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# **ConSciencS**

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# Labour Productivity Growth Determinants in the Manufacturing Sector in the Baltic States

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**ABSTRACT:** This article seeks to derive the determinants of labour productivity growth in the Baltic states' manufacturing sector and comparatively analyse the results. To achieve this, first, the growth rate of value added and its main contributors, namely hours worked and the growth rate of labour productivity, have been determined. Second, the main contributors to the growth rate of labour productivity, namely the contributions of labour composition, capital, and total factor productivity (TFP), have been established. Last, following the results, the relevant comparative analysis of newly derived indicators in the manufacturing sector has been accomplished, and conclusions have been presented. This paper used the growth accounting research methodology. Research limitations: the research was performed through the primary sources of growth approach, that is, only those determinants that remain important are incorporated in the model. Practical implications: the newly derived contributors to the growth rate of labour productivity reveal actual growth sources targeted to derive conclusions. The latter could be relevant for policy recommendations at both the national (e. g. guidelines for governmental policies for the selected economies) and the international (e.g., guidelines for EU policy and acts) levels. Originality and value: the novelty of the present study lies in the fact that the growth accounting method had not previously been applied in the manufacturing sector for the Baltic states.

**KEYWORDS:** growth rate, value-added, labour productivity, hours worked, labour composition, capital

## Introduction

The advantages that the growth accounting method can provide for the accurate measurement of the primary sources of the growth rate of value-added and labour productivity is perceived and provided by scholars (Corrado, Hulten, and Sichel 2005, 15; Jorgenson and Schreyer 2012, 2). There has, however, been inadequate attention paid by Lithuanian researchers to applying the growth accounting method for the Baltic States and a lack of results concerning this issue (Lankauskiene 2015, 2; Lankauskiene 2016, 430). This method has therefore been applied here to consider the manufacturing sector in the Baltic countries and to provide the present research results. The selection of the Baltic countries for comparative analysis is well grounded, because these countries are quite comparable, as they share similar historical, economic (structure, growth, development), political and geographical backgrounds. The manufacturing sector was selected because it remains important for the Baltic economies according to its share in gross value added and its applicable annual growth rates in those countries.

The article seeks to derive labour productivity growth determinants in the manufacturing sector of the Baltic states and compare derived results. First the growth rate of value added and its main contributors, namely hours worked and the growth rate of labour productivity, were estimated. Second, the main contributors to the growth rate of labour productivity – namely the contributions of labour composition, capital, and total factor productivity (TFP) – were determined. Last, following the results derived, a relevant comparative analysis of the new indicators was made and adequate conclusions drawn.

Research methodology – the growth accounting methodology.

Research limitations – the research was performed using the primary sources of growth approach; other factors except for the main determinants of growth value added and productivity incorporated in the model remain distanced.

Practical implications – the newly derived contributors to the growth rate of labour productivity reveal actual growth sources targeted to derive conclusions. The latter could be relevant for policy recommendations at both the national (e.g. in shaping governmental policies and guidelines for actions in the Baltic countries) and the international (e.g. EU policy and acts) levels.

Originality and value – the novelty of the present study lies in the fact that the growth accounting method has not previously been applied in the manufacturing sector for the Baltic states.

## 1. Methods

Economic growth consists of capital, labour and product contributions. The growth accounting method has long been used by well-known researchers (Solow 1956, 14). Later, the modified version appeared – that is, the growth accounting approach of Jorgenson, Gollop and Fraumeni (1987, 20). The latter is applied here to derive the results desired.

Suppose one unit of capital and labour (K and L, respectively) produces (value-added) output  $V_j$  in industry  $j$ . For each industry, there is the following value added defined as  $\Delta \ln TFP_j$  (Haskel et al. 2012, 14).

$$\Delta \ln TFP_j = \Delta \ln V_j - v_{K,j} \Delta \ln K_j - v_{L,j} \Delta \ln L_j \quad (1)$$

Here, TFP is the total factor productivity, “v” and “j” are shares of K (capital) and L (labour) remuneration in nominal value added.

The relationship between industry value added and market sector value added, reflected in changes in aggregate real value added, is a weighted sum of changes in industry real value added:

$$\Delta \ln V = \sum_j w_j \Delta \ln V_j, \quad w_j = P_{V,j} V_j / \sum_j (P_{V,j} V_j), \quad w_j = 0.5 (w_{j,t} + w_{j,t+1}) \quad (2)$$

The estimates of the economy-wide real value-added growth and the industrial contributions are as follows:

$$\Delta \ln V = \left( \sum_j w_j v_{K,j} \Delta \ln K_j \right) + \left( \sum_j w_j v_{L,j} \Delta \ln L_j \right) + \sum_j w_j + \ln \Delta TFP_j \quad (3)$$

The contributions of  $K_j$  and  $L_j$  to whole-economy value-added growth depend upon the share of  $V_j$  in total  $V$  ( $w_j$ ) and the shares of K and L in industry value added. That is, the contributions of  $K_j$  and  $L_j$  depend on their share in aggregate value added. The contribution of  $\Delta \ln TFP_j$  also depends on the share of  $V_j$  in total  $V$  ( $w_j$ ) (Haskel et al. 2012, 14).

The contributions of capital (both tangible and intangible) and labour (different types and separations) can differ, and they are aggregated according to their impact on growth (Haskel et al. 2012, 15):

$$\Delta \ln K = \sum_k w_k \Delta \ln K_k, \text{ capital type } k \quad (4)$$

$$\Delta \ln L = \sum_l w_l \Delta \ln L_l, \text{ labour type } l \quad (5)$$

$$w_k = P_{K,k} K_k / \sum_k (P_{K,k} K_k), w_l = P_{L,l} L_l / \sum_l (P_{L,l} L_l), K_j = \sum_k K_{k,j} \forall k, L_j = \sum_l L_{l,j} \forall l, \quad (6)$$

$$w_t = 0.5(w_t + w_{t-1}) \quad (7)$$

The growth accounting method provided above is applied here. After employing this technique, the growth rate of value added can be decomposed into the contributions of hours worked and labour productivity determinants within a consistent pattern. The labour productivity growth rate is further decomposed into labour, capital, and TFP input measures. Under the strict neoclassical assumptions, TFP embodies technology improvements (Goodridge 2007, 42; Oulton 2016, 68). It is derived as a residual between the volume growth of output and the volume growth of inputs. As a result, it measures the increase in value added by specific given quantities of inputs (Haskel et al. 2012, 15).

The foundation of the growth accounting method is production possibility frontiers. Industry gross output is the function of capital, labour, intermediate inputs and total factor productivity, all indexed by time. The value added consists of capital and labour inputs. Under strict neoclassical assumptions, the growth of industrial value added is broken into labour, capital, and TFP contributions. Capital and labour inputs are weighted by their parts of the remuneration in all gross value added.

The data for the growth accounting method had be prepared following strict methodological rules before application (Timmer et al. 2007, 24–44):

- Capital accounts for input measures to obtain capital volumes;
- Labour accounts for input measures to obtain labour services; and
- Productivity accounts.

Labour services reflect the labour input. The labour input measure is derived according to educational attainment. This measurement is most beneficial from a labour productivity perspective. Labour services are calculated by Formula 5 and expressed as the Tornqvist quantity index. The weights reflect the average shares of labour types according to the educational attainment in the value of labour compensation (LAB; Formula 6 and 7; Timmer et al. 2007, 24–44).

Capital services reflect capital input. The capital services measure is derived according to the detailed capital stock indicators, and the weights were the shares of its remuneration in the total output value. Capital services were calculated according to Formula 6 (Timmer et al. 2007, 24–44) and are expressed as the Tornqvist quantity index. The weights were derived as the average value of shares of each detailed asset in the value of capital compensation (CAP; Formula 6 and 7); the compensation is expressed as the user cost; and the return rate is calculated following the endogenous approach (Timmer et al. 2007, 24–44).

For the productivity accounts, capital and labour weights were derived from two indicators from the national statistics departments: compensation of employees (COMP) and gross operating surplus (GOS). GOS is adapted to self-employed income (which is forwarded to the COMP indicator). Thus, the prominent figures for capital and labour weights were derived from the remuneration values (Timmer et al. 2007, 24–44).

Growth accounting needs the preceding variables that capture the contributions of inputs and TFP to value-added growth (Timmer et al. 2007, 24–44). A new set of intangibles expands the traditional EU KLEMS methodology.

## 2. Research implementation

Research implementation details are presented in Table 1.

Table 1. Research implementation details

<b>Country coverage:</b>	Lithuania, Latvia, Estonia
<b>Industry coverage:</b>	Manufacturing
<b>Method:</b>	Growth Accounting
<b>Methodology:</b>	EU KLEMS approach supplemented by new intangibles
<b>Period of research:*</b>	1995–2017
<b>Data:</b>	Capital, Labour and labour compensation, value-added
<b>Capital data:</b>	Different types of capital assets (in more detail in Table 2)
<b>Labour data:</b>	Labour composition according to the educational attainment
<b>Databases:</b>	EU KLEMS ( <a href="http://www.euklems.net">http://www.euklems.net</a> ), INTAN Invest ( <a href="http://www.intaninvest.net">http://www.intaninvest.net</a> ), national statistics departments (Latvia: <a href="https://www.stat.gov.lt/en">https://www.stat.gov.lt/en</a> ; Lithuania: <a href="https://www.csb.gov.lv/en/sakums">https://www.csb.gov.lv/en/sakums</a> , Estonia: <a href="https://www.stat.ee/en">https://www.stat.ee/en</a> ), WIOD ( <a href="http://www.wiod.org/home">http://www.wiod.org/home</a> ), Eurostat ( <a href="https://ec.europa.eu/eurostat">https://ec.europa.eu/eurostat</a> )

*Source: own elaboration*

\*The research period refers to the latest period available in the statistical databases

Table 2. Types of capital assets

<b>EU KLEMS data</b>	IT – Computing equipment CT – Communications equipment SoftwDB – Computer software and databases TR – Transport equipment OtherMach – Other machinery and equipment NonResid – Non-residential equipment Resid – Residential structures Cult – Cultivated assets RD – Research and development
<b>INTAN Invest data (New Intangibles)</b>	Minart – Entertainment artistic and literary originals + mineral explorations Design – Design Brand – Brand OrgCap – Organisational capital Train – Training NPD – New product development in the financial sector

*Source: own elaboration*

### 3. Data

The initial indicators (where available) were taken from the EU KLEMS database (Table 2). To fill remaining gaps, data were drawn from national statistics departments or from Eurostat databases. The needed values included the real values of GFCF for each type of asset. In cases when the data for the previous years were required, the Harberger method (1978) was used to get estimations for the initial 1995 capital stocks. With the help of the perpetual inventory method (PIM; OECD 2009, 87), the indicators were estimated for the whole period (1995–2017) needed. Lithuania lacked estimations from 1995 to 2000, so the backwards PIM calculation method was used to derive values for the missing period.

There were no data for the new intangibles (Table 2) for the Baltic countries in the INTAN invest database. For this reason, the indicators were derived with the help of the methodology of Corrado et al. (2012) and Mas and Quesada (2014, 117). The same sequence of steps needed to provide the full set of indicators were composed and applied for the Baltic countries.

### 4. Results

The results of the research are provided in Table 3.

Table 3. Research results

<b>1995–2017</b>	<b>VAQ 1</b>	<b>H 2</b>	<b>LP 3</b>	<b>Contr LC 4</b>	<b>Contr C 5</b>	<b>TFP 6</b>
	1=2+3		3=4+5+6			
<b>Lithuania</b>	0.06	-0.01	0.07 (0.068)	0.00 (-0.001)	0.02 (0.025)	0.04 (0.044)
<b>Latvia</b>	0.03	-0.02	0.05 (0.053)	0.01 (0.007)	0.02 (0.023)	0.02 (0.023)
<b>Estonia</b>	0.05	-0.01	0.06 (0.062)	0.00 (-0.002)	0.03 (0.035)	0.03 (0.029)

*Source: own calculations*

\*VAQ – the growth rate of value added (%)

H – contribution of hours

LP – the growth rate of labour productivity (%)

Contr LC – contribution of labour composition (according to educational attainment)

Contr C – contribution capital

TFP – total factor productivity

During the period researched, the growth rate of value added was highest in Lithuania's manufacturing sector (0.06%). The second place goes to Estonia (0.05%), followed by Latvia (0.03%). The hours worked contributed negatively to the growth rate of value added in the manufacturing sector in all Baltic countries, but most negatively in Latvia (−0.02%). Labour productivity was the highest in Lithuania (0.07%), followed by Estonia (0.06%) and Latvia (0.05%). The real interest is the driving forces of labour productivity growth, as this is the most critical indicator for wealth, beginning in the research of Solow (1956, 14) and Jorgenson, Landefeld, and Shreyer (2014, 3) and ending in contemporary research (Goodridge, Haskel, and Edquist 2019, 867; Castellani et al. 2018, 75; Goodridge, Haskel, and Wallis 2018, 1; Jona-Lasinio and Meliciani 2018, 58; Oulton 2018, 63; Van Ark, de Vries, and Jäger 2018, 53; Goodridge and Haskel 2015a, 2015b, 2; Veugelers 2015, 4; Dal Borgo et al. 2013, 806;

Jorgenson, Ho, and Stiroh 2005, 2) and the EU policy agenda (Van Ark 2015, 6). The TFP indicator is of real interest because it embodies technological change; the highest contributor is in Lithuania (0.04%), followed by Estonia (0.03%) and then Latvia (0.02%). Regarding contribution of capital, the highest is in Estonia (0.03%), followed by equal positions shared in Lithuania and Latvia (0.02%). The contribution of labour composition to the growth rate of labour productivity is more or less similar in all countries, and it does not take a leading role in any of them: Latvia (0.01%) and Lithuania and Estonia (0.00%).

## 5. Conclusions

The manufacturing sector is significant for the economies of the Baltic countries. It was necessary to distinguish the main contributors to labour productivity growth in the manufacturing industry for the researched economies because results related to Baltic economies were lacking. The highest positions in the growth rate of value added and, most importantly – labour productivity, Lithuania's remains. A more in-depth analysis of the results derived revealed an exciting tendency – the contribution of TFP also remains the highest in Lithuania. This indicator is a significant one, because it embodies technological change. Capital, more or less, remains an equal contributor, and labour composition, according to educational attainment, does not play a vital role for any of the three researched economies. The following indicators – value added, labour productivity growth and TFP – the first place goes to Lithuania, followed by Estonia and Latvia.

The results obtained are impressive. A more in-depth analysis is needed, particularly for the main detailed contributions of the different types of capital assets to the growth rate of labour productivity and their separation according to tangible and intangible capital deepening (Corrado et al. 2012, 13; Corrado et al. 2013, 261; Haskel et al. 2010, 17; Haskel et al. 2014, 2; Guido and Bodmer 2017, 211; Jona-Lasinio, Manzocchi, and Meliciani 2019, 1).

## References

- Castellani, David, Mariacristina Piva, Torben Schubert, and Marco Vivarelli. 2018. "Can European Productivity Make Progress?" *Intereconomics* 53(2): 75–78. <https://www.intereconomics.eu/contents/year/2018/number/2/article/can-european-productivity-make-progress.html>.
- Corrado, Carol, Jonathan Haskel, Cecilia Jona-Lasinio, and Massimiliano Iommi. 2012. *Intangible Capital and Growth in Advanced Economies: Measurement Methods and Comparative Results*. Discussion paper no. 6733. Bonn, Germany: Institute for the Study of Labour. <http://repec.iza.org/dp6733.pdf>.
- Corrado, Carol, Jonathan Haskel, Cecilia Jona-Lasinio, and Massimiliano Iommi. 2013. "Innovation and Intangible Investment in Europe, Japan, and the United States." *Oxford Review of Economic Policy* 29(2): 261–286. <https://doi.org/10.1093/oxrep/grt017>.
- Corrado, Carol, Charles Hulten, and Daniel Sichel. 2005. "Measuring Capital and Technology: An Expanded Framework." In *Measuring Capital in the New Economy*, edited by Carol Corrado, John Haltiwanger, and Dan Sichel, 11–46. Chicago: Univ. of Chicago Press. <https://www.nber.org/system/files/chapters/c0202/c0202.pdf>.
- Dal Borgo, Mariela, Peter Goodridge, Jonathan Haskel, and Annarosa Pesole. 2013. "Productivity and Growth in UK Industries: An Intangible Investment Approach." *Oxford Bulletin of Economics and Statistics* 75(6): 806–834. <https://doi.org/10.1111/j.1468-0084.2012.00718.x>.
- Goodridge, Peter. 2008. "Multi-factor Productivity: Estimates for 1997 to 2006." *Economic & Labour Market Review* 2(1): 42–48. <https://doi.org/10.1057/elmr.2008.9>.
- Goodridge, Peter and Jonathan Haskel. 2015a. "How Does Big Data Affect GDP? Theory and Evidence for the UK." Working Papers 25156, Imperial College, London: Imperial College Business School. [https://spiral.imperial.ac.uk:8443/bitstream/10044/1/25156/2/Goodridge\\_2015\\_06.pdf](https://spiral.imperial.ac.uk:8443/bitstream/10044/1/25156/2/Goodridge_2015_06.pdf).
- Goodridge, Peter and Jonathan Haskel. 2015b. "How Much Is UK Business Investing in Big Data?" Working Papers 25159: Imperial College, London: Imperial College Business School. <https://spiral.imperial.ac.uk:8443/bitstream/10044/1/25159/2/Goodridge%202015-05.pdf>.
- Goodridge, Peter, Jonathan Haskel, and Harald Edquist. 2019. "The Economic Contribution of the "C" in ICT: Evidence from OECD Countries." *Journal of Comparative Economics* 47(4): 867–880. <https://doi.org/10.1016/j.jce.2019.07.001>.

- Goodridge, Peter, Jonathan Haskel, and Gavin Wallis. 2018. "Accounting for the UK Productivity Puzzle: A Decomposition and Predictions." *Economica, London School of Economics and Political Science* 85(339): 581–605. [https://spiral.imperial.ac.uk:8443/bitstream/10044/1/21167/4/TFP%20Puzzle\\_RR\\_Final.pdf](https://spiral.imperial.ac.uk:8443/bitstream/10044/1/21167/4/TFP%20Puzzle_RR_Final.pdf).
- Guido, Baldi, and André Bodmer. 2017. "Intangible Investments and International Business Cycles." *International Economics and Economic Policy* 14: 211–219. <https://link.springer.com/article/10.1007/s10368-016-0339-1>.
- Haskel, Jonathan, Tony Clayton, Peter Goodridge, Annarosa Pesole, David Barnett, Graeme Chamberlain, Richard Jones, Khalid Khan, and Alex Turvey. 2010. "Innovation, Knowledge Spending And Productivity Growth in the UK: Interim Report for NESTA 'Innovation Index Project'." Working Papers 5279, Imperial College, London: Imperial College Business School. <https://spiral.imperial.ac.uk:8443/bitstream/10044/1/5279/1/Haskel%202010-02.pdf>.
- Haskel, Jonathan, Peter Goodridge, and Gavin Wallis. 2012. "UK Innovation Index: Productivity and Growth in UK Industries." Working Papers 9786, Imperial College, London: Imperial College Business School. <https://spiral.imperial.ac.uk:8443/bitstream/10044/1/9786/1/Haskel%202012-07.pdf>.
- Haskel, Jonathan, Peter Goodridge, and Gavin Wallis. 2014. "UK Investment in Intangible Assets: Report for NESTA." Working Papers: 12846, Imperial College, London: Imperial College Business School. <https://spiral.imperial.ac.uk:8443/bitstream/10044/1/12846/2/Haskel%202014-01.pdf>.
- Harberger, A. C. 1978. Perspectives on capital and technology in less developed countries. *Contemporary Economic Analysis*, London, 42–72.
- Jona-Lasinio, Cecilia, Stefano Manzocchi, and Valentina Meliciani. 2019. "Knowledge Based Capital and Value Creation in Global Supply Chains." *Technological Forecasting and Social Change* 148(C). <https://www.sciencedirect.com/science/article/abs/pii/S0040162518305213>.
- Jona-Lasinio, Cecilia and Valentina Meliciani. 2018. "Productivity Growth and International Competitiveness: Does Intangible Capital Matter?" *Intereconomics* 53 (2): 58-62. <https://www.intereconomics.eu/contents/year/2018/number/2/article/productivity-growth-and-international-competitiveness-does-intangible-capital-matter.html>.
- Jorgenson, Dale, Frank M. Gollop, and Barbara M. Fraumeni. 1987. *Productivity and US Economic Growth*. Cambridge, MA: Harvard Univ. Press.
- Jorgenson, Dale, Mun S. Ho, and Kevin Stiroh. 2005. *Productivity, Volume 3: Information Technology and the American Growth Resurgence*. Cambridge, MA: MIT Press.
- Jorgenson, Dale, J. Steven Landefeld, and Paul Schreyer, eds. 2014. *Measuring Economic Sustainability and Progress*. Chicago: Univ. of Chicago Press.
- Jorgenson, Dale and Paul Schreyer. 2012. "Industry-Level Productivity Measurement and the 2008 System of National Accounts." *Review of Income and Wealth* 68: 1–27. <https://doi.org/10.1111/j.1475-4991.2012.00516.x>.
- Lankauskiene, Toma. 2015. *Economic Structure and Growth Evaluation*. Doctoral dissertation, Vilnius Gediminas Technical University. [http://dspace.vgtu.lt/bitstream/1/1827/1/2319\\_Lankauskiene\\_Dissertation\\_WEB.pdf](http://dspace.vgtu.lt/bitstream/1/1827/1/2319_Lankauskiene_Dissertation_WEB.pdf).
- Lankauskiene, Toma. 2016. "The application of the growth accounting model for the construction industry." *Journal of Business Economics and Management* 17(3): 430–443.
- Mas, Matilde and Javier Quesada. 2014. *Activos intangibles. Una inversion necesaria para el crecimiento economico en Espana*. Madrid, Spain: Fundacion Telefonica.
- OECD. 2009. *Measuring Capital – OECD Manual 2009* (Second edition). Paris: OECD Publishing. <https://www.oecd-ilibrary.org/docserver/9789264068476-en.pdf>.
- Oulton, Nicholas. 2016. "The Mystery of TFP." *International Productivity Monitor* 31: 68-87. <http://www.csls.ca/ipm/31/oulton.pdf>.
- Oulton, Nicholas. 2018. "Productivity and the Great Recession." *Intereconomics* 53(2): 63–68.
- Solow, R. M. 1956. "A Contribution to the Theory of Economic Growth." *Quarterly Journal of Economics* 70(1): 64-94.
- Timmer, Marcel, Ton van Moergastel, Edwin Stuivenwold, and Gerard Ypma. 2007. "EU KLEMS growth and productivity accounts, Version 1.0 PART I Methodology March". *Groningen Growth and Development Centre*. <http://www.euklems.net>.
- Van Ark, Bart. 2015. "From Mind the Gap to Closing the Gap. Avenues to Reverse Stagnation in Europe through Investment and Productivity Growth." *European Economy - Discussion Papers*. Luxembourg: Directorate General Economic and Financial Affairs (DG ECFIN), European Commission. [https://ec.europa.eu/info/sites/info/files/dp006\\_en.pdf](https://ec.europa.eu/info/sites/info/files/dp006_en.pdf).
- Van Ark, Bart, Klaas de Vries, and Kirsten Jäger. 2018. "Is Europe's Productivity Glass Half Full or Half Empty?" *Intereconomics* 53(2): 53–58. <https://www.intereconomics.eu/contents/year/2018/number/2/article/is-europes-productivity-glass-half-full-or-half-empty.html>.
- Veugelers, Reinhilde. 2015. "How to Turn on the Innovation Growth Machine in Europe." *Intereconomics* 50(1): 4–9. <https://www.kuleuven.be/metaforum/pdf/policy-papers/policy-papers-euroforum/euroforum-2013-veugelers-how-to-turn-on-the-innovation-growth-machine.pdf>.

# Brief Considerations Regarding the Crime of Preventing Access to Compulsory Education in the Romanian Criminal Code

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**ABSTRACT:** The inclusion of this crime in the current Romanian Criminal Code was a necessity given the alarming increase in the dropout rate by students in lower classes and beyond. The legislator considered it necessary to sanction the parents or guardians of minors who prevent their access to compulsory education in order to ensure the child's right to education. The text of the law does not refer to the situations in which this abandonment is determined by a precarious material situation, in which case the state must intervene by other means, but the situations in which the parent acts abusively, withdrawing the minor from studies or preventing to follow them, although he would have had all the conditions for it. The deed is not punished, if before the end of the criminal investigation the defendant ensures the resumption of the attendance of the courses by the minor. If, until the conviction is final, the defendant ensures the resumption of attendance by the minor, the court shall, as appropriate, postpone the application of the sentence or suspend the execution of the sentence under supervision, even if the conditions provided by law are not met.

**ERS** : crime, education, minor, right to education, school dropout

## Introduction

The crime of *preventing access to compulsory education* has no correspondent in the Romanian criminal legislation. The need for this incrimination has emerged in recent years as a result of the alarming increase in school dropout, which practically means a considerable decrease in the chances of successful insertion of today's children in tomorrow's society.

Many factors affect the completion of studies, including the risk of dropping out of students with poor results or older for the level at which they are enrolled. Such children and young people will certainly contribute to the number of those who leave school early, especially those who have repeated several times or those who have not enrolled at the right age (Strategy PTS 2015, 29).

The European Commission (2013) says that school dropout generates unemployment, social exclusion, poverty and health problems. There are many reasons why some young people drop out of school too early: personal or family problems, learning difficulties or a precarious socio-economic situation. Other important factors are the functioning of the education system, the atmosphere in schools and the relationships between teachers and students.

In Romania, at most levels of schooling, the phenomenon of absenteeism remains an unresolved issue for many of the school units, both in urban and rural areas. The child has the right to receive an education that allows him to develop, in non-discriminatory conditions, his skills and personality. Therefore, the state must provide the environment conducive to its development.

Parents also have an important role in the education process, because they choose the kind of education that is to be given to their children. In addition, they are also obliged to enroll the child in school and to ensure that he regularly attends school classes.

Also as a consequence of the realities in the Romanian society as well as a component of the protection of minors' rights, that of ensuring the child's right to education, the legislator

considered necessary the sanctioning of parents or guardians of minors who prevent their access to compulsory general education.

According to art. 32 para. (1) of the Romanian Constitution (1991, republished in 2003) „The right to education is provided by the compulsory general education, by education in high schools and vocational schools, by higher education, as well as other forms of instruction and postgraduate improvement”.

The right to education is considered a part of the right to education, and the last-mentioned right includes a diversity of rights and freedoms of parents and children, which correspond to a number of obligations of the state. The guarantee of this right ensures the education of the person in order to be able to fit according to his performances and skills in the social structures. At the same time, the right to education imposes a series of obligations in the relations between parents and children. (Selejan-Guțan, Muraru and Tănăsescu 2005, 306).

Access to education is not only a right, but also an obligation, since, according to article 26 of the Universal Declaration of Human Rights “education must pursue the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms. It must stimulate understanding, tolerance and friendship between all peoples and between all racial or religious groups”.

Law no 272/2004 on the protection and promotion of children’s rights, republished in the Official Gazette no 159 of March 5, 2014 establishes, in the content of art. 47 para. (2), the obligation of parents to provide their children with the necessary conditions for upbringing, education, learning, vocational training, as well as a healthy living environment.

If the parents or persons who, according to the law, have the obligation to support a child cannot ensure, for reasons beyond their control, the minimum needs for housing, food, clothing and education of the child, the state, through the competent public authorities, is obliged to provide them with appropriate support, in the form of financial benefits, benefits in kind and in the form of services, in accordance with the law - art. 48 para. (2).

## **Legal regulation**

Crimes against the family are a subgroup within the group of crimes that affect relationships on social coexistence. The composition of this subgroup was made according to the criteria of the special legal object, more precisely according to the social relations regarding the family, as a special social value defended by the criminal law (Oancea 2003, 491).

In the current Romanian Criminal Code, crimes against the family are positioned in Chapter II of Title VIII dedicated to crimes that affect relationships on social coexistence as in the previous criminal code. The group of crimes against the family is made up of crimes that are directed mainly against family relationships: Bigamy - article 376, Incest - article 377, Family abandonment - article 378, Non-compliance with the measures regarding the custody of the minor - art. 379 and Preventing access to compulsory general education - art. 380. The last-mentioned offense is a new offense introduced in the code.

In its current form the crime of preventing access to compulsory general education, provided by article 380 of the Criminal Code, has the following content: ”Preventing access to compulsory education - (1) A parent or a person to whom a minor was entrusted by law and who withdraws the minor from school or prevents him/her, by any means, from attending compulsory education, shall be punishable by no less than 3 months and no more than 1 year of imprisonment or by a fine. (2) The act shall not be punished if, before the criminal prosecution is complete, the defendant submits evidence that the minor has resumed attendance. (3) If, until the court order is deemed final, the defendant ensures the resumption of attendance to courses by the minor, the court shall order, as applicable, the deferred

enforcement of the penalty or the stay of execution of the sentence under supervision, even if the requirements provided by the law for such action are not met”.

### **The object of the crime**

The crime of preventing access to compulsory general education has as a special legal object the social relations related to ensuring the normal upbringing and education of minors, guaranteeing their access to compulsory general education.

According to article 9 para. (2) of Law no 1/2011 of National Education, published in the Official Gazette no 18 of January 10, 2011, the state provides basic funding for all preschoolers and for all students in general state compulsory education, private and denominational accredited. Compulsory general education, of 10 classes, includes primary education, lower secondary education and the first 2 years of upper secondary education, as it results from the provisions of art. 24 para. (1) of the Law.

### **Subjects of the crime**

The *active subject* is qualified, being able to have this quality only the parent of the minor or the person to whom the minor was entrusted for upbringing and education.

Criminal *participation* is possible in the form of instigation and complicity. *The passive subject* is the minor who, being prevented from attending the compulsory general education courses, his right to education guaranteed by the European Convention on Human Rights and the Romanian Constitution is violated.

### **Constitutive content**

#### **a) The objective side**

**The material element** of the crime consists in the unjustified action of the parent to withdraw or prevent the minor, by any means, to attend the compulsory general education courses.

*Withdrawal* presupposes as a premise the enrollment of the minor in the compulsory general education courses, as it is enshrined in art. 24 para. (1) of the National Education Law no. 1/2011, regardless of whether or not the course started. It is irrelevant whether the withdrawal was made formally, by the introduction by the defendant of a request alerting the educational institution to his intentions, or informally, without informing the educational institutions about his decision to withdraw the minor from the courses. . It is irrelevant, in terms of the existence of the crime, whether the minor had good or poor results in school. The incriminating text does not distinguish, from the point of view of the existence of the crime, whether the withdrawal was made with or without the consent of the minor child. (Sima 2016, 92).

*Preventing* the minor from attending compulsory general education is criminalized regardless of the means used by the parent or the person to whom the minor was entrusted. Thus, preventing the minor from attending the courses can be done by non-enrollment, by simple prohibition or under the interdiction followed by the threat of a punishment or by convincing the minor that attending the courses is not necessary for his training and no condition of a good integration in society (*Idem*).

**The essential requirement** for the existence of the crime, in both ways of committing it, is that the withdrawal or prevention by any means of the minor to follow the courses of compulsory general education be done unjustifiably.

The law does not specify the situations that would justify the withdrawal or prevention of the minor to attend compulsory general education, but we can conclude that such causes can be a serious illness, a circumstance that would endanger the child's life, state of war, etc.

This category does not include the precarious financial situation, a situation in which the parent or the person to whom the minor was entrusted may request the support of the local authorities, under the conditions provided by Law no 272/2004 on the protection and promotion of children's rights.

**b) On the subjective side**, the offense of obstructing access to compulsory general education is committed intentionally, namely the active subject (the minor's parent or the person entrusted with the minor for upbringing and education) provides for immediate follow-up and pursues or accepts its occurrence.

**The immediate consequence** is the creation of a state of danger for the normal development and training of the minor.

**Causal report.** There must be a causal link between the activity which constitutes the material element of the crime (the action of withdrawing or preventing by any means the minor from attending the compulsory general education courses) and the immediate consequence (the state of danger for the normal development and training of the minor). This connection results from the commission of the incriminated act itself (*ex re*).

The deed is incriminated only in the **consumed** form. **The preparatory acts and the attempt**, although possible, are not incriminated. The crime is consumed when the material element of the action of withdrawal or impediment by any means of the minor to attend the courses of compulsory general education has been realized. In the case of committing the act in the manner of withdrawal, the action is momentary, instantaneous, while, in the case of obstruction by any means, the action is continuous. In the provisions of article 380 of Criminal Code, the typical or simple form of the crime is incriminated in two ways: the withdrawal or prevention of the minor to follow the forms of compulsory general education. The law does not provide for aggravated ways, but the deed can be committed in a multitude of concrete ways that can lead to mitigation or aggravation of criminal liability. Committing the crime is punishable by imprisonment from 3 months to one year or a fine (Sima 2016, 93-94).

## Conclusions

The responsibility for the upbringing and development of the child rests, first and foremost, with the parents, who have the obligation to exercise their rights and to fulfill their obligations towards the child, taking into account the best interests of the child.

Given the compulsory education, the Romanian Criminal Code, in force since February 1<sup>st</sup>, 2014, also introduced penalties for parents who withdraw their children from school or prevent them from attending school.

Thus, the Penal Code establishes punishments for parents who withdraw their children from school or prevent them from attending school, classifying these acts as crimes and introducing them in the chapter "Crimes against the family".

Taking into account the principle of protecting the interests of the family, article 380 para. (2) The Criminal Code stipulates that the deed shall not be punished if, before the end of the criminal investigation, the defendant ensures the resumption of attendance by the minor.

If this fact has not been achieved, the defendant may ensure the resumption of attendance of the courses by the minor until the final decision of conviction, in which case, according to article 380 para. (3) of the Criminal Code, the court orders the postponement of the application of the sentence or the suspension of the execution of the sentence under supervision, even if the conditions provided by law for it are not met.

The criminal action is initiated *ex officio*, the criminal investigation is carried out by the criminal investigation bodies, and the jurisdiction to judge the case in the first instance belongs to the court.

## References

- European Commission. Education and training. 2013. Reducing early school leaving: Key messages and policy support Final Report of the Thematic Working Group on Early School Leaving November 2013. [https://ec.europa.eu/assets/eac/education/experts-groups/2011-2013/esl/esl-group-report\\_en.pdf](https://ec.europa.eu/assets/eac/education/experts-groups/2011-2013/esl/esl-group-report_en.pdf).
- Law no 1/2011 of National Education, published in the Official Gazette no 18 of January 10, 2011.
- Law no 272/2004 on the Protection and Promotion of Children's Rights, republished in the Official Gazette no 159 of March 5, 2014.
- Oancea Ion. 2003. In Dongoroz Vintilă and colab. 2003. *Explicații teoretice ale Codului penal roman. Partea specială (Theoretical explanations of the Romanian Criminal Code. The special part)*. Vol. IV, 2<sup>nd</sup> ed. Bucharest: All Beck Publishing House.
- Selejan-Guțan Bianca, Muraru Ioan, Tănăsescu Elena Simina. 2005. *Constituția României. Comentariu pe articole (The Romanian Constitution. Comment on articles)*. Bucharest: C.H. Beck Publishing House.
- Sima Constantin. 2016. *Infrațiuni contra familiei (Crimes against the family)*. In Antoniu George, Toader Tudorel (coord.). 2016. *Explicațiile noului Cod penal (Explanations of the New Criminal Code)*. Vol. V articles 367-446. Bucharest: Universul Juridic Publishing House.
- Strategy to Reduce Early School Leaving (Strategy PTS). 2015. Available at [https://www.edu.ro/sites/default/files/\\_fi%C8%99iere/Invatamant-Preuniversitar/2015/Strategie-PTS/Strategia-PTS-2015.pdf](https://www.edu.ro/sites/default/files/_fi%C8%99iere/Invatamant-Preuniversitar/2015/Strategie-PTS/Strategia-PTS-2015.pdf). Accessed on November 20, 2020.
- The Romanian Constitution - published in the Official Gazette no. 233 of November 21, 1991. Revised by Law no. 429/2003, published in Official Gazette no. 758 of October 29, 2003 and republished in Official Gazette no. 767 of October 31, 2003.

# **An Analysis of Chinese Leaders' Images Towards the United States During the COVID-19 Pandemic**

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**ABSTRACT:** This paper provides a preliminary analysis on how Chinese leaders perceive the United States during the coronavirus pandemic in 2020. The author borrows the concepts of strategic culture provided by Andrew Scobell (2014). Scobell asserts that “two faces of strategic culture” affect Chinese leader images and perceptions. The first face of strategic culture is concerned with a country’s self-image – the perceptions and realities of its dominant strategic traditions and how these interact and produce outcomes. The second face of strategic culture involves the image of other countries. Scobell argues that Chinese leaders tend to view their strategic tradition as the “Great Wall” strand of strategic culture, and therefore it shows “active defense” in nature. Chinese leaders tend to describe other states as more focused on aggressive and disreputable intentions in relation to China. This author uses pattern-matching research methodology and compares the theoretical pattern and the observed pattern. The data were collected from Chinese leaders’ speeches and government websites. The author codes and analyzes the data based on the conception model. Based on the empirical findings, this author confirms two strategic culture faces during the pandemic that affect Chinese leaders’ images. The result shows that Chinese leaders tend to have negative images towards the United States.

**KEYWORDS:** Chinese leaders’ images, strategic culture, US-China relations

## **Introduction**

The US-China relationship is one of the most important bilateral relationships in the world. As the coronavirus pandemic (COVID-19) spreads worldwide, the US-China relations drew the world’s most attention as their rivalry continued in 2020. The trade war and many other issues flared the tensions between the United States and the People’s Republic of China (PRC), which deteriorated their relations in the same year. Many scholars have offered analysis about US-China relations in 2020. Thomas Christensen describes the US-China relations during the COVID-19 pandemic as “a potential tragedy for the world” (Christensen 2020). Ryan Hass argues that the US and China are “in search of a new equilibrium” (Hass 2020). Boylan et al. argue that Chinese political leaders resented the lack of global political status equal to rapid economic growth and rising military might. They strived to uphold their international reputation and demanded more respect for the sphere of influence, and they mobilized against US threats to Chinese sovereignty (Boylan, McBeath, and Wang 2020).

Nevertheless, one important gap in the research is how Chinese leaders perceive the US-China relations during the pandemic from an empirical analysis of Chinese leaders’ perception during the pandemic. Therefore, this paper aims to examine the empirical pattern of Chinese leaders’ images toward the United States. To draw theoretical implications, this author compares the empirical results with the theoretical perspective using pattern-matching analysis. The arrangement of the paper is as follows. First, this paper provides an account of research methods and data collection. Second, the author develops the theoretical pattern based on the work of Andrew Scobell (2014) as the key concepts. Next, the author conducts an empirical analysis and finally compares the empirical results to the theoretical pattern in the discussion section.

## Methodology

The research question is “how Chinese leaders perceive the US-China relations during the pandemic?” The hypotheses are first, Chinese political leaders tend to depict self-image as peaceful and defensive; second, they tend to perceive that the US has a hostile, offensive, and aggressive attitude toward China. This author conducts qualitative single-case study research and uses pattern matching analysis to analyze the case. Pattern matching involves linking two patterns where one is a theoretical pattern and the other is an observed or operational one (Trochim 1989). In other words, pattern matching is a logic that compares an empirically based pattern with a predicted one made before you collected your data (Yin 2009, 143). A theoretical pattern is a hypothesis about what is expected in the data. The observed pattern consists of the data used to examine the theoretical model (Trochim and Donnelly 2001). The author has conceptualized the concepts in the above section and translated them into a specifiable theoretical pattern. The author collects and measures the empirical data and translates them into an observed pattern. The inferential task involves relating, linking or matching these two patterns. To the extent that the patterns match, one can conclude that the theory and any other theories which might predict the same observed pattern receive support (Trochim and Donnelly 2001).

The data were collected from original texts and Chinese Communist Party official publications. The author used keywords search from China’s Ministry of Foreign Affairs website. The searched time range is from 1 January 2020 to 31 December 2020. The author carefully selected relevant official statements and interviews for analysis. In total, the author collected fifteen official statements/interviews regarding US-China relations. Next, this author coded the data and analyzed the data using MAXQDA software. In qualitative research, coding is “how you define what the data you are analyzing is about” (Gibbs 2007). MAXQDA is a software program designed for computer-assisted qualitative methods of data and text analysis. Finally, the author analyzed the codes and organized the results as an observed pattern to compare with the theoretical pattern.

Since this is a preliminary study, this study needs to point out some research limitations. First, although the author searched and selected the most relevant data for analysis, the small sample size may affect the validity. Second, the theoretical argument would be simplified and lack a thorough theoretical explanation. Third, the coding process and results interpretation could be biased.

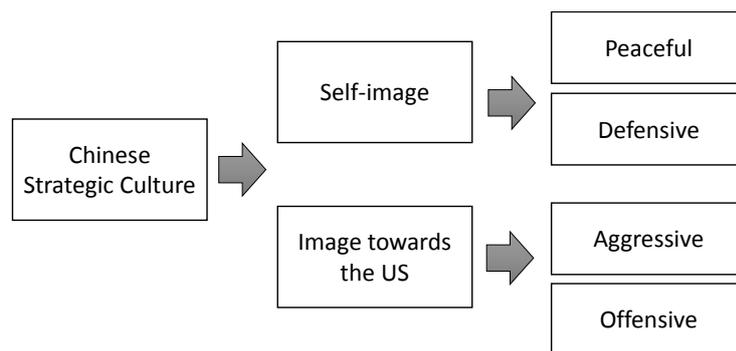
## China’s Strategic Culture and Leaders’ Images: Theoretical Pattern

Strategic culture is an important approach to examine political leader’s perceptions. Strategic culture can place severe constraints on elites’ ability to undertake strategic adjustment to systemic changes (Lin 2019, 211). Specifically, as Kupchan observes, decision-making elites can become trapped by strategic culture, preventing them from reorienting grand strategy to meet international imperatives and avoid self-defeating behavior (Ripsman, Taliaferro, and Lobell 2016). Scholars often debate on what Chinese strategic culture entails (Lin 2020, 66). Chinese traditional strategic culture tends to describe that China’s Confucian tradition was a key determinant, and therefore, China’s foreign policy favors harmony over conflict and defense over offense (Kierman and Fairbank 1974). Other literature focuses on Realpolitik, for example, the work of Sun Tzu’s Art of War, which stresses offensive nature and the Chinese predisposition for stratagem over combat. Johnston (1995) identifies the existence of two strands of Chinese strategic culture: a “Parabellum” (or Realpolitik) and a “Confucian-Mencian”; although two strands existed, only one - the Parabellum strand - was operative, and the other was purely for ‘idealized discourse.’ Johnston argues that Chinese realism stems from ideational sources rather than structural factors (Johnston 1995).

Andrew Scobell (2014) argues that strategic culture has a major effect on the national leaders’ decision making and how they perceive themselves and their actions and others. Therefore, there are two faces of Chinese strategic culture. The first face of strategic culture is concerned with a country’s self-image (the perceptions and realities of its own dominant strategic traditions and the policy outcome they produce). The second face of strategic culture involves the image constructed by the Chinese leaders towards other countries (Scobell 2014, 52). Based on this logic, Scobell posits that Chinese leaders tend to view their strategic culture as peaceful and defensive. In the meantime, they tend to focus on the aggressive and nefarious intentions of other states concerning China (Scobell 2014, 53). Scobell argues that Chinese leaders tend to view their strategic tradition as the “Great Wall” strand of strategic culture, and therefore it shows “active defense” in nature. Regarding the United States, Chinese leaders tend to characterize the US as “possessing a warlike and offensive-minded military disposition that is part of a broader expansionist, maritime, and materialist strategic culture,” and Chinese leaders tend to define their own strategic culture as “pacifistic and defensive-minded” (Scobell 2002, 17, 2014, 54).

Based on Scobell’s work, this paper argues that four indicators can be used to capture Chinese leaders’ self-image and image towards others: peaceful, aggressive, defensive, and offensive. Those four indicators refer to the patterns of state leaders’ interpretation of their own country and other countries. This author defines a peaceful image as the image that a state’s political, economic, and military power would not threaten international peace or other states. An aggressive image is defined as the image that a state’s political, economic, and military power would threaten international peace or other states. A defensive image is an image that a state’s behavior that aims to maintain moderate policies to attain the necessary security. An offensive image shows that a state’s behavior aims to seek excessive power to reach regional or global hegemony. Those indicators are not mutually exclusive and could exist in a leader’s perception at different times.

Applying Scobell’s theoretical concept and the typology of images that this paper develops, the theoretical argument of Chinese image patterns is: China’s self-image tends to be “peaceful” and “defensive,” and its image towards the US tends to be “aggressive” and “offensive.” The theoretical patterns can be visualized as the figure below:



**Results: Observed Pattern**

The author observed and evaluated the data and also paying attention to their contents and accuracy. The researcher has determined whether the data is suitable for analysis. This researcher analyzed the collected documents, which were determined as pieces of evidence. This researcher used the analysis tools provided by MAXQDA to analyze the coded segments. In total, this researcher has produced a total of 93 codes from the fifteen documents, in which 55 codes associating the key patterns are used for analysis.

Table 1. Number of codes in each pattern

Image patterns	Self-image	Image towards the US
Peaceful	11	2
Aggressive	0	15
Defensive	16	1
Offensive	0	10

*Made by the author*

The above table provides an overview of the codes. From the table, we can observe that Chinese leaders do not see China as an aggressive and offensive country. Instead, they perceive themselves as a peaceful and defensive country. On the other hand, Chinese leaders tend to perceive the United States as offensive and aggressive, and the US takes unfriendly actions against China.

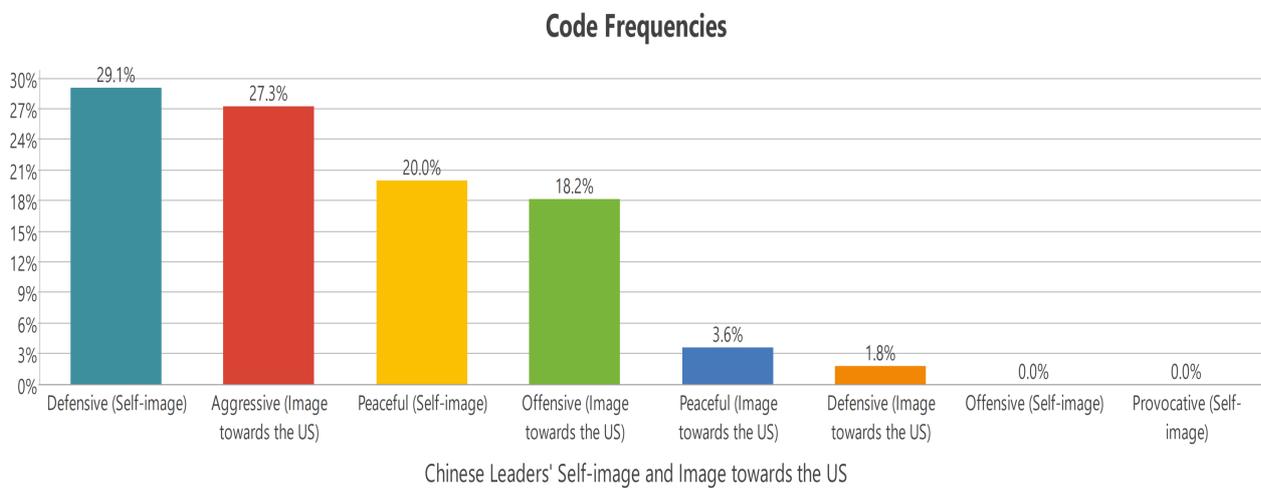
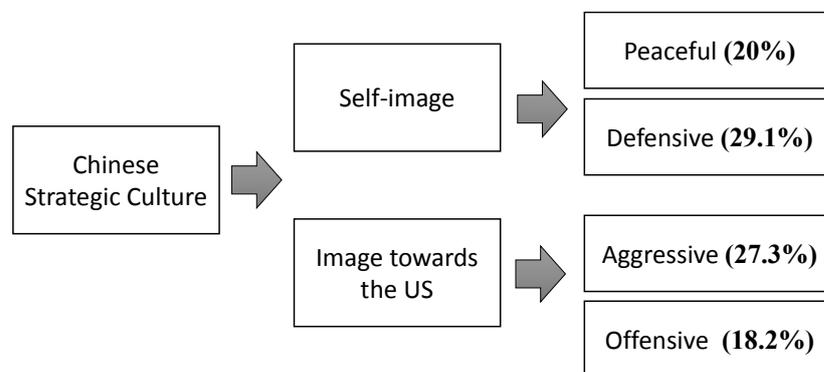


Figure 2. Code Frequencies

Figure 2 indicates the code frequencies of the observed evidence. The result shows that Chinese leaders stress the defensive pattern of self-image (29.1%), followed by the aggressive image towards the US (27.3%), the peaceful pattern of self-image (20%), and the offensive image towards the US (18.2%). The rest of the codes are below 10%. Based on the result, the empirical pattern of Chinese leaders' images can be drawn as follows:



## Discussion

The above result shows that the empirical evidence confirms the conceptual model based on Scobell's work. In the year 2020, Chinese leaders have a higher self-image of defensive pattern and tend to portray the US as an aggressive country against China. Chinese leaders always state that China is a peaceful country with a defensive foreign policy. At the beginning of the pandemic, the State Councilor and Foreign Minister Wang Yi stressed the cultural tradition of Chinese philosophy that "sees the world as one big family," which prevents China from an aggressive and offensive country. He stated:

*"Given its cultural traditions, China will not seek hegemony even when it grows in strength. What we have chosen is the peaceful development of our own country and mutually beneficial cooperation with the world. The path of socialism with Chinese characteristics, which has underpinned China's remarkable success, is brimming with vitality and leading to an even more promising future."* (Ministry of Foreign Affairs, the People's Republic of China 2020a)

Based on this logic, Wang states that China will never intend to challenge or replace the US but grow US-China relations with consistent and stable foreign policy. China will act defensively and "uphold its sovereignty, security, and development interests, safeguard the achievements that the Chinese people have made through hard work, and reject any bullying and injustice imposed on it" (Ministry of Foreign Affairs, the People's Republic of China 2020b). Therefore, China would not swallow any arbitrary and unscrupulous US moves. China's countermeasure is "legitimate, justified and lawful, and it fully conforms to diplomatic norms" (Ministry of Foreign Affairs, the People's Republic of China 2020c).

Regarding image toward the US, Chinese leaders tend to believe that the US takes an offensive and aggressive stance against China. At the beginning of the pandemic in February, the State Councilor and Foreign Minister Wang Yi state in an interview that "I am afraid that the United States has its own dark intentions sometimes. It doesn't want to see other countries develop. It doesn't want to see other countries' businesses grow and succeed. It has been spreading rumors to smear other countries' businesses" (Ministry of Foreign Affairs, the People's Republic of China 2020d). In the same interview, Wang further gives examples about how the US has been showing its offensive and aggressive postures:

*"China's National People's Congress has never introduced any bill on the internal affairs of the United States. However, the US Congress has reviewed and adopted one bill after another that blatantly interferes with China's internal affairs. China has never sent its military vessels and aircraft to the neighborhood of the United States to flex muscles. Yet, the US naval ships and airplanes have been flexing muscles at China's doorsteps...So talking about threat, it is not that China is threatening the US, but the US is threatening China. And the issue is how to address the US threat to China..."* (Ministry of Foreign Affairs, the People's Republic of China 2020d)

Wang even refers to the US aggressive attitudes as a "political virus" with "ideological biases" that has been "spreading in the US and jumping at any opportunity to attack and slander China. Some politicians ignore the basic facts and make up countless lies and conspiracy theories concerning China..." (Embassy of the People's Republic of China in the United States of America 2020). Wang emphasizes that some politicians in the US portray China as an adversary and even an enemy. The US needs to "develop more objective and cool-headed perceptions about China, and a more rational and pragmatic China policy" (Ministry of Foreign Affairs, the People's Republic of China. 2020b). Wang believes that the US's current China policy is based on ill-informed strategic miscalculation and is fraught with emotions and whims and McCarthyist bigotry (Ministry of Foreign Affairs, the People's Republic of China 2020e). If the US continues to do so, it will damage US credibility and

jeopardize world peace and stability (Ministry of Foreign Affairs, the People's Republic of China 2020f).

Unlike the State Councilor and Foreign Minister Wang Yi, who usually speaks explicitly about the US-China relations, President Xi Jinping uses a softer voice over the same issues. In the phone calls with President Donald Trump, Xi stresses cooperation and joint efforts. The US and China should maintain communication and strengthen cooperation on various issues, especially the Covid-19 pandemic (Ministry of Foreign Affairs, the People's Republic of China 2020g). Xi underscores that the year 2020 is an important juncture for US-China relations. Xi hopes that the US will take substantive steps to improve the relationship and work with China. This will contribute to building a relationship based on non-conflict or confrontation, mutual respect, and win-win cooperation (Ministry of Foreign Affairs, the People's Republic of China 2020h). After Joe Biden was elected as the president, Xi reiterates his stance that the two sides should uphold the spirit of non-conflict, non-confrontation, and focus on cooperation, manage differences, advance the healthy and stable development of China-U.S. ties (The Guardian 2020).

### Conclusion

This paper confirms the “two faces of Chinese strategic culture” provided by Andrew Scobell (2014) matches with the empirical study. Using the pattern-matching analysis, the findings prove that the theoretical pattern of the Chinese leaders’ images matches with the observed pattern. Chinese leaders view themselves as peaceful and defensive, which is based on traditional cultural philosophy. On the contrary, Chinese leaders tend to characterize the United States as more focused on aggressive and offensive intentions in relation to China. The evidence can be found in Chinese leaders’ speeches and statements. The result shows that Chinese leaders tend to have negative images towards the United States. Therefore, although Chinese leaders call for cooperation and joint efforts to strengthen cooperation on various issues, they also stress that China will uphold its sovereignty, security, and development interests and reject any bullying and injustice that the US imposes on it. This type of active defense is also consistent with Scobell’s term - the “Great Wall” strand of strategic culture.

### Appendix: List of data collected from the Chinese government websites

#	Date	Title	Source
1	February 7	President Xi Jinping Had a Phone Call with US President Donald Trump	Ministry of Foreign Affairs of the PRC
2	February 15	Transcript of State Councilor and Foreign Minister Wang Yi’s Exclusive Interview with Reuters	Ministry of Foreign Affairs of the PRC
3	February 15	<i>A. Bringing the East and West Together In Shared Commitment to Multilateralism</i>	Ministry of Foreign Affairs of the PRC
4	February 15	Wang Yi: It Is the US, Rather Than China, Is Threatening Others	Ministry of Foreign Affairs of the PRC
5	March 27	President Xi Jinping Speaks with US President Donald Trump on the Phone	Ministry of Foreign Affairs of the PRC
6	May 25	State Councilor and Foreign Minister Wang Yi Meets the Press	Ministry of Foreign Affairs of the PRC

7	July 9	State Councilor and Foreign Minister Wang Yi Delivered Remarks at the China-US Think Tanks Media Forum	Ministry of Foreign Affairs of the PRC
8	July 9	Stay on the Right Track and Keep Pace with the Times to Ensure the Right Direction for China-US Relations	Ministry of Foreign Affairs of the PRC
9	July 24	Wang Yi: The Current Difficulties in China-US Relations Are Completely Created by the US Side	Ministry of Foreign Affairs of the PRC
10	August 6	Interview on Current China-US Relations Given by State Councilor and Foreign Minister Wang Yi to Xinhua News Agency	Ministry of Foreign Affairs of the PRC
11	November 25	Xi congratulates Biden on election as US president	Ministry of Foreign Affairs of the PRC
12	December 7	Wang Yi Holds a Videoconference with a Delegation of Board of the US-China Business Council	Ministry of Foreign Affairs of the PRC
13	December 18	Wang Yi Holds Videoconference with Asia Society	Ministry of Foreign Affairs of the PRC
14	December 19	Reorient and Steer Clear of Disruptions For a Smooth Sailing of China-U.S. Relations	Ministry of Foreign Affairs of the PRC
15	December 11	Serving the Country and Contributing to the World: China's Diplomacy in a Time of Unprecedented Global Changes and a Once-in-a-Century Pandemic	Ministry of Foreign Affairs of the PRC

## References

- Boylan, Brandon M, Jerry McBeath, and Bo Wang. 2020. "US-China Relations: Nationalism, the trade war, and COVID-19." *Fudan Journal of the Humanities and Social Sciences*:1-18.
- Christensen, Thomas J. 2020. "A modern tragedy? COVID-19 and US-China relations." *Brookings Institution*.
- Embassy of the People's Republic of China in the United States of America. 2020. "State Councilor and Foreign Minister Wang Yi Meets the Press." <http://www.china-embassy.org/eng/zgyw/t1782262.htm>.
- Gibbs, Graham R. 2007. "Thematic coding and categorizing." *Analyzing qualitative data*. London: Sage:38-56.
- Hass, RYAN. 2020. "US-China relations: The search for a new equilibrium." Brookings, Global China series, February. [www.brookings.edu/research/uschina-relations-the-search-for-a-new-equilibrium](http://www.brookings.edu/research/uschina-relations-the-search-for-a-new-equilibrium).
- Johnston, Alastair Iain. 1995. *Cultural realism: Strategic culture and grand strategy in Chinese history*. Vol. 75: Princeton University Press.
- Kierman, Frank Algerton, and John King Fairbank. 1974. *Chinese ways in warfare*: Harvard University Press.
- Lin, Leo SF. 2019. *International Events and Grand Strategy Adjustment after the Cold War: Examining Chinese Grand Strategy Using a Neoclassical Realist Model*.
- Lin, Leo SF. 2020. "Strategic Subcultures and Grand Strategy Formation: A Neoclassical Realist View." Proceedings of the 17th International RAIS Conference on Social Sciences and Humanities.
- Ministry of Foreign Affairs, the People's Republic of China. 2020a. "Bringing the East and West Together In Shared Commitment to Multilateralism." Speech by H.E. Wang Yi, State Councilor and Minister of Foreign Affairs of The People's Republic of China at the 56th Munich Security Conference, Munich, 15 February 2020. Available at [https://www.fmprc.gov.cn/mfa\\_eng/wjdt\\_665385/zyjh\\_665391/t1745384.shtml](https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/zyjh_665391/t1745384.shtml).
- Ministry of Foreign Affairs, the People's Republic of China. 2020b. "State Councilor and Foreign Minister Wang Yi Delivered Remarks at the China-US Think Tanks Media Forum on 9 July 2020." Available at [https://www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1796538.shtml](https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1796538.shtml).
- Ministry of Foreign Affairs, the People's Republic of China. 2020c. "Interview on Current China-US Relations Given by State Councilor and Foreign Minister Wang Yi to Xinhua News Agency." August 5, 2020. Available at [https://www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1804328.shtml](https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1804328.shtml).
- Ministry of Foreign Affairs, the People's Republic of China. 2020d. "Transcript of State Councilor and Foreign Minister Wang Yi's Exclusive Interview with Reuters." February 14, 2020. Available at [https://www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1745264.shtml](https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1745264.shtml).

- Ministry of Foreign Affairs, the People's Republic of China. 2020e. "Stay on the Right Track and Keep Pace with the Times to Ensure the Right Direction for China-US Relations." Remarks by State Councilor and Foreign Minister Wang Yi at the China-US Think Tanks Media Forum, Beijing, 9 July 2020. Available at [https://www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1796302.shtml](https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1796302.shtml).
- Ministry of Foreign Affairs, the People's Republic of China. 2020f. "Serving the Country and Contributing to the World: China's Diplomacy in a Time of Unprecedented Global Changes and a Once-in-a-Century Pandemic." Address by H.E. Wang Yi State Councilor and Minister of Foreign Affairs At the Symposium on the International Situation and China's Foreign Relations in 2020. [https://www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1839532.shtml](https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1839532.shtml).
- Ministry of Foreign Affairs, the People's Republic of China. 2020g. "President Xi Jinping Had a Phone Call with US President Donald Trump." February 7, 2020. Available at [https://www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1741970.shtml](https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1741970.shtml).
- Ministry of Foreign Affairs, the People's Republic of China. 2020h. "President Xi Jinping Speaks with US President Donald Trump on the Phone." March 27, 2020. Available at [https://www.fmprc.gov.cn/mfa\\_eng/wjb\\_663304/zzjg\\_663340/bmdyzs\\_664814/xwlb\\_664816/t1763044.shtml](https://www.fmprc.gov.cn/mfa_eng/wjb_663304/zzjg_663340/bmdyzs_664814/xwlb_664816/t1763044.shtml).
- Ripsman, Norrin M, Jeffrey W Taliaferro, and Steven E Lobell. 2016. *Neoclassical realist theory of international politics*: Oxford University Press.
- Scobell, Andrew. 2002. *China and strategic culture*: DIANE Publishing.
- Scobell, Andrew. 2014. "China's Real Strategic Culture: A Great Wall of the Imagination." *Contemporary Security Policy* 35 (2):211-226.
- Trochim, William MK. 1989. "Outcome pattern matching and program theory." *Evaluation and program planning* 12 (4):355-366.
- The Guardian. 2020. "Xi Jinping congratulates Joe Biden on election win." Available at <https://www.theguardian.com/world/2020/nov/26/xi-jinping-calls-to-congratulate-joe-biden-on-election-win>.
- Trochim, William MK, and James P Donnelly. 2001. *Research methods knowledge base*. Vol. 2: Atomic Dog Pub.
- Yin, Robert K. 2009. "Case study research: Design and methods 4th edition." United States: Library of Congress Cataloguing-in-Publication Data.

# Criminological Explanations of Psychological Trauma and the Criminogenic Process

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**ABSTRACT:** This article describes the criminogenic process and the social implications of psychological trauma on the victim's behavior. Psychic trauma reflects the unique, devastating, painful experience that the victim is experiencing and cannot escape. Sometimes the consequences of childhood sexual abuse turn into mental trauma and can fundamentally change the victim's perception of social values, forming a devaluing perception of oneself. Out of the desire to get rid of the unbearable guilt complex, the victim who has become a young adult renounces his moral function and objectifies his will within the criminogenic process to satisfy the requirements of uncontrollable destructive impulses (destruction drive). An unusual process of transference takes place, the young adult, a victim of sexual abuse in childhood, discovers in his emotional memory a compulsive admiration for the will to power of the one who abused him. The aggressor is perceived by the traumatized in a distorted way, as an individual who will never know the suffering, because he uses violence and has absolute power over the victim. By passage to the act the victim who has become an aggressor tries to escape the trauma, he tries to get rid of the humiliation.

**KEYWORDS:** psychic trauma, criminogenic process, homicidal ideation, objectification of the will

## Introduction

For the psychologist Franz Ruppert, the word trauma means injury, and when the processes of perception, emotional experience, thinking, memory or imagination are affected and no longer function normally then we have a psychic trauma (Ruppert 2012). A traumatic experience causes a lasting change in body, spirit and soul; the consequences of a traumatic experience never completely disappear (Ruppert 2012). The neural representation of complex lived and imagined events reflects the unique experience of each individual; personal memories provide neural signatures of individual identity when events are reimagined and relived (Anderson, McDermott, Rooks, Heffner, Dodell-Feder, Lin 2020). Memories of pleasant or traumatic experiences can be activated by the brain and relived, by the neural reading of the information that the person activates in mental images; neuroimaging studies of brain activity have identified a central network of neuroanatomical regions that are activated during memory and imagination (Anderson, McDermott, Rooks, Heffner, Dodell-Feder, Lin 2020). These data prove that mental trauma is a real wound, activated neuronally by the activity of the brain. The traumatic experience can cause significant psychological difficulties for a large number of people; a number of psychological difficulties may develop after trauma in some of those who have been exposed; anxiety disorders, depressive reactions, suicidal ideation, alcohol and other abusive substances, obsessive-compulsive disorders, psychotic reactions, aggression (Roberts, Kitchiner, Kenardy, Bisson 2010). As individuals we are authentic, we live and imagine social events differently. The psychic apparatus retains the representations of the world and transforms them into neural representations, each being having its own neural signature of its individual identity. The episodic memory network includes regions of the medial parietal cortex, lower parietal cortex, and medial prefrontal cortex, medial and lateral temporal lobe (Anderson, McDermott, Rooks, Heffner, Dodell-Feder, Lin 2020). The traumatic experience fundamentally changes the life of the victim, who faces difficulties in terms of the perception of his own personality and the perception of the social world. For the victim, the world, as a social experience, seems a very dangerous place, distrust, vulnerability, weakness and loss of control are the feelings that overwhelm her; the consequences of psychological trauma are essential,

vital consequences that negatively transform the victim's life (Ruppert 2012). Trauma, as a thing of the past, can occur suddenly, as a short-lived, devastating event that endangers the victim's life (work and traffic accidents, criminal violence - attempted murder, rape, robbery), but there are traumas that represent events that last longer and repeat, producing feelings of helplessness, abandonment, suffering for the victim, such as torture, mistreatment, sexual and physical abuse (Ruppert 2012). After exposure to exceptional, threatening and horrific events the victim may develop a post-traumatic stress disorder; this mental disorder can occur after a single traumatic event or from prolonged exposure to trauma - sexual abuse in childhood (Bisson 2015). Symptoms in the emotional, behavioral, cognitive and physiological spheres can cause dysfunctions and can disrupt the social activity of the victim; interpersonal relationships, social involvement in the community, productivity, quality of life and health are affected (Yard, McCutcheon 2019). Traumatic events that trigger post-traumatic stress disorder are events that go beyond ordinary life experiences and may include sexual assault, fighting in a war zone, natural disasters (Yard, McCutcheon 2019). Post-traumatic stress disorder is associated with substantial psychiatric comorbidity, an increased risk of suicide, difficulties in integrating into social life and financial problems; patients present with cardiorespiratory, immunological, and gastrointestinal disorders (Bisson 2015). 10% of women and 5% of men are affected by post-traumatic stress disorder and have symptoms such as reliving the traumatic event (nightmare), avoidance of any existential situation or internal and external stimuli that would vitalize the traumatic event, negative thoughts (ruminations), irritability, aggression and insomnia (Yard, McCutcheon 2019).

### **Criminological aspects**

The abused child, a victim of violence (rape, incest, personal injury) suffers in silence and is powerless in the face of the aggressor's attack. Very often the victim is perceived as a weak creature, unprepared to intuit the danger and unable to prevent the criminal will of the perpetrator. His individual unconscious records the pain and his existential state of fear and despair, but all his unconscious records and perceives the will and power of the perpetrator, hatred, violence and satisfaction that the criminal act exerts. The perpetrator appears in the visual and emotional memory of the victim as an all-powerful individual, impossible to avoid, with an intimidating physical force that endangers his life. Brain imaging studies have found that intense emotional experiences stimulate the degree of activity in the left amygdala and improve memory in relation to the emotional intensity of an experience (Canli, Zhao, Brewer, Gabrieli, Cahill 2000).

The affective memory of the victim will deposit in the depths of the unconscious the feeling of hatred towards his own self, towards his own being incapable of opposing, a creature frightened by the criminal act, too weak to initiate the retaliation. The victim will always reproach his weakness, will have low self-esteem, will hate and despise himself because he was not able to face the murderer. In certain situations, in a critical period of personality formation, the perpetrator acquires an oversized dimension and begins to be admired by the confused ego of the victim. Although the traumatic event has died down and some time has passed since the criminal act, the image of the aggressor is temporarily fixed in the layers of memory and can follow the victim in the psychic activity of the individual unconscious (an abysmal area where impulses are formed and repressions and sufferings are closed). The perpetrator, who abused the child victim, later awakens in the young teenager's confused ego a sense of admiration for the dark force of the evil and a sense of disgust for the weak ego of the creature who suffered and was lost forever in the awful world of rumination and psychological trauma. The omnipotent murderer is unconsciously admired, because he has control over the victim's life by force; he decides whether the victim must suffer, whether the victim must die or whether the victim will survive the crime. The child victim will

remember the traumatic social event that will give rise to a devastating emotion, ie a complicated inner sensory event, with repercussions on brain development and consequences in DNA methylation. The child victim will be overwhelmed by the negative emotions of sexual abuse and ill-treatment, will withdraw into his or her own loneliness, and will seek to respond to aggression through self-destructive acts. Submissive and frightened, the victim will consider himself a weak person who deserves his punishment, and sometimes it is possible for the suicidal ideation to materialize the act. Psychic trauma will create suffering, the traumatic social event will produce a neural signature of the individual identity of the victim, because neural fingerprints are unique to the memory of each individual (Anderson, McDermott, Rooks, Heffner, Dodell-Feder, Lin 2020).

Criminal behavior begins to be admired because it becomes an alternative to the powerless attitude of the child victim, an alternative to the weak ego that tends to transform, to accept the will of extrahuman power (Nietzsche 1999) of an aggressive self. From a criminological point of view, through the will to power, the perpetrator wants to exercise the force of the destructive drive, possessing the whole being and corporeality of the victim, obtaining for himself the deep sensory experience of the criminal act. Heidegger in his study of "Nietzsche's metaphysics", considers that "the will to power is an aspiration to the possibility of the exercise of force, an aspiration to the possession of power" (Heidegger, 2005). The perpetrator wants the power to have control over the victim's fate, and at the same time forces the victim to experience the nightmare of the experiences that caused the trauma and ordeal of his existence. The ego affected by the guilt complex represses the memories and feelings of the existential ordeal in order to move away and renounce victimogenic behavior; the weak self wants change and the transfer of forces. The victim inhibits his shyness and moral function, but wants to obtain as compensation - the strength of the abuser who destroyed his life. Thus is born an internal conflict between the destructive drive of the aggressive ego, which wants to meet its immediate physical requirements, which begins to grow to occupy large spaces in the personality of the adolescent or young adult, and the weak resistance of the Superego, the moral psychic court, the one that was not able to protect him from sexual abuse, physical injuries and traumas of the being, victim-child. Self-punitive paranoia requires the abolition of the moral court and forces the Superego to discover himself in the darkness of the abysmal unconscious, because, although he obeyed all the rules, although he did and wanted only good, the child was abused and suffered abuse by the perpetrator. The child victim is considered abandoned because the moral function (guilty of failing to anticipate the evil act), divinity, parents, relatives, school, members of society, all were absent and allowed violence (in psychotherapy sessions the victim blames himself, has a low self-esteem and devalues; no force of good has prevented the perpetrator from attacking the innocent child). Thus takes place the transfer and dissociation of the ego, the innocent child becomes a young adult, a victim of injustice, confused and vulnerable chooses to obtain the absolute power of the one who abused him; the affective memory of the victim kept alive the strength of the omnipotent individual, who cannot be stopped by the instruments of good, obtaining for himself only satisfaction and the desire to subdue and mistreat the victim; in the individual unconscious of the victim the emotions have distorted reality and describe the aggressor as a person who dominates and controls the world through the force and presence of evil. The abused victim will change roles and become an aggressor; he will choose his innocent and vulnerable victims to punish them for their weakness and inability to fight and defend themselves. The perpetrator wants revenge because he actually hates and despises the hypostasis of the child victim of childhood abuse; the criminal Ego is deprived from the censorship of the Superego and wants to satisfy the demands of the instincts of destruction (the death drive) as well as the satisfaction of the will to power of the one who abused him. From an analytical point of view, the criminogenic process is in this situation a transfer process.

### **Psychoanalytic aspects**

Transfereentially the criminal can pour out his anger and hatred on the victim, instead of committing it in a self-destructive way; by committing the criminal act there is also the discharge of the anger of having been abused, which he was never able to express openly during the abuses of childhood (Davies, Frawley 2017). If he had done psychotherapy the open verbalization would have been positive; the patient (dissociated child) would go through a phase of intense mourning after the lost childhood, as well as for the loss of good parents, his parents before abuse, fantasizing compensatory (Davies, Frawley 2017). Freud considers that the symptoms of psychic trauma are remnants of intense emotional feelings, their particular character is explained by the connection with the traumatic scene that caused them, and they are commemorative symbols of traumatic psychic events (Freud 1992). In psychoanalysis the transfer accompanies the exercise of the word, the one who analyzes is the guarantor of a good order of things and can play the role of the healer (Chemama 1997). It is possible that sometimes the perpetrator in a state of sensory and intellectual confusion misjudges the silence, the moment of cataleptic horror of the victim's body as a consent (as an acceptance) screaming, spasm and tears as an accepted violent pleasure, depending on the emotions he lived them as a child victim. By objectifying the criminal will and transposing it into the expressed antisocial behavior, the perpetrator wishes to stop the delirium and suffering caused by the guilt complex, he is unconsciously attracted by the satisfaction of the impulse of punitive destruction; by taking action, he abuses the victim regardless of the moral and social consequences (Tănăsescu 2012).

### **Psychological aspects**

Memories of physical and mental violence create panic attacks and anxiety in the victim. Depersonalization and derealization are very common symptoms of panic attacks and are more common when anxiety symptoms follow a traumatic stressor, as in the case of post-traumatic stress (DSM-IV-TR 2003). The disorder of derealization is characterized by a feeling of detachment or self-alienation, the external world appears strange or unreal, and people are perceived as non-family beings; major depressive disorder, anxiety disorders and personality disorders coexist with depersonalization disorder (DSM-IV-TR 2003). In the criminal's consciousness the delusional system will collapse when the excessive homicidal ideation (as a psychic process of forming the criminal motivation) will move to the act, and thus the criminal will be objectified, that is, it will be expressed behaviorally; the perpetrator looks his enemy in the eye, and by taking action he transforms the persecutor into a victim (Costello 2017). The structure of the paranoid being performed an act of self-punishment (self-punitive paranoia, a term introduced by Jacques Lacan), because the perpetrator feels a state of relief at the time of his capture and conviction; the target of the attack was himself, in order to diminish and destroy the guilt complex (Costello 2017).

The antisocial personality of the perpetrator is manifested by an egocentric and aggressive attitude, emotionally unstable; the world as reality is perceived by the experiential flow as a sensory and intellectual construction of the Ego, the knowing subject, who mentally creates only the representations he needs, rejects the social world and does not accept the needs and social values of others. The criminal idea can also be revealed in the being as a brutal image of the violent act, an image that awakens the sensory will to live with intensity the imagined deed. The image of the criminal act can be stimulated by the appearance in the consciousness of the criminal ego of the visual representation of the vulnerable victim, who does not perceive the danger or anticipate his role in the criminogenic project (Ted Bundy, diagnosed with antisocial personality disorder, confessed that he was sometimes stimulated violent pornography, bloody scenes from police magazines and short stories depicting homicide victims; there are serial

killers who have sexual fantasies before conceiving and materializing criminal acts). From a psychoanalytic point of view, the decision to take action is also determined by the lack of self-control of the perpetrator, the destructive drive being much stronger than the censorship of the Supreme, the moral function is missing and any resistance of ethics is exhausted. The perpetrator uses emotional experience, memory and imaginary thinking to construct the experience of violent sexual fantasies or to conceive the scene full of emotional intensity of killing the victim (the case of Joshua Komisarjevsky, a victim of childhood rape, sentenced to death for rape and murder in the Cheshire crimes). The death drive is related to early mental trauma, which tends to recur throughout life; the compulsion to repeat is in principle an instinctive tendency towards the restoration of normal psychic functioning based on primary identification (Salonen 2006).

### **Philosophical aspects**

In *The World as Will and Representation* Schopenhauer considers that the blind will (probably created by the impulses of the unconscious), active only in its original essence as blind momentum, unconscious volitional impulse, can intersect in its actions with the actions of the will enlightened by knowledge self); the two forms of will can invade each other's domains in the form of two types of phenomena (Schopenhauer 2019). For Schopenhauer, the will is the thing itself, the intimate content and the universal essence, instead the visible world (the phenomenon) represents the mirror of the will as a manifestation of life; the will and the world coexist and are inseparable. According to Michael Sandel (in *The Moral Side of Murder* 2009) consequentialist moral principles locate morality in the consequences of an act (utilitarianism), and categorical moral reasoning (Kantian moral philosophy) locates morality in certain absolute moral requirements (rights and duties fundamental) regardless of the consequences (Sandel 2009). The lack of moral function creates difficulties for the individual in understanding social values the lack of moral reasoning leads the will of the perpetrator to blindly satisfy the requirements of impulses, without anticipating the immoral consequences and legal effects.

For Jung, the will is a psychological phenomenon in the sphere of the conscious Ego, a psychic energy at the disposal of consciousness; the volitional process is an energetic process, triggered by conscious motivation; culture and moral education influence and condition the will as a psychological phenomenon; will is not a psychic process determined by unconscious motivation (Jung 2004).

Cognitive control refers to the mental processes that allow behavior to vary adaptively depending on current goals; it is multidimensional, and one of its main functions is to restrict or inhibit unwanted but dominant response tendencies (Inzlicht, Bartholow, Hirsh 2015). Cognitive control provides substantial benefits for individuals and society, including the prospective prediction of better health, higher academic performance, reduced substance dependence, improved personal finances, and lower crime rates (Inzlicht, Bartholow and Hirsh 2015). Violence produces antisocial behavioral consequences due to the lack of inhibition of the perpetrator and poor cognitive control. The instinctual and emotional levels have their own dynamic energy, which can trigger a behavior; unlike the former, levels of cognitive and spiritual value, which do not have an energy-efficient substrate, must be supported by the will to trigger behaviors; motivational courts are those forces capable of generating behaviors (Tănăsescu 2018). Psychiatry and forensic medicine describe deviance as a later concept of behavioral and personality disorders or as a symptom of other psychiatric pathologies; this field provides a more complicated description of what deviance is, depending on the individual situational and pathological context (Heghes and Șchiopu 2020).

The sensory event, as a deep emotion (catharsis) that disturbs the criminal ego (the perpetrator is aware that the act is a tragic moment for the victim) is triggered by an opportunity - the presence of the victim or a social event that allows the perpetrator to act. At the

interoceptive level, homicidal ideation awaits the impulse of the social event to develop the genesis of the criminal will (Travaglio - the creative moment of expulsion of the act). The conscious will to perform the criminal act, but dominated by the disturbance of the sensory event (the emotional factor) uses the visceromotor regions of the brain and creates predictions; predictions are necessary concepts in perception construction, physiological regulation, and action guidance (Barrett 2017). In the mind-body interaction one can identify sensory processes as associations between the sense organs and the peripheral stages of the nervous system, while perceptual processes are those associations that take place in the upper floors of the central nervous system; sensations are experiences with simple stimuli, and perceptions are integrations of these sensations (Atkinson 2002). The volitional factor belongs to the conscious criminal ego and is guided by the conscious area of the being, of the psychic apparatus. In the egocentric and aggressive attitude of the perpetrator we also discover the solipsism, as an attitude of his own personality; the world as reality is perceived only as a sensory and intellectual construction of the individual, the knowing subject, who mentally creates only the representations he needs, rejects the social world and does not accept the needs and social values of others. The unconscious is not the second personality, but probably a decentralized summation of psychic processes; under certain conditions the criminal unconscious, dominated by the instinct for destruction and psychotic contents, is able to take over the role of the conscious Ego, the consequences of this transfer being the appearance of confusion and delirium (Jung 2014).

There is a previous state of will of the criminal ready to react to the appearance of the victim. Mental states and physical states interact constantly; when the perpetrator acts - causal chains can be initiated that do not have a sufficient physical history (Popper 2002); by taking action the perpetrator (the appearance of the vulnerable victim, the absence of the protector) - creates the physical causal chain (Popper 2002). David Eagleman claims that the visual system first scans the reality scene. The prefrontal cortex generates signals on the way to the motor cortex, which accurately coordinates muscle contractions - through the trunk, arm, forearm and hand of the perpetrator; by touching the victim (the object targeted by the objectification of the will) the nerves send a lot of information to the brain and psychic apparatus (about the weight of the object, its place in space, temperature) about the victim's confusion and agitation, about the shock of the moment and emotional crisis; information rises to the spinal cord and enters the brain, and at the same time compensatory information descends like a two-way circuit; the whole process is invisible to the mind of the conscious self (Eagleman 2018).

## Conclusions

Homicidal ideation intensifies its presence in the intellectual area of the criminal ego; but in order to objectify the criminal will, the thought affected by the influence of sensory perceptions, the thought altered by the experience of the demands of aggressive impulses must move away from the decomposed image of hallucinations and leave the world of violent sexual fantasies. The objectification of the criminal will is part of the criminogenic process, which when activated becomes a representation of the intention and reality of the criminal act. Homicidal ideation can be only a temporary stage in thinking; dysfunction of the orbitofrontal cortex can cause antisocial personality imbalance.

Analyzing the psychic processes of guilt, Professor George Antoniu considers that guilt is a process of consciousness consisting of the intellectual factor, with a significant role in the formation of homicidal ideation, and the volitional factor, very important in the process of taking action. The criminogenic process takes place in consciousness, where the representation of the deed, the result of the criminal action and the existential consequences are analyzed (Antoniou 2006).

The genesis of the criminal will, as production and manifestation of the final act of the reality of the criminal act (volitional factor), is the phase of crime by associating the force of

homicidal ideation (intellectual factor) with the occurrence of sensory event (emotional factor), birth triggered by the victim as part of social event (social factor) and encouraged by the lack of protector of social order (conjuncture, opportunity); the behavioral expression of the will represents the last phase of the criminogenic process.

Freud argues that the victim of childhood sexual abuse is in a confused state of conflict and can turn hatred and repulsion towards the pedophile perpetrator into desire and pleasure; disgust and horror turn into a scene of sexual passivity (Chemama 1997). There are situations when sexual incidents may not have taken place, and in the case of hysterics sexual abuse belongs to the realm of fantasy (Chemama 1997). Loss of innocence is a loss of moral function (loss of childhood due to sexual abuse or mistreatment) can cause a depressive state similar to the loss of a loved one; there is a process by which the perpetrator fights against the reaction of the suffering and despair of the ego decomposed into manic-depressive existential states; it is necessary an intrapsychic work (work of mourning) to overcome the pain of the being encompassed by anxiety and aggression, a detachment from reality and an escape from trauma (Chemama 1997). Metaphorically the minor can be described as a crystal object, which crumbles and cracks after the traumatic event and the cracks may never recover.

## References

- Anderson, Andrew James, McDermott, Kelsey, Rooks, Brian, Heffner, Kathi L., Dodell-Feder, David, Lin, Feng V. 2020. "Decoding individual identity from brain activity elicited in imagining common experiences". In *Nature Communications* 11, 5916(2020), doi: 10.1038/s41467-020-19630-y.
- Antoniou, George. 2006. *The new Criminal Code*. Bucharest: C.H. Beck Publishing House.
- Atkinson, Rita L., Atkinson Richard C., Smith, Edward E., Bem, Daryl J., 2002, Introduction to Psychology, Bucharest, Technique S.A. Publishing House.
- Barrett, Lisa Feldman. 2017. "The theory of constructed emotion: an active inference account of interoception and categorization". In *Social Cognitive and Affective Neuroscience*: 1-23, DOI 10.1093/scan/nsw154.
- Bisson, Jonathan I., Cosgrove, Sarah, Lewis, Catrin, Roberts, Neil P. 2015. "Post-traumatic stress disorder". *The BMJ Clinical Review*: 351:h6161, doi 10.1136/bmj.h6161.
- Canli, Turhan, Zhao, Zuo, Brewer, James, Gabrieli, D. E. John, Cahill, Larry. 2000. "Event-Related Activation in the Human Amygdala Associates with Later Memory for Individual Emotional Experience". In *The Journal of Neuroscience*. Vol. 20 RC99 1of 5, DOI 10.1523/JNEUROSCI.20-19-j0004.2000.
- Chemama, Roland. 1997. *Dictionary of Psychoanalysis*. Bucharest: Univers Enciclopedic Publishing House.
- Costello, Stephen J. 2017. *The Pale Criminal: Psychoanalytic Perspectives*. Bucharest: Three Publishing House.
- Davies, Jody Messler, Frawley, Mary Gail. 2017. *Treating the Adult Survivor of Childhood Sexual Abuse: A Psychoanalytic Perspective*. Bucharest: Three Publishing House.
- DSM-IV-TR. 2003. *Diagnostic and Statistical Manual of Mental Disorders*, edited by Aurel Romila, The Free Psychiatric Association in Romania Publishing House.
- Eagleman, David. 2018. *The Brain: The Story of You*. Bucharest: Humanitas Publishing House.
- Freud, Sigmund. 2017. *Psychology of the Unconscious*. Bucharest: Three Publishing House.
- Freud, Sigmund. 1992. *Psychoanalysis Lectures*. Bucharest: Didactic and Pedagogical Publishing House.
- Freud, Sigmund. 2014. *About Psychoanalysis*. Bucharest: Three Publishing House.
- Heghes, Nicoleta-Elena and Şchiopu, Cristina-Gabriela. 2020. "Juvenile Delinquency Bio-Psycho-Social Bases of Deviances". In *RAIS Journal for Social Sciences*, Vol. 4, No. 2, 2020, ISSN 2574-0245 (Print), ISSN 2574-1179 (Online) DOI: 10.5281/zenodo.4286617.
- Heidegger, Martin. 2005. *Nietzsche's metaphysics*. Bucharest: Humanitas Publishing House.
- Inzlicht, Michael, Bartholow, Bruce D., Hirsh, and Jacob B. 2015. "Emotional foundations of cognitive control". In *Trends in Cognitive Sciences*. Volume 19, ISSUE 3:126-132, doi: 10.1016/j.tics.2015.01.004.
- Jung, Carl. 2004. *Psychological Types*. Bucharest: Three Publishing House.
- Jung, Carl. 2014. *The Archetypes and the Collective Unconscious*. Bucharest: Three Publishing House.
- Nietzsche, Friedrich. 1999. *The Will to Power*. Aion Publishing House.
- Popper, Karl R. 2002. *Conjectures and Refutations. The Growth of Scientific Knowledge*. Bucharest: Three Publishing House.
- Roberts, P. Neil, Kitchiner J. Neil, Kenardy, Justin, Bisson, I. Jonathan. 2010. "Early psychological interventions to treat acute traumatic stress symptoms". In *Cochrane Database of Systematic Reviews*. No. 3. John-Wiley & Sons, Ltd, 1465-1858, DOI: 10.1002/14651858.CD007944.pub2.
- Ruppert, Franz. 2012. *Trauma, attachment, family constellations. Trauma psychotherapy*. Bucharest: Three Publishing House.

- Salonen, Simo. 2006. *On destructive drive phenomena: a study of human aggression*. In *The Scandinavian Psychoanalytic Review*. Volume 29, 2006 – Issue 2, doi: 10.1080/01062301.2006.10592786.
- Sandel, Michael. 2009. *The Moral Side of Murder, Justice*. Boston, Massachusetts: Harvard University, WGBH.
- Schopenhauer, Arthur. 2019. *The World as Will and Representation*. Bucharest: Humanitas Publishing House.
- Tănăsescu, Camil. 2012a. *Criminology*. Bucharest: Universul Juridic Publishing House.
- Tănăsescu, Camil. 2012b. *Judicial Psychology*. Bucharest: Universul Juridic Publishing House.
- Tănăsescu, Camil. 2018. “The Manifestation of Will: The Vectorial Force of Accepting Guilt”. In *The 10th International RAIS Conference on Social Sciences and Humanities*, Princeton, The Erdman Center, NJ, USA. Atlantis Press, Paris, France, Part of Series: ASSEHR; Volume 211, DOI 10.2139/ssrn.3266925.
- Yard, Samantha S., McCutcheon, Stephen R. 2019. F43.1 Post-traumatic stress disorder, coordinating editors Schaffer, Jack B., Rodolfa, Emil, 2019, *ICD-10-CM: Casebook and Workbook for Students: Psychological and Behavioral Conditions*, Bucharest: Three Publishing House.

# Opening the Black Box: Disbursement Delays Impacts on Growth in Asian Development Bank (ADB) Loan Projects in Indonesia

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**ABSTRACT:** Compared with commercial banks that take one day, Asian Development Bank (ADB) loans take over 5-year before they are fully disbursed after the borrower signed the loan agreements, because of conditionalities. During which, the funds stay in the banks and gain compounded interest disfavoring Indonesia and affect its economic growth. Development aid studies have mostly overlooked these gains, and their impacts. We reviewed the financial costs of delays during project implementation in Indonesia and their impacts on GDP growth involving 325 ADB's loan projects with over 1,100 sub-loans, from 1969 to 2017 totaled over \$33 billion. We applied a non-econometric, and quantitative attribution methodology, adopting project and portfolio management principles. The results show that 'if disbursed 100% in year-1', the ADB loans help Indonesia stabilizing growth at 6% per annum until they are at 1%-GDP. Because of disbursement delays, this is shortened by half with 60% volatility and declining at 0.42%-GDP (average ADB loans) due to ADB's standard implementation of 5-year and with 2-year delays (7-year). Growth sharply decays at 0.5%-GDP and reaches zero as ADB loans increase to 0.81%-GDP. Indonesia suffers a capital loss of \$0.5 - \$12 per \$1 loan because of disbursement delays under today's prevalent banking practices. Accounting for these losses, ADB loans have severe negative impacts as growth suffers over 200% volatility because of disbursement delays. Fixing this is simple but requires a fundamental change.

**KEYWORDS:** Disbursement delays, growth, money creation, negative impact, volatility, bank

## 1. Introduction

A study by the Organization for Economic Co-operation and Development (OECD 2003) discovered that 'disbursement delays' is one of the five most burdensome donor practices that may be the cause of aid volatility. Despite Pallage and Robe (2001, 10) found that many studies classified disbursement delay (lead and lag) as a minor issue, Diarra (2011, 7) has empirically identified that the "*disbursement delays approach*" by donors is one of the main causes of aid volatility. To date, notwithstanding all aid volatility studies have anchored on disbursements, yet there is almost no reference that shows unequivocally that disbursement delays alone are the primary cause of volatility in the loan projects implementation. Let alone from banking theories and practices. Hence, this paper is endeavoring to fill this gap by showing that 5-year delays in disbursement, under ADB loan funded projects in Indonesia, as opposed to the full disbursement of 100% in year-1, reduces long-term growth stability by about 60% and delays beyond 5-year and incorporating the financial costs of delays under loanable fund (LF), severely impacting growth negatively. Disbursement delays induce financial losses as the capital flight over ten times the loan value, adopting 10% reserve requirements per Indonesia Law No.23/1999 on Bank of Indonesia, under fractional reserve banking (FRB) theory. If these losses are endogenized in favor of Indonesia, the disbursement delays significantly holding back growth. Translated as negatively impacting growth towards zero and into negative. Meaning ADB loans with or without delays (5-year) have zero impacts on increasing Indonesia's growth. On the contrary, significantly retarding it.

The following sections discuss aid volatility definitions, ADB implementation delays, and Indonesia's capitals in ADB. Then, the underlying theory of the negative impact of disbursement delays and a literature review on aid volatilities and return per US Dollar aid, a brief description of capital endogenization, and three banking theories and practices. This is succeeded by an elaboration on the methodology, discussion on the results, and followed by recommendations.

## 2. Aid volatility definition

Loans, grants, technical assistance (TAs) and in-kind assistance are categorized as aid (OECD 2020). Most authors infer aid volatility as the difference between commitment and disbursements (Pallage and Robe 2001; Buliř and Haman 2006; Eifert and Gelb 2005), while Buliř and Lane (2004) refer to aid conditionalities and shortfall by Celasun and Walliser (2008). All of them harnessed disbursement as the main predictor and almost all are using econometrics approaches while the rest with contextual descriptions.

This paper specifically deals with ADB loans to Indonesia and defines aid volatility because of disbursement delays measured by the difference between 100% loan disbursement in year-1 upon loan agreement (LA) signing versus planned and/or actual disbursements. We perform the analysis using a non-econometric yet empirical methodology aided by graphical and numerical explorations.

## 3. ADB Disbursement Delays in Indonesia

Although development banks, such as the ADB, operate in similar ways to traditional banks (Mazzi 2013, p. xxvi), unlike borrowing from a commercial bank where the fund or bank credit is immediately disbursed in-full and deposited into the borrower's controlled-account upon Loan Agreement (LA) signing, borrowing from ADB does not work like this (Figure 1). The ADB ties its disbursements with certain conditionalities and controls the borrower's loan account. Kanbur (2000, 413-416), a former World Bank staff, expresses that conditionality of whatever type has failed in Africa, and they deliberately designed it to fail as a systemic imperative to ensure the aid keeps flowing. Conditionality incriminates the real issue that is *"one of an unhealthy interaction between donor and recipient processes which propagate aid dependence but are not so simple as to be characterised as the strength of the donors and the weakness of the recipients"* (Kanbur 2000, 414). To date, as shown by Howarth (2017, 33) that the infliction of 'conditionality', is a nuisance, highly controversial, and ineffective.

Essentially ADB requires that upon signing, the borrower must meet certain LA conditions before making the first disbursement, and only then ADB declares the loan is effective which signifies the availability of loan funds. This is still subject to the submission of withdrawal application (WA) by the borrower and the formal "No-objection (NO)" issued by the ADB before it can disburse any funds. ADB (2011, ii-iii) in their evaluation study on Uzbekistan admits that on average their projects experience 2-year delays and that the major limitations to ADB's efficiency are from delays in project implementation which increased project overall costs. Delays over 19-month are considered a serious delay (ADB 2018). This strange and appears imprudent in project and portfolio management as any delays, irrespective of duration, in loan-funded projects are causing money as compounded accrued interests, fees, and penalties.

Indonesia signed its first ADB loan (No.12) on 2 July 1969 and took 3.7 years (year-4) for its first disbursement on 7 February 1973. The average 1<sup>st</sup> disbursement time since 1969 is over 2 years (year-3). ADB-wide overall project implementation duration normally coincides with the grace period, which is its "standard" 5 years (ADB 2018, APPR, 21). On average, ADB-wide experiences 2.2 years delays hence in their year-8 of implementation (ADB 2018 APPR, p. iii).

This is consistent with Indonesia's project data. According to ADB's President Nakao, about 90% of ADB loan projects are experiencing 2-year delays (Witular 2016). Hence, we use standard 5-year with 2 years delays (7-year).

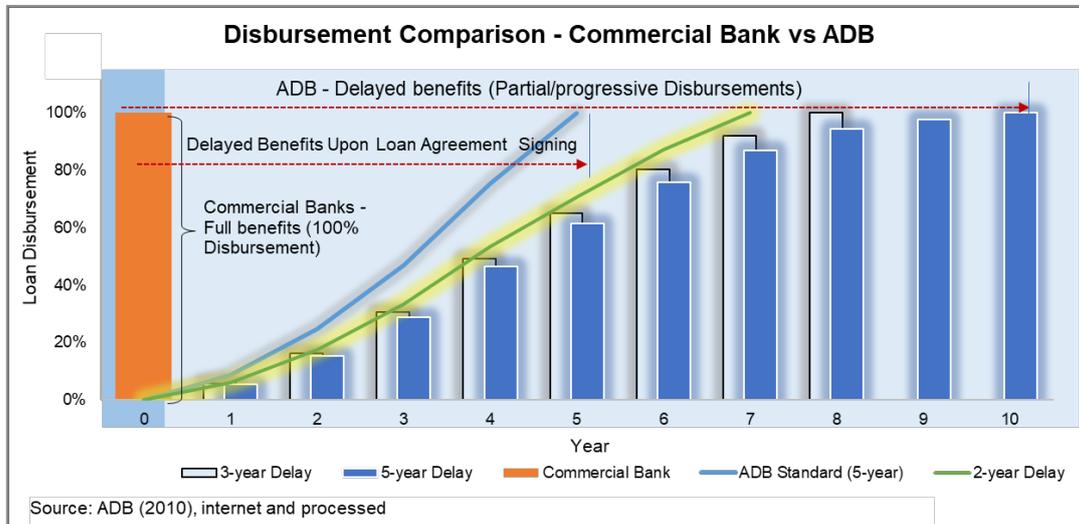


Figure-1. Loan Disbursements Comparison, Commercial Bank vs ADB

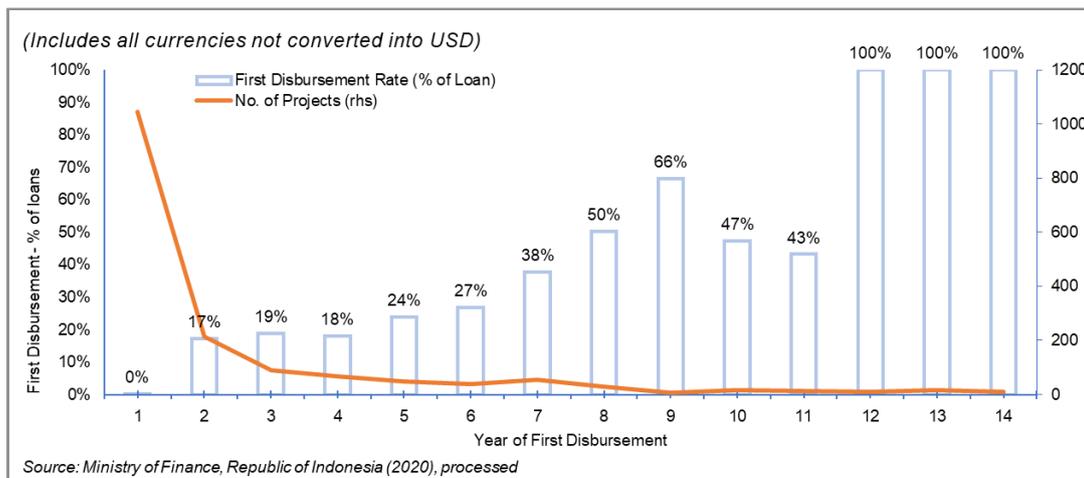


Figure-2. Indonesia-ADB Loans 'First Disbursement'

#### 4. Indonesia Capitals in ADB

Indonesia's paid-in (in-cash) plus subscribed capitals (total about \$8 billion) and guarantees (in-kind) to ADB. Under banking governance, these are Promissory Notes (PNs) per Bill of Exchange 1882 thus can be traded as securities, leveraged as deposit, or to create money. Each signed LA is a tradeable security and bank reserve (Nichols 1992, 11; Werner 2016 and IMF (Gross and Siebenbrunner 2019) and adding to Indonesia's securities to ADB. The borrowers can use these as 100% full loan-fund-disbursement collateral. Despite this and Indonesia's much larger disbursement capacity, ADB is asserting on controlling, thus delaying, the disbursement following its interpretation of its Charter, Article 14.

## 5. Theory and Hypothesis

Ibnu Khaldun, in the 14<sup>th</sup> century, warned that when the ruler (government) is not spending money, causing a shortage of capital. *"Now, if the ruler keeps it to himself [undisbursed], it is lost to the subjects"* (Khaldun 1377, 365). Similarly, when the ADB loan funds remain undisbursed, it causes a shortage of capital, growth retardation, and loss to Indonesia.

## 6. Literature Review

### 6.1. Aid volatility and growth

Despite development aid initiatives were established in the 1940s, the nexus between aid volatility, effectiveness, and growth was long neglected by scholars (Bulif and Hamann 2006, 4; Diarra 2011, 1) and has only been identified as early as 1995 by Ramey and Ramey (1995) and the most current one is by Hudson (2015) and McKee et al. (2020). Notwithstanding aid unpredictability harmfulness, loan disbursement delays discourage scholars to pursue deeper study as they consider it difficult (Chauvet and Guillaumont 2009, 453). This finding correlates with Aldashev and Verardi (2012, 3) who express that there is a lack of empirical cognition about how aid volatility affects development outcomes while Easterly (2006, 41) expresses that there is a disconnection in aid policy based on the assumption that aid promotes growth which in reality is the opposite. Hudson and Mosley (2008) shared this. They show that volatility reduces growth relevant to the size of aid on the recipient's economy as expressed in %-GDP. Rajan and Subramanian (2008), show the negative effect of aid flows on economic growth in developing countries regardless of the quality of policy or geographic location of the recipients. In 2009, the IMF identified that the 'right kind' of development aid has a positive impact on long-run economic growth (Minoiu and Reddy 2009, 6; McKee et al. 2020). However, their most recent study discovered that there is no robust evidence that aid increases growth (Dreher and Lohmann 2015, 5).

Over the past 40 years, significant evidence shows that aid volatilities have a severe negative impact on growth but little is known about their main sources (Desai and Kharas, 2010, p.1). Desai and Kharas (2010) identified loan disbursement delays as one of the possible sources of aid volatility which impairs aid recipients through the raising of financial costs, slashes investments, and reduces welfare and hence affects growth. Kharas (2008, 9) exhibits that disbursement volatility has massive negative shocks on growth and national income similar to those experienced by developed countries during the two World Wars and Great Depression.

### 6.2. The impacts of volatility

Hudson (2015) citing Pallage and Robe (2001, 18-19) discover that aid is highly volatile with an average of about 24.7% in African countries and the rest is 29.5%. Aldashev and Verardi (2012, 3-4) show that doubling aid volatility causes a fall in average GDP growth by two-thirds (67%). Using return per \$1 aid invested and disbursed by donors as a measure of volatility, this indicates a range of 15%-2400% (Jepma 1991; Andrews and Wilhelm 2008; GFI et al. 2015; ANU 2017; Lotti and Presbitero 2019; and Hickel 2019). The US Congress (1968, 280) record relating to 1969 budget appropriation for ADB registers *"... we find that many of the members... put in \$1 and get out \$7 [700%]"*. For paying interest alone it consumes 0.8%-GDP (Griffiths 2014).

### 6.3. Capital Endogenization

Interest earned on ADB undisbursed loan amounts and fees incurred are the ADB's and/or its private banks' profits and not accounted as Indonesia's national income (Paradox of profits). Those gains need to be monetized and endogenized by treating them

consistently as a source of capital (Zezza 2011, 15) for Indonesia. The concept of capital endogenization is used to estimate the regional economy wealth leakages (Rustiadi et al. 2018) and development sustainability (Fauzi 2019).

## **7. Foundation: Banking Theories, Practices and Governance**

Bourguignon and Sundberg (2007) and Edwards (2014) have voiced the need to go beyond econometrics to open the 'black box' of development aid as a plethora of studies, including aid volatilities, remain inconclusive. Since no cross-country financial transactions (GFI et al. 2015) can occur in the world without engaging banking systems hence, this paper builds its foundation on banking practices, which we discuss below, rather than econometrics. As the black box opener, the knowledge on how the banks work is essential as expressed by Galbraith (1975, 5) "*[t]he study of money, above all other fields in economics, is the one in which complexity is used to disguise truth or to evade truth, not to reveal it... Money, in contrast, is equally important to those who have it and those who don't. Both, accordingly, have a concern for understanding it. Both should proceed in the full confidence that they can.*" Hence, the subsequent section is opening the black box yet briefly, by expatiating on the three banking theories identified by Werner (2014, 2016)

### **7.1. Financial Intermediation Banking (or Loanable fund) (LF)**

First, LF is the most dominant theory which holds that banks are merely financial intermediaries. They gather deposits, mostly in cash, from patient savers and lend them out to customers or impatient spenders and charge interest. ADB appears practicing the LF as it continuously requests its member countries to replenish its ordinary capital resources.

### **7.2. Money Multiplier or Fractional Reserve Banking (FRB)**

Second, this FRB theory adopts that banks create money through 'multiple deposit expansion' by using a fraction of money in their possession as the basis for the credit generation. A bank with \$10 cash in its entire holding able to lend out \$100 (10 times) under the 10% reserve rule (adopted based on Indonesia, Article 62. b, Law No. 23 (1999) on Bank Indonesia) (Nichols 1992 - 1<sup>st</sup> ed. 1961, 11). At the time of ADB creation in 1966, the Federal Reserve Bank (FED) required all banks to maintain a reserve ratio of 4-6% (The Fed, 2020, Footnote 10-13). The Fed nullified this requirement on 26 March 2020 (The Fed 2020) which means, any bank can lend out money with zero reserves (Nichols 1992, 3). Per its 2020 Information Statement (ADB 2020, 9), ADB lending operation appears to maintain between 4-8% reserve (FRB) ratio. Based on this evidence, we assumed that ADB, through its banking governance is adopting both the FRB and LF. Subsequently, this paper uses these two terms in the analysis.

Werner (2014, 2016), Keen (2014) and Moore (1983) and a growing number of central banks, such as the Fed (Carpenter and Demiralp 2010) and the Bank of England (McLeay, et al, 2014), have mathematically, empirically, and practically proven that both LF and FRB theories are untenable, factually incorrect and not reflecting reality hence are indefensible.

### **7.3. Money or Credit Creation (CC)**

Third, the CC is the most dominant theory and currently practiced around the world in which banks require neither deposit nor reserve. All it needs is a signed LA or promissory note. This is the oldest banking theory in the modern civilization that was based on 5000 years of practices (Werner 2016; Hudson 2018).

Werner (2014, 14) in the first-ever practical empirical test in 5000 years of modern banking, observed in real-time and in an actual bank environment, with BBC crew filming, the whole process from LA signing until he receives the credit money into his bank account. The entire process took only 35 minutes in contrast with ADB's fund outlaying that takes over 5 years or an average of 7-8 years (Figure 1).

To illustrate the gains from money creation under the three banking theories, this online calculator (The Calculator Site 2020), which uses the compounded interest formula  $A = P(1 + r)^t$ , helps to view those gains under two scenarios namely 'borrow-to-invest' and 'borrow-to-project finance with 12.5% annual withdrawal'. Annual interest (r) is using average ADB loans to Indonesia of 4.727%. A hypothetical loan (P) of \$100 under LF and 10% bank reserve hence,  $100/10\% = \$1000$  money creation under FRB or CC. For (t), we applied eight years for the LF to reflect average ADB delays and five years for FRB/CC, which coincides with the ADB grace period when loan repayment begins, and the beginning of FRB/CC money creation reduction. We do not calculate principal repayment plus interest to mirror the implementation phase or grace period of ADB loans. The results show gains (A) per \$1 loan are between \$0.24 - \$12.6 (\$2.60 + \$10) or 24% - 1160% for LF and FRB, respectively. This includes the new money created plus compounded interest, which is all not in favor of Indonesia, hence a capital flight or loss.

Hence, this means for every one-year delay in ADB loan funded project causing the borrower (i.e., Uzbekistan) to lose between \$0.24/8year and \$12.6/5year (\$0.03 - \$2.52) per \$1 loan or \$0.25 - \$21 per \$100 loan/day under LF and FRB correspondingly. In summary, if they do not disburse the loan fund 100% in year-1 upon LA signing, it costs the borrower \$2.1 per day per \$1 loan under today's prevalent banking practices.

## 8. A case study with one country and one source of fund

The bulk of aid effectiveness and impacts studies have been typically centered on aggregated aid (see footnote 1) as a single resource of development funding. As identified by the World Bank (Bourguignon and Sundberg 2007, 316), Aldashev and Verardi (2012, 2), Edwards (2014), and Howarth (2017, 41-49) that lumping aids and countries in the analysis have fragile, fragmented, often ambiguous, spurious and gives inconclusive results. Hudson (2015, 66) concludes that the most important predictor of aid volatility is debt-financed by loans. Dreher and Lohmann (2015, 5) identify the gap in the literature on aid effectiveness because of the lack of empirical evidence at the country-level. Hence, this paper covers only one country (i.e., Indonesia), and one component of aid, that is ADB loan.

## 9. Methodology

Our paper uses a novel methodology identified as Development Outcomes Attribution (DOA) on Bank Outlays Growth On-development Results (BOGOR) (Ingratubun 2020). This applies quantitative attribution by treating a scenario of 100% loan disbursement upon LA signing in year-1 as the benchmark. We then compared them with progressive disbursement based on project S-curve and integrating money creation and their compounded interests and fees from undisbursed amounts, using triangulation of numerical, graphical, and stochastic approaches.

### 9.1. The Philosophy of DOA-BOGOR

We defined attribution in DOA as taking a slice of economic development (i.e., preferably current GDP) indicators and examine their compositions most relevant to the project/program, assess and understand their outcome apportionments to the source of funding which in this paper are the ADB loans.

As an illustration, in a slice of 'white' bread, equally sized and weighted, one can get 3-gram sugar, 2-gram protein, and zero-gram fiber whilst in a slice of 'brown' bread, 2-gram, 3-gram, and 2-gram respectively. Thicker or thinner slice produces different configurations. Likewise, in a GDP of Indonesia (a loaf of white bread), from which loaf a slice thereof (ADB loans) is extracted. From the loaf, one can obtain an average value (1969-2017) of 5.598% GDP growth level over average ADB's loans 0.415%-GDP hence, ADB loans slice attributes a 1.351% GDP growth of Indonesia. We term this as a growth attributor. Likewise, an equal slice of brown bread (ADB loans in a different country) will produce different results. Figure-3 below illustrates the basic mechanics of DOA-BOGOR.

Disbursement S-Curve Profile for 5-year Implementation										Disb. S-Curve Profile for 5-year Implementation with 2-year Time Lag (TL)														
Value (\$)		Year-1	Year-2	Year-3	Year-4	Year-5	Total	Total pa - %GDP		Attributor		Value (\$)		Year-1	Year-2	Year-3	Year-4	Year-5	Total	Total pa - %GDP		Attributor		
P1	P5	D1	D2	D3	D4	D5	Total	GDP (\$)	Yx	Growth (G)	P1	S-P	D1	D2	D3	D4	D5	Total	GDP (\$)	Yx	Growth	P1	(10)*	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)*	(10)*	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)*	(10)*	(1)	(10)*	
Year (Y)	(2x3)	(2x4)	(2x5)	(2x6)	(2x7)	(2x7)	Total	(Annual GDP-\$)	(8/9)/10	(8/9)/10	Y-1	(2x3)	(2x4)	(2x5)	(2x6)	(2x7)	(2x7)	Total	(Annual GDP-\$)	(8/9)/10	(8/9)/10	Y-1	(10)*	
Y1	P\$100%						P\$100%				No disbursement during 1st 2-year (TL-2yr)													
Y-1	P\$	D1 x P\$					D1P\$	GDP(\$Y1)	GY1			Y-3	P\$	D1 x P\$					D1P\$	GDP(\$Y3)	GY3			
Y-2	P\$	D2 x P\$				D2P\$	GDP(\$Y2)	GY2				Y-4	P\$	D2 x P\$				D2P\$	GDP(\$Y4)	GY4				
Y-3	P\$	D3 x P\$			D3P\$	GDP(\$Y3)	GY3					Y-5	P\$	D3 x P\$			D3P\$	GDP(\$Y5)	GY5					
Y-4	P\$	D4 x P\$		D4P\$	GDP(\$Y4)	GY4					Y-6	P\$	D4 x P\$		D4P\$	GDP(\$Y6)	GY6							
Y-5	P\$	D5 x P\$	D5P\$	GDP(\$Y5)	GY5						Y-7	P\$	D5 x P\$	D5P\$	GDP(\$Y7)	GY7								
Average										Average														
G5yr										G5yrTL2														

Note: \* Average (1969-2017) Growth at 100% disbursement (G100%) = 1.351%  
 Applicable with 2-year delays (7-year). Please use S-curve profile for 7-year implementation  
 G100% is the benchmark and will be compared with G5yr, G5yrTL2, etc.

Figure-3. Basic Mechanics of the attribution methodology (DOA-BOGOR)

From the borrower or recipient's perspective, the soonest they sign the LA, the credit money is immediately created. Accordingly, there are costs or gains attached to it and grows over time. This includes the costs of delays and money created under LF and FRB in favour of ADB and/or its commercial banks where Indonesia loans' funds are parked. These should be balanced by endogenizing them for Indonesia and treated as national income under the Stock-flow consistent (SFC model is a specific macro model that coherently integrates all stocks and flows in an economy developed by Copeland (1949). He studies “money flows,” in his quest to understand where does the money come from to finance the increased national spending and what happens to the money once obtained but not spent (Copeland 1949, 254)

**9.2. Description**

For this paper, we selected GDP growth as attributor (DOA) which will be quantitatively measured as ADB loans outlay progress following S-curve profiles until they reach 100% (BOGOR). The financial costs of delays (e.g., circa 30% and 250% for LF and FRB respectively) after being monetized, (are endogenized as Indonesia's capital in the BOGOR. Meaning, we benchmark the endogenized costs of delays with the 100% outlays in year-1 wherein there is no delay.

Hence, we applied a 10% bank reserves ratio per Article 62. b, Law No.23/1999 on the Bank of Indonesia (Undang-Undang Republik Indonesia Nomor 23 Tahun 1999 Tentang Bank Indonesia). Subsequently, we ascribed the attribution with ADB loans (0.415) as % of Indonesia GDP (Current GDP in US\$) being the numerator over average annual GDP (annual GDP growth in %) growth equally weighted (linearized). From this, we got a growth attributor of 1.351%. We normalized the factual disbursement S-curve profiles (constructed from ADB Dataset (1985-2008), Loan Project No.730 – 2501 consists of 185 loan projects between \$16.8 billion or 12% of ADB-wide total for the same period; this is 50.4% of Indonesia's borrowing (1969- 2017)) following the implementation plan with 2-5 years delays (Table-1). We then spread ADB loans into succeeding 5 and 7-years according to their disbursement profiles per its actual or projected S-curve. Thus, we found the growth attributors of 1.318 (5-year) and 1.232 (7-years) and compared them with the 1.351% (at 100% disbursement). We adjusted the actual interest rates, the London Inter-bank Offered Rate (LIBOR), and fees per ADB's (2021) rules and applied them to calculate compounded amounts from undisbursed funds. These are endogenized under LF and FRB adopting the Stock-flow consistent (SFC) model to balance the money created and its

multiplication from the LA. Subsequently, following the same steps as above, we produced the growth attributors of -1.757 (LF) and -2.895 (FRB). The negative signs show the endogenized sources. We used these in the Monte-Carlo simulations using random normal Gaussian distribution to see the volatility of growth versus ADB's loans progressive disbursements. For ADB's actual disbursement 'not-normalized' S-curve profile, Poisson distribution will be the best fit due to prolong loan closing. We run the growth attributor at a minimum of 1,000 iterations with 5% increments simulating the disbursement ratio. For estimating future total loan principal plus interest, despite they can be calculated individually from the actual data, we adopt the Rule of 72 using 19 years as average loans' life. Hence  $\{0.415 \times 19 / (72/4.727)\} = 0.52\%$ -GDP which is enveloped between 2% and 5% interest rates show in Figure-7).

Table-1. Normalized Disbursement S-curve Profiles

	Year-1	Year-2	Year-3	Year-4	Year-5	Year-6	Year-7	Year-8	Year-9	Year-10
Program Loans	82.99%	9.17%	2.65%	4.23%	0.96%					
Project Loans										
On-Time	13.07%	17.51%	21.36%	25.30%	22.76%					
2-year Delay	7.25%	11.69%	15.54%	19.48%	16.94%	16.03%	13.07%			
3-year Delay	6.08%	10.52%	14.38%	18.31%	15.78%	14.86%	11.90%	8.17%		
5-year Delay	5.38%	9.83%	13.68%	17.62%	15.08%	14.17%	11.20%	7.47%	3.46%	2.12%
MOF	14.89%	8.77%	12.62%	16.56%	14.02%	13.11%	10.15%	6.41%	2.40%	1.07%

Source: ADB (2011) and Ministry of Finance (MOF), Republic of Indonesia (2020), processed

10. Data

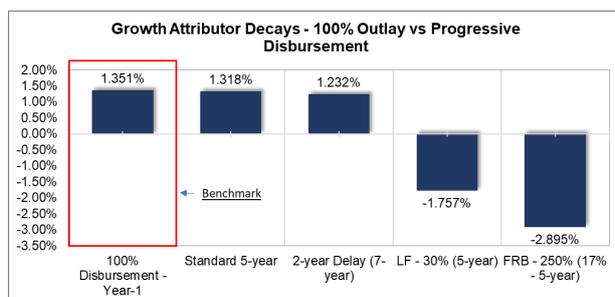
We adopted time-series datasets from ADB (2017) and World Bank (2020), GOI's Ministry of Finance (MOF) and St. Louis Fed (FRED 2020), and Indonesia's ADB loans from 1969 to 2017. The World Bank data provides the GDP growth level. FRED data caters to various interbank lending rates. As ADB loans since 1969 are all below 1%-GDP, we identified one outlier at 2.4%-GDP in 1998 coinciding with the Asian financial crisis and we kept it to maintain data integrity. We fill missing data with their neighboring values.

11. Findings

Delays, despite they are disadvantaging Indonesia in many areas (i.e. economy, finance, social politic), are financially and politically beneficial for ADB or its commercial bank where the undisbursed loan funds are deposited.

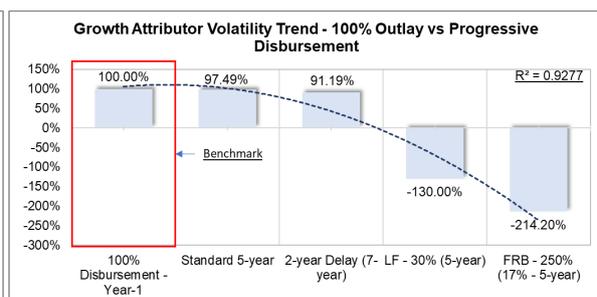
11.1. Numerical

Figure-4 shows ADB loans attribute for 1.351% (or 0.08% per year) of Indonesia's growth of average 5.598% per year had they been outlaid immediately 100% upon LA signing in year-1 into Indonesia's economy. However, the decision not to 100% disburse in year-1 degenerate the ADB loans slice for GDP growth by about 9% (from 1.351% to 1.232%) hence exposes the negative impacts of disbursement delays versus 100% disbursement.



Source: Processed.

Figure-4. Growth attributor decays



Source: Processed.

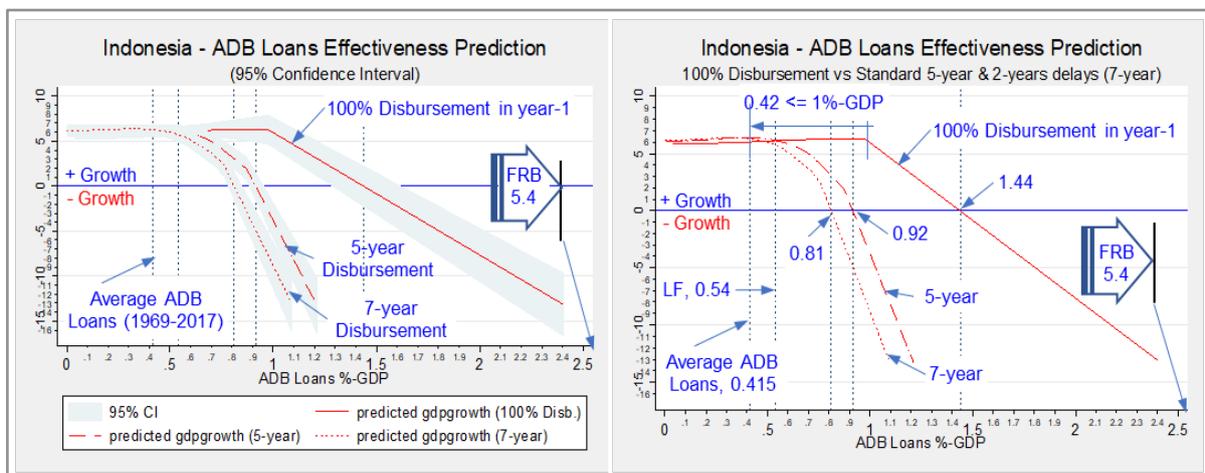
Figure-5. Growth volatility

These values are much smaller compared with those under LF (incorporating 30% compounded interests and fees) and FRB (250%) which pulls growth into -1.757% and -2.895% correspondingly hence, a 214% volatility. The negative signs indicate the endogenized sources. The R-squared value indicates that 93% of deterioration of ADB loans values relevant to the growth promotion due to delays which means the stability of growth attributor is only 7%. The FRB impact was calculated by taking into account that only 15% of FRB amounts are for real GDP transactions and contribute to growth (Bezemer & Hudson, 2016). Hence, to account for transaction costs, we apply 17% due to US Dollar denomination despite in Rupiah it is around 30% of real GDP transaction after disaggregating Bank Indonesia's data.

**11.2. Graphical**

After observing data trendlines between linear, quadratic, and polynomial subsequently, we selected the fractional polynomial as an intermediate between non-linear and polynomial (Royston and Sauerbrei, 2007, p.27). Hence, STATA's Twoway graph fractional polynomial function (fpfit) predicted that ADB loans (at 0.415%-GDP average loans to Indonesia, 1969-2017), if disbursed 100% in year-1, while they slightly maintain steady small GDP growth at around 6-6.2% level (3.2% gain), the effects are declining towards zero when reaching 1% or more of GDP (Figure-6). In tandem with 5- and 7-year delays, ADB loans plus their annual interest rate beyond 2% per annum signals a reduction of ADB loans impacts on Indonesia's growth as it is approaching zero at 0.8%-GDP (Figure-7) which is about double the 0.415%-GDP of ADB average loans size since 1969. Meaning ADB loans have no impact at all on Indonesia's growth, particularly when their amounts are increased. Meaning, more ADB loans are bad for Indonesia's growth. Taking into accounts ADB's average interest rate of 4.727%/year, the amounts of interest paid estimated using the rules of 72 starting at 2%/year (at 0.8%-GDP, this coincides with Griffiths (2014)) per \$1 loan is more than \$2 (+200%). This not only restrains growth but also pulls down into negative. Interestingly, even at 100% disbursement in year-1 under FRB (5.4%-GDP), it shows about 150% volatility (6% to -15%) starting at 1%-GDP and reaching zero at 1.44%-GDP and continues to negative growth zone.

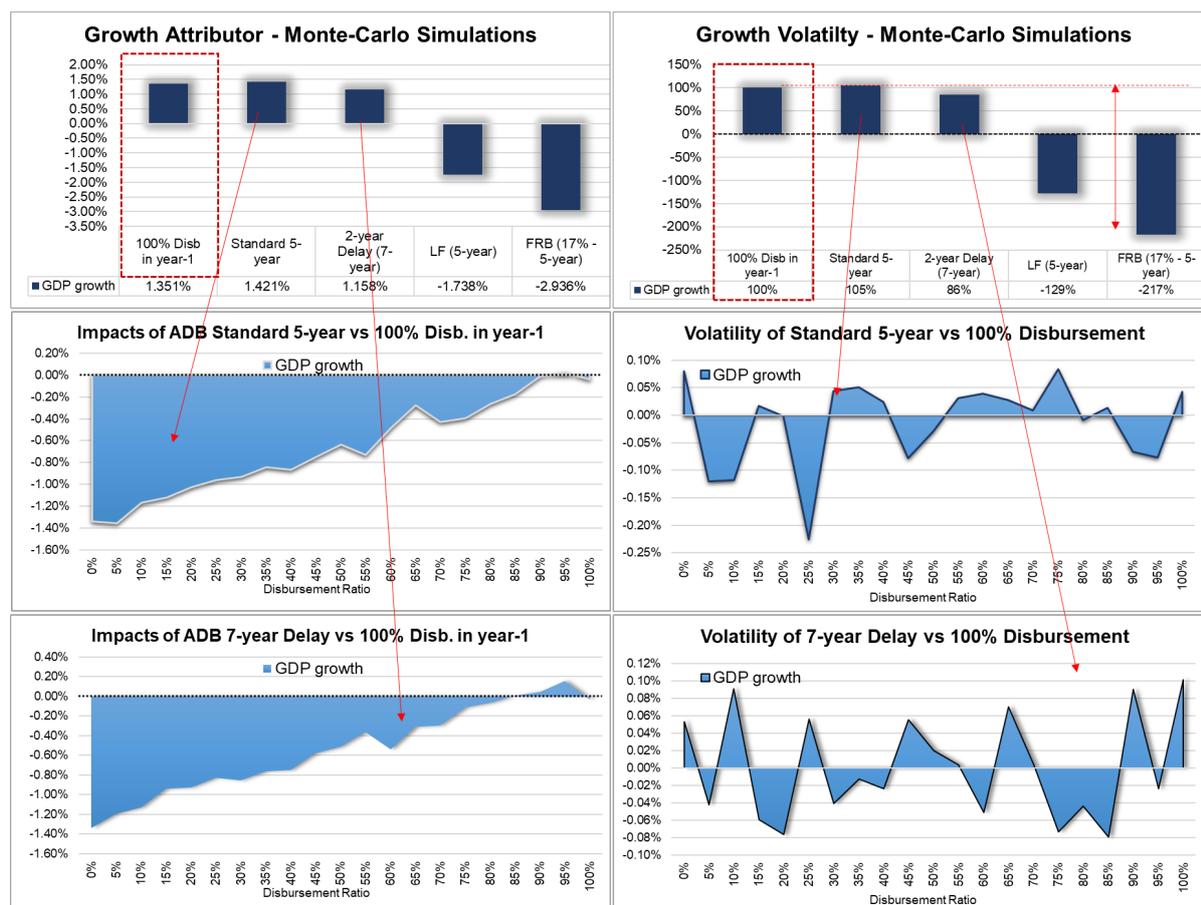
This hints that the impacts of the money created under LF and/or FRB or CC but not in favour of Indonesia, immediately upon LA signing, makes ADB loans negatively influencing Indonesia's growth. This will be fully reversed when the 100% disbursement on year-1 is observed.



Authors processed with STATA

Figure-6. ADB's loans effectiveness with the confidence interval





Note: Authors processed. Results may not be the same when rerun due to Monte-Carlo nature. Each bar was equally simulated with the same percentage of disbursement increment.

Figure-8. Monte-Carlo simulation results showing the impacts of delays and their volatilities, measured against 100% disbursement in year-1

**11.4. Financial impacts**

Triangulating the three results, *ceteris paribus*, the endogenized costs of average 2-year delays engender financial losses to Indonesia of a minimum 1.3–12.5 (under ADB’s 4% reserve ratio, yields \$32 per \$1 or 32 times of the loan value) times the loan value for LF and FRB correspondingly. The ADB loans (actual) financial impacts of delays per \$1 loans, as compounded interests and fees under LF of 22.17–27.91% are consistent with Jepma (1991), Pallage and Robe (2001), and Kharas (2008). Whilst the FRB of \$12.5 (calculated) correlates with more than \$10 capital flight (GFI et al., 2015) or half of \$24 (Hickel, 2017) per \$1 aid. We estimate that between 70-80% of the loan amounts are disbursed into Indonesia's economy and ADB paid the rest to the international services providers. This means 6%-62% (e.g. 70% x 1/1.3 (LF) (or 1/12.5 (FRB)) of the money created including their compounded gains, or \$0.5 (LF)—\$12 (FRB) per \$1 loan are capital flight and never entered Indonesia's national economy. This yields a 50%-1200% volatility of ADB loans to Indonesia, measured against 100% disbursement in year-1. This is almost double the expected return of 700% per \$1 by developed member countries in their investment in ADB (US Congress 1968, 280). This indicates that ADB loan volatility through disbursement delays is not incidental.

**12. Recommendations**

National law and political decisions are critically required by GOI to have any ADB loan funds be immediately 100% disbursed into Indonesia's banking systems in year-1, given the availability of sufficient collateral or no ADB loans at all. In mitigating moral hazard (Coase

1960), reforming the governance of ADB's disbursement. It requires more studies with different attributors, endogenized capitals, and LA conditionalities. (Asymmetric information is defined as when one side knows more than the other and benefit certain party but disadvantage others. This is considered a moral hazard in which decision-makers maximize their benefits while impairing others because of incomplete information on how things actually works, such as banking theories and practices).

### 13. Conclusion

ADB's disbursement delays have severe negative impacts on Indonesia's growth. More ADB loans cause negative growth. Fixing this issue is simple but requires a fundamental shift in their loan disbursement governance.

### Acknowledgment

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### References

- Aldashev, Gani, and Vincenzo Verardi. 2012. *Is Aid Volatility Harmful?* University of Namur. [https://www.tcd.ie/Economics/assets/pdf/AID\\_VOLATILITY\\_Draft\\_Jan8\\_2012\\_FULL.pdf](https://www.tcd.ie/Economics/assets/pdf/AID_VOLATILITY_Draft_Jan8_2012_FULL.pdf).
- Andrews, Matthew, and Vera Wilhelm. 2008. *Thinking about Aid Predictability*. NUMBER 124, PREM Notes Poverty: The World Bank
- Asian Development Bank (ADB, Data Library). 2017. *Statement of ADB's Sovereign Loans, 1968-2017*. <https://data.adb.org/dataset/statement-adbs-sovereign-loans-1968-2017>. Accessed on 11 December 2020.
- Asian Development Bank (ADB). 2019. *2018 Annual Portfolio Performance Report (APPR)*. Accessed 17 December 2020. <https://www.adb.org/sites/default/files/institutional-document/500841/appr-2018.pdf> (Accessed: 25 Aug 2020).
- Asian Development Bank (ADB). 2019. *Indonesia Fact Sheet*. [Online] Accessed 17 December 2020. <https://www.adb.org/sites/default/files/publication/27769/ino-2019.pdf>. Accessed: 25 Aug 2020.
- Asian Development Bank (ADB). 2020. *2019 Information Statement*. Accessed 17 December 2020. <https://www.adb.org/sites/default/files/institutional-document/417506/information-statement-2020.pdf>.
- Asian Development Bank (ADB). 2021. *Operations Manual OM Section D1/BP (Ordinary Capital Resources)* <https://www.adb.org/sites/default/files/institutional-document/31483/om-d1.pdf>. Accessed on 25 Aug 2020.
- Australian National University (ANU). 2017. *Aid study shows every \$1 spent returns \$7.10 in exports*. 16 October 2017. Accessed 17 December 2020. <https://www.anu.edu.au/news/all-news/aid-study-shows-every-1-spent-returns-710-in-exports>.
- Bezemer, Dirk, and Michael J Hudson. 2016. "Finance is not the Economy: Reviving the Conceptual Distinction." *Journal of Economic Issues* 50(3): 745-768.
- Bourguignon, Francois, and Mark Sundberg. 2007. "Aid Effectiveness: Opening the Black Box." *American Economic Review* 97(2): 316-321.
- Buliř, Aleř, and Javier A Hamann. 2006. *Volatility of Development Aid: From the Frying Pan into the Fire?* International Monetary Fund. IMF Working Paper, WP/06/65.
- Buliř, Aleř, and Timothy Lane. 2004. "Aid and Fiscal Management," in *Helping Countries Develop: The Role of Fiscal Policy*, ed. by Gupta, S., Clements, B. and Inchauste, G. (Washington: International Monetary Fund).
- Carpenter, Seth B, and Selva Demiralp. 2010. *Money, Reserves, and the Transmission of Monetary Policy: Does the Money Multiplier Exist?* Federal Reserve Board, Washington, D.C, US: Finance and Economics Discussion Series 2010-41.
- Celasun, Oya, and Jan Walliser. 2008. "Predictability of Aid: Do Fickle Donors Undermine Aid Effectiveness?" *Economic Policy*, 23(July), pp. 545-94.
- Chauvet, Lisa, and Patrick Guillaumont. 2009. "Aid, Volatility, and Growth Again: When Aid Volatility Matters and When it Does Not." *Review of Development Economics* 13(3): 452-463, 2009. DOI:10.1111/j.1467-9361.2009.00501.x.
- Coase, Ronald. 1960. "The Problem of Social Cost." *Journal of Law and Economics* 3(1): 1-44.
- Copeland, Morris A. 1949. "Social Accounting for Money flows." *The Accounting Review* 24(3): 254-264.

- Desai, Raj M., and Homi J. Kharas. 2010. *The Determinants of Aid Volatility*. Working Paper 42, September 2010. Global Economy & Development
- Diarra, Gaoussou. 2011. "Aid unpredictability and absorptive capacity: analyzing disbursement delays in Africa." *Economics Bulletin* 31(1):1004-1017.
- Doucouliaagos, Hristos, and Martin Paldam. 2008. "Aid effectiveness on growth: A meta study." *European Journal of Political Economy* 24(1): 1–24.
- Dreher, Axel, and Steffen Lohmann. 2015. *Aid and Growth at the Regional Level*. IMF Working Paper WP/15/196. Research Department and Strategy, Policy, and Review Department.
- Easterly, William. 2006. *The White Man's Burden*. Oxford: Oxford University Press.
- Edwards, Sebastian. 2014. *Economic development and the effectiveness of foreign aid: A historical perspective*. <https://voxeu.org/article/development-and-foreign-aid-historical-perspective>
- Eifert, Benn, and Alan Gelb. 2005. Coping with Aid Volatility. *A quarterly magazine of the IMF*. September 2005, Volume 42, Number 3. Accessed 17 December 2020. <https://www.imf.org/external/Pubs/FT/fandd/2005/09/eifert.htm>
- Fauzi, Akhmad. 2019. *Teknik Analisis Keberlanjutan*. PT Gramedia Pustaka Utama, Jakarta, Indonesia.
- FRED (Federal Reserve Bank of St. Louis). 2020. Economic Data. <https://fred.stlouisfed.org>. Accessed on 11 Dec 2020.
- Galbraith, John K. 1975. *Money, Whence it Came, where it Went*. Boston, US: Houghton Mifflin.
- Global Financial Integrity (GFI) et al. 2015. Financial Flows and Tax Havens: Combining to Limit the Lives of Billions of People. Accessed 17 December 2020. [https://secureservercdn.net/45.40.149.159/34n.8bd.myftpupload.com/wp-content/uploads/2016/12/Financial\\_Flows-final.pdf](https://secureservercdn.net/45.40.149.159/34n.8bd.myftpupload.com/wp-content/uploads/2016/12/Financial_Flows-final.pdf). Accessed 25 August 2020.
- Griffiths, Jesse. 2014. *Developing countries lose \$2 for every \$1 they earn*. <https://www.euractiv.com/section/development-policy/opinion/developing-countries-lose-2-for-every-1-they-earn/?fbclid=IwAR1-sYzJR0cWMFVtBiaBOuSe3Kp3RWqtlW70wG8f8mgJoGYvl7e4qxTlTmU>. Accessed 23 December 2020.
- Gross, Marco, and Christoph Siebenbrunner. 2019. *Money Creation in Fiat and Digital Currency Systems*. IMF Working Paper WP/19/285. International Monetary Fund.
- Hickel, Jason. 2017. *Aid in reverse: how poor countries develop rich countries*. Accessed 17 December 2020. <https://www.theguardian.com/global-development-professionals-network/2017/jan/14/aid-in-reverse-how-poor-countries-develop-rich-countries>.
- Howarth, Christopher N. 2017. *Does Development Aid Work?* A report by Christopher N Howarth for the Global Development Challenge. The Project for Modern Democracy. Accessed 17 December 2020. [https://issuu.com/p4md/docs/pmd\\_aid\\_effectiveness\\_report](https://issuu.com/p4md/docs/pmd_aid_effectiveness_report). (Accessed 15 Nov 2020)
- Hudson, John, and Paul Mosley. 2008. "Aid volatility, policy and development." *World Development* 36(10): 2082-2102.
- Hudson, John. 2015. "Consequences of Aid Volatility for Macroeconomic Management and Aid Effectiveness." *World Development* Vol. 69, pp. 62–74, 2015. 0305-750X/ 2014 UNU-Wider. Elsevier Ltd.
- Hudson, Michael J. 2018. *Palatial Credit: Origins of Money and Interest*. Accessed 17 December 2020. <https://michael-hudson.com/2018/04/palatial-credit-origins-of-money-and-interest/>.
- Ingratubun, M.A. 2020. (Unpublished) *Tracking Effectiveness of Loan Funds (Aid) (TEA) through Development Outcomes Attribution (DOA) on Bank Outlays Growth On-development Results (BOGOR). Case Study: Indonesia Loans from the Asian Development Bank (ADB)*. Bogor, Indonesia.
- Jepma, Catrinus J. 1991. *The tying of aid, Paris*, OECD.
- Keen, Steve. 2014. Endogenous money and effective demand. *Review of Keynesian Economics*, 2(3), Autumn 2014, pp. 271–291. Accessed 17 December 2020. [https://www.researchgate.net/publication/271215627\\_Endogenous\\_money\\_and\\_effective\\_demand](https://www.researchgate.net/publication/271215627_Endogenous_money_and_effective_demand).
- Khaldun, Ibnu 1377. *The Muqaddimah: An Introduction to History*. Translated by Franz Rosenthal (1969). Accessed 17 December 2020. [https://asadullahali.files.wordpress.com/2012/10/ibn\\_khaldun\\_al\\_muqaddimah.pdf](https://asadullahali.files.wordpress.com/2012/10/ibn_khaldun_al_muqaddimah.pdf).
- Kharas, Homi J. 2008. *Measuring the Cost of Aid Volatility*. Wolfenshon Center for Development Working Papers.
- Lotti, Giulia, and Andrea Presbitero. 2019. *The mobilisation effects of multilateral development banks*. Accessed 17 December 2020. <https://voxeu.org/article/mobilisation-effects-multilateral-development-banks>.
- Mazzi, Biagio. 2013. *Treasury Finance and Development Banking. A Guide to Credit, Debt, and Risk*. New Jersey, USA: John Wiley & Sons, Inc.
- McKee, Caitlin, Catherine Blampied, Ian Mitchell, and Andrew Rogerson. 2020. *Revisiting Aid Effectiveness: A New Framework and Set of Measures for Assessing Aid "Quality"*. Working Paper 524, January 2020. Washington, USA: Center for Global Development.

- McLeay, Michael, Amar Radia, and Ryland Thomas. 2014. *Money creation in the modern economy*. Bank of England. Quarterly Bulletin, Q1, pp.14-27.
- Minoiu, Camelia, and Sanjay G. Reddy. 2009. *Development Aid and Economic Growth: A Positive Long-Run Relation*. IMF Working Paper WP/09/118. International Monetary Fund.
- Moore, Basil J. 1983. "Unpacking the Post Keynesian Black Box: Bank Lending and the Money Supply." *Journal of Post Keynesian Economics* 5(4): 537–556.
- Nichols, Dorothy M. 1994. *Modern Money Mechanics. A Workbook on Bank Reserves and Deposit Expansion*. 1st published in 1961. Last revision by Anne Marie L. Goczy (1992). Chicago, IL, US: Federal Reserve Bank of Chicago.
- OECD. 2003. *Harmonising Donor Practices for Effective Aid Delivery. DAC Guidelines and Reference Series*. Paris: Organisation for Economic Co-operation and Development, Development Assistance Committee. Accessed 17 December 2020. <http://www.oecd.org/dataoecd/0/48/20896122.pdf>.
- OECD. 2020. *Net ODA - Official Development Assistance*. <https://data.oecd.org/oda/net-oda.htm>. Accessed 25 August 2020.
- Pallage, Stephane Pallage, and Michel A. Robe. 2001. "Foreign aid and the business cycles." *Review of International Economics* 9: 641-672.
- Quibria, Muhammad G. 2014. "Aid effectiveness: research, policy and unresolved issues." *Development Studies Research: An Open Access Journal* 1(1): 75–87.
- Rajan , Raghuram G., and Arvind Subramanian. 2008. "Aid and Growth: What Does the Cross-Country Evidence Really Show?" *Review of Economics and Statistics* 90(4): 643–665.
- Ramey, Garey and Ramey, Valerie A. 1995. "Cross-Country Evidence on the Link between Volatility and Growth." *American Economic Review* 85(5): 1138-1151. American Economic Association.
- Royston, Patrick, and Willi Sauerbrei. 2007. *The Use of Fractional Polynomials in Multivariable Regression Modelling*. Presentation, Heidelberg: Germany. Accessed 17 December 2020.: <http://www.biometrie.uni-heidelberg.de/statmeth-ag/veranstaltungen/magdeburg07/talks/sauerbrei.pdf>.
- Rustiadi, Ernan, Sunsun Saefulhakim, and Dyah R. Panuju. 2018. *Perencanaan Dan Pengembangan Wilayah*. Jakarta, Indonesia: Yayasan Pustaka Obor Indonesia.
- The Calculator Site. 2020. "Savings calculator." Available at <https://www.thecalculatorsite.com/finance/calculators/savings-calculators.php>. Accessed at 12 Dec 2020.
- The Fed. 2020. *Reserve Requirements*. The Federal Reserve, US. Accessed 17 December 2020. <https://www.federalreserve.gov/monetarypolicy/reservereq.htm>.
- US Congress. 1968. *Appropriation for 1969*. House of Representatives. 9th Congress, Second Session, Part 1 (94-105), pp.264-324.
- Werner, Richard A. 2014. "Can banks individually create money out of nothing? The theories and the empirical evidence." *International Review of Financial Analysis*, 36, pp.1-19.
- Werner, Richard A. 2016. "A lost century in economics: Three theories of banking and the conclusive evidence." *International Review of Financial Analysis* 46: 361-379.
- Werner, Richard. A. 2015. *A Prosperous Future Together: Financial & Economic Policies for Inclusive & Equitable Development*. 13th Rhodes Forum World Public Forum. Rhodos, Greece.
- Witular Rendi A. 2016. "Asian Development Bank to reform project delivery, cut delays." *The Jakarta Post* (Fri, May 6, 2016). Accessed 17 December 2020. <https://www.thejakartapost.com/news/2016/05/06/asian-development-bank-to-reform-project-delivery-cut-delays.html>. (Accessed: 25 Aug 2020).
- World Bank. 2020. "Open Data. Economy and growth." <https://data.worldbank.org> or <https://data.worldbank.org/topic/economy-and-growth>. Accessed on 11 December 2020.
- Zeza, Gennaro. 2011. "Godley and Graziani: Stock-Flow-Consistent Monetary Circuits." *Levy Economics Institute*.

# **Legislative Considerations on Respecting Patient's Rights in the Global Context Generated by the SARS COV-2 Pandemic**

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**ABSTRACT:** In the contemporary era, the right to health is a part of human rights and is based on one's natural rights. Hence the obligation of the states to elaborate an appropriate legislation and to implement this obligation, i.e. social responsibility in health. This article aims to analyze the way in which the rights of European patients are respected in the current global context, referring, in particular, to respecting patients' rights in the Romanian health system. The assertion of patient's rights must take into account, in particular, citizens' right to travel (freedom of movement) between the Member States of the European Union and equal opportunities, so as to benefit from quality services, in particular, to promote the implementation of these rights in all the states at regional level. In addition, the observance of these rights in the context of the COVID-19 pandemic implies changes in the daily relations between the patients and the ensemble composed of specialists and health structures. A modern healthcare system needs to be focused on the patient's needs, to have dynamic and integrated structures, adaptable to the diverse and changing health needs of the society in general and of individuals in particular and, last but not least, it must recognize the patient's role as an active partner in health policies, especially in the case of the SARS CoV-2 infection's emergence.

**KEYWORDS:** fundamental rights, the right to health, patient's rights, European legislation, public health, SARS CoV-2 pandemic

## **Introduction**

Throughout the historical evolution, the patient has had many obligations, but no rights in the modern sense. For authorities, the control of the epidemics was much more important than individual welfare, this being the reason behind public healthcare. The discoveries of political democracy, along with the economic and scientific progress since those times have changed the game of power.

In the decades following World War I, the progress of citizens' rights have become the foundation for the modern patient's rights. The introduction of the popular vote and the clear definition of citizens' rights have created the basis for expressing a desire for various social services, including healthcare. In our opinion, the scientific progress between the two world wars has highlighted the potential to treat an increasing number of diseases, not just the increase in the number of patients, but also in their expectations.

In the contemporary era, when the right to health is a part of human rights and is based on one's natural rights, European countries and the European Community have addressed the issue of the rights of the people who use health services. Patient's rights are a part of human rights and aim to promote patients' autonomy in the long-term. These rights are often intertwined.

Although political statements, such as human rights, are too general and imprecise to serve as a handbook of patients' rights, their value as a source of ideological and ethical inspiration has been significant.

## Theory

At the European level, the legal regulation of patient's rights had as its starting point the document "*Principles of the Rights of Patients in Europe: A Common Framework*" (WHO 1994) which set out a set of principles for the promotion and implementation of patients' rights in the European states who were members of the World Health Organization. Subsequently, the Oviedo Convention provided the patient with a catalog of rights and proclaimed his fundamental rights.

As a result of these signals, there has been an increase in national regulations regarding patient rights in almost every European country, even if in some countries there were formal laws on patient rights, applied according to political culture, such as an individual's right to take legal action if he/she is denied a right to certain functions or in cases of discrimination (Marin and Botinã 2012, 56-57) based on ethnicity or sexual orientation criteria.

In certain systems, patient rights are brought together within a general framework, while in others there are numerous specialized legislative acts.

In the context of the European Union, the assertion of patient's rights has had to take into account in particular the right of citizens to travel between the Member States and the right to equal opportunities in terms of benefiting from quality services in their countries of origin and in their host countries, and, in particular, in order to promote the implementation of these rights in all Member States.

## Results and Discussions

The patient's right to be treated is undoubtedly a major achievement, but it must be considered in terms of the content of the care and the patient's position when receiving care. Today, in order for access to healthcare to be global and for individual rights to be respected, the patient must be able to navigate the healthcare system to access the best care.

The emergence of SARS-CoV-2 infection has led to the rapid spread of COVID-19 worldwide. On 30 January 2020, WHO declared COVID-19 a public health emergency of international interest, and on 11 March 2020 the pandemic was declared. By November 2020, over 56 million confirmed cases and over 1 million deaths worldwide have been reported.

The First Order of the Minister of Health regarding the action plan and the COVID-19 hospitals list established a network of support hospitals at national level, with the aim of taking over patients from infectious disease hospitals.

This order also imposed the first restrictions on the activity of all the hospitals in the country, by reducing by up to 80% the scheduled hospitalizations and scheduled surgeries for chronic patients in health facilities with beds from university centers and reducing by up to 50% the outpatient activity compared to February. These restrictions were addressed on April 14, 2020, allowing hospitals to provide diagnostic or therapeutic interventions to chronic patients and pregnant women for whom postponement could have reduced the chances of survival. On 3 April, a new Ministerial Order designated, in addition to the support hospitals, Phase I hospitals and Phase II hospitals. The initial definition of these hospitals mentions the possibility of treating other pathologies only for phase II hospitals, given the existence of completely separate circuits. The result was, therefore, a period of almost 2 months (between 3 April and 29 May) in which, at least from a legal point of view, the hospitals designated to manage COVID-19 were obligated to treat almost exclusively patients infected with the new coronavirus. During this time, the number of COVID-19 dedicated hospitals reached 134.

The inclusion on the list of hospitals dedicated to COVID-19, especially of Phase I and II hospitals, has had a dramatic impact on the usual activity of the hospitals. At the same time, the activity of non-COVID hospitals was negatively influenced both by the restrictions imposed by the establishment of the state of emergency, and by the restrictions on hospitalizations and outpatient activity imposed by order of the Minister of Health.

The number of hospitalizations at national level has dropped dramatically since April 2020, when 70% fewer hospitalizations than in the similar period of the previous year were recorded.

### **The right to healthcare and treatment**

Every person has the right to receive healthcare appropriate to his/her needs, including preventive care and health promoting activities (WHO 1994).

Services should be available and accessible in a fair manner, without discrimination and in accordance with the financial, human, and material resources available in a given society (Wicks 2007, 20-29).

Patients have the collective right to a certain form of representation at each level of the healthcare system, in matters relating to the planning and evaluation of services, including the limits, quality and functioning of the healthcare provided (WHO 2007).

Patients have the right to a quality of healthcare characterized both by high technical standards and by a human relationship between the patient and the healthcare providers.

Although there is no absolute delimitation between acute and chronic healthcare, with many cases of exacerbation of chronic diseases, in March-August 2020 the sections dedicated to chronic patients recorded a significantly higher decrease in activity compared to the sections dedicated to acute pathologies.

In the current context of the pandemic, Colentina Clinical Hospital in Bucharest, one of the most important centers for chronic patients in the country, being transformed into a support hospital for COVID-19 management, discharged most patients and was dedicated almost exclusively to treating patients infected with the new coronavirus, thus, a decrease of over 90% in hospitalizations was recorded in April 2020 compared to April 2019.

Patients for whom there are no longer any medical reasons for admission to a healthcare institution are entitled to a comprehensive explanation before being transferred to another place or sent home. The transfer can only take place after another healthcare institution has agreed to receive the patient. However, it is not clear where and in what manner thousands of patients who used the medical services of Colentina Clinical Hospital in Bucharest were redirected every month.

Another indispensable center for chronic patients from all over the country is Fundeni Clinical Institute in Bucharest. Although it was not included on the list of COVID-19 designated hospitals, the decline in activity was considerable, especially in the first months of the pandemic, with a modest rebound in July-August 2020.

Over 16,500 people with HIV / AIDS live in Romania. In the first 6 months of 2020 alone, 159 new cases of HIV infection were detected (INBI 2020).

The medical services specific to HIV infection recorded the largest decrease of all pathologies. This is even more worrying as each case of HIV infection improperly treated can lead both to treatment-resistant forms and to new cases of infection. This is especially true for certain categories of people at risk, who need intense medical and social support in order to maintain adherence to the treatment.

In the case of the centers providing substitution treatment (STC) for people who inject themselves drugs, during the state of emergency, March 16 - May 14, 2020, no admissions of new patients to existing STC centers were accepted, which aggravated an already very difficult situation regarding access to substitution treatment in Romania [ORS 2020].

According to an analysis of the impact of the COVID-19 pandemic on the quality of the medical services and access of chronic patients to medical services (Mixich, Radu 2020), more than half of the respondents (51.7%) consider that the COVID-19 pandemic negatively affected the quality of the medical care received.

Respondents awarded grades from 1 to 10 to the quality of medical services received before the COVID-19 pandemic and during the pandemic. The grade average decreased from 8 - before the onset of the pandemic, to 4 - during the pandemic. Therefore, from the perspective of the chronically ill patients, the COVID-19 pandemic significantly reduced the quality of the medical services.

The causes for this significant decrease are multiple. The most frequently invoked is the reduction or refusal of access to the hospital where the person usually presented for treatment and monitoring. The difficulties generated by the traffic restrictions, as well as the difficult procurement of medicines are also frequently mentioned causes.

The COVID-19 pandemic has been a considerable challenge even for the most advanced medical systems in the world. A World Health Organization study carried out in 155 countries (WHO 2020) found that medical services for noncommunicable diseases were partially or completely disrupted worldwide, with the poorest countries being the most affected. 53% of the participating countries reported disruptions in the medical services for the treatment of high blood pressure, 49% for diabetes and its complications, 42% for cancer and 31% for cardiovascular emergencies. Screening campaigns (e.g., for breast or cervical cancer) were postponed in 50% of the countries participating in the study.

A study published in September by the Gates Foundation draws attention to the negative impact the pandemic has on HIV and tuberculosis healthcare (Goalkeepers Report 2020). The risk of interrupting this care is the deterioration of the health of those infected and the increase in the number of cases. Prior to the onset of the SARS-COV-2 virus, there were already 3 million unidentified cases of tuberculosis globally: infected people who did not know they had the disease, and the current limited access to diagnostic and treatment services will increase this number. The Global Fund to Fight HIV / AIDS, Tuberculosis and Malaria draws attention to the huge risk that the progress in recent years will be lost amid the COVID-19 pandemic (The Global Fund 2020). Disruptions in HIV treatment services are likely to increase the annual number of HIV deaths by more than half a million, bringing it back to the 2008 level.

Another patients' right that we intend to analyze in the light of the COVID-19 pandemic is the right to information (Marin and Buzescu, 2020, 728-730). The patient's right to information is proclaimed both in international documents (WHO's Declaration, the Helsinki Declaration of the World Medical Association, the European Charter of Patients' Rights), and in national ones (Trandafirescu 2009, 140), which constitute the implementation of the international applicable laws and of the *acquis communautaire*.

The doctor can take the best therapeutic measures for the patient, but he/she must explain them to the patient. Information about health services and about the best way to use them must be available to the public, so that all those interested can benefit from them.

One can see that, at present, citizens, especially those belonging to vulnerable groups, do not have essential information about their rights and obligations as patients. The lack of information is due, on the one hand, to the lack of activity on the part of the health system in terms of communicating minimal information regarding these rights and obligations, but also to a social inertia which has not yet determined an interest of the Romanian patient in this matter (OECD 2019). Basically, the citizens find out what rights and obligations they have in relation to the health system only when they encounter a problem in this field and end up using one or more services of the health system.

According to this principle, patients have the right to be fully informed about their health, including the medical factors of their condition, about the suggested medical procedures, about the potential risks and benefits of each procedure, about the alternatives to the proposed procedures, including the effect of non-treatment. Patients also have the right to be fully informed about the diagnosis, prognosis, and progress of the treatment.

The Ministry of Health has updated the List of specialized units which perform RT-PCR testing in order to establish the diagnosis of severe acute respiratory syndrome caused by the new coronavirus, with accredited laboratories (addresses/contact numbers), according to the legal provisions in force.

Although all the units on the List have the obligation to ensure with priority the diagnosis for the patients in the health units, suspects of epidemiological investigations, as well as the persons from the risk groups, according to the methodology of the National Institute of Public Health - National Centre for Surveillance and Control of Communicable Diseases, given the national epidemiological context, the units will decide the conditions under which they can respond to the needs for additional testing, upon request, and can determine the cost of the test.

However, some patients do not know how and do not get a medical evaluation during the disease, to know if a personalized treatment is needed or not. Although studies on the medium and long-term effects of COVID-19 already exist in the medical literature, there is no articulated program in Romania to monitoring patients and former patients infected with SARS CoV-2.

While non-pharmaceutical interventions have had the effect of mitigating the spread and effects of the pandemic and slowed down the transmission of the SARS CoV-2 infection, it is widely accepted that the rapid development, production and distribution of one or more vaccines against COVID-19 are essential for pandemic control, protecting health systems, reducing morbidity and mortality, and reviving economies worldwide.

Among the objectives of the EU vaccine strategy, a benchmark for national strategies formulated by Member States is to ensure that all EU citizens have a fair and affordable access to vaccines at decent prices.

From the point of view of patient's rights, the accessibility of the vaccines for the target groups in terms of price and of physical proximity is very important.

Among the main elements to be considered for national vaccination strategies is clear communication regarding the benefits, risks and importance of the vaccines against COVID-19, in order to instill public confidence.

Among the values and general principles of the National Vaccination Strategy is the clear communication of the benefits, risks and importance of the vaccination against COVID-19 for the entire population of Romania. The development of the communication strategy to promote vaccination at the level of the target groups is also focused on conducting information, communication, and education campaigns regarding the vaccination against COVID-19.

The declared purpose of the strategy is to inform the public clearly, completely, and factually about the vaccination against COVID-19 in order to promote the openness to vaccination against COVID-19 and to increase its confidence in the vaccination.

Although aimed at alleviating vaccination reluctance or hesitation about vaccination by clearly communicating the benefits, potential risks and operating principles of the vaccine, the information provided to the public through the national platform on vaccination against COVID-19 (<https://vaccinare-covid.gov.ro/>) is extremely technical, presenting the stages of the development of a vaccine, what the candidate vaccines are, as well as the modalities of their authorization.

## **Conclusions**

The main responsibility in the field of healthcare lies with the states, through the obligation to ensure proper promotion and protection of public health, in order to improve the quality of life.

Transparency is a key feature of an effective healthcare system, the access to information also empowering citizens to participate effectively in the policy decisions taken at European, national and international levels.

Patient's rights are a part of human rights and aim to promote patients' autonomy in the long-term. These rights are often intertwined. Furthermore, in compliance with the principle of human rights and the values in healthcare, every citizen has the right to health protection, insofar as it is available, through appropriate measures to prevent disease and through healthcare, and to the possibility of pursuing the highest possible level of health.

Even in the current context of the global pandemic, it is necessary for civil society (Rotaru 2020, 71-82) to monitor whether the states are developing appropriate policies to promote access to health, so that individuals can have access to information about the development and implementation of public health policies, without having their fundamental rights violated.

The impact of the COVID-19 pandemic on the access of chronic patients in Romania (including users of substitution centers) to medical services and on the quality of these services is considerable. The effect will lead to a deterioration of the chronic patients' health and to a pressure increase on an already overworked medical system.

Along with the vaccination campaign, a complex program is needed to assess the sick and those who have gone through the disease, so that the costs can be as low as possible, both for the people and for the state.

Since unmonitored medium and long-term sequelae mean future costs for the health system, this is the reason why European states undertake studies and develop medical recovery programs.

If Romania does not keep one step ahead of the pandemic, the structural mistrust in the health system will deepen the vaccine-skepticism, the only thing able to restore a sense of normalcy.

## References

- Goalkeepers Report. 2020. *COVID-19: A global perspective*. Bill & Melinda Gates Foundation: 2020 Goalkeepers Report. <https://www.gatesfoundation.org/goalkeepers/report/2020-report/#GlobalPerspective>.
- Marin, Marilena and Botină, Mădălina. 2012. *Specific features of the dismissal of personal assistants of disabled persons. Case Study*. Proceedings of the 2<sup>nd</sup> International Conference on Law and Social Order, Constantza, March 2-3, 2012. "Contemporary Readings in Law and Social Justice" (1): 53-61. New York: Addleton Academic Publishers.
- Marin, Marilena and Buzescu, Gheorghe. 2020. "Legal effect of the self-liability declaration during the pandemic - COVID 19. Integrity and freedom of conscience." *Journal for Freedom of Conscience*, 728-737.
- Mixich, Vlad and Radu, Constantin. 2020. *The impact of the COVID-19 pandemic on the access of chronic patients to medical services in Romania. Monitoring Report*. Romanian Health Observatory and Romanian Angel Appeal Foundation. <https://observatoruldesanatate.ro/publicatii/pandemie-bolnavi-cronici/>.
- National Institute of Infectious Diseases "Matei Balș" (INBI). 2020. *General data as of June 30*. "Matei Balș" National Institute of Infectious Diseases - Department for Monitoring and Evaluation of HIV/AIDS Infection in Romania.
- OECD and European Observatory on Health Systems and Policies. 2019. *State of Health in the EU. Romania Country Health Profile 2019*. [https://ec.europa.eu/health/sites/health/files/state/docs/2019\\_chp\\_romania\\_english.pdf](https://ec.europa.eu/health/sites/health/files/state/docs/2019_chp_romania_english.pdf).
- Romanian Health Observatory (ORS). 2020. *Monitoring report on access in Romania to substitution treatment for injecting drug users*. Report by Romanian Health Observatory and Romanian Angel Appeal Foundation. January 2020. [https://health-observatory.ro/wp-content/uploads/2020/07/ors\\_monitorizare\\_acces\\_substitutie\\_2020.pdf](https://health-observatory.ro/wp-content/uploads/2020/07/ors_monitorizare_acces_substitutie_2020.pdf).
- Rotaru, Ioan-Gheorghe. 2020. "Spiritual Lessons observed through the Coronavirus Crisis." *Dialogo. Issue of Modern Man* 6(2): 71-82.
- The Global Fund. 2020. *The Global Fund to Fight AIDS, Tuberculosis and Malaria. Results Report 2020*. [https://www.theglobalfund.org/media/10103/corporate\\_2020resultsreport\\_report\\_en.pdf](https://www.theglobalfund.org/media/10103/corporate_2020resultsreport_report_en.pdf).
- Trandafirescu, Bogdan Cristian. 2009. *News brought by Regulation (EC) No. 593/2008 (Rome I) and Romanian private international law*. Volume of the Communication Session "Recent Regulations in Business Law". Bucharest: ASE Publishing House.

- Wicks, Elizabeth. 2007. *Human rights and healthcare*. Portland, Oregon: Hart Publishing.
- World Health Organisation (WHO). 1994. A Declaration on the Promotion of Patients' Rights in Europe, Amsterdam, 1994: Principles of the Rights of Patients in Europe: A Common Framework Amsterdam Declaration of Patients' Rights, Endorsed by the World Health Organization European Consultation on The Rights of Patients, 28-30 March 1994. World Health Organization: Regional Office for Europe.
- World Health Organisation (WHO). 2007. *Everybody's business: strengthening health systems to improve health outcomes: WHO's framework for action*. Geneva: World Health Organization WHO Document Production Services.
- World Health Organisation (WHO). 2020. *COVID-19 significantly impacts health services for noncommunicable diseases*. World Health Organization Survey. <https://www.who.int/news/item/01-06-2020-covid-19-significantly-impacts-health-services-for-noncommunicable-diseases>.

# Saudi EFL Learners Choice of Language in their Emails to Instructors

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**ABSTRACT:** This paper investigates the linguistic preferences of Saudi female university students in relation to their choice of language (L1 or L2) in the emails they send to their instructors. The sample included a total of 47 emails that were sent by the students of the College of Languages and Translation IMSIU to their instructors. Students in CLT are required to use the English language in the emails they send to their instructors, and the use of the Arabic language is not acceptable. However, the analysis shows that they used Arabic in 19 emails (almost 41%). Our assumption is that students tend to use Arabic when they are planning to communicate particular speech acts. The analysis revealed that the speech acts that were communicated most frequently in these emails were: greeting, complimenting, apologizing, requesting (information), requesting (favour), and complaining. The results show that greeting and apologizing are the most frequently used speech acts in both languages. The least performed speech act in both languages was that of complaining. However, the most frequently used two speech acts had a higher percentage in the Arabic (L1) sample, with 89.5% of the total number of Arabic emails including these two types. To understand the students' perspective, a self-reflection questionnaire was distributed and collected, in which students were asked to pick their preferred language of email communication in relation to each of the six speech acts. The results of the questionnaire revealed that Arabic was the majority's choice in performing the speech acts of complaining and apologizing. This study and similar ones can shed the light on areas of weakness in EFL students' pragmatic performance, hence giving more attention to ways of improving them.

**KEYWORDS:** pragmatic performance, speech acts production, EFL, language choice

## Introduction

"Speech act theory emerged as a theory within the philosophy of language to explain the ways language can be used" (Drid 2018, 13). It is supposed to allow us to understand how native speakers of a language use their language to perform various acts. When L2 learners refrain from using L2 even when they are supposed to, it indicates that they lack the ability to use it. When the learner refrains from using it only on certain occasions, or when performing certain speech acts, we deduce that s/he does not lack knowledge of using the language as a whole, but of performing those specific acts in that language. When the language referred to is a foreign one, we believe that devoting parts of the teaching curriculum to explaining and practicing ways of expression of different speech acts might improve students' L2 pragmatic skills.

Many previous studies have investigated the production of speech acts by non-native speakers of a language and compared it with that of native speakers to arrive at a better judgment of L2 proficiency levels of non-native speakers and its effect and/or relation to production of speech acts (Holtgraves 2018; Maeshiba, Yoshinaga, Kasper, and Ross 1996; Murphy and Neu 1996; Siebold 2012). However, only a few, to the researcher's knowledge, have studied cases where EFL learners refrained from using English because they do not believe they can be as expressive using English as they are using their first language. Here, I believe the present study proves significant in highlighting how pragmatic incompetency in EFL can hinder communication, and suggesting ways to deal with such a problem.

## Literature review

### *Framework*

Although the term itself was formally adopted to the pragmatic field a few years later by Searle (1969), speech act theory was initially developed in 1962 by Austin when he observed that sometimes "it seems that to utter the sentence [.....] is not to *describe* my doing of what I should be said in so uttering to be doing or to state that I am doing it: it is to do it" (Austin 1962, 6). He made the distinction between constative and performative expressions, where the former term is used to "denote(s) statements or utterances that describe or depict facts or states of affairs and so may be true or false" Hafifah (2020). On the other hand, Performatives are utterances that are produced to perform an action and therefore they resist falsifiability. Moreover, Austin (1962) classified performatives into five types according to their illocutionary force; verdictives, exercitives, commissives, behabitives, and expositives. A three-level categorization of simultaneous acts upon producing an utterance was suggested; the locutionary act, the illocutionary act and the perlocutionary act. The locutionary act refers to the mere saying of an utterance, the illocutionary act denotes the doing or performing of an utterance, and the perlocutionary act relates to the consequential effect of the utterance on its hearer.

There have been several post-Austinian attempts to categorize speech acts. The one proposed by Searle (1976) might be the most reputable one so far. According to Searle, speech acts are categorized into the following five types;

- Representatives, which commit the speaker to the truth of the expressed proposition such as reporting.
- Directives, which are considered as attempts by the speaker to get the addressee to do something as in requesting.
- Commissives, which commit the speaker to a future action as in promising.
- Expressives, which express a psychological state such as the case of apologizing.
- Declarations: which effect immediate changes in the institutional state of affairs such as the case of firing from employment.

### *Previous studies*

Taguchi (2006) conducted a study to examine the correlation between English proficiency of Japanese college students and their production of English requests. The instrument used to elicit the participants' responses was an oral role play task. The resulting data were analyzed both quantitatively and qualitatively; the former by rating performance on a six-point scale for overall appropriateness, and the latter by identifying the directness levels of the linguistic expressions used to produce requests. Contrary to Tabatabaei's (2019) findings below, this one revealed a significant influence of L2 proficiency on the overall appropriateness of the produced speech act. In addition, it suggests that appropriateness of pragmatic performance depends on many factors including sufficient linguistic and pragmatic knowledge which needs to be accompanied by overall strategic capacities to implement this knowledge in communicative interaction.

Beckwith and Dewaele (2012) studied the effect of living in L2 culture in the production of apologies by American students living in Japan. The data was collected from four groups; two control groups, one of native speakers of English and the other of native speakers of Japanese. The first experimental group included American learners/ users of Japanese who have studied Japanese in the UK only and have never resided in Japan, while the second experimental group was comprised of participants who have spent eight months or more studying or working in Japan. The data collection instrument was a discourse completion task which was written in both English and Japanese. The results showed that both control groups used explanations as part of their apologetic act despite the cross-cultural differences. Moreover, they revealed that living in the target language community can trigger pragmatic development, although it was observed that this development was of a non-linear nature.

Felix-Brasdefer and Hasler-Barker (2012) examined American learners' of Spanish as a foreign language production of compliments and compliments responses in Spanish FL classroom. The data was collected via a DCT comprising 18 hypothetical situations that was distributed to the participants, and they were asked to complete each situation with their genuine response. The results revealed that FL learners of Spanish rely on their insufficient knowledge of the syntax and semantics of Spanish in their production of compliments and compliments responses. Therefore, they did not employ appropriate pragmalinguistic resources in the data they provided. The researchers suggest that "teaching pragmatics in the FL classroom will make learners aware of cross-cultural differences" (p.263) which will help them achieve native-like speech production.

Zayed (2014) investigated the production of certain speech acts by Jordanian EFL teachers and students in public schools. To carry out this task, the researcher used a classroom observation checklist to probe the participants' practice of speech acts. The results revealed that neither teachers nor students practiced the use of speech acts appropriately. However, certain speech acts were performed better than others by both groups. The researcher concluded that EFL teachers and students need to constantly practice the use of speech acts in English in order to achieve acceptable levels of pragmatic competence.

Holtgraves (2018) examined whether ESL learners automatically recognize speech acts once they comprehend an utterance. The participants composed two different groups; one including native speakers of English who were university students both males and females, the other consisting of male and female university students whose English is their second language and speak different first languages. Participants of both groups were residing in the United States at the time of the study. The stimulus materials for this experiment consisted of a set of scenarios, each scenario described a situation between two people and was followed by a remark. This remark was the target utterance that either performed a specific speech act or not. The participants, then, had to decide whether it constituted a speech act or not via a lexical decision task. Results revealed that for L2 participants, speech act activation was not as automatic as it was for L1 participants. They also suggested that there was a positive correlation between the duration of speaking English as a second language and the degree of speech act activation.

Tabatabaei (2019) investigated the effect of language proficiency on the production of the speech act of refusal by Iranian EFL students. The participants were Iranian postgraduate students in India enrolled in various majors. They were divided into two groups based on their level of English proficiency. The instrument of the study was a discourse completion task including 12 situations which needed to be completed with refusal expressions. Upon completion, two British native teachers scored respondents' performances on the DCT according to Hudson, Detmer, and Browns analytical rating criteria which is based on four aspects of appropriacy; the ability to use correct speech act, correct expressions, amount of information, and level of politeness. Results revealed that even high proficient learners did not approximate English native speakers' norms in strategy choice. The researcher blames the grammar-translation method that has been used to teach EFL in Iran. He believes that in order to achieve high proficiency levels in a foreign language, more focus must be put to the teaching of pragmatic functions. Moreover, the cross-cultural differences between languages in the realization of the refusal speech act should be highlighted to avoid performing negative transfer and pragmatic failure while communicating in English.

## **Methodology**

### ***Participants***

Participants in both instruments were female university students enrolled in the English department of the College of Languages and Translation at Imam Mohamed ibn Saud Islamic University, Riyadh, Saudi Arabia. The data was collected from the emails of 26 students and the (questionnaire) responses of 16 students.

***Instrument***

The ethnographic approach to data collection proved to be very effective when studying speech act production (Cohen 1996). Nevertheless, it is always advised to combine it with elicited data methods (ibid). Therefore, in this study the researcher's main tool is ethnographic analysis of students' emails to their instructor, supported by the results obtained from a questionnaire answered by students. The questionnaire included six items, all identical except in the type of speech act. It required the students to choose their preferred language (L1 or L2) in the emails they send to their instructors in relation to six speech acts. The speech acts specified in the questionnaire were the most frequently used ones in the analysed emails, namely; complaint, greeting, request (for information), request (for a favour), compliment, and apology.

***Procedure***

Spontaneous, non-elicited, emails of students to their instructors were collected during the second academic semester of 2018. Students were explicitly informed that English is the language they are expected to use in their correspondence with their instructor. After collecting and analysing the emails, six speech acts were named as the most frequently used ones. Hence, a questionnaire was designed and sent to the students asking them to explicitly identify the language of their preference when emailing their instructors. The questionnaire gave them the choice of language (Arabic or English) in relation to each speech act separately.

**Results analysis and discussion**

Upon analysing the emails, the researcher noticed that only three (from the 26 students whose emails were analysed) have conformed, in all of their emails, to the rule pertaining English being the only language allowed in student-instructor correspondences. Another three have only sent one email -each- in English, and eight have sent one email -each- in Arabic. The remaining twelve have sent multiple emails, and all of them have used English in some of their emails and Arabic in others. A total of 47 emails, 19 written in L1 (Arabic), and 28 in L2 (English) were used to collect data for this study. When ordering the six speech acts according to frequency of occurrence, as we can see in table 1 below, it was observed that the most frequently used speech act in both English and Arabic emails was the speech act of greeting. Apologies were performed the same number of times as greetings in the Arabic emails and slightly less in the English ones. In the third place was the speech act of complimenting, in both languages. The fourth most frequently performed speech act in Arabic emails was requesting a favour, while in English it was requesting information. The reverse order applies for the fifth place. And the least frequently used speech act in both languages was that of complaint, although the difference in the percentage of use was significant (see table 1).

Table 1. Speech act production in Arabic and English emails

Type of speech act	Number of occurrences in L1 emails	Percentage of number of occurrences to number of emails	Number of occurrences in L2 emails	Percentage of number of occurrences to number of emails
Greeting	17	89.5%	22	78.5%
Compliment	15	79%	18	64%
Apology	17	89.5%	20	71.5%
Request for favour	13	68.5%	4	14%
Request for information	12	63%	16	57%
Complaint	4	21%	1	3.5%

We can see from table 1 that there are some differences in the students' linguistic behaviour in their production of speech acts. For instance, we can see that they have a greater tendency to start their emails with a greeting when using L1 (89.5% in L1 emails as opposed to 78.5% in L2 emails). The same can be said about the speech acts of apology and compliment. Although they occupy the same order slot in relation to occurrence, second and third respectively, the percentage of occurrence is much higher in the Arabic data. Requesting information comes in the fourth place in the English data and in the fifth place in the Arabic one, with marginal difference in the percentage of use. The least performed speech act was that of complaint. However, its percentage in the Arabic emails was much higher than in the English ones.

When requesting a favour, the participants seemed to be much more comfortable using L1, which explains the language choice of Arabic instead of English for those who have sent emails in both languages. Requests for favours occurred in 68.5% of the Arabic emails, and only in 14% of the English ones. Actually, when studying the emails of this group closely, we can see that in most cases the main purpose of the L1 email was the request for favour, especially if the request is a prolonged one. For example, in one case, a student sent an email in English asking to change the time of her midterm (request for a favour). She performed the act and mentioned her excuse very briefly in one sentence. 25 minutes later she sent another email in Arabic requesting the same favour, but this time she elaborated in her email mentioning a number of reasons behind her requests in over three lines. Such a case, and similar ones, lead us to the conclusion that students feel more comfortable requesting a favour in their native language. This might be caused by a feeling of solidarity and common grounds between the requester and the requestee when using L1, leading the requester to believe that the requestee would understand the reasons behind the request and grant it to her.

Moreover, it was observed that the rank of imposition was an effective factor in the participants' choice of language. For instance, in one case, a student sent an English email asking her instructor to send her her midterm mark via email. Of course, this is considered a favour since it is customary that students can see their mark and check their paper either in class or in the instructor's office during office hours, not in the convenience of their homes in an email. However, since this is a low-rank request, that does not require excessive effort from the requestee, the requester used the English language, and she was brief and direct. In a following email, asking for bonus (extra) marks, the same participant opted to use Arabic, and she elaborated in her request for eight lines, including other speech acts (apology and complaint) in the performance of the main one (request for favour).

Urgency, as well, seemed to be a factor affecting students' choice of language. For instance, a student who seemed to be comfortable using English proficiently in a few emails, switched to Arabic in a following email, although she was only requesting information. The reason, however, is that the information she requested pertained the final exam which is an important topic with critical timing. In addition, according to her, receiving this piece of information was a necessity. Finally, a common trait among most Arabic emails is that they are lengthy, elaborated, and informal.

In their responses to the questionnaire (table 2), the participants expressed their preference to use L1 (Arabic) when performing the speech acts of complaint and apology, while they preferred using English -to varying degrees when performing greeting, requesting for information, complimenting, and requesting a favour. Their responses go in line with the results obtained from the analysis of the emails in relation to the speech act of complaint which was performed four times in 21% of the Arabic emails, while only performed once in English. The number of occurrence of apologies in Arabic emails was also higher in percentage. In almost 90% of the Arabic emails, the speech act of apology was performed. The corresponding percentage in the English emails was around 71%.

Table 2. Students' choice of language in production of speech acts in emails to their instructors

Type of speech act	Number of students who preferred L1	Percentage	Number of students who preferred L2	Percentage
Greeting	2	12.5%	14	87.5%
Compliment	4	25%	12	75%
Apology	9	56.25%	7	43.75%
Request for favour	5	31.25%	11	68.75%
Request for information	2	12.5%	14	87.5%
Complaint	13	81.25%	3	18.75%

Data in table 2 reveals that only in two cases participants admitted that they prefer using L1 over L2, apology and complaint. In the case of greeting and request for information, the majority of participants claimed that they prefer using L2. The same was the case with requesting a favour and complimenting but with a lower percentage. The results of this tool come in accordance with the results of the first one in relation to apologies and complaints, which were expressed much less in the English emails than in the Arabic one. The most obvious discrepancy in the data obtained from the two tools lies in the results for 'request for favour' which was only performed in 14% of the English emails, yet almost 69% of the respondents claimed that they prefer to perform it in English.

Although this data represents students' beliefs about their language preference, not their actual linguistic performance, it can be illuminating in recognizing areas of weakness as perceived by the students themselves. Thus, according to table 2, students believe that they can express apologies and complaints better in Arabic than in English. Bearing in mind that this study was not designed to evaluate the level of proficiency of students in English or in speech act production in L2, knowing EFL learners' beliefs regarding which speech acts they see as problematic allows us to better understand and assess the whole situation.

### Recommendations and conclusion

The present study investigated EFL learners' choice of language (L1 vs L2) when performing certain speech acts in the emails they sent to their instructors. Knowing that the use of L2 (English) is mandatory, and excluding lack of proficiency as a cause since most of the participants sent multiple emails in both languages, we deduce that the reason behind resorting to L1 when the use of L2 is a requirement is the lack of proficiency in performing certain speech acts in L2. Moreover, there were other observed factors which seemed to affect the choice of language, such as urgency, elaboration and informality. Accompanied by the results of the self-reflection questionnaire, we come to the conclusion that EFL learners actually believe that their L2 proficiency in certain speech acts is insufficient.

Hence comes the role of pedagogical planning. As Murphy and Neu (1996) have suggested EFL learners must be taught the distinctive features that differentiate one speech act from another, e.g., complaint and criticism. Lack of such knowledge may cause misunderstanding or even the production of an impolite expression. Since it is hard to explicitly define specific syntactic structures (Grundy 2008) and/or semantic formulas (Beebe and Cummings 1996) for the performance of each speech act based on the data gathered from natural spontaneous speech, and

since the exposure to natural speech in L2 proved effective in improving pragmatic development (Beckwith and Dewaele 2012), we believe that EFL learners should be exposed to natural speech of L2 in the classroom, in the form of audio or video clips. They should also be encouraged to watch or listen to shows in English outside the classroom to acquaint themselves with the foreign language culture and mindset of its speakers (Leaver, Ehrman, and Shekhtman 2005).

## References

- Austin, J. L. 1962. *How to do things with words*. Oxford: Oxford University Press.
- Beckwith, S. and Dewaele, J. 2012. "The effect of two years abroad on the development of apologies in the Japanese L2 of adult English native speakers." In L. R. d. Zarobe & Y. R. d. Zarobe (Eds.), *Speech Acts and Politeness Across Languages and Cultures*, Vol. 132, pp. 275-306. Bern: Peter Lang AG, International Academic Publishers.
- Beebe, L. M., and Cummings, M. C. 1996. "Natural speech act data versus written questionnaire data: How data collection method affects speech act performance." In S. M. Gass & J. Neu (Eds.), *Speech Acts Across Cultures*, pp. 65-86. Berlin: Mouton de Gruyter.
- Cohen, A. 1996. "Investigating the production of speech act set." In S. M. Gass & J. Neu (Eds.), *Speech Acts Across Cultures*, pp. 21-43. Berlin: Mouton de Gruyter.
- Drid, T. 2018. "Language as action: Fundamentals of the speech act theory." *Praxis International Journal of Social Science and Literature* 1(10):1-17.
- Felix-Brasdefer, J. and Hasler-Barker, M. 2012. "Complimenting and responding to a compliment in the Spanish FL classroom: From empirical evidence to pedagogical intervention." In L. R. d. Zarobe & Y. R. d. Zarobe (Eds.), *Speech Acts and Politeness Across Languages and Cultures*, Vol. 132, pp. 241-274. Bern: Peter Lang AG, International Academic Publishers.
- Grundy, P. 2008. *Doing pragmatics* (3 ed.). London: Hodder Education.
- Hafifah, M. 2020. "Constative and performative utterances in Jokowi's speeches." *Wahana Inovasi* 9(1): 85- 91.
- Holtgraves, T. 2018. "Second language learners and speech act comprehension." *Language Learning* 57(4):595-610.
- Leaver, B., Ehrman, M., and Shekhtman, B. 2005. *Achieving success in second language acquisition*. Cambridge: Cambridge University Press.
- Maeshiba, N., Yoshinaga, N., Kasper, G. and Ross, S. 1996. "Transfer and proficiency in interlanguage apologizing." In S. M. Gass & J. Neu (Eds.), *Speech Acts Across Cultures*, pp. 155-187. Berlin: Mouton de Gruyter.
- Murphy, B. and Neu, J. 1996. "My grade's too low: The speech act set of complaining." In S. M. Gass & J. Neu (Eds.), *Speech acts across cultures*, pp. 191-216. Berlin: Mouton de Gruyter.
- Searle, J. 1969. *Speech acts: An essay in the philosophy of language*. Cambridge: Cambridge University Press.
- Searle, J. 1976. "A classification of illocutionary acts." *Language in Society* 5(1): 1-23.
- Siebold, K. 2012. "Implicit and explicit thanking in Spanish and German." In L. R. d. Zarobe & Y. R. d. Zarobe (Eds.), *Speech Acts and Politeness Across Languages and Cultures*, Vol. 132, pp. 155-172. Bern: Peter Lang AG, International Academic Publishers.
- Tabatabaei, S. 2019. Tabatabaei, S. 2019. "Language proficiency and appropriateness of using refusal speech acts by Iranian EFL learners." *Applied Linguistics Research Journal* 4(1): 35-45.
- Taguchi, N. 2006. "Analysis of appropriateness in a speech act of request in L2 English." *International Pragmatics Association* 16(4): 513-533
- Zayed, N. 2014. "Jordanian EFL Teachers' and Students' Practice of Speech Acts in the Classroom." *International Journal on Studies in English Language and Literature (IJSELL)* 2(5): 1-10.

# **Application of Legal Instruments of Protection in the Field of Personal Data – Human Rights between Challenges and Limits**

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**ABSTRACT:** This paper proposes the analysis of a situation that may arise in the matter of personal data, when we talk about the protection of such data, as well as about the applicable legislation, referring to those legal instruments for the protection of personal data. Since the implementation of the legal texts also implies the confrontation with the reality or with the factual situation, the working hypothesis we propose is that of the limitations that appear regarding the exercise of what we generically call “human rights”. These limitations and the way in which the legislation has the capacity to deal in particular with respect for human rights, are challenges that we will analyze in our paper. As a working method, we chose qualitative analysis, observation and comparison, using various types of normative acts applicable in European countries. As a subject of analysis, I preferred the legislation within the European Union, as well as the Romanian legislation.

**KEYWORDS:** human rights, personal data, sensitive data, regulation, directive, legal instruments

## **1. Introductory aspects regarding the legal instruments of personal data protection**

The right to privacy is a fundamental right, which was regulated for the first time in the Universal Declaration of Human Rights (UN General Assembly 1948, Art. 12). Although not binding, the Declaration is a reference document, which was the basis for the adoption of treaties and laws on the protection of fundamental rights and freedoms (Stelejan-Guțan 2018, 7).

Going further, throughout history, the European Convention on Human Rights was adopted by the Council of Europe (1950). Within this normative act, at art. 8 regulates the right to private and family life, developing to a certain extent the provisions of the Declaration. Starting from the jurisprudence of the European Court, "the right to privacy is the right to privacy". The notion of private life includes elements that relate to a person's identity, such as his name, photograph, physical and moral integrity (Stelejan-Guțan 2018, 166-167). The European Court has defined the scope of art. 8 in a broad sense, by inserting some rights that are not expressly provided in the law (Erimia 2016, 456). This makes the processing of personal data an interference within the meaning of art. 8 of the Convention.

## **2. How to regulate and understand the phrase "protection of personal data"**

### **2.1. General Data Protection Regulation at EU level**

The right to privacy is a fundamental right, which was regulated for the first time in the Universal Declaration of Human Rights (UN General Assembly 1948, Art. 12). Although not binding, the Declaration is a reference document, which was the basis for the adoption of treaties and laws on the protection of fundamental rights and freedoms (Stelejan-Guțan 2018, 7).

Going further, throughout history, the European Convention on Human Rights was adopted by the Council of Europe, in 1950 (Rotaru 2014, 256). Within this normative act, at art. 8 regulates the right to private and family life, developing to a certain extent the provisions of the Declaration.

Starting from the jurisprudence of the European Court, "the right to privacy is the right to privacy". The notion of private life includes elements that relate to a person's identity, such as his name, photograph, physical and moral integrity (Stelejan-Guțan 2018, 166-167). The European Court has defined the scope of art. 8 in a broad sense, by inserting some rights that are not expressly provided in the law (Erimia 2016, 456). This makes the processing of personal data an interference within the meaning of art. 8 of the Convention.

In 1981, Convention no. 108 for the protection of individuals with regard to automatic processing of personal data, this document being recognized as the first international legal instrument, with binding force in the field of personal data protection, which was also ratified by Romania (in 2001).

The drafting of the Charter of Fundamental Rights of the European Union is the implementation of a modern vision of human rights, adapted to social, technological and cultural progress. It contains concepts of fundamental rights such as the protection of personal data, a concept that we also find in the European Convention on Human Rights in the form of the right to respect for private and family life, home and correspondence (Chilea 2018, 7).

Convention no. 108 for the protection of individuals with regard to automatic processing of personal data of the Council of Europe was ratified on 28 January 1981 and is one of the first legally binding international instruments that explicitly deals with the protection of personal data. The importance of this convention is a major one in the field of personal data protection, the day of January 28 becoming special, so that on this date is celebrated the European Day of Data Protection.

Convention no. 108 applies to both data processing in the public and private sectors, being designed as a tool for the protection of individuals against public abuse of collection and processing of personal data, while providing a mechanism for monitoring the rights of persons to life. private. It also seeks to regulate the cross-border flow of personal data (Craig and Grainne 2017, 427). Article 2 of the Convention defines personal data as those data relating to an identified or identifiable individual, and data processing represents any operations or set of operations performed on personal data, such as collection, storage, storage, modification, storage, dissemination, making available, deleting, destroying or performing logical or arithmetic operations with such data.

Chapter 2 of Convention no. 108 sets out a number of principles that must be observed in the protection of personal data, such as:

- obligations of the signatory parties: each member will take the necessary measures in national law to implement the provisions of the Convention and to ensure compliance with them
- each state party to the Convention must also allow the Convention Committee to evaluate the effectiveness of the legal measures it has taken to implement the provisions of the Convention and to participate actively in the evaluation process.

The Convention clearly sets out aspects regarding the legitimacy of the processing of personal data and their quality. Thus, the processing of data must be proportionate to the legitimate interest pursued, with a view to ensuring a balance between the purpose pursued, public or private, and the rights or freedoms affected.

Personal data must be collected, processed only in a legal, transparent manner, based on a free, unequivocal consent of the data subject or an interest established by law. The convention establishes in art. 6 a set of special categories of personal data, such as:

- genetic data
- personal data relating to offenses, criminal proceedings and related convictions and security measures
- biometric data that identifies a person
- personal data regarding ethnic or racial origin, political opinions, religion, health or sex life, membership in an organization.

The processing of such data is prohibited, except in cases and under the security conditions provided by law.

This Convention enshrines a number of the data subject's rights, such as: the right to be informed about the storage of his or her personal data, to oppose their processing or to request their correction or deletion. One of the obligations imposed by the Convention on signatory states is to set up a national data protection supervisory authority.

On 24 October 1995, the European Parliament and the Council of the European Union adopted Directive no. 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, in order to ensure the protection of the fundamental rights and freedoms of individuals and in particular the right to privacy with regard to the processing of personal data personal character.

On 27 April 2016, the same institutions drafted Regulation (EU) no. 2016/679 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive no. 95/46/EC, with application starting with 25.05.2018.

Also on 27 April 2016, the European Parliament and the Council of the European Union adopted Directive (EU) no. 2016/680 on the protection of individuals with regard to the processing of personal data by the competent authorities for the purpose of preventing, detecting, investigating or prosecuting offenses or the execution of sentences and on the free movement of such data and repealing Framework Decision no. 2008/977/JHA of the Council.

Currently, the main legal instruments in the field of personal data protection are within the European Union (Chilea 2013, 134):

- Regulation (EU) no. 2016/679 on the protection of individuals with regard to the processing of personal data and on the free movement of such data
- Directive (EU) no. 2016/680 on the protection of individuals with regard to the processing of personal data by the competent authorities for the purpose of the prevention, detection, investigation or prosecution of criminal offenses or the execution of sentences and on the free movement of such data
- Regulation (EU) no. Regulation (EC) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data and repealing Regulation (EC ) no. 45/2001 and Decision no. 1247/2002 / EC.

EU Regulation no. 2016/679 finds its sources in the Charter of Fundamental Rights of the European Union, art. 8 (1) and the Treaty on the Functioning of the European Union, art. 16 (1) which stipulate that every person has the right to the protection of his personal data (Braşoveanu 2012,136).

The purpose of the Regulation is to contribute to the achievement of a state of freedom, security and justice within the European Union, given at all times that the right to the protection of personal data is not an absolute right, but must be considered in close connection with the in society and in balance with other rights, respecting the principle of proportionality.

Although EU Directive no. 45//46/EC has been a basic tool in the protection of personal data, the need to adopt a new regulation to replace it has arisen due to the exponential growth of the economic and social activity of the members of the Union and the increased risks of personal data generated by the explosion. online activity.

According to art. 1 (1) of the Regulation, it establishes rules for the protection of individuals with regard to the processing of personal data and rules on the free movement of personal data (Erimia and Gheorghişă 2009).

Chapter II sets out the principles governing the lawful processing of personal data, such as the principle of legality, fairness and transparency in relation to the data subject, accuracy, data security, limitation of the data retention period.

An important aspect provided for in the Regulation is that of the data subject's consent to the processing of his or her personal data. It must be clear, free and always retractable.

In the case of the processing of personal data of a child, this is legal only if the minor who gave his consent has reached the age of 16 or if the consent is given or approved by the holder of parental responsibility of the child.

Chapter III of the Regulation contains the rights of the data subject, such as:

- the right to information on the processing of his personal data and on the actions taken following his request
- the right of access to his personal data processed by an operator
- the right to rectification
- the right to delete data
- the right to restrict processing
- the right to data portability
- the right to opposition
- the right to automated individual decision-making.

Development and adoption of Directive (EU) no. 2016/680 is due to the lack of a specific instrument for the protection of personal data processed in activities that were not regulated by European Community law, such as activities in the field of international judicial cooperation in criminal matters.

At the same time, it was taken into account that technological evolution allows large-scale processing and transmission of personal data for the purpose of prevention, investigation, identification of crimes or execution of punishments.

Thus, according to art. 1(1) Directive (EU) no. 2016/680 lays down rules on the protection of individuals with regard to the processing of personal data by the competent authorities for the purpose of preventing, investigating, identifying offenses or enforcing penalties, including for the purpose of preventing threats to public security.

Chapter II of the Directive sets out the principles to be taken into account by the competent data protection authorities, including:

- principles regarding the processing of personal data (legality, correctness, accuracy, etc.)
- observance of data storage time
- reviewing the need for data retention
- differentiations regarding different categories of people
- checking the quality / validity of the data
- processing of special categories of data.

## **2.2. GDPR in Romania**

In Romania, currently, the protection of personal data is achieved through a set of legal instruments in accordance with European legislation in the field, taking into account art. 26 al. (1) of the Romanian Constitution: "Public authorities respect and protect intimate, family and private life". Until the entry into force of Law no. 363/2018 and Law no. 190/2018, the protection of personal data was based on Law no. 677/2001 for the protection of individuals with regard to the processing of personal data and the free movement of such data and Law no. 238 of 10 June 2009 on the regulation of the processing of personal data by the structures / units of the Ministry of Administration and Interior in prevention activities, investigation and fight against crime, as well as maintaining and ensuring public order.

EU Regulation no. 2016/679, in force since 25.05.2018, is applicable on the territory of all EU member states. Considering its provisions regarding the fact that in certain situations complementary provisions are necessary at national level, the Romanian legislative apparatus adopted Law no. 190/2018 on measures to implement EU Regulation no. 2016/679, which entered into force on 31.07.2018.

The regulation has general applicability in Romania, except for the activities:

- which is not covered by Union law
- carried out by Member States falling under Chapter 2 of Title V of the Treaty on the Functioning of the European Union
- exclusively personal or domestic carried out by individuals
- activities carried out by competent authorities for the purpose of preventing, investigating, detecting or enforcing criminal sanctions, including protecting against and preventing threats to public safety (an area covered by Directive (EU) No 2016/680).

For the transposition into Romanian legislation of Directive (EU) no. 2016/680, Law no. 363/2018 on the protection of individuals with regard to the processing of personal data by the competent authorities for the purpose of preventing, detecting, investigating, prosecuting and combating crime or the execution of penalties, educational and security measures, and on the free movement of such data. [Șandru, Alexe 2018, 8].

At the same time, by Law no. 102/2005 regarding the establishment, organization and functioning of the National Authority for the Supervision of Personal Data Processing, the control and supervision body for the observance of human rights in the field of personal data protection was created in Romania.

Another tool used in the protection of personal data is Instructions no. 27 of February 3, 2010 on organizational and technical measures to ensure the security of personal data processing performed by the structures / units of the Ministry of Administration and Interior (Mitra-Radu 2013, 151).

Violation of legal provisions regarding the processing or protection of personal data can lead to several types of sanctions (Mitra 2014, 98).

### **3. Legal instruments for the protection of personal data**

#### ***3.1. The notion of "biometric data"***

Biometric data is a special set of personal data, with a limited space in European and national legislation. Although technological progress in the field of information systems urges the increasing use of this type of data in the process of identifying persons, in Romania, the National Authority for Supervision of Personal Data Processing, but also the courts have been reluctant to processing of biometric data, constantly recommending a serious analysis of the proportionality of the use of these special data, following to ensure a balance between the purpose pursued and respect for human rights.

By art. 4, lit. m) of Law no. 363/2018, the Romanian legislator defined biometric data as “personal data resulting from specific processing techniques, referring to the physical, physiological or behavioral characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data”.

Worldwide, biometric authentication is increasingly used. Technologies based on fingerprint are used, but also on facial recognition, iris recognition and even the specific features of an individual's gait.

Although the benefits of using this technology are obvious, ensuring speed in access or reduced risk of failure to authenticate, there are many criticisms regarding the security of this data (risk of identity theft) or ideas that would invade a person's privacy, may reveal sensitive data of the person (Stăiculescu and Trandafirescu 2003, 14).

There are countries where video surveillance for the official purpose of preventing and combating crime or terrorism is widely used. However, it is not known the border at which the legal role of ensuring the security of persons stops, and where the desire of governments to control the population starts.

At the European level, EU Regulation no. 2016/679 regulates by art. 9 processing of special categories of personal data, in which biometric data are included. The processing of such data is permitted only under certain conditions, including:

- the data subject has given his or her consent for this data to be processed for one or more precise purposes
- the processing is necessary for the purpose of fulfilling the obligations and exercising specific rights of the operator or of the data subject in the field of employment and social security and social protection
- the processing is necessary to protect the vital interests of the data subject or of another natural person, when the data subject is physically or legally incapable of giving his or her consent
- the processing is necessary for the ascertainment, exercise or defense of a right in court or whenever the courts act in the exercise of their judicial function
- the processing is necessary for reasons of major public interest
- the processing is required for purposes related to preventive or occupational medicine
- the processing is necessary for reasons of public interest in the field of public health, such as protection against serious cross-border threats to health or ensuring high standards of quality and safety of healthcare and medicines or medical devices
- the processing is necessary for archiving purposes in the public interest, for scientific or historical research purposes or for statistical purposes.

In Romania, the national legislative framework takes over the provisions of the Regulation on the processing of genetic data, biometric data or health data, inserting them in Chapter II, art. 3 of the law no. 190/2018, but in art. 10 of the law no. 363/2018.

Thus, the processing of such data "for the purpose of an automated decision-making process or for the creation of profiles, is permitted with the explicit consent of the data subject or if the processing is performed under express legal provisions", and the processing of health data performed to ensure health may not be subsequently performed for other purposes by third parties.

In accordance with art. 10 of the law no. 363/2018, the processing of biometric data for the unique identification of a natural person can be performed only if it is strictly necessary in a given case, if the rights and freedoms of the data subject are protected and secured and if one of the following conditions is met:

- the processing is expressly provided by law
- processing is necessary to prevent an imminent danger at least to the life, bodily integrity or health of the data subject or of another natural person
- the processing refers to personal data that are manifestly made public by the data subject.

### ***3.2. Extension of free access to information***

Continuing to remain in the field of Romanian law, it should be mentioned that in the public sector in the field of personal data protection are applicable two important legal instruments, namely: Law no. 544/2001 on free access to information of public interest and EU Regulation no. 2016/679.

Thus, at art. 2, lit. b) of law no. 544/2001, the legislator defined the information of public interest as "any information regarding the activities or resulting from the activities of a

public authority or public institution, regardless of the support or the form or manner of expression of information”.

Art. 6 of the same law stipulates that:

(1) Everyone has the right to request and obtain from public authorities and institutions, under the conditions of this law, information of public interest.

(2) Public authorities and institutions are obliged to provide persons, at their request, with information of public interest requested in writing or orally.

Also, through art. 12 of the law no. 544/2001, an attempt was made to clarify the situations in which the free access to public information is restricted, one of them being the one provided at let. (d) the situation in which the information requested contains personal data. At the same time, art. 4, paragraph 1 of Regulation (EU) no. 2016/679, as well as art. 4 lit. (a) of law no. 363/2018 defines personal data “any information regarding an identified or identifiable natural person, hereinafter referred to as the data subject; an identifiable natural person is a person who can be identified, directly or indirectly, in particular by reference to an identifying element, such as a name, an identification number, location data, an online identifier, or one or more many elements specific to his physical, physiological, genetic, mental, economic, cultural or social identity”.

Following the increasing media coverage of human rights, including the two rights, the protection of personal data and the right to free access to public information, the population has seen a gradual increase in requests to public authorities to access information considered public. Some of these requests are aimed at obtaining photocopies of documents containing both public information and personal data.

All art. 4 of Law no. 363/2018, but at letter e) the term pseudonymization is defined as “the processing of personal data in such a way that they can no longer be attributed to a specific data subject without the use of additional information, insofar as this additional information is stored separately and the object of technical and organizational measures intended to guarantee the non-attribution of an identified or identifiable natural person”.

Given that the law does not expressly regulate the situation where personal data are contained in the same document with information of public interest, in order to respect each of the two rights, the requested information will be forwarded to the petitioner, but using pseudonymization, that is deleting any information relating to an identified or identifiable person.

### ***3.3. Human rights between challenges and limits***

Regarding human rights (Rotaru 2019, 201-215), as we have shown before, Romanian and European legislation comes with some limitations, but also with challenges that cannot be ignored, but only need to be known and respected.

The regulation I referred to during this study makes some changes to human rights, such as:

Regarding the scope of the Regulation, the provisions of art. 3 does not limit its territorial application to operators under the jurisdiction of an EU Member State, but also extends to the location of the data subject.

The regulation strengthens the control over its own data, adopting the following provisions. The principle of transparency is added in art. 5, detailed in art. 12-14. Thus, the Regulation extends the information due to data subjects. The information must be provided in clear and easy-to-understand language, adapted to the level of the data subjects (for example: minors, specialists).

The Regulation maintains the rights of data subjects introduced by the Directive (access, rectification, deletion, blocking and opposition) in a clearer form. If in the Directive and in Law no. 677/2001 the first four rights mentioned above were included in the same

provision, the Regulation creates a provision for each, at art. 15-20. For example, the right of access extends the level of information that can be requested by the data subject, and the right of deletion specifies the cases in which the deletion must be performed by the operator. The Regulation introduces the right to data portability, according to which personal data may be withdrawn from an application or service without hindrance from the operator and transmitted to another operator. The regulation removes the prerogative of operators to charge a fee for facilitating these rights, ensures the possibility of exercising these rights in any form and introduces a 30-day response period.

The conditions of consent are detailed in art. 7-8. To be valid, it must be voluntary, specific, informed and clear, manifested by the data subject through an unequivocal statement/action. Thus, the default consent is not valid. It must be clearly separated from other provisions. For the volunteer, consent can be withdrawn at any time and as easily as giving it. For the processing of data of minors under 16 years of age, consent must be given by the minor's legal representative. Member States may specify a lower age, but not less than 13 years.

The Regulation maintains the legal bases for the processing of personal data (art. 6) and adds new grounds for the processing of sensitive data (art. 9). Member States may introduce specific conditions for the processing of genetic, biometric and medical data.

The concept of "personal data" includes any information relating to an identified or identifiable person, information about a person whose identity is obvious, or established by obtaining additional information. Identification obviously involves elements that distinguish the person from any other, e.g. name, email address. A person is identifiable, for example, according to the ECJ, by online identification elements (eg IP address). Thus, the legislation does not apply to anonymous data, data that cannot be associated with a person.

The concept of "sensitive data" poses a risk to data subjects. Thus, processing is only allowed together with specific guarantees. The directive distinguishes the following: racial / ethnic origin, political opinions, religious / philosophical beliefs, health data, sex life, trade union membership. To these, the Regulation adds genetic and biometric data.

#### **4. Conclusions**

The subject under analysis in this paper addressed the legal instruments through which the protection of personal data can be achieved, but also the challenges faced by human rights when the legislator himself imposes certain limits, over those imposed by the right holder. It is known that the right of each individual is limited, at a given time, if, by exercising that right, the right of another person is infringed in any way. Here comes the challenge that we followed, analyzed and presented the result of the information we gathered.

In relation to these ideas, we followed to what extent it is possible to apply these legal instruments, what legal consequences the application of these instruments produces and how human rights and data on people in general can be protected.

Also as part of the conclusion of our research, we mention the fact that, regarding the conditions of validity of the consent expressed by a person, operators in some states could rely on the implicit consent as a legal basis for processing, without ensuring that the person truly consented. Specifically, we have here the Opinion 15/2011 on the definition of consent, adopted on 13 July 2011 and the concrete situation in which a common definition was proposed, by which consent must be obtained expressly and not implicitly, but, according to the Commission, the advisory nature of the opinion did not lead to a change in the more permissive legislation.

These elements of legal finesse have led some European countries (Spain, Greece) to include in their legislation special mentions, such as consent which should not be ambiguous or explicit.

## References

- Brasoveanu, Florica. 2012. "International protection of human rights." *Ovidius University Annals: Economic Sciences Series*, Vol. XII, 2: 135-137.
- Charter of Fundamental Rights of the European Union. 2010. *Official Journal of the European Union* C83. Vol. 53. Brussels: European Union.
- Chilea, Dragoş. 2002. "The attributions of the institutions of the European Union in the adoption of the community legislation". *Curentul Juridic* V, 3-4: 91-107.
- Chilea, Dragoş. 2013. *European Union Law: 300 questions and answers*. Bucharest: Hamangiu Publishing House.
- Convention no. 108 for the protection of individuals with regard to automatic processing of personal data of the Council of Europe.
- Council of Europe. 1950. *European Convention on Human Rights*. Strasbourg: Directorate of Information
- Craig, Paul, de Burca Grainne. 2017. *European Union Law. Comments, jurisprudence and doctrine*. 6th edition. Bucharest: Hamangiu Publishing House.
- Directive (EU) no. 2016/680 on the protection of individuals with regard to the processing of personal data by the competent authorities for the purpose of prevention, detection, investigation or prosecution of criminal offenses or the execution of sentences and on the free movement of such data and repealing Framework Decision no. 2008/977 / JHA of the Council.
- Directive no. 95/46/EC of the European Parliament and the Council of the European Union adopted in 24 October 1995.
- Erimia, Cristina Luiza, Gheorghita Cristina, 2009. "Protection of human rights in medical bio- research in the EU and Romania." *Ovidius University Annals: Medical Science –Pharmacy, Series C*.
- Erimia, Cristina-Luiza. 2016. "The need to reform the romanian health system in view of the application of the European protection standards for patient mobility." International Conference on Law, European Studies and International Relations, 3rd Edition, *Perspectives of Law national and European in the context of the complex challenges of contemporary society*, May 12-13, Bucharest: Hamangiu Publishing House, 451-460.
- European Union. 2012. *Treaty on the Functioning of the European Union*. 26 October 2012, OJ L. 326/47-326/390.
- Instructions no. 27 of February 3, 2010 on organizational and technical measures to ensure the security of personal data processing performed by the structures / units of the Ministry of Administration and Interior.
- Law no. 102/2005 on the establishment, organization and functioning of the National Authority for the Supervision of Personal Data Processing, the control and supervision body for the observance of human rights in the field of personal data protection was created in Romania.
- Law no. 190/2018 on implementing measures to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation).
- Law no. 544/2001 on free access to information of public interest.
- Law no. 677/2001 for the protection of individuals with regard to the processing of personal data and the free movement of such data.
- Law no. Amending Regulation (EC) No 363/20018 on the protection of individuals with regard to the processing of personal data by the competent authorities for the purpose of preventing, detecting, investigating, prosecuting and combating crime or the execution of penalties, educational and security measures, and on the free movement of such data.
- Mitra-Radu, Mariana. 2013. "The Legal-Criminal Implications of Human Cloning, In Vitro Fertilization and Embryo Transfer." *Ovidius University Annals: Economic Sciences Series*, December, 149-153.
- Mitra, Mariana, 2014. "Corruption – a real threat to democracy and the rule of law." *Ovidius University Annals: Economic Sciences Series* 95-101.
- Regulation (EU) no. 2016/679 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and on the repeal of
- Regulation (EU) no. Regulation (EC) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data and repealing Regulation (EC) ) no. 45/2001 and Decision no. 1247/2002 / EC
- Rotaru, Ioan-Gheorghe. 2014. *Church Law*. Cluj-Napoca: Risoprint Publishing House.
- Rotaru, Ioan-Gheorghe. 2019. The Adopting for the first time on Romanian soil, in the Principality of Transylvania, of the Religious Freedom Principle and its evolution in a relatively short time of 25 years (1543-1568). Cluj-Napoca: Risoprint Publishing House.

- Șandru, Daniel Mihail; Alexe Irina. 2018. *European Union legislation regarding personal data protection*. Bucharest: Universitara Publishing House.
- Stăiculescu, Ana Rodica; Trandafirescu, Bogdan. 2003. "Comparative analysis of Romanian and French legislation in the field of cybercrime." *Annals of Ovid University: Law and Administrative Sciences Series*, I: 7-15.
- Stelejan-Guțan, Bianca. 2018. *European Protection of Human Rights*. 5th edition. Bucharest: Hamangiu Publishing House.
- UN General Assembly. 1948. "Universal Declaration of Human Rights." Paris, available at: <http://www.un.org/en/universal-declaration-human-rights/>.

# Insolvency Issues in the European Union

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**ABSTRACT:** The material presents an analysis of the evolution of the insolvency approach at the level of the European Union as a result of the economic-financial crisis from 2009-2013 and beyond. As is well known, the Member States of the European Union have different legal systems, and their harmonization has been and is a desideratum of the management of this entity of public international law, but the practical materialization encounters a series of difficulties. Insolvency is an area of commercial law, and it has undergone a remarkable evolution lately, given on the one hand the evolution of the economy, but also the strong influence of Anglo-Saxon legislation that has proven to be much more effective. In practice. Hardly, but surely, the traditionalist legal systems for which bankruptcy is a punishment, have embraced the idea that a remedial bankruptcy is much more beneficial to the economy and have changed domestic law. At this stage, with similar domestic insolvency laws at Member State level, the European Union's leadership is in a position to adopt uniform and extremely useful rules for its economy.

**KEYWORDS:** insolvency, restructuring, second chance, honest debtor, risk prevention, debt remission

## **Short history**

At the level of the European Union leadership, more and more voices referred to the notion of insolvency, given the period of economic and financial crisis in 2009-2013.

Thus, Ms. Viviane Reding, former Vice-President and Commissioner for Justice of the European Union, pointed out the following: *Businesses are essential for creating prosperity and jobs, but it is difficult to set up a business and keep it afloat, especially in the current economic context. The insolvency rules we currently have need to be updated to help viable businesses facing financial difficulties stay afloat, instead of being subject to liquidation. Every year, due to insolvency proceedings, 1.7 million people lose their jobs. We want to give companies and the people they hire a second chance.*

Mr. Antonio Tajani, another former Vice-President of the European Commission and Commissioner for Industry and Entrepreneurship, said: *We need to put in place an effective mechanism to differentiate between honest and dishonest entrepreneurs, which is essential to reduce the stigma currently associated with bankruptcy. (...) This distinction should eliminate discrimination against those entrepreneurs who they have gone bankrupt without committing fraud so that they can benefit from any market support available to start a new business.*

On 12 March 2014, the European Commission adopted an Insolvency Recommendation, which was based on objective findings regarding the economic situation in the Member States of the European Union. It was based on public consultations held in 2013 on a European approach to insolvency and on a proposal to revise European Union rules on cross-border insolvency cases, which was approved in 2014 by the European Parliament. Thus, it was found that insolvency situations are an inherent component of a dynamic and modern economy. At European Union level, about half of the companies have a lifespan of less than five years and about 200,000 companies go into insolvency every year, ie about 600 companies every day. A quarter of these bankruptcies have a cross-border element, and their number is growing, doubling since the beginning of the economic and financial crisis, and this trend was maintained in 2014.

The European Commission Recommendation of 12 March 2014 established a set of common principles applicable to insolvency proceedings initiated at national level applicable to companies in financial difficulty. The aim of these principles was to focus more on encouraging the early restructuring of viable enterprises, thus preventing them from going into insolvency, than on liquidating those enterprises.

The European Commission aims to give viable businesses a chance to restructure and stay in the market. The recommendation of 12 March 2014 emphasized that the reform of national insolvency rules would be to the benefit of all parties, namely: it would allow viable companies to continue their work and protect jobs, while also creating a more favorable environment, for lending institutions, which could thus recover a larger share of the investment. Honest entrepreneurs who have gone bankrupt should be given a second chance quickly, as they have proven to be more successful a second time.

In conclusion, it was noted that it is essential to have modern laws and efficient procedures that allow companies with sufficient economic substance to overcome financial difficulties and have a “second chance”. Insolvency practice has shown that the earlier companies in difficulty have the opportunity to restructure, the better their chances of survival (Bufan 2001, 31).

The European Commission's recommendation of 12 March 2014 helped to establish a coherent framework for national insolvency rules, requiring Member States to allow: facilitating the restructuring of companies in financial difficulty, at an early stage or before the start of the procedure insolvency officials and without establishing lengthy or costly procedures; enabling indebted companies to restructure their business without the need to officially start legal proceedings; allowing financially distressed companies to request a temporary grace period of up to four months (which can be extended to a maximum of 12 months), during which time they can adopt a restructuring plan before lending institutions may initiate enforcement proceedings against them; facilitating the process of adopting the restructuring plan, taking into account the interests of both debtors and creditors, so as to increase the chances of saving viable businesses; reducing the negative impact that bankruptcy would have on an entrepreneur's future chances of starting a new business, in particular by relieving them of debt within a maximum of three years.

European rules on cross-border insolvency were initially established by EC Regulation no. 1346/2000 on insolvency proceedings, which was replaced by Regulation CUE/EP no. 848/2015 on insolvency proceedings. This regulation contains rules on jurisdiction, recognition and applicable law and governs the coordination of insolvency proceedings opened in several Member States of the European Union. The Regulation applies when the debtor has a “commercial presence” or creditors in a Member State of the European Union other than his home Member State (Comşa 2017, 81).

In December 2012, the European Commission presented a package of measures to modernize insolvency rules. On 5 February 2014, the European Parliament voted in favor of the Commission proposal.

In parallel, the European Commission launched a public consultation in July 2013 on a European approach to business failure and insolvency, in order to gather views on key issues, such as the period required for debt relief, the conditions for initiation of insolvency proceedings, rules on restructuring plans and measures required for Small and Medium-sized Enterprises.

Several EU Member States have received recommendations in the context of the European Semester - the European Union's economic policy coordination cycle - and are invited to reform their approach to several aspects of national insolvency systems (such as: Spain, Latvia, Malta and Slovenia).

Other Member States of the European Union have started the process of reforming national legislation to improve the chances of rescuing companies in financial difficulties, to

reduce the debt relief periods granted to entrepreneurs or, more generally, to improve their framework insolvency law (such as the Netherlands, Poland, Latvia, Cyprus, Estonia, Croatia and the United Kingdom).

Given that the American model of insolvency prevention and insolvency proceedings has become increasingly entrenched in the Member States of the European Union and has contributed to the recent significant change in domestic law, even in European countries where the legislative tradition in this matter seemed unchanged, we appreciate that in the field of insolvency a unique legislation can be foreseen at the level of the European Union, in this sense an integrated community legal order can be achieved (Ispas 2011, 39).

### **Legislative coordination by the World Bank and the International Monetary Fund**

In 2013-2014, the World Bank assessed the legal framework applicable to insolvency and the rights of creditors / debtors in Romania based on a joint initiative of the International Monetary Fund with the World Bank on compliance with standards and codes, based on World Bank Principles on Insolvency Efficiency and Creditors' Rights Debtors.

This evaluation materialized through the elaboration of the ICR - ROSC Report, and it aimed at a broader legislative framework regarding the crediting of enterprises.

In this report it was noted that the Romanian authorities, in the last 20 years, have made progress, including by taking over and implementing European regulations.

Regarding the legal framework of insolvency in this evaluation report (part C of the report) it was noted that the Romanian insolvency law provides a relatively comprehensive and modern legal framework, which would still lead to improvements in several respects. The legal framework applicable to insolvency proceedings includes legal rules designed to prevent the improper use of the insolvency system by both the debtor and the creditors, respectively to avoid fraud in law, and to avoid the premature dismantling of the debtor's assets.

This report highlighted that the draft Insolvency Code, which was adopted by Law no. 85/2014 on insolvency prevention and insolvency procedures, took over the UNCITRAL model on cross-border insolvency, and the EU Regulation on insolvency proceedings is directly applicable in Romania.

This report concluded that the Romanian legal system on insolvency and creditors' rights has been significantly reformed, and is now a modern and comprehensive system. A sound legal system on creditors' and insolvency rights is an essential element of any market economy, and its role is extremely important in times of financial crisis (Fuerea 2006, 131).

A well-thought-out insolvency system can provide companies facing financial difficulties with the necessary resources to restore economic order, thus maximizing their value by continuing to operate and maintaining jobs (Bufan 2012, 65). It also facilitates a homogeneous relocation of resources for more productive use for companies that cannot become profitable again through restructuring. The predictability of an efficient insolvency system and improved procedures for setting up, registering and enforcing creditors' collateral help to increase the confidence of credit providers, leading to lower lending costs, especially for Small and Medium-sized Enterprises (Adam 2014, 117).

The report found that although there are a number of credit instruments in Romanian domestic law, "uncertainties" remain regarding the treatment of the property reserve clause and many "weaknesses" regarding the establishment of mortgages. Regarding the institution of the property reserve, it is regulated in the Romanian Civil Code contained in Law no. 287/2009 implemented by Law no. 71/2011, within the contract of sale, respectively when transferring the property or the right sold. The reservation of title is a form of guarantee of the obligation to pay the price for the good sold by the seller to the buyer.

With regard to the reservation of title, it was noted in the report that although by contract one of the parties may reserve ownership of some goods, transferring only possession

to the other party, the sale of the property by the buyer to a bona fide third party has the effect transfer of ownership. In the case of insolvency of the person who owns the property, respectively the buyer, the effectiveness of booking the property for the seller is low.

The report also found that the implementation of European Union regulations (Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions) on late payment had a beneficial effect, in particular on the cash-flow.

Romanian law supports the use of a wide range of lending methods, including the establishment of personal guarantees and guarantees on the debtor's assets, with or without dispossession, either fixed or variable, on a mass of movable or immovable property, including the entire property of an enterprise.

The report also noted that at European level there are opinions in the sense that the new Romanian Civil Code combined several doctrines, which were originally intended to ensure consumer protection and not commercial entities that trade from comparable positions on the market. According to these opinions, the new Romanian Civil Code contained too many provisions in favor of the debtor, such as the invalidation of the contingency clauses. The rules originally designed to protect consumers are inexplicably applicable to large commercial enterprises as well.

The report showed that Romanian legislation suffers from a “critical fragility” in terms of informal culture of reorganization and treatment of non-performing loans (Dinu 2014, 732). The insolvency code, however, tries to solve several of the problems that have arisen in the field of insolvency. The financial sector would be strengthened by implementing reforms in insolvency law, pre-insolvency measures and risk management, which could help reduce / eliminate non-performing loans.

The development of the private sector can be accelerated provided that a coherent and well-implemented insolvency system is able to ensure the efficient management of companies in financial difficulty, their wealth is maximized, resources are used properly, and jobs to be maintained.

An efficient insolvency system, improved procedures for setting up, rating and enforcing creditors' guarantees would help increase creditors' confidence, while simultaneously reducing credit costs and attracting investment into the economy.

The report concludes that the essence of insolvency law is to strike a balance between debtor and creditors. Thus, insolvency law must establish both collective rights for creditors and individual rights for creditors. The debtor must have access to the rights conferred by law and not be able to be stopped by creditors through hidden procedures, respectively by exercising procedural rights in bad faith. The bad faith debtor must be sanctioned, and creditors who trust the honest debtor must be given individual compensation.

### **The evolution of European Union insolvency law**

On December 18, 2018, the Council of the European Union, at the level of ambassadors, announced that the European Union will adopt new rules on corporate insolvency, the message being to give a second chance to bankrupt entrepreneurs with a good reputation. This facilitates the access of viable enterprises facing financial restructuring frameworks at an early stage to prevent insolvency.

The Council of the European Union has reached an agreement with the European Parliament on the adoption of a Directive on preventive restructuring frameworks, second chances and measures to increase the efficiency of restructuring, insolvency and debt remission procedures. The overall objective of the text is to reduce the most important barriers to the free movement of capital resulting from differences between Member States in restructuring and insolvency frameworks and to strengthen the culture of rescuing companies

in the EU. In addition, the directive also aims to reduce the volume of non-performing loans in banks' balance sheets and prevent their accumulation in the future. The proposal thus seeks to ensure an appropriate balance between the rights of debtors and those of creditors (Gavrilescu 2020, 1).

Mr. Josef Moser, Austria's Justice Minister, said: *Every year, 1.7 million people lose their jobs because their business goes bankrupt. Consequently, we need strong EU-wide insolvency rules to reduce bankruptcies and ensure that reputable entrepreneurs have a second chance. I am glad that we have reached an agreement with Parliament so quickly that the new rules can be adopted before the European elections.*

Thus, Directive No. 1023/2019 on frameworks for preventive restructuring, debt remission and forfeiture was adopted, as well as measures to increase the efficiency of restructuring, insolvency and debt remission procedures and amending EU Directive no. 1132/2017. Member States of the European Union have two years from the date of publication in the Official Journal of the European Union to implement the new provisions, but in duly justified cases they may request an additional year from the Commission for implementation, the deadline being 17 July 2021.

The content of the Directive was achieved by analyzing comparative studies of applicable European insolvency laws that have promoted a culture of rescue, taking into account the importance of implementing insolvency prevention procedures. A source of reference inspiration was an American legislation, which was the basis for the elaboration of the UNCITRAL Legislative Guide "Directors' obligations in the period approaching insolvency". The challenges involved in adopting the directive were presented at the Academic Forum "Harmonization of Insolvency and Restructuring Laws in the EU" at Insol Europe, held in Copenhagen in September 2019 (Miloş and Diaconescu 2020, 2).

The Directive requires the adoption of rules on: preventive restructuring frameworks that may be used by debtors in financial difficulty when there is a probability of insolvency, in order to prevent insolvency and ensure the viability of the debtor; the procedures leading to the remission of the debt incurred by insolvent entrepreneurs; and measures to increase the efficiency of restructuring, insolvency and debt relief procedures.

Preventive restructuring frameworks must enable debtors to restructure effectively at an early stage in order to avoid insolvency, thus limiting the unnecessary liquidation of viable companies.

A number of debtors are excluded from the scope of the Directive, such as: insurance undertakings or reinsurance undertakings; credit institutions; investment firms or collective investment undertakings; central counterparties; central depositories of securities; public bodies set up under national law and natural persons who are not entrepreneurs. However, it is possible to apply the provisions of the Directive in the case of convictions for serious breaches of accounting obligations.

The main measures proposed by this Directive are: ensuring early warning means and access to information; strengthening preventive restructuring frameworks; facilitating negotiations on preventive restructuring plans; encouraging extrajudicial proceedings, streamlining restructuring plans; suspension of individual forced executions; continuation of ongoing contracts; debt remission and cessation of forfeitures; protection of new and interim funding; streamlining insolvency proceedings.

Theoretical standardization has required the concentration and approximation of regulations in national legislation that have proven to be the most effective in preventing and giving a second chance to viable entities. In practical terms, the process of standardization will continue even after the transposition of the provisions of the directive into the domestic law of the states (Ogarcă 2011, 91). The divergences of approach to the problems in economic and social plan will also generate specific difficulties of legal treatment, with implications of the deepest in the plan of transposition.

## Conclusions

Insolvency is a mixed field, summing up an economic part, a legal part and a social part. The success of insolvency proceedings contributes to the efficiency of resources, especially financial resources, but also to ensuring a social balance. From this perspective, in order to ensure a stable economic and social environment at the level of the European Union, a more rigorous coordination of the legislation has been tried, but its efficiency is to be verified in time, during its application.

Personally, I consider that one of the problems of applying European Union law is its knowledge in a broad, correct and complete way at the level of law practitioners in the Member States (judges, lawyers, insolvency practitioners, experts, but also economic agents). The prioritization of the legal norm in European Union law is not always ensured even by the legislature of the member states, but also by the courts of the member states.

Despite all these difficulties, the field of insolvency at EU level has an important evolution, taking into account the necessary coordination from the international institutions, which is more strongly felt in times of crisis.

## References

- Adam, Anca Roxana. 2014. *Considerations regarding insolvency in the current economic context, International Conference, Uniformization of the law - legal effects and social policy, administrative implications*, October 23-25, 2014, Iași, <http://laws.uaic.ro/proiect2014/>.
- Bufan, Radu et al. 2012. *Notions of economics applied to insolvency proceedings, Manual prepared by a consortium led by Pricewaterhousecoopers in the program "Support for the improvement and implementation of bankruptcy law and jurisprudence"*, Phare 2012, Ministry of Justice.
- Bufan, Radu. 2001. *Judicial Reorganization and Bankruptcy*. Bucharest: Lumina Lex Publishing House.
- Comșa, Marcela. 2017. *Regulation on insolvency proceedings, Jurisprudence of the Court of Justice of the European Union*. Bucharest: Universul Juridic Publishing House.
- Dinu, Cătălina Georgeta. 2014. *Practical aspects regarding the control of legality exercised by the syndic judge in the insolvency procedure*. Bucharest: Hamangiu Publishing House.
- Fuerea, Augustin. 2006. *Community Business Law*. Second Edition added and revised. Bucharest: Universul Juridic Publishing House.
- Gavrilescu, Luiza Cristina. 2020. "The objectives set and the measures proposed by the EU Directive 2019/1023 on preventive restructuring frameworks." <https://www.unpir.ro/obiectivele-stabilite-si-masurile-propuse-de-directiva-ue-20191023-regarding-restructuring-frameworks>.
- Ispas, Gabriel Liviu. 2011. *European Union. Evolution. Institutions. Mechanisms*. Bucharest: Universul Juridic Publishing House.
- Legal Land. 2019. "New norms regarding the insolvency of enterprises." <https://www.legal-land.ro/noi-norme-privind-insolventa-intreprinderilor/>
- Miloș, Simona and Deli Diaconescu, Andreea. 2020. "Problems and debates on the impact and the modalities of transposition of the Directive on restructuring frameworks." *INPIR*. <https://www.unpir.ro/probleme-si-dezbateri-pe-marginea-impactului-and-the-arrangements-for-transposing-the-Directive>.
- Ogarcă (Matei), Cătălina. 2011. *Contextualizing the protection of property rights and combating terrorism in the European Union*. Romanian Journal of European Law.
- United Nations Commission on International Trade Law (UNCITRAL). [http://www.uncitral.org/uncitral/en/uncitral\\_texts/insolvency/2004Guide.html](http://www.uncitral.org/uncitral/en/uncitral_texts/insolvency/2004Guide.html).
- World Bank, *Insolvency Efficiency Principles and Creditors'/Debtors' Rights (Revised 2011)*, [http://www.worldbank.org/ifa/rosc\\_icr.html](http://www.worldbank.org/ifa/rosc_icr.html); [http://siteresources.worldbank.org/INTGILD/Resources/ICRPrinciples\\_Jan2011.pdf](http://siteresources.worldbank.org/INTGILD/Resources/ICRPrinciples_Jan2011.pdf).

# **Romanian Public Sector Staff. Categories. Applicable Legal Rules. Particularities**

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**ABSTRACT:** The study aims to create a picture of staff working in the public sector in Romania. The objectives they address are the following. First, it is proposed to identify the categories of staff who carry out their activity within the public authorities and institutions in the Romanian system. Then the three main categories are identified and analyzed: people who fulfill public dignities; persons holding public office and contract staff. The analysis of the legal situation of each category is made through the prism of the current legal framework, starting with the Constitution and the laws adopted on its basis, related to the constants derived from the doctrine and jurisprudence. Particular attention is paid to the two Codes, namely the Labor Code and the Administrative Code, in terms of the relationship between their provisions in regulating the legal situation of all staff.

**KEYWORDS:** staff, categories, public office, public dignity, contractual functions, civil servants, employees, contract staff, public law, private law

## **Brief theory of public sector staff**

In every state in the world, the staff that carries out their activity in what is called the “state apparatus” or “public sector” have certain particularities, in terms of the categories that compose it, of the rules applicable to each of them, of the legal situation, of deontology which is specific to him. In Romania, the staff of public authorities and institutions is structured in three main categories.

The first of these are civil servants, who work in all types of public authorities and institutions, not only in the executive sphere (administrative authorities). We thus consider the authorities and institutions that are part of the sphere of the 3 powers of the state, respectively legislative, judicial and executive, but also those that exceed the three classic powers, have a status of autonomy and are placed under parliamentary control, in order to achieve precisely the balance between the powers of the state, such as the People's Advocate, the Court of Accounts, the Legislative Council or the Constitutional Court.

I mentioned it first not because it would be the most representative in terms of numbers, but because it is the most significant in terms of the specific legal situation, the essence of which is that civil servants are the bearers of public prerogatives. They personalize the state and, as the old Romanian doctrine is expressed, as are its officials, so is the state they work for.

Another argument for which I mentioned them first is that in Romania, civil servants are subject to the statutory regime, which springs from an organic law regulating their legal status, which guarantees them stability and the right to a career. We thus interpret that, at the level of the rule of law, civil servants enjoy stability in office, which makes them present themselves as a kind of backbone of the public institutional gear. Civil servants are those who, beyond the political changes, the governments that come and go, the alliances and forces that assume the fate of the government and administration of the country, carry on the existence of the state and local authorities, respectively the authorities and institutions through which they perform the duties, provides services and satisfies the needs of those who compose them.

The next category we mention is that of dignitaries, respectively of holders of public dignities, at central and local level, appointed by election or by appointment, for a determined period, generically called mandate. The political origin of the functions they perform and their legal status makes them subject to the political game, in the sense that the duration of this mandate will be equal to the duration of the governing force of the political force that gave them that dignity.

The legal rules applicable to dignitaries are found first of all in the Constitution (The Romanian Constitution was published in the Official Gazette no. 233 of November 21, 1991. It was revised by Law no. 429/2003, published in Official Gazette no. 758 of October 29, 2003 and republished in Official Gazette no. 767 of October 31, 2003), but also in other infra-constitutional normative acts. For example, the members of the bicameral Parliament of Romania (In the Romanian constitutional tradition, the Parliament has a bicameral structure, enshrined in the current Constitution which provides, in art. 61 para. (2) that "*Parliament is composed of the Chamber of Deputies and the Senate*") are subject to the rules established by Law no. 96/2006 on the Statute of Deputies and Senators (republished in the Official Gazette no. 49 of January 22, 2016). The members of the Government, headed by the Prime Minister, have a status regulated by the Administrative Code, Part II dedicated to the central public administration. Autonomous public authorities are also led by persons who have the rank of dignitaries and whose status is regulated by special organic laws, such as Law no. 35/1997 on the People's Advocate (republished in the Official Gazette no. 181 of February 27, 2018) which provides for the election and termination of the mandate, its regime, the attributions, the deputies of the People's Advocate, the relations with the Parliament, and, very important, the fact that "*the People's Advocate cannot be subject to any imperative or representative mandate. No one can force the People's Advocate to obey his orders*" (the provision is contained in art. 2 para. (4) of Law no. 35/1997).

The third category is made up of contract staff, which, in turn, includes two subcategories, employees, respectively those employed under an employment contract and those appointed under a management contract.

They are a category of staff that differs from civil servants in that they do not exercise the prerogatives of public power. The contract staff, also evoked by the notion of employees, is the one who, by its specificity, is subject to the rules established by the labor legislation, in the center of which is the Labor Code, but an element of novelty, which occurred since 2019, was brought by the Romanian Administrative Code, approved by GEO no. 57/2019 (published in the Official Gazette no. 555 of July 5, 2019), which, for the first time, devotes a distinct part (*lato sensu*) to the regulation of public administration staff, an aspect to which we will return. Until the adoption of the Administrative Code, there was no independent regulation to enshrine special rules on contract staff in public administration, except for a Code of Conduct for contract staff in public administration, approved by Law no. 477/2004 (published in the Official Gazette no. 1105 of November 26, 2004), which was drafted, for the most part, according to the model of the Code of Conduct for civil servants, adopted by Law no. 7/2004 (republished in the Official Gazette no. 525 of August 2, 2007), both repealed by the Administrative Code. We specify that, until the adoption of the current Administrative Code, the regulation of civil servants, as well as of other legal institutions, was achieved through distinct organic laws (for example, the local public administration was regulated by Law no. 215/2001, republished in the Official Gazette no. 123 of February 20, 2007; The government and the ministries were regulated by Law no. 90/2001, published in the Official Gazette no. 164 of April 2, 2001).

Through the Administrative Code, all this disparate legislation, including that dedicated to the civil servant, has been merged into a separate, unitary normative act, which includes distinct parts, dedicated to these categories of authorities, as well as to public administration staff.

The contract staff, as we have shown, includes employees, namely those employed under an individual employment contract and persons working under a management contract. The management contract is not to be confused with the employment contract. The first is regulated by the Civil Code (The Civil Code was approved by Law no. 287/2009, published in the Official Gazette no. 511 of July 24, 2009. It was implemented by Law no. 71/2011 and republished in the Official Gazette no. 409 of June 10, 2011), to which are added special laws that regulate the legal regime, while the employment contract is regulated by the labor legislation, in the center of which is the Labor Code (approved by Law no. 53/2003, republished in Official Gazette no. 345 of May 18, 2011).

We specify that the notion of the manager is found in two different ways and two different legal regimes. The first is contractual staff employed under a management contract, which is subject to private law, and the second in the form of public managers, who represent the holders of a specific public position (the specific public position of public manager is provided in Annex 5 to the Administrative Code containing the list of public positions, section II B, position 24.) bearing this name and who are subject to the regime of public law, currently regulated by the GEO no. 92/2008 regarding the status of the civil servant called public manager (published in the Official Gazette no. 484 of June 30, 2008). According to art. 1 para. (2) of this normative act, *“the status of public managers is conferred by the role, attributions and responsibilities incumbent on them as agents of change in the field of public administration reform”*. Moreover, this specific civil service was created in order to honor the commitments made in relations with the European Union to accelerate public administration reform, by creating a professional and apolitical body of civil servants, called public managers.

We find in the Romanian system a diversity of professional and extra-professional categories that carry out their activity in the public sector. We say extraprofessional because public dignities are not professions, and holders of public dignities cannot be called professionals in a certain field. This variety and diversity of categories correspond to a multitude of names, a different terminology, which evokes legal categories between which there are similarities and differences.

### **Peculiarities of the legal situation of public sector staff**

We draw attention from the beginning to the meaning of the notions used, even by the name of this section. First, we refer to public sector staff, a phrase that has the merit of encompassing all three categories of staff that we identified in the previous section. Moreover, such a category also has a legal determination, the title of Part VI of the Administrative Code, after referring to civil servants and contract staff, mentions, finally, the staff paid from public funds, which includes, in practice, everyone.

We make the second observation regarding the use of the phrase of legal situation, which we consider to be integrative in terms of the legal rules governing each of the categories identified in the previous section.

The notion of the legal situation includes both the public law regime, applicable to dignitaries and civil servants, and the private law regime, to which the contract staff is subject, both employees and those who work as managers.

Regarding the applicable legal regime, specific to the current legal and institutional realities is the fact that we can no longer speak of a strict, firm delimitation between the rules of public law applicable to dignitaries and civil servants and the rules of private law applicable to contracts. The rule is also applicable in other areas, such as politics, for example, and we consider the distinction between right-wing and left-wing currents, between liberal and socialist conceptions and policies, and examples can continue.

Referring strictly to the legal rules applicable to the categories of staff working in the public or budgetary sector, it is common to them that, through their activity, they contribute to the competence of the public authorities and institutions of which they are part, respectively of the attributions they are conferred by law. And these attributions have as purpose and finality the provision of services to natural or legal persons, through which social needs of public interest are satisfied, at national or local level. From this perspective, they are enshrined in the legal rules that apply to them similar requirements established by the legislator in terms of the duties to which they are subject both in their activity and in their private life, with all the consequences arising from it.

In fact, as noted in the literature, a tendency to rethink, starting with the terminological aspect, is also felt at the supranational level. Thus, “a careful analysis of current developments in various countries, especially in the European Union, shows that there is a recomposition - on unitary criteria, not unique - of labor relations, either private or public law, which determines new similarities between them” (Ștefănescu 2017, 27).

We will analyze, in the following, some aspects specific to each of the enunciated categories, in order to then identify elements common to all.

In fact, as noted in the literature, a tendency to rethink, starting with the terminological aspect, is also felt at the supranational level. Thus, “a careful analysis of the ongoing developments in various countries, especially in the European Union, shows that there is a recomposition on unitary criteria, not unique - of labor relations, either private or public law, which determines new similarities between them”.

We will analyze, in the following, some aspects specific to each of the enunciated categories, in order to then identify elements common to all.

As regards the category of dignitaries, until the adoption of the Administrative Code there was no definition that the legislator should enshrine in a framework regulation, such definitions being found, as a rule, in doctrine, jurisprudence or sectoral regulations, such as they would be the normative acts in the field of salary (for example, Law no. 153/2017 on the remuneration of staff paid from public funds, published in the Official Gazette no. 492 of June 28, 2017, contains, in Annex IX provisions on elected public dignity functions (A), named (B), elected within the bodies of the local public authority (C), positions assimilated with public dignity functions (D)) or similar ones, as well as the normative acts that regulated different authorities or public institutions within which dignitaries carried out their activity, at central (for example, Law no. 90/2001 on the organization and functioning of the Government, currently repealed by the Administrative Code, regulated aspects of the status of members of the Government, starting with the Prime Minister) or local level or regulated different categories of dignitaries (for example Law no. 393/2004 on the Statute of local elected officials, published in the Official Gazette. no. 912 of October 7, 2004, currently repealed by the Administrative Code).

Article 5 lit. v) of the Administrative Code defines dignitaries as persons exercising functions of public dignity under a mandate, according to the Constitution, this code and other normative acts. The notion of the position of public dignity, in its turn, according to letter z) of the same text, represents the set of attributions and responsibilities established by the Constitution, laws and/or other normative acts, as the case may be, obtained by investment, as a result of the electoral process, directly or indirectly, or by appointment.

From the corroboration of all these provisions related to the constants of the doctrine result some elements that, in our opinion, characterize the category of public dignitaries.

a) Persons who hold and exercise functions of public dignity have the quality of dignitaries;

b) The functions of public dignity are exercised on the basis of a mandate, a notion that evokes the period of time between the moment from which the function of public dignity is

exercised and the one in which the exercise of the function ceases, either, as a rule, at the expiration or from this moment, under the conditions provided by law.

c) The ways of acquiring a position of public dignity are the election or appointment;

d) The content of the functions of public dignity is represented by the attributions and responsibilities incumbent on their holder, according to the Constitution and the laws adopted on its basis. For example, we find provisions regarding the members of the Government, headed by the Prime Minister, both in the Constitution and in the second part of the Administrative Code dedicated to the central public administration. In the same sense, the rules applicable to members of Parliament, deputies and senators, are found both in the Constitution and in Law no. 96/2006 on the Statute of Deputies and Senators, but also in the Regulations of the two Chambers of Parliament (Senate Regulation of October 24, 2005, republished in Official Gazette no. 990 of October 27, 2020; Rules of Procedure of the Chamber of Deputies of 24 February 1994, republished in the Official Gazette no. 338 of April 27, 2020; Regulation of the joint activities of the Chamber of Deputies and the Senate of March 3, 1992, republished in Official Gazette no. 247 of March 25, 2020).

As a legal nature, the regime governing the status of those holding a position of public dignity is a regime of public power. By public power regime we mean according to art. 5 lit. j) of the Administrative Code all the prerogatives and constraints provided by law in order to exercise the attributions of public administration authorities and institutions and which give them the possibility to impose themselves with binding legal force in their relations with natural or legal persons, to defend the public interest.

Civil servants are the second category of staff, which we can identify by the attribute of professional category, because, unlike dignitaries, they exercise a professional activity, as a rule, for an indefinite period, representing, as we expressed in the first section, the backbone of the institutional architecture of the public sector. Article 5 lit. y) defines the civil service as the set of attributions and responsibilities, established under the law, in order to exercise the prerogatives of public power by public authorities and institutions. As it results from the above definition and we mentioned from the first part of this study, the essence of civil servants is that they exercise public power prerogatives, which separates officials from contract staff, but resembles the incumbents' public dignity.

In the Romanian system, not only is this fundamental feature of civil servants determined to be the holders of prerogatives of public power, but it is also determined what these prerogatives consist of, through art. 370 of the Administrative Code (Art. 370: *“Prerogatives of public power. (1) The prerogatives of public power are exercised through general activities and through special activities. (2) The general activities involving the exercise of the prerogatives of public power, by the public authorities and institutions provided in art. 369, are the following: a) elaboration of draft normative acts and other regulations specific to the public authority or institution, as well as ensuring their approval; b) elaboration of public policy proposals and strategies, of programs, studies, analyzes and statistics necessary for the substantiation and implementation of public policies, as well as of acts necessary for the execution of laws, in order to achieve the competence of the public authority or institution; c) authorization, inspection, control and public audit; d) management of human resources and public funds; e) representation of the interests of the public authority or institution in its relations with natural or legal persons of public or private law, from the country and from abroad, within the competences established by the head of the public authority or institution, as well as legal representation of the authority or the public institution in which it operates; f) carrying out activities in accordance with the strategies in the field of information society, except for the situation in which they aim at monitoring and maintenance of information equipment. (3) The activities of special character which involve the exercise of the prerogatives of public power are the following: a) specialized activities necessary for the realization of the constitutional prerogatives of the Parliament; b)*

*specialized activities necessary to achieve the constitutional prerogatives of the President of Romania; c) activities for approving the draft normative acts in order to systematize, unify, coordinate the entire legislation and keep the official records of the Romanian legislation; d) specialized activities necessary for the realization of the foreign policy of the state; e) specialized activities and ensuring the necessary support for the protection of the fundamental rights and freedoms of the person, of private and public property, prevention and discovery of crimes, observance of public order and peace; f) specialized activities necessary for the application of the legal regime of the execution of sentences and measures of deprivation of liberty pronounced by the courts; g) customs activities; h) other activities with a special character regarding the exercise of public authority in areas of exclusive competence of the state, based on and in the execution of laws and other normative acts. (4) The establishment of positions in the civil service regime is mandatory, insofar as the activities provided in par. (1)-(3), except for the positions related to the staff from the categories provided in art. 382 lit. c), h) and i), as well as of the positions within the autonomous authorities, for which the categories of staff are established by the special legislation. (5) The public positions are established by law.”). An element of novelty that the Administrative Code brings compared to the old regulation consists in the fact that, unlike art. 2 of the former Law no. 188/1999 on the Statute of civil servants, currently repealed, identifies two categories of prerogatives of public power, some through which general activities are carried out and others through specific activities (Vedinaş 2020, 290).*

From the existence of the two types of prerogatives results two categories of civil servants, respectively civil servants subject to the general statute, represented by part VI of the Administrative Code, title II entitled even the statute of civil servants and civil servants subject to special statutes, adopted by Special organic laws, such as the police (The status of the police officer is regulated by Law no. 360/2002, published in the Official Gazette no. 440 of June 24, 2002), parliamentary civil servants (The status of the parliamentary civil servant was approved by Law no. 7/2006, published in the Official Gazette no. 35 of January 16, 2006.), diplomatic and consular staff (The statute of the Romanian diplomatic and consular corps was approved by Law no. 269/2003, published in the Official Gazette no. 441 of June 23, 2003) and examples could continue.

The contract staff, as we have shown, consists of employees, which include persons employed under an individual employment contract and staff employed under a management contract.

The element of novelty, truly revolutionary, that the Administrative Code brings is the fact that it regulates for the first time the legal situation of the contractual staff within the public authorities and institutions. As we expressed in a previous study (Godeanu 2018, 272), the Administrative Code brings a solution of unitary regulation of all public sector staff, while maintaining the differences between categories.

An important clarification is required, namely that, in addition to the separate regulations applicable to the three categories of staff, there are normative acts that create a unitary framework for all public sector staff, such as those on pay, records or the Social Dialogue Law no. 62/2011 (republished in the Official Gazette no. 625 of August 31, 2012), which, in addition to the common provisions, also contains separate provisions for civil servants. Referring to the latter law, the doctrine recognized its quality of “*common law for contract staff and civil servants in terms of social dialogue.*” (Ştefănescu 2017, 27) Equally, by enshrining provisions for civil servants distinct from those applicable to employees, “*a recognition by the legislator of the identity of the civil servant and his employment relationship is achieved.*” (Vedinaş and Vorniceanu 2011, 77).

## **Common aspects of the legal situation of the three categories of staff in the Romanian public sector**

A first aspect is that the records of all staff paid from public funds are regulated and effectively carried out. Rules on how to do this are found in Part VI, Title II Chap. IV of the Administrative Code regarding the record of staff paid from public funds and the national system of record of employment in the public sector.

The second aspect concerns the fact that the salary regime of all those who carry out their activity in the public sector is regulated by a single law, respectively Law no. 153/2017 on the remuneration of staff paid from public funds.

A third aspect concerns the existence, through the Administrative Code, of a regulation with the value of a framework law that contains provisions regarding the organization, functioning and staff of all public authorities and institutions, regardless of their status. As we have shown, it enshrines legal rules for all categories of staff, principles of organization and operation that are valid and binding throughout the public sector, such as legality, equality, transparency or the principle of the satisfaction of the general interest. Also in the Administrative Code is provided, in art. 546, the number of positions in the cabinet and chancellery of dignitaries whose right is recognized by law and the examples could continue.

Fourthly, we mention the existence, at central level, of the National Agency of Civil Servants, which is a specialized central authority subordinated to the ministry with responsibilities in the field of public administration, whose mission is to develop a professional, stable and impartial body of civil servants as well as the creation of a record necessary for the management of staff paid from public funds. The attributions of this public authority cover the staff from the entire public sector, which allows the promotion of unitary staff policies, regulations of the same character, which would allow a true proper management of these staff.

A last aspect that we mention is that of creating the normative framework of interinstitutional collaboration, the principle of loyal collaboration being one of the principles that, being promoted by the jurisprudence of the European courts, penetrated the Constitutional Court and the courts that compose the judiciary in Romania, but also in the administrative and governmental practice itself.

## **Conclusions**

The analysis of staff in the budget sector is of particular importance, as the quality of this staff influences the quality of the work of public authorities and institutions.

We could see that this staff is subject to both separate rules - public or private law, but also the fact that there is an interference between these two branches of law. "For over a century there has been a mutual movement to influence labor law through rules of public law and civil service law through protective rules of private labor law" (Ștefănescu 2017, 27).

It is sufficient to mention the penetration of bargaining in the civil service, by recognizing the possibility of concluding collective service agreements, which are the correspondent of collective labor agreements in labor law.

It is neither important to "expel" the norms of public or private law from one branch or another of law, nor to "prevent" further penetration and influence.

We specify that art. 278 of the Labor Code regulates the common law nature of labor law and provides that "The provisions of this Code shall apply by common law to those legal employment relationships not based on an individual employment contract, insofar as the special regulations are not complete and their application is not incompatible with the specifics of the respective employment relationships."

We thus understand that labor law applies and is common law to all other legal relations, of dignitaries, of the military, of magistrates, of priests and of other categories, with two conditions: they must not themselves contain their own rules or the rules that contain them not to be sufficient, and the provisions of the Labor Code to be compatible with the specifics of the respective labor relations.

## References

- Code of Conduct for contract staff in public administration, approved by Law no. 477/2004, published in the Official Gazette no 1105 of November 26, 2004.
- GEO no. 92/2008 regarding the status of the civil servant called public manager (published in the Official Gazette no. 484 of June 30, 2008).
- Godeanu, Teodor Narcis. 2018. „General considerations on how to regulate the legal situation of contract staff in the budgetary sector in the draft Administrative Code”. In E. Bălan, C. Iftene, D. Troanță, M. Văcărelu (editors). 2018. *Codificarea administrativă (Administrative coding)*. Bucharest: Wolters Kluwer.
- Labor Code approved by Law no. 53/2003, republished in Official Gazette no. 345 of May 18, 2011.
- Law no. 153/2017 on the remuneration of staff paid from public funds, published in the Official Gazette no. 492 of June 28, 2017.
- Law no. 188/1999 on the Statute of civil servants, currently repealed.
- Law no. 35/1997 on the People’s Advocate (republished in the Official Gazette no. 181 of February 27, 2018).
- Law no. 393/2004 on the Statute of local elected officials, published in the Official Gazette. no. 912 of October 7, 2004, currently repealed by the Administrative Code.
- Law no. 62/2011 - Social Dialogue, republished in the Official Gazette no. 625 of August 31, 2012.
- Law no. 7/2004 republished in the Official Gazette no. 525 of August 2, 2007.
- Law no. 90/2001 on the organization and functioning of the Government, currently repealed by the Administrative Code.
- Law no. 96/2006 on the Statute of Deputies and Senators republished in the Official Gazette no. 49 of January 22, 2016.
- Law no. 96/2006 on the Statute of Deputies and Senators, but also in the Regulations of the two Chambers of Parliament.
- Regulation of the joint activities of the Chamber of Deputies and the Senate of March 3, 1992, republished in Official Gazette no. 247 of March 25, 2020.
- Romanian Administrative Code, approved by GEO no. 57/2019, published in the Official Gazette no. 555 of July 5, 2019.
- Romanian Constitution was published in the Official Gazette no. 233 of November 21, 1991. It was revised by Law no. 429/2003, published in Official Gazette no. 758 of October 29, 2003 and republished in Official Gazette no. 767 of October 31, 2003.
- Rules of Procedure of the Chamber of Deputies of 24 February 1994, republished in the Official Gazette no. 338 of April 27, 2020.
- Senate Regulation of October 24, 2005, republished in Official Gazette no. 990 of October 27, 2020.
- Ștefănescu, Ion Traian. 2017 *Tratat teoretic și practic de drept al muncii (Theoretical and practical treatise on labor law)*. Bucharest: Universul Juridic Publishing House.
- The Civil Code was approved by Law no. 287/2009, published in the Official Gazette no. 511 of July 24, 2009. It was implemented by Law no. 71/2011 and republished in the Official Gazette no. 409 of June 10, 2011.
- The government and the ministries were regulated by Law no. 90/2001, published in the Official Gazette no. 164 of April 2, 2001.
- The local public administration was regulated by Law no. 215/2001, republished in the Official Gazette no. 123 of February 20, 2007.
- The status of the parliamentary civil servant was approved by Law no. 7/2006, published in the Official Gazette no. 35 of January 16, 2006.
- The status of the police officer is regulated by Law no. 360/2002, published in the Official Gazette no. 440 of June 24, 2002.
- The statute of the Romanian diplomatic and consular corps was approved by Law no. 269/2003, published in the Official Gazette no. 441 of June 23, 2003.
- Vedinaș, V., Vorniceanu C.. 2011. *Efecte ale Legii nr. 62/10 mai 2011 a dialogului social asupra instituției funcționarului public (Effects of Law no. 62 of May 10, 2011 of the social dialogue on the institution of the civil servant)*. In *Pandectele Române* no. 6.
- Vedinaș, Verginia. 2020. *Codul administrativ adnotat (Annotated administrative code)*, 2nd edition. Bucharest: Universul Juridic Publishing House.

# Some Shortcomings of the Legal Framework Applicable in the COVID-19 Context

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**ABSTRACT:** The article presents some aspects of the recent past of the pandemic with COVID-19, namely during 2020, either from a state of emergency or from a state of alert that was established in Romania. The exceptional situation still found around the world has led public authorities to take unprecedented action and to quickly develop a legal framework to implement these measures. The regulations adopted were not without ambiguities or ambiguities, which is why, in this study we set out to present some examples, namely: the situation of homeless people, rail passenger transport, restricting traffic exclusively in the metropolitan area, protection of chronic patients and not only. The aim of the research is to identify solutions to improve the legislation starting from concrete cases, but also to present the difficulties that the Romanian state authorities have faced and continue to face, in some cases and what solution has often been brought for balancing the relationship between rights and prohibitions, in the context of the need to protect public health by restricting individual rights and freedoms.

**KEYWORDS:** public health, human rights, pandemics

## **Legal framework regarding the accommodation of homeless persons in a state of emergency established in Romania in the COVID-19 pandemic**

Although concrete measures have been taken to house and care for homeless people in specially designed centres, this category of people represents a potential danger of spreading or bringing coronavirus to centres, as the obligation to isolate them in centres is not regulated at national level.

Moreover, the homeless also posed a risk to the staff of the welfare departments who were employed at the centre and who were at that time in preventive isolation at work (Adam 2017a, 90). As a result of the analysis of the applicable legislation, a discrepancy was found in the obligations to be met by each of the two categories of persons listed - employees being obliged not to leave the centre, while homeless people are not imposed the same obligations.

Although most homeless people staying in the centre have understood the recommendations to stay in the centre, there is no possibility of effectively banning these people from leaving the centre. In this context, of the deficient legal framework, the public administration authorities approved or not, at local level, the restriction of the exit of the beneficiaries from the Night Shelter and the Residential Centre for homeless people (Oprea, 2020).

Considering the aspects reported, we find the following:

According to art. 6 of the Military Ordinance no. 3/2020, the local public administration authorities have the obligation to identify and keep records of homeless persons, as well as to ensure their shelter and care.

According to art. 10 of the Military Ordinance no. 8/2020, during the state of emergency, the measure of preventive isolation at work or in especially dedicated areas where people from outside do not have access is established for the staff of the art. 9 paragraph (1) for a period of 14 days. Indeed, art. 10 paragraph (7) of Military Ordinance no. 8/2020 specifies that the access of visitors / owners / supporters / legal representatives of beneficiaries of social services in residential centres is prohibited, but, according to the existing legal framework, it is not regulated the prohibition of homeless people accommodated in centres with this purpose to leave their premises.

## **The unclear legal framework regarding the establishment of the ban on the movement of persons outside the locality or the metropolitan area**

Immediately, everyone wondered what “metropolitan areas” mean and what they are, as in a crossword puzzle that the population has to solve. This situation was found in several counties in Romania: Covasna, Galați, Prahova (Calin 2020; Ionescu 2020).

Given the situation created, we identified the following:

According to art. 7 and Annex I, point 11 of Law no. 351/2001 on the approval of the National Spatial Planning Plan - Section IV The network of localities, with subsequent amendments and completions, the metropolitan area is constituted by the administrative units - basic territories in the area of the Romanian Capital and of the first and second rank municipalities, which can be associated in a voluntary partnership in order to establish metropolitan areas related to the urban space and includes the administrative territory of the polarizing city and the administrative-territorial units included in its commuting area, at distances of up to 30 km, which respects the condition of spatial contiguity and within which cooperation relations have been developed on multiple levels.

From the analysis of the provisions of Annex no. 3, art. 2 to the Government Decision of Romania no. 394/18.05.2020 on declaring the state of alert and the measures applied during it to prevent and combat the effects of the COVID-19 pandemic, it is established the prohibition of the movement of persons outside the metropolitan locality / area, with certain exceptions expressly provided. A person can travel outside the metropolitan area / area only with justification, represented by the service card or certificate issued by the employer or a statement on his own responsibility regarding the reason for travel, completed in advance.

There was confusion in the public space, often considering that the metropolitan area is that area located within 30 km of the county seat.

In this regard, the Ministry of Internal Affairs came with clarifications:

“Are considered as part of the metropolitan area the localities within a radius of up to 30 kilometres from the main city (according to art. 11 of Law no. 351/2001 on the approval of the National Spatial Planning Plan - Section IV Network of localities)” (<https://www.mai.gov.ro/material-qa-stare-de-alerta/>).

However, we consider that these explanations were brief and did not clearly determine the meaning of the metropolitan area taken into account by Government Decision no. 394/2020, which is why there is a risk of a non-unitary interpretation of this phrase throughout the country, especially in areas where there is no metropolitan area established according to Law no. 351/2001.

As a result, the provisions issued must be clear and precise, in order to inform citizens correctly and coherently about the constraints on their movement, in order to avoid being fined.

## **Legal framework for rail passenger transport in the COVID-19 pandemic**

According to art. 34 of Law no. 55/2020 on some measures to prevent and combat the effects of the COVID-19 pandemic, during the state of alert, in the field of rail transport, the relevant ministry may order measures, respectively restrictions, regarding: hygiene and disinfection of common areas in stations, stops, stations or stopping points, train equipment and fittings, procedures and protocols inside stations, stops, stations or stopping points, but also inside wagons and train sets, grade and the handling of the rolling stock, the rules of conduct for the staff of the operators and for the passengers, as well as regarding the information of the staff and passengers, in order to prevent the contamination of the passengers and the personnel working in the field of railway transport (Aldea 2020).

Also, according to Order no. 988/2020 on measures and rules in the field of transport, during the alert state, to prevent the spread of COVID-19, issued by the Ministry of Internal

Affairs and the Ministry of Transport, Infrastructure and Communications, for "resumption / deployment specific activities, institutions and public authorities under or under the authority of the Ministry of Transport, Infrastructure and Communications develop and approve system procedures related to the restrictions imposed by the Romanian state authorities, in the context of the pandemic generated by COVID-19, and Annex no. 4, Chapter I, point 8 regulates the fact that the railway operators establish and bring to the public's attention the organizational measures imposed by the specifics of the activity.

The joint order of the Minister of Internal Affairs and the Minister of Transport, Infrastructure and Communications No. 79/988/2020 was repealed on June 19, 2020 by Joint Order No. 97/2020 on measures and rules in the field of transport, during the alert period, to prevent the spread of COVID-19, issued by the Minister of Internal Affairs, the Minister of Health and the Minister of Transport, Infrastructure and Communications.

The provisions of Order no. 79/2020 were taken over in the new order, regarding the measures and rules in the railway field during the alert state, in order to prevent the spread of COVID-19, except for the following situations:

- the obligation for railway transport workers to be equipped with gloves and protective masks is no longer established;
- the obligation to use each access area is no longer established - in the case of railway stations with several access areas - only for one of the flows, either at the entrance or at the exit from the station;
- the operation of commercial spaces located in the space of the railway station, both in the station building and on the platform, where packaged products are sold, without allowing consumption inside them, economic operators having the obligation to take measures to avoid crowding of people inside commercial spaces.

According to art. 65 letter h) of Law no. 55 / 2020 in conjunction with art. 67 paragraph (2) letter b), c), d) of the same law, the non-observance by individuals of individual measures for the protection of life and for limiting the effects of the type of risk produced on the health of persons, established according to art. 5 para. (2) lit. d) the Finding of the contraventions provided in art. 65 and the application of the sanctions provided in art. 66 are made by the control personnel within the Department for Emergency Situations, as well as the non-commissioned officers and the officers of fire and civil protection; by police agencies and officers, non-commissioned officers and gendarmerie officers, local police officers, respectively by the staff of the public health directorates.

According to Annex no. 4, Chapter I, point 8 of the joint Order no. 97/2020, "railway operators establish and bring to the public's attention the organizational measures imposed by the specifics of the activity and its area of development".

Also, the National Centre for Railway Qualification and Training (CENAFER) within MTIC has developed the System Procedure on preventing and combating the spread of Sars-CoV-2 virus and its effects - COVID-19 for education and training activities and railway museum located in the CENAFER portfolio ([https://drive.google.com/file/d/11b6BXiRLj-ge\\_-4oIX318AqQGtORHJll/view](https://drive.google.com/file/d/11b6BXiRLj-ge_-4oIX318AqQGtORHJll/view)), according to the provisions of art. 5 of the Common Order no. 97/2020.

### **The legal framework regarding the hospitalization of chronic patients in the context of COVID-19**

According to the Order of the Minister of Health no. 555/2020 on approving the Plan of measures for the preparation of hospitals in the context of the COVID-19 coronavirus epidemic, the List of hospitals providing medical care to patients tested positive for SARS-CoV-2 in phase I and phase a II and the List of support hospitals for patients tested positive or suspected with the SARS-CoV-

2 virus, through the amendments brought by the Order of the Minister of Health no. 961 of May 29, 2020 regulates the following:

1. Scheduled hospitalizations are reduced by up to 80%, such as scheduled surgeries for chronic patients in health facilities with beds in university centres, and up to 50% compared to February outpatient activity.

2. Chronic patients or pregnant women who require diagnostic or therapeutic interventions, the timing of which may lead to a reduction in the chances of survival, are excluded from the provisions of point 1. In this regard, health facilities will take measures in accordance with the regulations in force to prevent the spread of COVID-19 infection.

3. Hospitals will report daily in the centralized electronic system of the Ministry of Health the situation of bed occupancy.

4. This measure is necessary both to ensure the capacity of hospitals to take over cases and to save material and human resources.

5. Adequate public communication shall be ensured so that, during this period, the public addresses the hospitals only for emergencies.

6. After the cessation of the state of emergency, depending on the local epidemiological evolution, the hospitalizations and the scheduled surgical interventions can be resumed, as well as the activity in the outpatient clinics, not being necessary to respect the percentages mentioned in sub-point.

7. Depending on the local epidemiological evolution, hospitals that provide medical care to patients tested positive or suspected with the SARS-CoV-2 virus may provide, with the approval of the county health departments and the municipality of Bucharest, medical care and non-COVID-19 patients in the conditions for the existence of completely separate functional circuits (sn), without the need to discharge / transfer all hospitalized patients to other hospitals.

Therefore, it is important that the medical units - COVID hospitals and / or COVID-19 support units have separate functional circuits and, consequently, perform inpatient / outpatient appointments / surgeries / diagnostic interventions / therapeutic interventions for chronic patients and specializations, open in this respect at the level of each hospital (Schiopu 2020a, 132);

Concrete measures are also needed to support chronically ill patients who are in an emergency and cannot go to the medical units where they were being monitored or whose current doctors are currently working in the COVID-19 sector (for example, redirecting chronically ill patients) to other medical units, criteria for prioritizing emergencies, etc.).

Patients on waiting lists for national health programs were postponed for an unpredictable period, the supervision and issuance of medical prescriptions for chronically ill people who are in strict need of medication has been discontinued, with some patients being forced to buy their medicines without compensation or running out of medication for financial reasons (Jighira, 2020).

During this period, the medical staff could no longer provide outpatient clinical / paraclinical or hospital medical services (Adam 2017b, 277).

Many hospitals did not provide specialized medical staff in the organizational structure, namely a specialist in infectious diseases, a pulmonologist to provide medical care and specific treatment for the SARS-CoV-2 virus (Heghes 2020, 90).

The medical staff caring for coronavirus patients has reached mental exhaustion, nervousness, fatigue, burnout, and the scheduling of holidays can no longer be respected.

## Conclusions

Although mankind has faced an exceptional situation, states must strike a fair balance between protecting the public interest, which imposes coercive measures, and protecting fundamental rights and freedoms (Schiopu 2020b, 14). Some measures are unfounded and others are

necessary, but they are not taken. The legal provisions must be clearly elaborated, in order to allow a uniform application and not to give rise to abuse or arbitrariness.

Thus, with regard to homeless people in functional centres at local level, a regulation developed at central level was needed to help local authorities take action to implement it.

However, the insertion of traffic bans in an area that cannot be clearly defined, such as the metropolitan area, has been clarified by the public authorities, who have thus recognized the deficiencies and eliminated them.

Rail transport must take stronger measures to protect against COVID-19, and medical units intended for COVID-19 must have separate circuits that allow the hospitalization of chronic non-COVID-19 patients.

## References

- Adam, Anca-Roxana. 2017a. "General Theory of Obligations." Bucharest: C.H. Beck Publishing House.
- Adam, Anca-Roxana. 2017b. "Aspects regarding the notion of patrimony". In *The Annales of Titu Maiorescu University*. Bucharest: Hamangiu Publishing House, p. 90.
- Aldea, George. 2020. "Shuttle with Covid: CFR, Brasov staff." *Bună Ziua Braşov*, May 25, <https://bzb.ro/stire/naveta-cu-covid-ul-cfr-personalul-de-brasov-a151029>.
- Călin, George. 2020. "The same rule, different interpretations: the authorities from Brăila and Galați contradict the circulation with the declaration on their own responsibility." *DigiTv*. May 19. <https://www.digi24.ro/stiri/actualitate/aceeasi-regula-interpretari-diferite-autoritatile-din-braila-si-galati-se-contrazic-la-circulatia-cu-declaratia-pe-proprie-raspundere-1309726>.
- Hegheş, Nicoleta-Elena. 2020. "Some Considerations Regarding the Crime of Thwarting Disease Control." In *Proceedings of the 17th International RAIS Conference on Social Sciences and Humanities*, June 1-2, 2020, pp. 90-98. Washington, DC, USA.
- Ionescu, Alin. 2020. "CJSU Prahova contradicts the prefect and declares metropolitan areas around Ploieşti and Câmpina / Prefectures from Prahova and Satu Mare: We do not have metropolitan areas in the county and we need a declaration on our own responsibility when leaving the locality." *G4Media*, May 19. <https://www.g4media.ro/prefectii-din-prahova-si-satu-mare-nu-avem-zone-metropolitane-in-judet-si-e-nevoie-de-declaratie-pe-proprie-raspundere-la-iesirea-din-localitate-la-zalau-in-schimb-exista-zona-metropolitana.html>.
- Jighira, Liliana. 2020. "Non-COVID patients, collateral victims of coronavirus." *Transilvania Express*, June 19. <https://www.mytex.ro/stiri/828-coronavirus/618759-brasov-bolnavii-non-covid-victime-colaterale-ale-coronavirusului.html>.
- Ministry of Internal Affairs. 2020. "Material Q&A - Alert status." <https://www.mai.gov.ro/material-qa-stare-de-alerta>, accessed 13 January 2021.
- Oprea, Adriana. 2020. "Alerting and rumbling: how the rules on fines remained unclear." *Libertatea*, May 12. <https://www.libertatea.ro/opinii/starea-de-alerta-si-starea-de-brambureala-cum-au-ramas-neclare-regulile-legate-de-amenzi-3004730>.
- Şchiopu, Silviu-Dorin. 2020a. "On the (Im)possibility of Retaining the Criminal Offence of Thwarting Disease Control in the Case of Persons Infected With SARS-CoV-2 Who Refused Hospitalization During the State of Emergency." *Law Review* no. 11, pp. 132-149.
- Şchiopu, Silviu-Dorin. 2020b. "A Critical Look at the Obligation of Open-Air Catering Establishments to Keep a Record of Customer Reservations During the State of Alert." *Romanian Journal for the Protection and Security of Personal Data* no. 3, pp. 14-23.
- The National Center for Railway Qualification and Training (CENAFER) System Procedure for Preventing and Combating the Spread of SARS CoV 2 virus, accessed 13 January 2021, [https://drive.google.com/file/d/11b6BXiRLj-ge\\_-4oIX3l8AqQGtORHJl/view](https://drive.google.com/file/d/11b6BXiRLj-ge_-4oIX3l8AqQGtORHJl/view).

# Self-Representation on Social Media During Lockdowns in the First and Second COVID-19 Pandemic Waves

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**ABSTRACT:** Social media is a diverse and dynamically evolving online space that consists of multiple platforms. These social media platforms have become part of the daily lives of many and have grown into important venues of interaction. The ability to cross geographical and cultural borders and the interchangeable roles of sender and recipient (as opposed to conventional mass communications patterns) are two essential features of social media. This pilot study intends to provide an overview of changes that have occurred in self-representation on social media and their possible connection to mental health among Hungarian users using an online questionnaire conducted during two lockdowns in the first and second waves of the COVID-19 pandemic. The results of this two-step survey indicate that the use of social media and self-representation in social media posts increased during the lockdown periods, with selfies being the most popular type of content shared. In addition, signs of major depression were more prevalent among social media users who shared photos or videos of themselves or their close relations at least once a day on Messenger, the platform on which willingness to share this type of content increased the most during the lockdowns.

**KEYWORDS:** COVID-19, self-representation, social media, sociology, social psychology

## Introduction

Social media has become an indispensable part of the daily lives of many over the past 15 years. Its numerous definitions are well known, though they may essentially be summarized as follows: “social media employ mobile and web-based technologies to create highly interactive platforms via which individuals and communities share, co-create, discuss, and modify user-generated content” (Kietzmann, Hermkens, McCarthy, and Silvestre 2011). Social media can be used to cross geographical and cultural borders and is characterized by the interchangeable roles of the sender and the recipient. This pilot study intends to provide an overview of the changes that have occurred in self-representation on social media—specifically on social networking sites (Facebook, Instagram, LinkedIn, Twitter, Pinterest, and YouTube) and on social messaging platforms (Messenger, Viber, WhatsApp, and Snapchat)—and their possible connection to mental health among Hungarian users using an online questionnaire conducted during two lockdown periods in the first and second waves of the COVID-19 pandemic.

Coronavirus disease 2019 (COVID-19) is an illness caused by a novel coronavirus now known as severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2; formerly known as 2019-nCoV), which was first identified as an outbreak of respiratory illness in Wuhan, China (Cennimo 2020). According to the Centers for Disease Control and Prevention, “COVID-19 is thought to spread mainly through close contact from person to person, including between people who are physically near each other (within about 6 feet)” (CDC 2020). Because the virus is highly infectious, spreads very easily, and is particularly harmful to those with compromised immune systems, curfew restrictions, lockdowns, quarantining, and physical distancing have been proposed and implemented in many regions of the world as a precaution against the spread of the epidemic (Sanche et al. 2020).

In Hungary, in response to the first wave of the pandemic, an epidemiological emergency was declared on March 11, 2020 (Hungarian Official Gazette 2020/39), followed by a lockdown

on March 28 that initially lasted just two weeks. However, the government extended this lockdown indefinitely on April 9, easing it gradually to May 4. Restrictions in the first wave of COVID-19 included border closings; closure of educational institutions, leisure facilities, restaurants, cafés, bars, clubs, and some private industry service providers; bans on gatherings, events, and visits to health care and social care institutions; and obligation to wear masks in certain closed spaces such as public transportation, shops, and shopping malls. After a summer of only some light restrictions (e.g., obligation to wear masks in certain closed spaces) and a growing number of cases in the fall season, a state of emergency went into effect again on November 4 in response to the second wave of the pandemic (Hungarian Official Gazette 2020/237). On November 5, a partial curfew went into effect, requiring everyone to stay indoors from 8 p.m. to 5 a.m. Face masks were made mandatory not only in closed spaces but in all public spaces in municipalities with over 10,000 inhabitants as well. These restrictions are still in effect at the time of writing this, the beginning of January 2021. The COVID-19 pandemic is associated with mental and emotional burdens such as uncertainty about the future, fears of infection, resource shortages, public health measures that limit personal freedoms in unprecedented ways, material losses, and contradictory messages from the media (Pfefferbaum and North 2020). Researchers have found striking increases in rates of depression, anxiety, and comorbidities between the two among frequent users of social media throughout the COVID-19 pandemic (Gao et al. 2020). However, frequent social media use has been connected to heightened risks of depression before the pandemic as well (Lin et al. 2016). The three hypotheses of the current pilot study are the following: (1) time spent on social media and (2) willingness to share self-representative content have both increased again during the second wave of the pandemic and are associated with (3) higher rates of depression among the most active sharers, similarly to the first wave (Sándor 2020).

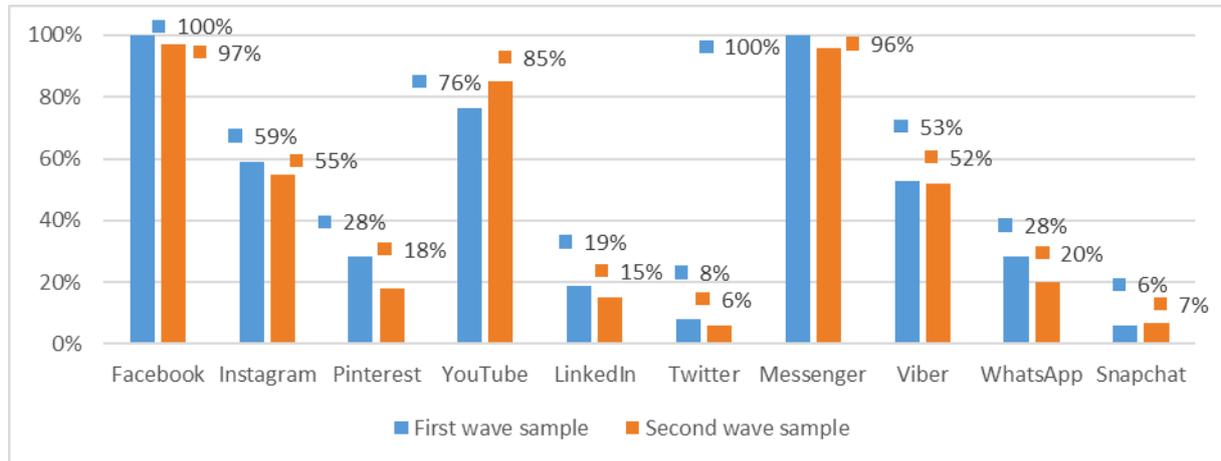
## Results and discussions

To provide an overview of the changes in self-representation on social media and their potential connection to mental health difficulties among Hungarian users during the first- and second-wave pandemic lockdowns, an online questionnaire was shared via Facebook and Instagram. The two-step survey included the same questions over two separate data collection periods, with only time-related modifications in the questions where needed. The purpose of the 20-question questionnaire is to assess participants' basic demographic traits (gender, age, type of settlement, and level of education) and social media usage (which social media platforms they use, what types of content they post, where they post from, and how often) in addition to apprehending their current mental health states using the Patient Health Questionnaire-2 (PHQ-2). Two open-ended questions were also included to record participants' thoughts on social media and the sharing of selves and others during the lockdown period.

The first round of anonymous data collection took place between April 22 and May 11 during the restrictions of the first wave of the pandemic. 170 social media users completed the questionnaire, in which the social media usage-related questions primarily concerned the first and pre-lockdown periods. The second questionnaire was released during the second-wave lockdown on November 20. Answers were accepted until December 2 and concerned the current period as well as the time between the two waves of the pandemic. Due to the mostly unpredictable nature of the pandemic and duration of the preventive restrictions (a second wave, its timing, and its severity were unforeseeable during the first data collection period), the situation required the quickest and most efficient data collection possible. Additionally, two samples of convenience cannot be identical. To make the two samples comparable, the second was adjusted to match the first; 100 sets of answers were selected from 119 participants of the second questionnaire in order to make it match the first sample in terms of gender and age groups with less than 0.5% difference (both samples consisted of 79% women and 21% men, and in both samples, 2% of the participants were 13–19 years old, 34% were 20–29 years old, 31% were 30–39 years old, 16%

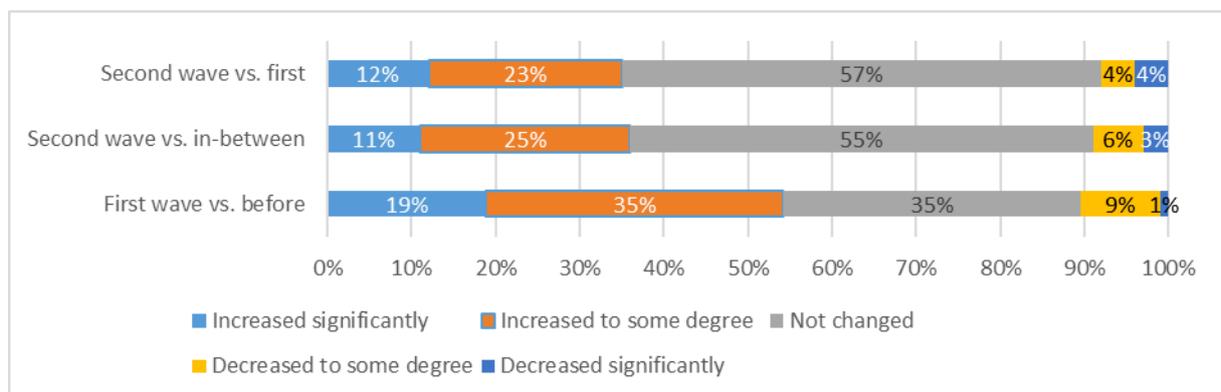
were 40–49 years old, 13% were 50–59 years old, and 4% were 60–69 years old). Facebook and Messenger were the most frequently used platforms among the participants (100% and 100% in the first wave sample, 97% and 96% in the second wave sample). Other social media platforms used included YouTube (76% and 85%), Instagram (59% and 55%), Viber (53% and 52%), WhatsApp (28% and 20%), Pinterest (28% and 18%), LinkedIn (19% and 15%), Twitter (8 and 6%), and Snapchat (6% and 7%) [Figure 1].

Figure 1. Usage of social media platforms by participants



In response to the question “How has your total time spent using social media changed?”, the largest increases were visible during the first wave; 54% of participants reported that they spent more time on social media during lockdown than before the pandemic. This increased even further for more than a third of the participants during the second wave. However, the second wave brought about smaller changes than the first wave in terms of overall perceived own social media usage [Figure 2]. “I spent more time online in the spring [during the first wave] than I do now, but overall, I spend more time online than I did before the coronavirus,” wrote one of the participants at the time of the second lockdown.

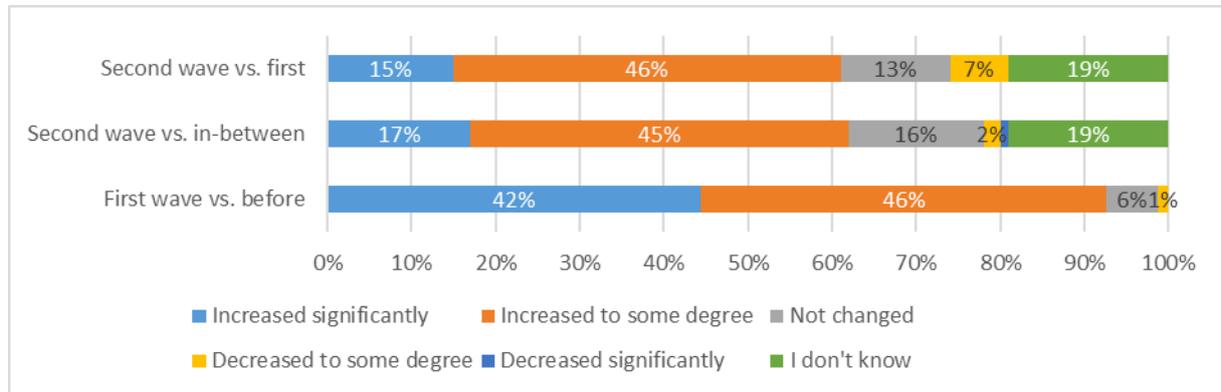
Figure 2. Overall perceived own social media usage time



The results show a considerable difference between the participants’ perceived changes in their own social media usage and their impressions of these changes in others. They tended to assume greater changes in the behaviors of others and larger increases in the social media usage times of others than their own [Figure 3]. “I think anyone who is at home uses these apps more,” pointed out one of the respondents. Another wrote, “my screen time has increased significantly, clearly showing that I use more social media. I use it mostly to keep in touch with my friends.” Job-

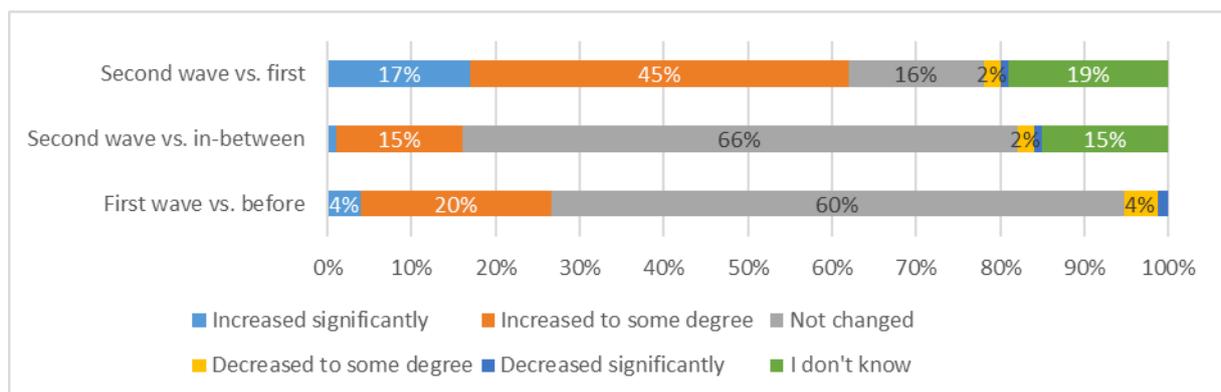
related social media usage was also mentioned, as someone stated, “I use it more at work because I teach online.”

Figure 3. Overall perceived social media usage times of others



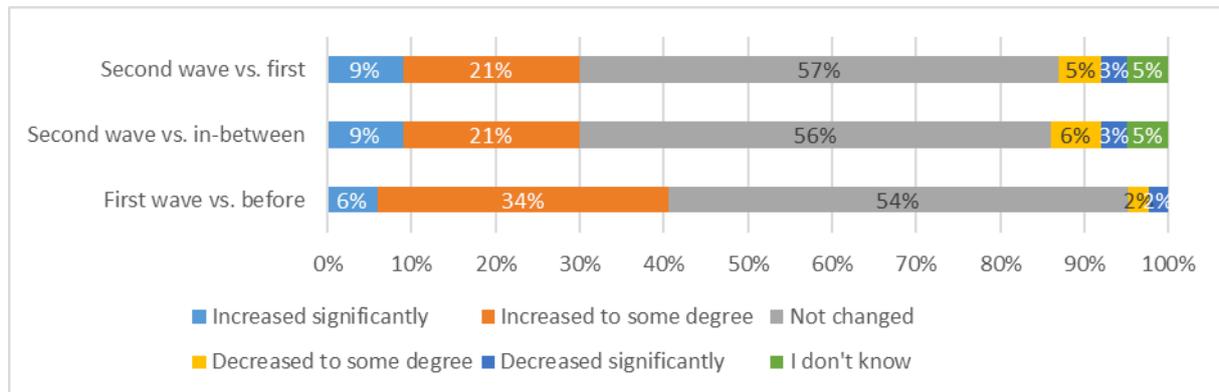
Regarding changes in the number of reactions (likes, other one-button reactions, or comments) received on photos and videos published on social media, participants perceived a more substantial increase during the second wave compared to the first than during the first wave compared to the pre-pandemic period. Almost two-thirds of participants (62%) believed that they received more reactions in the second lockdown than in the first, while less than one quarter (24%) reported the same amount of engagement in the first lockdown compared to before [Figure 4]. “Since people in my age group [20-29] have more time (due to online learning, e.g. my daily train travel time is freed up, which is 4 hours a day) I think they spend more time on staged images,” pointed out one of the respondents during the second wave. Another said, “I think people, in general, use them more than the time before new restrictions. In general, we don’t have that much activity... just social media.”

Figure 4. Overall perceived amount of reactions received



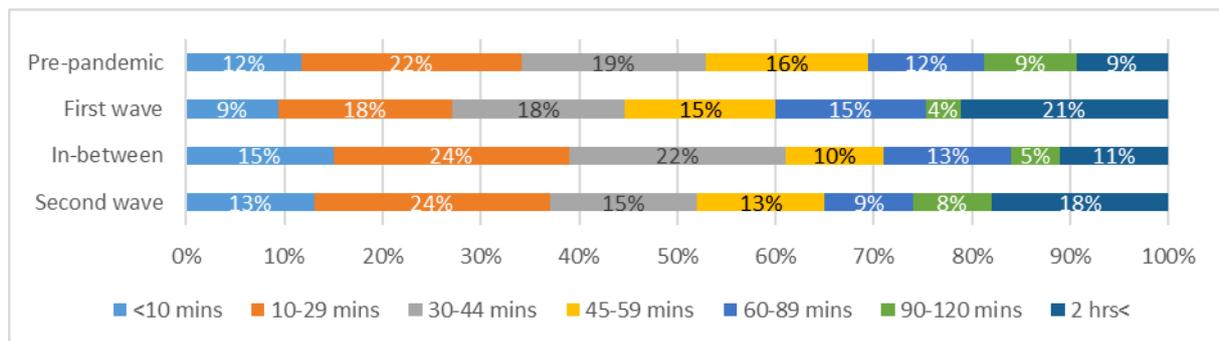
Interestingly, more respondents (40%) felt that their reactions to others’ social media content increased more during the first lockdown compared to the pre-pandemic period than during the second wave compared to the first or to the months between the two waves (30% to 30%) [Figure 5]. “More comments, rougher debates in the comment sections,” stated one of the respondents regarding the reactions.

Figure 5. Overall perceived amount of reactions given



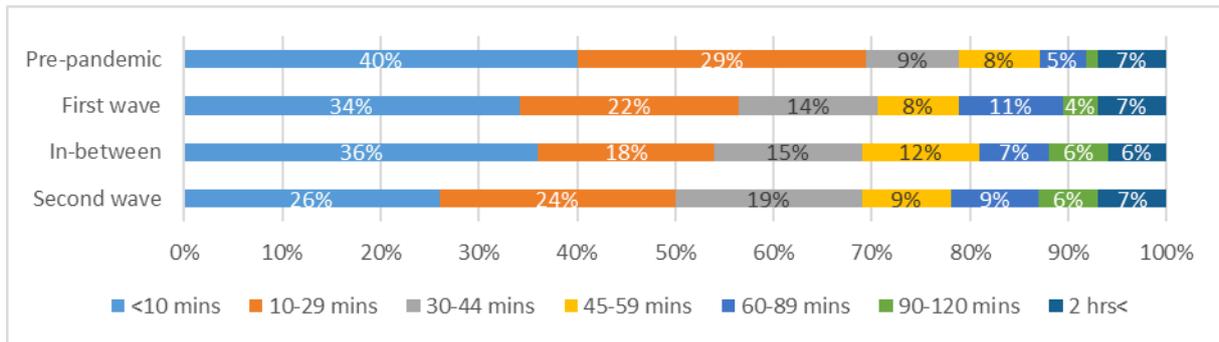
According to the data obtained using matrix questions (multiple-choice grids with time intervals in the columns and social media platforms in the rows), daily time spent on social media grew dramatically among participants during the COVID-19 pandemic. Participants responded to these questions twice in both questionnaires: in the first to record their social media usage times before and during the first lockdown, and in the second to assess their social media usage times before and during the second lockdown. Among all examined platforms, the use of Facebook showed the most prominent changes: during the first lockdown, the most popular answer was “more than 2 hours” (21%), while the proportion of those who reported using Facebook the most decreased by almost half (11%) between the first and second waves of the pandemic, only to increase again significantly during the second wave (18%) [Figure 6]. “I pay more attention to the pictures of others after 8 p.m.,” revealed one of the respondents in response to the second wave questionnaire, at the time of the eight-to-five curfew.

Figure 6. Time spent on Facebook per day before, during, and between the lockdowns



The proportion of those who spent more than half an hour a day on YouTube also increased considerably during the first lockdown (from 31% to 44%), and this growth continued even further between the first and second waves of the COVID-19 pandemic (46%) as well as into the second lockdown (50%) [Figure 7].

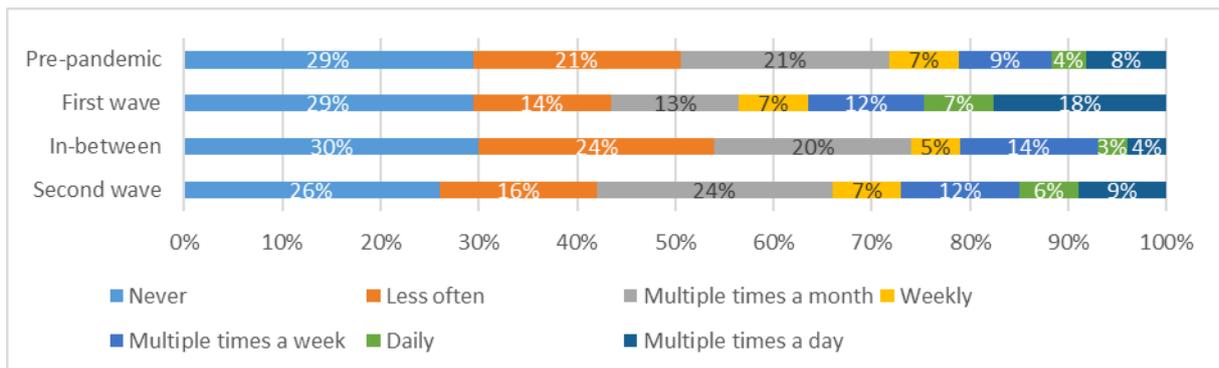
Figure 7. Time spent on YouTube per day before, during, and between the lockdowns



Participants were asked about the frequency at which they shared pictures or videos of themselves and close relations before, between, and during the lockdowns to assess shifts in the intensity of self-representation on social media. Changes were more noticeable on social messaging platforms (Messenger, Viber, WhatsApp, and Snapchat) compared to social networking sites (Facebook, Instagram, LinkedIn, Twitter, Pinterest, and YouTube), according to the collected data. “Much more selfie[s] (in makeup or face mask), and more people became a self-styled chef or confectioner,” said one of the respondents during the second wave. As another pointed out, “more people began to produce and share pictures, videos, and memes about the quarantine.”

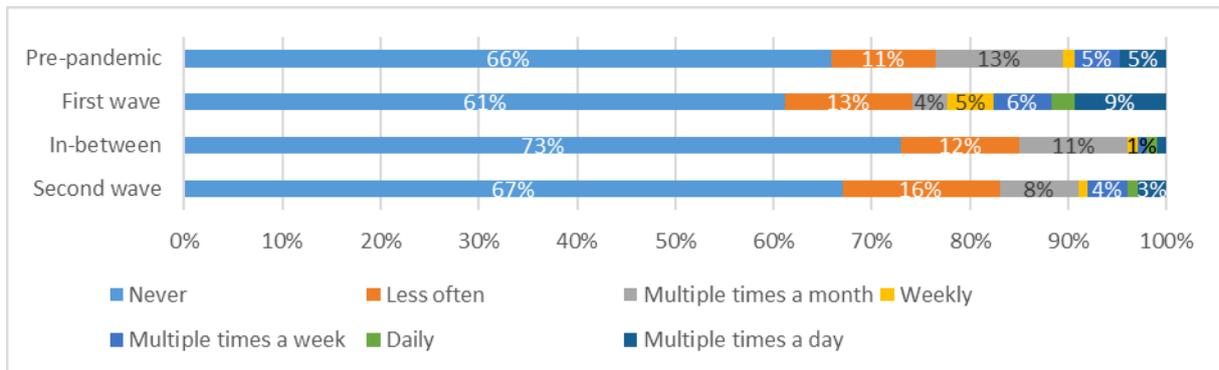
The most noticeable changes were observed on Messenger, where, during the first wave, 18% of respondents shared photos and videos of themselves or people closely related to them “multiple times a day” during the lockdown, while only 8% did so before lockdown, 4% did so between the lockdowns, and 9% did so during the second wave. “Daily” sharing of this type of content also increased from 4% to 7% during the first wave but dropped to 3% during the in-between period, only to increase again to 6% during the second lockdown [Figure 8].

Figure 8. Frequency of photo and video posts of self and close relations on Messenger before, during, and between the lockdowns



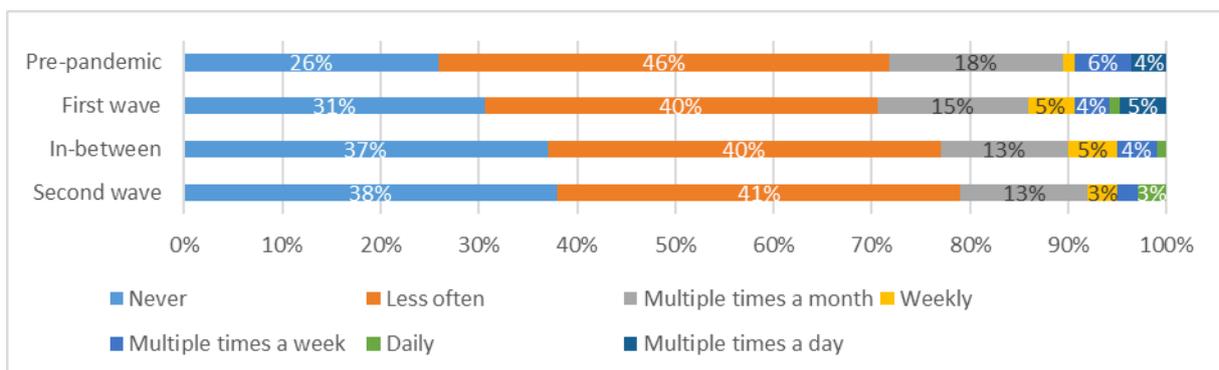
On Viber, the second-most commonly used social messaging platform among the participants, sharing self-representative photos and videos “multiple times a day” became twice as frequent during the first wave of the COVID-19 pandemic (increasing from 5% to 9%), but this rate decreased considerably before and during the second wave (to 1% and 3%). [Figure 9].

Figure 9. Frequency of photo and video posts of self and close relations on Viber before, during, and between the lockdowns



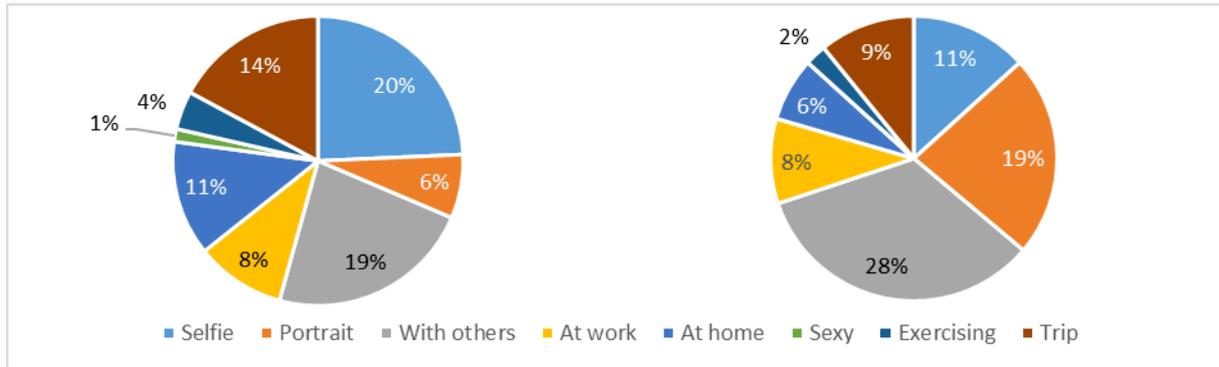
On Facebook, which is currently the most popular social networking site in the world (Clement 2020), the sharing of photos and videos of oneself and close relations at least once a day increased from the pre-pandemic period into the first wave from 4% to 6%, then dropped to 1% between the waves and increased to 3% during the second wave. Throughout this entire length of time, the most frequent answer to how often participants self-share on Facebook always remained “less often than multiple times a month” [Figure 10].

Figure 10. Frequency of photo and video posts of self and close relations on Facebook before, during, and between the lockdowns



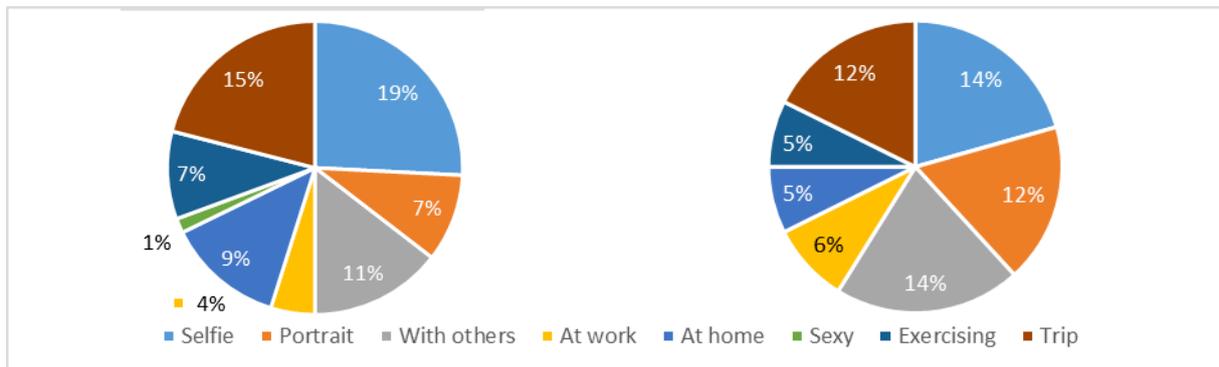
Concerning the type of self-related photos or videos shared during the first COVID-19 pandemic lockdown, “selfies” were the most popular among the participants on all examined social media platforms (Facebook, Instagram, Pinterest, YouTube, LinkedIn, Twitter, Messenger, Viber, WhatsApp, and Snapchat). On the contrary, the popularity of selfies decreased by the time of the second lockdown (from 20% to 11%), giving the first-place position to the former second-place content type, photos and videos “with others” (increased from 19% to 29%) [Figure 11]. This might suggest that memories from the in-between period were shared later during the second-wave lockdown or that participants had fewer concerns about personal interaction. “I see so many throwback photos,” confirmed one of the respondents. Another wrote, “there is a greater desire [in others] to show themselves and how they spend their time at home.”

Figure 11. Types of self-related photos or videos shared on Facebook during the first (left) and second (right) lockdowns



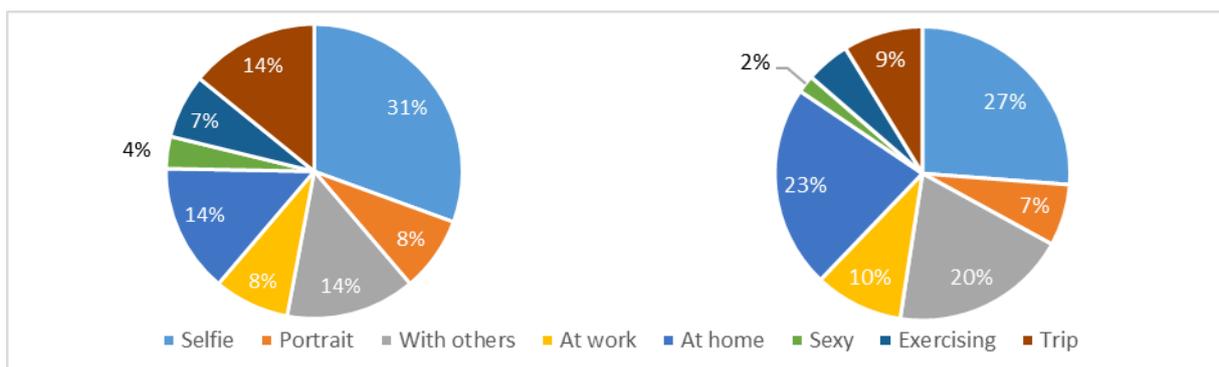
On Instagram, also one of the most popular social networking sites in the world (Clement 2020), the same tendency could be observed, with “selfies” (decreasing in popularity from 19% to 14%) sharing prevalence with photos and videos taken “with others” (increasing in popularity from 11% to 14%) during the second lockdown [Figure 12]. “Many people post more, and even those who had done so infrequently have started to post selfies or photos at home (e.g., of pets) more often,” declared one of the respondents during the second wave.

Figure 12. Types of self-related photos or videos shared on Instagram during the first (left) and second (right) lockdowns



On more private social messaging platforms such as Messenger, where content is usually not intended to be shared publicly, ratios of “sexy” photos and videos shared were also measured (4% and 2% during the two lockdowns) [Figure 13].

Figure 13. Types of self-related photos or videos shared on Messenger during the first (left) and second (right) lockdowns



The questionnaire included the Patient Health Questionnaire-2 (PHQ-2) to evaluate the mental health statuses of participants. The PHQ-2 consists of two items under the same question: “Over the last 2 weeks, how often have you been bothered by the following problems?” These items are “little interest or pleasure in doing things” and “feeling down, depressed, or hopeless,” while the options are “not at all” (0 points), “several days” (1 point), “more than half the days” (2 points), and “nearly every day” (3 points). Final PHQ-2 scores may range from 0 to 6, and scores of 3 points or more suggest the possibility of major depressive disorder and the need for further examination. According to the results of the PHQ-2, more respondents were bothered by the aforementioned problems during the second wave lockdown than during the first [Figure 14-15].

Figure 14. PHQ-2: Answers to “Little interest or pleasure in doing things” during the first (left) and second (right) lockdowns

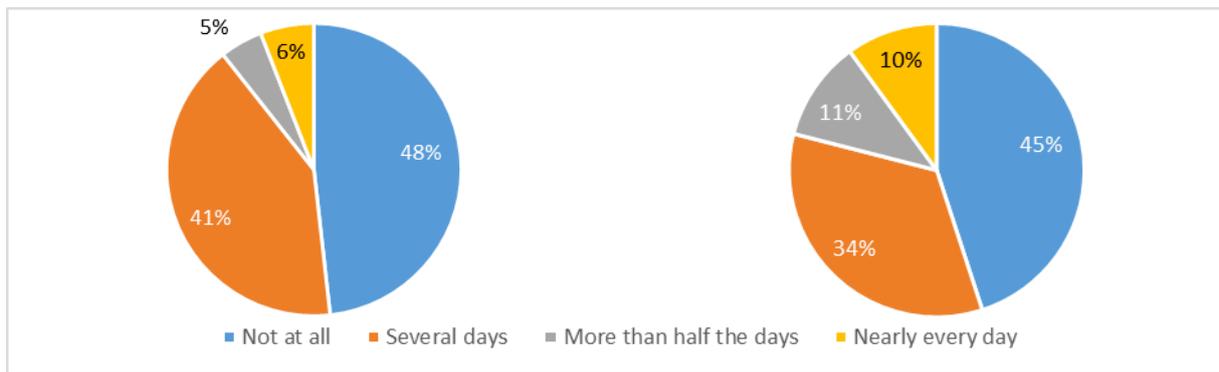
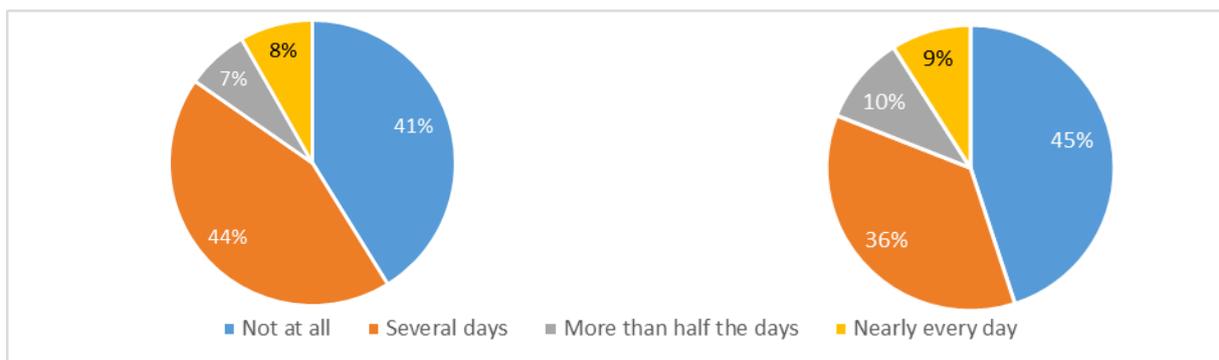


Figure 15. PHQ-2: Answers to “Feeling down, depressed, or hopeless” during the first (left) and second (right) lockdowns



Based on the final PHQ-2 scores of participants, the proportion of those who are likely to have major depression increased significantly (from 16% to 25%) from the first COVID-19 pandemic lockdown to the second [Figure 16]. On the other hand, considerably more participants were found to be at risk among those who shared photos of themselves or their close relations “multiple times a day” or “daily” on Messenger, the platform where the frequency of photo-sharing increased the most during the outbreak, compared to those who did not [Figure 17].

Figure 16. Overall proportions of those who are likely to have major depression

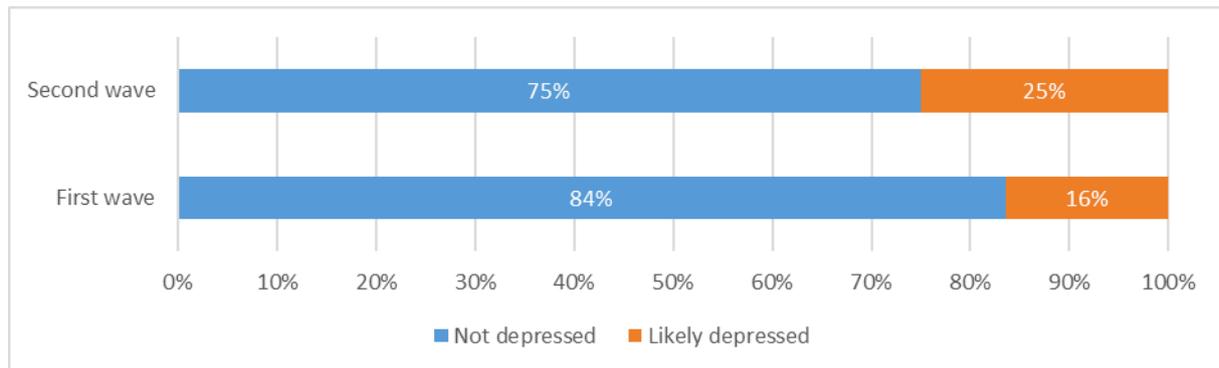
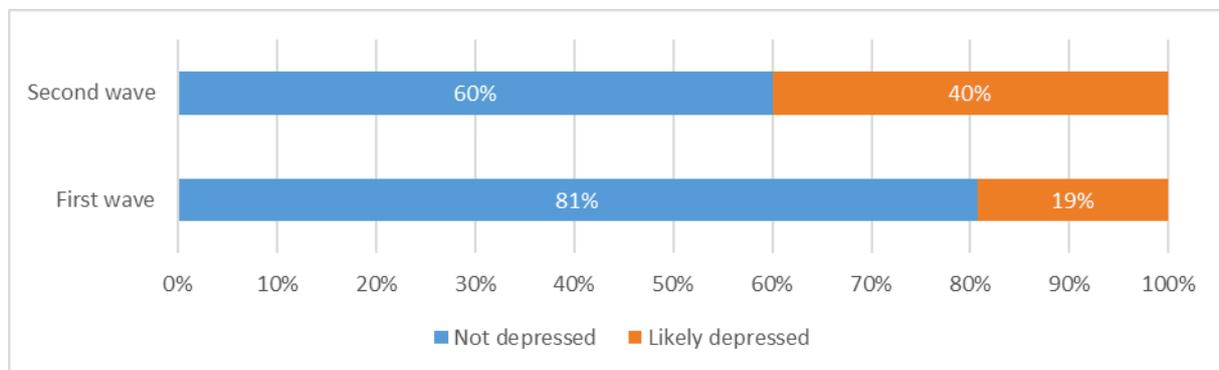


Figure 17. Proportions of those who are likely to have major depression among those who share photos or videos of themselves or close relations on Messenger at least once a day



## Conclusions

The results of the current pilot study confirmed all three hypotheses: (1) time spent on social media and (2) willingness to share self-representative content increased again during the second wave, with (3) the most active sharers of this content, according to their PHQ-2 scores, experiencing higher risks of depression, similarly to the first wave (Sándor 2020). However, while time spent on social media use and willingness to share photos or videos of oneself and close relations (including pets) did not increase as much from the period in between lockdowns to the second wave as it did from the pre-pandemic period to the first wave, the overall proportion of those who are likely to have major depression was higher in the sample taken during the second wave than the sample taken during the first, and the proportion of those who are likely to have major depression among those who share photos or videos of themselves or close relations on Messenger at least once a day more than doubled. Despite the relatively small sample size and the experimental nature of this research, it undoubtedly contributes significantly to the mental health contexts surrounding social media use and self-representation as well as the study of the relationships between these factors and real-life events such as pandemics and lockdowns.

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## References

- Cennimo, David J. 2020. "What is COVID-19?" *Medscape*. Last modified December 30, 2020. <https://www.medscape.com/answers/2500114-197401/what-is-covid-19>.
- Centers for Disease Control and Prevention (CDC). 2020. "Ways COVID-19 Spreads." Last modified October 28. <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.
- Clement, Jessica. 2020. "Global Social Networks Ranked by Number of Users 2020." November 24, 2020. <https://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/>.
- Gao, Junling, Pinpin Zheng, Yingnan Jia, Hao Chen, Yimeng Mao, Suhong Chen, Yi Wang, Hua Fu, and Junming Dai. 2020. "Mental Health Problems and Social Media Exposure during COVID-19 Outbreak." *PLoS ONE* 15 (4): e0231924. <https://doi.org/10.1371/journal.pone.0231924>.
- Government of Hungary. "Government Decree 40/2020 (III. 11.) on the declaration of state of danger" (A Kormány 40/2020. (III. 11.) Korm. rendelete veszélyhelyzet kihirdetéséről). *Hungarian Official Gazette (Magyar Közlöny)* 2020/39, March 11, 2020. <https://magyarkozlony.hu/dokumentumok/6ddbac40c788cb35b5bd5a5be4bb31294b59f9fc/megtekintes>.
- Government of Hungary. "Government Decree 478/2020 (XI. 3.) on the declaration of state of danger" (A Kormány 478/2020. (XI. 3.) Korm. rendelete a veszélyhelyzet kihirdetéséről). *Hungarian Official Gazette (Magyar Közlöny)* 2020/237, November 3, 2020. <https://magyarkozlony.hu/dokumentumok/8cbd291e418e353982f0af40c3a77d83c5d62fd4/megtekintes>.
- Kietzmann, Jan H., Kristopher Hermkens, Ian P. McCarthy, and Bruno S. Silvestre. 2011. "Social Media? Get Serious! Understanding the Functional Building Blocks of Social Media." *Business Horizons* 54: 241–251. DOI: 10.106/j.bushor.2011.01.005.
- Lin, Liu yi, Jaime E. Sidani, Ariel Shensa, Ana Radovic, Elizabeth Miller, Jason B. Colditz, Beth L. Hoffman, Leila M. Giles, and Brian A. Primack. 2016. "Association between Social Media Use and Depression among U.S. Young Adults." *Depression and Anxiety* 33 (4): 323–331. <https://doi.org/10.1002/da.22466>.
- Pfefferbaum, Betty and Carol S. North. 2020. "Mental Health and the COVID-19 Pandemic." *New England Journal of Medicine*. Accessed June 5, 2020. <https://www.nejm.org/doi/full/10.1056/NEJMp2008017>.
- Sanche, Steven, Yen Ting Lin, Chonggang Xu, Ethan Romero-Severson, Nick Hengartner, and Ruian Ke. 2020. "High Contagiousness and Rapid Spread of Severe Acute Respiratory Syndrome Coronavirus 2." *Emerging Infectious Diseases* 26 (7): 1470–1477. DOI: 10.3201/eid2607.200282.
- Sándor, Alexandra Valéria. 2020. "Self-Representation in Social Media During the COVID-19 Pandemic Lockdown." *European Journal of Social Sciences* 3 (2): 113–126. DOI: 10.26417/ejss.v3i2.p113-126.

# Are Neoliberalism Policies Undermining Free and Democratic Societies?

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**ABSTRACT:** Neoliberalism is a term that has attracted a remarkable degree of frustration and fury within the academia. Its political ideology is associated with Wall Street greed, union-busting, deregulation, wage theft, privatization and exploitation. Critics claim it has been used as a weapon of the wealthy class to mask their true intentions. It removes decision-making out of popular hands and places decisions in the hands of unelected International Organizations, undoing democracy. The extreme inequalities and empowerment of capital that neoliberalism brings about, reduces human beings into market actors undermining the power and needs of the people. The main conclusion of the paper is that neoliberalism policies are a radicalizing threat to human potential and democracies in the 21<sup>st</sup> century.

**KEYWORDS:** neoliberalism, neoliberalism policies, democracy, democratic societies, international organizations, World Bank, IMF, Structural Adjustment Programmes

## Introduction

Neo-liberalism parallels the 19<sup>th</sup> and 20<sup>th</sup> Century liberal political policies that, at that time, centered upon privatization of industry, austerity, deregulation and reductions in government spending. However, because it is a parallel to ideological liberalism and not liberal practices, the philosophy of neo-liberalism is paradoxical in its application. For neo-liberalism ideology to claim it holds liberal ideology as its dogma is a hypocrisy. “Success of neoliberal political strategies rests on a mixture of rhetoric, force and control of the major local and global institutions” (Afouxenidis 2016). Wealth and power determine who is cast off, and individuals and industries persist in the wake of repeated bank failures and bailouts, off-shoring of private wealth, and our permissive campaign finance system, which allows a small number of wealthy donors to set the agendas in Washington and state capitols across the country, determining who runs for office long before voters have their say at the polls. The billions of dollars spent on lobbying, reward the “public servants” who tilt the playing field in their favor. The financial sector is the polluting force that underlines everything. It eliminates the concept of “public good” because the principles of fiduciary duty mean clients take precedence over public needs. Neoliberalism has brought about the rise of an anti-corporatist movement, which asserts that the influence of corporations goes against the advancement of society and democracy.

Democracy deals with the idea of creating a society that allows for all citizens to remain equal through rights and freedom. It provides the fantasy structure that tries to keep neoliberalism in place. Although democracy is associated with higher human capital accumulation, lower inflation, lower political instability, and higher economic freedom, it does not supplant greed and competition, in fact, it encourages it. The competition and inequality it generates encourages people to get off on hierarchy and assert superiority on others. When selfishness turns to greed and seeks pleasure at the expense of others, citizens are reduced to their economic value and activity, they become pieces of human capital whose only purpose in life is to respond to market demands. The great linguist and political critic Noam Chomsky criticizes the issues associated with neo-liberalism in his book “Profit over People” stating: “Neoliberal democracy. Instead of citizens, it produces consumers. Instead of communities, it produces shopping malls. The net result is an atomized society of disengaged individuals who feel demoralized and socially powerless. In sum, neoliberalism is the

immediate and foremost enemy of genuine participatory democracy, not just in the United States but across the planet, and will be for the foreseeable future” (Chomsky 2011, 11).

Since the collapse of the Soviet Union, the Washington Consensus has imposed the regime of neoliberalism through the instruments of international agencies such as the World Bank and the IMF. Decision-making has ever since been removed out of popular hands and placed in the hands of these unelected International Organizations. The attempt at any other different type of social order has been squashed, even after austerity measures imposed by these institutions have failed repeatedly, stalling economic development of bailed-out countries. With no infrastructure to start developing new ideas and patterns, these countries pose no threat to the long-dominant ideology. The lure of the neoliberalism free market prevails and is unquestionably used as a function of the wealthy class. The lower class individuals, on the other hand, are the ones who suffer from the neoliberalism free market outcomes. Upper-class states like the United States are not susceptible to any of this, because they have their support of vassal states, their arms with NATO, and the IMF to support its economic worldview, which leads to their territorial and political control of other states. A whole empire has been built on economic coercion. While military bases are still powerful and functional, it is the economic power yielded in the ideology of neoliberalism that has been the true driving force of control. The fear of communism and fear of losing this effective capitalist agenda have brought in the idea that if we don't enforce neoliberalism across the world we will lose our seat of control.

Competition is seen by neoliberalism as an inevitable feature of human relations. This ideology pervades our society and distorts our thinking hindering the practice of social solidarity and popular engagement in determining policy (Lydon 2017). The principle of corporate limited liability spares those who control the corporation from the legal or direct economic consequences of their actions. “The idea of freedom from trade unions and collective bargaining means the freedom to suppress wages. Freedom from regulation means the freedom to poison rivers, endanger workers, charge iniquitous rates of interest and design exotic financial instruments. Freedom from tax means freedom from the distribution of wealth that lifts people out of poverty” (Monbiot 2016). Freedom means subordination to the decision of concentrated unaccountable power, and many economic and social insecurities are produced by it; people are foreclosed on due to tightened personal bankruptcy laws while others are forced to study or live on credit... Our presumed freedom is tied to one central condition: we must be successful, that is, make something of ourselves. Our society reinforces privilege and puts increasing pressure on its overstretched and exhausted citizens. This falsehood of “free choice” demotivates and depoliticizes. In such a world, depression, anxiety, narcissism are entirely logical responses. The rich claim they acquired their wealth through merit, ignoring the advantages, such as education, inheritance and class that may have helped to secure it while the poor blame themselves for their failures. Even a highly skilled individual who puts parenting before their career comes in for criticism. Neoliberalism places too much stress on measurable various like real GDP per capita and ignores the wider more intangible factors affecting the quality of life. Wages, for example, have failed to keep up with the rising cost of living. “American households have the highest credit card debt load in the world (over \$6,000 on average, but over \$16,000 on average among those that have credit card debt), which is perhaps not surprising given that over half of Americans live paycheck to paycheck, with an estimated 62 percent lacking liquid funds sufficient to cover a \$1,000 emergency expenditure” (Ciepley 2018). As corporate tax rates are cut, so are public expenditures on social services like education and healthcare. Neoliberalism imposes the logic of scarcity on the economy of abundance increasing inequality, coercion, and mediocrity in the corporation. Businesses are not trying to improve on human need, they are trying to improve on something to sell. They don't wish upon abundance because that would make them obsolete. The pollution of the water supply, for instance, is great for water bottle companies. We were taught to reward scarcity and we can't have preservation, sustainability and efficiency in a society that rewards the opposite.

## Analysis

In order to effectively explore the issues surrounding the impact neoliberalism has had on democracy, relevant literature has been collected. The effect of the World Bank and IMF lending on democratization has only been examined in a few academic studies, perhaps because of the politically neutral appearance cherished by these institutions. Given the variety of conditionalities on lending instruments, some variation in whether they pave or undermine the path to democratization are expected. The conditions associated with the stabilization programs and Structure Structural Adjustment Programmes (SAPs) include privatizing public assets, lifting import and export restrictions, reducing or eliminating subsidies, increasing regressive consumption taxes, currency devaluations, pension and social security reforms, labour market flexibilization reforms, cutting or capping the public sector wage bill and strengthening public-private partnership (PPPs). These conditions affect large parts of the population and are likely to cause social protest. “However, what seems to matter most is that the Fund’s capital infusions bail out political leaders under stress. Autocrats may thus use the money to cement their hold on power and blame the IMF for unpopular policies” (Birchler, Limpach, and Michaelowa 2016). In order to stay in power a lot of times, governments have to resort to coercive measures, and an unstable financial state that develops from civil unrest can contribute to worsening human rights (Bartilow and Ke 2011, 16).

On Doris A. Oberdabernig’s work “The Effects of Structural Adjustment Programs on Poverty and Income Distribution” he collects data from 1982-2004 for 94 countries in order to confirm the adverse effect of SAPs on income equality. What he concludes is that the “IMF programs tend to harm countries in terms of poverty levels and income distribution. Poverty rates are higher for countries *during* and especially *between* participation in IMF programs. Those poverty rates are not only higher in comparison to poverty rates of countries which *never* participated in an IMF agreement but also higher than poverty rates observed *before* the first participation in a Structural Adjustment Policy (SAP). *After* the last participation, poverty rates turn out to get lower again, even lower than they had been before the first participation. The same pattern emerges when it comes to income distribution” (Oberdabernig 2010, 6).

A great case against neoliberal economics happened after Greece fell victim to the global financial crisis of 2008. In 2010 under the bailout terms imposed by the EU and the IMF, the Greek “GDP dropped by 20 percent in the course of four years; unemployment reached as high as 27% and one of three Greeks ended up either near or below the poverty line” (Polychroniou 2015). Greek public health expenditure suffered a 24% decline due to the austerities imposed (Sparke 2017) and 2.5 million Greeks, a quarter of the population, were left without national state healthcare coverage. (Economou, Kaitelidou, Karanikolos, Maresso 2017, 132). The *education* system also suffered a series of cuts in public spending. Schools were left without heating, suicide rate rose alarmingly, and without *a* solution to the country's *debt crisis*, the well-educated youth were left with no choice but to emigrate in look for job opportunities (Polychroniou 2015).

Greeks had a lot to learn from Africa about the effects of austerity after a debt crisis. Throughout Africa, people’s lifestyles and livelihoods were fundamentally altered by the impact of SAPs after many countries were saddled with unsustainable debt in the 1980s and 1990s. Zimbabwe introduced its Economic Structural Adjustment Policy (ESAP) in January 1991. In a research conducted in April and May 1994 that covered 203 respondents residents, a large majority of them (87 percent) felt that ESAP had made things worse for the communal areas. They were particularly worried about increasing food prices and the increasing expense of farm inputs including seeds and farm equipment. Their concerns indicated that the basics were now a luxury. One of the major policy changes introduced under ESAP was the introduction of user fees for previously free welfare or huge rises in the prices charged. Even

primary schools now charge fees in urban areas and high increases in the cost of secondary school fees, uniforms, books, paper and exam fees, which has placed a heavy burden on parents. It is no longer possible to always send *all* the children in a family to school, some parents prefer to buy food. Transportation, electricity and rent prices also rose, forcing people to sell property and causing rural families to lose remittances from their urban kin. Both urban and rural people in Zimbabwe appear to have suffered many disadvantages from ESAP (Potts, Mutambirwa 1998, 65).

Comparatively, the Latin American debt crisis of the early 1980s, coupled with US-backed dictatorships and democracies, gave rise to a series of neoliberal and structural adjustment policies developed by the US and Latin America economists alike (Hartmann 2016, 2146). The Ecuadorian and Bolivian healthcare systems were radically changed after the World Bank mandates. Structural segmentation and fragmentation were caused by large cuts in the healthcare budget and the privatization of healthcare services, delivery and insurance (Hartmann 2016, 2146). “Because of the high costs of private healthcare, significant disparities in healthcare spending by sector were common: the Ecuadorian state spent less than one fourth as much on citizens with public insurance as it did for those covered by social security” (Hartmann 2016, 2146). Postneoliberal transformations are visible in Venezuela, Bolivia, Ecuador, Chile, Brazil, Argentina, Uruguay, Mexico, Nicaragua, Honduras, and El Salvador, although conceptualizations and implementation vary by context.

## Conclusion

It is quite difficult to find an answer to the question of whether SAPs have a positive or negative impact, as we cannot observe the outcomes which would have occurred in the absence of SAPs in affected countries. However, “the financial assistance from the Fund’s stabilization program is fungible because the conditions attached do not increase state actors’ awareness of the resource allocation process. On the contrary, the financial crisis in combination with deficit lending reduces the power of civil society vis-à-vis the state. In addition, the Fund primarily works with the finance ministry. Other parts of the executive or the parliament are involved only to a limited extent. Just as in the case of the World Bank’s investment projects, we therefore expect that the resource inflow associated with stabilization programs does not create conditions conducive to democratization. Overall, we thus expect a negative effect” (Birchler, Limpach, and Michaelowa 2016, 431).

Deficit lending requires a more inclusive and transparent political decision-making process. Society should be what rules, not big market or unelected organizations. It seems that the state under neoliberalism is a gradual retreat from the provision of public goods and social services. Neoliberalism does not concern itself with some widely touted values, such as universal equality, absolute fairness or unbreachable moral duty. It hampers the formation of a natural hierarchy of *winner*s and losers. Doing anything that hurts another human being, *becomes justifiable under the guise* that it is just the competitive nature of the world. We must move away from macroeconomic to save ecology and stability of our society in term of group relationships. Instead of worshipping class and status we must become more sustainability-focused. Peaceful coexistence is possible if our culture stops thriving on an overconsuming materialistic vain idealism. We can all live in a world which incentivizes people working together and sharing. A world where people get what they need and it becomes a social reality instead of a material, vindictive, status based reality. It does not mean that hierarchy would not exist in the future, natural hierarchy will always happen, but it will happen due to our respect for the talents of others and not because of their financial status. Hierarchies, essentially, can be good natural structures. The fact that someone is able to do things others can’t, ideally, should motivate our collaborative sense and the power of our society as a

civilization. Neoliberalism, however, tends to dismantle this collaborative power, hindering human potential and the fantasy of liberal democratic triumph.

## References

- Afouxenidis, A. 2016, December 16. "Neoliberalism and Democracy." *Political Inequality*. Retrieved from <https://politicalinequality.org/2016/12/16/neoliberalism-and-democracy/>.
- Bartilow, H., and Ke Y. 2011. Structural Adjustment Programs and Human Rights: The Counterintuitive Effect of Democracy.
- Birchler, K., Limpach S., Michaelowa K. 2016. "Aid Modalities Matter: The Impact of Different World Bank and IMF Programs on Democratization in Developing Countries." *International Studies Quarterly* 60(3): 427–439.
- Chomsky, N. 2011. *Profit Over People*. New York: Seven Stories Press.
- Ciepley, D. 2018, February 07. "The Corporate Contradictions of Neoliberalism." *American Affairs Journal*. Retrieved from <https://americanaffairsjournal.org/2017/05/corporate-contradictions-neoliberalism/>.
- Economou, C., Kaitelidou, D., Karanikolos, M., Maresso, A. 2017. "Greece: Health system review." *Health Systems in Transition* Vol. 19, No. 5. European Observatory on Health Systems and Policies. Retrieved from [https://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0006/373695/hit-greece-eng.pdf](https://www.euro.who.int/__data/assets/pdf_file/0006/373695/hit-greece-eng.pdf).
- Hartmann, C. 2016. "Postneoliberal Public Health Care Reforms: Neoliberalism, Social Medicine, and Persistent Health Inequalities in Latin America." *American Journal of Public Health* 106(12): 2145-2151. DOI:10.2105/ajph.2016.303470.
- Lydon, C. 2017, June 05. "Noam Chomsky: Neoliberalism Is Destroying Our Democracy." *The Nation*. Retrieved from <https://www.thenation.com/article/noam-chomsky-neoliberalism-destroying-democracy/>.
- Monbiot, G. 2016, April 15. "Neoliberalism – the ideology at the root of all our problems." *The Guardian*. Retrieved from <https://www.theguardian.com/books/2016/apr/15/neoliberalism-ideology-problem-george-monbiot>.
- Oberdabernig, D. 2010. "The Effects of Structural Adjustment Programs on Poverty and Income Distribution." *International Conference on Macroeconomic Analysis and International Finance (ICMAIF)*. Retrieved from: [https://icmaif.soc.uoc.gr/~icmaif/Year/2011/papers/paper\\_2\\_114.pdf](https://icmaif.soc.uoc.gr/~icmaif/Year/2011/papers/paper_2_114.pdf).
- Polychroniou, C. 2015. "Greece, Europe and the Neoliberal Nightmare: Is There a Way Out?" *Truthout*. Retrieved December 28, 2020, from <https://truthout.org/articles/greece-europe-and-the-neoliberal-nightmare-is-there-a-way-out/>.
- Potts, D., and Mutambirwa, C. 1998. "'Basics Are Now a Luxury': Perceptions of Structural Adjustment's Impact on Rural and Urban Areas in Zimbabwe." *Environment and Urbanization* 10(1): 55-76. DOI:10.1177/095624789801000118.
- Sparke, M. 2017. "Austerity and the embodiment of neoliberalism as ill-health: Towards a theory of biological sub-citizenship." *Social Science & Medicine* 187: 287-295. Retrieved from: <http://www.sciencedirect.com/science/article/pii/S0277953616307079>.

# Language Policies for Promoting Romanian in Europe

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**ABSTRACT:** Promoting Romanian language in the European area is a major objective of Romanian linguistic policies that embrace the EU directives. This can be achieved through activities that preserve the identity and also increase the visibility in Europe and internationalize Romanian language and culture. Any European project or activity extensively applied is based on linguistic diversity which is remarkable not only at a European level, but globally. This is because we are at a stage in which mobility and interaction define the individual and the contemporary social identity.

**KEYWORDS:** linguistic policies, Romanian language, European common area

This article captures the main aspects that occur in the policy of promoting Romanian language in the EU. Firstly, we need to refer to the responsible authorities within the EU for identifying and coordinating identity promoting projects in the context of a large multicultural community. Although the borders between the member states permit easy access, there are cultural, educational and linguistic barriers. As people migrated in the European common area, the circulation of goods and services increased. Subsequently, the mixing of different cultural and linguistic identities determined a new communication network dominated by this intercultural aspect (Simon 1995, 161-190).

The diversity aspect, caused by the input of different identities, caused the EU and the responsible organizations to launch a series of projects meant to build an *identity model* which promotes general values such as solidarity, tolerance (Rotaru 2019, 264-270), peace (Marin 2014, 209-213), economic and political stability (Marin and Botina 2013, 618-624), environmental awareness, people awareness through social policies. All these protect simultaneously the identity and diversity of European communities.

As a result, the Council of Europe and EU develop projects and actions with the purpose of overcoming language and cultural barriers, individually, as well as collectively. As early as 1992, the *European Convention* supported the appearance and development of communication competencies in a variety of regional and minority languages to protect the small communities that could be at risk of being crushed by the dominant languages, largely present and used worldwide (English, German, French, Spanish, etc). Maintaining the linguistic diversity was compared to the need of biodiversity, as it allows the European ecosystem to function naturally. In 1995, EU encouraged performance in three European languages, supporting European citizens to interact in a plurilingual Europe, also to recognize and accept each other's cultural identity. Any European project or activity extensively applied is based on linguistic diversity which is remarkable not only at a European level, but globally. This is because we are at a stage in which mobility and interaction define the individual and the contemporary social identity.

This social interaction dynamic is visible in all aspects of life, in any type of state or linguistic community. Undoubtedly, there is a constant element that generates and governs this social, economic and linguistic mobility and this is regulated by different documents, which ultimately follow the motto: "United in diversity". The respect for cultural and

linguistic diversity is mentioned in the beginning of the Treaty of European Union (OJ L 17, 6.10.1958, p. 385) (European Parliament 2021a).

The phrase *language policy* considers every aspect of all activities that begins with understanding language as fundamental to human communication. Legislative framework is the first and most important aspect for all types of activities at European level. This becomes accessible through translating the legislation and official documents in all European languages if they are relevant to each state. Otherwise, all documents are only available in English, French and German. The high cost of translating all documents justifies publishing these in a limited number of languages, often only in one language.

Another factor that influences translating documents or information on the European Commission's websites is the target-audience or the specialist fields where the information is needed for a limited time. Therefore, the general information is available in 24 European languages: Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish, as noticed on the European Parliament website (European Parliament 2021b).

A second aspect to be considered when actively integrating in the linguistic community is education. The linguistic policies in the EU are continuously disseminated in public and private education establishments across European countries. Currently, Romania is a committed partner in education, also on the labour market in Europe. Romania promotes Romanian language across Europe as a mother tongue that preserves identity and national values, also as a foreign language that enables people to access labour market and education in the Romanian territory.

The most important objectives that the EU set regarding linguistic policies are: respect for linguistic diversity, teaching and learning of foreign languages and mobility helped by educational formative programmes, insisting on lifelong learning. These objectives lead towards creating an intercultural dialogue which facilitates integration on labour market and offers opportunities for increasing the success rate in education. In this regard, EU collaborates continuously with all member states to protect minorities and implicitly promote historical, regional and minority languages across Europe, starting with *The European Charter for Regional or Minority Languages* adopted in 1992 by the Council of Europe.

In November 2017, during Gothenburg Summit, the Commission launched the vision to create a *European education area* by 2025. This proposal continues the "Creative Europe" idea from Erasmus and Erasmus+ programmes with activities on European language day and awarding distinctions such as *European Linguistic Certificate* and *Juvenes Translatores* which encourage learning and using foreign languages at the level of performance.

In 2019, Council of Europe introduced a recommendation for educational platforms, such as School Education gateway and eTwinning for efficiently teaching and learning foreign languages and adapted to the needs of a virtual learning space accessed by young people from Europe. In the context of a global pandemic, these platforms proved to be productive ensuring easy teaching, learning and assessing, without extra costs and time, with the positive impact of better management of personal resources by learners.

EU supported the research in the linguistic field. One of the priorities was observing the evolution of linguistic competencies of speakers in the European area. In 2005, Common European Framework for Languages (CEFR) [COM(2005)0356] offered a necessary tool for creating different materials for teaching, learning and assessing a foreign language.

Another priority of the linguistic policies was establishing linguistic research centres: *European Centre for Modern languages of the council of Europe (ECML)* and *The Mercator European Research Centre for Multilingualism and Language Learning*.

The centres have different priorities. ECML aims to elaborate a strategy meant to stimulate the linguistic acquisition through encouraging the intercultural dialogue, good practice exchange and various research projects. Mercator promotes cultural elements of regional and minority languages across Europe and making them accessible to every European Citizen.

European Masters in Translation (EMT) is another relevant network that includes 34 masters programmes across Europe. This "quality mark" can be gained through a masters programme in translation whose purpose is to qualify highly skilled translators.

In Romania the linguistic policies are promoted by the Ministry of Education and Research, the Ministry of Culture, the Ministry of External Affairs, the Romanian Language Institute, the Romanian Cultural Institute, the Institute of Romanian as a European Language, Eudoxiu Hurmuzachi Institute for the Diaspora and through universities. Each of these follows the EU directives and guidelines for education and research and collaborates to promote Romanian language in many countries in Europe, USA, Asia and Africa. The results are visible through fifty Romanian language, culture and civilization university departments across the world, also through Romanian language, culture and civilization courses at secondary schools and colleges for Romanian students studying in other European countries (Belgium, Italy, France, Ireland, Portugal, Spain and UK). Additionally, Romanian is promoted in the cultural institutions in Europe governed by ICR, which organize translation seminars, publish bilingual books and organize cinema, theatre performances and art exhibitions. Finally, yet importantly, the Minister of External Affairs offers foreign citizens the possibility to study in Romania with scholarships through the embassy and consulate network. These institutions are involved in maintaining and consolidating the economic, political, cultural and linguistic connections with the diaspora.

Romanian universities that became multicultural, promote Romanian as a European language and the cultural values that define the Romanian territory. The three weeks summer courses of Romanian language, culture and civilization are very popular every year in many universities in Romania. They attract students, young researchers from across the world and offer a diversity of information in an environment that has a high professional European standard in which cooperation and interpersonal good practice and dialogue is endorsed. Each university has an Erasmus+ Charter that offers language support to the students and organize Romanian language courses according to Gothenburg Summit 2017. The support is online before and during the mobility projects.

Another component of the Romanian linguistic policy is teaching and learning Romanian as a foreign language in the study programme: Preparatory year in Romanian language for EU and international students. Once they complete the course, the students have the linguistic competencies necessary for studying in universities for Bachelors, Masters, Doctorate or full-time researchers. There are Romanian culture and civilisation courses available, but also specialist language courses in medicine, engineering, social studies and philology.

In the context of online education, the students can access electronic resources that they use for more successful learning of languages. These interactive learning programmes transform the classical educational environment into an active and attractive one using visuals, games, group work and accessing search engines. All these elements transform what could be a passive learning environment into an active one. The border between work and play disappears.

Using IT (Rotaru 2016, 326-334), digital manuals, internet translation tools and much more requires a reconfiguration of the strategies and methods for teaching and learning now and in the future.

## References

- Bârlea, Petre Gheorghe. 2006. "Identité et diversité culturelle européenne" In *Diversité et Identité culturelle in Europe* (DICE), Tom IV, edited by Bârlea, Petre Gh., 9-23. Bucharest: MLR Press.
- Bârlea, Petre Gheorghe. 2010. *Multilingualism and Interculturality*. Bucharest: Grai & Suflet Press.
- European Council. 2021. "In the news." <https://www.consilium.europa.eu/ro/https://www.europarl.europa.eu/news/ro/>.
- European Masters in Translation (EMT). [http://ec.europa.eu/dgs/translation/programmes/emt/index\\_en.htm](http://ec.europa.eu/dgs/translation/programmes/emt/index_en.htm).
- European Parliament. 2021a. "Fact sheets about the European Union." Available at <https://www.europarl.europa.eu/factsheets/ro>.
- European Parliament. 2021b. "Multilingualism." Available at <https://www.europarl.europa.eu/about-parliament/ro/organisation-and-rules/multilingualism>.
- Marin, Marilena and Madalina Botina. 2013. "Ad validitatem and ad probationem forms in notice of real-estate sale." In *Proceedings of the 3<sup>rd</sup> International Conference on Law and Social Order*, Contemporary Readings in Law and Social Justice. Constanta, Romania, 618-624 (vol. II: 140-146).
- Marin, Marilena. 2014. "Human Rights Between Abuse And Non-Discrimination." *Managementul Intercultural*, XVI, No. 2 (31): 209-213.
- Reynaud, Jean-Daniel. 1989. *Les Regles du jeu. L'action collective et la régulation sociale*. Paris: A. Colin Press.
- Rotaru, Ioan-Gheorghe. 2016. "The use of digital information sources to composition and teaching the course of history and philosophy of religions in the 'Timotheus' Brethren Theological Institute of Bucharest, Romania." In *Religions, laïcités et sociétés au tournant des humanités numériques*, Stefan Bratosin, Mihaela Alexandra Tudor (coord.), France, Les Arsc: Editions IARSIC et ESSACHESS.
- Rotaru, Ioan-Gheorghe. 2019. *The Adopting for the first time on Romanian soil, in the Principality of Transylvania, of the Religious Freedom Principle and its evolution in a relatively short time of 25 years (1543-1568)*. Cluj-Napoca: Risoprint Publishing House.
- Simon, Patrick. 1995. "La Société partagée: relations interethniques et interclasses dans un quartier en rénovation." Belleville: Paris XX. *Cahiers internationaux de sociologie*, Tom 98: 161-190.

# On the Emotional Fallout of COVID-19

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**ABSTRACT:** Income inequality stretches deep in the time prospect the differing groups of the finance community and the real economy have during crises. Differing emotionality arises from economic crisis communication in the news if wealth exists or does not. In the aftermath of the COVID-19 fallout, the finance world in general has different emotional experiences than real economy agents. The most recent market volatility created opportunities for the sophisticated finance community to swap winning industries for losing industries that can be shorted and hence negative market performance could be turned into gains. In the real economy, concrete constraints create a more emotional and destructive reaction to the general information about COVID-19. Comparing the economic consequence of the endogenous crunch for the finance world and the real economy aids to retrieve crisis-specific recovery recommendations. Understanding how the social compound forms economic outcomes promises to explain how market outcomes are developed in society.

**KEYWORDS:** Affect, Collective moods, Communication, Consumption, Coronavirus, COVID-19, Digitalization, Economic fundamentals, External shock, Information, Lockdown, News, Pandemic, Social volatility, Socio-Economics, Socio-Psychological Foundations, 2008/09 World Financial Crisis

## Finance market versus real economy gap

The different uses of money create different classes in society. The finance world monetary economy differs from the real exchange economy as the finance sector has the benefit of the liquidity of wealth and thus domination via a wealth rent (Lee & Martin 2020). But this happens without any market production of the real economy. Financial forms of capital appreciation does not nurture society per se by enhancing social relations in material wealth that enriches socially or a valorization of commodities that is only possible in the real economy.

Income inequality stretches deep in the time prospect the differing groups of the finance community and the real economy have during crises (The Levy Economics Institute of Bard College 2020). Differing emotionality arises from economic crisis communication in the news if wealth exists or does not. The finance world has a time swap advantage to maintain existence and sustain in a separation between time of delivery, consumption and time of payment. Finance options introduce a separation of time for market prices and volatility (Meister forthcoming). In diversification financial market actors can wipe out the differences between positive and negative market movements and hence catalyze volatility. With the creation of options, which were illegal up until 1973 as for being considered as gambling, the finance world can benefit from time value. In stock options, the finance world can index winning industries and turn away losing market segments.

The finance world enjoys the value of optionality in purely financial gains (Meister forthcoming). Liquidity problems arise for the real economy during economic upheaval, which are titled as realization problems in Marx in the realization of ordinary living expenses (Meister forthcoming). According to Marx, money received in wages in the real economy is spent as soon as received in commodities that do not function as value-preserving assets or investments (Meister forthcoming). Money arises for transactional purposes in a confidence of finance in real economy activity. Options markets allow the financial system to anticipate and bet and benefit from future threats to liquidity from turbulence (Meister forthcoming).

The heightened volatility resulting from widely publicized threats to basic needs can be monetized.

Volatility can be positive and negative for the finance market to profit from, whereas volatility can only be negative in the real economy. This ability of financial markets to capitalize on threats through creating and pricing options is a source of financial resilience today but it also reveals the real economy's political vulnerability (Meister forthcoming). Take crops – in the finance sector shorting commodity prices offers financial gain perspectives, in the real economy any deviation from expected harvest goals is hurtful. The finance sector has created this risk-free, emotionless vacuum in comparison to an emotionally-laden, liquidity-constraint real economy. Volatility added to markets thus implies positive opportunities to gain for the finance world, but negative frictions in the real economy (Meister, forthcoming). That is the hidden inequality underneath the financial cushion skin.

Financial liquidity as such comes with a political and societal price (Meister forthcoming). Liquidity is manufactured by paying someone a premium to assume the risk of temporal illiquidity (Meister, forthcoming). Guaranteeing against systemic illiquidity and supporting the value of asset markets in the real economy activity was originally the main purpose of the finance world. The state connected these two world by the exclusive power to issue currency and finance long-term by the use of governmental bonds and redemption via inflation (Meister, forthcoming). The institutional support allocates tax revenues towards the financialization of infrastructure essential for real economy activities. This government's borrowing power to support financial markets liquidity is political creating additional social noise (Meister forthcoming). Piketty (2014) concludes that government policies – such as redistributive income taxes, capital levies, and monetary control – can lower the rate of return on capital as the ratio of wealth to output rises.

Liquidity in the finance sector has become the requirement of capital accumulation and imbues ultimate vulnerability to society in the obligation of the real economy to bail out failing financial markets and bear the costs of speculative bubbles bursting. In a collateral realization problem, the finance world is considered too big to fail and can benefit from value-at-risk, while being able to count on bail-outs if failing. The 2008/09 world financial recession aftermath was a vivid sign of bailouts being paid by an inflation-disowned general public.

The price of liquidity is set by capital markets (Meister forthcoming). Policies may peg the appreciation of capital markets to growth in the real economy. Meister (forthcoming) proposes to fix the problem of inflation by pegging wage rates to changes in the nominal price levels of the goods that wages can buy. The contract between capital and labor in Marx is entered voluntarily by the labor's own interest and can be left by the labor. But the current financial market and real world divide is an implicit monetary peg that was either chosen nor can be left.

Liquidity creation neither derives from production nor corresponds to asset appreciation possible in the real economy markets. Meister (forthcoming) builds on Marx's critique of capital appreciation that does not come from expanded economic output in the real economy and thus vanishes societal and cultural value. Capital accumulation stems from economic output but does not lead it or imbue it with value. The finance world thus lives from real economy productivity but erodes the social and cultural foundation economic growth builds on. In case if asset markets grow faster than the industrialized economies that underlie them, the democratic, cultural, artistic and social value erodes. A drive of capital in the finance sphere thereby eats from the financial potential of the real sector.

Over the course of industrialization, money's operating system permeated the world with expanding production cycles of capital in the private accumulation enabled by the institution of capital's unequal exchange with labor by means of the wage and of private property's systems of accounts (Beller forthcoming). Under capitalist expansion and its highly varied methods of accounting, qualities became increasingly treated quantitatively and

subjugated by the calculus of profit (Beller forthcoming). The abstraction of money was perfected in finance capital in which the finance world derives wealth from pure speculation and risk management detached from labor and labor time (Beller forthcoming). Abstraction in capitalism requires a re-formalization in material processes. Rendering money into commodities will make capital fungible for society (Beller forthcoming). The finance world turns money into finance and risk into value. The derivative society in the finance world can benefit from risk. With shorting, financial executives actually turn a downturn into financial gains. The finance sector benefits from the fungibility of money, which may be called fluid putty money for financial market transactions and collaterals convertible to money. The real economy is more struck with clay parts of economic growth that are dependent on favorable market conditions.

As for social class differences, the real economy has a different more emotionally-laden time perception than any chronological clock could ever provide (Martin 2019). Time on the clock is different than the time in the mind since experiences are created in the head (Martin 2019). Memory becomes the guide in interpreting information and absorbing time differently as opportunity or burden depending on the financial world and the real economy. The global transformation of time occurred during the era of neoliberal globalization, in which the finance sector became more and more detached from society (Martin 2019). Financial time is measurable and monetizable, ordered and linear (Martin 2019).

Fear of time becomes an issue in the real economy (Martin 2019); while the finance world can benefit from arbitrage and hedging to turn negative market performance to their favor during a violent disruption. The finance world ends with self-actualization and opportunity, while the real economy is constraint in a reality they want to escape from (Maslow 1943). While the real economy has a stressful time consciousness that is easier to be explained in finance terms that lived (Martin 2019). The finance world is therefore in direct contrast to the real economy. The finance sector enjoys a physical time, while the real economy suffers from a psychological time perception (Martin 2019).

Problematic appears that the finance world only focusing on preserving and expanding the store of capital that already exists without adding social value to it. In a direct mediation of value redistribution or mutual bail out obligation forms could bring back the finance industry to serve the real economy (Postone 1993; Meister forthcoming). As a service sector the finance sector could transfer economic value for the sake of shared prosperity (Higgins & Reddy 2020). Facing an obligation to contribute to society, finance markets can play a leading role to finance higher social goals and long-term endeavors – for instance in the eye of climate change and global responsible intergenerational leadership quests (Puaschunder 2016a, b, c).

### **Slow death of despair killing softly**

Berlant (2011) refers to “slow death” to the physical wearing out of a population in a deterioration as a collective physical and psychic attenuation from the effects of global/national regimes of capitalist structural subordination and governmentality. Sickness is thereby defined as inability to work in a rationalization of health (Berlant 2011). The distinction between environment and event, in which the slow death is more establishing the episodic nature of most external events and an absorptive function of the environment (Berlant 2011). Slow death is a phenomenon of the population living in crisis of self-induced attrition of persons keyed to membership to certain populations (Berlant 2011).

The contemporary obesity pandemic is sweeping in the United States and other, foremost Western world parts affected by US style consumer practices, which differ widely among the population (Berlant 2011). Food intake is at will and a sign of personal development or underdevelopment. In food and nutrition, structural inequalities become

apparent and the experience of food environment being unevenly distributed on a pendulum of rational versus emotional food intake. Money and purchasing power thereby play a key role in the mediation of the phenomenon (Berlant, 2011).

In the US obesity is one of the leading causes of slow death crises depending on the diet of individuals (Berlant 2011). Obesity induced addictions are traced back to pharmaceutical companies selling drugs with loose medical oversight and market incentivized insurances to populations whose appetites are out of control (Berlant 2011). Obesity has become a mass tendency in industrialized spaces that proliferate physically unhealthy bodily practices (Berlant 2011). Capitalist marketing pressures are encouraging transactions of satisfaction on a constant basis, which grows capitalist notions. Obesity is prevalent in commoditized highly industrial places of Europe and United States. Obesity is deemed as an international epidemic by the WHO since 2017 as for being a key driver of the global cardiovascular disease pandemic. Causes are the global circulation of unhealthy commodities of a social and environmental disease.

Rather than merely treating symptoms when the disease has already taken a toll, the eradication of the onset appears favorable. Damaging the body by overshooting food intake is a soft but widespread destruction of life appears to be stemming from socio-economic factors that cause susceptibility to external marketing Gimmicks leading to bad choice behaviors. Socio-economic, cultural and political factors may contribute to obesity. Capitalism may directly create surroundings that favor the destruction of life, may it be reproduction or food choice. Favorable choice architectures that make healthy choices easier, as propagated in Cass Sunstein's and Richard Thaler's *Nudge* (2008) could aid in getting people to make favorable long-term choices, such as picking the salad over the desert.

In both cases, the unborn children and the food choice, capitalism creates choice patterns that are unhealthy in which vulnerable populations – such as children, minorities or socially disadvantaged – show more economic pressures triggering more destructive choice outcomes (Nassif-Pires et al. 2020; The Schwartz Center for Economic Policy Analysis 2020a, b). Capitalism creates a need for physical satisfaction in the wheel of constant production and consumption with political support to saturate market activity in need for economic growth as determinant of market power. Social capital and individual interactions then bias people into those who manage health wisely or those who make unwise cheap and indulging but on the long run unfavorable choices. Overall scientists are increasingly alarming about the diminishing quality of life in the industrialized world.

COVID-19 nowadays has become a system change accelerator with putting people into different trajectories of disease impact based on the overall health status and existing pre-conditions. Obesity, but also the general status of the immune system are decisive in whether the Coronavirus becomes a danger to the individual. Due to a weakened immune system being related to a severe disease trajectory, preventive medical care has become more important for emergency medicine. In the novel Coronavirus crisis, prevention and general, holistic medicine determine whether COVID-19 puts patients on a severe or just mild symptom trajectory. Obesity itself is caused by financial constraints in countries with wide disparity of food quality. Especially young and poor but also socio-economically vulnerable groups are at the risk of eating becoming a disease as for filling marketing-fueled gaps of despair that make food to an addiction or compulsion (Berlant 2011).

Anne Case and Angus Deaton (2020) account for life expectancy in the US having recently fallen as in the past two decades, deaths of despair from suicide, drug overdose and alcoholism have risen dramatically, and now claim a rising hundreds of thousands of American lives each year. Case and Deaton (2020) explain the overwhelming surge in deaths of middle agers by socio-economic forces that have made life harder for the working class in recent decades. Capitalism is no longer delivering and finance plays a role in the despair. For the white working class, today's America has become a land of broken families and less

prospects. Inequality has risen as the college graduates have become healthier and wealthier, adults without a degree are literally dying from pain and despair in eating unhealthy, consuming drugs and engaging in risky behavior. Capitalism has weakened the position of labor in light of a growing power of corporations. A rapacious healthcare sector redistributes working-class wages into the pockets of the wealthy. Capitalism kills and it kills unequally with the most vulnerable on the losing cliffs.

In the US, healthcare projects have been pursued by the Clinton, Bush and Obama administrations, who tackled adipose-related national health crises. Unhealthy lifestyles but also genetic predispositions trickle down from generation to generation opening an intergenerationally-persistent obesity divide (Berlant 2011).

Unhealthy diets are also a crisis of those without money and time. Whereas food has become more and more affordable in recent decades in relation to general income levels in the US and the Western world, the price divide between healthy and unhealthy diets has remained stagnant if not widening. The problem also increases the general gap between the finance industry and the real economy, in which constraint real economy agents are not only facing a higher risk of financial constraints during crises that vanish healthy diets. The real economy appears to also suffer from a tendency of fixed time scheduled that solicit certain lunch and coffee breaks, tie them to fast-food availability and nurture a snacking culture in work cultures. Microwave and fast food are the quick choice inbetween overbusy schedules of the real economy. With about half the food budget spent outside the home, the environment, in which people work and thrive shapes their body and soul (Berlant 2011). Work this determines food zones. Exercise time is granted by the work profession and the potential to schedule one's own life. Health outlooks determined by profession, which determined time to eat conscientiously and exercise. Inactivity is related to a toxic effect of food on the human body. Deshaming obesity by legal protection of anti-discrimination against obesity and medical strategies to fight the end result (in stomach stapling or medication against calorie processing) rather than starting from the source of an unhealthy overconsumption are additional evidences of unwise strategies to combat the health epidemic crisis.

Obesity became prevalent in groups of certain labor, schooling and zoning that constructed and reciprocated obesity endemic environments. The disadvantaged eat up their lack of self-esteem in an unhealthy diet (Berlant 2011). High blood pressure and diabetes are especially catastrophic, as these portend early heart disease, liver and pancreatic failure, strokes and aneurysms, as well as blindness and circulation problems potentially resulting in arthritis and other difficulties such as loss of movement and amputation (Berlant 2011). Obesity leads to fatigue, pain and incapability of breathing impairing working. Obesity thus hinders people to find and keep jobs, remain healthy and afford healthcare in a backtested and big data based adjusted individualized healthcare system.

The political economy of food intertwines political agendas of capitalist growth with constant or unhealthy food intake. For one there are vast differences in healthy food intake possibilities around the world. Some of them are related to climate zones and the different preservation needs around the globe (Puaschunder 2020c). Additional pressure is induced in low-income countries, in which households often have to use a considerable amount of their income or wealth for stable food intake. Climate change is increasing these impacts on the "demand" side of economic pricing behavior (Puaschunder 2020c). As studies have shown, demand preferences are sticky as habits usually form over a long time and therefore do not change quickly. Future studies may unravel how climate changes preferences for specific goods and services in the long run. Thereby, especially the role of critical life events and external climate shocks in changing preferences immediately and definitively should be scrutinized (Puaschunder 2020c). Behavioral insight specialists may find innovative ways how to align the demand side with the supply side of climate policies from an interdisciplinary perspective. Future studies may also focus on how to teach the gains of a

warming earth in applied business cases (Gonglewski & Helm 2010; Helm 2009; Puauschunder 2020c). Insights into financial market speculations with commodities putting pressure on low-income households and the developing world are essential. In the light of global warming, climate transfer taxation could be proposed to reap the benefits from climate flexibility and redistribute these gains to territories that hit climate flexibility shortage (Puauschunder 2020c). Puauschunder (2020c) proposes a Climate Wealth of Nations' Winners and Losers model advocating to focus on climate change economic gains redistribution from territories that have time ahead until their reach the temperature peak condition. The gains of a warming earth should be made accessible for all so that they can be enjoyed equally within societies, around the world and over time.

On the societal level, political driven promotion of fructose over sucrose and palm oil over soy oil during the Nixon administration inflation crisis tells a story about consumerism that actually and eventually harms the uneducated bodies (Berlant 2011). The promotion was aimed at controlling international markets, bankrupt production sectors and drive food prices down. Another example of the interference of markets with commodities are the overinflated commodity prices since the 2008 world financial recession, which are hurtful to those with higher income proportion spent on food, who are also more likely to be in low-income countries and the developing world. Disadvantaged populations and non-elites became saturated by appetites luring them into obesity. Creating tastes for salt, sugar and fat but also proteins has also been found to be pegged to gender identities (Rios Seabra 2020). Gender identities are strategically associated with certain foods and a prospect of being considered a strong man is directly related to meat and other greasy products, while health and low calorie intake are virtues of the beautiful woman (Rios Seabra 2020). Surreal market laws came to life in lowered per-unit profit margins enabled by marketing supersized containers that increased sales (Berlant 2011). Supply created manufactured need (Berlant 2011).

An overconsumption endorsing environment creates the dramatic consequences of endemic overweight. Starting from home and schooling, eating habits are associated with productivity demands in the US workforce. In-house dining and catering at the workplace lock employees into nutrition scheduled as well as determine exercise frequency and habits. Food gets politicalized and as expressivity of despair and eating a sign of stress relief. Nourishment a social class division and access to time for exercise a luxury. Self-medication a pleasure and conduct around prevention a cultural norm. Education and nudging expertise determines the relation to food, self-medication and coping with a complex and stressful environment healthily. Slow food speaks to the trend to recognize the speed and time pressure destroys human health and creates a toxic environment (Berlant 2011). The finance sector has the advantage of relaxing prospects to gain from external shocks and temporal freedom in an undramatic environment. Food as a controllable pleasure people in the Western world enjoy is necessary for everyone.

Berlant (2011) outlines that in history there have never been as many overfed and underfed people at the same time, marking the stark food inequality prevalent of modern times. Causes are the cramped conditions of everyday life and the endemically unhealthy workplace. US working-class and proletarian populations fray slowly from the pressure of obesity on their organs and skeletons setting them on trajectories of slow and unspectacular deaths (Berlant 2011). Mass emaciation and obesity are mirror symptoms of the malnourishment of the poor throughout the contemporary world (Berlant 2011). Household members learn from each other healthy nutrition, also workplace team dynamics may learn a healthy conduct lifestyles (Berlant 2011). Capitalist stresses cause overworked and undercared-for bodies, which respond biologically by hoarding fat in their bodies. Equipping and skilling the workforce with expertise to look after each other and learn in teams healthy and hygienic conduct appears as healthcare innovation in the wake of the COVID-19 crisis. While capitalism of the past was about creating needs and wants to constantly feed ourselves,

the workplace innovation of the future may lay in boosting productivity at work via preventive medical care and learning by preventing in teams pandemic prevention (Gelter & Puauschunder forthcoming; Puauschunder 2020b).

Beyond food consumption can include intoxication or other drugs, whose urgencies and social pressures are even more context and environment dependent. The social trickling down effect of family learned values around food and drugs is almost impossible to be broken in the reliance of children to their parents but also workers to their employees and internet users to their software providers (Berlant 2011). The different stresses and constraints in various environments, frameworks and groups divide the population into groups of consumers, which are more likely to cultivate certain habits based on sociological ties (Berlant 2011). Repeating patterns of happiness in health forms the body, mind and soul of certain consumption groups. Depressed alienation, coolness and detachment in an overwhelmed life are eaten up in heavy calorie intake. Self-conscious consumption in an overwhelmed world and now presence in the act of consuming eases worries about the future. Food intake during the Coronavirus pandemic gives back control and order over one's disrupted careers, lives and livings.

Social and political precarity are directly attributable to social membership groups. Slow death speaks about the capitalist sacrificial violence towards labor and the increasing seduction to consumer overexcitement's disastrous outcomes for the individual (Berlant 2011). It touches on unhealthy environments and workplaces that create unfavorable choice architectures for the real economy versus the finance world. Slow death also refer to the time and money at hand the real economy working class does not have for reproduction, exercise or healthy food intake. Consumption and self-medication become the stress relief mechanism of the confusion and difficulty of contemporary life, which varies between different professional groups. Marketing profit extraction of consumption exhausts the body and feeds the affect to lead the body to give in to impulsive everyday pleasure consumption. This socio-economic fragility also plays out in novel digital media handling divides, in which online media consumption and affect elicited through online virtual media news on insecurity and uncertainty lead to a profound impact on individual's lives and their consumption patterns in general. Online media consumption leads to cultures of senses that provoke attrition or wearing-out or exhaustion. The same dramatic event thus leads to different affective responses in reaction to the melodrama and tragedy or opportunity created. While the finance world has the degrees of freedom to gain capital from downturns and can therefore see crises from an ordinary emotionless state of recessive affects, the real economy finds itself in a kind of stuckness in the status quo, in which affect and anxiety lead to negative ways of living. Recessive or ambient affects are opposed to powerful, unambiguous or cathartic affects is an example how subjects register and master the presence of systemic or structural crisis (Lee 2020). The finance world being bestowed with recessive or ambient affects is unlikely to experience a dramatic rupture or shock with the same affect as a shock means to the real economy and is therefore better able to capture the historic reality of crises (Lee 2020). The structure of affect will thus vary between optimism in the finance community from trauma in the real economy to one and the same shock and texts online.

Slow deaths of despair are unnoticed scandals of appetites, which in their duress and broad-based character in society account for worse results than any other disease or risk by now in the Western world young population. In combination with the derivative common movement due to shared sensibilities and societal interdependencies these slow deaths of despair fueled by underlying collective moods and flows together entangled in social classes and tied to workplace structures but also common sensibilities of moving together are the manifestation of the widest pandemic in the world. The cruelty lies in the unnoticed slippery slope these hidden mechanisms drag individual lives being wasted and vanished (Lee 2020). Perturbations and economic disruptions that create some continuous reactions via affect now

make the hidden cruelty more aware and noticed as a bursting wound of contemporary society and most pressing inequality (Deleuze in Lee 2020).

### **Flow versus destructive emotionality**

The current pandemic situation is a genre of social time and practice in which a relation of persons and worlds is sensed to be changing but the unstable rules for habitation are diversified between different social classes (Lee 2020). Future research what happens to persons and populations as an effect of catastrophe communication on social media based on the social group represented. The trauma situation of COVID-19 will be analyzed in order to derive inferences about the financial world and the real economy impact of crises. The people's adaptation to this event's force should be studied in its affective impact in order to derive systemic crises intervention strategies grounded in emotion mediation via language and communication. Particularly vulnerable groups should be guided in navigating emotionally overwhelming situations with potentialities with particular attention to the embeddedness of persons in institutional networks, norms and social cells when they encounter information in the social compound. Understanding the impact of an external shock on different economic groups and targeting at overcoming inequality between fragile communities and contingent ones will help maintaining an overall beneficial social compound. Language and communication on fast-paced, international social media will help build perspectives in the face of challenging conditions and dismantle fantasies of Gimmicks that make us sick and unhappy. Cultivating and taming the intensity and emotionality of economic and social volatility through deindustrialization and deurbanization but also strengthening personal social ties in emotionless professions will help human claim back the humanness in social interaction that has become sterile in modern markets, in which electronic money became a primary source of money without real world spinoffs (Massumi 1995). This volatility of the digital creates differing affective states. Affect differs based on the professional class of the recipient of information, which erects a contemporary hierarchy of images interpretation. Finance grants a position of ease and privilege, while the real economy is facing anxiety.

While new media was thought to alleviate the elitist positions of traditional government communication and media, new media has created a new hierarchy of affect to react to good and bad news. The internet merges life and the collective. Ambivalent and affective responses to external shocks are a new source of inequality. Information bleeds into the real economy. Affective conditions of the crowd create neurosis, paranoia and fear (Steyerl 2009). The news pierce deeper into individuals' lives in the real economy than in the sterile and rational finance world that can turn gains into losses with arbitrage and leads secured lives since Markowitz's diversification (1959) came along. The professional working group determines the position on general information, which is influenced by the economies of knowledge. The physical senses feature a different excitement, affective attunement and anxiety. The circulation of information has led to a novel production of poor choices based on new media buzzes and the social group one belongs to. Collective editing, file sharing and grassroots distribution circuits reveal erratic and coincidental links of socially dispersed audiences (Steyerl 2009). Audiovisual economies have created new disruptive movements of thoughts and affect in the circulation of information among silos that opens gates to a genealogy of ideas and collective moods (Steyerl 2009). Online bonds actualize historical ideas, which are bound to new media bonds.

In an expansion of capitalism, capitalism permeates into mental representations of life, infiltrating every aspect of being (Boltanski 1987). New management forms could be incepted in the critique of the contemporary way of making profit (Boltanski 1987). A detachment from family firms and the real economy occurred from the 1960s in the wake of modernity trends and capitalization of markets and quantification of management trends (Boltanski

1987). The spirit of capitalism is a dialectic relationship between finance market capitalization driving innovation and real economy implementing innovation. The financial world is envisioning the future, while the real economy is satisfying needs and wants in the now in the domestic real world. Individuals get anxious based on their networks and social groups that influence their economic lives and relationships. Affect is determined by the group and their outlook on the world (Csikszentmihalyi 2003). The finance world benefits from the flow of positive emotions in the wake of financial gain prospects during upheaval, while the real economy is suffering from slow death of despair that have largely been suffered unnoticingly (Berlant 2011; Case & Deaton 2020; Csikszentmihalyi 2003). The finance world thereby saves cognitive costs and emotional burden in the flow, which is perpetuated in the social nurturing environment of positive reinforcement of social norms in the social exchange online (Csikszentmihalyi 2003). Flow occurs in the finance world as the goals are clear, feedback is immediate, there is a balance between opportunity and capacity, as the challenges are high and equal to each other, and concentration deepens and control is enabled as societal losses can be transformed into financial gains (Csikszentmihalyi 2003). The catalyst function of the finance sector predestines the finance world to become the guardian of the real world economic activity. The finance world can alter the sense of time as for being bestowed with a longer term vision than the real economy. In a loss of ego, the finance world does not have to deal with social factors that are prevalent and determinant in the real economy mingling over a common social ground determining a price or an equilibrium. Actions can be taken in the finance realm autotelic for their own sake independent of social luring and gimmickry. Csikszentmihalyi (2003) finds high skilled people to thrive in challenges with flow experiences, while the real economy may employ anxiety in lower skilled workers. The ebbs and flows during times of crises thus vary by skill and professional challenge. In Csikszentmihaly's (2003, 72) *Flow of Everyday Experience* finds that highly skilled grow in challenges to flow experiences, while low skilled workers are facing apathy, worry and anxiety alerts, stresses and depressions. Csikszentmihaly (2003, 74) studied the relation of activities to the quality of experiences and finds high skilled individuals indulging in favorite activities and new tasks and learning during high challenges, while low skilled people face loneliness, social problems and work stress. Capital being the withheld consumption today grants future flexibility of consumption granting peace of mind of constraint imposed emotionality (Csikszentmihaly 2003). Money at hand thus is psychic energy released at the holder's discretion giving the ultimate freedom (Csikszentmihaly 2003).

While the finance world features impersonal judgments with efficiency, the real world consumption is based on personal judgement tainted with emotions. Intuitions guide both worlds in their choices as do the personal networks and social reference groups. It is now on the future of market actors to align these two worlds and balance between their powers to share benefits among them for the good of all society.

New hierarchies of statuses of affect arise based on the origins of wealth generation. Money skills in the finance world are pitted against life(style) skills acquired in the real economy. The laws of the creation of value determine a novel balance of power based on trust in the economy and gain prospects. Trust is established and reinforced together in networks and contexts that draft the social bubbles of information exchange. For society the question arises if the rational finance sector has an obligation to serve the higher societal progress and fund the real economy with the fruits of the spirit of capitalism (Boltanski). The instrumentalization of human beings and specifically human dimensions of life in the finance sector wears down the authenticity and individuality of daily life (Boltanski 1987).

Generalized calculations crowd out spontaneity and curb anxiety. In the total mastery of the finance realm, however, the proliferation of creative spirits of human consumption are lost (Boltanski 1987). Prefabricated needs of advertisement and marketing are crumbling away human values and the influence of the social glue to create happiness. Marketing Gimmicks

of individualized targeted aid that reinvents itself are to lure the real world masses into constant consumption, while low interest rates of the finance world drive the wish to depart with money in the bank. Never having the financial means though to finance future oriented but to pay back old debt puts individuals in a prison of constant debt repayment of old choices of the past. When people are spending their real economy lives hunting their shadows of the past consumption choice, life starts going backwards and rest in the yesterday.

### **Responsibility in the post COVID-19 era**

The COVID-19 crisis turns out to be a crisis of the measurement of value (Gorz 2003). The increasingly affective quality of language online turns the crisis communication into a hidden inequality accelerator. Affective differences in the perception of COVID-19 external shock communication underlines the immaterial wealth of capital (Gorz 2003). Capital leverages as a shared skill that materializes in the everyday life decisions and grants peace of mind. But this feature in capital leads to a reduction of emotions and real economy experiences. The financial market hegemony therefore capitalizes on the real economy by creating security in making money from money and the exchange of non-profitable industries emotionless. People's life choice is between the artificial head or the pounding heart.

The COVID-19 pandemic created winners and losers as well as the deep gap between strongly positive financial market developments and the negative performance of the real economy induced by lockdowns. Exposing the real economy to a wave of private bankruptcies and liquidity bottlenecks, therefore calls on governments around the world to reboot financial markets to return to be a service industry – to serve the real economy. Government bailout packages are likely to be financed over the long term by the historically-lowest, never-so-long-low key interest rates. Low key interest rates will continue to allow the capital market to flourish. But this is based on the cost of a weakening of the potential of the interest rate as a monetary policy tool, which the economist John Maynard Keynes (1936/2003) already described as a “liquidity trap.” The low interest rate policy brings along long-term external financing of past ideas, which impairs the flexibility of investors to finance future-oriented innovations and may hold back societal progress. Low interest rates on savings accounts in the real economy keep people trapped in the debt financing of past dreams (Forbes 2020). Household debt traps are causing massive psychosocial burdens, a so-called ‘deaths of despair’ trend is already noticed in the US for mid-career death spikes induced by alcoholism, drug use and suicide (Case & Deaton 2020). Unequal world problems include a diversified access to health, well-being and prevention in society.

Poor people are less likely to be able to afford and be cognizant about how to lead a healthy life. Marketing Gimmicks lure them into constant needs for consumption with a lacking budget. Exploitation creates an ever-existing appetite for food and self-medication that if cheap in light of personal consumer debt and uninformed leads to slow death of despair. People with less financial and salutogenic expertise may harm themselves over time with hedonistic and compulsive behavior that yet works towards capitalistic consumption goals. The obesity epidemic burdens the working classes of contemporary capitalist countries, like the United States and the United Kingdom and all countries that participate in the global processed-food regime (Berlant, 2011).

In a convergence of communication, information and financialization as computation, the virtual online machinery is dominating value creation today (Beller forthcoming). Representations of today's language and online communication determine responses to the social volatility rendered the more precarious real economy. Affect is the currency of the real economy, while financialization strategies that of the finance sector, which exacerbates the prevalent inequality schemes in society (Lee & Martin 2016). Money becomes the real abstraction (Beller forthcoming). Ironic in finance volatility and the financialization of

everyday life have become a major source of value in the creation for synthetic finance (Beller forthcoming). Computation is the extension, development and formalization of the calculus of exchange value enacted in the finance sector (Beller forthcoming). Information has become the basis of a derivative contract on any phenomenon. Its emergence is one with the calculus of probability and thus of risk. Information becomes a derivative on reality whose importance comes to exceed that of reality, at least for those bound by the materiality of information's risk profiles.

In the digital age, information becomes a technique that injects a socio-historically mediated system of valuation in society. Prior social narratives and ontologies slice society for social class differentiation. Financial income streams are meant to be transferred to social currencies. Information becomes social differentiation and the intake of information in heuristic. Computation has played a role in the financialization of the economy. Information becomes meshed with human inputs fueled on toxic emotions to become hedging capital. The finance sector benefitted from the financialization of daily life in the finance society of risk profiteers. But how to enact this convertibility and unleash a liquidity in the real economy is yet to be determined.

With the planned post-COVID-19 bailouts representing more than 60 percent of the money ever issued in the history of the US, should the finance world be obliged to return to the overall human well-being and promote the pursuit of humanness in arts, culture and societal growth? Can the finance sector lacking emotions return to the real economy via redistribution for also breeding creativity, soothing their hurtful anxieties and give to the core of humanness? Can we speak about a novel exploitation of real world livelihood and emotions by the finance world? Is there a moral sense or honor to put the finance world into service for the sake of human feelings? This may be a redistribution matter of ethics, justice and trust.

Staying in capitalism to change it, transformations and changes should be afar from pure quantitative value maximization and simple redistribution of financial assets. Qualitative values appear more uniquely precious than international prices. Local pockets and environments enrich our lives deeper than international prices. It is on us to trying to figure out these and put them in synchrony with each other but expand from the local.

This is the post-COVID-19 Renaissance and Reformation of Immaterial capital as in the end, life is about reality. The real present in the real conditions of existence. If we stop the social, we forget who we are.

## References

- Beller, J.L. (forthcoming). *The world computer: Derivative conditions of racial capitalism*. Durham: Duke University Press.
- Berlant L. G. 2011. *Cruel optimism*. Durham, NC: Duke University Press.
- Boltanski, L. 1987. *The making of a class: Cadres in French society*. Cambridge, UK: Cambridge University Press and the Maison des Sciences de l'Homme.
- Case, A. & Deaton, A. 2020. *Death of despair and the future of capitalism*. Princeton, NJ: Princeton University Press.
- Csikszentmihalyi, M. 1990. *Flow: A psychology of optimal experience*. New York, NY: Harper.
- Gelter, M. & Puaschunder, J.M. (forthcoming). „COVID-19 and comparative corporate governance.” *Journal of Corporation Law*.
- Gonglewski, M. & Helm, A. 2010. “An examination of business case methodology: Pedagogical synergies from two disciplines.” *Global Business Languages* 15(3): 17-31.
- Gorz, A. 2003. *The immaterial: Knowledge, value and capital*. Chicago: Chicago University Press.
- Helm, A. 2009. ”Global marketing classroom: Green marketing.” *American Marketing Association Global SIG Newsletter, Global Interests*.
- Higgins, M. & Reddy, S. 2020. “From COVID-19 to shared prosperity.” *Medium*, June 3, 2020. Retrieved at <https://medium.com/sdg16plus/from-covid-19-to-shared-prosperity-5de0098e411c>
- Keynes, J.M. 1936/2003. *The general theory of employment, interest and money*. Cambridge, MA: Harvard University Press.

- Lee, B. 2020. Lecture notes for ‘*Cultures of Capitalism*’ class Fall 2020. New York, NY: The New School.
- Lee, B. & Martin, R. 2016. *Derivatives and the wealth of societies*. Chicago, IL: University of Chicago Press.
- The Levy Economics Institute of Bard College 2020. Multidimensional inequality and COVID-19 in Brazil. Public Policy Brief No. 153, September 2020. Retrieved at <http://www.levyinstitute.org/publications/multidimensional-inequality-and-covid-19-in-brazil>
- Markowitz, H.M. 1959. *Portfolio selection: Efficient diversification of investments*. New York, NY: John Wiley & Sons.
- Martin, T. 2019. *Contemporary drift: Genre, historicism, and the problem of the present*. New York, NY: Columbia University Press.
- Maslow, A.H. 1943. A theory of human motivation. *Psychological Review*, 50, 4, 370-396.
- Massumi, B. 1995. “The autonomy of affect.” *Cultural Critique: The Politics of Systems and Environment* 31: 83-109.
- Meister, R. (forthcoming). *Justice is an option: A democratic theory of finance for the twenty-first century*. Chicago & London: The Chicago University Press.
- Nassif-Pires, L., de Lima Xavier, L., Masterson, Th., Nikiforos, M. & Rios-Avila, F. 2020. “We need class, race, and gender sensitive policies to fight the COVID-19 crisis.” *Multiplier Effect: The Levy Economics Institute Blog*, April 2, 2020. Retrieved at <http://multiplier-effect.org/we-need-class-race-and-gender-sensitive-policies-to-fight-the-covid-19-crisis/>.
- Piketty, Th. 2014. *Capital in the twenty-first century*. Cambridge, MA: Harvard University Press.
- Postone, M. 1993. *Labor, time, and social domination: A reinterpretation of Marx’s critical theory*. Cambridge, UK: Cambridge University Press.
- Puaschunder, J.M. 2016a. “Global responsible intergenerational leadership: The quest of an integration of intergenerational equity in Corporate Social Responsibility (CSR) models.” *Annals in Social Responsibility* 2(1): 1-12.
- Puaschunder, J.M. 2016b. “Socially Responsible Investment as emergent risk prevention and means to imbue trust in the post-2008/2009 world financial crisis economy.” In: O. Lehner (Ed.), *Routledge Handbook of Social and Sustainable Finance*, pp. 222-238, London: Taylor & Francis.
- Puaschunder, J.M. 2016c. “The role of political divestiture for sustainable development.” *Journal of Management and Sustainability* 6(1): 76-91.
- Rios Seabra, E. 2019. *Understanding Gender Identities and Food Preferences to Increase the Consumption of a Plant-Based Diet with Heuristics*. Master Thesis at The New School, 2019.
- Steyerl, H. 2009. “In defense of the poor image.” *E-flux*. Retrieved at <https://www.e-flux.com/journal/10/61362/in-defense-of-the-poor-image/>
- The Schwartz Center for Economic Policy Research 2020a. The New School Economics Department’s COVID-19 Policy Forum.
- The Schwartz Center for Economic Policy Research *Older Workers Report: Over Half of Unemployed Older Workers at Risk of Involuntary Retirement* 2020b. Retrieved at <https://www.economicpolicyresearch.org/jobs-report/over-half-of-older-workers-unemployed-at-risk-of-involuntary-retirement> (August 5, 2020).

# Psychopathology of Plastic Art and Creativity

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**ABSTRACT:** Art is born at the border of external and intrapsychic realities, through the human being's necessity of including pragmatic elements of his environment into his own affective system. Creativity stands between objective and subjective worlds as a symbolic metamorphosis of the material into the immaterial of the imagination, conscience and emotions of the artist. The product of creativity will be a complex interpretation of environmental elements meant for reinterpretations by other personalities, with their own individual and specific set of imagination tools. But what if, the inspiration for the artistic work is not a reflection of reality but a product of patho-psychological disruptions or, what if the inspiration resides in the altered emotional and neurological perception of reality? The artistic creativity within psychopathological activity in certain psychiatric disorders have been raising interest for both medical and non-medical world but the most intriguing aspect, is maybe, the colorful and complexity of emotions and sensations that are perceived by non-psychiatric persons when viewing such works. Maybe this could represent an argument for the subjective and relativity of the human psychology, beyond social and cultural standard values.

**KEYWORDS:** artistic, creativity, psychology, imagination, symbol

## **Introduction**

Art is not a simple phenomenon. Creativity is a complex process depending on the intellectual stimulation of the artist, his individual emotional experiences, the level of imagination and motivation surrounding certain aspects of life, nature, social and familial environment, and other specific characteristics of his personality and psychology. These elements are present in all individuals but the way the artist works is through his own configuration of stimuli and the way those stimuli are filtered through neurological and emotional perception, releasing a symbolic and metaphoric image of his reality. The psychological image is the artistic instrument of exposing different shapes and senses of real objects and events from the outside world through a subjective introspective configuration (Parr 2006, 155).

In some psychiatric disorders, there are qualitative and quantitative alterations of the conscience, disruptions of sensations and perception, intellectual issues, modification of affective system with proportional effect on the reality reflection. But even in that case, creativity and imagination can transpose their mental imaging system into art work, developing the complexity of their diseases into material and tangible reality. We could say that the instrument of creativity works from objective to subjective in non-psychiatric individuals and from fantasy to material in psychiatric patients (Bogousslavsky 2006, 109).

## **Psychology of creativity**

Understanding the psychopathological activity within art requires understanding the creative process within normal psychological boundaries. Creativity resides on mental imaging centered on the artist's self. Mental imaging is a filtering process of the outside world with bilateral transformations of material to symbols and inner feelings into material metaphors. This phase organizes the concept of creation which will be fully projected on the outside world through a symbolic-instrumental mechanism. In other words, there are a few steps throughout the imaginative process: the perceptive phase, in which objects and events of the outside world are given a signification, and feelings are interpreted as material elements, all

within cognitive mechanisms; the representation phase is the step in which these metaphors are systematized; the imaginative phase is the level where the artist creates a complex of meanings and shapes; the symbolic phase is what creates the mental image; the creative state is the level where the artist designs and expresses the mental image through material instruments (Zingg 1990, 26). The main subject of creativity is the symbol. The way the symbols are created and filtered by the inner structure of the artist's self, will result in the artistic product. One symbol, in art, may have 2 or more meanings and senses and this is the reason why artistic symbolism is close to symbolism of dreams with the difference that in the first case there is conscious, motivated act of transfiguration whereas the second case is the result of the subconscious, automatic representations. We could see the symbol as a link between shape and content of the creative idea that allows the artist to transfer his inner world to a material design. Symbolism uses the imaginary to change the senses of objective and subjective elements using all potentials: augmentation, caricature, mystification, fantasy, abstract, bizarre, dream symbols. The result of the symbolistic representation is art itself, as a material design of the intrapsychic life of the individual. Analysis of these projections in psychiatric patients, not only allow us to experience their world but it allows a more objective overview of their psychopathological structure (Enăchescu 77).

### **Psychopathological art**

The artistic creativity of psychiatric patients is a complex expression of the structure and dynamic of their personalities with all psychological disruptions of affective mechanisms and reality perceptions. After a psychological and psychiatric evaluation of the patient, he can be encouraged to express himself through art, as a mental pathology cannot be assessed only by his artistic behavior. Furthermore, the patient is asked to name and explain the design he made, as often, his interpretation is the only significance that can be given to his work. So, the psychopathological art is a unitary system of the symbolistic design and its creator and knowledge of the mental disease is mandatory for a proper understanding of his art. It is important to underline that the symbols of the psychopathological creativity are projections of disrupted inner mechanisms, from intellectual regression to hallucinations, extreme affective states, personality and cognitive dissociation or discordance (Inzelberg 2013, 256). Some authors believe that mental illness is not in fact, a creative process but a regressive one because it doesn't enhance his spiritual and emotional field and it is not a result of vast imagination but a simplistic and sometimes obsessive design of the morbid psychological single event. On the other hand, the subjective analysis of their artistic work, by non-psychiatric individuals is a complex, colorful and vivid interpretation with profound stimulation of one's emotional system, not only because of the reflex compassionate view, but also because of the contrasts and the abstract in these works and even though the interpretation is not consistent between healthy people and psychiatric patients, the emotional impact is very strong. There aren't few paintings or poems that ended up as valuable art pieces despite the author's psychiatric disorder, which means that even a "normal" person can emphasize and appreciate this form of art (Mula, Hermann, and Trimble 2016, 226).

Returning to the scientific point of view, the psychopathology of art is characterized by the main personality type that emerges in clinical psychiatry. There are specific elements that have been observed to appear frequently in the art of different groups of patients. Therefore, there can be a description of the pathological creative work by the common symbols and techniques used in certain disorders. The immature creative process tends to have a simple, elementary design, with interpretation of superficial and unimportant elements of the outside world, often with no relation between the design and the present emotional state of the author. The psychopathic creative process is designed by normal and pathological elements, being a mixture and transitional form between imaginative creation and

pathological symbolism. In these works, there are drastic variations of content inside the same piece, with abrupt passage between dark and light, tragic and happiness, delicate and aggressive. Neurotic creative process is a design of symbols that hide conflicts, trauma and compensate negative experiences through the projection. The most common type of psychopathological art is the psychotic one, with variations depending on the clinical aspect of the disorder. In the schizophrenic type, there are bizarre themes and compositions, with deep abstract symbols and a mixture of stereotypes and fantastic elements with absurd content. In bipolar disorders there are contrasts between the depressive state and maniacal state as the themes are either full of euphoria, ludic or erotic elements and the chromatic is bright and explosive within maniacal states either sad, gloomy and without color during depressive states. Epileptic and alcoholic psychotic states are represented in plastic arts with warm chromatics, oneiric or deep emotional content. Dementia creative process is characterized by a disorganization of symbolism with poor expressions, incoherent and unfinished, confusing designs with general aspects of disrupted splotches (Miller and Miller 2013, 26-30).

Besides the general aspects of the psychopathological art there are some objective elements that persist in these works, especially when the patients try to interpret real objects in their work. The symbolism in art is analyzed by shape and significance, the shape being the manifestation of the creative process and the signification being the occult, subjective content of the symbol (Heilman and Acosta 2013, 35). This concept has derived from Freud's dream analysis. Psychopathological creative work is defined by defect of shapes or deformations that reflects in a proportional way, the deviance of the symbolic system in mental ill patients. The more the symptoms are pushing the patient further away from reality, the more intense the deformation will be. That being said, para-formations are the lightest deformations that consist in real images getting unusual shapes, attributing them more significance than their logical meaning. Neo-formations are massive alterations of the natural plastic form of the objects by adding illogic elements into the original shape. These elements are reflecting a condensation mechanism of two or more objects due to the hallucinatory process with often negative or morbid significance resided in the deep inner conflict that the patient wants to express. True deformations are also called meta-symbols and represent the most severe deterioration of shape and sense of the real object. The plastic image is entirely disrupted, confused incoherent and the interesting part is, that even the patients tend to be unable to explain their own work (Enăchescu 1977). The creative process in these cases may reside both in the instinctual neurological processes and cognition, maybe with reflex mechanisms and subconscious symbolic activity overwriting consciousness alongside the productive elements of their psychic, this argument needing further study.

### **Psychiatric syndromes and psychopathological creative art**

As stated above, artistic creation is linked with the typology of psychiatric disorder as common elements are often found within groups of similar diseases. The simplest forms of pathologic creations are dementia and oligo phrenic types. The simplistic and confusing superficial exposure of symbols with raw and unfinished interpretations is characteristic. The difference between the two resides in the potential of impulsivity, aggressiveness, and affective disorders present with some oligo phrenic patients, elements that tend to be present in their work with strong underlining of certain themes, intensity of color, insistence and pressure on one side of the paper and stereotypes. The most complex and variant type of patho-plastic activity is the psychotic type. There are many characteristics of the psychotic creativity with the possibility of one or more than two of them being present in the same work. The main subject of this creation is the effect of a certain trauma on the individual, reflecting the unbalance created in their world by that trauma. Furthermore, the patient tends

to express the effect of that trauma on his life with complicated symbols, the creational activity being a way to suppress that negative effect or a way to make the outside world understand his inside world, in many occasions, creative plastic art being a veritable self-psychotherapy. There are certain themes that tend to be consistent with different disorders (Denmarin 2016, 345).

The self-portrait appears often in the psychotic patient's art, focusing on the body and especially facial expressivity or their affective state, being directly connected to the level of the illness.

Conflictual and compensatory drawings are the most expressive and complex creational product, as they reflect directly or indirectly, the unconscious inner emotions of the patient. Contrasting, profound expressions of the disrupted affective system are translated in vivid and intense symbols, often of morbid or negative value (Hacking, Foreman and Belcher 1996, 425).

Complex symbol drawings are reflections of heavy psychological inner conflict and tension, deep routed inside the patient's personality, with him being often unaware of them. Dream-like drawings reflect conflictual introspection with abstract symbols in random dispersion on paper and confusing significance (Barrantes-Vidal 2004, 60-65).

The existence of the patient is yet another theme often appearing within artistic activity of psychotic patients. It represents fractures of their reality and experiences in the order of their personal significance; the chromatic and the symbols used are reflecting the individual's perception of those experiences (Hagman, 2010).

Chronic alcohol consumers are rarely involved in artistic creativity although general psychoactive drugs consumption is often amongst plastic artists and musicians. Delirious, hallucinatory and anxiety is often recognized within the symbols used by these patients with deep negative impact on the viewer. Also, terrible nightmares are often the inspiration for these patients with morbid events, mystic symbols and animal interpretations of their fear, like monsters of deformed animals, The difference between these patients and psychotic ones is the efficiency and clearness of their paintings, with organized reflections of their inner living especially in the moment of remission after delirium tremens or delirious states of intoxication (Thys, Sabbe and De Hert 2013, 140).

Schizophrenic patients tend to "respect" a certain typology and similar characteristic of their work with understandable variants proportional to their inner psychological state. They often use bizarre symbols and elements with illogic relationship between them. The rigid construction of their drawings with schematic organization, geometric stylization and ornamental dispersal of shapes, tendency to fill all empty spaces, cold chromatic and unusual association of colors abstract representations appearance of morbid symbols with delirious inspiration are all present elements in schizophrenia patients. Another interesting aspect is the abrupt difference between the style of painting before and after the debut of the disease, in patients who drew for longer periods of time. Also, some individuals prefer to use unusual techniques such as painting with left hand they being right handed, using other support than paper or unusual instruments such as lipstick, charcoal or even their own blood in some stages of the pathology (Waddell 1998, 169).

Artistic creation in bipolar disorders is variant and contrasting during the two stages. Maniacal phase characterize the paintings with explosive compositions, expressive exaggerated well-being, expansiveness, euphoria and even obscene elements. Chromatic is preponderant warm with fast, abrupt lines and often degenerating the images to splotches. In other cases, drawings have a dirty, unfinished aspect (Ursachi 2019). In the depressive phase, the motivation and interest for painting is low so the themes and compositions are simple, with no elaboration, chromatics tend to dark colors with sad or gloomy elements and stereotypes (Lejsted and Nielsen 2006, 368). The anxiety can often be reflected in the pale, trembling lines and faded symbols. The contrast of the chromatic during the two phases of

bipolar disorder is one of the most important aspects as it reflects the affective content of art work as it drastically changes alongside the patient's psychological and emotional tensions with negative – positive directions and also, the hyperactivity and hypo-activity of the neuro – sensitive systems (Schnier 1996).

## Conclusions

Plastic artistic process represents an active form of manifestation of the creative insight transposing all cognitive and imagination mechanisms into the artistic product. It has a complex and continuous character with self-perfecting and evolving according to specific plan organized in systematic stages. The sources of inspiration come from the environmental reality. The creative process begins with the artist reflecting on that reality, on multiple aspects: society, family, nature, spiritual and mystic principles. The symbolic mechanism gives metaphors to the surrounding reality, these metaphors being aligned on a specific style and spiritual values giving the artistic process its originality. The expression of art and symbols is motivated by the projective psychological capacity of the artist with intentional orientation of the theme and content in the direction of perception he wants to insufflate to the viewer.

The psychopathological plastic art has qualitative differences, it being a form of manifestation of the disorder, as a component of the syndrome and lacking artistic intention and motivation. Many patients that paint during their clinical manifestation never expressed themselves through arts before the disease appeared. Also, in known artist, the content and quality of the creativity has changed drastically after the debut of the disease. It is a fair statement that art and psychology are directly linked as the creative process is linked with all cognitive, emotional, neurological and imaginative mechanisms.

Imagination and expressivity within symbolism of plastic art is maybe more than a cognitive process but also a subconscious one, with subconscious elements interfering especially during psychological disruption and productive symptoms such as delirium or hallucinations. This aspect requires further study, including imagistic examinations as it may provide physio-pathological orientation on some symptoms of psychiatric disorders. Plastic arts may not only be a way of effective therapy for these patients but also a key to discover more about their pathology and understanding their realities.

Although the pathological plastic art activity is often missing warmth, technique and style there is no doubt about its expressivity. Often morbid, gloomy or profound and heavy emotional its impact is as impressive and important as it is with non-psychiatric artists. It deserves no less attention and admiration than other artistic works, especially given the complexity and contrasting aspect of the mind and soul of the author.

## References

- Barrantes-Vidal, N. 2004. "Creativity & madness revisited from current psychological perspectives." *Journal of Consciousness Studies* 11(3-4): 58-78.
- Bogousslavsky, J. 2005. "Artistic creativity, style and brain disorders." *European Neurology* 54(2): 103-111.
- Enăchescu, C. 1977. *Psychology of pathoplastic activity*. Bucharest: Științifică și Enciclopedică Publishing House.
- Hacking, S., Foreman D. and Belcher J. 1996. "The descriptive assessment for psychiatric art." *Journal of Nervous and Mental Disease* 184: 425-430.
- Hagman, G. 2010. "The artist's mind: A psychoanalytic perspective on creativity, modern art and modern artists." London: Routledge.
- Heilman, K.M. and Acosta L.M. 2013. "Visual artistic creativity and the brain." *Progress in Brain Research* 204: 19-43.
- Inzelberg, R. 2013. "The awakening of artistic creativity and Parkinson's disease." *Behavioral Neuroscience* 127(2): 256.

- Lejsted, M. and Nielsen J. 2006. "Essay: Art created by psychiatric patients." *The Lancet* 368: S10-S11.
- Miller, Z.A. and Miller B.L. 2013. "Artistic creativity and dementia." *Progress in Brain Research* 204: 99-112.
- Mula, M., Hermann, B. and Trimble, M.R. 2016. "Neuropsychiatry of creativity." *Epilepsy & Behavior* 57: 225-229.
- Parr, H. 2006. "Mental health, the arts and belongings." *Transactions of the Institute of British Geographers* 31(2): 150-166.
- Schnier, J. 1966. *Norman Kiehl, Psychiatry and Psychology in the Visual Arts and Aesthetics: A Bibliography*. Madison: The University of Wisconsin Press.
- Thys, E., Sabbe B. and De Hert, M. 2013. "Creativity and psychiatric illness: the search for a missing link-an historical context for current research." *Psychopathology* 46(3): 136-144.
- Ursachi, R. 2019. "Notions and Concepts Characteristic of Artistic Psychology." In: *Problems of the socio-Humanities and Modernization of Education*. Ion Creangă State Pedagogical University, Coord. Scientific Ig. RACU, col. red. C. PERJAN [et al.]: [in vol.]. Chişinău: S. n., 2019 (UPS „Ion Creangă”), vol.4 (21): 60-69.
- Waddell, C. 1998. "Creativity and mental illness: is there a link?" *The Canadian Journal of Psychiatry* 43(2): 166-172.

# Online Child Pornography: A New Challenge for the Society

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**ABSTRACT:** Controlling online child pornography has always been a challenge for the global community. The introduction, growth, and utilisation of information and communication technologies (ICTs) have been accompanied by an increase in illegal activities. With respect to cyberspace, children's massive online presence and the rise of child pornography as a business are forcing all countries to adopt strong laws and collaborate internationally to tackle this threat. Recent online search trends indicate a manifold increase in the search for child pornographic material. Although there is a diversity of opinions on the definition of child pornography and the appropriate punishment, it is widely accepted that the Internet has exposed more children to pedophiles, mostly from poor countries. With respect to Egypt, almost 55% of the population has access to the Internet, and most Internet users access social networking sites. On such a basis, this article seeks to address and analyse the following issues: Firstly, the impact of ICTs on the spread of online child pornographic material and the techniques used by offenders. Secondly, an analysis of the existing legislative and regulatory framework and their efficiency in combating this form of organised crime will be provided, taking Egypt as a case study. Finally, the paper will conclude by discussing some recommendations that should be taken to protect children and society and minimise the risk of utilising ICTs in illegal criminal activities, especially with respect to child pornography.

**KEYWORDS:** Child pornography, Criminalization, Pedophiles, Sexual misconduct, Egypt

*"[C]aring for our children. It's our first job. If we don't get that right, we don't get anything right. That's how, as a society, we will be judged"*<sup>1</sup>

President Obama

## 1. Introduction

The investigation of cybercrime and the gathering of appropriate evidence for a criminal prosecution, the science of "forensic computing", "digital forensics", or "cyber forensics", can be a challenging and complex issue (Walden 2007, 205). This is primarily due to the intangible and often transient nature of data, especially in a networked environment. The technology renders the process of investigation and recording of data for evidence extremely vulnerable to defense claims of errors, technical malfunction, prejudicial interference, or fabrication (ibid). Such claims may lead to a ruling from the court against the admissibility of such evidence. A lack of adequate training of law enforcement officers, prosecutors, and the judiciary will often exacerbate these difficulties. In many countries, substantial efforts have been made over recent years to address this training need, with the establishment of specialized facilities and courses, supplemented by training courses offered by the vendors of forensic applications and services (ibid). The true problem of the information and communications era, therefore, seems to be to decide exactly how much value should be attached to a given piece of information, especially when that information is stored electronically and digitally (Van der Merwe et al. 2008, 104). In the past, when law enforcement investigated a crime, the investigators who analyzed the evidence used to present it to the judge to assist him in making the correct decision. Criminal investigation training

courses always include some forensics to understand what prosecutors and judges require regarding evidence (Wang 2006, 217). The focus is on the collection and preservation of effective evidence. In other words, at a computer-based crime scene, the greatest attention must be given to specifying digital evidence. The major feature which distinguishes cyber-crime from conventional crime is that the evidence at the crime scene is represented in electronic form. This also makes it easier for the criminal to store, conceal, propagate, and remove the information and makes it is more difficult to identify him/her (ibid).

Though cybercrimes could be, and are, committed within states, the opportunities for a wider reach of victims, global attention, greater economic gain, etc., would influence a cybercriminal to widen his reach and perpetrate cybercrimes on a transnational level (Oshikhena 2019, 16).

In sexual offenses, the Internet may be involved in several ways resulting in many sources of digital evidence. It can be an instrumentality when it plays an important role in the commission of the crime, such as enticement of children to engage in sexual activity (Ferraro et al. 2005, 4). Besides, Durkin proposes how the Internet can be utilized by sex offenders to disseminate images for personal and/or commercial reasons; or to engage in inappropriate sexual communication with children and/or to locate children to abuse (Beech et al. 2008, 217). Lanning suggests that abusive images downloaded from the Internet may be used to desensitize and/or lower inhibitions in an offender or victim before or during an offense (ibid). However, the “stickiness” of data is attributable, in part, to the multiple copies generated by the communications process, particularly in an Internet environment, as well as how data is held and removed on electronic storage media. While the “stickiness” of data will work to the advantage of an investigator, data availability may not enable a successful prosecution where the defendant is unaware of its existence. Conversely, the widely held perception that data held on an ICT resource is transient may work to the advantage of a defendant, where he/she can raise doubt as to the existence or otherwise of relevant forensic data.

Child pornography began with the camera in the 19<sup>th</sup> century and has evolved with technology ever since. Before the 21<sup>st</sup> century, child pornography was expensive, difficult to acquire, and the produced images were for trading and personal collectors (Garcia 2016, 4).

Internet child pornography is unlike most crimes local police departments handle. Local citizens may access child pornography images produced and/or stored in another city or on another continent. Alternatively, they may produce or distribute images that are downloaded by people thousands of miles away. An investigation that begins in one police district will almost certainly cross jurisdictional boundaries. Therefore, most of the major investigations of Internet child pornography have involved cooperation among jurisdictions, often at an international level (Wortley and Smallbone 2012, 5).

Children may spend considerable time on the Internet for different purposes, including surfing gaming sites, YouTube, apps etc. This may further invite trouble as children may get in touch with unknown predators, including the paedophiles. Children may also become victims of the porn industry as their digital footprints, images, and other identifying data, including facial images, may be used by porn content creators (Prakash 2018, 347). Internet child pornography is only one of several problems related to either child abuse or the Internet. Other related problems not directly addressed by this article include Child Abuse: violence and fatalities, neglect, abandonment, exposure to hazardous materials (e.g., clandestine drug labs), trafficking of children and babies and illegal adoption agencies, juvenile runaways. Internet Crime: online solicitation of children for sexual activity (Schulz et al 2016), identity theft (sometimes known as phishing) and hacking (Wortley and Smallbone 2012, 5).

It is difficult to be precise about the extent of Internet child pornography, but all available evidence points to it being a major and growing problem. At any one time, there are estimated to be more than one million pornographic images of children on the Internet, with 200 new images posted daily (ibid p. 12). One offender arrested in the U.K. possessed

450,000 child pornography images. It has been reported that a single child pornography site received a million hits in a month. As noted above, one problem in estimating the number of sites is that many exist only for a brief period before they are shut down. Much of the trade-in child pornography takes place at hidden levels of the Internet. It has been estimated that there are between 50,000 and 100,000 pedophiles involved in organized pornography rings around the world, and that one-third of these operate from the United States (ibid).

This article takes as its theme child pornography within the context of the Internet. The article sets out to provide a critical assessment of Internet child pornography and its governance through Egyptian legal means. Section 2 opens by talking about the definition of child pornography; Section 3 is about the role of the Internet in promoting child pornography. Section 4 provides an analysis of the existing legislative and regulatory framework and their efficiency in combating this form of cross-border crime, taking Egypt as a case study. Section 5 discusses some recommendations to fight the use of the Internet in illegal activities, especially with respect to online child pornography. Finally, section 6 concludes by highlighting that if cyberlaw is to be effective in the fight against child pornography it has to directly and explicitly address modern technologies' role in the production and distribution of child pornography.

## 2. Defining child pornography

There is no settled definition of child pornography. What constitutes child pornography in one jurisdiction may not be classified as child pornography in another. Definitions of a "child" and "child pornography" may vary between legal jurisdictions in the same country.<sup>2</sup> The content of materials that may constitute child pornography is varied. Adults with a sexual interest in children may collect a range of pictures and other materials that depict children. Not all of these materials will constitute child pornography, and not all will be illegal. These materials can be broadly "categorised along a continuum from less explicitly sexual, through nudity to explicitly sexual. Three broad categories can be identified: (1) erotica, (2) nudity, and (3) sexually explicit materials (Shackel 1999, 145).

The first category, erotica, consists primarily of materials that do not involve either nudity or depiction of sexual behaviour, such as pictures of children in underwear or swimsuits. These materials are unlikely to fall within definitions of child pornography. The second category that can be identified involves materials that contain nudity in some form. Nudity per se is not illegal. However, some of these materials may be implicitly sexual and may make use of children in provocative poses. The more sexual materials in this category may fall within some legal definitions of child pornography. This category may be viewed as analogous to "softcore" pornography in adult pornography. The third category that can be identified consists of materials that are explicitly sexual. These materials may focus on particular areas of a child's body, such as the genital or anal areas or may portray children engaged in real or simulated sexual acts. In most jurisdictions, these materials will fall within the definition of child pornography and may be viewed as corresponding to the "hardcore" pornography associated with adult pornography (ibid).

Putting aside national differences, even international attempts to define child pornography have failed to yield a clear, unambiguous working definition. Child pornography is difficult to define "in a multi-national environment" where various cultural, moral, religious, and legal standards coexist. The complexity of defining child pornography has been intensified by the arrival of the Internet, which has destroyed national boundaries and introduced child pornography into a global society with no clearly defined social, sexual, or legal standards.

Professor Vitit Muntarbhorn as the UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography in 1990, defined "child pornography" as "*the visual*

*or audio depiction of a child for the sexual gratification of the user and involves the production, distribution, and use of such material.*" The International Police Organisation's (Interpol) Standing Working Party, established to deal with offences against minors, described "child pornography" as: *"a consequence of sexual exploitation or abuse of a child. It can be defined as any means of depicting or promoting the sexual exploitation of a child, including written or audio material, which focuses on the child's sexual behaviour or genitals."* Also, in her report dated 20 September 1995, the current Special Rapporteur for the Sale of Children, Child Prostitution, and Child Pornography, Ms. Ofelia Calcetas-Santos recognised that "[t]here can hardly be any better illustration of the complications brought about by the advent of modern technology than in the field of pornography, including child pornography." The Special Rapporteur concluded that: "in light of recent developments where the telephone or other audio devices are also being widely used for pornographic messages involving children, there is now a need to distinguish visual from audio pornography." Accordingly, the Special Rapporteur defined "visual pornography" as: *"the visual depiction of a child engaged in explicit sexual activity, real or simulated, or the lewd exhibition of genitals intended for the the sexual gratification of the user, and involves the production, distribution and or/use of such material."*

"Audio pornography" was defined as "the use of any audio devices using a child's voice, real or simulated, intended for sexual gratification of the user, and involves the production, distribution and I or use of such material (ibid).

Despite these positive developments, more recent definitions of child pornography have nevertheless failed to embody the audio dimension of child pornography recognised in earlier definitions and emphasised by the Special Rapporteur, Ofelia Calcetas-Santos. It is submitted that Special Rapporteur Calcetas-Santos' definition of child pornography is currently the most apposite and should, as a minimum, be adopted in all international instruments and laws that deal with child pornography (ibid).

### **3. The role of the Internet in promoting child pornography**

The Internet has escalated child pornography by increasing the amount of material available, the efficiency of its distribution, and the ease of its accessibility. Specifically, the Internet (Wortley and Smallbone 2012, 9):

- Permits access to vast quantities of pornographic images from around the world;
- Makes pornography instantly available at any time or place;
- Allows pornography to be accessed (apparently) anonymously and privately;
- Facilitates direct communication and image sharing among users;
- Delivers pornography relatively inexpensively;
- Provides images that are of high digital quality, do not deteriorate, and can be conveniently stored;
- Provides for a variety of formats (pictures, videos, sound), as well as the potential for real-time and interactive experiences;
- Permits access to digital images that have been modified to create composite or virtual images (morphing).

The Internet's role in child pornography can be divided into three cycles—the production, distribution, and downloading of images. In some cases, the same people are involved in each stage. However, some producers and/or distributors of child pornography are motivated solely by financial gain and are not sexually attracted to children (ibid).

### ***3.1. Production***

This involves the creation of pornographic images. Collectors place a premium on new child pornography material. However, many images circulating on the Internet may be decades old, taken from earlier magazines and films. Images may be produced professionally, and, in these cases, often document the abuse of children in third-world countries. However, more commonly, amateurs make records of their own sexual abuse exploits, particularly now that electronic recording devices such as digital cameras and webcams permit individuals to create high quality, homemade images. With the advent of multimedia messaging (MMR) mobile phones, clandestine photography of children in public areas is becoming an increasing problem (ibid).

### ***3.2. Distribution***

This involves the uploading and dissemination of pornographic images. These images may be stored on servers located almost anywhere in the world. Distribution may involve sophisticated pedophile rings or organized crime groups that operate for profit, but in many cases, it is carried out by individual amateurs who seek no financial reward. Child pornography may be uploaded to the Internet on websites or exchanged via email, instant messages, newsgroups, bulletin boards, chat rooms, and peer-to-peer (P2P) networks. Efforts by law enforcement agencies and Internet Service Providers (ISPs) to stop the dissemination of child pornography on the Internet have led to changes in offenders' methods. Child pornography websites are often shut down as soon as they are discovered, and openly trading in pornography via email or chat rooms is risky because of the possibility of becoming ensnared in a police sting operation (e.g., undercover police entering chat rooms posing as pedophiles or as minor children). Increasingly those distributing child pornography are employing more sophisticated security measures to elude detection and are being driven to hidden levels of the Internet (ibid).

### ***3.3. Downloading***

This involves accessing child pornography via the Internet. The images do not need to be saved to the computer's hard drive or to a removable disk to constitute downloading. In some cases, a person may receive spam advertising child pornography, a pop-up link may appear in unrelated websites, or he may inadvertently go to a child pornography website (e.g., by mistyping a keyword). However, in most cases, users must actively seek out pornographic websites or subscribe to a group dedicated to child pornography. In fact, it has been argued that genuine child pornography is relatively rare in open areas of the Internet, and, increasingly, those seeking to find images need good computer skills and inside knowledge of where to look. Most child pornography is downloaded via newsgroups and chat rooms. Access to websites and online pedophile groups may be closed and require paying a fee or using a password (ibid).

## **4. Responses to the problem of child pornography on the internet: Egyptian approach**

In Egypt, Law No. 12 of 1996 on Child Rights amended by Law no. 126 of 2008 governs child pornography and child sexual abuse.<sup>3</sup> This law also guarantees the fulfillment of children's rights to live, grow and develop. Article 1 of the Law requires the state to be responsible for children's welfare and to guarantee the rights afforded to them in international conventions. Article 2 defines a "child" as a person under the age of eighteen. Article 3 ensures a child's right to life, survival, and development in a supportive family environment and to be protected from all forms of violence and injury; physical, mental, and sexual abuse;

and negligence and exploitation. Article 3(b) stipulates that children must be protected from all forms of discrimination based on their birthplace, parents, sex, religion, race, disability, or any other status, and must be guaranteed equal opportunity among children.

Article 89 prohibits to publish, show, or circulate any printed material or audio or visual productions on children's that addresses basic instincts or beautifies behavior contrary to society values , or leads them to delinquency.

Article 96 (6) stipulates that the child shall be considered at risk if he is exposed to a situation threatening the sound upbringing that should be made available to him, or in any of the following cases:...If the child is exposed in the family, school, care institutions, or other to violence, or acts contrary to public morals, or pornographic material, or commercial exploitation of children, or harassment or sexual exploitation, or the illegal use of alcohol or narcotic substances affecting the mental state.

Article 116- bis (a) stipulates that "Shall be imprisoned for a period of not less than two (2) years and a fine of not less than ten thousand (10,000) Egyptian pounds, and not exceeding fifty thousand (50,000) Egyptian pounds anyone importing, or exporting, or producing, or preparing, or viewing, or printing, or promoting, or possessing, or broadcasting pornographic material using children, or related to the sexual exploitation of children. Under article 113, any adult who neglects to look after a child, thereby placing the child at risk, is punishable by a fine. Also, under article 114, a child's guardian whose negligence in carrying out his or her duties toward the child compromises the child's safety or morals is punishable by a fine or imprisonment for three months to one year. Moreover, article 116 punishes an adult who induces a child to commit a misdemeanor, or assists or facilitates in the commission of one, with imprisonment for one to seven years.

Furthermore, Egypt has ratified the Convention on the Rights of the Child in 1990 and the Optional Protocol to the Convention on the Rights of the Child on children's sale, child prostitution and child pornography in 2002.

Finally, Internet Service Providers in Egypt are not liable for the pornographic material placed on their systems by a user, so long as the online host does not have "actual knowledge" of the activity. Upon obtaining such knowledge, the online host must act expeditiously to remove or to disable access to the pornographic material adopted.

According to article 7 of Cybercrime Law no. 175 of 2018, the Service Provider shall, upon a court decision, block any website or content constituting a cybercrime. In case of non-compliance, the Service Provider shall be punishable by a minimum of one-year imprisonment and/or a fine not less than 500,000 EGP and up to 1 million EGP. The law also provides for an aggravated penalty if such non-compliance resulted in the death of one or more persons.

## 5. Recommendations

“An ounce of prevention is worth a pound of cure” (Benjamin Franklin)

There is no doubt that children must be able to participate optimally according to human dignity. Children must receive protection from acts of violence and discrimination online and offline (Suharti et al. 2019, 2). For those areas of the world where children have access to the Internet, especially where they have access without a requirement of supervision, both the positive and negative effects of this accessibility will likely become ever more evident (Bross 2005, 749). Surveys of parents suggest that they buy home computers and subscribe to Internet access to provide educational opportunities for their children and to prepare them for the information-age (Subrahmanyam et al. 2001, 8). However, most parents' greatest fear is that their child could be a victim of sexual abuse. Consequently, children are trained from an early age to fear strangers. Therefore, it's quite a paradox that approximately 80-90% of all

sexual child abuse is committed by someone close to the child. In the U.S.A., a study found that (55%) of children aged 12–15 stated that they did not tell their parents everything they did on the Internet. Yet, adults kept an eye on children's Internet use (91%), limited online hours (62%), and used software to filter or block questionable websites (32%); moreover, two-thirds (67%) of children surveyed had to ask permission to access the Internet (Cankaya et al. 2009, 1108). Several recommendations for disrupting sexual abuse of children and child pornography using the Internet can be mentioned. Some of these recommendations will be expressed in this section.

- It is recommended that policymakers acknowledge the complexity of child sexual abuse since this offense is unlikely to be efficiently prevented unless the diversity of the people who sexually exploit children or abuse them is fully taken into account.
- It is highly recommended that all national governments sign the Convention of Cybercrime and the Council of Europe Convention on Action against Trafficking in Human Beings.
- Since Internet Service Providers have a vital role in protecting children on the Internet, it is important that governments implement legislation where the self-regulation of ISPs has failed.
- Justice and compensation to victims of sexual abuse remain an unresolved issue to be dealt with within a judicial system that takes account of the rights of the child's rights.
- National Governments should also fund research into the reactions and treatment of victims of child abuse. It is essential that governments raise societal awareness about the trauma children suffer through the production and distribution of child pornography.

## 6. Conclusion

The explosive growth in child pornography online is one of the most profound and complex problems that confront the world today. Cyberlaw has a fundamental role in regulating child pornography in a global society where national borders and boundaries are rapidly disappearing. In particular, cyberlaw must redress the impact of modern technologies, particularly computer technology and the advent of the Internet, on the trade-in child pornography. This paper has demonstrated that Egyptian Law has begun to recognise and acknowledge the formidable impact of technology on the legal regulation of child pornography and is accordingly attempting to address the emergent issues in various international fora.

If cyberlaw is to be effective in the fight against child pornography it has to directly and explicitly address modern technologies' role in the production and distribution of child pornography. To a large extent, the problems posed by advances in electronic technologies are new problems, and so new solutions will have to be explored.

### Endnotes

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<sup>1</sup> Transcript: President Obama at Sandy Hook Prayer Vigil, NAT'L PUB. RADIO (Dec. 16, 2012, 10:39 PM), Cohen, Beth and Newcombe, Pat, Prosecution of Child Pornography—The One-Eyed Judge by Michael A. Ponsor: A Book Review (2018). Western New England Law Review, Vol. 40, p. 159, 2018, Available at SSRN: <https://ssrn.com/abstract=3192178>.

<sup>2</sup> For example under federal law in the U.S. child pornography is defined as “any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or

produced by electronic, mechanical, or other means, of sexually explicit conduct,” where (A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct; (B) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or (C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct. Sexually explicit conduct is defined as actual or simulated (i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; (ii) bestiality; (iii) masturbation; (iv) sadistic or masochistic abuse; or (v) lascivious exhibition of the genitals or pubic area of any person. *See* Duncan (2014).

<sup>3</sup> The sexual abuse of children has long been a crime. *See* Dillof, Anthony. “Possession, Child Pornography and Proportionality: Criminal Liability for Aggregate Harm Offenses” (July 6, 2016). *44 Florida State University Law Review* 1331 (2018), Available at SSRN: <https://ssrn.com/abstract=2811655>.

## References

- Alasa, A. 2019. *A Legal Analysis of Cybercrimes and Cybertorts: Lessons for Nigeria*. Available at SSRN <http://dx.doi.org/10.2139/ssrn.3560905>, accessed [12/1/2021].
- Beech, A. Elliott, I., Birgden, A., Findlater, D. 2008. “The Internet and Child Sexual Offending: A Criminological Review.” *Aggression and Violent Behavior* 13: 216-228.
- Bross, D. 2005. “Minimizing Risks to Children when they Access the World Wide Web.” *Child Abuse & Neglect* 29: 749-752.
- Cankaya, S., Hatice, O. 2009. “Parental Controls on Children’s Computer and Internet Use.” *Procedia Social and Behavioral Sciences* 1: 1105-1109
- Cohen, B. and Newcombe, P. 2018. “Prosecution of Child Pornography - The One-Eyed Judge by Michael A. Ponsor: A Book Review.” *Western New England Law Review* 40: 159. Available at SSRN: <https://ssrn.com/abstract=3192178>, accessed [12/1/2021].
- Dillof, A. 2016. “Possession, Child Pornography and Proportionality: Criminal Liability for Aggregate Harm Offenses.” *44 Florida State University Law Review* 1331. Available at SSRN: <https://ssrn.com/abstract=2811655>, accessed [12/1/2021].
- Duncan, S. 2014. “Child Pornography Statutes and New Legislation.” *Sexting and Youth, A Multidisciplinary Examination of Research, Theory, and Law*. Carolina Academic Press ISBN 978-1-61163-386-3. Available at SSRN: <https://ssrn.com/abstract=2882769>, accessed [12/1/2021].
- Ferraro, M. and Casey, E. 2005. *Investigating Child Exploitation and Pornography. The Internet Law and Forensic Science*. California: Elsevier Academic Press.
- Garcia, Jennifer. 2016. *Child Pornography and the Technological Landscape*. DOI:10.13140/RG.2.1.2065.0644. Law No. 12 of 1996 on Child Rights amended by Law no. 126 of 2008. Law No. 126 of 2008 amending Law No. 12 of 1996.
- Prakash, A. 2018. “Role of Prohibitory Legislation in Preventing Online Sexual Abuse of Children: A Critical Socio-Legal Analysis.” *Unitedworld Law Journal* 2(2): 346-360. Available at SSRN: <https://ssrn.com/abstract=3521673>, accessed [12/1/2021].
- Schulz, A., Bergen, E., Schuhmann, P., Hoyer, J., Santtila, P. 2016. “Online Sexual Solicitation of Minors: How Often and between Whom Does it Occur?” *Journal of Research in Crime and Delinquency* 53(2):165-188.
- Shackel, R. 1999. “Regulation of Child Pornography in the Electronic Age: The Role of International Law.” *Macarthur Law Review* 1999 (3): 143-176.
- Subrahmanyam, K., Greenfield, P., Kraut, R., Gross, E. 2001. “The Impact of Computer Use on Children’s and Adolescents’ Development.” *Applied Developmental Psychology* 22(1): 7-30.
- Suharti, T., Kumala, T. and Prameswari, S. 2019. “The Role of Social Environment in the Implementation of Optional Protocol to the Convention on the Right of the Child on the Sale of Children, Child Prostitution and Child Pornography.” *International Conference on Science, Technology & Environment (ICoSTE)*. Available at SSRN: <https://ssrn.com/abstract=3487351>, accessed [12/1/2021].
- Van der Merwe, D., Roos, A., Pistorius, T. & Eliselen, S. 2008. *Information and Communications Technology Law*. Durban: Lexis Nexis.
- Walden, I. 2007. *Computer Crimes and Digital Investigations*. Oxford: Oxford University Press.
- Wang, S.-J. 2007. “Measures of Retaining Digital Evidence to Prosecute Computer – Based Cybercrimes.” *Computer Standards and Interfaces* 29 (2): 216-223.
- Wortlry, R., and Smallbone, S. 2010. “Child Pornography on the Internet.” *Center for Problem-Oriented Policing*, U.S. Department of Justice. Available at [www.publicsafety.gc.ca](http://www.publicsafety.gc.ca), accessed [11/1/2021].

# Revisiting the Concept of *Koinonia* Dimensions of Pauline's Theology of Communion

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**ABSTRACT:** It is the aim of this article to sketch the dimensions of Pauline theology of *koinonia*. The Christian life is lived in the reality of participation in Christ's death, resurrection and suffering. And these are the elements of what could be called the vertical dimension of *koinonia* with Christ, at the individual and communal level. There is also a horizontal dimension of *koinonia* with Christ, namely the communion of believers in the Body of Christ, the Church. Any individual believer is to acknowledge his participation in the community of Christ. This is actually reminded anytime when the believers share the Eucharist. The common element that connects the two dimensions, vertical and horizontal, of *koinonia* with Christ, is His example, expressed powerfully in his *kenosis*. The church mirrors Christ's *kenosis* in every member's attitude towards each other, in the embrace of the other in the same way in which, lovingly and sacrificially, Christ embraced humanity, in his body, transforming it from within.

**KEYWORDS:** *koinonia*, participation, church, communion, *kenosis*

## Introduction

It is well known in the scholarly world that the apostle Paul was one of the main thinkers that connected Christ event with the spiritual life of the individual Christian, and of the Church. Also, there is much written on the way in which Christ changed the entire paradigm of Paul in regard to the relationship of God with Israel and the people around Israel called generically, the Gentiles.

The thesis of this paper is that the concept of *koinonia*, as used in Pauline writings, defines, deeper than the word used, the theology of communion according to the thinking of Paul. His christologically grounded view of the Christian life, starting with the individual, and continuing with the communal level, is expressed in a powerful and still researchable way, by his concept of *koinonia*. The paper will argue that Paul does not limit his view only to the idea of *koinonia* as fellowship but also, he goes deeper, to the dimension of *koinonia* as participation, first at the vertical level, in and with Christ, and second, at the horizontal level, with one another as church, and as church in society.

Methodologically, this study will start with the most important dimension of *koinonia* as participation, namely, the *koinonia* with Christ. It will continue with the discussion about the way in which *koinonia* with Christ, defines and constitutes the koinonial relationships within the Church, and how this koinonial reality of the church is promoted in society as a whole.

## *Koinonia* with Christ or the Vertical Dimension of Fellowship

In one of his great writings, 1 Corinthians, Paul states what seems to be programmatic for his theology of fellowship:

Therefore, you do not lack any spiritual gift as you eagerly wait for our Lord Jesus Christ to be revealed. He will keep you strong to the end, so that you will be blameless on the day of our Lord Jesus Christ. God who called you into fellowship with his Son Jesus Christ our Lord is faithful (1 Cor. 1:7-9).

For Paul, this seems to be the first and determinant dimension of fellowship, the communion (κοινωνία) with Jesus Christ. And this is a reality that encompasses the entire life of the believer, from the beginning, starting with the call of God, to the end, the day of our Lord Jesus Christ. And this happens through the everyday life, while God keeps the believers strong.

Paul develops this concept of vital connection (Pink 1971, 74) of Christ with the entire Christian life, by using the term “in Christ.” The Christian life, says Paul, is to be lived in this reality named Christ. In his epistle to Galatians, Paul states this important identification of the Christian with Christ that actualizes (Neil 1976, 47) the death and resurrection of Christ:

I have been crucified with Christ and I no longer live, but Christ lives in me. The life I live in the body, I live by faith in the Son of God, who loved me and gave himself for me (Gal. 2: 20)

Paul sees his own personal experience as an identification with Christ crucifixion in order to live the Christian life, in Christ resurrection (Witherington, 1994, 177; Johnson 2003, 202). This seems to be an important pattern in which Paul thinks the fellowship of the Christian with Christ, namely, first the action of Christ and then the appropriate answer of man, and the entering in a process of transformation in which we are being conformed with the εἰκὼν of Christ (Kim 2002, 172-173). And this is obvious in the way he continues to develop the idea of man’s identification with Christ event. The condition of the believer being “crucified with Christ” for Christ to “live in me,” is part of a process of participation that has also other coordinates.

Don’t you know that all of us who were baptized into Christ Jesus were baptized into his death? We were therefore buried with him through baptism into death in order that just as Christ was raised from the dead through the glory of the Father, we too may live a new life (Rom. 6: 3-4)

Paul understood baptism as our identification with Christ, identification in his death and resurrection as the consequence of Christ’s identification with us. Christ died for our sins and his death is the one in which we are baptized, in such a way that his death becomes our death (Bornkamm 1969, 76; Jewett 2003, 96). In order to emphasize this important aspect, Paul contrasts the two ways of living for human beings, namely, “in Adam” and “in Christ.” (Rom. 5: 12-20). Or in Barth’s words: “Adam is the ‘old’ subject, the EGO of the man in the world...Christ is the ‘new’ subject, the EGO of the coming world” (Barth 1933, 181; Strom 2000, 92).

For Paul, being “in Adam” means to live as an old self that is not crucified and therefore to live as a slave of sin (Rom. 6: 6), living according with the sinful nature (κατὰ σάρκα) (Rom. 8: 5a), and being subject to death (Rom. 8: 6a). In contrast, being “in Christ” means to live as an old self crucified with Christ (Rom. 6: 6), living according with the Spirit (κατὰ πνεῦμα) (Rom. 8: 5b), and being subject to life (Rom. 8: 6b).

In this context, Paul develops what was called “the interchange in Christ,” (Hooker 1990, 13) namely that “Christ became what we are in order that *in him*, we might become what he is” (Hooker 1990, 42). In Christ’s identification with what we are, Christ became a curse (Gal. 3: 13) and was made sin (2 Cor. 5: 21) (Hooker 1990, 13).

Another dimension of a believer's participation in Christ is the participation in Christ’s suffering. The model for the way of participating in Christ’s suffering is set in Philippians chapter 2, where Paul argues the deep identification of Christ in humanity by the way of *kenosis*.

Let the same mind be in you that was in Christ Jesus, who, though he was in the form of God, did not regard equality with God as something to be exploited, but emptied himself, taking the form of a slave, being born in human likeness. And being found in human form, he humbled himself and became obedient to the point of death—even death on the cross (Phil. 2: 5-8).

For Christ, *kenosis* is not a renunciation to the divine prerogatives (Barth 1962, 62), rather is the embrace of human nature without renouncing the divine nature. And this meant for Him the acceptance of the plan of God (Dunn 1989, 117; Wright 1991, 84, 97), even though this plan means taking the image of a servant. This is the model, according to Paul's theology (Ladd 1974, 516). Like Christ, who was ontologically in the form (*μορφή*) of God and emptied himself and took the form of a slave and suffered, even the death on the cross, the Christian, who is now in Christ, is to enter this *kenotic* dimension, that means participation in Christ suffering (Phil. 3: 10-11).

For Paul to know God includes sharing Christ's suffering, next to participating in Christ's death and suffering (Fee 1999, 149; Bruce 1983, 116). This share in Christ's suffering is the mirroring of Christ's *kenosis* in Christian attitude. And this attitude is to be acknowledged as necessary and to be cultivated. Or in the words of Morna D. Hooker:

Yet it is also clearer than elsewhere that this idea of our participation is far from being automatic. Christ shares our humiliation, but if we are to share his glory, then we must share his humiliation (Hooker 1990, 47).

Speaking of this parallel between Christ and us we can conclude that, the *kenosis* of the Christian is to be oriented not only to his internal attitude towards God, rather also to his attitude towards the others. That means to participate in Christ suffering as part of the individual identification with Christ. To participate in Christ, according to Paul, to embrace a *kenotic* way of living (Ziesler 1983, 45), that will encompass not only the relationship with God but also, the relationships with the others in the Body of Christ (Banks 1994, 26). These considerations lead to the second section in which we will discuss the communal aspects of *koinonia* in Pauline theology.

### ***Koinonia* in the Body of Christ or the Horizontal Dimension of Fellowship**

In the first section, we discussed the way Paul sees the fellowship with Christ in its vertical dimension as participation in the death, resurrection and sufferings of Christ. In the next section, we will discuss the fellowship with Christ in its horizontal dimension, namely, the Body of Christ.

Paul sees the Church (*ἐκκλησία*) as being at the same time the body of Christ and also, one body in Christ (Ziesler 1983 57; Witherington 2003, 260). And this is so, because for Paul the corporeal dimension of Christian life, grounded in the individual's status of being in Christ, is important. Christ himself, in Paul thought, guarantees the balance between the individual and corporeal dimension of being in Christ (1 Cor. 12: 12-13, 27).

In Pauline's perspective, the unity of the Church is circumscribed by the experience of identification with Christ (in his death, resurrection and suffering), which has as consequence the integration in the community of those that experienced the same identification with Christ. The manifestation of the Body of Christ is the proclamation of Christ lordship upon the individuals, as "the Body of Christ is the real concretion before the Parousia of the universal sovereignty of Christ" (Kassemann, 1982, 68; Kummel 1974, 210). Being one in the Body of Christ is expressed in the very practice of Eucharist in the Church, an act that emphasizes the corporeality of being in Christ (Hooker 1993, 22).

Moreover, if identification with Christ's sufferings, for the individual was by the way of a *kenotic* attitude, this seems to be the case also in the horizontal interpersonal relationships in

the Body of Christ, the Church. In his epistle to Romans, Paul shows one of the elements of the *kenotic* attitude in regard with each other (Rom. 12: 3). Further, Paul own example is the illustration of this *kenotic* attitude that circumscribes the participation in Christ death, resurrection and suffering in regard to the other. In 2 Corinthians, Paul speaks of his suffering as being the way in which he became able to comfort others by the comfort he received from God (2 Cor. 1: 3-6).

The importance of the clarification regarding the precedence of suffering to glory, is underlined by the efforts and struggles of the first Christian communities to understand and to manage the apparent contradiction between the fact that they knew that are called to a life of victory in Christ, and still they were facing sufferings, defeats and failures provoked from outside (persecutions) and from inside (personal sins, church problems). And this could be seen also in other non-Pauline writings of the New Testament (Gundry 1993, 2-3).

Paul acknowledged, too, the social implications of *koinonia* with Christ and in Christ. Not only that Paul tried “to free *ekklesiai* from enslaving social patterns” (Strom 2000, 160), but for him, the new identity, of the individual Christian and of the church as community, circumscribed by Christ’s death and resurrection, constitute the new paradigm that challenges the societal ethos. As Christ was God and became human, was holy and became sin, was death and was resurrected, so, the church is formed by people that were dead and were resurrected with Christ (Eph. 2). Still, this is not the entire picture.

The new creation in Christ whose first fruits are the believers of the Body of Christ, is, in the world, a presence that brings a new alternative way of living, illustrating to the people of society the two kinds of people in the world, belonging to two ways of living, in “bondage and liberation, guilt and justification, estrangement and reconciliation, deformity and transformation” (Meeks 1983, 184). Even if the church was viewed in Paul’s times as a “religious club” (Ellis 1989, 148), the social impact of the church, was nevertheless not in the domain of recreation, but rather, in the moral and political realm. Still, for Paul the power, in the church, unlike in political Rome, is shared. In the words of Bruno Blumenfeld:

There is really the feeling that there is no substitute for Rome. Paul loves Rome. He falls within a compelling tradition of apologetics for Roman power. His interests are not revolutionary. Yet, his ends are different from those of other apologists of empire. Paul both concentrates and diffuses power. In Paul’s system, sharing does not dilute power. Everyone who participates in it actually *adds* to Christ; the more of them are the more absolute God’s rule (Blumenfeld 2001, 282).

Paul’s way of using the images coming from the societal structure and reinterpreting them according to the new paradigm is a positive way of critique of societal political structures and institutions (dictatorship, slavery, familial disorganization, citizenship). Paul deliberately and purposefully uses three terms in regard with Church’s relationship with God: city, household and people of God (Meeks 1993, 37). This was meant to draw the attention of the new model of society the Church exhibits in its internal relationships, having cosmic importance (Wink 1984, 89-96). Instead of oppression, in the church are mutual love and support, and even the release of slaves, instead of bitterness, there is a spirit of mutual forgiveness and acceptance, instead of egocentrism, and there is christocentrism, materialized in self-renunciation and sacrifice for the others.

## Conclusion

It was the aim of this article to sketch the dimensions of Pauline theology of *koinonia*. The Christian life is lived in the reality of participation in Christ’s death, resurrection and suffering.

And these are the elements of what could be called the vertical dimension of *koinonia* with Christ, at the individual and communal level.

There is also a horizontal dimension of *koinonia* with Christ, namely the communion of believers in the Body of Christ, the Church. Any individual believer is to acknowledge his participation in the community of Christ. This is actually reminded anytime when the believers share the Eucharist...

The common element that connects the two dimensions, vertical and horizontal, of *koinonia* with Christ, is His example, expressed powerfully in his *kenosis*. The church mirrors Christ's *kenosis* in every member's attitude towards each other, in the embrace of the other in the same way in which, lovingly and sacrificially, Christ embraced humanity, in his body, transforming it from within.

Yet, the *kenotic* attitude of the Church regards not only the internal relationships between its members, rather, it is expressed in the way in which the church embraces the society, being Christ body in the world, participating actively in Christ's own present ministry, through the Holy Spirit, of revealing the Father's heart and bringing many sons to glory. Only as such, the Church is that community through which the manifold wisdom of God is made known in the entire universe (Eph. 3: 10).

## References

- Banks, Robert. 1994. *Paul's Idea of Community: The Early House Churches in their Cultural Setting*. Peabody: Hendrickson Publishers, Inc.
- Barth, Karl. 1933. *The Epistle to the Romans*. London: Oxford University Press.
- Barth, Karl. 1962. *The Epistle to the Philippians*. London: SCM Press Ltd.
- Blumenfeld, Bruno. 2001. *The Political Paul: Justice, Democracy and Kingship in a Hellenistic Framework*. Sheffield: Academic Press.
- Bornkamm, Ghunter. 1969. *Early Christian Experience*. New York: Harper & Row Publishers.
- Bruce, F.F. 1983. *Philippians*. Peabody: Massachusetts, Hendrickson Publishers, Inc.
- Dunn, James D.G. 1989. *Christology in the Making: A New Testament Inquiry into the Origins of the Doctrine of the Incarnation*. Michigan: Grand Rapids, William B. Eerdmans Publishing Company.
- Ellis, E. Earle. 1989. *Pauline Theology: Ministry and Society*. Exeter: Paternoster Press.
- Fee, Gordon D. 1999. *Philippians*. Leicester: Inter-Varsity Press.
- Gundry, Robert H. 1993. *Mark: A Commentary on His Apology for the Cross*. Michigan: Grand Rapids, Eerdmans Publishing Company.
- Hooker, Morna D. 1990. *From Adam to Christ: Essays on Paul*. Cambridge: Cambridge University Press.
- Hooker, Morna D. 1993. *Not Ashamed of the Gospel: New Testament Interpretations of the Death of Christ*. Carlisle: Paternoster Press.
- Jewett, Robert. 2003. „Romans,” in *The Cambridge Companion to St. Paul*, edited by James D.G. Dunn. Cambridge: University Press.
- Johnson Timothy Luke. 2003. „Paul's Ecclesiology,” in *The Cambridge Companion to St. Paul*, edited by James D.G. Dunn. Cambridge: University Press.
- Kasemann, Ernst. 1982. *Essays on New Testament Themes*. Philadelphia: Fortress Press.
- Kim, Seyoon. 2002. *Paul and the New Perspective: Second Thoughts on the Origin of Paul's Gospel*. Michigan: Grand Rapids, William B. Eerdmans Publishing Company.
- Kummel, W.G. 1974. *The Theology of the New Testament: According to its Major Witnesses Jesus – Paul – John*. London: SCM Press Ltd.
- Ladd, George Eldon. 1974. *A Theology of the New Testament*. Michigan: Grand Rapids, William B. Eerdmans Publishing Company.
- Meeks, Wayne A. 1983. *The First Urban Christians: The Social World of the Apostle Paul*. New Heaven: Yale University Press.
- Meeks, Wayne A. 1993. *The Origins of Christian Morality: The First Two Centuries*. New Heaven: Yale University Press.
- Neill, Stephen. 1976. *Jesus Through Many Eyes: Introduction to the Theology of the New Testament*. Philadelphia: Fortress Press.
- Pink, Arthur. 1971. *Spiritual Union and Communion*. Michigan: Grand Rapids, Baker Book House.
- Strom, Mark. 2000. *Reframing Paul: Conversations in Grace & Community*. Downers Grove: Illinois, Inter-Varsity Press.

- Wink, Walter. 1984. *Naming the Powers: The Language of Power in the New Testament*. Philadelphia: Fortress Press.
- Witherington III, Ben. 1994. *Paul's Narrative Thought World: The Tapestry of Tragedy and Triumph*. Westminster: John Knox Press.
- Witherington III, Ben. 2003. „Contemporary Perspectives on Paul,” in *The Cambridge Companion to St. Paul*. Edited by James D.G. Dunn. Cambridge: University Press.
- Wright, N.T. 1991. *The Climax of the Covenant: Christ and the Law in Pauline Theology*. Minneapolis: Fortress Press.
- Ziesler, John. 1983. *Pauline Christianity*. Oxford: University Press.

# The Church and Social Media

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**ABSTRACT:** As nearly half of the global population is on one or more social networks, the churches need to relate to this rapidly expanding phenomenon. The churches have regarded social media primarily as a tool to fulfill their ministry, so generally in positive terms. However, the negative side of social media requires a proper response from the church, perhaps mainly by serving those who are directly affected by it. But social media is more than just a tool, according to the theory of mediatization, social media deeply influences all aspects of personal and public life. This paper explores what the appropriate response could be on the part of the church to this new reality which poses difficult challenges.

**KEYWORDS:** church, social media, mediatization, ministry, technology

## Introduction

As recently as October 2020, out of the 4.66 billion people who are active internet users and make nearly 59 percent of the global population, over 3.6 billion are active social media users, which represents around 49 percent of the global population (Statista.com 2020). Six social networks reported over 1 billion active users: Facebook (2.7 billion), Youtube and Whatsapp (each with 2 billion), Facebook Messenger and Weixin/WeChat (1.3 and 1.2 respectively) and Instagram (over 1.1 billion); another five social networks have between 500 and 700 million active users (TikTok, QQ, Douyin, Sina Weibo, QZone), while another seven are under 500 but above 300 million active users (Snapchat, Reddit, Kuaishou, Pininterest, Telegram, Twitter, Quora). The average time an internet user spends daily on social media networks is 144 minutes (Statista.com 2021).

These figures are relevant to all dimensions of the life of any society but our focus is on their impact on the churches. The latter have grown into regarding social media as an effective tool to fulfill their ministry and do yet need to address the challenges posed by the new developments of a more integrated reality, of which social media has become formative. Cultural studies initially neglected the interaction between religion and social media as, according to the prevailing secularization theory (Rotaru 2006, 251-266) which wrongly foretold the collapse of the religious phenomenon (Horsfield 2007, 59). Things have changed within the last couple of decades and this paper is intended as a contribution to the field as it aims to explore the dynamics of the relationship between the church and social media suggesting two levels of depth on which the two entities interact.

## Social media as a tool

As mentioned above, religion was not considered a significant factor in the quickly changing scene of the second half of the twentieth century. The growing importance of media was not looked at from the perspective of the religious phenomenon because they were independent one from another, the former on the rise, the latter towards an alleged extinction; Stewart Hoover identifies in that period ‘a particular way of looking at both media and religion: as separate and separable entities that could be seen as acting independently of one another and as of having impacts or effects on one another’ (Hoover 2002, 47). The overlooking of religion by the cultural and media studies theorists was very likely rooted in an Enlightenment sociological thought which envisioned a complete secularization of the western world (Hoover & Venturelli 1996, 252). On the other side, the religious entities were disregarding media on different grounds: at

work there was still an inability of understanding the fundamental changes that were taking place in the western societies and which were having a ravaging impact on the religious behavior of post-wars generations. This meant that the churches were at large trapped in a modernist approach to the surrounding world and to the way in which there were supposed to fulfill their calling. This modernist approach refers to the expectation of the church to still be acknowledged as one of the main players within or as the center of the society.

At the same time and perhaps linked to what we just mentioned, another important factor is the sinuous relationship between church and technology in general. Pattison (2005, 1) admits that 'technology as such has rarely been thematized as a matter of theological reflection' and this is a significant failure given the importance of the technology to the dynamics of the society in the present and more so in the future: 'it has left a gaping hole in the theological literature – and precisely at a point where, as seems more and more certain, the future of humanity itself is at stake'.

This neglect of the technology from the theological reflection – for which George Pattison offers convincing explanation but which goes beyond the scope of this paper – can be related to one of the main ways in which the church responds to technology.

Barbour (1993, 3-23) identified three such ways: technological optimism which, of course, means that the church acknowledges a positive role to technology in what regards the development of humanity and also as a support for the church by offering a platform which enables a wider impact; the technological pessimism points to a negative role of the technology inasmuch as it disrupts the wellbeing of the human person and community; the technological ambiguity looks at the context of the usage of technology emphasizing the changing moral value of the acts done with the help of technology.

The church has a tradition of being suspicious about the new developments of technology, but sooner or later it adjusted and ended using the latter to serve its purposes. Media made no exception to this; however, the church was right in regarding the media as a competitor. For nearly four decades of the second half of the twentieth century the main media types were TV and radio as well as print media; the first were the newer developments, out of which the first one was a paradigm shift. But TV individualized all experiences – initially these were related to spreading the information and offering entertainment, then slowly it reached out to many other areas of life: education, economics (business enhanced by advertising) etc. The actualization of the church in actual meeting of the congregation was threatened by being replaced by the screen of the TV.

It was surely the televangelists of the 70s, 80s and 90s the ones who saw the potential of using the media for developing their intended ministry, but the churches at large did not use it in a significant way. Media could not be avoided any longer as it became 'social': the internet revolutionized communication, the sharing of information, business, all aspects of human life.

The online interaction between people has become 'personal' and the increasing number of people connected made the churches to see the potential of this new development. Social media has been regarded as 'a place' where people can be found and subsequently it has been used primarily as a *tool* to fulfill the church's ministry to those people. This approach can be seen when looking at some of the influential books about the dynamics of the relationship between the church and social media. In *Trending Up: Social Media Strategies for Today's Church*, the book edited by Forrester (2017), the articles move from enquiring the usefulness of the social media for the church to offering suggestions to maximize the alleged benefits of the former to the latter.

In *The Social Media Gospel. Sharing the Good News in New Ways*, Meredith Gould argues convincingly that social media cannot be overlooked by the church, but used for an effective ministry; more than that, the author offers very practical advice for churches in order for them to choose the right platforms to be on and to make them profitable for their own purposes (Gould 2015).

But the social media is not only an evangelistic field, a means to reach people whom otherwise churches could hardly get to, or a means to enhance the internal life of the faith community, but it also points to the need to serve people who suffer because of their presence on the social media. One of the studies which makes the connection between having negative experiences on social media (which the study calls SNSs – Social networking sites) and depression and anxiety; one of the main reasons for that is not straightforwardly negative: ‘social comparisons’; these refer to the fact that the user compares himself or herself to a *projected* image of the lives of the others, that is presenting selectively only the accomplishments and not day-to-day struggles and perhaps failures (Seabrook, Kern, and Rickard 2016).

Baccarella et al. (2018, 431) warn about what they call ‘the dark side of the social media’: the spectacular increasing popularity of the social media platforms causes not only advantages for the individuals and society in its complex networking, but they are also ‘undermining the freedoms and the well-being of the individuals and communities they serve’.

Kietzmann et al. (2011, 241-251) suggest that the complex social media phenomenon which now consists of people not only consuming but also creating content on the Internet can be grasped by taking into account seven ‘functional building blocks’: identity – whether users reveal themselves, conversations – how much users communicate, sharing – the dynamics of content exchange, presence – the transparency of the users’ presence online, relationships – how users interact, reputation – access to the standings of the other users, and groups - whether users form communities. Baccarella et al. (2018, 432-435) argue convincingly that each of these ‘functional building blocks’ can be perverted by various users and therefore become part of the ‘dark side of the social media’: identity of the users is not respected but exploited, conversation is not positive, but a way to promote fake news and being aggressive to other users, sharing harmful content, knowing the location of users anytime, instead of cultivating good relationships, users can be threatened, abused, reputation can be deeply and sometimes irreparably damaged and, finally, users can experience exclusion and rejection from members of specific groups. The authors go on calling for a much more thorough analysis of the phenomenon which will desirably grow awareness and lead to action, though the latter is not detailed.

This indeed is a very complex and serious issue; social media is becoming more and more a world in which people take refuge or simply make it their new main world. Experiencing its dark side can have deep impact on people’s existence: stalking that determines moving houses or cities, cyber-bullying which sometimes leads to suicides etc. In this context the church should serve the online ‘neighbor’ by being present online, offering support – counselling, shelter, a voice, etc. With this aspect, we are moving towards a new development within social media, which has been growing for the last fifteen years, surely the period of the outbreak of global social networks.

### **Social media as the new reality**

Hoover (2012, 30) asserted that the separation between the two spheres which we also mentioned earlier claiming that it had described the relationship between the two entities in the initial phase, is no longer real nor possible; he claimed: ‘I want to argue that it is no longer possible to think of religion and media as separate spheres. The two are now converging on one another. This convergence is being brought about by important changes in “religion” and in “media”. The question is more complex than only how the media frame religion or how religions and religious people use media’. This phenomenon has developed initially between media and politics; the former has changed the way the latter is now done in most parts of the world. As early as 1979, in their seminal work, *Media Logic*, Altheide and Snow (1979, 136) claimed that ‘political life is

being recast to fit the demands of major media.’ D.L. and R.P. The fundamental change that was undergoing then was that media was becoming an instrumental factor which reshaped politics with all its aspects: communication, values, advertising, conflicts, decisions etc. This process has extended to all social and cultural dimensions and institutions. Hjarvard (2008a, 106) articulated this new development asserting that ‘the media are at once part of the fabric of society and culture and an independent institution that stands between other cultural and social institutions and coordinates their mutual interaction’. This process is called *mediatization* and Hjarvard is also one of the leading scholars who propose this understanding; he defines mediatization as ‘the process whereby society to an increasing degree is submitted to, or becomes dependent on, the media and their logic’ (Hjarvard 2008a, 113). Therefore what is at work now goes beyond the simple *mediation* of content to an audience which is not physically present; there rather a process by which the media becomes the *environment* in which we exist. The mediatization creates a reality of which media is *one of the* if not *the* driving force, the most important institution which shapes all areas of life on personal and public levels. While the concept was initially advocated by Nordic European countries and German media theorists, there is a growing awareness that the process is underway and mediatization might as well be the suitable manner of defining it.

Religion has made no exception and the impact of the media has become more and more significant; in the words of Hjarvard (2008b, 4): ‘through the process of mediatization, religion is increasingly being subsumed under the logic of the media, both in terms of institutional regulation, symbolic content and individual practices’. In order to explore the concept of the mediatization of religion, Hjarvard describes the manners in which media is to be understood by using three distinctions proposed initially by Joshua Meyrowitz: media as conduits refers to its function of conveying symbols and messages from the senders to the receivers; media as language emphasizes the fashion in which the media molds the messages and media as environments looks at the ways in which media institutions create patterns of communication and interplay. The impact of media on religion is significant on all these three levels because it influences ‘the amount, content and direction of religious messages in society’; more than that, it affects the reshaping of the religious representations and in the reassessment of the place and the authority of the institutionalized forms of religion. As a result, the media has turned religious symbols, representations and practices in banal religious representations which do not perform the same function but actually only to communicate new meanings, often times a non-religious one. (Hjarvard 2008b, 5-6).

## Conclusion

Social media is indeed a tool but it should be not regarded exclusively as such; the rapid changes in the societies that are increasingly connected support an understanding of the new reality as a mediatized one. The increasing importance of media within the construct of this new reality revolutionizes the way in which the message of the church is communicated (Rotaru 2014, 21), its content as such, as well as by whom it is conveyed. With communication that is instant, universal (globalized) and basic, the church needs to revisit its public discourse as well as the agents that share its messages. Social media should become the mission field, ‘the ends of the earth’ in which the church must be present sharing, loving, serving. Also, it is becoming essential that the church seeks to understand the dynamics of the life of the individual and the community, the society at large. In the end, perhaps that likes of the books that we mentioned above, in which Christian leaders strive to work out effective ways to be church online is a good starting point in facing the unprecedented challenges that lie ahead of the church.

## References

- Altheide, D.L. and Snow, R.P. 1979. *Media Logic*. Beverly Hills, CA: Sage.
- Baccarella, Christian V., Wagner, Timm F. Kietzmann, Jan H., McCarthy, Ian P. 2018. "Social media? It's serious! Understanding the dark side of social media." *European Management Journal* 36(2018): 431-438.
- Barbour I. G. 1993. *Ethics in an Age of Technology: Gifford Lectures*, Volume Two (The Gifford Lectures 1989-1991.) New York: Harper Collins.
- Gould, Meredith. 2015. *The Social Media Gospel. Sharing the Good News in New Ways*. Collegeville, Minnesota: Liturgical Press.
- Hjarvard, Stig. 2008. "The mediatization of religion. A theory of media as agents of religious change." *Northern Lights Journal* 6 (1).
- Hjarvard, Stig. 2008. "The Mediatization of Society. A Theory of Media as Agents of Social and Cultural Change." *Nordicom Review Journal* 29(2): 105-134.
- Hoover, S., & Venturelli, S. S. 1996. "The Category of the Religious: The blindspot of contemporary media theory." *Journal of Critical Studies in Mass Communication* 13 (3): 251-265.
- Hoover, Stewart M. 2002. "Introduction: The cultural construction of religion in the media age". In Stewart M. Hoover & Lynn Schofield Clark, L. S. 2002. *Practising Religion in the Age of the Media: Explorations in media, religion, and culture*. New York: Columbia University Press.
- Hoover, Stewart M. 2012 "Religion and the Media in the 21st Century." *Tripodos Journal*, Barcelona, 29:27-35.
- Horsfield, Peter. 2007. "Researching religion in a school of media and cultural studies." *ACCESS: Critical perspectives on Communication, Cultural Policy Studies* 26(2): 59-71.
- Kietzmann, Jan H. Hermkens, Kristofer, McCarthy, Ian P, Silvestre, Bruno S. 2011. "Social media? Get serious! Understanding the functional building blocks of social media." *Business Horizons* 54(3): 241-251.
- Mark Forrester (ed.). 2017. *Trending Up: Social Media Strategies for Today's Church*. Springfield, Missouri: Salubris Resources.
- Pattison, George. 2005. *Thinking about God in an Age of Technology*. Oxford: Oxford University Press.
- Rotaru, Ioan-Gheorghe. 2014. *Drept Bisericesc (Church Law)*. Cluj-Napoca: Risoprint Publishing House.
- Rotaru, Ioan-Gheorghe. 2006. "Aspects of secularization and of the secularized man". *Studia Universitatis Babeş-Bolyai, Theologia Orthodoxa*, L-LI, no.1: 251-266.
- Seabrook, Elizabeth M, Kern, Margaret L and Rickard, Nikki S. 2016 "Social Networking Sites, Depression, and Anxiety: A Systematic Review." *JMIR Mental Health. JMIR Publications*, 3 (4), November 2, 2016.
- Statista. 2020. „Global digital population as of October 2020." Available at <https://www.statista.com/statistics/617136/digital-population-worldwide/>, accessed December 20, 2020.
- Statista. 2021. „Number of social network users worldwide from 2017 to 2025." Available at <https://www.statista.com/statistics/278414/number-of-worldwide-social-network-users/>, accessed January 2, 2021.

# DNA Method in the Medico-Legal Expertise and Forensic Science

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**ABSTRACT:** In the criminal investigation, expertise has an important role in terms of finding out the truth about the criminal case. To identify or exclude suspects, specialists in the field use the DNA method, a method that is performed in forensic laboratories or in forensic institutions. The genetic fingerprint includes that chemical structure that differentiates us from other individuals and that helps specialists determine the genetic code through biological traces present on the spot. It can be seen that the DNA profile has a great utility, especially in the expertise of filiation, the establishment of biological traces, the identification of victims, the confirmation or refutation of guilt. The paper presents the importance of the DNA method and the contribution of this profile in terms of both the acquittal of the suspects and the reparation of some judicial errors.

**KEYWORDS:** DNA, genetic identification, forensic expertise, chemical structure, genetic code

## **Introduction**

The discovery of deoxyribonucleic acid (DNA) led to an understanding of the concept of heredity and, subsequently, to identification, by decoding the genetic information that the DNA molecule has in its component. It has a molecular structure and is contained in all living cells of organisms.

The first presentation of the structure of DNA was made in 1950 by James Watson and Francis Crick. The DNA molecule is very large, being composed of four types of nucleotides - adenine, cytosine, guanine and thymine.

Until 1985, the study of DNA molecules was not a major concern for forensics. Alec Jeffreys and his colleagues at the University of Leicester were the first to show the infinite valences that DNA has in identifying a person by studying the biological traces of any kind left by those people at the crime scene.

The process of identifying a person begins when he leaves a biological trace containing genetic material (DNA) at the scene of the crime. Next is the taking of the sample by the forensic scientist, followed by the laboratory analysis which has as a terminus the translation of the genetic material into a code, with a unique, unrepeatably formula, specific to a single carrier of that genetic information (Stancu 2015, 167).

## **Genetic identification**

Genetic identification consists in determining the genetic code of each individual, a relatively recent discovery, which foreshadows a real revolution in the field of forensic identification: genetic fingerprinting (Buzatu 2013, 66).

The chemical structure is different for each person, so each individual has his own biological scheme, the key to our individuality. No two genetic codes are identical, except for those coming from real twins, univitelline twins (results from a single fertilized egg divided in two) (Ionescu 2007, 81).

Only a small part of the genome has informational content (known) and encodes hereditary characters, areas of informational DNA alternating with non-informational areas. Informational DNA segments encoding a specific protein have "attached" non-informational

segments (DNA mini-satellites). In these non-informational segments multiple individual variations can be detected (segment called polymorphism), the variability being more accentuated in certain genomic areas, areas that are called polymorphic areas (Manu 2008, 419).

In terms of identification value, geneticists classify biological traces into three categories:

1. High precision tests in identifying the DNA profile: blood, semen; saliva (regardless of the types of objects it is collected on: smoked cigarettes, toothbrushes, masks, crockery, stamps, postal envelopes, etc.).

2. Samples with potential in defining the DNA profile: vaginal fluid, nasal secretions, hair (only torn hair has value for nuclear DNA analysis); pieces of meat, skin cells, urine, body parts, bones (bone marrow can be analyzed even in cases of advanced decomposition).

3. Samples with potential in mitochondrial DNA analysis. Any samples that are not suitable for other analyzes can be analyzed by mitochondrial DNA analysis (Stancu 2015, 168).

Performing the classic DNA test:

- Is harvested from the crime scene, from the victim, etc. incriminated samples of blood, semen, hair; as well as the comparative evidence from the suspects;

- Long spirals of DNA are extracted from the cells of each sample which are fragmented by cutting with the restriction enzyme and then separated by electrophoresis;

- DNA fragments are transposed on a membrane and then included in a special gel. By processing in the gel layer, DNA models (bar code) are formed which are transferred by irradiation on a film;

- The DNA models obtained appear juxtaposed on a single support. By comparing the incriminated model with those of the suspects, the similarities (identity) and the differences (non-identity) are determined (Buzatu 2013, 67).

### **The legal framework of performing medical examinations (genetic)**

Expertise is the means of proof used in criminal trial when the complexity of the aspects of the case requires the presence of specialists.

The Criminal Procedure Code is the main legislative framework that regulates the performance of expertise and all other aspects related to the procedure of their performance, the persons and institutions involved the framework and conditions for their conduct.

An expert is a person who has specialized knowledge in a certain field of science, technology or art, officially qualified as an expert, called for clarification in the criminal process of issues involving such circumstances (Ifrim, 2014, Academia.edu).

Forensic expertise is a means of proof, a valuable probative procedure, through which, based on research based on scientific data and methods (Ciobanu and Stancu 2017, 42), “the expert brings to the attention of the judiciary scientifically motivated conclusions about facts for whose clarification specialized knowledge is needed” (Mihuleac 1971, 20).

In the system of the Ministry of Justice, the first expertise is performed at the inter-county laboratories (Bucharest, Cluj, Iasi and Timisoara) and a new expertise at the National Institute of Forensic Expertise (Buzatu 2013, 26).

Among the attributions of the Genetics Laboratory we mention the following:

1. Organizes and ensures the proper conduct of specific activities on: sampling and conservation of biological samples and criminal bodies for DNA analysis; detection and quantification of human DNA in biological samples or criminal bodies; expertise by DNA examination to establish biological filiation, paternity/maternity, based on the deoxyribonucleic acid test; expertise by DNA examination to establish the complex

relationships of biological kinship, between relatives, of degree I, II or III, expertise by DNA examination in order to identify persons.

2. elaborates the medico-legal documents related to the activity;
3. ensures the identification and traceability of the distributed medico-legal works;
4. ensures the communication with the competent institutions, as well as with the interested natural persons, in the specific field of activity, with the observance of the confidentiality of the medico-legal act;
5. ensures the preservation of the chain of custody of the sample (collection, processing, preservation, restitution, destruction);
6. ensures the periodic evaluation of the laboratory performances by participating in the inter-laboratory tests on domestic and international level (INML 2020, inml-mm.ro).

The new expertise is ordered either *ex officio* or at the request of an interested party, when the verification of the first expertise is pursued by another expert or by a commission of experts. Thus according to article 125 of the Criminal Procedure Code, if the criminal investigation body or the court has doubts regarding the accuracy of the conclusions of the expertise report, it orders the performance of a new expertise (Buzatu 2013, 26).

The special medico-legal commission that performs the new expertise carries out its activity only within the National Institute of Forensic Medicine “Mina Minovici” Bucharest, being a unique commission in the country. It should be noted that the new expertise report represents another level of functional competence and, consequently, the conclusions formulated remove other opposing views expressed in a report of the expertise (Iftenie and Dermengiu 2014, 546-547). DNA expertise is regulated by article 190 of the Criminal Procedure Code. It can be ordered when it is necessary to establish the identity of a person or if the traces found come from the suspect, defendant or injured person.

The object of the expertise is the samples taken during the physical examination and any other evidence that was found or collected. DNA expertise is performed within medico-legal institutions, a forensic expertise laboratory or any other specialized institution certified and accredited in this type of analysis. The biological material is made available to the expert without the identification data of the person from whom they were taken and the results obtained are considered personal data and are protected according to law.

The provisions of the Criminal Procedure Code regarding judicial genetic expertise are similar to those regarding DNA expertise. It can be disposed of in the same manner and by the same persons, and the resulting genotyping is personal and is protected by law. In addition, the biological samples collected during the examination can be used only to identify the judicial genetic profile and can be used in other cases if necessary, in order to find out the truth (<https://www.academia.edu>).

### **The usefulness of the DNA profile in forensic and judicial practice**

The DNA profile plays an important role in:

- Affiliation expertise;
- Establishing biological traces (blood stains, vaginal discharge, semen, hair bulb, tissue fragments);
- Identification of the species to differentiate human/animal origin;
- Identification of blood samples taken for alcoholism;
- Identification of cadaveric/skeletal remains;
- Identification of victims;
- Confirmation/denial of guilt in sexual crimes and homicides.
- Reopening unresolved cases or checking erroneous convictions. Because DNA maintains its integrity in dry specimens for a long time, it can reopen old cases that are disposed of in the preservation of biological samples.

In a study conducted between June 1995 and June 1996, the US Department of Justice examined the cases of 26 people tried and convicted of sex crimes/sex crimes-crime, who were acquitted following a retroactive investigation of the DNA profile. These people, unjustly convicted, served between 9 months and 11 years of punishment (7 years on average). The conviction was based on visual identification by the victim/witnesses and demonstration of similarity by non-DNA methods between the suspect and the biological traces found on the face place or on the victim's body.

- Creating an international bank of criminal fingerprints of criminals. England is the first country in the world to set up a national DNA database in 1995 (Manu 2008, 425-426).

Scientific progress requires thorough and long-term research into as many genetic data as possible. There are thus undeniable benefits of genetic data processing.

Increasing the quality, size and diversity of genetic databases allows for more accurate diagnosis, targeted therapies, more effective prophylaxis measures, and the identification of potential risks of developing hereditary diseases, which are just a few of these benefits.

The analysis of information stored in DNA can have other uses: diagnosis and targeted treatment of certain diseases from the intra-uterine stage, establishing paternity, determining the degree of kinship, identifying ascendants or extinct relatives, tracking the evolution of species of organisms, identifying people in for the purpose of performing the act of justice or for the purpose of gathering information relevant to the national security of a state.

In view of the evolution of artificial intelligence, DNA microarray technology is a widely used and well-founded method in bioinformatics. Easy access to real data sets and the corresponding results, obtained by various methods by many researchers, offers a major opportunity to develop artificial intelligence methods in a consolidated and widely explored framework. The ability to evaluate the performance of new methods of evolutionary algorithms in the analysis of real data, the chance to compare the behavior of proposed methods with repeatedly tested approaches, and the potential to improve DNA microarray data analysis methods is extremely attractive (Oprea and Alecu 2020, hotnews.ro).

Thousands of unresolved cases could be reopened and resolved thanks to an innovation in DNA analysis.

Scientists have already proclaimed the new method as the most important progress in this field in the last decade. The method was tested in a pilot program and proved to be a success, and police and forensic investigators have already begun searching the archives for old, unresolved cases that could be solved with the new method.

The technique, developed by the Forensic Science Service (FSS) in the United Kingdom (the forensic service under the government) and called DNA Boost, makes it possible to create genetic profiles even in the case of "mixed" samples, namely when samples carrying genetic information taken by they come from two or more people at the crime scene. Approximately 10% of DNA samples analyzed in the UK by forensic scientists have this feature, and until now it was practically to researchers.

The method developed by FSS involved the creation of software that analyzes the mixture and "pairs" the information, signaling the possible correspondences. Such reconstituted DNA can be searched in the DNA database (which currently contains about 1 million records), and thus possible suspects can be designated (Descopera.ro 2009).

### **The value of the DNA method**

Recent advances in the field of DNA profiling have transformed this type of investigation into an investigative tool of great importance for Forensic Medicine due to its indisputable qualities:

- The method has specificity and a capacity of discrimination clearly superior to the classical methods of serological identification;

- Allows the identification of biological traces even when they are found in infinitesimal quantities;
- Can be successfully applied even when the biological traces are very old and degraded.

In the administration of justice, the contribution of the DNA profile is the exoneration of guilt of the suspects and the avoidance or reparation of committing judicial errors.

The evolutionary needs that determine the future directions of DNA technology are:

1. The creation of an International DNA Data Bank for medico-legal use, connected with similar databases, is necessary due to the ever-increasing flow of information and the need for real-time access to this data.

2. Internationally coordinated research programs. Research should be conducted according to an international program, focusing on priorities.

3. Improving DNA technique. The rapid evolution in DNA technology recorded in the last decade should continue towards improving the techniques of extraction, detection and filtration of contaminated DNA, increasing the reliability of DNA techniques (automation, computer interpretation)

4. Standardization of laboratory techniques. Due to the current diversity of laboratory procedures and techniques, an international effort is needed to standardize laboratory procedures (Manu 2008, 432-433).

## Conclusions

Expertise tends to occupy an important place in criminal investigation, and knowledge and specialization help the possibility of improving the activity of justice. It can be seen that the most requested expertise are those in the field of forensics and forensic medicine. Forensics and forensic doctors perform complex expertise there is a close collaboration between them, in this way, following a bill that refers to an autonomous regulation for such categories of expertise.

Lately, new technologies, which deal with the use of DNA to find the real culprits, are constantly evolving, this being due to the use in a wide range of information that comes to the aid of professionals in the forensics.

Genetic analysis has provided and continues to provide positive results in terms of finding out the truth, by identifying the offender, but also to ascertain the innocence of people who could be suspected of their involvement in a criminal case.

When a crime is discovered, at the crime scene, biological traces can be found, from which the genetic profile is determined. It is obtained from the use of new modern software tools in forensic genetics laboratories. Thus, specialists will find out certain characteristics of the individual, such as: eye color, hair color, age, which means defining the forensic path.

## References

- Buzatu, Nicoleta-Elena. 2013. *Criminalistica (Forensics)*. Bucharest: Pro Universitaria Publishing House.
- Ciobanu, Petruț and Stancu, Emilian. 2017. *Criminalistica. Tactica criminalistica (Forensics. Forensic Tactics)*. Bucharest: Universul Juridic Publishing House.
- Descopera.ro. 2009. "A new method of DNA analysis could lead to the reopening of investigations." Available at <https://www.descopera.ro/darticle/4080289-o-noua-metoda-de-analiza-adn-ar-putea-conduce-la-redeschiderea-unor-anchete>. Accessed on 18.12.2020.
- Ifrim, Cristina. 2014. "Biocriminal identification based on DNA profile." *Academia.edu*. Dissertation Thesis. Available at [https://www.academia.edu/39510934/Identificarea\\_biocriminalistic%C4%83\\_pe\\_baza\\_profilului\\_ADN](https://www.academia.edu/39510934/Identificarea_biocriminalistic%C4%83_pe_baza_profilului_ADN).
- Iftenie, Valentin and Dermengiu, Dan. 2014. *Medicina legala (Forensic Medicine)*. Bucharest: C.H. Beck Publishing House.
- INML. 2020. "Forensic genetics laboratory." Available at <https://inml-mm.ro/?pg=pag/lab-genetica>. Accessed on 20.12.2020.

- Ionescu, Lucian. 2007. *Criminalistica (Forensics)*. Bucharest: Pro Universitaria Publishing House.
- Manu, Dan. 2008. *De la Medicina legala la Dreptul medical (From Forensic Medicine to Medical Law)*. Pitești: Tiparg Publishing House.
- Mihuleac, Emil. 1971. *Expertiza judiciară (Judicial expertise)*. Bucharest: Științifică Publishing House.
- Oprea, Alin-Gabriel and Angelica Alecu. 2020. „Genetic data - a challenge for researchers, but also for ... lawyers.” *Hotnews.ro*. Available at [https://www.hotnews.ro/stiri-specialisti\\_stoica\\_si\\_asociatii-23631271-datele-genetice-provocare-pentru-cercetatori-dar-pentru-juristi.htm](https://www.hotnews.ro/stiri-specialisti_stoica_si_asociatii-23631271-datele-genetice-provocare-pentru-cercetatori-dar-pentru-juristi.htm). Accessed on 18.12.2020.
- Stancu, Emilian. 2017. *Tratat de Criminalistică (Forensic Treaty)*. Bucharest: Universul Juridic Publishing House.

# **Prevention of Deviant Conduct in Minors in Romania**

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**ABSTRACT:** The prevention of juvenile delinquency represents an important part of preventing criminality in a community, so that the legislative system had to adopt humane activities and orientations with respect to young persons for the purpose of developing non-criminal attitudes. The pursuit to prevent juvenile delinquency materialized in a series of international legal measures to ensure a balanced development of teenagers, with respect for their personalities, which have been largely taken over in national legislation, as a series of plans and programs for the young, with funds, resources and services for their treatment. In concrete terms, Romania took a series of measures in accordance with international conventions, that were inserted in the Romanian Constitution, in the Criminal Code, in special procedures of the Criminal Procedure Code, and also in special legislation for the protection and promotion of children's rights.

**KEYWORDS:** juvenile delinquency, prevention of crime, deviant conduct, minor, educational measures

## **Introduction**

The prevention of deviant behavior of minors has been of concern to most countries in the world, as it is of particular importance in preventing crime in society. In this sense, various legal provisions have been adopted in the legislative system as well as humanistic guidelines for minors to develop with non-criminogenic attitudes. I would mention here the French author Raymond Gassin who supports a preventive criminology that must be in line with both the orientation of criminal policy and the Community measures adopted in various European countries. He considers that the term prevention means both to anticipate (prevent crime) and to warn (warning with the occurrence of a possible crime) (Buneci 2019, 69 where he quotes the author Raymond Gassin).

## **Prevention of Deviant Conduct in Minors in Romania**

The concern for the prevention of deviant behavior has existed since the publication of the Criminal Code in 1969, after which there was a real criminological research on juvenile delinquency. Thus, a series of studies were conducted on the investigation of several thousand minors, and their conclusions showed that minors can commit criminal acts on the basis of known but unresolved behavioral disorders, due to lack of institutions, prosecuting late, without any preventive purpose. For this reason, social control through the intervention of justice proved to be low in relation to the number of crimes committed in the form of real competition, and pre-trial detention diminished the possibilities of re-education when the court ordered by court order educational measures.

Moreover, deviant behavior is understood as a behavior that is not desired by society, and active subjects of this type of behavior, if they commit a crime, acquire the status of suspects or defendants in a criminal case. Deviant behavior also refers to violated rules that are of a misdemeanor nature. Since the 70's, it has been discussed about the delinquent behavior of minors, about the causes that generated this type of behavior, deviant behavior but also what measures are required to prevent such behaviors. In this sense, the prison sentence

for juveniles who committed crimes was eliminated by Decree 218/1977, published in the Official Gazette no. 71 of July 17, 1977.

After the 80's, other research was done on the psychic features characteristic of deviant behavior of minors, which showed that in studying their criminal behavior must take into account the principle of personality, and in addressing the issue of juvenile delinquency assessments were made according of the interpersonal maturity of each individual (Bogdan, Preda and Olaru 1983, 285-304).

Regarding the concept of "deviance", the authors Dan Banciu and Sorin Rădulescu in the work "Introduction to the sociology of deviance" (Banciu and Rădulescu 1985) showed that this concept consists in "the set of behaviors that violate institutionalized expectations, ie those expectations shared or recognized as legitimate in a social system".

The same authors after the 90's analyzed in the paper Evolutions of juvenile delinquency in Romania, research and social prevention the notion of juvenile delinquency and what criminal sanctions apply. This juvenile predilection leads to manifestations and deviant acts starting with the absence from the school program, indiscipline phenomena also manifested within the school, a violent language, physical aggression, drug use, etc. (Buneci 2019, 43).

In the situation where a minor commits a criminal offense, the court conducting the judicial investigation according to the procedure in cases with juvenile offenders provided by art. 504 - art. 520 Code of Criminal Procedure may take a non-custodial educational measure, detention in an educational center, or in the worst case, an educational measure of detention of a minor in a detention center. In relation to the minor, in case of committing offenses punishable by a fine of imprisonment or imprisonment for a maximum of 15 years, according to the special procedure of the plea agreement, a plea agreement may be concluded, with the consent of their legal representative, taking into account when choosing the educational measure. In the case of custodial educational measures, the limits of the periods for which these measures are ordered shall be reduced by one third.

The number of crimes committed by minors has increased greatly from year to year, especially for deeds provided by Law no. 143/2000 on preventing and combating illicit drug trafficking and consumption, namely drug trafficking, possession of drugs for own consumption, international drug trafficking, but also in relation to crimes against property (theft, robbery, robbery), but the number of crimes committed against minors who have become victims of society has also increased.

These aspects result from the statistics of the Public Ministry for the years 2017-2018 but also from the statistics of the National Anti-Drug Association. The statistics have the effect that means can be found to combat juvenile delinquency, so that removing some causes or reducing them will have an effect on the social environment. With these data, measures can be taken on economic causes, natural causes or other causes that increase the criminal environment, so that in the end effective measures can be taken on prevention, so that no other crimes are committed.

The data provided by the statistics are of great value for the criminal policy of any state that must know the causes of the crime and organize itself to defend and repress as much as possible such criminal acts.

In order to discuss the prevention of deviant behavior of minors, we must first consider the causes that generate and favor this type of behavior. These include lack of landmarks, lack of communication lack of respect for ethical and moral principles and highlighting appropriate role models in the family, frequent absence of parents, psychopathological problems associated with physical and sexual abuse by people in the entourage, poverty, unemployment, social exclusion and racism, non-transmission of ethical and social values by educational systems. To these can be added personality disorders, associated with alcohol and

drug use, as well as the presentation by the media and websites of absurd, excessive and unjustified lifestyles.

Another cause that leads to crime is the economic influences that may exist in the development of a normal society, so that there is no major discrepancy between the poor and the rich. Thus progress and well-being have an overwhelming effect on crime, and if the laws governing the sanctioning of crimes (we refer here to criminal law) are consistent and have a certain prediction of reality, they lead to a decrease in the number of crimes.

A special influence on prevention has the education of the individual, who from childhood through the knowledge he acquires through school education can form him into becoming a person who analyzes all the time when performing certain acts to distinguish between good and evil, between legal and illegal.

The European Parliament issued a Resolution on 21.06.2007 to combat the phenomenon of juvenile delinquency, adopting several strategies at both national and European level, based mainly on the prevention and integration into society of juvenile offenders.

Over time, several measures have been taken to prevent juvenile delinquency through a number of international regulations. We mention here the 1989 Convention on the Rights of the Child, the UN Standard Minimum Rules for the Administration of Juvenile Justice - Beijing 1985, the 1990 UN Rules for the Protection of Young Persons the Principles for the Prevention of Juvenile Delinquency in Riyadh 1990, the Council of Europe Convention on Action against Trafficking of human beings since 2005.

Moreover, these normative acts mentioned above have shown that minors who do not have a family environment or it is not suitable for their development will have the right to protection but also to special assistance from the state such as: to be placed in within a family or their placement in certain appropriate child care institutions. Provisions are also provided for minors with physical or mental disabilities to benefit from a life that allows them a spiritual, mental, moral, social development, ie to ensure a decent and fulfilled life.

Incumbent Member need not apply juvenile delinquents punishment or inhuman, degrading, not torture, and in the worst situation can be taken against them a deprivation of liberty.

In criminal proceedings, in accordance with Directive 2013/48/EU (on the right to have access to a lawyer in criminal proceedings and European arrest warrant proceedings, as well as the right to have a third party be informed of deprivation of liberty and the right to communicate with third parties and consular authorities during deprivation of liberty) of the European Parliament and of the Council in which it is under the regime of a deprivation of liberty measure to be able to inform a family member about this.

In the case of the trial of a minor, it is necessary to carry out a social investigation that shows the conditions in which he lives and the circumstances of the person as well as the background of the minor.

The principle of the presumption of innocence as analyzed by EU Directive 2016/343 of the European Parliament and of the Council refers to the fact that minors even if they are under a preventive measure or awaiting trial are considered innocent and are required to receive legal advice free of charge, to be able to continue their studies and to be able to perform paid work on a case-by-case basis.

Romania has also taken a series of measures to adopt legislation in line with international conventions regarding the legal regulation of minors. We can mention here the Romanian Constitution - art. 49 Protection of children and young people, the current Criminal Code governing the criminal liability of minors, the Code of Criminal Procedure governing the framework of preventive measures and other procedural measures applied to minors but also the Special Procedure in cases of juvenile offenders. Regarding the preventive measures applied to minors in the Code of Criminal Procedure were regulated in art. 243-244 special provisions regarding these measures, in which detention and pre-trial detention may be

ordered against the minor only exceptionally and only provided that the effects that deprivation of liberty would have on his personality and development are not disproportionate to the purpose pursued by taking these measures. The execution of the detention and preventive arrest of minors is done in relation to the particularities of the age, so that these preventive measures do not prejudice their physical, mental or moral development.

Also, Law no. 272/2004 on the protection and promotion of children's rights, Law no. 254/2013 (with subsequent amendments) regarding the execution of sentences and custodial measures ordered by the judicial bodies during the criminal proceedings and Decision no. 299/2014 of the Romanian Government on the organization and functioning of the National Authority for the Protection of the Rights of the Child and Adoption. According to Law no. 304/2004 on the organization of the judiciary, courts for minors and the family were set up as special courts.

The legislator established by Law no. 252/2013 on the organization and functioning of the probation system (published in the Official Gazette, Part I no. 512 of August 14, 2013) the organization and functioning of the National Probation System at the central level and at the level of the territorial structures in order to contribute to the administration of the act of justice. The provisions of this law provided that juvenile defendants be assessed by the probation counselor at the request of the courts. In this sense, an evaluation report will be prepared where the following data will be entered: family situation, background, school situation, health status and if there is a risk that the minor will continue to commit other criminal acts.

By Law no. 9/2018, Law no. 35/1997 on the organization and functioning of the People's Advocate (republished in the Official Gazette, Part I no. 181 of February 27, 2018). Thus, by amending this law, the institution of the Child Advocate is under the coordination of the People's Advocate and acts in order to promote and protect the rights of children up to 18 years, supports and encourages the observance and promotion of children's rights, under the law and Law no. 272/2004 on the protection and promotion of children's rights, republished, with subsequent amendments and completions.

## Conclusion

Given the multitude of legal provisions on minors regarding the protection and prevention of deviant behavior of minors, I think it would be beneficial to unify the legislation into a single special law governing the rights, procedural guarantees and protective measures of minors.

## References

- Banciu Dan and Rădulescu Sorin. 1985. *Introduction to the sociology of deviance*. Bucharest: Scientific and Encyclopedic Publishing House.
- Bogdan T., Preda, V. and Olaru, N. 1983. "Psychology of deviance and the means of reeducation and reintegration of delinquents." 285 -304. In *Psychology of education and development*. Bucharest: Academiei Publishing House.
- Buneci Bogdan. 2019. *Minor - subject of law from the perspective of forensic interference with criminal procedural rules*. Bucharest: Universul Juridic Publishing House.
- Directive 2013/48/EU on the right to have access to a lawyer in criminal proceedings and European arrest warrant proceedings, as well as the right to have a third party be informed of deprivation of liberty and the right to communicate with third parties and consular authorities during deprivation of liberty.
- EU Directive 2016/343 of the European Parliament and of the Council.
- Decree 218/1977, published in the Official Gazette no. 71 of July 17, 1977.
- Decision no. 299/2014 of the Romanian Government on the organization and functioning of the National Authority for the Protection of the Rights of the Child and Adoption.
- Law no. 143/2000 on preventing and combating illicit drug trafficking and consumption.
- Law no. 254/2013 (with subsequent amendments) regarding the execution of sentences and custodial measures ordered by the judicial bodies during the criminal proceedings.

Law no. 272/2004 on the protection and promotion of children's rights, republished.

Law no. 272/2004 on the protection and promotion of children's rights.

Law no. 304/2004 on the organization of the judiciary.

Law no. 9/2018, Law no. 35/1997 on the organization and functioning of the People's Advocate (republished in the Official Gazette, Part I no. 181 of February 27, 2018).

Romanian Criminal Code.

Romanian Code of Criminal Procedure.

# The Role of Intellectuals in the Religious Education of Children and Youngsters in Communist Romania

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**ABSTRACT:** Immediately after coming to power, communist regime aimed at creating an atheist society, slowly but surely. As it was an exclusive “religion”, which could not accept another one around it, the communism became “the enemy of any other form of religion, and in particular of Christianity” (Bardyaev 1960, 158). Becoming aware that with adults they could not achieve their goals, communism accepted the idea that it should “bear” the adults’ convictions and mindset and focus on the younger generations to stop the forwarding of religious beliefs.

**KEYWORDS:** church, neo-Protestant, intellectuals, religious education, communism, children and youngsters, student activities

## 1. Introduction

This article represents a revised and added subchapter from the Graduate Thesis titled *The Religious Education of Children and Youngsters in the Communist Period*, unpublished, presented in front of the Evaluation Committee at the University of Bucharest, Baptist Theology Faculty, in June 2007, in Bucharest.

The creation of “The new Man” was the motto and the ideal of communists, such as it results from “The July Theses” – 1971 (Popescu, Adam, Abăluță 2001, 33), written by Nicolae Ceaușescu and the “Program” of the Romanian Communist Party, elaborated four years later, where the subject is the “training of youth masses from a professional and political viewpoint, their active participation to accomplish the general goal of the party” (Cernat 2004, 254). In reality, during the Romanian “golden age”, public school was transformed into an incubator and launchpad for future communists.

This article aims to highlight the efforts of the neo-Protestant cults in keeping their children and youngsters in the spirituality sphere while facing the communist powerhouse, accentuating the role of intellectuals and student activities in strengthening, and rejuvenating of their churches. We want to fill a small part of the ample historical void in this period. The uniqueness of this study comes from the fact that it is, mostly, based on unpublished documents from the files of the Archive of the State Secretariat for Cults (A. S. S. C.) as well as on parts of the files from the Archives of the National Council for Studying the Securitate Archives (A. N. C. S. S. A.).

## 2. Religious education from the perspective of historic cults

In the communist period, The Orthodox Church had an interest in adults, preponderantly, and it did not organize activities for educating the youth (A.S.S.C., no. - /1981, 1), with some exceptions in Banat and Transylvania (Popescu 1986, 14; A.S.S.C., no. - /1971, 3), the catechization of children and youngsters being almost nonexistent (A.S.S.C., no. 103/2 April 1960, 3). Most priests just advised the believers to raise their children in the spirit of the ancestral orthodox belief and to bring the children to church (A.S.S.C., no. 36/1982, 10). It would have been a difficult thing to do since the Church itself was oscillating between collaboration, some priests’ greed, lack of education of some ministers, and even disinterest of priests and parents, children, and

youngsters, all of them being influenced by the attitude of the Church. The few religious activities were organized just to counteract the powerful neo-Protestant influence, the roman-catholic or even the protestant influence over orthodox children and youngsters.

On the other side, the Roman-Catholic Cult was not recognized officially by the state and it followed the provisions of the canonic Codex, elaborated by the Vatican, regarding the religious education of believers, Codex that also comprised special provisions for the indoctrination of children and youth. Thus, canons 1330 and 1331 stipulated that the parish priest should timely and continuously prepare the children throughout many days, every year, to get them ready for the sacraments of penitence and confirmation (it strengthened the grace received when baptized for children older than seven years old). Besides this, the parish priest had to instruct more carefully the children that were to receive the first eucharist. This training took four weeks, a few hours a day, when this ended every child had to know the Confession of faith, a number of prayers and the Ten Commandments by heart.

From the catechization viewpoint, the protestant cults – The Lutherans (of Augustan Confession and Presbyterian) and the Reformed Church, have manifested a long-term pursuit to attract children and youngsters to come to church. It was with great expense that priests had many children prepared for confirmation, which, from a protestant viewpoint, was an official confirmation of the baptism prior to communion.

When comparing the Orthodox and the Roman-Catholic cults to the protestant ones, we notice that the latter had a more intense preoccupation towards teaching the children and youngsters their doctrines. But, as we shall present forward, the neo-Protestant cults put a greater value on catechization, which had a character of schooling and mandatory frequency, as opposed to the protestant cults.

### **3. Religious education from the perspective of neo-protestant cults**

The Neo-Protestant Cults have, during the entire communist period, manifested a great interest in keeping their children and youngsters in church (Petcu 2005, 352). In the majority of cases, children and youngsters' catechization took place in church, on Saturdays or on Sundays, during the religious services, together with the rest of the believers. There were also deviations from this rule, when it was desired to intensify the religious life, and then the catechization happened after the religious services' time, separated from the adults. (A.S.S.C., no. 103/1958, vol. 1, inv. 122, 7 – 8; A.S.S.C., no. 93/1960, vol. 13, inv. 99, 1; A.S.S.C., no. 2573/21 July 1989, 1; A.S.S.C., no. 147/27 June 1989, 1; A.S.S.C., no. 178/3 July 1989, 1).

For Adventist children and youth, there were organized classes of religious education throughout the school year, including holydays, no matter the number of participants. Due to a small number of children and youngsters, some neo-Protestant cults, interrupted the catechization during holydays (A.S.S.C., no. 88/28 June 1989, 1). In most neo-Protestant churches there were special, separated rooms where children and youngsters were taught the spiritual percepts of their religion (A.S.S.C., no. 273/26 June 1989, 3; A.S.S.C., no. 437/12 July 1989, 2). When there were no such rooms in churches, such activities would take place in private houses, and they were very often sanctioned with drastic fines. Although there is no evidence on which cult they belonged to, in March 1972, in Suceava, such a meeting took place and the youngsters there were fined according to Decree no. 153/1970. Also, in October, in the village of Pătrăuți, a gathering with children and youth organized by educator Turtureanu Oltea, was "fined" with the termination of employment for the educator (A.S.S.C., no. 6436/1973, inv. 1783, 3). Similarly, pupils between 7<sup>th</sup> and 12<sup>th</sup> grade would gather in some rooms rented by the children of pastor Geabău. Since it was a private house, the cults inspectors knew little about the activities that took place there (A.S.S.C., no. 273/26 June 1989, 2).

The religious education was carried out by pastors mainly, and when necessary by elders and members of local committees (A.S.S.C., no. 2573/21 July 1989, 2). There were, of course, pastors who dodged this type of activities (A.S.S.C., no. - /1989). In some bigger churches, with Adventists and Baptists, the pastors even created groups of scholars – believers that would be responsible with the religious education of children and youth, thus imprinting a scholastic character to the catechization (A.S.S.C., no. 2573/21 July 1989, 2). At the Adventist Church in Urleta, the sub-engineer Popescu Liviu, who worked at the industrial cooperative in the village of Scorțeni, was teaching religious education to school and preschool children. Under his leadership, every Saturday 25-30 children were taught according to their age. In the same church, the music teacher Burciu Valeriu, although a member of the local church committee, who was a corpsman at the dispensary in the village of Bănești, was organizing and training the choir and orchestra groups (A.S.S.C., no. 25/30 June 1989, 6; A.S.S.C., no. 1175/25 April 1980, 2). The same was the situation with the Christian Evangelical Church cult and the Pentecostal cult, besides the members designated to take care of the religious education, the choir conductors were sometimes doing this religious education. However, children by the age of ten were most often taught by young women, members of the local church, appointed by the pastors and local committees to be in charge of the religious education of such children (A.S.S.C., no. 181/3 July 1989, 2). Many times, the wives of younger pastors dealt with Sabbath or Sunday schools and taught children (A.S.S.C., no. 224/3 July 1989, 3). The lessons would also be conducted by former teachers, now banned from teaching because of their religious belief, or by students, all recruited by pastors (A.S.S.C., no. 93/1958, vol. 8, inv. 99, 2). It is worth mentioning that, although they did not have the studies of a pastor, all people who taught neo-Protestant children and youth in church were very well-prepared religion wise (A.S.S.C., no. 103/1960, 2).

When talking about the methods and means of religious teaching for children and youngsters, the communist authorities appreciated that the most well-organized activity was the one of the Adventist cult, followed closely by the Baptist cult (A.S.S.C., no. 1/1989, 1; A.S.S.C., no. 2573/21 July 1989, 1). The other two cults, the Pentecostals and mainly the Christian Evangelical Church cult were less organized on this matter, in some churches the catechization was even done just to fulfill a duty (A.S.S.C., no. 2.573/21 July 1989, 1; A.S.S.C., no. - /1971, 3; A.S.S.C., no. 122/5 March 1980, 3), and this aspect led to a departure from the church of many children and youngsters (especially in the Christian Evangelical Church cult) (A.S.S.C., no. 170/30 June 1989, 8). Things were different in these two cults because, on the one hand, they did not have educational establishments to form pastors, and ministers had to work in different institutions to earn a living (for the religious services receiving a monthly wage between 100 – 300 lei) (A.S.S.C., no. 26/s/10 February 1982, 4), and as consequence they had a poor religious training (A.S.S.C., no. 412/4 June 1973, 6), and, on the other hand, parents were quitters to authorities, and they were happy with giving their children a religious education at home. Following an inspection at the Pentecostal Church in Marginea, it was noticed that they were teaching their children in church. They were announced that neo-Protestants were not allowed to separately teach children from the Scriptures, and the members of the church stopped sending their children to church, saying that: “We are happy to receive such good advice!” (A.S.S.C., no. 109/1961, vol. 1, inv. 103, 34-35).

Some of the particularities of the catechization with the neo-Protestant cults were the scholastic character, the programs, and the mandatory frequency, all this contributing to 100% children and youth participation in the process (A.S.S.C., no. 103/1960, 4; A.S.S.C., no. 103/1969, vol. 11, inv. 143, 1). To prevent some possible repercussions from the state, the catechization instructors avoided to keep evidence or directories or to note down anything and they would change by rotation to give the impression they are not permanent (A.S.S.C., no. 36/1982, 4).

To have an efficient catechization process, different aids were used. Be it the illustrated Bible, or the decoupage Bible, “The Holy Scripture” was the supreme book during catechization hours. There were also used brochures printed in Romanian and illegally introduced in the country (A.S.S.C., no. 273/26 June 1989, 5). Poetry books and religious hymns books were very rare and usually copied by hand (A.S.S.C., no. 5127/1973, inv. 1477, 2). For the religious education lessons there were also used illustrations, albums, drawings specially prepared with different biblical information, filmstrips, slides, stereos, tape recorders and even videos all with religious messages (A.S.S.C., no. 2573/21 July 1989, 3; A.S.S.C., no. 178/3 July 1989, 2). Furthermore, the Adventist Cult used the hymns book for children “Ciripit de păsărele” (Birdsongs), edited in Romania, and the poetry book “Viața lui Iisus” (The Life of Jesus) (A.S.S.C., no. - /1989, 3). The themes in the Baptist Cult were inspired by the magazine „Îndrumătorul creștin baptist” (The Baptist Christian Guide) and the brochure “Mărturisirea de credință” (A Testimony of Faith), also using lessons and lectures from the seminary (A.S.S.C., no. 2.573/21 July 1989, 1 – 3). The Pentecostal Cult was poorer from this point of view; besides the Bible they only used the hymns and the prayers books (A.S.S.C., no. 100/29 June 1989, 5).

It was a routine to give different material incentives to award the diligence of children and youth in learning the biblical knowledge presented in the church. These incentives were awarded according to age, starting with candies, books, pictures or art reproductions, religious paintings, and even sponsoring some trips organized by the church or scholarships some neo-Protestant communities gave to young people accepted at university (A.S.S.C., no. - /1973 – 1974, 20). Some churches gave incentives with the purpose of attracting children and youngsters to attend church (A.S.S.C., no. 78/19 February 1974, 7).

All catechization activities had as main purpose the intensification of religious life and the increase in number of members; and all these were performed using bible study groups, Sabbath or Sunday schools, youth organizations, song learning groups, choirs, instrumental groups, as well as other organizational formats.

#### 4. The role of intellectuals in the catechization of children and youngsters

Among neo-Protestant believers there is a layer of intellectuals, made up of teachers, engineers, doctors, jurists and economists, spread across all sectors of activity. Some of them were in top industrial units, computer centers, design institutes, local state apparatus, sometimes even held top management positions: Team masters, sectors and sections masters, farm heads, etc. Through their social position, but also because they knew very well both the doctrines of the cults they belonged to and the legislation regulating the activity of the cults, they were real leaders when it came to order and discipline in worship. At the same time, intellectuals gave a note of confidence to other believers. Although in church, many of them often behaved as mere believers, not playing an active role, their presence in the church was often a moral obligation to that church for material assistance received during their studies.

Of the 253.000 adult neo-Protestant believers, registered in 1984, 4.500 intellectuals were identified, accounting for about 2% of all believers. Although the data are approximate, at the level of the four NeoProtestant religious denominations the situation of intellectuals is as follows, on the 1st of April 1984:

Cult	Number of believers	Number of intellectuals
Baptist	86.000	2.583
Adventist	50.000	864
Pentecostal	90.000	536
Christian Evangelical Church	27.000	462

As shown in the table above, the highest share of intellectuals in terms of the number of members was registered in the Baptist cult, with 3% of the members of the cult being intellectuals. Then, in descending order, also in relation to the number of members, the Adventist cult with 1.72% intellectual members, the Pentecostal cult with 0.59% intellectual members and the Christian Evangelical Church Cult with 0.17% intellectual members. These studies did not include retired intellectuals, which would have made the number of intellectuals working among the non-Protestant cults much higher.

The activities of intellectuals in churches, but also outside, were multiple and varied.

**They were preaching, praying, and leading parts of the religious services.** Adventist doctor Andronic Emil, from the hospital in Ocna Mureș, Alba county, was preaching weekly in church, offering ample and substantiated answers to biblical study classes, being an example of religious conscientiousness for other believers (A.C.N.S.A.S., no. 150, vol. 5, 80). At the Baptist cult is noticed Albuț Ioan, a doctor at the "Refractara" company, in Aleșd, Bihor county, who preached at the churches in Aleșd and Tinăud. Also, engineer Mărgăraș Constantin, from the Termoenergetic Equipment Company in Cluj-Napoca, who had given up his membership in the party, would preach and pray almost weekly, being one of the most active members of the Baptist Church (A.C.N.S.A.S., no. 150, vol. 5, 79). Vasile Ioan, an engineer at the company "23 August" in Târgu Mureș, also preached at the Pentecostal Church in the locality, which had more than 600 members at that time. In the Christian Evangelical Church Cult were recognized for the mobilizing preachings, doctors Socoteanu Ion, from the Fundeni Hospital and Sima Ion from the Hospital of Rheumatology, both in Bucharest. The lawyer, Vasilache Mihai, the engineers Ursache Valentin, Chițescu Ioan who preached, even leading evangelization hours (A.C.N.S.A.S., no. 150, vol. 5, 80-81).

The neo-Protestant intellectuals, who were highlighted by the activity within the cult, **were elected and even held leading positions in local churches**, such as: elders, deacons and local officials. In their promotion, in addition to the established religious zeal, some services to the church were also taken into consideration: substantial contributions, assistance to believers, storage and dissemination of illegally introduced in the country religious spreading materials. At the Adventist cult, Gheorghe Paul, a doctor at the Polyclinic in Filipești de Pădure, Prahova county and Stroescu Alexandru, an engineer in Bucharest, were the leaders of the Sabbath School in the respective churches (A.C.N.S.A.S., no. 150, vol. 5, 82). Negruțiu Paul, psychologist, resigned from Hospital no. 6, Oradea, and without the agreement of the Department of Cults, occupies the position of pastor at the Church no. 2 in Oradea. In a similar way acted endocrinologist Gheorghiu Nicolae, from Deva, who starting January 1982 became a baptist pastor, without any approval from the state institutions. Also, the head of the church in Fetești – Gară, Ialomița county, was Vlăsceanu Florin, an economist who had been excluded from the party in 1978 for baptist missionary activity (A.C.N.S.A.S., no. 150, vol. 5, 81). In the Christian Evangelical Church, Vasilache Gheorghe, an engineer in Iași, was for several years now the leader of the local church (A.C.N.S.A.S., no. 150, vol. 5, 83). In the Pentecostal cult, Derechei Iosif, an economist at the National Bank of the Romanian Socialist Republic, in Bihor county, was a deacon at the local church (A.C.N.S.A.S., no. 150, vol. 5, 82).

In order to strengthen the above mentioned things, we specify that in Arad county, more than 60% of neo-Protestant intellectuals were part of the governing bodies of local churches.

**They were also traveling to other churches for missionary purposes.** It was a form that was growing in scale, and aimed at revitalizing religious life in isolated churches or with a small number of members. The presence of an intellectual in such churches often led to the mobilization of believers from both their own cult and other cults, arousing in those who were visited the feeling of safety and pride of belonging to the said neo-Protestant cult. Many times, the presence of such an intellectual concerned the design of film strips or slides with religious content, the evocation of some memories of that guest about religious life in other

countries, the reading of letters received from emigrated relatives, the training of the members of that church committee on the activity they had to perform. A special case is that of doctor Istrate Petre, from the village of Cruşov, Brastravăţ commune, Olt county, who had set up an "illegal" church in his home, where 25-30 believers of the Adventist cult met. Doctor Istrate and his wife, a pharmacist, were running this church. And Farc Petru, an engineer at "Clujana", a deacon of the Baptist Church no. 1, in Cluj-Napoca, would travel to the churches without a minister in the county, where he would preach and officiate various religious services. Rodilă Constantin, a professor of mathematics, but who had given up the office and worked as a technician at the Small Boiler Plant in Cluj-Napoca, would go almost monthly to the Baptist churches in the county and design slides.

At the same time, some of them **carried out various missionary activities**, exercising their profession. At the Adventist cult, Mureşan Aron, a lawyer in Tulcea town, was supporting low-cost trials for those who were baptized in the Adventist cult. The dentist Fişă Gheorghe, in Dobra commune, Hunedoara county, would approach the patients and invite them to the Baptist Church. Missionary actions while practicing their professions were also performed by Stan Constantin, an engineer at "Electroputere" Craiova and Aninoiu Daniel, a dentist also in Craiova, both members of the Christian Evangelical Church. Lupu Maria, educator at Orman General School, Cluj county, went to the children's homes and, on the pretext of connecting with their parents held pentecostal indoctrination studies with the grown-ups (A.C.N.S.A.S., no. 150, vol. 5, 83- 84).

In addition to these preoccupations, the neo-Protestant intellectuals were particularly interested in **the religious education of children and young people**, with a particular role in organizing and training them in the religious life. To this end, they used their educational and psychological knowledge accumulated in secular education, as well as their prestige and professional authority.

As **instructors of artistic-religious groups**, neo-Protestant intellectuals were implementing their skills by producing literary and musical works, which were included in the repertoire of choirs, orchestras, soloists and reciters. Along with other believers, intellectuals began to assert themselves in organizing separate catechisation courses for children. As a rule, these courses were held in the annexed chambers of the churches, during evangelization hours or during break between religious services. Most of the rooms where such activities took place were equipped with a rich audio-visual teaching material (A.C.N.S.A.S., no. 150, vol. 5, 86).

Since 1977-1978, in Timisoara, the young faithful Baptists from Churches no. 1 and no. 2, gathered separately in the prayer houses, in some days, other than those established by the regulation of the cult (about 250 young people). Following this pattern, from autumn 1981 the Pentecostal youth from Churches no. 1 and no. 2 started to gather together separately (180 young people, students and workers). During these meetings, they preached, sang, recited poems, read and commented biblical verses. Other youth-related actions were also initiated, such as planning trips. Since 1983, a similar group has also been formed at the Baptist Church in Lugoj, and the tendency to intensify such actions was on the rise in the other counties of the country. Going back to the four groups in Timisoara, we must add that they had as leader a number of young intellectuals, of whom we remember in the Baptist Cult – Dronca Nelu, an energetic engineer, Colţ Teofil, mechanical sub-engineer, Doru Mate, engineer and, Craşovan Cornel, constructor engineer, Luca Teodor, mechanical engineer, Frânc Iosif, economist – in the Pentecostal Cult (A.C.N.S.A.S., no. 150, vol. 5, 88).

Most of the neo-Protestant intellectuals, at their request, were not recorded in the members records, which is why they were more difficult to detect. During their student years, many of them had not attended the churches, not even being members of a neo-Protestant cult. Only after employment, they returned to churches with membership. The number of intellectuals in the neo-Protestant cults was on the rise, to be kept in mind the fact that in all university centers in the country there were powerful neo-Protestant churches, with a large

number of believers, but also intellectuals. In Ploiești, Timișoara, Craiova, Cluj, Bucharest, churches were also frequented by foreign students, mostly from Africa (A.C.N.S.A.S., no. 150, vol. 5, 91).

## 5. Students' activities

During the communist period, the zeal of young neo-Protestants to engage in various activities, whatever their nature, was often blurred by the intervention of the authorities charged with overseeing such activities. However, this has not overturned the spirit of youth, and during this period there have been numerous reports on various activities carried out by young people, with young people or, sometimes, for young people.

The presence in the main university centers of students from especially Adventist and Baptist families has been exploited by these churches and used for the training of choirs, recitators, and orchestras. In order to have an overview, we specify that on March 1<sup>st</sup>, 1974, 38 students were identified at the University in Cluj-Napoca, most of them students at the Conservatory and the Faculty of Medicine (A.S.S.C., no. 9371/2119/12 May 1975, 10).

Youth meetings were often held and organized in churches, either by young people themselves or by some pastors or by various intellectuals, members of the respective cults. In Timișoara, at Baptist churches no. 1 and no. 2, every Monday evening, between 7 pm and 9 pm, meetings were organized with the youth, explaining texts, and singing religious hymns. On March 12<sup>th</sup>, 1976, a group of young people from Baptist Church no. 1 from Timișoara went to Church no. 2 and proposed to Pastor Stanca I. that on Monday the young people from the two churches should no longer gather separately, but in one place, perhaps together with those in the Hungarian church. They also expressed their desire to organize the Baptist youth in Romania, first in Timișoara, then in the rest of the country, as it had been organized before (A.S.S.C., no. 13/6/2/1976, vol. 2, inv. 4). In the same year, 1976, Pastor Gheorghită Nicolae, together with other persons, tried to create in Hunedoara county an organization of the Baptist youth, by initiating special programs at the houses of prayer (A.S.S.C., no. - /12 October 1983, 1-2).

At the same time, these youth meetings were mobilizing for missionary activities among young people. Following the visits and preaching of the pastors Iosif Țon and Liviu Olah, in the Baptist Church in Galați, the Baptist youth, who sometimes met for rehearsal on Saturday night, decided to meet regularly, not only every Saturday evening, but also on Tuesday evening, for the purpose of continuous indoctrination and attraction of other young people. As a result of these visits and the urges given by the two pastors outside the church, the young students of the church began to engage in an activity to attract new students to the Baptist faith. At the University of Galați, 20 Baptist students who were intensifying their missionary activity among students were detected. The effort of these missionaries was successfully crowned, so in September 1975 Podaru Sanda and Popalon Zamfira, second year students, sub-engineers at the extraction section, were baptized at the Baptist Church in Brăila. In response to this activity, the Communist Party Committee at the University has undertaken several educational actions, and the management has even taken administrative measures. Thus, on May 7<sup>th</sup>, 1976, following the missionary actions to distribute some Baptist materials, Podar Sanda and Popalon Zamfira had to move from the student hostel. The head of the Baptist Church in Galați came to the office of the Inspector for Cults, manifesting his indignation in the name of the Baptist believers because on May 8<sup>th</sup>, the day when the setting up of the Romanian Communist Party was celebrated, the two Baptist students had to evacuate the student hostel (A.S.S.C., no. 13/6/2/1976, vol. 2, inv. 4, 1).

On the evening of October 18<sup>th</sup>, 1981, on the express train no. 343, Suceava – Iași, two students from Suceava found a map with personal documents and other notes belonging to Muntean

Teodor Miroslav, who was resident in Iași and worked as designer at the Synthetic Fibers Plant in Iași, design department. The investigation subsequently carried out by the Inspector for Cults revealed that Muntean Teodor Miroslav was a Member of the management committee of the Pentecostal Church in Iași. There were also various notes on the meetings he had with students from Iași on October 14<sup>th</sup>, 1981. This meeting had coincided with the feast day of the Mitropoly of Iași "Cuvioasa Paraschiva", which had been celebrated on Wednesday. On that occasion they analyzed the work they had done so far, discussed future projects, had moments of personal testimony, and the last item on the agenda was the prayers "for the transformation of Iași" (A.C.N.S.A.S., no. 141, vol. 14, 1-3).

There were several occasions when young students, because of their desire, were allowed by the pastors to organize and hold the entire religious service in the church. On November 7<sup>th</sup> 1954, at the Baptist Church in Nicolae Titulescu street, when about 1.400 believers attended the church, the religious service was held by Chiper, a student at the Faculty of Construction, together with Anei, a student of the Faculty of Medicine. This happened with the approval of pastor Alexa Popovici (A.S.S.C., no. 94/1954, vol. 10, inv. 136).

The special interest of young people in spiritual things has often led the leadership of cults to create the necessary framework and time for such activities. At the meeting of the committee of the Conference of Muntenia, held on 11<sup>th</sup> and 12<sup>th</sup> February 1958, it was discussed, in accordance with the directives received from the Union of Conferences, the date when the week of prayer of the young Adventists was to take place. The Inspector for Cults, who was present, specified in his report that he believed that such a separate manifestation of young people should be banned, and could be very well combined with that of the adults, which took place at the end of each year.

The reports of the inspectors for cults recorded, for students' activities also, trips made by the artistic-musical groups. On April 14<sup>th</sup>, in Petroșani, there was a great religious event, attended by more than 600 people, organized by Ilea Traian. He had invited a group of 20 students from Timișoara on this occasion, including a student from Congo. Another group of students from Cluj-Napoca, all with musical instruments, joined the group, and organized a major musical event. Five students spoke in the church, including the one from Congo. The program lasted for five hours, being broadcast through the amplification station outside the church. Similar events were also held by students at Câmpa and Petrila. These actions delighted some believers who had previously made negative comments on the religious freedom in our country, compared to that in Congo (A.S.S.C., no. 13/6/2/1976, vol. 2, inv. 4, 7).

Besides these actions, we must also mention the intention of young Christian Evangelical Church members in Bacău to organize a conference with young people from several places in the country on the 23<sup>rd</sup> and 24<sup>th</sup> August, 1972. Being notified, the Inspector for Cults decided to call, on 2<sup>nd</sup> August the leading committee of the Christian Evangelical Church in Bacău and to show them they had no right to organize religious services outside the religious regulations. After having read the notification received, the members of the leadership of that church were shown the provisions of the law on the General Regime of Cults, Article 24 and the provisions of the Statute of the Cults concerning the purpose of the religious gatherings. From the discussions held at the time, it became obvious that the idea of such a conference belonged to Gavriiliuc Paul and his father, Gavriiliuc Iftimie, this was understood from their statements and from the fact that order 568, from April 16<sup>th</sup> 1970, given by the cult's leadership through his three delegates, provisioned religious services also on legal holidays. Starting from the premises, the two considered that it was better to gather young people from several places than to have fun, drink or attend bars and other harmful places. Of course, the committee dissociated itself from the action taken by the two and, as young people from Bacău, Vaslui, Bârlad, Harghita and Pașcani were to come to the conference, they were announced that the assembly had been suspended. The conclusions of that meeting focused on the observance of the existing rules, the non-authenticity of order

568, from 1970, the introduction of discipline and order within Christian Evangelical Churches and the need to not initiate on August 23<sup>rd</sup>-24<sup>th</sup>, 1972, any religious gatherings, choir rehearsals or any other activities, these days not being mentioned in the old provisions of religious services (A.S.S.C., no. 325/29 August 1972, 1-3).

Among the large-scale activities organized by the Baptist cult, were the organization of the 3<sup>rd</sup> and 4<sup>th</sup> World Youth Congress. The 3<sup>rd</sup> Congress was held between 25<sup>th</sup> and 30<sup>th</sup> July 1953 in Bucharest, gathering over 1.500 delegates, observers, guests of various political and religious beliefs, from all social categories, races and nationalities, representatives of the most diverse youth organizations. It was "the most representative assembly in the history of the entire youth movement". Debating the most pressing issues and demands of youth around the world, this Congress was called the "World Youth Parliament". Luis Jorge, Argentina's Catholic delegate, says: "We came to the Congress to shake the hands of young socialists, Protestants, Liberals, communists, Muslims, young people of all political ideologies, all religions, all intellectual tendencies, to tell them that we do not disagree with anyone when fighting for peace and independence". This Congress brought together, along with democratic youth organizations from around the world, many other political, cultural, sports, religious youth organizations such as the Youth Organization of the Good Templars in Norway, the Catholic Student Action in Belgium, the Organization of Muslim Scouts in Algeria, and the Union of Socialist Students in Iceland (A.S.S.C., no. 84/1953, vol. 4, inv. 130).

Between the 2<sup>nd</sup> and the 16<sup>th</sup> August, the fourth Youth Congress was held, Bucharest even being called the "City of Youth". The capital's streets echoed the songs of the choirs and the fanfares. The Congress was attended by young people from more than 106 countries, of different nationalities and languages, totaling about 100,000 people. The Inspector for Cults signaled that he had never seen a city in which so many flags from so many countries could flap together. "These powerful impressions and feelings planted in the soul of young people around the world were to strengthen the hope of the peoples in the victory of understanding, friendship and collaboration, until the final triumph of peace." (A.S.S.C., no. 84/1953, vol. 4, inv. 130).

The students also carried out some rather bold activities for that period, which were, of course, immediately penalized by both the cult leadership and the competent authorities. On June 6<sup>th</sup> – 7<sup>th</sup>, 1978, the Baptist Union Committee was held at the headquarters in Bucharest. During the discussions, Mara Cornel reminded of a memoire of young Baptists from Iași who had reached "Free Europe", and read a letter of the Baptist Church in Iași, in which the believers blamed them and disapproved the deed of the young people (A.S.S.C., no. - /7 June 1978, 19).

The Baptist Student Timotei Pop, from the University of Brașov, also multiplied Iosif Ton's speeches and sent them to some people in the country. After the analysis of the situation by the County Committee of the Communist Party, together with the University leadership, he and another student, a Member of the Pentecostal cult, were warned by the competent authorities before their colleagues and those responsible for youth organizations (A.S.S.C., no. 486/15 September 1976, 8).

And in an informative report, with Mitica Popescu as source, the Securitate organs were informed about the "multiplier machine", which has been running since the winter of 1986 at the Conference of the Adventist cult in Cluj-Napoca, 12 Cuza Voda street. It was also reported that the students Marius Jianu, from the Faculty of Construction, originating from Oradea, Turda Grigore, a student at the Faculty of Dentistry, who was originating from Vișeu de Sus and Michel, a student at the Faculty of Medicine, originating from Zambia, knew about this. The son of Nosner Gotfried, a student of no frequency schedule, also knew about this. These students had connections with the people who had access to the multiplying machine. This student had made several exits during 1987 in France and Greece. Jianu Marius

had brought foreign students to the church, and he recently had brought a Jordanian, student in Medicine (A.C.N.S.A.S., no. 141, vol. 14, 1).

Whether it was Ploiești, Timisoara, Craiova, Cluj or Bucharest, the neo-Protestant churches in these university centers were frequented by a large number of students, and the result was the strengthening and rejuvenating of these churches.

## 6. Conclusions

In parallel to the communist state's attempt to make the entire Romanian society atheist, there were children and young people who, "illegally" most of the time, benefited from the highest religious education. This endeavor, of instilling religious feeling to the younger generations, was a hand-over of joint efforts by parents, pastors, and local churches, from which, with tears, pride, and consistency, over the years, the most beautiful results were collected. Students or workers, intellectuals or not, instructors, who were in charge of conveying information and religious values, were real models, highly trained people of exceptional moral quality, with fear of God and love of people, without whom the Romanian neo-Protestant churches would certainly be different today.

## References

- A. C. N. S. A. S., file no. 150, vol. 5.  
 A. C. N. S. A. S., fond Documentar (Documentary fond), file no. 141, vol. 14.  
 A. S. S. C., document no. 170/30 June 1989.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), document no. 181/3 July 1989.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), document no. 2573/21 July 1989.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), document no. - /12 October 1983.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), document no. - /1971.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), document no. - /1973 – 1974.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), document no. - /1981.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), document no. - /1989.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), document no. 100/29 June 1989.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), document no. 103/2 April 1960.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), document no. 1175/25 April 1980.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), document no. 122/5 March 1980.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), document no. 147/27 June 1989.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), document no. 178/3 July 1989.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), document no. 224/3 July 1989.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), document no. 25/30 June 1989.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), document no. 2573/21 July 1989.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), document no. 273/26 June 1989.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), document no. 325/29 august 1972.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), document no. 36/1982.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), document no. 412/4 June 1973.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), document no. 437/12 July 1989.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), document no. 486/15 September 1976.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), document no. 78/19 February 1974.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), document no. 88/28 June 1989.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), document no. 9371/2119/12 May 1975.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), file 13/6/2/1976, vol. 2, inv. 4.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), file no. 1/1989.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), file no. 103/1958, vol. 1, inv. 122.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), file no. 103/1960.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), file no. 103/1969, vol. 11, inv. 143.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), file no. 109/1961, vol. 1, inv. 103.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), file no. 5127/1973, inv. 1477.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), file no. 6436/1973, inv. 1783.  
 A. S. S. C., fond Direcția de studii (Research Directorate fond), file no. 84/1953, vol. 4, inv. 130.

- A. S. S. C., fond Direcția de studii (Research Directorate fond), file no. 93/1958, vol. 8, inv. 99.
- A. S. S. C., fond Direcția de studii (Research Directorate fond), file no. 93/1960, vol. 13, inv. 99.
- A. S. S. C., fond Direcția de studii (Research Directorate fond), file no. 94/1954, vol. 10, inv. 136.
- A. S. S. C., fond Direcția relații culte (Directorate of religious relations fond), document no. - /7 June 1978.
- A. S. S. C., fond Direcția relații culte (Directorate of religious relations fond), document no. 26/s/10 February 1982.
- Arhiva Consiliului Național pentru Studierea Arhivelor Securității (A. C. N. S. A. S.) (The Archive of the National Council for the Study of the Securitate Archives).
- Arhiva Secretariatului de Stat pentru Culte (A. S. S. C.) (The Archive of the State Secretariat for Cults).
- Berdyayev, Nikolai. 1960. *The Origin of Russian Communism*. Ann Arbor Paperback: University of Michigan Press.
- Cernat, Paul *et al.* 2004. *Explorări în comunismul românesc (Explorations in Romanian Communism)*. Iași: Polirom.
- Petcu, Adrian N. 2005. *Partidul, Securitatea și Cultele (The Party, Securitate, and Cults)*. Bucharest: Nemira.
- Popescu, Ion Mihail. 1986. *Observații asupra dinamicii fenomenului religios și asupra proceselor de secularizare și de educație ateistă (Observations on the Dynamic of the Religious Phenomenon and the Secularization and Atheist Education Processes)*. Bucharest: Bucharest University Press.
- Popescu, Titu and Adam Sergiu and Abăluță Constantin *et al.* 2001. "The July Theses" („Tezele din Iulie.”) *Vatra*. Târgu-Mureș no. 8:31-66.

# Engineering in Criminal Probation. 3D Scan of the Body with the Help of Virtopsy Software

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**ABSTRACT:** Over time, engineering has played an important role in the development of the society we have today. Technology has been and will be the science that has given mankind an increase in quality of life, strong economic growth, strong military influence, a chance at life in treating incurable diseases that threatened and threaten the population and last but not least engineering in the field of justice brought justice. The implementation of engineering in the technological modalities of forensic research through imaging and radiological diagnosis, meant an innovative solution for criminologists. Thus, for investigations where a corpse is always found at the crime scene, the forensic probation must be carefully analyzed by specialists, and it cannot be brought to a favorable result without a technology that allows this. If we look in this context at the classic methods of determining the cause and time of death, we see that once at the morgue of the IML, specialists resort to surgical means namely autopsy of the corpse by dissection and subsequent finding the result, by suturing and grooming. This classic process takes time, and for criminal investigation bodies can bring serious negative effects, such as a new crime or even the escape of the criminal. So here we can understand the need for engineering and so nowadays specialists can boast of the new *Virtopsy* software. This software is designed as a CT that with the help of 3D scanning of the body, can determine not only the time and cause of death, but also blunt objects possibly inside the body. Interestingly, this software, thanks to scanning, radiological diagnosis and imaging, reaches the possibility of calculating the depth of the wound, the technological properties of the knife, the knife, for example, in the case of a stabbing, the technology of bullets in the case of shooting, and many other material and technological properties of weapons or objects that caused death. *Virtopsy* is therefore the software that sheds light on murder cases, this software is again a living proof of the importance of engineering in this field as well.

**KEYWORDS:** engineering, forensic research, Virtopsy, investigations, 3D scanning, technology

## Introduction

Over time, engineering has played an important role in the development of the society we have today. Technology has been and will be the science that has given mankind an increase in the quality of life, a strong economic growth, a strong military influence, a chance at life in treating incurable diseases that threatened and threaten the population and last but not least the judicial engineering of brought justice. The implementation of engineering in the technological modalities of forensic research through imaging and radiological diagnosis, meant an innovative solution for forensic scientists.

In order to better understand this aspect related to the adaptation of technology in the forensic field, a definition in this sense would be: *“Forensics is the science that develops technical and scientific means and methods, as well as tactical procedures for discovery, fixation, lifting, examination and interpretation, judicial evidence, carrying out expertise and technical-scientific findings, in order to prevent and discover crimes, identify the perpetrators and administer the evidence necessary to find out the truth in the judicial process.”* (Romanian Police - National Institute of Forensics - politiaromana.ro). Therefore, reference is made to conducting on-site research, examination of laboratory evidence, conducting technical-scientific findings and forensic expertise, as well as fundamental and applied scientific research, these being the main structural branches related to forensics.

Particularizing the branches of forensics, it will be analyzed in the following, aspects related to the functioning of each, as follows:

(a) *On-the-spot investigation*: this is usually the beginning of a criminal investigation into the act. The technical-scientific investigations of the place where the crime was committed or of some related surroundings are part of the fundamental process of the subsequent performance of all findings or expertise. We cannot discuss a field research without the necessary equipment, this is about special dusts and fingerprint brushes, various devices that use UV light to identify bloodstains that are not visible to the naked eye, collection bags various suspicious objects, different chemical pencils that can cause the reaction of chemical agents, and the list goes on, all for the purpose of taking evidence that will later be used against the perpetrator.

(b) *Examination of evidence in the laboratory*: Another important aspect that contributes to the investigators' path to the resolution of the case is the examination in the laboratory of various objects found at the crime scene and especially on the victim's body. Related to this aspect, here we carefully analyze the finest and smallest details, which cannot be analyzed otherwise, so we are talking about different human secretions, hair, DNA, fingerprints, blood, chemicals, and the list goes on. This branch is a vital one in the criminal prosecution process, as it provides a high percentage of criminal identification. But none of the above could have been possible without the technical and scientific engineering not intervening and developing modern equipment, so we can boast today with high-performance laboratories in thousands of police institutions.

(c) *Forensic expertise and technical-scientific finding*: the concept of forensic expertise has a wider openness resulting in the need for different types of expertise, such as archaeological forensic or anthropological expertise, forensic expertise of weapons and ancient objects, forensic expertise, numismatics forensics, and the list goes on, all of which belong to the term „forensic science." This forensic expertise is defined by several specialists as “*a probation procedure provided by law, consisting of a scientific research activity of judicial material evidence, performed by persons with thorough knowledge of strict specialty and which aims to identify persons, phenomena, objects and substances in a causal link with the unlawful act, the establishment of their properties or any changes in their form, content and structure and the mechanism of those changes*”. (I.N.E.C.; Stancu 1997, 54; Mircea 1999, 312). Therefore, I am of the opinion that forensic expertise as an activity has a probative purpose and a complex scientific character.

(d) *Fundamental and applied scientific research*: specialists in the field of Forensics and Forensic Medicine have investigated in the specialized works, traces of blood, semen, saliva and hair, created by the human body considering that they are the most important evidence, because they are present in large numbers at the scene of a crime. All biological traces, present in everyday life, related to the victim, offender, or crime scene, are equally important, whether they are human or nonhuman in nature, and a biological trace rarely found in the criminal space, but present in jurisprudence, can have a special importance for the investigation, opening new ways of solving the case, this practically defines the notion of scientific research of Forensics (Cioacă 2018).

In other words, the forensic scientist has branches that together, step by step, lead to the solution of criminal cases. In conclusion, an important aspect is the technological evolution, which becomes more and stronger, thus influencing the society and the field of criminal investigation. That is why I preferred to analyze in this article a software that leads this field in another dimension, it is the third dimension called the virtual dimension.

More precisely, for the investigations where a corpse is always found at the crime scene, the forensic probation must be carefully analyzed by specialists, and this cannot be brought to a favorable result without a technology that allows this. If we look in this context at the classic methods of determining the cause and time of death, we see that once at the

morgue of the IML (IML – (abbreviation) – Institute of Forensic Medicine), specialists use surgical means namely autopsy of the body by dissection and subsequent finding the result, by suturing and grooming. This process takes time, and for the criminal investigation bodies it can bring serious negative effects, such as a new crime, if we are talking about a serial killer, or even the escape of the murderer. So here we can understand the need for engineering and so nowadays specialists can boast of the new software *Virtopsy*.

### **Innovative “virtopsy” technology in analyzing the corpse found at the crime scene**

For starters, forensic medicine is based on the documentation, analysis and elucidation of scientific medical discoveries with activity in the living and among the dead where the main objectives are to determine the cause of death, how he was killed if we talk about a crime, the assessment of the injuries suffered and the forensic reconstruction of various criminal cases. However, there are two areas in which technology has not reached them, being forensic genetics and toxicology, but in the other areas it has been carefully incorporated as part of the working day, forensic pathological documentation still has as a fundamental technical part autopsy and protocols that have been around for a very long time.

From the point of view of the classic tools used by forensic doctors that help to identify the so-called truth, we mention the scalpel, the verbal description, the conventional two-dimensional photography. The idea of forensics imaging has long appeared, and the application of this method to the non-destructive documentation of forensic discoveries has managed to encourage the implementation of a new generation of technologies, so nowadays, classical imaging is far surpassed by technology in continuous development. The old textbooks of forensic radiology did not touch on the subject of the possibility of implementing technology in this field, we mention here the computerized technology of tomography and the technology of magnetic resonance imaging. Unfortunately, it seems that diagnostic imaging in forensic probation is underused because its huge development potential has not yet been recognized.

Historically speaking, in 1977 the first application of the computer tomograph appeared through forensic technology, which determined the description of the lesion model made after a shot in the head. Because at that time the quality and resolution were not so good, only a few pathological studies could be presented for the first time as evidence in court. The appearance of three-dimensional data was possible in 1989, but nevertheless there was no increase in the interest rate of criminologists. Over time, numerous researches by specialists have not led to a result of systematic examinations of the whole body, trying to determine the diseases and injuries suffered by the victim, using the combination of computed tomography and magnetic resonance imaging.

Another important factor in terms of conventional autopsy is presented by society, which often rejects the forensic method. Being in a multicultural society, based on religious principles and ancestral traditions, many families resort to rejecting the conventional autopsy of the deceased relative, and this rather important and worrying aspect for jurisprudence, led to the implementation of non-invasive imaging documentation, and then where appropriate, guided minimally invasive tissue sampling in relation to angiography that addresses its vascularity. It was necessary to implement imaging, a method implemented in the early 1990s, after a powerful and terrifying homicide in Switzerland, in which case a comparison of the victim's skull with the deadly weapon could be analyzed, resulting in analysts a degree of certainty high, and so in 2000 it was requested to implement independent observer imaging of the surface of the corpse on the outside which could be correlated with the independent imaging of the surface of the corpse on the inside.

So analyzing these aspects we can understand why engineering has left its mark in forensic science so the need for imaging documentation at a high technological level led to

the emergence of the new *Virtopsy* software. This software was designed to be compatible with a CT (CT – (abbreviation) – Computer Tomograf), that with the help of 3D scanning of the corpse, can determine not only the time and cause of death, but also blunt objects possibly inside the body. Interestingly, this software, thanks to scanning, radiological diagnosis and imaging, reaches the possibilities of calculating the depth of the wound, the technological properties of the killer weapon, the knife, for example, in the case of a stabbing, the technology of bullets in the case of shooting, and many other material and technological properties of weapons or objects that caused death. If we ask ourselves how it works, then we can say that by manipulating the data set with volume playback instruments (VR), the virtual autopsy method appears, which can be used anytime and anywhere.

Compared to the advantages of this technological concept, no forensic discovery with its help has been disturbed, as they appear in conventional autopsy techniques. *Virtopsy* is thus a concept of approach that systematically compares the results of radiological scanning and surface with those obtained from conventional autopsy technique. We must thus focus on the fact that the forensic investigation of the circumstances and the corpse is based more on the assessment of the injuries suffered according to their vitality, which can lead to the forensic reconstruction of the incident.

### **Clinical trials using *Virtopsy* software**

The experiments of this software were appreciated and admitted by the *Local Department of Justice* and the *Ethics Committee* of the University of Bern, which included 120 forensic cases involving people whose age at death ranged from 22 weeks from birth, up to 94 years. Each body was wrapped in two forensic bags with no other objects that could contaminate the radiology equipment and protect the identity of the deceased during the clinical scan. In other words, the functionality of the new *Virtopsy* concept and its advantages and disadvantages were analyzed on each device and medical method. These devices and medical methods include computer tomography, magnetic resonance imaging, photogrammetry based on 3D optical scanning, logistics, cross-section correlation with traditional autopsy results, and the list goes on.

(a) *Multisection and microcomputer tomography*: in this case, the whole body was scanned with a 1 or 1.25 mm collimation on a four or six detector line scanner. Up to 1200 axial images resulted, with a 1.25 mm thick section and a 0.7 mm increase in the soft and bone tissue nuclei. In special cases, bone tissue samples were examined on a micro-CT system. This scanner can imagine a 3D volume with a resolution of 10 to 100  $\mu\text{m}$ . The system thus allows the examination of samples with diameters between 4 and 40 mm.

(b) *Magnetic resonance imaging and microscopy*: the head, thorax and abdomen were analyzed on a 1,5-T system but not only these parts were taken into account, we are also talking about other parts of the body of forensic interest, such as it would be the neck in case of strangulation, extremities in case of injuries, etc. These analyzes led to coronal, sagittal and axial images with different contrast weights. The MRI microscopic study procedure was performed at room temperature on a Bruker DMX (Cioacă 2018); spectrometer coupled to a wide-hole magnet operating at 9.4 T. Formalin-fixed eyeballs were washed in phosphate-buffered saline, dried relay and placed in -a 25 mm glass tube filled with Fluorinert before imaging. Three-dimensional anatomical images resulted in a T1 (msec repeat time / msec echo time = 200/8, number of acquired signals = 16, acquisition time = 9.5 hours); enhancement of the T1-weighted imaging sequence. After the image was completed, the eyeballs were cut in half and prepared for embedding paraffin. Histological sections 6  $\mu\text{m}$  thick were cut and then stained with hematoxylin-eosin (H-E) to distinguish hemorrhage from eye tissue.

(c) Photogrammetry based on 3D optical scanning: the standard for documenting lesions in forensic medicine remains photography with accurate measurements. However, similar to conventional radiography, the photographic process displays a 3D wound in only two dimensions. With the TRITOP / ATOS II system, the 3D color-coded surface can be recorded by detecting the distortion of light strips projected on the surface. Therefore, the system can recalculate the 3D surface that caused the distortion. This system is usually used when high accuracy, close to 20  $\mu\text{m}$ , is required. With this technology, it is possible to document from fine details such as skin lesions to the general report, the whole body.

(d) Identification: to begin with, any post-mortem investigation begins with the identity of the body to be clarified and proved; if the corpse can no longer be identified with the naked eye, showing serious damage, the post-mortem investigation has as one of its purposes the restoration of the identity of the unidentified body. Computer tomography with multiple detectors can be very helpful in this regard. Security in post-mortem identification is possible only on the basis of dental condition, DNA profiles or fingerprints. Usually, however, the method of recognition by DNA is not recommended because it requires time for analysis, and thus fingerprints and dental identification are more frequently used. With cranial CT data obtained in a corpse, it is possible to reconstruct any facial projection that may lead to the identification of the victim. A plus in computer-aided software analysis would be a shoulder, hip or knee stent - findings that are often already expected based on effective external inspection. This technological concept used in forensic CT has shown that mobile devices could be used to collect post-mortem data in cases of mass casualties, such as plane crashes or natural disasters. In such cases, the identification of bodies is the major issue to be addressed, and with the software implemented in the computer tomograph can have a huge impact in identifying disaster victims.

(e) Cause and manner of death: regardless of how the victim's right to life has been or has been extinguished, for example, natural causes, accidents, suicides, homicides, death can have a variety of causes. Some of the causes of death belong to certain organs, such as the brain, heart and lungs. Various systemic findings have concluded that this leads to death.

Referring to the most common organ in the cause of death, namely the brain, the typical traumas discovered in clinical radiology are equally well visualized in post-mortem imaging. Thus we understand that the increasing intracranial pressure as a result of trauma usually manifests itself at autopsy as a transtentorial hernia of the temporal lobe or a hernia of the cerebellum in the foramen magnum.

Referring to the second common organ in case of death, namely the heart, studies show that most natural deaths are caused by heart failure. Chronic heart disease, for example, cardiomyopathies can induce heart failure by sharply reducing the number of contractile fibers.

## Conclusion

In conclusion, *Virtopsy* is therefore the software that sheds light on murder cases and not only, is this software again a living proof of the importance of engineering in this field as well. *Virtopsy* offers excellent tools for reconstructing crime and accidents, represented in 3D such as internal wounds, real colors of surface lesions and even full-scale models of entire crime scenes and events. *Virtops's* approach in the legal field brings to life the critical forensic evidence in an impartial and easy to understand way, suitable for presentation as evidence to legal professionals. However, the concept of *Virtopsy* has come to be implemented in medical automation, namely in robots.

So the Virtobot system is an automated system that performs a variety of tasks along with the CT scanner that was developed for innovation and medical technology. The mode of operation is as simple and well-understood as possible, so it allows the automatic

documentation of the high-resolution 3D surface, as well as the taking of CT-guided post-mortem tissue samples. And because engineers have always taken care of their technological art, its modular design facilitates the expansion of the system by adding functionality in the future (Virtopsy 2021).

## References

- Cioacă, Cezar. 2018. *Elements of research and interpretation on the spot of the main traces. Biological of human nature*. Doctoral Thesis. Bucharest: University of Bucarest, Faculty of Law.
- I.N.E.C. – National Institute of Forensic Expertise (NIFE). [www.inec.ro](http://www.inec.ro).
- Mircea, I. 1999. *Criminalistica (Forensics)*. Bucharest: Lumina Lex Publishing House.
- Romanian Police - National Institute of Forensics. [www.politiaromana.ro](http://www.politiaromana.ro).
- Dirnhofer, R., Jackowski, C., Vock, P., Potter, K., Thali, M. J. 2006. “*VIRTOPSY: Minimally Invasive, Imaging-guided Virtual Autopsy*.” Presented at an education exhibit at the 2003 RSNA Annual Meeting. Published Online: September 1<sup>st</sup>, 2006.
- Stancu, E. 1997. *Criminalistica (Forensics)*. Vol. I. Bucharest: Actami Publishing House.
- Virtopsy.com. 2021. “About Virtopsy.” Available at [virtopsy.com/about-virtopsy](http://virtopsy.com/about-virtopsy). Accessed on 02.01.2021.

# Some Measures to Prevent Domestic Violence

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**ABSTRACT:** The Romanian Constitution guarantees the equality of citizens before the law and public authorities without privileges or discrimination, as well as the rights and freedoms of all persons. It also provides that no person shall be subjected to torture or to any other degrading or inhuman or degrading treatment or punishment. Following the legislative changes in 2004, the National Authority for the Protection of the Family and the Rights of the Child was born in Romania, which was established by taking over the attributions of the National Authority for the Protection of the Rights of the Child, the Pilot Center for Assistance and Protection of Victims of Domestic Violence of Information and Consultancy for the Family and of the National Agency for Family Protection, based on the provisions of the Government Decision no. 1384/2009.

**KEYWORDS:** domestic violence, protection, prevention, measures, victim

## **Introduction**

The concept of “domestic violence” is broad and includes domestic violence (understood as violence that occurs between partners, whether spouses or cohabitants), but also violence against children, the elderly or other relatives. Regarding domestic violence, it is a repeated series of coercive behaviors and physical, sexual and mental attacks that a person manifests towards his partner, in order to control and dominate him, using force and/or taking advantage of the inability to defend victim, which occurs in a couple relationship (Toma and Constantin 2010, 6).

The phenomenon of domestic violence is present in our daily reality, closer or further away from our home, our values, our habits of resolving conflicts and those of self-control over impulses. The range of forms of violence is wide, covering all aspects of personality (Munteanu 2000, 8).

Domestic violence has long been considered a common manifestation in disorganized families and socially disadvantaged marginalized groups, but similar behaviors have been observed in families with a higher social status, who are not willing to recognize them, bringing a false, lower image of the magnitude of this phenomenon.

Maria Roth-Szamoskozi states that violence is universally present, but also condemned, as it affects human life both interpersonally and socially. At the interpersonal level through: acts of delinquency, acts of crime, physical, emotional and psychological violence between persons (family members or outside it); and at the social level through: wars, social inequality, inter-community and inter-national conflicts (Szamoskozi 2005, 12).

In the sense of Law no. 217 of May 22, 2003 for the prevention and combating of domestic violence, republished in the Official Gazette no. 948 of October 15, 2020, domestic violence means any inaction or intentional action of physical, sexual, psychological, economic, social, spiritual or cyber violence, which occurs in the family or domestic environment or between spouses or ex-spouses, as well as between current or former partners, regardless of whether the aggressor lives or has lived with the victim. Domestic violence also prevents a woman from exercising her fundamental rights and freedoms.

According to the same law, in art. 4 para. (1) provides that domestic violence manifests itself in the following forms: verbal violence, psychological violence, physical violence, sexual violence, economic violence, social violence, spiritual violence and cyber violence.

### **Legal tools for the prevention of domestic violence**

Family violence prevention programs, depending on the target group, can be of three types (Naum and Jurcă 2005, 166-169):

1) *Primary prevention* is part of the general effort to reduce the incidence of violence before violence occurs. Primary prevention refers to actions, programs, campaigns addressed to larger populations (country, county, and city), in order to raise their awareness and reduce tolerance to violence. Primary prevention is combined with political efforts to create laws and specialized services within communities;

2) *Secondary prevention* is included in the activity of the services and has as objective the identification of the persons who are at risk or the identification of the risk factors in the production of violence. Secondary prevention is addressed to groups at high risk of manifesting a certain behavior or to groups at risk of victimization. The selected risk groups can be children and adolescents living in families with violence, unemployed or low-income women who are unemployed and dependent on the unemployed, etc. Secondary prevention is established in the identified cases and aims at an intervention as fast and adequate as possible;

3) *Tertiary prevention* aims to reduce the conditions for violence in couples who face violence. This last form is more directed towards intervention. Tertiary prevention refers to actions on groups already affected by domestic violence: women victims, aggressors, abused children. Tertiary prevention is not the prevention of behaviors that are at risk of occurring for the first time, but the prevention of relapses, sanctioning and/or recovery of aggressors, safety of victims, recovery or treatment of effects and consequences (post-traumatic therapy, psychotherapy, treatment of emotional disorders and medical, victim empowerment, protection measures, knowledge of rights, etc.). Tertiary prevention is achieved through the intervention of organizations and bodies empowered to develop specialized services.

Violence prevention is a responsibility of both community services and community members:

- *The police* has an important role in stopping the social mechanisms for perpetuating violence. Police officers can identify various risk situations and can inform the social worker; police officers can also facilitate early intervention in the production of violence and can report situations with a high risk of violence;

- *Community doctors and nurses* - during office consultations or home visits can identify the various problems facing their families and children. They can provide information to families, guiding them where they can go, when they need support or to prevent violence;

- *Teachers* are also a good source in preventing violence and providing information to families facing problems;

- *The priest* can provide help to families in the community and can disseminate information on the occurrence and consequences of violence. Priests can also inform social workers about the existence of risk factors that can contribute to the development of domestic violence. Priests have an important role to play in preventing violence against the elderly or pregnant women. Given his special influence on the community, the priest has the opportunity to multiply information, to provide resources on risk behaviors and support services for children and adults.

Community members can support initiatives proposed by various professionals and can inform social workers about the existence of risk factors in the production of violence. Prevention programs are carried out according to the age of the target group, the cultural aspects involved and the way the information is transmitted.

### **Temporary/permanent measures to prevent and combat domestic violence**

*The security measures* aim to eliminate the state of public danger and prevent crime in general. The provisions of the Criminal Code and the Criminal Procedure Code as well as those of the Law on preventing and combating domestic violence are incidents in this field.

*The Presidential Ordinance* is a special procedure according to which the court may order temporary measures, in urgent cases, for: maintaining a right that would be damaged by delay; prevention of imminent and irreparable damage; removing the obstacles that would arise on the occasion of an execution.

*Restriction order.* According to most legal systems, a “protection” or “restriction” order is a temporary preventive measure that seeks to temporarily protect a person against any harm, by imposing a ban on another to approach him, home or work or to contact her by any means. In case of non-compliance, severe sanctions are provided. The measure can become definitive and can be extended for a long period of time. In some jurisdictions, this is a measure that can be taken by civil courts, for minors and family, and in others it is a measure of criminal law. Although it does not cease to generate controversy related to practical efficiency, it is still appreciated that such a measure remains extremely useful in ensuring immediate protection for the victim of domestic violence.

By Law no. 187/2012, for the implementation of Law no. 286/2009 on the Criminal Code, the security measure on the prohibition to return to the family home for a certain period was introduced. The court can take this measure against a person sentenced to at least one year in prison for hitting or any other act of violence. It can be taken for up to 2 years. This measure is an absolute novelty and is an attempt of the legislator, timid as it is true, in accordance with the purpose of the precautionary measures in the Criminal Code to remove a state of danger. The legislator tried by this measure to equate the restraining order with international law, but the lack of complementary amendments to the Code of Procedure led to its total inapplicability. (Intervention guide in cases of domestic violence 2009-2014, 13).

In cases where it is necessary to separate the victim from the aggressor, there is the alternative of temporary accommodation in public shelters. According to Law no. 174/2018, the county councils, respectively the General Council of the Municipality of Bucharest, and the local councils, with the approval of the agency (art. 23) have the responsibility of establishing the assistance centers for victims of violence, as well as the assistance centers for the aggressors. Law no. 174/2018 stipulates that public shelters for victims of domestic violence must provide free social support services, in compliance with quality standards, both the victim and the children in their care, such as: protection against the aggressor, medical care, food, accommodation, psychological assistance and legal counselling, for a determined period, until the family situation is resolved.

The centers for sheltering victims of domestic violence are social assistance units, usually without legal personality, which provide protection, accommodation, care and counseling to victims of domestic violence, who have to resort to this social assistance service. The reception of the victims in the shelter is done only in case of emergency or with the written approval of the family assistant, when the isolation of the victim from the aggressor is required as a protection measure. The persons who committed the act of aggression are forbidden to access the premises where the victims are located. The isolation of the aggressors from the victims is done with the consent of them or, as the case may be, of the legal representative.

## **Conclusions**

Domestic violence is not only a social and public health problem but also a problem of human rights violations. Domestic violence is at the root of many physical and mental illnesses, consultations, hospitalizations and temporary incapacity for work, as well as high drug use.

The family is the place where the law intervenes the least and where the highest frequency of violent acts directed against more vulnerable human beings, “more physically and mentally fragile” is observed. This often insidious violence develops according to a cycle where the intensity and frequency increase over time.

The consequences of violence are very serious both physically, to the point of homicide and suicide, and psychologically, often leaving dramatic sequelae.

This violence is often disguised, with victims feeling ashamed and guilty. Traumatized children express themselves in a particular way, presenting disorders that are difficult to interpret.

The intimacy of the family cell is often the area of unexpressed violent impulses in social life, induced by antecedents, reactions against social organization (working conditions, daily living conditions), conceptions of married life (sharing obligations, responsibilities), cultural conceptions of male/female relationships, husband/wife, but also of the individual means of enduring living conditions (alcohol, drugs, sedatives, drugs).

This intimacy is a “private space”, a place of diversion, far from public disgrace and the sanction of reprehensible social acts and therefore it is difficult to discern the importance and seriousness of the acts of violence committed.

An additional reason for the victim, aware of the contemptuous social representation of the situation in which he finds himself, to keep a certain reserve and to hide the events he is experiencing and which make him suffer.

## References

- Munteanu Ana. 2000. *Violența domestică și maltratarea copiilor (Domestic violence and child abuse)*. Timișoara: Eurostampa Publishing House.
- Naum Monica and Jurcă Constantin. 2005. *Violența în familie în perspectiva Uniunii Europene (Domestic violence in the perspective of the European Union)*. Constanța: Muntenia Publishing House.
- Roth-Szamoskozi Maria. 2005. *Copii și femei victime ale violenței (Children and women victims of violence)*. Cluj-Napoca: Presa Univ. Clujeană.
- Toma Cristina and Constantin Mădălina. 2010. *Stop violența în familie (Stop domestic violence)*. Iași: Fundația Șanse egale pentru femei.
- The Romanian Constitution, republished in the Official Gazette of Romania no. 767 of October 31, 2003.
- Government Decision no. 1384/2009 for the modification and completion of the own Statute of organization and functioning of the National Agency for Social Benefits, approved by the Government Decision no. 1.285/2008, as well as for establishing organizational measures.
- Law no. 217 of May 22, 2003 for the prevention and combating of domestic violence, republished in the Official Gazette no. 948 of October 15, 2020.
- Law no. 272 of June 21, 2004, on the protection and promotion of children's rights, republished in the Official Gazette no. 159 of March 5, 2014.
- Law no. 187 of October 24, 2012 for the implementation of Law no. 286/2009 on the Criminal Code, published in the Official Gazette no. 757 of November 12, 2012.

# Considerations Regarding the Independence of Justice in the Current Romanian Society

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**ABSTRACT:** The impact of the Reports of the Cooperation and Verification Mechanism in Justice (CVM) on the general public opinion but also on the professionals from the Romanian justice created divergences of opinion regarding the independence of the Romanian justice. Also, the abolition of the Section for Investigation of Crimes in Justice (SICJ) generated intense and legitimate discussions both between Romanian magistrates and especially between Romanian politicians, thus forming a phenomenon of confusion in the perception of public opinion regarding the existence and prerogatives of SICJ. In the present approach, we want to expose the belligerent points of view of the supporters of keeping the SICJ but also of its dissolution as well as the impact of CVM on the public opinion. Thus, we will present potential reactions at the level of the general perception regarding the topics under discussion.

**KEYWORDS:** Justice, public opinion, magistrates, reform, trust in justice, judiciary

## Introduction

We note with regret that there is a negative ednemic period for justice regarding the citizens' perception of this institution, inside which, backstage games, internal and hegemonic conflicts have become a priority, and opacity on the decisions and activity of justice has oriented it towards a line unhealthy decadence as a whole.

Regarding the development strategy of the judiciary 2015-2020, presented by the Ministry of Justice and approved by the Government on December 23, 2014, was largely based on the recommendations of the CVM report, as well as studies developed in collaboration with the World Bank, in particular the study Functional Analysis of the Romanian Judiciary ([www.just.ro](http://www.just.ro)) (the project submitted for public consultation is based on: Functional Judicial review – “Analysis of the functioning of the judiciary”; CVM reports and EC recommendations; the Court Optimization Study; the contributions of the specialized departments within the Ministry of Justice, the contributions of the Superior Council of Magistracy, of the Public Ministry, of the High Court of Cassation and Justice, of the National Office of the Trade Register and of the National Administration of Penitentiaries).

Based on a set of fundamental principles based on the rule of law, the strategy defines the objectives for further reforms in 2015-2020, in order to make the judiciary more efficient and accountable and to ensure its better quality, strategy and plan action plan should also be the basis for defining EU funding priorities in the field of justice (Report from the Commission to the European Parliament and the Council on Romania's progress under the Cooperation and Verification Mechanism/ \*COM/2015/035 final\*).

The national judiciary, together with the other components of the national system of control and balance, such as constitutional courts and “People's Advocate” institutions, are the first lines of defence against attacks on the rule of law by any branch of the state (<https://eur-lex.europa.eu>).

A Eurobarometer survey conducted in autumn 2014 indicated a strong consensus in Romanian society that the reform of the judiciary and the fight against corruption are important issues for Romania. Although the results of the survey showed a substantial increase in the number of people who say they have seen an improvement in recent years and are confident that this process will continue, the political factor and endemic interference of “parallel state” services

in conducting justice, by pronouncing judicial solutions that have often provoked public disapproval, especially from journalists specializing in the field of justice, entitle us to express our concern about the potential subversiveness that can be created in this area.

The Cooperation and Verification Mechanism (CVM) was set up at the time of Romania's accession to the European Union in 2007 and created major hopes among the population, considering that Francisco de Quevedo's apophthegm said that "Where Justice does not work, it is dangerous to be right", will no longer find its applicability in the Romanian justice.

Referring to the supreme court of justice, namely the Superior Council of Magistracy (SCM), we express our opinion that it is not allowed to be influenced by the political factor or to be in collusion with it, as, unfortunately, the public image was created that some people would have tried to use politics to resolve power interests within the system.

There is clear support for the EU's involvement in resolving these issues and for continuing EU action until Romania reaches a level comparable to that of other Member States.

We strongly recommend that the SCM defend its place and constitutional role, to correctly identify those solutions that do better justice for the people, as a public service. For a good reputation among citizens, it is necessary for the magistrates themselves to want both a functional justice and the full trust of the people, but this trust is obtained only if the system is not affected by dysfunctions. The way in which the SCM will interact on the debate on the laws of justice *"should no longer allow the perception that justice would be divided according to different currents of political opinion. This proved to be detrimental to the image of the place and role of magistrates in society, but also detrimental to the justice system and its stability"* (Anghelescu-Stancu, 2020, gandul.ro).

### **The independence of the judiciary creates trust among the population**

Democracy cannot exist without independent courts that guarantee the protection of fundamental rights and civil liberties, nor without an active civil society and without independent media to ensure pluralism. The rule of law is a well-established principle, the central elements of which are properly defined (Communication from the Commission to the European Parliament, the European Council and the Council - Further strengthening the rule of law in the Union - Current situation and possible next steps (COM 2019, 163 final).

Romanian civil society is active and expresses itself freely and independently and thus, the opinion was created that the endemic existence of a mechanism for verifying the activity of justice of a state cannot entitle someone to consider that the state is independent in terms of decision-making in the field of justice. Romania is subject to such a verification mechanism called CVM which makes many recommendations to reach a level comparable to that of other EU member states, from which we logically deduce that our country still has important steps to take to reach the level of other EU member states.

The November 2018 Report states that: *"The amended justice laws, which entered into force in July and October 2018, could lead to pressure on judges and prosecutors, which could ultimately undermine independence, efficiency and quality of judicial system. Instead of addressing the issues highlighted in previous CVM reports, the laws had introduced new risks, in particular through the creation of the Special Section for the Investigation of Magistrates and the regime on disciplinary sanctions and disciplinary liability of magistrates. Accordingly, the Commission concluded that the laws were an involution in relation to the January 2017 assessment and proposed a respite to reconsider the situation by freezing the entry into force of the changes"*. The November 2018 Report recommended:

- Immediate suspension of the implementation of justice laws and subsequent emergency ordinances.
- Revision of justice laws, taking full account of the recommendations made in the CVM, as well as the recommendations of the Venice Commission and GRECO.

Although the Romanian authorities also invoked the argument that the laws of justice produced legal effects that could not be stopped, there are opinions that claim that these recommendations no longer have the dimension of guidance but of imposing measures as it appears from the way they are expressed, using imperative terms such as “immediate suspension” or “revision of the laws of justice, taking full account of the recommendations (...)”.

Opinions have been expressed about the latest CVM report calling for the urgent abolition of the Special Section for the Investigation of Magistrates (SICJ) and we make the respectful recommendation to understand the purpose for which this Special Section was established and which was and it is the impact of the existence of the SICJ on the perception of public opinion.

Some specialists in the legal field see that the existence of the SICJ is an additional guarantee for Romanian magistrates (prosecutors and judges) to deliberate impartially, independently and without any political or systemic influence in pronouncing legal and sound decisions. SICJ is the correspondent of the College of Physicians in the field of justice. The Romanian magistrate does not have to identify with the law itself, its purpose is to apply it completely and correctly. Part of the public opinion considers that there is a higher control forum for all professional categories and does not understand the major concern of the Brussels Commission regarding the existence of such a forum for magistrates as well.

Even some magistrates considered that the existence of the SICJ is not meant to put pressure on judges and prosecutors and that this special section cannot undermine the independence, efficiency and quality of the judiciary but on the contrary, creates a responsibility of magistrates to the act of justice, trust of litigants. Justice must not be selective, it must not be considered good only for some and bad for others.

There are disciplinary sanctions and disciplinary liability for all professional categories and it was rightly considered that it should also exist for magistrates. The abolition of the SICJ can generate legitimate questions such as: are magistrates above the law?: Do magistrates represent a higher category of doctors or teachers or other social categories?

Such recommendations found in the latest CVM Report, such as the one on the abolition of the SICJ and the nominal references in some dispositions of prosecutors or judges in certain criminal cases concerning magistrates who subsequently elected high-ranking positions are not likely to create trust and impartiality CVM.

### **Recommendations of the European Commission for Romania from the CVM Report**

We will stop for analysis on some of the recommendations made by the European Commission for Romania in the latest CVM report.

Thus, one of the recommendations is made *“in order to further improve the transparency and predictability of the legislative process, as well as to strengthen internal guarantees on irreversibility, the government and parliament should ensure full transparency and take due account of consultations with relevant authorities and stakeholders in the decision-making process and in the legislative activity related to the Criminal Code and the Criminal Procedure Code, anti-corruption laws, integrity laws (incompatibilities, conflicts of interest, unjustified assets), laws of justice (regarding the organization of the justice system), as well as the Civil Code and the Civil Procedure Code, inspired by the transparency of the decision-making process put into practice by the government in 2016”* (Digi24 2019).

We make the necessary clarifications regarding this recommendation, stating that the representatives of the Romanian Government are already creating a framework for dialogue between the Government and associations and foundations, on public policy priorities, coordinating government strategies on associative forms in civil society, increasing its capacity to contribute with ideas and expertise to the public policy process transparency and consultations with the competent authorities, contributing to the continuous communication with citizens, including for the synchronization at European level of cooperation policies and strategies with

organized civil society and with citizens, also supports and support in carrying out programs or activities initiated by legally constituted organizations, associations or foundations.

Another recommendation refers to “members of the Strategic Management Council of the Judiciary, namely the Minister of Justice, the President of the Superior Council of Magistracy, the President of the High Court of Justice and Cassation and the Prosecutor General, should ensure the implementation of the action plan how it has been adopted and to implement regular public reporting on its implementation, including solutions to the problems posed by the low number of clerks, excessive workload and delays in drafting the reasons for judgments” (Digi24 2019).

In order to achieve the desideratum deduced from this recommendation, we reveal that there is no unitary position of the representatives of the forums listed in the above mentioned recommendation and the hegemonic struggles for power and interest to access the leadership of these forums for justice have never stopped in Romania. As long as appointments are made for the management of the General Prosecutor’s Office and there is no real, transparent competition that has as its only measure of value, professional competence and not political influences, nor will it be possible to achieve the general validity of independence in the Romanian judiciary.

Regarding the recommendation that “the new Superior Council of Magistracy should develop a collective program for its mandate, including measures to promote transparency and accountability”. This program should include an outward-looking strategy, with regular open meetings with assemblies of judges and prosecutors at all levels, as well as with civil society and professional organizations, and the organization of discussions on annual reports at general meetings of courts and prosecutor’s offices” (Digi24 2019).

We regret to say that the members of the Superior Council of Magistracy are divided in diametrically opposed opinions magistrates judges and prosecutors, members of this forum for justice in Romania, being in a perpetual conflict and thus being impossible to achieve a unitary strategy a collective, coherent program to promote transparency and accountability. The Superior Council of Magistracy has not been able to act as an effective factor of control and balance to defend the independence of judicial institutions under pressure. The divisions in the Superior Council of Magistracy, evident in its meetings with the Commission services, have made it increasingly difficult for the Superior Council of Magistracy to be effective as a spokesperson for the judiciary - especially when consulted on legislation - and as an administrator of the judicial system, as it results from the last CVM report for Romania.

Also, even some members of the current Superior Council of Magistracy said that within this forum there is a lot of inertia, lack of involvement, lack of awareness of the place and role of each, harmful compromises and overturned values.

## Conclusion

The reform of the Romanian judicial system is a nebula with negative effects on public opinion and justice specialists. We tend to believe that this reform is a utopia and there are few who still believe that it will ever be achieved based, legitimately, on an empirical reality that has generated the shattering of many ruined hopes.

## References

- Anghelescu-Stancu, A. 2020. “EXCLUSIVITY. Interview with Judge Evelina Oprina, candidate for the SCM leadership.” Available at <https://www.gandul.ro/actualitate/exclusivitate-interviu-cu-judecatorul-evelina-oprina-candidat-la-sefia-csm-ce-decizii-au-daunat-consiliului-si-unde-duce-lipsa-de-transparenta-membrii-consiliului-sunt-si-trebuie-sa-raman-19542338>.
- Communication from the Commission to the European Parliament, the European Council and the Council - Further strengthening the rule of law in the Union - Current situation and possible next steps (COM 2019, 163 final).

- Communication from the Commission to the European Parliament, the European Council and the Council - Further strengthening the rule of law in the Union - Current situation and possible further steps (COM 2019, 163 final), p. 6.
- Digi24.ro. 2019. "MCV report. The 12 recommendations for Romania." Available at <https://www.digi24.ro/stiri/actualitate/justitie/raportul-mcv-cele-12-recomandari-pentru-romania-1204984>.
- Just.ro. 2014. Judicial Reform Strategy for 2015- 2020 (Government Decision no. 1155/2014). Available at <http://www.just.ro/LinkClick.aspx?fileticket=h7Nit3q0%2FGk%3D&tabid=2880>.
- The Official Journal of the European Union, C368, October 30, 2020. Available at <https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:52019DC0343&from=RO>.

# Decreasing the Number of Judicial Errors from the Perspective of Synergological Expertise in Romania

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**ABSTRACT:** The administration of justice in any state in the world is done by people and is therefore not perfect. Judicial errors can occur for various reasons, most often the subjective human factor that leads to final court decisions that can affect the entire existence of a suspect. There have been countless cases in which those sentenced by final and irrevocable sentences to years of imprisonment have been acquitted before serving their sentences, as it has been shown that the criminal act allegedly committed by them was in fact committed by another perpetrator. At other times, the acquittal decision was taken after the convict had fully completed the sentence, which produced its legal effect only for the rehabilitation institution. The article aims to analyze some of these judicial errors, the causes that determine them and their effects on the life course of the individual suspected of committing an illegal act, for different branches of law, from the perspective of synergological science. Some conclusions drawn at the end of the paper will aim to strengthen the arguments presented regarding the benefit of a forensic synergological expertise.

**KEYWORDS:** civil law, psychology, criminal law, body language, criminal act, guilt, micro-expression, judicial errors, psychological expertise

## **Non-verbal language science and judicial sinergologia**

In its early development, the human being experienced many life-threatening dangers such as predators, natural phenomena, but also aggression from members of the same species, which led them to develop certain neuro-motor structures capable of enabling them. in rescue and emergency conditions (Marr 2012, 24).

With the establishment, organization and development of human societies, the physical and psychological mechanisms developed by man to provide security, although no longer so important, have been preserved and perpetuated generatively (Zlate 2000, 132).

These skills acquired following the evolution of the species have been preserved and in the era of cognitive development of humanity, certain psychomotor aspects have migrated from the sphere of elementary physical skills to the sphere of sentimental knowledge. This transfer allowed many researchers to establish certain patterns of physiognomy and non-verbal language (Popoviciu 2013, 117).

In this way it was possible the emergence and development of the science of identifying and interpreting different types of stature, gestures and facial expressions in interpersonal relationships. The term from French, also used in Romanian for this new science of human body language is synergology, which brings together in its subject both the elements of gesticulation and facial micro-expressions (Philippe 2015, 15).

The importance of synergology is also given by recent studies in the field of communication which have shown that in the transmission of a verbal message only 7 percent represents the message itself, non-verbal language occupying the largest proportion of 58 percent, 35 percent being held by the para-verbal (Corniță 2006, 38).

The founder of synergological science is Philippe Turchet, an internationally renowned expert in the field of non-verbal language. In the elaboration of his work, he makes a special separation between the signals that the human body displays during a conversation and those that are highlighted by facial micro-expressions (Philippe 2015, 17).

The expert in the study of the signals emitted by the muscles engaged in facial communication, Paul Ekman, claims that there are 6 universal emotions that have distinct features such as sadness, anger, surprise, disgust, contempt and happiness. Any other human feelings or sensations that are visibly expressed with the help of the face represent various combinations of them (Ekman 2011, 100).

Thus, the forensic expert in the analysis and interpretation of non-verbal messages is the person who knows all the ways of manifestation of the human physique and issues an expertise in order to establish the guilt of a suspect alleged to have committed a criminal act.

He uses in the exercise of his duties, both the knowledge in the field and the advanced technology that allows him to identify exactly the type of stimulus that contributed to the manifestation of a certain set of unconscious physical reactions of the analyzed subject.

It is absolutely necessary that the software used in such a process contain all the information necessary for the correct provision of data, and in this regard, many authors in the field have developed a series of illustrated scientific papers that can be the basis for designing such applications (Messinger 2018, 21).

Specifically, the expertise of the judicial synergist represents a sustainable alternative to the method of identifying the truth using the polygraph test (Butoi T., Butoi I., Butoi A. and Put C. 2019, 132).

### **Criminal Law in the perspective of synergological analysis**

The role of Criminal Law is to protect the social values ensured and protected by the state for the proper functioning and organization of society, by protecting all citizens from the dangers of others, which is materialized by criminalizing certain acts that affect life, patrimony, physical and psychological integrity of the individual (Hotca 2020, 121).

Not all deeds are sanctioned by criminal law, this indicates that not all human actions are subject to Criminal Law. For the commission of an action to be considered criminally incriminating, it is necessary for that act to be regulated by criminal law, to be done under the will of the perpetrator, to have no doubt as to the unfair nature of its commission and not in lastly, it may be imputable to the subject of law who committed it (Mitrache Ctin. and Mitrache C. 2019, 245).

In terms of the unfair nature of the act committed by a person, it follows from the content of the law criminalizing the action, depending on its specificity and the injured persons, as it is provided by the legislator (Neagu 2020, 134).

Regarding the volitional nature of the execution of such an action, there are several forms of guilt. Depending on the possibility of predicting and following the final result, the perpetrator is either in the situation of intention that may be direct or indirect as the effect of the committed act was pursued or not, or of guilt, depending on the possibility of predicting or not the result of the action (Nour 2020, 125).

The imputability of an action provided and incriminated by the criminal law refers to its perception and awareness by the perpetrator. Thus, minors under the age of 14 are not criminally liable for their deeds, because they do not fully represent the reality of the effects of committing such an act (Cioclei 2020, 141).

In the same way, minors between 14 and 18 years of age are not criminally liable, except for half of the penalty limit provided by law and only if it is clearly and unequivocally proven that they had the representation of the result of their action at the time of its commission (Boroi 2019, 216).

The last category of persons excluded in the matter of criminal liability is judicial prohibitions which, for absolutely objective reasons, have no discernment and cannot predict the outcome of the acts committed (Butoi T. 2019, 136).

A special case of persons who cannot answer from a criminal point of view is represented by those subjects who, although they had the discernment intact until the moment of committing the deed, shortly before committing the crime for which they are investigated, lost their reason even temporarily and remediable, either permanently and definitively (Duțu 2013, 78).

Synergological expertise is useful in establishing the guilt and motivation that determined it. The expression of guilt appears, both at the level of the face and at the level of the body as a combination between the universal indicators of sadness and fear. Sadness comes from the feeling of remorse over the result of the action committed and the subject's fear of not being identified as the perpetrator (Messinger 2018, 30).

Any other universal trait that could appear in the form of happiness, pleasure, amusement in connection with the criminal act committed, if the subject is the perpetrator, denotes an altered discernment and lack of representation of reality.

The expert in the analysis of non-verbal language may issue a specialized forensic examination at the request of the courts or of the persons concerned to prove once again the guilt of the suspect or, on the contrary, to prove his innocence or lack of discernment, or may be called in hearing time to support criminal investigation (Grigore and Chiș 2020, 654).

### **Civil Law in the perspective of synergological analysis**

The role of Civil Law in society is to protect the patrimonial and non-patrimonial values of citizens, as they are ensured and guaranteed by the Romanian Constitution, in the spirit of achieving justice and freedom of all citizens (Trușcă P. and Trușcă A. 2016, 22).

Thus, this branch of law regulates social relations between individuals that aim at collaboration and good social organization, through which they increase or decrease their personal wealth or create other legal relationships designed to ensure their good existence (Ungureanu 2013, 64).

These types of relationships can be concluded between subjects of law, be they natural or legal persons, respecting the legal forms established by law in the form of contracts or by expressing will by consensus by concluding civil legal acts (Boroi and Anghelescu 2012, 48).

In Civil Law, persons who participate in the formation of patrimonial or non-patrimonial social relations are presumed to have good faith in their generation. A very important and essential element in the creation of such reports is the manifestation of consent that must be freely expressed, obvious in the sense of forming the relationship and given knowledge (Durac 2021, 113).

Regarding the expression of informed consent, there are situations in which one of the parties uses certain maneuvers or means by which it determines the other party to consent at the conclusion of the legal act. Sometimes there is a situation in which both parties, for one reason or another, have a misrepresentation of the nature of what they are about to consent to. These situations are found under the name of consent vices (Barbu-Ciochină and Jora 2020, 130).

One of these vices is the error which consists in the fact that the subject under its empire does not correctly represent the object on which he gives his consent. It may be used with the intent to compel the party to consent to the conclusion of the act or it may exist independently of the knowledge of the parties, in which case, although both subjects are in good faith, the legal act cannot be concluded valid (Trușcă P. and Trușcă A. 2016, 151).

Another such vice is represented by violence, which in Civil Law is reduced to the simple threat of an evil of a physical or moral nature capable of inducing the party on whom a fear is used that determines it to consent to the conclusion of the legal relationship (Boroi and Anghelescu 2012, 153).

Deceit and injury are also vices of consent by which one party determines the other party to form the legal relationship either by exercising cunning maneuvers or by deliberately diminishing the party's assets (Trușcă P. and Trușcă A. 2016, 162).

The need for a synergological expertise in the field of Civil Law arises in the matter of defects of consent where the party claiming to be the victim of one or more such practices is required to provide clear evidence to prove that the legal act thus concluded can be achieved. of nullity, whether relative or absolute (Durac 2021, 223).

## Conclusions

Throughout its legal history, the judiciary has produced many errors, condemning, in some cases, innocent people, which has caused radical changes in their normal lives.

The science of studying non-verbal language which consists in the analysis and interpretation of universal physical and physiognomic signals, recognized, in Romanian, with the term synergology, can contribute to reducing these errors, being an effective alternative to the polygraph test. Thus, the synergist expert can issue a specialized expertise whenever it is requested, either by the courts or by the criminal investigation bodies, in situations where such an informed opinion is needed, or by the persons directly interested in the lawsuits.

An additional feature that highlights the usefulness of this method instead of the polygraph test is that it requires a double analysis in the decision-making and expertise process. On the one hand the analysis made with the help of a specialized software and designed in order to identify the universal signals of non-verbal language, and on the other hand the human analysis made by the expert based on the data collected by the computer and establishing the factors that determined those physical reactions.

Synergology has a practical utility, both in the field of Criminal Law, in establishing guilt and imputability of an act incriminated by criminal law, and in the field of Civil Law, in establishing the degree of good faith of the subjects of legal relations.

The implementation of the science of studying non-verbal language in the judiciary could, in the future, contribute to a significant reduction in the number of judicial errors, so that the quality of life of law-abiding citizens in the spirit and purpose for which it was adopted no longer has detrimental implications caused by these errors.

## References

- Barbu-Ciochină, I. and Jora, C. 2020. *Civil Law. General Part*. Bucharest: Prouniversitaria Publishing House.
- Boroi, A. 2019. *Criminal Law. Special Part*. Bucharest: C. H. Beck Publishing House.
- Boroi, G. and Anghelescu, A. 2012. *Civil Law. General Part*. Bucharest: Hamangiu Publishing House.
- Butoi, T. 2019. *University Treatise on Forensic Psychology*. Bucharest: Prouniversitaria Publishing House.
- Butoi, T., Butoi I., Butoi A. and Put C. 2019. *Behavioral Analysis From The Perspective of Forensic Psychology, Victimology and Forensic Tactics*. Bucharest: Prouniversitaria Publishing House.
- Ciocele, V. 2020. *Criminal Law. Special Part I*. Bucharest: C. H. Beck Publishing House.
- Corniță, G. 2006. *Communication and Marks*. Baia Mare: Northern University Publishing House.
- Durac, G. 2021. *Civil Law. General Part*. Bucharest: Hamangiu Publishing House.
- Duțu, A. 2013. *Forensic Psychology*. Bucharest: Universul Juridic Publishing House.
- Ekman, P. 2011. *Emotions Revealed. Understanding Faces and Feelings*, Bucharest: TREI Publishing House.
- Grigore, T. and Chiș, P. 2020. *Treaty of Criminal Procedural Law*. Bucharest: Hamangiu Publishing House.
- Hotca, M. 2020. *Handbook of Criminal Law. General Part. 3rd Edition*. Bucharest: Universul Juridic Publishing House.
- Marr, A. 2012. *The World History*. Bucharest: Nemira Publishing House.
- Messinger, J. 2018. *Illustrated Dictionary of Gestures*. Bucharest: Listera Publishing House.
- Mitrache, Ctin. and Mitrache, C. 2019. *Romanian Criminal Law. General Part*. Bucharest: Universul Juridic Publishing House.
- Neagu, N. 2020. *Criminal Law. General Part*. Bucharest: Universul Juridic Publishing House.
- Nour, A. 2020. *Criminal Law. General Part*. Bucharest: C. H. Beck Publishing House.

- Philippe, T. 2015. *Sinergologia. From body language to the art of reading the other's thoughts*, Bucharest: Polirom Publishing House.
- Popoviciu, S. 2013. *Social Psychology*, Oradea: Emanuel University Press Publishing House.
- Trușcă, P. and Trușcă A. 2016. *Civil Law. General Part*. Bucharest: Universul Juridic Publishing House.
- Ungureanu, T. 2013. *Civil Law. General Part*. Bucharest: Hamangiu Publishing House.
- Zlate, M. 2000. *Introduction in psychology*. Bucharest: Polirom Publishing House.

# Alleviating COVID-19 Inequality

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**ABSTRACT:** This paper detects and offers solutions to alleviate COVID-19 induced inequality. The COVID-19 external shock now clearly created economic disparity between nations, industries and societal groups. This paper discusses rising inequality trends in finance, healthcare and digitalization exacerbated during the global COVID pandemic. It then discusses the most novel and cutting-edge innovations in bridging the finance-world and real economy inequality gap, fostering digitalization advancements and common goods oriented access to affordable healthcare but also equality in connectivity and tech-skills development to overcome unforeseen inequality in the shadow of COVID-19.

**KEYWORDS:** Banking, Connectivity, Consumption, Coronavirus, COVID-19, Digitalization, Finance, Healthcare, Medical care, Real economy, Social volatility, Socio-Economics

## COVID-19 inequality

The COVID-19 external shock now clearly created economic disparity between nations, industries and societal groups. The Union Bank of Switzerland (UBS) currently describes the largest economic gap between world economies for at least 40 years (The Economist October 8, 2020a, b, c). In contrast to earlier economic turmoil stemming from system-inherent crises creating liquidity constraints, the external COVID shock caused “social volatility” – a collectively depressed mood that largely dampened consumption. The difference to previous systemic recessions becomes apparent in the rapid recovery of well-managed financial funds – for example, the S&P 500 recovered 50% of its pre-COVID value within the first three months after the crisis and reached an all-time high in August 2020. Deutsche Bank recorded rising earnings after the onset of Coronavirus crisis in Europe, especially the investment bank branch of 43% or 2.4 billion euros. The clear distinction between COVID-19 profit and loss industries made it possible for today's highly flexible financial world to quickly exchange weakened market segments – such as oil, public transport and aviation, face-to-face service sectors such as international hospitality and gastronomy – with above-average market options – such as pharmaceutical companies and emergency medical devices for healthcare, digital technologies, fintech, artificial intelligence and big data analytics industries, online retail, automotive and interior design industries.

Inequality has increased in society since the 1990s as a result of the wave of US financial market deregulation (Piketty 2014). The financial world performance began to diverge massively from the real economy in 2008/09 and experienced the greatest divergence so far with the Coronavirus crisis that widened the gap between top performance of financial markets and negative fallout in the real economy (The Economist, October 10, 2020a, b, c).

The strong contrasts between COVID-19 winners and losers as well as the deep gap between strongly positive financial market developments and the negative performance of the real economy induced by lockdowns, which is currently exposing the real economy to a wave of private bankruptcies and liquidity bottlenecks, therefore call on governments around the world to reboot financial markets to return to be a service industry – to serve the real economy (Reddy 2020e).

Government bailout packages are likely to be financed over the long term by the historically-lowest, never-so-long-low key interest rates. Low key interest rates will continue

to allow the capital market to flourish. But this is based on the cost of a weakening of the potential of the interest rate as a monetary policy tool, which the economist John Maynard Keynes (1936/2003) already described as a “liquidity trap.” The low interest rate policy brings along long-term external financing of past ideas, which impairs the flexibility of investors to finance future-oriented innovations and may hold back societal progress. Low interest rates on savings accounts in the real economy keep people trapped in the debt financing of past dreams (Arora 2020). Household debt traps are causing massive psychosocial burdens, a so-called ‘deaths of despair’ trend is already noticed in the US for mid-career death spikes induced by alcoholism, drug use and suicide (Case & Deaton 2020).

In the future, social friction is expected due to the strong polarization of financial profits sponsored by low key interest rate policy. The flexible substitutability of financial fund components in the exchange of loss segments for winning industries increases financial market profits, but at the same time reduces liquidity capacity and sustainability survival of small and medium-sized enterprises. In this sense, the generally low interest rate creates a situation that the financial world lives at the expense of the real economy.

Taxing the COVID-profit industries, especially digitization winners, could create fiscal space for redistributing some of the economic gains to industries that clearly lose from COVID-19. Taxation of digitalized economic growth during our forced digitalization disruption could provide the necessary redistribution funds to back the liquidity-dried real economy. Governments can also bring back the financial world in the service of improving and stabilizing the real economy in a stricter separation between investment and consumer banks, which already began in the course of the regulations following the 2008/09 recession. Central bank could offer diversified interest rates. Low key interest rate for driving innovation and economic growth in the financial sector that refunds higher interest rates for the real economy savings for consumers in order to avert psychosocial friction from individual over-indebtedness in households.

Online currencies, such as the currently planned European Central Bank digital currency, could help a transparent use of the currency over time to strictly divert interest rate profits and avoid arbitrage or interest rate swaps.

Mutual collateral insurance between the financial world and the real economy would also be possible in order to spread risk.

Bonds have also been discussed to enable innovations while repayments should be redistributed to the real economy. Bonds have been used throughout history to finance long-term strategies with unknown outcome (Puaschunder 2013, 2015).

In addition, could banks be encouraged to use the current profits for future large-scale investments that add societal long-term value. For example, large construction projects but also innovation in research and development are valuable macroeconomic multipliers that can benefit society as a whole in the short and long term (Epstein 2020; Keynes 1936/2003). Governments and intergovernmental bodies, like the European Union, have the long-term vision and financial freedom to operate on deficits but also the regulatory means to enact large-scale redistribution and long-term wealth creation in grand investments for the future. The COVID-19 pandemic could become a major reset offering also exciting opportunities and long-lasting positive societal advancements that come out of the crisis such as preventive medical care, reconnection with nature but also digitalization.

On an interconnected globe with a highly mobile 21st century population and a most contagious virus, common health and well-being are as internationally-interdependent as never before in the history of modern humankind. The endeavor of a commonly healthy world with attention for precaution against pandemics is challenged by nowadays unprecedentedly-blattant healthcare inequality around the world.

Access to affordable quality medicine and precautionary prevention of widespread diseases depend on economic prosperity and freedom from corruption. Modern healthcare

being technologically advanced also requires digitalization and innovation market financialization for modern preventive and precautionary medical care.

In macroeconomic modelling, my empirical research brought forward four indices shedding light on health inequality in the 21st digital century. Internet connectivity and high Gross Domestic Product are likely to lead on AI-driven big data insights for pandemic prevention. On these dimensions, Europe, Asia and North America have optimal global healthcare leadership potential. International data on healthcare standards in relation to digitalization, economic prosperity, freedom from corruption and innovation market financialization revealed that Europe and North America feature excellent starting positions on economic productivity, digitalized healthcare and relatively low levels of corruption.

Already before the outbreak of the pandemic, Artificial Intelligence, algorithms, robotics and big data entered healthcare with booming health self-tracking devices and preventive medical care enhanced by big data insights.

COVID peaked attention for hygiene, pharmaceuticals and emergency medicine. COVID-19 healthcare apps now estimate individual contagion risks and derive large-scale health trends from big data. Digitalized healthcare heightens demand for privacy protection of vulnerable patients and anti-discrimination based on health status. Bluetooth-cartography of medical devices helps overcome bottlenecks and prevents fraud while protecting privacy. Telemedicine cures remotely all over the world.

With pre-existing prevalence, such as obesity and diabetes, but also the immune system influencing the COVID disease trajectory, preventive care and whole-rounded lifestyles gained unprecedented attention. Europe benefits from highest standards on public preventive medical care, while the United States has the most prosperous market financialization to advance medical innovations and Asia appears to have the most sophisticated data tracking software in place.

As future predictions, equal access to the internet and affordable preventive healthcare around the world would help as future pandemic precaution. With the current vaccination efforts around the world questions arise in the interplay of law and economics. How far should intellectual property laws should be enforced to ensure the highest pharmaceutical sector margins remain to uphold excellence and innovation driven by competition. A COVID-19 vaccination should be offered to the entire world to reach general immunity quickly and eradicate COVID-19. Thereby a legal strategy such as outlined by the Trade-Related Aspects of Intellectual Property Rights, or TRIPS agreement, of the General Agreement of Tariffs and Trade has been brought forward by the WTO. Since the 1990s the TRIPS agreement granted access to affordable medicine to low income countries while protecting patent rights in the developed world to ensure market remuneration for medical innovation in order to uphold high quality of medical services.

As a future prospect, digitalization and big data insights for the healthcare sector appears as long-term pandemic prevention plan. In the healthcare sector, the EU has a competitive edge as for a historically-grown wealth of data of a homogenous population as European citizens pay for free universal healthcare by automatic provision of data. Within Europe, potential exists to bundle the largest and most refined historic datasets on health of 500 million European citizens in order to derive inferences for prevalences and tailored personal medical care. In the age of information, big data has become the new untaxed wealth generation means. Novel computational advancements can now retrieve medical insights from patient data that can be capitalized, especially for preventive medical care.

Due to a highly-skilled population, the European continent is a technological innovation leader and picks up technological advancements around the world quickly and efficiently. Europe also hosts a major part of historically-grown pharmaceutical agencies that are relatively independent of market actors – in the US, for instance, big data insights are

regulated by the Federal Trade Commission (FTC) and the Federal Communications Commission (FCC), two agencies that are more market oriented.

The US medical market is more fractionated into public and private sector health and features a more market-focused approach. Europe has a post-war history of stressing ethical considerations in market-driven innovations. A European track-record exists for putting a human face onto capitalism. Innovation is ennobled with an ethical imperative focus – for instance, using more precautionary standards in releasing drugs.

In the corporate sector, the German *Präventionsgesetz* or *Prevention Act*<sup>1</sup> grants governmental funding to corporations for preventive self-care and team learning of healthy lifestyles. As never before in the history of industrialization, employers now watch out for creating a healthy workplace environment with hygienic interaction, constantly tracking workforce safety and requiring health self- and group monitoring. Home office flexibility outsources workplace health risks, as do newly-erected office glass walls in interior designs. The Austrian *Sozialpartnerschaft* embraces stakeholder decision making in shaping an overall healthy workplace environment. As for healthcare evolutions, anti-depression and anti-obesity or anxiety control should create a collective environment for personal social change, involving the larger social network (Berlant 2011). The governmental, corporate, and personal responsibility could target at providing oversight of the public good in deference to corporations.

Future advancements lie in bundling information for pandemic prevention and medical resource tracking. In order to enable a big data capitalization coupled with upholding highest ethical standards, the European Union should foster a fifth trade freedom of data to bundle AI and big data gains large scale. While big data is primarily used in the US to offer more targeted consumerism, Europe should aim for building a data stock to retrieve information for preventive care leading the world with ethical imperatives in big data insight-driven medicine. On the European level, a EU fifth trade freedom of data could set positive market incentives for sharing information, but also provide big data privacy protection and legal anti-discrimination means against misuse of sensitive data – such as stigmatization – of vulnerable patients.

Data insights should only be used for the benefit of people but not be turned against human beings. A stakeholder survey conducted in November 2019 revealed that risks in the use of big data insights in healthcare include data misuse and leakage leading to privacy infringements, as well as biases and errors (Puaschunder 2020). Big data insights open gates for health care pricing, stigmatization, social stratification, discrimination and manipulation.

Big data in the healthcare sector should only be used with caution and targeted particular information release to avoid discrimination. For instance, only anonymized data slices should be made available to the public in order to avoid stigmatization, gentrification and discrimination based on predictable prevalences within population groups or certain districts.

Data protection through technological advancement, self-determined privacy attention through education as well as discrimination alleviation through taxation of data transfer values are recommended. Taxation of data transfer revenues will grant the fiscal space to offset losses and the social costs of market distortions caused by new technologies taking over human tasks and entering the workforce in the medical marketplace.

When it comes to the currently exacerbated online digital disruption in the wake of COVID-19, less discussed are currently opening inequalities based on international time zones that create natural barriers. Natural day and night time conditions currently implicitly

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<sup>1</sup> Gesetz zur Stärkung der Gesundheitsförderung und der Prävention (Präventionsgesetz – PräVG) vom 17. Juli 2015, BGBl 2015, I/31.

connect or separate continents. Online knowledge transfer is favored due to the time harmony. Common daytimes flourish exchange, while a day-night divide disconnects us for real-time exchange.

Direct exchange in work relations, telemedicine or innovation ideas exchange are facilitated within a time zone. If the digitalized exchange persists, this may create new timezone bundles. North and South America, Europe-Africa and Central Asia-Southeast Asia-Australia are emerging as new time-harmonious clusters, which operate in the same time zone. This may finally improve the north-south divide by facilitating the exchange of information and fostering common projects – such as virtual conferences and subsidiaries. Opening the online window to a different, better world, however, will likely increase already rising mobility trends. Europe will be pegged to Africa, where digitalization ranks lowest and European officials will likely face the predicament between infrastructure development in Africa for the sake of rising migration from Africa and instigating brain drain.

Concrete wellness and healthcare trends are emerging in the contemporary pandemic. COVID-19 triggered a de-urbanization in the US – a trend to move to environmentally-pleasant surroundings. Given the contagion risk in crowded metropolitan areas and air purification being challenged in city skyscrapers with closed ventilation and elevators, corporate headquarters currently move to remote work or suburbs. Retail shifted online to lower fixed cost of real estate and health risks. Hygiene and health leveraged into core business of contemporary cityscaping – as visible in the New York public transport cleanup and consumer trends to own personal cars or bikes. Art and culture events scaled down to more rural communities or are currently re-curated for social distanced performances or even are staged in virtual luxury worlds. Gastronomy order-ins and shared virtual eating experiences are socially-distanced service sector innovations. The sharing economy started offering workspace closer to nature.

Moving to cheaper suburbs now allows a remote workforce to build wellness cocoons with attention for healthy living embedded in nature. The environment is also represented in biophilic architecture trends that resembles nature. Or fungus clothing designed as carbon-negative organic alternative to fast fashion. Hygienic antibacterial surfaces for cleanability and technologically-enhanced kitchens are booming. With precise online retailing and people spending more time at home, minimalism is trending as people are getting rid of unnecessary items at home.

The de-urbanization is yet not a ruralization, as people are not giving up luxuries of metropolitan areas, such as exchange of goods, services and ideas in highly specialized markets with diverse market actors. Today's cosmopolitan luxury shifted into virtual online spaces as COVID-19 has also perpetuated the online tech world. Physically distant, we came closer digitally than ever before. Worldwide data traffic exploded on a flat digital globe. An online multitasking workforce gained global reach, while technology reduced bureaucracy. Digitalization kicked in all industries.

As North American universities currently face high revenue losses from international students staying away and closed campus housing, universities are exploring hybrid education in larger international network consortia. Students from all over the world could thereby flexibly take courses in large international education hubs with participating institutions being far spread out over the world. Without relocation costs and visa requirements, students will also be free to study longer. Education of the future could thus become truly global, individually-specialized and life-long. Global access to online education could become an international development transformation game changer. Overall expected price adjustments for education in the United States may lift the education debt burden in the US that has already curbed large-scale consumption of the generation internship since the beginning of the millennium. For Europe there is the potential to partner with North American elite institutions or create multi-lingual European consortia to bundle excellence.

With the digitalization disruption, however, come along novel inequalities. Inequality in internet connectivity, tech-skills and digitalization-affinity, leverages AI-human-compatibility as competitive advantage. Digital online working conditions that make individual living conditions transparent emphasize social hierarchies in our educational and work-related interactions.

On a global scale, problems arise from a dominance of digital innovations and online communication tools being centered in the United States, which imposes a data deficit, revenue losses and problems to enforce European privacy protection. The new use of digitization in the healthcare sector increases the demand for online data protection for particularly vulnerable patient groups and anti-discrimination in big data derived inferences.

Taxing digital economies could create the fiscal space to offset technology disruption fallouts and ensure education and trainings honing mindful use of new technologies. Healthy and informed access to new media needs to address the dilemma between the individual benefit from information exchange online versus the human dignity of privacy on the Internet. In the digital age, we cannot estimate what effects the sharing of private information, tranche-by-tranche, over time has in merging, in relation to large amounts of data and over time.

The anonymous participation in new virtual realities currently also brings with it completely new problems such as cyber crime, hate postings and social censorship by the online masses. Governments and traditional media have lost control of online censorship in the digital age.

In an attempt to uphold ethics and responsibility in virtual global online worlds that are currently open to us on the Internet, the European Union has launched the General Data Protection Regulation, GDPR, and taxation attempts of online revenue. European legal scholars and activists are defining legal rights of individuals to be forgotten online and the dignity of conscientious data protection and e-privacy.

## References

- Arora, R. 2020. "Which companies did well during the Coronavirus pandemic?" *Forbes*, June 30, 2020.
- Berlant L. G. 2011. *Cruel optimism*. Durham, NC: Duke University Press.
- Case, A. & Deaton, A. 2020. *Death of despair and the future of capitalism*. Princeton, NJ: Princeton University Press.
- Epstein, G. 2020. The Coronavirus consensus: "Spend, Spend, Spend." *Dollar & Sense: Real World Economics*, March 2020. Retrieved at <http://dollarsandsense.org/archives/2020/0320epstein--spend.html>.
- Keynes, J.M. 1936/2003. *The general theory of employment, interest and money*. Cambridge, MA: Harvard University Press.
- Piketty, Th. 2014. *Capital in the twenty-first century*. Cambridge, MA: Harvard University Press.
- Puaschunder, J.M. 2013. "Ethical investing and socially responsible investing." In Baker K. H. & Ricciardi, V. (Eds.), *Investor Behavior*, pp. 515-532. New York, NY: John Wiley & Sons Finance Series.
- Puaschunder, J.M. 2015. "When investors care about politics: A meta-synthesis of political divestiture studies on the capital flight from South Africa during Apartheid." *Business, Peace and Sustainable Development*, 5(24): 29-52.
- Puaschunder, J.M. 2020. *Big data, algorithms and health data*. Report on behalf of the European Liberal Forum of the European Parliament. Brussels and Vienna, European Union.
- Reddy, S. 2020e. "Lockdowns are costing us: It's time to be smart." *Barron's*, May 23, 2020. Retrieved at <https://www.barrons.com/articles/lockdowns-are-costing-us-its-time-to-be-smart-51590193324>.
- The Economist* 2020a. "Changing places." October 8, 2020.
- The Economist* 2020b. "The pandemic has caused the world's economies to diverge." October 8, 2020.
- The Economist* 2020c. "The peril and the promise." October 8, 2020.

# **Women's Gendered Work Experiences in a Hyper-Masculine Organization: Differences Between Cohorts**

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**ABSTRACT:** In 1973 the Department of Defense (DoD) switched to an all-volunteer force (AVF), opening many opportunities for women. Prior to this, women were an inconvenience that the military was forced to deal with, utilized out of necessity but legislated out of the ranks when possible (DePauw 1981; Lazar 2006). This disdain transferred to feelings concerning military families, something the military did not want to focus on (Lazar 2016; Miller 1997; Murdoch et al. 2006). However, a change to AVF projected shortfalls in manpower that necessitated incorporating women more fully. Over the next few decades, women's service continued to grow, as did their options (Crowley and Sandoff 2017; King 2015). In 2015, Secretary of Defense Carter set a January 1, 2016 deadline for the services to comply with his order to open all combat positions to women (Crowley and Sandoff 2017; King 2015). Today women serve fully in the military. Even as the military draws down the number of troops, women's participation stays constant, with some branches experiencing increases in the numbers of women serving. Nonetheless, the military remains predominately masculine in both its membership and culture (Crowley and Sandoff 2017). The military and family are competing institutions and, as such, women confront contradictory expectations of the roles they play (Segal 1986). These roles elicit competing devotions which demand complete dedication. While this phenomenon is not unique to military personnel, the intensity and complexity of the demands consume the lives of female service members more than many other workers.

**KEYWORDS:** women, military, mothering, equal opportunity

## **Gender in the Military**

### ***Gender Theory***

Gender theory aids in the analysis of women's experiences in a highly-masculinized culture because it examines the processes involved in the institutional reproduction of gender roles (Archer 2012). The reproduction of gender occurs in social institutions such as the family and economy. These institutions define what is appropriate behavior for men and women in terms of role identity and expectations (Archer 2012; Potucheck 1992). The hyper-masculine institution of the military reproduces gender roles and behaviors in its members through the expectations of normative behavior. These particular gender roles fortify the boundaries between work and family; when there are conflicting demands, work tends to win out for both men and women (Baker 2012). The military emphasizes the traditional model of the breadwinner-homemaker family, increasing the dynamic of separate spheres (Harrell 2001). With this traditional family ethos and strong reinforcement of separate spheres, the military makes it more difficult for women to negotiate WFC than non-military work environments. Coupled with societal expectations of women as primary caregivers, women are bound by two unforgiving institutions and forced to make compromises. With social expectations that mothers nurture, and fathers

provide, navigating the traditionally male military can be problematic for women (Furia 2009). Complicate this by a historical stance that families are unnecessary to military functioning, then multiply by it by the cultural demands for intensive mothering, and women in the military are in an impossible position it seems (Vealey 2016).

### ***Hegemonic Masculinity***

In highly masculinized work environments, the dominant cult belief is that masculinity is a sign of good character and signifies strong work commitment (Hennessy 2009). Women face insubordination and scrutiny when in positions of authority (Lunyolo 2017; Miller 1997). For example, Archer (2012) found female cadets were consistently rated lower on the following: influencing others, personal ethics, supervising, planning and organizing and developing subordinates. Negative feelings toward females in masculine work spaces are structural and assume women are emotional and unprofessional (Lunyolo 2017).

Whether using an equal opportunity, gender neutral, or equivalency approach, militaries struggle to integrate women. Where once all modern militaries prohibited women from combat, today many countries espouse equal opportunity for women (Brownson 2016; Heineken 2017; King 2016). South Africa, for instance, has a long history of women in combat and bolsters its equal opportunity stance with affirmative action and gender-neutral job requirements. The United States lifted the ban on women in certain jobs in the military in 2013, setting a full implementation date of January 2016 (Roulo 2013). The U.S. still maintains two standards for physical fitness, though job requirements now have gender neutral standards (Woods et al. 2017). Some argue that gender-neutral standards penalize women because of their natural physical differences compared to men (Brownson 2016; Heineken 2017; King 2016). This is where the equivalency approach comes in. Equivalency is meant to honor diversity and differing abilities. Diversity management fosters equitable treatment of women, but it ignores the underlying patriarchal power structure of the military and inherent differences in abilities (King 2016; Woodward and Winter 2006). There is no military femininity, and this shift to diversity management, with its accompanying language, pushes to make all differences equivalent, which works to depoliticize gender in the military. Furthermore, women's full integration into the military is not complete, as evidenced by ever-changing regulations regarding women's grooming (Furia 2010). But grooming is not the only part of a woman's body the military regulates. There are strict standards for pregnancy in the military involving everything from dress to exercise to hygiene (Gomperts and Grossman 2011; Holt et al. 2011; Jacobson and Jensen 2011).

Prior to 2012, women in the US military could not be assigned to combat units, although they were attached to those units as support (Crowley and Sandoff 2016). Combat, as the most masculine space in the military, is the antithesis to the socially constructed definition of feminine, that of weak, soft and caring (Crowley and Sandoff 2016; Mankayic 2006; Woodward 2000). Additionally, the military applies a binary logic to women, seeing them as sex objects but problematizing them being sexual. There is a double standard when sexual activity is considered in the military: men get lonely whereas women are either whores or use sex to get ahead (Mankayic 2006; Woodward 2000).

Koeszegi et al. (2014) describes the military as a war against women, where misogynistic jokes, denigrating glances and sexual harassment flourish in an effort to exclude (Heineken 2017). Women who do not comply with hegemonic masculinity suffer derogatory labeling (Heineken 2017; Koeszegi et al. 2014). Weitz (2015) argues that the military is a masculinist institution, rejecting any signs of weakness, read as "femininity." The military prizes strength, aggression, competitiveness, heavy drinking, risk taking, and the denigration and objectification of women (Heineken 2017; Koeszegi et al. 2014; Weitz 2015). King (2016) furthers this with the utilization of the slut-bitch binary.

## **Privileging Male Jobs**

In the civilian world, women who become mothers may have options to reduce work hours, move to less demanding work or leave the job temporarily. These options are not available to military women (Harris 2009; Sinclair 2004). Because the military requires unwavering commitment, women with families feel pulled in disparate directions, with career and social mothering incongruent (Blair-Loy 2003). Women in the military experience more conflict than men in the two loyalties of work and family because, while work requirements are equal for men and women, families demand more of mothers and societal expectation are that mothers fulfill these demands (Harris 2009; Sinclair 2004).

Williams (2001) defined the ideal worker as unencumbered and committed to long arduous hours of work, with no outside limitations. As men and women make the choice to have children while pursuing a career, they face different repercussions for their choices. When becoming a father, men gain in the appearance of warmth while keeping the perception of competence. Women who become mothers gain in perceptions of warmth but lose in perceptions of competence (Harris 2009; Stevens et al. 2007). Further, the wage gap between mothers and non-mothers is greater than the wage gap between men and women, with women facing a penalty of 5% per child in wages (Bernard and Correll 2015; Correll et al., 2007; Waldfogel 1997, 1998). When a woman becomes pregnant, her employers perceive her work commitment as secondary (Halpert, et al. 1993; Harris 2009).

Women who are mothers are seen as less capable workers, though men are not (Bernard and Correll 2015; Correll, et al., 2007; Harris 2009; Hodges and Budig 2010). In their study, Correll et al. (2007) found employers perceived mothers as less competent and committed, deserving of less salary and leniency, as well as less upwardly mobile. Fathers, conversely, were perceived as more competent, committed, deserving of larger salaries and leniency, and more upwardly mobile. Aisenbrey et. al (2009) support these findings and add to them in a cross-national study that found mothers in the United States suffered greater penalties for taking time out for children than women in Germany and Sweden. Additionally, sex segregation at work creates pay gaps where women in more traditional jobs receive lower wages than those in male jobs (Kennelly 2007; Reskin and Padavic 1994). Moreover, in masculine work spaces, men use labeling, such as “easy” or “dyke,” in order to exert control over women (Wright 2016). And rather than rejecting labeling, women scrutinize each other under these labels, preferring to work with men.

## **Hostile Work Environments**

### ***Othering Women***

What women say about other women tells a lot, as “talk is action” (Ezzell 2009; Kleinman 2007). In “othering,” the other is dehumanized, and this action reinforces gender inequalities (Kleinman 2007). For women, being one of the guys in a male-dominated work environment is important (Hayes 2009), as the woman worker may feel a “raise in stature” (Ezzell 2009; Kleinman 2007). At the same time, she may be erasing females’ characteristics. The phenomena of becoming one of the guys may involve cussing more or making disparaging comments about other women in an effort to distance the female worker from women in general. This “othering” of women is divisive (Burns 1999; Ezzell 2009) and feeds into the competition between women. In particular, the rhetoric on sexual infidelity works to implicate the woman as predator and men as responding normally to a highly sexualized trope (Burns 1999; Ezzell 2009). The discourse that the “other woman” is bad is simply an excuse for male infidelity and alienates women from each other.

**Bullying, Harassment and Horizontal Violence (BHHV)**

This “othering” of women is reflective of power and the way women use discourse to wield this power (Ezzell 2009; Kleinman 2007). Women experience horizontal violence, in the wielding of power laterally by other women which works to reproduce female inequality to male counterparts (Mougey 2004). While a woman is succeeding in her career, she garners the envy of other women and feels threatened by them rather than exercising collective action and empowerment (Beckwith 1999; Cech and Blair Loy 2010). Successful women see those who do not succeed as deficient. Power between women functions within the structure of gendered power, and power is associated with masculinity. Women’s collusion against “others” fortifies her oppression (Beckwith 1999; Ezzell 2009).

The military is a ripe environment for bullying, with the potential for abuse of authority, high levels of group cohesion, denigration of those who do not comply and institutionalized aggression (Koeszegi et al., 2016). The most studied field for horizontal violence is nursing. Research shows that bullying, harassment and horizontal violence (BHHV) are “oppressed group behavior evolving from feelings of low self-esteem and lack of respect from others” (Becher and Visovsky 2012; Namie and Lutgen-Sandvick 2010). There are active and passive accomplices in BHHV as there are coworkers and supervisors that may bear witness, participate or reinforce these behaviors. While globally it is estimated that nurses experience some form of BHHV at a rate of 17-76%, in the United States approximately 46% of those in the health care field experience it and over half have witnessed it (Becher and Visovsky 2012; Namie and Lutgen-Sandvick 2010).

BHHV is so widespread that the Bullying advice line in the UK receives 2000-3000 calls daily (Kumar et al. 2012). Twenty percent are teachers, 12% healthcare providers and 10% social services, with 90% of those reporting serial bullying (Kumar et al. 2012). Three-quarters of callers are women and half of those causing the harm are women. Normally BHHV takes the form of psychological or emotional harassment, although sometimes it manifests in physical aggression. Generally, BHHV consists of humiliating, alienating, unwarranted criticizing and gossiping (Becher and Visovsky 2012; Crothers et al. 2009; Curtis et al. 2007; Longo and Sherman 2007; MacIntosh et al. 2010; McKenna et al. 2002, Namie and Lutgen-Sandvick 2010; Taylor 2016).

***Cohorts***

Blair-Loy (2003) stated that much of the research on WFC focuses on individual choices and does not acknowledge that social institutions and cultural definitions may structure options. She further argues that research has focused on work and family demands as being external to the actor. There is a “deep seated, taken for granted powerfully compelling cultural schema that shapes constraints and people’s interpretations of them” (Blair-Loy 2003). Cultural schemas become institutionalized and internalized. Schemas of devotion give one orientation in the allegiance of time, energy and passion, connecting one to something outside of themselves. WFC becomes larger than the individual making cost-benefit decisions. The schemas dictate a moral definition of what is a good mother or a good worker. And while we have seen an increase in family-friendly workplace policies in the 21<sup>st</sup> century, the military lags behind the civilian sector on such policies, only realizing their importance in 2006 with declining enlistments and retentions (Petite 2008).

Devotion schemas demand complete dedication, and the ideal worker is an unencumbered, fully committed man (Blair-Loy 2003; Williams 2001). This leads to conflict between work and family. In Blair-Loy’s (2003) research, she found a distinct difference between cohorts, with the younger cohort having more “successfully transposed the egalitarian schema from the workplace onto their families’ definitions of marriage and motherhood” (Blair-Loy 2003; Cotter et al. 2011). The two schemas, work and family, are

seen as callings, becoming one's life essence. The professionals in the study strove to justify their worth as a mother while acknowledging regret over lack of time with their children. Additionally, younger cohorts demonstrate more labor market attachment than older ones (Landivar 2015; Percheski 2008), with older cohort workers gravitating to more traditional work roles. Younger cohorts supply more labor earlier, tend to delay childbearing and pay a smaller motherhood penalty than their older counterparts (Pavalko and Wolfe 2016; Park 2016; Percheski 2008)

Carr (2002) found older cohorts made greater tradeoffs in negotiating competing demands of work and family, experience more WFC and less life balance. While the older cohort may see more extreme WFC, Cotter et al. (2011) argue that each subsequent cohort experiences increased pressure to intensively mother, experiencing more fatigue from the mother role (Nilsson 2016). This leads to younger cohorts seeking more flexibility in work as well as changing work values (Twenge et al. 2010). Older cohorts place more intrinsic value on their careers while younger place more extrinsic value, leading to differing levels of sacrifice (Carr 2002). This supports Bianchi and Milkie's (2010) findings that younger cohorts of professional women report lower levels of WFC than older, perhaps due to the younger cohorts' willingness to outsource domestic labor.

The concept of intensive mothering compounds the reproduction of gender in the military and family for women who serve (Arsenault 2018; Hays 1996). Intensive mothering is a socially appropriate model of caregiving, which entails investing immense amounts of time, energy and money to nurture one's child. This does not hold for men. Complicating societal expectations of intensive mothering, women serving in the military find further constraints to parenting due to long work hours and tours away from home.

Nomaguchi (2009), in examining changes in WFC over time, found several factors that increase WFC. Overall, from 1977-1997, parents felt more WFC while spending the same amount of time on childcare. She also found that increases in work hours, as well as educational attainment, increase WFC. However, older workers reported less WFC than younger. Further adding to the stress, economic restructuring has resulted in longer work weeks and decreased real wages (Stevens et al. 2007). The breadwinner-homemaker family has given way to the dual-earner, finding more spouses juggling the demands of work and family.

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## References

- Aisenbrey, Silke, Marie Evertsson, and Daniela Grunow 2009. "Is There a Career Penalty for Mothers' Time Out? A Comparison of Germany, Sweden, and the United States." *Social Forces* 88(2): 573-605.
- Archer, E. M. 2012. "The power of gendered stereotypes in the US Marine Corps." *Armed Forces & Society* 39(2).
- Becher, J., & Visovsky, C. 2012. "Horizontal violence in nursing." *Medsurg Nursing* 21(4): 210.
- Beckwith, J. B. 1999. Power between Women: Editor's Introduction Power between Women: Discourses within Structures.
- Bianchi, S. M., & Milkie, M. A. 2010. "Work and family research in the first decade of the 21<sup>st</sup> century." *Journal of Marriage and Family* 72(3): 705-725.
- Blair-Loy, M. 2003. *Competing devotions: Career and family among women executives*. Cambridge MA and London: Harvard University Press.
- Brownson, C. 2016. "Rejecting Patriarchy for Equivalence in the US Military: A Response to Anthony King's "Women Warriors: Female Accession to Ground Combat". *Armed Forces & Society* 42(1): 235-242.

- Burns, Angie 1999. "Power Between Women: The Constructed Otherness of 'Other Women.'" *Feminism and Psychology* 9(4):410-413.
- Carr, D. 2002. "The psychological consequences of work-family trade-offs for three cohorts of men and women." *Social Psychology Quarterly*, 103-124.
- Cech, E. A., & Blair-Loy, M. 2010. "Perceiving glass ceilings? Meritocratic versus structural explanations of gender inequality among women in science and technology." *Social Problems* 57(3): 371-397.
- Correll, Shelley J., Stephen Benard and In Paik. 2007. "Getting a Job: Is There a Motherhood Penalty?" *American Journal of Sociology* 112(5): 1297-1338.
- Cotter, D., Hermsen, J. M., & Vanneman, R. 2011. "The end of the gender revolution? Gender role attitudes from 1977 to 2008." *American Journal of Sociology* 117(1): 259-89.
- Crothers, L. M., Lipinski, J., & Minutolo, M. C. 2009. "Cliques, rumors, and gossip by the water cooler: Female bullying in the workplace." *The Psychologist-Manager Journal* 12(2): 97.
- Crowley, K., & Sandhoff, M. 2017. "Just a Girl in the Army: US Iraq War Veterans Negotiating Femininity in a Culture of Masculinity." *Armed Forces & Society* 43(2).
- Curtis, J., Bowen, I., & Reid, A. 2007. "You have no credibility: Nursing students' experiences of horizontal violence." *Nurse Education in Practice* 7(3): 156-163
- Furia, S. R. 2010. "Navigating the boundaries: Army women in training." In *Gender and Sexuality in the Workplace*.
- Halpert, Jane A., Midge L. Wilson, and Julia Hickman. 1993. "Pregnancy as a Source of Bias in Performance Appraisals." *Journal of Organizational Behavior* 14(7): 649-663.
- Harrell, Margaret C. 2001. "Army Officers' Spouses: Have the White Gloves Been Mothballed?" *Armed Forces & Society* 28(1): 55-75.
- Harris, G.L.A. 2009. "Women, the Military, and Academe: Navigating the Family Track in an Up or Out System." *Administration and Society* 41(4): 391-422.
- Hayes, S. 1996. *The cultural contradictions of women's lives*. New Haven: Yale University Press.
- Heinecken, L. 2017. "Conceptualizing the Tensions Evoked by Gender Integration in the Military: The South African Case." *Armed Forces & Society* 43(2): 202-220.
- Hennessy, J. 2009. "Choosing work and family: Poor and low-income mothers' work-family commitments." *Journal of Poverty* 13(2): 152-172.
- Hodges, M. J., & Budig, M. J. 2010. "Who gets the daddy bonus? Organizational hegemonic masculinity and the impact of fatherhood on earnings." *Gender & Society* 24(6): 717-745.
- King, Anthony C. 2015. "Women Warriors: Female Accession to Ground Combat." *Armed Forces & Society*. 41(2).
- Kleinman, Sherryl. 2007. *Feminist Fieldwork Analysis*. Los Angeles: Sage University Paper.
- Koeszegi, S. T., Zedlacher, E., & Hudribusch, R. 2014. "The war against the female soldier? The effects of masculine culture on workplace aggression." *Armed Forces & Society* 40(2).
- Kumar, G., Jain, A., & Kumar, B. 2012. Bullying in the workplace: recognition and management. *The Obstetrician & Gynaecologist*, 14(2), 130-135.
- Landivar, L. C. 2015. "The gender gap in employment hours: do work-hour regulations matter?" *Work, employment and society* 29(4): 550-570.
- Longo, J., & Sherman, R. O. 2007. "Leveling horizontal violence." *Nursing Management* 38(3): 34-37.
- MacIntosh, J., Wuest, J., Gray, M. M., & Cronkhite, M. 2010. Workplace bullying in health care affects the meaning of work. *Qualitative Health Research*, 20(8), 1128-1141.
- Mankayic, N. 2006. "Male constructions and resistance to women in the military." *Scientia Militaria: South African Journal of Military Studies*, 34(2).
- McKenna, B. G., Smith, N. A., Poole, S. J., & Coverdale, J. H. 2003. Horizontal violence: Experiences of registered nurses in their first year of practice. *Journal of advanced nursing*, 42(1), 90-96.
- Miller, L. L. 1997. Not just weapons of the weak: Gender harassment as a form of protest for army men. *Social psychology quarterly*, 32-51.
- Mougey, M. 2004. *Exploring female K-12 administrators' experiences with horizontal violence: A multiple case study*. (Doctoral dissertation, University of Nebraska--Lincoln).
- Namie, G., & Lutgen-Sandvik, P. E. 2010. "Active and passive accomplices: The communal character of workplace bullying." *International Journal of Communication*, 4, 31.
- Nilsson, K. 2016. "The ability and desire to extend working life." *Healthy workplaces for women and men of all ages*, 30.
- Nomaguchi, K. M. 2009. "Change in Work-Family Conflict Among Employed Parents Between 1977 and 1997." *Journal of Marriage and Family* 71(1): 15-32.
- Percheski, C. 2008. "Opting out? Cohort differences in professional women's employment rates from 1960 to 2005." *American Sociological Review* 73(3): 497-517.
- Petite, K. 2009. *Tinker, tailor! Soldier, sailor! Mother? Making sense of the competing institutions of motherhood and the military*. Doctoral dissertation.

- Potuchek, Jean L. 1992. "Employed Wives' Orientations to Breadwinning: A Gender Analysis." *Journal of Marriage and Family* 54: 548-558.
- Reskin, B. F., & Padavic, I. 1994. *Men and women at work*. Thousand Oaks, CA: Pine Forge Press.
- Segal, Mady Wechsler. 1986. "The Military and the Family as Greedy Institutions." *Armed Forces and Society* 13(1): 9-38.
- Sinclair, Cody S. 2004. "Effects of Military/Family Conflict on Female Naval Officer Retention." *Defense Technical Information Center*. Fort Belvoir, VA.
- Stevens, Daphne Pedersen, Krista Lynn Minnotte, Susan E. Mannon and Gary Kiger. 2007. "Examining the 'Neglected Side of the Work-Family Interface;' Antecedents of Positive and Negative Family-to-Work Spillover." *Journal of Family Issues* 28(2): 242-262.
- Waldfogel, Jane. 1997. "The Effect of Children on Women's Wages." *American Sociological Review* 62(2): 209-217.
- Waldfogel, Jane. 1998. Understanding the "Family Gap" in Pay for Women With Children. *The Journal of Economic Perspectives* 12 (1): 137-156.
- Weitz, R. 2015. "Vulnerable warriors: Military women, military culture, and fear of rape." *Gender Issues* 32(3).
- Williams, J. 2001. *Unbending gender: Why family and work conflict and what to do about it*. Oxford University Press.
- Woodward, R. 2000. "Warrior heroes and little green men: Soldiers, military training, and the construction of rural masculinities." *Rural Sociology* 65(4).
- Woodward, R., & Winter, P. 2006. "Gender and the limits to diversity in the contemporary British Army." *Gender, Work & Organization* 13(1): 45-67.



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