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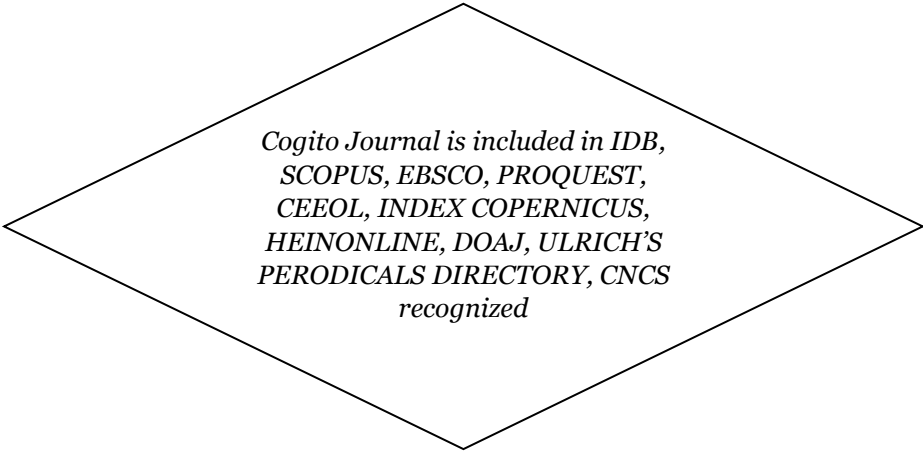
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IN MEMORIAM
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CHRISTIAN UNIVERSITY

PROF. PhD. MOMCILO LUBURICI
A DESTINY OF SCHOOL FOUNDER

The academic community of "Dimitrie Cantemir" Christian University in Bucharest was grief-stricken in the fall of this academic year because, on November 15, 2023, the one who was our mentor, teacher, rector, president, founder of this university, prof. PhD. MOMCILO LUBURICI passed away.

Professor Momcilo LUBURICI was an exceptional personality of the Romanian academic environment, an intellectual with multiple cognitive and ethical virtues, endowed with a sparkling wit, doubled by a rare modesty and extraordinary wisdom. He had the psychology of the founder, with the vocation of construction and tireless work, a rigorous but creative academic spirit, a genuine scholar with exceptional managerial qualities, a true model of visionary teacher, for all who knew him.

Undoubtedly, "Dimitrie Cantemir" Christian University remains the "beloved child" of the late Prof. Momcilo Luburici, to which he dedicated all his skill, intelligence, commitment and wisdom; a landmark of work carried out with dedication, enthusiasm, passion and maximum responsibility. His everyday attitude within the university, almost until the last moment of his life, his positive spirit that always left some leeway for relaxation under serious circumstances, his efforts for reconciliation and understanding, his openness to novelty, his respect for tradition, the advice he offered us every time, the encouraging appreciations for academic performances, are gestures that we will never forget! What Prof. Momcilo Luburici passed on to us was and will remain a treasure of culture, education and professionalism, and it is our duty to preserve and enrich this heritage, as he wanted to make it last over time. Only in this way can we keep him forever in our memory, with gratitude and appreciation for the chance to serve in the university he built up and for which the founding president Momcilo Luburici fought in order to impose it in the Romanian academic environment, as an elite university, for elite students.

Very few times do we have the chance throughout life to meet people who mark us deeply, determine certain attitudes, increase our confidence in values specific to intellectual elites, in sound principles born from meaningful experiences, generously giving everybody a sign of

*understanding. I had the great chance to meet and get to know President Momcilo Luburici, when he was Rector of the University he founded and which bears the mark of his academic integrity and visionary intelligence. I chose to be a professor at this university because I was encouraged, supported and appreciated by the University Management, and its President, Prof. PhD. Momcilo Luburici stimulated me enormously in the academic, educational and research projects initiated and carried out in this institution. I had the privilege of working directly with Mr. President, as vice-rector with didactic activity, vice-rector with research activity, as Dean of the Faculty of Educational Sciences, which I initiated and coordinated, then, as an editor-in-chief at the two scientific research journals COGITO & EUROMENTOR. I directly collaborated with him in the organization and coordination of international conferences dedicated to Dimitrie Cantemir. For everything I learned from Prof. Momcilo Luburici, for the opportunity to become a professor in the university he founded, but above all, for all the advice and appreciation of his lordship, the encouragement and real support he offered me to establish and develop both academic journals, I express my high appreciation and gratitude **in aeternum.***

Prof. PhD. Gabriela Pohoată
Editor-in-Chief COGITO & EUROMENTOR

MACHIAVELLI ON CONSPIRACIES POLITICAL METHODOLOGY AND SOVEREIGNTY

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Abstract: *This study aims to present and interpret chapter III, 6 of Niccolò Machiavelli's Discourses, which refers to conspiracies. This chapter is the longest section of the Discourses, which raises questions about the author's true intention. What is it that Machiavelli ultimately wants to achieve with this chapter? It is very difficult to discern whether his analysis advises the state's opponents on how to conspire against it, or whether it provides the state with a manual for preventing a potential conspiratorial movement. The conclusion of this research is that Machiavelli's advice on conspiracies is part of the Machiavellian methodology of sovereignty, which is fundamentally different from political philosophy in its classical form. Machiavelli's political methodology aims at subjective or historicist sovereignty in every way, while political philosophy aims at the improvement of its research object, that is, man and the city. However, Machiavellian political proposals such as the mixed constitution or the harmonious order of the state's institutions must also have the proper interpretative depth.*

Keywords: *Conspiracies, Machiavelli, Discourses, political methodology, political philosophy, mixed constitution, state's institutions, political sovereignty*

Human nature as an interpretative field of the Machiavellian method

What does Machiavelli really offer us, a systematic political philosophy, which has specific principles and goals, or a methodology of political sovereignty open to subjectivism and relativism? Machiavelli certainly starts as a classic, he recognizes that any attempt at political interpretation must have man as its center¹. If we do not get to know man and the way he thinks and acts, we will never be able to decide objectively, and therefore

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¹ Hankins, "Machiavelli, Civic Humanism, and the Humanist Politics of Virtue", *Italian Culture*, Vol. xxxii No. 2, (2014), pp. 98–109.

scientifically-philosophically, about the essence and functioning of a political society. The start-point of Machiavellian thought is human nature as a stable background of analysis and interpretation. The nature of men does not change, it is the only datum that remains emphatically constant in the continuous movement of human things, which in turn will be repeated identically as long as human nature is the driving cause of their development. For a science to have substance, it must know the causal relationships that make up its cognitive matter. The cognitive subject of political science is man, so knowledge of the causal relationships that structure human-nature is necessary in order to have an objective interpretation of the human condition.

The classics opined unequivocally that man is a rational being, a living being distinguished from others because of his rational ability. Machiavelli does not dispute this, he subscribes to the fact that some people have the ability to understand the expression of historical events and arrive through rationality at the knowledge of their causes while predicting their future reappearance. He admits that there is an aretaic differentiation of people in terms of rational ability², what he does not accept is that many people can reach this state of natural perfection. Most people are bad, while only a few are good. The wickedness of men lies in the emphatic predominance of the passions against reason. Although rationality tends to impose order, passions tend toward irrationality and disorder. The human rule is not the orderly condition of rationality, but the chaotic condition of the passions. Therefore, analyzing human nature through rational integration, as the ancients did, is a wrongful method, human nature must be analyzed based on the passions. The human condition should not be viewed as something that can be perfected, but as something that is inherently imperfect. Human nature is attached to imperfection and deficiency under the rule of the passions, and with defective material we cannot make perfect creations.

So, if we cannot perfect man, what is left to do with him? The control of man is the Machiavellian answer to this question, human nature must be decisively controlled as something chaotic that emanates from fortune. But what about human purpose, can it be inextricably, teleologically connected to human essence, as the classics believed? Machiavelli concludes negatively, human nature must be disconnected from human purpose, the rupture with the classical tradition will open new horizons of political application, where the utopian and the accidental will be completely limited and the certainty of political sovereignty³ through the decisive control of

² Er. Benner, *Machiavelli's ethics*, Princeton University Press 2009, pp. 197-200.

³ M. Viroli, "Machiavelli's Realism", *Constellations*, Volume 14, No 4, (2007), pp. 466-482.

human nature will acquire real status⁴. Machiavelli, although he has classical origins, although, just like the ancients, he considers the human essence as a necessary cognitive field for the formation of political philosophy, he then makes a separatist, modern movement, cutting off the relationship between human essence and human purpose⁵. Man's purpose is now defined by the institutions of the state, which have the power to impose it. Machiavelli is a fallen angel; he was once a classical angel and ended up being a modern devil⁶.

This means that a civil society must be able to decisively control the human material that constitutes it. This control is imposed through the institutions of the state, which serve the subjective purpose of the state⁷. The primary concern of the state is the perpetuation of its institutions through the decisive control of the people who make up civil society. Obviously, a democracy has different goals than a tyranny, but the concern of the Machiavellian methodology is the preservation of the state through the protection of its institutions⁸. Therefore, a state must primarily be freed from the internal factors that threaten its survival, a tyranny must kill Brutus, while a democracy the sons of Brutus, otherwise the preservation of the state and its institutions will be precarious (*Discourses* III, 3). In this perspective, conspiracies pose greater danger to a state than external threats, because a conspiracy is an internal movement of disintegration of institutions and the constitution⁹.

Conspiracies: a great danger

The sixth chapter of the third book of Machiavelli's *Theses* deals with conspiracies attempted either against a ruler or against the conspirator's own state¹⁰. The remarkable thing about this chapter is, on the one hand, its length (it is longer than any other chapter in the book) and, on the other hand, the way the political thinker approaches the subject. That is to say, the size of the chapter indicates the importance of the topic in question, and Machiavelli's choice to describe the phenomenon of conspiracy not so much

⁴ El. Vavouras. "The Machiavellian reality of Leo Strauss", *Dia-noesis: A Journal of Philosophy*, 12, (2022), pp. 265-273.

⁵ El. Vavouras, "Machiavelli: Natural right and historicism", *Polis*, Volum IX, Nr. 3 (33), (2021), pp. 5-24.

⁶ S.B. Drury, "The hidden meaning of Strauss's *Thoughts on Machiavelli*", *History of Political Thought*, Vol. 6, No. 3 (1985), pp. 575-590.

⁷ M. Hörnqvist, *Machiavelli and Empire*, Cambridge University Press 2004, pp. 30-39.

⁸ Q. Skinner, "Machiavelli on the maintenance of liberty", *Australian Journal of Political Science*, 18:2, (1983), pp. 3-15.

⁹ R.J. Schmidt, Jr, *Reading Politics with Machiavelli*, Oxford University Press, 2018, pp. 29-49.

¹⁰ In Italian *patria*, meaning one's country, one's place of origin regardless of state status.

from the perspective of the one against which the conspiracy is being made as from that of the conspirators is noteworthy. In any case, the matter needs attention and should not be passed aside, and this because conspiracies are equally dangerous for the rulers as for the private individuals who undertake them¹¹. Machiavelli believes that more rulers lost their lives and states were overthrown by conspiratorial actions than by open war. The reason is simple: war requires money and expenditure that few possess, and conspiracy can be undertaken by anyone, even private individuals. This fact multiplies the internal enemies a ruler can have. Then again, of course, no act is as risky and daring as that of conspiracy. Machiavelli intends to advise both, the rulers to guard themselves against such actions, and the private individuals so as not to be hastily involved in such acts. Besides, the success rate of a conspiracy is small. To prevent possible misunderstandings that the reader may have that he encourages the overthrow of the regimes, Machiavelli programmatically assures us that with his words he will teach private individuals to be content with the current state of affairs that was formed either by chance or by the state. Of course, this promise is barely fulfilled by what is analyzed below. However, Machiavelli does not openly urge rebellion¹², he simply explains the most effective ways that the conspirators must take in order to achieve the overthrow of the state or vice versa how a hegemony or a democracy can avoid a conspiratorial move. In order to get out of this uncomfortable position, however, a saying of the historian Tacitus is invoked: “men must admire the past but obey the present, wish for virtuous leaders but also tolerate the present, whoever they may be”¹³. Violation of this maxim usually brings about the destruction of the would-be conspirator and his state.

The causes of a conspiracy: personal injustices

According to Machiavelli, conspiracies are carried out either against a ruler or against the entire state. Instances of cities being surrendered to besiegers through treachery have been explained in a previous chapter, and will not trouble the political thinker. The reasons which lead to a conspiracy against a ruler must first be investigated. These may be many, but primary and chief is the hatred of his subjects¹⁴. The greater the universal hatred of

¹¹ “*essendo cosa tanto pericolosa ai principi ed ai privati*”.

¹² Note that the recipient of the letters Zanobi Buondelmonti conspired against the Medici in 1522. Cf. Al. Campi, *Machiavelli and Political Conspiracies. The Struggle for Power in the Italian Renaissance*, Routledge, 2021, pp. 39-58.

¹³ For this saying, cf. Tacitus *Hist.* IV, 8: *ulteriora mirari, praesentia sequi; bonos imperatores voto expetere, qualiscumque tolerare*.

¹⁴ The observation of the hatred of the ones being ruled towards their ruler is ancient and is summarized with noble simplicity by the old commentator of Thucydides (1.75): ὁ γὰρ ἄρχων ἀεὶ μισεῖται = for he who rules is always hated.

a ruler¹⁵, the greater are the chances that some subjects have been offended by him to the point of wanting revenge. This revenge is even more likely to be taken as long as there is a universal ill-disposition¹⁶ towards the person of the ruler. So, the primary concern of the ruler is to get rid of any such public accusations and to win the favor¹⁷ of the ones being ruled. The guarding of the ruler from general hatred helps to reduce the chances of conspiracy developing since on the one hand no one will consider an injustice so great as to be worth avenging it and on the other hand the conspirator will naturally be discouraged by seeing the overall well attitude surrounding the ruler. The results, besides, of a conspiracy against persons dear to the people are disastrous, and will be referred to at the end of the chapter.

The types of injustices

The injustices that the subjects may suffer from the ruler are trichotomized by type: they are the injustices concerning the materials (e.g., seizure of property), injustices of blood (physical damage) and injustices of honor¹⁸. Of the three, Machiavelli considers that of blood the most dangerous. In fact, the threat of physical harm is much more dangerous than its execution. This is true because the dead cannot take revenge, while revenge by the relatives of the deceased is not a common occurrence. Conversely, the living who will accept the threat, if driven by the need to either act or suffer, is the greatest danger to the ruler. Next are the injustices of property and honor. These are the ones that hurt people more than any other insult. Indeed, even if you strip someone of all his possessions, his mind will always remain irrevocably fixed on revenge, because human nature tends towards greed, the acquisition of new material possessions leads to pleasure, while the loss of material possessions leads to pain. The ruler or the state must know the concept of material happiness of the people and deal appropriately with their natural passions. Injuries of honor can concern either the victim's wife (which are the most important) or the person himself¹⁹. This kind of injustice was e.g. and the one that led Pausanias to kill Philip II, the king of Macedonia²⁰.

¹⁵ Cf. *The Prince* chapter 19

¹⁶ "*mala disposizione universale*".

¹⁷ This is the well known *captatio benevolentiae*.

¹⁸ "*Le ingiurie, conviene che siano nella roba, nel sangue o nell'onore.*"

¹⁹ Cf. *The Prince* XVII.

²⁰ For the assassination of Philip, cf. Diodoros 16, 93 ff / Justin, IX 6. On the question of an attack against a tyranny by *hybris* (*δὲ ὑβρίν*), Cf. Aristotle, *Politics* 1311a et seq. As other crimes of honor and their subsequent conspiracies, Machiavelli mentions some modern examples; Julio Belanti conspired against the Sienese tyrant Pandolfo because the latter gave his daughter to the former to marry, but took her back (honour injustice). The

The liberation of the state as a cause of the conspiracy

There is, however, one more reason, not inconsiderable, which could give rise to a conspiracy. It is the liberation of a state held by the ruler. Such a conspiracy was that of Brutus and Cassius against Caesar²¹. History is full of tyrant-killers who wanted to liberate their particular homeland because occupying a country by law will instill hatred in its patriotic citizens who will want to liberate it at all costs. Machiavelli decides that there is no escape from this bad disposition which tyranny creates. There is only one solution (and that is unrealizable), the renunciation of tyranny. None, however, seem willing to relinquish their tyrannical power²². Therefore, there are few tyrants who do not have a bad end and this fact also gives rise to the following verses of Iuvenalis: "Few kings go down to Hades without being slaughtered and unscathed and few tyrants without a bitter death"²³.

Conspiracies with one offender

In the remaining part of the chapter, the ways and methods of the Conspiracy are analyzed in order for it to be successful and at the same time mention is made of any risks that may arise and their precautionary measures. The risks of a conspiracy are classified into three parts based on the time of the act of the conspiracy. It is therefore a matter of risks during the planning of the conspiracy, at the time of and after its execution. The conspirator may act alone, or he may have accomplices. Of course, the conspiracy of a single person cannot be considered in strict terms as a conspiracy in itself, rather it is more like a strong impulse that leads someone to kill the ruler. This kind of "conspiracy" is special because it lacks the risk of execution. The reason is this: because the secret of the conspiracy is not distributed to many, the chances of the ruler being informed about it are reduced. Another important aspect of such conspiracies is that they can be carried out by anyone regardless of their socio-economic position or their relationship with the ruler. This is because everyone in one way or another is allowed to come into contact with the ruler and give in to the impulses of hatred at the moment of this contact. Pausanias was of course noble, but

Pazzi attacked the Medici because the latter deprived the former of the inheritance of Giovanni Borromei (Cf. *FH VIII* 2-7). The Pazzi conspiracy was in 1478.

²¹ Cf. Plutarch, *Brutus* 8-10. The Sicilian tyrants Phalaris and Dionysius are also mentioned. For the former Cf. Cicero's account, *De Officiis*, II 7, according to whom Phalaris was slain by the "general multitude" of Agrigentum. For the latter see also, Plutarch *Dion* 6, Aristotle *Politics* 1312a4-6. Two Dionysiuses were in fact tyrants of Syracuse.

²² The love of tyranny and clinging to it despite its inherent dangers are themes that have also been established since ancient times.

²³ *Satura* 4,10 v. 112-123: *ad generum Cereris sine caede ac vulnere pauci / descendunt reges et sicca morte tyranni.*

even social outcasts can cause, given the opportunity, mortal harm to the ruler²⁴. This means that many may be found possessed of the desire to kill the ruler (for the will is not punished), but few will carry out their desire, and of those who do, even fewer survive the act.

Conspiracies with multiple perpetrators

Conspiracies consisting of more than one person are in order to be dealt with. A noticeable difference is directly defined that distinguishes this kind of conspiracies from the previous ones. In other words, with historical experience it becomes clear that the conspiracies of several individuals always include in their bosom persons with exceptional influence or power, who are also connected to the ruler. Weak men, unless possessed of insanity, cannot conspire precisely because of their inherent weaknesses: they distrust each other and lack the resources necessary to have easy access to the ruler. But even in the event that no one witnesses their plans, they are also faced with the same problems that high-paying conspirators face, although here these problems are multiplied without end. So when people see that their property and life are in danger, they initially prefer to protect themselves (not everyone is insane). If they still want to harm the ruler who is responsible for the injustice, they simply curse him, waiting for more powerful people to take over his actual punishment. Those who undertake this punishment are more to be commended for their discretion than for their prudence.

Conspiracies because of greed

There are, on the other hand, positive reasons for attempting a conspiracy. It is not only the emptying of goods that causes hatred, but also the filling that leads to greed. Thoughtless favors can be as disastrous as injustices. Roman history abounds with examples of conspiracies that were sparked by countless misdeeds. Those who are overburdened with riches, honors, and positions consider that the only thing left for them to reach the consummation of their power is to seize the authority which bestowed these goods on them, in this case the position of the Roman Emperor. Such conspiracies are of course extremely dangerous, as the conspirators have at their disposal ample financial resources to carry them out. However, it is precisely their desire for more that ultimately blinds them and diverts them from fulfilling their purpose. Only if they could satisfy their wickedness with prudence (an oxymoron in itself), would they be successful in their aims. The ruler must therefore fear and be more diligently guarded against those whom he benefits than those whom he harms, because the intention to overthrow

²⁴ As he did e.g. a poor Spaniard in Ferdinand (7 December 1492) and a dervish Turkish priest in Bayezid (both rulers, however, survived the attack). The latter attacked Bajaret II, sultan from 1481 to 1512 and father of Selim I. This incident happened in 1492.

the ruler is certainly present in both, but only the former possess the facility and the opportunities to carry it out. Furthermore, the desire for absolute domination is as great if not greater than that of revenge. The antidote to such conspiracies lies in the ruler not giving excessive power to his intimates, thus exaggerating their greed. In addition, there must be a distance between them, and the ruler must fill that distance with intermediate desires that will keep his friends busy and distract them from any other ambitions that threaten his position. If not, there will be rare cases where favors to friends will not have automatically caused the end of the benefactor.

The dangers of conspiracy before its execution: infidelity

Proceeding from the causes to the actual act of the conspiracy, all the factors that could contribute to its successful or unsuccessful outcome are examined. We thus return again to the temporal trisection of the conspiracy: before the act, during the act and after the act. These are all three periods of a conspiracy. Few are those who, passing through each period, succeeded in their pursuits. It is again unlikely that anyone could say that they were all able to pass the first period without being revealed. This first period is the most demanding and the most critical as the risks inherent in it are also the greatest. The good outcome of the first period requires good luck and prudence to avoid its premature disclosure. This usually happens either because someone (of the conspirators) reveals the conspiracy or by guesswork. That is why the conspirator must be extremely careful in choosing the conspirators to work with him. Infidelity and lack of prudence are main reasons for uncovering a conspiracy. To combat this, the conspirator should choose his associates either from his own circle of friends or pick others who are also dissatisfied with the present regime. The more the conspiracy circle expands, the more negligible will become the number of those caught before the conspiracy is committed. On the one hand friends are a good choice since they will be willing to die for the conspirator. In general, the fear of risk and penalties in case of failure should not shake the willingness of co-conspirators. But love as a criterion for choosing conspirators can sometimes deceive, so there must also be trust which is only acquired through experience, which is quite dangerous since a previous case of danger is presupposed by which the present trust must be calculated, however this is false since the present danger of conspiracy outweighs all others. That's about friendship. On the other hand, displeasure and non-satisfaction can also be misleading as criteria, because the announcement of the conspiracy to one dissatisfied with the ruler can be the occasion for their reconciliation. Therefore, either his hatred must exceed that of the organizer of the conspiracy, or the power exercised over him must be so great that disobedience cannot be accommodated.

Ignorance as a cause of failure – When should a conspiracy be announced?

Lack of prudence can become, as mentioned above, the cause of a failed conspiracy if it is spread everywhere carelessly. The main suspects in the rampant spread of the plot are slaves, wives and loved ones. A strong example is the conspiracy of Philotas and the royalists against Alexander, which was revealed by a lover of Philotas²⁵, Nicomachus. It remains to be conjectured on behalf of the one against whom the conspiracy is being carried out. This speculation is fueled by the mismanagement of the conspirators, who either due to malice, lack of prudence or even recklessness²⁶ leave suspicions with their actions that the ruler takes advantage of to expose them. Piso's plot against Nero²⁷, well-prepared as it was, ultimately unraveled because of such thoughtless acts on the part of the conspirators. With the increasing number of members of the conspiracy, the chances of actions that undermine it multiply accordingly. If more than one person is arrested, failure is certain because even the pretexts that the arrested will improvise at the time are not likely to agree with each other. When one is captured, salvation is left to the strong will and courage of both. In other words, the arrested person must with delay not give the names of the co-conspirators, and the other free conspirators must not run away in fear, thus raising suspicions. But for both of these things to happen, huge reserves of virtue are required that are almost impossible to find. Titus Livius, however, mentions one such case, it is about the conspiracy against the tyrant of Syracuse Hieronymus; the fortitude and virtue of the arrested Theodore and the extraordinary trust that the other conspirators had in him led to the success of the project despite the obstacles that arose²⁸. Such cases are now rare and should not be taken into account as prescriptions but as examples of wonderful might, commitment and determination. So it is clear that a conspiracy must pass all these dangers while it is still in its infancy. The remedy suggested by Machiavelli for these dangers which appear in the pre-execution time part of the conspiracy is to disclose it shortly before or during its execution. In this way, there is no time for any kind of wrongdoing and the possibility of betrayal is eliminated. The examples of Nelematos²⁹, Darius³⁰ and Alexamenos are invoked. Thus, when plotting by making the

²⁵ Cf. Quintus Curtius, VI 7 - 11.

²⁶ “*per malizia, per imprudenza o per leggerezza*”.

²⁷ Cf. Tacitus, *Annales* XV 48-56, for the conspiracy of Gaius Piso against Emperor Nero in 65.

²⁸ For this conspiracy, cf. Livius 24, 5. (in some mss he is also mentioned as *Theodotus*). The year was 215 B.C.

²⁹ Cf. Justin. XXXVI I, but the conspirator's name is given as Hellanicus. The year was 272 B.C.

³⁰ Cf. Herodotus 3, 61-79.

conspiracy known at the last moment or when executing it, the possibility of repentance and second thoughts is removed and at the same time failure is minimized. There are few conspiracies that historically could not follow the above advice, but the bad-headedness of people motivates them to operate in wrong ways since they do not take into account similar examples to be disciplined from them. Greater junctures, on the other hand, call for bigger and more fatal mistakes.

To how many must a conspiracy be disclosed?

The announcement of the conspiracy must therefore be made either chronologically while it is being carried out or under extreme pressure of necessity. Even then, however, it is preferable to disclose it to only one person rather than to several (it is also easier), as long as that person has a confidence that has been ascertained through long experience or is actuated by the same motives. After all, even if that person confesses, the way of escape is not impaired provided that there is no written testimony that can convict the conspirator. Writing is an element that can immediately and very effectively circumvent the conspiracy and irreversibly expose the conspirator. That is why he must be very carefully guarded against giving his signature lavishly, just as ships are careful not to run aground on reefs³¹. When there is no incriminating writing, the conspirator can deny the accusation with ease, since his “no” is equal in value to the “yes” of the informant. There are therefore two dangers lurking in the case of disclosure to a person: either that he reveals the conspiracy out of a personal quarrel or because of coercion. In any case the charge can be rebutted with the counter-argument that the whistleblower acted either out of personal hatred or out of fear of torture.

Fear as a necessity for action

It has been discussed above that the threat to life is the greatest danger to the ruler because it reduces the threatened to a dilemma between acting or suffering. The would-be conspirator, constrained by the instinct of self-preservation and wanting to ensure his threatened salvation, acts without regard for his own safety and commits what he fears the ruler will do against him. This overwhelming need³² always leads to conspiratorial actions with successful results. Evil rulers are afraid of suffering what they deep down recognize they deserve and thus issue threats of harm that backfire and for which they are immediately and severely punished. Threat is a generator of successful conspiracies. This kind of need that leaves no time for thinking is

³¹ “*e dallo scrivere ciascuno debbe guardarsi come da uno scoglio*”.

³² For how this need can lead to hopelessly destructive consequences even if the constrained has just been defeated, Cf. Plutarch, *Themistocles* 16,3.

similar to the need that arises when the conspiracy is disclosed immediately before or during its execution, as mentioned above. Therefore, the ruler must be extra wary of threats of physical harm in order not to draw upon himself an unpreventable conspiracy. Therefore, he must either treat his subjects in an excellent manner or make sure that he is safe from them and not limit them to situations where it is a question of either killing or being killed³³.

The dangers in the very act of conspiracy

The dangers faced by the conspirator in carrying out the conspiratorial plan must now be discussed. Machiavelli traces these risks to four causes: a) change of the orders that have been given in advance b) lack of courage on the part of the executors c) error of the executor made due to incoherence d) incomplete realization of the work due to the survival of persons planned to be killed. Machiavelli judges that there is nothing more disturbing that prevents the smooth execution of any human act than the sudden change of orders that have been pre-planned and given for moments when there is no time to waste. This applies primarily to warlike actions such as that of conspiracy. Indeed, such acts need strong and committed spirits who are prepared for specific orders and conditions to carry out their assigned work. Any deviation from these only leads to turmoil, if not destruction, of the entire enterprise. It is preferable to follow the present plan regardless of the problems that arise than to give new orders to the conspirators, which will give birth to a myriad of other problems. The above applies in case of lack of time, because if there is time, things can be managed or modified in any way one wants. The executor, again, may not carry out his work, inhibited either by reverence or by innate cowardice. The ruler's person is surrounded by such majesty and respect that it can inspire awe in the executioner, soften his will or even terrify him. If the executor loses courage, the conspiratorial action is thwarted. Rulers are guarded by prestige even when fortune does not favor them³⁴, let alone when they appear in their full glory, surrounded by royal finery, bodyguards and a procession of followers. Indeed, even a ruler's salute is enough to blunt one's sanity. Failure in these cases, when the executor is surprised by the presence of the ruler, is due to a lack of judgment and the absence of mental bravery one is ought to have³⁵. When these elements invade a confused mind, there is no completion to the workings of the conspiracy. Even the most fearless and courageous personalities can be confused when they have to execute the ruler. Being

³³ Cf. *The Prince* III.

³⁴ As e.g. was the case with Marius. For this instance, Cf. Plutarch, *Marius* 37-39. This took place in 88 B.C.

³⁵ "*per poca prudenza o per poco animo*;"

skilled in murder and stabbing does not automatically mean that one's mind will not be darkened at the time of execution. That is why only those who have previous experience in such matters should be selected. So, the acquired experience, not the courage, is more of a guarantee for the smooth and unimpeded completion of the conspiracy. Alexamenos, for example, shortly before killing Nabis, had to gather his mental strength because it had been shaken by the magnitude of the undertaking, he undertook³⁶.

Conspiracy against several persons

The problems mentioned concern cases of conspiracies directed at a single person. When it has two people in its sights, the correct outcome becomes even more difficult if not impossible. Indeed, if conspiracy against one person is a dubious, dangerous, and imprudent affair, then that against many seems futile and utterly foolish, because it is almost impossible to take the same action at the same time against two different persons who are locally separated. Timing is critical, if one operation falls behind, it will be at the expense of the other. If all targeted persons are not neutralized, the plot remains equally unsuccessful. The survival of a person destined to be killed will only bring worse results through a sequence of retaliatory killings. Therefore, anyone who plans such conspiratorial operations with multiple objectives is harming himself, his state and everyone. On the other hand, the surviving tyrants are further hardened and become more insufferable and unbearable from the fear of their personal salvation. There is only one conspiracy in recorded history that was successfully mounted against not two but ten tyrants, by a person who had no access to the tyrants, was an avowed rebel, and had limited resources; that is the conspiracy of Pelopidas³⁷ against the oligarchs of Thebes. This exceptional case, however, should not be taken as an example but only praised as an unprecedentedly rare act which in spite of all adversity was crowned with success. Machiavelli warns us, however, that such a dangerous act can be interrupted by the slightest wrong impression or some unforeseen event. Such false impressions which may be caused in an instant are combated with due prudence after being examined and considered for their validity. On the other hand, he who has his conscience tainted is prone to all kinds of suspicions that are created to him with the slightest stimulus. Every speech he hears seems to him to refer to him, and thus through suspicion his mind is agitated, with the result that he either becomes afraid and flees, thus revealing the conspiracy, or hastens the execution unnecessarily, bringing confusion to the act. Of course, all this usually happens when there are many who have knowledge of the future conspiracy.

³⁶ Cf. Livius 35, 35: *conligit et ipse animum confusum tantae cogitatione rei.*

³⁷ Cf. Plutarch, *Pelopidas* 7-13.

Random events as obstacles to a conspiracy

The deterrent power of unexpected events can be illustrated by historical examples in order to make the conspirators more cautious: Julio Belanti wanted to kill Pandolfo³⁸ because he had prematurely kidnapped his daughter to betroth her. Julio noticed that Pandolfo occasionally visited a friend and, on his way home, passed by Julio's place of residence. Julio therefore had his conspirators await Pandolfo's arrival and attack him. However, on the day of the execution, it happened that Pandolfo, shortly before passing by Julio's house, was delayed by a chance encounter with an acquaintance. Thus, Pandolfo's attendants who proceeded heard the clanging of the weapons of the hidden conspirators, and the conspiracy was revealed. This story comes to corroborate the argument of devastation that random events can bring. These, as rare as they are, cannot be cured but can be thoroughly examined in advance to prevent what is likely to happen.

The dangers that follow the conspiracy

There remain, finally, the dangers that exist after the execution of the conspiracy: the primary and only such danger is the survival of persons who will undertake the vengeance of the deceased ruler. The main candidates willing to take revenge are all the kindred and intimates to whom the hegemony would be bequeathed. These persons survive through negligence and the consequential causes discussed above. There are of course cases where conspirators are not responsible for this omission. However, when this is done because of little prudence and indifference, then the conspirators are not justified and are duly punished. The greatest, however, and unavoidable danger that the conspirators must face after the conspiracy is finished is the people who were favourably disposed to the ruler they murdered. The conspirators will never be able to be safe, or to reverse the ill-disposition of the numerous and multitudinous mass towards them. They are condemned to be persecuted by the crowd forever and everywhere until the latter's vengeful fury is satiated.

Conspiracies against the state

Conspiracies against the motherland follow. These are comparatively much less dangerous than those made against a ruler. In terms of the three time-stages discussed above, such conspiracies have few risks during the plotting, equal³⁹ to those against rulers during its execution, while the conspirators run no risk once the plot is carried out. During the period of conspiracy preparation, the conspirator is not in much danger because his

³⁸ For Pandolfo cf. *FH* VIII 35; P 20, 22.

³⁹ Machiavelli modifies this initial statement, saying that conspiracies against a state are more dangerous in their execution.

ambitions for rising to power can be hidden and his plans concealed. Thus, as long as there is no factor that hinders him, the conspirator can succeed in his project. If he is again prevented by some legal order, then he can simply wait until another opportunity presents itself. These conspiracies are the offspring of a partially at least corrupt, unhealthy republic [*republica*], because in democracies healthy without the presence of an inefficient office [*principio*], seditious thoughts do not exist. So when the risks of repression and arrest dissipate, citizens have diverse methods to seize hegemony. This is because of the nature of how democracies deal with such issues. Democracies are generally more slow-moving than rulers and therefore less suspicious, since they rarely doubt the integrity of their great citizens. Would-be conspirators take advantage of the apathy democracies exhibit and are thus bolder and more courageous when they plot against them.

The state as the enemy of conspirators

Executing a conspiracy against an entire state is actually more difficult and carries several risks. This is due to the power mismatch between the conspirators and the state. Seldom is the occurrence for a sufficiency of experienced, trained, and trusted men to be able to confront and overcome the mass of the state. In addition, strategic skills are required that are not the property of any man. Not everyone is Caesar⁴⁰, Agathocles⁴¹ or Cleomenes⁴². Gathering an army is a necessary condition for the rapid seizure of hegemony. Alternatively, the conspirator must achieve his goal by deceit, trickery or foreign forces. Fraudulence allows those who use it to achieve almost unhindered and in a short time their conspiracy against the state. There are, in any case, various means of deception and trickery which, combined with the proper obstinacy, one may use for this purpose. As for the use of foreign powers, conspiracies historically have had varying results in their attempts to seize the state while using them, according to the favor of fortune. That said, it appears that plots to take over a country are rarely broken up or exposed in their preparatory stages, while failure usually occurs during their execution. After the execution, the dangers that remain are those that the tyranny brings with it and that are regular and almost “circular”. Once someone becomes a tyrant, he naturally falls into dangers against which the “antidotes” have previously been pointed out by Machiavelli.

Steel or poison?

In all the forms of conspiracies discussed it was implicitly assumed that the instrument of execution was a sword, knife or any iron object with a

⁴⁰ Cf. Plutarch, *Caesar* 32.

⁴¹ Cf. Justin XXXII I / Plutarch, *Pyrrhus* 14.

⁴² Cf. Plutarch, *Cleomenes* 4.

sharp end capable of causing mortal injury to the victim. Machiavelli does not reject the use of poison, but he considers it more dangerous since it must be entrusted to a second party who specializes in pharmacies. Also, injecting the poison is not an easy task as it requires access to the ruler's personal space. Finally, even if the poison is ingested, the death of the ruler is not guaranteed either due to the individual temperament of the affected body and its immune system or due to emesis that renders the poison useless.

The effects of the conspiracy

That being said as an epilogue in this important chapter of the *Discourses* mention is made of all the consequences, material or not, with which the ruler is confronted after the conspiracy. First of all, there is, obviously, the possibility that he will be killed. But if the conspiracy fails and the insiders are killed, the ruler risks being discredited as having concocted the conspiracy to feed his greed and avarice by eyeing the properties of the alleged conspirators and satisfying his bloodthirsty desire for murder. Machiavelli admonishes rulers and every state against whom a conspiracy is planned to first thoroughly investigate their nature so as to ascertain their size and compare it with their own abilities and power. In case they wish to suppress the conspiracy, but think it beyond their power, they must by any method cover it, because if the conspirators perceive that their designs have been sued, necessity will induce them to use every hasty and rash means to quickly complete their purpose, leading to immediate destruction. Necessity shortens time and, as it was concluded, lack of time implies quick execution with a high probability of success. Conversely, when it is believed that there is an excess of time, everything that is planned is put on hold. Therefore, the republics and sovereigns who wish to postpone the conspiracy, must artificially give the impression of a future opportunity to the conspirators, so that, while they wait idly for the opportune moment, they may suddenly assail them. This methodology, of course, applies to powerful and prepared conspiracies, because those that prove to be small and powerless must, according to Machiavelli, be crushed mercilessly.

Conclusions

1. The chapter on conspiracies shows Machiavelli's concern about the internal decay of state institutions. The pursuit of the *Discourses* is the creation of a strong state under mixed political institutions that will serve the original purpose of its founder and realize the greedy dictates of human nature⁴³. A precondition for the preservation of the state is the preservation of its internal order, i.e., its institutions. Conspiracy is the most

⁴³ M. Fischer, "Machiavelli's Political Psychology." *The Review of Politics*, Vol. 59, No. 4 (1997), pp. 789-829.

dangerous disruptive movement from within, the most morbid twist in the political organization. Later, Hobbes in *De Cive* (XIII, 13) will similarly focus on the creation and action of a political faction, which constitutes a city within the city itself. The faction conspires against the sovereign agent and is capable of provoking civil strife which may drive the political community back to the state of nature and to dissolution. Machiavellian interpretation's intense interest in the formation and action of a conspiracy echoes his intense anxiety about the possibility of maintaining a state in the face of the most powerful internal disruptive cause. If the conspiracy is prevented, then the state must provide for its external security and the preservation of its institutions within the constant movement and decay of human things.

2. Dealing with conspiracies is a paradigmatic manifestation of the Machiavellian methodology of domination. Machiavelli describes the form, development and results of conspiratorial movements within a state from a neutral perspective⁴⁴. It is very difficult to discern whether his analysis advises the state's opponents on how to conspire against it, or whether it provides the state with a manual for preventing a potential conspiratorial move⁴⁵. This chapter of the *Discourses* is very close to the structure of *The Prince*, where it is really ambiguous whether Machiavelli is exhorting the rulers how to control the people and impose their subjective rule, or whether he is providing the people with a cognitive instrument of protection against the methods of domination of the rulers and the state. The chapter on conspiracies is a tool of political methodology to succeed or prevent the overthrow of the constitution⁴⁶. This methodological neutrality is undoubtedly Machiavellian.

3. This also highlights the separation of political philosophy in the classical sense of the term with the political methodology of modernity. Political philosophy remains faithful to the essence-purpose connection of its cognitive object, knowledge of human nature will also give us knowledge of man's purpose. The pursuit of political philosophy, like any science, is the improvement of the object of its research and not its destruction or neutral indifference to it. The political methodology proposed by Machiavelli breaks the essence-purpose relationship of political philosophy and allows entry into subjectivism and historicism. Starting from the knowledge of the human essence, just like in political philosophy, the Machiavellian method is not

⁴⁴ F. Baluch, "Machiavelli as Philosopher." *The Review of Politics* 80 (2018), pp. 289–300.

⁴⁵ Cf. Al. Campi, *Machiavelli and Political Conspiracies. The Struggle for Power in the Italian Renaissance*, Routledge, 2021, pp. 3-9.

⁴⁶ Cf. M. J. Holler, B. Klose-Ullmann, "Machiavelli's Conspiracy Games Revisited", *Munich Social Science Review*, New Series, vol. 2 (2019), pp. 17-42.

interested in the integration of man within the civil society, but in his inescapable control⁴⁷. Through the knowledge of man, man can now be controlled politically in a decisive way. The Machiavellian methodology declares its absolute neutrality for the object of its investigation, its only concern is the achievement of political dominance⁴⁸. But is science something completely neutral and detached from the object of its research⁴⁹? Can medical science, for example, serve any other subjective purpose than improving the health of human nature? Machiavelli's conspicuous transformation of political philosophy into political methodology justifies the one who succeeds in imposing his control over human affairs at the given historical moment⁵⁰, historicism and subjectivism through man's power of control objectify human political history⁵¹.

4. Conspiracy echoes the tendency of human nature towards greed, the conspirators are either motivated by the class of nobles (who the more they own the more they desire) or by the popular social strata who desire more than they have. In fact, the acquisition of additional material goods is done by the adversarial political disposition, the nobles wish to seize from the people and the people from the nobles. Hence the malignity or imperfection of human nature decisively affects the political condition. To develop a conspiracy means that the state leaves fate to nature or chance, which are just sides of the same coin according to Machiavelli. But the success of politics lies in the control of man through his passions, conspiracy, although something entirely human, because it expresses the greedy tendency of human nature, constitutes a political failure, since the state cannot control nature and chance that arises from it.

5. Machiavelli's solution against conspiracies is mixed government and well-organized state institutions⁵². The mixed constitution harmoniously balances the antagonisms between the rival dispositions within the state⁵³ and thus prevents any greedy excess of any political part. The parties of

⁴⁷ Cf. M. J. Holler, "Niccolò Machiavelli on Power", in *Niccolò Machiavelli: History, Power, and Virtue* (ed. L. Donskis), New York: Rodopi, 2011, pp. 27-48.

⁴⁸ S. Forde, "Varieties of Realism: Thucydides and Machiavelli", *The Journal of Politics*, Vol. 54, No. 2 (1992), pp. 372-393.

⁴⁹ L. Strauss, *Natural Right and History*, Chicago 1953, pp. 4-5.

⁵⁰ El. Vavouras, "Natural right and historicism: from Thucydides to Marx", *Cogito*, Vol. XIII, no.1, (March 2021), pp. 7-20. Cf. K. Demetriou, "The logical status of history and the paradoxes of historicism", *Dia-noesis: A Journal of Philosophy*, 12, (2022), pp. 145-162.

⁵¹ H. C. Jr. Mansfield, "Strauss's Machiavelli", *Political Theory*, Vol. 3, No. 4 (1975), pp. 372-384.

⁵² M. H. Hansen, "The Mixed Constitution Versus the Separation of Powers: Monarchical and Aristocratic Aspects of Modern Democracy", *History of Political Thought*, Vol. 31, No. 3 (Autumn 2010), pp. 509-531.

⁵³ P. Pasquino, "Machiavelli and Aristotle: The anatomies of the city", *History of European Ideas* 35 (2009), pp. 397-407.

the state are either forced by laws to live with sufficient goods or find themselves in control of the opposing side. When there is strong popular representation, the nobles cannot act unchecked, while correspondingly, when the nobles actively participate in the exercise of power, the anarchy of the crowd is drastically curtailed⁵⁴. The guarantors of the proper functioning of the constitution and order within the state are the institutions, which stand above any selfish interest⁵⁵. When the institutions are strong any rebellious movement will meet failure, because either Brutus will die or his children will be condemned to death by him⁵⁶.

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⁵⁴ J.P. McCormick, "Of Tribunes and Tyrants: Machiavelli's Legal and Extra-Legal Modes for Controlling Elites", *Ratio Juris*, Vol. 28 No. 2, (2015), pp. 252–66.

⁵⁵ R. Namazi, "Leo Strauss on Machiavelli's the Prince and the Discourses: A Recently Discovered Lecture", *Interpretation*, 43, 3, (2017), pp. 431-460.

⁵⁶ N. Machiavelli, *Discourses*, III, 3. Cf. J. G. A. Pocock, "Machiavelli and Rome: The Republic as Ideal and As History", in *The Cambridge Companion to Machiavelli* (ed. J. M. Najemy), Cambridge: Cambridge University Press, 2010, pp. 144-166. Cf. C. M. Harvey – N. Tarcov, "Republicanism Ancient and Modern" in Niccolò Machiavelli, *Discourses on Livy*, (trnsl. H. C. Mansfield and N. Tarcov), The University of Chicago Press, 1996, pp. xxvII- XXXIII.

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FROM A SUBJECT TO AN AGENT, FROM SOCIETY TO COMMUNITY IN CONDITIONS OF THE MARKET OF IDENTITIES, ABILITIES AND FREEDOMS

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***Abstract:** The synergetics of open systems, refracted into the field of social relations, demonstrates new principles and forms of group behavior - corporatism, involvement, conventionalism, non-collective community, being-together. The dissipative nature of modern society overturns the institutional order in it and makes it necessary to get rid of ideological identity, along with this, the reason for the ideological and class struggle disappears. However, there are other problems associated with somatic identity, employment, consumerism and social precarity, which are sufficient causes for conflicts. To resolve actual social contradictions, an appeal is made to the concept of natural rights and the paradigm of performativity, which highlight physical body in the mode of its presence and natural desire. Thus, the panoptical neoliberal social space, traditionally referred to as society, today is a spontaneous alliance of single agents publicly manifesting their individual needs and the right to satisfy them.*

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Introduction

The social and individual dimensions of social activism are currently undergoing radical changes. Violation of the balance of private and public, online activity and the development of network marketing leads to the emergence of new forms of cooperation. The change in the nature of production and consumption forms a new model of economic relations based on the potential direct participation of local agents of the market. The universal principle of maximizing pleasure and the criterion of utility commercialize education, art, legal sphere, and politics.

The activity of relations with the authorities and the degree of individual responsibility are increasing, while the effectiveness of influencing the vertical of management is decreasing. Institutional ones are being replaced by agentive connections on various platforms, in various public spaces, among which the virtual is the most in demand. The singularity of individual agents participating in political, economic, civil and cultural actions eliminates the need for centralized management and highlights the figure of a moderator of processes in flexible open structures. An independent agent-manager is aware of the need for continuous education, permanent self-improvement, the inevitability of a tough and responsible choice, and at the same time unlimited opportunities for self-realization.

Of paramount importance now is not the subject with his personal potential and ability to be creative, but a specific location, that is, an impersonal topos that accepts companions of a common goal, the format of their participation in the project is also important. The situational and temporary nature of the emerging communities of producers, consumers, users, clients, patients, voters, spectators or employees does not allow us to call the modern neoliberal space of late capitalism a society in the known sense of the word and requires an in-depth analysis of the situation, as well as a semantic and lexical reboot of the narrative about sociality.

The relevance of the study lies in the identification of new social attributes of a person, as well as the principles and forms of public associations that find themselves in a rational individualized liberal environment.

The philosophical categories used in the article - corporality, presence, publicity, participation, alliance, involvement, corporatism, moderation - work in a single field of metamodern logic, the basis of which is the principle of fluctuation of equivalent elements that create target connections in their own interests. The hermeneutic method is used to reveal the meaning of key concepts in the context of the stated topic - such as agency, community, prosumerism, and others. Semiotic analysis allows subtracting (or making

a new reading) of actionist spaces, in particular creative public art locations, network platforms, workshops, urban zones, political performances and marketing platforms as iconic formats in the field of social interaction. The phenomenological aspect of the study contributes to reflection on the anthropological changes of the social individual, his priorities in labor and creative self-realization, and allows to place accents in the strategy of social development, mass culture and legal policy. The appeal to the principles of performativity and intersubjectivism in the course of the study reveals the meaning of the body in modern social practices of agentive communities.

The purpose of the study is to identify conceptual changes in the activity and interaction of social groups, as well as individuals in the realities of neoliberal cognitive capitalism; to trace the metamorphoses of anthropological attribution from subject to agent and the transformation of group modality from society to community; to place priorities in the life of a modern agent and community, as well as highlight the main accents in the rhetoric about them.

Analysis of recent research and publications

In the socio-philosophical narrative today, many methods and categories of mathematical, network and economic sciences are used, including agency, singularity, moderation, conventionality, distributiveness, resource, production, consumption, cooperation, use, and others.

Thus, the theory of agency and agentive relations was applied by the Swedish scientist Francis Lee in the process of studying social pandemic crises and developing tactics to deal with them¹. The Japanese philosopher Tinka Kawashima refers to the principle of agency in the course of reasoning about the phenomena of self-isolation and belonging to a community in a Covid social environment². In this case, the scientist notes that today network interaction provides a permanent intimate community of agents. The American authors Roy Satyaki and Ghosh Preetam apply mathematical modeling of a spatial model of a social network to solve the problem of “dispersed existence” of agentive bodies³. The concepts of agent and agentive community are woven into the context of the discourse about collective experience of precarity by the representatives of temporary labor market. Much attention is paid to this phenomenon, in particular, by the

¹ Francis Lee, *Enacting the Pandemic: Analyzing Agency, Opacity, and Power in Algorithmic Assemblages*. *Science & Technology Studies*, 2021, Vol. 34, no. 1, p. 65-90.

² Tinka Delakorda Kawashima, *The Relationless Japanese Society and the Practices of Belonging during the COVID-19 Pandemic*. *Asian Studies*, 2022, Vol. 10, no. 1, p. 45-68.

³ Roy Satyaki, Ghosh Preetam, *Scalable and Distributed Strategies for Socially Distanced Human Mobility*. *Applied Network Science*, 2021, Vol. 6, no. 95, p. 1-19.

American scientist Judith Butler⁴. For her, precarity is a reality of the political performative space.

Philosophers Alvisе Matozzi (from Italy) and Laura Parolin (from Denmark)⁵, as well as Geoffrey Dierckxsens⁶ from the Czech Republic who is a researcher in the field of enactivism write about the singularity of self-generated agents and communities that exist in performative realities through bodies, artifacts, objects, environments and substances.

Economic rhetoric regarding the social ties and processes that take place today is expressed by many Western theorists over the past three decades. For example, the French philosopher and sociologist Andre Gorts built a well-known concept of self-entrepreneurship, or self-exploitation, according to which each individual acts as an economic resource in physical, emotional and intellectual aspects⁷.

In the same first years of this millennium, the popular American thinker Chris Anderson presented his theory of the "the long tail", thereby stating a new marketing model in the online market space and at the same time a new principle of production and consumption⁸. According to this theory, now, after the "niche revolution", the market is focused on an infinite number of individual and unique consumers who do not feel the unity of their tastes and interests. "The long tail" theory explains not only the modern concept of business, but also the actual model of social cooperation, the rule of moderation of social systems based on it.

The economic term "prosumerism" in the sense of a way of socio-cultural interactive being of a community or an individual, when consumption and production are merged together, is used by Alvin Toffler⁹, and later by the modern British scientist Isobel Harbison¹⁰. According to her, an individual who in the online market is in the status of a buyer, resource and producer and is involved in self-reproduction, self-satisfaction

⁴ Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity*. New York & London: Routledge, 1990; Judith Butler, *Notes Toward a Performative Theory of Assembly*. Harvard: Harvard University Press, 2015.

⁵ Alvisе Mattozzi, Laura Lucia Parolin, *Bodies Translating Bodies: Tackling "Aesthetic Practices" from an ANT Perspective*. Science & Technology Studies, 2021, Vol. 34, no. 4, p. 2-29.

⁶ Geoffrey Dierckxsens, *Introduction: Ethical Dimensions of Enactive Cognition – Perspectives on Enactivism, Bioethics and Applied Ethics*. Topoi, 2022, Vol. 40, Issue 2, p. 235-239.

⁷ Andre Gorts, *Nematerialnoe. Znanie, stoimost, kapital* [The Immaterial: Knowledge, Value and Capital] 2010. <https://finbook.news/book-kapital/nematerialnoe-znanie-stoimost.html> (Accessed on 29.09.2022).

⁸ Chris Anderson, *The Long Tail: Why the Future of Business Is Selling Less of More*. New York: Hyperion, 2008.

⁹ Alvin Toffler, *The Third Wave*. London: Pan in association with Collins, 1980.

¹⁰ Isobel Harbison, *Performing Image*. Cambridge: The MIT Press, 2019.

and self-representation at the same time. I. Harbison demonstrates this by the example of a person's relationship with the performative images of cinema, animation, television and web platforms.

Revealing the natural, pre-social foundations of non-collective agent communities, we turn to the experience of analyzing natural human rights by the French philosopher Alain de Benoist¹¹. Proceeding from the primitive state of man, free from any kind of identities, as well as from the distributive nature of legal justice, A. de Benoist masterfully substantiates the purely institutional nature of natural human rights and their political significance. With this initial anti-humanism of human rights, the philosopher explains the potential stratification and various forms of discrimination in society.

The views of A. de Benoist are in many respects close to the opinion on the structure of society of another French philosopher Jean-Luc Nancy, who problematizes modern forms of social unity and fully justifies the model of a community of singularities¹². J.-L. Nancy calls life in such communities "being-together", basing on bodily participation. His thoughts about natural communism can be regarded as a conditional polemic with Slavoj Žižek, who admits the prospect of communization of the world community in the horizon of the pandemic¹³. One way or another, both authors are in search of new forms of collectivity and solidarity in an individualized society.

The Danish philosopher Dan Zahavi is concerned about the loss of collective identity and collective intentionality, however, he is not inclined to discredit these social phenomena¹⁴. A vivid image of a pathologically individualized society was "painted" in the 90s by the French researcher Marc Augé¹⁵. Even then, the author introduced the symbolic term "non-places", aptly conveying the pathos of topology, spatiality, as well as the attributes of presence as priorities in the metaphysics of social life in the 21st century. This states the obvious victory of the body over identity, as well as material needs over spiritual ones.

¹¹ Alain de Benoist, *Po tu storonu prav cheloveka. V zaschitu svobod* [Beyond Human Rights: Defending Freedoms]. Moskva: Institut Obschegumanitarnyih Issledovaniy, 2015.

¹² Jean-Luc Nancy, *Neproizvodimoe soobshchestvo* [Inoperative community]. Moskva: Vodoley, 2011.

¹³ Slavoj Žižek, *Koronavirus – put k kommunizmu* [Coronavirus is the path to communism], in <https://www.liva.com.ua/koronavirus-put-k-kommunizmu.html> (Accessed on 25.03.2020).

¹⁴ Dan Zahavi, *We in Me or Me in We? Collective Intentionality and Selfhood*. *Jornal of Social Ontology*, 2021, Vol. 7, no 1, p. 1-20.

¹⁵ Marc Augé, *Ne-mesta. Vvedenie v antropologiyu gipermoderna* [Non-Places: An Introduction to Supermodernity]. Moskva: Novoe literaturnoe obozrenie, 2017.

The principle of agency in social space

One of the problems raised in this study is the process of development of the metaphysics of the *subject* to the metaphysics of the *agent*, as well as the de-actualization of the very concept of “subjectivity”. The emphasis expressed in posthumanism on the atomization of the individual requires a new vocabulary that allows more accurate and flexible coverage of the anthropological and social metamorphoses that occur with a person. In this regard, the term “agency” (or “agentivity”) is gaining special scientific popularity today, in the social sciences it denotes the attributive quality of a person - his territoriality, corporality, spirituality, activity, desires, etc. Agency characterizes the function of an individual in social production, or participation in civil circulation outside of his role-based social identity, that is, as a local active consumer, producer, voter, spectator or patient. In a certain sense, agency is an alternative to sociality, identity, individuality, personality.

Agency has a sociopathic connotation. The term focuses on the ability of a person to act as an independent person, making a conscious and free choice. Usually "agency" is put on a par with the concepts of "actor", "social action". Agency indirectly refers to the problems of individuality, sociality and subjective rights. In one or another structure - social, legal, digital, informational - the agent is characterized by a decentralized status and a tendency to modeling (often simulation modeling). This characteristic distinguishes social agents from social entities operating at the macro level.

What does this mean? The possessing autonomy personality of the traditional liberal milieu was conceptually conditioned in its activity by the individual social position it occupied in the social mega-system. As for the agent, he is neutral in the moral and ideological sense, therefore, the agent's self-organization builds independent relationships in the local spaces of the target communities, which distinguishes him from a person who has identified himself as an element of a certain system. If the autonomy of an element does not contradict the system and does not violate the functions of the system, then the agency sets a definitely unsystematic nature of the connections and the situational logic of local stories. The agent approach, which is based on new principles of integrity, interaction and self-organization, has been widely developed in the field of Artificial Intelligence. Thus, the functioning of multi-agent digital systems is associated with the activities of physical intelligent agents (robots) or software intelligent agents (bots).

However, the concept of agency is by no means limited to the field of Artificial Intelligence, its application is justified in other formats of integrity, including social. For example, the Swedish scientist Francis Lee uses the concept of agency in the field of applied mathematics in order to

study and prevent a social crisis phenomenon - the COVID-19 pandemic. He is busy methodologically applying the theory of algorithms to social practice, in particular demonstrating how the algorithm was used not only in 2019 but also in 2015 to study and prevent the outbreak of the Zika virus. Positive results were achieved using a variety of computing resources, punctualization of the agency and analytics of algorithms (assessments of the intensity of diseases, the threat of morbidity, risk, forecasts, etc.)¹⁶.

As such, the idea of agency in a social context assumes the function of expressing a non-collective community, whose members are united by a common purely pragmatic interest and do not identify themselves with this social entity. In line with this rhetoric, since 2010, the Japanese media have begun to use the term “relationshipless society” (*muenshakai*), that is, the one in which social isolation is enhanced, to characterize modern Japanese society. Its characteristic features, which have intensified significantly during the COVID-19 pandemic, are the following: population aging, dying alone, weak local and family ties, single-member households.

In turn, the Japanese author Tinka Kawashima tries to refute this stereotype¹⁷. According to the scientist, it is social isolation that awakens a positive need for networking, the scale of which is constantly growing¹⁸. Exploring the role of the sociocultural factor in the fight against COVID-19, T. Kawashima analyzes the types of interpersonal connections that have come to the fore in the context of pandemic isolation and which are necessary for the development of a sense of belonging. It is the feeling of belonging to others and thinking in terms of “we” that largely determines whether humanity will survive self-isolation without pathological consequences. Many Western scientists, including American scientists, brought up in the traditions of individualism, have recently been inclined to this opinion.

The pandemic has shown the importance of group identity, solidarity, belonging. And although these theories operate more likely not with the concept of “collectivity”, but with the concept of “corporatism”, nevertheless, spontaneous solidarity and a sense of belonging, even to a temporary community, are of fundamental positive importance in times of crisis. Belonging raises the following questions for community members. What would be the community's reaction? How can I best take care of my beloved ones? How threatened are we by those who are not part of our groups (other countries, societies, communities)? Thus, two concepts remain unchanged: a common threat is the best motive for cohesion and at

¹⁶ Francis Lee, *Enacting the Pandemic...*

¹⁷ Tinka Delakorda Kawashima, *The Relationless Japanese Society...*

¹⁸ Tinka Delakorda Kawashima, *The Relationless Japanese Society...*, p. 45.

the same time a convincing basis for dividing into friend or foe¹⁹. The Japanese scientist also concludes that the sense of belonging to communities is successfully formed and works on the Internet. Communities don't have to be physical, they can be mental. Remote networking has replaced traditional ties - family "blood ties" and regional unions, on the basis of which communities, schools and companies are losing their regulatory role today. Gadgets provide a "permanent intimate community" with family, friends and partners. Nevertheless, according to T. Kawashima, virtual involvement cannot replace physical contacts and is only a consequence of forcedness²⁰.

Socio-philosophical rhetoric appeals to the agent approach in connection with the problem of personal failure and identity crisis of the modern subject. According to social psychologists, the crisis is most clearly expressed in the collective experiences of precarity as an intersubjective human vulnerability. We are talking about the precariat in the sense of a certain community of people, more precisely agent groups, largely subject to oppression, violence, injuries and, as a result, unmourned death. As a result of the politically conditioned position of numerous social groups, precarity is not just a personal form of consciousness, but a collective experience of diffuse anxiety, vulnerability, insecurity, helplessness, exposure and, as a result, the basis of the sociopathic nature of entire agentive communities. However, due to the mercantile-egoistic nature of the needs and problems of precariae, precarity is not the basis of either the cultural identity of vulnerable agents or their solidarity; there is no common narrative and dialogue at its basis.

In the epistemological and discursive paradigm of postmodernism, *identity* was viewed through the prism of narrative, it was formed in the historical tradition of close communication and essential self-expression of individuals. Therefore, identity was an attribute of *personality*. The personality, rooted in the traditional humanistic culture, possessing depth, foundation and stability, carried in itself the uniqueness and at the same time the characteristic features of the community and environment with which it associated itself, identified itself. The personality, of course, went through the formation, was exposed to metamorphoses, but retained spiritual fullness, the essence that determined its identity in the dialogue of opinions, ideas, values. In the communicative paradigm, dialogue played a creative function, brought relations to a new constructive level, personified a new way of being.

The crisis of identity, ascertained by modern social sciences, is associated with a paradigm reloading of anthropological and social theories

¹⁹ Tinka Delakorda Kawashima, *The Relationless Japanese Society...*, p. 45-51.

²⁰ Tinka Delakorda Kawashima, *The Relationless Japanese Society...*, p. 56-57.

of man, qualitative changes in the ontology of his existence, understanding, activity, self-expression. The performative being has replaced the discursive. Thus, the popular rhetoric of agency today is fully justified by material, ideological and digital realities and requires theoretical analysis.

Guy Debord back in 1967 stated in "The Society of the Spectacle" that social relations are now mediated by images produced by the capitalist system of mass media and television. And thanks to portable recording devices, the subject himself becomes an "actor" for himself, this is how the phenomenon of image-making arises, which allows you to construct and deconstruct your own identity, exposing the very mechanism of this. The whole world becomes a produced "representation", and the viewer is the agent of this production²¹.

In turn, Judith Butler²² proposes to give up the concept of identity in principle, in particular when it comes to the precariat. The latter represents a completely new character of a community that does not have traditional social qualities. The precariat does not generate personality parameters through social conventions imposed by institutional power. The precariat is an alliance of people, or communities of agents who do not recognize mutual commonality, thinking, speaking and acting in opposite directions people, competing, nevertheless, creating the potential for resistance to political power in everyday associations with each other. The precariat in its mass forms is an assemblage, or a general assembly, which by itself, without a common ideology and dialogue, in its pure presence, becomes an agent of political action. J. Butler, among others, raises questions about the uneven political distribution of the fragility of lives, about the precariousness of gender, about the relationship between privacy and publicity, about the activity of the media as a representation of the "bodily alliance", as well as protest²³.

The performative theory of precarity by J. Butler gives an interpretation of the socio-political metamorphosis of the subject in the space of the agent community²⁴. Precarity allows revealing sociality as an interdependence of vulnerable and exposed bodies, initially open and receptive to each other, but unpredictable in their relationships. Precarity is a weighty aspect not only of political and economic realities, but equally of modern culture, art, human existence in law, in the information environment²⁵. The prefix *post-* (*postculture*, *posthumanism*, *posthuman*) in scientific and philosophical discourse indicates a feature of the modern epistemological situation, which

²¹ Guy Debord, *Obshchestvo_Spektaklya* [The Society of the Spectacle]. https://royallib.com/read/debor_gi/obshchestvo_spektaklya.html#0 (Accessed on 29.09.2022).

²² Judith Butler, *Gender Trouble ...*

²³ Judith Butler, *Gender Trouble ...*

²⁴ Judith Butler, *Notes Toward ...*

²⁵ Judith Butler, *Notes Toward ...*

is unable to convey a picture of a person and society within the framework of traditional methods, assessments and categories of thinking.

According to J. Butler, the performativity zone acts as a critical space capable of destroying ideological systems, accepted social norms and stable identities, forming and producing others. The philosopher challenges the matter of bodies, arguing that materiality is constructed socially, historically and culturally²⁶.

Modern Western philosophy pays considerable attention to the semiotics of the body and topological research in aesthetics, anthropology, social philosophy, philosophy of communication, art theory and design. Today, the integration of a person into interactive zones and performative spaces occurs through the mediation of many artifacts, substances, materials, environments that radically affect his demand. In particular, the actor-network theory²⁷ speaks about the bodily function of artifacts.

Let us digress from the general social aspect and turn to the projection on a person, more precisely on his physical side - the attribution of the body - a topic that is touched upon by many European scientists today. Enactivism, one of the areas at the intersection of cognitive science, phenomenology and applied ethics is located in this problematic²⁸. It overcomes the cognitive dualism of subject and object, body and consciousness, organism and environment, real and virtual. Enactivism is based on the principles of naturalism, the self-generating of single objects, the activity of the corporeal mind and the cognizing body, which converge in the natural act of "shaping the world" through the interaction between the brain, body and environment. According to enactivists, perception is not what happens to us or in us, but what we do. Cognition and experience are defined by them as "embodied action", that is, the enactivation of the world, its construction. We cognate because we behave in a certain way in the environment and with it: we look, we touch things, we communicate with others. Knowledge is inherently physical and embodied, as well as fundamentally social, that is, dependent on the influence of the environment and the contingent. Based on this, enactivist Geoffrey Dierckxsens recommends effective tools to increase the moral sensitivity of online users in their interaction²⁹. They are the search and recognition of the face of another, the principle of a handshake (the interaction took place if the recipient confirmed your request), awareness of the general vulnerability of being in the digital space.

Recently, the tendency to eliminate the body, largely due to pandemic restrictions, has provoked a number of multidisciplinary domestic and

²⁶ Judith Butler, *Gender Trouble ...*

²⁷ Alvise Mattozzi, Laura Lucia Parolin, *Bodies Translating ...*

²⁸ Geoffrey Dierckxsens, *Introduction: Ethical Dimensions ...*

²⁹ Geoffrey Dierckxsens, *Introduction: Ethical Dimensions ...*

foreign studies aimed at developing the concepts of social distancing, which is optimized, among other things, using mathematical methods and the arsenal of network science (the science about network). Thus, the American authors Roy Satyaki and Ghosh Pritam propose a solution to the problem of "dispersed existence" by referring to social modeling based on the principle of spatial parallelization based on a grid³⁰. They created a scaled event modeling platform, where each node is an agent, and the total time is divided into discrete time epochs. The social network is implemented through a spatial model, where nodes are active agents that form temporary social connections. The efficiency of the distributed strategy depends on the convergence index. Thus, the enormous importance of the format of presence, as well as the role of bodies and their locality in most modern social practices, is quite obvious. In the same vein as network science, the theory of agency is also developing.

The modern picture of the world is performative, it is characterized by the silence of visual agents, orgy of artifacts, expressive actionism and a continuous rehearsal of the fragility of immortality. So, according to J. Butler, in order for politics to take place, a body must appear³¹. The performative activity of the precariae is a radical experience of intimacy that is released in various unexpected ways, demonstrating the existence and presence of interested agents in the face of social institutions. Artistic and political actionism lies in the very building of relationships, the search for its participants themselves. At the same time, random connections and relationships of atomic agents do not give rise to an alliance, narrative, tradition, history, dialogue of cultures, ideological movement, community. They are chaotic, short-lived like flashes and lead to inevitable death. They do not even serve as an experience for building future alliances. Nevertheless, the performative experience of collective experience is the experience of the intersubjectivity of independent agents, which, without making them *members* of communities that arise temporarily, nevertheless reveals their physical immanence to another in the act of involvement in the whole.

Metaphysics of the community in the format of participation of bodies and unity of purpose

Michel Foucault called the model of European capitalist society of the last three centuries a "disciplinary society" or "space of confinement", the basic form of which was the prison³². The task of such a society is to concentrate, arrange in space, arrange in time, arrange the productive force in the space-time continuum in such a way that the resulting effect exceeds

³⁰ Roy Satyaki, Ghosh Preetam, *Scalable and Distributed ...*

³¹ Judith Butler, *Notes Toward ...*

³² Michel Foucault, *Discipline and Punish. The Birth of the Prison* / translated from the French by Alan Sheridan. New York: Vintage Books. A Division of Random House, INC, 1995.

the summed result of all components taken separately. Each local space of confinement within has its own law: the law of the family, the school, the factory, the hospital, and finally, the prison. However, following M. Foucault, a little time later, Gilles Deleuze in his article "PostScript to Societies of Control" comes to the conclusion that disciplinary societies are doomed to be replaced by "societies of control"³³. According to the philosopher, ultra-fast forms of non-verbal and direct control (media techniques, pharmaceutical products, molecular engineering, genetic manipulation, etc.) replace the old disciplinary methods that have always operated in the strict frame of a closed system.

When a corporation replaces a factory, constant learning replaces a school, and continuous control replaces one-time examinations (metastable states), we are talking about a crisis of institutions, a progressive and dispersed installation of a new system of domination. The phenomenon of involuntary but forced self-control, self-restraint and self-organization of the members of today's society speaks of conceptual changes in the nature of their connections and the format of social integrity. In the corporate sphere, new models of operating with money, profits and human material are applied, with the complete exclusion of old production and trade cycles.

Modern man's refusal to search for his own essence, the end of existential anthropology, departure from spiritual unity, open structures of social unions and associations, and finally, non-violent forms of social control - all these lay the foundation for a new theoretical discourse about being of the subject, in which participation and community play the key role.

It is in this vein that the French philosopher Jean-Luc Nancy develops the theme of *community* in the sense of an alternative to society, where unity gives way to *plurality*, and ideological identity and immanence to *bodily participation*, he calls it *being-together*³⁴. According to the philosopher, the basis of being-together is not at all a commonality of ideas, but the pragmatic interest of its participants. The direct interaction of individuals, practice of their lively communication, shared experience, group will, emotional influence and opposition to institutions - all this forms a flexible, unviable, but effective association of people who crave success and satisfaction.

Community arises in the interactions that interrupt identities, ideologies, social roles, statuses, and traditions that subjugate any communication. In such interactions, *singularities* are born - elementary manifestations of a person in his uniqueness, self-sufficiency and independence from any totalizing entities. It is this nature of interactions that contributes to the formation of healthy economic, political, and legal communities that are not closed to the centralizing idea of organized unity.

³³ Gilles Deleuze, *Postscript on the Societies of Control*. October, 1992, Vol. 59, p. 3-7.

³⁴ Jean-Luc Nancy, *Neprizvodimoe soobshchestvo ...*

Another example of a targeted spontaneous community is the “samizdat” intelligentsia movements, which are usually engaged in the publication and distribution of manuscripts of forbidden literature in totalitarian states.

Communities arise from real practical activities: publishing magazines, organizing exhibitions, shows, recitations, actions, building barricades, participating in street events, pickets, rallies, social mobs, festivals of street cultures³⁵. At the same time, they are distinguished by a high degree of self-organization and do not need governing bodies. The phenomenon of *complicity of loners* can be formed from the victims of political repressions, who received the inoculation of social rejection, as a form of their silent resistance. The peak of community activity mainly falls on the periods of post-totalitarian “thaw”, reformation, liberalization of life, cultural revolution, when the community takes the place of the state. In Ukraine, a situation favorable to political actionism developed at one time in 2014, accompanied by the overthrow of the illegitimate government and the solidarity of the Maidan community. That time the social spaces that belonged to the state became the common places of the civil community, its cultural performative environment. The Maidan community found a form that allowed it to survive as a political and legal force that influences the authorities.

The core of the target community, as a rule, is an *anti-idea*, resistance to the official ideology. Communities do not have either individualistic or collectivist, but *common* grounds for being-together. In this a community is the opposite of both communist and capitalist sociality. It consists of full-fledged individuals who are guided not by the norm, but by the meaning, and have all the signs of agency. Relationships within the community prevent oppressive institutional formalization. There is a shadow genesis of communities and their public manifestation. In order to make unified decisions, the community chooses the practice of an assembly that is absolutely open to the participation of anyone. Being *between* the public and the private, it acts as a *common place* for the manifestation of individual differences. The political horizon of the community is the general counter-effort of power. The publicity of the community - its essential quality - is informal and lively publicity, but not media one. The mobile matter of relations - the immediacy of the meeting, process, interaction, result, intensity of enjoyment - is a new social body. Its publicity and generality are radically different from those that were traditionally set by the logic of wage labor and collective production, the market and capitalist corporatism.

Activism of the agent communities frees up public space and appropriates the city (*the City belongs to everyone!*). Therefore, reactionary

³⁵ Yuliia Meliakova, Ganna Krapivnyk, Inna Kovalenko, Eduard Kalnytskyi, Svitlana Zhdanenko, *Performance conceptualism: from semantics to body language*. Wisdom, 2022, Vol. 21, no. 1, p. 145-147.

urban actionism defends the right to enjoy public natural, material and cultural resources, contrary to the interests and priorities of private capital, elite firms, markets and cafes that have privatized common places, the public environment and digital reality. In this sense, the brutality of law enforcement and judicial violence that falls upon the actionist communities should be understood precisely as a reaction to their demonstration of collective enjoyment. The discourse on *the right to enjoyment* and its protection is very relevant today³⁶.

However, existence in an action is a moment of life at the limit, so it does not last long, just as the history of communities itself does not last long. Today, virtual communities are widely spread and active, the agents of which are freelancers, users of online services, video hosting and social networks. However, just as politics cannot be virtual, a community cannot exist for long without a meeting event. The agentive target community is based on the practice of public action in front of many, on building informal situations. Since the beginning of the 2000s, the practice of arranging the so-called art zones, art factories, hubs, artist camps, events, workshops and anti-cafes has become popular, where creative interaction and networking are supported in specially designated neutral places, a response to the initiatives of visitors is carried out, art or work space is constructed. Quite often, such a format of coworking forms the basis of a startup studio emerging in its place, purposefully generating ideas³⁷.

In the community format, *the tactic of participation* transcends *the tactic of representation* in its artistic, legal, political and business dimensions. The community of agents is a kind of *city of their own*, the relationships in which are regulated not by the norm and institution of power, but by speakers and moderators of joint work. In turn, the society of citizens can be called a *city of strangers*, living according to the principles of formalism, institutionalism, hierarchy, stability, consistency, accountability, legitimacy of power and positivity of law; society subordinates human freedom to the logic of social production and consumption. The principles of the *city's of their own* life can be considered, in particular, social singularity, network interaction, situationism, publicity of self-manifestations, administrative technique of the assembly, intersubjectivism of natural law.

Returning to the thoughts of J.-L. Nancy about the metaphysics of the community and its individuals, we note that, according to the philosopher,

³⁶ Yuliia Meliakova, Inna Kovalenko, Svitlana Zhdanenko, Eduard Kalnytskyi, Tetiana Krasiuk, *Posthuman freedom as the right to unlimited pleasure*. Amazonia Investiga, 2021, Vol. 10, Issue 39, p. 62-75.

³⁷ Victor Cabral, *Coworking spaces: Places that stimulate social capital for entrepreneurs*. International Journal of Entrepreneurial Venturing, 2021, Vol. 13, Issue 4, p. 404-424.

the closest thing to the concept of natural communism is the primitive natural community, which resists any entity that rises above it, since it inevitably seeks to unite and subjugate to itself the compatibility of finite existences, that are the members of the community³⁸. J.-L. Nancy believes that in the modern context, it is the word "communism" that symbolizes the desire to return to the proper place of the community, which would be devoid of social differences and exclude techno-political dominance, but at the same time would not detract from freedom of expression and happiness³⁹. However, communism, as it was at the stage of primitive natural law, as a kind of ideal image, is not viable. In the purity of its doctrine and design, this path no longer exists.

From the point of view of "civilized" communism, the ideal community involves the full realization of their own essence by people with the help of economic ties, the law of privatization, technological progress and political associations under the general idea of collective unity⁴⁰. By the way, fascism of the 1930s, like communism, also represented a "splash of the obsessive idea of community", unity, identity⁴¹. J.-L. Nancy correlates the term "communist" with the word "immanent" - in the broad sense meaning "corresponding", "interpenetrating", "solidary", "participative".

In turn, Slavoj Žižek, in connection with the pandemic, was imbued with a much more direct and unambiguous concept of solidarity, which he presented in his book "Pandemic!: COVID-19 shakes the world"⁴². According to the Slovenian philosopher, global capitalism is approaching a crisis, and only radical changes can save it. S. Žižek hopes that the corona crisis will contribute to the spread of a useful ideological "virus of thinking about an alternative society" in the form of global solidarity and cooperation. It is about the "new communism", based on trust in people and science. The philosopher formulates a historically stable pattern: a global threat generates global solidarity. That is, according to S. Žižek, the coronavirus crisis, like a filter, revealed all the existing pathologies of modern society, all the disadvantages of liberal democracy and pointed the way to alternative values, which are the communist. Thus, the corona crisis is the path to communism. Moreover, S. Žižek's forecast comes down to a supranational solidarity society with centers of global coordination.

Undoubtedly, strict quarantine requirements for self-isolation, the general trend of limiting the physical presence and activity of people in the

³⁸ Jean-Luc Nancy, *Neproizvodimoe soobshchestvo ...*

³⁹ Jean-Luc Nancy, *Neproizvodimoe soobshchestvo ...*, p. 23-24.

⁴⁰ Jean-Luc Nancy, *Neproizvodimoe soobshchestvo ...*, p. 26-27.

⁴¹ Jean-Luc Nancy, *Neproizvodimoe soobshchestvo ...*, p. 47.

⁴² Slavoj Žižek, "Pandemic!: COVID-19 shakes the world", 2020.

<https://www.amazon.com/Pandemic-COVID-19-Shakes-Slavoj-Zizek/dp/1509546111>. (Accessed on 25.09.2022).

modern cultural space leads to fragmentation and localization of subjects. In this sense, the performative is an attempt to compensate for a flawed, limited online existence in the adverse conditions of the digital environment in general and quarantine in particular. Thus, predominantly virtual-bodily self-realization, which has been dominating lately, indirectly forces a vulnerable person to look for performative forms of self-expression, self-defense and self-preservation in the harsh conditions of late capitalism. The oblivion of the body is fraught with the danger of its lawlessness and death. Therefore, spontaneous targeted meetings of subjects - bodily performances - are a new model of social unity, a new format of legal personality, which are based on universal human natural needs, but not ideological solidarity⁴³. Thus, it is performativity that acts as the principle of being-together of an agent community, while the immanence of a commune as a community of entities ceases to be relevant at all.

However, not all modern theorists recognize the unconditional priority of the new social integrity of singular agents. Thus, the Danish philosopher Dan Zahavi, studying collective intentionality, various types of social experience, the status and nature of the *We* and its relationship with the *Self*, notes that individuals are not just motivated competitors, but “shareholders of a collective identity, feeling, thinking and acting as part of *We*”⁴⁴. Studying the very nature of *collectivity*, D. Zahavi offers three opinions about the localization of this attribute. First, collectivity is concentrated in content. Second: collectivity is the mode itself, that is, it reveals itself in the mode of being. Third: collectivity lies directly in the personality, therefore, collective intentionality implies the existence of a multiple subject *We*. The philosopher had to admit that it is impossible to explain many types of group formations and types of collective intentionality that we encounter in everyday life⁴⁵. Thus, he is not inclined to discredit collectivity and unambiguous apologization of agency and corporativity.

J.-L. Nancy, as we remember, adheres to the most progressive views and believes that collective enterprises with the dominance of the spiritual immanence of individuals contain the truth of death⁴⁶. The unifying synthesis has no other logic than the logic of the suicide of the community consistent with immanence. Therefore, the logic of Nazi Germany was not only the logic of the destruction of other (non-immanent), second-class people, outside of the community of blood, but, at the same time, the logic

⁴³ Yuliya Melyakova, Inna Kovalenko, *Intersub'ektivizm pravovyih tel v prostranstve sudebnogo performanssa* [Intersubjectivism of Legal Bodies In The Space Of Judicial Performance]. *Visnyk Natsionalnoho yurydychnoho universytetu imeni Yaroslava Mudroho*. Serii: filosofii, filosofii prava, politolohiia, sotsiolohiia, 2022, no 2 (53), p. 56-76.

⁴⁴ Dan Zahavi, *We in Me or Me ...*, p. 4.

⁴⁵ Dan Zahavi, *We in Me or Me ...*, p. 5.

⁴⁶ Jean-Luc Nancy, *Neproizvodimoe soobshchestvo ...*, p. 40.

of the sacrifice of those from the "Aryan" community who did not meet the criteria of pure immanence - criteria that cannot be fixed with certainty. The generalization and outcome of this process can be characterized as the suicide of the German nation itself in its categorical idealization of itself and the absolute triumph of its purity.

Suicide in the form of the common death of lovers is one of the persistent literary and mythical images of this logic of participation in an immanent spiritual kinship. In the death of the lovers, immanence realizes the infinite reciprocity of the two components. This is existential intersubjectivity. This is the principle of passionate love, derived from Christian communion and the community of souls in God. By and large, it is the phenomenon of spiritual immanence that underlies any unifying idea, collectivist ideology, social commune, brotherhood or union. About this, according to J.-L. Nancy, the Hegelian model of the state testifies, which contains the reality of love in the form of a principle, namely the fact of having in another the moment of its existence⁴⁷. In such a state, each one is realized through the other, which replaces the state itself. Thus, the reality of a state appears most clearly when its members give their lives for it in a war (the logic of suicide in immanence), and the decision on war is made by the monarch of the subject state alone and arbitrarily. The monarch is identical to the state, just as citizens are identical to each other in their legal identity and spiritual unity.

Thus, the immanent community is the community of death. At the same time, it is characteristic that only entities can be immanent to each other, not bodies. Therefore, the fate of real communities of entities (including the communist one) is inevitably tragic. Self-sacrifice always takes place in the name of a higher idea, and the body in this action of self-sacrifice does not carry a semantic load - the soul goes to death. In turn, the new community of pragmatically motivated agents removes the pathos of the social unity of entities, and at the same time the community of death. The rebellion of agents against participation in the immanent community is absolutely justified, since death itself cannot be removed by any dialectic, and by no means by salvation⁴⁸. In this sense, the rhetoric of the agentive community has a selfish accent of indifference.

In the 90s of the last century, the French philosopher Marc Augé introduced and substantiated a new concept - "non-places"⁴⁹. So he called a kind of transfer zone of comfort and alienation, zones that arise in our social life, without any kind of existential conditioning (as opposed to "traditional places", "places of memory", "places of history"). Into non-places, M. Augé

⁴⁷ Jean-Luc Nancy, *Neproizvodimoe soobshchestvo ...*, p. 40.

⁴⁸ Jean-Luc Nancy, *Neproizvodimoe soobshchestvo ...*, p. 41.

⁴⁹ Marc Augé, *Ne-mesta. Vvedenie v antropologiyu gipermoderna ...*

includes facilities that provide an accelerated circulation of goods and passengers - high-speed highways, transfer hubs, airports, terminals, as well as the means of transport themselves, large shopping centers and places of long-term stay that shelter tourists, migrants, refugees⁵⁰. A symbolic example of a non-place is the famous busy Shibuya crossing in Tokyo, which during peak hours, is crossed by about two thousand people for two minutes. In these locations, the “here and now” setting rules, everything is subordinated to the importance of the current moment. The place itself, its history and personalities are dissolved in them. Non-places unify people, turning them into anonymous passengers and consumers of services. Our identity is in no way capable of imbuing non-places with even the rudiments of personification. The standard transit passenger shows his individuality to the minimum, but he claims his own world, personal space and freedom of choice.

Freed from his conceptual determinants (faith, memory, tradition, ideology, morality, kinship, patriotism, historicity, immanence), an individual who has fallen into non-places simply does his job, having previously been identified by the client’s plastic card, identification number, QR code, bank account number, pass, identity card, driver's license, ID-card biometric data, etc. Non-places do not require existential self-expression from the individual. They require elementary activity from him, allowing him to be inscribed in the algorithm of the functional zone and, being identified, to move on. For self-determination in these smart mobs, neither emotional communication nor moral solidarity is needed. Just the presence of a silent body is enough, as well as a consciousness that has an access code to the system of non-places. Non-places moderate grandiose performances of dumb agents exercising their impeccable right to access, use and consumption⁵¹. The agent needs space more than people. It is the equipped space that gives him the opportunity to realize himself. Therefore, the basis of the community is a successful location for the interaction of agents. Moreover, the function of such a location can be successfully performed, among other things, by non-places, in the sense that M. Augé endowed this concept with, and even cyberspace, which modern researchers characterize by length and metrics, chronology and sociality⁵².

The community as such is not a unifying productive project - it is not a project at all, and this is its radical difference from a humanistic society based on the spirit of the people. This explains a new characteristic social phenomenon - *ghosting* - a sharp termination of relationships without

⁵⁰ Marc Augé, *Ne-mesta. Vvedenie v antropologiyu gipermoderna ...*, p. 20-21.

⁵¹ Yuliia Meliakova at all, *Performance conceptualism ...*, p. 150-151.

⁵² Anatolii Getman, Oleg Danilyan, Olexandr Dzeban, Yurii Kalynovskyi, *Modern ontology: reflection on the continuity of cyberspace and virtual reality*. Revista de Filosofia, 2022, Vol. 39, Issue 102, p. 78-79.

warning and explanation of any reasons, which is considered a feature of the millennial generation. "It is necessary to think the community, excluding communal models," notes J.-L. Nancy in his work "The Inoperative Community"⁵³. The figure of the subject is destroyed in the ecstasy of separation. The individual subject turns into an agent. Communication of separation is the *dis-location* of agents in a common place of their mutually beneficial cooperation - on a contact platform offline or in a network. To *co-communicate* does not mean to merge. Communities make corporations in the field of business, politics, recreation, creativity, sports or human rights activities, operating in urban areas or on web platforms. Thus, coworking spaces and the trend of their multiplication is an indicator of the growth of non-social connections of individuals. The place of communication and unity of subjects of immanent communities is replaced by a multiplicity of locations and productive cooperation of individual agents in target alliances – being-together.

Economic rhetoric and commercial expediency in the new culture of consumption/production

Since the last quarter of the last century, many philosophers have noted the trend of commercialization of social relations and the use of economic logic and terminology in the discourse about them. Neoliberal Western society has successfully extended the business principles of utility, competitiveness, commodification and maximization of one's own market value to the relationships of individuals in absolutely all areas - from labor to art and education. At the beginning of the century, the French social theorist A. Gorz noted the dominance of the logic of capital and the categories of the market; in practice, this resulted in the phenomenon of self-entrepreneurship, which replaced the labor relations of hiring⁵⁴. Self-preservation, self-exploitation, self-promotion and self-sale, justified by rational individualism, is the destiny of a modern active agent trying to integrate into the temporary labor market. The degree of individual responsibility has increased significantly: a free agent of an open performative market is responsible to himself for his success or lack of it⁵⁵. The market does not have a collective interest, it simply changes the situation, provoking an effective response of each unit from a diverse community.

⁵³ Jean-Luc Nancy, *Neproizvodimoe soobshchestvo ...*, p. 56.

⁵⁴ Andre Gorz, *Nematerialnoe. Znanie, stoimost, kapital ...*

⁵⁵ Yuliia Meliakova, Inna Kovalenko, Eduard Kalnytskyi, Hanna Kovalenko, *Performativity and self-exploitation: body significance in late capitalist era*. Cogito, 2021, Vol. 13, no. 4, p. 22.

That time, in the first decade of the millennium, the famous American writer and journalist Chris Anderson managed to make a real splash in business theory, substantiating "the Long Tail" rule as an alternative to the well-known Pareto rule "20 percent of goods bring 80 percent of profit", thereby putting an end to the "hit economy" and the beginning of the "abundance economy"⁵⁶. This phenomenon was made possible thanks to the Internet. Online market places have dramatically reduced the costs of reaching consumers, storing goods, marketing and distribution. The Long Tail economy has moved from a universal model of mass appeal to a model of unlimited variety for unique tastes. Sales increased due to selectivity. Now, thanks to the web resource, the length of the shelf is unlimited; there is a transition from the offer book to the virtual basket. The bet is made on the exclusivity of consumer tastes - from refined to the most unpretentious, on the hidden majority, which is beyond stereotypes and shows demand for products in the "tail". Ch. Anderson called this event a "niche revolution".

An era of unprecedented choice, a consumer paradise, gave rise to a special niche culture, the slogan of which is "Shorter, faster, less!" and which opposed mass capitalist culture with a unique, individual, initiative and independent agent. Unlimited choice reveals the truth about what consumers want and how they want it (from DVDs on Netflix to ads and content on Google). The new economic business model is focused on the activity of an individual market entity, creativity, and culture. His desire and will are the basis of system modulation, the principle of feedback and, as a result, the power of cooperation of many singularities, in connection with which Ch. Anderson notes: "The ants have megaphones"⁵⁷.

The departure from hits and mass culture, group identity and the will of the majority suggests that the new distribution economy is consistent with the new policy of distribution of rights and benefits. If classical liberal democracy gave the right to an individual voice for the sake of manifesting social moods and the will of the masses, and a dialogue and consensus between voices influenced power, then the era of technological capitalism and post-democracy, on the contrary, disunites the collectivity and group unity of autonomous individuals, providing a decisive and responsible choice to a lone agent or local community. The intimacy of a deal concluded between an agent and a company, an agent and the state, an agent and society, can be called the rise of a niche, or, as Ch. Anderson himself put it on this score, "filters control everything."

The reform in the field of distribution with the replacement of "the 20/80 rule" with "the long tail rule" set a qualitatively new strategy for buying/selling in relations with consumer agents. On the one hand, the

⁵⁶ Chris Anderson, *The Long Tail ...*

⁵⁷ Chris Anderson, *The Long Tail ...*

principles of market business deprive an individual of social support, mass culture, group identity, but, on the other hand, they guarantee independence in building new identities, self-determination and self-generation in intimate communities. At the same time, his freedom cannot be considered lost, rather its character is changing, because the precariat, for all its vulnerability, cannot be called unfree. The legal meaning of distributive justice in the post-democratic space does not even include the principle of initial equality, let alone its sacred guarantees. Natural rights must be revealed by an individual in himself, based on his own situational needs, and declared by him in performative cooperation with others. The unnaturalness and secondary nature of natural rights will be discussed below.

The subject's assessment of himself as a resource significantly influenced the concept of individual rights and a person's place in society. A. Toffler was one of the first to make such an assessment in 1980 in "The Third Wave", raising the problem of overcoming the Marxist threat of alienated labor⁵⁸. The philosopher called the new principle of social life "consumption/production", or prosumerism. So, from the odious figure of the consumer, society rapidly moved to the prosumer - the consumer / producer, in whose activities the mechanisms of consumption and production are merged.

The British philosopher Isabelle Harbison turns to prosumerism when analyzing performative images in contemporary arts, the network sphere and, in particular, the mass media, seeing them as a natural response to modern sociocultural changes in the issues of self-identification, image-making, employment, consumption and production⁵⁹. The peculiarity is that prosumerism does not point to the simple consumption of produced goods (information, services), but at the same time to the parallel "editing" by the consumer of the form of existence of these products, depending on his individual needs. For example, by "assimilating" content on Facebook, the user is free to respond to it, thereby producing his own informational material, which will later become a new product for social network users and a commercially useful resource for the owner of the web service. This is how the "consumption-production-consumption" algorithm works.

The prosumer operates on the principle of DIY (do it yourself), assembling his own goods as a puzzle from ready-made elements. I. Harbison notes that the digital space with its open source code, Wikipedia, TikTok or Instagram platforms, public archives and databases activates a more intensive distribution of prosumerism logic⁶⁰. On the one hand, the consumer receives the finished product, but, on the other hand, he independently forms its final

⁵⁸ Alvin Toffler, *The Third Wave* ...

⁵⁹ Isobel Harbison, *Performing Image* ...

⁶⁰ Isobel Harbison, *Performing Image* ...

version using the ready-made technique. Prosumerism turns a product into a continuous event that takes a certain time and place, that is, it creates a user performance. At the same time, performativity changed the very nature of the event - from the act of creation to the act of modulation⁶¹. In the web environment, the viewer acts as a content producer for himself (YouTube strategy). The subject is the mediator of images, while the desires of the subject generate images and are generated by the images themselves. The new hermeneutic circle is complete.

I. Harbison highlights the liberal aspects of prosumerism, for example, the creation of platforms for the representation of minorities, and in general, considers it as a new culture of consumption/production⁶². In her opinion, the performative images of art, coexisting with the space of mass media, influence not only mentally, but also on the bodily level, creating the illusion of presence or, conversely, alienation. They provide surplus value and also become a kind of bridges through which the artistic, social and political environments communicate. In performative images, racial, gender and class boundaries are crossed, access to new identities is opened in the production of one's own Self according to "the long tail" principle.

Web space prosumerism can be a tool for both exploitation and liberation. In the Networks, a person experiences an irresistible, almost physical, desire to interact, which is the anthropomorphic essence of the Internet, capable of regulating and generating people's needs. This desire for an image, massive in its scale, turns into a resource of the economy, which in turn satisfies our "hunger". However, despite the active participation of the agent in the production of goods, knowledge, information, ideas, images and values, endlessly broadcast on popular platforms, he still feels himself invisible. The threat of *invisibility on the Internet*, along with the previously stated threat of *muteness* of social precariae, are consistent with the larger problem of *inferiority* of the modern "remote" temporary employment individual. The body, pushed into the background, begins to fiercely fight for its existence, however, deprived of its voice and appearance, it remains a vulnerable actor in the global legal performance⁶³.

Being-together: grounds for conflict and the defense of human rights

The foregoing allows us to conclude that agent alliances and communities are mainly of a random and short-term nature, determined by the urgent needs of their participants, but often their emergence has weighty

⁶¹ Yuliia Meliakova, et al, *Performativity and self-exploitation ...*, p. 24.

⁶² Isobel Harbison, *Performing Image ...*

⁶³ Yuliia Meliakova, et al, *Performativity and self-exploitation ...*, p. 26-27.

fundamental grounds not of a spiritual and ideological, but of a biological nature (sex, gender, race, etc.). ethnos, etc.) and they claim long-term existence. In this case, it naturally comes to the *purity* of such communities: transgender, intersex, communities of non-binary individuals, racial communities, national, ethno-cultural (Slavic, Romano-Germanic, Anglo-Saxon, Asian and others). Such determinants naturally lead to discourse about filtrations, marking of bodies, natural identity, the genetic code of the nation, and, in the end, genocide (it is good, if only to discourse). The most essential markers are ethnos and language. Language is one of the most intimate, sensitive, painful elements of anthropology. The prohibition of the language, its modification, condemnation, contempt for the language leads to the destruction of man. The rejection of the native language (the language of thought), of the mimetic context of individual vocabulary is the destruction of the anthropological essence for the sake of a loyal simulative form in the social assemblage, replacing the human archetype.

At the same time, in the liberal consumer world of hedonistic priorities and economic utility, mastering another language is, as a rule, defiantly welcomed as a marker of a new body, new identity, new agency in the target community. Temporary alliances of interested agents, constantly appearing and disappearing in the market, legal and political spaces, basically require a flexible and tolerant dialogue of the participants, however, the language acts there only as a tool for concluding a profitable “deal”. The Heideggerian ontology of language was completed (“language as the house of being”). Hermeneutical interpretation is now the subject not to narratives and statements, but to acts of the body. The way of human being is naturalized to the level of a physical performance, often replaced by a virtual one. Speech and narrative are secondary in agentic relations, since myth, tradition, social ideals, values, ideology, and identity are no longer significant for target communities. The material need that came to the fore, as well as the need for pleasure and enjoyment, neutralize the ontological value of language, retaining for it only the function of a connect. Nevertheless, the native language does not cease to be an essential marker of the very nature of a person, therefore it is often used in conspiracy manipulations in order to crystallize biological communities in their “purity”.

Sheila Bock, an American researcher on stigmatization in the field of gender and the experience of illness, as well as the problem of material / digital / bodily performances of personal and public identity, conducted a semiotic analysis of one political performance in the White House⁶⁴. In 2019, US President Donald Trump, after inviting the team of champions of the national football playoffs to his official residence, served them fast food.

⁶⁴ Sheila Bock, *Fast Food at the White House: Framing Foodways, Class, and American Identity*, in “Western Folklore”, 2021, Vol. 80, no 1, p. 15-43.

S. Bock considers this action as an exquisite implementation of the fast food symbol by the president in the discourse of class and "Americanism", that is, an indirect marker of identity in modern society. Thus, cultural values can play an important role in social practices of various nature - from family to international political.

One way or another, it is the theory of agency that gives a chance to prevent both class and demographic conflicts, to oppose the destructive trend of searching for identities with an ideologically neutral model of dynamic target communities. The key criterion of a *people* in the sense of a formal agentive community should be by no means a social ideology or traditional culture, not a myth about the belonging of bodies and their origin, but it is the superficial motivation of individuals that has situational social effectiveness, for example, legal expediency, ecological or valeological justification, economic utility.

The nature of the pre-social natural foundations of human rights, as well as the reasons for their upholding, was once understood by the French philosopher Alain de Benoist, who eventually came to the conclusion that the theory of natural rights and freedoms of a person has an openly anti-humanistic character⁶⁵. It is it that gives the ideological justification of the natural properties of a person, fixing the mechanisms for their demonstration, thereby laying the potential conflict of identities in any anthropological environment. A. de Benoist notes that law never refers to an isolated being, an individual as such, an extra-social agent in his natural state, since it comes from the relationships of people, this is the sphere of distributive justice. At the same time, it does not apply to man, taken in his total universality; man in his generic quality remains an empty frame. Therefore, it is simply absurd to talk about the naturalness of human rights⁶⁶.

In the classical conception of natural law there is no room for either universalism or subjectivism. The nature of the cosmos and the human mind, which was discussed in this concept, gave external principles according to which people should be satisfied regardless of belonging to one society or another. Modern natural law is a subjective law (including at the stage of intersubjectivism), it is entirely derived from a subject integrated into an institutionalized, differentiated society. Hence there is the actual elitism of human rights. In addition, the abstract equivalence of people proclaimed by them conflicts with the statement about the absolute uniqueness and value of each individual subject, its indispensability⁶⁷.

Today, claiming your rights means simply trying to maximize your profits. The tendency is to turn into "rights" all sorts of demands, desires,

⁶⁵ Alain de Benoist, *Po tu storonu prav ...*

⁶⁶ Alain de Benoist, *Po tu storonu prav ...*, p. 90-91.

⁶⁷ Alain de Benoist, *Po tu storonu prav ...*, p. 92.

whims and interests. A. de Benoist wonders, in what kind of society we now exist - in the one that respects human rights, or in the one that has decided to give the right to all forms of desire, to recognize all styles of life, all modes of existence, all preferences, inclinations and orientations, as long as they do not interfere too much with the preferences and orientations of the neighbors⁶⁸. According to the philosopher, the excessive spread of human rights, "insane overproduction of rights" entails their depreciation⁶⁹. This is facilitated, among other things, by the performative activism of agents of law and the media hype around it. Of considerable interest is the state of the modern agent of law in the zones of performative activity - from the courtroom to the city square - when one and the same individual is able to synthesize in himself the person of institutional justice and at the same time an asocial participant in the anarchic acts of anonymous bodies in the performances of urban cultures and protest actions of the *precariae*.

A. de Benoist's thoughts about society are largely consistent with the position of J.-L. Nancy, in particular, in assessments of its atomic structure and the hedonistic-pragmatic nature of relations that completely exclude unity and collectivism. A. de Benoist calls individualism, on which modern society and human rights are based, atomism, from which, in turn, contractualism stems. Society is simply a sum of individualized atoms, endowed with sovereign will and equally driven by the rational desire for the greatest benefit. Each subject independently determines his goals, and he joins society only to the extent that it serves him. In other words, only an individual exists in reality, while a society or a collective is just an abstraction, a trick, a kind of surplus reality⁷⁰. It will not be a contradiction to call it an *agent community*, in the meaning that we put into this concept.

In A. de Benoist, the talk is about the freedom of a person as an isolated, self-contained monad (selfish individual), which is an acceptable abstraction, but not a real state of society. Nevertheless, if we regard the conditional target communities of atomized agents as an asocial, non-political phenomenon, then human rights (in the natural aspect) should be clearly revealed there. Rather, they may even act as the sole conceptualizing force and rationalizing principle of community behavior. However, according to the French philosopher, the paradox is as follows. Subjective rights, although postulated as something alien to sociality, can still achieve their reality only within the social, state framework⁷¹.

Human rights require an organized civil society to be their guarantor. It is a demand for something from the other, and that other is the state. If

⁶⁸ Alain de Benoist, *Po tu storonu prav ...*, p. 95-96.

⁶⁹ Alain de Benoist, *Po tu storonu prav ...*, p.96.

⁷⁰ Alain de Benoist, *Po tu storonu prav ...*, p. 104.

⁷¹ Alain de Benoist, *Po tu storonu prav ...*, p. 111-113.

the theory of individual rights itself still seeks to limit the power and authority of the state, then collective rights regard the state as the main instrument for their implementation. This is especially true of the “rights-equalities” of the second generation - social collective rights - to work, education, medical care, social protection, information, etc. They are inalienable from the rights of the group, since they follow from distributive justice; they presuppose the fact of sociality, communication, state control, and therefore cannot be derived from the pre-political nature of man and the pre-state nature of society. The recipients of some of them are not individuals, but entire collectives (among them are information rights and the right to speak their native language).

Thus, the concept of “freedom of information” today includes freedom of speech and expression, freedom of the media, the right to seek, receive, produce, store, distribute and transmit information, the right of citizens to a public response and refutation of false information, to protect sources of information, prohibition of censorship, and other rights in the information sphere. Being in one of the upper tiers of individual human rights, this group of rights regulates exclusively secondary, verbal relations, necessarily mediated by technical attributes and state institutions⁷².

Thus, individual human rights should not be regarded at all as an attribute of its primordial anthropological value, but as a formalizing product of statehood. Referring to naturalness, they, nevertheless, have as their goal the legalization and legal identification of the subjects to which they belong, while revealing the secondary nature of their own naturalness. To assume the purification of human rights from their normative form means to admit that very natural primitive communism, about which J.-L. Nancy wrote as about self-deception⁷³. The modern discourse on human rights in their somatic version is addressed specifically to the natural aspects of human nature (life and death, gender, health, immortality, etc.). At first glance, it is impossible not to recognize the extra-social, rather biological, nature of this anthropology of law. However, the natural features and needs of a person in the civilized world turn out to be no worse grounds for discrimination, xenophobia and extremism, quickly acquiring a layer of ideological rhetoric and a network of political conjuncture. And the liberal society once again appeals to public morality: *to be different is normal!*

Thus, the pathos of human rights becomes a spectacular justification and a powerful tool for openly aggressive initiatives of societies and states, social institutions and political forces. For example, transgenderism today

⁷² Oleg Danilyan, Alexandr Dzeban, Yurii Kalinovskiy, Eduard Kalnytskyi, Svetlana Zhdanenko, *Personal information rights and freedoms within the modern society*. Informatologia, 2018, Vol. 51, no 1-2, p. 30-31.

⁷³ Jean-Luc Nancy, *Neproizvodimoe soobshchestvo ...*

is an effective and natural means of population regulation, as well as differentiation and individualization of society, but most importantly, an irrefutable basis for interfering in the internal affairs of sovereign fundamentalist states and traditional societies under the slogan of protecting the rights of sexual minorities and, as a result, acts as a clear line a rift between communities and European liberals and conservatives. An attempt to escape from social conflicts on the basis of ideological identity (partisanship, confessionalism, classism, historic culturalism) eventually turned into a triumph of biological personification as a sufficient reason for the next conflict of civilizations. Sexual, gender, racial, ethnic or other identity is very easily converted into a political agenda and becomes a lever of pressure from the authorities.

The balance of body and language is still disrupted. Although the biological attributes of the body have become paramount and inalienable, they easily become instruments of manipulation by social authorities. At the same time, the body should not be the basis for the differentiation of social units, a symbol of their natural belonging and quality marking. On the contrary, it should guarantee the possibility of free *participation* in a variety of target communities - from professional to neighborhood, creative, educational, cultural, sports, epidemic, environmental, gastronomic, or communities of victims of domestic violence. Thus, Andrea Eckersley and Cameron Duff, Australian scientists from Melbourne, demonstrate the semiotics of fashion as one of the solutions to the problem of subjectivation and identity⁷⁴. In his fashion choice, an individual installs himself, embodies his habits, memories, desires, experience. The body is critical here. Influencing bodies through the collision of matter, signs and style, fashion not only defines the subject, but also participates in its modulation.

The body must be recognized as the defining, ontological substance of the desocialized agent. It is it that legitimizes, provides grounding and moral justification for the external activity of a person. The ontology of corporality reveals a qualitatively new principle of human interaction - a *community of needs* that can only be satisfied through presence, that is, tactilely, visually, sensually, but not through informational, ideological or moral influence and cooperation.

Initially leaning towards the model of agentive target communities as the optimal form of social interaction, we can assume that the logic of individual pragmatic interest underlying them can be justified only by the short duration of the existence of such communities and their dynamism. Most probably, the abstract community of atomized agents would be closest to the idealized environment of asocial free individuals, subject only to

⁷⁴ Cameron Duff, Andrea Eckersley, *Bodies of Fashion and the Fashioning of Subjectivity*. Body & Society, 2020, Vol. 26, Issue 4, Dec. 1, p. 35-61.

natural causality and possessing real natural rights that are not regulated by anyone above (which could be called the triumph of human rights). However, the previous analysis of the nature of communities and human rights themselves leaves no doubt that even this form of unity will not completely avoid dependence and discrimination in the interconnections of participants and will most likely lead to segregation, “purges” and struggle for authenticity. In addition, in its pure form, this kind of reservation, or space of freedom, is not possible in reality.

Conclusions

Summing up the above, it should be noted that the real social existence of a person is a natural consequence of the radical transformation of all spheres of his life: information, education, labor, management, household, financial and others. The principle of production, consumption and distribution characteristic of modern systems has changed the social modality of the individual from a person to an agent, deconstructing all group forms of his existence. Communality, solidarity, collectivity gave way to a multitude of singularities, corporatism, alliance and target community of the mentioned agents, concerned with finding expressive means to manifest their needs.

The greatest damage in the online reality, or a "community with disabilities", is experienced by the agent's body. It also becomes the main lever of manipulation on the part of the authorities, while the agent is in search of a somatic identity and the pursuit of individual satisfaction and usefulness. Inexhaustible desires that generate the activity of the body, at the same time turn it into the main resource of the economy of prosumerism. At the same time, bodily needs and the issue of natural belonging are no less a basis for modern types of segregation and discrimination than classism, despite the fact that the issue of collective rights and the war of ideas in a civilized society is almost resolved. The only weak hope in the struggle for the universal asocial status of the body remains the discourse of natural individual human rights.

Short-term and local agentive communities are the only possible form of unity of individuals, a mechanism for their cooperation and protection of group interests. Not only the distributive economy is diversifying, but also distributive politics, getting rid of powerful and influential social forces - producers and consumers - that once determined mass moods (demand), collective values (bestsellers) and popular will (political priorities). Their place is taken by individual self-organizing prosumers, who form a new desocialized "class" - the precariat, and the "place" in the sense of "location", or the workspace of their performative activity, is not of secondary importance here.

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VALUE ASPECTS OF THE SAFE EXISTENCE OF SOCIAL SYSTEMS IN AN UNSTABLE WORLD

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Abstract: *The paper analyzes the axiological aspects of the safe existence of society in conditions of global instability. The authors defined the essence of social solidarity as a factor of increasing stability in social systems. The importance of social justice for reducing the level of conflict in the existence of modern societies has been proven. The institutional importance of democracy and democratic values for the safe development of social systems is substantiated.*

Keywords: *social system, human rights and freedoms, global instability, solidarity, justice, democratic values.*

Introduction

At the end of the 20th and the beginning of the 21st century, "tectonic shifts" began to occur in the existing world order, which led to increased

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instability both in certain regions of our planet and in the world as a whole. Global transformations have concerned all spheres of life of modern societies: economic, social, political, spiritual and valuable, communicative and informational etc. Global changes, on the one hand, created new opportunities for states and communities, and on the other hand, provoked the strengthening of crisis phenomena at various levels, intensified the struggle for spheres of influence in the world, and actualized the problem of preserving the homeostasis of social systems. In connection with the above, the need to develop the latest strategies for the safe existence of states and societies in conditions of global turbulence has significantly increased. Such strategies, in our opinion, should be based on certain value-oriented points, that reflect the specifics of national interests and priorities of a particular society. Despite such specificity, a number of basic axiologyemes can be distinguished, which form the basis for the creation of national programs of safe development during the increase of global instability. Such value orientations and priorities are peace, stability of the socio-economic system, social justice, social solidarity, mutually beneficial cooperation on a regional and global level, democracy, human rights and freedoms, preservation of the national identity of peoples, overcoming the ecological crisis and preventing man-made disasters, etc. In this paper, we plan to analyze only some of the above-mentioned values and axiological priorities, leaving consideration of others for further research. Therefore, the purpose of this article is to define and reveal the value guidelines for the safe existence of social systems in conditions of increased global instability.

Methodology

The methodological basis of our research is a complex of general scientific, philosophical, and philosophical-legal approaches and methods, which provided a comprehensive consideration of the problem of value aspects of the safe existence of social systems in a turbulent world. In particular, the dialectical method made it possible to trace the evolution of the value content of the concept of "security of the social system", and the synergistic method - to ground the role of values in self-organizing processes in social entities in order to maintain their stability.

The structural-functional method in combination with the normative-analytical method became the basis for identifying the level of influence of social justice and social solidarity, as value and legal phenomena, on the stability of the existence of democratic systems. With the help of the concretization method, the institutional and axiological significance of human rights and freedoms for the preservation of social stability was substantiated. In this regard, relying on methods of analysis and synthesis, the merits and demerits of democratic political and legal systems are outlined and their potential for maintaining social stability is analyzed.

Instead, the methods of classification and systematization contributed to the detecting and generalization of various theoretical and methodological positions regarding the understanding of values in the context of the safe existence of social entities in an unstable world, as well as the substantiation of indicators of social justice and forms of social solidarity.

Literature review

The problem of the safe existence of social systems in the axiological dimension was reflected in the scientific publications of researchers from various branches of knowledge. Referring to the history of the issue, we emphasize that this problem was analyzed in the books of the philosophical classics, in particular in the works of Charles Louis Montesquieu¹, Georg Wilhelm Friedrich Hegel² others. For instance Charles Louis Montesquieu emphasized the need for democratization of political power and social relations for the prosperity of the country, and Georg Wilhelm Friedrich Hegel substantiated the determining role of the state in ensuring the stability of the social organism. In its turn, contemporary scientists V. Pivovar, S. Drachuk reflects on the relationship and essential characteristics of the concepts of "security" and "danger" in the context of increased global competition³.

In its turn, the authors of the research "Modern Ontology: Reflection of the Continuity of Cyberspace and Virtual Reality" analyze the conflictual aspects of the interaction of social and virtual spaces, defining the value difference of these worlds as one of the reasons for the instability of human existence in society⁴. In accordance with the above-mentioned logic O. Petryshyn and O. Gilyaka, emphasize that the results of digitization of many branches of life require the understanding and adequate formulation of the legal mechanism for the regulation, implementation, and protection of already existing and new human rights for the purpose of sustainable socio-economic development, ensuring the implementation and protection of constitutional human rights and civil rights and freedom. This research focuses on new rights, such as the right to anonymity, the right to the protection of personal data, the right to digital education and access to digital knowledge; rights related to the protection of genetic information; the right to participate in the circulation of property in the digital sphere⁵.

¹ C.-L. Montesquieu, *On the spirit of laws*. Moscow: Thought, 1999.

² W.V.G. Hegel, *Phenomenology of spirit* / trans. with Germ. P. Taraschuk, science. ed. trans. Y. Kushakov. Kyiv: Osnovy, 2004.

³ V. Pivovar, & S. Drachuk, *Philosophical problems of security as a methodological basis for ensuring the security of the stock market*. Legal informatics, 2007, 2(14), p. 77-82.

⁴ A. Hetman, O. Danilyan, O. Dzoban, & Y. Kalynovskyi, *Modern ontology: reflection on the continuity of cyberspace and virtual reality*. Revista de Filosofía, 2022, Vol. 39, Iss. 102, p. 78-94.

⁵ O. Petryshyn, & O. Hyliaka, *Human rights in the digital age: Challenges, threats and prospects*. Journal of the National Academy of Legal Sciences of Ukraine, 2021, 28(1), p. 15-23. doi:10.37635/jnalsu.28(1).2021.15-23.

The theme of the crisis of sociality, spirit and values is continued in the work of Y. Meliakova and coauthors. For a late capitalism autonomous individual, his or her corporeal and mental self-exploitation is considered as an effective integrative tactics. Performative utterances are the attempts to compensate for the deficient and limited online existence in the unfavourable conditions of the digital environment on the whole and quarantine, in particular. That way, purely virtual corporeal self-realisation, dominating these days, implicitly forces a vulnerable human to seek performative forms of self-realisation, self-defence and self-preservation⁶.

On the other hand, in the research work of G. Simmel⁷ and Z. Bauman⁸ revealed the role of social solidarity as a factor in the stable existence of society. The consolidating function of social solidarity is analyzed as well by O. Osipova⁹ and O. Palagniuk¹⁰, interpreting it as a manifestation of social self-organization, which has a dynamic character.

Researching social justice as a value basis for the security of social systems, we relied on the scientific works of A. Grynenko¹¹, L. Kravchenko¹², J. Rawls¹³, V. Studinsky¹⁴, N. Fedin¹⁵ and others. Scientific researches of S. Kosinov¹⁶, A. Kudryachenko¹⁷, T. Popovich¹⁸, A. Sen contributed to the justification of the idea of the value of democracy for progressive and safe

⁶ Y. Meliakova, I. Kovalenko, E. Kalnytskyi, & H. Kovalenko, *Performativity and self-exploitation: body significance in late capitalist era*. Cogito, 2021, Vol. 13, Iss. 4, p. 16.

⁷ H. Simmel, *Man as enemy*. Sociological journal, 1994, 2, p. 114-119.

⁸ Z. Bauman, *Postmodern ethics* / Trans. from English R. Zimovets, O. Yudin, D. Korol. Kyiv: Port-Royal, 2006.

⁹ E.V. Osipova, *Mechanical and organic solidarity*. Russian sociological encyclopedia. Moscow: NORMA-INFRA, 1999.

¹⁰ O.V. Palahniuk, *Socio-psychological aspects of social solidarity in the conditions of social transformations: an attempt at conceptualization*. Scientific Bulletin of Kherson State University, 2022, 1, p. 67-76.

¹¹ A.M. Grynenko, *Social justice as a key principle in the implementation of the social policy of the state*. Scientific works of Petro Mohyla Black Sea National University of complex "Kyiv-Mohyla Academy". Ser.: Pedagogy, 2009, 112 (99), p. 104-107.

¹² L.V. Kravchenko, *Justice as a choice*. Kyiv: Molod, 1998.

¹³ J. Rawls, *Theory of justice*. Novosibirsk: Novosibirsk University Publishing House, 1995.

¹⁴ V. Studinsky, *The issue of social justice in the context of social policy*. Ukraine: aspects of Labor, 2009, 1, p. 13-16.

¹⁵ N.V. Fedina, *The concept of social justice in the theory of the state and law*. Legal novels, 2018, 4, p. 66-72.

¹⁶ S. Kosinov, *Democratic principles and values in the organization of public power*. Bulletin of the National Academy of Legal Sciences of Ukraine, 2013, 3 (74), p. 128-134.

¹⁷ A. Kudryachenko, *Fundamental democratic values and their impact on the development of civil society in European countries*. Viche, 2015, 2. URL: <https://veche.kiev.ua/journal/4541/> (access date: 07/10/2022).

¹⁸ T.P. Popovych, *Legal model of a modern democratic state*. Comparative and analytical law, 2016, 1, p. 65-68.

development of social entities. A number of scientists define human rights and freedoms as the core value of democracy in the axiological dimension, such scientists as V. Sokurenko¹⁹ and V. Tykhyi²⁰.

Results and Discussion

Under the influence of global turbulence, the very philosophy of safe existence is gradually changing, which involves strengthening the role of spirituality (spiritual security) and strengthening information security in the life of any community and humanity as a whole. For a comprehensive research of the issue of the safe existence of social systems in the axiological dimension during the intensification of global confrontation, let's briefly dwell on the consideration of the conceptual dichotomy "security" and "danger".

Revealing the philosophical aspects of security as a social phenomenon, it should emphasize that the concept of security and awareness of its necessity is manifested both on the sensory and rational levels. Premonitions, negative emotions, a sense of danger, a sense of self-defense with the subsequent conscious formation of a defense system are a manifestation of the richness of human being's nature, the inexhaustibility of human qualities. Security is a dynamic process that depends not only on the state and level of development of this or that system, but on the richness of human being's nature, on its psychology, feelings, moods, state of culture and civilization. Therefore, it is correct to pose the problem of identifying and revealing the essential characteristics of security as a social phenomenon. These should include self-sufficiency, self-preservation, security, stability of existence, protection from threats, guarantee, etc. In practical activities (in the sphere of political, economic, legal, cultural), this manifests itself in a state of protection from threats, increasing the potential for secure existence, strengthening reliability, improving the protection system, creating security guarantees for the development of the social system. Security is not an abstract phenomenon detached from concrete living conditions. This concept has and manifests its specific meaning based on specific circumstances, situations, social conditions as well. It acts as a need for human existence in general, as a need for the existence of a person, nation, state in particular, because its functioning is connected with the satisfaction of the most important need of human being and society - security of existence. Security is associated with the very possibility of life,

¹⁹ V.V. Sokurenko, *Human rights as a fundamental value*. National and international mechanisms for the protection of human rights: theses add. All-Ukrainian round table (Kharkiv, April 20, 2016) / Ministry of Internal Affairs of Ukraine, Kharkiv. national University of Internal Affairs affairs Kharkiv: Kharkiv National University of Internal Affairs, 2016, p. 7-9.

²⁰ V.P. Tikhii, *Human security is the main object of Ukraine's national security*. Spirituality of Person: methodology, theory and practice, 2017, 4, p. 323-329.

its preservation and protection from threats, it is understood as a value and criterion of development, which is connected with the awareness of a complex and systematic approach to security problems²¹.

At the same time, it should be emphasized that a significant increase in global and social turbulence determines the revision of the paradigm of safe existence, since new challenges and threats are no longer typical, and the protection system for their leveling is not developed in social systems at the proper level. In its turn, the system of values also undergoes changes: their content, ranking in public consciousness, implementation features, etc.

Scientists prove that during periods of crisis, when the basic value orientations of development change, the process of forming a new ideology of safe development on a new value basis usually begins, thanks to the inclusion of natural and artificial mechanisms of "social energy" regulation. In the conditions of an unstable state, there is a need to strengthen control over probable changes, since the actions of certain innovations can be useful with appropriate socio-cultural preparation, but can also cause various social dangers and threats. For instance, today the danger caused by globalization processes is that external borrowings, without their critical rethinking, are applied directly for social life under the guise of proven effective social means, which with the help of information technologies begin to "penetrate" and destroy the defensive reaction of traditional culture, mimicking allegedly under the already familiar interior of activity due to mass replication and endless repetition. Therefore, taking into account the needs of safe development, it is necessary to pay attention to the fact that certain innovative changes contribute, first of all, to the consolidation of society, to the benefit of one's society. Identifying yourself with someone or something is the most convenient form of achieving a stable safe state, that is, self-preservation based on self-determination²².

Summarizing the reasons for the emergence and strengthening of social instability in the modern world, scientists emphasize that these are socio-economic and political crises, unsuccessful attempts to reform political-legal and economic systems, asynchrony of political and economic transformations, destructive external influence on social processes in a certain state²³.

In general, the problem of preserving the stability of social systems in the value dimension is not new. For instance Charles Louis Montesquieu developed the idea of the need, in the interests of state and public security,

²¹ V. Pivovarov, & S. Drachuk, *Philosophical problems of security as a methodological basis for ensuring the security of the stock market*. Legal informatics, 2007, 2(14), p. 78.

²² Y. Kysil, *Principles of social security formation in multicultural societies*. Political management, 2009, 2, p. 129-130.

²³ O. Danilyan, O. Dzoban, & Y. Kalynovskyi, *Social instability as a global trend of the modern world*. Cogito, 2022, Vol. 14, 3. p. 155.

to separate the three branches of government. In addition, he argued that liberal-humanist values and principles of a stable social system (condemnation of despotism, defense of civil and personal freedom, religious tolerance, political moderation, gradual change) are necessary and sufficient conditions for preserving and maintaining public security²⁴.

Instead, Georg Wilhelm Friedrich Hegel in his scientific investigations revealed the worldview and philosophical aspects of the human security, state and society. From his point of view, the main role in ensuring social and individual security is played by the state, because it is thanks to the state that the habit and conditions of a safe existence are formed in a person, which becomes his second nature. Researching the essence of the security problem, Georg Wilhelm Friedrich Hegel draws the following conclusion - the individual security guarantees the safety of society, that is, in fact, we are talking about the so-called integral security and safety, which the state must ensure. Refusal of the state from this function inevitably leads to the degradation of the totality of all social relations, the destruction of the social order. A significant decrease in the level of moral, legal, and cultural restrictions promotes the manifestation of selfishness, instincts, and violence. This is the root cause of the entire spectrum of dangers and threats to the existence of the individual, social groups, the state, civilization and humanity as a whole²⁵.

Nowadays, various methods are used to determine the stability of social systems and the parameters of their safe existence, which take into account a number of indicators, including spiritual-value, mental-cultural, worldview.

At the same time, according to experts, there is no generally accepted scientifically based quantitative indicator (index) in the world that would objectively measure the general state of national security. However, many countries of the world and international organizations quite widely use a variety of methods that allow indirectly, through the analysis of quantitative indicators of individual aspects of the socio-political, economic, socio-cultural, ecological and other life of the country, to arrive at a general assessment of the state of ensuring the national security of both an individual country and region as a whole. Such methods, the analysis of indicators (indices) of which in aggregate allows to reach a first approximation to a more or less objective assessment of the general state of national security, should include:

– The Sustainable Society Index (SSI) is a combined indicator of the Sustainable Society Foundation, which measures the achievements of countries in terms of the sustainability of social development.

²⁴ L.V. Kalashnikova, *Socio-philosophical origins of the formation of the concept of security in protosociology*. Grani, 2016, 9, p. 10.

²⁵ W.V.G. Hegel, *Phenomenology of spirit* / trans. with Germ. P. Taraschuk, science. ed. trans. Y. Kushakov. Kyiv: Osnovy, 2004, p. 42.

– Worldwide Governance Indicators (WGI) is a technique, the indicators of which can be used to assess the general state of each individual country in the world in the branch of national security. Within the framework of the project initiated by the World Bank (WB) in 1996, aggregate and individual indicators of the success of governance in individual countries of the world are presented according to six key management ratings (indices). Aggregate WGI indicators combine the views of a large number of respondents from more than 30 organizations, institutions and experts and use more than 40 data sources, covering almost 200 countries and have been updated annually since 2002²⁶.

Let's dwell in more detail on the value parameters of the safe existence of social systems, taking into account the existing factors of global instability. It is worth noting that the increase in global turbulence objectively contributes to the consolidation processes in social entities, pushes them to overcome internal contradictions for self-preservation and maintaining the trajectory of stable social development. In this regard, social solidarity is an important value for the safe social development.

From O. Osipova's point of view, solidarity in its basic ontological dimensions is, first of all, a special state of group, corporate, collective consciousness precisely as the consciousness of unity; secondly, it is a feeling of interconnectedness with other members of the group, a feeling of "we", that is, a feeling of unity; thirdly, it is a state of people's agreement to certain common actions for the purpose of asserting their own interests. Solidarity is a unity of beliefs and actions, mutual help and support of members of a social group, which is based on common interests and the need to achieve common group goals; joint responsibility, as well as active sympathy and support for any actions or thoughts²⁷.

The importance of social solidarity as a value for the safe existence of social systems is especially enhanced in crisis situations that require cohesion, synergy of actions, and organized work for a common result from all segments of the population. For instance, G. Simmel believed that social solidarity is strengthened by conflict, which leads to social integration. Based on various historical examples, the scientist proves that conflict in society is inevitable, and one of its main forms is the conflict between the individual and society. Conflict, according to G. Simmel, does not always

²⁶ S.V. Semin, *The concept of the axiological paradigm of the fundamental principles and value principles of ensuring the national security of Ukraine*. National Institute of Strategic Studies, 2019. URL: <https://niss.gov.ua/doslidzhennya/nacionalna-bezpeka/koncept-aksiologichnoi-paradigmi-zasadnichikh-principiv-i> (access date: 09/07/2022).

²⁷ E.V. Osipova, *Mechanical and organic solidarity*. Russian sociological encyclopedia. Moscow: NORMA-INFRA, 1999, p. 476.

and does not necessarily lead to destruction, but on the contrary, it can perform important functions of preserving social relations and social systems²⁸.

In the context of our scientific research, we take into account both internal factors (positive and negative) influencing social solidarity, and external factors - the global conflict of interests, civilizational values and the struggle for spheres of influence, which under certain conditions either strengthen or weaken social integration. That is to say, the safe existence of the social system directly depends on the ability of constituent subjects to maintain a sufficient level of social solidarity to counteract internal and external factors of social instability. With that, social solidarity as a valuable basis for the safe social existence is an axiologeme that is reproduced with varying degrees of intensity - it has dynamic characteristics and needs permanent actualization at all levels of social relations.

In this sense, O. Palahniuk says, that solidarity is a phenomenon that ensures the internal unity and self-organization of society, which is manifested in its ability for social self-regulation, self-preservation and self-development, and allows the maximum use of the capabilities of all members of society for the individual and common good. Therefore, solidarity in its authentic interpretation should be understood as the self-organizing level of its consideration, which comes from internal motivation, integration of norms and practices. Nevertheless, according to theoretical ideas, all self-organizing orders (social structures) are always procedural. That is, social solidarity should be interpreted not as a static, accomplished fact, but only as a constantly dynamic process that exists only at the level of everyday interactions, which are continuously reproduced. Recently, these interactions and processes have become very rapid and significant, which is interpreted according to Z. Bauman, as "flowing modernity". That's why, solidarity is a process, a dynamic state and, at the same time, quality of society. Thus, the measure of social solidarity can be one of the main characteristics of society, which allows you to make predictions about the possible trajectory of its further development. At the same time, both strongly and weakly integrated societies get into the zone of a high level of crisis risk²⁹.

In connection with the dynamism of the phenomenon of social solidarity, possible "flash point of entropy" of various degrees in the social system and systems of a higher level, due to the risks of damage to a safe foundation, social life is not insured.

²⁸ H. Simmel, *Man as enemy*. Sociological journal, 1994, 2, p. 114-119.

²⁹ O.V. Palahniuk, *Socio-psychological aspects of social solidarity in the conditions of social transformations: an attempt at conceptualization*. Scientific Bulletin of Kherson State University, 2022, 1, p. 70.

It should be noted that social solidarity as a value and a mechanism for ensuring the stable existence of the social system is the result of the reproduction of other axiologemes, in particular social justice.

Justice as a valuable aspect of society's security needs specification: clarification of the criteria for determining its level in a certain social system not only as a moral, but also a legal phenomenon, definition of "fair" and "unfair" for a given stage of the social system's existence. To assess perceptions of the level of social justice, researcher V. Studinsky suggests taking into account certain indicators:

- the degree of satisfaction of the subject (individual) with the observance of the norms of social justice at the household or everyday level;
- assessment by the subject (individual) of his participation in the process of struggle against social inequality and the effectiveness of this struggle;
- attitude to phenomena that prevent the achievement of social justice both at the level of society and at the household level;
- the degree of satisfaction of the subject (individual) with the content of work, the possibilities of influencing decision-making in the system of social or purely industrial relations, compliance with labor discipline, possibility for further education and professional level's improvement;
- the degree of determination of parameters of social justice in the system of distribution of material and moral goods, distribution of public goods;
- the degree of certainty of the criteria for the subjective assessment of the correspondence of the salary to the quantity and quality of the labor spent³⁰

Social justice is a certain compromise, a balance of interests between social groups regarding existing restrictions and advantages in the distribution of rights, freedoms, material resources, positions and statuses, opportunities to acquire symbolic capital, etc. In our opinion, social justice is determined concretely and historically, based on the indicators of the existence of a certain social system. The result of the successful implementation of social justice as a value and principle that ensures social stability is the absence of system-dangerous conflicts in it.

As emphasized in this context by L. Kravchenko: "There wasn't, isn't, and probably won't be eternal justice, suitable for all times and peoples. In the very idea of justice, as in other social ideas, in one or another combination, the past and that which does not pass, changeable and permanent appear"³¹.

³⁰ H. Simmel, *Man as enemy*. Sociological journal, 1994, 2, p. 15-16.

³¹ L.V. Kravchenko, *Justice as a choice*. Kyiv: Molod, 1998. p. 8.

Determining the essence of social justice as an axiologeme of safe existence, scientists proceed from different methodological attitudes. For instance, J. Rawls justified it by two principles: "The first requires each person is to have an equal right to the most extensive basic liberty compatible with similar liberty for others, and the second asserts that social and economic inequalities, for example, in wealth and power should be arranged so that they are both reasonably expected to be to everyone's advantage, in particular, for less successful members of society"³².

In return, the meritocratic concept of justice involves limiting the differentiation of "legitimate" and "illegitimate" inequalities and eliminating the latter by modifying the existing distribution system (distributive justice). It is not about eliminating some inequalities between people, their groups regarding certain values, benefits, services, rewards and punishments, but about legitimizing the latter by changing people's attitude towards them. Each sphere of activity has its own scale of values and priorities, its own criteria for fairness in the distribution of income, authority, its own privileges peculiar only to this sphere of activity³³.

Summarizing various approaches to understanding social justice, it is possible to single out several basic concepts derived from certain philosophical and ideological doctrines:

- egalitarianism (represented in particular by Marxism) – social justice as the equal distribution of benefits, rights, and duties among all members of society;

- liberalism – social justice is the result of self-organizing mechanisms in society with minimal state intervention;

- neoliberalism - social justice consists in maintaining a balance of interests of various social groups through active cooperation of the state and institutions of civil society;

- social-democratic approach - social justice consists in the provision by the state of high living standards for all sections of the population, as well as equal access to education, medicine, and culture through the development of a market economy and socially oriented distribution of material goods³⁴.

Therefore, social justice does not have an unambiguous interpretation in scientific concepts and social practices today. The models of its implementation can be different, but in the end they should contribute to the establishment of social harmony and peace.

³² J. Rawls, *Theory of justice*. Novosibirsk: Novosibirsk University Publishing House, 1995, p. 28.

³³ N.V. Fedina, *The concept of social justice in the theory of the state and law*. Legal novels, 2018, 4, p. 70.

³⁴ Y. Kalynovskyi, *Peculiarities of the implementation of social justice in a legal society*. Hilea: Scientific Bulletin, 2013, 74, p. 172-173.

As ukrainian scientists rightly point out, the most important indicator of the socially just orientation of society is the nature of social relations. The vector of their development can be deployed in the direction of increasing inequality, which leads to the dominance of some social groups and the subordination of others to them, and as a result - to the growth of social tension. And it can be deployed in another direction, when the decomposition of the statuses of social groups is formed and a social truce occurs, which allows social development to acquire a stable progressive character. All the mentioned characteristics reflect one or another aspect of social justice and, depending on the specifics, make it possible to judge about social progressiveness or, on the contrary, about regressiveness of society³⁵.

Apparently, the implementation of the principles of social justice is a multifaceted process in which a wide range of subjects and institutions are involved. Their activities should create conditions for increasing vectors of social development for citizens and social groups, contributing to the establishment of a balance between their interests (needs) and the state's (society's) capabilities to provide for them.

The historical experience of the existence of social systems of various types has proven that the most pluralistic and free entities in terms of the possibilities of social development of various subjects are democratic countries, which are actually, not declaratively, able to ensure the realization of democratic values, rights and freedoms of citizens. It is the development of democracy and human rights as values of social development that forms the basis for the safe functioning of social systems.

A. Kudryachenko claims that in developed democracies the entire legal system works much more effectively, and human rights violations are not systemic in nature. Values, legal and political culture, democratic regime, and civil society contribute to this. It was thanks to democracy and government support of public initiatives and non-governmental organizations that a developed and structured civil society was formed in Western European states already in the second half of the 20th century. It interacts with state structures, and the government is forced to reckon with it. These components correspond and together become effective factors of the general political atmosphere, which, in its turn, becomes a qualitative characteristic of the functioning of the state and ensures the inviolability of democratic values and, accordingly, the existing social order in the state³⁶.

³⁵ A.M. Grynenko, *Social justice as a key principle in the implementation of the social policy of the state*. Scientific works of Petro Mohyla Black Sea National University of complex "Kyiv-Mohyla Academy". Ser.: Pedagogy, 2009, 112 (99), p. 107.

³⁶ A. Kudryachenko, *Fundamental democratic values and their impact on the development of civil society in European countries*. Viche, 2015, 2. URL: <https://veche.kiev.ua/journal/4541/> (access date: 07/10/2022).

The necessity to embody democratic values as a guarantee of the stable existence of the social system is due to the fact that democracy as such contains, according to S. Kosinova:

- intrinsic value: people are seen as active participants in social processes. Democratic development enables citizens to help themselves and influence the world as a whole;

- instrumental value: democracy is more a procedure than an ideology; it is provided primarily by a set of formal rules and institutions, within which there is a place for the most diverse ideologies, and each of them is formally equal;

- creative or constructive value: democracy plays a creative role in the formation of values recognized by society. Democratic values appear in society not only through its natural development due to the various repetition of a certain model of behavior, but also through a conscious desire to implement the ideal of democracy³⁷.

In addition to thinking of the previous researcher in the context of our scientific research, we note that a developed democracy also carries social value, contributing to the economic well-being of citizens on a competitive basis and providing them with an appropriate level of social guarantees. Certainly, democratic values in combination with the implementation of the principles of the social state acquire special stabilizing significance for the existence of social systems in periods of crisis. Strengthening the social protection of citizens in democratic social systems is an important guarantee of counteracting the negative consequences of global turbulence.

Nowadays, the concept of the welfare state includes not only the obligations to introduce and effectively manage the social security system, but also to effectively redistribute public goods. The notion of social welfare, on which the principle of the welfare state is based, is to ensure that no one has to live in poverty and to avoid significant inequality in the distribution of public goods. Although the question of whether the principle of the welfare state establishes positive obligations to provide certain benefits to all its citizens or only gives the state such a right is not yet definitively determined. For instance, most representatives of the German constitutional doctrine believe that the state has a constitutional duty to guarantee a minimum standard of living for all its citizens. As the Federal Constitutional Court of Germany (Bundesverfassungsgericht) pointed out, "human dignity is at the top of the value order of the Basic Law"³⁸.

³⁷ S. Kosinov, *Democratic principles and values in the organization of public power*. Bulletin of the National Academy of Legal Sciences of Ukraine, 2013, 3 (74), p. 129-132.

³⁸ T.P. Popovych, *Legal model of a modern democratic state*. Comparative and analytical law, 2016, 1, p. 67.

It is quite obvious that the implementation of democratic values in social entities that strive for stable functioning should be complemented by an effective system of social protection of citizens.

As an interim conclusion, we emphasize that democracy in itself is an important value for the progressive development of humanity. Without idealizing democracy, but understanding its merits and demerits, we would agree with the opinion of A. Sen that democracy is a set of values, in particular, first, political freedom is an element of human freedom in general, the realization of civil and political rights as a crucial condition for the good life of individuals as social beings. Participation in social and political life has a self-sufficient value for human life and well-being. Secondly, democracy has an important ancillary value, increasing the chances of people to express and defend their claims to political attention (especially in terms of satisfying their economic needs). Thirdly, the practice of democracy gives citizens a chance to learn from each other, helps society form its values and priorities. Even the idea of "needs", namely the understanding of "economic needs", requires public discussion and exchange of information, views... In this meaning, democracy has a constructive value in addition to its self-sufficient value for the lives of citizens and its auxiliary value in making political decisions³⁹.

The strength of democracy, which should contribute to the strengthening of social stability in conditions of global turbulence, is the comprehensive implementation of human rights and freedoms. Accordingly, the social system that is capable of truly embodying the democratic rights and freedoms of citizens, making them effective participants in political-legal and socio-economic processes, becomes more competitive and safer in the world. Only an active, patriotic and free citizen can effectively and consciously oppose destabilizing factors of both internal and external nature. In this sense, T. Slinko and O. Uvarov emphasize that freedom of expression is one of the prerequisites for the formation and existence of a democratic society, it belongs to universal human values of primary importance, as it allows not only to freely express one's own views, but also to reveal the potential of the individual⁴⁰.

From V. Sokurenko's point of view, one of the properties of human rights is their ability to be considered a universal value. That is to say they are important for any civil society, regardless of the national and cultural context. The issue of the existing international documents on the

³⁹ A. Sen, *Democracy as a universal value* / Democracy: an anthology. Arrange O. Protsenko Kyiv: Smoloskip, 2005, p. 126.

⁴⁰ T. Slinko, & O. Uvarova, *Freedom of expression in ukraine: (non)sustainable constitutional tradition*. Baltic Journal of European Studies, 2019, 9(3), p. 26. doi:10.1515/bjes-2019-0020

formulation of the rights and freedoms of a person and a citizen is quite controversial, since in the case of the development of such generalizing legal provisions, questions inevitably arise as to which theory of rights to proceed from and which standards in this area to consider as a model. However, the complexities of the law-making process do not exclude the idea of possible use of human rights as a value common for the all world. First of all, their universality is manifested in the fact that it expresses interests that an individual cannot renounce - life, freedom, property, honor, etc. Moreover, the rights and freedoms of a person and a citizen are a means of protection against state intervention in certain spheres of social relations and, accordingly, a means of realizing the freedom of individuals. At the same time, they provide an opportunity for citizens to influence state management (for example, voting rights) and make political decisions (in civil society, its members and public institutions are involved in the process of discussing such decisions through appropriate mechanisms). It should also be added that human rights are the basis for mutual understanding and interaction between representatives of different cultures, and this also shows their universality. Since human rights involve treating everyone as a bearer of such rights, they ensure the perception of another subject of relations as equal. Therefore, they exclude the theory of "subhuman", treating other members of society only as a means of realizing one's own interests. That is to say, in civil society, a person's belonging to another social or ethnic group, professing other views and beliefs cannot be grounds for disrespecting him⁴¹.

The implementation of human rights and freedoms in the social space of modern democracies promotes self-organization and self-development of citizens, allows them to realize their involvement and responsibility in relation to national processes, in particular in the field of security. In the institutional dimension, in the context of our research, we have to talk about the human right to security, which involves both external and internal aspects.

From the point of view of V. Tykhyi, human security lies in the rule of human rights and freedoms. The following means are used to ensure it:

1) the state and society contribute to the creation of conditions necessary for the full and unhindered realization of human rights and freedoms;

2) human rights and freedoms are the limit of state intervention in human life;

⁴¹ V.V. Sokurenko, *Human rights as a fundamental value*. National and international mechanisms for the protection of human rights: theses add. All-Ukrainian round table (Kharkiv, April 20 2016) / Ministry of Internal Affairs of Ukraine, Kharkiv. national University of Internal Affairs Kharkiv: Kharkiv National University of Internal Affairs, 2016, p. 8-9.

3) measures for the protection of rights and freedoms, legal rules regarding human security are foreseen, in particular, natural human rights and their guarantees, prohibitions and limitations of groundless interference of the state and its organs in human life, means of self-defense of a person against encroachments on human rights and freedoms by both the state and private individuals, are enshrined in the Constitution and laws, other measures to prevent and exclude violations of human rights and freedoms;

4) in case of violation of human rights and freedoms, activities are carried out and measures are taken for the direct protection of human rights and freedoms - termination of violation (threat of violation) of human rights and freedoms, their restoration, elimination of the consequences of committed offenses, bringing the guilty to legal responsibility, compensation for material and moral damage caused by such violations, realization of legal responsibility⁴².

From our point of view, the influence of various values on the stability of the social order, on the one hand, has a complex nature, and on the other hand, in certain periods of society's existence, certain values become paramount (for example, the value of peace in ukrainian society nowadays).

Analyzing comprehensively the issue of the value basis of the safe existence of social systems in conditions of global turbulence, ukrainian scientists draw attention to the following generalizing points. Firstly, values as a social phenomenon constitute a spiritual and cultural basis for the safe functioning of social systems. Despite the importance of various values, the collective values that determine the social behavior of broad sections of the population acquire special importance for the stable existence of society. Secondly, for the vital activity of democratic social systems, the system-forming factor (value) is law (human rights), since this value constitutes the existence of other axiologemes for the safe development of society, such as freedom, responsibility, justice, solidarity. Thirdly, the security of the functioning of democratic social systems is determined both by the general development of the political and legal and civil culture of society, and by the rooting of civic values in the worldview of individual subjects of the social space, especially those endowed with power⁴³.

Conclusions

Summarizing the above, we note that the value guidelines for the safe existence of society in the conditions of intensification of global instability

⁴² V.P. Tikhyy, *Human security is the main object of Ukraine's national security. Spirituality of Person: methodology, theory and practice*, 2017, 4, p. 326.

⁴³ *National security: worldview and theoretical and methodological foundations: monograph* / by general ed. O. P. Dzoban. Kharkiv: Pravo, 2021, p. 347.

are a component of the national and international security system. Values are directly the core of spiritual and informational security of any social system. The transformation of global and regional security configurations requires adequate changes in the strategy and tactical steps of the institutional subjects of ensuring national security regarding the leveling of new risks and challenges to social stability. Today, experts use several methods to determine the stability of social systems, which are constantly being improved.

A system-forming component of the safe existence of social organisms is a complex of values and axiological priorities that correspond to the cultural, mental and spiritual background of a particular people. We do believe that solidarity at all levels of society is an important value imperative for a stable social existence. Social solidarity ensures both internal and external stability of society due to constantly reproduced social ties, actualization of various interests of the subjects of activity, strengthening of their worldview and spiritual unity, etc.

In order to strengthen the stability of society in the face of global challenges, the principles of justice of the democratic type must be reproduced in the social system and human rights and freedoms must be implemented in practice. To counteract external threats and internal factors of instability, democratic social systems must demonstrate flexibility in decision-making, ensure socio-economic growth of the population, take care of the balance of interests of social groups, promote the development of science and education, etc.

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THE AUTHORITY OF SERVICE AND THE SOLIDARITY OF SERVICE IN LUKE 22:24-27

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Abstract: *Jesus censures the twelve and demands that, ‘the one who leads should become like the one who serves’ (22:26). The text provides a lesson on the essence of apostolic authority in the Christian community. The aim of this work is to identify this essence of apostolic authority as service in Luke 22:24-27. The objective is to illustrate how the exercise of authority as service enhances participation and mission within the Christian community. The method employed is an exegetical/socio historical analysis of vv. 24-27 in the context of ‘the one who serves’. The conclusion is that ‘the one who serves’ ministers as servant to the community and its members. The leader who exercises authority as service is therefore the servant of the community. Such service places members at the position of masters in relation to their leader and accords them a sense of respect and importance. This awareness evokes a sense of responsibility among members, and readiness to offer their best in service to the community. This solidarity of service on the part of both the leader and the led enhances a realized Church as communion and synod in the furtherance of its mission of spreading the Kingdom of God.*

Keywords: *Apostolic Authority, Christian Community, Luke 22:24-27, Mission, Participation, Solidarity, Service, Synod, the One who serves.*

Introduction

The term authority of service¹ refers to an exercise of authority that is centred on the service those in authority render to their community; it refers to the power service has to enforce rules, convince and influence. The authority that is derived from the genuinely selfless service leaders render to their people. Such leaders are identified as servant-leaders; they are those who inspire and influence people by identifying and meeting the legitimate needs of those entrusted to their care.² Solidarity of service on the other hand is used to refer to the services members willingly offer in response to the inspiring leadership of an engaging servant-leader. It refers to the

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¹ Pope Francis, *Address of His Holiness at the Commemoration of the 50th Anniversary of the Institution of the Synod of Bishops* (Vatican: Editrice Vaticana, 2015), p. 4.

² J.C. Hunter, *The Servant* (New York, NY: Crown Business, 2012), pp. 21, 25-6.

interaction of the service of a servant-leader and the services of convinced and gratified members of the community. It denotes co-responsibility, communion, mutual submission and unity. In this interaction is derived the empowerment and authority of the Christian community in the realization of its mission.

The servant-leadership responsible for this realized communion is what the Lukan-Jesus demands of his apostles in Luke 22:24-27.³ In response to their quest for greatness Jesus exhorts that the one who is the greatest must be like the one who serves v. 26. The apposition is between the 'greatest', 'kings', 'those in authority', 'leader', and 'one at the table' on the one hand, and the 'youngest' and the 'one who serves' on the other hand.

This work sets out to examine the servant-leadership motif of the text for the purpose of highlighting the role of 'service' as the essence of authority in a Christian community. The study is undertaken in the context of the theme of synodality, which denotes a working together in solidarity and communion. This working together is implied in the service-oriented understanding of authority and greatness proposed by the Lukan-Jesus. When authority is exercised in humble and selfless service to the members of the community, it exudes esteem for the members on the part of the leaders and evokes and encourages trust and active participation from the members.

The text has enjoyed a wider research on some principal fronts especially covering vv. 24-30; some authors have explored it as Jesus' reinterpretation of the criteria for greatness and true benefaction.⁴ Other scholars have approached it as the Lukan-Jesus' criticism of the inequality and reciprocity of the Greco-Roman patron-client system⁵. This study assesses the text as the condition for the true exercise of authority in the Christian community for the promotion of communion, participation,

³ The synoptic parallels to this Lukan text are found in Mark 10:41-45; Matt 20:24-28. There are discussions as to whether this text is original to Luke or from the other synoptic sources or from Q. This study is concerned with a synchronic analysis and is therefore restricted to Luke.

⁴ P.K. Nelson, *Leadership and Discipleship: A Study of Luke 22:24-30* (Atlanta, GA: Scholars, 1994); S. P. Soo, *Luke's Jesus in the Roman Empire and the Emperor in the Gospel of Luke* (Eugene, OR: Pickwick, 2015); Y. Yan, 'Honour and Authority Redefined in Luke 22:24-30' in W. Loader, B. Repschinski, E. Wong (eds.), *Matthew, Paul, and Others: Asian Perspectives on New Testament Themes* (Innsbruck: Innsbruck University Press, 2019), pp. 231-46; J. Marshall, *Jesus, Patrons, and Benefactors* (Tübingen: Mohr Siebeck, 2019).

⁵ Y.S. Ahn, *The Reign of God and Rome in Luke's Passion Narrative: An East Asian Global Perspective* (Leiden: Brill, 2006); D. Thomas, 'Jesus' Cross-Cultural Model of 'Leader as Servant' in Luke 22:24-30', *Theology of Leadership Journal* vol. 1, no. 1, 2018, pp. 67-78.

solidarity and mission. It focuses on the Lukan-Jesus' approach to the leader as a servant.⁶

The first part of the work provides a textual interpretation of the passage. This is geared towards a comparative understanding of the gentile model of leadership, authority and greatness (vv. 24-25), and the paradigm of leadership, greatness and authority offered by Jesus in his teaching and deeds (vv. 26-27). Based on a socio-historical analysis the work undertakes along with the textual analysis, a brief study of the cultural context of the Greco-Roman patron-client system of benefaction. Socio-rhetorical analysis provides the background for understanding the cultural context of a text, and consequently enhances a deeper appreciation of the message contained in the text. The second and concluding section of the work discusses how authority exercised as service enhances synodality in terms of solidarity, participation and communion within the Christian community. The essence of an ecclesial community consists especially in this working-together; it is in this solidarity that its mission of preaching the Kingdom of God is achieved.

The Gentile Model of Authority as Lordship and Grandeur vv. 24-25

Luke's juxtaposition of the quest for superiority by the apostles in v. 24 with Jesus' reference to the gentile manner of exercising authority in v. 25 is note worthy. It implies that the apostles' desire for recognition and greatness is influenced by the gentile understanding and exercise of authority.

Dispute about Greatness v. 24

The apostles display their love of strife *philoneikia* over who should be the greatest. The term *philoneikia* is a combination of two terms, 'philos' love + 'neikos' strife or contention. The contention is about who 'seems to be the greatest'; the comparative 'meizōn' (literally 'greater') is used for the superlative as against the greater in v. 27; it denotes 'the most important'. The term *dokei* 'seem' denotes appearance; in terms of being considered publicly by others. The tussle is about being noticed and recognized. It is about the one among them who will be considered as the most important in the conventional understanding of greatness.

Ruler and Benefactor v. 25

The phrase, 'the kings of the nations or pagans' refer to the rulers of the gentiles. The verb *kyrieuousin* used with genitive as complement denotes pre-eminence or domination over. The complement, 'exercise dominance over them', implies the one on whom rule or control is exercised 'the 'gentiles'. It refers to the rule of kings over their people and in which case the use of their power is often self-centred.⁷ The gentile kings exercise power

⁶ D. Thomas, 'Jesus' Cross-Cultural Model of 'Leader as Servant' in Luke 22:24-30', p. 68.

⁷ H. Bietenhard, 'kyrios, katakyrieuō', in C. Brown (ed.). *The New International Dictionary of New Testament Theology* vol. 2 (Grand Rapids, MI: Zondervan, 1976), p. 519.

at the expense of those they rule, to lord, and dominate them. They define greatness in terms of their authority, lordship and dominance.

This sense is intensely expressed by the verb *katakryrieuein* used in the synoptic parallels Mark 10:42 and Matt 20:25. The meaning includes ‘to suppress or ‘to subdue’ (see ‘subdue the earth of Gen 1:28). Luke however, chooses *kyrieuō* ‘he will rule over you’ (Gen 3:16) to emphasize only the dominance without necessarily insisting on suppression.⁸ Luke denotes a rule or exercise of authority in which the ruler is the centre of attention and those ruled exists only at the periphery.

Luke uses the term *hoi exousiazontes* ‘those who exercise authority’ while the synoptic parallels use *hoi megaloi autōn katexousiazousin autōn* ‘their great ones exercise authority against...’ (Mark 10:42 and Matt 20:25). Luke’s choice steps down the component of highhandedness. His chosen term is found in Neh 5:15; 9:37; 1 Cor 6:12; 7:4. However, the choice of ‘those who exercise authority’, against the Markan ‘great ones’ is significant. While Mark and Matthew limit the exercise of authority to only the great ones, Luke expands it to all those who exercise authority at various levels, both the great and the not too great, especially in the civil sphere outside the political arena occupied by the kings. These people relish being given the title ‘benefactors’ *euergetai kalountai* (v. 25c). This is absent in Mark and Matthew (Mark 10:42c; cf. Matt 20:25).

The term *euergētēs* ‘bene-factor or well doer’ is used as an honorary title in the Hellenistic world for gods, princes, Caesars, and other distinguished persons who impressed the society or their clients with philanthropic gestures. The noun cognate of this term, *euergesia* denotes ‘doing of good’, or ‘that which is beneficial’, ‘the content of beneficial service’, ‘kindness’, or ‘benefaction’. The verb form *euergeteō* implies the rendering of exceptional service, especially, to a community, ‘be of benefit to’.⁹ In the Hellenistic period *euergētēs* became a technical term for the ‘benefactor protector of a city, of a people, and of the whole human race’, and in Egypt, Syria and Rome, the title *Theoi Euergētēs* was applied to kings.¹⁰

In an inscription from the Fayyum in Egypt, Nero is given the title *euergētēs* and *soter* of the oikoumenē.¹¹ The title is evocative of a patron or master/client relationship common in the symbolic world of the New Testament (Wisdom 3:5; 19:14; Esther 8:13). The one who carries out good

⁸ L.T. Johnson, *The Gospel of Luke* (Collegeville, MN: The Liturgical Press, 1991), p. 344.

⁹ W. Bauer, et. al., ‘euergētēs, euergeteō’, *A Greek English Lexicon of the New Testament and Early Christian Literature*, 3rd ed. (Chicago: University of Chicago Press, 2000), p. 405.

¹⁰ C. Spicq, ‘euergesia – euergētēs’, *Theological Lexicon of the New Testament* vol. 2 (Peabody, MA: Hendrickson, 1994), pp. 109, 110.

¹¹ O. Flender, ‘Oikoumenē’, in Colin Brown (ed.), *The New International Dictionary of New Testament Theology* Vol. 1 (Grand Rapids, MI: Zondervan, 1975), p. 519.

deeds is rewarded with the title and the glory that goes with it and addressed as the ‘benefactor-protector or saviour’ of a city.

The verb *kalountai* can be middle voice but is here treated as passive voice because all instances of the occurrence of *kaleō* as middle-passive in Luke-Acts in relation to a personal noun are passive (Luke 1:60; Acts 7:58).¹² As passive it therefore reflects, like *dokei*, the desire of the beneficent donors to be recognized by the recipients or the society in compensation for their benefaction.

The Greco-Roman Patron-Client System of Benefaction

The system of benefaction was a voluntary and reciprocal relationship that existed between people of unequal status within the patron-client social structure of the Greco-Roman world.¹³ The ‘patron-client social structure placed expectations on wealthy rulers to share favours with poor clients, and the clients in turn were to offer gratitude in the form of honour, loyalty, testimony and service to the patron’.¹⁴ It is associated with the civilized outlook of Hellenism; ‘gods and heroes, kings and statesmen, philosophers, inventors and physicians are hailed as benefactors because of their contributions to the development of the race’.¹⁵

In the Greco-Roman world of the time, the wealthy in the local community would offer to provide for the needs of the people in their communities, and rescue the city in times of food shortages. In return for this munificence they were rewarded with public offices or leadership positions, public conferment of honours and titles in the community; their names were incised on stones, they were awarded a gold crown, given a permanent seat of honour in the theatre,¹⁶ and generally addressed as benefactors and sustainers of their societies. The poor beneficiaries of their favours were in turn conditioned to perpetually owe them the debts of gratitude and unwavering loyalty. These mutual bonds of favour and indebtedness enhanced by the patronal system facilitated social cohesion in the society. Thus instead of paying regular taxes which attracted no reward, the rich would, alternatively prefer to use their wealth to randomly offer these supposedly generous services. These included building public temples, aqueducts, distributing bread or money and sponsoring spectacles.¹⁷

¹² M. Zerwick and M. Grosvenor, *A Grammatical Analysis of the Greek New Testament* (Roma: Pontificio Istituto Biblico, 1993), Luke 22:25, p. 271.

¹³ Y. Yan, ‘Honour and Authority Redefined in Luke 22:24-30’, p. 233.

¹⁴ D. Thomas, ‘Jesus’ Cross-Cultural Model of ‘Leader as Servant’ in Luke 22:24-30’, p. 72.

¹⁵ G. Bertram, ‘Ergon – Euergetēs’ in G. Kittel (ed.), *Theological Dictionary of the New Testament* vol. 2 (Grand Rapids, MI: Eerdmans 1964), p. 654.

¹⁶ Y. Yan, ‘Honour and Authority Redefined in Luke 22:24-30’, p. 234.

¹⁷ P. Garnsey and R. Saller, *The Roman Empire: Economy, Society and Culture* (Oakland, CA: University of California Press, 2015, 2nd ed.), p. 46.

These beneficences were generally motivated not by the care for the community but by the egotistic quest for honours and recognition. The wealthy were thus often delighted at the inability of the city councils to meet their financial needs. They saw these as opportunities to win more offices and titles. There was therefore no true sense of generosity motivated by the desire to alleviate the pains of others; it was rather benefaction for title and prestige. This implied that leadership offices were thus the prerogative of the wealthy.¹⁸ The system was thus that of competition for honours, office, prestige and greatness. Thus for the Lukan-Jesus the gentiles in authority arrived here not by the motivation to serve, but by their desire for the honour and grandeur of the title of benefactors. Their benefactions served as smoke screens for grabbing and exercising power.

This model of authority among the gentiles depicts greatness in terms of honour, the exercise of dominance over others, and overweening self-aggrandizement. It is a model of leadership that creates a very high power distance-culture based on a patron/client cultural construct that supports an unequal distribution of power among members of its society. Power distance implies the extent to which members of a group and society inspire and prize unequal distribution of power with greater power concentrated at the highest rungs.¹⁹

Jesus' Model of Authority as Servant-Leadership v. 26-27

The cryptic Greek phrase 'but you not thus' of v. 26a delivers Jesus' disapproval of attempts to adapt his apostolic community to the gentile model.²⁰ With the stronger adversative conjunction *alla* he proposes his own model of leadership for the apostles. He calls for an utter transformation of the gentile manner of ruling and benefaction among his apostles.

The Youngest for the Greatest

The superlative 'greatest' *ho meizōn* implies 'the most important, a specific person who is at the head of all, as it is with the king, it could also mean 'eldest'.²¹ It reflects the grandstanding of those also referred to in the text as 'kings', 'those in authority', 'leader' and 'one at the table'. These are used in apposition with 'the youngest' and 'the one who serves'. While the greatest supposes the kings (v. 25v) in their political power and their attitude of lordship, the youngest is used, in contrast with the greatest, as

¹⁸ J.B. Green, *The Gospel of Luke* (Grand Rapids, MI: William B. Eerdmans, 1997), p. 768.

¹⁹ D. Thomas, 'Jesus' Cross-Cultural Model of 'Leader as Servant' in Luke 22:24-30', pp. 68, 69.

²⁰ F. Blass and A. Debrunner, *A Greek Grammar of the New Testament and Other Early Christian Literature* (Chicago, IL: University of Chicago, 1961), §480.5, p. 254.

²¹ I. H. Marshall, *The Gospel of Luke* (Grand Rapids, MI: Paternoster Press, 1978), p. 813.

the metaphor for the attitude of lowliness that should replace the lordship of the kings.

One would ordinarily expect the second member of the apposition to be the 'lesser' but Luke prefers *neōteros*, 'youngest' (literally 'newer, younger', see Gen 42:20), the comparative of *neos* 'young' for the superlative 'youngest'. The youngest generally perform the lowliest services as seen in Acts 5:6; 1 Pet 5:5; this is the case too in the ancient world. The use of the word *neōteroi* especially in Acts 5:6; 1 Tim 5:1; Tit 2:6; 1 Pet 5:5 tends to refer to a designated group of persons with recognized roles in the primitive Christian community.²² This does not however apply to the Lukan text. Youngsters generally do not have status that may require specific recognition; they are of least status and service, and away from authority. Therefore, 'to become like the youngest' includes forgetting status demands characteristic of the gentiles.²³ The preference for the position of the youngest also rekindles the biblical theme of the favoured younger one (Gen 27:15; 42:13; 1 Sam 17:14; Luke 15:11-32). The invitation to become like the youngest implies that the one at the head of all should in the exercise of his office 'respect and serve others as if they are his seniors'.²⁴ He must act as the last one to be admitted into their structured community, the youngest and the least significant in the apostolic college.²⁵ He must behave as though he were appointed to menial service.

The verb 'to become' indicates an experience of a change in nature and in the end an entry into a new condition, to become like the youngest in conducts and way of living. So the greatest among them are invited to experience a change from their former nature of considering themselves the most important, and embrace the condition of the youngest. Making a fundamental change to embrace the state of lowliness in service. It implies a reformation, they are to make a full circle turn from the gentile conception of greatness and embrace the humility, submissiveness and lowliness of the youngest. But the comparative particle *hōs*, which marks the manner in which a thing proceeds denotes 'like', and in this text calls for the confusion of appearances; though being the first and the leader, one must appear to be the servant.

Jesus calls the great to humble and selfless services for the community; the great among the disciples should give themselves up to the roles of servants, relish a humiliating posture as a much less exulted figure and not

²² J. Fitzmyer, *The Gospel According to Luke X-XXIV* (Garden City, NY: Doubleday, 1985), 1417; I.H. Marshall, *The Gospel of Luke*, p. 813.

²³ J. Nolland, *Luke 18:35-24:53* (Dallas, TX: Word Books, 1993), p. 1065.

²⁴ M. Zerwick and M. Grosvenor, *A Grammatical Analysis of the Greek New Testament*, Luke 22:26. p. 271.

²⁵ J. Fitzmyer, *The Gospel According to Luke X-XXIV*, p. 1415; cf. p. 1417.

press their authority upon those they lead. The invitation is about the interpersonal relationship that must exist among the apostles in their lives together as Christ followers, this reversal of roles is in turn to form the exemplar for the founding and functioning of the primitive Christian community.

The One who Serves v. 26

‘The one who leads’ *ho ēgoumenos*, is from *ēgeomai* ‘to lead, guide’, ‘to think, consider’, it is used in the participle in the NT to express the sense of leadership (Matt 2:6; Acts 7:10) and is applied to Church leaders (Heb 13:7, 17, 24; see Acts 15:22). This implies that an average Christian community is constituted by those who lead and those who are led, and ‘reverent subjection to human officers with divinely given pastoral authority is now integral to Christian piety’.²⁶ This sense is implied here too, and Jesus is therefore demanding that the leaders narrow the power distance between them and those they lead. Church leaders must become like servants *diakonoi*; a servant is inferior in rank and of low esteem. This pairing of *ho ēgoumenos/ho diakonōn* in the context of Church leadership underscores a more primitive form of the contrast between *episkopos and diakonos* and suggests that ‘all Church leaders must show the characteristics of those who were especially entitled ‘deacons’.²⁷ *Diakonos* implies serving or ministering, and ‘the one who is to serve’ *ho diakonōn* continues the submissive tone, and lowliness of leadership as ‘becoming like the youngest’ (26b).

The phrase, ‘the one who leads’ is all embracing and addresses anyone who is in the position of leading; ‘he who is in authority’, ‘the chief’, everyone is placed in a position of leadership by virtue of roles played in the society. These persons are invited to be ‘servants’ and give themselves up to the life of service, and the consequent submissiveness and lowliness it entails. The service of the ‘one who serves’ is to be defined within the context of service at table in v. 27. This ‘waiting on table’ with its down-to-earth motif is predominantly at the heart of *diakoneō* in Luke-Acts (4:39; 8:3; 10:40; 12:37; Acts 6:1, 2; 20:24; 21:19). Servants at table are on their toes, politely and reverently ministering to those at table, watching over them to make sure no one lacks anything. They desire at all times to please, would not rest until they are done with their service, would not expect to be rewarded and would be content with acknowledging that they are but mere servants who have only done their duty (Luke 17:7-10).

‘The one who serves’ is a symbolism for altruism, generosity, humility, and lowliness. It is a service-oriented approach to leadership that translates

²⁶ F. Büchsel, ‘ēgeomai – diēgēsis’, in G. Kittel (ed.), *Theological Dictionary of the New Testament* vol. 2 (Grand Rapids, MI: Eerdmans, 1965), p. 907.

²⁷ I.H. Marshall, *The Gospel of Luke*, p. 813.

into meaningful beneficence as against the masqueraded munificence of the gentile leaders. Service is about benefiting others; and those who use their position and power to genuinely benefit and serve others are those who rightfully qualify as ‘the greatest’.²⁸ The phrase ‘the one who leads’ supposes ‘those in authority’ of v. 25c within the civil society and their soft or implicit power compared to the explicit power of governance. This power arises from their acquisition of honours ‘benefactors’. The expression ‘the one who serves’ is used in contrast with ‘the one who leads, as the metaphor for the humble attitude of generosity and selflessness that should replace the selfish quest for public recognition and grandeur by the gentiles in authority. It denotes the humility that allows one to see others as more important than the self, and give priority to the common good. While those in authority rely on their power and wealth for the attainment of greatness, the powerless ‘one who serves’ attracts greatness by selfless and humble servant service. True greatness is not with the one with honour and authority but with the one who ministers as the servant of the people.

The thrust of the exhortation is directed primarily at leaders of the Christian community of Luke’s time. Commemorating the Lord’s Supper for Luke is about serving the Christian community rather than serving personal interest and lording it over the ecclesial community. Being a Church is about serving the Christian community and offering social *diakonia* also in the locality within which the Church exists and functions. The form of leadership demanded by Jesus of his community is one that is ‘unconcerned with the accrual of status honour but itself reflects the humility of table servants and of those who occupy the bottom rung of social power and privilege, the young’.²⁹ They must cherish and emulate the lowly position of the house servant because ‘no matter what rank the disciples or apostles may achieve in human eyes and by human estimate, their role as Christians is to serve in a lowly, humble way’.³⁰

Jesus the Model of One who serves v. 27

The question of Jesus ‘who is the greater’ recalls and caps the pericope with the same query that necessitated the contention among the disciples in v. 24. However, while in v. 24 the apostles seek to know who ‘seems’ the greatest, Jesus asks for who is ‘really’ the greater: reality versus appearance. So by appearance he makes known that the gentile kings are the greater, but in reality, the servant king is the greater. *Ho anakeimenos* is contrasted with *ho diakonōn* in the continuation of the tension between ‘the greatest and the youngest’. In this context *meizōn* is not used superlatively. *Anakeimai*

²⁸ D.J. Lull, ‘A Servant-Benefactor as the Model of Greatness (Luke 22:24-30)’, *Novum Testamentum* vol. 28, 1986, p. 297.

²⁹ J.B. Green, *The Gospel of Luke*, p. 769.

³⁰ J. Fitzmyer, *The Gospel According to Luke X-XXIV*, p. 1418.

means ‘to lie, recline’, it is used here of guests at a meal, ‘to dine’ (Luke 7: 37; Mark 6:26; 14:18).³¹ It denotes the context of a formal banquet of significance in the Greco-Roman world.

A banquet as distinct from a dinner is a ready occasion to convey one’s status and position in the hierarchy of the Roman society. In the later half of the fourth century the Hellenist monarchs and the wealthy relished displaying their royal status and generosity by organizing luxurious banquets (Athenaeus, *Sophists at Dinner* 7.321c-d).³² A Banquet is equally a milieu for an experiment on the interaction between the rich, the master, and his slaves. Here the total authority of the master over his slaves is in display as the latter remain on their feet, running around serving the master and his guests as they recline.³³ The body that is static is of the superior while the body that moves or takes action is of the inferior, the reclining posture was originally symbolic of a superior status; it is the sign of power, prestige and privilege.³⁴ Invariably, the one reclining at table is greater than the one who serves.

Jesus’ words ‘I am among you as the one who serves’ may be referring to his actually serving the Passover meal;³⁵ by giving the bread and wine (22:19-10), he is actually doing the serving.³⁶ While Mark 10:45 and Matt 20:28 make this the ‘Son of man’ saying, Luke prefers to simplify it with an ‘I’ saying and make it more directly a model for leaders. The *en mesō humōn eimi* ‘I am in the midst of you’ focuses attention on the comportment of Jesus in relation to his apostles. While in the real sense he is the *ho meizōn* who should be reclining at table, he prefers rather to act as *ho diakonōn* serving at table. Thus Jesus’ life and ministry are to be understood as service and should become the norm for apostolic ministry.

Jesus’ Semitic double question is rhetorical and parabolic; through it, he creates a metaphor for servant-leadership using the contrast of his own life. In other words, the answer to the question as to who is the greater between the one who reclines at table and the one who serves is

³¹ W. Bauer, *et. al.*, ‘anakeimai’, *A Greek English Lexicon of the New Testament and Early Christian Literature*, p. 65.

³² J.F. Donahue, *The Roman Community at Table during the Principate* (Ann Arbor, MI: University of Michigan, 2004), pp. 93, 116.

³³ C. Daniel-Hughes, ‘Bodies in Motion, Bodies at Rest: Status, Corporeality, and the Negotiation of Power at Ancient Meals’, in D.E. Smith and H.E. Taussig (eds.), *Meals in the Early Christian World: Social Formation, Experimentation, and Conflict at the Table* (New York, NY: Palgrave, 2012), p. 216.

³⁴ J.S. Kloppenborg, ‘Precedence at the Communal Meal in Corinth’, *Novum Testamentum* vol. 58, no. 2, 2016, p. 175; M. Klinghardt, ‘A Typology of the Communal Meal’, in D.E. Smith and H.E. Taussig (eds.), *Meals in the Early Christian World: Social Formation, Experimentation, and Conflict at the Table* (New York, NY: Palgrave, 2012), p. 9.

³⁵ J. Fitzmyer, *The Gospel According to Luke X-XXIV*, pp. 1418.

³⁶ L.T. Johnson, *The Gospel of Luke*, pp. 345.

incontestable by secular standard (see 17:7-10). It is rhetorically answered by the second question; based on secular reasoning and protocol the one who reclines at table is greater than and is served by the one who serves at table. Jesus brings in a contrast to accentuate his message of a reversal. And if the one who reclines at table is the greater, Jesus who is evidently known as the host, and presides as the head at the Last Supper (22:14-23) and leader of his community of apostles is in their midst doing the opposite; serving at table and playing the role of a table servant. The intent here is presupposed by the foot washing in John 13:4-5, 12-17; it follows that Jesus exercises leadership and achieves greatness by doing the menial service of the servant. Therefore, the greater is the one who serves rather than the one served (Mark 10:45a) and from the example of Jesus, serving is therefore of a higher estimation and becomes obligatory as the new manifestation of relations between persons.³⁷

At the Last Supper, Jesus does the servant's job of distributing the wine in the cup (22:14, 17) and the bread to the apostles (22:19a). The bread and wine symbolize Jesus' own life generously given on the apostles' behalf (vv.19b, 20b). This implies that the Last Supper depicts Jesus at his best as the benevolent self-sacrificing servant, and a benefactor par excellence who is beneficent in giving his own life for others.³⁸ Though the leader or the greater, among them he is the servant, his greatness and leadership consist in doing the work of the servant in their midst, it is in serving that his greatness is felt. In serving, a servant engages those served against the ruler who superintends or looks over without engaging the people. It is a bottom to top model of leadership. Jesus presents himself as the model of greatness; he substitutes humble and lowly appearance for the conventional notion of greatness and grandeur.

Though portrayed as lord and king in Luke, Jesus insists rather that, his status is articulated in the form of his service, which is so integral to his character that it will determine his disposition towards his faithful ones even at the eschaton (12:35-38).³⁹ This must equally be the defining disposition for the apostles; they must reverse their obsession with status, honour and the self and be committed to incomparably spending their energy on serving the needs of others. Jesus teaches that greatness is not to be understood in terms of superior status and the dictatorial exercise of authority, but in terms of the lowliness of selfless service that is genuinely benefitting to others.

³⁷ C. Colpe, 'ho huios tou anthrōpou', in G. Kittel (ed.), *Theological Dictionary of the New Testament* vol. 8 (Grand Rapids, MI: Eerdmans 1972), p. 448.

³⁸ D.J. Lull, 'A Servant-Benefactor as the Model of Greatness (Luke 22:24-30)', p. 299.

³⁹ J.B. Green, *The Gospel of Luke*, p. 769.

Leadership (as) Service, Participation, Solidarity and Mission

Leadership is about facilitating and enhancing the effective management of persons for the realization of set goals and objectives within the framework of agreed policies. This takes into consideration the authority of the leader - which permits him to influence peoples' behaviour, the integrity and dignity of the human persons and the environment. This destination of leadership can be achieved through different theoretical models evidently proposed by many authors. The Lukan-Jesus of 22:24-30 studied above recommends a servant-leadership style for his would-be Christian community. It is a leadership that is based on the fundamental desire to serve and ensure that 'other people's highest priority needs are being served', and those being served are inspired to grow as persons, 'become healthier, wiser, freer, more autonomous, more likely themselves to become servants?'⁴⁰ It is a leadership whose desire to serve is founded on ethics, virtues and morality over and against the desire to wield power over subordinates. The model of this leadership style 'revolves around the creation of a whole through the integration of opposites'.⁴¹ The characteristics of such leadership are 'egalitarianism, moral integrity, empowerment, empathy, service in humility, and vision'.⁴²

The Lukan text defines greatness as deriving from service; only in serving as the servant of the community does one become great. Jesus redefines the hierarchy of leadership by teaching that in his community, as in an inverted pyramid, the top must be located beneath the base.⁴³ The one in authority is expected to function as the servant, embracing the menial services of a house servant serving at table; serving others first before attending to his own needs; taking up the position and status of the youngest in the family, or the newest arrival in an organization, serving the last rung of the ladder or hierarchy. It is a leadership style that creates a familial atmosphere and attracts the confidence of the followers.

This notion of leadership reverses the table of hierarchy, the leader perceives the 'subordinates' as the superior, the mind-set of boss and bossing is eliminated, the subordinates feel loved, and the structure of trust is built. When members feel themselves so appreciated and elevated, they in turn appreciate and trust their leader, feel his moral authority and are disposed to follow his lead. They feel encouraged to contribute their services

⁴⁰ R.K. Greenleaf, *The Power of Servant-Leadership*, L.C. Spears (ed.) (San Francisco, CA: Berrett-Koehler, 1998), iBooks, p. 294.

⁴¹ F. Trompenaars and Ed Voerman, *Servant-Leadership Across Cultures* (New York, NY: McGraw Hill, 2010), p. xi.

⁴² D. Thomas, 'Jesus' Cross-Cultural Model of 'Leader as Servant' in Luke 22:24-30', pp. 68, 69.

⁴³ Pope Francis, *Commemoration of the 50th Anniversary of the Institution of the Synod of Bishops*, p. 4.

in solidarity with the leadership, and the true greatness so desired is achieved. They feel empowered by their servant-leader's humility, service, and vision to become servants themselves to their shared cause. It becomes an inclusive leadership or co-responsibility; the Christian community becomes, truly and true to its essence, the responsibility of all. Each member's opinion counts and each feels consulted because there is collaboration, there is an air of communion, family, and self-worth. Thus, the walking together of synodality, which is truly the quintessence of the Church wherein 'everyone is a subject and all, companions on the journey', becomes a reality.⁴⁴

This participation 'is based on the fact that all the faithful are qualified and called to serve each other through the gifts they have all received from the Holy Spirit'.⁴⁵ It characterizes true discipleship as a community of persons who both lead and are led.⁴⁶ Within this circle, each member by anointing is in consequence, an agent rather than a passive recipient of evangelization.⁴⁷ There is room for participation, authenticity, listening, transparency and a community. A mutual listening in which everyone has something new and precious to contribute, and to learn, there is a synodality; walking together on the same path towards the same destination. There is opportunity for new discoveries drawn from the uniqueness of the serving members in the participatory atmosphere.

If both the leader and the ones led are service renderers to each other, then no position will be more important than the other, and no one will be greater than the other, and what will ensue will not be love of strife over who is the greatest, rather love of service, on which greatness lies. The atmosphere will be of love, respect, trust, prudence, and dialogue since the latter 'thrives on friendship, and most especially on service'.⁴⁸ If there is love of service among the members, there will be services in solidarity with the leader and with the Church, and consequently even more than expected will be achieved for the Christian community. Service therefore becomes the responsibility of all members of the Christian community.

⁴⁴ International Theological Commission, *Synodality in the Life and Mission of the Church* (March 2, 2018), no. 55, https://www.vatican.va/rc_cti_20180302_sinodalita_en accessed 08/12/22.

⁴⁵ International Theological Commission, *Synodality in the Life and Mission of the Church*, no. 67.

⁴⁶ J.T. Squires, 'Leadership and Discipleship: A Study of Luke 22:24-30'. By P.K. Nelson. Review, *Hebrew Studies* vol. 37, 1996, p. 201.

⁴⁷ Pope Francis, *Apostolic Exhortation Evangelii Gaudium* (24 November 2013), nn.119, 120.

https://www.vatican.va/apost_exhortations/documents, accessed 09/12/22.

⁴⁸ Pope Paul VI, Encyclical Letter *Ecclesiam Suam* (August 6, 1964), no. 87, *AAS* 56 (1964), p. 644.

https://www.vatican.va/encyclicals/documents/hf_... accessed 08/12/22.

If the Lukan Jesus presents service as the essence of leadership in the Christian community, it follows then that every member of the Christian community is a leader because each provides service. It implies avoiding excessive clericalism but without the confusion of roles; clericalising the lay people or turning the clergy into lay people.⁴⁹ It is a collaboration based on the uniqueness of the state and role of each member of the people of God in the reciprocity of communion; it is a partnership in which the inviolable dignity of the people is rediscovered, and the authority of the pastor is acknowledged as the 'specific gift of the Spirit of Christ the Head for the up building of the entire Body, not a delegated and representative function of the people'.⁵⁰ And with this spirit of shared responsibility, respect for roles, and commitment, the moral authority of the Christian community is enforced; its mission of preaching Christ, and becoming the leaven in the society is actively propagated and achieved. And the true greatness of leadership is achieved in the making of God in Christ to become all in all for all (cf. 1 Cor 15:28). Greatness consists therefore, in the community, the promotion of the community by the communal services of all. The Church thus becomes a model of leadership and greatness, and community needed more than ever in the society today.

Jesus is not objecting to the attainment of official status and the exercise of power, rather he subordinates them to the notion of service or servanthood expressed in the terms *ho neōteros* and *ho diakonōn*. He is not calling for the elimination of ranks and distinction in the Christian life or community, rather he invites the greatest among them to become like the youngest: to respect, serve and act in relation to others as though they were his superiors. He is insisting on the service greatness owes to lowliness.⁵¹ Leadership flows from true servanthood, it is something earned, given and can be withdrawn.⁵²

Conclusion

The Lukan concept of the 'One who serves' is underscored in the context of the apostles' quest for superiority in the manner of the gentile model of authority in vv. 24-25. While the disputes within the apostolic community is driven by the gentile representation of leadership as lordship and benefaction, the model of leadership insisted upon by Jesus is that of authority as service or

⁴⁹ International Theological Commission, *Synodality in the Life and Mission of the Church*, no. 104.

⁵⁰ International Theological Commission, *Synodality in the Life and Mission of the Church*, no. 67.

⁵¹ D.J. Lull, 'A Servant-Benefactor as the Model of Greatness (Luke 22:24-30)', p. 297; Joseph Fitzmyer, *The Gospel According to Luke X-XXIV*, p. 1417.

⁵² L.C. Spears (ed.), *Reflections on Leadership* (New York: John Wiley & Sons, Inc., 1995), p. 25.

servant-leadership. Leadership entails the ability to inspire and influence people; it is about the person one is, and the influence and impact one has on those encountered. Being a servant denotes the ability to identify and meet the legitimate needs of those under your care. A servant-leader is therefore one who influences others by working to identify and provide for their needs. One who matches the desire and ability to lead with the readiness to serve. It is a leadership that is based on a low power distance, and a higher humane orientation, value and respect for all. Humane orientation involves the disposition to reward hard work and good behaviours and encourage growth.⁵³ The model generates an enthusiastic commitment from members as against the passive compliance, and even stubborn resistance that the high power distance model would sometimes evoke⁵⁴.

The study of Luke 22:24-27 has revealed that the Lukan Jesus exhorts his apostles to adopt a servant-leadership style in their relationship as a Christian community. Greatness understood and struggled for by the apostles is likened to the gentile model of lording over others and exercising authority for the purpose of being acknowledged and revered as the provider. But Jesus interprets and proposes greatness and authority in terms of service. While the apostles' worry is about who will appear to be the greatest, Jesus' response is about how the greatest ought to behave, the criteria for being great in Jesus' community.

The apparent discrepancy between Jesus' reply and the apostles' contention is pedantic: Jesus' answer to the question is in effect an invitation to desist from struggling to be great, because those who are content to serve will be truly great.⁵⁵ True greatness consists in service and since every member of the Christian community is called to serve, greatness is the community prerogative and is the destiny of all. Since greatness is of the community, and is predicated on the services of members of the community, then there is equality in the assumption of greatness.

Authority exercised as service in the reversed pyramid creates an atmosphere for the voluntary and willing services in the community by all. It encourages and generates generous services/cooperation on the part of those over whom such authority is exercised. Such solidarity of service in turn propagates and renders authority effective within the community and consequently enhances the mission of the Church. This enhancement of the authority of the Church spreads the reign of God on earth and makes God's presence felt.

⁵³ R.J., House, *Culture, Leadership, and Organizations: The GLOBE Study of 62 Societies* (London: SAGE Publications, 2004), p. 569.

⁵⁴ M. Sirazetdinova, A. Stoletov, and R. Lukmanova, 'Manipulation, Individuation, and the Self', *Cogito Multidisciplinary Research Journal* vol. 13, no. 2, 2021, p. 120.

⁵⁵ I.H., Marshall, *The Gospel of Luke*, p. 812.

Leadership should therefore be embraced as an opportunity for service rather than as an occasion for the attainment of greatness. True greatness consists in the Church's realization of its Christ-commissioned mission, and this is achieved when its members are committed to serving. When every member in solidarity offers dedicated and selfless service for the progress of the community the mission of the Christian community which consists in making Christ felt and known is achieved, God's kingdom is propagated within the locality as all-encompassing and desirable, and the Christian community is acknowledged and appreciated as great. Thus greatness that is Christocentric may be understood as the possession and humble self-sacrificing exercise of authority and power in utmost respect for the dignity and integrity of the human person and the environment and for the benefit of the community and its members. Such greatness is achieved through servant-leadership and belongs to the community rather than to individual member or leader.

Synodality is the context in which this Lukan text is evaluated. It consists especially in the working together in solidarity and communion within the Christian community's framework of participatory leadership. It is the specific *modus vivendi et operandi* of the Church as the people of God, from it is derived the essence of the Church as communion when members journeying together, congregate in an assembly and actively participate in her evangelising mission.⁵⁶ Leading as a servant means assuming moral responsibility and political leadership by enhancing solidarity, fraternity, and humanity within the Christian community. It means reducing the distance of power in a high power distance culture, rediscovering the unfringeable dignity of the people, restoring the confidence of members in their leadership, and enhancing their commitment to the cause of the community. It implies constituting a model of leadership that inspires the civil society to reform itself in justice and fraternity.

The quest for distinction and differentiation will always generate strife, and class struggle. This is common in the civil society with its class distinction and its understanding and exercise of authority. It conceives the success of authority and leadership in terms of lordship. On the contrary, the Christian community is to seek successful leadership and exercise of authority in service, humility and lowliness. Because when all are seeking relevance in serving, then the love of service will replace the struggle for position and the consequent love of strife it generates. While the world emphasizes, titles, greatness and authority the Christian community must emphasize service and being a servant. Jesus is inviting the disciples to forego the cultural norms that define leadership in terms of the high index

⁵⁶ International Theological Commission, *Synodality in the Life and Mission of the Church*, no. 70a.

of power distance and in terms of the servitude of the patronal social structure. They are to embrace the lowliness and meekness of servant-leadership in a faith community. He challenges the structure of leadership in the Church and her missionary methods, the ways relationship and interactions are enhanced daily in the Church, and sounds a caveat that the structure of leadership in the Church cannot sufficiently be based on existing cultural construct of greatness and benefaction, he proposes instead a counter cultural model of humility and service that is theological. When leaders motivate their subordinates by their servant-leadership, the latter will bring commitment to the table and effective leadership will be achieved in the community.

Being a benefactor by doing good is not in itself depraved; rather the Lukan Jesus underlines the selfish and distorted use of the system by egotists in authority.⁵⁷ They are semi tyrants who mask the reality of their conducts with the title 'benefactors' in a flourish of public works.⁵⁸ They are therefore renounced by Jesus as the social model of the greatest in the Roman society because of their pursuit of honour and because of their exercise of authority.⁵⁹ The Christian God alone is the true benefactor, from whom every good thing, and blessings come (Acts 4:9) and who gives without expecting any reward (Luke 6:35-36). He is the Creator and Sustainer of the world in general (Wisdom 7:26). Lukan Christians must therefore reject, in the sense of Matt 23:7ff, the misguided pursuit and use of this title by the gentiles because only Christ can lay claims to it and really be called *euergetēs* (Acts 10:38). Every human benefit is traced back to Christ or to God. The recommended position for human beings in the mediation of divine benefits is that of servants (Luke 22:26; cf. Matt 23:11).⁶⁰

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⁵⁷ F.W. Danker, 'Benefactor', in David Noel Freedman (ed.), *The Anchor Bible Dictionary* vol. 1 (New York, N.Y: Doubleday, 1992), p. 670.

⁵⁸ D.J. Lull, 'A Servant-Benefactor as the Model of Greatness (Luke 22:24-30)', p. 290.

⁵⁹ Y. Yan, 'Honour and Authority Redefined in Luke 22:24-30', p. 232.

⁶⁰ Georg Bertram, 'Ergon – Euergetēs' in *Theological Dictionary of the New Testament* Vol. 2, p. 655.

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NICOLAE STEINHARDT AND LEON DUGUIT FACE TO FACE AFTER (ALMOST) A CENTURY

(reading Nicolae Steinhardt `Principiile clasice și noile tendințe ale dreptului constituțional. Critica operei lui Leon Duguit` [Classical principles and new trends of constitutional law. Criticism of Leon Duguit's work], Iași: Polirom Publishing House, 2008)

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Abstract: *This alignment of two names might seem at least strange or exaggerated: Leon Duguit and Nicolae Steinhardt. At the time of defending the thesis in 1936 by Nicolae Steinhardt, a young man of 24, Leon Duguit was no longer alive, but he had left an impressive scientific work. That is, it would be said that there is no place for comparison, the equality of arms being utopian. And yet the comparison is opportune, because it is about ideas to which history may or may not have given its answer.*

The article is developed within the Project "Modernization of governing mechanisms focused on the protection of human rights", cipher 20.80009.1606.15, in the Scientific Research Laboratory "Compared Public Law and e-Government", Law Faculty, Moldova State University.

Keywords: *positivism; metaphysical concept; fundamental notions; legal constructions; finding the facts; critical spirit*

In his doctoral thesis defended in 1936 in front of a commission composed of professors Mircea Djuvara (president), Paul Negulescu, Anibal Teodorescu, George Plastara and Aristide Basilescu (members)¹, Nicolae

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¹ F. Roatiș, edition note. *N. Steinhardt. Principiile clasice și noile tendințe ale dreptului constituțional. Critica operei lui Leon Duguit* [Classical principles and new trends of constitutional law. Criticism of Leon Duguit's work], Ronia Monastery, Polirom Publishing House, 2008, p.5.

Steinhardt analyzed several topics in the thesis, criticizing the work of Leon Duguit which was based on positivist postulates, such as the exaggeration of the exclusivist value of the fact, the ignorance and even contempt for abstractions and speculations, i.e. for concepts of metaphysics, persisting on the idea that observation and reasoning on the observed data are the only tools of investigation that man possesses in order to discover a small part of the truth that he is allowed to know².

Steinhardt believed that legal scholars must oppose positivism, for the reason that positivists require them, in Steinhardt's view, to abandon the basic ideas of reason and civilization, in order to start the whole discussion from scratch on every occasion. But, Steinhardt argued, a scientific discipline would not be possible if all the lines of thought that led to the formulation of its notions had to be recreated at every moment.

Steinhardt's credo was just the opposite, showing that the scientist must not abandon the basic ideas of civilization and reason, but impose the recognition of the necessity of the judgments that underlie the science of law, including the rational inductive method. In the work *Novum Organum* Fr. Bacon considered analysis, comparison, observation and experiment as the basis of the inductive method, and Steinhardt drew attention to the fact that Bacon urged us to give up preconceptions, not notions, thus appealing to the authority of the English author³, who did not serve the positivists, but precisely their opponents.

Expressing this conservative attitude, Nicolae Steinhardt referred to the famous dean of Nancy, Francois Geny, whom he called a modern jurist, who is on the side of tradition and does not admit that everything that was done in the past is radically false and that the whole old edifice must be destroyed⁴. Although Steinhardt often quoted Francois Geny, he did not entirely agree with the position of the dean of Nancy. He criticized the pragmatism of Geny who, in order to defend himself from Duguit, considered the fundamental notions of civil law to be procedures of legal art, symbolic constructions, technical instruments. Steinhardt sarcastically

² L. Duguit, *Traité de droit constitutionnel [Treaty of Constitutional Law]*, 3-ième ed., 1927, pp.107. Apud: Ș. Georgescu, *Filosofia dreptului. O istorie a ideilor din ultimii 2.500 de ani [Philosophy of law. A history of ideas from the last 2,500 years]*, Bucharest: BECK Publishing House, 2001, p. 151.

³ N. Steinhardt, *Principiile clasice și noile tendințe ale dreptului constituțional. Critica operei lui Leon Duguit, [Classical principles and new trends of constitutional law. Criticism of Leon Duguit's work]*, Ronia Monastery, Polirom Publishing House, 2008, pp. 208-209.

⁴ N. Steinhardt, *Principiile clasice și noile tendințe ale dreptului constituțional. Critica operei lui Leon Duguit, [Classical principles and new trends of constitutional law. Criticism of Leon Duguit's work]*, Ronia Monastery, Polirom Publishing House, 2008, p. 178.

mentioned that Geny defends himself with wooden weapons in which he transformed steel weapons (fundamentals), thus considering them more important than simple technical tools⁵.

Attributing a dubious and debatable character to fundamental legal notions, Steinhardt believed, is only an effect of the entire revision of ideas initiated by the social science of the 20th century - sociology. Law was considered by Duguit to be a phenomenon arising from social relations and, as an objectivist sociologist, he called for distancing from metaphysics.

Duguit campaigned for the exclusion from the field of legal research of individualistic legal constructions, entered into law by the French revolution, inheritor of the Roman tradition, adding that their time has passed, that it is impossible to fold the complex and varied relationships that were born at the beginning of the 20th century on the old frameworks between individuals and collectivity. In their place, Duguit put the ascertainment of facts, affirming as true only what can be ascertained through direct observation, wanting to cleanse legal science of metaphysical concepts⁶.

The theory of the sources of law had a distinct character at Duguit. We currently recognize that the material sources of law are represented by social facts that fix the idea of general norms in the social consciousness, which are then transformed into generally binding norms of law. The formal sources of law are the legal acts that establish a norm crystallized through a material source as effective positive law.

Duguit considered that the thesis about the abrogation by a custom of the norm in a law is incorrectly stated, because they are not legal norms and cannot abrogate one another. When it is certain that the custom has given rise to a legal norm, and the rule of the text of the law is in contradiction with it, then the one who applies the law must apply the customary norm.

Regarding the legal norm, Duguit, based on his idea of the need to limit the state, promoted the opinion that it should not be seen as the result of the activity of the state, but as a rule that is formed in the mass of individual consciences and the determination of the moment when in the mass of individual consciences the conviction arises that the respect of that rule is so essential to the maintenance of social solidarity that it calls for an organized sanction, that is when the rule of law appears. Duguit wrote that

⁵ N. Steinhardt, *Principiile clasice și noile tendințe ale dreptului constituțional. Critica operei lui Leon Duguit*, [Classical principles and new trends of constitutional law. Criticism of Leon Duguit's work], Ronia Monastery, Polirom Publishing House, 2008, p. 229.

⁶ L. Duguit, *Traité de droit constitutionnel* [Treaty of Constitutional Law], vol.1, Paris, Ancienne Librairie Fontemoing & G, Rue de Médecis, p. 116. Réédité, Hachette Livre BNF en 2018.

he does not judge whether that rule is good or conforms to a higher ideal, but simply states that it is a legal rule of a social group.

Thus, Duguit's conception on the legal norm was based on the opinion that the legislator cannot give a rule the force of a legal norm, therefore, a binding character, unless and only if that rule has already been formulated and imposed to the legislator. By the force of things, the legislator recognizes and sanctions it. But who makes that rule? Duguit's answer: the mass of individual consciences, which can be observed and is based on an objective finding: the organic solidarity of the members of the group. It is not the will of a higher authority that is the basis of the legal norm, which is a social norm, but the mass of individual consciences. Maurice Hauriou reproaches Duguit for idealizing society in the same way that others have idealized the state, and solidarity can also be built on the basis of fear, of admiration for a charismatic leader, etc.

The mass of individual consciences, considered Duguit, is formed under the influence of two factors: the sense of justice and sociality. A legal norm arises from a social necessity and a sense of fairness, as it exists in human consciences at a given time. The rule which is inconsistent with equity is not a legal rule.

What makes a norm to be social? The reaction of the group, if a member of it does that act or his attitude towards that act. Duguit's predecessor, Emile Durkheim, believed that the feelings that lead to a social norm must be strong ones, from those that have stirred the souls of a society, feelings deeply anchored in the soul of that group, but that must crystallize in clear forms, clarified by evolution in concrete forms, so that everyone knows precisely that when a certain act is done, the collective feeling is struck. Analysing these ideas of Durkheim, Mircea Djuvara found that the honest and objective analysis of Durkheim led to the conclusion that the determination of the moral fact and, therefore, of the legal fact, acquires, with the progress, more and more a rational nuance. That is why Djuvara, as a faithful disciple of Kant, shows that the legal phenomenon is not a purely affective or instinctive phenomenon, but is a phenomenon that, in the final analysis, is reduced to a rational analysis⁷. The rulers, believed Duguit, cannot legitimize themselves by the origin of their power, but by the purpose they pursue, which is exercised in accordance with social law. Law is a psychological creation of society, determined by material, intellectual, moral needs⁸.

⁷ M. Djuvara, *Teoria Generală a Dreptului. Drept rațional. Izvoare și drept pozitiv* [*General Theory of Law. Rational law. Sources and positiv law*], Bucharest, ALL Publishing House, 1995, p. 370.

⁸ T. Boccon-Gibod, Duguit et après? Droit, propriété et rapports sociaux [Duguit and after? Law, property and social relations], *Revue internationale de droit économique*

Denying the subjective right, Duguit affirmed that its nature is impossible to define, because if it represents a power, a quality of the human will, the intimate nature of this will should be known, which is impossible, because it is an element that escapes perception and the observation. The man is not the holder of a right as an individual, but is the debtor of obligations as a member of the social body. Instead of subjective law, Duguit put the term legal situation. Because Duguit did not recognize subjective rights, he believed that the term sovereignty should also be removed from the legal field, which is, in his opinion, a metaphysical concept and should be replaced by a precise, concrete term that emerges from the positive observation of the facts. Duguit considered metaphysical any notion that involves a statement that cannot be verified by observation. He considered that sovereignty as a competence of the competence, understood by the individualist theory as a will with its own character, is independent of other will, has rights, but has no obligations. The assumption that the nation, as the holder of sovereignty, is a person distinct from the sum of individuals, that it has a conscience, a collective will, distinct from the individual ones cannot be demonstrated, replied Duguit. If we adhere to this view, he concluded, then it follows that the will of the nation subordinates the individual will, thus the autonomy of the human person disappears.

Mircea Djuvara objected to this conception of Duguit, that sovereignty is not a de facto power, it is an organizing power of law, organizing law in society in the form of laws, administration, judicial power, all of which are the legal order. Law thus presents itself not only as a manifestation of force, but is primarily the realization of an ideal of justice, which, although not fully realized, commands our entire judgment. In this case, the right that sovereignty organizes is not something arbitrary, it must correspond to what the respective society understands as the ideal of justice⁹.

The foundation of any legal norm is in the social norm of solidarity, considered Duguit, who did not agree with the hypothesis of a superior will addressing the subordinate wills that he could constrain, because, he believed, this thesis cannot be verified by experience. The norm is imperative only because it emanates from the social norm. A legal rule is based on a social need and the sense of equity as it exists in the minds of people at a given time. A rule that is not in accordance with equity is never a legal rule, it may be a legislative rule, but not a legal rule. Once again,

[*International Journal of Economic Law*], no.3, t.XXVIII, 2014, pp.285-300. Available at: <https://www.cairn.info/revue-d-histoire-moderne-et-contemporaine-2005-3-page-88.html> (Accessed: May 09, 2023).

⁹ M. Djuvara, *Teoria Generală a Dreptului. Drept rațional. Izvoare și drept pozitiv* [*General Theory of Law. Rational law. Sources and positiv law*], Bucharest, ALL Publishing House, 1995, pp. 374-375.

invoking equity, Duguit appeared as an unwilling metaphysician. Steinhardt saw the inconsistency of Duguit's theory in the fact that he adhered to metaphysical concepts, without recognizing it and fighting against them. The inconsistency of Duguit's work was demonstrated by the fact that, on the one hand, he ignored and considered useless philosophical reflections, attacked the theory of natural law, but, on the other hand, appealed to the feelings of sociality, justice. In Duguit's opinion, sociality is a feeling that exists in a group of people (tribe, family, city, nation), in which the bond of solidarity that maintains social integration can be broken, if the violation of an economic-moral rule will not be sanctioned by law. The sense of justice is variable in ways and applications, but it is constant in its background, which is proportion and equality¹⁰. But these very feelings are at the heart of natural law theory. Even the disciples of Duguit, the adherents of his theory, admitted the ideas of justice and reason, Reglade considering that Duguit only describes the phenomena, but does not explain them, and G. Jeze presented Duguit as inspired by the idea of natural law in the most naive sense¹¹. Geny considered that Duguit brings us back to the classical theory of a natural right, resulting from the nature of things and as such imposing itself on man under the control of reason. Relying on this idea, Steinhardt aligned the opinion of Mircea Djuvara, who claimed that the doctrine that denies any legal rationalism does not put anything in its place to impose this solution, so that the systematic effort that imposes this solution cannot be seen¹².

Another idea criticized by Steinhardt was related to the concept of the state. Duguit affirmed the impossibility of establishing, according to the observation method, that the state is a person, therefore it cannot even be recognized a right of sovereignty, i.e. a right to command individuals. The state, in Duguit's view, can be defined using the distinction between governors and governed. Duguit was very concerned about the possibility of abuses by the rulers. The state thus is a tutelary court, over the will of individuals, therefore it cannot impose a law that it itself cannot break. From here Duguit saw the contradiction between individual freedom and sovereignty and believed in the absorption by the state of violence between individuals.

¹⁰ L. Duguit, *Traité de droit constitutionnel [Treaty of Constitutional Law]*, vol.1, Paris, Ancienne Librairie Fontemoing & G, Rue de Medicis, 1, p. 124, Réédité: Hachette Livre BNF en 2018.

¹¹ N. Steinhardt, *Principiile clasice și noile tendințe ale dreptului constituțional. Critica operei lui Leon Duguit [Classical principles and new trends of constitutional law. Criticism of Leon Duguit's work]*, Ronia Monastery, Editura Polirom, 2008, p. 217.

¹² N. Steinhardt, *Principiile clasice și noile tendințe ale dreptului constituțional. Critica operei lui Leon Duguit [Classical principles and new trends of constitutional law. Criticism of Leon Duguit's work]*, Ronia Monastery, Editura Polirom, 2008, p. 241.

Through his doctrine, Duguit insisted on limiting the power of the state, disagreeing with the label of anarchist that Hauriou had put on him, stating that his theory ensures obedience and submission to the legitimate decisions of the governors, so this is a fact, being unnecessary a claimed principle of authority, the principle being qualified by him as one devoid of meaning and content. Another label attributed to Duguit, that of a socialist of the department, was taken up by Steinhardt, who added that democracy is essentially opposed to socialism¹³.

Most of the Steinhardt`s texts, often marked by dramatic conditioning of history, are under the sign of a liberal-conservative thought and under that of bourgeois values; the author did not appreciate the slide of his countrymen towards socialism¹⁴. So, not only sovereignty, but also the right to integrity of the natural person, the right to free movement, the right to property, the right to work, the right to contract freely, the right to express one's thoughts¹⁵ were elements that Steinhardt defended as classical. Duguit was laying a new foundation for the right to property which, he believed, was not a sacred and inviolable right, as the French Revolution had proclaimed, but a social function. Because he did not recognize legal personality as a useful notion for law, Duguit also did not recognize the legal personality of the state, so that public property was conceived not on the basis of the legal personality of the state, but on the basis of the appropriation of goods.

¹³ N. Steinhardt, *Principiile clasice și noile tendințe ale dreptului constituțional. Critica operei lui Leon Duguit [Classical principles and new trends of constitutional law. Criticism of Leon Duguit's work]*, Ronia Monastery, Editura Polirom, 2008, p. 289.

¹⁴ C. Jinga, Nicolae Steinhardt (1912-1989), *Mémoires; Histoire, Témoignage. Essais sur la littérature du Goulag Est-Européen [Briefs; History, Testimony. Essays on the Literature of the East European Gulag]*, Dir. Dumitru Tucan, Szeged, 2014, p. 105, 120. ISBN 978-963-315-188-4. Available at:

https://d1wqtxts1xzle7.cloudfront.net/40966343/03_D_Tucan_memoire_histoire_temoignage_2014-libre.pdf?1451990020=&response-content-disposition=inline%3B+filename%3DDumitru_Tucan_dir_Memoire_histoire_temoi.pdf&Expires=1674000181&Signature=UUbBzq69WcTFQT9GeBeUvSLmmVd2LZrq7buRGpJ8QR2QEoloACI-oiMsQwAmO1Tg9Vj44QUcBE-kofXxxZE8zH52YcC1E66AcDWJf7aIB2lmvGuvmo8sB4ZZ4FQCANA-yKkLlMQeOcrEO5C9zsJdsgQqR-5tP1oUGpSIkH2GRE97QKCglfkjz8Bxo2bAndqizD2fRaRE2PiYZJC~PjPxnIypOg1gLCgJG PiTxEjtu9R1cVmiWGde5B23dvpEeaqMS9~ZVkkd~phcERXMKJVHLcGZvelPaRpTD91qhVmvf9YXyQujxhuxFcHvAj5gys2RPkJvop9hwxVdiU8LOInGvw__&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA#page=106 (Accessed: May 09, 2023).

¹⁵ N. Steinhardt, Liberalism [Liberalism], *Revista Fundațiilor Regale [Royal Foundations Magazine]*, 1937, nr.9, pp.594. Available at: <http://dspace.bcu-iasi.ro/bitstream/handle/123456789/46026/Steinhardt,%20N.,%20Liberalism,%20RFR,%20An.4,%20Nr.9,%201937,%20p.584-604.pdf?sequence=1> (Accessed: May 09, 2023).

Steinhardt mentioned how in an ironic note the author Louis Bourges urged Duguit to become a professor of civil service, if he considers that there are no rights, but only social functions, but not to teach law, because, it is necessary to say it, he does not have the right¹⁶.

In interwar Romania, this conception of the public function of property was accepted by the Constitution of 1923 and, as a result, the nationalization of the subsoil, of some armaments enterprises, metallurgical plants took place. As a doctrinal argument, the thesis of the French authors Aubry and Rau was invoked: Everything that cannot be legitimized by concrete efforts, naturally falls into the public heritage¹⁷.

On the issue of female suffrage, Leon Duguit and Nicolae Steinhardt were on divergent positions, Duguit considering it necessary to grant the right to vote to women, while Nicolae Steinhardt considered the opposite. Generally, Steinhardt`s conceptions reveal `hostility [...] to the universal vote that could lead to despotism of masses`¹⁸. Duguit believed that the political incapacity of women is temporary and the evolution of societies will lead to the ascent of women in political life, in the future, the humiliation of women, including through the norms of the Napoleonic Code, will prove to be unjust. It should be noted that women in France could vote only for the election of local bodies (they were granted this right in 1915), while French women obtained the right to vote for the legislative body only in 1944, i.e. at a later date than Steinhardt's criticism of Duguit's work.

The situation was somewhat similar in Romania, where at the time of Steinhardt's criticism of Duguit's work, women could be involved in political life only at the local level, but even in this case with difficulties, because a considerable part of public opinion displayed a shrill tone towards women who wanted to get involved in political life. Women's right to vote was not mandatory, and registration in the electoral race could only be done if the candidates belonged to a political party. However, in the elections of 1930 some women participated, and 2 of them obtained the post of mayor¹⁹.

¹⁶ N. Steinhardt, *Principiile clasice și noile tendințe ale dreptului constituțional. Critica operei lui Leon Duguit [Classical principles and new trends of constitutional law. Criticism of Leon Duguit's work]*, Ronia Monastery, Editura Polirom, 2008, pp.217.

¹⁷ M. Duțu, *Constituția din 1923 – punct culminant al constituționalismului românesc [The Constitution of 1923 – the culminating point of Romanian constitutionalism]*. Available at: <https://www.juridice.ro/essentials/6193/constitutia-din-1923-un-punct-culminant-al-constituționalismului-romanesc> (Accessed: May 09, 2023)

¹⁸ M. Precupanu, Political Thinkers Present in Nicolae Steinhardt`s Journalism, *Analele Universității Dunărea de Jos Galați din Galați. Seria Istorie [Annals of Dunarea de Jos University of Galati. History Series]*, 2021, no.20, pp.203. Available at: <https://www.ceeol.com/search/article-detail?id=1044928> (Accessed: May 09, 2023).

¹⁹ Ș. Mihăilescu, *Din istoria feminismului românesc. Studiu și antologie de texte, (1929-1948)*. [From the history of Romanian feminism. Study and anthology of texts, (1929-1948)], Iasi: Polirom, 2006.

This information was of public notoriety, especially for the cultured public, but the press and in wider public opinion was not very favourable to women, showing that they lacked the necessary training for political exercise, and the level of education was unsatisfactory. It should be noted that this was not true for all women, so for example in the suffrage of 1930 participated Sarmiza Bilcescu-Almănișteanu, who had obtained her bachelor in law and PhD in law in Paris, being the first female PhD in law, just before the French Jeanne Chauvin; then, after enrolling in the Ilfov bar (Bucharest) she became the first female lawyer in Europe. But the majority Romanian mentality of that time meant that after enrolling in the bar, Sarmiza Bilcescu was unable to practice law, because clients avoided her, preferring male lawyers²⁰.

Another example of remarkable historical success refers to Ella Negruzzi, the first female pleading lawyer in Romania. She has studied at The Faculty of Law in Iasi and has become a member of the Bucharest Bar Association in 1919, after being refused by the Iasi Bar Association, in 1914. In the Parliamentary elections 1930s she ran on the lists of National Peasant Party. Ella Negruzzi had to fight against an outdated way of thinking, in which the woman had no right of professional affirmation in public space. (Friedmann-Nicolescu Iosif. *Faces and Portraits from the World of Romanian Law*.²¹

Nicolae Steinhardt was probably aware of these realities, being himself appreciated a difficult subject to be approached, insofar as he discusses uncomfortable topics, including the model of the interwar intellectual²². Although, he answers through Adhemar Esmein, that women's political suffrage is neither in accordance with the principles nor useful to society, and the division of labour between men and women shows that public life belongs to the man, and the care of the home to the woman. But Esmein had died before the start of the First World War and had not seen the changes that had taken place in social life, when women had taken the place of men who had gone to the front and proved themselves capable in those fields

²⁰ *Povestea Sarmizei Bilcescu – prima femeie avocat din Europa [The story of Sarmiza Bilcescu - the first female lawyer in Europe]*. Available at: <https://historia.ro/sectiune/portret/povestea-sarmizei-bilcescu-prima-femeie-avocat-578891.html> (Accessed: May 09, 2023).

²¹ I. Friedmann-Nicolescu, *Chipuri și portrete din lumea avocaturii românești [Faces and portraits from the world of Romanian law]*, *Revista Română de Istoria Dreptului [Romanian Journal of the History of Law]*, 2021, vol.1, no.1, pp.32-33. Available at: <https://www.rrid.ro/index.php/rrid/article/view/6> (Accessed: May 09, 2023).

²² R.P. Mureșan, *Spiritualitate și cultură în scrierile Părintelui Nicolae Steinhardt (1912-1989) [Spirituality and culture in the writings of Father Nicolae Steinhardt (1912-1989)]*. *Teologie și Educație la Dunărea de Jos [Theology and Education at Dunarea de Jos]*, 2020, no.18, pp.265. Available at: <https://www.ceeol.com/search/article-detail?id=918899> (Accessed: May 09, 2023).

previously reserved only for men. Steinhardt supported those authors who considered political feminism as a phenomenon that shakes the family. Women's suffrage, Steinhardt stressed, would unnecessarily complicate political life, facilitate unfortunate legislative activity, and undermine constitutional law²³.

On this subject, history proved Leon Duguit right, because, from a legislative point of view, in France, women obtained the right to vote in 1944, and in Romania - in 1938.

Conclusions

History gave its answers to the confrontation between legal classicism (Steinhardt) and the ideas of the new sociological school, whose legal representative was Leon Duguit. The opening of legal science to reality was the focus of the great jurists of the last century, whose works were analyzed by Steinhardt, a larger place being given to François Geny and Leon Duguit. And if in the case of Geny Steinhardt's sense of confidence in the ideas of the Dean of Nancy was dominant, the same cannot be said of the attitude towards Duguit's work, which was vehemently criticized. It is possible that in Duguit's case the labeling of him as the `socialist from the chair` played a role, a label with which Duguit himself did not agree. The leaders of the interwar Romanian intelligentsia (where we include Steinhardt as well) had a repulsion towards socialism for various reasons, including the Bolshevik practice in the Soviet Union, with which Romania had a border on the Dniester, so that Steinhardt defended the classical principles of constitutional law and opposed legal positivism.

After almost a century, history reconciled Duguit and Steinhardt, giving both of them partial justice, because legal positivism, including pseudo-positivism (to which Duguit's theory is attributed) is still attacked without disappearing, women have the right to vote both in France and in Romania as well, and the classical principles have been enriched, have been and continues to be claimed by numerous authors, especially after the Second World War.

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²³ N. Steinhardt, *Principiile clasice și noile tendințe ale dreptului constituțional. Critica operei lui Leon Duguit, [Classical principles and new trends of constitutional law. Criticism of Leon Duguit's work]*, Ronia Monastery, Polirom Publishing House, 2008, p. 184.

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ASSESSING THE IMPACT OF THE HEALTH, ENERGETIC AND GEOPOLITICAL CRISIS ON E-CONTRACTS DEVELOPMENT (TRENDS)

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Abstract: *This research is focused on the analyzes of evolution of the e-contracts during crisis as: health, security and energetic in the Republic of Moldova compared to other countries. The Pandemic made the digital transformation to become an imperative world's priority. The countries 'governments took necessary steps to legalize the e-contracts rules and technology in order to facilitate signing electronic transactions (contracts) between absent persons. In this aspect, the crises (health, security and energetic) speeded the transition from classic contract to the electronic one as it offered the facility to administrate the contractual relations from distance. The energetic crisis affected eContract balancing, however lesser compare to health crises. The impact of the security crisis increased the number of the people emigrating from Ukraine to the neighboring countries and other countries and respectively they were forced to manage and administrate their businesses and personal affairs from distance, that increased consequently the number of the eContracts and eTransaction. The paper concludes with a comprehensive, critical discussion of the advantages and challenges that must be addressed in the area of eContracts signing and their further execution and a set of recommendations that researches, developers should consider when applying electronic contract during crisis.*

Keywords: e-contracts trends, pandemic, energetic crisis, geopolitical crisis, Romania, Moldova, China, United States, security crisis, crisis situations, online environment, energy smart contracts

Introduction

Our modern society is based on economic circuit that mainly works on the mechanism of contracts. The technology invaded our life and daily activities, though, it is almost impossible to imagine people's life without facilities that the technologies offer. The domains as health, agriculture, economy, energy are influenced by the technologies, that offer benefits to their users. Civil law is also influenced by technological revolution and thus

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in the contractual domain, by offering subjects less time to be spent on negotiation and signing the contract, the opportunity to sign and execute the contracts by the persons that are not present in the same place. Moreover, the advantages of digitalization respectively are demanding a different approach and behavior towards the subject. In this research will be analyzed e-contracts development trends during crises as: health, energetic and geopolitical. The digitalization is spreading along the public services and through the private relations. The Internet plays a crucial role in digitalization, is one of the most important means through which signing of electronic contracts take place.

As per analyses, in the year of 2018 only approximately 75% of population in former communist countries had access to Internet compared to 82% in OECD countries or 83% in Euro Area nations¹. In the doctrine it is mentioned ‘*The electronic contract is validated by verifying the validity of the pillars: the object, the cause, the agreement and the eligibility, which are organized in the same framework as the general rules regulating the traditional contract*’², in online medium the contracts’ elements are influenced each one in separate way and may have effect also each is separate way. The advantages of eContract consist in the fact that is help administrate easier the business, as the business is getting digitalized, the necessity to switch from the traditional contract to the digitalized contract is arisen³. This study will provide figures that show the increase of number of subjects involved in contracts concluded in online/virtual space and their development in different countries, the risks that subjects face and relevant legal framework. The novelties in the digital eContract market, a new subject that is entering the electronic ‘market’ is the artificial intelligence, that is becoming part of the human being’s life and is “indirectly fighting” for its position on market, “subjects rights” among individuals and juridical persons⁴.

¹ Djavilov Bekhzod, Kobijonov Isломjon, Salahodjaev Rauthon, *Can digital Human Capital Mitigate CO2 Emissions? Empirical test for post-communist countries*. International Journal of Energy Economics and Policy, 2023, 13(4), pp.383-388. [Scopus]

² Dr. Yassin Ahmad alqudah, Dr. Raed Mohammad Flieh Alnimer, *The Legal Nature of the Electronic Contract (comparative study)*, Psychology and Education Journal, Vol. no.1 (2021), pp. 2260-2276. [Scopus]

³ Saini Neha, Dr. Arvind P. Bhanu, *Operational aspects of e-contracts: a critical study*, International Journal of Management, Vol. 11, Issue 5, May 2020, pp. 1721-1734. [Scopus]
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⁴ Pawel Ksiezak, Sylwia Wojtczak, *Toward Conceptual Network for the private Law of Artificial Intelligence*, Law, Governance and Technologies Series, Issues in Privacy and Data Protection, volume 51, published by Springer, Poland, 2023, ISSN 2352-1902. [Scopus]

I. Legal framework of the E-contracts and next steps

Contracting is an essential aspect of doing business. Meanwhile electronic contracting uses telecommunications and artificial intelligence to improve contracting processes by streamlining red tape, enforcement legal correctness⁵. The legal framework for doing online business (business-to-business and business-to-consumer) in Romania, is set forth in Law no. 365/2002 on e-commerce (E-commerce Law) and its application by Government Decision no. 1308/2002 (Guidelines). The E-commerce Law transposes Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the internal market (E-commerce Directive). In this context, the provisions of Government Emergency Ordinance no. 34/2014 on consumer rights in agreement with professionals (GEO 34/2014) applies to business to consumer, which transposes consumer rights (Consumer Rights Directive)⁶. The civil code of Romania previews the notion of contract in electronic form in the art. 1245 that states: *'the contracts concluded through electronic means are regulated by the conditions of the form previewed by special law'*, this article interprets the formalities applied to the electronic contracts, by which it is previewed application of the special norm, for example the Law no 365/2002 on electronic commerce. The special norm refers not to the nature of the electronic contract, if it is an electronic contract of the contract of buying and selling, there will be applied the norms that regulates the contract of buying and selling. The authors Alexandru Lefter and Cosmina Sima related in a nutshell the steps toward digital business in Romania, they provided a high level overview of matters relating to regulations and regulatory bodies for doing business online, setting up an online business, electronic contracts and signatures, data retention requirements, security of online transaction and personal data, licensing of domain names, jurisdiction and governing law, advertising, tax, liability for content online, insurance and proposals for reform. The authors described the common steps a company had to take to set up an existing/new business online. Firstly, the company has to obtain an authorization on certain types of products as: food products, beverages, pharmaceutical products and, insurance services, however as per general rule, setting up an online business does not require prior authorization, authorization with the

⁵ Ronald M. Lee, *A logic model for electronic contracting*, *Decision Support Systems*, Volume 4, Issue 1, 1988, pp. 27-44, [https://doi.org/10.1016/0167-9236\(88\)90096-6](https://doi.org/10.1016/0167-9236(88)90096-6) (last visited 01.08.2023) [Scopus].

⁶ Alexandru Lefter, Cosmina Sima, Panchiu & Associates. Digital business in Romania: overview.

[https://content.next.westlaw.com/Document/Ie00c6fce464f11e598dc8b09b4fo43e0/View/FullText.html?contextData=\(sc.Default\)&transitionType=Default&firstPage=true](https://content.next.westlaw.com/Document/Ie00c6fce464f11e598dc8b09b4fo43e0/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true) (last visited 01.08.2023).

relevant regulatory authority may be required. Secondly, the incorporation of a business requires of a scope of activity, the selection of a scope of activity, that has to be reflected in the articles of association as a main or secondary object of activity, for example activity of retail sale via mail order houses or via the internet. Thirdly, choosing the domain name for the company website plays a crucial role as entire advertising of the business will be related to it. Fourthly, and nevertheless one of the most important is creating your own website, which may require a copyright agreement with a web design service provider or it might be developed by the Company. Data protection is also a key domain that has to be reflected and well-regulated internally by the Company⁷.

As with regard to the contracts concluded online with consumers, to allow online payments and to deliver goods ordered online, there has to be established relations with e-payment and courier service providers. In the same manner, an online business would require to contract with the following: web developers, suppliers, other providers. At first glance, the business is a simple one to establish but involves concluding contracts with web developers, as the website has to be protected by copyright, which generally belongs to its author. An important aspect to be taken into account is the competition rules that should be respected by the suppliers, in special those related to preserving of the resale price. Nevertheless, online business involves contract with couriers, cloud service providers and payment service providers. As we mentioned an important aspect is protection of the personal data, as with compliant Regulation (EU) 679/2016 on the protection of personal data, to the processing of personal data and on the free movement of such data (General Data Protection Regulation (GDPR)). The online transaction/contracts shall include also appropriate measures to protect the personal data from unlawful processing and safeguard security of internet transaction.

In Bulgaria, the law on obligations and contracts defines the contract – is an agreement between two or more persons for establishing, settling or terminating a legal relationship between them. Persons shall use their rights to satisfy their interests⁸. On the 1st July 2016, Bulgaria adopted new laws on eSignature law, the LEDES to comply with the eIDAS regulations. This has made it possible to send contracts throughout Europe and vice versa.

⁷ Alexandru Lefter, Cosmina Sima, Panchiu&Associates. Digital business in Romania: overview.

[https://content.next.westlaw.com/Document/Ie00c6fce464f11e598dc8b09b4f043e0/View/FullText.html?contextData=\(sc.Default\)&transitionType=Default&firstPage=true](https://content.next.westlaw.com/Document/Ie00c6fce464f11e598dc8b09b4f043e0/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true) (last visited 01.08.2023).

⁸ The law of obligations and contracts amend. SG 43/20 May 2005 <http://www.bulgaria-law-of-obligations.bg/law.html> (last visited 20.12.2022).

The digitalization of the public and private services became a key priority domain in the Republic of Moldova and other neighboring countries. It started back in 2002 when the civil code of the Republic of Moldova was adopted, and it was included the legal deed in electronic form; in 2004 was adopted law on electronic commerce no 284/2004 (currently modified as Law on information society services)⁹. Also currently was adopted the Law no 124 from 19.05.2022 regarding electronic identification and trust services¹⁰, in particular, that regulates the electronic signature of the individuals and seal of the legal entities. Under the Government of the Republic of Moldova was created the Agency on Electronic Government (currently under the Ministry of Economic Development and Digitalization) that is leading technologies into the Government services, rethinking processes, improving public and private sectors and facilitate the interaction between citizens and Government.

In our days, technology builds bridges between public and service providers by ensuring data exchange and respectively improving governmental services for citizens. In order to facilitate citizens access to public services by the Government of Republic of Moldova was created Universal Centers for Public Service Delivery (UCPSD) that provides digital public services for citizens through Multifunctional Centers of the Public Services Digital Moldova Agency, the public services as population documentation, real estate registration, legal entities registration, further modifications and erasing were unified. Republic of Moldova took steps towards digitalization and consequently entering the European online market and the international online market. Despite the fact of being a small country, and respectively a small actor of the big online market, Moldova has all the necessary conditions to access the international online market, being the third country in the entire world by gigabit coverage with around 90% of population having option to subscribe to a gigabit plan.

Hence at the national level the draft Digital Moldova Strategy for the years 2023-2030 was developed, the latter was submitted to public consultations (May 2023), recently adopted in September 2023. The main goal of the strategy is to create the framework for developments and use of the IT potential in all the sectors as: public, private, businesses and citizens' livelihoods. The strategy had three main objectives: to improve the connection and access to the network, digital content and electronic services – promoting the improvement of the digital services content and society

⁹ Law on information society services [last visited 09.01.2023], Available at: https://www.legis.md/cautare/getResults?doc_id=107529&lang=ro

¹⁰ Law no 124 from 19.05.2022 regarding electronic identification and trust services

digital skills strengthening to enable innovation and stimulation of use¹¹. According to the Moldovan legislation in force, the provisions of the Civil Code (further named as CC of RM) regarding electronic form of the legal deed, it is previewed by: par. 1, art. 315 *‘the object of the legal act consists in the obligation of the person to conclude the legal act..’*, par. 1, art. 316 CC RM *‘legal deed might be concluded verbally, electronic, written and in authentic mode’*, art. 318, art. 319 provide *‘the electronic form of the legal act, the types of the signature applied on the electronic document’*,. In the same time, the legislator provided expressly that the electronic form of the deed is equalized to the written form of the legal deed, stipulated the method of concluding the electronic form and the ways of concluding by electronic means¹². An important moment to be mentioned is that the consent is presumed to be given by the person. This condition might be overruled, the consent might be proven through different methods/proves (exception from the general rule forfeiture of the right to testify in court), possible to register the documents in electronic form, including signing of the contracts, which was way ahead regulated. Furthermore, we will analyze the issues appeared during the Pandemic health crisis, geopolitical crisis and energy crisis.

II. The e-contracts development in health crisis and post health crisis

According to World Trade Organization (WTO) information note, the ‘Covid-19 pandemic’ increased the use of e-commerce in particular also ‘e-commerce-enabling services and technologies’, it also contributed to highlight the role of electronic commerce in facing the restrictions imposed by pandemic situation and the rules imposed by each state. Additionally, it has been mentioned the ‘continued challenges faced by developing countries’, and the lack of bridging the digital divide. The EU faced discrimination in e-commerce towards developing countries and moreover the entire world is facing currently the challenge of crisis that influenced almost each state’s economy stability¹³. The WTO continued to work on multilateral program on e-commerce. A group of members started working since the Eleventh Ministerial Conference in 2017 on potential rules on e-commerce under a Joint Statement Initiative. This strategical document was aimed at strengthening the cooperation between states in overcoming

¹¹ Strategy for digital transformations for the years 2023-2030, [accessed 09.01.2023], Available at: <https://particip.gov.md/ro/document/stages/proiect-cu-privire-la-aprobarea-strategiei-de-transformare-digitala-pentru-anii-2023-2030/9914>.

¹² Civil code of the Republic of Moldova, no 1107, republished in Law no 133 from 15.11.2018.

¹³ World Trade Organization, *Information note, E-commerce, trade and the Covid-19 Pandemic*, [accessed 09.01.2023], Available at:

https://www.wto.org/english/tratop_e/covid19_e/ecommerce_report_e.pdf

the bottlenecks, lessons learned, challenges and difficulties during Covid 19, contributed to collaboration in policy-making, provision of easier access to market, development of cross-border e-commerce, protection of consumer and built the consumer's confidence in e-commerce and respectively e-contracts¹⁴.

Another important aspect, plays role of the actors involved in the e-contracts at the national and international level in promoting e-contracts and developing e-commerce. As for example, a new strong actor that invaded the electronic commerce and plays a crucial role in electronic commerce also in electronic transactions is China. “*As online shopping has soared, even before Covid-19 added extra fuel, Chinese internet firms have dreamed up new ways to engage consumers*¹⁵”, the business in China is targeting to online market, the three big giant companies that holds almost 90% of the merchandise sells are: Alibaba and its rivals JD and Pinduoduo.

In United States the online titan Amazon and its two challengers Shopify and eBay accounted for less than 50%. However, Alibaba was under investigation of the State Administration for Market Regulations pursuant to Anti-Monopoly Law¹⁶, it is still one of the biggest giants that influence and control the e-commerce market.

China has been revolutionary not only in covering the biggest part of the e-commerce market but also in adopting new civil code on May 28, 2020 that entered in force on January 1st, 2021. It updated the provisions of the civil code, that has a total of 1260 articles and comprises seven parts, provides legal norms regarding different personal and property rights and interests in property rights in China, acquiring ownership upon marriage, the issues one should pay attention to when renting a new apartment, tort law, contract law, etc. In the field of e-commerce, the civil code contains provisions on: e-commerce business operators, e-commerce platform operators, business operators using e-commerce platforms, other affected business operators. Similarly, to civil legislation in countries as: Germany, United Kingdom, according to art. 469 of the Civil code of China the form of the contract ‘*in writing*’ is interpreted as by letter, telegram, telex, or fax, etc., in special civil code emphasis that the accessible electronic data are considered as information ‘*in writing*’¹⁷.

¹⁴ World Trade Organization, Information note, *E-commerce, trade and the Covid-19 Pandemic*, [accessed 09.01.2023], Available at:

https://www.wto.org/english//tratop_e/covid19_e/ecommerce_report_e.pdf.

¹⁵ *The future of e-commerce. The great Mall of China*. In the: Economist. United States: January 2nd, 2021, pag. 47-50.

¹⁶ *China's e-commerce titan Alibaba hit with antitrust law*, [accessed 09.01.2023], Available at: <https://techcrunch.com/2020/12/23/alibaba-antitrust-probe/>.

¹⁷ Donfil Huang, Dezan Shira & Associates' Guangzhou Office, *China's civil code: Implications for E-commerce firms*, [accessed 09.01.2023], Available at:

However, the relations established between the seller and the buyer in the online space (e-commerce) differs from a classical contract. Nevertheless, it is still considered as 'contract', in which parties agree upon the price, the quality and quantity of the product, the delivery terms and conditions, the promise of return with no reason in a particular period of time (usually it takes 14-15 days or it even may exceed 60 days due to pandemic situation). Despite the fact, the customer has never seen partner, and signed electronically or placed an order, still was entitled to prove that the contract was concluded, by placing the order, as for example when placing an order from a restaurant and you never received your food, you still had the right to refund and compensation due to late delivery.

The new trends in online shopping were started by social platforms as Facebook, Pinterest, What's up, Instagram, YouTube, TikTok and other social networks. They cached the clients' desires and interests and redirect all the advertisements to his/her account. Social commerce is driving an increasing portion of marketing-driven revenue for ecommerce businesses. According to McKinsey, retail social commerce sales in the US amounted to \$45.7 billion in revenue in 2022. Experts predict that by 2025 it will hit close to \$ 80 billion. According to social commercial statistics marketers¹⁸.

Due to Covid 19 health crisis situation, many large businesses all around the globe introduced the option of 'distant work from home', as well as adapting negotiating deals from home offices that face a question how to make sure that contracts being signed electronically are legally binding¹⁹, Surprisingly, but this hybrid work program still works in our days. The common tools of executing of contract electronically consist of: the 'sign and scan' approach, *docuSign* and other commercial third-party applications, taking a picture of the signature and attaching to the documents, email or other communication indicating an intention by the parties to be bound by an electronic contract²⁰. The reasons that influence whether a contract can be signed and delivered electronically are the following: the legal framework

<https://www.china-briefing.com/news/chinas-civil-code-implications-for-e-commerce-firms/>.

¹⁸ Jacqueline Zote, What is social commerce? Stats, trends and tips marketers should know for 2023 [accessed 30.06.2023], Available at:

<https://sproutsocial.com/insights/social-commerce/>

¹⁹ Claudio Arruda, Mark Tibberts, Faye Williams, *How to execute contracts electronically while working from home*, [accessed 30.04.2023], Available at: <https://www.bakermckenzie.com/en/insight/publications/2020/03/how-to-execute-contracts-electronically>.

²⁰ Claudio Arruda, Mark Tibberts, Faye Williams, *How to execute contracts electronically while working from home*, accessed 30.06.2023], Available at: <https://www.bakermckenzie.com/en/insight/publications/2020/03/how-to-execute-contracts-electronically>.

on digital signature, the parties' consent to e-signatures, e-contract delivery and retention, the contract's object, the party's authority under the constitutive act, the rules of any governmental agency where document may need to be filed. Further there will be analyzed the development trends of e-contracts during geopolitical crisis and during energetic crisis, that lately is tightly connected to place of e-signature and the consent that parties are expressing in online space.

The actions against pandemic started back in China, where the virus started its origin, identified on 30 December 2019²¹. The Covid – 19 health crisis situations, highlighted the problems and the gaps existing in the legislation of the Republic of Moldova with respect to application in practice of: digitalization of the health system, digitalization of the public services, electronic transfers, electronic contracts and gaps in the above-mentioned areas. The Chamber of Commerce and Industry from the Republic of Moldova (further named as CCI) published in 2020 the list of useful web links on the public authorities' decisions that had impact on business, in conditions of crisis caused by the pandemic situation (COVID-19), but also the initiatives which, CCI has undertaken in order to support business in Moldova which offered financial help, guidelines to mitigate the risks that appeared during and after Covid-19²².

The National Assembly of Bulgaria has adopted the Measures and Actions during the State of Emergency Act on March 13th, 2020 and will be in force until the state of emergency is lifted²³. With regard to the contracts the authorities decided in art. 6 of the Act, *Until the state of emergency is lifted, in case of delay in payment of obligations of private legal entities, debtors under credit agreements and other forms of financing (factoring, forfeiting and others) provided by banks and financial institutions under Art. 3 of the Credit Institutions Act, including when the receivables are obtained from other banks, financial institutions or third parties, and under leasing contracts, no interest and penalties shall be charged, the obligation shall not be declared early due and the contract shall not be destroyed due to default, and no items shall be seized*²⁴. Also, according to

²¹ Caroline Varin, *Global Security in Times of Covid-19. Brave New World? Editure: Palgrave Macmillan*, 2022, pag. Viii.pp.

²² International Chamber of Commerce, *Web portal – Covid – 19 of the with Information and recommendations for business* [accessed 09.01.2023], Available at: <https://bit.ly/3f5sUuj>.

²³ Commission for Personal Data Protection, *The Measures and Actions during the State of Emergency Act* [accessed 09.01.2023], Available at: <https://www.cdpd.bg/en/index.php?p=element&aid=1244>.

²⁴ Commission for Personal Data Protection, *The Measures and Actions during the State of Emergency Act*, [accessed 09.01.2023], Available at: <https://www.cdpd.bg/en/index.php?p=element&aid=1244>.

the Act, the terms previewed by the proceedings and cases in which are not suspended, requested under the Electronic Communications Act and art. 19, para. 6 in connection with para. 5 of the Act of the Commercial Register and the Non-Profit Legal Entities Register in connection with art. 536 of the Code of Civil Procedure.

In Romania according to KPMG data the ordinance no 33/2020 provides incentives – a discount-for on-time payments or corporate income tax or the tax on the income of micro-enterprises that are due on 25 April 2020 for the first quarter of 2020 as a response to the coronavirus (COVID 19).²⁵ The Romanian Government adopted economic measures to stipulate small and medium enterprises (SME) by raising the ceiling for credit guarantees for SMEs affected by the coronavirus crisis by LEI 5 billion, which depending on the financing needs of SMEs, can be increased ever further to LEI 30 billion. Interest is 100% subsidized. For loan amounts of up to 1 million the guarantee will cover 90% of it and 50% for credits over 1 million.

Other measures and resources:

a) GEO 29/2020 – tax relief measures enacted in response to the COVID-19 outbreak.

b) GEO 30/2020 – Social protection measures during the state of emergency due to COVID-19.

c) GEO 48/ 2020 Additional fiscal measures and procedural and reporting clarifications during the state of emergency.

d) Fiscal facilities granted during the state of emergency, through G.E.O. no. 33 / 2020

e) Law 54/2020 for approval of GEO 29/2020.

f) GEO 99/2020 - New fiscal measures and extensions of deadlines for the facilities already granted²⁶.

An important role in supporting small business has been attributed to the National Bank of Bulgaria, which approved on June 25th, 2020 the moratorium extension for customer loan repayments and approvals from 30 June to 30 September 2020 and extended the final deadline for bank customer loan repayments from end of the year of 2020 to 31 March 2021. Also, an important institution that supported businesses in this tough pandemic situation was the European Banking Authority's (EBA) that has

²⁵ R. Schob, S. Munteanu, L. Toncescu, *Romania Government and Institution measures in response to Covid*, [accessed 09.01.2023], Available at: <https://home.kpmg/xx/en/home/insights/2020/04/romania-government-and-institution-measures-in-response-to-covid.html>.

²⁶ R. Schob, S. Munteanu, L. Toncescu, *Romania Government and Institution measures in response to Covid*, [accessed 09.01.2023], Available at: <https://home.kpmg/xx/en/home/insights/2020/04/romania-government-and-institution-measures-in-response-to-covid.html>.

modified and updated Guidelines. The Guidelines amended legislative and non-legislative moratoria on loan repayments applied a sector-wide moratorium on payment and was designed to support the individuals and businesses affected by the payment difficulties and financial shortages.

Recommendations of the Government of the Republic of Moldova to ensure the socio-economic protection, safety and health of employees at work in the context of the epidemiological situation in the country²⁷ there were taken some measures to support business, in special small and medium businesses²⁸ that will be described herein further, but as the country's economy has been shocked, many small businesses run out of their activities, other - re-oriented to the digital market. So, in other words, the consequences were quite dramatic for some and opened the doors for others. Similar to the situation at the international level the countries' governments decisions to establish restrictive measures due to Covid – 19 threats, the Government of the Republic of Moldova adopted restrictions that influenced primarily the HORECA small businesses (hotels, bars, restaurants and related entrepreneurial activities) by establishing restrictions on social distance of 1-1.5 m to be respected, requirement to wear protective masks, mass events to be organized with a maximum limit of 50 people²⁹. Furthermore, additionally, there were created public platforms to monitor the situation of Covid-19 in real time and the situation at the border crossing points³⁰, were opened-bank accounts by the Government of the Republic of Moldova designated for donations with the purpose to prevent Covid-19 spread. Considering the above-mentioned measures taken by the Government of the Republic of Moldova, the latter created an environment of transparency in decision-making process that were set for donations made by the foreign governments and by local entrepreneurs.

During the interviews with subjects involved in e-contracts, there were highlighted the issues and problems people were facing during the lock down as: lack of implementation of the e-contracts legislation, validation of e-signature of the contracts and consequently lack of possibility to prove the

²⁷ *Recommendations of the Ministry of Health of the Republic of Moldova in order to ensure the socio-economic protection, safety and health at work of employees in the context of the epidemiological situation in the country* [last visited 09.01.2023], Available at: <https://bit.ly/3aPtIQE>.

²⁸ *The measures to support the businesses* [last visited 09.03.2023], Available at: <https://bit.ly/2KMNv8S>.

²⁹ *Activity rules for business: duties, prohibitions, restrictions*, [last visited 09.01.2023], Available at: <https://bit.ly/2KOPYiZ>.

³⁰ *Covid-19 real time monitoring platform Monitor of the situation at the borders crossing points under Covid 19 conditions*: [last visited 09.01.2023], Available at: <https://bit.ly/2Wbxizt>.

authorization of contract, remedies that will be analyzed in details in this research.

Moreover, the Government of the Republic of Moldova were trying in different ways to promote the implementation of the e-governance legislation as mentioned above via creating Agency for E-Governance and all the decisions adopted, as e-applications, e-declarations, e-contracts, e-signature and other related duties.

Pandemic has forced governments and businesses around the globe to accelerate the transition to digital technologies³¹. During Covid – 19 health crisis situations, it was clear what could work and what had difficulties to be applied. In order to sign the e-document it was necessary to have electronic signature. In the Republic of Moldova exist several companies offering services in provision of electronic signature, and mainly: M-sign, Moldcell and Orange Fiscal services offices for certain types of declarations and contracts. M-sign is the Governmental integrated service for electronic signature, provided at the level of the common technological platform of the Government, is one of the most frequently used by the legal entities and individuals, due to its applicability by the state authorities. As per example when a person signed electronically a Contract in M-sigh system (one of the official dealers of the electronic signature used by the majority of state authorities and institutions) a problem could appear in validating the signature on the contract as if it was made an insignificant modification to the PDF document, so it was not possible to validate it even though the signature was signed electronically by the competent person or by both competent persons. Another issue that appeared was the problem of validating electronically in case when one party signed the contract in wet ink and the second electronically.

The population of the Republic of Moldova is around three million people. Taking into account the number of emigrants living abroad in different countries, the recognitions of the signatures issued in the Republic of Moldova is an important issue that unfortunately is not recognized in all other countries. According to the National Bank of Moldova (NBM) data in the Republic of Moldova during 2020-2022, there were made payments with cards issued in the RM and/or abroad in an increased numerous³². The NBM report on the results of the monitoring of financial market infrastructure is an analysis of indicators of payments systems and non-cash

³¹ Yu. Otmakhova, I. Devyatkin. *Priorities of human resources policy in the context of digitalization and the Covid-19 Pandemic. Lectures Notes in Information Systems and Organization* Volume 54. Editors: Spagnoletti Paolo, Marco de Marco, Pouloudi Nancy, Te'eni Dov, Jan vom Brocke, Winter Robert, Baskerville Richard, 481-492. [Scopus]

³² National Bank of Moldova, *Report: number and value of the transactions made with payment cards in the Republic of Moldova*, [accessed 09.01.2023], Available at: <https://www.bnm.md/bdi/pages/reports/dsp/DSP4.xhtml?lang=ro&id=50501>.

payment instruments trends and their development prospects. The number of transactions made without credit or debit card via e-platforms (e-commerce) on the territory of the Republic of Moldova during 2020 were 11,0 MLN in value of 4,7 BLN MDL, in 2021 were 14,9 MLN in the value of 6,5 BLN MDL, in 2022 were 16,2 MLN in the value of 8,1 BLN MDL and the number of payments made with no card by automated distant systems on the territory of the Republic of Moldova in 2020 were 11,4 MLN in the value of 3,6 BLN MDL, in 2021 were 16,1 MLN in the value of 5,7 BLN MDL, in 2022 were 20,2 MLN in the value of 9,3 BLN MDL³³. The figures presented above showed an active increased trend of the individuals' or legal entities' participation in the electronic commerce. Moreover, currently it is worth mentioning that the payments made through electronic means are definitely increasing.

NBM thoroughly monitors the activity of the participants through the payment system AIPS (Automated Interbank Payment System), by ensuring the stability and the efficient operations. According to the NBM statistics, in the third quarter of 2020, the indicators of activity with payment cards maintained their upward trend, the number of cards in circulation increasing by 9.4 % compared to the same period of the previous year, and the number of non-cash payments made with cards issued in the country increased by 39,8 % compared to the same period of the 2021 year.

The Bank Association from Moldova stated at the beginning of the lock down period due to COVID 19 (published on March 17th, 2020) that the banks drafted business continuity plans (PCOs) for critical situations, and were prepared to honor customer requests for card operations and payment settlements, ensured adequate liquidity, carried out business properly in territorial subdivisions to face the challenges of e-payments consequently signing e-contracts.

As a primary health security measure, people were highly recommended to apply for non-cash payments through automated remote service systems provided by banks, as well as through cards or online payments. Customers were constantly informed regarding the requirements to avoid direct physical contact in banks' offices, branches and agencies whenever possible. In this regard, banks took measures to serve individual customers through the online environment, including the application of electronic signatures for as many products and services as possible³⁴.

³³ National Bank of Moldova Report *Report: number and value of the transactions made with payment cards in the Republic of Moldova*, [accessed 09.01.2023], Available at: <https://www.bnm.md/bdi/pages/reports/dsp/DSP4.xhtml?lang=ro&id=50501>.

³⁴ *Banks from Moldova are ready to support their clients during pandemic Covid-19* (Băncile din Moldova sunt gata sa-si sustina clientii in perioada pandemiei COVID-19) [accessed 09.01.2023], Available at:

Automated remote service systems (SADD) became increasingly popular among users in the number of SADD holders at the end on the 2020 compared to the same period of the previous year, being registered due to the considerable increase in users of the mobile-payment systems. The number of active holders recorded an increasing trend of 45.1% compared to the third quarter of 2019, due to increasing need to use automated remote service systems to make payments, especially in the context of Covid-19 pandemic situation in the country. At the same time, the value of remittances received by individuals increased with 32.5% compared to the third quarter of 2019, and those ones made - increased with 32.4%³⁵.

Nevertheless, in the Republic of Moldova the Government through the Minister of Economy and Infrastructure of the Republic of Moldova (currently is named Ministry of Economic Development and Digitalization) in partnership with OED (Organization for Entrepreneurial Development) implemented the new program designed for entrepreneurs to apply to new SME digitalization program, which was launched in 2020 and served for two years. The program was designed for entrepreneurs in an amount of 20 million MDL aimed for the development of e-commerce tools. This support simplified assistance to the national entrepreneurs to digitalize their business processes and market their products or services on different online platforms. The program was also designed to provide support to businesses in creating websites, online stores, but also to provide grants for the purchase of digital technologies and solutions. As stated by the Director of OED: *'at least 100 SMEs, beneficiaries of the program benefited from a 'voucher' in the amount of MDL 20.000,00 for accessing consulting and mentoring services in order to develop their own websites, set up social page, develop an online profile and make company's and product descriptions etc. Also, entrepreneurs benefited from financial support of MDL 200.000,00 for the purchase of equipment and software in order to introduce new up-to-date technologies'* ³⁶.

http://infomarket.md/ro/banks/Bncile_din_Moldova_sunt_gata_si_susin_clienii_n_periaoda_pandemiei_COVID-19.

³⁵ *Report on the results of monitoring the infrastructure of the financial market, trim. III, 2020* (Raportul privind rezultatele monitorizării infrastructurii pieței financiare din Republica Moldova, trimestrul III 2020, [accessed 09.01.2023], Available at: <https://www.bnm.md/ro/content/raportul-privind-rezultatele-monitorizarii-infrastructurii-pieteii-financiare-din-republica?fbclid=IwAR3ZbZldUKk91KdabidcNDuZJjb2DG7pNXklfjKhqR4ft2ewl3ufpjNrxo>).

³⁶ *Moldova urges entrepreneurs to apply to new SME Digitisation Programme* [accessed 09.01.2023], Available at: <https://eufordigital.eu/moldova-urges-entrepreneurs-to-apply-to-new-sme-digitisation-programme/>.

It has to be highlighted that lately the modern technology changed the world course over the past two decades. Also, the negotiation and signing of the contracts by electronic means and consequently their execution. According to EUROSTAT, specialized in collecting e-commerce statistics starting 2010, 20% of companies within the 28 EU member states sold their products online, and has a quote of the total consumption in online sales of 17% in 2018.

In the years 2020-2021 such Scandinavian countries like Denmark 32%, Norway 29%, Sweden 32% that have increased e-commerce quotes of their economies. In the Eastern European Union member states had lower e-commerce quotes of around 12% in their economies compared to the above mentioned³⁷.

The Covid-19 health crisis brought a chaos in all the domains and industries. Due to this pandemic situation, consequently many countries entered in crisis, execution of the contracts has posed a challenge. Consequently, this raises a question regarding electronic contracts binding and enforceability. As it was highlighted before the 'pandemic' has been qualified by the lawyers in majority of the cases as the reason to suspend or terminate the contract, but at the same time, technology has given every domain a new breath and a new direction to start with. The disaster of the Covid-19 epidemic has affected people's health physically, mentally, economically, socially, and nationally in Thailand and other countries³⁸.

III. The e-contracts during geopolitical crisis (conflict in Ukraine)

The conflict in Ukraine that started on 24 February 2022 has already become 'one of the biggest geopolitical crises since the Second World War' according to Osborne and Clarke Company³⁹. Taking this into account, it had significantly influenced (affected) the performance of contractual obligations. Compare to previous crises, including the Covid-19 outbreak, the geopolitical crisis affected the execution of contracts, *rebus sic stantibus clause* (clause regarding unchanged circumstances, thus the contract is to be executed only if the circumstances underlying it have not changed), was

³⁷ Predrag R. Mirkovic, Jelena N Stojsik Dabetic, *Alternative Ways of Organization* of [accessed 09.01.2023], Available at:

https://kpolisa.com/KPP2020_2/EN/04.MirkovicDabeticEN.pdf?fbclid=IwAR165ipH7dyReGHgwpXLElG1cKiCOww29iYFtmxvKYzgf5bWA1qVZXI4co.

³⁸ W. Kamkiew, (2022). *Crisis management of the coronavirus COVID-19 pandemic in Bangkok*. *International Journal of Health Sciences*, 6(S1), pp. 9064–9077. <https://doi.org/10.53730/ijhs.v6nS1.7129> [Scopus]

³⁹ *Impact of the Ukraine war on contract performance: force majeure?* <https://www.osborneclarke.com/insights/impact-ukraine-war-contract-performance-force-majeure>.

frequently implied. However, since the conflict in Ukraine, the concept of force majeure increased in its significant use by the counterparts.

According to the IMF managing director Kristalina Georgieva ‘*from global experience that conflict is the enemy of development and prosperity*’... she mentioned ‘*several crisis on top of a crisis: first the pandemic that turned peoples’ lives and economies upside down, Russia’s invasion of Ukraine, that devastated the economy and shook the entire globe, the economic consequences of the invasion spread far to the neighboring countries and beyond and hit the most vulnerable people, which are struggling with lower incomes and higher energy and food prices*’⁴⁰. Food and energy prices, and the supply chain issues, continue to influence the inflation. Also, before the Ukrainian, conflict Russia and Ukraine provided 28 percent of the global wheat exports, also Russia and Belarus were exporting and supplying potash (fertilizer), consequently the leaders across Africa and the Middle East are struggling with needs in suppliers⁴¹.

Unfortunately, the Republic of Moldova was deeply affected by the pandemic, the energy crisis, and the refugee crisis not only because of physical proximity but also due to vulnerability as a small country, landlocked and dependent on economies of big and developed states. The invasion of refugees since February 2022 caused the increase of the living costs for population, additional expenses for state budget and challenges for socio-economic development of the country. In the Republic of Moldova, the Ukrainian geopolitical crisis healthily affected it, a country with population of 2,6 million people had welcomed more than 400,000.00 refugees. In this period several issues come up for the economic, social and cultural life of Republic of Moldova that nevertheless influenced the development of commerce and in particular e-commerce (e-contracts), the fact that Ukrainians reside the territory of the Republic of Moldova and were forced to manage their activities and previous life from abroad in online environment, respectively increased the usage of electronic platforms.

The eCommerce in Ukraine during Pandemic grew up rapidly, in 2020 the market share of eCommerce reached 8% of retail (+45% year-to-year) compare to the Eastern Europe average YoY growth was 46% same year, and

⁴⁰ Kr. Georgieva, *Upon Crisis: How the world can respond*, 2022 Washington DC: [accessed 09.01.2023], Available at:

<https://www.imf.org/en/News/Articles/2022/04/14/sp041422-curtain-raiser-sm2022>

⁴¹ Kr. Georgieva, *Upon Crisis: How the world can respond* [accessed 09.01.2023], Available at: <https://www.imf.org/en/News/Articles/2022/04/14/sp041422-curtain-raiser-sm2022>

in Western Europe remained at 4%. On February 24th, 2022 all online stores lost 82.7% of sessions on average⁴².

However, during lockdown, the e-commerce was reinforced almost in all European country including Romania, Poland ... and all over the world, during the first week of the conflict (war) in Ukraine online retailers lost almost all their revenues, by 92% on average⁴³. The dark part of the conflict did not influence only e-commerce, but also hit the employment as many people lost their jobs or left behind their homes, farms, lands and other belongings. In a nutshell the pandemic crisis played a role of catalyzer for e-commerce and consequently increased the number of e-contracts signed by the parties. However, the geopolitical crisis did not play the same role as pandemic crisis, the possibility to conclude contract in virtual space, to manage the business and pay the bills online by the people moved from Ukraine in other parts of the world made their life easier.

IV. The influence of e-contracts in the energetic crisis

Half of the energy used in European Union comes from an import. Hence this makes EU to be the largest importer of primary energy in the world⁴⁴. Over the years Europe has become increasingly dependent on Russian energy sources over years, which include: Anthracite, crude oil, fuel oil, and, most notable natural gas. In 2021, Russia supplied around 36% of the region's gas and 30% of its coal, and 10% of its crude oil. The extremely dependent on the Russian energy supply are Germany and Italy⁴⁵. This situation changed since February 2022. High energy costs have driven numerous governments to boost fossil fuel production, thus delaying the switch to renewable energy⁴⁶.

⁴² V. Lavska. *How the Ukrainian eCommerce changed during a month of the war 2022*: [accessed 09.09.2023], Available at: <https://www.promodo.com/blog/how-the-ukrainian-e-commerce-changed-during-a-month-of-the-war>

⁴³ V. Lavska. *How the Ukrainian eCommerce changed during a month of the war 2022*: [accessed 09.09.2023], Available at: <https://www.promodo.com/blog/how-the-ukrainian-e-commerce-changed-during-a-month-of-the-war>.

⁴⁴ Ag. Pach-Gurgul, J. Piwowarski. *Axiological, Economic and Legal Challenges for the Functioning of the Energy Union in the context of the Energy security of the European Union*, in the Juan Cayon Pena Security and Defence: *Ethical and Legal Challenges in the Face of Current Conflicts* [Scopus]

⁴⁵ Abdallah S. Abualkanam. *Russian-Ukrainian Crisis: Causes and Impacts of the war*, Journal of southwest Jiaotong University, Vol. 58. No 2, April 2023, [accessed 09.09.2023], Available at:

<https://www.jsju.org/index.php/journal/article/view/1615/1605>, [Scopus]

⁴⁶ Hassen Tark Ben, Hamid el Bilali. *Impacts of the Russia-Ukraine war on global food security: towards more sustainable and resilient food system?* Foods 2022, 11(15), 2301; [accessed 09.01.2023], Available at: <https://doi.org/10.3390/foods11152301> [Crossref] [Scopus] [web of science] [Google scholar]

‘Even though all the actors analysed have been active in the application of human security in the diagnosis and evaluation of the crisis, it is the European Parliament that can be considered as the key “speaker” of this logic in the EU, setting the initial tones and interpretative cues’⁴⁷.

“Starting June 2022, with flows of natural gas from Russia plummeting and rationing and economic devastation looming, the European Union approved an edict ordering member state to ensure that their gas-storage facilities were at least 80% full by November 1st, 2022. Fortunately, the situation was not so critical and by the end of November 2022 the storage was 95% full of gas, waiting to be unloaded from a fleet of tankers idling off Europe’s coasts⁴⁸”. Russia remains one of the most-energy-intensive countries in the world⁴⁹.

In the Republic of Moldova, as in other neighboring countries the situation was much difficult, as being a small country with not enough natural resources to provide for own needs, consequently the dependance on the Russian natural resources was quite high, so in this respect the hit on the economy and in particular on population expenses/wallet considerably has increased.

Apart from competitiveness and environmental protection, energy security is one of the three priorities of the energy policy of the European Union⁵⁰.

The connection between the energetic crisis and the e-contracts is playing a double role. On the one hand the population is struggling to pay the expenses, as consequences of increasing the bills for heat, on the other hand, it pushes to find alternative ways to buy basic needs and the electronic platforms from abroad, as it becomes a key element to find such alternative ways. Moreover, as it was mentioned, the consequences of pandemic improved the delivery services and companies’ competition on the

⁴⁷ Stepka Maciej, *Identifying security logics in the EU policy discourse. The ‘Migration crisis’ and the EU*, published IMISCOE, Switzerland, 2022 p. 95. [Scopus]

⁴⁸ *The costs and consequences of Europe’s energy crisis are growing, despite appearances, the worst is yet to come?* [accessed 05.05.2023], Available at: <https://www.economist.com/briefing/2022/11/24/the-costs-and-consequences-of-europes-energy-crisis-are-growing>.

⁴⁹ Bashmakov, I., Myshak, A., Bashmakov, V.A. et al. *Russian energy balance, energy efficiency, and energy-related GHG emission accounting system. Energy Efficiency* 16, 67 (2023). [accessed 05.05.2023], Available at: <https://doi.org/10.1007/s12053-023-10132-6> [Scopus]

⁵⁰ Pach-Gurgul Agnieszka, Piwowarski Juliusz. *Axiological, Economic and Legal Challenges for the Functioning of the Energy Union in the Context of Energy Security of the European Union in the Security and Defence: Ethical and Legal Challenges in the face of current conflicts*. Editor: Juan Cayon Pena. Springer Nature Switzerland AG 2022. Pp.195-208. [Scopus]

countries' market. There were identified an increase of the delivery companies and in particular focused on delivery/shipment from abroad.

In this research, it had as a main goal to analyze not only the consequences of energetic crisis in countries neighboring the Ukrainian conflict but also to highlight the role of the smart contract in energetic sector, as it fits the requirements of the consumer and of the professionals and it connects the will to find the energy solution at the best price.

According to Desen Kirli et others '*the energy system is going through major changes to accommodate to the increasing amount of renewable energy resources (RES), as well as new types of loads, as per example from decarbonized transport systems. Smart contracts play a crucial role in energy applications specifically*'⁵¹. In a nutshell Desen Kiril et. al. mentioned '*the blockchain architecture – while no doubt crucial for understanding what a smart contract is and its capabilities – can be seen as being at a different implementation level than the smart contract specification itself. For example, to take an energy P2P exchange application, it is the smart contract that specifies the rules for how/when energy or flexibility is to be traded, and the price to be paid, rather than the blockchain architecture*'⁵². As with regards to the key characters of smart contracts, as self-enforcement and automation, tamper-proof nature, trustworthiness, transparency and accessibility, security, speed and reliability, self-verification, computation performance and expense.

There are energy applications of smart contract as: P2P (peer-to-peer) trading, where the smart contract plays a role to liaison (match) buyers (consumers) with the sellers when the bids come, a smart contract validates a trade which is composed of price and volume of energy at a specific time. Peer-to-grid (P2G) is the next level as in the P2P transactions is validated by smart contract, the extra energy can be traded between the consumer and the grid; electricity market, the consumer may select the supplier, negotiate and sign a contract, at the same time to securely deposit time series from the energy monitoring infrastructure and offer associated billing services. Additionally smart contract may support implementation of automated activities as determining (defining) electricity costs for a period, payment policies, time management to procure and sell electricity; electric vehicle

⁵¹ D. Kirli, B. Couraud, V. Robu, Ma. Solgado-Bravo, S. Norbu, Me. Andoni, I. Antonopoulos, M. Negrete-Picdtiv, D. Flynn, A. Kiprakis. *Smart contracts in energy systems: A systematic review of fundamental approaches and implementations* [accessed 05.05.2023], Available at: <https://pdf.sciencedirectassets.com/271969/> [Scopus]

⁵² Desen Kirli, Benoit Couraud, Valentin Robu, Marcelo Solgado-Bravo, Sonam Norbu, Merlinda Andoni, Ioannis Antonopoulos, Matias Negrete-Picdtiv, David Flynn, Aristides Kiprakis, *Smart contracts in energy systems: A systematic review of fundamental approaches and implementations* [accessed 05.05.2023], Available at: <https://pdf.sciencedirectassets.com/271969/>

management (EVmgt), etc. In this field smart contract is used to implement lighter optimization algorithms such as 'limited neighborhood space while achieving fair profits distribution among EV charging places owners', a popular app is smart charging for EVs; market design; grid management; virtual power plants (VPP), audit and certification, smart homes etc.

Energy crisis moved the attention from natural resources to save natural resources and to clean energy, transition to a net-zero carbon system have long heralded the greater insulation from geopolitics that would likely result from the end of the fossil era⁵³.

Conclusions and further work

The syntagma 'the future is digital'⁵⁴ is used to be invoked. Now we are facing the digitalization of both the public and private sectors and, consequently, the number of the digital transactions (e-contracts) are increasing, too. Lessons learned from the past to the future and the effects of the crisis showed that digitalization is one of the key priorities to work on.

Let's take firstly the Pandemic (Covid-19) crises this is considered as the best catalysator for the digital commerce and especially for the eContracts, it enriched (amended) the legislation of the countries as during lockdown people were facing legislation gaps in order to access the online public and private services, in this way there were established internal and international norms on e-Contract.

However, digitalization is directly connected to energetic facility, while the Ukraine conflict showed the opposite site of the coin, that people were left with no food, no water and no electronic facilities and the digitalization does not help them in those times.

For the future perspective - digitalization is seen as a high priority. However, it should be controlled as in many cases it involves. The immediate priorities in present are to end the conflict (war) in Ukraine, for the future prevent the pandemic and improve the e-contracts use by the end users.

Despite the fact, the geopolitical crisis played lower role as pandemic crisis in e-Contracts development, but it offered a great opportunity to conclude contract in virtual space, to manage the business and pay the bills online by the people moved from Ukraine in other parts of the world made their life easier.

⁵³ Don c. Smith, *Geopolitical realities of the energy transition supply chain: energy security risks and opportunities*. Journal of Energy & Natural Resources Law, 2023, Vol. 41, No 3, pp. 233-239, [accessed 05.05.2023], Available at: <https://doi/epdf/10.1080/02646811.2023.2230732?needAccess=true&role=button> [Scopus]

⁵⁴ Kr. Georgieva, *Upon Crisis: How the world can respond* [accessed 05.05.2023], Available at: <https://www.imf.org/en/News/Articles/2022/04/14/sp041422-curtain-raiser-sm2022>.

As previously being highlighted, the legal aspects of e-contracts trends during crisis times especially upon the Covid 19 pandemic, energetic and security crises contributed to the international level, to collaboration between the state and private authorities in policy-making, provide easier access to market, development of cross-border e-commerce, protection of consumer and building the consumer's confidence in e-commerce and, respectively e-contracts.

As recommendation for the future development of e-contracts is to improve the gaps in the implementation of legislation regarding e-contracts, validation of e-signature of the contracts and, consequently, lack of possibility to prove the authorization of contracts, institutional capacity and educate the society in terms of correct attitude towards digitalization.

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THE INVIOLABILITY OF THE PERSON

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Abstract: *The research in reference is dedicated to the inviolability of the person as a principle of the criminal process and as a legal guarantee of personal security, which obliges adequate protection. On the other hand, the freedom of the person represents one of the greatest social values. The person can be deprived of liberty only in exceptional cases, based on grounds strictly regulated by law. No one should be arbitrarily deprived of this freedom. The arrest of the person must be ordered as an ultima ratio. The main rule is to search the person at liberty, and the presumption is always in favor of release. The authors research, in this sense, the jurisprudence of the Republic of Moldova and that of the ECHR, they come up with practical recommendations and proposals for ferenda law, trying to align and correspond the internal norms to the standards imposed by art. 5 of the ECHR.*

Keywords: *inviolability, person, deprivation, freedom, arrest, penal trial.*

Introduction

The inviolability of the person is a legal guarantee of the personal security and freedom of each individual. This is expressed by giving the person a real opportunity to dispose of himself, to determine his place of residence at his own discretion, not to be under constant guard and surveillance.

In addition, the inviolability of the person consists in preventing, suppressing and punishing the violation of his physical and mental integrity and individual freedom. The restriction of the person's right to personal integrity is carried out within the criminal process, in order to create the necessary conditions for the conduct of the criminal investigation and the imposition of a fair punishment on the guilty.

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Discussion and results

„The consecration of the freedom of the person, as a fundamental right, requires its guarantee, through a strict regulation of the cases and conditions in which this fundamental right can be violated.”¹

„By individual freedom it is necessary to understand the physical freedom of the person, his right to be able to behave and move freely, not to be held in slavery or in any other servitude, not to be detained, arrested or imprisoned except in cases and according to the forms expressly provided by the Constitution and laws.”²

This aspect was also retained by the Constitutional Court, which noted that, „By guaranteeing the „right to liberty”, Article 5 § 1 of the Convention envisages the physical liberty of the person (Creangă v. Romania [MC], February 23, 2012, § 84).³

„The safety of the person means the set of guarantees that protect the person in situations where the public authorities, in the application of the Constitution and the laws, take certain measures that concern individual freedom, guarantees that ensure that these measures are not illegal.”⁴

„Safety could mean that no one needs fear that they will be subjected to arbitrary encroachments on their freedom.”⁵

Individual freedom is one of the fundamental values protected by the European Convention on Human Rights, requiring, due to its importance, a rigorous control by the ECHR regarding any measure that could affect this value.

In the ECHR case, *Bozano v. France*, the European Court held that: „The main issue to be determined is whether the disputed detention was „lawful”, including whether it was in accordance with a procedure prescribed by law”. The Convention here refers essentially to national law and establishes the need to apply its rules, but it also requires that any measure depriving the individual of his liberty must be compatible with the purpose of Article 5 (art. 5), namely to protect the individual from arbitrariness (see, as the most recent authority, the *Ashingdane* judgment

¹ Ioan, Griga, *Procedural Criminal Law, General Part, Theory, Jurisprudence and Practical Applications*, Bucharest, Published by Oscar Printn, 2004, p. 57.

² Ioan, Muraru, *Constitutional law and the political institutions*, Bucharest, Pro Arcadia, 1993, p. 248.

³ Decision No. 15 of 28.05.2020 regarding the exception of unconstitutionality of article 191 paragraph (2) of the Code of Criminal Procedure (provisional release under judicial control [2]) (point 47).

⁴ Ioan, Muraru, *Constitutional law and the political institutions*, Bucharest, Pro Arcadia, 1993, p. 249.

⁵ Gheorghită, Mateuț, *The criminal procedures. General part*, Bucharest, Universul Juridic, 2019, p. 85.

of 28 May 1985, Series A no. 93, p. 21, § 44). What is at stake here is not only the „right to liberty” but also the “right to security of person”.⁶

„A person is deprived of liberty by ordering the measure of detention, administrative management at the police headquarters, by the execution of the warrant of bringing by coercion, by ordering preventive arrest, house arrest, provisional arrest with a view to extradition or issuing the European arrest warrant, ordering the measure of safety of temporary medical hospitalization, etc.; likewise, on the basis of a final court decision, there is a deprivation of liberty in the case of the execution of the main sentence of imprisonment or life imprisonment or the educational measure of internment in an educational center or in a detention center.”⁷

The individual’s right to liberty and security is regulated in several international instruments. According to art. 3 of the Universal Declaration of Human Rights: „Every human being has the right to life, liberty and security of his person”. Moreover, in accordance with the provisions of art. 9 of the same international act, „No one shall be arbitrarily arrested, detained or exiled”.

The inviolability of the person is also proclaimed in the *International Covenant on Civil and Political Rights*, adopted on December 16, 1966 in New York. *Every individual has the right to freedom and security of his person. No one can be arrested or detained arbitrarily. No one can be deprived of his freedom except for legal reasons and in accordance with the procedure provided by law* (art. 9 paragraph (1)). This fundamental right is specifically protected by other international documents.⁸

In accordance with art. 5 paragraph 1 of the ECHR: „Everyone has the right to freedom and security. No one can be deprived of his freedom except in the cases expressly stipulated in the law”, and namely:

a) if he is legally detained on the basis of a conviction pronounced by a competent Court;

b) if he became the subject of a legal arrest or detention for disobeying a decision issued in accordance with the law by a Court or in order to guarantee the execution of an obligation provided by law;

c) under the conditions in which he was arrested or detained, with a view to his being brought before a competent judicial authority, when there are good reasons resulting from the need to prevent him from committing a crime or fleeing after committing it;

⁶ ECHR Judgment, *Bozano v. France*, of 18.12.1986 (§ 54). Available: <https://hudoc.echr.coe.int/eng?i=001-57448> [accessed: 02.10.2022].

⁷ Mihail Udroi, *Synthesis of Criminal Procedure, General Part*, 2nd ed., Volume I, Bucharest, C.H. Beck, 2021, p. 62.

⁸ *Final Act of the Conference on Security and Cooperation in Europe* (Helsinki, 1975; The final document of the Vienna Meeting of the representatives of the States participating in the Conference for Security and Cooperation in Europe (1989) and so on.

d) when it comes to the legal detention of a minor, decided for his education under supervision or for the purpose of bringing him before a competent authority;

e) when we can talk about the legal detention of a person susceptible to transmitting a contagious disease, of an insane person, an alcoholic, a drug addict or a vagabond;

f) when we can talk about the legal arrest or detention of a person, to prevent him from entering the territory of a state or against whom an expulsion or extradition procedure is being carried out.

"(...) in general, Article 5 § 1 of the European Convention contains an exhaustive list of permissible grounds for deprivation of liberty, provided for in letters (a)-(f), and no deprivation of liberty shall be lawful unless it falls within one of these reasons (e.g. see *M. v. Germany*, December 17, 2009, § 86; *Creangă v. Romania [MC]*, February 23, 2012, § 120; *Del Río Prada v. Spain [MC]*, October 21, 2013, § 125)".⁹

In the ECHR case, *Guzzardi v. Italy*¹⁰, the Court recalls that in proclaiming the „right to liberty”, paragraph 1 of Article 5 (art. 5-1) is contemplating the physical liberty of the person; its aim is to ensure that no one should be dispossessed of this liberty in an arbitrary fashion. As was pointed out by those appearing before the Court, the paragraph is not concerned with mere restrictions on liberty of movement; such restrictions are governed by Article 2 of Protocol No. 4 (P4-2) which has not been ratified by Italy. In order to determine whether someone has been „deprived of his liberty” within the meaning of Article 5 (art. 5), the starting point must be his concrete situation and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question (see the *Engel and others* judgment of 8 June 1976, Series A no. 22, p. 24, par. 58-59”).

In the ECHR case, *Creangă v. Romania*¹¹, the Court found: „(...), in cases examined by the Commission, the purpose of the presence of individuals at police stations, or the fact that the parties concerned had not asked to be able to leave, were considered to be decisive factors. Thus, children who had spent two hours at a police station in order to be questioned without being locked up were not found to have been deprived of their liberty (see *X v. Germany*, no. 8819/79, Commission decision of

⁹ Decision of the Constitutional Court of the Republic of Moldova no. 27 of 30.10.2018 regarding the control of the constitutionality of some provisions of Article 185 of the Code of Criminal Procedure (preventive arrest if the person has not admitted his guilt in committing the imputed act) (point 91).

¹⁰ ECHR case *Guzzardi v. Italy*, of 06.11.1980 (§ 92). Available: <https://hudoc.echr.coe.int/eng?i=001-57498>.

¹¹ ECHR Judgment *Creangă v. Romania*, of 23.02.2012 (§ 93). Available: <https://hudoc.echr.coe.int/eng?i=001-109226>.

19 March 1981); nor was an applicant who had been taken to a police station for humanitarian reasons, but who was free to walk about on the premises and did not ask to leave (see *Gueant v. Switzerland* (dec.), no. 24722/94, Commission decision of 10 April 1995). Likewise, the Commission attached decisive weight to the fact that an applicant had never intended to leave the courtroom where he was taking part in a hearing (see *E.G. v. Austria*, no. 22715/93, Commission decision of 15 May 1996). The case-law has evolved since then as the purpose of measures by the authorities' depriving applicants of their liberty no longer appears decisive for the Court's assessment of whether there has in fact been a deprivation of liberty. To date, the Court has taken this into account only at a later stage of its analysis, when examining the compatibility of the measure with Article 5 § 1 of the Convention (see *Osypenko v. Ukraine*, no. 4634/04, §§ 51-65, 9 November 2010; *Salayev v. Azerbaijan*, no. 40900/05, §§ 41-42, 9 November 2010; *Iliya Stefanov v. Bulgaria*, no. 65755/01, § 71, 22 May 2008; and *Soare and Others v. Romania*, no. 24329/02, § 234, 22 February 2011)."

Personal freedom is part of fundamental human rights. Individual freedom is widely enshrined in numerous provisions that the Constitution includes in art. 25. Thus, the Constitution recognizes as legal the restriction of the inviolability of the person in the cases provided by law. From the constitutional text we derive the following:

- 1) Individual freedom and security of the person are inviolable;
- 2) The search, detention or arrest of a person is allowed only in the cases and within the procedure regulated by law;
- 3) The detention of the detained person must not exceed 72 hours;
- 4) The arrest of the person must not exceed 30 days, and in total - 12 months;
- 5) The arrest and extension of the arrest is made only on the basis of a court order and can be contested by appeal in the hierarchically superior court;
- 6) The person subject to detention or arrest must be immediately informed of the grounds and reasons for the application of these coercive measures;
- 7) The accusation of the person is made known in the shortest possible time;
- 8) The reasons for detention or arrest are made known to the person subject to these measures only in the presence of a lawyer, chosen by the person or appointed *ex officio*;
- 9) The detained or arrested person should be released immediately in cases where the reasons for the measures applied have disappeared.

Regarding the observance of the term of deprivation of liberty, the European Court, in the case of *Assenov and Others v. Bulgaria*¹², mentions that, „(...) it falls in the first place to the national judicial authorities to ensure that the pre-trial detention of an accused person does not exceed a reasonable time. To this end, they must examine all the circumstances arguing for and against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set these out in their decisions on the applications for release (...)”.

„In order for a deprivation of liberty to be in accordance with the principle of legality and to exclude the abusive application of this coercive measure contrary to the provisions of the Convention, states have a positive obligation to establish in their domestic legislation rules regarding the conditions and grounds for the application of arrest, as well as other guarantees for persons who are subject to these measures that limit the right to freedom. In this context, the right not to be arrested and detained in the absence of the cases and conditions provided by the national legislation clearly and precisely represents a legal guarantee against arbitrary state interference in individual freedom, and one of the states’ obligations also involves the exercise of a certain control of compliance with national law in a specific case”¹³.

„In addition to the principle of legality, Article 5 § 1 of the Convention enshrines the protection of the person against arbitrariness. If the illegal nature of a deprivation of liberty implies its lack of conformity with domestic law, then the notion of „arbitrary” extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful under domestic law, being at the same time arbitrary and therefore contrary to the Convention (*Creangă v. Romania* [MC], no. 29226/03, § 84, 23 February 2012)”¹⁴.

Recognizing the social significance in the fight against criminality, as well as in the light of constitutionality, the criminal procedural law comes to

¹² ECHR Judgment, *Assenov and Others v. Bulgaria*, of 28.10.1998 (§ 154). Available: <https://hudoc.echr.coe.int/eng?i=001-58261> [accessed: 15.08.2022].

¹³ Ministry of Justice of the Republic of Moldova, Government Agent, *Study regarding the observance of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms by the Republic of Moldova*, Chişinău, 2018, p. 2. Available: https://www.justice.gov.md/public/files/agent_guvernamental/A5_MDA.pdf [accessed: 15.08.2022].

¹⁴ Ministry of Justice of the Republic of Moldova, Government Agent, *Study regarding the observance of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms by the Republic of Moldova*, Chişinău, 2018, p. 2. Available: https://www.justice.gov.md/public/files/agent_guvernamental/A5_MDA.pdf [accessed: 15.08.2022].

guarantee the inviolability of the person, concretely regulating the grounds and reasons for his restriction.

In order to protect individuals from illegal prosecution or conviction, as well as any other unreasonable restriction of their rights and freedoms, the inviolability of the person has been proclaimed as a fundamental principle of the criminal process.

The principle of the inviolability of the person, enshrined in art. 11 of the Code of Criminal Procedure, establishes the general conditions regarding the freedom and safety of the person, as follows:

1. No person may be detained on suspicion of committing a crime or arrested without the conditions and legal grounds indicated in the Code of Criminal Procedure;

2. No one may be deprived of liberty, arrested, forcibly committed to a medical institution or sent to a special educational institution except based on a warrant or a court order. The respective decisions of the court must be thorough and reasoned;

3. The person cannot be detained for more than 72 hours until the court issues an arrest warrant;

4. Procedural actions that affect the inviolability of the person (for example, search, physical examination) can be carried out without the consent of the person or his legal representative only under the conditions and grounds provided for in the Code of Criminal Procedure;

5. The person deprived of liberty (detained or arrested) must be kept in conditions that exclude threats to his life and health, implicitly those that could affect the capacity of the person in question to make decisions and express his position;

6. Any person illegally detained, kept in detention longer than the period provided for by the Code of Criminal Procedure or deprived of liberty in any other way, as well as illegally placed in a medical institution or illegally sent to a special educational institution, must be released immediately by the court, prosecutor or criminal prosecution body, implicitly also by other representatives of the bodies in which this person is detained (for example, employees of temporary detention centers).

At the same time, persons deprived of liberty, pursuant to art. 11 of the Code of Criminal Procedure are provided with specific guarantees. These persons are immediately notified about:

1) The rights and grounds for detention or arrest;

2) The circumstances of the deed, for which they were detained or arrested;

3) The legal classification of the criminal act of which it is suspected or accused;

The aspects indicated above are brought to the attention of the person in the language he understands, in the presence of a chosen defender or a lawyer who provides legal assistance guaranteed by the state. These guarantees are implicitly regulated so that the person can challenge the legality of his possession.

In the ECHR case, *X v. the United Kingdom*¹⁵, the Court held that, “(...) *the need for the applicant to be apprised of the reasons for his recall necessarily followed in any event from paragraph 4 of Article 5 (art. 5-4): anyone entitled (...) to take proceedings to have the lawfulness of his detention speedily decided cannot make effective use of that right unless he is promptly and adequately informed of the facts and legal authority relied on to deprive him of his liberty (...).*”

In the case *Fox, Campbell and Hartley v. the United Kingdom*¹⁶, the Court noted that, “(...) any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness (...). Whilst this information must be conveyed “promptly” (in French: “dans le plus court délai”) (...), it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features.”

At the same time, according to art. 11 paragraph (9) of the Code of Criminal Procedure, “*During the criminal process, no one can be physically or mentally mistreated, and any actions and methods that create danger to human life and health, even with his consent, are prohibited, as well as to the environment. The detained, preventively arrested person cannot be subjected to violence, threats or methods that would affect his ability to make decisions and express his opinions.*”

Thus, the principle of the inviolability of the person establishes the limits of restricting the freedom of the suspect and the accused during the criminal process. Restrictions are allowed for a strictly defined period, after which a person must be released. The most important guarantee of the inviolability of the person in the criminal process is the provision of the right to restrict only the freedom of the court. Only for the short-term detention of a suspect, the law does not require a court order. This principle also ensures adequate conditions for keeping a person in places of detention. Failure to comply with this principle contradicts the Constitution and international legal acts in the field of human rights and freedoms.

¹⁵ ECHR Judgment, *X v. the United Kingdom*, of 05.11.1981 (§ 66). Available: <https://hudoc.echr.coe.int/eng?i=001-57602> [accessed: 14.10.2022].

¹⁶ ECHR Judgment, *Fox, Campbell and Hartley v. the United Kingdom*, of 30.08.1990 (§ 40). Available: <https://hudoc.echr.coe.int/eng?i=001-57721> [accessed: 14.10.2022].

In addition, the Code of Criminal Procedure regulates in detail the procedural order of the person's detention, the term of detention, the application of preventive detention, etc., being a guarantee of the limitation of individual freedom in the criminal process only under the conditions of the law. The application of preventive detention, as it was mentioned before, is exclusively the competence of the court, which determines the appropriateness of this measure based on the multilateral verification of the materials of the criminal file.

The court or the prosecuting body is obliged to immediately release any person detained illegitimately.

According to art. 78 of the previous Code, preventive arrest was authorized by the prosecutor. Later, the arrest was made possible based on a warrant issued by the prosecutor. The legislator through Laws of the Republic of Moldova no. 1579-XIV of February 27, 1998 and no. 95-XIV of July 16, 1998, starting from April 30, 1998, sent from the prosecutor's office to the courts the examination of the measures regarding the application of the preventive measure - the arrest, the issuance of the arrest warrant and the extension of the detention period. The introduction of judicial control over this preventive measure results in a broader defense of the freedom and safety of the person.¹⁷

Therefore, from the moment of the adoption of the Constitution and until the introduction of these amendments in the Republic of Moldova, there have been serious violations of the human right to freedom and personal safety.

In the ECHR case, *Pantea v. Romania*, *"The Court notes firstly that in the instant case the prosecutor at the Bihor County Court intervened initially at the investigation stage, examining whether it was necessary to charge the applicant, directing that criminal proceedings should be opened against him and taking the decision to place him in pre-trial detention. He subsequently acted as a prosecuting authority, formally charging the applicant and drawing up the indictment on which the latter was committed for trial in the Bihor County Court. However, he did not act as prosecuting counsel before this court, although this would have been possible, since no provision in the Law on the Administration of Justice would have specifically forbidden him from so doing. Accordingly, it is appropriate to consider whether, in the circumstances of the case, he*

¹⁷ Decision of the Plenum of the Supreme Court of Justice no. 29 of 09. 11. 1998 with the changes introduced by the Decision of the Plenary of the SCJ no. 17 of 22. 04. 2002 about the application by the courts of some provisions of the criminal procedure legislation regarding preventive detention // Collection of Decisions of the Supreme Court of Justice (May 1974 – July 2002), p. 388.

provided the guarantees of independence and impartiality inherent in the concept of “officer” within the meaning of Article 5 § 3.”¹⁸

“Considering the above, the Court concludes that the prosecutor who ordered the preventive arrest of the applicant was not a “magistrate”, in the sense of Article 5 paragraph 3 of the Convention, therefore, it must be verified whether the legality of the measure of preventive arrest was subject to judicial control and whether he intervened “immediately” (“aussitot”), in the sense of the same provision of the Convention.”¹⁹

To understand the legal (constitutional) concept of individual freedom, one must start from the fact that individual freedom (like all human freedoms) is not, cannot and must not be absolute. This means that individual freedom is to be realized in the coordinates imposed by the constitutional order or, more broadly, by the legal order, implicitly the criminal procedural order.

*“The Court also reiterates that where deprivation of liberty is concerned it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of “lawfulness” set by the Convention, a standard which requires that the law at issue be sufficiently precise to allow the person – with appropriate advice if need be – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see the *Steel and Others v. the United Kingdom*, 23 September 1998, § 54 Reports of Judgments and Decisions 1998 VII, and *Holomiov v. Moldova*, no. 30649/05, § 126, 7 November 2006).”²⁰*

“Violation of the legal order entitles the public authorities to intervention and oppression, which implies, if necessary, depending on the seriousness of the violations, some measures that directly concern the freedom of the person, such as, for example, conducting searches, detention, arrest, etc.”²¹

“Naturally, when adopting the decision regarding the application of the arrest, the national courts must apply the standards imposed by the European Convention: legality of detention; existence of a reasonable suspicion; presence of a risk; the proportionality of the application of the preventive measure and, finally, the possibility of applying alternative

¹⁸ ECHR Judgment, *Pantea v. Romania*, of 03.06.2003 (§ 237). Available: <https://hudoc.echr.coe.int/eng?i=001-122720> [accessed: 05.10.2022].

¹⁹ ECHR Decision, *Pantea v. Romania*, of 03.06.2003 (§ 237).

²⁰ ECHR Judgment, *Leva v. Moldova*, of 15.12.2009 (§ 51). Available: <https://hudoc.echr.coe.int/eng?i=001-144486> [accessed: 21.05.2022].

²¹ Ion, Creangă, *Individual liberty and security of the person - the most expressive human rights*. In: *The Ombudsman review*, nr. 1–3, 2001, p. 16.

measures for detention (see the DCC no. 3 of 23 February 2016, §§ 62 and 63).²²

In the ECHR case, *Buzadji v. the Republic of Moldova*²³, the Court noted that, “*In Storck v. Germany (no. 61603/00, § 75, ECHR 2005-V) the Court held that the right to liberty is too important in a “democratic society” within the meaning of the Convention for a person to lose the benefit of the protection of the Convention for the sole reason that he gives himself up to be taken into detention. Detention might violate Article 5 even though the person concerned might have agreed to it (see De Wilde, Ooms and Versyp v. Belgium, 18 June 1971, § 65, Series A no. 12).*” Respectively, even if the person agrees that preventive arrest or house arrest could be applied to him, the European Court condemns this aspirant by the fact that he does not provide the person with effective guarantees of the right to freedom and safety.

In the following, we will refer to the procedural-criminal rules that specifically regulate the deprivation of liberty of the person, which we will analyze through the prism of their correspondence to international standards and constitutional norms.

In accordance with Art. 165 paragraph (1) of the Code of Criminal Procedure, “*Deprivation of a person’s liberty, for a short period of time, but not more than 72 hours, constitutes detention.*” This procedural norm corresponds to the constitutional rigors. As far as ECHR jurisprudence is concerned, it does not establish a specific term for detention. At the same time, the Moldovan cases examined by the European Court regarding art. 5 of the ECHR, denotes that the Court did not expose itself to the detention period. The determination of this term remains at the discretion of the states. In divers legislations, retention is provided for differently. For example, in Romania detention cannot exceed 24 hours. “The French regulation sets the initial term of detention at 24 hours with the admission of its simple extension by another 24 hours and with the existence for special cases of more extensive extensions, such as the field of crimes against the state, where the extension can go up to 6 days in normal conditions and after 12 days if a state of emergency has been declared.”²⁴

However, the European Court tells us about detention as deprivation of liberty for a very short period of time. For example, in the ECHR case, *Foka v. Turkey*²⁵, the Court “(...) *Even if it is not excluded that Article 5 § 1 may*

²² Decision of the Constitutional Court of the Republic of Moldova no. 27 of 30.10.2018 (point 75).

²³ ECHR Judgment, *Buzadji v. the Republic of Moldova*, of 05.07.2016 (§ 107). Available: <https://hudoc.echr.coe.int/eng?i=001-164928>.

²⁴ Nicolae, Volonciu, *Treaty on criminal procedure, General part*, Volume I, Paidea, Bucharest. 1996, p. 413.

²⁵ ECHR Judgment, *Foka v. Turkey*, of 24.06.2008 (§ 75). Available: <https://hudoc.echr.coe.int/eng?i=001-87175>.

apply to deprivations of liberty of a very short length (see *X v. Germany*, no. 8819/79, Commission decision of 19 March 1981, Decisions and Reports (DR) 24, pp. 158, 161) (...).” Also, in that case, the ECHR notes that, “(...) the Convention organs’ case-law shows that this provision was considered not applicable in cases where the applicants’ stay in a police station lasted only few hours and did not go beyond the time strictly necessary to accomplish certain formalities (see, for instance, *Guenat v. Switzerland*, no. 24722/94, Commission decision of 10 April 1995, Decisions and Reports (DR) 81, pp. 130, 134, and *X v. Germany*, decision cited above).”

Also, the detention period of up to 72 hours must be calculated from the moment the person is detained *de facto* and not *de iure*.

“*De facto* detention - is a criminal procedural action undertaken by a Police employee, which consists in the physical deprivation of liberty of the person suspected or accused of committing a crime, until the arrest report is drawn up, a period that cannot exceed 3 hours. Persons for whom a final prison sentence has been pronounced or for whom an arrest warrant has been issued may be detained *de facto*. Detention by law - is a criminal procedural action carried out by the criminal prosecution body which is manifested by drawing up the minutes of detention.”²⁶

The Code of Criminal Procedure establishes the circle of persons in respect of whom the withholding may be applied. Thus, in accordance with the provisions of art. 165 paragraph (2) of the Code of Criminal Procedure, “*There may be subject to detention:*

1) persons suspected of committing a crime for which the law provides for a prison sentence of more than one year if there is a reasonable suspicion that the person has committed this crime;

2) the accused, the defendant who violates the conditions of the non-custodial preventive measures taken against him, as well as the protection ordinance in the case of family violence, if the crime is punishable by imprisonment;

3) convicts in respect of whom, decisions have been adopted canceling the conviction with conditional suspension of the execution of the sentence or canceling the conditional release from the sentence before the term;

4) the persons in respect of whom the decision of acquittal was annulled and the decision to sentence to imprisonment was adopted, as well as the persons who evade the execution of the sentence to imprisonment;

²⁶ Point 1) Chapter V, Annex no. 1 to the Order of the head of the General Police Inspectorate no. 129 of 27.04.2020, *Regarding the approval of the Standard Operating Procedures regarding the detention, escort, transportation and placement of the detained person in the Police Detention Center.*

- 5) people who commit an audience crime;
- 6) the persons to be charged, if the whereabouts of the person is not known or if he did not appear without good reason and did not inform the body that summoned him about the impossibility of his appearance;
- 7) persons subject to extradition.”

The list of mentioned persons is an exhaustive one. At the same time, the criminal procedural law establishes the procedural acts based on which detention can take place, namely: minutes, ordinance and the judgment of the court. The respective acts and the cases of their preparation are regulated in art. 165 paragraph (3) of the Code of Criminal Procedure.

From the analysis of art. 165 paragraph (2) of the Code of Criminal Procedure we understand that this criminal procedural norm establishes, in addition to the persons in respect of whom detention can be applied, concrete conditions regarding the application of this coercive procedural measure.

The first condition, established in art. 165 paragraph (2) point 1) of the Code of Criminal Procedure and in art. 166 paragraph (1) of the Code of Criminal Procedure, is that the crime for which the person is suspected must have a criminal penalty of imprisonment of more than one year. If the person is suspected of committing a crime for which the criminal law establishes the penalty of up to one year in prison, a fine, unpaid community service or other categories of main penalties, this person cannot be detained under the terms of the criminal procedural law.

The second condition, established by the same rules, is the existence of a reasonable suspicion that the person has committed the crime. According to art. 6 point 4/3) of the Code of Criminal Procedure, “*reasonable uncertainty – suspicion resulting from the existence of facts and/or information that would convince an objective observer that a crime attributable to a certain person/persons has been committed or is being prepared to be committed and that there are no other facts and/or information that remove the criminal nature of the fact or prove the person’s non-involvement.*” At the same time, the jurisprudence of the European Court, in several cases, points to reasonable suspicion, which is similar to the notion in our domestic law.

For example, in the ECHR case, *Stepuleac v. Moldova*²⁷, “*The Court reiterates that ‘the ‘reasonableness’ of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention which is laid down in Article 5 § 1 (c) of the Convention. Having a ‘reasonable suspicion’ presupposes the existence of*

²⁷ ECHR Judgment, *Stepuleac v. Moldova*, of 06.11.2007 (§ 68). Available: <https://hudoc.echr.coe.int/eng?i=001-112790> [accessed: 13.04.2022].

facts or information which would satisfy an objective observer that the person concerned may have committed the offence. What may be regarded as 'reasonable' will however depend upon all the circumstances. While special circumstances may affect the extent to which the authorities can disclose information, even "the exigencies of dealing with terrorist crime cannot justify stretching the notion of 'reasonableness' to the point where the essence of the safeguard secured by Article 5 § 1 is impaired" (...)." The same aspects were also observed in the case of Leva v. Moldova.²⁸

In practical terms, when judicial bodies are to establish "reasonable suspicion", they must take into account a complex of information and evidence. For example, the criminal investigation body notified by the investigative bodies must analyze the content of the notification in relation to the investigative documents (hearing of the victim, witnesses, technical-scientific or medico-legal findings, etc.).

Sometimes only the victim's complaint is sufficient when the reasonable suspicion and circumstances of the case emerge from its content (for example, the victim declares the fact of the crime and its author). In other words, there must be sufficient and concrete evidence or information regarding the act, firstly, and the alleged perpetrator, secondly. At the same time, the criminal prosecution body must establish the non-existence of circumstances that exclude criminal prosecution or that remove the criminal character of the deed.

The identity of the perpetrator is not required to start the criminal investigation, but when it is decided to apply detention, his identity is mandatory, unless the person is detained for a period that cannot exceed 6 hours, in order to establish his identity (art. 166 paragraph (5/1) of the Code of Criminal Procedure).

The jurisprudence of the Strasbourg Court comes in support of the invoked desiderata. For example, in the case of *Ignatenco v. Moldova*, "The Court observes that the applicant was arrested on the basis of "operative information", (...). The Court also notes that this "operational information" was confirmed by S.F.'s criminal complaint, which would be sufficient to justify the applicant's arrest under national law." In other words, there was operative information, which, according to its content, corroborated with the content of the complaint submitted by the victim.

In the ECHR case, *Labita v. Italy*²⁹, the Court noted that, "While a suspect may validly be detained at the beginning of proceedings on the basis of statements by pentiti, such statements necessarily become less

²⁸ ECHR Judgment, *Leva v. Moldova*, of 15.12.2009 (§ 50). Available: <https://hudoc.echr.coe.int/eng?i=001-144486> [accessed: 21.05.2022].

²⁹ ECHR Judgment, *Labita v. Italy*, of 06.04.2000 (§ 159). Available: <https://hudoc.echr.coe.int/eng?i=001-58559> [accessed: 06.10.2022].

relevant with the passage of time, especially where no further evidence is uncovered during the course of the investigation.” The analysis of the respective case shows that the suspect can also be detained based on information or statements of informants. However, that information will have no force unless it is corroborated and supported by other evidence.

In some specific cases (for example, those of a terrorist nature), the Court took into account only operational information, i.e., information obtained from informants. In the ECHR case, *O' Hora v. the United Kingdom*³⁰, the Court held that, “(...) *The intelligence derived from four informants who had proved reliable in the past and had provided information leading to seizures of explosives or firearms and to prosecutions. None of the informants had a criminal record. The information given by these four informants was consistent, in that all gave the same names as being involved, and independent, in that none was aware of the existence of the others and each gave the information at separate meetings with police officers.*” The analysis of the respective case shows that, even in complicated cases, such as those of a terrorist nature, the European Court supported the Government’s position regarding the application of the detention of four suspects only based on operative information. However, the Court correctly retained and analyzed the content of this information and its corroboration with other operational information received from other informants, which according to the content were the same. In addition, the informants did not know each other nor were they aware of the existence of the information given by others. Thus, both the domestic judicial bodies and the Court took into account all these circumstances and that they could not be fabricated or the information could not be wrong, coming from different sources with the same content.

It should be noted that, for the application of the coercion measure of detention, there must be grounds and reasons, not just the reasonable suspicion of the commission of the crime. Thus, the criminal procedural law, through the prism of art. 166, specifically establishes the grounds for the application of withholding, namely:³¹

1) *if he was caught in flagrant offense*, in other words, the crime was discovered at the time of its commission or the crime whose perpetrator, immediately after its commission, is followed by the victim, by eyewitnesses or other persons or is caught close to the place of commission of the crime with weapons, tools or any other objects that would give grounds to suppose him a participant in the crime (art. 513 of the Code of Criminal Procedure).

³⁰ ECHR Judgment, *O' Hora v. the United Kingdom*, of 16.10.2001 (§ 10, 21, 32, 40). Available: <https://hudoc.echr.coe.int/eng?i=001-59721> [accessed: 06.10.2022].

³¹ Art. 166 paragraph (1) points 1)-5) of the Code of Criminal Procedure of the Republic of Moldova.

This ground will be proven through various procedural actions, such as: on-site research, victim or witness statements, objects lifting, etc.;

2) *if the eyewitness, including the victim, directly indicates that this particular person committed the crime.* The statements of the victim and/or the witness prove this basis, who will point directly to the person who committed the crime, that is, will declare the identity of the perpetrator or his particular signs by which he can be recognized. In the latter case, the criminal investigation body, in addition to the hearing, will also perform the presentation for recognition (this ground for detention will be applied only if the witness and/or victim will recognize the perpetrator).

In the case *Stepuleac v. Moldova*³², the Court held that, “*More disturbingly, it follows from the statements of the two alleged victims that one of the complaints was fabricated and the investigating authority did not verify with him whether he had indeed made that complaint, while the other was the result of the direct influence of officer O., the same person who registered the first complaint against the applicant (see paragraph 7 above; see also Sultan Öner and Others v. Turkey, no. 73792/01, §§ 121-123, 17 October 2006). This renders both complaints irrelevant for the purposes of determining the existence of a reasonable suspicion that the applicant had committed a crime, while no other reason for his arrest was cited (...).*”

In the ECHR case, *Leva v. Moldova*³³, “*The Court notes that under Article 166 of the Code of Criminal Procedure a person suspected of a crime could be arrested only if certain requirements were met, in particular when there are grounds for arrest. One of the grounds for arrest is “if an eyewitness, including the victim, points directly at him as having committed the crime” (...). The arresting officer relied only on that ground in the minutes of the applicants’ arrest (...). However, as later established by the investigating judge, no such witness statements had been included in the case file at the hearing of 8 November 2004 (...).*”

3) *if obvious traces of the crime are discovered on the person’s body or clothes, at their residence or in their transport unit.* The respective basis will be applied if the traces of the crime will be detected following the on-site investigation, body or home search, collection of objects and documents, physical examination or examination of the objects detected and seized, technical-scientific or medico-legal findings, expertise, hearings;

4) *if traces left by this person are discovered at the crime scene.* The respective theme will be proven through on-site research, technical-

³² ECHR Judgment, *Stepuleac v. Moldova*, of 06.11.2007 (§ 77).

³³ ECHR Judgment, *Leva v. Moldova*, of 15.12.2009 (§ 52).

scientific or medico-legal findings, expertise, hearings, presentation for recognition of objects and documents;

5) *if he tried to hide or his identity could not be ascertained*. The basis given will be proven through hearings, including of law enforcement officers (for example, investigative officers), searches, collection of documents and records, presentation for recognition, information from local public authorities or those provided by the Public Services Agency.

In the ECHR case, *Becciev v. Moldova*³⁴, the Court held that, “*The danger of an accused’s absconding cannot be gauged solely on the basis of the severity of the sentence risked. It must be assessed with reference to a number of other relevant factors, which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (Yağcı and Sargın v. Turkey). The risk of absconding has to be assessed in light of the factors relating to the person’s character, his morals, home, occupation, assets, family ties and all kinds of links with the country in which he is prosecuted. The expectation of heavy sentence and the weight of evidence may be relevant but is not as such decisive and the possibility of obtaining guarantees may have to be used to offset any risk (Neumeister v. Austria, judgment of 27 June 1968, Series A no. 8, § 10).*”

1) *It will prevent the truth from being discovered*. In the respective case, the criminal investigation body and the prosecutor must have sufficient information regarding this ground, including the statements of the victim or the injured party, the witnesses, the risk that he will hide the evidence or destroy it, etc.

In the ECHR case, *Becciev v. Moldova*³⁵, the Court held that, “*The danger of the accused’s hindering the proper conduct of the proceedings cannot be relied upon in abstracto, it has to be supported by factual evidence (Trzaska v. Poland, no. 25792/94, § 65, 11 July 2000).*”

“The person’s refusal to disclose to the prosecution the names of witnesses or the location of evidence that could prove his innocence cannot be invoked as a reason for arrest. This not only cannot constitute grounds for arresting a person, but also represents a violation of an accused’s right to remain silent, guaranteed by Article 6 of the ECHR (Decision *Turcan and Turcan v. Moldova*, 23 October 2007, § 51).”³⁶

³⁴ ECHR Judgment, *Becciev v. Moldova*, of 04.10.2005 (§ 58). Available: <https://hudoc.echr.coe.int/eng?i=001-112622> [accessed: 14.07.2022].

³⁵ ECHR Judgment, *Becciev v. Moldova*, of 04.10.2005 (§ 59).

³⁶ Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova no. 01 of 15.04.2015 *on the application by the courts of some provisions of the criminal procedure legislation regarding preventive arrest and house arrest* (point 9).

In the ECHR case, *Cebotari v. Moldova*³⁷, “(...) *The Court stresses in this connection that in the absence of a reasonable suspicion arrest or detention of an individual must never be imposed for the purpose of making him confess or testify against others or to elicit facts or information which may serve to ground a reasonable suspicion against him.*”

“Invoking the risk of obstructing the proper course of justice can only take place in the initial phase of the proceedings (Judgment *Jarzynski v. Poland*, 4 October 2005, § 43), because witnesses can be heard and relevant material evidence can be collected. The judges will check for each one if this argument is invoked for the arrest, for what reason the evidence was not accumulated until the application was filed and how convincing these reasons are.”³⁸

2) *Will commit other crimes.* The criminal investigation body and the prosecutor will take into account the presence of criminal antecedents and other information deriving from statements, special investigative measures and others.

In the ECHR case, *Clooth v. Belgium*³⁹, “*The Court considers that the seriousness of the charge may lead the judicial authorities to place and leave a suspect in preventive detention in order to prevent any attempt to commit further crimes. It is however necessary, among other conditions, that the danger be plausible and the measure appropriate, in the light of the circumstances of the case and in particular the past history and personality of the person concerned. In the present case, the offenses which gave rise to the applicant’s previous convictions were not comparable, either in nature or degree of gravity, with the charges preferred against him in the contested proceedings (...).*”

Thus, in the ECHR case, *Labita v. Italy*⁴⁰, the Court determined that, “(...), *detention ceases to be justified (...)* “*on the day on which the charge is determined*” (...), “*some delay in carrying out a decision to release a detainee is often inevitable, although it must be kept to a minimum*” (see the *Giulia Manzoni* judgment cited above, p. 1191, § 25 in fine). For example, there may be situations in which the execution date of a court decision or the prosecutor’s decision to release the suspect, the accused or the defendant occurs at night. Respectively, in this case, the prison workers

³⁷ ECHR Judgment, *Cebotari v. Moldova*, of 13.11.2007 (§ 48). Available: <https://hudoc.echr.coe.int/eng?i=001-112794> [accessed: 14.07.2022].

³⁸ Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova no. 01 of 15.04.2015 *on the application by the courts of some provisions of the criminal procedure legislation regarding preventive arrest and house arrest* (point 9).

³⁹ ECHR Judgment, *Clooth v. Belgium*, of 12.12.1992 (§ 50). Available: <https://hudoc.echr.coe.int/eng?i=001-57699> [accessed: 14.07.2022].

⁴⁰ ECHR Judgment, *Labita v. Italy*, of 06.04.2000 (§ 171). Available: <https://hudoc.echr.coe.int/eng?i=001-58559> [accessed: 06.08.2022].

may not release him immediately, because the respective confirmations are required from the responsible persons, who may be absent at that time in the interest of work. The Court admits such situations, only it indicates that the respective term must be reduced to a minimum.”

In the case *Calmanovici v. Romania*⁴¹, “The Court notes that the parties agree that the judgment of September 20, 2005 ordering the applicant’s parole became final and executory on September 26, 2005, at midnight. The Court recalls that, in examining the period of execution of a release decision, it did not ignore periods such as evening and night in other cases where the conditions required for the applicant’s release were met at a time when the prison employee responsible for certain operations necessary in this goal was absent due to his work schedule (see *Labita*, cited above, §§ 24 and 172, and *Rashid versus Bulgaria*, no. 47905/99, §§ 31-32 and 79-80, 18 January 2007). (...) the notification of the penitentiary regarding the final nature of the decision, had to be carried out by the court of first instance, by a clerk or a delegated judge until closing time, the Court nevertheless considers that, even if such a delay can be considered unavoidable, it was up to the authorities to exercise particular diligence on 27 September 2005 to minimize the time needed to release the applicant, who had already spent another night in prison.”

From the analysis of ECHR jurisprudence, we find that, when the person must be released, for various reasons, but this fact cannot take place during certain periods of time (for example, during the night or outside working hours), or for bureaucratic reasons (confirmation of the act of release of the person - the prosecutor’s order or the conclusion of the investigating judge, or even an acquittal or conviction without deprivation of liberty), the person is detained until the impediments disappear and immediately released. Those obstacles must be reduced to a minimum. For example, if the release time is at night and the responsible person is absent, when the last one comes to work, the person will be immediately released.

In accordance with art. 166 paragraph (6) of the Code of Criminal Procedure, “The term provided for in paragraph (5) flows from the moment of deprivation of the person’s liberty. In that term is included the time for carrying out the procedural actions immediately following the moment of depriving the person of his liberty until the preparation of the report of detention, in the situation where the person was effectively constrained in his freedom of movement during the execution of these measures.” For example, in the situation where the criminal investigation body searches the person who is alleged to have committed the crime and there are stolen goods, the term of the search must be included in the term

⁴¹ ECHR Judgment, *Calmanovici v. Romania*, of 01.07.2008 (§ 77). Available: <https://hudoc.echr.coe.int/eng?i=001-87195> [accessed: 06.08.2022].

of detention, because the person's right to leave the home or to move freely has been restricted. At the moment when the search lasted 5 hours, and after that the person was escorted to the headquarters of the criminal investigation body and was detained by law (preparation of the minutes of detention), we consider that this is a violation of the inviolability of the person and art. 5 of the ECHR. Or, the respective report must be drawn up within 3 hours of the *de facto* deprivation of liberty.

According to art. 166 paragraph (7) of the Code of Criminal Procedure, "*The person detained under the conditions of this article must be brought as soon as possible, from the moment of detention, before the investigating judge to be examined the question of the arrest or, as the case may be, of his release.*" This procedural norm corresponds to the rigors of art. 5 § 3 of the ECHR.

In the ECHR case, *Labita v. Italy*⁴², the Court "*reiterates that the list of exceptions to the right to liberty secured in Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his or her liberty (see, among other authorities, the Giulia Manzoni v. Italy judgment of 1 July 1997, Reports 1997-IV, p. 1191, § 25, and the Quinn v. France judgment of 22 March 1995, Series A no. 311, pp. 17-18, § 42).*"

In the case *Pantea v. Romania*⁴³, "*The Court reiterates that Article 5 § 3 of the Convention requires that judicial review take place rapidly, the promptness in each case having to be assessed according to its special features (see De Jong, Baljet and Van den Brink, cited above, pp. 24-25, §§ 51-52). However, the scope of flexibility in interpreting and applying the notion of promptness is very limited (see Brogan and Others v. the United Kingdom, judgment of 29 November 1988, Series A no. 145-B, pp. 33-34, § 62), as prompt judicial review of detention is also an important safeguard against ill-treatment of the individual (see Aksoy, cited above, p. 2282, § 76).*"

Art. 166 paragraph (7) of the Code of Criminal Procedure, also regulates the fact that, "*The prosecutor, until the expiration of the term provided for in art. 308 paragraph (12), will issue an order for the release of the detained person or, as the case may be, will submit the arrest motion to the investigating judge.*" The release of the detained person takes place in the cases provided for in art. 174 paragraph (1) of the Code of Criminal Procedure, namely:

1) *credible reasons to suspect that the detained person committed the crime were not confirmed;*

⁴² ECHR Judgment, *Labita v. Italy*, of 06.04.2000 (§ 170).

⁴³ ECHR Judgment, *Pantea v. Romania*, of 03.06.2003 (§ 240). Available: <https://hudoc.echr.coe.int/eng?i=001-65679> [18.09.2022].

- 2) *there are no grounds to continue depriving the person of his liberty;*
- 3) *the criminal investigation body found an essential violation of the law when the person was detained;*
- 4) *the retention period has expired;*
- 5) *the court did not authorize the preventive arrest of the person.*

In the ECHR case, *Cristina Boicenco v. Moldova*⁴⁴, the Court “reiterates that the illegal detention of a person represents a total denial of the fundamental guarantees provided for in Article 5 of the Convention and an extremely serious violation of this provision. Failure to record data such as date and time of arrest, place of detention, name of detained person and reasons for detention, as well as the identity of the official responsible person, is a violation of the requirements regarding the legality of detention and the very purpose of Article 5 of the Convention (*Kurt v. Turquie*, decision of 25 May 1998, § 125, and *Çakıcı v. Turquie [GC]*, no. 23657/94, §§ 104 and 105, ECHR 1999-IV).”

A first guarantee regulated in domestic legislation is the one provided for in art. 167 paragraph (2) of the Code of Criminal Procedure, in other words, “*The reasons for the immediate detention are made known to the detained person only in the presence of an elected defender or a duty lawyer who provides emergency legal assistance.*” This norm corresponds to art. 5 § 2 of the ECHR.

In the ECHR case, *Khlaifia and Others v. Italy*⁴⁵, the Court held that, “*Paragraph 2 of Article 5 lays down an elementary safeguard: any person who has been arrested should know why he is being deprived of his liberty. This provision is an integral part of the scheme of protection afforded by Article 5: any person who has been arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his deprivation of liberty, so as to be able to apply to a court to challenge its lawfulness in accordance with paragraph 4 (...).*”

The detained person must be informed of the reasons for his deprivation of liberty immediately, i.e., in the shortest possible time. In the case *Fox, Campbell and Hartley v. the United Kingdom*⁴⁶, the Court noted that, “*(...) this information must be conveyed "promptly" (in French: “dans le plus court délai”).*”

⁴⁴ ECHR Judgment, *Cristina Boicenco v. Moldova*, of 27.11.2011 (§ 43). Available: <https://hudoc.echr.coe.int/eng?i=001-124080> [accessed: 16.09.2022].

⁴⁵ ECHR Judgment, *Khlaifia and Others v. Italy*, of 15.12.2016 (§ 115). Available: <https://hudoc.echr.coe.int/fre?i=001-170054> [accessed: 17.09.2022].

⁴⁶ ECHR Judgment, *Fox, Campbell and Hartley v. the United Kingdom*, of 30.08.1990 (§ 40). Available: <https://hudoc.echr.coe.int/eng?i=001-57721> [accessed: 14.10.2022].

There are situations when the detained person, for various objective reasons (for example, mental development, or limited exercise capacity, etc.), does not understand the reasons for the detention or limitation of his rights. In such situations, the judicial bodies must inform the lawyers, legal representatives or other persons about them.

In the ECHR case, *Z.H. v. Hungary*⁴⁷, the European Court found that, “(...) if the condition of a person with intellectual disability is not given due consideration in this process, it cannot be said that he was provided with the requisite information enabling him to make effective and intelligent use of the right ensured by Article 5 § 4 to challenge the lawfulness of detention unless a lawyer or another authorized person was informed in his stead (see *X. v. the United Kingdom*, no. 6998/75, Commission’s report of 16 July 1980, § 111, Series B no. 41).”

Art. 167 of the Code of Criminal Procedure also grants other guarantees for detained persons, namely⁴⁸:

- *The criminal investigation body is obliged to ensure conditions for the confidential meeting between the detained person and his defense counsel until the first hearing.* That provision guarantees the effective right to defense;

- *In the case of the detention of the minor, the person carrying out the criminal investigation is obliged to communicate immediately this to the prosecutor and the parents of the minor or the persons who replace them.* This provision grants additional guarantees to the minor deprived of liberty, as the parents must know about the circumstances of the act, the location of the minor and other circumstances, implicitly in order to get involved as soon as possible in the process as a legal representative to defend the interests of the minor;

- *The detained person will be heard in accordance with the provisions of art. 103 and 104, if he agrees to be heard.* In the ECHR case, *Samoilă and Cionca v. Romania*⁴⁹, the Court held that, “A hearing is required for persons detained under the conditions set out in Article 5 § 1 c) (*Kampanis versus Greece*, decision of 13 July 1995, Series A no. 318-B, p. 45, § 47). In particular, a process involving an appeal against detention or its extension must guarantee equality of arms between the parties, the prosecutor and the prisoner (*Nikolova versus Bulgaria [GC]*, no. 31195/96, § 58, ECHR 1999-II and *Włoch versus Poland*, no. 27785/95, § 126, ECHR 2000-XI).”;

⁴⁷ ECHR Judgment, *Z.H. v. Hungary*, of 08.11.2012 (§ 41). Available: <https://hudoc.echr.coe.int/fre?i=001-114276> [accessed: 14.10.2022].

⁴⁸ Art. 167 paragraphs (2/1)-(6) of the Code of Criminal Procedure.

⁴⁹ ECHR Judgment, *Samoilă and Cionca v. Romania*, of 04.03.2008 (§ 68). Available: <https://hudoc.echr.coe.int/eng?i=001-85326> [accessed: 14.10.2022].

- *The person who carries out the detention has the right to subject the detained person to a physical search under the conditions of art. 130 of the Code of Criminal Procedure. At the time of detention, the respective search is not authorized. In the same way, the search of persons in the home where the search is carried out is also not authorized. In the other cases, unless the person gives consent, unforced by anyone, the body search will be authorized;*

- *If during the apprehension the presence of injuries or bodily injuries of the detained person is established, the person carrying out the criminal investigation will immediately inform the prosecutor, who will immediately order the performance of a medico-legal examination or, as the case may be, a medico-legal expertise in order to determine the origin and nature of the injuries or lesions. This provision provides guarantees regarding the inadmissibility of torture, which derives from the content of art. 11 paragraph (9) of the Code of Criminal Procedure.*

After the arrest of the person, it will be decided whether it is the case of the application of coercive procedural measures depriving of liberty or the release of the detained person. If it is decided to apply the arrest, the prosecutor, having the grounds indicated in art. 176 of the Code of Criminal Procedure, will issue an ordinance pursuant to art. 177 of the Code of Criminal Procedure, and then will submit a reasoned application to the investigating judge (art. 308 of the Code of Criminal Procedure).

“Although, from a procedural point of view, detention is different from preventive arrest, according to ECHR jurisprudence, both criminal detention is a deprivation of liberty (see decision *Străisteanu and Others v. Moldova*, April 7, 2009, §§85-88, or *Lazoroski v. Macedonia*, October 8, 2009, §44), as well as preventive arrest or house arrest (see the decision *Mancini v. Italy*, no. 44955/98, §17; or *Nikolova v. Bulgaria* (no. 2), no. 40896/98, §§60 and 74, 30 September 2004). Thus, the guarantees established against an illegal deprivation of liberty are equally attributed to both procedural coercion actions.”⁵⁰

As for the content and procedure of examining the approach regarding the application of preventive detention, we have previously explained⁵¹, therefore we will not refer here.

In the ECHR case, *Brogan and Others v. the United Kingdom*⁵², the Court held that, “(...) *whether an “arrest” or “detention” can be regarded*

⁵⁰ Tudor, Osoianu, Mihaela, Vidaicu., *Rights of Suspects in Police Detention: A Research Conclusion*, Chisinau, Cartier Juridic, 2015, p. 30.

⁵¹ Tudor, Osoianu, Dinu, Ostavciuc, *The judicial control of criminal proceedings*, Chisinau, Military Book, 2021, p. 108-119.

⁵² ECHR Judgment, *Brogan and Others v. the United Kingdom*, of 29.11.1988 (§ 65). Available: <https://hudoc.echr.coe.int/eng?i=001-57450> [accessed: 15.09.2022].

as “lawful” has to be determined in the light not only of domestic law, but also of the text of the Convention, the general principles embodied therein and the aim of the restrictions permitted by Article 5 paragraph 1 (art. 5-1) (see notably the above-mentioned Weeks judgment, Series A no. 114, p. 28, paragraph 57). By virtue of paragraph 4 of Article 5 (art. 5-4), arrested or detained persons are entitled to a review bearing upon the procedural and substantive conditions which are essential for the “lawfulness”, in the sense of the Convention, of their deprivation of liberty.”

“Generalizing the jurisprudence of the European Court in the matter, in Decision no. 3 of February 23, 2016, the Constitutional Court established that there are grounds for depriving the person suspected of committing a crime of the risks: 1) his evasion of the trial; 2) affecting the performance of justice; 3) commission of other crimes; 4) production of public disorders. These reasons must not be combined, the existence of a single reason being sufficient for the application of preventive detention. Risks must be demonstrated by evidence based on facts (§§ 73, 93, 94).”⁵³

Regarding the stated risks, we note that they correspond to the grounds for applying the detention; therefore, they will not be repeated. The exception is only the last risk – the production of public disorders.

“The fact that there are suspicions that a person has committed a serious crime does not automatically mean that he must be arrested. The European Court has accepted that, due to the particular gravity and society’s reaction to the resonance of this crime, certain crimes can generate public disorder, which could justify preventive arrest.

However, this risk must be imminent and can only be invoked in exceptional circumstances, only for a certain period of time and only if evidence has been presented to prove that releasing the person will disturb public order. The invocation of the risk that the release of the person will cause public disorder is only valid during the period of the risk of social disturbances (see decision Tiron v. Romania, 7 April 2009, § 41-42; decision Letellier v. France, 26 June 1991, § 51). The risk that the person’s release will cause public disorder should not depend solely on the nature of the offense of which the person is accused. Therefore, in each specific case, the prosecutor must present evidence regarding the risk of public disorder, its nature, extent and duration. The judge must take into account the scale of the disorder and the obligation of the authorities to ensure public order. The

⁵³ Decision of the Constitutional Court of the Republic of Moldova no. 15 of 28.05.2020 regarding the exception of unconstitutionality of article 191 paragraph (2) of the Code of Criminal Procedure (provisional release under judicial control [2]) (point 50).

mere fact that a small part of society insists on arrest should not automatically lead to the arrest of the person.”⁵⁴

*“The arrest of the person must be ordered as an ultima ratio. In its jurisprudence, the Court established that the investigation of the person in a state of freedom is a rule. **The presumption is always in favor of release (pro freedom)** (and so on).”*⁵⁵

Therefore, the arrest of a person is not a rule, but an exception and only in the cases and conditions regulated by the criminal procedural law. Jurisprudence “explicitly enshrines the *rule that criminal trials must, in principle, be conducted with the suspect or the accused in a state of freedom* – normal aspect, since freedom is the natural state of any person, and the suspect and the accused benefit, during the criminal trial, from the presumption of innocence.”⁵⁶

The conclusion of the investigating judge regarding the application of the arrest must be motivated. In the ECHR case, *Mihuță v. Romania*⁵⁷, the Court notifies that, “*after the case was sent to court, the decisions ordering the continuation of the applicant’s detention were either insufficiently reasoned or lacked any reason at all (...). Therefore, these judgments could not be considered compatible with the requirements of an effective judicial review of the legality of the detention in question.*”

“Courts, when adopting a reasoned decision, must be aware of the fact that by doing so they demonstrate to the parties of the trial that they have been heard. Furthermore, a reasoned decision gives the parties the possibility of contesting it, as well as the possibility of reforming the decision by the court of appeal, or, by pronouncing a reasoned decision, the public examination of the administration of justice is ensured. The reasons relied on by the courts in their decisions regarding placing the suspect/accused in custody or extending the arrest cannot be limited to paraphrasing the grounds provided by the Code of Criminal Procedure, without explaining how they are applied in the specific case. The conclusion that does not refer to the materials that support the judge’s conclusion and in which the arguments of the defense pleading against the arrest are not contested is not a reasoned conclusion of arrest (see decision *Feraru v. Moldova*, 24 January

⁵⁴ Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova no. 01 of 15.04.2015 *on the application by the courts of some provisions of the criminal procedure legislation regarding preventive arrest and house arrest* (point 11).

⁵⁵ Decision of the Constitutional Court of the Republic of Moldova no. 15 of 28.05.2020 *regarding the exception of unconstitutionality of article 191 paragraph (2) of the Code of Criminal Procedure (provisional release under judicial control [2])* (point 52).

⁵⁶ Bogdan, Micu, Radu, Slăvoiu, Andrei, Zarafiu, *The criminal procedure*, Bucharest, Hamangiu. 2022, p. 25.

⁵⁷ ECHR Judgment, *Mihuță v. Romania*, of 31.03.2009 (§ 43). Available: <https://hudoc.echr.coe.int/eng?i=001-91923> [accessed: 03.10.2022].

2012, §§ 59-66). The justification for taking preventive measures must be done in such a way that it does not leave the target person or a third party to understand that the judge is certain of the guilt of the person who is still in the process of the trial.”⁵⁸

The arrested person, in accordance with the requirements of art. 5 paragraph 4 of the ECHR, benefits from an effective appeal before the court. In the case, *Mihuță v. Romania*⁵⁹, the Court holds that, “*although the applicant exercised the remedy indicated by the trial court (see paragraphs 9 and 14 above), the county court did not examine his pleas regarding the illegality of his pre-trial detention. However, such an examination was all the more necessary since the court that ordered the maintenance of the measure did not give reasons for its decisions and did not examine the applicant’s arguments regarding the lack of justification for such a measure (Svipsta cited above, §§ 130-134, and vice versa, Van Thuil cited above).*”

The inviolability of the person guarantees not only the deprivation of liberty of the person (detention or arrest), but also the restriction of liberty (for example, hospitalization of the person into medical institutions for expertise).

In the ECHR case, *De Tommaso v. Italy*⁶⁰, the Court mentioned that: “*(...) The difference between deprivation and restriction of liberty is one of degree or intensity, and not one of nature or substance (see Guzzardi, cited above, §§ 92-93; Nada v. Switzerland [GC], no. 10593/08, § 225, ECHR 2012; Austin and Others v. the United Kingdom [GC], nos. 39692/09, 40713/09 and 41008/09, § 57, ECHR 2012; Stanev v. Bulgaria [GC], no. 36760/06, § 115, ECHR 2012; and Medvedyev and Others v. France [GC], no. 3394/03, § 73, ECHR 2010) (...).*”

In the ECHR case, *Storck v. Germany*⁶¹, the Court notifies that, “*it is undisputed that the applicant was placed in a locked ward there. She was under the continuous supervision and control of the clinic personnel and was not free to leave it during her entire stay there of approximately twenty months. When the applicant attempted to escape it had been necessary to shackle her in order to keep her in the clinic. On the one occasion she managed to escape, she had had to be brought back by the police. She was also unable to maintain regular social contact with the*

⁵⁸ Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova no. 01 of 15.04.2015 on the application by the courts of some provisions of the criminal procedure legislation regarding preventive arrest and house arrest (point 32).

⁵⁹ ECHR Judgment, *Mihuță v. Romania*, of 31.03.2009 (§ 44).

⁶⁰ ECHR Judgment, *De Tommaso v. Italy*, of 23.02.2017 (§ 80). Available: <https://hudoc.echr.coe.int/eng?i=001-171805> [accessed: 02.10.2022].

⁶¹ ECHR Judgment, *Storck v. Germany* of 16.06.2005 (§ 73). Available: <https://hudoc.echr.coe.int/eng?i=001-69374> [accessed: 02.10.2022].

outside world. Objectively, she must therefore be considered to have been deprived of her liberty.”

“However, the notion of deprivation of liberty within the meaning of Article 5 § 1 does not only include the objective element of the detention of a person in a certain restricted space for a not inconsiderable period of time. A person can be considered to have been deprived of liberty only if, as an additional subjective element, he did not validly consent to the detention in question (see, *mutatis mutandis*, *H.M. v. Switzerland*, cited above, § 46).”⁶²

Hospitalization of the person is another sensitive subject of procedure, which can affect the right to private life and freedom by virtue of art. 5 and 8 of the ECHR.

A regrettable case on this aspect for the Republic of Moldova is the *David v. Moldova* case of 27.11.2007,⁶³ the Court reiterates the fact that if a person initially agreed to his admission to a psychiatric institution for the performance of expertise, nothing prevents him from later refusing and leaving that institution, so that the continuous detention of the applicant from the moment he expressed his intention to leave the hospital constitutes a “deprivation of liberty”, thus interference with the right to liberty. The person expressing the consent is from the start released from a forced hospitalization, having the right to leave the medical institution at any time and no one has the right to prevent this will as long as a conclusion regarding the forced hospitalization has not been issued in respect of him.

During the criminal investigation, the investigating judge, authorized by law to order forced internment, issues the court decision. This desideratum is regulated in art. 41 point 4) of the Code of Criminal Procedure - The investigating judge ensures judicial control during the criminal investigation by ordering the person’s hospitalization into the medical institution.

At the same time, in accordance with the provisions of art. 301 paragraph (3) of the Code of Criminal Procedure, “..., *hospitalization of the person in a medical institution for the performance of the judicial expertise, ... it is done with the authorization of the investigating judge.*”

Analyzing the stated provisions, we find that when, during the criminal investigation, there is a need to carry out a judicial expertise in the hospital, and the suspect (accused) refuses to be hospitalized in order to assess and examine him, the investigating judge issues a reasoned decision for forced hospitalization for the purpose stated.

⁶² ECHR Judgment, *Storck v. Germany*, of 16.06.2005 (§ 74).

⁶³ ECHR Judgment, *David v. Moldova*. Available:

<http://hudoc.echr.coe.int/eng?i=001-127751> [accessed: 01.11.2021].

In the following we will refer to the admission procedure, the grounds and reasons for forced admission, the powers of the criminal investigation body and the prosecutor in cases where there is a need to admit the person to the medical institution, as well as the procedure for examining the approach regarding the forced admission of the person to the healthcare institution.

Thus, according to the provisions of art. 152 paragraph (1) of the Code of Criminal Procedure, *“If for the performance of the medico-legal or psychiatric expertise there is a need for long-term supervision, the suspect, the accused, the defendant can be hospitalized in a medical institution. This is recorded in the ordinance or conclusion by which the judicial expertise was ordered.”*

Therefore, at the criminal investigation stage, if for the performance of the judicial expertise (medico-legal or psychiatric) forensic doctors or psychiatrists need more time to supervise the suspect or the accused, in order to finally make objective conclusions on the object of the expertise, the criminal prosecution body is obliged to indicate this fact in the ordinance ordering the expertise.

In other words, the law dictates the fact that when the criminal investigation body orders the medico-legal or psychiatric expertise, it will expose, in the same ordinance, the forced hospitalization of the person into the medical institution.

We consider that the stated aspects do not correspond to the principle of the inviolability of the person, because at the stage of issuing the order determining the expertise, the criminal prosecution body cannot know how much time a judicial expert needs to carry out an expertise or another. Respectively, the determination of the time for carrying out the medico-legal or psychiatric expertise is decided by the expert and not by the criminal investigation body. Thus, the disposition of expertise that does not require hospitalization (outpatient) or that requires this hospitalization (inpatient) is dictated by medical and not legal judgment.

Based on the above, we are of the opinion that when the criminal investigation body finds the grounds provided in art. 142 paragraph (1) of the Code of Criminal Procedure, it will issue the order for the disposition of the judicial expertise. If long-term surveillance of the suspect or the accused is necessary for the performance of medico-legal or psychiatric expertise, the criminal investigation body will issue another order determining forced hospitalization in the medical institution.

This ordinance will be issued in accordance with the provisions of art. 255 of the Code of Criminal Procedure. In addition to the conditions mentioned in art. 255 of the Code of Criminal Procedure, the order for the forced internment of the suspect or the accused must include, mandatorily,

the reasons for the internment, the behavior of the person during the procedural actions (for example during the hearing), the analysis of the medical documents of the suspect or the accused (for example, the medical card, which mentions the fact of the treatment of a psychiatric illness), the mention of the suspect or the accused in the records of the narcologist or psychiatrist, the analysis of the statements of other participants in the trial (for example, the statements of the victim or witnesses from which the inappropriate behavior of the suspect, the accused results) and other aspects related to the case.

Similarly, all the mentioned aspects must be analyzed in relation to the circumstances of committing the illegal act. It is very important for the criminal investigation body to request from the expert institution the information regarding the need for long-term surveillance of the suspect or the accused. If the prosecuting body will not request that information, at least it will be obliged to hear the judicial expert to determine the appropriateness of internment. On the other hand, after all, this decision has a medical tone, and respectively, only doctors can communicate about the duration of medical investigations. This information must be reflected in the internment order and analyzed together with the other evidence. Only in this way, can the criminal investigation body justify its order and determine the forced internment of the suspect or the accused.

In the case *Filip v. Romania* of 14.12.2006,⁶⁴ it was found that the applicant was admitted to a psychiatric institution for a period of 88 days. In this Judgment the ECHR reiterates the fact that one of the elements necessary for the “legality” of detention in the sense of art. 5 of the ECHR is the lack of arbitrariness. Deprivation of liberty is such a serious measure that it is only justified when less severe measures have been analyzed and considered insufficient to protect the personal or public interest that requires detention, in our case transposed by internment. The plaintiff being hospitalized for an indefinite period based on the decision of the prosecutor’s office taken without the opinion of an expert doctor having been obtained beforehand. The prosecutor's office only ordered an expert examination one month after his admission, after receiving the complaint of the applicant who criticized the legality of the security measure on the grounds that such an examination had not been ordered either before or after his admission, which had already been 80 days. The Court estimates that the prior evaluation by a psychiatrist was indispensable, taking into account in particular the fact that the applicant had no history of mental disorders. In any case, it was not an emergency hospitalization, plus the doctor's request regarding the need to extend the hospitalization period was

⁶⁴ ECHR Judgment, *Filip v. Romania*, of 14.12.2006. Available: <http://hudoc.echr.coe.int/eng?i=001-123269> [accessed: 20.10.21].

missing, thus limiting the plaintiff's right without a legal basis, his hospitalization being arbitrary and illegal. (§§ 59-60)

Conclusions

In order to obtain the expected results, it is necessary to take into account all the circumstances of the case, the reasons and the purpose of the crime, data regarding the illnesses that the person suffered, the previous behavior but also the behavior of the person during the trial,⁶⁵ all this as a whole will elucidate the complete picture of the suspect/accused's personality for making the correct decision regarding the need for internment.

In support of the mentioned idea comes the analysis of the text "*there is a need for supervision*" stipulated in art. 152 paragraph (1) of the Code of Criminal Procedure. Thus, the question arises - when does this need arise and who actually makes the decision in this regard? It is natural, as we mentioned before, that the need for supervision is decided only by doctors and by no means by criminal prosecution bodies. By the way of explanation, from the moment when the doctors will inform the criminal investigation body about the need for hospitalization, only then will be established the presence of the factual basis for the forced hospitalization of the person in the medical institution.

In order not to leave room for ambiguous interpretations, we consider it necessary that art. 152 paragraph (1) of the Code of the Criminal Procedure to be amended and completed in such a way as to provide for the issuance of the reasoned order for the forced admission of the person in the medical institution, other than the order for the disposition of judicial expertise.

The ECHR emphasized in the case of *H.L. v. Great Britain*,⁶⁶ the absence of procedural rules regarding the detention of the incapacitated person, in contrast to the multitude of guarantees that apply in ordinary cases. As a result of the lack of procedural rules, medical staff assumed full control over the liberty and treatment of a vulnerable individual based on clinical assumptions alone, and although the Court did not question their good faith or failure to act in favor of the claimant, the purpose of the existence of guarantees is to protect individuals against professional errors and omissions. The absence of these rules of procedure led, in the opinion of the Court, to the arbitrarily taking of the measure, and therefore to the violation of art. 5 of the ECHR.

The analysis of internal procedural rules shows that they mostly correspond not only to international acts, but also to the provisions of Directive 2013/48/EU of the European Parliament and of the Council of

⁶⁵ Poalelungi Mihai, *Guide for judges in criminal cases*. Chisinau. 2013, p. 1024.

⁶⁶ ECHR Judgment, *H.L. v. Great Britain*, of 05.01.2005. Available: <http://hudoc.echr.coe.int/eng?i=001-185580> [accessed: 24.10.2020].

October 22, 2013 regarding the right to have access to a lawyer in criminal proceedings and European Arrest Warrant procedures, as well as the right for a third party to be informed following deprivation of liberty and the right to communicate with third parties and consular authorities during deprivation of liberty. With reference to the provisions of art. 166 paragraph (1) point 3) of the Code of Criminal Procedure, we consider that its text contains a legal tautology, for which reason we propose to exclude the text “*or in his transport unit*”, because the domicile of the person is indicated. Moreover, according to art. 6 point 11) of the Code of Criminal Procedure, as well as the jurisprudence of the Constitutional Court and ECHR, the transport unit (car) is considered domicile.

At the same time, art. 166 paragraph (3) of the Code of Criminal Procedure also establishes other reasonable grounds, which assume that the suspect: *Will avoid prosecution*. The ground in question must be proven. Many times, the criminal investigation body or the prosecutor formally indicates this basis, that is, illusory. The law requires the motivation of procedural documents (for example, art. 308 paragraph (6) of the Code of Criminal Procedure, establishes that, “*The prosecutor is obliged to justify the reasonable suspicion and the grounds for applying preventive arrest. Omission of such an obligation constitutes grounds for rejection of the approach*”), including by proving the grounds, and otherwise the law also provides for procedural sanctions. Data or documents proving that the person will evade criminal prosecution will serve as an argument for this reason (for example, purchase of plane tickets, booking hotels abroad, presence of real estate or business, etc.). At the same time, the severity of the sanction can justify the application of this ground.⁶⁷

The basic rule established by the criminal procedural rules is that detention is applied only if criminal prosecution is initiated (art. 55 paragraph (4), art. 165, art. 166, art. 274 paragraph (1), art. 279 of the Code of Criminal Procedure). There is only one exception to the general rule, provided for in art. 166 paragraph (4) of the Code of Criminal Procedure, which consists in the fact that detention can be applied until the crime is registered. This rule applies only to the mature person (who has reached the age of 18 at the time of committing the criminal act). This exceptional rule regulates that the registration of this crime, of which the adult person is suspected, must take place immediately, but no later than 3 hours from the moment when the adult person is brought to the criminal prosecution body. Otherwise, the adult person will be released, except when the person has

⁶⁷ Other arguments are indicated and explained in point 8) of the Plenary Decision of the Supreme Court of Justice of the Republic of Moldova no. 01 of 15.04.2015 *on the application by the courts of some provisions of the criminal procedure legislation regarding preventive arrest and house arrest*.

been detained by the masters of ships and aircraft in their capacity as ascertaining authorities (handover of the detained person takes place when the ship has docked or the aircraft has landed).

Analysis of art. 166 paragraph (4) of the Code of Criminal Procedure denotes that the detention of the mature person takes place in cases of flagrant offence. However, according to us, that norm should be amended and supplemented, so that the word “*mature*” should be excluded. Therefore, when a person will commit a criminal act and will be caught red-handed, having the legal grounds for detention, the competent judicial bodies can apply this coercive measure also regarding the minor, who will be the subject of the given crime. Alternatively, the current rule lacks the criminal investigation body and the prosecutor to detain minors until the crime is registered (in *flagrante delicto*), even if they have committed serious, particularly serious or exceptionally serious crimes (for example, a murder). In addition, having committed a crime in *flagrante delicto*, the criminal investigation body is obliged to carry out procedural actions in order to administer the evidence, including body search, hearing and others (including those with the participation of the minor).

The term of detention of the minor – subject of the crime (14-18 years, depending on the seriousness of the committed act) cannot exceed 24 hours from the moment of his deprivation of liberty (*de facto* detention).

An important aspect is that, when the grounds for detaining the person have expired, he must be released immediately, without waiting for the maximum limit for this coercive measure to expire. For example, the person being caught red-handed is detained by the criminal investigation body, having several grounds, including the complaint and statements of the victim. More than 36 hours after the apprehension, the victim withdraws his complaint under art. 275 point 6), 276 of the Code of Criminal Procedure. The person must be released immediately without waiting for the 72-hour period to expire. Another example is when, after the arrest, it is found that the elements of the criminal offense do not exist, or there is a definitive decision regarding the act for which the person is detained, etc. Precisely from these situations, the criminal procedural law has established that, “*The period of detention must not be longer than what is strictly necessary for his holding.*” (art. 166 paragraph (5) of the Code of Criminal Procedure).

Problems can arise when the lapse of grounds takes place outside working hours, or there is an order of the prosecutor to release the detained person, which must be immediately implemented, but the person is in detention, where there is a certain work regime, and a simple employee cannot make decisions. The question arises: how do we proceed in these cases? The answer to the question was found in ECHR jurisprudence.

Art. 166 paragraph (7) of the Code of Criminal Procedure establishes that the prosecutor can release the person until the expiration of the term provided for in art. 308 paragraph (12). We propose to amend and supplement the respective rule, as it is not clear which rules are being considered. On the other hand, art. 308 of the Code of Criminal Procedure contains only 10 paragraphs. We also consider that the legislator may have had in mind art. 308 paragraph (3) of the Code of Criminal Procedure, in other words, the deadline for submitting the request regarding the application of preventive detention. However, it is imperative to amend and complete the text “art. 308 paragraph (12)”.

It should be noted that the person cannot be detained repeatedly for the same reasons (art. 174 paragraph (2) of the Code of Criminal Procedure). We propose to amend and supplement this procedural rule, because, in our opinion, it can be interpreted ambiguously. Alternatively, the released person can be detained for the same reasons (mentioned in art. 166 of the Code of Criminal Procedure), but for the reasonable suspicion of committing another crime, other than the one for which he was detained and subsequently released. Thus, the legislative intervention in art. 174 paragraph (2) of the Code of Criminal Procedure is imposed, as it regulates not only the same grounds, but also for the same deed.

Art. 167 of the Code of Criminal Procedure regulates the procedure of detaining the person. According to art. 167 paragraph (1) of the Code of Criminal Procedure, *“For each case of detention of a person suspected of committing a crime, the criminal investigation body, within up to 3 hours from the moment of deprivation of liberty, prepares a minutes of detention, indicating the grounds, reasons, place, the year, month, day and time of detention, the physical condition of the detained person, complaints regarding his health, what he is wearing (description of clothing), explanations, objections, requests of the detained person, the request to have access to a medical examination, including on his own account, the act committed by the person in question, the results of the body search of the detained person, as well as the date and time of the preparation of the report. The minutes are brought to the attention of the detained person, at the same time they are given written information about the rights provided for in art. 64, including the right to remain silent, not to testify against himself, to give explanations that are included in the minutes, to benefit from the assistance of a defense attorney and to make statements in his presence, fact that is mentioned in the minutes. The arrest report is signed by the person who drew it up and by the arrested person who is immediately given a copy of it. Within up to 3 hours after the arrest, the person who drew up the minutes presents to the prosecutor a written communication about the arrest.”* According to us, criminal procedural

legislation provides sufficient guarantees for detained persons. However, we are of the opinion that the detained person should not only be given a copy of the information regarding his rights, but that these rights must be explained concretely to the detained person in an accessible and understandable language. Therefore, we propose to amend and complete art. 167 paragraph (1) of the Code of Criminal Procedure, so that according to the text “*at the same time, he is given written information about the rights provided for in art. 64*”, should be introduced the following text “*and these rights are explained to him in an accessible and understandable language*”.

In practice, there are cases when the criminal prosecution body does not indicate in the report the grounds for detention, limiting itself only to the fact that the person is suspected of the crime for which he is detained. This fact is inadmissible, otherwise the minutes can be canceled and the detention will be considered illegal.

Compulsorily, the minutes regarding the person’s detention must include all the data indicated in art. 167 paragraph (1) of the Code of Criminal Procedure, implicitly the place, year, month, day and time of (*de facto*) detention, date, time, year and place of drawing up the minutes, etc.

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THE CRIME OF TERRORISM: FORENSIC CHARACTERISTICS AND METHODS OF COMMITTING IT

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Abstract: *Despite the changes they have undergone over time, acts of terrorism and, in particular, the ways in which they are committed have remained virtually the same, in fact, as the psychology of those who commit such acts. All acts of terrorism share a number of common features: first of all, they are characterized by the transnational, international nature of the attack and a pronounced physical and psychological aggression. Acts of terrorism are also usually characterized by their complex nature. The process of learning about these acts does not always have a corresponding finality. Prosecuting authorities often gather incomplete information and draw unjustified conclusions, incorrectly determine the direction of the investigation and make errors in the process of drafting their statements. However, knowledge of the criminal event must be obtained on the basis of the provisions determining the scope and limits of evidence in criminal cases and the forensic nature of the criminal act. In relation to the work of investigating acts of terrorism, success is guaranteed by the creative use of scientific knowledge in practical work, including forensic knowledge. Only under such conditions will the decisions taken be legal and well-founded, ensuring that the results correspond to the knowledge of objective reality. In connection with this, a proper examination of the forensic nature of the crime of terrorism and how it was committed is necessary.*

Keywords: *terrorism, crime, forensic characteristics, prosecuting authority, witnesses, victim, offender, psycho-somatic qualities, modus operandi, explosions, fires, harmful consequences, prosecution versions, real danger, threat, terrorist group, demonstrative character.*

Introduction

The forensic nature of certain offences involves the detailed study of a large number of offences in the category of criminal acts in question, highlighting and describing data with forensic significance, including the modus operandi, i.e., the means and manner of their application in order to achieve the criminal purpose. It is generally accepted that the way in which the crime was committed suggests to the prosecution the direction of the investigation. In addition, the traces on the scene are of great importance, as they can be used to develop versions of how the crime was committed and

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who the perpetrator was¹. The forensic characterization of the crime has a rather complex structure, usually comprising: 1) the characterization of typical background information; 2) the system of data on the typical ways of committing and concealing the crime, including the consequences of their application; 3) the person of the perpetrator and the possible purposes and motives of the crime; 4) the person of the victim and data on the object of the criminal act; 5) data on certain circumstances in which the crime is committed (place, time, etc.); 6) data on the nature of the crime and its consequences.

This structure reflects all the aspects, moments to be established in accordance with the requirements of the subject matter of evidence in criminal cases, which will be specified in relation to the specifics of the criminal case under investigation.

Knowing the importance of typical initial information and the bearers of this information will make it much easier for the prosecuting body to discover and assess it, thus giving it a proper orientation in the essence of the crime to be investigated.

In these circumstances, the data on how the crime was committed and concealed is the central element of the forensic characteristic, because it expresses the functional side of the criminal activity. These data include not only purely operational information on how the crime is prepared, committed and concealed, but also information on the reflection of the perpetrator's actions in the environment (i.e., what traces, fingerprints of the perpetrator's actions appear in the process of committing the crime, where they should be looked for and how, with their help, the mechanism of the crime can be restored)².

Violence at all levels, sordid crime and terrorism are phenomena that are becoming more and more manifest and widespread today, seriously calling into question the moral support of societies and the structures on which they are based.

The fear of violence and terrorism makes the streets of major cities empty as evening falls. New, more cynical and perverse forms of violence have been added to the classic forms of violence that have been used to date. Victims of violence are increasingly innocent people who have nothing to do with the perpetrators' aims³.

¹ Simion Doraş, *Criminalistics*. Chisinau: Legal Book Publishing House, 2011, pp. 520-521.

² Tatyana V. Averyanova, Rafail S. Belkin, Yurii G. Korukhov, Elena R. Rossinskaya, *Criminalistics: textbook*, Moscow: NORMA, 2016, pp. 671-672.

³ Ioan V. Maxim, *Terrorism: Causes, Effects and Countermeasures*, Bucharest: Politics Publishing House, 1989, pp. 5-6.

Terrorism is one of the most dangerous crimes under international and national criminal law in the world. The main characteristic of the crime of terrorist acts is considered to be violence applied with the aim of intimidating the population, undermining public security or forcing public authorities or individuals to take decisions in order to achieve criminal ends.

If the terrorist act is intended to achieve a material or personal advantage, such as the execution of funds or revenge, it constitutes a common crime. If the terrorist act is intended to complicate or break relations between States, to remove political leaders, including heads of State, who have become undesirable in certain political circles, to influence by intimidation the general policy of States or the position they are to adopt in the solution of specific problems, or to impose political doctrines or a particular form of State organisation, it is a terrorist act. This category also includes state terrorism, which consists of acts of violence and aggression carried out by a government or a ruling political force in a state against members of its own society⁴.

The criminal nature of the crime of terrorism, according to its structure, must be classified as traditional, since its core is the way in which it is committed. It is the manner in which terrorist acts are committed that reflects the specific nature of the crime, which determines the content, structure, linkage and mutual conditionality of the other elements of the criminal characteristic.

We can see that, today, not only are many methods known, but unfortunately they are also widely applied, which, some time ago, the perpetrators could not even think of. Understanding the possibility of applying certain methods of committing crimes must be part of the knowledge necessary for the effective work of law enforcement agencies and the proper counteraction to acts of terrorism.

Today no one can guarantee absolute security and protection of the legitimate rights and freedoms of man and citizen. By using a certain way of committing the crime of terrorism to influence the decision-making process of state bodies, criminals are not satisfied with this fact alone, causing harm to people who have no connection with various events. However, knowing how terrorist acts are committed, how the perpetrators will act, will allow us to orient ourselves appropriately in certain critical situations and select the most rational course of action⁵. It is precisely in the manner in which terrorism is committed that the basic peculiarity of the crime under consideration is manifested, which determines its content, structure, and

⁴ Alexei Barbăneagră, Gheorghe Alecu, Viorel Berliba, et. al. *Criminal Code of the Republic of Moldova: Commentary*. Chisinau: Lawyers' Law Centre, 2009, p. 611.

⁵ Olga N. Korshunova, *Crimes of Terrorist Orientation: Criminal Prosecution at Pre-trial Stages*, St. Petersburg: Juridical Center Press, 2003, p. 131.

the mutual and interlinked nature of the other elements of the criminal model of terrorism⁶.

The perpetrator's choice of the methods (modalities) to be used to commit terrorist acts are closely interdependent, intertwined and interwoven with the action that constitutes the material element of the offence, and there are situations in which these means are not capable of objectifying the action, which means that the perpetrator's choice is not the right one - for various reasons -, and that his act does not fall within the scope of the criminal offence (the impossibility of committing the offence is due to the way in which the execution was conceived).

When the perpetrator carries out activities which reveal the means or method which he intends to use to carry out his action, by producing or procuring, or taking measures (by gathering information for the production or procurement of means or materials or the adoption of intellectual methods), his actions are preparatory acts, which in the case of acts of terrorism are assimilated to attempts and criminalized⁷.

The description of the objective side of Article 278 of the Criminal Code of the Republic of Moldova⁸ reflects, to a large extent, the diversity of the structure and content of the terrorist act. The text (provision) of this article contains, in a generalized form, all the information on the possible ways of committing a terrorist act.

First of all, we note that, according to the provisions of Article 278 of the Criminal Code of the Republic of Moldova, criminal liability is provided not only for the commission of certain actions, but also for the threat to commit them. In this respect, we can speak of the fact that the objective side of this crime is expressed in two forms: 1) committing terrorist acts; 2) threatening to commit terrorist acts.

On the basis of these provisions, the ways of committing the terrorist act can be divided into two groups: a) ways of committing the terrorist act directly; b) ways of threatening to commit such acts.

In the following, we will examine in detail the above-mentioned ways of committing a terrorist act.

⁶ Mihail Gheorghiuță, *Treatise on Forensic Methodology*, Chisinau: CEP USM, 2015, p. 413.

⁷ Doru Ioan Cristescu, Viorel Cătălin Enescu, *Criminal and Judicial Investigative Practice in the Case of Crimes Against National Security and Terrorism: Elements of Forensic Tactics*. Vol. I, Timisoara: Solness Publishing House, 2017, p. 184.

⁸ *Criminal Code of the Republic of Moldova: Law of the Republic of Moldova No 985-XV of 18 April 2002*. In force since 12 June 2003. In: Official Monitor of the Republic of Moldova. 2002, no. 128-129. [online] [accessed 24.10.2023]. Available: https://www.legis.md/cautare/getResults?doc_id=17695&lang=ro.

Modes of direct commission of the terrorist act

Some of the ways of committing a terrorist act are specified by the legislator directly in the provision of the criminal law rule (causing an explosion or a fire), but the list given is not exhaustive, as the text of the criminal law continues with the following text: *“or the commission of another act which creates a danger of causing death or injury to body or health, substantial damage to property or the environment or other serious consequences...”*.

It is obvious that such ways of committing a terrorist act as an explosion or fire should be categorized specifically under the first group. At the same time, we have other modalities, mentioned in the provision of Article 278 of the Criminal Code of the Republic of Moldova. Thus, for the purposes of para. (1) of Article 278 of the Criminal Code of the Republic of Moldova, “other act (other than causing an explosion or fire)” means: 1) causing transport accidents; 2) causing the collapse of residential, governmental, cultural, religious, sports or other buildings, without causing an explosion or fire; 3) infecting buildings, goods, food, etc. with radioactive, poisonous or bacteriological substances. For the purposes of qualification, it is irrelevant whether the commission of the above-mentioned acts involves: 1) direct confrontation with law enforcement authorities, where the perpetrator risks direct exposure to anti-terrorist repression; 2) carrying out the terrorist act from a distance, which involves the perpetrator being far from the scene of the crime, thereby ensuring a low risk and low possibility of being identified and subsequently traced (e.g. remote hitting by remote control means; dispatch of “booby-trapped” explosive packages or letters, etc.). The differentiation between these types of offence may only be in terms of the individual nature of the penalty⁹.

Thus, the objective aspect of such offences can be expressed in two forms: the commission of terrorist acts, such as causing explosions, fires or other serious acts, and the threat to commit such acts. According to this delimitation, the modalities of committing this offence can be divided into two categories: modalities of committing terrorist acts; modalities of informing about the danger of committing acts falling under the notion of terrorism.

It is well known that such ways of committing terrorist acts, such as causing explosions or fires, must necessarily be attributed to the first category. Other types of terrorism include causing collapses, floods, blocking transport communications, infecting water sources or food supplies, attacks on objects requiring increased security measures, and

⁹ Sergiu Brînză, Vitalie Stati, *Treatise on Criminal Law*. Special Part. Vol. II., Chisinau: F.E.P. “Central Typography”, 2015, p. 525.

damage to objects supplying the population with water, fuel, electricity, etc.¹⁰.

Even a simple listing of just some of the possible ways of committing a terrorist act speaks of their diversity. In connection with this, it is very useful to make a further classification of the ways of committing the crime of terrorism.

Depending on the presence and nature of the causal link between the act and the socially dangerous (harmful) consequences laid down by law, all the modalities that fall into the first group can be divided into:

1) modalities whose content is constituted by influence, action endangering the life or health of persons, their property or the environment or which may cause the occurrence of other serious consequences e.g., explosions, fires);

2) modes of influence which create conditions for the occurrence of danger to life or health of persons (e.g., accidents to critical infrastructure objects and installations)¹¹.

In turn, each of these modes also implies a certain outcome, which can be achieved by different means. Thus, an explosion can be triggered by detonation of an explosive device, by burning flammable compounds. The terrorist act in the USA in September 11, 2001 demonstrated a further possibility for the evolution of events and actions that can cause fires and explosions.

At the same time, arson can be the result of an intentional act, which in turn is a self-contained way of committing terrorism. Accidents, in turn, are also a complex phenomenon from a forensic point of view, being the result of a spectrum of diversified actions. Depending on the situation, an accident may be the result of a way of committing terrorism, or it may be its own way of committing terrorism. Thus, for example, if the accident occurs as a result of an explosion or a fire, then it is these actions that will be examined as a means of committing terrorism, as they are specified in the criminal law. If, however, the accident was caused by some other action, such as a blackout, then the accident will be considered as a means of committing terrorism, provided that it creates the danger specified by the law and pursues the purposes referred to in the rule criminalizing the terrorist act¹².

We should not overlook suicide attacks in which members of terrorist groups, for reasons of religion, fanaticism, other psychological and physiological reasons or mental derangement, accept or propose the suicide mission of committing a violent attack, either by manipulating a device, apparatus, weapon, machine, etc., the use of which inevitably causes death,

¹⁰ Mihail Gheorghită, *op. cit.*, p. 414.

¹¹ Olga N. Korshunova, *op. cit.*, pp. 132-133; Mihail Gheorghită, *op. cit.*, p. 414.

¹² *Ibid.*, pp. 132-133.

or by planning to carry out the attack in such a way that the desired result is achieved only by their death¹³.

An indispensable component of the mode of committing terrorism is the real danger of the harmful consequences specified in the text of the criminal law. The real nature of the offence in each specific case is determined by the circumstances in which it was committed: place, time and the manner in which the objective aspect materialized.

Since the terrorist act is considered to have been committed when the explosion or fire or other actions have created a real danger for the occurrence of the consequences (consequences) provided for by law, then these consequences, from the point of view of criminal law, are not part of the manner of committing terrorism¹⁴.

The offence in question is, as the case may be, a formal-material or formal offence. If the offence involves causing an explosion or fire or committing another act, it is a formal-material offence and is deemed to have been committed when the real danger to life, health, property, the environment or other social values arises. The actual occurrence of serious consequences will be taken into account when the penalty is being determined.

In the presence of the threat to cause an explosion or fire or to commit another such act, the specified offence is a formal offence. It is deemed to have been committed when the threat is made, provided that the threat was properly perceived by the addressee of the threat.

If the threat to cause an explosion or fire or to commit another such act is not real, the act must be qualified as a knowingly false communication of the act of terrorism¹⁵.

In the chain of consequences of acts of terrorism, which the legislature seeks to avoid by criminalizing such acts, the life of the person comes first. This is only natural, because human life is the supreme value of any state. In connection with this, the classification of the serious consequences of terrorist acts depends on their connection with the life and health of the person. The greatest social danger is posed by consequences that are directly linked to the life or health of the person (creating the danger of causing death or injury to body or health).

The second group of socially dangerous consequences is made up of those harmful consequences which are not related to the life or health of the person, but which are linked to his or her existence as an individual in society, including: causing material damage; destabilization in certain localities, disruption of the work of state bodies, etc.¹⁶.

¹³ Doru Ioan Cristescu, Viorel Cătălin Enescu, *op. cit.*, p. 198.

¹⁴ Mihail Gheorghiuță, *op. cit.*, p. 414.

¹⁵ Sergiu Brinză, Vitalie Stati, *op. cit.*, p. 526.

¹⁶ Olga N. Korshunova, *op. cit.*, pp. 133-135.

The offence will be classified as an attempt to commit terrorism if, for reasons beyond the perpetrator's control, the perpetrator's threat to cause an explosion or fire or to commit another act that creates a danger of causing death or injury to body or health, substantial damage to property or the environment or other serious consequences remains ineffective, if this act is committed with the aim of intimidating the population or part of the population, of drawing the attention of society to the political, religious or other views of the offender or of inducing the State, international organization, legal person or natural person to commit or refrain from committing any act¹⁷.

For the analysis of how terrorist acts are committed, it is not only the content of the terrorist acts that is relevant, but also their character. However, these actions must be public in nature. It is also a prerequisite that as many people as possible must be notified of the terrorist act. Depending on the purpose and methods of committing terrorist offences, the persons notified and informed of the acts committed may include representatives of the authorities, political leaders and a certain section of the population.

If, for example, the explosion or fire, which endangered the life or health of persons, their property, etc., is not of a public nature, then the aims and objectives of the terrorist offence will not be achieved. It is important for the perpetrators to make it clear to everyone that a terrorist act has been committed, that what has taken place is not a mere accident or some other criminal act.

It should also be noted that when it comes to terrorist acts, they can be divided into two categories: a) a single act of terrorism or several acts of terrorism, united by a common intention b) a series of actions which, taken together, make it possible to achieve terrorist objectives.

The first variant is simpler for the organization of investigations, since the ways in which the offence is committed are based on actions which form the content of a single act. If a series of actions is committed, the structure of the *modus operandi* becomes substantially more complicated, comprising a chain of related, interrelated and logically consecutive actions. However, examining each of them is of forensic importance in its own right, and is a substantial part of the investigation of the systemic pattern of the terrorist act. In such cases, the mode of commission of the terrorist act will include, as components, the modes of commission of each of the actions forming a single chain, which are considered as terrorist offences. This chain may also include different modes of commission: arson, explosions, etc. The diversity of the modes concerned should not, however, make it difficult to

¹⁷ Sergiu Brînză, Vitalie Stati, *op. cit.*, p. 526.

determine the perpetrators' single intention when the whole chain of actions forming the content of the terrorist act is assessed¹⁸.

In these circumstances, the information obtained is checked for authenticity, accuracy and relevance. The sources of information are: casual intelligence sources and specially trained intelligence sources. Occasional sources of information, such as informants on occasion, are assessed in terms of their perceptiveness, motivation and the circumstances in which they provide information.

Specially trained intelligence sources refer to specialist informants and undercover investigators, who are assessed on the basis of their integration into terrorist groups, the categories of information to which they have access and their ability to double-cross.

The intelligence analysis phase results in the development of intelligence assessments through the application of scientific checks. In this phase, intelligence is systematized, evaluated and stored. The objectives of the intelligence analysis phase are: a) to identify conditions relating to existing terrorist threats in a country or jurisdiction; b) to rapidly identify terrorists who announce the occurrence of a terrorist attack, showing changes in existing threat conditions; c) to accurately predict trends that can be used in the occurrence of an attack; d) to provide conclusions to state authorities for the purpose of prosecution.

The intelligence analysis phase is carried out in two stages: a) assessment of intelligence; b) integration of intelligence. With regard to the assessment of information, once it has been checked for authenticity, accuracy and relevance, it must be transformed into information useful for the investigation of terrorist offences. In turn, integration is a process that brings facts and indicators together to produce a hypothesis¹⁹.

Ways of expressing threats to commit a terrorist act

Since the ways in which threats to commit terrorism are brought to the attention of the persons to whom they are addressed are diverse, in order to simplify their investigation from a forensic point of view, we will classify them.

The ways in which threats are made can be classified as *direct* and *mediated*: 1) threats are made directly to the person or structure to whom they are addressed; 2) threats are made by various technical means (telephone, television, etc.) or in written form, with or without the involvement of third parties.

¹⁸ Mihail Gheorghiuță, *op. cit.*, p. 415; Olga N. Korshunova, *op. cit.*, pp. 135-136.

¹⁹ Adrian Cristian Moise, Emilian Stancu, *Criminalistica: Methodological Elements of Crime Investigation*, Bucharest: Legal Universe Publishing House, 2017, pp. 297-298.

At the same time, it should be borne in mind that third persons are persons who have no connection with the persons or structures to whom the threats are addressed. If, however, the threat to commit a terrorist act is addressed to the institution, organization, etc., and is communicated to one of the employees of this structure, this method of committing terrorism must be classified in the first group.

Another basis for classifying the ways in which threats are made is the way in which the subject of the offence acts. The person (group of persons) expressing the threat may act openly or anonymously. On this basis, the ways in which threats are made can be classified into the following groups: 1) making threats, accompanied by messages about the identity of the perpetrators; 2) making threats anonymously when they are sent to the recipient²⁰.

The degree of openness of the subject of the threat is of no importance from a legal-criminal point of view. However, from a forensic point of view, the nature of the threat may be of some value, especially as the anonymity of the threat can be examined not only as a characteristic of the way in which the crime is committed, but also as part of the concealment of the traces of the criminals who commit the terrorist act in this way²¹.

One aspect to be mentioned is the threat to plant explosive devices, by means of telephone announcements or anonymous text messages, which lead to disruption of normal economic and social life, cause and spread fear, terror and a feeling of insecurity, and affect public safety, with the emergency and judicial authorities being obliged to intervene to prevent any lethal or destructive consequences²².

So far, we have set out and analyzed the elements of the concept of "ways of committing acts of terrorism" in a narrow sense. However, we believe that this is insufficient for a correct presentation of the terrorist act from a forensic point of view. Regardless of which particular means of materializing the criminal intent was applied by the perpetrator, each terrorist act is to be perceived and examined as a criminal operation carried out in several stages. In other words, the manner of committing the terrorist act comprises a system of interconnected and interdependent actions, united by a single purpose, aimed at achieving a strictly determined objective. Only such an interpretation allows us to organize the fight against acts of terrorism rationally.

In general, the way in which a terrorist act is committed comprises three stages of criminal intent.

²⁰ Olga N. Korshunova, *op. cit.*, pp. 136-137; Mihail Gheorghită, *op. cit.*, pp. 415-416.

²¹ *Ibid.*, pp. 136-137; Mihail Gheorghită, *op. cit.*, p. 416.

²² Doru Ioan Cristescu, Viorel Cătălin Enescu, *op. cit.*, p. 190.

The first stage - preparing to carry out any of the actions specified above, which usually includes:

- the emergence of intent, the desire to commit a specific crime or to create a criminal group with the aim of committing terrorist acts;
- creation of a criminal group (with or without division of roles);
- searching for, identifying, recruiting and training persons in criminal activity, in particular those whose knowledge, skills and abilities are necessary for the preparation and commission of terrorist acts;
- procuring the objects, documents, weapons, etc. necessary for the commission of the crime;
- the thorough and detailed preparation of the full preparation and commission of the offence (determining the place, time, etc.)
- under certain conditions, drawing up a plan to conceal the crime, certain traces, conceal the direct perpetrators of the terrorist act²³.

The activity of the terrorist group is not always organized on the basis of the above scheme, and the preparation for the terrorist act may not include all the elements referred to above. However, law enforcement practice has seen cases where one or more of the above-mentioned components of the first stage are missing, because the preparation for the crime takes place on limited terms, when the criminals do not have sufficient time to prepare thoroughly for the commission of terrorist acts.

At the same time, it is absolutely necessary to highlight such components of preparation for the commission of terrorist acts, because at each stage criminals leave different traces, which must and can be discovered by law enforcement officials, providing us with sufficient information for the proper and speedy investigation of criminal cases. Uncovering the signs of certain specified actions will also enable us to carry out an effective prevention of terrorist acts²⁴.

The second stage involves the actual commission of the crime. The choice of the method of committing the crime is conditioned by several factors which, in turn, determine the materialization of several elements of the criminal act. This (method of committing the offence) will be related in particular to the following elements:

- the aims and motives of the criminal act;
- the special knowledge, skills and aptitudes, psycho-somatic qualities of the perpetrators, other qualities of the offenders;
- the circumstances in which the offence is committed, the particulars of the place where the offence was committed, etc.

²³ Olga N. Korshunova, *op. cit.*, pp. 137-138.

²⁴ *Ibid.*, p. 138.

In addition, the manner in which the offence is committed predetermines the selection of the offence's weapons, the place and time of its commission.

The final stage concerns the concealment of the offence. A distinctive feature of the terrorist act is that it lacks the concealment of the criminal event, which is, however, characteristic of most crimes. The essence of the terrorist act lies in its demonstrative character. However, as far as the concealment of criminals is concerned, this moment is given particular attention even in the case of terrorist offences.

One of the elements that determine the specific nature of acts of terrorism is the state of powerlessness and social subordination of eyewitnesses and victims that results from criminal acts. The perpetrators of acts of terrorism usually resort to such ways, methods and means of influence that can shock victims and others with their inhuman cruelty²⁵.

The literature also refers to a very diverse range of methods (ways) of committing acts of terrorism, which are categorized as follows: violent, aggressive, insidious, covert, conspiratorial, diversionary, subversive, direct, spontaneous or elaborate²⁶.

Conclusions

The forensic characteristics of the crime of terrorism, according to its structure, must be classified as traditional, since its core is the way in which it is committed. It is the manner in which terrorist acts are committed that reflects the specific nature of the crime, which determines the content, structure, linkage and mutual conditionality of the other elements of the criminal characteristic.

The modalities of committing a terrorist act can be divided into two groups: a) modalities of committing the terrorist act directly; b) modalities of threatening to commit such acts.

Depending on the presence and nature of the causal link between the act and the socially dangerous (harmful) consequences laid down by the law, all the modalities that fall into the first group can be divided into: 1) modalities whose content consists of influence, action that endangers the life or health of persons, their property or the environment or that may cause other serious consequences to occur (e.g. explosions, fires); 2) modalities of influence that create conditions for the occurrence of danger to the life or health of persons (e.g. accidents to critical infrastructure objects and facilities).

The ways of expressing threats can be classified into *direct* and *mediated*: 1) addressing threats directly to the person or structure to whom

²⁵ Mihail Gheorghiuță, *op. cit.*, pp. 416-417; Olga N. Korshunova, *op. cit.*, pp. 139-140.

²⁶ Doru Ioan Cristescu, Viorel Cătălin Enescu, *op. cit.*, p. 185.

they are addressed; 2) addressing threats using various technical means (by telephone, television, etc.) either in written form, with or without the involvement of third parties.

Another basis for classifying the ways in which threats are made is the way in which the subject of the offence acts. On this basis, the ways in which threats are made can be classified into the following groups: 1) making threats, accompanied by messages about the identity of the perpetrators; 2) anonymous threats at the time of their transmission to the recipient.

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BET-FIXING COMMITTED BY AN ORGANIZED CRIMINAL GROUP OR A CRIMINAL ORGANIZATION: THE CASE OF THE REPUBLIC OF MOLDOVA

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Abstract: *Since 2013, in the Republic of Moldova, betting on a fixed match is a criminal offence. Criminal liability is aggravated if the act in question is committed by an organized criminal group or a criminal organization. In this study, I will analyse the particularities of criminal liability for arranged bets committed by an organized criminal group or a criminal organization. The characteristic features of the organized criminal group and the criminal organization were established through the prism of the normative framework, case-law and doctrinal approaches. Finally, proposals are submitted to improve the criminal law of the Republic of Moldova.*

Keywords: *bets, match-fixing, Criminal Code of the Republic of Moldova, organized criminal group, criminal organization.*

Introduction

Pursuant to Article 242² (1) of the Criminal Code of the Republic of Moldova, “bet-fixing” shall mean betting on sport-related events or on other events that offer the possibility to make bets, or informing other people about the arrangement to manipulate the event at issue with the intention to urge them to participate in that particular betting committed by a person who certainly knew about the arrangement to manipulate that event. Such unlawful acts are punishable by fines ranging from 2.350 to 4.350 conventional units¹, or by imprisonment (one to three years), while the legal entity involved is punished by fines ranging from 6.000 to 9.000 conventional units and by depriving them of the right to exercise certain activities.

According to Article 242² (2) of the same Code, the liability is tightened if the acts referred to in paragraph (1) of the same Article are committed by an organized criminal group or by a criminal organization (letter a), or have

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¹ According to Article 64(2) of the Criminal Code of the Republic of Moldova, a conventional unit used to calculate the amount of fines equals to MDL 50. At the time of writing this paper, 1 MDL = 0.05 EUR.

caused particularly severe damage (letter b). Against this background, fixed betting offences shall be punished by fines ranging from 3.350 la 5.350 conventional units or by imprisonment (two to six years), while the legal entity shall be punished by fines ranging from 9.000 to 11.000 conventional units and by depriving it of the right to exercise certain activities.

Under the Criminal Code of the Republic of Moldova, event manipulation offence is dissociated from the act of betting on a sport event or another event which is fixed².

Hence, pursuant to Article 242¹ (1) of the Criminal Code of the Republic of Moldova, an “event manipulation” shall mean encouraging, influencing or instructing a participant in a sports or in a betting event to take actions that would produce a flawed effect on that particular event with the purpose to unduly derive goods, services, privileges or advantages of any kind for oneself or for another person. Such an unlawful conduct is punishable by imposing a fine ranging from 2.350 to 4.350 conventional units or to imprisonment (one to three years), and in both cases the natural person in question is deprived of the right to hold certain positions or to exercise a certain activity for up to three years, while the legal entity is punished with a fine ranging from 6.000 to 9.000 conventional units and deprived of the right to exercise certain activities.

Under Article 242¹ (2) of the Criminal Code of the Republic of Moldova, the same actions committed by a Trainer, a Sportsman’s Agent, a Member of the Jury, an Owner of the Sports Club or by a person – member of a sports organization leadership are punishable by a fine ranging from 3.350 to 5.350 conventional units or by imprisonment (two to six years); in both cases, the people concerned shall have no right to hold certain positions or to exercise a certain activity for a 4-7 year – timeframe³.

It is worth noting that the crimes of manipulation of an event and arranged bets were included in the Criminal Code of the Republic of Moldova before (in 2013) the adoption of the Convention on the Manipulation of Sports Competitions of 2014⁴.

After these clarifications, in the present study, the aggravating circumstance provided for in Article 242² (2) (a) Criminal Code of the

² Gheorghe Reniță, *Social values impaired by the manipulation of sports and betting events: the case of the Republic of Moldova*, in *Eastern Journal of European Studies*, vol. 10(1), 2019, pp. 181-197.

³ UNODC, *Legal Approaches to Tackling the Manipulation of Sports Competitions: A Resource Guide*, 2021. Retrieved from: <https://shorturl.at/dAG59> [accessed: 01.11.2023].

⁴ Tom Serby, *The Council of Europe Convention on Manipulation of Sports Competitions: the best bet for the global fight against match-fixing?*, in *The International Sports Law Journal*, vol. 15(1), 2015, pp. 83-100; Louis Vandercruysse, An Vermeersch & Tom Vander Beken, *Macolin and beyond: legal and regulatory initiatives against match manipulation*, in *The International Sports Law Journal*, vol. 22, 2022, pp. 241-258.

Republic of Moldova – bet-fixing committed by a criminal group or a criminal organization – is analyzed.

International and European standards

Illegal gambling has become the primary source of revenue for organized crime groups⁵. But what means criminal group or a criminal organization?

One of the major issues with research on organized crime concerns exactly the ambiguity around the term “organized crime”, and the subsequent lack of any definitional consensus, rendering the researcher vulnerable to shifts in politically motivated renditions of a constantly shifting cluster of often disparate activities⁶.

At the international level, Article 2 of the UN Convention against Transnational Organized Crime distinguishes between:

1) *organized criminal group* – a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;

2) *structured group* – a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure⁷.

At EU level, Article 1 of the Council's Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime operates with the following notions:

i) *criminal organization* – a structured association, established over a period of time, of more than two persons acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, to obtain, directly or indirectly, a financial or other material benefit;

ii) *structured association* – an association that is not randomly formed for the immediate commission of an offence, nor does it need to have

⁵ Peng Wang and Georgios A Antonopoulos, *Organized crime and illegal gambling: How do illegal gambling enterprises respond to the challenges posed by their illegality in China?*, in Australian & New Zealand Journal of Criminology, vol. 49(2), 2016, pp. 258-280.

⁶ For example, see Dick Hobbs and Georgios A Antonopoulos, How to Research Organized Crime, in Letizia Paoli (ed.), *The Oxford handbook of Organised Crime*, Oxford: Oxford University Press, 2014, pp. 96-118.

⁷ *Convention against transnational organized crime. General Assembly Resolution no. 55/25*. Retrieved from: <https://bit.ly/3dkE2lT> [accessed: 01.11.2023].

formally defined roles for its members, continuity of its membership, or a developed structure⁸.

It can be easily observed that the EU has taken over the provisions of Article 2 of the UN Convention against Transnational Organized Crime with certain terminological discrepancies, a fact that can generate confusion and legal uncertainty. I believe that in the context of the Council's Framework Decision 2008/841/JAI of October 24, 2008, the notions of “criminal organization” and “structured association” refer to the concepts of “organized criminal group” and, respectively, “structured group” from Article 2 of the UN Convention against Transnational Organized Crime.

The Resolution of the European Parliament of 25 October 2011 on organized crime in the EU mentions the extremely limited impact on the legislative systems of the EU Member States of the Framework Directive 2008/841/JHA on the fight against organized crime, which has not yet led to significant improvement of national laws or operational collaboration to combat organized crime. The European Parliament calls on the Commission to submit, by the end of 2013, a proposal for a directive which contains a more concrete definition of organised crime and better identifies the key features of the phenomenon, focusing in particular on the key concept of organisation and also taking into account new types of organised crime. Also, requests, as regards the offence of membership of a criminal organisation and with due regard to the different and specific characteristics of the various national legal systems, a study of the abolition of the current dual approach (which criminalises both membership and conspiracy) and the identification of a range of typical offences which, regardless of the maximum sentence permitted in the legal system of Member States, could be deemed to constitute such a criminal offence. Last but not least, The European Parliament calls also for more rigorous scrutiny of the question of criminalising all forms of support for criminal organisations, and urged on the Commission to draw up a proposal for a directive to make associating with mafias or other criminal rings apunishable crime in all Member States, in order to be able to punish criminal organisations which profit from their very existence, through their ability to intimidate – even without any specific acts of violence or threats – with the aim of committing crimes, influencing the running of the economy, general government, public services and the electoral system⁹.

⁸ *Framework Decision 2008/841/JHA on the fight against organised crime*. Retrieved from: <https://bit.ly/2BsXb6U> [accessed: 01.11.2023].

⁹ *Resolution on organised crime in the European Union (2010/2309(INI))*. Retrieved from: <https://bit.ly/3enanc3> [accessed: 01.11.2023].

Ten years have passed since then, but still no proposal for a directive has been drawn up in the analyzed matter. It seems that it is not so easy to develop a conception of organized crime valid for all legal systems.

The normative framework of the Republic of Moldova

As for the normative framework of the Republic of Moldova, we note that in accordance with Article 46 of the Criminal Code of the Republic of Moldova, “the organized criminal group is a stable meeting of persons who have organized in advance to commit one or more crimes”.

At the same time, the notion of “criminal organization” is reproduced in Article 47 (1) of the Criminal Code of the Republic of Moldova, as follows: “criminal organization (association) is considered a meeting of criminal groups organized in a stable community, whose activity is based on the division, between the members of the organization and its structures, of administrative functions, ensuring and executing the criminal intentions of the organization in order to influence the economic and other activity of natural and legal persons or to control it, in other forms, in order to obtain advantages and realize economic, financial or political interests”.

There is a “part-whole” correlation between the notions of “organized criminal group” and “criminal organization”.

From the content of Article 46 of the Criminal Code of the Republic of Moldova, the following defining features of the organized criminal group can be derived:

- 1) it constitutes a meeting of persons;
- 2) it is a stable meeting of persons;
- 3) it is a previously organized meeting;
- 4) the purpose of the meeting is to commit one or more.

The *first* condition involves the commission of the crime of fixed bets by several people. In the specialized literature it is claimed that “from a numerical point of view, the organized criminal group must bring together at least two people”¹⁰. In the same sense, some courts have decided¹¹.

This conception derives from the grammatical interpretation of the term “persons”, as well as from the systemic interpretation of the provisions of Article 41 (according to which “participation is considered the cooperation with intent of two or more persons in the commission of an intentional crime”) and Article 43 (c) of the Criminal Code of the Republic

¹⁰ Irina Selevestru, *Criminal liability for embezzlement*, Chisinau: CEP USM, 2015, p. 257.

¹¹ *Decision of the Supreme Court of Justice of the Republic of Moldova of 31 October 2018*. File no. 1ra-1945/2018. Retrieved from: http://jurisprudenta.csj.md/search_col_penal.php?id=12171 [accessed: 01.11.2023].

of Moldova (according to which “depending on the degree of coordination of the participants' actions, the following forms of participation are distinguished: [...] organized criminal group”).

On the contrary, in a Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova from 2004 it was explained that the organized criminal group must unite three or more people. In support of this statement, the supreme court referred to the notion of “organized criminal group” from Article 2 of the UN Convention against Transnational Organized Crime. This approach is also reflected in Article 1 of the EU Framework Decision on the fight against organized crime, which contains the phrase “by more than two people”. The minimum ceiling of three members of the organized criminal group is also established in the criminal legislation of some states (e.g., Romania, Bulgaria, Northern Ireland, Italy, Spain, etc.). The Republic of Moldova ratified the mentioned Convention but did not synchronize its provisions with the provisions of Article 46 of the Criminal Code of the Republic of Moldova.

Considering the provisions of article 8 of the Constitution of the Republic of Moldova, which claims the need to respect international law and international treaties, I believe that both in the context of Article 46 of the Criminal Code of the Republic of Moldova, as well as in the context of the crime of arranged bets, the organized criminal group must unite at least three people. A similar opinion has been expressed in the literature in relation to the offence of match-fixing¹². At the same time, the composition of an organized criminal group could include not only natural persons, but also legal persons, a fact confirmed in the judicial practice of the Republic of Moldova¹³.

The *second* condition requires that the gathering of people be stable. As a specific feature of the organized criminal group, stability presupposes the duration and persistence of the links between the participants, who are aware of the fact that they are part of the meeting¹⁴ in order to commit one or more crimes. The stability of the organized criminal group denotes the lack of fluctuation or reduced fluctuation within the respective group, seconded by the existence of lasting ties between the members of the organized criminal group¹⁵. However, the condition of stability is relative,

¹² Tony Spapens, Match-Fixing, in Hans Nelen and Dina Siegel (eds.), *Contemporary Organized Crime: Developments, Challenges and Responses*. Cham: Springer, 2017, p. 141.

¹³ *Decision of the Supreme Court of Justice of the Republic of Moldova of the 28 January 2020*. File no. 1ra-343/2020. Retrieved from:

http://jurisprudenta.csj.md/search_col_penal.php?id=15199 [accessed: 01.11.2023].

¹⁴ Serghei Brînza et al., *Criminal law: Special part*, 2nd edition. Chisinau: Cartier, 2005, p. 104.

¹⁵ Irina Selevestru, *Criminal liability for embezzlement*, Chisinau: CEP USM, 2015, p. 259.

because a reset of some members of the organized criminal group can happen for various reasons. Moreover, in terms of time, it is difficult to ascertain the stable character of the organized criminal group when it was created to commit a single crime.

In Decision no. 472 of June 27, 2017, the Constitutional Court of Romania specified the following: “the group formed occasionally for the immediate purpose of committing one or more crimes and which does not have continuity cannot constitute an organized criminal group. The requirement that the grouping be established over a certain period means precisely that it must not be of an occasional nature. This means that there must be an understanding between the members of the organized crime group that gives stability and durability. [...] The period that must elapse from the formation of the group for it to acquire a criminal character distinct from that of the offenses that fall within its scope cannot be established with absolute precision, by reference to time units, but can only be determined according to the circumstances of each individual case. Thus, the fulfillment of the condition related to the existence of the organized criminal group to be ‘constituted for a certain period of time’ is, necessarily, an element of judicial interpretation, which must be left by the legislator to the discretion of the criminal investigation bodies and the courts, the recipients of the criminal law having the opportunity to know, from the very text of the criticized legal norm – if necessary with the help of its interpretation by the courts and after obtaining adequate legal assistance – what are the acts and omissions that can engage their criminal liability and what is the punishment he risks”¹⁶.

Therefore, the Constitutional Court of Romania concluded that the text “constituted for a certain period of time” does not raise any problem from the perspective of the Constitution. The principle of general applicability of the law prevailed. The conclusions of the Constitutional Court of Romania are also relevant for the Republic of Moldova.

In the context of the elucidated, the *third* condition comes to our aid – organizing the group in advance. It implies the existence of an internal discipline, a well-defined hierarchy with a “single command center”, some rules for accessing new members, for acting and assigning the roles of each participant of the organized criminal group. This is not a spontaneous organization, but one that may have a structure and a “schedule” to carry out (i.e., to commit crimes).

Regarding the *last* condition – the purpose of committing one or more crimes –, it should be noted that the legislator did not specify what kind of

¹⁶ *Decision of the Constitutional Court of Romania no. 472/2017 regarding the exception of unconstitutionality of the provisions of art. 367 paragraph (6) of the Criminal Code.* In: Official Journal of Romania no. 760, 2017.

crimes it is. Pursuant to article 16 (1) of the Criminal Code of the Republic of Moldova, “in accordance with the nature and degree of prejudicial nature, the crimes provided for by this code are classified in the following categories: light, less serious, serious, particularly serious and exceptionally serious”. It follows that any of these crimes could be committed by an organized criminal group.

In contrast, in the sense of Article 2 of the UN Convention against Transnational Organized Crime, the organized criminal group is established for the purpose of committing one or more serious crimes. In the sense of the same international normative act, “serious crime” shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty. A similar concept is reflected in Article 1 of the EU Framework Decision on the fight against organized crime.

Although the probability of committing a minor crime by an organized criminal group is low, however, it is not excluded in the sense of the criminal law of the Republic of Moldova.

From the corroborated analysis of the provisions of Article 16 (3) and Article 242² (2) of the Criminal Code of the Republic of Moldova, it appears that the crime of arranged bets committed by an organized criminal group is a less serious one. It does not provide in the aggravated version of the crime a prison sentence of four or more years, but a maximum of three years. This could raise problems from the perspective of compliance with the provisions of Article 2 of the UN Convention against Transnational Organized Crime. However, we must not forget that based on Article 34 (3) of the same Convention, “each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating transnational organized crime”.

These four conditions are cumulative. They were not met in the case of *Ciumac*¹⁷, as well as in the case of *Gluhoi and others*¹⁸, tried by the courts of the Republic of Moldova. In both cases, the prosecutor accused the defendants of being part of an organized criminal group and committing the crime of fixed bets. But the prosecutor could not prove, in light of the conditions analyzed above, that the offence in question was committed by an organized criminal group.

It should also be noted that the provisions of article 46 of the Criminal Code of the Republic of Moldova were contested before the Constitutional

¹⁷ *Decision of the Chisinau Court of Appeal of 4 June 2019*. File no. 1r-121/19. Retrieved from: <https://bit.ly/2Xq4TaW> [accessed: 01.11.2023].

¹⁸ *Decision of the Supreme Court of Justice of the Republic of Moldova of 17 November 2021*. File no. 1ra-1296/21. Retrieved from:

http://jurisprudenta.csj.md/search_col_penal.php?id=19921 [accessed: 01.11.2023].

Court of the Republic of Moldova. Thus, it was argued that the provisions of the mentioned article violate the provisions of Article 22 of the Constitution regarding the non-retroactivity of the law, because the courts apply them to facts that occurred before the entry into force of the Criminal Code of the Republic of Moldova (i.e., June 12, 2003). The Criminal Code from 1961 dealt with the notion of “organized group” in several Articles but did not define it. The Constitutional Court of the Republic of Moldova held that the author of the exception of unconstitutionality requested the declaration of the unconstitutionality of the criticized law text by referring not to its normative content, but to the circumstances of the case, a matter that concerns the way of applying the law. But the examination of such criticisms, such as the application of the law in relation to the factual situations, does not fall within the competence of the Constitutional Court, which, according to Article 135 (1) (a) from the Constitution, exercises the control of the constitutionality of laws. The competence to assess whether the law has been correctly applied rests with the courts vested by law with the powers of judicial control, being aspects inherent in the administration of justice¹⁹.

The Constitutional Court also established that the contested text does not contain any retroactive provision, nor does it appear that it aims to produce retroactive effects. The criticized norm does not regulate the content of a crime or punishment, but establishes, on the one hand, a form of participation, which can exist in cases of committing crimes, and, on the other hand, defines, generically, through certain elements the definitions, the meaning of the notion of “organized criminal group”. For these reasons, the Constitutional Court declared inadmissible the referral regarding the exception of unconstitutionality of Article 46 of the Criminal Code of the Republic of Moldova. Indeed, the author of the notification did not raise a genuine exception of unconstitutionality, but addressed a problem of law enforcement, which does not belong to the competence of the Constitutional Court²⁰.

The provisions of Article 46 of the Criminal Code of the Republic of Moldova could face several problems, e.g.: whether or not criminal liability is applied for the establishment of the criminal group; if all members of the criminal group are liable as co-perpetrators or according to the role actually performed; whether all members of the criminal group are criminally liable or only those who directly participated in the commission of the crime;

¹⁹ *Decision of the Constitutional Court of the Republic of Moldova on inadmissibility of referral no. 166g/2017 regarding the unconstitutionality exception of Article 46 of the Criminal Code (organized criminal group)*. In: Official Journal of the Republic of Moldova no. 142-148.

²⁰ *Ibidem*.

whether people from outside the organized criminal group can be recruited to commit the crime; the extent of the responsibility of the organizer and leader of the organized criminal group; etc.

It is true that “beyond the special dangerousness of the collective and generic references to how these organizations jeopardize ‘peace’ or ‘security,’ the (not so recent) theories about the injurious nature of these associations are based on the fact that they assume an attack on the state. More specifically, they presuppose an attack on the state’s legitimate exercise of its coercive power”²¹.

However, the legislator of the Republic of Moldova had to provide answers to the mentioned aspects. Given that the legislator remains silent, the doctrine has fallen to the task of bringing more clarity in this regard.

According to the scholars, “the creation of an organized criminal group without having resorted to the commission of any crime must be qualified as preparation for the crime for the purpose of which the group was created”²². Thus, those who will create the criminal group organized in order to commit the crime of arranged betting (betting on a sports event or another betting event or informing other people about the existence of an agreement regarding the rigging of that event in order to induce them to participate to the respective bet, committed by a person who knows with certainty about the existence of an agreement regarding the rigging of that event) must be held accountable pursuant to Article 26 (preparation for a crime) and Article 242² (2) (a) of the Criminal Code of the Republic of Moldova.

The constitution of the organized criminal group: Romanian experience

In the criminal law of some states, the establishment of an organized criminal group is an independent crime. For example, article 367 (1) of the Criminal Code of Romania criminalizes the initiation or establishment of an organized criminal group, joining or supporting, in any form, such a group. This act is punishable by imprisonment from one to 5 years and the prohibition of the exercise of certain rights. Para. (6) of the same article provides that “organized criminal group” means the structured group, consisting of three or more persons, established for a certain period and to act in a coordinated manner for the purpose of committing one or more crimes.

According to the Constitutional Court of Romania, the cited provisions do not represent an excessive regulation. Regarding the predictability of the

²¹ Manuel Cancio Meliá, *The Wrongfulness of Crimes of Unlawful Association*, in *New Criminal Law Review*, vol. 11(4), 2008, p. 584.

²² Stanislav Copețchi and Igor Hadîrcă, *Classification of crimes: Course notes*. Chisinau: Central Typography, 2015, p. 329.

notions “initiation”, “establishment”, “adherence” and “support”, included in the provisions of Article 367 (1) of the Criminal Code of Romania, the Constitutional Court of Romania held that “the law, as a work of the legislator, cannot be exhaustive, and if it is incomplete, unclear, the legal system recognizes the judge's competence to cut off what escaped the legislator's attention, through a judicial, causal interpretation of the norm. The meaning of the law is not given forever at the moment of its creation, but it must be admitted that the adaptation of the content of the law is done through interpretation – as a stage of applying the legal norm to the concrete case – in criminal matters, respecting the principle according to which the criminal law is of strict interpretation”. She also noted that “genuine, legal interpretation can be a prerequisite for the proper application of the legal norm, by giving a correct explanation of its meaning, purpose, and finality, but the legislator cannot and must not provide for everything. In concrete terms, any legal norm, which is to be applied to solve a concrete case, is to be interpreted by the courts (judicial interpretation, case by case), in order to issue a legal application act”²³.

Therefore, the lack of legal definitions of some notions used in the criminal law denotes the legislator's intention to give them the meaning that derives from their common sense.

The concept of the Romanian legislator finds support in the jurisprudence of the European Court of Human Rights (ECtHR). Thus, for example, in *Ashlarba v. Georgia*, the applicant was sentenced to seven years in prison for membership of a “mafia-type underworld organization”. The highlighted phrase was known in Georgian society as referring to the professional underworld and “godfather” figures of the criminal elite²⁴.

Under this aspect, the ECtHR considered certain studies, which show that the operation of these underworld organizations contaminated not only the penitentiary sector, but also the general public in Georgia, including its most vulnerable members, namely the youth, long before the adoption of the legislative package under discussion. Thus, this criminal phenomenon was already so deeply rooted in society, and the social authority of these underworld leaders so great, that every person knew notions of criminal law such as “underworld”, “leader of underworld organizations” or “resolving conflicts through recourse to the authority of such a leader”. Consequently, the Court considered that the Parliament of Georgia simply criminalized concepts and actions related to the criminal subculture, the exact meaning

²³ *Decision of the Constitutional Court of Romania no. 559/2016 regarding the rejection of the exception of unconstitutionality of the provisions of art. 367 para. (1), (3) and (6) of the Criminal Code*. In: Official Journal of Romania no. 818, 2016.

²⁴ *Case of Ashlarba v. Georgia*, Application no. 45554/08, ECHR. Retrieved from: <https://hudoc.echr.coe.int/eng?i=001-145572> [accessed: 01.11.2023].

of which was already well known to the public. The Court also noted, as an interesting fact, that the parliament opted to maintain the colloquial language in the legal definition of the crime. In the opinion of the Court, this solution aimed to guarantee that the essence of the new crimes will be more easily understood by the general public²⁵.

Therefore, legal predictability should not be analyzed in vacuo, only from a linguistic perspective, by reference to the linguistic formulation of the legal text but should be examined in the light of a wider context, which may include social mentalities, as well as information that has come to be part of the collective consciousness of society. Such an interpretation of the requirement of foreseeability makes the prior warning created by the criminal rules more efficient, especially in the situation where the legislator chooses to use colloquial terms, which are well known at the level of society²⁶. In this sense, the purpose of the norm also helps us.

The role of members of the organized crime and the EtCHR case-law

According to the doctrine, “regardless of the role performed in the commission of the crime, all members of the organized criminal group [or criminal organization] are liable as co-perpetrators. [...] [For this reason], when qualifying what they have done, it is not necessary to refer to Article 42 of the Criminal Code of the Republic of Moldova – rule that defines the participants in the crime. [...] If the article in the Special Part of the Criminal Code contains the qualifying sign ‘by an organized criminal group or a criminal organization’, then the qualification will be made in accordance with this sign, without the additional invocation of Article 46 of the Criminal Code of the Republic of Moldova”²⁷ or Article 47 of the Criminal Code of the Republic of Moldova. Otherwise, a double legal value would be given to one and the same circumstance. Therefore, the act of arranged bets committed by an organized criminal group or a criminal organization must be qualified only in accordance with Article 242² (2) (a) of the Criminal Code of the Republic of Moldova. This opinion finds support in the specialized literature²⁸. But the role of individuals within the organized criminal group must be considered when individualizing the criminal penalty.

It has also been pointed out in the literature that, “ordinary members of the organized criminal group may not know about some concrete crimes,

²⁵ Cristina Tomuleț, *Interpretation in criminal law*, Bucharest: Universul Juridic, 2023, p. 232.

²⁶ *Ibidem*.

²⁷ Stanislav Copețchi and Igor Hadîrcă, *Classification of crimes: Course notes*, Chisinau: Central Typography, 2015, p. 329.

²⁸ Vitalie Stati, *Economic Crimes: Course Notes, 3rd Edition, Revised and Updated*, Chisinau: CEP USM, 2019, p. 236.

committed by other members of this group. In such situations, they bear criminal liability only for their participation in the organized criminal group and for their personal actions, committed by them for the execution of the criminal activity plan of the organized group, according to the respective articles of the Special Part of the Criminal Code”²⁹.

Here the emphasis is on the subjective element. This opinion considers the hypothesis that some members of the organized criminal group are unaware of the commission of crimes by other members of the same organized criminal group. This can happen especially in the case of criminal groups with a relatively large numerical composition. Reasoning *per a contrario*, I wonder if the solution will change in the situation where some “ordinary” members of the organized crime group knew (but did not contribute) to the commission of certain crimes by other members of the same organized crime group? The answer should be no. In this sense, Article 47 (5) of the Criminal Code of the Republic of Moldova provides that the member of the criminal organization can be held criminally liable only for the crimes in the preparation or commission of which he participated. The same concept must be applied, *a fortiori*, to the members of the organized criminal group.

At the same time, unlike the organized criminal group, in the case of the criminal organization, the legislator expressly provided that the organizer (i.e., the one who created the criminal organization) and the leader (i.e., the one who directs it) of the criminal organization bear responsibility for all crimes committed by this organization (Article 47 (3)-(4) of the Criminal Code of the Republic of Moldova). This approach can also be applied to the organizer or the leader of the organized criminal group. The explanation lies in the fact that these persons can “approve” or order “from the shadows” the commission of crimes by members of the organized criminal group.

From this perspective, I refer to Resolution adopted by the XVIth International Congress of Penal Law (Budapest, September 5-11, 1999), according to which: “because it is often difficult to prove that leaders and members of organized criminal groups have actually participated in the perpetration of particular offences, traditional forms of perpetration and accessorial liability can be insufficient to make these individuals accountable. To the extent the traditional law of perpetratorship and complicity is deemed insufficient, one should consider a cautious modernization based on the principle of organizational responsibility. In hierarchically structured organizations, persons with decision and control power can be made responsible for acts of other members under their control if they have ordered these acts to be committed or have consciously

²⁹ Alexei Barbăneagră et al., *The Criminal Code of the Republic of Moldova: Commentary*. Chisinau: Sarmis, 2009, p. 101-102.

omitted to prevent their commission.”³⁰ So, the organizer or leader of the organized crime group should be held accountable for all crimes committed by the people who acted on their “directions”.

Further, according to Article 47 (2) of the Criminal Code of the Republic of Moldova, “the crime is considered to have been committed by a criminal organization if it was committed by a member of it in its interest or by a person who is not a member of the respective organization, on its behalf”.

From this perspective, the case of *Işıkırık v. Turkey* judged by the ECtHR is relevant. In this case, the ECtHR held, in fact, that in 2007 the applicant was convicted of “membership” of an illegal armed organisation (the PKK) and sentenced to more than six years’ imprisonment on the basis of Article 220 § 6 of the Turkish Criminal Code on the grounds that he had attended the funeral of four PKK militants, had walked in front of one of the coffins during the funeral and made a “V” sign, and that he had applauded while other demonstrators chanted slogans in support of Abdullah Öcalan during a gathering at his university³¹.

The courts considered that since both the funeral and the demonstration had been held following calls and instructions issued by the PKK, the applicant, who had participated in those events, had to be considered as having acted “on behalf” of that organisation.

According to Article 220 § 6 of the Turkish Criminal Code, anyone who commits a crime “on behalf” of an illegal organisation will be punished as a “member” of that organisation under Article 314 § 2, without the prosecution having to prove the material elements of actual membership.

The applicant’s conviction for membership of an illegal organisation under Articles 220 § 6 and 314 § 2 of the Turkish Criminal Code, based on his participation in a funeral and a demonstration, could be considered as an interference with his right to freedom of assembly.

The wording of Article 220 § 6 of the Turkish Criminal Code did not itself define the meaning of the expression “on behalf of an illegal organisation”.

The domestic courts had interpreted the notion of “membership” of an illegal organisation under Article 220 § 6 of the Turkish Criminal Code in extensive terms. The mere fact of being present at a demonstration, called for by an illegal organisation, and openly acting in a manner expressing a positive opinion towards the organisation in question, was found sufficient to be considered acting “on behalf of” the organisation and thus liable to punishment as an actual member.

³⁰ XVIth International Congress of Penal Law, Resolution (Budapest), 1999. Retrieved from: <https://bit.ly/2CXk2s6> [accessed: 01.11.2023].

³¹ Case of *Işıkırık v. Turkey*, Application no. 41226/09, ECHR. Retrieved from: <https://hudoc.echr.coe.int/eng?i=001-178506> [accessed: 01.11.2023].

In contrast, when Article 314 of the Turkish Criminal Code was applied alone as regards “membership” of an illegal organisation, the courts had to have regard to the “continuity, diversity and intensity” of the accused’s acts. Similarly, they would also assess whether the accused had committed offences within the “hierarchical structure” of the organisation, whereas when the same article was applied with reference to Article 220 § 6 of the Turkish Criminal Code, the question of acting within a hierarchy became irrelevant.

In sum, the array of acts that potentially constituted a basis for the application of a severe criminal sanction in the form of imprisonment, under Article 220 § 6 of the Turkish Criminal Code, was so vast that the wording of the provision, including its extensive interpretation by the domestic courts, did not afford a sufficient measure of protection against arbitrary interference by the public authorities.

Furthermore, and importantly, on account of his conviction for acts which fell within the scope of Article 11 of the European Convention on Human Rights (ECHR), there remained no distinction between the applicant, a peaceful demonstrator, and an individual who had committed offences within the structure of the PKK.

According to ECtHR, such extensive interpretation of a legal norm could not be justified when it had the effect of equating the mere exercise of fundamental freedoms with membership of an illegal organisation in the absence of any concrete evidence of such membership.

Article 220 § 6 of the Turkish Criminal Code was thus not “foreseeable” in its application since it did not afford the applicant legal protection against arbitrary interference with his right under Article 11 of the of the ECHR. Hence, the interference was not prescribed by law.

The ECtHR did not stop there. She further pointed out that when demonstrators faced the charge of membership of an illegal armed organisation, they risked an additional sentence of between five and ten years in prison, a sanction which was strikingly severe and grossly disproportionate to their conduct.

Therefore, Article 220 § 6 of the Turkish Criminal Code, as applied in the instant case, would inevitably have a particularly chilling effect on the exercise of the rights to freedom of expression and assembly.

Moreover, the application of the provision at issue was not only likely to deter those who were found criminally liable from re-exercising their rights under Articles 10 and 11 of the ECHR, but also had a great deal of potential to deter other members of the public from attending demonstrations and, more generally, from participating in open political debate.

Therefore, the very essence of the right to freedom of peaceful assembly and, thereby, the foundations of a democratic society, was undermined when the applicant was held criminally liable under Article 220 § 6 and Article 314 of the Turkish Criminal Code for the mere fact of attending a public meeting and expressing his views thereat.

Consequently, the ECtHR decided that, in this case, Article 11 of the ECHR and awarded the plaintiff the sum of 7.500 euros as moral damage³².

The reasonings of the ECtHR are valid, *mutatis mutandis*, also for the Republic of Moldova (and not only).

In another register, I note that it does not exist similar provision the one in Article 47 (2) of the Criminal Code of the Republic of Moldova in case of organized criminal group. However, the doctrine admits that “members of the [organized criminal] group can establish the participation of all or only some, they can even recruit executors from outside”³³.

Thus, the crime can be committed directly by a single person, who acted at the behest of the organized criminal group. The person must know that he is acting at the behest of the organized criminal group. In a case examined by the US Supreme Court, it was found that the defendant (Burke) was an associate of the “Lucchese” mafia family, on whose behalf he bet on the games contested with the Boston College basketball team, which he knew with certainty were rigged³⁴. This act falls under Article 242² (2) (a) of the Criminal Code of the Republic of Moldova.

Regarding the “executors” outside the organized criminal group, in the case of *Contrada v. Italy (no. 3)*, the ECtHR found that the relevant legal provisions of domestic law did not expressly criminalize the external association of a person with a mafia-type group, but the act of the person who is part of a group of this type (Article 416bis of the Italian Criminal Code). Moreover, the ECtHR held that the jurisprudence on the matter was contradictory: while some courts considered that “external association” with a mafia-type group constituted a crime, others did not. Under these conditions, the ECtHR found a violation of Article 7 of the ECHR³⁵. From this perspective, in the case of the criminal organization, there is no doubt that liability can be applied based on Article 242² (2) (a) of the Criminal Code of the Republic of Moldova when the crime of fixed bets was committed by a person who is not a member of the criminal organization, but who acted on its behalf. In contrast, in the case of the organized criminal

³² *Ibidem*.

³³ For example, see Dorin Ciuncan, *The establishment of an organized criminal group*. Retrieved from: <https://bit.ly/2zW9MPO> [accessed: 01.11.2023].

³⁴ David Porter, *Fixed: How Goodfellas Bought Boston College Basketball*, New York and Oxford: Taylor Trade Publishing, 2000, pp. 152-171.

³⁵ Case of *Contrada v. Italy (no. 3)*, Application no. 66655/13, ECHR. Retrieved from: <https://hudoc.echr.coe.int/fre?i=001-153771> [accessed: 01.11.2023].

group, problems of interpretation might arise. In this situation, to confer the predictability required by Article 7 ECHR, it would be appropriate to apply the rule provided for in Article 47 (2) of the Criminal Code of the Republic of Moldova.

Next, according to Article 47 (6) of the Criminal Code of the Republic of Moldova, “the member of the criminal organization may be released from criminal liability if he voluntarily declared the existence of the criminal organization and helped to discover the crimes committed by it or contributed to the unmasking of the organizers, leaders or members of the respective organization”. The legislator of the Republic of Moldova did not foresee the same possibility for the member of the organized criminal group.

The circumstance that the crime of arranged betting was committed by an organized criminal group or by a criminal organization must be considered when individualizing the punishment.

It should also be noted that the application of liability based on Article 242² (2) (a) of the Criminal Code of the Republic of Moldova excludes the incidence of the aggravating circumstance from Article 77 (1) (c) of the Criminal Code of the Republic of Moldova (committing the crime through any form of participation). The normative support of this conclusion derives from Article 77 (2) of the Criminal Code of the Republic of Moldova: “if the circumstances mentioned in para. (1) are provided in the corresponding articles of the Special Part of this code as signs of these components of crimes, they cannot be simultaneously considered as aggravating circumstances”.

Solutions

Finally, to avoid jurisprudential divergences and, respectively, a possible conviction of the Republic of Moldova by the ECtHR, I consider it appropriate to expressly specify that the rules provided for in Article 47 para. (2)-(6) of the Criminal Code of the Republic of Moldova (cited above) are applicable, *mutatis mutandis*, in relation to the organized criminal group. In this way, enforcement of fixed bets committed by an organized criminal group or criminal organization will become more predictable.

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FROM SAVINGS TO ESCAPE AND ENFORCEMENT SAVINGS

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Abstract: *This paper is important and innovative for economic theory, as it presents thoroughly the transition from the concept of savings to escape and enforcement savings. This analysis is the result of the Theory of the Money Cycle, while for the first time in the history of economics, the concept of economic degrees is introduced. Therefore, the current research is very important as introduces two new concepts in the Literature Review. The first one is about the evolution of the concept of savings, and the other one is about the term of economic degrees, something that permits the perfect use of complementary terms, meaning the enforcement and the enforcement savings. Every economy has an economic angle that presents the rate between escape and enforcement savings. Moreover, it presents a theoretical scenario of the applied mathematical equation about the savings of the Theory of Cycle of Money. The methodology that is followed for the current research uses mathematics and programming in Mathematica, to present the results.*

Keywords: *economic degrees, savings, escape savings, enforcement savings*

Introduction

The Theory of Cycle of Money assesses the economic functionality of an economy through the distribution and reuse of money, providing an opportunity to understand the structure of each economy¹. An amount of money in many cases is transferred from an economy to external banks or other economies. The basic perspective of the money cycle is that larger corporations and international corporations save their money in external banks and financial havens². Therefore, according to this theory, tax

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¹ Constantinos Challoumis, 2023 “Utility of Cycle of Money without the Escaping Savings (Protection of the Economy),” in *Social and Economic Studies within the Framework of Emerging Global Developments Volume 2*, 53–64,

<https://doi.org/10.3726/b20509>; Constantinos Challoumis, “Impact Factor of Liability of Tax System According to the Theory of Cycle of Money,” in *Social and Economic Studies within the Framework of Emerging Global Developments Volume 3*, 2023, 31–42, <https://doi.org/10.3726/b20968>.

² Vicente Ortún, Beatriz G. López-Valcárcel, and Jaime Pinilla, “El Impuesto Sobre Bebidas Azucaradas En España,” *Revista Espanola de Salud Publica* 90 (2016);

authorities should impose an additional tax on this type of corporation to reduce economic loss. In addition, smaller companies and freelancers should be taxed at lower tax rates³. Thus, it is possible to increase economic dynamics. In that way, a more democratic state could be established ⁴. Factories, know-how services of large enterprises, the health system, and the education system are special cases of the economy, as they belong to cases where taxes improve the quality of the economy.

Factories and large know-how companies increase the money cycle if they are not substitutes for the activities of small and medium-sized enterprises and self-employed persons⁵. Education and healthcare systems improve the quality of the economy and generally improve the overall economy⁶. Therefore, this work attempts to clarify how the concept of the money cycle works in real scenarios in a country.

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³ Marcelo Ladvoat and Vander Lucas, 2019, "REGIONAL DISPARITIES, PUBLIC POLICIES AND ECONOMIC GROWTH IN BRAZIL" *Revista Baru - Revista Brasileira de Assuntos Regionais e Urbanos* 5, 2, <https://doi.org/10.18224/baru.v5i2.7687>; P. Reeves et al., 2019, "Economic Evaluations of Public Health Implementation-Interventions: A Systematic Review and Guideline for Practice," *Public Health*,

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⁴ Melissa A. Fernandez and Kim D. Raine, 2019, "Insights on the Influence of Sugar Taxes on Obesity Prevention Efforts," *Current Nutrition Reports*,

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⁵ Marian Leimbach et al., 2017, "Future Growth Patterns of World Regions – A GDP Scenario Approach," *Global Environmental Change*, 42,

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⁶ Steven D. Baker, Burton Hollifield, and Emilio Osambela, 2020, "Preventing Controversial Catastrophes," *Review of Asset Pricing Studies* 10, 1, <https://doi.org/10.1093/RAPSTU/RAZ001>; Zahid Hussain et al., 2022, "Green Growth, Green Technology, and Environmental Health: Evidence From High-GDP Countries,"

The money cycle indicator indicates how an economic system should cope with a monetary crisis and examines how well a country's economy is structured. Estimates of the indicator of the money cycle were used for comparison with the global average indicator of the money cycle.

From Savings to escape and enforcement savings

One of the main problems with the study of savings is that one has to distinguish between escape savings and enforcement savings. The issue with enforcement savings is what is currently perceived as savings. In the classical interpretation of the term, it is savings that will allow consumption to increase in the future ⁷. The growth of consumption is inextricably linked to the concept of saving, since even temporarily before consumption there must have been some form of saving because saving must also be interpreted as holding a quantity of money. Could saving be considered, however, to be something distinct that has nothing to do with holding money? The answer is that possession and saving are conceptually close to each other because saving presupposes possession. But does possession also require saving? The answer seems to be that possession does not require saving. As I may own a quantity of money, I can consume it immediately, without having to go through the process of saving at all. Whereas saving cannot occur unless I have previously possessed this amount of money.

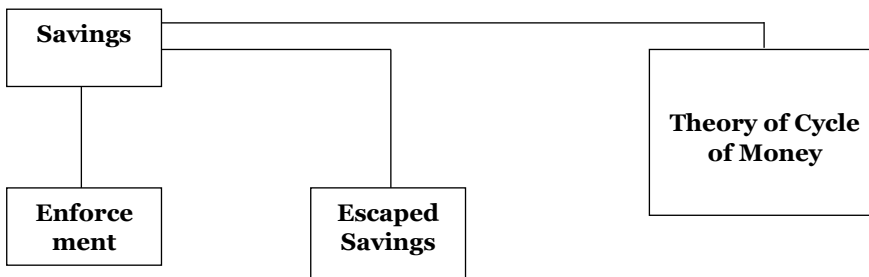


Figure 1: Savings on the Theory of Cycle of Money

It is important to distinguish between savings that have a positive effect on the economy and savings that have a negative effect on the economy. The importance of this theoretical assumption is of major importance since

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⁷ JoséMaría Casado Ruiz et al., 2017, "Measuring the Social and Economic Impact of Public Policies on Entrepreneurship in Andalusia, 1994" *CIRIEC-Espana Revista de Economía Publica, Social y Cooperativa* 1, 90, "The East Asian Miracle: Economic Growth and Public Policy," *Choice Reviews Online* 32, 2, <https://doi.org/10.5860/choice.32-1052>.

savings can also have a negative effect on the economy since their holding can occur in a banking system outside the country where they were acquired⁸. Thus, traditional literature on savings has assumed savings by including them in the concept of enforcement savings. This, according to the Theory of the Cycle of Money, is conceptually inconsistent with the concept of the functional use of money. Functionally, money derived from savings does not necessarily return to the economy. This is very important in Money Cycle Theory, as two conditions must apply primarily to strengthen an economy.

- First, it is the reuse of money that acts as a multiplier of economic activities.

- Second, it is the dispersion of money that enables economic activity throughout the economy. This means that all economic units of the economy are put into operation when the theory of the Money Cycle is correctly followed.

Tax authorities should focus on savings, and where they should focus is on where the money is saved, whether it fits into the domestic economic system, thus indicating the amount of money that will be reintegrated into the domestic market. In other words, there seems to be a need for relevant supervision of the tax authorities for the money cycle, so that it does not break up⁹. The reuse of money affects the intensity with which an economy's health increases, and the dispersion of money to the extent of an economy's health.

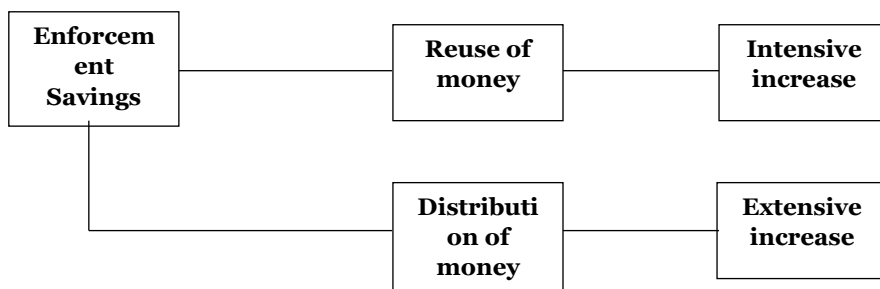


Figure 2: Savings on the Theory of Cycle of Money

⁸ Constantinos Challoumis, 2023, “A Comparison of the Velocities of Minimum Escaped Savings and Financial Liquidity,” in *Social and Economic Studies within the Framework of Emerging Global Developments, Volume - 4*, V. Kaya, 41–56, <https://doi.org/10.3726/b21202>; Constantinos Challoumis, 2022, “Conditions of the CM (Cycle of Money),” in *Social and Economic Studies within the Framework of Emerging Global Developments, Volume -1*, V. Kaya, 13–24, <https://doi.org/10.3726/b19907>.

⁹ Constantinos Challoumis, 2021, “The Impact Factor of Tangibles and Intangibles of Controlled Transactions on Economic Performance,” *Economic Alternatives* 29, 4 (2023); Constantinos Challoumis, “Index of the Cycle of Money -the Case of Bulgaria,” *Economic Alternatives* 27, 2, 225–34,

<https://www.unwe.bg/doi/eajournal/2021.2/EA.2021.2.04.pdf>.

There are two aspects of the effect of savings on the function of money. One is expansive and the other is intensive¹⁰. The intensity concerns the intensity with which the economy is strengthening¹¹. Expansion concerns the extent of the impact on the economy. The two effects strengthen the economy through the reuse and dispersion of money respectively¹². The reuse of money increases the growth intensity of the economy because with the same money, i.e. without the need to mint new money and therefore borrow from the central bank (and without additional interest), the economy is served without the burden of any obligations. The dispersion of money ensures that all economic units will be used and consequently that the economy will be properly structured¹³. The reason is that since the whole economy will function, then structurally all economic units will take over for a specific reason, allowing the structural self-regulation of the economy through its maximum functionality, since all economic units will be assigned a role. The mathematical representation of the above is reflected in the Theory of the Money Cycle. The relationship is as follows:

$$c_y = c_m - c_a = \frac{dx_m}{dm} - \frac{dx_m}{da} \quad (1)$$

¹⁰ Constantinos Challoumis, 2023, “Risk on the Tax System of the E.U. from 2016 to 2022,” *Economics* 11, 2, Constantinos Challoumis, 2018, “Methods of Controlled Transactions and the Behavior of Companies According to the Public and Tax Policy,” *Economics* 6, 1, 33–43, <https://doi.org/10.2478/eoik-2018-0003>.

¹¹ Manuela Tvaronavičienė, Elena Tarkhanova, and Nino Durglishvili, 2018, “Sustainable Economic Growth and Innovative Development of Educational Systems,” *Journal of International Studies* 11, 1, <https://doi.org/10.14254/2071-8330.2018/11-1/19>; Mario Fernando Prieto Peres et al., 2020, “Public Policies in Headache Disorders: Needs and Possibilities,” *Arquivos de Neuro-Psiquiatria* 78, 1, <https://doi.org/10.1590/0004-282X20190144>; Jesse R. Cruce and Jason C. Quinn, 2019, “Economic Viability of Multiple Algal Biorefining Pathways and the Impact of Public Policies,” *Applied Energy* 233–234, <https://doi.org/10.1016/j.apenergy.2018.10.046>.

¹² Leticia dos Santos Benso Maciel et al., 2020, “Evaluating Public Policies for Fair Social Tariffs of Electricity in Brazil by Using an Economic Market Model,” *Energies* 13, 18, <https://doi.org/10.3390/en13184811>; Paul H. Jensen, 2020, “Experiments and Evaluation of Public Policies: Methods, Implementation, and Challenges,” *Australian Journal of Public Administration* 79, 2, <https://doi.org/10.1111/1467-8500.12406>; Jeongbae Jeon, Solhee Kim, and Sung Moon Kwon, 2020, “The Effects of Urban Containment Policies on Public Health,” *International Journal of Environmental Research and Public Health* 17, 9, <https://doi.org/10.3390/ijerph17093275>.

¹³ Matthew C. Nowlin, Kuhika Gupta, and Joseph T. Ripberger, 2020, “Revenue Use and Public Support for a Carbon Tax,” *Environmental Research Letters* 15, 8, <https://doi.org/10.1088/1748-9326/ab92c3>; Vincent Amanor-Boadu, Peter H. Pfromm, and Richard Nelson, 2014, “Economic Feasibility of Algal Biodiesel under Alternative Public Policies,” *Renewable Energy*, 67, <https://doi.org/10.1016/j.renene.2013.11.029>; Christopher M. Herrington, 2015, “Public Education Financing, Earnings Inequality, and Intergenerational Mobility,” *Review of Economic Dynamics* 18, 4,

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$$c_y = s \cos\varphi + s \sin\varphi = s (\cos\varphi + \sin\varphi) \quad (2)$$

$$c_m = s \cos\varphi \quad (3)$$

$$c_a = s \sin\varphi \quad (4)$$

$$s = m \quad (5)$$

The, c_y symbolizes the money cycle. The, c_m is the money that is in an economy and is reused. In other words, c_m , refers to both enforcement savings and money introduced, for the first time, into an economy. The c_a are the escape savings, that is, those money that are lost by an economy. Moreover, s is about the savings and m about the money. In this regard, for the first time in the history of economics, the concept of degrees is introduced in economics. The x_m is related to the productivity or the products of the economy. This means that the angle φ takes values from 0° to 90° . For $\varphi = 0^\circ$ this economy is the ultimate economy as it reuses and disperses to the maximum extent. For $\varphi = 90^\circ$ this economy has virtually ceased to function and its structure has been destroyed. Other degrees could be set beyond 0° to 90° but there would be cases of more idealized original economies.

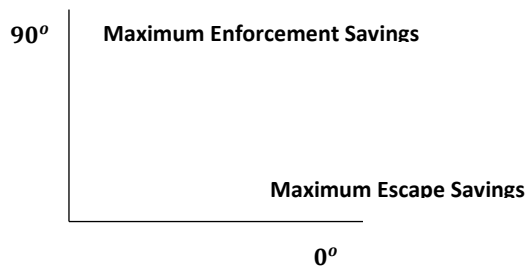


Figure 3: Economic Degrees

In the previous figure, it is obvious that for an angle 0° the worst possible situation for the economy occurs. In this case, escape savings have left the economy, resulting in a reduction in the amount of money that is available to that economy¹⁴. Whereas, when it comes to angle 90° , then it is in its maximum possible state, since enforcement savings are at their highest possible point. Savings, in this scenario, stay within the economy, i.e. in the domestic banking

¹⁴ Sébastien Bourdin and Fabien Nadou, 2018, “French Tech: A New Form of Territorial Mobilization to Face up to Global Competition?”, *Annales de Géographie*, 723–724, <https://doi.org/10.3917/ag.723.0612>; Anita Lal et al., 2020, “Inclusion of Equity in Economic Analyses of Public Health Policies: Systematic Review and Future Directions, 2018, *Australian and New Zealand Journal of Public Health*, <https://doi.org/10.1111/1753-6405.12709>; Azharul Islam et al., 2020, “Public Policies and Tax Evasion: Evidence from SAARC Countries,” *Heliyon* 6, 11, <https://doi.org/10.1016/j.heliyon.2020.e05449>.

system¹⁵. The system of economic degrees achieves a complete depiction of the relationship between escape savings and enforcement savings, as when one increases the other decreases, and vice versa. Therefore, in this way, it is possible to determine this complementarity relationship between escape savings and enforcement savings.

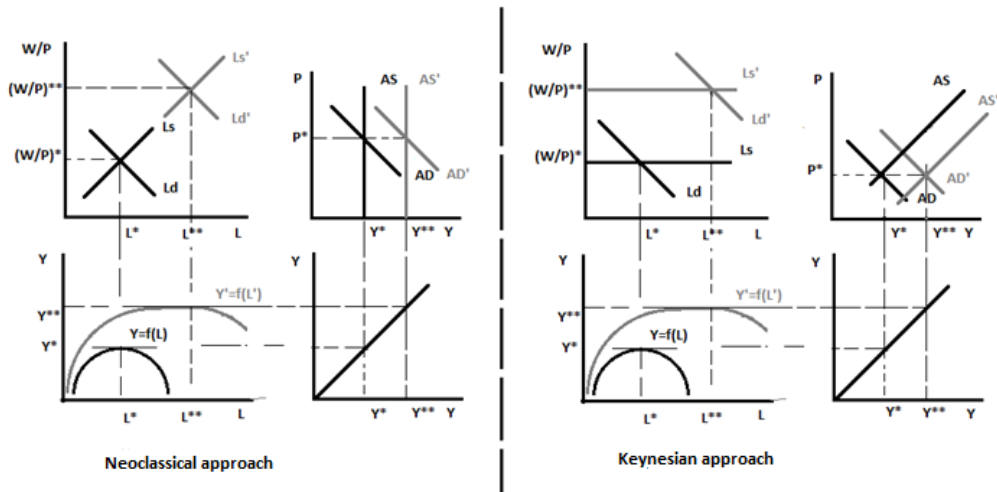


Figure 4: Economic Degrees

According to the previous scheme, what the Theory of Cycle of Money achieves is the best income and generally the best revenues of all economic units of an economy. This is because the reuse of money, like its wide dispersion, allows higher income to be achieved. This applies both to the Keynesian approach and to that of the Neoclassical approach.

Methodology

The applied methodology is based on the concept of the mathematical and theoretical analysis of the current equations. Therefore, according to Eq. (1) to (5):

$$c_y = s (\cos\varphi + \sin\varphi) \tag{6}$$

$$c_y = s (1 + \tan\varphi) \tag{7}$$

$$\tan\varphi = \frac{c_y}{s} - 1 \tag{8}$$

$$\varphi = \tan^{-1}\left(\frac{c_y}{s} - 1\right) \tag{8}$$

From the prior equations, it is shown how to define the economic angle φ . Therefore, Eq. (2) defines the cycle of money, and φ , the economic degree of an economy, defines the rate between the escape savings and the enforcement savings.

¹⁵ Constantinos Challoumis, 2019, "The R.B.Q. (Rational, Behavioral and Quantified) Model," *Ekonomika* 98, 1, 6–18, <https://doi.org/10.15388/ekon.2019.1.1>.

Results

Applying the mathematical and the theoretical background to the current paradigm:

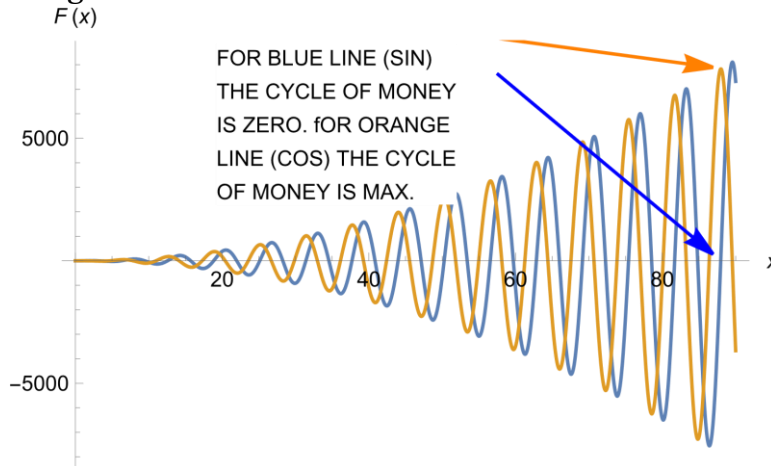


Figure 5: Economic Degrees

It is shown that for an equation that $s = x^2 + x$, and x is taking values from 0° to 90° the result is the escaped savings at 90° (their maximum) or enforcement savings at 90° (their minimum) give as a result the lower cycle of money, c_y . On the contrary, when escaped savings are at 0° (their minimum) or enforcement savings at 0° (their maximum) give the higher cycle of money, c_y .

Conclusions

Future research will be made for real case scenarios, as these already happened for many countries to the Theory of Cycle of Money. Future research could determine the economic degree, φ , of countries' economies.

The current analysis and results define the relationship of the savings, as the existing literature doesn't support this separation of savings, between the escape and enforcement savings. The distinction is very important as this is where the theory of Cycle of Money is based. Also, it is unique the use of economic degrees, as each country has only one economic degree that specifies with an accurate way its economic condition.

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THE GROWING DEBT BURDENS OF GLOBAL SOUTH COUNTRIES: STANDING IN THE WAY OF CLIMATE AND DEVELOPMENT GOALS

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Abstract: *This paper analyses the available data on external debt burdens of low- and middle-income countries and identifies 79 countries that are considered by international institutions as being in or at risk of debt distress. In the context of the ongoing climate crisis, high debt burdens hamper the ability of these country to invest in climate resilience. This paper shows the effects that servicing debt has on these countries' ability to respond to climate disasters, as well as provide services to their population. The paper shows how developing countries are trapped in a vicious cycle, which keeps them indebted and perpetuates vulnerability to the effects of climate change, as well as hampering their development path. The response so far from the international financial community has been inadequate to help countries break this vicious cycle.*

Keywords: *climate change, sustainable development, external debt*

Introduction

The sharp increase in US interest rates over the past 18 months has led to increased financial volatility, exchange rate depreciation, and higher

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borrowing costs for developing countries.¹ Numerous nations with low to moderate income levels are burdened by substantial foreign currency-denominated debt, primarily denominated in US dollars. They face significant repercussions from abrupt shifts in worldwide capital flows. These challenges are further amplified by an imbalanced global financial system that intensifies the demands on countries to meet their obligations to creditors “when they can least afford it.”²

More countries are dealing with the physical impacts of climate change and, while low- and middle-income countries generally bear the least responsibility for the climate crisis, they often face the greatest burden in terms of its impacts. The costs of climate disasters can be very high, even for countries generally considered to be more resilient. For example, the drought in Argentina in the spring of 2023 — the country’s worst in 60 years — is projected to result in about \$20 billion in losses to national income, almost three percent of GDP, in 2023 due to a significant decline in exports of grain, soy, and corn. This paper examines the current financial architecture and the challenges it poses to developing countries at a time when they are also increasingly being affected by the effects of climate change.

High debt burdens are a direct obstacle to building climate resilience and achieving progress towards the Sustainable Development Goals (“SDGs”). A growing number of countries have been identified as in or at risk of debt distress in analyses conducted by the International Monetary Fund (IMF) and United Nations Development Program (UNDP) as seen below. Out of the 79 countries flagged by these two institutions 60 have also been designated by the Notre Dame GAIN Climate Index as highly climate vulnerable³. The countries that are both in or at risk of debt distress and particularly vulnerable to climate change can be seen in the figure below.

¹ The United Nations Conference on Trade and Development Report Update, [accessed: 03.09.2023], Available at: https://unctad.org/system/files/official-document/gdsinf2023d1_en.pdf.

² Ibidem

³ Ibidem

Climate Vulnerability of 79 Low and Middle–Income Countries in, or at Risk of, Debt Distress

ND GAIN Climate Vulnerability Index
more vulnerable --->

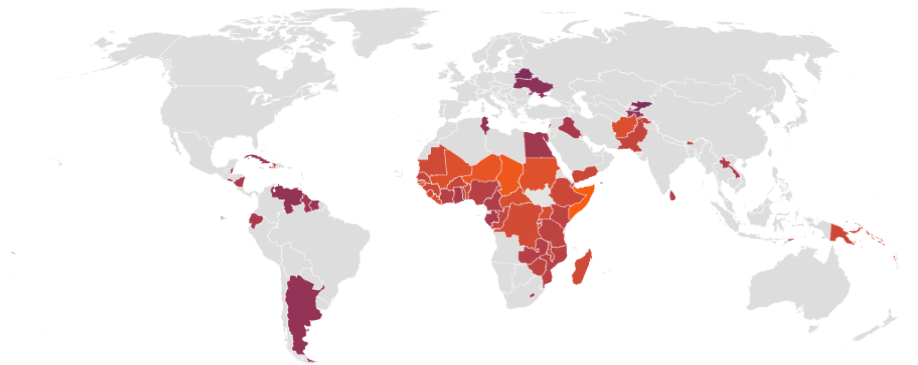


Figure 1. Climate Vulnerability of Low- and Middle-Income Countries Identified as in or at Risk of Debt Distress⁴

Out of the 79 low- and middle-income countries in, or at risk of, debt distress, half (39) are in Sub-Saharan Africa, followed by Latin America and the Caribbean (14) and East Asia & the Pacific (11). A total of 60 countries in or at risk of debt distress are highly climate vulnerable. More countries are dealing with the physical impacts of climate change and, while low- and middle-income countries generally bear the least responsibility for the climate crisis, they often face the greatest burden in terms of its impacts.⁵ The costs of climate disasters can be very high, even for countries generally considered to be more resilient. For example, the drought in Argentina in the spring of 2023 — the country’s worst in 60 years — is projected to result in about \$20 billion in losses to national income, almost three percent of GDP, in 2023 due to a significant decline in exports of grain, soy, and corn.⁶

The SDGs, including climate action, are highly interdependent. Climate change has a direct impact on health, food security, and other basic human needs, while the advancement of social and economic development is key to strengthening resilience against climate shocks and the long-term consequences of climate change. Comparing this within the current international financial architecture, the entrenched process which keeps

⁴ The International Monetary Fund’s List of LIC DSAs for PRGT-Eligible Countries Report [accessed: 03.09.2023], Available at:

<https://www.imf.org/external/Pubs/ft/dsa/DSAlist.pdf>.

⁵ Notre Dame Global Adaptation Initiative Country Rankings, [accessed: 01.09.2023], Available at: <https://gain.nd.edu/our-work/country-index/rankings>.

⁶ M. Cervantes and S. Avalos, *Historic Drought Adds to Argentina’s Economic Woes*, in *Buenos Aires Times*, Buenos Aires, Argentina. June 2023, p. 12

developing countries indebted, prevents progress on the SDGs, and perpetuates climate precarity, has been referred to as “the vicious cycle.”

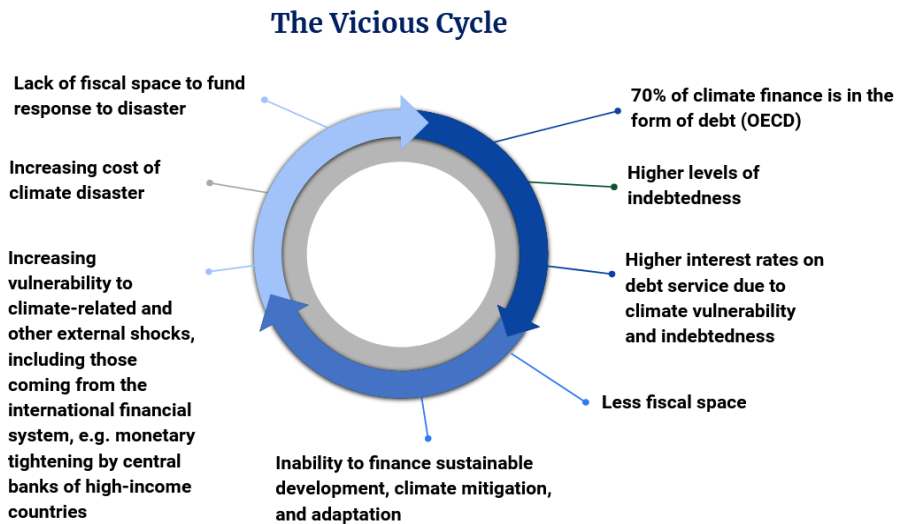


Figure 2. The Vicious Cycle⁷

Within the current international financial architecture, the entrenched process which keeps developing countries indebted, prevents progress on the SDGs, and perpetuates climate precarity, has been referred to as “the vicious cycle.”⁸

Looking at the same countries, data from the World Bank International Debt Statistics on external debt is analyzed to identify patterns and capture the emerging trends. This analysis looks at external public debt, which is the debt owed by governments to foreign creditors and is denominated mostly in US dollars. This debt cannot be restructured domestically by countries, whose ability to repay is also sharply affected by global financial cycles which shift interest rates and exchange rates. The calculations show how external debt increased sharply following the 2009 world recession, which was characterized by low interest rates in advanced economies and loose monetary policy globally.

The total external public debt stock in low- and middle-income countries doubled from \$1.5 trillion to over \$3 trillion from 2010–2021. As seen in figure 3, the increase in debt precedes the COVID-19 pandemic, which then only further increased the already high level of external borrowing, as seen in figure 3.

⁷ Ibidem

⁸ I. Crotti and I. Fresnillo, *The Climate Emergency: What’s Debt Got to Do With It?* in European Network on Debt and Development, Brussels, Belgium. September 2021, p. 3.

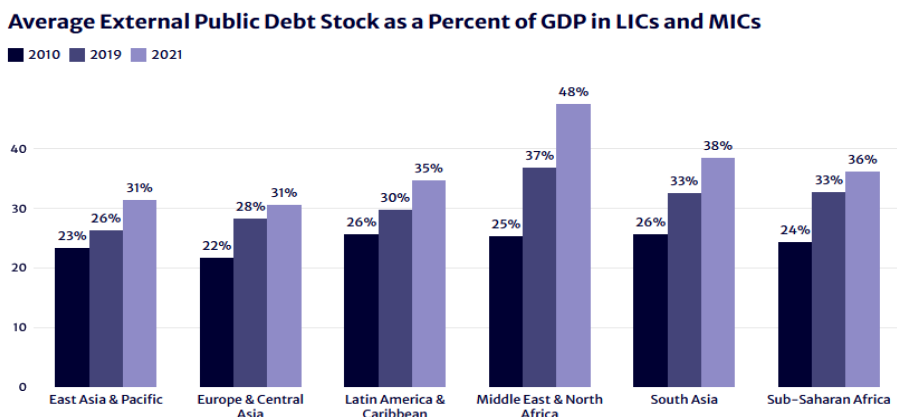


Figure 3. Average External Public Debt Stock as a Percent of GDP in Low- and Middle-Income Countries⁹

When comparing this to the total external debt stock of low- and middle-income countries, excluding China and disaggregated by creditors, external debt held by private creditors grew the fastest and was estimated at \$1.8 trillion in 2021 — more than the total external public debt of low- and middle-income countries in 2010.

Owners of External Public Debt Stock in Low- and Middle-Income Countries (2021)

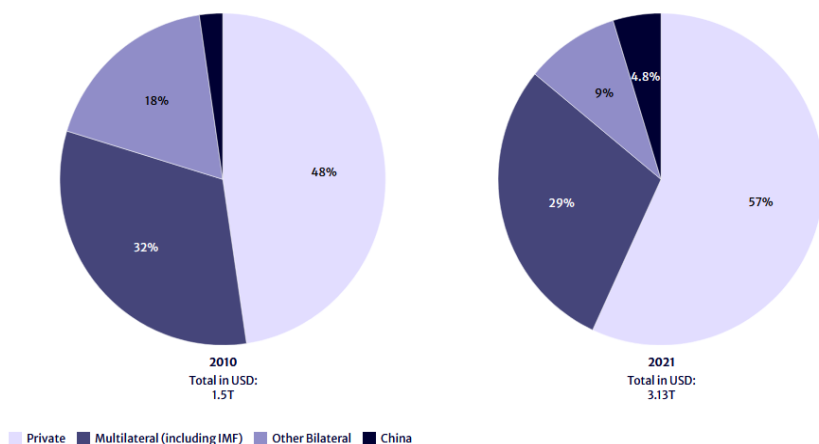


Figure 4. Owners of External Public Debt Stock in Low- and Middle-Income Countries¹⁰

⁹ The International Monetary Fund’s World Economic Outlook Database. [accessed: 01.09.2023], Available at: <https://www.imf.org/en/Publications/WEO/weo-database/2023/April>.

¹⁰ World’s Bank International Debt Statistics. [accessed: 01.09.2023], Available at: <https://databank.worldbank.org/source/international-debt-statistics>.

The role of China as a creditor has grown significantly in relative terms compared to 2010, overall it holds only 4.8 percent of the total external public debt of low- and middle-income countries as a bilateral lender. Private creditors are now the largest holders of external public debt in low- and middle-income countries, with 57 percent of the total stock. Debt from private creditors comes with higher interest rates, shorter maturities, and is difficult to restructure, putting extra pressure on developing countries in times of crisis.¹¹ This is especially true for middle-income countries, which have almost no access to concessional finance and in which the majority of the world's poor lives.¹² Payments to private creditors make up two-thirds of the total debt service for low- and middle-income countries, as shown in Figure 5.

External Public Debt Service, Interest and Principal by Creditor Type (2021)

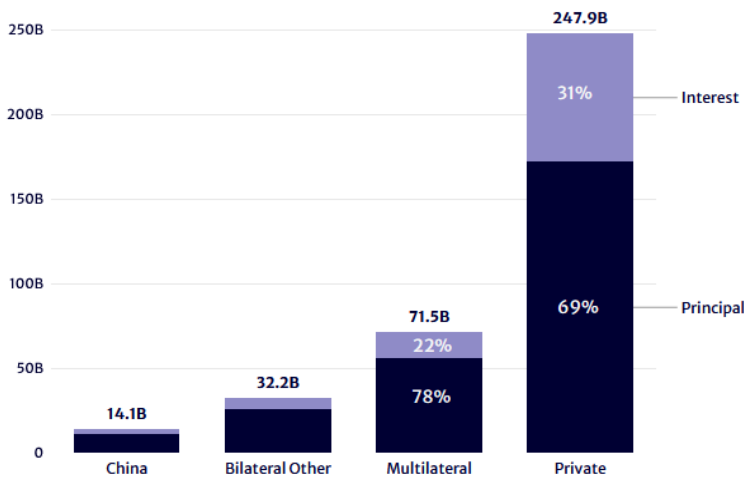


Figure 5. External Public Debt Service, Interest and Principal by Creditor Type, in Low- and Middle-Income Countries in 2021¹³

A sustained period of low interest rates in advanced economies in the aftermath of the global financial crisis led to increased capital inflows into

¹¹ C. Albinet and M. Kessler *The Coming Debt Crisis: Monitoring Liquidity and Solvency Risks* in Finance for Development Lab, Paris, France, November 2022, Working Paper 1.

¹² I. Crotti and I. Fresnillo, *The Climate Emergency: What's Debt Got to Do With It?* in European Network on Debt and Development, Brussels, Belgium. September 2021, p. 3.

¹³ World's Bank International Debt Statistic, [accessed: 03.09.2023], Available at: <https://databank.worldbank.org/source/international-debt-statistics>.

developing countries, as investors sought higher returns.¹⁴ However, the aggressive tightening pursued by the US Federal Reserve in the past 18 months has resulted in a reversal of capital flows, increased volatility, currency depreciation, and widening bond yield spreads.¹⁵ Countries that are identified as climate vulnerable face even worse borrowing terms than others. In a study of CVF member countries, Buhr and Volz found that the average cost of debt in a sample of developing countries was higher by 117 basis points due to their climate vulnerability, meaning that they paid \$40 billion in additional interest on government debt from 2008–2018.¹⁶ This includes \$62 billion in higher interest payments in both the public and private sectors. They estimated that interest payments would increase by up to \$168 billion between 2018–2028.¹⁷

The growing risk of a global debt crisis is to a large extent driven by rising interest rates around the world, led by the US Federal Reserve, as well as other advanced economies increasing interest rates in response to domestic inflation concerns.¹⁸ Resulting capital flight from low and middle-income countries, and thus declining foreign reserves, have also increased external borrowing costs. In 2022, low- and middle-income countries experienced net outflows of \$94 billion, mostly from bond funds.¹⁹ By the end of 2021, approximately 30 percent of low- and middle-income countries had no access to credit markets, up from 10 percent in 2019.²⁰

Analysis of the problem of the vicious cycle

Low- and middle-income countries lack the resources to cover climate-driven losses and to make necessary investments to build climate resilience. The Climate Vulnerable Forum (CVF), an international association of climate-vulnerable countries, has estimated that 55 of its 59 (now 68) members faced losses of \$525 billion, or 22 percent of these countries' total 2019 GDP in current US dollars, due to the effects of climate change between

¹⁴ UNCTAD's Trade and Development Report [accessed: 03.09.2023], Available at: https://unctad.org/system/files/official-document/tdr2022_en.pdf.

¹⁵ Ibidem

¹⁶ B. Buhr and U. Volz, *Climate Change and the Cost of Capital in Developing Countries; Assessing the Impact of Climate Risks on Sovereign Borrowing Costs*. in UN Environment Imperial College, London, UK, May 2018, p. 3.

¹⁷ Ibidem

¹⁸ United Nations Department of Economic and Social Affairs World's Economic Situation and Prospects: Trade and Development Report [accessed: 03.09.2023], Available at: https://unctad.org/system/files/official-document/tdr2022_en.pdf.

¹⁹ UNCTAD's Trade and Development Report [accessed: 03.09.2023], Available at: https://unctad.org/system/files/official-document/tdr2022_en.pdf.

²⁰ P. Bolton, L. Buchheit, M. Gulati, U. Panizza, B. di Mauro, and J. Zettelmeyer, *Climate and Debt*. in Centre for Economic Policy Journal, Geneva, Switzerland, no. 25, 2022, p. 4.

2000 and 2019.²¹ Lacking other sources of finance to cover these losses and damages, low- and middle-income countries often have to borrow in order to respond to increasingly severe disasters like floods, droughts, and tropical storms. In fact, 70 percent of all public climate finance is in the form of loans.²²

The concomitant increase in debt service payments results in less fiscal space for essential spending on climate adaptation, as well as spending on key public goods, including healthcare, education, and infrastructure.²³ The lack of necessary investment in public institutions further erodes a country's ability to respond to future climate-related disasters, perpetuating the vicious cycle.

These issues are widely acknowledged by multilateral institutions, yet the global financial architecture continues to lack an effective mechanism to address sovereign debt problems.²⁴ Climate experts continuously warn the public of the dire social, economic, and planetary consequences of delaying climate action, yet thus far international financial institutions have failed to propose any effective plans to break the vicious cycle outlined above and develop sustainable forms of financing for climate and development goals.²⁵ Using estimates for SDG investment needs and contrasting them with external public debt service reveals that total debt service will exceed non-climate-related SDG investment needs for 102 countries in 2023.²⁶ More than half of these countries (57) are in or at risk of debt distress. Interest payments alone will exceed investment needs in seven countries, as shown:

²¹ Vulnerable Twenty Group (V-20) Report on 2022, [accessed: 03.09.2023], Available at: https://www.v-20.org/wp-content/uploads/2022/06/Climate-Vulnerable-Economies-Loss-Report_June-14_compressed-1.pdf.

²² Organisation for Economic Co-operation and Development report on Aggregate Trends of Climate Finance Provided and Mobilised by Developed Countries in 2013-2020 [accessed: 03.09.2023], Available at: <https://www.oecd.org/climate-change/finance-usd-100-billion-goal/aggregate-trends-of-climate-finance-provided-and-mobilised-by-developed-countries-in-2013-2020.pdf>.

²³ World Bank's International Debt Report, [accessed: 03.09.2023], Available at: <https://thedocs.worldbank.org/en/doc/6e72boded996306fao1f5db7a0c38b19-0050052021/related/IDR-2022-Key-Messages.pdf>.

²⁴ United Nation's Common Agenda Report of the Secretary General 2022, [accessed: 12.08.2023], Available at: https://www.un.org/en/content/common-agenda-report/assets/pdf/Common_Agenda_Report_English.pdf.

²⁵ L. Jensen, *Avoiding 'Too Little Too Late' on International Debt Relief*. in Development Futures Series Working Paper, New York, USA, 2022, p. 18.

²⁶ L. Ramos, R. Ray, R. Bhandary, K. P. Gallagher, and W. N. Kring, *Debt Relief for a Green and Inclusive Recovery: Guaranteeing Sustainable Development*. In Boston University Global Development Policy Center Research, Centre for Sustainable Finance, Boston, USA, April 2022.

Category	Interest Only	Total Debt Service
Climate investment needs	2	39
SDG investment needs (except climate)	7	102

Figure 6. Number of Countries in which External Public Debt Service Exceeds Climate and Other SDG Investment Needs, 2023 Estimate²⁷

Moreover, in the last decade, external debt service has consistently increased compared to spending on education and health in low- and middle-income countries, according to UNCTAD.²⁸ The inability to finance non-climate SDGs impacts climate resilience, as stronger health, food, and other social systems are better able to withstand shocks from climate disaster.

Not only do high external debt service payments crowd out necessary social investment, but they also have a direct impact on a country's ability to invest in climate needs. In 2023, external public debt service is projected to exceed climate investment needs in 39 low- and middle-income countries, as shown in Figure 9.²⁹ Most of these countries (32) are in or at risk of debt distress.

In this calculation, climate investment represents adaptation and resilience needs, as well as the energy transition away from fossil fuels.³⁰ Regarding adaptation in particular, Bolton et al. report that costs exceed fiscal space in 22 out of 29 low-income countries that have published estimates.³¹

High levels of debt servicing also push fossil fuel-dependent economies to delay any possible energy transition.³² Financing external debt requires the accumulation of foreign exchange reserves, which for many countries is obtained predominantly through the export of fossil fuels and other

²⁷ Ibidem

²⁸ UNCTAD's Trade and Development Report Update: Global Trends and Prospects, [accessed: 12.08.2023], Available at: https://unctad.org/system/files/official-document/gdsinf2023d1_en.pdf.

²⁹ L. Ramos, R. Ray, R. Bhandary, K.P. Gallagher, and W.N. Kring, *Debt Relief for a Green and Inclusive Recovery: Guaranteeing Sustainable Development*. In Boston University Global Development Policy Center Research, Centre for Sustainable Finance, Boston, USA, April 2022.

³⁰ Ibidem

³¹ Ibidem

³² C. Mejía-Silva, *Climate Crisis, Debt and Recovery in a Context of Multiple Crises: A Look From a Climate Justice Perspective in Latin America and the Caribbean*. in Latin American Network for Economic and Social Justice Journal, Buenos Aires, Argentina, January 2022, p. 26.

extractive industries, forcing countries to rely on these sectors. Indeed, ten percent of countries in or at risk of debt distress are fossil fuel-dependent economies which would require significant investment for a just and sustainable transition.³³

Conclusion

As shown in this paper, given the exceedingly burdensome debt situation in low- and middle-income countries, many are unable to finance climate adaptation or energy transition needs without perpetuating the vicious cycle. Recognizing the need for climate finance, the G20 countries in 2010 pledged to mobilize \$100 billion per year by 2020 through the United Nations Framework Convention on Climate Change (UNFCCC). However, only \$83.3 billion— less than one year’s pledge — had been allocated in 2020, mostly in the form of loans.³⁴ The true cost to the developing world is much higher, with adaptation costs in low- and middle-income countries alone reaching upwards of \$340 billion per year by 2030. Currently, only about \$29 billion in funding is provided each year by wealthier countries. The United Nations Environmental Programme (UNEP) estimates that the adaptation financing gap in developing countries is up to 10 times higher than international adaptation financial flows and will likely increase.

Increasing debt burdens, combined with the severe effects of the climate crisis in low- and middle-income countries, mean that, without action, these countries “will be forced to implement austerity measures on an unprecedented scale.”³⁵ Immediate measures to alleviate the burden and give countries additional breathing room are needed, along with a fundamental reform of the international financial architecture. Rising external debt burdens, accompanied by growing debt service costs, are leading to increased debt distress in the developing world.

Highly indebted developing countries have no path out of the current crisis without a robust multilateral and global response; thus far that response has been wholly inadequate. A fundamental reform of the international financial architecture, as well as far-reaching debt restructuring measures, debt relief from all creditor classes, and more

³³ Carbon Tracker, [accessed: 12.08.2023], Available at:

<https://carbontracker.org/reports/petrostates-energy-transition-report/>.

³⁴ Organisation for Economic Co-operation and Development Report on Aggregate Trends of Climate Finance Provided and Mobilised by Developed Countries in 2013-2020, [accessed: 1.10.2023], Available at <https://www.oecd.org/climate-change/finance-usd-100-billion-goal/aggregate-trends-of-climate-finance-provided-and-mobilised-by-developed-countries-in-2013-2020.pdf>.

³⁵ I. Crotti and I. Fresnillo, *The Climate Emergency: What’s Debt Got to Do With It?* in European Network on Debt and Development, Brussels, Belgium. September 2021, p. 3.

grant-based finance from wealthy countries, are imperative to ending the vicious cycle.

Debt resolution frameworks need urgent updating and require a reliable platform for rapid and fair debt treatment across all creditor classes along the lines of a decade-old UN proposal. A full suspension of debt payments to creditors is a key element of such proposals, aiming to incentivize creditors to seek a speedy resolution. Additionally, legislative action, along the lines of a bill recently introduced in New York State, can compel private creditors to access the same restructuring terms as those applied to public sector creditors, a measure which would effectively extend the scope of initiatives, such as the Common Framework. In the immediate term, a new SDR allocation would provide immediate, effective support to climate-vulnerable and debt-constrained countries, providing them with much-needed additional fiscal space for taking urgent action.

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CONSUMER COMPETENCE IN SOCIAL COMMERCE: THE CONTEXT OF THE THEORY OF GENERATIONS AND THE TRANSFORMATION OF BUSINESS PROCESSES IN THE SERVICE SECTOR

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***Abstract:** Relevance. Effective promotion of commercial services and goods and services of government agencies Depends on the level of consumer competence of modern youth, who spend most of their personal time in modern conditions in social media, therefore the study of the features and content of consumer competence in social media is relevant both for theory and for practices. Methods. Based on the comparison method, an analysis of existing approaches to the content of consumer competence and social media was carried*

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out. Through a survey, features and possible solutions for the use of digital tools for effective and increasing levels of consumer competence in social media were identified. Results. Conclusions are formulated based on the analysis of three generations, which includes analytics of traditional and digital social media, as well as the level and factors of their digital consumer competence. The survey made it possible to identify the most popular digital technologies and digital communications, to determine the directions and vectors for promoting goods and services in social media. Conclusion. Conclusions are formulated on the rhetorical and practical blocks of the study.

Keywords: Consumer Competence, Creation of Motivational Components, Digital Competence, Digital Generation.

Introduction

In the era of social commerce, it is relevant to examine consumer literacy in the context of generational theory as a key success factor. Modern consumers are becoming more informed, more critical and more demanding, under the constant influence of social media and various online platforms that play an important role in everyday life.

Consumer literacy, the ability of consumers to make informed choices, analyze and evaluate the goods and services offered, is growing and gaining in importance with the growth of social commerce as a process that combines social media and e-commerce. Total digitalization, with a large amount of information, opens up access to new opportunities and needs for consumers. As a result, it is becoming increasingly difficult for them to identify what they need and what is important to them from a wide range of offers and to make the right decision.

Despite the positive impact of social commerce in improving the efficiency of consumer-seller interaction, the negative side of such interaction is fake reviews, inaccurate information and fraud. High levels of consumer empowerment will help to protect consumer interests, distinguish genuine reviews from fake ones, verify the validity of information and compare offers, make more informed decisions and avoid negative consequences. Studying the influence of consumer competence on the purchase decision process of consumers of different age groups is of particular interest in this context.

The aim of the study is to develop a research methodology and analyze consumer competences in relation to the effective use of social media tools in the promotion of goods and services to Generation Y, both social and commercial. The theoretical importance is to analyze the evolution of the changing category of social media and consumer competence. Of practical interest will be the testing of the methodology of the study of consumer

competences in the context of the application of social media tools and their effectiveness in the promotion of goods and services.

The research topic is of great interest for the study of interdisciplinary phenomena such as "consumer literacy" and "social commerce". The e-commerce industry is under-going significant changes in the era of rapid development of digital technologies, social networks and new media. Traditional online tools for promoting and selling a product (mainly through specialized online shops and digital marketplaces) are being complemented by the integration of commercial activities into social media platforms. In some segments, social commerce is more competitive than traditional e-marketing channels. The study of the consumer competence of different age segments is of particular interest due to the existing contradiction between the increase in the audience of social networks on the one hand and the insufficient study of the impact of a company's activity in social networks on the consumer's trust in it on the other hand.

In the framework of this study, we will consider the categorical apparatus of consumer competences in social commerce. Let us highlight the main content and the evolution of the study of consumer competences in social commerce.

At the first stage the basic concept of competence in scientific and practical aspects was studied, first of all, in the pedagogical context: as one of the problems of quality of education and as a system-forming activity for implementation of a number of skills¹²³⁴. Foreign and Russian scientists have separately considered competences in different spheres of human

¹ K. Minseong, Y. Soonkyoung, S. Jongho, P. Minjeong, S. Kyoung-Oh, S. Tacksoo, C. Jeongmin, S. Deokhee, H. Sungdoo, *A Review of Human Competence in Educational Research: Levels of K-12, College, Adult, and Business Education*. Asia Pacific Education Review, 2007, no. 3, pp. 500-520.

² T. Oroszi, *Competency-Based Education*, Creative Education, 2020, no.11, 2467-2476. DOI: 10.4236/ce.2020.1111181.

³ O.V. Galustyan, L.A. Radchenko, M.A. Pleshakov, G.S. Palchikova, *Concepts of competence and competency in modern pedagogy*. Gumanitarnye nauki [Humanitarian sciences], 2019, no. 2, pp. 10-14. (in Russian)

⁴ A.B. Tumanova, *Updating the concepts of "Competence", "Competence", "Competence-based approach" in the context of integration of science and education*. Neofilologiya [Neophilology], 2015, no. 1, pp. 39-45. (in Russian)

activity: socio-cultural⁵⁶⁷, narrowly professional⁸⁹, informational^{10 11} and others. However, the majority of scientific works is concentrated in the field of educational and pedagogical issues, while the study of economic competence is of great interest not only for future specialists, but also for different age groups.

At the second stage, the consideration of competences in relation to social commerce has been studied relatively recently, with the emergence of marketing activities in social media^{12 13 14}. Economists correlate marketing competence with successful business results^{15 16}, with promotion on the

⁵ O.A. Dareeva, S.A. Dashieva, *Sociocultural competence as a component of communicative competence*. Vestnik Buryatskogo gosudarstvennogo universiteta. Filosofiya [Bulletin of Buryat State University. Philosophy], 2009, no. 15, pp. 154-159. (in Russian).

⁶ Y.A. Kustov, Y.A. Livshits., S.V. Statsuk, *The essence of sociocultural competence of an individual*. Vestnik Volzhskogo universiteta im. V.N. Tatishcheva [Bulletin of Volga University named after. V. N. Tatishcheva], 2014, no.4, pp. 139-149. (in Russian).

⁷ E.E. Novgorodova, *The problem of structure and content of social and cultural competence*. Vestnik Kazanskogo gosudarstvennogo universiteta kul'tury i iskusstv [Bulletin of the Kazan State University of Culture and Arts], 2016, no.4, pp. 39-42. (in Russian).

⁸ S.I. Gluhih, *Professional competence and professional mobility as system-forming concepts in the training of nurses*. Vestnik Volzhskogo universiteta im. V.N. Tatishcheva [Bulletin of Volga University named after. V. N. Tatishcheva], 2012, no.3, pp. 98-107. (in Russian)

⁹ M.A. Pahnotskaya *Translator training: competency-based approach*. Vestnik Volzhskogo universiteta im. V.N. Tatishcheva [Bulletin of Volga University named after. V. N. Tatishcheva], 2012, no.3, pp. 155-160. (in Russian)

¹⁰ G. Sarzhanova, A. Alimbekova, T. Slambekova, N. Albytova, S. Salykzhanova. *Information competence as a means of developing leadership qualities in student-teachers*. International journal of environmental & science education, 2016, no.9, 2887-2899. DOI: 10.12973/ijese.2016.729a

¹¹ M.P.Leshchenko, F.M.Kolomiets, A.V.Iatsyshyn, V.V.Kovalenko, A.V.Dakal, O.O. Radchenko *Development of informational and research competence of postgraduate and doctoral students in conditions of digital transformation of science and education*. XII International Conference on Mathematics, Science and Technology Education (Icon-MaSTEd 2020), Kryvyi Rih, 2020. DOI: 10.1088/1742-6596/1840/1/012057

¹² C. Wang, P. Zhang, *The Evolution of Social Commerce: The People, Business, Technology, and Information Dimensions*. Communications of the Association for Information Systems, 2012, vol.31, art.5, pp. 105-127. DOI: 10.17705/1CAIS.03105

¹³ A. Afrasiabi Rad, M. A Benyoucef, *Model for Understanding Social Commerce*, Journal of Information Systems Applied Research, 2011, no.2, pp. 63-73.

¹⁴ T.P. Liang, E. Turban, *Introduction to the Special Issue Social Commerce: A Research Framework for Social Commerce*. International Journal of Electronic Commerce, 2011, no.2, pp. 5-13. DOI: 10.2307/23106391

¹⁵ S. Janani, M. Wiles, S. Mishra, *Marketing Competence and Institutional Trust in Business*. Journal of International Marketing, 2022, no.3, pp. 5-17. DOI: 10.1177/1069031X221109598

¹⁶ K. Saeed, *Gaps in marketing competencies between employers' requirements and graduates' marketing skills*. Pakistan Business Review, 2015, no.17, pp.125-146.

international market¹⁷, with competent company management¹⁸. The principles of new socio-cultural practices have been embodied most vividly by social networks; with the appearance of the first mass social network, Classmates.com, in 1995, there have been fundamental changes in the nature and forms of communication and the corresponding consumer competences, as well as in the socio-economic space of modern society as a whole.

In the third stage, studies appeared which showed that competencies in commerce depend on the age generation. Consumer behaviour in the context of generational theory is considered in studies devoted to people's everyday preferences and demands. D.A. Shevchenko considers competences in the context of the segmentation of ranks, establishing the similarity of consumer values depending on the generation¹⁹.

The generational aspect is considered in scientific works not only in terms of the now classic "generation theory" of W. Strauss and N. Howe, but also in individual theories based on regional or national contexts. Despite the fact that at the beginning of the 21st century the theory of generations became extremely popular and widespread in foreign sociology and marketing research, today it is only gaining recognition in Russia. Among domestic works, the studies of G.U. Soldatova, E.I. Rasskazova²⁰, S.S. Maletin²¹, G.S. Timokhina, S.V. Mkhitaryan, etc. stand out.²²

A group of Chinese scientists studies consumer behaviour in the sphere of domestic tourism, using the classification: the generation of communist serfs (FCG), the lost generation (LG), the generation of reform and openness (ROG), the generation of only children (OG) and the generation of globalists

¹⁷ H. Kanibir, R. Saydan, S. Nart, *Determining the Antecedents of Marketing Competencies of SMEs for International Market Performance*. Procedia - Social and Behavioral Sciences, 2014, no. 150, pp. 12-23. DOI: 10.1016/j.sbspro.2014.09.003

¹⁸ I.A. Donina, *Information and analytical component of marketing competence of heads of educational organizations*. Baltiyskiy gumanitarnyy zhurnal [Baltic Humanitarian Journal], 2014, no.1, pp. 48-50. (in Russian)

¹⁹ D. Shevchenko, *The study of consumer behavior of large segments of the market in Russia: generational approach*. Prakticheskiy marketing [Practical marketing], 2013, no.4, pp. 4-13. (in Russian)

²⁰ G.U. Soldatova, E.I. Rasskazova, A.E. Vishneva, O.I. Teslavskaya, S.V. Chigar'kova, *Rozhdennye tsifrovymi: semeynyy kontekst. I kognitivnoe razvitie* [Born digital: family context and cognitive development], Moscow, 2022, 356 p. (in Russian)

²¹ S.S. Maletin, *Features of consumer behavior of generation z*. Rossiyskoe predprinimatel'stvo [Russian entrepreneurship], 2017, no. 1, pp. 3347-3360. (in Russian)

²² G.S. Timohina, S.V. Mhitaryan, I.I. Skorobogatyh, I.A. Koryagina, A.V. Lukina, *Sustainable consumer behavior: research through the lens of generational theory*. MIR (Modernizatsiya. Innovatsii. Razvitie)[MID (Modernization. Innovation. Development)], 2022, no.3, pp. 420-442. (in Russian)

(GG)²³. A pool of scholars considers socially responsible consumption and sustainable behaviour of representatives of different generations^{24 25}. The review of theoretical frameworks shows the diversity of approaches to the study of behaviour in the context of generational theories. However, there is still a need to elaborate the specific features of consumer behaviour of different generations, to take into account the integrated approach and to develop indicators for measuring consumer competence in the context of social commerce.

The following generations are distinguished at the intersection of generations and related characteristics within generational theory.

Table 1 Generations distinguished according to age.

Generations	Year of birth
Baby boomers	1944-1963
Generation X	1964-1984
Generation Y	1985-2002
Generation Z	2004-2015
Generation A (alpha)	since 2015

According to the theory of generations formulated by W. Strauss and N. Howe. According to Strauss and Howe, every 15-20 years a new age cohort is formed whose maturation and socialization is strongly influenced by the accompanying historical events and socio-political context. "Generational theory has more to do with socialization and socio-political culture than with the year of birth"²⁶.

In the fourth step, the theoretical provisions of the problem under study are developed in the vector of the Theory of Planned Behaviour and the Theory of Generations, considering environmentally responsible consumption, taking into account the influence of the factors of perceived

²³ Qunfang Huang, Yuqi Lu. *Generational perspective on consumer behavior: China's potential outbound tourist market*. Tourism Management Perspectives, 2017, vol.24, pp.7-15. DOI: 10.1016/j.tmp.2017.07.008

²⁴ G. S. Timohina, S. V. Mhitaryan, I. I. Skorobogatyh, I. A. Koryagina, A. V. Lukina, *Sustainable consumer behavior: research through the lens of generational theory*. MIR (Modernizatsiya. Innovatsii. Razvitie)[MID (Modernization. Innovation. Development)], 2022, no.3, pp. 420-442. (in Russian)

²⁵ A. Falke, T. Schröder, C. Hofmann *The influence of values in sustainable consumption among millennials*. Journal of Business Economics, vol.92, i.6. pp. 899-928. DOI: 10.1007/s11573-021-01072-7

²⁶ E.E. Nechay, P.S. Ovchinnikov, *New vectors of development of russian society as a consequence of the influence of generational characteristics, digitalization and urbanization*. Teoriya i praktika obshchestvennogo razvitiya [Theory and practice of social development], 2021, no.2, pp. 37-43. (in Russian)

consumer effectiveness (PCE), media influence, reference social group (family and peers) and self-identification²⁷.

The results of some studies show differences in consumption patterns both between generational groups and within the groups themselves. For example, the response to digital marketing content and the differences in values between Gen X and Gen Y have been studied: it has been found that Gen Y are more receptive to viral marketing tools than Gen X, driven by the desire to meet social expectations, to be part of the community ("to be in trend")²⁸.

Stage 5 - the research of the theory of generations for Russia at the beginning of 2000 under the leadership of E. Shamis. If in traditional (agrarian) society young people mostly repeated the lifestyle of their parents, as everyday practices, everyday life and the surrounding world were relatively constant, with the advent of industrialization and then digitalization the individual's environment is changing rapidly²⁹.

Stage 6: Realising D. Bell's theory of post-industrial society by rethinking all social processes, managing which deviates from the traditional rational ideas of managing a social organism³⁰. At present, we are witnessing how digital transformation and a significant increase in the income of the population are shifting the focus from the sphere of goods to the sphere of services. D. Bell has repeatedly stressed that the post-industrial society is based on the service economy and is expressed in the form of a "game between people" (the influence of information, knowledge and modern communication technologies on the transition to a new type of society is also described by M. Castells, E. Toffler). L. Berg³¹ believes that a competent consumer should first of all be informed about products and about the peculiarities of market functioning - these two indicators she

²⁷ O. Ivanova, J. Flores-Zamora, I. Khelladi, S. Ivanaj, *The generational cohort effect in the context of responsible consumption*. Management Decision. 2018; no.5, pp. 1162-1183. DOI: 10.1108/md-12-2016-0915

²⁸ I. Katunina, V. Kashtanova, *The Application of Generational Theory to Digital Content Management*. International Conference Technology & Entrepreneurship in Digital Society, 2016, pp. 106-110. DOI: 10.17747/TEDS-2018-106-110

²⁹ M.Y. Eflova, Y.V. Vinogradova, A.V. Vitushkin, *Values of youth in conditions of digitalization: generational analysis*. Kazanskii social'no-gumanitarnyy vestnik [Kazan Social and Humanitarian Bulletin], 2022, no.6, pp. 52-56. DOI: 10.26907/2079-5912.2022.6.52-56. (in Russian)

³⁰ D. Bell, *The coming post-industrial society: the experience of social forecasting* (Russ. ed.: Inozemtseva V.L. Gryadushchee postindustrial'noe obshchestvo: opyt sotsial'nogo prognozirovaniya. Moscow: Academia, 2004. 783 p.)

³¹ L. Berg, *Competent consumers? Consumer competence profiles in Norway*. International Journal of Consumer Studies, 2007, no.4, pp. 418-427. DOI: 10.1111/j.1470-6431.2007.00588.x

considers to be the main indicators of consumer competence. B. Brechko and A. Ferrari³² in 2016 described a framework of digital consumer competence necessary for active, safe and confident functioning in the digital market. They referred to the DigCompConsumers framework, which consists of 14 competencies grouped into three main domains: pre-purchase, purchase and post-purchase. Typically, researchers refer to the theory of purchase decision making (Liu G., Li X., & Meng Q.³³), which captures a change in consumer behaviour at each stage.

The next step is a category analysis of social commerce or social media.

In English-language scientific sources, this term is used in the definitions "social commerce", "community e-commerce", "social shopping". Within the concept of social commerce proposed by the search engine Yahoo! in 2005, with the practical participation of sellers of large online companies (such as Amazon, Groupon and eBay), social commerce was considered as a value-added business service³⁴.

From a business perspective, social commerce is seen as a connecting element of interaction and interpersonal relationships, a 'conduit' for routing the customer journey from the origin of a need to post-purchase feedback. In addition, a number of researchers emphasize the personalization and interactivity of relationships in the transaction process³⁵.

Another direction of social commerce research is to consider the technical and technological side of social media using Web 2.0 applications for user support, online interaction and access to services and products. This distinguishes social commerce from traditional e-commerce³⁶.

The practical digital transformation of commercial activity has predetermined the consideration of social commerce without separating it from e-commerce, highlighting only some features of the promotion of goods and services through the creation of content and the building of relationships on social platforms.

³² B. Brečko, A. Ferrari *The Digital Competence Framework for Consumers*. Joint Research Centre Science for Policy Report, 2016 33 p. DOI: 10.2791/838886

³³ G. Liu, X. Li, Q. Meng, *How to shop online: The construct and measurement of consumer competency in online shopping*. *Cyberpsychology: Journal of Psychosocial Research on Cyberspace*, 2023, no.2. Available at:

<https://cyberpsychology.eu/article/view/30977/28842>. DOI: 10.5817/CP2023-2-6

³⁴ C. Wang, P. Zhang, *The Evolution of Social Commerce: The People, Management, Technology, and Information Dimensions*. *Communications of the Association for Information Systems*, 2012, vol.31, art.5, pp. 105-127.

³⁵ A. Afrasiabi Rad, M. Benyoucef, *A Model for Understanding Social Commerce*, *Journal of Information Systems Applied Research*, 2011, no.2, pp. 63-73.

³⁶ T.P. Liang, E. Turban, *Introduction to the Special Issue Social Commerce: A Research Framework for Social Commerce*. *International Journal of Electronic Commerce*, 2011, no.2, pp. 5-13. DOI: 10.2307/23106391

To summarize the main theoretical views, the social commerce business model can be characterized by the following features:

- Integration of commercial activities in the context of social media;
- Social interaction between customers and the brand based on interpersonal relationships (the core of the activity);
- A dialogue and interactive format between the user and the brand;
- Technologies unique to social media;
- Interaction and promotion of goods and services based on an ever-increasing flow of information.

It should be noted that traditional e-commerce focuses on presenting information about the characteristics of the product or service being promoted, pricing, sales and maximizing purchases. At the same time, social commerce focuses on interaction and collaboration with consumers. The user is not so much an object of influence as a full subject of commercial communication. They can participate in the creation of content, they are consulted on product design and quality, they become part of the "community" of those involved with the brand, building a dialogue with participants on a variety of topics.

In the context of this study, considering the highlighted modern features of changes in the category of social commerce and consumer empowerment, we consider it appropriate to expand and complete its content. Consumer competence in social commerce implies the use of digital social media and platforms in commercial activities in the promotion of goods and services, which allows to effectively influence the choice, decision, consumer behaviour in obtaining and purchasing certain goods and services. It should be noted that in modern conditions consumer competence is synonymous with the category of digital competence, which we propose to understand as a set of knowledge, skills and abilities to find information relevant to the inquiry in the digital environment, critically analyze it and check its reliability, as well as independently create content.

The results of the study can be used by companies in the real sector to develop effective marketing strategies adapted to the needs and preferences of different generations, as well as to improve the general understanding of consumer decision-making processes in the field of social commerce.

The author's model of consumer competence in social commerce is proposed based on the analysis of theoretical provisions. The proposed author's model of consumer competence in social commerce consists of four key blocks of skills in the areas of information seeking and processing, digital communication, user safety and cognitive analysis.

Table 2 Author's model of consumer competence in social commerce in the promotion of goods and services

Competence	Indicators
Competences related to information retrieval and processing	<ul style="list-style-type: none"> • The ability to effectively search for and find information about a product, its characteristics, use and reuse. • Evaluate information about product alternatives, find sources of information to compare products and make purchasing decisions. • Critically evaluate product information, verify the authenticity of brand descriptions in the digital environment, analyze product reviews and ratings and apply them to effective consumption.
Communication and digital competences	<ul style="list-style-type: none"> • Ability to communicate and interact socially with participants of social commercial activities (asking questions to the seller, clarifying information, contacting other users). • Ability to use digital devices, knowledge of the functioning of the digital environment for solving consumer tasks.
Competences aimed at security and protection of personal data	<ul style="list-style-type: none"> • Understand the basics of digital personal finance security and personal privacy • The ability to create unique and strong passwords, use two-factor authentication, recognize phishing and other fraudulent activity, and manage their own digital security.
Competences to cognitively analyze commercial information to make an informed decision	<ul style="list-style-type: none"> • Knowledge of the basics of commercial markets, pricing, forms of delivery and service, incentive schemes, promotions and discounts. • Ability to solve a consumer problem competently, taking into account the market offer and the level of one's own purchasing power, ability to recognize and resist serious manipulation in marketing, promotions and sales.

Source: Authors

It should be noted that the content of consumer competence in social media differs from that in electronic and digital media, as shown in Table 3. Traditional media do not have strict requirements for consumer competence, so the factors influencing its formation include information about the product, advertising information and perception of it.

New digital methods extend the level of consumer competence and depend on the level of perception of target advertising, digital marketing information and marketing tools. There is a high level of interactivity in the

formation of the user's image, content, communication mechanisms in social media.

In modern conditions, digital media are divided into social networks, online versions of newspapers, magazines, streaming services and virtual games. For each category, the characteristics of consumer competence and the range of factors that shape it are distinguished. These important aspects should be taken into account when developing a marketing strategy to promote products and services in social media.

Table 3 Distinguishing consumer competence in social media from other forms of electronic and digital media

Media typology and its characterization	Types of media	Media characterization	Factors influencing the development of consumer competence
<p>Traditional electronic media. Main task is to communicate socially relevant information to the audience Characterization according to M. McLuhan: predominance of "hot" media (high degree of immersion in events, low interactivity).</p>	<p>TV and radio</p>	<ul style="list-style-type: none"> • Unidirectional flow of information • Mass (targeting the "average" viewer, ignoring the interests of small segments of the audience) • expensive content production, clear editorial policy • Reliability of the source of information (it is constant and verifiable) • the use of visual and auditory media is limited by the possibilities of TV or radio 	<ul style="list-style-type: none"> • The message about the product/service is aimed at the "average" viewer, the preferences of narrow segments are not taken into account. • Low indicators of audience attention concentration during commercial breaks, information with an impulse to consume is perceived as intrusive and interrupts the viewing of the programme.
<p>New digital media. The main challenge is communication between a wide range of social actors. Characterization according to M. McLuhan:</p>	<p>Social networks</p>	<ul style="list-style-type: none"> • Users create a profile with detailed information about themselves; • Content is created by the users themselves; • Communication is built directly, without any additional mechanisms outside of it; 	<ul style="list-style-type: none"> • Possibility of individual approach to the consumer - targeting • High percentage of native advertising and hidden marketing tools of influence

Predominance of "cold" media (wide scope for interpretation of information, high interactivity)		<ul style="list-style-type: none"> • The ability to create a circle of like-minded people according to criteria, to find friends, to create a community; • Interactivity or the possibility of following other people's "stories" in real time, commenting on photos, exchanging opinions. 	<ul style="list-style-type: none"> • High influence of other users' feedback on purchase decisions • High risk of receiving inaccurate or fraudulent information about the product/service
	Online versions of newspapers and magazines (there are some signs of social media, such as interactive magazines)	<ul style="list-style-type: none"> • Speed of news delivery to the reader • Maintaining a clear newspaper structure and style (which helps to attract different audiences, including the older generation) • A constant source of information (usually the editorial team sets the agenda) • multimodal and convergent presentation of information (a combination of textual, auditory and visual information) • moderated feedback from readers in the form of comments and reactions to content 	<ul style="list-style-type: none"> • Symbiosis of advertising types (combination of text, audio and video information) • Interaction with the audience through moderation of comments • Trust of the audience, used to traditional sources of information • The influence of "banner blindness", a defenses mechanism against annoying advertising.
	Streaming services, video hosting services	<ul style="list-style-type: none"> • Online streaming • The largest selection of video and audio content, • Personalized recommendations automatically generated for each user 	<ul style="list-style-type: none"> • High percentage of youth audience • Popularity of lifestream shopping • Engagement with advertising through instrumental or acoustic compositions

	Virtual games, virtual reality systems	<ul style="list-style-type: none"> • The main activity is playing • Impact on different sensory channels (the effect of the user's presence in the artificial world) • Requires special VR equipment • the user "lives" the story through meta-stories • corresponds to young people's clip thinking - quick switching from one fragment to another 	<ul style="list-style-type: none"> • The gaming and competitive element appeals to children, teenagers and young adults, but there is also a risk of gaming addiction. • ingame advertising has a long exposure period • High exposure due to rewarding tools (quick results by buying game attributes or watching adverts)
	Blogosphere	<ul style="list-style-type: none"> • Huge number of information sources (every blog is an information source) • Blog creator is an ordinary user (horizontal connection with the audience) • High influence of opinion leaders (influencers) • Wide variety of thematic and highly specialized content • Interactivity and constant feedback from the audience 	<ul style="list-style-type: none"> • High level of trust in the information provided by the influencer or reference group (participants in the blogosphere) • Variety of formats for presenting information, its interactivity

Source: Authors

Many business activities have been transformed at a rapid pace by the digitalization processes of recent years. The service sector has moved towards online sales and digital services. This has led to the need to consider digitalization processes and their impact on service development tool models.

According to research conducted by RedisBusinessClass, PwC, Microsoft, 41% of service company owners surveyed are already in the process of digital transformation, and another 16% plan to start in the next year. Reducing the number of purchases and buying cheaper products and

services remain the defining trends in consumer behaviour in the services sector.

The digital platform can become the main source of information and organization of services. The introduction of digital technologies in the organization of services, including big data, machine learning, artificial intelligence, etc., involves the following stages of transformation³⁷:

- Analysis of existing business processes to identify possible mechanisms and reserves for organizing information processing using information technologies;
- Modeling of new business processes in which the field of communication with external participants in the value chain of consumer services is extended as a tool to increase interaction³⁸;
- Implementing the action plan for the digitization and authorization of information solutions;
- Approval of new business processes, control and monitoring of the resulting network economic effect.

There are three types of change in the business processes of service providers:

- Empowering the owner: the organization recognizes the importance of digital; integration - digital - new products; low level of change.
- Centralising digital resources: a more coherent and holistic approach to business change; high level of change through resourcing the decision maker; integration of digital functions into existing structures³⁹.
- Creation of something new: creation of a competitive brand for platform commerce, placing digital advantages at the center of business processes, strengthening innovation in the core business; creation of a new business model⁴⁰.

³⁷ D.V. Chernova, N.S. Sharafutdinova, I.I. Nurtdinov, Y. Valeeva, L.I. Kuz'mina, *The Transformation of the Customer Value of Retail Network Services Under Digitalization*. Digital Age: Chances, Challenges and Future, 2020, no.1, pp. 252–260. DOI:10.1007/978-3-030-27015-5_31

³⁸ N. Lin-Hi, K. Schafer, I. Blumberg, L. Hollands, *The omnivore's paradox and consumer acceptance of cultured meat: An experimental investigation into the role of perceived organizational competence and excitement*. Journal of Cleaner Production, 2022, vol.338. DOI: 10.1016/j.jclepro.2022.130593

³⁹ X. Zheng, J. Xu, H. Shen, *To be respected or liked: The influence of social comparisons on consumer preference for competence- versus warmth-oriented products*. International Journal of Research in Marketing, 2022, vol.39, i.1, pp. 170-189. DOI: 10.1016/j.ijresmar.2021.04.001

⁴⁰ Z. Kolbl, A. Diamantopoulos, M. Arslanagic-Kalajdzic, V. Zabkar, *Do brand warmth and brand competence add value to consumers? A stereotyping perspective*. Journal of Business Research, 2020, vol.118, pp. 346-362. DOI: 10.1016/j.jbusres.2020.06.048

Digital Transformation is going to influence how services get designed from new sources. In particular, we identify five key sources of predictive supply chain transformation: automation, customization, environment, interaction, transparency and control. These sources can replace or combine the perceived consumer-level benefits of convenience, relevance, experience, empowerment, and monetary and environmental savings⁴¹.

Digital technologies facilitate the collection of individualized consumer data through, for example, big data, digital data (e.g. online reviews, social media activity, smart product usage) and the provision of contextual information (e.g. consumer life changes, job changes) that can be combined with other consumer data held by the retailer⁴². These capabilities allow marketing efforts to be personalized, creating additional value for the consumer and addressing the heterogeneity of consumer preferences⁴³.

Improving existing or creating new value for consumers occurs at different stages of the service chain⁴⁴. For example, service industries can use facial recognition systems to identify consumers and tailor interactions with them to their mood (correlation with purchase history data, their preferences)⁴⁵. In addition to the sensory value that can be created through the aesthetic ambience of the sales floor and the shopping service infrastructure, a personalized approach can provide emotional (e.g. shopping pleasure), cognitive (e.g. stimulating inspiration and motivation to explore new recommendations) or relational value (e.g. a sense of personal recognition and appreciation) that goes beyond cost.

Digital technologies can drive engagement through the integration of voice shopping and communications, geo-targeting, which facilitates the delivery of push messages through geo-location when a consumer enters a specific geographical area (Table 4).

⁴¹ S. Jha, M.S. Balaji, J. Peck, J. Oakley, G.D. Deitz, *The Effects of Environmental Haptic Cues on Consumer Perceptions of Retailer Warmth and Competence*. *Journal of Retailing*, 2020, v.96, i.4, pp. 590-605. DOI:10.1016/j.jretai.2020.04.003

⁴² C. Hoang, K. Knoferle, L. Warlop, *Using different advertising humor appeals to generate firm-level warmth and competence impressions*. *International Journal of Research in Marketing*, 2023. DOI:10.1016/j.ijresmar.2023.08.002

⁴³ K. El Hedhli, H. Zourrig, A. Al Khateeb, I. Alnawas, *Stereotyping human-like virtual influencers in retailing: Does warmth prevail over competence?* *Journal of Retailing and Consumer Services*, 2023, vol.75. DOI: 10.1016/j.jretconser.2023.103459

⁴⁴ X. Wu, Y., Huo, *Impact of the introduction of service robots on consumer satisfaction: Empirical evidence from hotels*. *Technological Forecasting and Social Change*, 2023, vol.194. DOI: 10.1016/j.techfore.2023.122718

⁴⁵ H. Ryu, S. Jun, *Legitimacy association of an aged brand: Shelter for a brand suffering from consumers' perceptions of incompetence*. *Journal of Business Research*, 2023, vol.168. DOI: 10.1016/j.jbusres.2023.114248

Table 4 Scope of Industry 4.0 digital technologies in organising services

Technology 4.0	Scope of application
Big Data, Artificial Intelligence	Demand forecasting and replenishment, mobile application with online ordering, payment and credit services and nonfinancial services
Robotics	Automated purchasing system, robotic supply chain, facial biometric payment technology
Computer Engineering	DataOps, ModelOps, DevOps provide improved performance, scalability of artificial intelligence
Blockchain - distributed ledger technologies	Supply chain integration and automation using a digital code to track the movement of goods
Industrial Internet of Things	A system of sensors to monitor consumer behaviour and electronic price tags form the basis of the "Smart Store" concept.
Virtual and Augmented Reality Technologies	Video analysis of human resources management and customer service by means of neural network processing in real time, video consultation in a mobile application.

Source: Authors

Depending on the context, the embedded environment enables the immediate satisfaction of emerging needs and facilitates the connection to the right object, i.e. the right actor in the service creation chain, through any channel, providing a personalized offer, e.g. from the agricultural producer to the end customer⁴⁶.

Interactions include all virtual and physical communications with the consumer, and can range from presales to digital product-user interactions to customer-to-customer social media interactions. Transparency and control enable value creation through empowerment, i.e. giving consumers more control over their behaviour or choices⁴⁷. In this case, the more information consumers receive, the more freedom of choice they have when comparing purchase and consumption preferences. Transparency is achieved, for example, by obtaining information about other consumers' experiences with the product in question in the form of ratings and reviews. The power of information is shifting from the retailer to the consumer.

The growing importance of the brand-consumer interface. With the increasing use of social media and smartphones, brands have begun to

⁴⁶ Lin-Hi N., Schafer K., Blumberg I., Hollands L. *The omnivore's paradox and consumer acceptance of cultured meat: An experimental investigation into the role of perceived organizational competence and excitement*. Journal of Cleaner Production, 2022, vol.338. DOI: 10.1016/j.jclepro.2022.130593

⁴⁷ Wu X., Huo Y. *Impact of the introduction of service robots on consumer satisfaction: Empirical evidence from hotels*. Technological Forecasting and Social Change, 2023, vol.194. DOI: 10.1016/j.techfore.2023.122718

interact directly with end consumers through mobile apps. The dominance of any of the three interfaces (brand-to-consumer, retailer-to-consumer, platform-to-consumer) will depend on their ability to create customer value for the shopping service.

By using new technologies, product manufacturers can influence consumer preferences at different stages of the shopping journey. For example, smart refrigerators will allow consumers to not only check stock levels via a smartphone app, but also predict consumption patterns and order food. With the ability to augment the original durable good with additional products/services, the durable goods manufacturer is now in a much better position to engage more closely with the consumer during the actual use phase. A new type of value is emerging - product platforms. They have the advantage of saving on associated consumables by monitoring and managing product performance.

Like branded product platforms, retail platforms are particularly well suited to aggregating goals, sourcing information to improve consumer decision making, and providing service efficiencies by adapting interactions to business models: fast, easy, conflict-free and product-centric.

The importance of the retailer-consumer interface remains. The value of the physical service sector in the digital world is primarily in enabling better multisensory decision making. In addition, fast service and face-to-face appointments can contribute to convenience and possible savings in time, money and effort, depending on the nature of the request (e.g. product exchange, specific diagnostics). A consistent shopping experience is an important part of a retailer's value proposition in a digital environment.

Materials and methods

The research methodology is based on a comprehensive approach of complementary methods. Theoretical - system and structural-functional analysis of scientific publications in international and Russian scientometric databases related to the research problem; analysis of scientific and methodological literature to form the author's approach to the study of consumer competence in social media. Empirical - collection, synthesis and analysis of secondary data from research centres GlobalWebIndex, WeAreSocial, Meltwater, Mediascope, NAFL, VCIOM (for 2021-2023). The results and conclusions of the work are based on the author's system of indicators of consumer competence.

The research methodology consists of the following stages of research.

Based on the analysis of the existing researches in the field of studying the category of consumer competence, five main stages of transformation of its content depending on the implementation of the theory of generations, the theory of cognition are identified. The main structural components of

consumer competence are highlighted. Social media or social commerce is considered in the context of modern needs and consumer transformation of the promotion of goods and services.

Differences in the use of social media, preferences in the perception of consumer information between different generations are analysed.

The peculiarities of the behaviour and preferences of consumers of different generations in the sphere of online shopping are revealed, the factors influencing the ability to make informed decisions when shopping in social networks and other online platforms are identified.

The author's model of consumer competence in social commerce is proposed.

A questionnaire survey was carried out. The study used a combinatorial approach including secondary data analysis and quantitative method to investigate the consumer competence of young people in social commerce. The first stage of the study was secondary analysis of data from research centres Mediascope, NAFI, VCIOM for 2021-2023. In the second stage, the results of two representative mass surveys were analysed: the All-Russia survey "Digital Socialisation and Digital Competence of Russian Youth" (n=2206, April 2023) and the mass survey of the population of the Republic of Tatarstan "Sociological Study of Digital Activity of the Residents of the Republic of Tatarstan" (n=1554, April-May 2023).

Development of a model of creation and provision of services on the basis of the results of the conducted questionnaire of modern youth, allowing to participate in the processes of creation of services through social media.

Formulation of conclusions on the practical application of the obtained research results in the practice of commercial services.

Results

The key feature of social commerce is the monetisation of social activity on relevant digital platforms: trust is built with the consumer through the possibility of mutually beneficial dialogue, the involvement of experts and brand advocates, and the high influence of influencers or opinion leaders on the decision and purchase.

Social media now connects a significant number of people from all over the world. According to the Digital 2023: Global Overview Report, by the beginning of 2023 the world population will have reached 8.01 billion, of which 5.16 billion will be internet users (64.4% of the total world population), and 4.76 billion people will be using social networks (just under 60% of the total world population)⁴⁸.

⁴⁸ *Digital 2023: Global Overview Report*. Available at:

Among the trends in the development of social commerce are: the growth of the global volume of social commerce; the increase in competition due to the strengthening of the positions of major players and the emergence of many new participants; the growing interest in niche specialised social platforms and virtual communities; the increase in mobile traffic, which will lead to the improvement of technologies for mobile devices; the development of technologies due to the emergence of artificial intelligence (personalised product recommendations, price optimisation, chatbots).

According to forecasts by the international analytics service Hootsuite, social commerce sales in the United States will grow by 34.4% this year to reach \$53.1 billion⁴⁹. According to Hootsuite's experts, marketers who are able to build a competent relationship with consumers will be able to achieve high efficiency and effectiveness in their social commerce activities, attract new customers and encourage them to spend more. Proactive brands will continue to anticipate opportunities, "growth points" in social media, while their less bold competitors will abandon their social commerce plans, leaving the playing field open.

Let us highlight the key factors influencing social media development and consumer sophistication.

The level of development of social commerce, the use of digital technologies and consumer engagement in social media is influenced by the regional aspect. Information and digital inequality is observed in the regions due to the underdevelopment of information and communication infrastructure, access to Internet services for an exceptionally wealthy part of the population (due to the high cost of services), low readiness of various population groups to use digital technologies in everyday practice, and underdeveloped government programmes to promote informatisation.

The correlation between ICT infrastructure in geographical segments depends on regional levels of income, education, where families live and the nature of their information and digital activities⁵⁰. For example, the top 8 countries in terms of Internet penetration include countries with a high standard of living, such as Ireland, Norway, Switzerland, Saudi Arabia, the

<https://datareportal.com/reports/digital-2023-global-overview-report> (Accessed: 1 April 2023)

⁴⁹ *The Future of Social Commerce*. Available at:

<https://www.hootsuite.com/research/social-trends/commerce#2IA6F2eWa6Z9iGxBF64FCt> (Accessed: 1 April 2023)

⁵⁰ O.V. Shinyaeva, O.M. Slepova, *Information and digital inequality of the population: risk and anti-risk factors*. Izvestiya Saratovskogo universiteta. Novaya seriya. Seriya Sotsiologiya. Politologiya [News of Saratov University. New episode. Series Sociology. Political science], 2019, no.1, pp. 53-61.

United Arab Emirates, Denmark, the United Kingdom and South Korea⁵¹. In other countries, the Internet index does not even reach the 50 per cent mark (e.g. Kenya - 32.7 per cent, India - 48.7 per cent, the last place is occupied by North Korea). The Russian Federation has a high internet penetration rate of 88.2%, although the information development of the regions varies from one constituent entity to another. The Republic of Tatarstan, the Belgorod Oblast, the Tula Oblast, the Khanty-Mansiysk Oblast, etc. are at the top of the digital transformation rating, and the Republic of Ingushetia, the Republic of Tyva, the Khabarovsk Krai, etc. are at the bottom⁵².

The level of consumer competence in social commerce also depends on demographic factors, studied through the prism of generational theory. Integral index of media literacy CIRCON includes 5 main components "the ability to effectively search for and find the necessary information; the ability to protect oneself from harmful and excessive content; the ability to verify and critically evaluate information using alternative sources of information; the ability to perceive information appropriately and use it effectively (competently); the ability to disseminate information effectively and correctly, taking into account the requirements of legislation"⁵³.

Adolescents and young people account for the highest proportion of media consumption time⁵⁴. According to the GlobalWebIndex (GWI) global survey, almost half of girls and boys aged 16-24 spend more than 4 hours a day browsing the Internet on a mobile device.

As part of the research, we will focus on studying the social media consumer competence of representatives of not only the younger generation, but also the older generation. Summarising the data from GWI, WeAreSocial, Meltwater, Mediascope, NAFI, VCIOM (2021-2023), we can highlight the following features of global social commerce practices in the context of generational theory, using the examples of three generations - Baby Boomers, Generation X and Generation Z:

1. Baby boomers. This age group has a fundamental difference in consumer competence from the younger generation in terms of attitude

⁵¹ *Digital 2023: Global Overview Report*. Available at: <https://datareportal.com/reports/digital-2023-global-overview-report> (Accessed: 1 April 2023).

⁵² *Tsifrovizatsiya regionov Rossii* (Digitalization of Russian regions)

⁵³ I.V. Zadorin, D.V. Mal'tseva, L. V. Shubina, *Level of media literacy of the population in Russian regions: comparative analysis*. *Kommunikatsii. Media. Dizayn*[Communications. Media. Design], 2017, no.4, pp. 123-141. (in Russian)

⁵⁴ A.V. Lipatova, *Media consumption of youth in social networks: review of world and russian practices*. *Kazanskii social'no-gumanitarnyy vestnik* [Kazan Social and Humanitarian Bulletin], 2023, no.2, pp. 20-24, DOI: 10.26907/2079-5912.2023.2.20-24. (in Russian)

towards social media and intensity of its use. Financial savings (the highest of any generational group) and a growing interest in new technologies make baby boomers an important part of the social commerce consumer segment. They value their savings and investments highly (32% more than the average consumer) and this category also has the highest level of property ownership. It is the older age group that is particularly sensitive to the economic problems associated with crisis situations: for 40% of pensioners, financial shocks mean that some of them may face a significant reduction in their savings⁵⁵. Hence the demanding attitude towards pricing policy, quality and quantity of purchased goods and services (price and benefit are in their field of vision). Therefore, the main purchase incentives are clear savings schemes such as promotions, coupons and reward programmes. However, care should be taken with the wording of sales offers, as the consumer competence of baby boomers depends on trusting the source and understanding the maximum benefit for the money invested.

Surveys around the world show that more than 90% of baby boomers own a smartphone and increasingly prefer to watch videos on their mobile devices (Table 4). Although the most popular 'touch point' for this category is of course traditional TV, they watch 40 minutes more TV than other age groups. According to the results of a survey of Russians conducted by VCIOM in the autumn of 2002, active TV viewing is common among the over-60 audience⁵⁶. In the advertising segment, TV advertising dominates in terms of influencing this age group.

Table 5 Average time spent daily by baby boomers viewing content on smartphone, PC/laptop/tablet, TV (hh:mm)⁵⁷

Device	2020		2021				2022		
	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3
Mobile	2:08	2:08	2:05	2:03	2:07	2:26	2:25	2:28	2:20
PC/Laptop /Tablet	3:04	3:07	2:59	3:05	2:50	2:56	2:49	2:43	2:39
Broadcast TV	2:40	2:46	2:48	2:46	2:36	2:34	2:38	2:39	2:31

⁵⁵ *GWI's report on the latest trends among internet users aged 16-25. GWI (GlobalWebIndex)*. Available at: <https://app.globalwebindex.com> (Accessed: 1 April 2023).

⁵⁶ *Trendy mediapotrebleniya (Media consumption trends)* Available at: <https://wciom.ru/analytical-reviews/analiticheskii-obzor/trendy-mediapotrebleniya-2022> (Accessed: 1 April 2023).

⁵⁷ *GWI's report on the latest trends among internet users aged 16-25. GWI (GlobalWebIndex)*. Available at: <https://app.globalwebindex.com> (Accessed: 1 April 2023)

Baby boomers are significantly more likely to be concerned about privacy and data security, so transparency should be a priority for technology companies seeking to attract this category to social commerce.

The consumer competence of this generation is thus expressed in the desire to protect personal data, but the development of this competence may be hampered by a lack of digital literacy. Baby Boomers have developed the cognitive analysis competence to make an informed decision, but the indicators of consumer competence "information seeking and processing", "communication and digital competence" are not sufficiently developed, but the growth rate of media consumption expands the opportunities for their development.

Generation X. Representatives have a higher level of consumer competence, which includes financial security through greater savings, but also greater recurrent expenditure. "X'ers are concerned about saving for the future and many are focused on budget planning. As GWI's research shows, Generation X consumerism has changed dramatically over the past five years. In 2018, the most popular online shopping categories were clothing and groceries, whereas in 2022, clothing purchases are 25 per cent lower than food consumption. Despite the impact of the Covid-19 pandemic on global consumer habits - an increase in online activity followed by some decline due to a return to familiar mixed forms of consumption - Gen X's interest in social commerce has not waned, and the number of online orders from this generational group continues to grow. These shoppers are 48% more likely to use social media to tell their lifestyle story than the average user. Digital consumption is based on ordering household goods, and the most influential marketing message is based on appealing to the everyday practices of Gen X.

Table 6 Average amount of time Generation X spends daily watching content via smartphone, personal computer/laptop/tablet, TV (hh:mm)⁵⁸

Device	2020		2021				2022		
	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3
Mobile	3:01	2:59	2:56	2:58	3:05	3:11	3:13	3:05	3:12
PC/Laptop/Tablet	3:08	3:14	3:08	3:08	3:02	2:59	2:57	2:52	2:48

During the pandemic, the daily time spent online by Generation X peaks at an average of 6 hours and 13 minutes per day in the fourth quarter of 2020. In the third quarter of 2022, they spend 26 minutes less per day on

⁵⁸ GWI's report on the latest trends among internet users aged 16-25. GWI (GlobalWebIndex). Available at: <https://app.globalwebindex.com> (Accessed: 1 April 2023)

non-mobile devices. From mid-2021, the mobile phone will become the main digital source of information.

Their immersion in digital consumption will thus influence the growth of indicators related to the development of consumer skills in information seeking and processing, cognitive analysis of commercial information to make an informed decision, communication and digital skills. However, this generation still prefers traditional marketplaces and online shops, while social commerce is still in second place. This situation can be changed both by macro factors in the development of the digital environment and technology, and by the competent marketing policy of brands that formulate their sales offers in such a way as to attract and retain consumers on the social media platform.

Generation Z. As the "Hootsuite" service writes in its research on Internet commerce, consumers in the 16-24 age group are more likely to use social media than search engines (50% vs. 46%) for shopping and brand research⁵⁹. The same trend of preference for social media to solve the task of finding information about products is confirmed by the GlobalWebIndex research (Table 7).

Table 7 Dynamics of using digital platforms to find information about a brand or product (number of Gen Z respondents, %)⁶⁰

Digital search platforms	2015	2016	2017	2018	2019	2020	2021	2022
Search engines	47%	46%	46%	47%	49%	50%	45%	44%
Social networks	36%	41%	49%	49%	49%	51%	49%	48%

While this group has the highest levels of digital literacy, the researchers noted a key difference in the reasons for turning to gaming environments between Gen Z respondents and those of other generations. For example, 'Zoomers' are 47% more likely than 'Millennials', 'Xers' and 'Baby Boomers' to cite socializing and connecting with friends as the main reason for playing games, while older audiences turn to games to relax and take their minds off reality⁶¹. According to experts, gaming is becoming the

⁵⁹ *The Future of Social Commerce*. Available at: <https://www.hootsuite.com/research/social-trends/commerce#2IA6F2eWa6Z9iGxBF64FCt> (Accessed: 1 April 2023)

⁶⁰ *GWIs report on the latest trends among internet users aged 16-25*. *GWIs (GlobalWebIndex)*. Available at: <https://app.globalwebindex.com> (Accessed: 1 April 2023).

⁶¹ A.V. Lipatova, *Media consumption of youth in social networks: review of world and russian practices*. *Kazanskii social'no-gumanitarnyy vestnik* [Kazan Social and

"key" to the "Zoomers". This generation has been dubbed the "streaming" generation, as their favorite genre is entertainment (music), with films and TV series coming in second. The consumer competence of Generation Z is characterized by a shortened perception of information, and they are primarily targeted by short forms of content, such as YouTube shorts. In the segment of teenagers and young adults aged 12-24, according to the research company Mediascope, the entertainment genre is preferred in 38% of cases when accessing Telegram channels, while the older group of 25-34 year olds access the messenger for entertainment functions in only 8% of cases⁶².

Despite limited budgets and finances (as a rule, Generation Z is still in the process of obtaining a specialization and entering the labour market), "Zoomers" are more likely than representatives of older generations to say that they have spent money on travel in the last 6 months. The key to this lies in the motives for consumption, which are based on the concept of receiving impressions and pleasant emotions, whereas the consumer competence of baby boomers, for example, lies in a functional, pragmatic approach to purchasing decisions.

Thus, the demographic age factor of influencing consumer competence is most effectively realized through social media in Generation Z.

In modern conditions, social media allow to create new consumer values by providing additional services, establishing personal interactions with consumers, offering personalized offers through mobile applications, social networks, websites. Service companies have expanded online services, which has influenced the transformation of business processes of services in offline and online formats. Looking at the development models of the service industry, we would like to highlight several vectors of end-customer involvement within online services or using a digital platform:

- "Demand for full involvement of the end user in the creation of services" - organisation of the sale of goods and services of networks taking into account the individual trajectory and requests of specific end users;
- Quick request and quick possibility to provide services" - mobile sale of goods and services based on situational requests.

Humanitarian Bulletin], 2023, no.2, pp. 20-24, DOI: 10.26907/2079-5912.2023.2.20-24. (in Russian)

⁶² *Mediapotreblenie 2023* (Media consumption 2023). Available at: <https://mediascope.net/upload/iblock/226/e7lwh96qizxpwhfirj2ttfzkwlie8vr8/%Do%BC%Do%B5%Do%B4%Do%B8%Do%Bo%Do%BF%Do%BE%D1%82%D1%80%Do%B5%Do%B1%Do%BB%Do%B5%Do%BD%Do%B8%Do%B5%202023.pdf> (Accessed: 1 April 2023)

The management of the formation and provision of services compares the possibilities of providing the requested goods and services with the resources of the production company, agricultural enterprises, processors, and considers the possibility of placing these goods in distribution centres and warehouses. Interaction with buyers and other actors in the chain can take place through a digital platform or website, a mobile application. This circumstance predetermined the need to analyse the consumer competences of modern youth in social media.

In addition, a questionnaire survey was conducted among this generation. The content of the questionnaire questions is presented in the methods section. For example, young people rate their consumer competence in finding and processing information as "rather high" or "high". 97% of respondents in the all-Russian survey (n=2206) rated their digital consumer competence as high, and 91% stated that the main source of information about important events in society and the country is social networks.

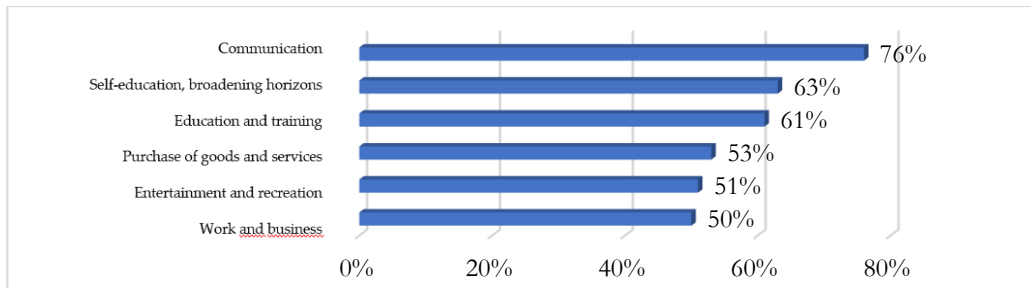


Figure 1 Areas where the Internet and digital technologies are most often used by Russian youth to develop their consumer skills

Russian youth most often use the Internet and digital technologies to communicate - 76%, with only 2% of respondents saying they never use the Internet to communicate. 16% of young people said that they have almost completely - 90-100% - converted their communication with relatives to a digital format, while more than a third of respondents have converted their communication with family members to an online format by 70-89%. 83% of respondents said that more than half of their communication with friends is digital. The results show a high level of consumer competence in using digital resources to solve communication tasks. This is largely due to the increasing speed of information processes and technological capabilities that make it possible to transmit a message instantly, in real time. Moreover, virtual contexts are now becoming an important part of socialisation and positioning oneself in the eyes of society. Modern tools help to construct one's digital consumer competence (including photo editing and retouching

services), thus increasing the attractiveness and visibility of one's socio-economic status. Social commerce should take this trend into account when creating an integrated marketing communications plan. Establishing a dialogue with the consumer in the virtual environment will allow the message to be delivered effectively and feedback to be obtained from the consumer.

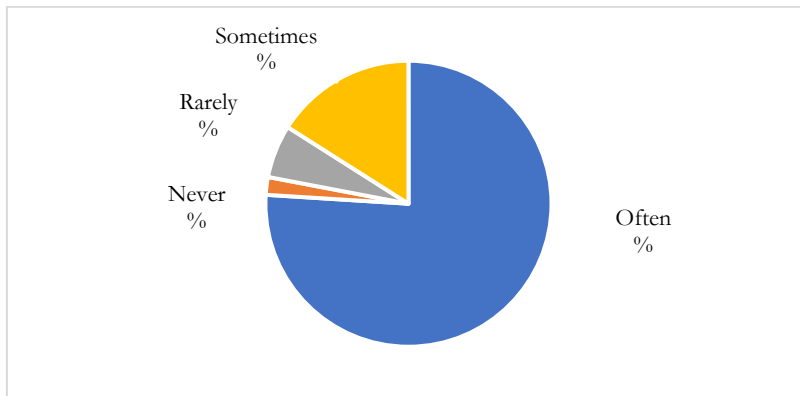


Figure 2 Distribution of responses to the question: "How often do you use digital and Internet technologies to communicate?"

63% of respondents in the All-Russia survey said that they use Internet resources for self-education and broadening their horizons, 61% for education. These data are consistent with the study of values of Russian youth (VTsIOM, 2022, n=1592)⁶³, which showed that creative self-realisation and self-development are important for 71% of young people. However, the way information is presented becomes an important aspect of consumer competence: educational content presented in a playful or entertaining way is perceived better than traditional formats. Today, entertainment content and streaming services are in high demand among young people in terms of consumer competence. In the segment of teenagers and young adults aged 12-24, according to data from the research company Mediascope⁶⁴, the entertainment genre is preferred in 38% of cases when accessing Telegram channels, while the older group of 25-34 year olds access the messenger for entertainment functions in only 8% of cases.

⁶³ *Cennosti molodezhi (Youth values) 2022*. WCIOM. Available at: <https://wciom.ru/analytical-reviews/analiticheskii-obzor/cennosti-molodezhi> (Accessed: 1 April 2023)

⁶⁴ *Trendy mediapotrebleniya (Media consumption trends)*. Available at: <https://wciom.ru/analytical-reviews/analiticheskii-obzor/trendy-mediapotrebleniya-2022> (Accessed: 1 April 2023)

Half of the respondents said that they use Internet resources to purchase goods and services (53%) and to solve work or business problems (50%), and the range of their consumer competence has expanded accordingly. Young people's indicators for dealing with e-commerce issues are higher than other age groups, which is confirmed by global studies. According to the Hootsuite service, in its study on Internet commerce, the 16-24 age group uses social media more often than search engines for shopping and brand research (50% vs. 46%), while the older generation prefers familiar search engines⁶⁵.

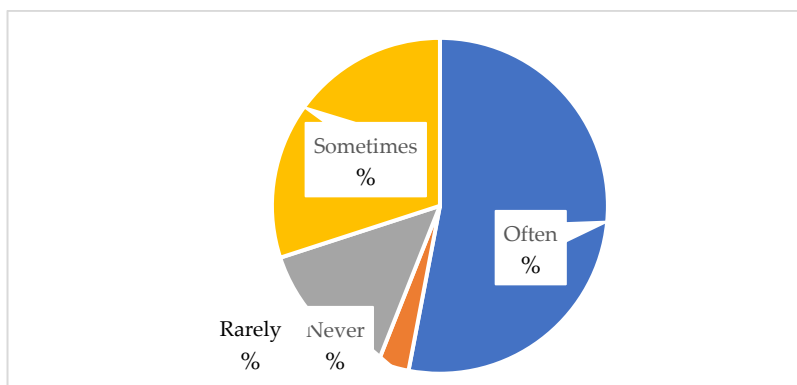


Figure 3 Distribution of responses to the question: "Digital consumer competence. How often do you use digital and internet technologies to buy goods and services?"

Telegram (84%), VKontakte (74%), WhatsApp (71%) and YouTube (63%) were named as the most popular messengers by the young people surveyed. Telegram's popularity can be explained by its cross-platform system, which combines both the function of news content delivery and messenger - correspondence with privacy through end-to-end encryption, cloud storage capabilities, etc. Given the multiplicity of digital consumer touch points, social commerce adopts an integrated approach to advertising, using the resources of several platforms at the same time.

⁶⁵ *The Future of Social Commerce*. Available at:

<https://www.hootsuite.com/research/social-trends/commerce#2IA6F2eWa6Z9iGxBF64FCt> (Accessed: 1 April 2023)

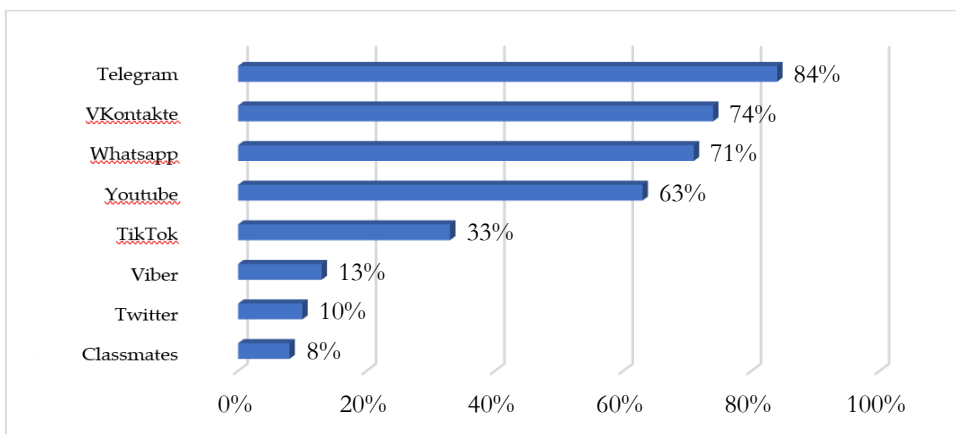


Figure 4 Social networks and messengers most used by Russian youth

A survey of teenagers and young adults aged 14-34 living in the Republic of Tatarstan (n=801) found that their level of digital security competence was rated as average (42%) or rather high (32%). 18% of respondents rated their level of digital literacy as high.

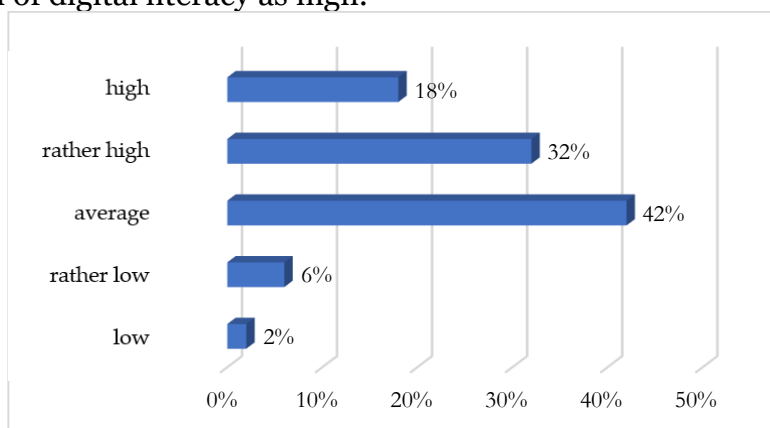


Figure 5 Distribution of responses to the question: "How would you rate your level of competence in ensuring your digital security?"

This question needs to be explored in more detail, as the reasons for the rather average assessment of the level of mastery of tools to protect one's digital presence should be considered in more detail. However, the answers to specific questions on account protection already indicate the need for further elaboration in this direction. For example, 65% of the younger generation correctly answered what two-factor authentication is (which is 10% higher than the figure for all age groups). Young people feel more

confident about creating and distributing digital content, with 42% of young people rating their level as average or high.

As both the All-Russia survey and the mass survey of the population of the Republic of Tatarstan show, the most commonly used digital services among young people today are:

- marketplaces,
- videoconferencing services
- digital services for creating and editing online documents
- cloud file storage services,
- shopping and food delivery.

Secondary analysis of Mediascope data shows that 45% of 18-24 year olds and 52% of 25-34 year olds visit e-commerce sites daily, and 89% do so at least once a month⁶⁶. Social media also provides a platform for commerce, but requires youth engagement through the creation of engaging and informative content with audience preference research. Consumer competence is formed in the context of the 'consumer - digital platform - seller' system, so it is important for all participants in the process to develop a competence-based approach to social interaction.

Thus, this generation has highly developed competences related to information search and processing, communication and interaction with the digital environment (including knowledge of security tools). However, the analysis of commercial information is specific in the form of a preference for products and services that provide emotional reinforcement rather than pragmatic benefits. When designing a marketing offer, it is important to take into account the specificities of media consumption: clip perception, gamification, game format, impression orientation.

Education and information literacy play a key role in developing consumer competence. The more consumers are aware of their rights, protection, market characteristics and methods of evaluating goods and services, the more competent they become as consumers. It is therefore important to provide educational programmes and initiatives aimed at improving consumer competence in the digital environment. Creating new consumer value by providing additional services, establishing personal interactions with consumers, offering personalized offers through mobile applications, social networks and websites.

⁶⁶ E-commerce. Available at:

https://mediascope.net/upload/iblock/671/oxb4pgtiyr31agi323k871mx8n01tbq7/%D0%9D%D0%A0%-D0%A4_E-com_%D0%A1%D1%83%D0%B0%D0%BD%D0%BE%D0%B2%D0%Bo_10.11.22.pdf
(Accessed: 1 April 2023)

From the point of view of commercial structures, the projected volume of sales is adapted to individual requirements and goods and services are made available to customers via a digital platform or in an offline format. It is characterized by the use of various intelligent systems to manage the relationship between end consumers and other social media participants. For example: chatbots with end consumers to clarify individual queries and fulfill them in an online format with delivery of goods to the home or organization. Online marketing technologies are the main tool for studying the demand of end consumers, the offer of production companies, agricultural companies, processors, researching the optimal formats of service provision and promotion of goods with the help of CRM, ERP systems.

Big data analysis allows to study the structure of previous purchases of goods and services by participants of the chain through the retail network and to make forecasts of future sales of goods and services. Data (Fig. 6) are compared using CRM systems on the availability of possible resources, fulfillment of forecast sales of goods and services of retailers, as well as production companies, agricultural enterprises, processors, etc. Interaction with government agencies allows for the creation of a trajectory for the development of network trade in terms of new trade facilities, provision of jobs, development of trade infrastructure (provision of land resources).

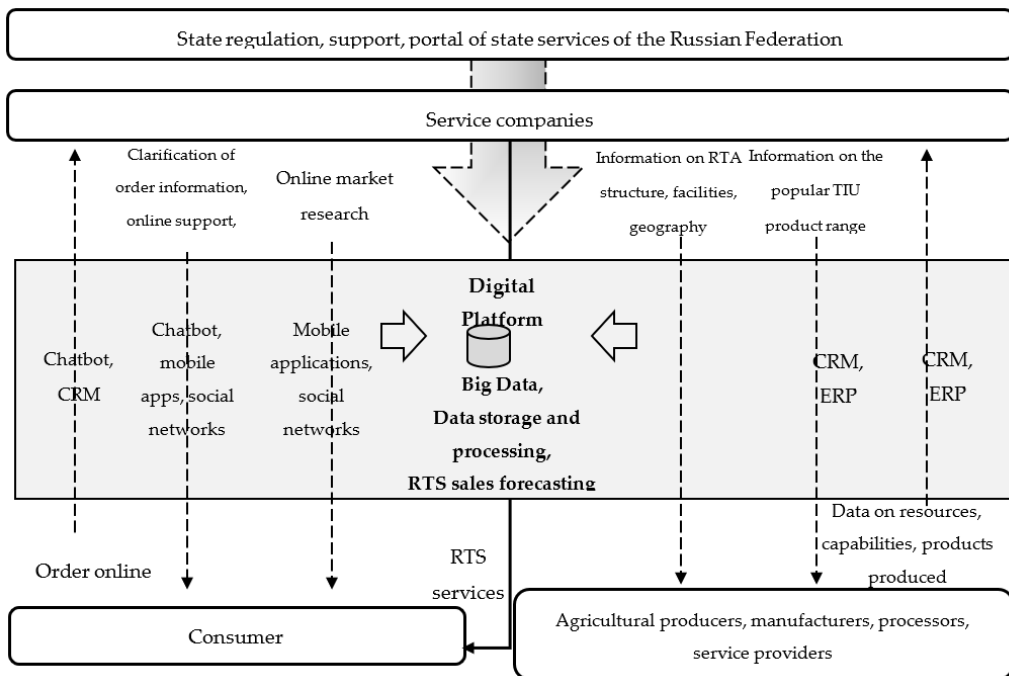


Figure 6 Consumer competence through a digital platform using digital technologies

Figure 6 illustrates the peculiarity of this macro process in that, within the digital platform, the end consumer has the opportunity to place orders and purchase goods and services directly from the production company, bypassing the retail network. This is a major risk for retailers in the long term.

Figure 7 shows the management macro-process of communication between the participants in the aggregated consumer services value chain.

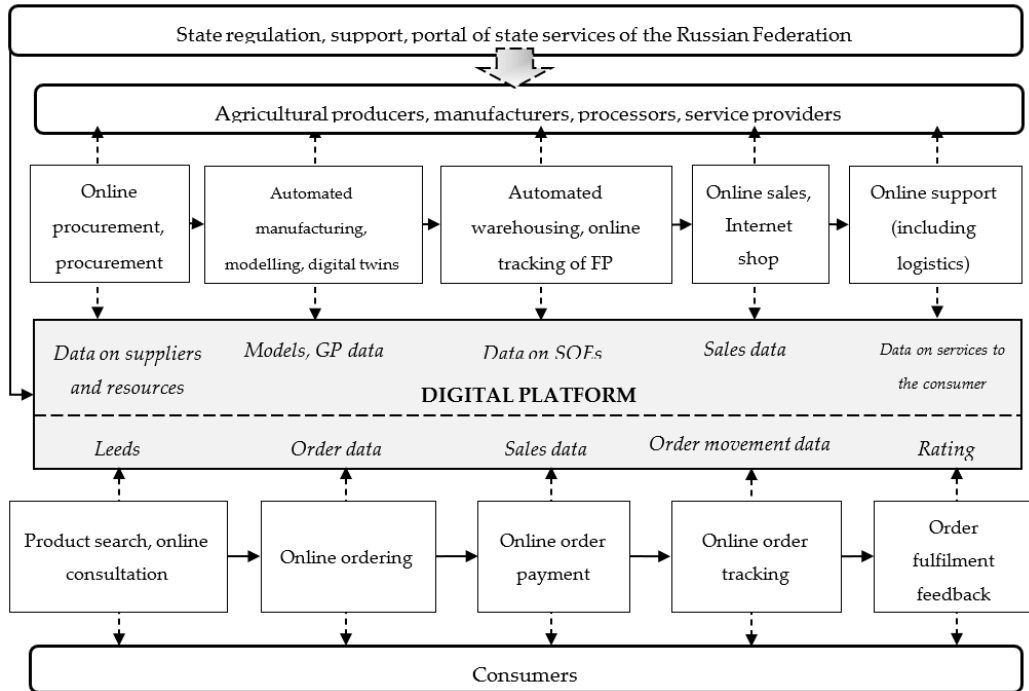


Figure 7 Macro process of delivering network services through digital platform and Big Data

The paper presents and systematizes the methodology of assessing the development of network services through the prism of existing approaches, identifies their advantages and disadvantages, as well as the possibilities of application to retail trade. The analysis of the approaches shows that it is necessary to supplement the modern methodologies and use indicators to assess the effectiveness of implementation of management decisions within the framework of value-oriented development of retail chain services, which are used in the practice of retail chains. The system of indicators for assessing the development of services of retail trade networks, which formed the basis for determining the integral coefficient of value-oriented development of services at the meso and micro levels.

It was found that the most relevant management model for the development of services of retail trade chains is based on the value-oriented

and process-oriented approaches. In this case, value-oriented development should be carried out in three directions: through consumer orientation, development of the retail network, orientation to the participants of the chain of aggregate consumer value. Within the framework of the concept of perceived value, we have identified the characteristics of retail chain services and defined four levels of their development.

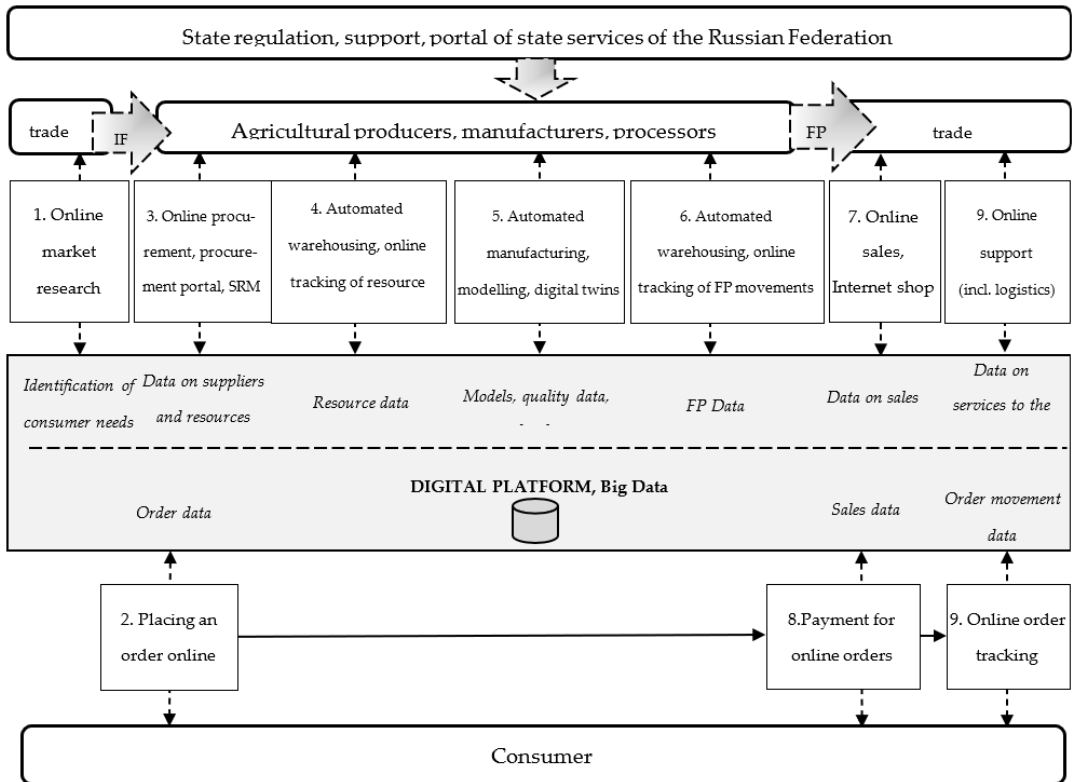


Figure 8 Digital consumer competence in the development of the service sector: IF - in-formation flow about goods demanded by the market, FP - finished products

Thus, the research on consumer competences in social media has made it possible to extend and shape the business process models of the service sphere using these competences. It is important to note that the role of consumers with higher digital consumer competences allows a greater involvement of the service and advertising industries in the organizational process.

Conclusions

In modern conditions, social media play a big role in commercial activities as well as in the provision of public services. The level of consumer

competence in social media is increasing annually, so the vector of marketing tools, especially digital tools, is expanding. Within the framework of the theoretical part of the research, the theoretical provisions were studied and systematized in relation to the content of two categories as consumer competence and social media. The model of consumer competence is defined, which consists of four structural elements and forms its content component. The interrelations and differences between traditional and digital social media are shown through the identification of characteristics and factors influencing consumer competence. In addition, the peculiarities and organizational changes of social media are outlined with a step-by-step analysis of their structural changes.

In the practical part of the study, the monitoring of consumer competence in digital media of three generations is systematized and the digital elements of their content are identified. On the basis of developments in the study of tools and digital technologies, which are formulated in the questions of the developed questionnaire, formulated conclusions for the young generation, which will allow the effectiveness of promotion of goods and services. As a result of theoretical elaboration of the modern understanding of consumer competence in social commerce, as well as methodological analyses, we have proposed the author's view of a set of indicators connected in 4 main consumer competences. The validation of the proposed methodology on the example of three generations - baby boomers, generation X and generation Z - allowed us to trace the differentiation in the change of the content of consumer competence characteristics. As our research has shown, each generation has specific characteristics in terms of financial behaviour, consumption and interaction with digital formats. The results of our data show that social commerce companies need to build marketing strategies based on generational characteristics to better engage with consumers. This will increase consumer loyalty and build long-term relationships, increasing repeat purchase rates. Developing skills and competencies related to consumer literacy will also enable customers to better evaluate the products and services offered and make informed purchasing decisions. The digitalization of the industry, information technology increases the level of accessibility of information about the goods offered to consumers. High consumer competence is based on the ability of the buyer to effectively filter and critically analyze the vast amount of information available in the online environment. The development of social networks and online platforms contributes to the continuous improvement of the areas of interaction between consumers and companies.

The scope of the research findings is relevant to the service sector from the point of view of a wide range of consumer competences, including digital

competences, their involvement in the creation and development of services and the purchase of goods. It is argued that social media in modern conditions are a communication platform for all stakeholders in the service sector.

Acknowledgements

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THE PECULIARITIES OF BUSINESS NEGOTIATIONS IN THE CONTEXT OF CONTEMPORARY ATYPICAL SITUATIONS OF THE REPUBLIC OF MOLDOVA

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Abstract: *Business negotiations are important processes in the business world and can have a significant impact on the success of a company or business. The purpose of this research is to identify the particularities of the negotiation process affected by atypical situations. The working hypotheses were summarized in the respondents' assessment of the influencing factors of the stages of the negotiation process and in the identification of deficiencies and solutions. For data collection, the questionnaire was used for the purpose of mixed quantitative and qualitative research. The results of the analysis of the collected data are graphical representations that contributed to the formulation of conclusions and behavioral recommendations in the process of negotiations in atypical conditions. The conclusions specify that atypical situations can significantly influence the negotiation process, but this influence can vary depending on the nature and context of the situation, so we must be prepared to face these difficulties. Recommendation for those who will consider this study when planning, organizing and carrying out negotiations, it is important to select and adapt the solutions and methods correctly according to the type of atypical situations that influence and the organization's objectives.*

Keywords: *atypical situations, business negotiations, negotiation process, influencing factors, negotiator*

JEL Classification: F51, J50, M12,

Introduction

Business negotiations are essential processes in the world of business, as they allow the parties involved to reach agreements and resolve differences in an efficient and mutually beneficial way. Business negotiations are the process by which two or more parties meet to discuss and reach an agreement on various aspects of a business or business transaction. These negotiations can take place in different contexts, including a sale, partnership, tender or strategic collaboration. Negotiations have been a subject studied over time by several authors and experts, who

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as a result of their studies have provided different definitions and perspectives on business negotiations.

Let's analyze what Chester L. Karrass¹ tells us about negotiation, such as "Business negotiations are a process in which two or more parties communicate to reach an agreement regarding common or divergent interests.", then we understand negotiation as a process exchange. In fact in the early stages of research in the field of negotiations, they were seen primarily as exchange processes, where parties try to obtain mutual benefits through discussions and understandings.

However, the economic effects in the last decades, have been observed as a tendency towards defining business negotiations in several forms such as associations and cooperation. In this context we identify the work "Getting" - "Getting to Yes" by Roger Fisher² in which we find that "Negotiations are a process of resolving differences through dialogue, where the parties try to reach an agreement that satisfies the needs and their interests." This perspective encourages the parties to seek win-win solutions, where both sides gain significant benefits through collaboration and mutual understanding. A similar approach is found in Roy J. Lewicki, David M. Saunders and John W. Minton³ in the work "Negotiation" where "Business negotiations are a process of interaction between two or more parties trying to reach an agreement about to a subject of common or divergent interest, subject to constraints or limitations.". We believe that this perspective has placed more emphasis on communication and economic problem-solving.

A further evolution of definitions emphasized the strategic nature of negotiations in business. Thus Gavin Kennedy⁴ defines "Business negotiations are a form of strategic communication, in which the parties try to reach an agreement that will maximize their benefits and minimize their losses." These statements lead us to the finding that negotiators are seen as strategic agents who try to obtain advantages for their organizations and manage resources and interests in an efficient way.

As a new typology of business negotiations, we find it in Mary C. Kern⁵: "Business negotiations are a process of conflict resolution or decision-

¹ C.L. Karrass, *Give and Take: the Complete Guide to Negotiating Strategies and Tactics*, Publisher HarperCollins, New York, Revised edition, 1993, 320 pag., p. 56-59

² R. Fisher, W. Ury et al. *Getting to Yes: Negotiating Agreement Without Giving*, Penguin Publishing Group, London, 2011, 240 pag., pp. 123-128

³ J. Roy Lewicki, M. David Saunders and W. John Minton, *Negotiation*, McGraw-Hill Education (ISE Editions); International 2 Revised ed edition (July 1, 1999), 528 pag., p.49

⁴ G. Kennedy, *Kennedy on negotiation*, Gower Publishing, Ltd., 1998, 335 pag., p. 27., p. 278

⁵ T.R. Kurtzberg, Mary C. Kern, *Negotiating at Home: Essential Steps for Reaching Agreement with Your Kids*, Publisher: ABC-CLIO, LLC, Santa Barbara, CA, USA, 2020, 200 pag., p.68.

making in which the parties try to reach an agreement that satisfies their own interests." with negotiation being treated as a process of conflict resolution. As the understanding of negotiations developed, it was recognized that they can also be used to resolve conflicts and disputes in a peaceful and constructive way.

The problem of the negotiations was the dispute of several statements "you can't get everything you want, but you can get it with strategy and time"⁶, „the ability to sell yourself and your ideas"⁷ „to let people think that they have won"⁸, „when both partners show respect, understanding and openness"⁹ „The best time to negotiate is when you don't have to do it"¹⁰, etc. In our view, these quotes emphasize various aspects of negotiation, such as the importance of compromise, the ability to manage relationships and reach mutually beneficial solutions, and the need to have a balance between personal objectives and those of the other parties in a negotiation. It is important to note that there are currently many perspectives and theories on negotiation, and their definition may vary depending on the context and the approach of the author or researcher. In this context, we present a new vision of business negotiations under the conditions of some contemporary atypical situations identified in society and faced by the business environment. Negotiating business in today's atypical conditions requires a proactive and adaptable approach to the rapid changes in the global business environment. In a world where technology, social change and unforeseen crises can significantly affect the negotiation process, it is important to develop a new vision of this process.

I believe that the new vision of business negotiations in today's atypical conditions¹¹ must be a holistic one, integrating flexibility, technology, sustainability, risk management, communication skills and collaboration. The approach must be tailored to the specific context and focused on achieving sustainable and beneficial outcomes for all participants.

⁶ D.M. Reeves, B.N. Grosf, M.P. Wellman, and Hoi Y. Chan, *Toward a Declarative Language for Negotiating Executable Contracts*, International Business Machines Incorporated, Thomas J. Watson Research Center, 1999, p. 39-48. Aviable <https://cdn.aaai.org/Workshops/1999/WS-99-01/WS99-01-007.pdf>

⁷ M. Geraghty, *Anybody Can Negotiate--Even You!*, Bloomington: iUniverse, Indiana, USA, 2006, 148 pag., p.32-33

⁸ L.J. Brahm, *Doing Business in China: The Sun Tzu Way*, Vermont: Tuttle Publishing, North Clarendon USA, 2004, 160 pag. p. 45-47

⁹ D. Waitley, *The Psychology of Winning: The Ten Qualities of a Total Winner*, London: Penguin Publishing Group, 1995, 192 pag. p. 15-16

¹⁰ H. Kissinger, *Diplomacy*, New York: Simon & Schuster, 1994, 912 pag. p.618-623

¹¹ L.Sargu, C. Coman, et all. *Negocierile între metodă și proces în condiții atipice*. Monograf, Publicing Varsovia: iScience, Poland, 2020, 120 pag. p.

Circumstances created when developing business negotiation practice in the context of atypical situations

For the business environment of the Republic of Moldova in the last 10 years, different conditions have been identified than the usual ones for the development of negotiation processes, whether financial, commercial, social or international. Such phenomena are considered in our opinion to be atypical situations for the performance of certain activities. Negotiations are an integral part of the business environment. The circumstances created *for the emergence of situations* different from the usual ones were created by the unforeseen political changes and the appearance of the embargo¹² as a factor in creating atypical situations of negotiation for the business environment. Negotiating in atypical situations¹³ with unpredictable political changes can be extremely complex and demanding. In such situations, it is important to understand that the current political situation and the changes that have occurred require conditions for the business environment to be more prepared to adapt during negotiations. Unforeseen political situations can generate uncertainty, which will generate certain changes in the objectives and negotiation strategies. Thus, the economic agents are forced to take measures to minimize these risks or to protect their interests in the event of unforeseen developments. Unforeseen political situations can prolong the negotiations or generate unexpected obstacles. Such obstacles defined as atypical situations¹⁴ in the process of business negotiations for the business environment in the Republic of Moldova created by embargoes and sanctions have affected the business environment in the agrarian sector more. Obviously for an agrarian country, affecting the imports and exports that maintain the development of this field implies affecting economic activity at the micro-economic level.

There are certain requirements to successfully shift the market to other regions such as infrastructure development, investment in innovations, signing of some free trade agreements, etc. To facilitate export to alternative markets, it is essential to develop and modernize transport infrastructure, including railways, ports and road networks. Similarly, investment in innovation and research can help develop competitive products and services

¹² Russian embargo will hit apple exporters (2022), available online <https://moldova.europalibera.org/a/embargoul-rusesc-va-lovi-%C3%AEn-exportatorii-de-mere/31982204.html>

¹³ L. Sargu, C. Coman, *Method of Handling the Atypical Situations Management through the Informational System*. in: Saudi Journal of Business and Management Studies, Volume 4, Issue 9, Dubai, United Arab Emirates, 2019 pag. 708-711, <https://scholarsmepub.com/sjbms-49/>

¹⁴ L. Sargu, *Management of atypical situations through the quality management system*. In: The collective monograph Management of innovative development the economic entities, Poland, 2018, 198-208 pag.

that can be successfully exported to international markets. Or the diversification of the range of exported products to meet the demands of different international markets. At this point we identify a break of 5-7-10 years if not longer. Namely, these factors have contributed to the destabilization of the business negotiation model according to the classic model and its adaptation to the conditions of atypical situations.

Another kind of circumstances were created by the global events caused by the pandemic, war, economic crisis, which affected the negotiation process and created more atypical negotiation conditions than the previous ones caused by the political changes inside the country. The particularities and difficulties of the negotiations caused by the atypical situation of COVID-19¹⁵ was studied by the author in the period 2020-2021, through which a focus of the process on three defining elements time, power and information was identified. Even in difficult circumstances, a respectful approach can help maintain dialogue and find solutions by approaching a diplomatic attitude. Business negotiations are affected by war in a neighboring country. This conflict has created for the business environment an atypical situation with many facets. On the one hand, the transit of goods from Ukraine to the territory of the Republic of Moldova, in some cases by means of local economic agents¹⁶. On the other hand, the competition created in foreign markets with the invasion of a flow of goods and services at low prices due to the volume and enormous quantities. These have made it difficult not only for exports but also for the commercialization of goods on domestic markets, a problem also faced by the business environment in Romania¹⁷, Polonia, Hungary, Bulgaria, Slovakia.

Exploring the possibilities of concluding free trade or economic cooperation agreements with other countries and regions to facilitate access to their markets is one of the possibilities for the business environment of the Republic of Moldova to negotiate without difficulty. But this process also did not bring any advantages. If we mention that the Republic of Moldova had signed the Partnership and Cooperation Agreement in 1998, later in

¹⁵ L. Sargu, Yu. Valeeva, C. Gîdilica, *Approaching Trade Negotiations Under Atypical Conditions Created at Global Pandemic Level*, Proceedings of the International Conference Digital Age: Traditions, Modernity and Innovations (ICDATMI 2020), The proceedings series Advances in Economics, Business and Management Research, Volume 489, pag. 26-30, Available, DOI: <https://doi.org/10.2991/assehr.k.201212.006>,

¹⁶ Moldovan producers – affected by imports from Ukraine. What the authorities say about aid for farmers, 2023, Available <https://realitatea.md/producatorii-moldoveni-afectati-de-importurile-din-ucraina-ce-spun-autoritatile-despre-ajutorul-pentru-agricultori/>, Visited (11.11.23)

¹⁷ Cereal imports from Ukraine at the negotiating table 2023, Available <https://www.dw.com/ro/importul-cerealelor-din-ucraina-la-masa-negocierilor/a-66865458>, Visited (17.11.23)

2010 initiating the negotiations for the Moldova - EU Association Agreement, which was signed in June 2014 in Brussels and ratified in July by the Moldovan Parliament¹⁸, then it would be difficulties caused by atypical situations for the business environment in the negotiation processes had to disappear. Although the Republic of Moldova has signed other Free Trade and Partnership Agreements with 27 other states, the atypical situations caused by the barriers did not manage to ensure a smooth negotiation process.

All these phenomena have contributed to the realization of a study, based on a questionnaire, which would shed light on the clarification of the elements of the negotiation process through the prism of the influence of atypical situations. This study will ensure a certainty regarding overcoming atypical situations caused by political phenomena, global events, etc.

Method and methodology of the study

This research is a quantitative one, it is based on collecting data from respondents in a systematic and structured manner. The 15-question questionnaire was distributed to a sample of 80 respondents. The respondents being randomly selected from among the people employed in the companies in the Republic of Moldova. The questionnaire was conducted via a Google Form, which included multiple-choice questions, estimation grids, and respondent data. These data were quantified, statistically analyzed and used to obtain information about the nature of the atypical situations that influence the negotiations, trends in the manifestation of atypical situations in the phases of initiation, organization, conduct of negotiations and relationships between the negotiation process and the personality and behavior of the negotiator.

Results and discussion

Analyzing the sample of respondents, we can present the following characteristic of them in table 1. The results show a majority presence of women in the process of negotiations of an atypical character, given the fact that it is considered a job more for men. Thus, of the 33.8% of men participating in the survey, 12.3% are aged between 21 and 31, 7.5% are aged between 32 and 51 and 6.3% are older than 51. The women participating in the questionnaire have a weight of 66.2%. Of which 43.8% are between the ages of 21 and 31, 17.5% are between the ages of 32 and 41, 26.1% are between the ages of 42 and 51 and 8.0% are over the age of 51 year old. We found that 44% of the participants in the negotiation are between 21-31 years old, a fact that indicates certain advantages for this field. Young people

¹⁸ European Union 2023, Available online <https://amp.gov.md/portal/node/36>, Visited (12.11.23)

bring with them unique perspectives and experiences that can contribute to finding innovative solutions, contribute to improving communication and understanding between different age groups, facilitate intergenerational dialogue, and ensure a better and more sustainable future. 63.7% of the respondents in estimating the negotiation process were based on their own experience and the experience of practices within the company, 18.8% evaluated according to intuition and only 17.5 followed the course of the theoretical aspects towards the subject negotiations. The fact that participants in the negotiation estimate the process is a guarantee for specific results and can help them be better prepared for further negotiations.

Table 1 Characteristics of the respondents, %

<i>Age/gender</i>	21-31 ani	32-41 ani	42-51 ani	51ani și mai mult	total
<i>male</i>	12,5	7,5	7,5	6,3	33,8
<i>female</i>	31,3	10,0	18,6	6,3	66,2
<i>TOTAL</i>	43,8	17,5	26,1	8,0	100

Source: made by the author on the basis of the data from the questionnaire

It is important to realize that negotiations are unpredictable, so flexibility and adaptability are also key in the negotiation process. Also, a lot depends on the negotiator and his position in the negotiation process. Respondents were also asked about their role and their quality in the negotiation process. Thus, the results are shown in diagram 1.

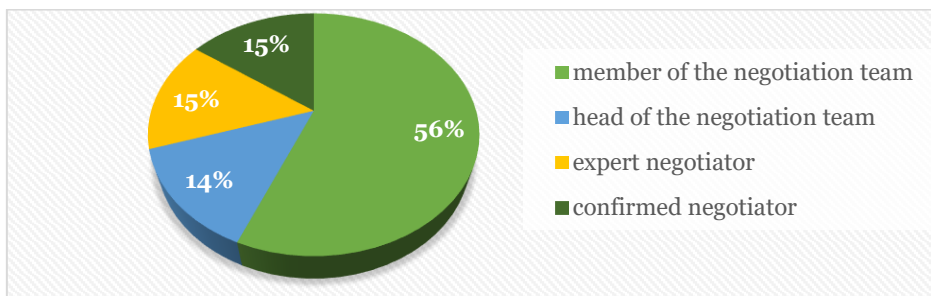


Figure 1 Negotiator quality of the respondents

Source: made by the author based on the data from the questionnaire

The fact that the majority of respondents are trained in negotiation teams confirms the skills of employees in carrying out a negotiation process and estimating its particularities. Being a member of the negotiating team means that you represent the interests of the organization or group and

firmly support its positions and objectives during negotiations. Experience as a member of a negotiating team can provide opportunities for professional development and continuous learning, as well as growth to the level of a negotiating team leader. Only 13.7% of the respondents appeared as the head of the team, and 30% of them are already experts and confirmed negotiators.

With these results, we affirm the representativeness of this study and confirm the capacity and potential of the answers provided by them.

There are several types of business negotiations that can be analyzed, but the following were selected for the present study: commercial negotiations, financial negotiations, international negotiations which in the questionnaires constituted 76.3%. Other negotiations identified by the respondents in the business chapter refer to acquisitions, partnerships and labor contracts which constituted 23.7%. The estimated value in conventional units negotiated by the respondents by types of negotiations is shown in figure 2.

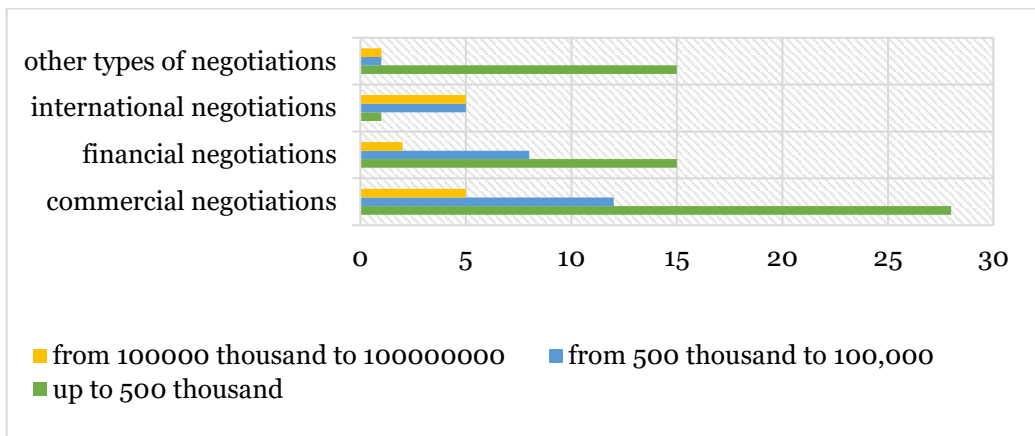


Figure 2 analysis of responses regarding the type of business negotiations and estimated value in conventional units

Source: made by the author on the basis of the data from the questionnaire

The main particularities of commercial negotiations are their clearly profit-oriented purpose on the part of the offered and to obtain advantages on the part of the buyer. Specifically, the parties involved in a trade negotiation aim to obtain benefits. Although commercial negotiations are aimed at immediate profit, it is often important to build long-term relationships between the parties. This can lead to future collaborations,

partnerships, and mutual trust, which is beneficial to long-term business development.

The focus of the study was on the occurrence of atypical situations in the process of negotiations and the identification of their influence at the preparation and deployment stages. The respondents involved in the study were asked to appreciate the influence of the atypical situations presented earlier in this article and to determine which characteristics and actions of the processes of organizing and conducting the negotiation process suffered more. Thus, figure 3 shows the results of the respondents' assessments of the influence of atypical situations on the negotiation preparation process regarding: set objectives, documentation and information gathering, team building, the communication process, the place of the negotiations, the creation of the negotiation atmosphere and the time for the organization the negotiations.

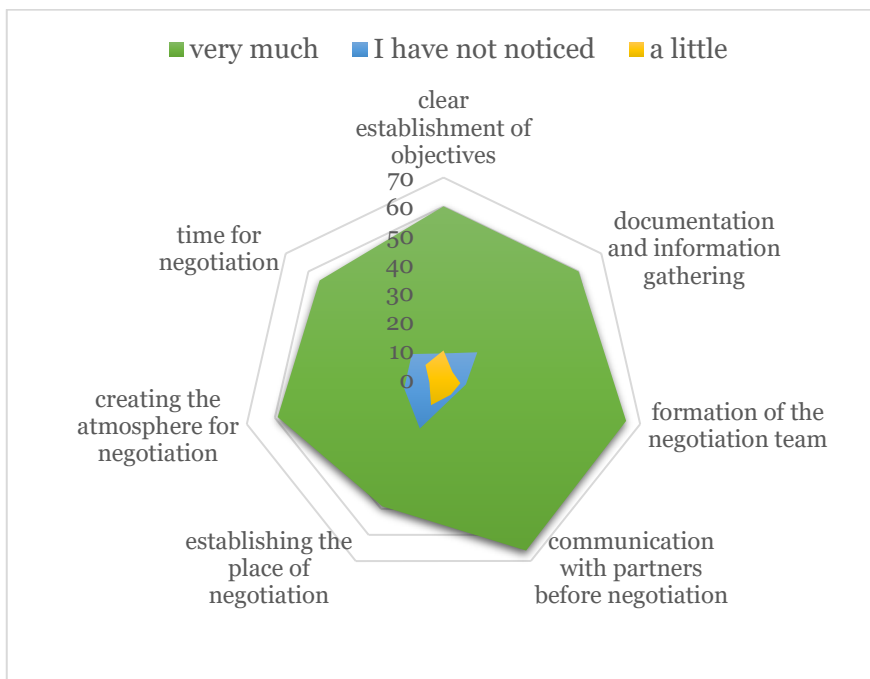


Figure 3 Appreciation of the influence of atypical situations on the process of organization and preparation of the negotiation process

Source: made by the author based on the data from the questionnaire

Flexibility and adaptability are key factors under these conditions. Negotiators must be willing to quickly adapt to changing circumstances and adjust their strategies accordingly. This may involve re-evaluating goals and

priorities in real time. As can be seen, the clear establishment of objectives was identified by 60 of the 80 respondents, the influence on documentation and information was noted by 60 of the 80 respondents, the influence on the formation of negotiating teams was noted by 65 of the respondents in total, the communication with partners before the initiation of the negotiation process was affected and made aware by 66 of those questioned. Less affected by atypical situations were setting the place of negotiation which was marked by 49 respondents, ensuring the atmosphere for negotiation valued as an influence by 59 respondents and time for negotiations valued by 55 of the respondents. A fairly high tendency of the influence appreciated by those questioned regarding the seven elements proposed for evaluation is observed. It is obvious that the atypical situations that arise at this stage actually influence the process of preparation and organization of negotiations. In this context, we note that economic, political or social crises, pandemics or other unexpected events can imply significant changes in the context of the organization of the negotiation process. Impairing the availability of parties to physically participate in negotiations has created a new possibility to create online or remote meetings. Sudden changes in the economy can significantly influence the positions and expectations of the parties regarding the negotiations. Atypical situations often bring with them uncertainty and additional risks. So atypical situations can have a significant impact on the process of organization and preparation of negotiations. Flexibility, adaptability and the ability to handle uncertainty are essential in such situations to ensure an effective and successful negotiation process. In atypical situations, the parties may have to re-evaluate their goals and priorities. This can lead to a reorientation of the negotiations towards different aspects or to the reconsideration of the terms and conditions of the agreement.

Once the organizational process is affected, the other stages of the process can obviously be affected. The next evaluation proposed to the respondents was on: presentation of offers and localization of products; agreeing on some compromises; the signing of contracts; arguments for offers; establishing force majeure rules; the assurance of communication processes; the ability to convince; the paraverbal stimulus; the place of the negotiation; the clothing and external appearance of the negotiation team members; physical and visual character of partners; non-verbal elements and mime; communication style components.

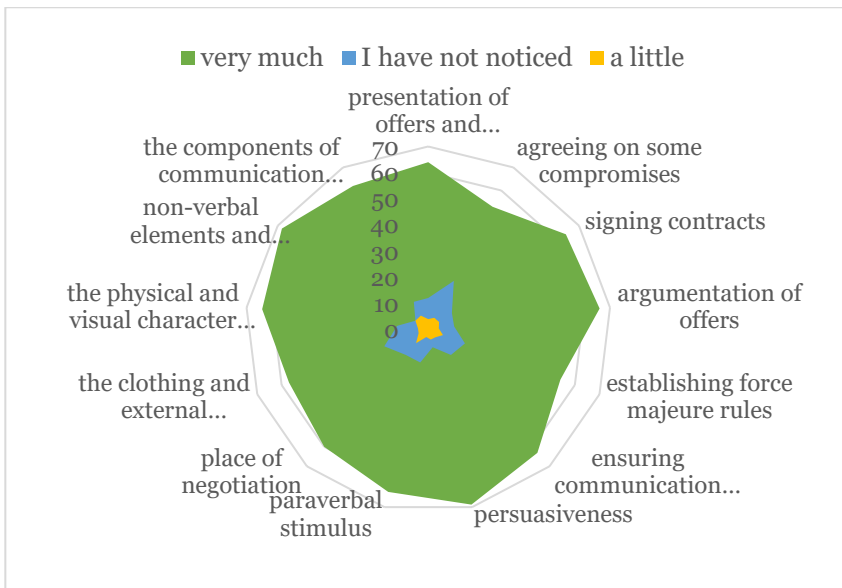


Figure 4 Assessment of the influence of atypical situations that appeared in the process of negotiations

Source: made by the author based on the data from the questionnaire r

Analyzing the results, we find an influence on all the elements proposed for analysis that are part of the actual process of the negotiations. Thus in table 2 we transcribe the elements analyzed according to the degree of damage in 3 categories: extremely damaged, very damaged, damaged.

Table 2 Degree of affecting the elements of the negotiation process

extremely affected 69-64 point	very affected 63-60	affected 57-53
<ul style="list-style-type: none"> • presentation of offers and location of products • signing contracts • the physical and visual character of the partners; • persuasiveness; • paraverbal stimuli • argumentation of offers; • non-verbal elements and mimicry; 	<ul style="list-style-type: none"> • ensuring communication processes • place of negotiation • the components of communication style 	<ul style="list-style-type: none"> • the clothing and external appearance of the members of the negotiation team • establishing force majeure rules • agreeing on some compromises

Source: made by the author based on the data analyzed in figure 4

Referring to the three categories, it is important to be careful about the first group of elements of the negotiation process affected by atypical situations. So that the technical organization of the negotiation and the provision of a safe and efficient environment become a priority for all participants in the process. Apart from flexibility, participants must be prepared to change strategies to new realities. This may involve the development of backup plans or the analysis of alternative scenarios. It is important that organizers are prepared to quickly adapt to atypical situations that arise that cause changes in context and to approach new challenges with confidence and wisdom. Atypical situations can bring with them high levels of stress and uncertainty, which can affect how the parties make decisions and negotiate. It is important to manage these emotions effectively in order not to affect the results of negotiations. A dangerous aspect for the negotiation process may become the change of power due to the appearance of atypical situations. Or vice versa an atypical situation can create an opportunity.

However, the nature of atypical situations is both negative and positive. It is important to be very attentive to their appearance and to react quickly. In order to be prepared, studies, exchange of practices, theories based on methodologies, etc. are required. This study asked respondents to express their opinion regarding some solutions or directions for improving the negotiation process when atypical situations arise.

In figure 5 we present the solutions offered by the respondents involved in the study, who gave priority to the implementation of quality systems, the involvement of economic clusters, the application of innovations, the creation of platforms, the involvement of diplomatic missions.

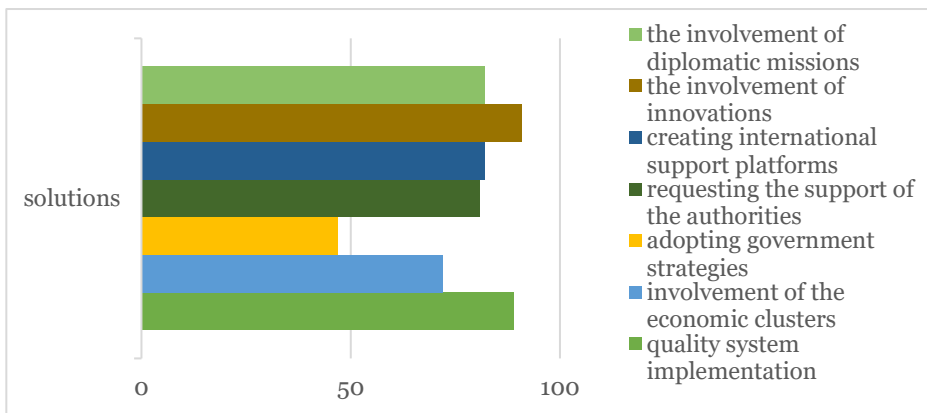


Figure 5 Solutions from the respondents regarding the improvement of the negotiation process affected by atypical situations

Source: made by the author based on the data from the questionnaire

Analyzing the solutions proposed by the respondents in figure 5, we observe a prevalence of the proposals for orientation on quality systems and on the involvement of innovations. These two solutions are at first glance different, but they are relevant today. Innovation can be a valuable solution for dealing with and handling atypical situations in business negotiations. When faced with unusual circumstances or challenges, organizations and negotiating teams can use innovation to come up with creative and effective solutions. It is important that organizations cultivate a culture of innovation and be open to exploring new ways and approaches to meet unexpected challenges in the negotiation process.

The implementation and maintenance of a quality management system¹⁹ (QMS) can be a valuable solution to manage atypical situations in business negotiations. The Quality Management System represents a structured framework to ensure the quality of an organization's products or services and can have a significant impact on a company's ability to cope and adapt to unexpected situations. There are quality standards for identifying, assessing and managing risks, for operational processes and for product or service quality. A quality management system can promote a culture of learning and adapting quickly. This aspect is important in atypical situations because it allows the organization to react more quickly and learn from previous experiences.

Another question, to which the respondents answered, was regarding the shortcomings encountered when conducting negotiations in atypical conditions. The results are shown in Figure 6.

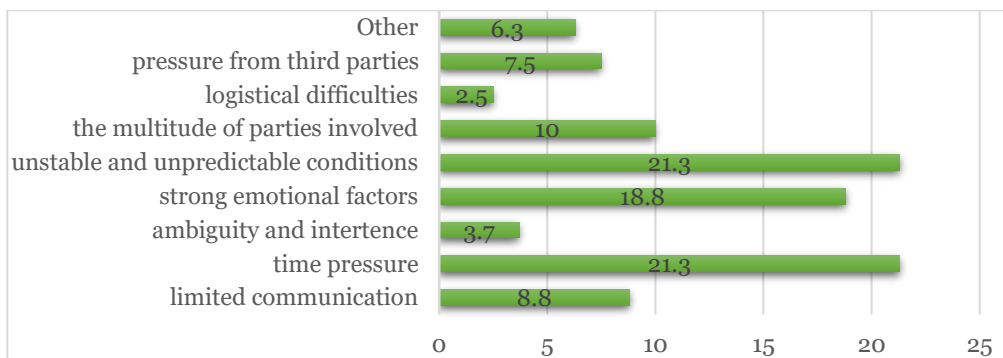


Figure 6 Deficiencies encountered by negotiators when atypical situations occur

Source: made by the author based on the data from the questionnaire

¹⁹ L. Sargu, *Quality management system. Between theory and regulation*, Chisinau, USEM, 2022, pag. 282, p. 111-121

Analyzing the results obtained in the survey and presented in figure 6, we notice that 21.3% of the respondents believe that the deficiencies that appeared in the negotiation process occur because of time pressure. Time pressure can cause parties involved to make quick decisions without considering all aspects or available options. This can lead to sub-optimal agreements, choices that are not well thought out, misunderstandings or misinterpretations. When time is limited, the parties may not have enough time to communicate properly and express their interests, concerns or priorities. The parties may feel they have no choice but to accept a settlement, whether it is best for them or not. Respondents had the same option for unstable or unpredictable conditions which accumulated 21.3% of the responses. In order to more effectively manage time pressure and volatile conditions in the negotiation process, it is important to pay attention to adequate preparation, remain calm and use effective communication techniques. Apart from the fact that negotiators need to maintain an open and constructive communication environment, it is also useful to recognize the time pressure and try to manage it appropriately. 18.8% of the respondents stated that in atypical situations, negotiations had difficulties arising from emotions and stress. Stress and anxiety can negatively influence the negotiation process. In these conditions, parties may avoid sensitive topics or hesitate to address issues that could trigger strong emotional reactions. It is recommended to postpone solving the problems until the time of de-tensioning.

The atypical situations²⁰ that have recently affected the business environment in the Republic of Moldova, in our opinion, could affect in the future or have already affected a large part of the business environment in neighboring countries and even in the world. Research in the field of negotiations in atypical situations²¹ is quite limited and has not yet reached the attention of researchers, who have sought to concern themselves more with the elimination of dangers for their companies and survival in these conditions. However, being concerned about this subject, we consider it appropriate to present this study to the general public for consultation and the taking of some practices. Because the negotiation process²² takes place between individuals, and they behave approximately the same in situations

²⁰ L. Sargu, *The factors of the formation of atypical situations in the conditions of the market economy*. In: Materials of the International Conference "Sustainable economic-social development of euro-regions and cross-border areas", XIV edition, Iasi, Romania, 2018, page 463-470

²¹ L. Sargu, *Management Functions In Atypical Situations*. in: Knowledge Horizons, Economics, Volume 11, Issue 3, Bucharest, Romania, 2019, page 52-61

²² C.B. Craver, *Legal negotiation process and techniques*, George Washington University Law School, Washington, D.C., 2011, 56 pag. available file:///C:/Users/Utilizator/Downloads/NEGOTPROCESSBANK.pdf

of stress²³, pressure, difficulty, threat, misunderstanding, etc. We conclude that atypical situations can positively or negatively influence the negotiation process and this influence can vary depending on the nature and context of the situation. It is important that the parties are willing to collaborate to face these situations effectively and to reach beneficial solutions for all parties involved. It is obvious that during the foundation of the theories regarding negotiation, the approach to situations different from those usual to the process existed, but with the emergence of new circumstances, information technologies, the development of the technical revolution, innovations, sustainable development, new methods and models of negotiation also appear. Obviously, a study based on a quantitative method can be inferior to a qualitative study, which is why we reserve this objective for further research with the same destination.

Conclusion

In conclusion, we can say that ***all these changes will contribute to the adaptation of the business negotiations format.*** With increasing concerns about atypical situations related to political changes and global events, negotiations should also include sustainability issues.

The research in question has identified the researcher's main concerns. The main hypothesis, if the negotiations are affected by the atypical situations and were this an environment for creating deficiencies, was confirmed. As a result of the study we established that time crises, political and economic uncertainties significantly affect negotiations at all stages. Negotiators should be prepared to proactively assess and manage risk and identify opportunities amid uncertainty. In unusual situations, communication skills become crucial. Active listening and empathy are important to better understand the needs and concerns of the other participants in the negotiations. Technology can be a valuable tool in negotiations, facilitating communication, data analysis, and collaboration at a distance.

Identifying the deficiencies and problems encountered by the negotiators from their own experience in the negotiation process, represents an advantage in addressing the emergence of atypical situations. Rather than a strictly competitive approach, the negotiations could focus more on collaboration and developing long-term partnerships. This can lead to more sustainable outcomes and increased value for everyone involved. The business environment is evolving rapidly, and negotiations are no

²³ M.H. Bazerman, J.R. Curhan, D.A. Moore, and Kathleen L. Valley. *Negotiation*. Annual review of psychology 51, no. 1 2000, pag. 279-314.
<https://doi.org/10.1146/annurev.psych.51.1.279>

exception. Negotiators should invest in their personal development and be willing to learn and adapt as situations become increasingly complex.

The recommendations and solutions identified because of the study contribute to the adaptation of the negotiation process, which is increasingly present in the commercial, financial, social, political, managerial processes to these conditions. Atypical situations being cataloged as improvement processes.

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CONCEPTUAL CATEGORIES REPRESENTED BY ENGLISH TERMS OF THE FOOD INDUSTRY

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Abstract: *This article delves into the categorization of the English food industry terminology units, focusing on the types of concepts they represent. The categorical organization of scientific concepts plays a pivotal role in enhancing comprehension and communication within specialized domains. This study aims to explore how the food industry terminology is structured into conceptual categories and the distribution of these categories within the domain of knowledge. By analyzing over 1000 English terms extracted from specialized dictionaries and online sources, this research employs definitional analysis, classification, comparative analysis, and statistical methods to identify and dissect the conceptual categories present in the food industry terminology. The article presents eight categorical groups, encompassing objects, substances, processes, modes, properties, values and units of measurement, sciences and industries, and professions. Each category is analyzed in detail. The percentage ratio of terminological lexical units included in each of the categories is indicated. The article underscores the significance of studying the typology of terminological units in analyzing the systemic organization of specialized vocabulary. This emphasis on the organizational structure of terminology within a specific field is essential for effective communication, knowledge dissemination, and research in the food industry domain.*

Keywords: *terminology, conceptual categories, categorization, food industry, specialized language, linguistic analysis.*

Introduction

Linguists actively and diversely research the terminology of various branches of science. The problem of language categorization of terminology, which is of great interest not only to linguists, but also to the entire scientific

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world, is increasingly becoming the object of scientific research. In the realm of language, scientific concepts are organized by scholars into categories based on specific characteristics. This practice stems from the presence of these conceptual types within each term system, which in turn governs the distribution of the core terminological vocabulary within a particular field of knowledge.

The issue of categorizing reality and how this process is manifested in language has gained increasing significance in contemporary times. This trend is partially attributed to the emergence of new methodologies and areas of study. This topic is remarkably intricate and offers an extensive scope for investigation. The pertinence of categorical structuring within the sphere of terminology is underpinned, firstly, by the necessity to arrange terminology systematically and, secondly, by the pivotal role that categorization plays in human cognition and thought processes.

The formation of the English food industry terminology as a system with a clear structure and interrelationship of units is due to the presence of a conceptual sphere at its core, which reflects the knowledge and practical experience gained in the process of learning about the field of food production. It is necessary to emphasize that the language of the food industry in modern English is a complex system related to a certain professional sphere of human activity aimed at the creation of food products.

Despite a significant number of thorough scientific studies, there are no scientific works in modern terminology that systematically consider the issue of conceptual categories of the food industry terminology. The relevance of research is due to the need to systematize the English terminology of the food industry through the modeling of conceptual categories represented by linguistic means.

The aim of our work

The aim of this study is to investigate the categorization of the food industry terminological units according to the types of concepts they represent, as well as the percentage composition of the identified groups of the examined domain of knowledge.

Literature Review

When comprehending reality, human consciousness refers its fragments to certain categories, establishing common and distinctive features in comparison with other fragments. The establishment of a commonality of objects and phenomena of reality and the definition of a generalizing concept for it is a categorization as a cognitive process.

Scientific language operates with the concepts of the relevant subject area, which, based on their inherent features and nature of relations, are combined into broader concepts - categories that reflect the most general and essential properties of the objects of reality. The number of categories distinguished by researchers varies depending on the complete coverage of the relevant field of knowledge by industry terminology.

The issue concerning the classification of categories does not possess a single definitive resolution in the studies conducted by scholars.

D. S. Lotte, the founder of terminology, systematized technical terminology into four categories: 1) subjects; 2) processes/phenomena; 3) properties; 4) calculation concepts and units of measurement¹. S.V. Hrynyov-Hrynevych noted that the conceptual system can be simplified in the three broadest categories: 1) objects; 2) processes/state and 3) properties². According to the classification of T. L. Kandelaki³, the following categories are the most characteristic for scientific and technical fields of knowledge: 1) subjects; 2) processes; 3) states; 4) modes; 5) properties; 6) values; 7) units of measurement; 8) science and industry; 9) professions and occupations⁴. Classifying special concepts, A.V. Superanska, N.V. Podolska, and N. V. Vasylieva traditionally single out among them universal (general) categories: objects, processes, properties, quantities⁵. Along with D.S. Lotte, T.L. Tabanakova and A.V. Superanskaya, N.V. Podolskaya, N.V. Vasilyeva, S.D. Shelov⁶ also identifies the category of objects.

A review of publications devoted to the categorical analysis of terminologies shows that some types of concepts highlighted in the classifications proposed by different researchers coincide or are close in their content, while others are very specific. The number of categories may be different and subsequently change, which in turn depends on the degree of coverage of terminology belonging to one or another field of scientific knowledge. The typology of categories varies depending on whether the terminological corpora belong to technical, natural or human sciences.

¹ D.S. Lotte, *Fundamentals of construction of scientific and technical terminology: questions of theory and methodology*. Moscow: Publishing House of the USSR Academy of Sciences, 1961, p. 29.

² S.V. Grinev-Grinevich, *Terminology*. Moscow: Academy, 2008, p. 73.

³ T.L. Kandelaki, *Semantics and motivation of terms*. Nauka, 1977, pp. 9-11.

⁴ Ibidem, p. 9

⁵ A.V. Superanskaya, N.V. Podolskaya, *General terminology*. Questions of theory. Moscow: Nauka, 2003, p. 89.

⁶ S.D. Shelov, *Experience in constructing a terminological theory: the meaning and definition of terms: author. dis. ...* Dr. philologist. Scienc., 1995, pp. 3-13.

Materials and methods of research

The study was based on a sample consisting of over 1000 English terms related to the food industry, selected from specialized dictionaries and Internet sources within the field of food industry. The study was based on a sample of lexicographic data recorded in English specialized dictionaries: Oxford Companion to Food (2014), Food Industry Glossary (2006), Dictionary of Food Science and Nutrition (2007), International Food Information Service (IFIS) Dictionary (2012), USDA National Agricultural Library's Food and Nutrition Information Center (FNIC) Glossary (2007), Food Safety Glossary (2006) and explanatory dictionaries: Longman Dictionary of Contemporary English (2000), Britannica dictionary (2009), The Free Dictionary (2005).

During the analysis, we employed methods of comprehensive language material sampling, definitional analysis, classification, as well as comparative analysis and statistical method.

The use of comprehensive language material sampling ensured the representativeness of the collected data, extracted from specialized and explanatory dictionaries and Internet resources. Employing the definitional analysis method allowed us to explore the substantive scope of the terms. Utilizing the classification method, we correlated the terms with specific conceptual categories addressed in this research. The comparative analysis enabled the identification of thematic groups of terms associated with specific conceptual categories. The statistical analysis method was employed to determine the percentage ratio of terms within the food industry domain that corresponded to particular conceptual categories.

Conceptual categories

One of the relevant approaches to the study of terms is the categorical approach, which expands the possibilities for conducting interdisciplinary studies of languages for special purposes. The very idea of categorical division of reality in the ontological key and in specialized sublanguages in the terminological key highlights the need to study not a single term, but a whole category of terms for concepts. The categorical approach is based on the general scientific principle of consistency, since any science is characterized by consistency (as opposed to non-scientific or pre-scientific knowledge), which is expressed in the union of a certain number of objects, suggesting some relationship between them. Also in a narrower sense, terminology as part of the language of a particular science has a systemic nature: "Language is a system, all the elements of which form a whole, and

the significance of one element stems only from the simultaneous presence of others”⁷.

According to the definitions proposed in dictionaries, a (conceptual) category is “a format of structured knowledge of the cognition subject⁸, ”any set of objects, concepts, or expressions distinguished from others within some logical or linguistic theory by the intelligibility of a specific set of statements concerning them⁹. Categories organize a separate level in the conceptual-subject hierarchy of a special subject area. As a generic concept, these categories are used to denote objects of scientific-technical and natural-scientific spheres. The selected categories serve as a support and guide for professional thinking and professional activity.

Categories form classes of terms around themselves, integrated by categorical features on the basis of a general concept. Therefore, for our research, it will be necessary to identify the scientific concepts and means of their verbalization, which form categories of the sublanguage of the food industry.

Before proceeding to the analysis of linguistic material, we note that the sublanguage as a discourse of science includes not only the terminology itself, but also the general vocabulary that plays its role in the categorization and conceptualization of knowledge. With regard to the language of the food industry, it should be noted that the terminological vocabulary here falls into two obvious layers. Industry terminology is the terminology of generic sciences for the food industry, as well as related sciences: first of all, Chemistry, Biochemistry, Nutritional Science, Biotechnology, Food Engineering, Agricultural Science, Environmental Science, Microbiology, etc.

Actually terminological vocabulary (highly specialized terms) is a verbalizer of concepts developed and symbolically fixed within the framework of the food industry practice itself. Regarding the national vocabulary, then, terminological use is intertwined with everyday language. According to E. I. Golovanova, “ordinary knowledge is concentrated in common words, but through this ordinary knowledge logical, actually special knowledge “grows”¹⁰. Scientific concepts are often formed on the basis of every day, popular ideas, which determines the complex dialectical relationship of various types of knowledge in building

⁷ A.P. Martyniuk, *Dictionary of the main terms of cognitive-discursive linguistics*. KHNU named after V.N. Karazin, 2011, p.159.

⁸ Ibidem, p. 29.

⁹ Collins Dictionary.

<https://www.collinsdictionary.com/dictionary/english/category>

¹⁰ E.I. Golovanova, *Introduction to cognitive terminology: textbook*. Nauka, 2011, p.

a scientific picture of the world (in our case, the private scientific food industry).

The terminology of various scientific disciplines and their subject areas has its own set of categories. Let's explore the conceptual categories presented in the conceptual field of the food industry, which is the complex network of farmers and diverse businesses that together supply much of the food consumed by the world population. Although there is no formal definition for the term, the food industry covers all aspects of food production and sale. It includes such areas as the raising of crops and livestock, manufacture of farm equipment and agrochemicals, food processing, packaging and labeling, storage, distribution, regulatory frameworks, financing, marketing, retailing, catering, research and development, and education¹¹.

Based on the results of the analysis of the collected material in the terminosphere of the food industry, we distinguish 8 categorical groups, each of which was named by a key generic term: objects (18.8%), substances (23.7%), processes (20.2%), modes (11.3%), properties (12.4%), values and units of measurement (8.7%), sciences and industries (2.5%), professions (2.4%).

Category of Object

The first of the considered categories is "object". In Britannica Dictionary, we come across the following definition of an object: "An object is something that is a visible entity, something that can be perceived by the senses"¹².

Collins English Dictionary defines an object as "anything that has a fixed shape or form, that you can touch or see, and that is not alive"¹³.

The main characteristics of objects are: ' a visible entity', ' not alive '. Terms from the category of objects constitute a significant portion of terminology in the field of food industry (18.8% of the total sample). This is mainly due to the fact that, material objects are widely used in food production – machines, tools, and equipment that are integral to food processing, packaging, and preparation, etc. For instance: skimmer, blender, muesli, dough rolling machine, glazing unit, grinder packaging machine, canning equipment, filling station, conveyor belt, cooking vessel, refrigeration unit, slicing machine, bottling apparatus.

¹¹ *Food Industries, Food Standards Agency (UK).*

<https://www.gov.uk/government/organisations/food-standards-agency>

¹² *Britannica Dictionary.* <https://www.britannica.com/dictionary/object>

¹³ *Collins Dictionary.*

<https://www.collinsdictionary.com/us/dictionary/english/object>

These examples illustrate how the concept of objects is manifested in the terminology of the food industry, where various material entities are crucial components of the production processes and equipment. The concept of "objects" in this context highlights the tangible and functional aspects of the terminology related to the food industry.

Category of Substances

Our observations have revealed that the largest number of terms (23.7%), within the food industry terminology belongs to the category of "substances", which is represented by two subcategories: 1) "food products and beverages"; 2) "natural/synthetic substances." We believe that nouns denoting food products and beverages fall into the category of substances, as they consist of inorganic elements (water, minerals) and organic compounds (carbohydrates, fats, organic acids, vitamins, etc.), thus possessing the characteristic of 'substantiality.' An additional feature that classifies such nouns under the category of substances is the 'indication of uniformity in substance composition and mass. The two subcategories within the category of substances are differentiated based on the feature of 'substance purpose.' In contrast to food products and beverages, the second group of naturally or synthetically derived substances (various food additives) includes those that are not intended for direct consumption but are specifically introduced into food products at various stages of production or storage to enhance and intensify the manufacturing process, provide desired organoleptic properties to products, and increase their resistance to various forms of spoilage (food colorant, aromatic emulsion, brightener, gelatin, agar, carrageenan, etc.).

We present a classification of terms nominating substances within each subcategory. The subcategory "food products and beverages" includes terminological units that denote the names of various types of food products and beverages commonly found in the food industry: fruits, grains, dairy products, meat and poultry, seafood, baked goods, confectionery, beverages (alcoholic and non- alcoholic).

The second subcategory "natural/synthetic substances" is presented in nominations: 1) food colorants: natural colorants (e.g., beetroot extract, turmeric) synthetic colorants (e.g., red 40, blue; 2) flavor enhancers: monosodium glutamate (MSG), yeast extract, natural flavor extracts (e.g., vanilla, almond), emulsifiers lecithin mono-and diglycerides; 3) gelling agents: gelatin, agar-agar, pectin; 4) stabilizers: xanthan gum, carrageenan, guar gum; 5) preservatives: benzoic acid, sorbic acid, sulfur dioxide; 6) nutritional supplements: vitamins (e.g., vitamin C, vitamin D), minerals (e.g., iron, calcium), amino acids; 7) sweeteners: sugar (sucrose), high

fructose corn syrup, artificial sweeteners (e.g., aspartame, saccharin); 8) antioxidants: vitamin E, vitamin C, BHA (butylated hydroxyanisole) etc.

The category of substances, represented by an array of terms the food industry is one of the fundamental categories for the terminology of this field, as it has a pragmatic significance, which is explained by the need to accurately indicate a specific substance. The variety of terms naming substances illustrates the complexity and sophistication of food production and processing.

Category of Processes

The next, widely represented in the corpus of the food industry terminology is the category of “processes”, which encompasses a range of activities and phenomena within the food industry.

To determine the main features of the category of “processes”, let's analyze the definitions of the "process" concept given in explanatory dictionaries. The Britannica dictionary offers this definition of process: 1) a series of actions that produce something or that lead to a particular result; 2) a series of changes that happen naturally¹⁴. The Free Dictionary defines process as 1) a series of actions, changes, or functions bringing about a result; 2) a series of operations performed in the making or treatment of a product¹⁵.

The main characteristics of a process are 'change,' 'development,' 'action,' 'sequence,' with additional attributes including 'action object,' 'instrument (tool) of action,' 'conditions of action,' 'requirements for conducting action,' and 'orientation towards achieving a specific outcome.' The category of processes in the terminology of the food industry holds the second position in terms of the number of terms associated with it, following the category of substances. The group of nominations corresponding to the category of “processes” is 20.2% of the total sample.

This can be attributed to the significant number of human and technological actions performed at various stages of food product production. In the context of the food industry, processes play a crucial role in transforming raw materials into finished food products.

The category of “processes” is presented by three subcategories:

- 1) Labor Processes: calibration, washing, dough processing, filtration, stuffing, blending, cooking, baking, fermentation, packaging; grilling, roasting, smoking, freezing, sterilization;
- 2) Physico-Chemical Processes and Phenomena in Food Environments: coagulation, maillard reaction, crystallization, maillard browning, caramelization, adhesion of dough, deformation of dough pieces, self-

¹⁴ *Britannica Dictionary*. <https://www.britannica.com/dictionary/process>

¹⁵ *Free Dictionary*. <https://www.thefreedictionary.com/process>

pressing of cheese, cheddaring, formation of jelly texture, physical ripening of cream, crystallization of sugar, oxidation, hydrolysis, enzymatic reactions, dehydration, rehydration;

3) Methods of Researching Raw Materials and Food Products: sensory evaluation, thermogravimetric analysis, organoleptic assessment, alcoholometry, rheological testing, high-performance liquid chromatography (HPLC,) spectrophotometry microbiological testing, texture analysis, chromatographic techniques, microscopic analysis, sensory profiling, colorimetry.

Our research showed that the subcategories of product processing processes based on different types of products in the food industry the process are reflected in the food industry terminology. The terms of these subcategories cover a wide range of processes associated with the processing of products in these segments of the food industry: 1) Meat Processing; 2) Dairy Processing; 3) Fish and Seafood Processing.

The first subcategory Meat Processing is represented by these terms: slaughtering, evisceration, deboning, grinding, mixing (for sausages and processed meats), curing (salting, brining, or smoking), cooking, smoking, fermentation (for certain cured products), packaging.

The second subcategory Dairy Processing includes the following terms: milking, pasteurization, homogenization, fermentation (for yogurt, kefir, and cultured dairy products), coagulation (for cheese and curd production), cutting and draining (cheese production), aging and ripening (cheese and dairy products), churning (for butter production), fortification (adding vitamins and minerals), packaging.

The third subcategory Fish and Seafood Processing is represented by a number of following terms: cleaning, filleting, smoking, drying, canning, packaging, curing, marination, shellfish shucking and processing, freezing, cold storage.

The means of expressing the grammatical and lexical meaning of the action are the terms of procedural semantics and their structural word-forming elements. In the food industry terminology verbalizing the category of “process”, terminological units are widely represented with a number of specialized suffix term elements (-ion, -tion, -ing), which form terms with the meaning of action or process, for example: calibration, fermentation, sterilization, filtration, fortification, homogenization, coagulation, margination, grilling, roasting, smoking, freezing, filleting, canning, curing, freezing, deboning, grinding.

Reflection of the features of process in the food industry and its objects in the scientific language requires referring to the grammatical category of the word combination as the main nominative unit of terminology. Terminological phrases not only name and differentiate concepts that arise,

but also systematize paradigmatic relations between them, reflecting system connections units of a specific term system

The studied terminology is characterized by terminological models with structural elements of the object phrase, for example: adhesion of dough, deformation of dough pieces, self-pressing of cheese, cheddaring, formation of jelly texture, physical ripening of cream, crystallization of sugar.

To represent the category of "process" in the food industry terminology, terminological phrases with an attributive component can also be used, which have the ability to specify the meaning of a term through additional qualifying characteristics, such as: artificial coloring, brine curing, dry curing, nutrition labeling, smoke flavoring, vacuum packaging, spray drying.

A substantial portion of the terms representing the concept of "process" in food industry terminology is expressed through secondary nomination, primarily achieved through metaphors. Metaphorical terms in food industry, which articulate conceptualizations of processes, attempt to unite the novel and the familiar through the use of metaphors. The utilization of pre-existing linguistic labels frequently hinges on "common" stereotypical associations. These metaphors are rooted in analogies drawn from an intricate network of associations interconnected with processes, for instance: *food production pipeline*, this term metaphorically describes the sequential and systematic processes involved in producing food items, akin to a pipeline that moves materials from one stage to the next; *flavor fusion*, when different culinary traditions or ingredients from diverse cuisines are combined, this term metaphorically emphasizes the blending of flavors, similar to how elements fuse together in a nuclear reaction; recipe flow, in food industry operations, *recipe flow* is a metaphorical term representing the structured steps and stages that a recipe or food product goes through, emphasizing the process of preparation; *food infusion*, in culinary terms, "infusion" is used metaphorically to describe the process of steeping flavors or ingredients in a liquid, similar to how tea is infused with herbal flavors; *simmer down*, this common culinary phrase is metaphorical, as it describes the gradual reduction of heat and intensity in the cooking process when a liquid is brought to a simmer, emphasizing a process of calming and slow cooking. The term "*sausage factory*" is a metaphorical expression often used to describe a place or process where various elements are combined to create a final product. In the context of Meat Processing, it metaphorically represents the facility where different ingredients and processes come together to produce sausages. This metaphor emphasizes the complexity and intricacy of the meat processing procedures. The term "*cheese maturation*" metaphorically compares the process of aging and developing flavors in cheese to the maturation or growth of a living organism. This

metaphor highlights the transformative nature of the aging process in cheese, emphasizing how the flavors evolve and mature over time.

As the field of food technology and production continues to advance, new processes and techniques may emerge, further expanding the scope of this category in the terminology of the food industry.

Category of Modes

In the explanatory dictionary, the concept of "mode" is defined as "a set of parameters that characterize the functioning of the object"¹⁶. Concepts are used in the field of food technology "technological modes" as "a set of numerical values of the main parameters characterizing the environment or working area in which this technological operation occurs"¹⁷.

In the context of the food industry and technological processes, the category of modes refers to a set of parameters that characterize the functioning of a specific process or operation. A mode encompasses the numerical values of key parameters that define the environment or working zone in which a particular technological operation takes place. This concept is fundamental for maintaining consistency, quality, and efficiency in food production. The essence of the category of modes lies in attributes like "set of parameters," "environment," and "technological operation." The term "modes" in the context of the food industry generally refers to different sets of rules, regulations, or conditions that govern the production, distribution, and consumption of food products.

The number of terms representing the "mode" category is 11.3% of the total sample. The category of "modes" is represented by multicomponent terms of the food industry.

Multicomponent terms are characterized by the ability to identify multifaceted characteristics of the mode in the food industry. They help clarify, reveal and detail every aspect of the mode to ensure high standard of production and product safety.

Some of them are given below: quality standards mode, safety and hygiene mode, labeling and packaging mode, supply chain and distribution mode.

The terms representing the features of the mode category in the food industry terminology nominate a set of parameters that must be precisely controlled to achieve consistent and desired outcomes in food production.

¹⁶ V.T. Busel, *Big explanatory dictionary of the modern Ukrainian language*. Kyiv, Irpin: Perun, 2005, p.208.

¹⁷ L.L. Tovazhnyansky, V.A., Domaretskyi, A.M. Kuts, F.F. Gladkyi, L.A. Danilova, V.D., Hanchuk, P.O. Nekrasov, Yu.F. Snezhkin, I.V. Melnyk, *Theoretical foundations of food technologies*. National technical Kharkiv University. "Polytechnic institute", 2010, p.72.

The specificity of these terms lies in their ability to guide professionals in creating products with specific qualities, textures, flavors, and safety standards, for instance: baking mode for bread production, pasteurization mode for dairy product, drying mode for fruit dehydration, curing mode for meat products, fermentation mode for yogurt production.

Thus, the category of "mode", presented in multi-component terms in the food industry, reflects important aspects of regulation, covering the various components that determine the conditions of production, distribution and consumption of food.

Category of Properties

The concept of "property" is defined in the explanatory dictionaries as "a quality, a sign, characteristic of someone, something"¹⁸; a quality in a substance or material, especially one that means that it can be used in a particular way¹⁹.

The category of "properties" encompasses characteristics, qualities, and attributes that are inherent to objects or substances. In the context of the food industry, these properties define the unique features that contribute to the identification, evaluation, and understanding of food products. The group of nominations corresponding to the category of "properties" is 12.4% of the total sample.

The category of properties in the terminosphere of the food industry is divided into three subcategories:

1) inherent properties focuses on inherent qualities that define the physical and structural attributes of food products, such as color, flavor, texture, and aroma. For example, physical properties of milk is represented by these terms: density, viscosity, pH, freezing point; visual appearance of ground meat: texture on cross-section, color of meat.

2) qualitative (positive and negative) characteristics define the nature of the food product, including appearance, taste, odor, and mouthfeel. Positive qualitative characteristics: vibrant color, rich aroma, smooth texture, distinct flavor. Negative qualitative characteristics: discoloration, off-odor, unpleasant mouthfeel, bland taste.

3) quantitative parameters addresses the capacity and capability properties that describe the functional behavior of food substances during processing and consumption. Capacity and capability properties are presented in the following terms, for example, fermentative activity of preparations: fermentation rate, yeast growth, gas production; water-

¹⁸ V.T. Busel, *Big explanatory dictionary of the modern Ukrainian language*. Kyiv, Irpin: Perun, 2005, p.194.

¹⁹ *Cambridge dictation*.

<https://dictionary.cambridge.org/dictionary/english/property>

holding capacity of meat products: ability to retain moisture, resistance to exudate formation; rising ability of leavened dough, volume increase during fermentation, gas retention.

The category of properties in the terminology of the food industry is widely represented in the language by the grammatical category of an adjective. Adjectives name individual features (or properties) of objects, in contrast to nouns, with the help of which names are related to integral sets of features and properties. Reflection of the features of objects in the language requires referring to the grammatical category of the word-combination as the main nominative unit of terminology. The main number of such attributive phrases in the food industry terminology consists of two-valued phrases, that is, terms that include two words. The following terms can serve as examples: rich aroma, smooth texture, distinct flavor, bland taste, soft texture, fresh taste, pleasant smel, crunchy texture, flavorful taste, intense color, reflective surface.

Thus, the terms that verbalize the category of properties within the terminology of the food industry play a distinctive role in capturing and communicating the essential characteristics, qualities, and attributes of various food products. These terms serve as a foundation for understanding, evaluating, and differentiating food items, enabling professionals in the food industry to ensure product quality, safety, and consumer satisfaction.

Category of Quantities

Quantity expresses the external, formal relation of objects, their parts, their properties, their connections, number, dimension, set, element (unit), individual, class, degree of manifestation of this or that property²⁰.

In the realm of the food industry, the category of quantities encompasses numerical measurements that provide quantitative descriptions of the characteristics and relationships of objects and phenomena. Quantities are determined through measurement processes and are crucial for accurate analysis, scientific understanding, and precise communication within this field. This category is characterized by attributes such as "quantitative characteristic" and "measurement." The terms included in this category account for 8.7% of the total sample. The category of quantities in the terminosphere of the food industry is represented by the following terms.

Nutritional Labeling: nutritional information on food labels includes quantities of macronutrients (such as carbohydrates, proteins, and fats) and

²⁰ A. Spirkin, *Dialectical Materialism*, Progress Publishers, 1987, p. 128. Retrieved from:

<https://www.marxists.org/reference/archive/spirkin/works/dialectical-materialism/cho2-so9.html>

micronutrients (like vitamins and minerals) per serving, helping consumers make informed dietary choices.

Recipe Formulation: culinary professionals use precise quantities of ingredients to create consistent and delicious dishes, ensuring accurate taste, texture, and appearance.

Food Processing: food manufacturers use specific quantities of ingredients in product formulations to maintain consistent taste, quality, and safety across batches.

Quality Control: food quality assessments involve measuring quantities of attributes like moisture content, pH levels, and texture to ensure products meet desired standards.

Food Safety: quantities of preservatives, additives, and antimicrobial agents are carefully controlled to prevent microbial growth and ensure food safety.

Baking and Pastry: bakers use precise quantities of ingredients, such as flour, sugar, and yeast, to achieve the desired texture, rise, and flavor in baked goods.

Beverage Production: quantities of ingredients like hops, malt, and water are crucial in brewing beer, where precise ratios impact the flavor and characteristics of the final product.

Product Packaging: packaging materials are measured and cut to specific quantities to ensure consistent packaging sizes and prevent waste.

Supply Chain Management: quantities of raw materials are managed throughout the supply chain to ensure a steady production flow and meet consumer demands.

Fermentation Processes: in cheese and yogurt production, quantities of starter cultures and enzymes are carefully controlled to achieve desired fermentation outcomes.

The category of quantities within the terminology of the food industry is also expressed through symbolic signs, which carry specific numerical information and play a crucial role in conveying quantitative characteristics. These symbols provide a concise representation of measurements and quantities, ensuring effective communication and accurate implementation within various processes. Examples of such symbolic signs are the following terms.

Nutritional Labels: the "g" symbol represents grams, indicating the quantity of macronutrients and micronutrients present in a serving of a food product. This concise symbol helps consumers quickly identify the amount of nutrients in the product.

Temperature Control: temperature settings on ovens, refrigerators, and freezers are often depicted using symbolic signs such as degrees Celsius (°C)

or degrees Fahrenheit (°F). These symbols guide food processing and storage, ensuring that products are kept at safe and optimal temperatures.

Measurement Units: the use of symbols like "mL" for milliliters and "L" for liters indicates the quantity of liquids used in recipes, ensuring precise measurements for consistent results.

Weight Measurements: symbols like "kg" for kilograms and "g" for grams are commonly used to indicate the weight of ingredients in recipes, helping chefs and food manufacturers achieve the desired product characteristics.

Baking Times: clock symbols with numerical values indicate baking or cooking times. These symbols are essential for achieving the right texture and taste in baked goods and other food items.

Portion Sizes: symbols like "oz" for ounces and "lb" for pounds signify portion sizes on menus or packaging labels. These symbols assist consumers in understanding the quantity of food they will receive.

Nutritional Information: symbols like "%" are used to indicate the percentage of daily recommended intake of specific nutrients, providing consumers with information about the nutritional value of a product.

Concentration Levels: in food processing, symbols like "%" also indicate the concentration of certain ingredients or additives in a product, ensuring consistency and quality in the final output.

Expiration Dates: calendar symbols alongside numerical dates indicate the expiration or best-before dates of food products, helping consumers make informed choices regarding freshness and safety.

These symbolic signs serve as a universal language in the food industry, facilitating clear communication of quantitative attributes across diverse contexts. Their use ensures accuracy, consistency, and safety, as they provide a visual representation of quantities that is easily understood by professionals, consumers, and regulators alike.

The analysis of the studied terms showed that the quantity category in the terminology is objectified in terms and symbolic signs that express the quantitative characteristics of various aspects of the food industry, affecting product quality, safety, consistency and consumer satisfaction. Quantitative indicators are an integral element in the food industry.

Category of sciences and industries

In the explanatory dictionaries we come across the following definitions:1) **science** is any system of knowledge that is concerned with the physical world and its phenomena and that entails unbiased observations and systematic experimentation. In general, a science involves a pursuit of knowledge covering general truths or the operations of

fundamental laws²¹; 2) industry is the work and processes involved in collecting raw materials, and making them into products in factories²².

The main features of the category of sciences and industries include: 'knowledge', 'system', 'activity'. The number of terms representing this category is 2.5% of the total sample.

The category of sciences encompasses the following terms: Agricultural Science, Agronomy, Food Science, Culinary Science, Microbiology, Food Chemistry, Nutrition Science, Biotechnology, Enology/Viticulture, Poultry Science. This category is represented by such technical terms as oenology, food technology, food engineering, culinary arts, bakery and confectionery sector, viticulture and wine industry, meat industry, tea industry, etc.

These examples highlight the diverse range of fields of knowledge and economic activities within the food industry. Each example represents a specific science or industry related to food production, processing, or research. These fields contribute to the advancement of food technology, quality standards, and consumer satisfaction. Understanding the sciences and industries involved in the food sector is essential for professionals to make informed decisions, implement best practices, and drive innovation within the industry.

Category of Professions

Profession is any type of work that needs special training or a particular skill, often one that is respected because it involves a high level of education²³.

The category of professions encompasses various occupations and specialized areas of work within the food industry. These professions require specific knowledge, skills, and expertise and serve as sources of livelihood for individuals. Professions within the food industry involve distinct types of work and activities related to food production, processing, preparation, and more. This category is characterized by attributes such as "occupation," "specialized knowledge and skills," and additional features like "action object," "action nature," and "action instrument."

The category of professions is represented by a small group of terms (2.4% of the total sample), since the field of industrial engineering includes several dozen branches and sub-branches, each of which has its own specific types of work of the people who work in it. These are, for example, the following terms: food technologist, food safety specialist, culinary

²¹ *Britannica Dictionary*. <https://www.britannica.com/science/science>

²² *Collins Dictionary*.

<https://www.collinsdictionary.com/dictionary/english/industry>

²³ *Cambridge Dictionary*.

<https://dictionary.cambridge.org/dictionary/english/profession>

instructor, dietitian/nutritionist, confectioner, baker, disgorging, tea maker, marmalade-paste maker, etc. The meaning of the term correlates it with a special concept of a certain field of knowledge.

These examples showcase the diversity of roles within the food industry, ranging from culinary experts to professionals who contribute to food safety, quality, and consumer education. Each profession plays a vital role in shaping the industry and ensuring the production of safe, delicious, and innovative food products.

Conclusion

Thus, in the course of the investigation, we studied the categorization of terminological units in the food industry in accordance with the types of concepts they represent, and the percentage of nominations of selected subgroups within the considered field.

By analyzing a substantial dataset of over 1000 English terms sourced from specialized dictionaries and online resources, the research employs a range of analytical methods, including definitional analysis, classification, comparative analysis, and statistical techniques. Through these approaches, we have identified and thoroughly dissected eight distinct categorical groups within the food industry terminology. These categories encompass objects, substances, processes, modes, properties, values and units of measurement, sciences and industries, and professions, with each category receiving detailed scrutiny. In the studied terminology of the food industry, these categories perform the functions of classification, informativeness and identification. The statistical aspect offers a concrete understanding of the relative importance and prevalence of different types of concepts within the food industry terminology. The selected categories serve as a support and reference point for professional thinking and professional activity.

Consequently, the categorical approach to the study of terms expands the possibilities for conducting interdisciplinary studies of languages for special purposes. The study of the typology of terminological units in the analysis of the system organization of specialized vocabulary is of great importance for improving understanding and effective communication in specialized areas. Comprehensive analysis and categorization of terminological units provide valuable information for professionals, researchers and linguists interested in this specialized area.

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