)).

2. Methods

The main method used while working with *Unabridged Dictionary of Russian Jargons* is the method of continuous sampling. Also in the course of investigation, the method of word-formation analysis and the method of dictionary definition analysis were used.

3. Results and Discussion

The authors of *Russian Grammar-80*, speaking of nouns with a modifying meaning, refer the suffix –онок/-ёнок (–onok) to the group of suffixes forming the nouns with the meaning of non-adulthood: "the nouns with the suffix –онок (–onok) <...> name a person or an animal characterized by childlishness, lack of maturity" [*Russian Grammar*], and single out the following subtypes:

1) Nouns motivated by the names of animals, calling the baby animals: *зверёнок (zveryonok) – the young of wild animals*, *совёнок(sovyonok) - owlet*, *щеглёнок(shcheglyonok) – young goldfinch, оленёнок(olenyonok) = fawn, слонёнок(slonyonok) – baby elephant, волчонок(volchyonok) – wolf cub*, etc.;
2) The nouns motivated by the names of persons, denoting "a child – a representative of nationality, social stratum or profession named by a motivating word": *турчонок (turchonok)* – Turkish child, *цыганёнок (tsyganyonok)* - Gypsy child, *батрачонок (batrachonok) - , казачонок (kazachyonok)* - Cossack boy*, попенёнок (popenyonok)* - baby girl*, внучонок* (*vnuchonok)* – grandson, etc.

Among the nouns with subjective-attitudinal meaning, a group of derivatives with the suffix –онок (–onok) with a diminutive-affectionate or only affectionate meaning is also distinguished: *мальчонок (malchonok)* – lad, *дошколенок (doshkolenok)* - preschooler, etc. [Russian Grammar].

According to the materials of the explanatory dictionary of word formation by T.F. Efremova the suffixal formant–онок/-ёнок (–onok) has the following meanings:

1. A word-formation unit that forms the nouns with general meaning of a person or animal characterized by childishness, lack of maturity: 1) a cub of animals; 2) a child – a representative of nationality, social stratum, profession, designated by a motivating word;
2. A formative unit that forms masculine nouns with a diminutive or affectionate meaning (Efremova, 2000).

T.F. Efremova, characterizing the theoretical foundations of the construction of *The Explanatory Dictionary of the Word-Formation Units of the Russian Language*, writes, "Formative categories in this dictionary include: <...> diminutive, magnifying, derogatory suffixal formations of nouns" (Efremova, 2000). However, in this case, the prevailing morphemic nature of Russian word-formation which is expressed in its ability to convey word-formation meanings with the help of

morphemes, like grammatical ones, is not taken into account.

According to the traditions of the Kazan Linguistic School (KLS), we refer the suffixes of subjective evaluation to word formation.

Unabridged Dictionary of Russian Jargons by V.M. Mokienko, T.G. Nikitina (Mokienko & Nikitina, 2000) fixes 36 derivatives with the suffix -онок/-ёнок (-onok/-yonok) and 6 derivatives in the plural with the suffix -ат(а)/-ята(а) (-at(a)/-yata(a).

Of the 42 derivatives with this suffix, only four designate cubs of animals: *моргушонок (morgushonok)* (Ofen. *Ягнёнок - lamb* (from *Моргуша* Ofen. Овца - sheep, баран – he-sheep)), *мозёнок (mozyonok)* (Ofen. *Козлёнок (kozlyonok) – baby goat* (from *Моза*)), *хрунёнок (khrunyonok)* (Ofen. *Поросёнок (porosyonok) - piggy* (from *хрунья (khrunya)* Ofen. *Свинья - swine*)), *шкапёнок (shkapyonok)* (1. Criminal *Жеребёнок (zherebyonok) – colt* (from *Шкапа* Criminal Ironic. 2. *Лошадь - horse*)).

Eleven derivatives corresponding to the names of animal cubs in the literary language in jargon represent the result of semantic or morphemic derivation, and the derivatives can denote a face (*мышонок* (1. Criminal. A picker (usually young). 2. Arrest. A disciplined, not penalized prisoner. 3. Criminal. A drunk man), *фазанёнок (phazanyonok)* – a young pheasant (Army. Ironical. Young soldier of the spring draft (from *Фазан* 4. Army. Pejorative. A soldier of military service from a year to 1.5 years // Young soldier of the spring draft)), *крысята (krysyata)* - baby rats (Criminal jargonism. Pejorative. Extramarital children of a single mother (usually a deserted drunkard), *волчонок (volchonok)* – wolf cub (1. Prisoner. Young convict who overrides authorities), *индюшата (indyushata)* – turkey poults (pl. Mus., humorous. Musicians performing alternative music etc.)), and an item (*медвежонок (medvezhonok)* - teddy bear (Criminal. Сейф – a metal box for storing money // Small-sized safe (From *Медведь* - Bear)), *крабёнок (krabyonok)* (Narcotic. Снокарб (a psychostimulant, hallucinogenic drug), *утята (utyata) - ducklings* (pl. Criminal. Humorous. Резиновые сапоги – rubber boots, etc.), *гусёнок(gusyonok) - gosling* (Criminal. Welding machine for breaking up safes), *волчонок (volchonok) - wolf cub* (2. more often plural for US dollar), *цыплёнок (tsyplyonok)- spring chicken* (3. pl. Criminal for Ботинки - Boots. 4. pl. Criminal., mil. Humorous for Патроны - Cartridges), etc.). Semantic derivation is also found in the names of mushrooms: *опёнок с опятами* (opyonok s opyatami) honey mushrooms (Criminal. for Револьвер с патронами - a Revolver with cartridges (< by analogy with *Маслёнок с маслятами (Maslyonok, maslyata) – butter mushrooms*)).

In a number of examples, a derivative word standing for the name of a person acquires only the meaning of maturity that is characteristic of the suffix –онок/-ёнок (–onok/-yonok): *быдлёнок (bydlyenok)* (The term of abuse. 1. the child of a prostitute. 2. a demented child. 3. Youth. A student of vocational school (from. (from *Быдло - Cattle* 2. Abuse. Feeble-minded, stupid, ill-cultured man)), *ваучерёнок (voucheryonok)* (Youth. Ironical. Young businessman (from *Ваучер* - Voucher.)), *лащёнок (lashchyonok)* (Ofen. Ребёнок. Child. (from *Лащина*. Ofen. Парень, юноша a boy, young man)), *корючонок (koryuchonok)* (Ofen. Девочка - Girl. (from *Корюк*, *корюка (koryuk, koryukha),* from Ofen. Девушка - Girl).

A derivative characterized by the meaning of diminution was lexicalized: *скулёнок (skulyonok)* (Criminal. Small stash pocket (from *Скула*. *(Skula).* Criminal. 1. Inside welt pocket)). In addition, a number of derivative words differs from those produced only by the presence of evaluativity: *рубчонок (rubchonok)* (Youth. Ironic. *Рубль - Ruble*), *жигулёнок (zhigulyonok)* (1. car make *Zhiguli*).

We can conclude that borrowed words are common in the process of forming new lexemes with this suffix: *бэбиёнок* (*бэбёнок*) (bebyonok) (Ребёнок - Child (from English *baby*)), *киндарёнок (kindaryonok)* (Youth. Humorous. Ребёнок - Baby (from *Киндер*) (from German *Kinder*)), *чайлдёнок (childyonok)* (Youth. Ребёнок (from English *child*)), *чилдрёнок (childryonok)* (Youth. Humorous. Ребёнок (from English *children*)), *герлёнок (gerlyonok)* (Youth. Девушка, девочка (from English *girl*)), *бейбёнок (beibyonok)* (Youth. 1. Ребёнок. 2. Девушка (from English *baby*)), *пиплёнок (piplyonok)* (Ребёнок - Baby (from English *people*)). These derivatives designate a child (less often – a girl), thus expressing the meaning of infantility that is characteristic of the suffix –онок/-ёнок (–onok / -yonok).

In addition, one derivative formed by means of univerbalization was fixed: *кесарёнок*

(kesaryonok) – C-section baby (Medical, A baby who was delivered by Cesarean section).

4. Summary

The word formation analysis of the derivatives with the suffix – онок (-onok) allows for the following conclusions.

On the whole, the suffix–онок (–onok) is not frequent in use for the formation of jargons, which can be explained by the expression of gentleness inherent in it, which is not characteristic of jargon (for example, A. I. Solzhenitsyn writes about the peculiarities of the prison language, "The language of the prisoners loves and stubbornly conducts these inserts of pejorative suffixes: *not мать, but мамка; not больница, but больничка; not свидание, but свиданка; not помилование, but помиловка; not вольный, but вольняшка.*" (Solzhenitsyn, 1991).

Jargonisms with the suffix -онок (-onok) have two main ways of derivation:

1) suffixation proper, including repeated complexification by means of the suffix of the same stem, generating homonymy,
2) semantic derivation.

In jargonism formation, to reach expressivity is possible not only via the use of formants with an emotionally evaluative connotation, but also due to the presence of homonymous relations between jargon derivatives and literary words. Such formations have a high potential for expressiveness and can create a pun effect.

5. Conclusions

Thus, as a result of the study, it was found that Russian jargon is derived by means of the suffix –онок/-ёнок (–onok/yonok) according to the same patterns as literary words, but jargon practically does not express endearment. In addition to suffixation itself, semantic derivation plays an important role. Suffixes perform nominative, evaluative-expressive and style-forming functions in jargons.

The obtained results can be used, firstly, in lexicography (inclusion of the units with the suffix –онок/-ёнок (–onok/-yonok) into explanatory dictionaries and explanatory dictionaries of word-formations), and secondly, in linguodidactics (as a subject matter for courses in word formation, the Russian language as a foreign).

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RICHTMANN PUBLISHING

Research Article

Juridical Evolution of the "Decent Work" Concept in the Albanian Labour Legislation

Prof.As.Dr. Eneida Sema (Dervishi)

Dr. Juliana Bylykbashi

Faculty of Justice,
University of Tirana,
Tirana, Albania

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Abstract

The development in workplace relationships in our society demonstrates the need to respect human rights and freedoms at the work place, the so-called essential guarantees for 'having decent work and dignity in the workplace'. Thus we can detect that the "decent work" concept takes place in the dimenstions between the new demands of a country's job market, in respecting the important principles and values, such as the principle to ban forced work, the principle that bans discrimination in the work place, the principle of equal pay, the freedom of association principle, the principle for comprehensive protection in the work place which is coherent to the development of current issues, such as the need to defend one's rights in the work place. Considering the current development of the internataional labour law and in particular the need to develop the concept of 'decent work' now an actual interlacement is needed between the respective legal framework and the best politicies adapted in order to meet the legal goals of a country in the best way possible.

Keywords: *labour rights, decent work, forced work, employment, freedom of association*

1. Introduction

The legal labour relationship is a special judicial relationship which are now legally consolidated because of the special nature of the judicial elements it entails.

Besides the qualifying judicial elements in the workplace relations, the most important principles that the labour legislation is based on[1] the comprehensive variety of labour rights guaranteed give this legal framework special judicial pattern.

In the same manner, social and technological evolution enable not only the detection of what the dynamics in the respective legislation are, but they also present the needs to adapt to the coherent development of legal priciples and concepts.

The "decent work" concept has already been presented in a series of international acts, and it can be treated as the goal or the motto of improving working conditions and sustainable development. ("Decent work is not just a goal, it is a driver that of sustainable development."[2])

[1] *Here we add: principle of non-discrimination, principle of equal pay, principle for banning forced work, principle for general protection in the workplace*

[2] *Guy Ryde, ILO Director-General, "Decent Work and the 2030 Agenda for Sustainable Development", https://sustainabledevelopment.un.org/post2015/transformingourworld*

'In 1999, the ILO set itself a new goal "Decent Work for All", which aims to secure decent work for men and women everywhere. The objective is the creation of not just jobs, but jobs of acceptable quality'.[3]

Thus we can detect that the "decent work" concept takes place in the dimensions between the new demands of a country's job market, in respecting the important principles and values, such as the principle to ban forced work, the principle that bans discrimination in the work place, the principle of equal pay, the freedom of association principle, the principle for comprehensive protection in the work place which is coherent to the development of current issues, such as the need to defend one's rights in the work place.

2. Judicial Analysis of Some Principles and Freedoms in the Workplace According to the Legal Frame in Albania in Regard to the Evolution of the 'Decent Work' Concept

The evolution in workplace relationships in our society demonstrates the need to respect human rights and freedoms at the work place, the so-called essential guarantees for 'having decent work and dignity in the workplace'.

In regard to the main legal guarantees in the workplace, the Constitution of the Republic of Albania sanctions the right to work and to freely choose a profession, the freedom of association, the right to go on a strike, the right for social protection and it guarantees the principle of banning forced work and discrimination in the workplace.[4]

Nowadays, the Albanian labour legislation regulates completely the workplace relations and guarantees the protection of the employees. The Albanian Labour Code[5] as the main corpus of the regulating articles for the workplace relations provides the main rights in the workplace as well as the main principles.

International Labour Organization, in cooperation with other famous international bodies/institutions which focus on the constant global economic growth rhythm through sustainable improvement of employment and working conditions, expole the always changing problems that come up from time to time, and summarize them in the synthesis of common interactions taken in order to better the living conditions.

We can thus conclude that decent work is a concept that has been integrated in every labour rights' principle, and in each guarantee or essential labour right and as such it needs constant adaptation of the legal framework, it needs policies and special strategies in the employment sector to evolve in complete accordance with the demands of economic, social and cultural developments of a country.

2.1 The right to work and banning forced work

The right to work for each individual is the right that guarantees the chance to ensure means to live through legal work and it refers to employment policies and generating new work in the job market. The legal framework that incites employment and vocational training[6] provides the main ways for the government to intervene in the job market, including active employment policies such as: regulating the employment agencies activies, programs to generate new jobs and programs that offer vocational training.

Based in data by the Statistics Institute, during the second trimester of 2019, the official

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[3] See "Decent Work and Development Policies", Gary S. Fields, Cornell University, International Labour Review, Vol.142 (2003), No 2, p.23

[4] See Constitution of the Republic of Albania, approved by Law No 8417 dt 21.10.1998, amended, respectively articles 18, article 26, article 49, article 50, article 51

[5] Labour Code approved in 1995, amended by Law No 8085, dt 13.03.1996, by Law No 9125, dt 29.07.2003, by Law No 10053, dt 29.12.2008, and by Law No 136/2015 (the latter came to power on date 22.06.20016)

[6] See Law No 15/2019 "On Inciting Employment", approved on dt.13.03.2019, and Law No 15/2017 "On Professional Education and Training in the Republic of Albania", approved on dt 16.0.2017

unemployment rate in Albania, for the population over 15, is 11.5 %. For males, the job market participation rate is 15.9 % higher than for females[7].

As stated above, the job market in Albania is characterized by the lack of stability because of the concentration of the number of young people in chosing certain professions, the low level of salaries in the country and the emigration fluxes.

Despite the fact that the National Strategies has as one of the goal, to incite decent work through fruitful policies in the job market including modernizing the service offered by the National Employment Service and interinstitutional cooperation with all the social actors and partners[8], the problems in the job market and the issues regarding gender equality in the workplace seem more evident and much more complex.

Meanwhile the employment policies should be included in a completely reformed agenda, which deals with current issues, minors are still abused in various forms of employment and unpaid jobs continue to be among the most sensitive employment issues.

The Albanian society has gone through the roughest dictatorial regime, in which the principle that bans forced work was violated in all forms and it was instead the opposite of it that was pushed upon all social classes, despite the manner in which it would be disguised and the decorative 'strategies' they used to achieve that.

As mentioned in the document published by the Authority for Informing on the Former State Security Service Documents: "the official goal of keeping political prisoners in jail was to 'rehabilitate and educate them' through suffering and labour"[9].

The Constitution, the international acts that were ratified in Albania regarding banning forced work, as well as the Labour Code have legally engraved this important principle that eradicates all forms of forced work, including the worst forms of minors work, however, informal work, the economic need and the deep problems in regard to implementation of law, including the principles that are part of the legal framework remain present and inseparable part of the big issues of a society that is still transitioning, since 1990.

Legally, forced work is banned in all its forms, including every job or service demanded by an individual without his consent, under threat of whatever punishment[10] and also hiring children under 16 is banned[11] and also considered a criminal act according to the criminal legislation.

Considering that in 2010 Albania has reported very high numbers of children (from 5-17 years old) that have been victims of various forms of work abuse[12], a deep analysis of the social and legal issues remains a contemporary case to be made.

Thus, decent work chrystalized and formatted in the framework of respecting principles remains a comprehensive concept which in its implementation is still far from expectations considering the wide array of social problems which are inevitably intertwined in the low level of law implementation.

2.2 Health protection at the workplace

Protection and safety in the workplace is another important Constitutional and legal principle and

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[7] See: www.instat.gov.al, "Quarterly Survey for the Work Force, II Trimester, 2019"

[8] National Strategy for Employment and Training 2014-2020, see p. 61,Chapter 3: "The goals of the policy for major products in developing employment and skills"

[9] Authority on Information for the Files of the Former State Security Institution, "Study Frame on the Prison system, banishment and forced labour during the communist regime in Albania focused on founding a Commemoration Museum in the former-camp of Tepelena", Academic Beqir Meta, Dr. Ermal Frasheri, Tirana, November 2018, see: p. 28

[10] Labour Code, Albjuris 2017 Publishing, Article 8/1, p. 11

[11] Labour Code, Albjuris 2017 Publishing, Article 98/1, p. 73

[12] INSTAT, ILO, (IPEC-International Programme on the Elemination of Child Labour) "Children who work in the Republic of Albania, the results of the national study on children labour in 2010", Tirana, July 2012, see p.10: "It's estimated that in Albania, 54 000 children aged 5-17 years old work. This figure represents 7.7% of the child population in this age group".

another aspect that deserves great attention during this short summarizing analysis.

Protection in the workplace is a comprehensive concept and principle in the Labour law as it encompases all the aspects of protections for employees hired in a workplace, including their salary, working hours and resting hours, working conditions, protection of special categories of employees, rights granted by the statute at the work place, the legal chance to change or terminate the work relations as well as the right to equal treatment and freedom of association.

However, when protection in the work place is directed towards the working conditions and safety, this legal concept approached more the concept of protection of life and health of the employees in their workplace.

In the Albanian Labour Code safety in the workplace and the working conditions are regulated in a special chapter, which contains general provisions and special articles regarding safety in the workplace.[13]

In the framework of the harmonization of the Albanian legislation with European Union laws, as an explicit and necessary need in fact, a special law on safety in the workplace brought about the implementation of the novelty principles that had been lacking in the field, along with prevention measures and constant cooperation and social dialogue through the actors involved.[14]

Although the legal articles mentioned above can be considered as having had a 'reforming' effect on the field, the principles that describe it could be qualified as such even in the Labour Code during the general amendments made to this Code in 2015.

As we presented in general the legal regulations, we can now pose the question whether the concept 'decent work' or 'dignity in the workplace' is implemented in practice and how does that evolve.

In my opinion, meeting the right level of expectations regarding the implementation of the 'decent work' concept in this aspect/field must take place through implementation of the respective legal framework in power, which helps detect issues in many aspects, including the efficiency of intra-institutional cooperation, the necessary professionalism from the employers who 'control' this field and lastly the well-functioning of the judicial branch.[15]

2.3 Freedom of association

Considering the fact that freedom of association is not only one of the main freedoms of employees (referring in this case to freedoms and rights of employees), which can also be considered an important mechanism in function of fulfilling all the freedom and rights of the employees at work.

The principle of freedom of association is sanctioned in the Albanian Constitution and it can also be found among the articles of the Labour Code in accordance to the principles of the international acts ratified by Albania. Similarly, based on the articles of the Labour Code the intervention of the employers in the syndical activities of the employees, where intervention is considered the entirety of measures that incite founding of syndicates of employees supported in various forms by the employers, including financial means. Employers are also banned from hindering the founding or functioning of employees' associations and cannot discriminate their

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[13] The legal framework for safety in the workplace and the working conditions, besides the main legal regulations also includes legal acts which refer to detailed rules for special sectors such as: CMV No. 844, dt 03.12.2014 "On employees's protection from risks related to ioniazing radiation in the workplace; CMV No. 843 dt 03.12.2014 "On protection of employees from risks regarding optic radiation in the workplace; CMV No. 484 dt 29.06.2015 "On approving the guidelines to protect employees from risks coming from asbestos in the workplace"; CMV No. 108 dt 15.02.2017 "On approving the guidelines to protect children in the workplace"; etc.

[14] Refers to Law No 10.237 dt 18.02.2010 "On safety and healthcare in the workplace" and after that, for its implementation a series of legal acts were approved such as: CMV No 312 dt 05.05.2010 "On safety in the construction sites"; CMV No. 1012 dt 10.12.2010 "On signs in the construction site and the workplace"; CMV No. 107 dt 09.02.2011 "On the structure, rules for how the Safety Council and healthcare in the workplace would function, and epmloyees' representatives"; etc., see also: https://inspektoriatipunes.gov.al

[15] As is well-known now, in Albania the justice reform is being implemented, because of the many issues detected through the years in the functioning of the judicial branch.

employees based on their membership or participation in the activities of a syndicate or organization.[16]

Among the most important legal instruments at the hands of the syndicates are collective contracts which are also one of the main professional sources that regulate a specific work relationship in special sectors or fields of activity, as well as the right to go on a strike. These legal institutions, are a crucial part of the Labour law framework in Albania and are found in articles that regulate respectively the procedures of signing and starting collective contracts and the rules that regulate how to exercise the right of striking when there is a collective conflict.

Certainly, to study the activity of syndicates and the efficiency of their activity a ractional and actual use of these vital mechanisms is necessary.

The implementation of association freedoms and rights is based thus in a series of international acts and it is also sanctioned in the main legal act, the Constitution as well as described in other parts of our legislation. Even though Albania is on a path of progressive legal transformations, in order to join the European family, practical implementation of principles that are internationally approved is important, while the European Union member states respect the principles sanctioned in a series of essential legal acts. In the second edition of "European Labour Law, Bercusson says about European syndical rights: "Both jurisprudence and The Treaties now point to the need to identify within Member States the common traditions regarding fundamental trade union rights".[17]

In Albania it does not seem to have been any harsh collective conflict so far that stem from possible clashes between sides (namely representatives of employees and employers) regarding any disagreement about negotiable conditions in the collective contract. Consequently, the question we can naturally pose is whether the lack of this conflict stems from the "excellent" will of the sides to meet each other's rational requests or from their "will" to respect the formality of their relationship and their collective contracts by not making adequate and necessary requests in these contracts?

As was analyzed above, the concept 'decent work' besides other fields of dealing with essential rights and freedoms of employees, evolves best when it relies on the efficiency of the judicial tools used by the sides to actually improve the work relationship and not only the meticulousness of the legal provisions.

The analysis of some of the collective contracts that are implemented in some important sectors of activity concluded in findings such as the formality of their relations in general lacks specific regulations beyond legal provisions, even in such cases when the legal articles direct the sides to the collective contract as a legal instrument to regulate and detail their relationship.

3. Conclusions

Labour law in Albania consists of important principles and includes the regulation of the work relationship in its entirety, both in the public and private sector. The provisions in the labour law regulate both the individual and the collective contract, the judicial status of the sides, including their rights and obligations that derive from this legal relationship, but besides the comprehensive variety of regulating this relationship, the rights of employees in the work place are a vital aspect of the legal framework. Such rights are provided not only in important legal acts, but they are also an integral part of any institution of this legal framework.

Considering current developments of the international labour law and in particular the need to evolve with the concept of 'decent work', now an actual intertwining is needed between the legal framework and the best politcias adapted with the purpose to better reach the legal objectives in the country.

With the purpose to eliminate the negative phenomena in the global range, which threaten the implementation of the decent work principle, it is crucial to increase the effectiveness by taking care of the sustainability of the global economic growth. Furthermore, considering this goal, *first* growth

[16] *Labour Code updated with judicial practices, Tirana 2017, Albjuris Publishing, see article 186, p.134*
[17] *Brian Bercusson, "European Labour Law", Second Edition, Cambridge University Press, 2009, p.320*

should be reached evermore comprehensively meaning *improvement of the living and working conditions* for many countries, and increasing the social groups that should benefit from the improvement of these standards.[18]

In my opinion, if the social and economic issues are detected more realistically, it would help find the most accurate policies for the job relationship, including building strong bridges of inter-institutional cooperation and use in the proper way of financial sources, with the goal to increase professionalism in this field.

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[18] *See: "World Employment Social Outlook, Trends 2018", International Labour Organization, International Labour Office-Geneva, 2018, Box 1.2, p. 6, for more visit the website: www.ilo.org/publns*

Research Article

The International Legal Status of Marshes of Iraq as Protected Natural Areas

Salwan Jaber Hashim[1]

Valiullina Ksenia Borisovna[2]*

Davletgildeev Rustem Schamilevich[2]

[1]*College of Law, Al-nahrain University, Republic of Iraq*
[2]*Kazan Federal University, Kazan, Russia*
**Corresponding Author*

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Abstract

The wetlands of the Republic of Iraq, being a natural area of protection, have unique environmental, historical and cultural characteristics and are significantly different from the existing wetlands of the world. However, despite this status, they are exposed to numerous negative influences. The authors point to the most important international legal instruments aimed at preserving this unique territory of the Republic of Iraq, namely, the Ramsar Convention on Wetlands. The Government of Iraq is committed to fulfilling international obligations related to this convention and to overcoming the obstacles encountered in their implementation. The authors have examined the main international commitments, obstacles and the main priority lines developed by the Government of Iraq in order to overcome these obstacles. In particular, the problem of Water constraints has been considered in connection with the embankments built by the Islamic Republic of Iran, doing natural environment damage to the wetlands of Iraq and the attempts of the Government of Iraq to resolve the current situation, including the involvement of the Ramsar advisory mission. The mission was organized in mid-2017. The authors also provide relevant recommendations aimed at enhancing cooperation between Iraq and neighboring (coastal) states, and contributing to the reasonable and equitable use of a shared watercourse using the 1997 UN Convention on International Watercourses. The authors put high hopes on attracting international attention to the problems of relations between the Republic of Iraq and the Islamic Republic of Iran in the use of the Hawizeh marshes site.

Keywords: *Wetlands, Ramsar Convention, UN Convention on International Watercourses, Common Watercourse, the Republic of Iraq, the Islamic Republic of Iran*

1. Introduction

The marshes of southern Iraq are among the richest areas that teem with fish, birds and abounds in plants, namely: 259 species of blue algae, more than 264 species of green algae, more than 32 species of golden algae, 209 species of rare plants, and groups of floating plants, used in the pharmaceutical industry. In addition, this region is placed on very valuable oil lakes.

Marshes are the environment for the survival and breeding of many species of animals, fish and birds, including birds of passage from around the world. The most important species are stork, duck, hoopoe and others. The southern mashes are home to millions of fish, which includes the best species in the region, breeding in spring and constantly increasing in number. Amphibians are represented by reptiles, such as turtles.

The importance of marshes in many areas is manifested in the preservation and retention of the rivers of Tigris, Euphrates and tidal estuaries, in the cleaning away of hazardous pollutants, metals and organic substances from water, where soil microbes process organic waste to reduce their harm.

The hydrological role of marshes in the biosphere lies in the fact that they serve as accumulators of a huge mass of fresh water of a unique “marsh” composition. The role of swamp water is extremely important in supplying rivers with the main substances of swamp origin (Veretennikova, 2005).

Low rainfall in the desert has a negative effect on swamps, resulting in dust storms that lead to climate degradation, damage to buildings, infrastructure, Iraqi cultural heritage, worsen the condition of archaeological sites, destroy crops, provoke diseases and death of livestock, and also entail worsening bird and wildlife watching that could attract tourists from all over the world.

On the reason of the difficult situation on the territory of wetlands, the country is required to adjust its activities, strategies and environmental legislation, having in consideration international cooperation in the field of environment conservancy. International cooperation is carried out by making various treaties, as well as consolidating the role of intergovernmental international organizations in order to preserve the biological system and sustainable use of water resources.

2. Methods

In the course of the research, we used the methods, such as comparative legal, special legal, the method of structural analysis, the method of comparative law.

3. Results and Discussion

The most important international legal instrument aimed at protecting wetlands as one of the most important areas of biological diversity is the Ramsar Convention on Wetlands (ratified in Iran in 1971 and entered into force in 1975). Subsequently, the Protocol of the Convention was amended, ratified in 1982 and entered into force in 1986.

The Ramsar Convention on Wetlands is the basis for international cooperation for the conservation and smart use of all wetlands. This is the only international environmental convention that deals with the special ecological regime of wetlands that ensure the biodiversity of plants and animals, including the source of freshwater resources.

The purpose of the Convention is the protection of wetlands and the recognition of the basic environmental functions of these areas, their economic, cultural, scientific and recreational value.

The Government of Iraq is committed to fulfilling international obligations concerning the Ramsar Convention (Iraq has acceded to the Ramsar Convention Law № 7 of 2007 on Accession to the Ramsar Convention on Wetlands. Iraq Chronicle, 2008). Three new sites were added to the Ramsar List of Wetlands (Central Swamp, Horm Hem and Lake Savva) in 2015. The Government of Iraq collaborated with the Convention secretariat on the implementation of certain issues related to the conservation of Iraq’s nature sites.

The Iraqi Government has fulfilled a number of international obligations to hold international scientific conferences, seminars and trainings; information and education programs for the population living in the immediate vicinity of the marshes, with the aim of raising awareness about the conservation of wetlands. We have explored and researched 32 natural wetland sites in Iraq, as well as the collected environmental, social and economic data necessary to include wetland sites in the list provided for by the Ramsar Convention; the representative of Iraq was ensured at the Committee’s ongoing meetings over the past three years.

Within the framework of fulfilment of the obligations under the Ramsar Convention, the cooperation with the government agencies, being necessary to address some issues on the implementation of the Convention on the Conservation of Wetlands, especially in oil production and climate change has been achieved; environmental status has been determined, and ongoing activities to monitor water quality and biodiversity in Ramsar sites have been carried out (National report on the implementation of the Ramsar convention on wetlands, 2018).

Among the international commitments undertaken by the Government of Iraq are the development of plans, programs and strategies for the conservation of wetlands. The Wetland Conservation Strategy is based on poverty eradication; water management plans and water use efficiency improving; coastal and marine resource management plans; integrated coastal management plan; aquaculture and fisheries; conservation of biodiversity in wetlands, etc. (https://www.ramsar.org).

The main obstacles to implementing the Ramsar Convention in the Republic of Iraq are: poor community awareness of the importance of wetlands; the lack of an effective contribution to improving living conditions to be dependent on wetland resources; decrease in water flow in the swamps due to reduced water resources and climate change, which leads to increased environmental and economic consequences; problems of oil production and its impact on the environment of mashes; lack of experience in managing sustainable wetlands, as well as support for wetland management plans.

When it comes to water scarcity in wetlands, the result of it was a change in the flow of water in a number of rivers and tributaries and the construction of dams by the Islamic Republic of Iran, which caused significant damage to biological diversity in the mashes of Iraq, especially in the Hawizeh mashes.

The Hawizeh mashes are part of the marshes of Mesopotamia and the largest freshwater marshes of Western Eurasia, where marshes are considered an important international site of biological diversity (National report on the implementation of the Ramsar convention on wetlands, 2018). The Hawizeh site was identified by Iraq as a part of its accession as a Contracting Party to the Wetlands Convention, but in 2010, the Government of Iraq requested that the site be put into the Montreux Ramsar list with ongoing or expected environmental changes due to the threat of drying out and decreasing water flow and rainfall.

In 2011, the Government of Iraq invited the Convention Secretariat to determine the actual state of wetlands, which served as the basis for a preparatory visit of a group of experts from the Ramsar Secretariat to the Republic of Iraq. The main purpose of the visit was to hold a meeting with specialized experts to assess the conditions of the drought affecting the mashes and its negative influence on the environment and biological diversity (https://www.ramsar.org).

The report of the secretariat group notes that in 2001, a dam was built in Iran across the River of Karh, which flows into Khor Hawizeh and Khor Al-Azm. And in early 2000, the construction of the dam through the mashes, along the border between Iraq and Iran, began. The dam was completed in 2009 (Hawizeh Marsh placed on the Montreux Record). The Hawizeh area is mainly dependent on rainwater as well as river water and, as a result, a decrease in the amount of water will increase its salinity (Report on a ramsar team visit to the hawizeh marsh ramsar site, 2014).

Following the review, the Ramsar group noted that the Iranian dam had reduced the water flow from the Khor Al-Azma swamp to the Hawizeh district. Despite the attempts between Iraq and Iran to negotiate on this difficult issue, there are no prerequisites for this issue to be resolved in the near future. In this regard, steps must be taken to strengthen confidence and consolidate cooperation between the relevant institutions in Iraq and Iran, with the purpose of preserving both Havr al- Hawizeh (Iraq) and Khor al-Azm (Iran).

Such steps on confidence-building can be taken through technical cooperation, as well as through joint ventures organized by a third party, such as the United Nations Agency and the United Nations Development Program (https://www.ramsar.org).

In mid-2017, the Government of Iraq requested the Ramsar secretariat to organize a Ramsar advisory mission on wetlands to determine the future cooperation between Iraq and Iran and as a first step towards the long-term conservation and sustainable development of the wetland region, including determining the methods to reduce sand and dust storms.

The Ramsar Consultative Mission is a consultative mechanism carried out at the invitation of the Contracting Party concerned. The mission is not a mechanism for verifying the compliance with the convention or a disciplinary procedure; its legal basis is the so-called “monitoring procedure” established by the decision of the Ramsar Standing Committee in 1988 and approved by Recommendation 4.7. of the Conference of the Parties in 1990 (Report on a Ramsar Team Visit to the Hawizeh Marsh Ramsar Site, 2014).

The Advisory Mission crossed the border with Iran and visited the Khor al-Azm associated with the Hawizeh marshes in Iraq. However, the construction of the dam along the international border in mid-2000 divided the mashes. Further, there was organized a meeting in the Iranian city of Ahwaz, the participants carried on the discussion on what they saw and heard during the visit, and more importantly, they confirmed future cooperation areas (https://www.ramsar.org).

In order to ensure fair and reasonable use of the Mesopotamian mashes, including the Hawizeh site, as well as to enhance cooperation between Iraq and Iran on water resources management and wetlands conservation, we consider it appropriate to refer to international legal standards applicable to international watercourses, in particular to the 1997 UN Convention on the Law of the Non-Navigational Uses of International Watercourses (https://www.ramsar.org), which confirms the principle of good neighboring and the obligation to respect the rights of costal states, as well as to ensure reasonable and fair use of common watercourse.

The United Nations Convention on International Watercourses was ratified by Iraq in 2001 and entered into force in 2014. It consists of 7 parts divided into 37 articles containing the most important characteristics of the Convention.

According to Article 2 of the 1997 Convention, “watercourse” means a system of surface and groundwaters, which, due to their physical interconnection, constitute a single whole and usually have a common ending, and “international watercourse” means a watercourse, parts of which are located in different states. In our opinion, the fact that the Mesopotamian mashes are part of the river complex of the rivers of Tigris and Euphrates allows to attribute them to watercourses according to Article 2. Unfortunately, the problem of applying the 1997 Convention to the Hawizeh wetlands is connected with the fact that Iran is not a party to it, but we can hope for the subsequent accession of the Islamic Republic of Iran to the Convention on International Watercourses.

The Convention is necessary to consider bilateral agreements with a view to bringing them into line with the basic principles of this Convention. As a Universal Agreement, it embraces three main issues: the lack of an international agreement between riparian parties to regulate the use of common rivers; the existence of an agreement or agreements between some but not all states participating in the international watercourse; the existence of an agreement between riparian states, but limited to specific aspects that do not encompass all areas covered by the 1997 UN Convention.

The Convention provides a list of factors and circumstances to be considered in order to reach a harmonious agreement regarding the definition of common, fair and reasonable use (https://www.ramsar.org; https://documents-dds-ny.un.org), it is the general basis for creating an obligation to the intended cooperation, exchange of information and non-discrimination between different uses of watercourse, since the order of preference for one type of use over another is absent.

4. Summary

To conclude the article, we can summarize:

- the main international legal instrument ensuring the conservation of Iraq’s wetlands is the Ramsar Convention which implies the subsequent adherence to its norms in the activities of the Government of the Republic of Iraq;
- it is reasonable to continue to use the monitoring mechanism provided for by the Ramsar Convention concerning the work of the Ramsar advisory mission, in order to increase international recognition of the problems of relations between Iraq and Iran in the use of the Hawizeh marshes area;
- in order to achieve optimal and sustainable use of an international watercourse to the entire group of states participating in its use, and to comply with the obligations of the states to use an international watercourse on its territory, taking all appropriate measures being necessary to prevent significant damage to other states, it is required for Iran to join the 1997Convention on International Watercourses;
- with the aim of prudent and equitable management of shared water resources and urgent appropriate measures to save the Hawizeh wetlands, it is reasonable to use the provisions

of the 1997 Convention to resolve disputes between the Republic of Iraq and the Islamic Republic of Iran.

5. Conclusion

The mashes of Iraq are of great environmental, historical and cultural significance and are the cradle of the Sumerian, Akkadian, Assyrian and Babylonian civilizations.

The mashes of Iraq differ from the diversity of the mashes of the world, because their environmental characteristics in terms of water movement, the amount of dissolved oxygen, the abundance of plants and species of biological diversity are radically different from existing wetlands.

A region that comprises these two elements: the history and richness of nature should have exceptional importance and value and be part of the world's treasures, the preservation and sustainability of which are international and national priorities.

The inclusion of Iraq's mashes as Ramsar sites of international importance attests the considerable efforts undertaken by the Government of Iraq. International obligations require the Government of Iraq to coordinate efforts between the Ministry of the Environment and other state institutions, and at the same time, international obligations consist in the fact that the Government of Iraq, together with the international community, must consolidate international cooperation in order to preserve the territory of wetlands that represents the heritage of all mankind.

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Viale della Navigazione Interna, 89
35027 Noventa Padovana - PD
Telefono: +39 049 8991511
Fax: +39 049 8991502/600
E-Mail: info@mediagrafspa.it