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A LEGAL APPRAISAL OF NEGOTIATION AS AN ALTERNATIVE DISPUTE RESOLUTION PROCESS

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Abstract: *When disputes occur, it is not impossible for the disputing parties to attempt settling the disputes themselves. Negotiation is an amicable dispute settlement process that affords the disputants, an opportunity to settle their disputes by themselves without the intervention of a neutral third party. This article adopts desk-based method in appraising negotiation as an Alternative Dispute Resolution (ADR) process by examining what negotiation is, the potentials of negotiation as an ADR mechanism, the requirements and strategies for effective and efficient negotiation sessions. It also examined how negotiation can be better enhanced in settlement of contractual/commercial disputes where relationship fostering and continuity is important. The paper makes vital recommendations before conclusion.*

Keywords: Alternative Dispute Resolution, Negotiation, BATNA, Nigeria

1. Introduction

Human beings have different desires and interests and are relationship in nature. In a bid to satisfy these variants desires and interest, through various human interactions the possibility of conflict ensuing cannot be ruled out (Daibu et al., 2014: 106). Thus, when disputes occur, existing relationships, especially those of commercial/contractual nature need not come to an end as a result of the ensuing disputes (Fagbemi, 2015: 223). While the courts were set up as a formal dispute settlement platform, over the years, owing to factors such as formality of proceedings, relative high cost, lack of participation by the disputants, technicalities, wastage of time, etc. which are the hallmark of litigation in Nigeria (Akpata, 1997: 11). There is a sharp turn to more friendly, expeditious, party-centred, less expensive, dispute settlement mechanism culminating in the emergence of Alternative Disputes Resolution (ADR) which is the adoption of amicable, party-centred, informal dispute settlement processes aimed at achieving expeditious and less rancorous settlement of disputes (Akeredolu, 2019: 7).

Negotiation which is typically the act of disputants dialoguing with the aim of settling a dispute that has arisen by themselves without the involvement of a neutral third party is one of the ADR mechanisms available (Oweazim, 2017: 171). In fact, while there are several ADR mechanisms such as mediation, arbitration, Rent a Judge, conciliation, Early evaluation, etc., unarguably, negotiation is usually the first resort process as the disputants, even before resort to litigation, would attempt to dialogue with a view to settling their disagreement (Akeredolu 2016, P. 4). It is usually, the failure or ineffective/efficient deployment of negotiation that will necessitate or result to litigation (Borokini, 2006: 43-55). This paper examines the meaning and scope of negotiation, the nuances of negotiation especially, the requirements and strategies to

be adopted for effective and efficient negotiation aimed at settling a disputes. It also discusses the advantages of negotiation in comparison litigation and selected ADR mechanisms. Furthermore, it also examined how negotiation can be better enhanced in settlement of contractual/commercial disputes where relationship fostering and continuity is important.

2. The Meaning and Scope of Negotiation Discussed

Negotiation is derived from the Latin word *'negotiari'* which means *'to carry on business, do business.'* Negotiation is defined as self-counselling between the parties to resolve the dispute. In negotiation, parties, with their own will, by discussing politely and patiently, try to come up with a solution that is acceptable to both parties regarding the issue (Kaushik 2022, P. 1). It is any form of direct or indirect communication through which parties who have conflicting interests discuss the form of any action which they might take together to manage and ultimately resolve the dispute between them. Negotiations may be used to resolve an existing problem or to lay the groundwork for a future relationship between two or more parties. It must be noted that there is no compulsion for either of the parties to participate in the process of negotiation (Dani, 2020: 3). The parties have the free will to either accept or reject the decisions that come out of the process of negotiation. There is no restriction in the number of parties that can participate in the process of negotiation. They can vary from two individuals to the process involving dozens of parties. Unlike third party facilitated ADR mechanism, the outcome of a negotiation is reached by parties together without resorting to a neutral third party. The process is flexible and informal also ensures confidentiality at the choice of the parties. Negotiation may come to play in resolving conflicts, structuring commercial agreements, and managing social relationship to mention, etc. from the foregoing, it is obvious that communication is critical to the process of negotiation. Thus, negotiation is a direct process of dialogue and discussion taking place between at least two parties who are faced with a conflict situation or a dispute. Both parties come to realization that they have a problem, and both are aware that by talking to each other, they can find a solution to the problem. The benefits of compromised solution, it is believed, outweigh the losses arising from the refusal to negotiate. The goal of negotiation is "…. to reach agreement through joint decision making between parties" (Jeong, 2000: 168) As much as it is part of daily life, the nitty-gritty of negotiation needs to be understood, and skills sharpened especially when it gets to the formal and more advanced settings of commercial negotiations. Also it is an act that needs to be perfected for effectiveness and achievement of purpose. Before a decision is taken as to whether a matter should be resolved by negotiation or by other processes, the Best Alternative to Negotiated Agreement (BATNA) must be taken into consideration. Regarding scope, negotiation can be used to settle a wide range of disputes. There are no civil disputes which parties are prohibited from negotiating with the aim of settlement from commercial to contractual and even matrimonial disputes.

1.1. DETERMINING YOUR BATNA

Where parties fail to reach an agreement in a negotiation, several alternatives are available to them. The most preferable of the alternatives is called the Best Alternative to a Negotiated Agreement (BATNA). The option for BATNA is however due to the fact that what

was desired when negotiation was employed will not (or did not) provide the result expected (proving a failed negotiation process). This therefore means that, the moment a best alternative to a negotiated agreement is found, the alternative becomes the option that brings limit to discussion. This limit will therefore be the worst case scenario. No one will invariably be willing to go below the BATNA (Ajetunmobi, 2017: 190).

In accessing your BATNA which require skills and preparation, the focus must not be on pecuniary gains. Factors such as the time required to strike the deal, risk, tolerance and relationships must be considered. A more tasking aspect is the ability to gain information on the best alternatives available to the other party (Ananaba, 2016: 148). This requires hard work. The ability to know the BATNA of the other party is crucial so as to enable the negotiator determines the offers that are acceptable in the process of bargaining. Moreover, assessment of the BATNA of both sides aid in foreknowing if there is any possibility of agreement between parties to a negotiation and also lead to determining whether there is much room to bargain or little. While considering the BATNA of the parties involved in a negotiation, it is possible to determine a point of connection (or agreement) between the parties. This point of connection is known as the Zone of Possible Agreement (ZOPA). Based on this, a ZOPA is achieved when there is an overlap of the bottom line position. For instance, in negotiating for the awards of maintenance of children in a divorce suit, the mother's bottom line may be N12, 000.00 per month while the father's bottom line may be N8, 000.00; due to the large difference in the parties' requests, it can be concluded that there is no ZOPA. However, if the father's bottom line (i.e. the amount he is willing to part with) is N15, 000.00 per month, and the mother's bottom line (i.e. the amount she is willing to receive) is N12, 000, then a Zone of Possible Agreement (between N12000 and N15000) exist. When there is a proper evaluation of BATNA, the possibility of coming out of a negotiation with good award is strong. Inability to determine ones BATNA and that of the other party can lead to an outcome that is below what the best alternative could provide. Negotiation has the advantages of confidentiality. The proceedings and all that pertains to it is exclusively between the negotiating parties without any third party involvement. Also, it is party-centered as same is tailored to suit the parties since they are fully in charged unlike like arbitration and particularly litigation where the disputants have little or insignificant control over the proceedings. It is capable of fostering relationship and best suited for the settling commercial/contractual disputes in which relationship is crucial. Compared to all other third party enabled ADR mechanisms and as well as litigation, negotiation is less expensive. No fees is paid to a third party who facilitates the proceedings or represents any of the parties in most cases. It is more expeditious with regard to settlement or otherwise.

1.2. Negotiation Strategies

Negotiation is an art that thrives on several skills. The techniques used by negotiators to accomplish their true goals and come to a consensus on the subject of the negotiation are known as negotiation strategies. The nature of the dispute as well as the timing are major determinants of the strategy that a negotiator will adopt. The strategy adopt will impact the outcome of the proceedings. Competitive and cooperative strategies are the two different categories of negotiating tactics negotiators often adopt. A succinct adumbration of these two strategies in hereunder undertaken.

a. Cooperative Approach

The cooperative approach, also known as the problem-solving approach, is distinguished by its win-win strategies. The goal of the negotiations is to reach a mutually beneficial agreement that allows for the peaceful resolution of disagreements. The goal of the negotiations is to reach a mutually beneficial agreement (Gibson, 2022: 1). Cooperative negotiators look for common interests and compare the parties' disparate assessments of the items. They then work together to look for options and a solution that will best serve the interests of both parties with the other negotiator, who is seen more as a partner than an opponent. Because it places a strong emphasis on integrating the parties and identifying the best cooperative solution, this strategy is commonly referred to as integrative bargaining (Foldberg, et al., 2016: 61).

Additionally, in order to implement the win/win approach, negotiators must establish a boundary between the parties and the issue that needs to be resolved. By doing this, problems are settled and the personalities of the parties involved are maintained; they pay careful attention to the goal they set out to accomplish and refrain from taking an uncompromising position that could endanger the entire process; they show creativity in coming up with multiple options that allow the process to be successfully negotiated; and they decide that the outcome of the negotiations will be determined by some objective, measurable yardstick. Negotiations can be successful without jeopardising future relationships if the parties agree early on to allow for a fair and equitable process that prioritizes objectivity by using the collaborative strategy.

It is important to remember that the type of transaction and the surrounding conditions will determine the appropriate approach.

b. Competitive Approach

Win/lose tactics define the competitive approach, also known as the positional approach. It happens when one party makes a stand and is unwilling to back down or give in to pressure from the other. The participants in this strategy uphold a winner-take-all mentality. Parties turn to plotting in order to attain their objectives and obtain the upper hand. The strategy makes the parties competitive. Relationships between the parties and other intangibles are not as important in a competitive approach. This tactic is detrimental and typically results in a situation where the defeated party is left with a bad taste in their mouth. This approach's shortcomings render it inappropriate for parties who intend to keep their relationship going after the dispute is over. The strategy might also result in a lose/lose scenario where both parties are adamant about their positions and won't budge. In such cases, the parties' relationship might be strained and terminated.

The benefits of this strategy include winner-take-all outcomes and a sense of fulfillment for the victor. However, the drawbacks include potential strain on relationships (commercial, familial, etc.); loss of future opportunities for the party that lost the negotiation; and the possibility of a deadlock in which the losing party also chooses to take a stand and cause losses for both parties. This strategy is unsuitable for settlement of commercial or contractual disputes in which continuity of relationship is important. As a result, it is not to be adopted where continuity of relationship is necessary.

2. Negotiation Tactics

Many people believe that winning is the only outcome in negotiations; anything less is acceptable. For many, it's a "win at all costs" situation. With this kind of thinking, negotiators are more likely to employ any kind of tactic (many of which are unethical) to achieve their objectives. Because of this, negotiators sometimes use various strategies to accomplish their self-serving objectives. Some of the tactics adopted by negotiators are examined hereunder.

i. Promise

This strategy is based on the idea of using future advantages as a ruse to get an instant concession (I'll buy from you more frequently if you sell me this for less money). Negotiators frequently find themselves in a position where they are promised future transactions in exchange for making concessions in the current transaction. However, negotiators must keep in mind that, as desirable as future deals may be, the present should not be sacrificed in favor of a deal that might never come to pass.

ii. Bloated Negotiating Team

The goal of this trick is to intimidate and harass the opposition. The way this trick is executed is by outnumbering the opposition in terms of negotiators per team. Bringing in specialists from every pertinent area of the negotiation process is one way to accomplish this. Nonetheless, the sheer number of people on the other side won't intimidate a knowledgeable negotiator who has prepared themselves sufficiently (Julian, et al., 2003: 165).

iii. Threats

Threats are a tactic used by one side to coerce the other into making snap decisions that could harm their case. This occurs particularly when the person making the threats has information or an advantage over the other party. A skilled negotiator will consider both the potential threat and the consequences of noncompliance. When the person being threatened has the ability to read the other person, the threat will not be effective. In the end, this starts to work against the negotiator making the threat.

2.1. Extreme Initial Position

The extreme initial position is a tactic commonly used by competitive negotiators by setting the initial stakes high and expecting the other party to make an offer that will fall within the range of acceptable position. This tactic works more where the other party is not well prepared for negotiations. When the necessary information is not harnessed to know the options available and how to respond, the party becomes vulnerable to the antics of the other party. The danger in this position is that party may view the other party as unserious and may respond in an outrageous manner. This situation makes the parties far away from arriving at a consensus. Negotiating for a property, the assignor may fix a price that is very high and if the buyer is not aware/ informed of the worth of such property in the area may eventually pay more than the property is worth.

2.2. Psychological Ploy

This trick is often devised by negotiators on their opponents to secure favourable concessions for themselves even if it is detrimental to the other party. The psychological ploy can be used in various ways, like feigning ignorance or lack of competence. A party in opposition negotiation may use this trick to gather information not available to him in order to strengthen his negotiation (Ezejiofor, 1997: 17). The psychological ploy tactic can also manifest in a situation

where in the team of a negotiating party one of the team acts as a mediator. This ploy is devised in the situation where by all other members are unyielding and difficult in their demand but this fellow plays the devil's advocate breaking the truce between his team and the other party to reach a negotiated agreement where ordinarily there would not have been. The kind of agreement reached in this instance is to the advantage of the mediator's team.

2.3. Deadline

Negotiators will always seek to close a deal in no time by issuing deadlines. When deadlines are issued, it pressures the other party into taking a not well thought out decision, especially if such depends on the outcome of the negotiation to take other decisions. For instance, if a man owes a bank and he has a property he wishes to sell to offset the debt, the other party may have information that might be used to rush him into decision and which will not be favourable to him. Therefore, before rushing to meet a deadline, a negotiator should weigh the consequences of not meeting the deadline (Ekwenze, 2011:8). He should be faced in determining what in real terms will be the price to pay for losing this deal as against other options. A negotiator should be wary of issuing deadlines that he does not intend to follow up, which labels him as unserious and lacking integrity.

2.4. Nibble

Nibble is a tactic that can be used by a party on whom an advantage has been conferred. It is like an Oliver Twist asking for more. This trick comes to play after parties have concluded negotiations and a party brings up a request for an additional concession which may look intangible but ordinarily would not be conceded if it was brought up during negotiation.

From the foregoing it is important that a negotiator be adequately prepared before going to the bargaining table. Being able to recognise the opponent's approach and ability to decipher the tactics employed by the other party per time and means of avoiding falling into the trap is important for a successful negotiation.

3.1 Sources of Power in Negotiation Proceedings

The context of power in negotiation is the ability to exercise control over the outcome of discussions between the parties during negotiation. It is a power play that can sway the process on the part of the negotiator that can play it well. Sometimes there are some factors that lead negotiation to a particular predetermined end.

These factors have power to control the process of negotiation and thereby bring the deal in the favour of the party with such power. This power may be real or imagined. The power is real when a party is in direct possession of what it takes to direct the deal to conclude in his desire. It is imaginary when the other party feels or thinks, his opposing party is capable of leading the deal in his direction of interest. There are however several sources of power in negotiation (Adam et al., 2021: 1).

It may take months for parties in negotiation to come to an agreement and when parties are getting ready to seal the deal, a party may then declare he has power to negotiate but not make final decision, therefore may need to resort back to his principal or some authority to approve or ratify the agreement. This tactic often is a plot to buy time to have a further

deliberation or review the offer made by other. It is advisable at the beginning of negotiations that the issue of authority is cleared by both parties.

These sources include.

a. Competition

Competition here refers to the commodity in question. This arises when a party has sole right and ownership of what is desired by other parties. The scarcity involved in the commodity drives the negotiation in favour of the owner. This is similar to a monopolistic market, where there is one seller and many buyers. The fluctuation of the price of such commodity is also the prerogative of the owner. He can deliberately manipulate the negotiation to his favour. However, where there are competing commodities or several owners of similar commodities, the direction of negotiation can be partly controlled by both the buyers and sellers. This is similar to the law of demand and supply in which when there is scarcity of supply while there is surplus in demand, the price is high and vice versa.

b. Legitimacy

In negotiation, legitimacy is another source of power. The validity placed on items, commodity or transaction may influence the negotiation. For instance, a NAFDAC approved drug or food item will easily attract buyers to negotiation. This official approval will also sometimes affect the price tag as against another original product without a NAFDAC approved number. Another example is a titled land with appropriate Certificate of Occupancy. Such property can attract better negotiation than one without a title.

c. Information

Information is another strong source of negotiation. The level of information available to a party on a deal will put the party at advantage. The available but scarce information can become the wheel of manipulation in a negotiation, most especially when the other party is unaware of such viable information. More so, when a party has prior knowledge about the interest of the opponent in a negotiation the party is put in an advantage. Such information can be useful in directing the course of negotiation.

d. Time

Business deals are always timely. The gauge of time is an important factor in striking a deal. Some businesses depreciate with time while some others appreciate. When time constraints are placed on a deal, the parties in negotiation are pressured to end the deal before the set time. Whatever negotiation that would be is fixed within the time limit. It is required that all negotiations must be concluded before the deadline. Most times, negotiations close to deadline are always hurried and this many at times influence the outcome.

e. Investment

The investment power in negotiation works like a golden handcuff. It is used to get the opponent to make commitment at the beginning of a deal. A party who has invested so much in a business will be very unwilling to part with the business just because of his huge investment, even though he is no more willing to continue with the business. The size of such investment may be used by negotiators to persuade the other investor to make larger concessions in the future and to hold down his interest. The reasoning behind this is that with the investment made, the party will feel a sense of loss to rescind the transaction.

On the long run even when faced with a situation that he would not have ordinarily consented to he will be unwilling to relinquish the transaction because of the investment at

stake. Having discussed what power is in negotiation, a negotiator must understand his source of power and be able to use it to his advantage, and likewise he must be able to identify the opponent's source of power so as to be able to counter them when it will be to his own disadvantage.

f. Precedent

Cases in court are based on strategic precedents. The outcome of a decided case can be used to determine the case at hand. This is also similar to negotiation. The current practice in a business can be used as a negotiating factor to decide on a transaction. Where this is the case, it is concluded that precedents around the business is being used to make appropriate decision.

3.2 Negotiation Process

The phases in negotiation and how important it is for a negotiator to be adequately prepared for, and thoroughly understand the dynamics of each of the phases is what this aspect is aimed at. Negotiation is a process which is psychological and physical. Generally, negotiating follows the following processes. There is the preparation stage. The saying goes that he who fails to prepare is planning to fail. Developing good plans and preparation are important to the success of any negotiation. A negotiator must have a mental picture of what he plans to achieve and set out an articulate agenda to guide the process (Rosen 1999, P. 567). As events unfold in the course of negotiation, methods and strategies may change but the agenda in place guides and helps the negotiator from deviating from the substance of negotiation. It is necessary for a negotiator to do his homework well, gather all relevant information and have thorough understanding that is necessary about the transaction before going into the mainstream of negotiation. During preparation, certain issues need to be considered. These are that a negotiator must know the other options open to him and that of the opponent in the course of negotiation if they fail to reach a consensus. In all the options open to a negotiator the best of the options on the scale of preference is called the Best Alternative to Negotiated Agreement (BATNA). This helps in knowing and assessing the limit of negotiation award. Also, a negotiator needs to prepare get to meet the other party. The opposing negotiator and the corporate entity or individual he represents, get enough information about their background and personal traits. Uncontrolled emotions are capable of running a negotiation process as a result, at the stage of preparation, a potential negotiator needs to master the art of emotional control so that it does not affect the proceedings and ultimately, the outcome. To achieve success, the negotiator needs review the negotiation plan and tactics intended to be deploy in the course of the negotiation just like a case theory in litigation.

Review your plans and tactics, and prepare for how to respond and manage surprises that spring up in the course of negotiation. The negotiator must detail the bargaining work plan, determining the upper and lower limit, and also develop negotiation work plan detailing the bottom line, acceptable and the ideal positions. There is the need to be proactive, think ahead, and envisage circumstances that may warrant digressing from your agenda and how not to be derailed from achieving your end goal.

The initiation stage is first in line before the bargaining stage in negotiation. This stage is very crucial because on it rests the success or failure of the whole process. At this stage each of the parties will state their case, establish the real facts, and state the main issues to be

addressed in the negotiation. The parties present their problems from their different points of view in accordance to the needs the parties want addressed. At this stage also there should be no display of emotions in stating the problem, there is a need to thread softly and be cautious of just marshaling your position on the matter because it poses the danger of each party maintaining their own position rather than seeking opportunity for mutual gains. In addition, parties should state clearly and have a thorough understanding of issues in dispute. This helps the parties to focus on the issues (Onigbinde et al., 2015: 4). By establishing the real facts parties will separate the supporting facts from conclusion and test all assumptions. Where parties intend to adopt the collaborative strategy, the initiation stage is the time to set the tone, check for common grounds between the parties to agree on. Who should open discussion may become a problem. There are different ways to resolve the problem which include considering the subject matter of the transaction, the custom of the trade may indicate who starts up the discussion. The venue of the meeting may determine the one who takes the first shot. Negotiation may be opened by the party hosting, or from whose instance the meeting is convened. The person with a weak case can allow the other party to open discussion to be able to ascertain whether the other party is aware of the weakness. Where a party has a limited information, the onus of starting discussion maybe shifted to the other party which may also help gather information from the other party.

3.3 The Negotiation Phase and Process

This is the phase where all the preparations of the parties come to the test. The negotiation stage is also called *the bargaining phase.* This is where the parties' bare issues and analyze their options. Here they agree on points noted at the preliminary stages. Also, the negotiation phase is one for persuasion on both sides to accept offers and counter offers by either party. It is a time to influence the other party to come into agreement. The success of this phase is based on the strategy adopted by the parties in bargaining. Where the competitive strategy is adopted then parties will play the power game by using different kinds of tactics to make the opponent accept their position. The tactics include but not limited to extreme initial position, use of threat, deadline, and nibble (as explained earlier) (Pamboukis, 2019: 3).

In a situation where parties adopt the collaborative strategy, the bargaining phase should be used to discover, synchronize and decide options that will meet the respective needs of the parties. In order to do this, negotiators must understand the three elements at play in negotiation. These elements are the subject matter of the negotiation which is the crux of the negotiation which they parties are attempting to resolve, the standpoint which is the position taken by each party to the negotiation. Without a robust understanding of the standpoint of the other negotiating party, a negotiator may negotiate only to realise that the whole exercise had been misunderstood or their minds never really met. Another element is the interest. Interest refers to the fundamental concern and prospects of the parties that would be affected by the agreement in the transaction. The outcome of the negotiation, is bound to impact the relationship of the parties one way or the other. Thus, at this stage, the communication skills of a negotiator come in handy, he must know how to use them to maximize his benefit.

It is not uncommon in the course of negotiation for the parties to have a stalemate situation, where in the course of negotiation a party remains keen on his point not to shift position. Even when parties have adopted the win-win strategy, this does not totally negate a

stalemate situation. This happens especially where parties fail to agree on the appropriate means of solving the problems identified or even where one of the parties in the course of negotiation decide to adopt the win-lose strategy.

3.4 Concluding Phase of the Proceedings

This is the climax. Both parties would have discussed and reached a conclusion on pertinent issues in the transaction. At this stage parties must ensure that all queries and objections raised at the bargaining phase are addressed. At this point the pertinent issues are resolved, details of the agreement are modified, and all necessary for an enforceable agreement have been dealt with. Previous agreements are reviewed and possibly exchanged between the parties for modification or correction. Parties reach an overall and final agreement and reduce their agreement into writing. They may both agree on the form of documentation. There are specific instances where the form of documentation is prescribed. The parties must ensure that they embark on negotiation without any form of concealment or anything that is capable of unduly prejudicing the proceedings (Lew, 2003:180). Where anyone of them, negotiate without good faith, the agreement reached is vitiated and may be rendered unenforceable. Thus, there must be mutual trust and transparency throughout the negotiation (Carbonneau 1994: 194).

4. Skills required for Effective and Efficient Negotiation

For an effective and efficient negotiation, certain skills are required. One of the skills required is listening skills. The potential negotiator must be able to listen keenly without interrupting the other party in the course of the proceedings. Listening will enable the parties identify the areas of agreement and disagreement and to understand the dispute. Where a person allows the other the opportunity to speak uninterruptedly, chances are that the party speaking, feel safe and more willing to reason towards settlement. Another skill is persuasion. Negotiation is all about skillfully persuading the other party to reason along with one's position so as to gain advantage. Where either or both parties are antagonistic, it is certain that the negotiation will breakdown (Abimbola, 2013: 27). There is also the question asking or inquiry skill. In negotiation, it is generally advisable to ask open-ended as opposed to close-ended questions. Probing questions may only be asked when the proceedings are advanced and not at the beginning so as to avoid giving the wrong impression. Being time conscious is another skill. Ability to manage time in the course of the proceedings is germane. While opportunity for honest and sincere conversation should be given, the negotiator must ensure that irrelevancies are totally eliminated in the course of the engagement so that time is not wasted (Mbam, 2016: 216).

5. Conclusions

Negotiation is one of the ADR platforms available to disputants which can be deployed for the amicable settlement of their disputes. ADR has emerged as an alternative and complimentary to litigation owing to the inherent challenges of litigation. Negotiation is party-centered, informal, less expensive, expeditious, relationship fostering, confidential and non-combative. For a person to engage in effective negotiation, there is need to possess certain skills such as listening, emotional intelligence, note-taking, and attentiveness. In negotiating,

parties can adopt the tactic of promise, threats, psychological ploy, extreme initial position, nibbles, etc. Each stage of the negotiation proceedings from the preparation through the actual negotiation to the conclusion, a negotiator must stay focused on the goal and willing to make compromises to arrive at an agreement. Where the parties negotiate in utmost good faith and without any vitiating element, the outcome is binding and enforceable.

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DILATORY ADJUDICATION OF DISPUTES IN DOMESTIC AND INTERNATIONAL LEGAL PROCEEDINGS

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Abstract: *Dilatory or delayed adjudication of disputes has always been a threat to justice. This trend is not peculiar to any State or region. It is universal. Courts at domestic and international levels have grappled with it. This article embarks on a detailed exposition of specific cases and how the actors' conduct bogged down the court's affairs. It highlights the unique ways that the States, International Organisations, litigants, legal representatives and the courts have abused time limits meant to perform legal acts. This article constrains itself to Nigerian courts, the International Court of Justice, and the United Kingdom. This article is expository, not comparative. It proffers statutory amendment and stricter measures by the courts as the way forward.*

Keywords: *Dilatory, Delay, Enlargement, Extension, Time limits, Timeline, Timeframe*

1. Introduction

*It is trite law that a Defendant who has no real defence to an action should not be allowed to disturb and frustrate the Plaintiff and cheat him out of the judgment he is legitimately entitled to by delay tactics aimed at not offering any real defence to the action but at gaining time within which to continue to postpone meeting his obligation and indebtedness***.**

Ignatius Igwe Agube, Justice of the Court of Appeal of Nigeria, in *Hyd Road & Others Tech ltd & Anor v. Abia State Govt & Anor (2014)*

This action was initiated as per suit No: FHC/L/CS/591/95, nearly thirty (30) years ago... To make matters worse, this appeal was left "hanging" in this Court since the Appellants transmitted record on 9/11/2006. Sadly, both Counsels involved had been Counsels in this matter from the trial Court. This form of practice is highly deprecated.

Helen Moronkeji Ogunwumiju, Justice of the Supreme Court of Nigeria, in *Dike Geo Motors Ltd & Anor v. Allied Signal Inc & Anor (2024)*

Time cannot be divorced from the law. Any attempt to do so will reduce efforts at justice to nought. Often, persons who have business in the court refuse to operate within this truism. The blame for this conduct is usually shifted from the litigants to the lawyers, then ultimately to the judicial system. In *Obasi v. State* (2020), the Supreme Court of Nigeria held that waste of time in proceedings could be caused by either the parties or the court. It is natural for litigants to act through their Counsel/Legal Representatives. Hence, it makes sense that lawyers are counted as parties for the position in *Obasi v. State.*

Peters G. (1979) made great attempts at describing delays in relation to judicial proceedings but made some mischaracterisations. He described it as ‘case processing time in excess of what is considered normal, appropriate, or necessary’. He mischaracterised court

congestion and backlog as unconnected to delays in the adjudicatory process. He maintained that cases not yet at trial or appeal should not be taken into account when considering delayed cases. He was more concerned with delays in proceedings for which the court has started sitting rather than the generality of affairs, which would have a bearing on the entire adjudication process. Contrary to Peters' position, the author here is of the view that dilatory adjudication of disputes is an incidence of conduct before, during, or after judicial proceedings, which slows its progress. What matters is that more time than appropriate has been expended to perform an act before, during or after the proceedings in court. This conclusion will be vindicated in this paper. Statutes generally provide time limits within which to perform certain acts. Failure to perform the act within the prescribed time creates a bar on the act. However, there are usually allowances afforded in certain circumstances. For instance, an appeal to the Court of Appeal in Nigeria shall be filed not later than three months from the date of judgement and ninety days for criminal matters. An appeal to the Supreme Court of Nigeria shall be filed within three months from the date of judgement, thirty days in criminal cases. But a party that is out of time can apply for enlargement of time. The various rules of courts empower the courts to enlarge these timelines when the applicant has shown a good cause to do so.

In the same vein, the International Court of Justice (ICJ) in The Hague, Netherlands, is no stranger to the practice of time limits and enlargement of time. The Rules of the ICJ provide time limits for State Parties to perform certain acts in proceedings before the ICJ. The ICJ prescribes the time limits for the filing of written pleadings and can extend it if there is justification to do so. The Statute of the ICJ also recognises the power of the ICJ and the President of the ICJ to prescribe time limits for advisory opinions. Of significance is Article 48 of the Rules of the ICJ. It provides that 'Time-limits for the completion of steps in the proceedings may be fixed by assigning a specified period but shall always indicate definite dates. Such time limits shall be as short as the character of the case permits'. The requirement of definite dates and shortness of time underscores the importance of time in the affairs of ICJ.

2. Nigerian courts and the quagmire of extension of time

In 1986, the Supreme Court of Nigeria delivered an instructive judgement in *R. Lauwers Import-Export v. Jozebson Industries Co. Ltd* (1988). It all began in 1984 when the Plaintiff (Lauwers) sued the Defendant (Jozebson) at the High Court of Anambra State to recover the debt of ₦1,176,382.54. The Defendant later admitted the sum of ₦904,644.39 in addition to ₦2,500.00 as cost. On 20 March 1984, judgement was delivered by Nwokedi. J in favour of the Plaintiff based on the admissions of the Defendant. On 30 April 1984, the Defendant, through its Counsel, applied to the court to pay the judgement debt by instalment. The application was heard on 29th May 1984, and the court ordered a down payment of ₦250,000.00, then ₦30,000 monthly until full payment is achieved. Still dissatisfied with this arrangement, the Defendant applied for leave to appeal the Order, but the application was struck out for the non-appearing of counsel or the parties on 15 June 1984. The Defendant started paying the judgement debt. But at some point, the Defendant stopped making payments. From 1984 to 1986, the Defendant paid only ₦432,851.05 to the Plaintiff. The Plaintiff levied execution on the properties of the Defendant to recover the outstanding sum. On 28 April 1986, Awogu. J disallowed the Defendant's application to have the writ of execution set aside.

Maybe as an afterthought, on 8 July 1986, the Defendant applied to the Court of Appeal for an enlargement of time within which to appeal the judgement of Nwokedi. J of 20 March 1984. On 23 September 1986, the Court of Appeal granted the application for enlargement of time. From 20 March 1984 to 23 September 1986 was exactly two years, six months and three days of wasted time. This was way beyond the three-month time limit stipulated by law to appeal a judgement, and the Plaintiff wouldn't have it. Hence, the Plaintiff appealed the enlargement of time granted in favour of the Defendant to the Supreme Court.

The Supreme Court held that one of the conditions *sine qua non* for granting an application for an extension of time to appeal a judgement is that the applicant must show good and substantial reasons for failing to appeal within the time limit prescribed by law. It is vital to reproduce the three main reasons deposed by the Defendant in paragraphs 20, 28, and 33 of his Affidavit as reasons for the delay:

> **Para 20**: That I do not know anything about court processes and procedure, and I relied entirely on my Solicitor N.C.O Okwudili Esq for my defence and guidance
>
> **Para 28**: That our former Counsel N.C.O Okwudili did not tell me or advise me, and I did not know, not being a lawyer, that we could appeal against the judgment
>
> **Para 33**: That our failure to appeal within time was due to no fault of ours but due to either inadvertence or an error on the part of our former solicitor in not appealing or advising us to appeal against the judgment.

The Supreme Court recognised that the Defendant was deeply out of time, and by way of a general rule stated as follows:

> [T]he Court will not visit the sins of counsel on their clients. So, where reasons for delay in appealing within time are attributable to mistakes, negligence or inadvertence of counsel, an application for an extension of time will generally he granted

However, upon specific interrogation of paragraphs 20, 28, and 33 above, the Supreme Court refused to accept them as true. The Supreme Court recounted that at no point did the Defendant mention in the affidavit that he sought the advice of his former counsel Okwudili on whether to appeal the judgement of 20 March 1984. Recall that Okwudili represented the Defendant in the application to pay the judgement debt by instalment on 29 May 1984. Again, it was the same Okwudili, who on behalf of the Defendant, filed an application for leave to appeal the Order of payment by instalment. The Supreme Court then asked: "How can anybody take the Defendant serious when he said that he did not know that anybody could appeal against an Order of court?". Okwudili could not have made these past representations if not on the direct instructions of the Defendant. Hence, the claim of ignorance by the Defendant in the Affidavit was bogus. The allegation of negligence against Okwudili couldn't hold water. Based on this and other reasons which are not germane to this paper, the Supreme Court allowed the appeal and dismissed the enlargement of time granted by the Court of Appeal.

Contrary to the argument of Peters G. (1979) that delay is unconnected with matters not yet in the court, the delay in this case was caused by post-judgement conduct. Remember, the High Court had already decided the substantive suit, became *functus officio*, and the Defendant

had already started paying the judgement debt by instalment. At that point, the matter was no longer in any court. It was the failure of the Defendant to fully comply with the judgement debt and the consequent levying of execution on its property that gave rise to the appeal, thereby making the appeal look like an afterthought. It was indeed an afterthought because a litigant who wishes to appeal a judgement would apply for a stay of execution and appeal the judgement immediately after the High Court delivers it. The Defendant did none of those, rather complied with the judgement for two years and then decided to appeal.

Nevertheless, in *Obasi v. State (supra)*, the Appellant (Obasi) was absent for over forty sittings of the High Court and about fifteen adjournments were had on his account. He applied to the High Court to dismiss and discharge the criminal charges against him for lack of fair hearing due to the incessant transfer of judges who were meant to hear his case for over twenty years. The Respondent, on the other hand, insisted that the Appellant and other co-accused persons consistently made excuses to avoid attending the court for the proceedings to move forward. At some point, the court got tired and issued a bench warrant to compel their presence after they had gone ahead to commit the same crime they were charged with against another complainant. The High Court, the Court of Appeal, and the Supreme Court denied the application for dismissal and discharge. The Supreme Court remarked that the Appellant "must not be allowed to benefit from the delay he caused".

The Court of Appeal in *Anudu v. Olisahi* (2018) observed that if a Counsel deliberately employs delay tactics to frustrate the court, the latter can act against the former's interest, and it will not amount to a violation of the right to a fair hearing. In 2018, the Supreme Court rebuked a Counsel who bogged down the main suit at the trial court with a series of interlocutory appeals. The right of appeal was deployed by the Counsel as a tactic to delay the substantive suit, the Supreme Court found. Some Counsel would want to appeal every single interlocutory ruling of the trial court all the way to the Supreme Court. This effectively puts the substantive matter at the trial court on hold pending the determinations of the appellate courts on the interlocutory appeals.

One would think that these holdups are unique to Counsel and litigants, but that would be a wrong conclusion. The courts have also been instrumental in delays in the adjudication process. The Constitution of the Federal Republic of Nigeria (CFRN 1999 as amended) provides that every court in Nigeria has ninety days after the conclusion of evidence and adoption of final written addresses, to deliver its written judgement. One of the rationales behind the ninety-day time limit is that the court perhaps still retains the mental impression of the witnesses and the entire proceedings. Beyond this time frame, the court is deemed to start losing or have lost such mental impression. In *Nnajiofor & Ors v. Ukonu & Ors* (1985) the Supreme Court had this to say:

> This is not the first occasion when we have to express the disapproval of the Court of such inexcusable delay in writing judgment, but it is well worth consideration by all Courts that human recollection may lose its strength with the passage of time and that justice delayed is as bad as justice denied and may even under certain circumstances be worse.

Courts devised a way around the statutory time limit by inviting parties to come and re-adopt their final written addresses after the expiration of the ninety days. This automatically activates a fresh ninety days for the court to deliver its judgement. With this tactic, the court could always buy time whenever it ran out of it. In *Lasisi v. Federal Republic of Nigeria* (2022) the Court of Appeal addressed this practice as follows:

> A trial Court has the power to invite the parties to re-adopt their final written addresses only before the expiry of the ninety days within which it must deliver judgment, especially where new issues have arisen to which it requires the parties' submissions before delivery of judgment. But the practice where after the expiry of ninety days a trial Court invites parties to readopt final addresses before delivering its judgment, as was done by the learned trial Judge at page 333 of the Record of Appeal, has no place either in the Constitution, or in our statutory laws or rules of procedure. In fact, such a practice neither obviates the fact that the judgment is delivered after the ninety days stipulated, nor adds any value to the final addresses being readopted by the parties. Thus, after the expiry of the ninety days within which it must deliver its judgment, a trial Court can only proceed to deliver its judgment and then comply with the reporting requirement stipulated in subsection (6) of Section 294, by reporting same to the Chairman, National Judicial Council. It is then left to an appellate Court before which a complaint against the late delivery of the judgment is lodged to determine whether a miscarriage of justice had been occasioned as a result of the delay in the delivery of the judgment.

Apparently, a judgement delivered outside the ninety-day timeline, though condemnable, cannot be nullified on account of the delay simpliciter. The party seeking to have the judgement set aside on appeal must adduce evidence of a miscarriage of justice, which they have suffered on account of the delay. Hence, in *Dangaji v. Abdulkadir & anor* (2020) the court was out of time for over one-hundred-and-six-days, but the delay simpliciter was not enough ground to nullify the judgement. The concern has been what events typify a miscarriage of justice in this regard. In *Dibiamaka v. Osakwe* (1989), Oputa (former Justice of the Supreme Court of blessed memory) had this to say:

> [T]he law is that if inordinate delay between the end of the trial and the writing of the judgment apparently and obviously affected the trial Judge's perception, appreciation and evaluation of the evidence so that it can be easily seen that he has lost the impressions made on him by the witnesses, then in such a case, there might be some fear of a possible miscarriage of justice and there, but only there, will an appellate Court intervene. The emphasis is not on the length of time simpliciter but on the effect it produced in the mind of the trial Judge.

While this provides some guidance, it is not a satisfactory description of what constitutes a miscarriage of justice in such circumstances. However, in *Esthon v. Federal Republic of Nigeria & Anor* (2020), the Court of Appeal held that the findings of the trial judge contradicted the evidence given by the witnesses during the trial. The court further held that by the five-hundred-and-eleven-days delay in delivering the judgement, the trial judge had lost his mental impressions of the trial, and the contradictions amounted to a miscarriage of justice.

3. Zhongshan Fucheng Industrial Investment Co. Limited v. The Federal Republic of Nigeria

The arbitration award of 2021 obtained by the Chinese company Zhongshan Fucheng (ZF) against the Federal Republic of Nigeria (FRN) was shrouded in sovereignty strife, especially in the United Kingdom (UK). ZF filed an *ex parte* application before Cockerill J of the High Court of England and Wales in line with Part 62(18) of the Civil Procedure Rules (1998) of the UK. The application sought to enforce the arbitral award as a judgement. ZF, being clever in the application, preempted the FRN by arguing the possible defences the FRN might raise.

ZF told the court that the FRN might contend that the latter is immune from the jurisdiction of the UK courts under section 1 of the State Immunity Act 1978 of the UK. The FRN had raised and lost the argument of State immunity during arbitration. ZF drew the attention of the court to section 9 of the State Immunity Act of 1978, which provides the relevant exception where the court's proceedings are about an arbitration, which the State (FRN) had agreed to in writing. The procedure for ZF's application is summary in nature. The court shall exercise its discretionary powers to either make an *ex parte* order of enforcement or order that the adverse party (FRN) be put on notice if there are compelling reasons not to make the order of enforcement *ex parte*. However, if the order of enforcement is made *ex parte*, the FRN, in this case, can apply to have the order set aside or varied. In paragraphs 4 and 5 of the *ex parte* Order of enforcement by Cockerill. J on 21 December 2021, she stated:

> 4. This Order having been made without notice to the Defendant, the Defendant has the right to apply to set aside or vary this Order, if so advised, within two months and 14 days of the date on which this Order is served on the Defendant
> 5. Should the Defendant make an application to set aside this Order on the grounds that it is immune from the Court's jurisdiction, then it shall have a further period of 14 days from the date on which that application is determined within which it may apply to set aside this Order on any other ground.

This Order was served on the FRN on 30 May 2022. In its regular attitude, particularly in domestic litigations, the FRN failed to utilise the timeframe in paragraph 4 above till it expired in August 2022. The FRN's solicitor became aware of the enforcement Order in July 2022 but claimed to have only received a copy of the same on 11 August 2022, which was a few days before the expiration of the time limit. It was on 17 August 2022, after the timeline had already expired that the solicitor advised the FRN to apply to set aside the Order. This suggests either of two things: the FRN's representatives who received the Order on 30 May

2022 perhaps withheld it to stall the process instead of transmitting same to the solicitor, or sheer listlessness on the part of the solicitor to obtain a certified true copy.

On 15 September 2022, the FRN's solicitor filed an application for an extension of time by an additional twenty-eight days (about four weeks) to be able to file an application to set aside or vary the Order under paragraph 4 above. He also prayed for relief from sanctions for the delay. ZF filed a reply to the application. Again, the FRN missed the seven-day time limit to file its evidence in response to ZF's reply. As a result, the solicitor to the FRN filed another application for an extension of time for the expired seven-day' timeline. The FRN, either deliberately or as an oversight, didn't mention any intention to argue immunity in the first application for an extension of time. It was in the second application for an extension of time that such intention was revealed in the witness statement that accompanied the application.

Cockerill. J heard and dismissed the two applications on 2 December 2022. The court noted that the delay in utilising the seven-day time limit to file reply evidence was deliberate and a grievous breach. The court emphasised that the purpose of arbitration is for a speedy resolution of disputes, and the FRN had not shown any sign of urgency concerning the Order of enforcement. Worst still, the court remarked that the FRN was not even diligent enough to accompany the applications for an extension of time with the substantive application to set aside the Order of enforcement. Perhaps, if the substantive application had accompanied the applications for an extension of time, it might have shown some sense of seriousness and perhaps evoked the favour of the court. The court further held that a good reason for delay can only fall within acts which are beyond the control of the party. The reasons advanced by the FRN were its own actions, which it had full control of. Hence, the failure of the FRN's federal authorities to timeously inform Ogun State (a State in Nigeria), which had a stake in the arbitration, about the Order of enforcement was held not to be a good reason for the delay.

The FRN sought the leave of the Court of Appeal to appeal the decision of 2 December 2022, but Males LJ declined it on 30 January 2023. Again, the FRN applied to the Court of Appeal to revisit the ruling of Males LJ, and on 6 April 2023, Underhill LJ ordered an oral hearing. Part 52(30) of the UK's Civil Procedure Rules (1998) allows the re-opening of the determination of the Court of Appeal if doing so will avert real injustice. But this criterion can only be met if the appeal has the chance of success. At the hearing, the FRN argued State immunity under section 1(2) of the State Immunity Act (1978), that the High Court was obligated to *suo motu* determine the issue of State immunity on the merit even though the FRN did not appear in the proceedings nor filed an application to set aside the Order of enforcement within the time limit set by the court. The FRN maintained that the High Court ought to have *suo motu* journeyed into the abyss of the documents used in the arbitration in search of arguments on immunity. But the Court of Appeal found it enough determination of State immunity by the High Court for granting the Order of enforcement with a two month and fourteen days (74 days) stay within which the FRN could apply to have the Order set aside. The FRN squandered this opportunity. The Court of Appeal dismissed FRN's application for leave to appeal. For the avoidance of doubt, section 1(1) and (2) of the State Immunity Act 1978 provides as follows:

> 1(1) A State is immune from the jurisdiction of the courts of the United Kingdom except as provided in the following provisions of this Part of this Act.

> (2) A court shall give effect to the immunity conferred by this section even though the State does not appear in the proceedings in question.

This provision effectively made the appearance of States optional to determine State immunity. It does not make the filing of arguments of the States optional. It is foolhardy for a State to sit back and expect the court to form arguments for it. ZF had already argued against immunity, and based on their argument, the court *prima facie* found that the FRN was not immune to the court's jurisdiction. The court also allowed a generous time within which the FRN could come and prove otherwise. Indeed, it reeks of selfishness to expect the court to argue immunity for you while you refuse to comply with the court's time limit.

4. The International Court of Justice and the torments of procrastination

The ICJ is empowered to fix the time within which a party must conclude its argument. Of all the proceedings at the ICJ, advisory opinions have suffered the most setbacks. State interventions in cases have also delayed adjudication processes too. However, the focus of this paper will be on the advisory proceedings of the ICJ. The United Nations (UN) Charter empowers the ICJ to give advisory opinions on any legal question at the request of the General Assembly or the Security Council. Other organs of the UN and specialised agencies authorised by the General Assembly can also refer legal questions to the ICJ for an advisory opinion. The President of the ICJ shall fix the time limit within which the ICJ shall receive written statements from States or international organisations, as well as the time limit to hear oral statements. Having presented written or oral statements, States and international organisations can comment on the written or oral statements of other States or international organisations within the time limit fixed by the Court or the President of the Court. Two important advisory opinions will be the focus here, namely:

a. Request for an advisory opinion on the right to strike of workers and their organisations under the International Labour Organisation (ILO) Convention No. 87.
b. Request for an advisory opinion on the obligations of States in respect of Climate Change.

a. Advisory opinion on the right to strike

The Constitution of the ILO confers interpretative powers on the ICJ. In Article IX, paragraph 2 of the Agreement between the UN and the ILO, the UN General Assembly authorises the ILO to refer legal questions falling within the scope of its activities to the ICJ for an advisory opinion. Based on these, at its 349th *bis* (Special) Session held on 10 November 2023, the Governing Body of the ILO adopted a resolution requesting the ICJ to "urgently" deliver an advisory opinion on the following legal question:

> Is the right to strike of workers and their organizations protected under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)?

On 13 November 2023, Gilbert F. Houngbo, the Director-General of the ILO, transmitted the request to the President of the ICJ. In a press release on 14 November 2023, the ICJ announced the reception of the request. The Rules of the ICJ provide that whenever a

request requires an urgent answer, the ICJ shall take all necessary measures to accelerate the procedure of the proceedings. Consequently, on 16 November 2023, the ICJ made some orders. It fixed 16 May 2024 as the time limit within which written statements on the legal question shall be presented to the ICJ. In the same vein, 16 September 2024 was fixed as the time limit within which written comments on the written statements of others shall be presented. Once the ICJ commences advisory proceedings, international organisations and States who are not eligible to participate in the proceedings usually apply to the ICJ to be allowed to participate. The ineligibility is usually an incidence of not being a party to the convention or treaty, which is the subject matter of the proceedings. The interruptions occasioned by the intermittent applications to participate bog down the proceedings.

The United States of America, not being a party to the ILO Convention No. 87, applied to the ICJ to be allowed to participate in the proceedings. On 10 April 2024, the ICJ approved the request of the United States of America. This was about five months from the date the ILO transmitted the request for the advisory opinion to the ICJ. Any State or organisation that desired to participate in the proceedings should have approached the ICJ without taking so long. The delay didn't end with the United States. On 6 May 2024, the ICJ granted the request of the Organisation of African, Caribbean and Pacific States (OACPS) to participate in the proceedings.

After the expiration of the time limit of 16 May 2024, the expectation was for the proceedings to move to the next stage. But on 3 June 2024, the ICJ approved the request of Brazil to participate in the proceedings. Brazil was also granted leave to file its written statement the next day, 4 June 2024. On 18 June 2024, the ICJ recorded thirty-one written statements, and that part of the proceedings was deemed closed. By 1 October 2024, the ICJ recorded fifteen written comments on written statements. From all indications, further proceedings will spill into 2025. Recall that the request for the advisory opinion was transmitted to the ICJ on 13 November 2023 and was tagged 'urgent'. Allowing the proceedings to span across three years (2023-2025) defeats the urgency to say the least.

b. Advisory Opinion on Climate Change

The advisory opinion on climate change has suffered similar setbacks. The request for the advisory opinion was transmitted to the ICJ long before the one on the right to strike. The UN General Assembly, at its sixty-fourth plenary meeting held on 29 March 2023, adopted resolution 77/276 titled "Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change". On 12 April 2023, the Secretary-General of the UN transmitted the request to the ICJ, attaching certified true copies of the resolution. By 17 April 2023, the Registry of the ICJ acknowledged receipt of the request. On 19 April 2023, the ICJ announced the reception of the request. The Registry also communicated the request to all the States entitled to appear before the ICJ. By an Order of 20 April 2023, the ICJ set the time limit for the proceedings: it fixed 20 October 2023 for the filing of written statements and 22 January 2024 for the filing of written comments on written statements filed by others.

As expected, States and international organisations that were ineligible to participate in the proceedings started applying to be allowed to participate. On 14 June 2023, the ICJ authorised the International Union for Conservation of Nature to participate in the proceedings.

Subsequently, on 22 June 2023, the ICJ authorised the Commission of Small Island States on Climate Change and International Law to participate in the proceedings. The next day, the ICJ authorised the European Union to participate in the proceedings. On 18 July 2023, the ICJ authorised the African Union to participate in the proceedings.

One would think that States and international organisations would have started filing their written statements three months after the ICJ received the request. But this was not the case. On 24 July 2023, the Republic of Vanuatu, alongside fourteen other States, sought a three-month extension of time. By a letter dated 28 July 2023, the Commission of Small Island States on Climate Change and International Law added its voice to the plea for a three-month extension of time. The Republic of Chile joined the chorus on 31 July 2023 with its letter to the ICJ. On 4 August 2023, the ICJ acceded to this request and ordered an extension of time to 22 January 2024 and 22 April 2024 for the filing of written statements and comments on written statements, respectively. From the date this order was given (4 August 2023) to the new deadline (22 January 2024) was about five months. Worse still, from the date (12 April 2023) the request for the advisory opinion was sent by the Secretary-General of the UN to the ICJ, to the new deadline (22 January 2024) was about nine months. This begs the question: Do States and organisations with all the resources at their disposal need nine months to prepare and file written statements?

Amid all these holdups, international organisations were still applying to be allowed to participate in the proceedings. On 1 September 2023, the President of the ICJ authorised the Organisation of Petroleum Exporting Countries to participate in the proceedings. On 20 September 2023, the ICJ authorised the Organisation of African, Caribbean and Pacific States, the Melanesian Spearhead Group and the Forum Fisheries Agency to participate in the proceedings. By 24 November 2023, the ICJ authorised the Pacific Community to participate in the proceedings.

The ICJ was even asked for a further extension of time by four months. By a letter dated 22 November 2023, the Director-General of the Melanesian Spearhead Group was the first to request an additional four-month extension of the time limits. In a letter dated 28 November 2023, the Secretary-General of the Organisation of African, Caribbean and Pacific States requested for at least four months extension. In a letter dated 30 November 2023, the Director-General of the Pacific Community asked for a four-month extension. On 5 December 2023, the Republic of Kiribati made the same request. On 11 December 2023, the African Union joined the chorus, followed by the Republic of Nauru on 12 December 2023. Again, the ICJ acceded to the request and ordered an extension of time to 22 March 2024 and 24 June 2024 for the filing of written statements and comments on written statements, respectively. By April 2024, the ICJ recorded about ninety-one filed written statements. This was the highest it has recorded in history. By 30 May 2024, the ICJ further extended the time for filing of written comments to 15 August 2024. The ICJ eventually recorded sixty-two written comments.

If at all, such extension of time limits should only be available to States and organisations who need the express authorisation of the ICJ to participate in the proceedings. The blanket extension of time limits for all and sundry enables a laidback attitude, especially amongst States that have been aware of the proceedings for a long time and don't need the express authorisation of the ICJ to participate.

5. Recommendations

Much has been said about delays in legal proceedings. It is apposite to propose possible panaceas to the anomaly. Nigerian legislators can amend the Court of Appeal Act as well as the Supreme Court Act by creating a statute bar on certain subject matters which have been adjudicated on. For instance, the judgement of the High Court on civil matters like breach of contract should be appealed within three months, after which the judgement shall stand tall till the end of time. The first two months shall be the natural time to appeal. The last month shall be the time within which an extension of time may be accommodated after the applicant has evidenced good cause. Anything beyond this timeframe should be statute barred except in extreme circumstances like death, and the estate of the deceased is desirous of appealing, provided the deceased died when his right of appeal was still active. The courts should be firm in applying the rules. Tortious claims should also receive similar treatment.

Be that as it may, certain matters should not be appealable to the Supreme Court. The appeals should end at the Court of Appeal. Land matters, breach of contract, tortious claims, suits to set aside an arbitral award, interlocutory appeals, etc., should not be appealed beyond the Court of Appeal. An interlocutory appeal against the ruling of a High Court should end at the Court of Appeal. The practice of appealing every interlocutory decision of a High Court all the way to the Supreme Court is untidy. At best, except in cases of emergency, threat to the *res,* or challenge to jurisdiction, the courts should rule on objections and interlocutory applications at the same time as the final judgement. Afterwards, a party who wishes to go on an appeal spree can go ahead.

The Rules of the ICJ should be amended to provide that an extension of time to participate in advisory proceedings should only be available on a limited basis to States and international organisations who need the express authorisation of the ICJ to participate in the proceedings. Others who can participate as of right should have a common time limit, which is not extendable except when the State is at war. The ad hoc judges of the ICJ should sit for advisory proceedings**.** The ICJ is already inundated with substantive cases. Since advisory opinions are not proper disputes, a different team of judges should handle them. Having an advisory court that is distinct from the main court may be a good way to go.

6. Conclusions

Wouters and Coppens (2001) suggested that the sensitivity of a subject matter could delay the steps taken on it. While this is true, care should be taken to not defeat the purpose of adjudication, which is justice. Broderick (2016) in her work, decried the delays in the implementation of vital legal frameworks and how they leave the target subject's interests in abeyance. By and large, delay not taken with care erodes the best interest of parties. This article is not an attempt to downplay the efforts of various actors identified in the adjudicatory process. Rather, it is an invitation to re-evaluate and adjust. This article focused on Nigeria, the ICJ, and the UK. This does not suggest that other jurisdictions should not reflect on these issues. One thing that has been revealed here is that the events which cause these delays are largely man-made. Therefore, it can be managed with the proper regulation. The world is becoming increasingly litigious. The dockets of the courts are not getting slim anytime soon. It only makes sense that proper measures are put in place to arrest events that delay the adjudicatory process.

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ELEMENTS OF ANALYSIS CYBERATTACKS AS WAR CRIMES. LEGAL AND PRACTICAL IMPLICATIONS IN MODERN MILITARY CONFLICTS

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Abstract: *Cyber operations have emerged as significant elements of modern warfare, particularly in conflicts like those in Ukraine, where cyberattacks target essential infrastructure alongside physical military actions. This paper examines the potential for cyberattacks to be classified as war crimes under international law, analyzing criteria established by international legal frameworks such as the Rome Statute, Additional Protocol I, and the Tallinn Manual on International Law Applicable to Cyberwarfare. Through case studies and legal analysis, this paper outlines the challenges and implications of prosecuting cyber operations that harm civilians and critical infrastructure in conflict zones.*

Keywords: *cyber warfare; hybrid warfare; cyber-criminal operations; cyber security; critical infrastructure; the potential of digitized actions*

Introduction

Cybersecurity and protection in the Black Sea has become a topic of great importance in the context of the war between Russia and Ukraine. The Black Sea is a region of strategic physical, economic and political geography. The conflicts in the Black Sea area have highlighted the need for robust cybersecurity measures. Cybersecurity involves the security of systems in critical infrastructures from both a military and an economic or social perspective.

In recent military conflicts, cyber operations have been widely used to target critical infrastructure, sometimes in coordination with physical attacks. These attacks raise ethical and legal questions, in particular regarding the possibility of cyber operations being considered war crimes. This paper explores the evolving criteria for war crimes in international law and the challenges of applying these standards to cyber operations, focusing on Ukraine as a primary case study.

Hybrid warfare: **The conflict between Russia and Ukraine is not only taking place on the traditional battlefield, but also in cyberspace**. Cyberattacks and influence operations are used to destabilize critical infrastructure and spread disinformation.

Involvement: The North Atlantic Treaty Organization and its allies have intensified security measures in the Black Sea region, including through military exercises and cooperation in the cyber field. Proximity warfare is an excellent geographical space to test the response capability of the military and military systems and equipment. A military maneuvering range as close as possible to real situations. In this geopolitical and military context, Romania, a

country close to the real conflict, plays an important role in the cyber protection of the region, being involved in NATO initiatives and collaborating with Ukraine to counter cyber threats.

Defining cyber operations in conflict zones. Cyber operations in conflict zones involve actions that disrupt, damage, or manipulate a state's networks and infrastructure, usually for military strategy purposes.

International Humanitarian Law (DIU) traditionally governs physical warfare, but in the case of cyber warfare, establishing thresholds for "attacks" and attributing consequences becomes challenging for justice. The current legal framework with reference to the **Rome Statute, Additional Protocol I** and **The Tallinn Manual**, provides guidance but does not explicitly mention cyber warfare, resulting in a legal gap.

1. **Legal framework in cyber warfare**

Classical warfare has a series of regulations through exceptional legal norms unanimously accepted by International Conventions and Treaties that become part of the sources of law in military conflicts alongside regular legal norms derived from the Constitution, Organic Laws, Emergency Ordinances, Government Decisions, Orders of the Minister of Defense, Military Regulations and Battle Orders. The correct application of legislation during military conflict is carefully supervised by the Military Prosecutor's Offices and Military Courts. In the area of Military Conflicts, we find the authority of the International Criminal Court whose role is to protect states and citizens from non-compliant actions that lead to genocide, crimes against humanity, etc.

According to researchers, *"Cyberwarfare is a new type of warfare waged in the cyber environment that can be considered the most developed form of warfare, through which the goal is achieved without human losses and without bloodshed. Cyberwarfare is similar to a classic armed conflict, the difference being the deployment environment, namely the virtual one, as well as the means by which it is carried out. This phenomenon represents the use of digital attacks to attack a nation, causing harm comparable to real war and disrupting vital information systems. There is significant debate among experts regarding the definition of cyberwarfare and even whether such a thing exists* (www.juridice.ro).

The opinion of military specialists (Zavakski, 2018:239-247) is that war in digital space is accessible to every individual who owns digital equipment connected to the Internet or local network and has minimal knowledge of using computers. From this point, structures in social groups "specialized" for cybercrime operations are identified, such as: state actors specialized in special military actions (some act under a foreign flag or under a private identity); military companies acting privately; international corporations; economic agents and organized crime groups.

We note that in the American Doctrine of Information Operations (https://irp.fas.org/doddir/dod/jp3_13.pdf) there are five distinct forms of this type of military operations, but (without limitation) namely:

- OPSEC – Operational Security (operations of operational security);
- MILDEC – Military Deception (operations of military deception),
- PSYOPS - psychological operations,
- EW – Electronic Warfare - operations related to electronic warfare,
- CNA – Computer Network Attack - operations on computer networks.

Most authors consider the actions: research by collecting information; attack determined by the destruction of enemy information and protection for the defense of one's own information as basic elements of information operations. The core of cyber warfare materialized through operations on computer networks (Zavalski, 2018), physical or virtual servers, transmission networks, social networks and elements of social engineering.

1.1 The Rome Statute and the policies of the International Criminal Court (ICC)

The Rome Statute does not contain direct provisions for cyberwarfare. The International Criminal Court has expressed its willingness to investigate cyberattacks on infrastructure that affect civilians, particularly if they align with traditional acts of war crimes. These include attacks that cause harm to civilians or support physical military operations. The Office of the Prosecutor at the International Criminal Court initially declined to comment but has previously stated that it has jurisdiction to investigate cybercrimes as well (Deutsch et al., 2024).

1.2 Additional Protocol I (API) and the Tallinn Manual

Additional Protocol "I" to the Geneva Conventions requires that attacks on civilian objects be prohibited and that methods that cause "unnecessary suffering" be illegal. The Tallinn Manual[i] extends this concept to cyberwarfare, stipulating that cyberattacks should meet a threshold of physical harm to be considered "attacks." This criterion would exclude nonviolent cyberauction's but complicates cases where cyberoperations indirectly affect civilian well-being without causing immediate physical harm.

2. Case studies of cyber operations in conflict zones

2.1 Cyberattacks in Ukraine: Power and communications network

Russia's use of cyber operations in Ukraine illustrates the integration of cyber warfare into traditional physical warfare. Notable cases include the attacks on Ukraine's power grid (2015, 2016) and recent operations targeting internet and satellite communications, often coordinated with physical attacks (Popescu et al., 2024). Also in the context of the war between Russia and Ukraine, the Black Sea region has been the target of several recent cyber-attacks. Here are some notable examples:

Attacks on Ukraine: In 2020, a group of hackers from Russia carried out a major cyberattack in Ukraine, affecting approximately 20,000 email accounts (www.forumulsecuritatiimaritime.ro).

GPS signal jamming: Recently, GPS signal jamming in the Black Sea region has become a serious problem, affecting thousands of flights and the movement of commercial ships in the south-eastern area of Romania (Ilie, 2024).

Ransomware attacks: Although not specific to the Black Sea region, ransomware attacks, such as the 2017, Petya malware, have had a significant impact on critical infrastructure around the world, including in this region (Lupescu, 2024a). *A series of powerful cyberattacks using the Petya malware began on 27 June 2017 that swamped websites of Ukrainian organizations, including banks, ministries, newspapers and electricity firms* (Prentice, 2017).

These attacks underscore the importance of cybersecurity measures and international cooperation to protect critical infrastructure and ensure stability in the region.

Cyberattacks are deliberate actions designed to compromise the security of computer systems, steal data, disrupt services or gain unauthorized access. Here is how a cyber-attack generally unfolds, divided into stages: a) This type of operation disrupts essential social services. b) The effect of cyber operations is to limit civilians' access to information, energy and healthcare.

Attacks on critical infrastructure. A Cook Islands-flagged tanker belonging to Russia's ghost fleet carrying Russian oil has cut the ESTLINK2 power cable between Finland and Estonia (Dumitrache, 2024). In addition to the power cable, four other communication cables were damaged, but the situation could have been much worse if the Finnish Coast Guard had not reacted quickly and boarded the ship. The situation is more complex, as the ship apparently lost its anchor while "dredging" the seabed. "When the authorities asked the EAGLE S to raise the anchor, it was noticed that the anchor was no longer connected to the anchor chain," Finnish media notes (Salon Seudun Sanomat, 2024).

If it is proven that "cyber operations" intentionally affected civilians, legal arguments can be made that the criteria for a war crime are met.

2.2 Global Implications: The Iran-Israel Cyber Conflict

The cyber conflict between the state of Iran and the state of Israel demonstrates the potential of cyber operations to target critical infrastructure beyond "*special operations*" in Ukraine. Notable incidents, such as attacks on water infrastructure, show that cyber operations can create risks to civilians by impacting access to life-essential resources.

These cases support the argument that cyber operations should be subject to standards comparable to physical attacks under *International Humanitarian Law*. (DIU).

2.3 Israel's water infrastructure

A notable example of a cyberattack on Israel is the 2020 attempted attack on Israel's water infrastructure. This incident, attributed to Iranian actors, targeted water and sanitation facilities in Israel, attempting to manipulate control systems and disrupt water supplies. Israeli authorities reported that the attack, if successful, could have had serious consequences, potentially altering chemical levels in the water and endangering public health. This attack sets a worrying precedent for cyberwarfare against civilian infrastructure, with the aim of creating physical harm through digital means.

Given its intent to directly affect civilian assets, this cyberattack highlights the devastating impact of digital actions on civilian society. Cyber-action of this type (affecting the life and integrity of the population) can be classified as a war crime because it threatens the health of civilians and violates humanitarian protection rules under international law.

Protective measures can be achieved and strengthened through: a) International cooperation: States in the region work closely together to share information and develop common cyber defense strategies**. b) Exercises and simulations:** Military exercises, such as those organized by NATO, include cyber warfare components to prepare member states to respond effectively to cyber-attacks**. c) Advanced technologies:** The implementation of

advanced technologies and the development of new cybersecurity solutions are essential for protecting critical infrastructure and communication networks**.**

2.4 Cyber-attack evolution and recognition milestones

2.4.1 Reconnaissance. In this stage, attackers collect information about their target to identify vulnerabilities. This can include scanning networks, analyzing user behavior, and looking for weaknesses in security systems (https://www.dendrio.com/blog/cele-mai-comune-etape-ale-unui-atac-cibernetic/).

2.4.2. Delivery. Attackers use the collected information to deliver a malicious payload. This could be a phishing email, an infected link, or an attachment containing malware.

2.4.3. Exploitation. Once the payload has been delivered and activated, attackers exploit identified vulnerabilities to gain access to the system. This may involve executing malicious code, escalating privileges, or compromising user accounts.

2.4.4. Installation. Once they gain access, attackers install additional software to maintain access and avoid detection. This software can include backdoors, Trojans, or other types of malwares**.**

2.4.5. Command and Control (C2). The attackers establish a line of communication with the compromised systems to control and coordinate the attack. This allows them to extract data, launch additional attacks, or manipulate compromised systems (Lupescu, 2024b).

2.4.6. Action on the objective. In this stage, attackers achieve their final objectives, which may include data theft, information destruction, service disruption, or ransom demands (in the case of ransomware attacks)**.**

Examples of common cyberattacks:

a) Phishing: Sending fraudulent emails that appear to be from trusted sources to obtain sensitive information**.**

b) Malware: Malicious software that can damage or gain unauthorized access to computer systems.

c) Ransomware: Encrypting the victim's data and demanding a ransom to unlock it.

d) DDoS (Distributed Denial of Service): Flooding a server or network with fake traffic to make it unavailable.

In cyber warfare, targets can be grouped into several critical categories:

1. **Critical Infrastructure**: Energy networks (electricity, gas); Water supply systems; Transportation (airports, ports, railways); Telecommunications (radio, analog or digital, encrypted, satellite); Systems regarding public health and financial-banking systems;
2. **Government Systems**: National databases; Military communication systems; Diplomatic networks; Emergency systems (112); Digital public services; Inter-institutional communication and public communication;
3. **Mass-Media Systems**: Televisions; Radio; News sites; Online social communication networks; Mass communication systems;
4. **Sensitive Data**: Military information; Government and diplomatic information; Medical information; Financial data; Classified documents; Economic and intellectual property data and Personal information of citizens

2.4.7 Protection against cyber-attacks:

Protection against cyberattacks involves using advanced security solutions, constantly updating software, and educating users to recognize and avoid threats in cyberspace.

The security situation in the Black Sea region is complex and strategic from several perspectives. The strategic importance of the Black Sea is given by the fact that it is a vital trade route for Ukrainian grain exports. World trade between ASIA and EUROPE via the Black Sea route reduces the route of goods compared to the Mediterranean Sea option and the Atlantic Ocean area in Western Europe by 2,429 nautical miles.

Figure 1. The navigable artery of the Danube

Source: https://acn.ro/images/PDF/Site_2019/comercial/Nota_conceptuala_v1.pdf

The Black Sea is a crucial access point between Europe and Asia for the transport of oil and methane gas from Central Asia. Thus, the region has major strategic importance for NATO as an area to counter Russian influence

Romania's role: The Port of Constanta has become a crucial hub for Ukrainian grain exports but also for the entry of energy products into the European Union market. Romania hosts important NATO military facilities, including the Mihail Kogălniceanu base, and actively participates in surveillance and air defense missions in the region.

2.4.8 Threats and challenges in the geographical space of the Black Sea:

- Russia's frequent attacks on Ukrainian Black Sea ports with potential failures turn us into collateral victims;
- The presence of sea mines, which pose a high risk to navigation in the Black Sea area, constitutes challenges to freedom of navigation;
- Attempts at destabilization through hybrid warfare (cyber attacks, disinformation) affect the entire society.

2.5 Some security measures: Increasing NATO presence in the region; Strengthening air defense capabilities; Intensifying multinational military exercises and Developing surveillance and early warning systems. Specific mechanisms for protection against cyber attacks through active structures specialized in Cyber Security.

2.5.1 Regional cooperation:

- Close collaboration between Romania, Bulgaria and Turkey within NATO;
- Inclusion of the Republic of Georgia in the invisible front of cyber security on the geographical, political and military side of the West;
- Support for Ukraine by facilitating exports/imports, as well as cargo transit through Romania's infrastructure;
- Coordination with NATO partners to ensure maritime security in the Black Sea geographical area;

From the perspective of cyber security in the Black Sea area, the situation is quite complex:
Strengths:

- Romania has CERT-RO (National Cyber Security Incident Response Center) which monitors and responds to threats from the digitalized/informatized space.
- Within the Romanian army there is a complex military structure in cyber warfare within the Cyber Defense Command;
- Collaboration with NATO through the Tallinn Cyber Defense Center of Excellence
- Partnerships with private cybersecurity companies provide added value to cybersecurity with real-time action, countering cybercrime attacks and limiting potential damage.

2.5.2 Significant vulnerabilities of critical infrastructures:

- Critical infrastructure (ports, airports, bridges, road or rail tunnels, energy systems, communications) may still be vulnerable. Not all systems are up to date with the latest technologies. The high cost of modern equipment and the dependence on foreign technologies in some areas make defense vulnerable. Many industrial systems still use a series of outdated technologies that do not have the capability to stop attacks from cyberspace with devastating effects on the geographical, economic and social reality.
- Lack of specialized personnel. Lack of training of personnel operating computer systems, but also the lack of education of the population who, through involuntary, innocent actions, allow attackers to penetrate the digital space from where to launch attacks.
- Sometimes insufficient coordination between institutions. The arrogance of some institution leaders allows a lack of coordination between institutions and provides open spaces for attackers to penetrate databases.
- Attacks on port/airport infrastructure can disrupt specific activities. Critical infrastructure is connected to various support companies (which provide software and protection for this software), as well as partner companies that provide related services in marketing, sales, service, etc. Example: tourism or aviation ticketing companies that have access to airport infrastructure and specific commercial activities can also be cyber-attacked with the ultimate goal of reaching their partners, the airport structures.
- Maritime traffic control systems can be targets of cyber-attacks to block traffic or generate asset losses.
- Energy networks connected to the internet are vulnerable due to the relatively simple way to access computer systems and hijack dispatchers' actions.
- The potential for manipulation of maritime navigation and communications data

Conclusions

Proximity conflicts that combine classic warfare with elements of cyber attacks constitute a basis for a new military doctrine and effective strategies to combat potential risks at the population level. **A first step is to educate** the population about cybersecurity because through awareness you reduce risks. The more people we have who understand the basics of cybersecurity, the harder they can be manipulated or exploited, increasing the "digital immunity" of the entire society.

The next step can be to demystify the field. Everyone must understand that **Cybersecurity is not "black magic" and is not just for "*experts in black suits*".** Cybersecurity is a shared responsibility, like locking the door to your house. Irresponsible or unconscious use of the internet opens the door for cybercriminals who attack everything in the online environment. It is the context in which they have access to digital commands for the critical infrastructure area, so essential for the existence of the state, social peace and public health. Educating the population also brings social benefits in that parents will encourage their children towards this career and increase the reporting of suspicious incidents.

An educated population is the first line of defense against cyberattacks and substantially reduces the attack surface. In fact, a culture of security is created. We must start with basic education and then build specializations. We can assimilate the procedure as in medicine - when the population understands the importance of hygiene and prevention, the medical system works more efficiently.

In cybersecurity this means:

a. At the population level:

- Understanding the importance of "cyber hygiene" and paying attention to system access passwords, unwanted software updates or phishing.
- Awareness of the importance of data protection
- Ability to identify simple threats
- Development of natural preventive behavior

b. Construction of a digital technical system:

- Specialists will be able to focus on complex threats
- Resources are not wasted on basic cybersecurity problems
- Defense systems will be much more efficient, and a long-term strategy can be developed

c. Benefits:

- Simple attacks fail from the start!!!
- Specialists no longer "put out fires" continuously by acting reactively.
- Increases the efficiency of investments in social security and forms a sustainable security ecosystem

Opinion: The situation is similar to an immune system - the better the population has *"digital antibodies*", the more the specialized defense system can focus on truly dangerous threats. Right? If we look at it as a whole, the system of protection against cyber actions looks like an inverted pyramid: The wide base at the top of the pyramid. The educated population knows how to protect itself and understands the threats coming from the digital sphere, from the ground up. In this way, the population can avoid simple traps and pass on basic knowledge or potential cyber-attacks.

The middle portion of the pyramid system, thus imagined, will consist of specialists with training in information technology who understand the importance of security, implement preventive measures correctly to identify more complex problems.

The bottom of the pyramid where we imagine the top is made up of security experts who deal with advanced threats, develop complex strategies to prevent attacks or eradicate them, and manage major crises. The result will be real-time solution innovation.

By applying the principles presented, we no longer waste top resources on "I clicked on a suspicious link". Specialists can focus on the real defense of critical infrastructure. It's like building a house - you need a solid foundation (the educated population) before you put on the roof (the experts).

Proposals and Suggestions to improve security capacity for cyber risks:

1. Greater investments in modern security technologies
2. Training more specialists in the field
3. Cyberattack simulation exercises
4. Closer public-private cooperation

2. Training programs through specialized institutions: Military Technical Academy, NATO specialized courses, Joint exercises with allies and optional course programs included in youth education

Major challenges:

1. Personnel and expertise:

- Shortage of military specialists in the cyber field
- "Competition" with the private sector that offers higher salaries
- Difficulty in retaining experts in the system
- Increase in salaries in the military cyber field
- Partnerships with technical universities
- Mentoring program between experts and newcomers
- Regular practical exercises

2. Technology:

- Acquisition of modern detection and response systems
- Infrastructure upgrades
- Development of solutions own (not to be totally dependent on others)
- Increasing the role of private industry

Opinion: Maybe we should take the example of Israel or Estonia, which have developed integrated programs - they prepare young people from high school for cyber-security and then integrate them into military structures.

3. Operational vulnerabilities:

- Legacy systems that cannot be easily updated
- Interconnection with less secure civilian systems
- Challenges in coordination between different military structures

We are developing, but we are not yet at the optimal level necessary for current threats. We have the basic structures, but we lack the resources and expertise to deal with sophisticated attacks

4. A possible model for Romania could look like this:

1. Specialized high schools that have classes with a cyber and security profile. Partnerships between computer science high schools and military structures.
2. Specialized laboratories with real equipment
3. Practical programs with "Capture the Flag" type exercises; Attack and defense simulations;
- Ethical learning of hacking methods and real case studies (anonymized)
4. Benefits for students: Special scholarships; Guaranteed job after studies; Access to advanced technologies and possible internship programs during the summer.
5. Continuity: the possibility for young people to have a direct transition to military academies and "early binding" contracts with benefits.

Specifically:

1. Structure of the collaboration:
- Specialist officers teaching special modules in high schools
- Secure access to military testing infrastructure
- Shadowing programs where students observe specialists at work
- Military-IT summer camps

2. Advantages for military structures:
- Identify talents early
- Build loyalty and interest in the military field
- Develop their own specialist nursery
- Can influence the curriculum for their specific needs

3. Benefits for high schools:
- Access to specialized expertise
- Advanced equipment and technologies
- Real opportunities for students
- Increased prestige and attractiveness

4. Challenges to be solved:
- Security checks for access to information
- Balance between secrecy and educational needs
- Coordination between the civilian and military systems

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CRIMINAL LEGAL PROTECTION OF CULTURAL HERITAGE IN THE REPUBLIC OF MOLDOVA

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Abstract: *Just as we cannot conceive a future without knowledge of the past, we cannot appreciate the past without protecting cultural heritage. Legislative interventions, including criminal measures, aimed at protecting cultural heritage, are essential and welcome. In addition to the importance attributed by the legislature to cultural heritage, the legal and penal mechanism for its protection is more effective than other forms of state intervention. It is crucial for the response of authorities to be efficient, both in normative terms and in law enforcement. Otherwise, criminal charges risk becoming merely declarative and ineffective. This is the theme we have proposed to analyze in this endeavor, identifying both deficiencies and solutions for their remedy.*

Keywords: *cultural heritage, crime, criminal proceedings, evidentiary process.*

1. Introduction

From the start, we must admit that the notion of cultural heritage is a recent one for the criminal legislation of the Republic of Moldova, although the subject itself has not been absent from the public agenda. In the initial version of the Criminal Code, cultural heritage as a value protected by criminal law was practically absent. However, according to the provisions of art. 133 Criminal Code of the Republic of Moldova (Criminal Code, Law of the Republic of Moldova no. 985/18.04.2002 Official Gazette 128-129/1012, 13.09.2002), the notion of cultural values was given, as being values of a religious or secular nature, meaning the indicated values in the United Nations Educational, Scientific and Cultural Organization Convention of 14 November 1970 on measures aimed at prohibiting and preventing the illegal introduction, removal and transmission of ownership rights over cultural values. But the only rule from the special part of the Criminal Code that referred to cultural heritage was contained in art. 248 CP RM – Contraband. In accordance with the provisions of para. (4) of this article, it was sanctioned the passage of cultural values across the customs border of the Republic of Moldova, evading customs control or hiding them from him by hiding them in places specially prepared or adapted for this purpose, as well as not returning to the customs territory of of the Republic of Moldova of cultural values taken out of the country, if their return is mandatory.

The legislator's attention returned to the cultural heritage through the legislative changes made by Law no. 75 of 21.04.2016. Law by which several articles of the Criminal Code were modified, especially those related to embezzlement, but not only. In particular, the legislator introduced as an aggravating factor to art. Art. 186 (theft), 187 (robbery), 188 (robbery), 190 (embezzlement), 191 (embezzlement of foreign property) provisions regarding goods that constitute cultural heritage. At the same time, by the same normative act, several new components of crime aimed at protecting cultural heritage were introduced.

2. General considerations regarding the legislation for the protection of cultural heritage in the Republic of Moldova

The analysis of statistical data related to the detection and investigation of crimes in the category of those mentioned above since the entry into force of Law no. 75/21.04.2016, indicates that in fact both the information regarding the investigation and the information regarding the detection of such crimes are missing. Thus, a first impression would be that the legislator's interventions aimed at the legal-criminal protection of the cultural heritage remained more of a declarative one, oriented towards legal compliance reports.

In another order of ideas from the Informative Note to Law no. 75/21.04.2016, it follows that the purpose of the Law was to "improve the legislation in force regarding the protection of historical and cultural monuments and the return of cultural heritage to the legal space, in accordance with the provisions of the nominated laws, the Ministry of Culture has developed and proposes for approval the project of Government Decision on the approval of the draft Law on the amendment and completion of some legislative acts.

The draft law aims to complete and amend the Criminal Code of the Republic of Moldova and the Contravention Code of the Republic of Moldova, in order to protect the national cultural heritage" (Informative note, to Law no. 75 of 21.04.2016).

At the same time, it follows from the content of the mentioned law that, in addition to the special components of crimes aimed at protecting cultural heritage, the legislator criminalized as aggravating factors for all forms of evasion the crimes whose material object is cultural heritage goods from archaeological sites or areas with potential archaeological. Approach that seems to be criticizable at least from the perspective in which the material object of the crime was formulated in the law. However, most likely not all cultural heritage assets are necessarily also cultural heritage, just as certainly not all assets from archaeological sites or areas with archaeological potential as they are mentioned in the rules mentioned above are also necessarily assets that are part of the heritage cultural. In this sense, according to us, the criminal law to be interpreted restrictively, problems may arise in the opposite sense, or according to the provisions of art. 3 paragraph (2) Criminal Code of the Republic of Moldova, the extensive unfavorable interpretation and the application by analogy of the criminal law are prohibited.

Another aspect to which we would like to draw attention in relation to the changes to the criminal law in the part related to the protection of cultural heritage refers to the fact that although initially by Law no. 75/21.04.2016, several components of crimes were amended, including 190 CC "fraud", and cultural heritage goods from archaeological sites or areas with archaeological potential were provided as the material object of the crime, subsequently the mentioned norm of has been modified, so that currently only the movable national cultural heritage goods from archaeological sites or areas with archaeological potential constitute the material object of the fraud. The respective amendment was introduced into the criminal law by Law no. 247/29.07.2022, which in fact concerned several changes in the Criminal Code, mainly focused on the legal classification of embezzlement depending on the value of the stolen goods and only art. 190 CC of the Republic of Moldova has also undergone changes regarding cultural heritage assets.

Moreover, according to the informative note to Law no. 247/29.07.2022, it follows that in the operation of the mentioned amendment, the authors were guided by certain existing deficiencies in their opinion in the current wording of the respective article. Thus, it is

mentioned that "the current provision from art. 2 (Informative note, to Law no. 247 of 29.07.2022) art. 190 of the Criminal Code of the Republic of Moldova provides for criminal liability only for the fraudulent acquisition of national cultural heritage assets from archaeological sites or areas with archaeological potential.

The archaeological site is the land that contains archaeological remains. Area with archaeological potential — is the land where the existence of archaeological remains is scientifically documented or is assumed based on indirect data (see art. 1 of the Law on the Protection of Archaeological Heritage). Thus the provision of this article is vague and unclear. In the situation where a fraud would be committed with the appropriation of assets that are part of the movable national cultural heritage, but are not located either in archaeological sites or in areas with archaeological potential, for example in a museum, it follows that it would not be applicable provision of 2 (Informative note, to Law no. 247 of 29.07.2022) art. 190 CP RM".

Beyond the detailed analysis of the criminal rules aimed at the protection of cultural heritage, which certainly go beyond the subject of this approach, the ones we would like to highlight actually relate, on the one hand, to the value protected by the respective criminal rules, and on the other hand of how this can be achieved taking into account the current legal system. At the same time, several objections regarding the legislator's interventions are requested to be made. However, according to the legislator's logic, the previous provision of the norm was "vague and unclear. In the situation where a fraud would be committed with the appropriation of assets that are part of the movable national cultural heritage, but are not located either in archaeological sites or in areas with archaeological potential, for example in a museum, it follows that it would not be applicable provision of 2 art. 190 CC".

But then the question arises, but if the goods from the museum are stolen by another method, for example robbery or theft, or if it was decided that in the previous wording of art. 190 para. ((Informative note, to Law no. 247 of 29.07.2022) CC RM, these assets were not protected then, why were they not offered protection against other forms of embezzlement. In the same register, if in the previous edition they were protected all the cultural heritage goods, then through the mentioned interventions their spectrum was limited only to the national movable ones informative both in the draft law and in the final version, the commission of extortion is provided for the purpose of acquiring movable national cultural heritage assets from archaeological sites or areas with archaeological potential. However, following the logic of the authors, it is not clear how the cultural heritage assets could be protected located in places other than archaeological sites or areas with archaeological potential, if in fact the modification has been reduced from the change of the notion of cultural heritage goods to cultural heritage goods national mobile.

In fact, the answer to the inadvertences mentioned above become clear from the content of the informative note, but also from the initial draft of Law no. 75/21.04.2016. Thus, according to the mentioned act, it was proposed to include in the Criminal Code a new article 200/3, with the following content: "the theft of cultural heritage assets from archaeological sites or from lands with archaeological potential [...]" (Informative Note, at Law no. 75 of 21.04.2016). But in the final version, the law was adopted without the respective article, which was actually included in the aggravating versions of the evasions. Consequently, beyond the mentioned inadvertences and the legislator's less successful attempt to fix them, a no less

important problem in our opinion concerns the determination of the value of stolen cultural heritage assets. Or, if the legislator had adopted the law in the originally proposed version, most likely the respective problem would not have arisen, but once included as aggravating crimes of embezzlement, especially in the situation where the delimitation of some forms of criminal embezzlement from contraventional ones depends on the value of the goods evaded that problem is to be solved.

Consequently, from the perspective of the object of the criminal procedural evidence, those that outline the specifics of the criminal acts whose material object is cultural heritage highlight at least two aspects: the first related to the determination of the asset's belonging to the cultural heritage; and the second to determine the value of this good.

Obviously, both problems involve some specialist knowledge. In this sense, although the legislation of the Republic of Moldova does not provide for the mandatory performance of expertise to establish the belonging of goods to the cultural heritage, the necessity results from the very nature of expertise in the criminal process. In this sense according to art. 142 para. (1) CPP RM (hereafter, the Code of Criminal Procedure, Law of the Republic of Moldova no. 122/14.03.2003 Official Gazette 248-251/447, 07.06.2003), results that the judicial expertise is ordered in cases where for ascertaining, clarifying or evaluating circumstances that may have evidentiary importance for the criminal case, specialized knowledge in the field of science, technology, art, craft or other fields. And the possession of such specialized knowledge by the person conducting the criminal investigation or by the judge does not exclude the need to order judicial expertise. However, it is indisputable that clarifying the possible belonging of the asset to the cultural heritage requires specialized knowledge.

Thus, according to the provisions of art. 2 lit. "a", Law no. 280/27.12.2011 Law on the protection of movable national cultural heritage on the protection of movable national cultural heritage, Law on the protection of movable national cultural heritage - movable cultural assets of special or exceptional historical, archaeological, documentary, ethnographic, artistic, scientific value and technical, literary, cinematographic, numismatic, philatelic, heraldic, bibliophile, cartographic, epigraphic, aesthetic, ethnological and anthropological, representing material evidence of the evolution of the natural environment and of man's relationship with this environment, of the potential human creator. According to the provisions of letter "c" of the same article, by the classification of movable cultural assets, is meant the procedure for establishing the category of movable cultural assets and registering them in the Register of movable national cultural heritage. And according to the provisions of art. 8 para. (2)-(5) from Law no. 280/2712.2011, the classification of movable cultural assets is carried out on the basis of an expert report drawn up by experts accredited by the Ministry of Culture.

The competent scientific body to decide the classification of movable cultural assets is the National Commission of Museums and Collections. The classification decision, compulsorily accompanied by the expert report drawn up by experts of movable cultural assets accredited by the Ministry of Culture, will be signed by the president of the National Commission of Museums and Collections and will be approved by order of the Minister of Culture within 3 months from the moment the classification procedure is triggered. The conclusions from the expert report, the standard sheet of the classified cultural asset and the black-and-white or color photo, as appropriate, will be attached to the classification decision.

Law 68/14.04.2016, regarding the judicial expertise and the status of the judicial expert in art. 2 provides that a judicial expert is a person qualified and authorized, according to the law, to carry out expert examinations and formulate conclusions in the specialty in which he is authorized, regarding certain facts, circumstances, material objects, phenomena and processes, the human body and psyche, and which is included in the State Register of Judicial Experts.

According to art. 43 para. (1) from Law no. 68/14.04.2016, the quality of judicial expert is acquired by the person who has passed the qualification exam, held before the Commission for Qualification and Evaluation of Judicial Experts (hereinafter referred to as the Commission for Qualification and Evaluation), formed by the Ministry of Justice, entity which according to the provisions of art. 49 para. (1) of the law, also keeps the register of judicial experts.

3. Conclusions

In conclusion, from the mentioned, it follows that the experts in the respective field, from the Ministry of Culture in the case of procedures for the identification and management of the respective goods, have decision-making power over the goods that are part of the cultural heritage, and respectively licensed by the Ministry of Justice in the case criminal proceedings.

At the same time, at the moment in the state register of judicial experts there are no persons qualified to carry out the expertise of goods in the cultural field (State Register of judicial experts). Moreover, such an expertise is not even found in the list of Forensic Expertise Services provided by the National Center for Judicial Expertise (Forensic Expertise Services provided by the National Center for Judicial Expertise), which is currently the main public institution in the field of judicial expertise.

The mentioned, related to the provisions of art. 2 para. (4) CPP RM, according to which the procedural legal norms from other national laws can be applied only on the condition that they are included in the Code of Criminal Procedure. But also the provisions of art. 6 para. (1) point 12), from which it follows that a judicial expert is a qualified person who is authorized, according to the law, to carry out expert examinations and formulate conclusions in the specialty in which he is authorized, with regard to certain facts, circumstances, material objects, phenomena and processes, the body and the human psyche, and which is included in the State Register of Judicial Experts. It indicates that we are actually in the presence of a legislative inadvertence, on the one hand within the Ministry of Culture there are certain experts in the field of cultural heritage, and on the other hand their skills cannot be used in the criminal process, as long as they do not correspond formalities required by law.

In conclusion, although the legislator's initiative to offer protection including through criminal instruments to cultural heritage is a beneficial step, it cannot have a finality as long as it is not followed by other actions, including organizational ones, which would be of a nature to ensure effective enforcement of the law.

Moreover, the simple criminalization of certain acts, the creation of a corresponding mechanism for the application of the criminal law, seems to be more of a declaration of intentions than a proper legal protection of certain social values.

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LEGAL EXEGESIS OF THE CUSTOMARY COURT OF APPEAL JURISDICTION UNDER THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 AGAINST EMERGING TRENDS

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Abstract: *Section 282(1) of the Constitution of the Federal Republic of Nigeria, 1999 (CFRN, 1999) vests appellate and supervisory jurisdiction on the Customary Court of Appeal (CCA) on civil matters involving questions of customary law. Section 282(2) of the CFRN, 1999 grant the State House of Assembly (SHA) the vires to prescribe additional jurisdiction on the CCA by prescribing questions it can determine. Pursuant to this, some SHA have conferred original jurisdiction on the CCA contrary to the intendment of section 282(1) of the CFRN, 1999. This article adopts desk-based method in interrogating the jurisdiction of the Customary Court of Appeal under the CFRN, 1999. It examines decisions of appellate courts with the aim of determining whether or not these decisions are a stultification of the jurisdiction of the CCA or adherent to constitutional prescription? It argues that the act of conferring original jurisdiction by some SHA on the CCA runs afoul of section 282(1) of the CFRN, 1999. It discusses challenges inherent with the purportedly conferred original civil jurisdiction of the CCA hinged on the composition requirement of the CCA under the CFRN, 1999 and appeals procedure. It recommends constitutional amendment as a way to addressing the quagmires.*

Keywords: *Court; Constitution; Customary court of Appeal, Jurisdiction, Justice, Nigeria*

1. Introduction

Sections 6(5) (h) (i) 265, 280 of the CFRN, 1999 established the Customary Court of Appeal as one of the Superior Courts of Record in Nigeria (SCR). It is a SCR because it keeps record of its proceedings and has the power to punish for contempt and impose fines. Section 282(1) of the CFRN, 1999 vest appellate and supervisory jurisdiction on the CCA over decisions of the Customary Court or their equivalent on matters relating to customary law. Section 282(2) of the CFRN, 1999 empowers the State House of Assembly (SHA) to confer additional jurisdiction on the CCA of a State by prescribing questions which the CCA can adjudicate upon. By the clear and unambiguous phraseology of section 282(1), the CCA whether of the State or the Federal Capital Territory, has and exercises only appellate and supervisory jurisdiction. Pursuant to the power conferred on the various SHA to confer additional appellate and supervisory jurisdiction on the CCA, most SHA in the federation, have enacted laws to this effect.

The SHA, in conferring additional jurisdiction on the CCA, have by the various laws, purportedly conferred original civil jurisdiction on the CCA despite the clear provision of section 282(1) of the CFRN, 1999 and the peculiarity of the CCA. For instance, section 16 (1) (d) the Oyo State Customary Court of Appeal (Amendment) Law, 2018 which amended Section 39 of the Oyo State Customary Court of Appeal Law, 2008 conferred original civil jurisdiction on the CCA on probate

matters of deceased persons who died intestate and lived under the customary law. The question is: considering that probate is a subject of original jurisdiction exercised by the Chief Judge under the Administration of Estate Laws of the various State and the CCA under the Constitution, has only appellate and supervisory jurisdictions, can the SHA conferred jurisdiction on the CCA beyond the prescription of the Constitution? Also, regarding appeals to the CCA, matters of fact and evidence which are clearly beyond the scope of matter relating to customary law where they form a ground of appeal, does the CCA has the vires to adjudicate over same? These issues especially the second one has attracted considerable judicial attention with the outcome that it is a stultification of the jurisdiction of the CCA.

This paper, adopts desk-based method in interrogating whether the original civil jurisdiction purportedly conferred on the CCA by the various State Laws does not run afoul of the express provisions of the CFRN, 1999 and the inherent challenges in conferring such jurisdiction on the CCA. It examines judicial stance towards the jurisdiction of the CCA and answers the question whether the pronouncements of the appellate court amounts to an unwarranted stultification of the jurisdiction of the CCA or adherence to constitutional prescription. The paper rely on primary data such as the CFRN, 1999, Oyo State Customary Court of Appeal Law, 2008, Oyo State Customary Court of Appeal (Amendment) Law 2018, and case law; as well as secondary data such as articles in learned journals, and online materials. These data are subject to jurisprudential analysis. Regarding scope of the paper, while it is correct that the CFRN, 1999 creates the Customary Court of Appeal of the Federal Capital Territory, and Customary Court of Appeal of a State, the exegesis in this paper is mainly focused on and limited to the CCA of a State. The rationale is that it is this one that legislative steps taken by some SHA have sprung constitutional dilemmas requiring critical rigorous interrogation.

By structure, the article is divided into seven sections. Section one is the introduction. Section two contains conceptual clarification. Section three examines the evolutionary journey and nature of the CCA. Section four examines judicial stance towards the jurisdiction of the CCA and matters arising. Section five examined the jurisdiction of the CCA and evolving trends. Section six contains the way-forward in addressing the identified challenges revolving around the jurisdiction of the CCA and its general practice and procedure; while section seven contains the conclusion and recommendations.

2. Conceptual Clarification

For the sake of clarity of presentation and precision in understanding, there are certain concepts used in this work that require clarification. Thus, this section of the work is dedicated to this end. These concepts include jurisdiction, custom and customary law.

i. Jurisdiction

Jurisdiction is a term of great significance in adjudication. This is because it is to adjudication, what blood is to the body as was held in *Ladejobi v Odutola Holdings Ltd* (2002). Underscoring its meaning, effects in adjudication and significance, the Supreme Court of Nigeria (SCN) in *Egharevba v Eribothe* (2010) held that:

> Jurisdiction is a term of comprehensive import embracing every kind of judicial action. It is the power of a court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties. Jurisdiction also defines the power of the court to inquire into facts, apply the law, make decisions and declare judgments. It is the legal right by which Judges exercise their authority. Jurisdiction is equally to the court what a door is to a house. This is why the question of a court's jurisdiction is called a threshold issues, because it is at the threshold of the temple of justice. Jurisdiction is a radical and fundamental question of competence, for if the court has no jurisdiction to hear the case, the

> proceedings are and remain a nullity however well conducted and brilliantly decided they might have been. A defect in competence is not extrinsic but rather intrinsic to adjudication.

The above adumbration of the SCN is instructive and unassailable. As to when a court is said to have the requisite jurisdiction over a dispute, the SCN had laid down the indicia in its foremost decision in *Madukolu v Nkemdilim* (1962) when it stated thus:

> A court is competent when it is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another; the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction and the case comes before the court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of jurisdiction. The court further held that any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided; the defect is extrinsic to the adjudication.

Deducible from the foregoing is that, a court is said to have jurisdiction when it is composed by the prescribed number of judge/justice and their qualification is intact; the subject matter of the disputes comes within its adjudicatory circumference; due process of the law including but not limited to fulfilment of condition precedent, has been fulfilled before the initiation of the case; and there is absence of any feature that prevents the court for adjudicating over the case presented as was decided in *AG Ogun State v Coker* (2002). In *National Electoral Commission & Anor v Izuogu* (1993) it was decided that the statute that creates a court, specify its jurisdiction and any jurisdiction that is not expressly given to a court, is deemed to have been taken away from the court as was held in *National Electoral Commission & Anor v Izuogu* (1993). As a result, neither the court nor litigants can confer or sequestrate the jurisdiction of court *Akinkunmi Shoyoye & Anor* (1977). The issue of jurisdiction is a threshold matter which could be raised anyhow and at any stage in the proceedings even on appeal at the SCN for the first time *Ibori v Ogboru* (2005). It is trite law that once the question of jurisdiction is raised, the court must keep at abeyance, further proceedings and determine the question one way or the other as was decided in *Triumph Assurance Co. Ltd v Fadlallah & Sons Ltd* (2000). The rationale is that where a court adjudicate in want of jurisdiction, irrespective of how well the proceedings were conducted, it is an exercise in futility *Okolo v Union Bank of Nigeria Ltd.* (2004). court have examined its jurisdiction and finds that it lack the requisite jurisdiction, the proper order for it to make is an order striking out the suit and not dismissal so as to give the party where possible, the opportunity to remedy the defect and present the matter before the appropriate court as was held in *DIN v Attorney General of the Federation* (1986). The jurisdiction of court over a dispute must exist and subsist from the time it became seised of the matter till it delivers it judgment in the action which means that there must be a break in the chain of jurisdiction *Felix Onuora v Kaduna Refining and Petrochemical Co. Ltd* (2005). In determining its jurisdiction, the court must have recourse to the claim of the claimant *Nigerian Deposit Insurance Corporation v Central Bank of Nigeria* (2002) and the law that determines the jurisdiction of the court is the law as at the time the cause of action arose and not when the adjudicatory machinery was set in motion *Ibafon Co Ltd v Nigerian Ports Plc.* (2001).

With regards to types, the jurisdiction of a court could be subject matter as exemplified by the provisions of Section 251 and 254C of the CFRN, 1999 which has vested exclusive original civil jurisdiction over a spectrum of subject matter on the Federal High Court and National Industrial Court of Nigeria respectively. Thus, only these courts have the requisite jurisdiction to entertain those subject matter matters in the event of any dispute. Jurisdiction could also be monetary as in where the law specify a particular monetary threshold which a court can entertain dispute over. Once the amount

involve, is above the monetary limit upon which a court can adjudicate over, the court lacks the jurisdiction. There is also territorial jurisdiction which is the geographically location within which a court is competent to entertain disputes from. For instance, in Nigeria, the federal courts (i.e. the Supreme Court, Court of Appeal, Federal High Court, and National Industrial Court of Nigeria) have nationwide jurisdiction although they are locate in various judicial division for the purposes of administrative and adjudicatory convenience *Francis O Johnson & Anor. v. Comrade Emma Eze & Anor*. (2021). The High Court of State has its territorial jurisdiction limited to matters arising within the State or if the disputes arose therefrom or the litigant are domicile therein. A court's jurisdiction could also be either original (i.e. with regards to disputes it can adjudicate upon as a court of first instance). This original jurisdiction could either be exclusive or shared. It is exclusive when it is only that court and no other, can sit over a particular dispute at first instance while share when two or more courts can entertain the dispute as first instance. The jurisdiction could also be appellate, that is where the court entertain appeals from the decision of an inferior court.

ii. Custom

The word 'custom' literally, grammatically, or ordinarily means; tradition, practice; usage; observance; way; convention; procedure; ceremony; ritual; ordinance; form; formality; fashion; mode; manner; shibboleth; unwritten rule; way of doing things; formal; praxis; style; etiquette; routine; habit; usual; rite; Solemn; unwritten code; conventional social behaviour; etc. Custom is the way of life of a people rooted in their beliefs and idiosyncrasies (Mohita, 2022). Custom takes birth from the habits and natural dealings of the people in a society; by their unconscious adoption of a certain rule of conduct and its sanctity is based on nothing but its long continued use and recognition by the people. In *Yinka Folawiyo & Sons Ltd. v. Hammond Projects Ltd* (1978) it was held that custom is a practice of usage which by common adoption and acquiescence, and by long and unvarying habit, has become compulsory, and has acquired the force of law with respect to the place or subject matter which it relates. Custom is limited by territorial jurisdiction. Unless a person who has subscribe to a particular custom is bound by its dictates during his life time and may even have his estate administered in accordance with that custom. Custom occupies a very important place in regulation of human conduct in almost all the societies, irrespective of the countries to which they belong. It is one of the oldest sources of law-making, but with the progress of the society its significance gradually diminishes and legislations and judicial precedents become the main source of law, replacing the influence of Custom (Bhattacharyya, 2020).

A custom is a continuing course of conduct which may by the acquiescence or express approval of the community observing it, has come to be regarded as fixing the norm of conduct for members of society. When people find any act to be good and beneficial, apt and agreeable to their nature and disposition, they use and practice it from time to time, and it is by frequent use and multiplication of this act that the custom is made. Custom is a rule of conduct which is spontaneously observed by the society as a tradition, habit and usage, but not in pursuance of law. Custom is created by the people, by their unconscious adoption of a certain rule of conduct whenever the same problem arises for solution and its authority is based on nothing but its long continued use and recognition by the people. Custom is some kind of special rule which is followed from time immemorial.

iii. Customary Law

Customary law is specie of law existing and recognised in Nigeria as a valid system of law with binding and enforceable *Bakare Alfa & Ors. v. Arepo* (1963). It consists of the customs and traditionally beliefs of an indigenous community which has been applied over a significant period of time to the extent that it has become a taboo/abomination or even an offence to conduct oneself contrary to their dictates *Salau v. Aderibigbe* (1963). Their observation by all and sundry is obligatory and failure usually

attracts sanctions. Asein has opined that customary law includes those laws that is indigenous to the native communities (Asein 2021, 18). It is a body of rules regulating rights and imposing correlative duties, being a rule or body of rules which obtains and is fortified by established usage and which is appropriate and applicable to any particular cause, matter, dispute, issue or question (Ogbu 2013, 90). According to Elias (1956, 55) the customary law of a given community is the body of rules which are recognised as obligatory by members on the principle of their social imperative and it is a dynamic social conduct, an accepted behaviour which the vast majority of its members regards as absolutely necessary for the common weal. According to (Emiola 2011, 6) referencing Justice Ollenu, asserts that not every form of social conduct fits the definition of customary law even if it is well established as it will not pass the test of law where it merely excites the displeasure or contempt of the society when violated. This implies that the present of sanction is necessary for a generally accepted social conduct to fit into the societal mould of customary law.

Thus, in espousing the nature and status of customary law, the SCN in *Kharie Zaidan v. Fatima Khalil Mohssen* (1973) elaborately defined customary law thus:

> Customary law is a system of law, not being the common law (of England), and not being a law enacted by a competent legislature in Nigeria, but which is enforceable and binding within Nigeria s between the parties subject to its sway.

According to Kalajo (2001, 1) has asserted that customary law may conveniently be defined as those rules of conduct which the persons living in a particular locality have come to recognise as governing them in their relationships between one another and between themselves and things; it is an ancient rule of law binding on particular community and which rule do change with the times and rapid development of social and economic conditions.

From the foregoing, Emiola (2011, 8) has opined that for any rule to be regarded as customary law, three elements must be present in it. First, it must be a rule of conduct, stipulating what may or may not be done, secondly, it must be a rule prescribed by a competent authority empowered and recogniseable as capable of making such law and finally, it must be enforceable and accompanied by sanction for its violation. Customary law is not only law but the organic law of any indigenous society. Obaseki JSC (of blessed memory) underscored this point in *Oyewumi v. Ogunesan* [1990] when he authoritatively opined that "customary law is the organic or living law of the indigenous people of Nigeria regulating their loves and transactions. It is organic in that is not static; it is regulatory in that it controls the lives and transactions of the community subject to it. It is said that the custom is a mirror of the culture of the people." Customary law is a custom that has attained the force of law by having prohibitive prescription and well defined repercursionary effect in the event of breach. For custom to have the force of law, it must be approved by consent of those who follow it as was held in *Okonkwo v. Okagbue & Ors* (1994). It is potent law which is not subservient to any other existing or recognised system of law. By it characteristic nature, customary law is unwritten as was held in *Lewis v. Bankole* (1908) and it is recognised as law by the members of an ethnic group. It is a mirror of accepted usage as was held in *Owoniyin v. Omotosho* (1961).

It should be noted that customary law is customary because it grows from the customs and conducts of the people and is based on the tested tradition of the particular society concerned. The tradition are handed down from one generation to another and are abandoned when they had outlived their usefulness and ceases to command the obedience they deserve due to change in times and season. Customary law has six unique features which is that it is unwritten, flexible, it is based on the custom of the people, it is popular law which commands common allegiance from the majority of the people and, it is a moral law founded on the principles of universal rules of justice and fairplay. Even after a

customary law has been proved to be part of the custom of a group of people, it is not always applicable. Customary law is not applicable in criminal cases as long as it is not contained in any written law as stated by section 36(12) of the constitution. For customary law to be enforceable, the court in *Guri v. Hadeija Native Authority* (1959) laid down three conditions it must fulfilled which are that the rule must not be repugnant to natural justice, equity and good conscience, the rule must not be incompatible with any law being in force for the time being. It must not be incompatible either directly or by implication, and the rule must not be contrary to public policy.

3. Evolutionary Journey and Nature of the CCA

From the outset, the point should be made that the CCA is a brain child of necessity as it is often said and truly so, necessity is the mother of invention. The CCA was established in a bid to aid the development of customary and adjudication of customary matters which had been unsuitable for adjudication by the regular court. The development of Nigeria's judiciary could be compartmentalised into: pre-colonial, colonial and post-colonial eras as opined by Elias (1963, 4). During the pre-colonial era, the various indigenous communities in Nigeria had various means of dispute resolution. In the South West and South East, comprising the Yorubas and Igbos, disputes were resolved through a structured informal traditional court system wherein they were submitted to the family head, advances to the head of the compound and if need be, to the King until they were resolved. In the North, there was a formalised traditional dispute resolution system hinged on the Islamic system of sharia law which is predominant there Allot (1962, 39). The Alkali system with the Emir being the apex appellate authority prevailed. By 1842, the Native Court System (NCS) was the main system of justice administration in Nigeria (Ogbu 2013, 219). These courts, in the course of justice administration, fashioned civil and criminal procedure rules, sentencing guidelines and other matters to aid their functionality. These NCS is what has transmogrified to the present day customary/district courts and CCA. By 1843-1913 during the colonial era, the British through a combination of Foreign Jurisdiction Act of 1843 and 1893 established law under which various courts were set up (Obilade 2018, 6). By 1954, the Court of Equity was established by the colonialist in some Southern parts of Nigeria including Brass, Opobo, Brass, Benin and Okrika. The Judges of this court were the consular or administrative officer, principal agents of trading firm. The Royal Niger Company (RNC) also established more courts, pursuant to a Royal Charter granted to it in 1886 to govern and administer justice within the area it is located (Obi-Okoye 1996, 4). The Court established by the RNC, in their adjudicatory exercise, were expect to have regards to the customs and laws of the class or tribe or nation to which the disputants respectively belong, especially with respect to the holding, possession, transfer, and disposition of lands and goods, and testate or intestate succession, marriage, divorce and legitimacy and other rights (Asein 2021, 211). The advent of colonialism brought with it the English court system which was aimed at protecting the commercial interest of the colonialist owing to disputes that might arise between merchants especially after the infamous treaty of cession was made in 1861. By 1862, the First Governor of the colony of Lagos had established several courts including the Police Magistrate, Commercial court, and the Slave Commission courts (Umeh 1989, 39-40). In 1863, by Ordinance No 11 of 1863, the Supreme Court of Lagos was established, it had both civil and criminal jurisdiction. Upon amalgamation of the Southern and Northern Protectorates, a new Supreme Court was established without any significant changes in terms of powers and functions by the Supreme Court Ordinance of 1914 and in 1954, owing to the defects of the subsisting system, there was an overhaul. Upon independence on the 1st of October, 1960 but by 1st of October, 1954, Nigeria had become federation with federate units and a central government (Malemi 2009, 166). Under the 1963 Independence Constitution, various courts were established including the now federal Supreme Court which became the apex court, and entertained appeals from the High Courts of the various Regions which were by law, allowed to establish regional court of appeal if needed (Asein 2021, 224-225).

In 1979 when a new constitution was enacted, there was a reorder of the courts with the creation of the Supreme Court, Court of Appeal, Federal High Court, High Court of State, Sharia Court of Appeal, and Customary Court of Appeal. Thus, it was under the 1979 Constitution of the Federal Republic of Nigeria that the Customary Court of Appeal was conceived and birthed. The aborted 1989 Constitution retained the same arrangement which is duplicated under Section 6(5) of the CFRN, 1999 (Asein 2021, 205). Thus, under the CFRN, 1999, the CCA is established as a Superior Court of Record having appellate and supervisory jurisdiction over Customary Court in relation to civil matters involving questions of customary law. The CFRN, 1999 provides for the mandatory establishment of the Customary Court of the Federal Capital Territory, Abuja while the establishment of the same court for any of the federating States is optional sequel to section 280 of the CFRN, 1999. The CCA of a State is composed of the President and such number of judges as may be prescribed by a law of the House of Assembly of the concerned State.

The first CCA of a State was established in Nigeria by Plateau State on the 2nd of October, 1979 by the Customary Court of Appeal Law of Plateau State. Since then, several States in Nigeria including but not limited to Oyo, Edo, Rivers, Ogun, Benue, Delta, Abia, Imo, Ebonyi, Kaduna, Nasarawa, Taraba, Cross River, Bayelsa States have established CCA. Appointment of a person as the President of the Customary Court of Appeal of a State is made by the Governor upon the recommendation of the National Judicial Council (NJC), subject to confirmation of such appointment by the House of Assembly. While appointment of judges follow the same process but without the additional requirement of confirmation. For a person to be appointed the President of Judge of the CCA, he must be a legal practitioner and must have been so qualified for at least ten years and in the opinion of the NJC, he has considerable knowledge and experience in the practice of customary law. Surprisingly, there is no indicia provided in the constitution for ascertaining the requirement of having considerable knowledge and experience in the practice of customary law which is the basis for appointment. The CCA is a specialised court meant for the adjudication of disputes relating to custom. Its jurisdiction is special and exclusive.

4. Judicial Interpretation of Section 282(1) of the CFRN, 1999 and Matters Arising

The jurisdiction conferred on the CCA has been subject of judicial interpretation owing to the controversy it is shrouded in. the extent of the jurisdiction has been a legal dragnet. With regards to judicial interpretation of section 282(1) of the CFRN, 1999 in relation to the jurisdiction of the CCA, Dudson and James (2020, 41-48) have opined that "despite the enormous benefit derived from the establishment of the Customary Court of Appeal in States that have established them, a trend has emerged that tends to challenge the very existence of the Court as a superior court of record in in Nigeria." The trend being referred to by the duo is the judicial pronouncement on the confines of the jurisdiction of the CCA as provided under Section 282(1) to the effect that the CCA can only determine an appeal which the ground (s) thereof do not deal with evaluation of evidence or the admissibility of evidence even if the appeal arises from customary law issues such as dissolution of customary law marriage, succession under customary law, customary land law tenure, etc. notwithstanding that the appeal emanates from trial customary court. In *Pam v. Sule Gwom* (2002) the Supreme Court Per Ayoola JSC (as he then was) on the issue whether the CCA can entertain appeal dealing with issues other than question of customary law held that:

> Where the decision of the Customary Court of Appeal turns purely on facts or on question of procedure such decision is not, with respect, a question of customary law, notwithstanding that the applicable law is the customary law… where the parties are in agreement as to what the applicable customary law is and the Customary Court of Appeal does

not need to resolve any dispute as to what the applicable customary law is, no decision as to any question of customary law arises.

The issue that arises is when can an action be said to constitute a question of customary law? In giving a guide to this question, the SCN have held Per Ayoola JSC (as he then was) thus:

> I venture to think that a decision is in respect of a question of customary law when the controversy involves a determination of what the relevant customary law is and the application of Customary Law as ascertained to the question in controversy. Where the parties are in agreement as to what the applicable customary law is and the Customary Court of Appeal does not need to resolve any dispute as to what the applicable customary law is, no decision as to any question of customary law arises. However, when notwithstanding the agreement of the parties as to the applicable customary law, there is a dispute as to the extent and manner in which the such applicable customary law determines and regulates the right, obligation, or relationship of the parties having regard to facts established in the case, a resolution of such dispute can in my opinion be regarded as a decision with respect to a question of customary law. Where the decision of the Customary Court of Appeal turns purely on facts or on question of procedure, such decision is not with respect to a question of customary law, notwithstanding that the applicable law is customary law.

Thus, in *Edo State v. Aguele* (2006) the Court of Appeal held that "for an appeal to be competent before the Customary Court of Appeal, the grounds of appeal must relate to and raise question of customary law… it is not the subject matter of the action… it is rather the grounds of appeal… that will confer the necessary jurisdiction on the appellate court." In *Golok v. Diyal Pwan* (1990) reverberating the position above, as to whether the Court of Appeal can entertain an appeal from the decision of the CCA other than one that relate to question of customary law, the Court of Appeal emphatically held that appeals lie from the decision of the CCA to it on question of customary law alone, and none other *Joseph Ohia v. Samuel Akpoemonye* [1999]. In *Samuel Onah v. Samuel Odeh* (2023) the Court of Appeal was confronted with the vexed issue of whether or not the appellate jurisdiction of the CCA is limited to determination of questions of customary law in civil proceeding from the trial Area or Customary Courts. In this case, the appellant had filed a suit against the respondent before the Upper Area Court, Oju, Benue State seeking declaration of title to land and an order of perpetual injunction. At the conclusion of trial, the trial court entered judgment in favour of the claimant/appellant. Being dissatisfied by the judgment, the respondent filed an appeal before the Benue State CCA on a lone ground of appeal that the "the judgment of the trial Upper Area Court, Oju is against the weight of customary justice and it is unwarranted and unreasonable." The parties filed and exchanged brief of argument and it its judgment, the CCA upheld the appeal of the respondent and the judgment of the trial Upper Area Court was set aside, and in its stead, the claims of the claims of the claimant/appellant against the respondent/defendant were dismissed for lacking in merit. The appellant being dissatisfied, appealed to the Court of appeal contending that the CCA lacked the jurisdiction to have entertained the appeal as it does not fall within the province of section 282(1) and (2) which has circumscribed the appellate jurisdiction of the CCA to determination of questions of customary law. The Court of Appeal in its judgment, upheld the appeal and set aside the judgment of the CCA. The Court of Appeal came to the conclusion that in law, weight of evidence and or evaluation of evidence are not questions of customary law that would enable an appellant to appeal to the Benue State CCA from a decision of the trial Upper Area Court. It follows therefore, the sole ground of appeal before the CCA did not satisfy the requirement of section 282(1) of the CFRN, 1999, in that it did not raise any question of customary law *Yakubu & Anor. v. Ali & Ors.* (2018). The reason for this justifiable restrictive interpretation is not an attempt at stultifying the jurisdiction of the CCA but compliance with constitutional provisions. No court, can through interpretation, expand its own jurisdiction or that of another court contrary to the law

that laid down the jurisdiction of the court in the first place. The implication of the foregoing is that, where an appeal from the decision of an Area or Customary Court deals with questions of customary law and evaluation of evidence, the appeal has to be split to the CCA and High Court. While this outcome is cumbersome and worrisome, that is what is at present, obtainable since it is a matter of constitutional provision. The Court of Appeal had noted that to prevent the quagmire noted above, there is a need for a holistic approach to be adopted with the outcome that a challenge to evaluation of evidence or the admissibility of evidence should be taken even by a CCA in an appeal as long as it is intrinsic to a challenge to the outcome of the decision on a question of customary law that had been determined and is before the CCA *Samuel Onah v. Samuel Odeh* [2023] The rationale for this proposal of the Court of Appeal is that "it will be tidier and expedient to avoid a situation of split litigation in different courts on same suit on judgement." The Court of Appeal further reasoned that the fact that at present, the CCA is composed of legal practitioners who are trained and learned in matters of evaluation and admissibility of evidence, such evidential matters, should be handled by them. To achieve this lofty goal, the Court of Appeal rightly proposed the amendment of the CFRN, 1999 to expand the jurisdiction of the CCA to include entertaining matters of evidence arising from decisions of Area and Customary Court on questions of customary law. It is our view that this is the only way to address the issue bearing in mind the case of the National Industrial Court of Nigeria which was omitted under section 6(5) of the CFRN, 1999 which chronicled the SCR in Nigeria. The enactment of the National Industrial Court Act, 2006 to cure this omission was adjudged a constitutional affront and aberration as it was an unlawful attempt to amend the constitution through an ordinary Act of the National Assembly as opposed to an Act of Constitution dimension *Oloruntoba-Oju & Ors v. Dopamu & Anor* [2008]. Thus, it was the enactment of the CFRN, 1999 (Third Alteration) Act, 2010 that laid the issue to rest *Skye Bank Plc v. Victor Anaemem Iwu* [2017]. Thus, it is only through constitutional amendment that the jurisdiction of the CCA can be legally enhanced and fortified as it is now desired. Thus, the court to the jurisdiction of the CCA, is not a stultification of its jurisdiction but merely adhering to the express provision of the CFRN, 1999.

5. The CCA Jurisdiction and Emerging Trends

From the discussion in the preceding sections, it has been observed and rightly so that the section 282(1) and (2) of the CFRN, 1999 which creates the CCA, empowers the various SHAs to confer additional jurisdiction. Despite the Constitution unambiguous specifying that the CCA shall have and exercise appellate and supervisory jurisdiction only, most SHAs, have gone ahead to craftily but insolently conferring original civil jurisdiction on the CCA. For instance, Section 16 of the Oyo State Customary Court of Appeal (Amendment) Law, 2018 has conferred original civil jurisdiction of the CCA to entertain probate matters of deceased person who died intestate and lived under customary law, any question of customary law regarding a marriage concluded in accordance with customary law, etc.

From the foregoing, it is trite that the CCA as created under the CFRN, 1999 does not have nor can exercise original jurisdiction. While it is conceded that the CFRN, 1999 gives the various SHAs the power to create addition jurisdiction for the CCA, it is vehemently contended that the additional jurisdiction to be conferred must be in strict consonance with the express provision of the Constitution that created the CCA and outlined its initial jurisdiction. The SHAs cannot expand the subject matter jurisdiction originally conferred by the Constitution beyond the boundary already set. Thus, the jurisdiction purportedly conferred on the CCA of Oyo State pursuant to section 16 of the Oyo State Customary Court of Appeal (Amendment) Law, 2018 to entertain probate matters of deceased person who died intestate and lived under customary law, any question of customary law regarding a marriage concluded in accordance with customary law, etc. is not only *ultra vires* the SHA of Oyo State but

illegal as the CCA, by extant provision of the Constitution, has only appellate and supervisory jurisdiction. The SHA lacks the vires to clothe the CCA with original jurisdiction which is neither contemplated nor conferred by the CFRN, 1999 that created the CCA. Only the CFRN, 1999 can expand the subject matter of any form of jurisdiction of a court created by it. Thus, pursuant to section 1(3) of the CFRN, 1999, the Oyo State Customary Court of Appeal (Amendment) Law, 2018 and all others in the same standing, which are inconsistent with the express provision of section 282(1) of the CFRN, 1999, are null and void to the extent of their inconsistency.

Moreover, for the CCA to be composed with regards to number, in any proceedings, it must consist of three judges of the court sitting. Decisions of the court, to be valid, has to be signed by three judges. The question is, when the CCA issues Letters of Administration (LA) following the vicissitude of the State High Court, the LA, must be signed by three judges of the CCA but in practice, it is only the President of the CCA that signs same as issued under his seal and mark. The irresistible and logical conclusion is that, the CCA by its nature, issuance of LA, is a matter which it is not only incompetent to handle but unsuitable. There is no contestation that no federating State in Nigeria, including the Federal Capital Territory, can have two probate Registry or Registrar as it is purportedly being surreptitiously done or attempted through the inclusion of original civil jurisdiction in the various CCA laws examined. Attempting to confer original civil jurisdiction on a court that sits in panel, aside from being a horrendous task which is seldom undertaken even by the Court of Appeal under exceptional circumstances when the course of justice demands, portrays a lack of firm understanding of the philosophical basis for the creation of the court. courts that sits in panel are not suitable for legal gymnastic associated with legal trials and associated matters which the State High Court, Federal High Court, NICN, are characteristically well suited for.

Since under Nigeria's law, private citizens have the right to protect the Constitution from violation by any person or by the government or its agent/agency, it is imperative that human rights groups/individual, take up public interest suit before the High Court to seeking the declaration of the obnoxious law as null and void owing to its inconsistency since it runs afoul of the constitution which is the supreme and organic law of the land.

6. Way-forward from the Quagmire

From the preceding section, it is clear that the Court of Appeal and the Supreme Court have firmly and rightly so in our view held that the jurisdiction conferred on the CCA under section 282(1) of the CFRN, 1999 is appellate and supervisory strictly in relation to question of customary law. Additionally, while the SHA is empowered to vest more jurisdiction on the CCA by virtue of section 282(2) of the CFRN, 1999, such additional jurisdiction cannot be beyond the ambits of section 282(1). Thus, the act of conferring original civil jurisdiction on the CCA by the laws enacted by some State House of Assembly, runs haywire the constitution hence, it is null and void to the extent of its inconsistency. Also, the jurisdiction constitutionally conferred on the CCA, is clearly on questions on customary law although, appeals from Customary and Upper Area Courts could result to the formulation of grounds of appeal beyond the scope of question of customary law for determination, such as matters of evidence or facts not strictly question of customary law. Where this happens, the stance of the court is that grounds of appeal other than questions of customary law, are beyond the jurisdictional competence of the CCA hence, it lacks the vires to be seised of same and resolve it. Under this circumstance, a litigant whose appeal contain grounds of question of customary law and maybe evidential matters, pure law or fact, is left with the only option of bifurcating the appeal to the CCA and the High Court. Of course, this regrettable situation impels severe but avoidable hardship on the administration of justice with the concomitant hardship being felt by the system, litigants and the society in general. The cost implication of prosecuting a bifurcated appeal arising from one dispute at the CCA and High Court could be enormous couple with the possible waste of judicious and judicial time is

excruciatingly exhausting. In fact, when one consider the fact that the composition of the CCA as prescribed under Section 281, CFRN, 1999 is made up of legal practitioners who have been so qualified for not less than ten years, the rationale for the bifurcation becomes apparently questionable. The composition of the CCA implies that the judges are presumed sufficiently knowledgeable with regards to the law and must have acquired sufficient skills in practice and procedure of adjudication and evidential matters, it is hardly justifiable rendering the court incompetent to be seised of and determine matters of law and fact pertaining to evaluation and admissibility of evidence. The above, is a constitutional conflagration foisted on the system and, it will require constitutional remedy to put-out. Hinged on the aphorism that justice delayed is justice denied and that access to justice should be seamless and straightforward, it is imperative that the issue of bifurcation of appeals based on grounds of law/fact on one hand and customary law on the other be constitutionally redressed.

7. Conclusions and Recommendations

Extrapolating from the above analysis, the CCA is a specialised court created to entertain appeals from the Area and Customary Court. Its jurisdiction is as specify under section 282(1) and (2) of the CFRN, 1999. The CCA under the Constitution, has only appellate and supervisory jurisdiction over the Area and Customary Courts. Thus, where an appeal from the Area/Customary Court involves both questions of customary law and evaluation/admissibility of evidence, the CCA can entertain the former but not the latter leading to bifurcation of such an appeal bearing in mind its burdensomeness and potential of wasting precious and scare judicial time and resources. It is trite law that the jurisdiction of a court is as provided by the statute or law that created the court and neither the parties nor the court or another court, can increase or decrease the jurisdiction; and, any decision rendered in want of jurisdiction, irrespective of how well the proceedings were conducted, it is a nullity. While the Constitution empowers the SHAs to confer additional jurisdiction on the CCA in accordance with the specification of section 282, Oyo State in particular, has conferred original jurisdiction on the Oyo State CCA contrary to what the CFRN, 1999 dictated. To this end, the CCA has been entertaining applications for and issuing LA which is an affront to the CFRN, 1999.

Considering that the challenges associated with bifurcation of appeals from decisions of Area/Customary Court involves both questions of customary law and evaluation/admissibility of evidence, couple with the fact that the judges of the CCA are legal practitioners with considerable years at the bar and experience, and the need to comply with the provision of the CFRN, 1999, it is therefore recommended that the provisions of section 282(1) and (2) of the CFRN, 1999 be amended to allow the CCA entertain any matter of fact or evidence arising from the determination of any question of customary law submitted to the CCA for determination arising from the decision of a trial Area/Customary Court.

Furthermore, since the provision of section 16 of the Oyo State Customary Court of Appeal (Amendment) Law, 2018 runs afoul of section 1(3) of the CFRN, 1999, there is a need for the High Court of Oyo State to declare them null and void and all actions already taken thereunder.

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DISCRIMINATORY CITIZENSHIP BY REGISTRATION PRACTICE UNDER THE CONSTITUTION OF FEDERAL REPUBLIC OF NIGERIA, 1999 AND ITS IMPLICATION ON GENDER EQUALITY

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Abstract: *The Constitution of the Federal Republic of Nigeria, 1999 (CFRN, 1999) by virtue of section 1(3) thereof, is the organic and supreme law in Nigeria. Section 26 of the Constitution, deals with the types of citizenship available in Nigeria of which citizenship by registration through marriage is one. Thus, where a male Nigerian, marries a foreigner wife, she is legally permitted to acquire Nigerian citizenship by registration. However, where a female Nigerian marries a foreigner, the husband is disqualified from acquiring Nigerian citizenship through registration by virtue of marriage. This position subsists notwithstanding the provision of section 42 of the CFRN, 1999 which prohibits all forms of discrimination particularly on the basis of sex. This article adopts desk-based comparative method in interrogating the propriety of this practice and its implications on gender equality. It also examines various forms of gender discriminatory statutory provisions in Nigeria and their impact on gender equality in Nigeria. It discusses the practice in Kenya and Uganda drawing lesson for Nigeria. It argues that the statutory gender discrimination against females is an albatross to Nigeria's achievement of Goal 5 of the Sustainable Development Goals (SDGs.). It recommends overhauling of the discriminatory legal architecture.*

Keywords: *Citizenship, Democracy, Gender equality, Gender discrimination, Nigeria, Sustainable Development Goals*

1. Introduction

In Nigeria, the Constitution of the Federal Republic of Nigeria, 1999 (hereinafter referred to as CFRN, 1990) specifies they types of citizenships available. According to Aina-Pelemo (2023) Chapter 3 of the CFRN, 1999 which comprises of Sections 25 to 32 deals with

the subject matter of citizenship. Under this Chapter, three types of citizenships exist in Nigeria i.e. citizenship by birth, by registration, and by naturalisation. Denton (2022, p. 44) has stated that citizenship is the legal link between an individual and a state or territory as a result of which the individual is entitled to certain protections, rights and is subject to certain reciprocal obligations and allegiance. What this means is that as an individual, there is a relationship between you and the state/country, which entitles you to certain privileges and obligations which come with being a citizen of the state. Thus, section 26(2) of the CFRN, 1999 is to the effect that where a Nigerian male, marries a foreigner as a wife, the foreigner wife can apply and be granted Nigerian citizenship by registration. However, where a female Nigerian citizen marries a foreigner husband, the husband is legally incompetent to apply and be granted Nigerian citizenship by registration pursuant to the marriage. The justification for this gender disparity is impracticably unfounded especially when the provisions of section 42(1) of the CFRN, 1999 are countenanced which prohibits all forms of discriminatory practices against Nigerian citizens on account of sex.

It would appear that in Nigeria, gender discrimination is prevalent (Onyemelukwe 2016, Pp. 1-16). Ekhator (2015, Pp. 285-296.) has opined that there is ample evidence of the unfortunate existence of several statutorily inspired and engendered discrimination against women simply on the basis of their sex notwithstanding that the same is contrary to the provisions of the CFRN, 1999 and international human rights legal instruments which Nigeria is a signatory. The subsistence of such discrimination against women is a great threat to the promotion and attainment of gender equality which is one of the United Nations Sustainable Development Goals (SDGs) that is a mirror for the ascertainment of civil and developed society. By the foregoing, Imasogie (2010, P. 15) has opined that a foreigner spouse of a Nigerian female citizen, can only obtain Nigeria's citizen by naturalisation which is a much longer process that takes at least fifteen years as opposed to by registration that takes less time.

Thus, this state of affairs raises several concerns requiring rigorous jurisprudential interrogation. The issues are; what is the propriety of section 26(2) in view of the provisions of section 42 of the CFRN, 1999 that prohibits all forms of discrimination particularly on the basis of sex? What is the impact of statutorily flavoured gender inequality on Nigeria's socio-legal development amongst the comity of states? What are the forms or instances of statutorily flavoured gender discrimination subsisting in Nigeria? What are the roles of women and human rights stakeholders such as Non-Governmental Organisations (NGOs) in tackling gender inequality against women in Nigeria? What is the posture of Nigerian courts to gender inequality in Nigeria? Is gender inequality an affront on women human rights in Nigeria? These issues form the crux of this paper.

By way of structure, this article is divided into six parts. Part one which includes this section contains the introduction. Part two examines the propriety of the practice of disallowing foreigners who are married to Nigerian women from apply and obtaining Nigerian citizenship through registration on the basis of being married to a Nigerian citizen and its human rights implications. Part three discusses other forms of statutorily flavoured gender discrimination against women in Nigeria which promotes gender inequality as well as the socio-legal impacts on Nigeria. Part four examines the roles of stakeholders in combating all forms of gender discrimination/equality in Nigeria and the available action plans. Part five examines the

practice in Kenya and Uganda with a view to drawing lessons for Nigeria. Part six contains the conclusion and recommendations based on the findings.

This article adopted analytical method and relied on primary data such as the Constitution of the Federal Republic of Nigeria, 1999, Labour Act, 1974, Nigerian Drug Law Enforcement Agency (NDLEA) Act, 1989; Immigration Act, 2019, African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, 1988, case law; and secondary data such as articles in learned journals, standard textbooks, online materials, Convention on the Elimination of All Forms of Discrimination Against Women, Protocol to the African Charter on Human and Peoples Right on the Right of Women in Africa, 2003. These data are subjected to content and jurisprudential analysis.

2. A Catalogue of Statutorily Flavoured Gender Discrimination against Women in Nigeria

Aside discriminatory customary practices that are prevalent against women in Nigeria, there are also pockets of statutorily and administrative flavoured gender discrimination against women in Nigeria. This section of the paper is an attempt at chronicling them with a view to make a case for statutory overhauling aimed at expunging such provisions/policies from Nigerian laws and practices. Section 34(1) of the CFRN, 1999 bequeaths the right to dignity of human person on all citizens of Nigeria without distinction. This notwithstanding, there are penal laws in Nigeria that erode women dignity aided by socio-religious undertones. Section 55 of the Penal Code applicable in Northern Nigeria, husbands are permitted to chastise their wives. In fact, section 55(10) provides that "nothing is an offence which does not amount to the infliction of grievous harm upon a person and which is done by a husband for the purpose of correcting his wife…" the implication of the foregoing is that a husband can violate the right to human dignity of his wife by beating or any other form of domestic violence and it would not be criminal so far as it does not result in the infliction of grievous bodily injury. Section 360 of the Criminal Code makes the indecent assault of women a misdemeanour punishable with a two-year prison term, as opposed to three years' prison term imposed for indecently assaulting a man, which is a felony in section 353. It is appalling to note that the same offence carries different penalties simply because the sufferers are different on the basis of sex and nothing more. Nwogwu and Okonkwo (2023, p. 47) have argued and rightly in our view that the law has been skewed in favour of the males against females who are a vulnerable group ordinarily requiring enhanced protection. Section 29(4) (a) of the CFRN, 1999 recons that twenty-one years old is the age of majority in Nigeria. However, this age is applicable to a married woman with the implication that a woman, who is less than 21 years but married, has attained majority. This provision is responsible for the consistent perpetuation of underage marriage against girls predominant in Northern Nigeria and serves as an incentive for the refusal of most States in Northern Nigeria to adopt the Child Rights Act which prohibits the menace of child marriage and the likes (Ezeilo, 2011, p. 98).

Under the Nigerian Drug Law Enforcement Agency (NDLEA) Act, 1989, by virtue of section 5(1), for a female to join the agency, at the point of entry, she shall be unmarried and upon enlistment, shall remain unmarried for at least two years. Where a unmarried women in

the agency wishes to marry, she shall apply in writing to the authorities seeking permission and fully disclosing the details of the would-be husband. Surprisingly, this entry and marriage requirements are inapplicable to males. In Nigeria, there is no general age of majority but each transaction has its age of majority. Where a person (s) who are less than 21 (twenty-one year old) wishes to get married under the Act, Section 18 of the Marriage Act requires the written consent of the father of either party and the mother's written consent is only permitted when the father is dead or of unsound mind or out of Nigeria. The implication of the foregoing is that a woman cannot give such written consent save in the instances provided.

Moreover, By the provision of section 34(1) of the Labour Act, a man who is employed in the public service in Nigeria is permitted to be accompanied to his station of work 'by such members of his family (not exceeding two wives and such of his children as are under the age of sixteen years) as he wishes to take with him.' Regrettably, there is no corresponding privilege accorded female employees (Tinuoye 2015, Pp. 84-105). Section 55(1) and 56(1) of the Labour Act is replete with far reaching discrimination against women (Dauda 2007, Pp. 44-59). The section, under the guise of protection, prohibits women from being employed in night work and underground work whether in private of public enterprises except in managerial position and as nurses. Eyongndi (2022, Pp. 374-398) has opined that surprisingly, this obnoxious provisions are inapplicable to male workers. The Civil Service Rules of some States in Nigeria discriminate against women in the event of a women getting pregnant during the course of a training funded by the State (Igbuzor, 2000, Pp. 14-20). For instance, the foregoing is the provision of Rule 03303 of both Kano and Kaduna States' Civil Service Rules geared towards institutionalising gender inequality (Yusuf 1998, P. 80). Under the Immigration Act, a married woman applying for the issuance of international passport is required to submit the written consent of her husband but a married man doing same is not required to submit the consent of his wife. The rationale for these barbaric, vexatious, repugnant, and inhumane restrictions is untenable.

Aside these legal drawbacks on gender equality against women, there is in existence several obnoxious customary practices against women although, Nigerian courts have declared most of them unconstitutional as opined by Eyongndi, (2017, Pp. 17-30.). In terms of inheritance, most customary inheritance rules give preference to male against women as women are excluded from inheriting certain properties (Oyelade 2006, P. 99). The primogeniture rule of inheritance where the eldest male child inherits the estate of a decease to the exclusion of all others including daughters and widow of the decease is deep rooted in Edo State amongst the Benin (Taiwo, 2008). In fact, a woman is herself customarily regarded as a chattel to be inherited upon the demise of her husband and as such, cannot inherit. In most customary land ownership/usage rules, women can only access land through the males and not directly (Olubor, 2009). Base on the foregoing, the position taken by Eyongndi (2022, Pp. 374-398) that in Nigeria, females are exposed to brazen rights violations and all forms of inequalities is almost unassailable. It is trite that no one ever determines their sex (whether male or female) hence, it is extremely unfair, unjust, inhumane, and disheartening to subject a person to harsh treatment simply on the basis of their sex. It is therefore necessary that urgent statutory and administrative extra-judicial steps are taken to redress the injustice. The entrenchment and prevalence of gender equality is a hallmark of a developed and civilised

society where everyone is treated equally irrespective of their sex or any other distinguishing feature. Thus, Nigeria cannot run against the tides as far as gender equality and equity is concerned.

There have been several instances where Nigerian women have suffered unquantifiable public ridicule, shame, opprobrium due to acts of discrimination melted against them especially on political appointments. The discrimination came as a result of contentions arising and relating to whether they should take up political appointment based on their state of origin or that of their husbands. For instance, in 2003, when President Olusegun Obasanjo nominated Dr. Mrs. Ngozi Okonjo-Iweala as Minister of the Federal Republic of Nigeria to fill up the Abia State slot, her nomination was fiercely opposed on the basis that her State of origin is Delta State hence, she is incompetent to take up the slot of Abia State which is her husband's state of origin (Akpambang, 2020, Pp. 17-31). Similarly, Mrs. Josephine Anenih was appointed Minister of Women Affairs based on her state of origin, Abia State; the appointment was opposed that she ought to have been appointed for the slot of her husband's state of origin being Edo State. Indeed, Nigerian women are predisposed to several forms of gender based discrimination mainly on their sex (Ashiru 2010, P. 105). It would seem as if being a woman in Nigeria, is a taboo.

It is apposite to note that these statutory and administrative discrimination against women, aside their utter illegality, is a direct subversion of the will and capabilities of women/females in Nigeria. This is so despite the fact that females have contributed significantly in all spheres of human endeavour to the growth, development and even stability of Nigeria and are still contributing whether resident in Nigeria or the diaspora. Women such as Chimamanda Ngozi Adichie, Ngozi Okonjo Iweala, Folorunso Alakija, Funmilayo Ransome Kuti, Margaret Ekpo, Obi Ezekwesili, etc. These are few of the many women that have and are still contributing greatly to the development of Nigeria in their endeavours. Thus, the sustained tides of discrimination against women on various fronts in Nigeria in rather unfortunate and should not be allowed to persist.

3. Citizenship Discrimination against Women and the Quest for Gender Equality in Nigeria

While the CFRN, 1999 is the supreme law in Nigeria and Chapter III thereof deals with citizenship, it is apt to note that Nigeria's citizenship regulation and practice with regards to sources of citizenship laws is not limited to the Constitution. He opined that past constitutional documents under the theory of vested rights pursuant to section 309 of the CFRN, 1999, Acts of the National Assembly pursuant to section 4(2) of the CFRN, 1999, Presidential regulations are all sources of Nigeria's citizenship laws. However, this discussion in this article is limited to the provision of the CFRN, 1999. Denton (2022) has opined that citizenship by registration is a type of citizenship given to a person who marries someone in a particular country because marriage entails registration. What this means is that when an individual gets married to another person, they often have to register their marriage in order to make it official and legally binding before the laws of the land. As a result of the said marriage, the individual married to the citizen of the country also becomes a citizen by registration. Section 26 thereof deals with citizenship

by registration. This operates to the effect that where a Nigerian male, marries a foreigner wife, (whether the marriage is statutory or customary if only it is valid), the citizenship of Nigeria is automatically conferred on the wife by virtue of the fact of marriage. Thus, subject to the provision of section 28, the wife is entitled to all rights and privileges enjoyed by Nigerians. One would have reasonably expected that the same right is bestowed and enjoyed by female Nigerians who might marry a male spouse who is a foreigner. However, section 26(2) renders this statutorily impracticable as a female Nigerian spouse cannot confer Nigerian citizenship by registration on her foreigner male spouse simply because of her sex and nothing else.

Meanwhile, sections 34 and 42 of the CFRN, 1999 guarantees the right to dignity of human person and freedom from discrimination on the basis of sex respectively. Section 42(1) (a) (b) and (2) of the CFRN, 1999 in prohibiting all forms of discriminations, provides as follows:

> A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the Government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions are not made subject; or (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.
> (2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

Subsection 3 of section 42 provides that nothing in subsection (1) shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the State or as a member of the armed forces of the Federation or member of the Nigeria Police Force or to an office in the service of a body corporate established directly by any law in force in Nigeria. it is trite that that the exception wherein a statute (including the constitution itself or course) could imposed restriction aside from being clearly stated in unambiguous terms, it does not include on the basis of sex as it is the case in section 26(2) of the CFRN, 1999. In effectuating the right to freedom from discrimination, the legitimate expectation is that, in the application of any law, executive or administrative order, no citizen shall be accorded privileges which are not accorded to others on the basis of any distinguishing feature as was held by the court in *Lafia Local Government v. Government of Nassarawa State* [2012]. In *Mojekwu v. Mojekwu* [1999] where the appellant was discriminated from inheriting the property of the deceased on the basis that she is a woman and as such, cannot inherit immovable property under the Igbo customary inheritance practice, the Supreme Court of Nigeria held that the customary inheritance practice was unlawful as it violates the appellants right to freedom of discrimination based on her sex. In the same vein, in *Lewis v. Bankole* (1090) the Supreme Court of Nigeria held that under the Yoruba customary inheritance system, the deceased children of a man (whether male or female), has the right to inherit the estate of the deceased and that their sex cannot be used to disinherit. These decision resonates

with that in *Mojekwu v. Ejikeme* [2001] where the court came to the conclusion that the appellant cannot be disinherited from her deceased father's estate on the basis that she is a female because her sex, which is not responsible for and is neither a disability, should not be used to discriminate against her. in 2014, in the celebrated judgment of *Ukeje v. Ukeje* (2014) the Supreme Court reaffirmed the position that sex cannot be used to discriminate against a Nigerian citizen as same is not unlawful unconstitutional but repugnant to natural justice, equity and good conscience.

The provision of section 26(2) of the CFRN, 1999 are clearly in breach of section 42 thereof. In fact, when there are two conflicting provisions in a statute, the subsequent provision prevails over the former as it is regarded as a technical repeal of the former. Thus, section 42 supersedes section 26(2) and to the extent of its inconsistency, it ought to be declared null and void and of no effect whatsoever. Section 26(2) is an arrogant and gruel accentuation of the patriarchal nature of Nigeria and its unbridled discriminatory propensity. Section 14(2) of the CFRN, 1999 provides that the security and welfare of the people shall be the primary duty of the government while Section 17(1) of the Constitution also provides that the State social order is founded on ideals of Freedom, Equality and Justice. Section 17(2) (a) stipulates that in furtherance of the social order, every citizen shall have equality of rights, obligations and opportunities before the law. The irresistible conclusion of the foregoing is that the ideal of gender equality is enormously entrenched and recognised under Nigeria's constitution.

Aside the CFRN, 1999, the section runs afoul of international human rights instruments. For instance, article 1 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) enjoin state parties to adopt laws and implement policies which prohibits all forms of discrimination against women especially on the basis of sex. The African Charter on Human and Peoples Rights, 1988 and the Protocol on the right of women in Africa have been signed and ratified by Nigeria through the African Charter on Human and Peoples Right (Ratification and Enforcement) Act, 1988 making it part and parcel of Nigeria's domestic law as was held in *Gani Fawehinmi v. Abacha* (1996) and reaffirmed by the decision in *Attorney-General, Ondo State v. Attorney- General of the Federation* (2000). Article 3 of the Charter prohibits all forms of discrimination against women and enjoins state parties to take positive action to curb same. Article 28 provides that every individual shall have the duty to respect and consider his fellow beings without discrimination, 3 of ACHPR stipulates that everyone is equal before the law and entitled to equal protection of the law, and 5 provides for dignity of the human person and protection from cruel, inhumane and degrading treatment. It is our contention that gender inequality as frontal promoted in section 26(2) of the CFRN, 1999 against women, is an act of cruel, inhumane and degrading treatment which ought not to be as it is diametrically opposed to the tenets of the ACHPRs. Also, the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa 2003 prohibits discrimination and gender inequality. Article 2 of the Protocol provides that State parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures; Article 8 provides equal protection and benefit of the law. While the protocol is yet to be specifically domesticated by Nigeria, it was applied by the court in *Dorothy*

Njemanze & three others v. Federal Republic of Nigeria (2017). Although Nigeria operates a dualist system and by virtue of section 12 of the CFRN, 1999, all international treaties which Nigeria is a party to, must be domesticated to become binding, Nigeria cannot abdicate from its minimum responsibility under international law. The Human Declaration of Human Rights, 1984 recognises the right of equality of all genders. Article 26 of the International Covenant on Civil and Political Rights, 1966 (ICCPR) recognises everyone's right to freedom from discrimination and right to equality.

The Federal Government of Nigeria adopted the National Gender Policy in 2006. The policy enjoins the government to adopt and adapt proactive measures in its commitment in addressing problems affecting women and to ensure the mainstreaming of women issues in the formulation and implementation of all policies and programmes.

The United Nations Sustainable Development Goals (UN SDGs) are seventeen global, material and ambitious aspirations which were adopted in 2015 by UN in its seventieth General Assembly. By the SDGs, the UN expects nations of the earth to adopt and adapt policies and programme to facilitate their achievement by 2030. The goal 5 is entrenchment and promotion of gender equality and empowerment of all women. There is said to be gender equality when access to rights or privileges' is not determined by gender but by other objective non-discriminatory standard. Gender equality does not mean that all people, irrespective of sex or gender preference need or require the same things but that none is deprived owing to gender consideration (Akpabio 2022, Pp. 111-141). The issue of male gender preference which is deeply rooted in the Nigerian society is an albatross to gender equality and equity which needs to be frontally confronted through sensitisation and reorientation. (Adegbite and Eyongndi 2023, Pp. 8-17).

4. Curbing Gender Discrimination in Nigeria through Stakeholders Action

From the preceding sections, is it obvious that there is ingrained gender discrimination and inequality in Nigeria against women and its continuity, is a threat to meaningful development and stability. This section of the paper discusses the roles of stakeholders towards curbing this menace. Interestingly, there has been ample attempt by women rights groups to curb discrimination against women through constitutional review. Bill 36 which was an act to alter the provision of Chapter III of the Constitution of the Federal Republic of Nigeria, 1999 to 'provide for Citizenship by Marriage; and for related matters' was sponsored at the floor of the Senate however, the predominant male majority were averse to it and gave it a natural death culminating in protest by women rights groups in Nigeria. Bill was aimed at conferring Nigerian citizen by registration on foreigner spouses of Nigerian women. There is need to reintroduce this Bill under the current senate. Also, through advocacy and enlightenment, groups such as Federal Ministry of Women Affairs, Women Empowerment and Legal Aid Initiative, Nigerian Bar Association Women Form, International Federation of Female Lawyers, Nigeria Association of Women Journalists should lobby for the ratification of CEDAW should considering the fact that it contains ample provisions which could be explored to curb discrimination against women. The Nigerian courts have consistently take a stand against gender discrimination. For instance, the Police Regulations 1969 made pursuant to the Police Act contains several discriminatory provisions against women. Regulation 118(g)

provides that a woman desirous of joining the police force must be unmarried but same is inapplicable to males, by Regulation 124 of the Police Act, a woman police officer who is intends to get married must initially apply in writing to the Commissioner of Police for approval but male officers are not so required. However, the Federal High Court (FHC) in *Women Empowerment and Legal Aid Initiative v. Attorney-General of the Federation* (2010) has held that these regulations are illegal as they discriminate against women contrary to the provision of section 42(1) of the CFRN, 1999. In the same vein, in *Dr. Priye Iyalla-Amadi v. Comptroller- General, Nigerian Immigration Services and Anor.* (2008) the FHC held that the requirement of written consent of the husband where a married woman is applying for issuance of International passport is was an affront on section 42 of the CFRN, 1999 as it is discrimination against married women especially since married men are not required to supply written consent of their wife where they apply for international passport. The Nigerian court should sustain this laudable stance as it is the hope of the vulnerable in the society (Umah 2020). Continuous rigorous sensitisation and enlightenments must be initiated and sustained aimed at promoting gender equity and equality in Nigeria by stakeholders. There is a need to mainstream gender studies into Nigeria primary and Secondary School curricula and same should be done at the tertiary level as a compulsory general studies course. This will help to reorient the citizenry as a reverse from the subsisting bias against women.\

5. Examining the Practice in Kenya and Uganda

Acquisition of citizenship by registration on the basis of marriage is not known only under Nigerian law. There are several jurisdictions where foreigner spouse of citizens, upon fulfilment of certain preconditions, can become citizens of their spouse country. This section of the paper examines the practice in Kenya and Uganda with Nigeria. Kenya and Uganda are selected because aside being common law jurisdictions, they share strong socio-economic affinity with Nigeria as Uganda has the fastest developing economy is southern Africa while Kenya is the economic hub of East Africa.

In Kenya, Section 15 of the Kenya Constitution provides that a person who has been married to a citizen for a period of at least seven years is entitled on application to be registered as a citizen while section 18(a) thereof empowers the Kenyan Parliament to enact laws regulating acquisition and regulation of citizenship. As a result, the Kenyan Parliament enacted that Kenya Immigration and Citizenship Act, 2011. Section 11 of the Act, provides that a person who has been married to a Kenya citizen for at least seven years is entitled to apply in the prescribed manner, upon fulfilment of certain conditions for Kenyan citizenship. This is possible if the marriage had been solemnised under a system of law recognised in Kenya whether the solemnisation was done in or outside Kenya; the applicant has not been declared a prohibited immigrant under the Act; the applicant has not been convicted for an offence and sentenced to prison for a period of three years or longer; the marriage was subsisting as at the time of filing the application for citizenship; and the marriage was not entered into for the purpose of acquiring a status or privilege in relation to immigration or citizenship. Upon the fulfilment of the aforementioned conditions, a foreigner married to a Kenya citizen, will be granted Kenyan citizenship. By virtue of section 12(1) of the Act, a foreign national who has

been married to a Kenyan citizen who but for the death of the citizen would have been entitled, after a period of seven years, to be registered as a citizen of Kenya under section 11 thereof, shall be deemed to be lawfully present in Kenya for the unexpired portion of the seven years and shall be eligible for registration as a citizen on application in the prescribed manner upon expiry of the seven years period. By virtue of section 4 of the Kenya Citizenship and Immigration (Amendment) Act, 2023, an application for citizenship by registration on the basis of marriage shall be accompanied by a statutory declaration and marriage certificate to ascertain the marriage.

It is apposite to note that under Kenyan law, citizenship by registration through marriage is made available to anyone person who marries a Kenyan citizen. The implication of the foregoing is that both female and male Kenyan citizen's foreigner spouses can apply and upon fulfilment of the prescribed criteria, are registered as citizens of Kenya. This is unlike Nigeria where only foreigner spouses of male Nigerian citizens can by virtue of marriage, be granted Nigerian citizenship. The law in Kenya does not discriminate against either male or female but is gender neutral and balanced. As a result, it promotes gender equity and equality. The position of the law in Kenya emphasises and aligns with the rights to freedom from discrimination on account of sex or any other distinguishing feature and dignity of the human person enshrined in sections 27 and 28 of the Kenyan Constitution, 2010. It also reinforces the right to freedom and security of the person guaranteed under section 29 thereof which requires that no one shall be treated or punished in a cruel, inhuman or degrading manner as gender discrimination is a form of cruel, inhuman and degrading treatment melted out on the victim.

It should be noted that in Kenya, where a widow or widower marries a non-citizen before the expiration of the seven years window, he/she forfeits the right to apply for Kenya citizenship. Thus, where a widow/widowers remarries after the expiration of seven years from the year of contracting the marriage, he/she is eligible to apply and be granted the citizenship of Kenya by registration.

In Uganda, acquisition of citizenship through marriage is gender neutral. Section 14 of the Uganda Citizenship and Immigration Control Act, 1999 regulates citizenship by registration. Section 14(2) of the Act is to the effect that certain persons, upon application, shall be registered as citizens of Uganda. One of the persons is every person married to a Ugandan citizen, upon proof of a legal and subsisting marriage of five years or more as at the time of making the application for citizenship. From the foregoing, once a Ugandan citizen (whether male or female), marries a foreigner, for a period of five or more years from the date of marriage, the spouse can apply and be granted Ugandan citizenship. This right inures all citizens of Uganda without any discrimination on the basis of sex. It is clear that the position under Ugandan law is gender neutral which supports and promotes gender equity and equality unlike Nigeria where only male Nigerians are constitutionally permitted to transfer their citizenship to their foreigner spouses and not vice versa. It is imperative that the obnoxious, vexatious and repugnant provision of section 26(2) of the CFRN, 1999 be reviewed with a view to making same gender neutral like what is obtainable in Kenya and Uganda.

It is instructive to note that Kenya and Uganda are African countries with patriarchal outlooks just like Nigeria. However, unlike Nigeria, these two African countries, have considered it worthy to promote and protect gender equality with regard to entitlement to

citizenship based on marriage. Their patriarchal nature did not become a veritable tool for gender subjugation and exploitation towards women. The probable use of patriarchy as the justification for discriminating against Nigerian female citizens from automatic conferment of their citizenship on their foreigner husband(s) that such is opposed to patriarchy lacks legitimacy. The possibility that a foreigner husband will be willing to acquire the citizenship of his spouse country cannot be overlooked. The reasonable thing to do is to make available the option/opportunity and let the concerned persons decides whether or not to avail themselves of it. Discriminating on mere presumption especially in this instance is brash and dangerous.

6. Conclusion and Recommendations

Extrapolating from the analysis above, it is crystal clear that women in Nigeria are exposed to several forms of discriminations including statutory and customary law practices. In terms of political participation and representative action, the pendulum tilt unfavourably against women. Section 26(2) of the CFRN, 1999 is discriminatory against women with regards to citizenship by registration for spouse's contingent on section 42 thereof. This practice, promotes gender inequality which is an anathema to the achievement of the United Nation SDG 5 as well as obliterates women's right to dignity of human person. To curb this menace, women and human rights stakeholders such as the Federal Ministry of Women Affairs, Women Empowerment and Legal Aid Initiative, Nigerian Bar Association Women Form, International Federation of Female Lawyers, Nigeria Association of Women Journalists, must ensure that affirmative action is taken towards amendment of section 26(2) of the CFRN, 1999 by expunging the restriction placed against the male spouses of Nigerian women from acquiring citizenship by registration. Also, advocacy and enlightenment should be taken to reorient the citizenry on the ills of gender inequality on national development and its effects as an impediment to Nigeria's achievement of SDG 5. The education curricula of Nigeria's secondary and tertiary institutions should be reviewed with the aim of introducing gender studies as compulsory subject/course. This will help to orientate and reorientate Nigerian youths on the need to promote and protect the ideal of gender equality.

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THE LEGAL INSTITUTION OF PARENTAL ALIENATION AND HOW IT IS REGULATED IN ROMANIA

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Abstract: *Parental alienation is a complex and controversial phenomenon, often encountered in the context of parental separation or divorce, and involves the process whereby a child is emotionally and psychologically alienated from one parent as a result of negative influence from the other parent. It involves a series of behaviors and actions whereby the alienating parent manipulates the child's perceptions, inducing feelings of hostility, fear or contempt towards the target parent. Parental alienation can have devastating consequences for both the child and the alienated parent, in the sense that it has negative effects on the child's emotional and relational development, affecting the child's ability to maintain healthy long-term relationships and at the same time causing significant distress for the alienated parent, who feels excluded from the child's life. In the legal and social context in Romania, parental alienation has been a challenge for family courts and professionals working in the field of child protection, as until now there was no specific legislation directly regulating this phenomenon, despite all the general principles of family law and child protection legislation that provided mechanisms to prevent and address such situations. This article aims to provide an introduction to parental alienation and to emphasize the importance of understanding and properly managing the phenomenon from both a legal and psychological perspective in order to protect the interests and well-being of children.*

Keywords: *divorce, best interests of the child, maintenance of personal ties program, estranged parent, parental alienation.*

Introduction. The situation of children in Romania before Law 272/2004

It was only in 1970 that the first Romanian law on child protection was adopted, and the purpose of this law was to provide protection to certain groups of children, especially children in need of care outside the family.

This law provided for institutionalization as the main form of protection for these children. However, institutions became overcrowded during the communist regime as a result of the communist government's policy of increasing the population at all costs by banning abortion and other more conventional methods of family planning. After the fall of communism, the terrible effects of this policy shocked the world. Foreign journalists were allowed to visit children's homes and hospital homes for children with disabilities, and numerous articles and documentary films were published in many countries.

Thus, Romania's image suffered, and the positive side of things was only the compassion of people from all over the world, who, seeing their situation, began to send humanitarian aid in the form of food, clothing and judgment to the institutions that cared about their plight and had made such a deep impression. (Visu, 2022: 62) Despite the efforts of these people, their situation was not going to change without a fundamental change on several levels, which is why representatives of organizations such as UNICEF, USAID, World Vision, Holt Terre des Hommes were set up in Romania and, in cooperation with local and central public authorities, they carried out staff training programmes, restructuring programmes for some institutions, as well as the creation of new types of services in certain pilot counties.

The year 1997 proved to be a landmark for the reform of the child protection system in Romania, as the first governmental strategy covering the period 1997-2000 took place, which led to the decentralization of child protection activities, the restructuring and diversification of child protection institutions, the development of family-type alternatives to residential protection, and the prevention of child abandonment. The immediate effect of the adoption of the new legislation was the establishment, in all counties of the country and in the six sectors of Bucharest municipality, of child protection commissions and specialized public services for child protection, called Child Protection Directorates.

Brief considerations on Law no. 123/2024 amending and supplementing Law no. 272/2004 on the protection and promotion of children's rights

Law No 123/2024 was introduced in Romania to update Law No 272/2004 on the protection of the rights of the child, with the main aim of strengthening measures to protect the relationship between children and both parents, especially in the context of custody disputes. The amendments aim to combat the phenomenon of "parental alienation," which is considered a form of psychological violence. This occurs when a child develops hostility or withdrawal towards one parent due to negative influence from the other parent, which may include manipulation or restriction of personal relationships with that parent.

New provisions include the possibility for courts to order protective measures or sanctions to ensure that the child's right to maintain personal relations with both parents is respected. Courts can also decide that parental authority should be exercised by one parent if the other parent displays serious behaviors, such as manipulating the child against the other parent, violence or addictions.

With this law, the Romanian government aims to better protect the emotional well-being and development of children, while facilitating balanced relationships between them and their parents, including in difficult cases of separation or divorce.

In concrete terms, Law no. 123/2024 was designed with the intention to target two major purposes, namely, a first main purpose which is reflected in combating **real situations of parental alienation** encountered in very large numbers in practice and seriously affecting an increasing number of children, and the second secondary purpose, aimed at combating **situations in which unfounded accusations of parental alienation are made**, usually to hide an abusive behavior of their own against the child or the other parent.

Law No 272/2004 states that they are entitled to protection and support to exercise their rights, and if it is found that a minor is unable to exercise his or her rights, the responsible persons must take action in accordance with the law.

The primary responsibility for the upbringing and development of the child lies with the parents, who must act in the best interests of the child, and where parents are unable to fulfill these obligations, the local community has an additional role in supporting the family by developing services appropriate to the child's needs.

The intervention of public authorities is complementary, ensuring child protection only when necessary, through the actions of specialized institutions and competent authorities.

The provisions of Law No 272/2004, which has been updated by the new law, emphasize that the state plays a **supporting and intervening** role **only in necessary cases**, respecting the right of parents to raise and educate their children. However, if there is a risk or finding of a violation of the child's rights, including in situations of parental alienation, the public authorities must act in accordance with the legal provisions to protect the child. (Spîrchez, 2022: 10)

The amendments brought by Law no. 123/2024 further emphasized the role of **state institutions** in rapid intervention to protect the child in cases of psychological violence, neglect or parental alienation.

Measures proposed by Law no. 123/2024 to combat the phenomenon of parental alienation

Law No 123/2024 introduces a number of new measures to combat the phenomenon of parental alienation (or parental alienation) in Romania, as part of the amendments to Law No 272/2004 on child protection. These measures include: **monitoring** by the representatives of the public social welfare service, **financial sanctions in the form of** late payment **penalties** imposed on the parent who refuses to implement or comply with the provisions concerning the child's living arrangements or the child's personal relations maintenance program, the **service plan** to be drawn up and implemented by the public social welfare service and the **visits** organized by the representatives of the social welfare services in case there are reasonable grounds to suspect that the child's life and security are endangered in the family. We note that all these measures introduced by Law no. 123/2024 have as a prerequisite situation, the disagreement between parents on how to exercise the right to have personal contact with the child or even situations in which one of the parents deliberately prevents the non-resident parent to comply with the visitation schedule established in favor of the latter, a situation that actually reflects the phenomenon of parental alienation.

In the following lines we will give a brief overview of what is involved in preventing the phenomenon of parental alienation:

Monitoring compliance with the personal links program

The monitoring of the contact schedule between the child and the non-resident parent is a regulated procedure to ensure that the child's right to have a relationship with both parents is respected, even in situations of divorce or separation. This monitoring can be carried out in a number of ways, depending on the circumstances of the case and the decision of the court, with the proviso that monitoring can also be carried out in a situation where, by

an authentic instrument issued by a notary public, the parents have agreed on a schedule for the non-resident parent to maintain contact with their child.

Therefore, if one of the parents hinders or negatively influences the child's relationship with the other parent by not complying with the court-ordered or mutually agreed program, the other parent has the right to request the intervention of the public social welfare service or other persons responsible for social welfare in the area where the child lives, to monitor contact with the child for a period of up to 6 months.

The monitoring allows representatives of the public social welfare service or persons responsible for social welfare to be present during the child's pick-up from the non-resident parent, during the non-resident parent's visits to the child's home, and when the child is returned to the resident parent. Also, if the court has ordered monitoring by a final judgment, social workers may also be present when the child is accommodated by the non-resident parent. During the monitoring, the representatives of the public social assistance service or, where appropriate, the persons in charge of social assistance may interview the parents, the child, the persons with whom the child has a relationship and other persons whose interview is deemed to be useful for the purposes of drawing up the monitoring report.

At the end of the monitoring period, the social service representative may request an extension of the monitoring for a maximum of 6 more months, if deemed necessary. He or she may also recommend psychological counseling for one or both parents, as well as other measures to improve the child's relationship with the non-resident parent. The monitoring report is given to both parents and can be used as evidence in court if the situation so requires.

Measures of an insurance, guarantee or penalty nature

In accordance with the provisions of Article 20 of Law no. 272/2004 amended by Law no. 123/2024, at the request of the interested parent or other entitled person, the court may order one or more measures of a precautionary nature, guarantees or penalties to ensure that the child's personal relations with his/her parents or other persons with whom the child has enjoyed family life are maintained, to ensure the return of the child to his or her home at the end of the period of accommodation, to prevent the child from being prevented from being taken back to the home of the parent who does not live with the child at the end of the period of accommodation, and to ensure compliance with the provisions concerning the child's residence.

In the case of penalties, they are set between 10% and 15% of the monthly net income of the person obliged to pay it, but not less than 300 lei, and if the court finds the existence of a situation of parental alienation, the penalty is mandatory and the minimum and maximum limits of the penalty are doubled.

As for the rest of the precautionary measures that can be ordered by the court in case of non-compliance with the program, we also specify the possibility of depositing a real or personal guarantee by the parent or the person from whom the child is to be taken, in order to maintain personal relations or, where appropriate, upon termination of the visitation program, as well as the deposit of the passport or other identity document with an institution designated by the court.

Service Plan

The Service Plan is an important tool in combating parental alienation, providing a clear framework of intervention and support for parents and children. This plan is developed by the General Directorate of Social Assistance and Child Protection (DGASPC) and aims to protect the best interests of the child, ensuring that the bond with both parents is maintained and that the child's rights are not violated.

The DGASPC specialists conduct a detailed assessment of the family situation, identifying behaviors that indicate parental alienation (for example, the child's refusal to meet with a parent without a real justification). On the basis of the assessment, a personalized service plan is established with the main objective of restoring a healthy relationship between the child and the estranged parent.

The service plan may include psychological counseling for both the child and the parent who is hindering the personal bond, as this can help identify and correct alienating parenting behaviors, helping to heal the affected relationship. Family counseling may also be included in the plan to help the whole family manage conflict and improve communication.

The service plan may also include measures to mediate between parents in order to resolve disputes related to the visitation schedule and to prevent conflicts from escalating.

During the implementation of the service plan, DGASPC monitors progress and carries out regular evaluations. If the relationship between the child and the non-resident parent does not improve, additional measures may be proposed, such as prolonging the monitoring or recommending more intensive interventions (e.g. specialized therapy), and at the end of the monitoring period, a detailed report is drawn up and submitted to the parents, which can be used as evidence in court in case of litigation. The report includes observations of the parent's behavior that hinders personal bonding, as well as recommendations for further necessary interventions.

The service plan is therefore essential to combat parental alienation as it provides a structured set of interventions that support the child in maintaining a balanced relationship with both parents. It helps protect the best interests of the child and contributes to conflict resolution, thus preventing the negative consequences of parental alienation on the child's development.

Visits by representatives of the public social welfare service

If there are reasonable suspicions that the safety and well-being of the child is at risk within the family, representatives of the public social welfare service or the General Directorate for Social Assistance and Child Protection (DGASPC) are obliged to visit the child's home. During this visit, they must assess the conditions in which the child is being cared for, check the child's state of health and physical development, as well as aspects of the minor's education and vocational training. If irregularities or shortcomings are found, the representatives have a duty to provide the necessary recommendations and guidance to remedy the situation.

This intervention is designed to protect the child's best interests by ensuring that the child develops in a safe and healthy environment. If the situation so requires, DGASPC may decide to apply additional protective measures, including placing the child in a more secure environment, if remaining in the family would pose an imminent danger to the child. If,

following the visits carried out by the representatives of the public social welfare service, it is found that the child's development is endangered physically, mentally, spiritually, morally or socially, and the personal ties with the non-resident parent are negatively affected or there is clear evidence of parental alienation, the social welfare service is obliged to notify the General Directorate of Social Assistance and Child Protection (DGASPC) within 24 hours. This referral is necessary in order for the DGASPC to take appropriate legal measures to protect the best interests of the child.

Among the measures that DGASPC can take in the above-mentioned situation are a detailed assessment of the situation of the child and the family, recommending or imposing psychological counseling measures for the parents, adjusting the previously established program of personal ties, if it affects the child's development, and in serious cases, initiating a temporary placement procedure to protect the child from an environment considered dangerous.

It is important to note that the court is the only competent authority to decide, taking into account, as a matter of priority, the best interests of the child, on: the person exercising parental rights and fulfilling parental obligations in the situation where the child is temporarily or permanently deprived of parental care, the manner in which parental rights and obligations are exercised and fulfilled, the total or partial deprivation of parental rights, the restoration of parental rights and the determination of the existence of parental alienation.

Conclusions

We conclude that parental alienation is a subtle but deeply damaging form of emotional abuse of the child, and that it interferes with the healthy relationship between the child and the target parent, creating confusion, emotional distress and, in the long term, affecting the child's healthy development.

Success in tackling this phenomenon requires a shared responsibility on the part of parents, mediators, counsellors and the legal system to recognize the signs of parental alienation and to act in the best interests of the child, through early interventions, such as those mentioned in this article, which can help to restore damaged relationships and provide a stable and healthy environment for the child.

Essential for the prevention and management of cases of parental alienation are both counseling and mediation programs and the intervention of legal professionals, who, through the measures made available by the legislation in force, can sanction abusive behavior and promote healthy parent-child relationships. (Motica, 2015: 58)

Parental alienation affects not only family dynamics, but also the emotional health of the child, with consequences that may persist into adult life. Understanding and tackling this problem requires empathy, cooperation and prompt intervention, with the ultimate aim of the child's well-being and harmonious development.

Last but not least, the best interests of the child must be paramount in all actions concerning children. This is not to say that the best interests of the child will always be the only determining factor to be taken into account, but that "there may be competing or conflicting human rights interests, for example between children taken separately, between different groups of children and between children and adults". (Nicolae, 2016: 189) However,

the best interests of the child must be taken into account in all situations and it must be demonstrated that the child's best interests have been given priority.

The provisions of Law 272/2004 and the rights of the child as a whole may be seen as diminishing the authority of parents, other family members or caregivers. However, such a perception is not correct, as Law 272/2004 emphasizes the essential role of the family in the child's life and emphasizes the respect the child owes to parents, other adults and peers.

In conclusion, Law No 272/2004 emphasizes parental authority and the responsibilities of the parents in their relationship with the child, as well as the fact that every child is important and is a capable being. This law, like the UN Convention on the Rights of the Child, considers that good average results or a high rate of overall progress is not enough.

In short, the idea that Law 272/2004 conveys to all those who are responsible for promoting children's rights in Romania is that every child matters and all authorities responsible for the promotion and protection of children's rights in Romania have a duty to do their utmost to ensure that no child is forgotten or ignored.

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THE ROLE OF SPECIAL INVESTIGATIONS IN THE PROTECTION OF CULTURAL HERITAGE ASSETS IN THE REPUBLIC OF MOLDOVA

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Abstract: *Special investigative activity has always been an essential legal instrument of the state, intended to protect fundamental social values, including cultural heritage assets that are the subject of crimes. The recent legislative changes in the Republic of Moldova have changed the way this activity is regulated, generating difficulties in the understanding and unitary application of the new regulations. This study aims to explain, highlight and analyze the problems related to the normative framework that prevent special investigations to be carried out in order to prevent and investigate crimes, including those that attack cultural heritage assets. Finally, recommendations will be made to improve the legal framework and to optimize the application of the special investigative activity in this specific context.*

Keywords: *special investigative activity, special investigative measures, criminal process, criminal prosecution, cultural heritage assets.*

Introduction

Cultural heritage goods are a distinct type of goods, created by man to satisfy his spiritual and aesthetic needs, while having scientific, historical, artistic and cultural value. The special importance of these goods has meant that their commercial price has remained stable and high, even under market economy conditions. This factor has led to an increase in the volume of investments in this area and, as demand has been met, the number of criminal attacks on objects of cultural value has also increased, most of these crimes being thefts (Glavan, 2007: 195-199).

The term "cultural heritage goods" entered the Moldovan legal vocabulary through the ratification by the Republic of Moldova of the UNESCO and Council of Europe conventions in the field of cultural heritage protection: UNESCO Convention on the Protection of the World Cultural and Natural Heritage of 23.11.1972 (Convention Concerning the Protection of the World Cultural and Natural Heritage), in force for the Republic of Moldova since 23.12.2002; The Convention for the Protection of Cultural Property in Case of Armed Conflict, together with Protocol I to the Convention, of 14.05.1954 (Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention), in force for the Republic of Moldova since 09.03.2000; Convention for the Protection of the Architectural Heritage of Europe of 03.10.1995 (Convention for the Protection of the Architectural Heritage of Europe), in force for the Republic of Moldova since 01.04.2002; Convention on the Measures to be Taken for the Prohibition and Prevention of Illicit Operations of Import, Export and

Transfer of Ownership of Cultural Property, of 14.11.1970 (Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property), in force for the Republic of Moldova since 14.12.2007; European Convention for the Protection of the Archaeological Heritage (revised) of 16.01.1992 (European Convention on the Protection of the Archaeological Heritage), in force for the Republic of Moldova since 22.06.2002.

Following the ratification of these very important international legal instruments, the Republic of Moldova intervened in 2016 (Law of the Republic of Moldova no. 75 of 21.04.2016 on the amendment and completion of certain legislative acts) with some amendments to the criminal law meant to criminalize certain acts that threaten the cultural heritage, namely the completion of art. 186 of the Criminal Code "Theft" with para. (21), of art. 187 of the Criminal Code "Robbery" with para. (21), of art. 188 of the Criminal Code "Robbery" with para. (21), of art. 190 of the Criminal Code "Excrocheria" with para. (3) and art. 191 of the Criminal Code "Embezzlement of foreign property" with para. (22), the inclusion of new articles such as Art. 1991 "Deterioration or destruction of cultural heritage goods", Art. 1992 "Carrying out unauthorized works in archaeological sites or areas with archaeological potential", Art. 1993 "Concealment or illegal preservation of movable archaeological goods", Art. 1994 "Unauthorized commercialization of movable archaeological goods and classified movable cultural goods".

It seems that the inclusion of these rules in the criminal law was also determined by the fact that crimes related to the theft of cultural heritage goods were treated and investigated in the same way as other crimes. Also, the estimation of the objects of cultural value stolen at a very low price was a problem in initiating the procedures for investigating these facts (Odagiu, 2009:87-89).

The doctrine emphasizes that crimes related to the trafficking of cultural property are extremely difficult to investigate and research. These crimes pose an increased social danger, characterized by the difficulty of being prevented, detected, and discovered, as well as by the personality traits of the offenders. Most of these crimes are committed on demand and are meticulously prepared by criminals who use technical means, methods, and modern weapons. The organizers of these crimes are highly conspiratorial, which allows them to evade criminal liability (Bogdanov et al., 2019:53-56).

The scale of this phenomenon is primarily due to the fact that illegal transactions in goods of cultural value are almost on a par with illegal arms or drug trafficking in terms of profitability. Even a single successful operation brings huge profits to criminals. This is explained by the fact that the price of cultural goods on the international market is several times higher than on the domestic market. In addition, illegally obtained funds are used to finance new similar crimes. All these factors contribute to better cooperation between domestic and international crime (Gherman, 2008:96-101).

The prevention, detection and investigation of theft of cultural heritage assets remains a very complicated problem in the Republic of Moldova. Some researchers have drawn attention to the lack of statistics on the number of thefts of cultural heritage goods, despite the fact that in the last 10 years more than 60 churches have become the target of thefts of objects of cultural value. The number of private individuals who have become

victims of such acts remains unknown. Even worse is the fact that some people have not even realized that they have become victims of scammers (Odagiu, 2009:87-89).

In this context, the issue of strengthening measures to ensure and protect cultural assets becomes particularly topical. Among these measures, a special place belongs to the measures characteristic of the special investigative activity.

The methodology of the study includes the traditional research methods: logic, grammar, analysis and synthesis, deduction and induction, observation and comparison. Based on the analysis of relevant materials (national legislation, specialized literature, other relevant materials) the appropriate conclusions and proposals are formulated.

Results obtained and discussions. The special investigative activity is a complex type of state activity, to which certain unusual investigative instruments are specific, strictly regulated by law. These instruments are intended to be applied subsidiarily to protect and ensure the security of certain social values of particular importance. Given the intrusive nature of these investigative instruments in the rights and freedoms of the person, appropriate legal regulations are required to guarantee the absence of possible abuses by the bodies competent to apply them (Glavan, 2019:88-108).

The legislation of the Republic of Moldova has been in a continuous process of reforming the regulation of the special investigative activity for more than a decade, trying to balance the balance between the public and private interest. The difficulties of traditional investigation of crimes through procedural methods, which have become more and more evident as the criminal phenomenon is professionalized and transformed in the context of the technical-scientific progress of the recent period, have led to the modification of the normative framework of criminal procedure. Thus, the results obtained during the special investigation activity can be used in the evidentiary process.

The lack of a clear model about the architecture of the legal regulation system of the special investigation activity and, probably, the conflicts of interest, led in 2012 to the reform of the normative framework in this area, generating problems of understanding and unitary application of the legal norms (Glavan, 2018:142-147). The reform has generated contradictory discussions regarding the location of the legal regulations regarding the special activity of investigations in the national law system. The polemics continued regarding the implementation of special investigative measures within and outside the criminal trial as well as other topics (Covalciuc, 2018:145; Covalciuc, 2023:52,57, 70; Botnari, 2022:162).

The numerous attempts to harmonize the legislation led to new legal changes in 2023. Although they were intended to improve the regulatory framework, the new regulations make it difficult to investigate some crimes, including those related to the theft of goods of cultural value.

According to the current legal regulations, the special investigative measures provided by Law no. 59/2012 can be carried out only outside the criminal trial. This means that, in the investigation of crimes, including in the preparation and attempt phase, only the special investigative measures regulated in the Code of Criminal Procedure can be applied. Thus, the previous paradigm, according to which the special investigative measures regulated

by Law no. 59/2012 could have been carried out for the prevention and investigation of crimes, it no longer works.

Currently, the Code of Criminal Procedure regulates 14 special investigative measures, seven of which are authorized by the investigating judge: search of the home, use and/or installation in it of devices that provide photography or surveillance and audio and video recording; technical supervision; interception and recording of communications and/or images; retaining, investigating, handing over or picking up postal items; monitoring or control of financial transactions and/or access to financial information; collection of information from providers of electronic communications services; accessing, intercepting and recording computer data.

The other seven measures are authorized by the prosecutor: identification of the subscriber or user of an electronic communications network; control of the transmission or receipt of money, services or other material or intangible values claimed, accepted, extorted or offered; supervised delivery; acquisition of control; undercover investigation; visual tracking; collection of information.

Obviously, the measures authorized by the investigating judge, compared to those authorized by the prosecutor, have a more intrusive character in the sphere of the rights and freedoms of the person. They are also the most effective in investigating crimes. According to statistical data from previous years, the most requested investigative measure is "Interception and recording of communications and/or images", constituting approximately 50% of the total number of measures performed. With a frequency of about 14%, the measure "Collection of information from electronic communications service providers" is applied.

On the third place, with about 10%, would be positioned the measure "Technical surveillance", given that it derived from the merger of two previous measures: "Home surveillance by using technical means that ensure registration" and "Documentation with the help of technical methods and means, location or tracking through the global positioning system (GPS) or by other technical means". "Visual tracking" is applied in about 8% of cases, and 7% of the measures are represented by "Identification of the subscriber, owner or user of an electronic communications system or an access point to an information system". The other 11% of the measures belong to other types of special investigative measures (Statistical data on the performance of special investigative measures in the period 20015-2022 obtained on the basis of the annual reports of the Prosecutor General's Office of the Republic of Moldova) [https://www.procuratura.md/activitate.html#item-3].

By analyzing these figures, we can see the potential of special investigations to combat crimes, including those related to the theft of cultural heritage goods. At the same time, it is also worth taking into account the new conditions for carrying out special investigative measures. Among the general conditions enshrined in Article 133 of the Code of Criminal Procedure, it is necessary to have a criminal investigation initiated with regard to the preparation or commission of a serious, particularly serious or exceptionally serious crime, with the necessary exceptions.

Considering the fact that the crime of theft of cultural heritage goods from archaeological sites or areas with archaeological potential provided by art. 186 para. (21) The Criminal Code does not belong to the category of serious, particularly serious or exceptionally serious, it can be noted that for the investigation of these facts practically no

special investigative measures can be carried out. The same statements can be made regarding the crime of damage or destruction of cultural heritage goods provided by art. 1991 para. (1) and (2) CP; the crime of carrying out unauthorized excavations or searching for treasures in archaeological sites or in areas with archaeological potential provided by art. 1992 CP; of the crime of concealment or illegal storage of movable archaeological goods provided for by art. 1993 of the Criminal Code; as well as the crime of unauthorized sale of movable archaeological goods and classified movable cultural goods provided by art. 1994 CP.

Although the legislator has provided for some special investigative measures special conditions for carrying them out, indicating by name the articles of the Criminal Code for which these measures can be carried out, including for some minor and less serious crimes, we can nevertheless observe that the respective lists practically do not include the facts that threaten cultural heritage assets.

Thus, the legislator conditioned in art. 1381 para. (2) CPP, carrying out the measure of interception and recording of communications and/or images through a list of facts prohibited by the criminal law, but in that list there are no offenses provided by art. 186 para. (21); Art. 187 para. (21); Art. 190 para. (21); Art. 191 para. (22); Art. 1991 - Art. 1994 CP.

Special conditions were also provided for the measure of monitoring or control of financial transactions and/or access to financial information (art. 1383 para. (2) CPP) and even in this case we do not find most of the crimes that attack cultural heritage assets, except for the crimes provided by art. 190 para. (21) and art. 191 para. (22) CP.

Thus, we find that the only crimes that directly attack cultural heritage assets and in respect of which certain special investigative measures can be carried out, because they are part of the category of serious, particularly serious and exceptionally serious crimes, are those provided for in art. 187 para. (21); Art. 190 para. (21); Art. 191 para. (22) CP.

The reports reveal that the potential of the special investigation activity is not fully exploited in order to protect cultural heritage assets, most likely that the legislator did not draw sufficient attention within the reforms carried out regarding the regulation of special investigations. These limitations in the application of special investigative measures significantly reduce the ability of authorities to effectively prevent and combat these crimes, leaving cultural heritage vulnerable to illegal activities. A reassessment of the legislative framework is needed to allow the use of special investigative measures in the case of these offences as well, thus ensuring adequate protection of cultural heritage.

We remind you that today's crime phenomenon is at a much more advanced level of development compared to the one that existed 15-20 years ago. The level of technical equipment is much higher. To detect cultural heritage goods, criminals use metal detectors and other remote sensing devices, the use of which is not prohibited in the Republic of Moldova. This happens in the conditions in which the state institutions lack metal detectors. It seems that the price of several thousand euros for the purchase of a metal detector is not an impediment for self-proclaimed archaeologists (https://adevarul.ro/stiri-externe/republica-moldova/republica-moldova-a-ajuns-prada-vanatorilor-de-1222751.html).

The high-performance technique used by burglars of apartments and other places where cultural heritage goods could be kept should not be overlooked either. Usually, the crimes of theft of cultural heritage goods, in addition to actions directly aimed at taking possession of values, include methods of preparing and concealing a crime.

Preparation for the theft of cultural goods consists of the following elements:

1) Investigation of the subject of theft:
   - Determining the subject of the criminal attack.
   - Selecting and studying the object from which the theft will be committed.
2) Selection of the members of the criminal group and the distribution of roles.
3) Finding a method of theft:
   - Elaboration of specific methods of stealing cultural heritage goods.
   - Selection of the technical means necessary to commit the crime.
4) Determination of the method of concealment of the crime:
   - Determination of distribution channels and the expected amount of enrichment.
   - Development of means of camouflage, destruction of traces and instruments of crime.

The methods of concealment of crimes targeting valuables or documents can be divided into the following types:

1) Actions aimed at concealing the material traces of a crime:
   - Using methods of disguise, falsification, imitation, concealment and destruction.
2) Actions aimed at hiding information about a known crime from certain persons:
   - Intellectual concealment by withholding information, giving false testimony, spreading false rumors, writing anonymous fake letters, etc.
3) Actions carried out directly by the offender or other persons:
   - Actions taken before a crime was committed.
   - Actions carried out during the commission of a crime.
   - Actions taken after a crime has been committed (Gavryliuk, 2007:290-292).

Information about the actions of criminals after committing a crime is important for detecting and investigating crimes in this category. Thus, a detailed understanding of how criminals prepare, commit and conceal crimes can significantly contribute to the development of more effective strategies to prevent and combat these illicit acts.Depending on the situation at the scene of the crime, the presence of criminal experience, social status, connections in the criminal world and among collectors, they choose the places of storage of the instruments of crime and stolen goods, as well as the methods and channels for selling these goods.

Of course, the investigation of these crimes is quite difficult and without the involvement of the special investigation activity it is almost impossible to combat this phenomenon, and in the conditions of the rule of law to which the Republic of Moldova aspires, adequate legal regulations are required.

Conclusions

In conclusion, in order to ensure effective protection of cultural heritage, it is essential that legislation allows for the use of special investigative measures also in the case of crimes related to goods of cultural value. It is also necessary to improve the technical equipment of state institutions and to establish a clear and coherent legislative framework that

balances the need for security with respect for the rights and freedoms of the individual. Only through an integrated approach, including both preventive measures and effective investigation methods, can the phenomenon of illegal theft and sale of cultural heritage goods be significantly reduced.

As a solution, the legislator could opt to increase the sanction of crimes related to the protection of cultural heritage assets, so that they fall into the category of serious crimes and in this way the condition of art. 133 CPP for the ordering of special investigative measures will be met. At the same time, it is also necessary to complete the lists provided for in art. 1381 para. (2) CPP and art. 1383 para. (2) CPP with the mention of the offenses provided for in art. 186 para. (21); Art. 187 para. (21); Art. 190 para. (21); Art. 191 para. (22); Art. 1991 - Art. 1994 CP. Thus, with regard to these crimes, the full spectrum of special investigative measures will be ordered, allowing the authorities to combat more effectively the theft and illegal trafficking of cultural heritage goods.

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LEGISLATIVE TRANSFORMATIONS IN CIVIL CODE AND CIVIL PROCEDURAL LAW IN 2024: IMPACT ON JUDICIAL PRACTICE IN ROMANIA

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Abstract: *The 2024 legislative reforms in Romania's civil code and civil procedural law aimed to modernize and streamline the judicial system, aligning it with technological advancements and European standards. Key measures included the digitalization of civil procedures through electronic case files, videoconferencing for court hearings, and recognition of qualified electronic signatures, enhancing accessibility and efficiency. New regulations on online contracts and AI liability addressed emerging challenges in digital transactions and advanced technologies. However, the reforms revealed obstacles such as inadequate technological infrastructure, resistance to change among legal professionals, and legal uncertainties due to varying interpretations of the new rules. Effective implementation requires professional training, consistent judicial practice, and infrastructure investment to maximize the benefits of the reforms. By addressing these challenges, Romania can foster a more transparent, efficient, and accessible justice system.*

Keywords: *Civil procedural law, Judicial digitalization, Electronic case files, Online contracts, Artificial intelligence liability, Legal modernization, Legislative challenges*

1. Introduction

In a time of fast change, society faces numerous challenges driven by technological advancements, economic transformations, and new social realities. Against this backdrop, civil law and civil procedural law, as foundational branches of law, must continuously evolve to meet the demands of modern and efficient justice systems. The year 2024 has brought to the forefront a series of legislative changes aimed at supporting this adaptation process, with particular emphasis on digitizing judicial procedures, simplifying legal relationships, and strengthening the protection of individual and collective rights.

These legislative reforms are not only a response to the need for aligning national legislation with European standards, but also a recognition of the importance of improving citizens' access to justice and optimizing judicial mechanisms. Specifically, recent changes focus on eliminating procedural delays, increasing transparency in the justice process, and reducing bureaucracy, which has previously hindered judicial efficiency.

However, these reforms have not been without their challenges. Their implementation has revealed practical difficulties, such as the lack of technological readiness among courts, resistance to change from some legal professionals, and uncertainties arising from the different interpretations of the new regulations. These challenges highlight that, while the legislator's intent is commendable, the success of the reforms depends on how effectively they are applied in practice.

This article examines the impact of legislative changes on civil and civil procedural law in Romania, providing concrete examples to illustrate the benefits and challenges brought by these reforms. We will also explore possible solutions to overcome the difficulties faced and ensure a coherent and efficient application of the new regulations.

2. Digitalization of Civil Procedures: A Necessity and an Obstacle

The digitalization of judicial procedures has become a priority in modernizing Romania's justice system. In 2024, this direction was reinforced through several legislative changes that targeted civil procedural law. The adopted measures were designed to simplify citizens' access to justice, reduce procedural costs, and improve court efficiency. However, implementing these measures has also introduced significant challenges. Changes were introduced through Law no. 116/2024 and Law no. 122/2024. These amendments aimed to enhance regulations governing civil legal relationships, focusing on clearer and more efficient application of provisions.

Code of Civil Procedure: Law no. 139/2024 brought significant adjustments to optimize judicial procedures, particularly in the areas of evidence management and expediting dispute resolution. Additionally, Decision no. 8/2024 by the High Court of Cassation and Justice clarified key legal interpretations, ensuring uniformity in the application of new rules.

Electronic Signature: Law no. 214/2024 had a major impact by recognizing electronically signed documents (using advanced or qualified electronic signatures) as equivalent to authenticated documents. This represents a significant step toward the digitalization of judicial processes.

3.1. Innovations Introduced in 2024

3.1.1. Electronic Case Files

One of the most significant changes has been the introduction of electronic case files. This feature allows parties to access case documents online, submit requests, check hearing dates, and receive electronic notifications. The aim of this measure is to eliminate the time wasted on physical trips to the courts and reduce dependence on printed documents. For example, a party involved in a dispute can download court decisions or other relevant documents directly from the court portal.

3.1.2. Court Hearings via Videoconference

The possibility to hold hearings online via videoconference represents a significant step toward adapting to new realities. This is especially useful in non-contentious cases or when parties live in different counties or even abroad. It significantly reduces the time required for hearing witnesses and parties, making justice more accessible.

3.1.3. Qualified Electronic Signature

Another major change is the legal recognition of the qualified electronic signature as a valid means of authenticating documents submitted to the court. This step simplifies administrative procedures and allows parties to send petitions, responses, or other documents without needing to appear physically in court. For example, a lawyer can submit an appeal or a petition via secure email with an electronically signed document, contributing to smoother legal operations.

3.2.Benefits of Digitalization

3.2.1. Increased accessibility

People in rural areas or those far from courts can now more easily access judicial services.

3.2.2. Reduced bureaucracy

Digitalization eliminates many administrative steps involved in managing physical documents, such as archiving or transporting paperwork.

3.2.3. Increased efficiency

Procedures become faster, and courts can handle a larger volume of cases due to the automation of certain processes.

3.3.Obstacles Faced

3.3.1. Lack of technological infrastructure

In many courts, the implementation of necessary technology is limited by a lack of modern equipment and high-speed internet connections. Courts in less-developed areas have struggled to use computer systems, causing delays in implementation.

3.3.2. Resistance from legal professionals

Some lawyers, judges, and other legal professionals have expressed reluctance to adopt new technologies. Reasons include a lack of familiarity with digital systems, fear of technical errors, or the perception that these changes add an additional burden.

3.3.3. Legal uncertainties and varying interpretations

New regulations on the use of electronic signatures or conducting hearings via videoconference have occasionally led to differing interpretations, especially in the absence of clear procedural guidelines. For example, there have been cases where the validity of electronically signed documents was contested due to failure to meet specific technical requirements.

3.4.Practical Example

A company in Bucharest was involved in a civil dispute with a partner in Cluj-Napoca. Before the digitalization process, resolving such a case required frequent travel, additional costs, and delays due to logistical issues. In 2024, the parties benefited from completely digital procedures, including witness hearings via videoconference, which greatly reduced the duration of the process.

3.5. Discussions

Digitalizing civil procedures is an essential and beneficial change, but its effective implementation requires substantial investment in infrastructure, professional training, and legislative clarification. Romania has the potential to become a model in this regard if it can overcome current obstacles and ensure a fair and functional transition for all actors involved in the justice system.

4. Regulation of Online Contracts

Online contracts, which have become a standard practice in the digital age, have been more thoroughly regulated to ensure their validity and protect the parties involved, especially consumers. The new legislative framework (2021-2024) introduces clear provisions regarding:

4.1. Consumer Information: Online commerce now imposes strict obligations on service or product providers, who must provide complete and transparent information before a contract is concluded. Consumers must be informed about the price, delivery conditions, right of withdrawal, and other key details.

4.2. Validity of Electronic Contracts: Contracts concluded online are now legally recognized regardless of the platform used. The qualified electronic signature, which was introduced in procedural law, plays a central role in validating online commercial contracts.

4.3. Protection Against Unfair Clauses: To protect consumers from unfair business practices, regulations have been strengthened to identify and penalize abusive clauses in online contracts, such as unjustified limitations of merchants' liability.

4.4. Practical Example: E-commerce platforms are required by law to provide a clear summary of key contract terms before an order is placed. Consumers are also entitled to an extended right of withdrawal if essential information is not communicated correctly.

5. Rules Regarding Liability for Damage Caused by Artificial Intelligence

A significant change in 2024 concerns liability for damages caused by artificial intelligence (AI), a relatively new legal issue given the extensive use of algorithms and automated technologies in areas such as transport, healthcare, and commerce. The new legislation introduces:

5.1. Clear Liability Definitions: It is established that liability for damages caused by AI generally lies with the manufacturer or operator of the algorithm, depending on the nature of the malfunction or the level of control over the technology.

5.2. Diligence Obligations: AI operators are required to implement preventive measures and ensure the safety of the algorithms used, reducing the risk of damage.

5.3. Compensation Mechanisms: Victims of AI-related damage are entitled to rapid compensation, with special guarantee funds created in cases where liability cannot be attributed to an individual or company.

5.4. Practical Example: In the case of autonomous vehicles, an accident caused by a programming error was regulated by assigning liability to the vehicle's manufacturer, who is required to compensate the victim. The manufacturer can also recover costs from the software developer if it is proven that the error originated from the source code.

6. Benefits of Legislative Changes

6.1. Adaptation to New Technologies: The legislation responds to current economic and technological realities, providing a clear legal framework for online transactions and the use of AI.
6.2. Protection of Party Rights: Both consumers and businesses benefit from clear rules that ensure a fair and secure relationship.
6.3. Legal Efficiency: The new regulations close legislative gaps and offer clear solutions for disputes arising from new technologies.

7. Challenges and Perspectives

Although the new regulations are welcome, their application poses certain difficulties. For instance, courts may face challenges in interpreting the rules on AI liability, especially in the absence of consistent legal precedent. Moreover, the lack of technological resources and expertise in evaluating digital technologies may complicate the application of these regulations in practice.

Looking ahead, it is crucial to ensure the continuous update of civil law norms in line with technological developments and societal needs, ensuring a balance between innovation and the protection of fundamental rights.

8. Standardizing Judicial Practice: A Continuing Challenge

Despite legislative changes aimed at clarifying legal issues and improving the application of legal norms, standardizing judicial practice remains a major challenge for Romania's judiciary. In some cases, these changes create uncertainties that lead to differing interpretations and solutions across courts.
8.1. Example: The reduction of the prescription period for claiming immovable property, from 30 years to 10 years under certain conditions starting in 2024, has sparked controversy, particularly regarding its temporal applicability. The main issue is how courts will interpret the new regulation in relation to ongoing cases at the time of the law's enactment and how to handle situations where the previous 30-year prescription period had already started before 2024.

9. Challenges of Legal Interpretation

Despite the clarifications brought by the new legislation, its practical application is not always straightforward. For instance, reducing the prescription period was meant to address modern economic and social realities, as well as to protect property owners from long-term claims. However, in cases where parties were already involved in lengthy disputes, retroactive application of the new regulation may lead to differing solutions between courts, especially when no clear transitional norms are in place.

10. The Growing Complexity of Disputes in Relation to New Technologies

10.1. Resolving Technology-Related Civil Disputes: Between Necessity and Challenge

The new legislative regulations from 2024, in the context of civil and civil procedural law, include provisions that explicitly address conflicts arising from technology, such as disputes over cryptocurrencies, digital transactions, and the use of online platforms. These

legislative adjustments have emerged in response to the rapid increase in the use of digital technologies and the growing complexity of legal relationships involving these areas.

10.2. Necessary but Challenging Regulations

The legislative changes were necessary to provide a clear and predictable framework, particularly regarding:

10.2.1. Cryptocurrency Transactions

Establishing regulations to define the rights and obligations of the parties involved, liability in cases of losses caused by market fluctuations or fraud, and the process for recovering lost funds.

10.2.2. Disputes Over Online Platforms

Regulating the relationships between users and platform providers, including abusive clauses in digital service contracts or violations of privacy and security standards.

10.2.3. Intellectual Property

Disputes over copyright regarding user-generated content or content created by artificial intelligence systems.

Although these regulations were welcomed, they have caused difficulties in their implementation, mainly due to the lack of technical expertise among judges and legal professionals. Disputes involving advanced technologies, such as cryptocurrencies or artificial intelligence algorithms, require a deep understanding of how these systems function—something often lacking in judicial practice.

10.3. Lack of Technical Expertise in Courts

The technological complexity of these disputes often exceeds traditional legal competencies. For example:

- Cryptocurrencies involve technical aspects related to blockchain, market volatility, and recovering losses caused by technical errors or fraud.
- Algorithms on online platforms can include terms of use that are incomprehensible to those without a technical background, and may hide data processing mechanisms that raise legal issues.

The lack of technical expertise has led to:

1. Delays in resolving cases: Sometimes, courts need to consult experts for clarification, extending the duration of proceedings.
2. Inconsistency in rulings: Different courts may issue divergent decisions in similar cases due to inconsistent interpretation of technical issues.
3. High costs: Disputes involving technology are often costly for the parties, both in terms of expert fees and the length of the process.

10.4. Possible Solutions

To address these challenges, measures are needed to improve the technical competencies of the courts and reduce legal uncertainties:

- Ongoing training for judges: Courses and workshops on technologies such as blockchain, cryptocurrencies, and artificial intelligence algorithms, organized by the National Institute of Magistracy.

- Creation of practical guidelines: Developing tools to help judges understand and interpret technological disputes consistently.
- Use of neutral technology experts: Establishing a list of approved experts who can provide clear technical explanations during trials.
- Adapting judicial procedures: Simplifying evidentiary rules and using digital solutions for faster case management.

The new regulations mark an important step toward modernizing the legal framework; however, the challenges associated with their application highlight the need to adapt the judicial system to contemporary technological realities.

10.5. Practical Example

A dispute regarding the loss of cryptocurrencies due to a cyber-attack was brought before a civil court. The judges faced difficulties in interpreting the regulations and evaluating technical evidence, which led to extended deadlines and the risk of incorrect rulings.

11. Benefits and Challenges of Legislative Changes

11.1. Benefits

- Increased efficiency of civil procedures through digitalization.
- Enhanced protection for consumers and vulnerable individuals.
- Alignment with international and European standards in emerging fields, such as technology and digital commerce.

12. Challenges

- Lack of professional training: Many judges, lawyers, and clerks were not adequately prepared to deal with digitalization.
- Inconsistent judicial practice: Insufficiently detailed changes led to contradictory interpretations.
- Adaptation costs: In rural areas, courts and parties faced technical difficulties due to insufficient digital infrastructure.

13. Directions for Improvement

To maximize the benefits and minimize the negative impact of legislative changes, the following measures are necessary:

1. Ongoing training: Organizing courses and seminars for judges and lawyers focused on applying the new regulations.
2. Legislative clarification: Issuing practical guides and adopting methodological norms for the consistent application of the law.
3. Infrastructure development: Investing in the technology necessary for the digitalization of courts, especially in disadvantaged areas.

14. Conclusions

The conclusion regarding the legislative changes in civil and civil procedural law in Romania in 2024 emphasizes that, although these changes had a positive impact on the judicial

system by streamlining procedures and strengthening the protection of citizens' rights, significant challenges remain in their practical application. Among these challenges is the need for ongoing adaptation of legal professionals to the new regulations and clarifying certain aspects related to the interpretation of the law. In this context, it is essential for the legislative authorities, courts, and professionals in the field to work closely together to ensure the uniform and correct implementation of the new rules.

Thus, the success of the reforms depends on their effective understanding and application in practice, which requires not only an update of professional knowledge but also a continuous adjustment of judicial procedures to meet citizens' needs. Only through active collaboration between decision-makers and justice professionals can the judicial system become more transparent, faster, and more accessible, thereby contributing to the consolidation of the rule of law and increasing citizens' trust in state institutions.

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RECONCILING THE CONFLICT IN THE INTERPRETATION OF SECTION 15(4) OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015 ON OBTAINING OF CONFESSIONAL STATEMENT UNDER NIGERIA'S CRIMINAL JURISPRUDENCE

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Abstract: *Where a suspect is arrested by any of the law enforcement agencies in Nigeria, it is usual practice for the suspect to write a statement. There have been cases of suspects being coerced, cajoled and manipulated to write statement. To ensure that this practice is checked, in 2015, when the Administration of Criminal Justice Act, 2015 (the ACJA, 2015) was enacted, it provided that the taking of such confessional statements, may be recorded in audio-visual format while the Administration of Criminal Justice Law of, Lagos State, 2011, /provides that the taking of the same statement must be in audio-visual format. The Court of Appeal in decided the position under the ACJA, 2015, have held in some cases that it is optional to record a confessional statement in audio-visual format and in other cases, it has held that it is mandatory thereby creating a conflict as to the nature of the requirement. This paper, adopts doctrinal method in evaluating the correct interpretation of section 15(4) of the ACJA, 2015 by examining the decision of the Supreme Court of Nigeria in Charles v. The State of Lagos. The paper also analysed the nuances of confessional statement under Nigerian law and its utilitarian value. It found that the controversy brought about by conflicting decisions of the Court of Appeal has been resolved by the SCN when it held that it is mandatory for confessional statements to be recorded in audio-visual format and not discretional notwithstanding that "may" was deployed. The paper recommends sensitisation of security personnel, provision of needed recording apparatuses as way-forward.*

Keywords: *Confessional Statement, Fundamental rights, Torture, Nigeria*

1. Introduction

In Nigeria, like it is in many other jurisdictions, where the security agents, apprehends a suspect upon the alleged commission of a crime, quite often than not, the suspect is required to make a statement ether admitting the commission of the offence or refuting same. A statement in which a suspect admits the commission of an offence to the security agent/agency is known as a confessional statement as was determined in *Saidu v. State* (1982). Generally, it is expected that a confessional statement which a suspect's guilt can be proved, must be made voluntarily as was held in *Ikemson v. State* (1989). However, in Nigeria, there have been incidents of confessional statements being beating or forced out of suspects enter by naked force, inducement, cajoling, threat of harm or actual injury. To checkmate this ugly development, Lagos State in 2011, enacted the Administration of Criminal Justice Law, 2011 (hereinafter simply called the ACJL, 2011) and section 9(3) thereof provides that for a confessional statement to be admissible in any criminal trial, the audio-visual record must be tendered in evidence. This means that security agencies/personnel have a duty to record confessional statements in audio-visual format for it to be used in proving the guilt of an accused person standing trial for the commission of any offence.

However, in 2015, the Federal Government of Nigeria through the legislature sought to address the menace of obtaining confessional statement by coercion or inducement (Udosen, 2017, P. 109). Thus, it enacted the Administration of Criminal Justice Act, 2015 (hereinafter simply referred to as ACJA, 2015). Section 17(2) and 15(4) of the ACJA, 2015 provides that for a confessional statement to be admissible, it has to be recorded in audio-visual format. However, in stating the need to have the confessional statement in audio-visual format unlike the Lagos State ACJL, 2011 that uses the word, "shall" the ACJA, 2015 uses "may." This has led to the question: is there an obligation on security agencies to have confessional statements taken in audio-visual format for the same to be admissible or it is discretionary? The interpretation of these sections (i.e. sections 17(2) and 15(4) of the ACJA, 2015) have led to contradictory judgements by the Court of Appeal where in some cases, it has held that it is mandatory for confessional statements to be recorded in audio-visual format to be admissible while in others, it held that it is discretionary to recorded confessional statement in audio-visual format. Resolving this conflict is the fulcrum of this paper.

The paper is divided into four sections. Section one contains the introduction. Section two examines the nuances of confessional statement under Nigerian criminal jurisprudence by discussing its meaning, conditions for its admissibility, probative value in criminal trial and the quagmire of trial-within-trial. Section three discusses judicial stance on the right interpretation of section17 (2) and 15(4) of the ACJA, 2015 vis-à-vis section 9(4) of the ACJL, 2011 of Lagos State by explicating decisions of the Court of Appeal and Supreme Court on the issue. Section four contains the conclusion and recommendations based on the findings. In carrying out this intellectual exercise, reliance was placed on doctrinal method relying on primary and secondary data sources such as the Constitution of the Federal Republic of Nigeria, 1999, the Administration of Criminal Justice Act, 2015, Administration of Criminal Justice Law, 2011, case law, statutes, articles in learned journals, and online materials. This data was subjected to content analysis from where findings were made and conclusion drawn.

2. Explicating the Tenets of Confessional Statement under Nigerian Criminal Jurisprudence

According to Udosen (2017, P. 102) the term confession means a free and voluntary admission of guilt of a crime by an accused person. A Confession may also mean an out - of-court statement made by a suspect to the police in whom he voluntarily, knowingly and intelligently acknowledges that he committed or participated in the crime and which makes it clear that there is no defence in law that would make his conduct lawful. Statutorily, Section 28 of Nigerian Evidence Act defines confession as: "an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime." The law is that, in criminal proceedings, based on the provisions of section 36(12) of the Constitution of the Federal Republic of Nigeria, 1999, an accused person is presumed innocent until the contrary is proven. In proven the guilt of an accused, the prosecution must prove same beyond reasonable as was held in *Ojuri Anjola v. The State* (2012). However, where an accused person, admits or confesses to the commission of an alleged crime, the admission or confession, could be used by the prosecution to prove his/her guilt as was held in *Okoh v State* [1971]. In *Olusola Adeyemi v. The State* (2015) the Supreme Court held that a confessional statement is really the best evidence or the strongest against an accused in the determination of his guilt. Therefore, when such a statement has proved to have been made voluntarily and it is direct, positive and unequivocal, then it is an admission of guilt and can even stand alone to sustain a finding of guilt that is without corroboration. For the guilt of an accused person to be established through his/her confessional statement, the same must be direct and positive as far as possible (Akinsulore 2015, P. 988). This means that it must not have been a product of oppression as provided by section 29(5) of the Evidence Act, 2011. Thus, The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 defines torture broadly as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person.

There are two types of confessions are an accused person can make, judicial and extra-judicial confession. Formal or judicial confession is the one made by the accused in the Court before the trial Judge or the Magistrate by pleading guilty to the charge or where he admits that he commits the crime in a statement before the court during a preliminary enquiry. It is apposite to add that a confession made in judicial proceedings is of greater force or value than all other proofs, because it is direct true and satisfactory as was held in *Jimoh & Anor. v. The State* (2011). Thus, the latter is made during investigation as was decided in *Daudu v. FRN* (2018). For an extra-judicial confessional statement to be admissible, it has to fulfil certain conditions. the very old English case of *R. v. Baldry* (1852) where *Parker B* stated that "in other to render a confession admissible in evidence it must be perfectly voluntary, and there is no doubt that any inducement in the nature of a promise

or of a threat held out by a person in authority vitiates a confession. This position was reiterated in *Ibrahim v. R* (1914) by Lord Summer thus:

> It has long been established as positive rule of Criminal law that no statement by an accused is admissible in evidence against him or her unless it is shown by the prosecutor to have been a voluntary statement, in the sense that it had not been obtained from him or her either by fear of prejudice or hope of advantage exercised or held out by a person.

The foregoing position has been given statutory coverage and sanctification by virtue of section 29 of the Evidence Act, 2011 which requires that for a confessional statement to be admissible, it must be prove that it was make voluntarily and the burden of proving its voluntariness, lies with the prosecution. In order to prove the voluntariness of a confessional statement, the law only require the court to seek evidence outside the confessional statement to corroborate its voluntariness as was held in *Elewanna v. State* (2019).

During trial, a defendant is permitted at the earliest opportunity, particularly, when the confessional statement is sought to be tendered and admitted in evidence to take objection to its admissibility where it was involuntarily obtained as was held in *Dandare & Anor v. The State* (1966). Where this happens, it is said that the accused person is challenging the voluntariness of the confessional statement as was held in *Jimoh & Anor. v. The State* (2011). It must be note that objecting to the voluntariness of a confessional statement by the accused person is not the same as retraction of the confessional statement. In the former, the accused person is saying that the making of the confessional statement was involuntary either because he made it under threat, torture, inducement or any other voluntariness vitiating factor. In the latter, the accused person is denying making the confessional statement at all (Toju 2022, 139). Where the confessional statement is retracted, where the court adjudges it admissible, the weight to be attached to the piece of evidence is to be taken into cognisance as in *Babarinde & Ors v. State* (2013).

However, where the voluntariness of the confessional statement is objected, in order to determine the same one way or the other, the court must conduct a trial-within-trial. Trial within trial is a mini trial within the context of the main trial. It is a procedure in criminal law wherein the confessional statement of an accused person is subjected to trial scrutiny so as to determine whether the statement was freely and voluntarily made by the accused person to the police as was determined by the court in *Adelarin Lateef & Ors. v. F.R.N.* (2010). The *raison d'être* of the evolution of the mini trial procedure is to arm the trial court with a procedural mechanism for sifting the chaff of involuntary and inadmissible evidence from the wheat of admissible evidence. It is apposite to note that the appropriate time for the accused to object to the admissibility of a confessional statement is when the prosecution seeks to tender it when presenting its case and not when the accused open his/her defence as that would amount to an afterthought as was held in *Akinkunmi v. State* (2022). In *State v. Ibrahim* [2024]

For the prosecution to prove the voluntariness of the statement, it must adduce evidence to show that the usual cautionary words were issued by the officer taking the statement to the suspect that he had the right to write same or had someone right for him, explain same and when he understood the contents, signed it and that the officer who

supervised the making of the statement, took the accused to a senior police officer for the accused to confirm the statement and that its making was voluntary. Where the court, after trial-within-trial found that the statement was made involuntarily, it will declare the same inadmissible as to do otherwise, will amount to convicting an innocent person on false evidence. In fact, where there is a ray of doubt on the voluntariness of the confessional statement, the course of justice will be better served by declaring it inadmissible as it is better for a guilty person to be set free than for one innocent person to be convicted. In fact, where the court found that a confessional statement was made involuntarily, it establishes the fact that the fundamental right of the accused especially dignity of human person or right not to speak, has been violated. To ensure that this unfortunate unwholesome practice is checked, damages should be awarded in favour of the accused as compensation for breach of his/her right. While the utilitarian value of a trial-within-trial cannot be overemphasised, it is crystal clear that it could become a dilatory tactic and an anathema to speedy dispensation of justice.

3. Judicial Attitude on the Purport of Section 17(2) and 15(2) of the ACJA

From the preceding section, it had been stated that the interpretation of sections 9(3) of the ACJL, 2011 of Lagos State by the Court of Appeal has had the unanimous outcome that security agencies/personnel are mandatorily required to take the extra-judicial confessional statement of an accused person in audio-visual format as the operational word in the section is shall. However, regarding sections 17(4) and 15(4) of the ACJA, 2015, the word "may" has been interpreted differently to mean it is mandatory that confessional statement must be recorded in audio-visual format and that it is discretionary to do so. This situation has led to conflicting judgments from the court. This situation is worrisome particularly when the fact that the decision of on division of the Court of Appeal is not binding so to speak on another and more importantly, trial courts are left in a position of choosing between the two conflicting positions, which to follow. This section of the paper takes a look at some decisions of the Court of Appeal on the issue and synchronises the same with the decision of the Supreme Court in in *Charles v. State of Lagos* (2024).

Thus, in In *Oguntoyinbo v. Federal Republic of Nigeria* (2018) the appellant had challenged the admissibility of his confessional statement at the trial court on the ground that it was taken in violation of section 15(4) of the ACJA. The trial court in order to resolve this issue, proceeded to conduct a trial-within-trial. The respondent argued that the provisions of section 15(4) of the ACJA are not mandatory as the operational word is "may" which connotes discretion. The trial court agreed with the argument and held that the violation, if any, is not fatal. The appellant being dissatisfied, appealed to the Court of Appeal which upheld the decision of the trial court stating that the provision of section 15(4) of the ACJA are discretionary and violation of the same, is not fatal but mere irregularity. In the same vein, in *Godwin Elewanna v. State* (2019), the Court of Appeal where the trial court had held that section 15(4) of the ACJA was discretionary, upheld the decision of the trial court and stated that, section 28 and 29 of the Evidence Act, 2011 as opposed to the

provision of the ACJA, regulate admissibility of evidence in Nigerian courts. Thus, the use of "may" as opposed to "shall" means that the provision is discretionary and not mandatory.

However, in *Nnajiofor v. Federal Republic of Nigeria* (2019) where the accused person objected to the admissibility of the confessional statement on the ground that it was taken in gross noncompliance with the provision of section 15(4) of the ACJA. The trial court held that the use of the word "may" in placing the obligation to record in audio-visual format the confession of an accused, made it discretionary and not mandatory. On appeal to the Court of Appeal, it came to the conclusion that, the word "may" as used, must be construed as mandatory. The reason according to the court is that it places an obligation on public authority to perform in favour of the citizens hence, the "may" in the provision, has the meaning of "shall" thus, having failed to comply with the mandatory provision of the ACJA in recording the confessional statement, the same was in valid and therefore, inadmissible. The same conclusion was reached in *Orakul Resources Ltd. & Anor. v. NCC & Anor* (2022). In this case, the trial court had interpreted the combined provisions of section 15(4) and 17(4) of the ACJA as discretionary because of the use of "may" as opposed to "shall." The appellant appealed to the Court of Appeal and the Court of Appeal reversed the decision of the trial court holding that the aforementioned provisions created and fixed a mandatory obligation on security agencies/personnel to ensure that confessional statements are recorded in audio-visual format for them to be admissible in court. These decisions are the same with the one in *Joseph Zhiya v. The People of Lagos State* (2016) in which the Court of Appeal held that the obligation imposed by section 9(3) of the ACJL, 2011 of Lagos State to recorded confessional statements of accused persons is mandatory.

Based on the foregoing, it is crystal clear that the Court of Appeal interpretation of section 15(4) of the ACJA, has led to the existence of conflicting decisions. This state of affair is rather unfortunate and disturbing bearing in mind the fact that trial courts are now placed in a floating situation as to the correct position of the law. As fate will have it, the Supreme Court of Nigeria (SCN) had the opportunity of interpreting section 15(4) of the ACJA, 2015 in *Charles Friday v. The People of Lagos State* (2023). In the case, the appellant at the trial court, challenged the admissibility of the confessional statement sought to be tendered by the Respondent on the ground that in was taken in noncompliance with section 17(4) of the ACJA, in its ruling, the trial court dismissed the objection holding that the section was mere discretionary and not mandatory. The same outcome was the determination of the Court of Appeal. On appeal to the Supreme Court of Nigeria, the court stated that section 9(3) of the ACJL is *pari materia* with sections 15(4) and 17(1) and (2) of the ACJA noting that the conflicting judgments by the Court of Appeal which has ensued as to the effect of subsection 4 of section 15 of the ACJA, has long been settled. Thus, it came to the conclusion that the word "may" used in section 15(4) of the ACJA has the same effect as the word "shall" used in section 9(4) of the ACJL, 2011. The court reasoned that where a public authority is obligated to perform or refrain in favour of the citizens, the word "may" must carry mandatory connotation and not permissive/discretionary.

The implication of the foregoing is that, in Nigeria today, section 15(4) of the ACJA, 2015, has made it mandatory for the extra-judicial confessional statement of an accused person to be recorded in audio-visual format for it to be admissible in evidence at his/her trail. The utilitarian value of this cannot be overemphasised. Even the courts, have

acknowledged the unwholesome practice of coercing confessional statements out of accused persons. Rhode-Vivour JSC (as he then was) in *Owhoruke v. Commissioner of Police* (2015) acknowledged this unfortunate reality. In fact, in *Onianwa v. State* (1992) in an attempt to beat out a confessional statement from the accused, the accused person died in the process. There are several unrecorded/reported incidents where citizens of Nigeria, have been beaten or manhandled and as a result, were forced to admit commission of offences. Having the whole process recorded in audio-visual format, will greatly reduce this possibility and it will offer the court the opportunity to observe the demeanour of the accused when the statement was being taken.

Thus, it may be important that where the court found that a confessional statement was taken involuntarily or in contravention of section 17(4) of the ACJA, 2015, damages should be awarded to accused persons who have suffered from such noncompliance. This will ensure that the accused person is compensated and the concerned agency, will take remedial steps to ensure deterrence by ensuring that its personnel play by the rules. There is also the need for the government to improve on infrastructure to enable security agencies record confessional statements when suspects are apprehended.

4. Conclusions and Recommendations

Based, on the discussion above, it has been demonstrated that in Nigeria, the standard of proof in criminal cases is proof beyond reasonable doubt and this can be achieved where the accused person volunteer a confessional statement admitting the commission of the alleged crime. However, for a confessional statement to be admissible in evidence, it must not only be direct and positive, but it must have been obtained voluntarily. To ensure that confessional statements are voluntarily obtained from suspects, the ACJA, 2015, obligates security agencies/personnel to record the same however, it creating this obligation, unlike its counterpart, the ACJL, 1011 of Lagos State, the ACJA, 2015 uses the word "may" which interpretation by the Court of Appeal, has led to conflicting decisions. However, this conflict has been resolved by the Supreme Court of Nigeria by holding that the obligation to record confessional statement, despite the use of "may" in imposing the same, is mandatory and not discretionary. Thus, by this decision, the conflict has been settled and the position of the law is now clear and precise.

Based on the foregoing, it is recommended that where there is noncompliance with the provision of section 17(4) and there is evidence of involuntariness, in addition to declaring the confessional statement inadmissible, the court should award damages against the erring agency in compensation to the accused. This will ensure deterrence. Also, the government should ensure that the infrastructural need of security agencies to comply with the requirement of the law as it pertain to recording of confessional statements of accused person is catered for. There is also the need for continuous sensitisation of the stakeholder on best practice in obtaining of confessional statements.

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INTEGRATING JUDICIAL PROTECTION FOR ENHANCED FEMALE WORKERS' FUNDAMENTAL RIGHTS IN THE NIGERIAN WORKPLACE ENVIRONMENT

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Abstract: *The current discourse on the conception of equality by diverse global social and political forces have impacted the current world focus on the necessity to offer legal protection to those considered vulnerable in the workplace. Matching side by side – almost to a hitherto unmatched degree in labour law, are the models of judicial backing and transnational labour standards established in many foreign jurisdictions. All over the world - Nigeria inclusive - female workers are considered as part of the vulnerable person in the society requiring greater protection, especially in the workplace. In Nigeria, this category of workers, on account of their multiple natural and societal responsibilities as wives/mothers, are often exposed to various human rights breaches, which inevitably gives rise to the need for legislative and judicial guarantees against derogation of rights and diverse forms of abuses in the workplace. This paper, adopts desk-based method in examining various forms of female employees' rights that are often violated at the workplace, the precipitants of the violation and as well as assess the adequacy or otherwise of statutory protection provided. The paper primarily focuses on the adequacy of judicial efforts directed at the reduction in the violation of female employees' rights in workplaces in Nigeria this is achieved through an evaluation of selected decisions of Nigerian courts particularly, the National Industrial Court of Nigeria (NICN) and the Court of Appeal (CA) on the matter. The study discovered that, surprisingly, some of female employees' workplace fundamental rights violations are provided statutory fillip as well as cultural nourishments. Further, that Nigerian courts, particularly the NICN and the CA have frowned at such violation and have provided judicial solatium in the form of award of damages to identified victims, even though, oftentimes the damages awarded do not have deterrent effects on account of their paltry nature. The paper makes some vital recommendations which are both immediate and futuristic. The immediate recommendation is the award of punitive damages by the court to achieve deterrence while for the future, a review of obsolete law for an egalitarian and comprehensive protection should be considered.*

Keyword: *Fundamental right, Equality, Female Employees rights, Nigeria, National Industrial Court of Nigeria*

1. Introduction

All over the world, children and women are generally regarded as persons numbered among the vulnerable in every society. This implies that women and children are in serious need of intentional judicial and legislative protection and guarantees against derogations from

their fundamental rights in the workplace, far more than other members of the society (Daudu 2004, P. 38). The phenomenon of sex discrimination against women in employment environment is of antiquated origin which goes back well into the nineteenth century through the unrelenting efforts of civil rights groups whose agitations in the statutory protection provided by the US Civil Rights Act of 1964 as well as other legislative interventions directed at tempering the intensity of sex discrimination, sprang up also in European Union law. Sex discrimination in the workplace has precipitated campaigns by civil rights advocacy groups for equal pay and equal access of men and women to employment opportunities, as well as agitations for reduction in discrimination on grounds of sexual orientation, religion or belief and age (Deakin and Morris, 2012 p. 602). However, unlike what obtained in the US, the pace of the legislation against discrimination in employment was relatively slow in taking off in Europe. Both the Equal Pay Act which was enacted in 1970 but only came into effect in 1975 as well as the Sex Discrimination Act which was enacted in 1975 have both endured frequent amendment without any noticeable remedying effect on the endemic sex discrimination in employment (Anderman, 1993 p. 201). In Nigeria, even though sex discrimination is present in the workplace, yet, the situation has not witnessed any appreciable progress in favour of women despite the fact that female workers constitute a significant number of employees both in the public and private sectors. Although female employees enjoy various rights ranging from freedom from sex discrimination in employment and are oftentimes shielded from sexual exploitation and harassment in the workplace, they have access to maternity leave with pay, freedom from sexual exploitation/harassment, equal pay for equal work, and so on, yet, despite all the foregoing seeming reprieves enjoyed by women have been seriously undermined by their exposure to various forms of abuses of their basic fundamental rights even though there are in existence, laws which offer womenfolk protection in the workplace (Ajayi & Eyongndi 2018, P. 209). Various factors are responsible for the abuse of the labour and employment rights of female employees in Nigeria ranging from socio-cultural, economic, weak regulatory/legal frameworks, chauvinism, and high level of unemployment which has affected Nigeria very adversely (Adejo & Leigh 2016, Pp. 75-90).

The courts are established to adjudicate over disputes in order to ensure that there is no resort to self-help. The Courts in Nigeria, particularly the National Industrial Court of Nigeria (NICN) which from the 2010 when the Constitution of the Federal Republic of Nigeria, 1999 (Third Alteration) Act, 2010 came into force, was bequeathed exclusive original civil jurisdiction over labour, employment and ancillary matters, has made commendable strides towards reducing the menace of violations of female employees' rights in Nigeria although, with certain reservations. This paper, adopts desk-based method in interrogating various forms of female employees' rights that are often violated at the workplace, the precipitants of the violation and as well as assess the adequacy or otherwise of statutory protection accorded. It also focused on examining judicial strides towards emasculating the menace of violation of female employees labour and employment rights in Nigeria zeroing on the question of how adequate or otherwise is the quantum of damages that these courts have awarded in getting these ugly tides to ebb away?

The paper was written relying on primary data such as the Constitution of the Federal Republic of Nigeria, 1999, the National Industrial Court Act, 2006, Case law, and secondary data such as articles published in learned journals, standard textbooks on labour and

employment law, online materials, newspapers articles, policy documents, etc. these data was subjected to rigorous content and jurisprudential analysis whereof findings were made and conclusions drawn. The paper also discusses the role of stakeholders in curbing this menace. For the purpose of structure, the paper is divided into four sections. Section one contains the introduction. Section two focuses on the different kinds of female employees' rights in Nigeria by highlighting various labour and employment rights which inure to this category of employees, for expounding the legal/regulatory frameworks of these rights, and the patterns of their abuses. Section three examines judicial strides towards curbing this menace with particular focus on the adequacy or otherwise of this effort. Section four contains the conclusion and recommendations.

2. Clarifying the different types of Female Employees' Rights under Nigerian Law

This section of the paper highlights female employees' rights under Nigerian law, and examines the types of abuse female employees are predisposed to. At this juncture, it worthy to note that while there are general employment rights inuring to all categories of employees (including females), there are certain rights that are female specific. Section 34(1) of the Constitution of the Federal Republic of Nigeria, 1999 (hereinafter simply referred to as CFRN, 1999) generally prohibits forced labour against all category of employees with special emphasis on womenfolk in employment. Also, section 17(3) of the CFRN, 1999 guarantee female employees' equal pay for equal work done. Section 54(1) of the Labour Act gives female employees' right to maternity leave with pay. This right exists for the benefit of female employees who are expectant mothers, adopted mothers. The point needs be made at this point however, that recent developments in Nigeria have culminated in the extension of paternity leave to the male workers whenever their wives gave birth to new offspring. The right to maternity leave is enjoyed by the female employee upon producing a certificate by a certified medical practitioner that her confinement – for a new birth delivery - is fast approaching. Section 15 of the Labour Act gives every female employee right to regular payment of salary and wages by the employer which must be paid within intervals not exceeding one month. Thus, The Nigeria Court of Appeal in the case of *D. U. Tamti v. Nigerian Customs Service Board & 2 Ors* (2009) gave judicial approval to an employee's right to receive salary by concluding that an employee's salary becomes due and his/her right to it is vested at the end of each month and not later even where the parties agree to the contrary. The effect of the foregoing is that an employer is barred from terminating the employment of an employee with retrospective effect to extinguish remuneration already earned as was clearly, affirmative and authoritatively stated by the Supreme Court of Nigeria in *Underwater Engineering Co. Ltd. & Anor. v. Darusha Debefon* (1995). Hence, the practice of non-payment of salary and wages by employers whether private or public, is a derogation from this right. The National Industrial Court of Nigeria (NICN) in *Chemical & Non-Metallic Products Senior Staff Association v. Benue Cement Co. Plc.* (2006) upheld the sanctity of this duty as fundamental to the continuity of the employment relationship, a breach of which will strike at the core of the relationship to undermine it and render same ineffective and inexorably destroyed.

The female workers are also entitled to right to freedom from sexual related discrimination. The point must be made at this juncture that sexual harassment/discrimination

is experienced both by male and female employees with the female employees, more on the receiving end than their male counterpart as argued by Eyongndi & Okongwu (2021, Pp. 122-146). Thus, Atilola (2017, Pp. 50-51) while expressing dismay at the prevalence of sexual harassment in the workplace and its various ways of manifestation in Nigeria opined as follows:

> Sexual harassment may take diverse and varied forms. It is not limited to demand for sexual favours made under threats of adverse job consequences but also includes any unwanted conduct of sexual nature or other conduct based on sex, which violates the dignity of a person, and in particular when it creates an intimidating, hostile, degrading, humiliating or offensive work environment for the recipient. Sexual harassment is a serious and real problem for various working women in Nigeria. It has been viewed as one of the most egregious forms of violence against women in the workplace and has increasingly become a subject of concern to working women, trade unions and human rights organizations.

One of the many ways this fundamental right is violated is where the employment of a female employee is terminated upon discovery that the employee is pregnant (Animashaun 2007, P. 4). There are also other illustrations of violation where companies' especially private ones have an unwritten policy requiring female employees to be unmarried during probation period or if married, not to become pregnant within a particular period of time or risk being terminated in the event that they become pregnant (Ajayi 2015, P. 46). This discriminative practice is averse to the connotation of Article 5 (d) of the International Labour Organization (ILO) Termination of Employment Convention No. 159 of 1982 which requires that pregnancy shall not be a ground for termination of employment of an employee. To ensure the protection of this right, (Eyongndi & Okpara 2022, Pp. 432-455) have opined that every workplace must put in place a sexual harassment policy and an effective whistleblowing mechanism through which victims can safely report culprits for necessary disciplinary action It is noteworthy that while statutory provisions such as section 34(1) of the Labour Act, avails a male worker employed in the public service in Nigeria the opportunity to be accompanied to their places of primary assignment by such members of his family (not exceeding two wives and such of his children as are under the age of sixteen years) as he wishes to take with him, no such statutory cover is extended to a female employee unlike her male counterpart. Section 55 of the Labour Act protect female employees from night and underground work in mines except they are working in managerial position in such an undertaking. On its face value, this looks like a protective provision to ensure that females are not allowed to work underground particularly in mines and in other undertakings, at night. When one considers the argument of the weak physiological make up of women to males, the restriction is justified. However, it is discriminatory rather than protective. We are not oblivious of the fact that in this current modern dispensation, there is a radical shift from the orthodox work engagement ethos to whittle down the dichotomy between male and female jobs. This is on account of an ever-increasing parity in the number of females taking up roles that were once considered male jobs and vice versa (Ekhator 2015, 289). The possibility exists in today's Nigeria for a female employee to voluntarily opt to work in an underground undertaking in a non-managerial position or to elect a preference for night work. Where such a desire exists, the female worker who is incapable of actualising the desire will suffer a discrimination at the workplace, as to

do so would be in clear violation of the prohibitive discriminatory provisions of the Labour Act (Eyongndi 2020, P. 116). This provision of the Labour Act is contrary to the provisions of Article 13(d) of the Protocol to the African Charter on Human and Peoples Rights Right on the Rights of Women in Africa (1988) which enjoin member States to ensure with diligence, the guarantee of the freedom of choice to womenfolk in respect of their occupation, and protect them from exploitation by their employers who are predisposed to violating and exploiting the fundamental rights of female employees when the former recognise and uphold the conventions, laws and regulations in force in their various national jurisdictions in favour of the womenfolk (Tinuoye 2015, P. 99). These discriminatory trends are also manifest in pre-employment situations whereby there have been employment advertisements engineered against female applicants especially in law firms by excluding them from applying for jobs in such establishments (Animashaun 2007, P. 5).

In furtherance of the rights of female workers in the workplace, they are also entitled to favourable and friendly work environment. Both the work environment as well as the mental and physical conditions of work are expected to be both conducive as well as proximate. Where a nursing mother is employed, the employer has a duty to provide suitable place or facility within or nearby to her workplace to enable her attend to her baby. The employer must put in place policies and regulations that promote gender equality and equity. Despite the foregoing rights, there is an avalanche of cases where employers have flagrantly violated these rights especially on discrimination and maternity leave. Some of these scenarios are examined in the succeeding section of this paper.

3. The position of NICN and the Court of Appeal on Female Employees' Rights Protection

As earlier stated above that the court are vanguards for the safeguard of rights and liberties, they exist as an institutionalised medium for the settlement of disputes and prevention of potentially calamitous situation of resort to self-help. Over the years, the issues of female employees' rights abuses have been adjudicated upon by the National Industrial Court of Nigeria and the Court of Appeal. This section of the paper, is dedicated to the appraisal of some of the cases which these courts have decided with the aim of clarifying the position taken by them to proffer solutions to this problem. The study further proposes to evaluate the adequacy or otherwise of the remedies extended to the victims of this malaise against the backdrop of instilling and achieving deterrence.

In *Standard Chartered Bank Nig. Ltd. v. Ndidi Adegbite* (2019), the Court of Appeal had the opportunity to adjudicate over a matter dealing with alleged violation of the rights of the respondent. The Appellant employed the Respondent as an Account Relationship Officer. While working, she applied for maternity leave which she was granted for the period of 7th February to 6th May 2005. Upon the expiration of the leave, she applied for an extension as the health of her baby required it and she was granted. On the 3rd day of February 2006, she had s meetings with her supervisors and one of the Appellant's Executive Directors where she was informed that her performance appraisal was appalling. As a result of these meeting and the appraisal reports, on the 8th day of February 2006, the Respondent resigned from the Appellant's employment and filed a suit against the Appellant contending that consequent upon

the information received from the Appellant that appraisal of the Respondent was poor and therefore unfavourable to her continuous employment with the Appellant, Respondent was constrained to resign her appointment thereby rendering the resignation involuntary and constituting a constructive dismissal of the Respondent from employment by the Appellant. It was the further contention of the Respondent that in appraisal exercise, the Appellant discriminated against her on the basis of her sex and the fact that she was a nursing mother and the Appellant wrongfully debited her account with the sum of ₦ 1, 628, 209. 64. She therefore sought for several reliefs including a declaration that her dismissal from the Appellant's employment was both discriminatory and unconstitutional and that the sacking was done in bad faith on the basis of her sex and status as a nursing mother and therefore asked the court to direct the Appellant to pay monetary compensations to the Respondent in the sum of fifty million naira (₦ 50,000,000), and a further refund of the money wrongfully deducted by the Appellant from the account of the Respondent etc. Appellant denied all the claims contending that the Respondent resigned voluntarily and her appraisal was not hinged on the basis of her sex nor the fact that she was a nursing mother. In its judgment, the trial court granted her some relief awarding her the sum ₦ 5, 000, 000, 00 as damages for wrongful termination. The Appellant appealed to the Court of Appeal while the Respondent cross appealed contending that the damages awarded by the trial court did not take into consideration the depravity and ill treatment suffered by the Cross-Appellant. The Court of Appeal in its judgment, dismissed the appeal and affirmed the decision of the trial court. This decision shows that the Court of Appeal will readily confirm the award of damages awarded against an employer who violates the employment right of a female employee.

Similarly, in the case of *Mrs. Folarin Oreka Maiya v. The Incorporated Trustees of Clinton Health Access Initiative, Nigeria & 2 Ors.* (2012) the NICN awarded the Claimant compensation to the tune of her one-year gross pay which is the sum of ₦ 5, 576, 670 (Five Million, Five Hundred and Seventy-Six Thousand, Six Hundred and Seventy Naira) only. The facts of the case as revealed in court were that, claimant became pregnant in the course of her employment and subsequently informed her immediate boss. The defendant was displeased about the pregnancy and had her employment terminated leading to the law suit initiated by the Claimant for wrongful termination of her employment on account of being pregnant. The defendant could not put up a formidable defence and at the end of the trial, the NICN found that "the action of the Respondent amounts to inhuman, malicious, oppressive and degrading treatment and that the Respondent in their action held themselves out as abhorring the humanity of a woman on account of her pregnancy."

Another instance of the court's safeguarding of a victim's rights against sex discrimination was in *Ejike Maduka v. Microsoft Nigeria Ltd. & 3 Ors.* (2014). In this case, during the employment of the Claimant with the 1st Defendant, the 3rd defendant who was a co-employee with the Claimant, was consistent harassing the Claimant sexually as well as other female employees of the 1st Defendant, by tickling them on their waist and making other sexual gestures. The claimant repeatedly warned him to desist from sexually harassing her and other female employees as this unsolicited act from the 3rd Defendant was both a sexual harassment and a trespass to her persons as well as a gross violation and infringement of her and other affected female workers' fundamental rights to their privacy, but all to no avail. Despite the warnings and resistance taken by the Claimant, to the 3rd Defendant's objectionable acts, the

harassment persisted and Claimant had to inform her husband, who came to her office and sternly warned 3rd defendant to steer clear of his wife. The 3rd and 4th defendants were infuriated by this act and promised to deal with the Claimant. Subsequently, they framed her up and got her employment terminated after making the workplace extremely uncomfortable for her by forcing her to collect a termination letter which she refused, but same was delivered at her house. She sued the defendants contending that the termination amounted to an act of intimidation, sexual discrimination, and vindictiveness which constitute direct and flagrant infringement of her fundamental rights. The defendants expectedly denied all the allegations of the claimant, but the NICN, based on the evidence adduced by the parties, found that the claimant was sexually harassed, intimidated and her employment maliciously terminated and awarded damages to the Claimant in sum of ₦ 13, 225, 000, 000 (Thirteen Million, Two Hundred and Twenty-Five Thousand Naira) against the defendants.

Likewise, in *Pastor (Mrs.) Abimbola Patricia Yakubu v Financial Reporting Council of Nigeria & Anor* (2016), the NICN awarded damages of the sum of ₦ 5, 000, 000 (five Million Naira) only for sexual harassment against the Defendant. The claimant was an employee of the Defendant and a co-worker with the 2nd Defendant who had been making sexual overture towards her unceasingly. All appeals and warnings to him to cease and desist were not heeded even though, the 2nd defendant was aware that the claimant was married and pregnant. The claimant suffered psychological and emotional disturbance from this incessant and unsolicited immoral overture and annoyances from her colleague and filed a suit against the parties. The 2nd defendant denied the claim but the claimant's overwhelming evidence, showed that she was relentlessly harassed sexually be the 2nd defendant, her immediate boss without reprimand from the 1st defendant, her employer.

From the foregoing, it is crystal clear that the NICN and Court of appeal sternly frown at violation of female employees' employment rights. Despite this laudable stance of these court, it is easy to notice that the quantum of damages awarded in the cases above, is usually inadequate and oftentimes incapable of instilling deterrence in the culprits as well as potential offenders. In some of the cases, the claimants claim for monetary damages will be in the range of about ₦ 30, 000, 000, 00 (Thirty million naira) and more, but what usually result, is that the courts will – in virtually all the cases appraised, except perhaps with the exception of one – award a paltry sum of monetary compensation in the range of ₦ 5, 000, 000. One would expect that considering the pervasive nature of sexual harassment and its attendant negative effect on the physical and mental health of the victim, where the same is proven, punitive damages would be awarded. In order therefore to achieve the taming of this this menace which is growing in geometric progression and making the many workplaces unsafe and insecure for female employees from continuing to thrive, the courts should award punitive or exemplary damages.

While the courts have frowned at this malaise, rights groups, especially women rights, such as National Association of Women Journalist (NAWOJ), Nigerian BAR Association Women Forum, etc. can undertake awareness exercises through massive sensitisation on the deleterious effect that this malaise have on the health and safety of the workplace. By their collective efforts, female employees should be made to be aware of their fundamental rights to freedom from sex discriminations in the workplace and avenues should be created for female employees whose rights are infracted, to ventilate their grievances. Those female victims but

who may not have the wherewithal to litigate should also be granted access to *pro bono* legal services and professional counselling as argued by Leigh (2022, P. 99). The government as regulator of employment and in the quickening of its paternalistic status, has the responsibility to ensure that the obsolete labour and employment laws are reviewed in order to expand the scope of statutory laws to victims for an enhanced protective regime through a consistent and rigorous application and enforcement thereof.

4. Conclusions and Recommendations

From the analysis above, it is clear that the labour laws of Nigeria accord female employees certain rights. Despite this recognition, female employees are often victims of various rights violations from their colleagues and sometimes from their employers. Some of the several factors that are responsible for this unpleasant state of affairs include but are not limited to economic, socio-cultural, weak enforcement of existing laws and high rate of unemployment. In fact. Leigh (2014, 650-678) has argued that high rate of unemployment has led to the increase and acceptance of precarious forms of employment in Nigeria such as casualisation wherein the rights of employees are flagrantly breached. There are also laws that are sometimes intended to protect female employees, but instead end up discriminating against them. Fortunately, Nigeria courts, particularly the National Industrial Court of Nigeria and the Court of Appeal have frowned at this malaise and have awarded damages in such instances. While the award of damages is laudable, the quantum of damages awarded is oftentimes insignificant and therefore unable to instil deterrence. To address the issue, human rights organisations needs to sensitise female employees of their rights, provide enabling environment for complaints and also offer *pro bono* legal services to victims who might not have the means to institute and sustain court actions against potential offenders.

Based on the findings above, it is recommended that where a case of right violation is established by a claimant, especially dealing with sexual harassment and intimidation, to serve as deterrence, the courts, particularly the NICN should grant exemplary damages instead of the usual nominal damages.

Also, the government as regulator should ensure that the existing obsolete and inadequate framework which provide to female employees' certain rights is reviewed to become compliant with minimum global standard and international best practice in this sensitive area of sex discriminations. In the same breath, one of the identified precipitants of this menace is the high level of employment which is at present, a very huge challenge confronting Nigeria. The government needs to create more jobs and an enabling environment where those desirous of working can access decent and gainful employment.

Employers should be compelled by legislative instrument to put in place sexual harassment policy and programme to ensure that all staff are orientated and enlightened regularly. This will help sensitise the workforce and prevent the festering and geometrical progression of sexual harassment by entrenching attitudinal change. Employers will also be relieved of their perennial accusation of their condonation, collusion and connivance of sex discrimination offences within their respective provincial domains.

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CONSIDERATIONS ON THE LIMITATIONS IN ROMANIAN LEGISLATION REGARDING THE ALIENATION AND EXECUTION OF LAND CONTRACTS

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Abstract: *The execution of agreements aimed at transferring ownership of real estate is hampered both by the behavior of the seller, who refuses to fulfill his obligations, and by legal regulations that make it difficult to transfer ownership of real estate by imposing important obligations on the seller. The legislation of the last ten years has made it much more difficult to carry out sales of land, especially outside the built-up areas of localities. A legal modification from 2020 implements a series of important legal changes related to the holders of pre-emption rights, but also concerning the specific ways of selling agricultural land located outside* built-*up areas, when the holder of pre-emption rights does not want to buy. Whenever the court is asked to give a decision which supersedes a selling contract, the petition is admissible only if the pre-contract is legally signed, in accordance with Civil code provisions, and all other legal requirements are fulfilled, meaning: obtaining all necessary authorizations, respecting pre-emption rights, respecting the fiscal and land registration requirements. Following the latest legislative changes imposed by Law No. 116 of 2024, failure to comply with these obligations is sanctioned, as the case may be, with absolute or relative nullity of the concluded contract. In finding solutions for the execution of these contracts, the High Court of Cassation and Justice of Romania has an important role, which has ruled through several decisions that are presented in this study.*

Keywords*: sale of real estate, limitations, right of pre-emption, enforcement*

1. Introduction

Romanian legislation before 1990 only allowed the transfer of building ownership, but the sale of land was prohibited. The transfer of property rights only became possible after 1991 when Law No. 18 of February 20, 1991 on tland resources was adopted. According to Article 45, “Privately owned land, regardless of its owner, is and remains in the civil circuit. It may be acquired and alienated by any of the methods established by civil legislation, in compliance with the provisions of this law”.

At first, only Romanian citizens could own land. Later, the Romanian Constitution of 2003 also recognized the right of foreign citizens to acquire land in Romania under the conditions of accession to the European Union. The concrete conditions for the acquisition of land by foreign citizens were laid down in 2005 by Law No 312 of November 10, 2005 on the acquisition of land private ownership by foreign and stateless citizens and foreign legal entities.

According to Article 3 of the same Law, a citizen of a Member State, a stateless person residing in a Member State or in Romania, as well as a legal person established in accordance with the legislation of a Member State may acquire the land property right under the same conditions as those provided by law for Romanian citizens and Romanian legal persons. Foreign citizens could acquire the property of land after 5 years or 7 years from the date of Romania's accession to the European Union, depending on whether or not they were resident in Romania (Art. 4 and 5 of the Law). Therefore, the conditions under which the property right of real estate in Romania that can be validly acquired are also of interest to foreign citizens, especially those of the European Union.

2. The real estate sale in Romanian Law

In Romanian Law, real estate sales contracts must be drawn up in authentic notarial form, this being a condition of their *ad validitatem*. The need to fulfill this form results in particular from art. 1244 of the Civil Code. The text of the law imposes the form of the authentic document under the penalty of absolute nullity in the case of conventions that transfer or constitute real rights to be entered in the land register. Currently, the transmission of the real estate property right or the establishment of real rights through legal acts can only be achieved by concluding the act in authentic form and registering the transfer or establishment of the right in the land register (Bârsan, 2013: 125).

However, the parties sometimes choose to conclude a sale-purchase promise. The sale-purchase promise, also known as the pre-sale contract, has been defined in the doctrine as a contractual agreement of will by which the parties mutually assume the obligation to conclude a certain sale-purchase contract between them in the future, establishing its essential content (Costin, Mureşan, Ursa, 1980 : 36). In Romanian doctrine, the notion of sale-purchase promise was also defined by the terms "precontract", "preliminary contract" or "provisional contract". It represents a promise to sell and/or buy, an agreement of will that precedes the conclusion of a sale and which is intended to give the parties the certainty that none of them will capitulate from the intention to carry out the envisaged contract (Cărpenaru, Stănciulescu, Nemeş, 2009:14). The promise whose object is the property right over the building can be recorded in the land register if the promisor is registered in the land register as the holder of the right that is the object of the promise, and the pre-contract, under the penalty of rejection of the request for recording, stipulates the term in which the contract is to be concluded (Stănciulescu, 2012 :105). The text did not provide the condition of the authentic form for the valid conclusion of the preliminary contract for the sale of real estate.

Likewise, sales-purchase contracts that do not comply with the requirement of authentic form because they are concluded in writing under private signature will be considered sales pre-contracts based on the principle of conversion of legal acts. They give rise to an obligation on both parties to make and improve (*facere*) the sale-purchase contract in an authentic form. The obligation to make (*facere*) is the one that compels the debtor to a positive act (or performance) other than giving (Flour, Aubert, Savaux, 2002: 26)**.** The party that has fulfilled its obligation to pay the price has the possibility of requesting the issuance of a decision that will take the place of an authentic sales contract..

The current Civil Code expressly provides, through the provisions of art. 1279 paragraph (3) of the Civil Code, and art. 1669 paragraph (1) of the Civil Code, for any

contractual party, in the event of refusal by the other party, to address the court to obtain a decision that will take the place of the contract. According to art. 1279 paragraph (3) of the Civil Code, "*if the promisor refuses to conclude the promised contract, the court, at the request of the party that has fulfilled its own obligations, may issue a decision that will take the place of the contract, when the nature of the contract allows it, and the requirements of the law for its validity are met. The provisions of this paragraph are not applicable in the case of a promise to conclude a real contract, unless otherwise provided by law."* Also, according to art. 1.669 paragraph (1) Civil Code: *"When one of the parties who have concluded a bilateral promise of sale unjustifiably refuses to conclude the promised contract, the other party may request the issuance of a judgment to replace the contract, if all other conditions of validity are met."*

The two cited legal texts represent particular applications of the enforcement remedy in kind to which the creditor may resort when the debtor fails to perform his assumed obligations. Since these texts represent procedural provisions laying down the conditions for exercising civil action, they are also applicable in the case of enforcement of obligations derived from preliminary sales-purchase contracts, concluded prior to the entry into force of the current Civil Code. In these cases, the acquisition of ownership of the real estate will be based on the court decision, which will replace the consent of the seller. The court decision is itself an authentic document (Sferdian,2021:598).

3. Limitations on the sale of land imposed by special legislation

The transition period in any society which encountered radical changes of the Government or the Political regime had multiple relativities and complications. In Romania, the transition period seems to have no end and on the contrary it seems more and more complicated (Rath-Boșca, 2015). All of this has imposed the need to adapt some traditional institutions of law (C.Miheș, 2019:103).

Significant restrictions on the sale of agricultural land outside built-up areas were imposed in Romanian legislation by Law no. 17/2014 on some measures regulating the sale of agricultural land located outside the built-up area and amending Law no. 268/2001 on the privatization of companies that manage public and private state-owned land for agricultural purposes and the establishment of the State Lands Agency. One of the declared purposes of the law, which has undergone numerous changes, was to ensure food security, protect national interests and exploit natural resources in accordance with the national interest. The law imposes special conditions for the agricultural land located outside built-up areas, within 30 km from the state border and the Black Sea coast inlands, as well as those alienated through sale-purchase only with the specific approval of the Ministry of National Defense (art. 3 paragraph 1 of the Law). Agricultural land located outside the built-up area can be alienated, by sale, before the completion of 8 years from the purchase, with the obligation to pay tax of 80% on the amount representing the difference between the sale price and the purchase price, based on the notary's grid for that period. According to the provisions of the Fiscal Procedure Code, the person who considers that his rights have been violated by a fiscal administrative act has the right to appeal. (Cîrmaciu, 2022; 59).

It also provides that the alienation, by sale, of agricultural land located outside built-up areas shall be carried out in compliance with the substantive and formal conditions provided

for by the Civil Code and rrespecting the pre-emptive right of certain categories of persons. . The legislative amendments of 2020 regulated seven categories of pre-emptors. Among those who make up these categories, we mention: co-owners, relatives, spouses, owners of agricultural investments, tenants, owners of neighboring land, young farmers, the Romanian State or the State Lands Agency (Art. 4 paragraph.1). The pre-emptive right is exercised in the order of the seven classes at a price and under conditions equal to those provided in the offer. We agree with the opinion expressed in the doctrine in the sense that the legislator surprisingly greatly, and even artificially, expands the scope of pre-emptions, by artificially dividing them into seven ranks of preferability, thus diluting the traditional meaning of the pre-emptive right and even tending towards a restriction of the principle of free movement of land (Marcusohn, 2021).

According to Article 16 of the Law no.17/2014, the alienation by sale of agricultural land located outside the built-up area without respecting the right of pre-emption, according to the provisions of law or without obtaining the approvals provided is prohibited and is punishable by absolute nullity. Also, following the amendments made to Law 17/2014 by Law no. 116/2024, the alienation by sale of agricultural land located outside the built-up area without respecting the provisions of Article 42 regarding the obligation to pay tax is prohibited and is punishable by relative nullity.

On the other hand, as regards the alienation, by sale, of agricultural land located in the outside built-up areas on which there are classified archaeological sites, this is done according with the provisions of Law no. 422/2001 on the protection of historical monuments, republished, with subsequent amendments (art. 4 paragraph 2). Last but not least, it is mandatory that the property that is the subject of the pre-contract be registered in the tax roll and in the land register.

Law no. 17/2014 requires compliance with these legal provisions also in the case of sale-purchase pre-contracts, regardless of whether they were concluded before or after its entry into force. Art. 5 paragraph 2 of the Law also provides that the application for registration in the land register of the ownership right shall be rejected if the conditions provided for by this law are not met.

Initially, art. 20 paragraph 1 of Law no. 17/2014 exempted from the obligation established by art. 5 paragraph 1 pre-contracts that were authenticated by a notary prior to its entry into force. However, the Constitutional Court of Romania, by decision no. 755 of 16th December 2014 (https://www.ccr.ro/wp-content/uploads/2020/07/Decizie_755_2014.pdf), admitted the exception of unconstitutionality of the provisions of art. 20 paragraph 1. The Constitutional Court considered that equal treatment should be established regardless of the form in which the pre-contract was concluded and made it mandatory to comply with the requirements of Law 17/2014 in all cases.

4. Important court decisions that interpreted the legal limitations

By decision no. 8 of June 10, 2013 of the High Court of Cassation and Justice (https://www.iccj.ro/2021/07/10/decizia-nr-8-din-10-iunie-2013/), it was decided that the legal action requesting the issuance of a court decision to replace an authentic act of sale and purchase of a real estate property has the character of a personal real estate action. The supreme court considered that the action is personal in nature, because the plaintiff asserts a

claim, namely the right to request the conclusion of the contract, correlative to the defendant's obligation to take the necessary steps to conclude it.

In another decision, no. 12 of June 8, 2015, rendered in an appeal in the interest of the law (https://www.iccj.ro/2015/06/08/decizia-nr-12-din-08-iunie-2015/), the High Court of Cassation and Justice ruled on the possibility of enforcing in kind of the promise of sale, in a situation where the promising seller has only an ideal share of the property right over it. The supreme court ruled that the promise of sale cannot be enforced in kind in the form of a judgment in lieu of a sale contract for the entire property without the consent of the other co-owners. The solution of partial admission of the action, within the limit of the co-owner's share in the property, can be envisaged only if the prospective purchaser opts to obtain a decision for an ideal share of the real estate property. Otherwise, the principle of availability would be terminated.

By issuing the decision, the court does not conclude the contract in place of the parties, but verifies the existence of the elements of the contract as agreed by the parties and, only to the extent that they are present, and the refusal of one of the parties was unjustified, then the court issues the decision that will replace this requirement. The court decision issued in this case ensures the enforcement of the obligation, legally assumed by the promise of sale, and does not assume the legal nature of the sale-purchase contract. The court decision enforces the right of the creditor (promiser-buyer) to obtain in kind the enforcement of the obligation to conclude the contract capable of transmitting the property right, assumed by the debtor (promiser-seller), the court decision cannot be confused with the sale contract itself, in the sense of *negotium*.

In the case of a pre-contract of sale and purchase concerning a real estate property, concluded by only one of the spouses, the prospective purchaser may not bring an action having as its object the issue of a decision that would take the place of the contract, provided that the pre- contract of sale and purchase did not give rise to an obligation to conclude a contract of sale and purchase and to transfer the ownership of the real estate property to the non-signatory spouse. The promising purchaser has the possibility to obtain only damages, without being able to successfully use the remedy of enforcement in kind of the obligation to dispose of the property assumed by one of the spouses.

In the Decision of the High Court of Cassation no. 24/2016 on the resolution of certain legal issues, the High Court of Cassation and Justice of Romania has established that the court may order the completion of the formalities in order to obtain the opinions provided for in art. 3 and art. 9 of Law no. 17/2014, as subsequently amended and supplemented, from the competent authorities and to follow the procedure regarding compliance with the right of pre-emption provided for in art. 4 of the same normative act, during the trial. It was also held that, given that by issuing a decision to replace a sale-purchase contract, the aim is to obtain a property transfer document, the conditions of validity of the contract must be verified by reference to the time of issuing the decision, and not to the time of formulating the action(https://www.iccj.ro/2016/09/26/decizia-nr-24-din-26-septembrie-2016/). The validity requirements provided for by Law 17/2014 can be fulfilled during the trial, with the assistance of the court, which will order the administration of evidence that may constitute proof of their fulfillment. If the court were not granted the possibility of actively acting in the sense of fulfilling certain legal requirements during the trial, by administering specific

evidence, the plaintiff's legal action would be completely devoid of purpose in the face of the defendant's refusal to carry out the procedures prior to the alienation of the property (The Decision no.235 of February 4,2021, https://www.scj.ro/1093/Detalii-).

In judicial practice, there have been controversies regarding the verifications of the formal or substantive requirements that the court must carry out when it is entrusted with the request to issue a decision allowing the registration in the land register of the arbitral award redered in a dispute related to the transfer of ownership and/or the establishment of another real right over a real estate property. By Decision No. 1/2022, the High Court of Cassation and Justice interpreted Article 603 of the Civil Procedure Code. According to Article 603 paragraph 3 of the Code of Civil Procedure, if the arbitral award concerns a dispute related to the transfer of ownership and/or the establishment of another real right over an immovable property, the arbitral award shall be submitted to the court or the notary public in order to obtain a court decision or, as the case may be, an authentic notarial deed. After the court or the public notary has verified compliance with the conditions and after the procedures imposed by law and after the parties have paid the tax on the transfer of ownership, the registration in the land register shall be carried out and the transfer of ownership and/or the establishment of another real right over the immovable property in question shall be carried out. By Decision no. 1/2022 rendered in an appeal in the interest of the law (https://www.iccj.ro/2022/03/25/decizia-nr-1-din-31-ianuarie-2022-2/), the High Court of Cassation and Justice ruled that the court will only analyze the formal conditions of the arbitral award, and not of the substantive ones. The Court reached this conclusion by interpreting the provisions of the Code of Civil Procedure, considering that the regulation of an appeal, subject to an imperative term for exercise (according to art. 611 of the Code of Civil Procedure) and a certain competence (of the court of appeal, according to art. 610 of the Code of Civil Procedure), cannot be circumvented, so that the formal aspects that could be exploited through the annulment action can be brought to the court in a non-contentious procedure (thus violating the legal regime of appeals).

5. Final conclusions.

Although there is a legal framework for acquiring property rights over real estate by Romanian citizens and foreigners, both through the regulations of recent years and through the interpretation of the relevant normative acts by the High Court of Cassation and Justice and the Constitutional Court, the situation of persons interested in seling or acquiring real estate and enforcement of sales pre-contracts has become significantly more difficult.

We consider that the beneficiary of a promise to sell real estate outside built-up areas, which falls under the incidence of Law no. 17/2014, is in a difficult situation as long as art. 5 paragraph 1 requires the fulfillment of the conditions provided for in art. 3, 4 and 9 in order to be able to issue a decision that will take the place of an authentic contract. The High Court of Cassation and Justice has stated that the special law does not authorize the court to issue a decision that will take the place of a sale-purchase contract in the absence of the cumulative fulfillment of the special validity conditions that this normative act imposes. Under Art. 1.669 of the Civil Code, the only condition of validity that can be replaced by the court, under the terms of law, is the consent of the promisor who unjustifiably refuses to conclude the promised contract, this being a general condition of validity.

One solution is to notify the court, either in the process regarding the issue of the decision that will take the place of an authentic contract, or separately, to oblige the promisor-seller to fulfill the formalities provided by law. However, the High Court of Cassation and Justice has established that the court may order the fulfillment of the formalities in order to obtain the opinions provided for in Art. 3 and Art. 9 of Law no. 17/2014, with subsequent amendments and completions, from the competent authorities and to follow the procedure regarding the observance of the right of pre-emption provided for in Art. 4 of the same normative act, during the court proceedings.

Regarding the limitations imposed especially after 2020, we consider that they excessively complicate the situation of owners seeking to alienate agricultural land outside the built-up areas of localities. We think that this restriction of the prerogative of the provision is likely to affect the very essence of the right to property.

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SOME CONSIDERATIONS REGARDING PERPETRATORSHIP IN CRIMINAL PROCEEDINGS IN ROMANIA

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Abstract: *Starting from the consideration that the activity of preventing and combating anti-social acts actually represents an application of the legal norms that regulate the conduct of life in society, we note that it is appropriate that through the competent bodies of the state, those who have committing antisocial acts and subsequently applying some sanctions, because life in a society cannot take place without order and discipline, which are ensured by the will of the legislative bodies and with the support of judicial bodies with the assurance of all procedural guarantees in respect of individual rights and freedoms during a criminal trial.*

Keywords: *perpetrator, adult, suspect, defendant, criminal trial*

Introduction. Brief history regarding the evolution of the quality of the perpetrator in the criminal process

After the appearance of the first codes, and in particular the Code of Criminal Procedure (of Romania) from 1936, there is a shift to the consolidation of specific terminologies (accused or accused).

Thus, the accused was the person against whom a denunciation, complaint or direct action had been filed or the person against whom the first investigations were carried out ex officio. In this context, the content of the notions of accused and defendant was determined by the specific way of organizing the criminal process, which went through the following phases: the first investigations, the preparatory instruction, the trial and the execution of the sentence. Later, according to the provisions of the Code of Criminal Procedure from 1968 (of Romania), acquiring the quality of being accused also required the existence of a premise, consisting of a violation of the criminal rules that criminalize the commission of certain crimes.

Currently, the name of the accused has been changed to that of the suspect. Thus, according to the provisions of art. 77 CPP, the suspect is the person regarding whom, from the existing data and evidence in the case, there is a reasonable suspicion that he has committed an act provided for by the criminal law, being one of the important procedural participants in the conduct of the criminal investigation.

General considerations regarding the quality of the perpetrator in the criminal process

The notion of suspect designates a procedural position different from that of the perpetrator or the defendant. The suspect is not a party to the trial, but his status is closer to that of the accused than to that of the perpetrator. As a result of the elimination of the

criminal procedural provisions that regulated the institution of the preceding acts, as well as the institution of the accused from the previous Criminal Procedure Codes, we present the evolution of these provisions, in order to delimit them from those currently existing in the Criminal Procedure Code.

In the Code of Criminal Procedure from 1936, the notion of the accused was defined in the chapter dedicated to the parties, while in the Code of Criminal Procedure from 1968 the accused was the subject of the criminal process, but did not have the status of a party in the criminal process. Moreover, the Code of Criminal Procedure from 1936 did not use a unified terminology for the accused, calling him a guilty person, criminal, suspect, accused, without paying attention to the definition or differences in content. In the legislation of other countries, such as the Russian one, which greatly influenced the Romanian legislation, the suspect, in the phase of the first investigations, had a passive role, not being able to be heard and, consequently, not being able to formulate his defenses (Zolyneac, 1993:45).

In relation to this aspect, the Constitutional Court, by Decision of the Constitutional Court no. 210 of October 26, 2000, rejected the objection of unconstitutionality of the provisions of art. 6 para. (1), of art. 172 para. (1) and of art. 224 CPP 1968, reasoning that "the guarantee of the right of defense cannot be ensured outside the criminal process, before the start of the criminal investigation, when the perpetrator does not have the procedural capacity to be accused or accused".

In the previous Code of Criminal Procedure, the accused was defined as the person against whom the criminal investigation was carried out, as long as no criminal action had been initiated against him. Starting from this legal provision, in the specialized literature, the notion of the accused was defined as "the person against whom the criminal investigation is carried out, as long as the fundamental legal relationship, as well as the accessory relationships, have not been born, as a result of the initiation of the criminal action", or "the person against whom the criminal prosecution has begun, subject to procedural rights and obligations (Dongoroz, 1969:205).

According to the provisions of the previous Code of Criminal Procedure (of Romania), there was a phase of acts preceding the start of the criminal prosecution, which preceded the birth of the criminal procedural legal report. The person against whom the preliminary acts were carried out was called the perpetrator. The acts preceding the initiation of the criminal prosecution were not binding, but were related to the need to verify the conditions that were the basis for the initiation of the criminal prosecution.

The carrying out by the criminal investigation body of some criminal investigation documents, prior to the start of the criminal investigation, in order to collect the data necessary for the initiation of the criminal process, did not represent the moment of the start of the criminal process and was done precisely to determine whether or not there are grounds for starting it. The perpetrator acquired the quality of the accused once the criminal investigation began. This was the moment when, in the case, the procedural law relationship was born as a legal relationship that was established between the judicial body and the people who took part in the activity of bringing criminal responsibility.

Analyzing the old regulation, we find that the moment when it was possible to move to the phase of starting the criminal prosecution against the perpetrator was not precisely

determined, so that the initiation of the criminal prosecution could be ordered both with regard to the act and with regard to the perpetrator. Under this aspect, the Code of Criminal Procedure from 1936 was more precise, by regulating the institution of indictment, so that, by the provisions of art. 248[1], it was stipulated that, after the start of the criminal process, as soon as there were sufficient data regarding the deed and the person who committed it, the criminal investigation body had to proceed with the indictment.

The accused was the subject of the criminal process, but he did not have the capacity of a party in the criminal process, the capacity of the accused being maintained until the initiation of the criminal prosecution, when he acquired another procedural capacity, that of the defendant.

Currently, through the new provisions, following the commission of a crime, a criminal legal relationship of conflict arises between the state, as the owner of the legal order, and the criminal, as an active subject, consisting in the right of the state to apply the sanction provided by the criminal law violated (the right to be criminally liable) and in the offender's obligation to bear the sanction (to be criminally liable) as a result of disregarding the rule.

After bringing this legal report before the judicial bodies, during a criminal trial, the passive subject of the conflict legal report (the injured person) becomes the active subject of the criminal procedural law report, while the active subject of the criminal legal report (the offender) receives different procedural qualities, becoming a passive subject of the criminal procedural law report.

In other words, during the criminal process, the criminal will wear different "legal clothes", each of which shows the stage of the criminal process, as well as the rights and obligations that he has, in each individual case (Neagu, 2020:165).

Thus, before the start of the criminal process, the person who committed the crime has the capacity of perpetrator. From a terminological point of view, the notion of perpetrator seems to denote the very person who is guilty of committing the deed under investigation, although in reality it is about the person against whom a complaint has been made or who is suspected of violating the criminal law.

The notion of perpetrator was not defined, as it is not defined even now by the provisions of the Code of Criminal Procedure, but this quality exists, the legislator mentioning it in the provisions of art. 61 para. (2) CPC, which stipulates that, in the case of flagrant crimes, the investigative bodies have the right to search bodies or vehicles, to catch the perpetrator and immediately present him to the criminal investigation bodies. Also, according to art. 310 CPP, it is stipulated that, also in the case of flagrant crime, any person has the right to catch the perpetrator.

In relation to the violation of the rules of criminal law, the state must respond by restoring the legal order, which must materialize by bringing criminal responsibility and, subsequently, by applying a sanction to the person who committed the crime, the procedure for bringing criminal responsibility being necessary to be carried out during a criminal trial.

Regarding the initiation of the criminal investigation, the Code of Criminal Procedure approaches a different procedure compared to the previous regulation, in the sense that the initiation of this phase of the criminal process is no longer decisive for acquiring the quality of a suspect (Neagu, 2020:165). Thus, according to the provisions of art. 305 para. (1) CPP, when the reporting act meets the conditions provided by the law, the criminal investigation

body orders the initiation of the criminal investigation regarding the act committed or the commission of which is being prepared, even if the author is indicated or known.

Also, according to the provisions of art. 305 para. (3) CPC, when there is evidence from which the reasonable suspicion that a certain person has committed the act for which the criminal investigation has been started and there is not any of the cases provided for in art. 16 para. (1) CPC, the criminal investigation body orders that the criminal investigation continue to be carried out against it, which acquires the status of a suspect (Neagu, 2024:100).

Rights and obligations of the perpetrator during the criminal process

The existence of the notions of perpetrator, suspect or defendant is not intended to reflect different degrees of guilt, but the status of the passive subject of the criminal procedural law report corresponding to the different stages of the criminal process.

The legislator established through the provisions of art. 78 CPC that the suspect has the rights provided by law for the accused, except when the law does not provide otherwise, precisely as a result of the common nature of the regime established for them, which we exemplify through the provisions of art. 83 CPC regulating the suspect's rights: the right not to make any statement during the criminal trial, drawing his attention to the fact that if he refuses to make a statement, he will not suffer any adverse consequences, and if he makes statements, they may be used as evidence against him; the right to be informed about the act for which he is being investigated and its legal framework; the right to consult the file, under the law; the right to have a lawyer chosen, and if he does not appoint one, in cases of mandatory assistance, the right to have a lawyer appointed ex officio; the right to propose the administration of evidence under the conditions provided by law, to raise exceptions and make conclusions; the right to make any other requests related to the resolution of the criminal and civil side of the case; the right to benefit from an interpreter free of charge when he does not understand, does not express himself well or cannot communicate in Romanian; the right to appeal to a mediator, in cases permitted by law; the right to be informed about his rights; other rights provided by law.

In the category of other rights provided by law for the suspect, we can include the right to the presumption of innocence, provided by art. 4 CPP, the right to be represented, the right to request the continuation of the criminal process (art. 18 CPP).

The normal conduct of the criminal process requires that each participant comply with the obligations expressly provided by the law, as well as those arising from the way the criminal process is organized, which is why we highlight the obligations of the suspect in the criminal investigation phase, as follows: the bearing of some procedural measures that they decided against him (detention, medical hospitalization in order to carry out a medico-legal psychiatric examination); the obligation to appear at the summons of judicial bodies; the obligation to notify the judicial body within 3 days of the change of address where he lives; the obligation to keep and preserve the objects left in custody following the search carried out.

Failure by the suspect to comply with his obligations is sanctioned by means specific to criminal procedural law, according to the provisions of art. 283 para. (4) CPP, with a judicial fine from 500 lei to 5,000 lei. We thus find, as we stated previously, that the suspect

has rights and obligations, being neither the perpetrator nor the defendant in the case, because, as the provisions of art. 305 para. (3) CPC, the suspect is the person against whom, from the evidence, there is a reasonable suspicion that he has committed a crime (Mateuț, 2024:82). Also, until the perpetrator becomes a suspect, will the criminal investigation bodies hear him, and following his hearing, will the statements be recorded in a perpetrator's statement?

No, because the provisions of the Code of Criminal Procedure do not regulate this institution, and then recourse is made in the practice of criminal investigation bodies to the recording in a witness statement of the data provided by the perpetrator, and then, depending on the evidence administered in the case file, to be able, if necessary, to continue the criminal investigation started in rem, regarding the act against him, who acquires the name of the suspect in question, being obviously about the reported witness to which there is in fact an accusation and which, according to the provisions of art. 118 para. (4) CPP the right to appear at hearings accompanied by a lawyer (Stan, 2016:2). Moreover, corroborating the provisions of art. 118 with those of art. 120 CPP, we note that the witness has the right to remain silent, he has the right not to declare facts and factual circumstances that, if known by the judicial body, would determine his incrimination regarding the commission of the crime.

Thus, the judicial body has the obligation to inform the witness, before each hearing, of the fact that he can refrain from declaring some factual facts or circumstances related to the crime, and in the case of a violation of these provisions by the judicial body, then the evidence obtained in violation of these provisions will not be able to be used against the witness in the criminal trial. Also, the witness has the right not to incriminate himself, and the witness statement given by a person who, in the same case, before or after this statement, had or acquired the status of suspect or defendant cannot be used against him, meaning in which the interpretation of the text must be done in the sense in which the witness has the right to remain silent, to the extent that through his statement, given before the judicial bodies, he could incriminate himself. In this situation, the witness's statement is not excluded from the case file and can be used to establish the circumstances of the case, which are not related to it, mentioning when the statement is recorded and the procedural status previously held (Neagu, 2020: 513).

As obligations of the witness in the criminal process, we mention the obligation to present himself whenever he is summoned to appear before judicial organs, the obligation to communicate in writing within 5 days any change of address to which he will be summoned, as well as the obligation to tell the truth, taking an oath or solemn declaration, which corresponds to the obligation to give statements in accordance with reality, otherwise it is pointed out that he can answer from a criminal point of view by committing the crime of perjury, the judicial body being obliged to inform the witness of its obligations, and about bringing them to the knowledge must make a mention in the declaration.

The High Court of Cassation and Justice, the Panel competent to judge the appeal in the interest of the law, ruled on this aspect, by Decision no. 1/2019, considering that "The fact of a person heard as a witness making false statements or not telling everything he knows about the essential facts or circumstances about which he was asked meets only the typical elements of the crime of perjury , provided by art. 273 para. (1) of the Criminal Code".

In order to have legal effectiveness, the fundamental and procedural rights of the perpetrator heard as a witness in the criminal investigation phase, until the collection of evidence from which it is reasonable to suspect that he has committed a crime, the continuation of the criminal investigation and the acquisition of the quality of the suspect, must to be guaranteed by appropriate legal institutions, in relation to the principles contained in Title I of the General Part of the Code of Criminal Procedure. Their violation by judicial bodies may attract procedural, criminal or disciplinary sanctions (Negruț, 2024:243). Among the guarantees necessary to ensure the rights of the suspect, we mention:

- guaranteeing the right to defense (art. 10 CPP). This right is guaranteed, throughout the entire criminal process, to all parties and main procedural subjects. According to the provisions of art. 281 para. (1) lit. f) CPP, failure to provide legal assistance - when it is mandatory - entails the absolute nullity of the acts performed. Violation of these provisions must be invoked: until the conclusion of the procedure in the preliminary chamber, if the violation occurred during the criminal prosecution or in the procedure of the preliminary chamber; in any state of the process, if the violation occurred during the trial; in any state of the process, regardless of when the violation occurred, when the court was notified with a plea agreement;

- guaranteeing the right to freedom and security (art. 9 CPP). The law expressly provides for the conditions under which measures can be taken to restrict a person's freedom, the term and the grounds that can be the basis for taking such measures. If the person against whom a measure of restriction of freedom was taken considers that it is illegal, he has the right to file an appeal against the disposition of the measure, according to art. 9 para. (5) CPP.

Remedies were also provided for the violation of the freedom of individuals. Thus, paragraph (5) of art. 9 CPC stipulates that any person against whom a custodial measure was ordered illegally, during the criminal process, has the right to compensation for the damage suffered;

- guaranteeing respect for human dignity and private life. According to art. 11 CPC, any person under criminal investigation or trial must be treated with respect for human dignity. It is also necessary to respect privacy, the inviolability of the domicile and the secrecy of correspondence. Violation of these norms attracts criminal liability, the facts may meet the constitutive elements of the crimes of: abusive research (art. 280 of the Criminal Code); subjecting to ill-treatment (art. 281 of the Criminal Code) or torture (art. 282 of the Criminal Code).

Conclusions

The provisions contained in Law no. 135/2010 on the Code of Criminal Procedure (of Romania) do not define the quality of the perpetrator and at the same time do not provide for him the rights and obligations that he would have, but only refer to this quality in the criminal prosecution phase until the moment of the continuation of the criminal prosecution through the disposition of the criminal investigation body materialized by the order to continue the criminal investigation according to the provisions of art. 305 para. (3) CPP. After notifying the judicial bodies through one of the notification methods provided by the legislator, they must collect the evidence necessary to clarify all the aspects related to the commission of a

crime, which is why either knowing the person who committed the act or not knowing him, they have the obligation to start the criminal investigation in rem, regarding the deed, and then start hearing the perpetrator. This is where the controversies start, as a result of the fact that the perpetrator does not have any capacity in the criminal process, according to the provisions of art. 29 CPP, being considered neither party nor main procedural subject in the criminal process.

It is thus the obligation of the judicial bodies to hear him, because they have to use this evidentiary procedure, but as a witness, which is why the perpetrator will acquire a quality, namely that of a witness of his own deed, which contravenes the a kind of legal logic for which he acquires such a quality, but in the judicial practice of criminal investigation bodies this fact is preferable since the legislator did not provide provisions that to give him a quality and, subsequently, no rights in the criminal process. It thus becomes understandable the reason why judicial bodies resort to such a way to obtain evidence in the criminal process, following that the legislator can rethink these provisions in a way that confers a procedural position on the perpetrator.

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LEGISLATIVE, DOCTRINAL AND PRACTICAL CHALLENGES REGARDING THE EXAMINATION OF THE BODY AT THE SCENE IN THE REPUBLIC OF MOLDOVA

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Abstract: *This study addresses the legislative and practical challenges related to the on-site examination of cadavers under the legislation of the Republic of Moldova. It focuses on both criminalistic and procedural aspects, identifying deficiencies in the practice of investigative bodies and offering concrete recommendations to enhance the effectiveness of this procedural action. Additionally, it suggests legislative amendments to eliminate ambiguities and strengthen the normative framework. The article examines, from a tactical and procedural criminalistics perspective, the process of cadaver examination, emphasizing the need for interdisciplinary approaches to ensure a comprehensive investigation at the discovery site. Drawing on judicial practices, it highlights legislative gaps, contradictions, and tactical errors that may negatively impact the conduct of such investigations. Furthermore, it includes observations on the extra-procedural transportation of the cadaver from the discovery site to forensic institutions, a topic deemed insufficiently regulated. The author underscores the importance of cadaver examination in the broader context of criminal investigations, noting that this process should not be confined to on-site inspections but should extend to other procedural stages. Accordingly, additional regulations are proposed to prevent subjective interpretations and support the work of investigative bodies. The study also provides tactical and methodological recommendations aimed at optimizing the investigative process as a whole.*

Key-words: *cadaver examination, procedural criminal law, criminalistics, investigative tactics, investigation efficiency, investigative bodies.*

Introduction

The discovery of a deceased person in judicial proceedings represents an incident. The body may be found either at the place where the death occurred or where it was moved. In the first situation, the scene of the incident and the place where the body was found coincide and are examined as part of the on-site investigation.

On-site investigation is one of the most important and frequent activities during which the criminal investigation officer directly perceives various objects relevant to the case.

For the successful investigation of the offense, on-site investigation is the most critical action, as it constitutes a reliable source for obtaining evidence. The effectiveness of the

criminal investigation directly depends on the results of this activity. The prompt, objective, thorough, and skilled execution of an on-site investigation is key to solving an offense.

Not in vain, on-site investigation is symbolically referred to as the "key to solving the problem with multiple unknowns" *(Yuri Belozerov, Vladimir Ryabokon, 1990)*.

The examination of the body during the on-site investigation, both from a tactical-criminalistic and procedural perspective, is extensively addressed in the international specialized literature. Domestic literature contains segmented studies that explore the subject through the lens of forensic medicine *(Baciu Gheorghe, 2008)*, criminalistics *(Osoianu Tudor, 2020)*, and criminal procedural law. However, in the national bibliographic domain, there is no work representing a blend of knowledge encompassing the aforementioned fields, specifically addressing the examination of the body at the scene.

Despite this, there are disagreements in the specialized literature regarding the contribution of body examination to establishing the offense and identifying the perpetrator. In this regard, authors William Aguilar-Navarro and Carmen Cerda-Aguilar note that "the external examination of the body represents a decisive means in solving various issues and questions related to a specific individual. Its purpose is not only to establish a diagnosis but also to provide information about the committed act, the existence of pathologies, or diseases that have a vital impact on the investigation of the offense" *(William Aguilar-Navarro, Carmen Cerda-Aguilar, 2022).*

Author V. Tomilin observes that "the examination of the body at the scene is not an end in itself but a set of actions aimed at solving the questions posed by the criminal investigation officer" *(Vitaly Tomilin, 2001)*. Therefore, the description of the body in the on-site investigation report should not be schematic, referring only to general cadaveric phenomena, but should reflect data necessary to answer questions related to the time of death, the mechanism of inflicting bodily injuries, violent or non-violent death, and, additionally, for each case, describe the specific features of a certain pathology.

Vieru-Socaciu Radu mentions that "in cases of homicide, the forensic doctor is tasked with providing the judiciary with objective evidence and the conditions under which the offense was committed. The specific way in which the forensic doctor assists in solving a homicide involves conducting a forensic autopsy of the body, going through all the stages required in such cases, namely the on-site examination, forensic autopsy of the body, examination of physical evidence, and examination of the aggressor or suspected aggressor" *(Radu Vieru-Socaciu, 2002)*.

"The main activity of the forensic doctor consists of the examination of the victim during the on-site investigation and later during the forensic autopsy" *(Radu Vieru-Socaciu, 2002)*.

According to Popov V., "the examination of the body at the scene involves urgent investigative actions aimed at studying the on-site situation, detecting, recording, and collecting various traces and other material evidence to clarify the nature of the event" *(Valentin Popov, 2001).* Delays in conducting the on-site investigation can lead to changes in the scene and the loss of traces.

"Based on the data discovered during the on-site examination of the body, the forensic doctor (or physician) can only propose typical hypotheses" *(Osoianu Tudor, 2020)* which, although important, have a limited operational impact on the investigation process.

Ultimately, objective, complete, and substantiated conclusions regarding the issues arising during the examination of the body can only be formulated after a thorough examination of the body during the autopsy. In this regard, the criminal investigation body is not entitled to demand from the forensic doctor (or physician) participating in the body examination as a specialist conclusions based solely on the on-site examination of the body.

Body examination can be carried out in cases involving homicides, traffic accidents, fires, etc. In such situations, the human body is the primary object within the crime scene and must be examined with utmost thoroughness.

Body examination is largely associated with on-site investigation but should not be forgotten that this activity can also be carried out during other criminal investigative actions, such as searches, collection of objects or documents, and, in our opinion, during on-site verification of statements. Regarding the examination of the body during on-site verification of statements, while the criminal procedural law stipulates, "If objects and documents that may serve as evidence in the criminal case are discovered during the on-site verification of statements, they are collected, and this is recorded in the report," we believe that the criminal investigation body must (is obliged to) examine them before collecting them.

In the same context, it should be noted that body examination can also constitute an independent criminal investigative action. Such a situation arises when the complete and objective examination of the human body at the discovery site could not be achieved or was performed inadequately, with the body being sent to the forensic examination institution, and before the forensic autopsy is conducted, to discover new circumstances that might impact the expertise (e.g., in formulating questions), a human body examination is carried out. In this context, the criminal procedural law is imperfect, as it does not regulate body examination outside the on-site investigation. For these reasons, we propose that the examination be regulated as an independent procedural action.

The examination of the human body at the place of its discovery or location is a complex criminal investigative action stipulated by criminal procedural law to be conducted by the criminal investigation body with the participation of a forensic doctor, or, in their absence, with the participation of another physician. If necessary, other specialists may also be involved in the body examination *(Criminal Procedure Code of the Republic of Moldova, 2013).*

In the same context, it should be mentioned that the complexity of performing this action lies in the necessity of interweaving various sciences (criminal procedural law, medicine, criminalistics), which, in essence, must form a cohesive whole at the time of the human body examination.

CONTENT. Next, we do not aim to study the rules and stages governing the process of examining the cadaver. There is sufficient research dedicated to this subject, based on which an algorithm for examining the human cadaver can be developed. Thus, we consider it timely and relevant to highlight legislative collisions and gaps, as well as tactical and

procedural errors, which determine and perpetuate the existence of flawed practices concerning the examination of the cadaver.

Legislative collisions and gaps

Analyzing the national procedural-criminal legislation reveals a precarious situation concerning the examination of cadavers at the scene. Notably, Article 118 paragraph (1) of the Criminal Procedure Code (hereinafter CPP) uses the term "human or animal cadavers," while Article 120 CPP refers only to the term "cadaver" without specifying whether it pertains to humans or animals.

The same observation applies to the legislation of neighboring countries:

"*Exhumation may be ordered by the prosecutor or the court to determine the type and cause of death, identify the cadaver, or establish any elements necessary for resolving the case*" (Romanian Criminal Procedure Code, 2010).

"*The examination of a cadaver by the investigating officer or prosecutor is conducted with the mandatory participation of a forensic expert or a doctor if the timely involvement of a forensic expert is not feasible*" (Ukrainian Criminal Procedure Code, 2012).

According to the Romanian explanatory dictionary, the term "*cadaver*" refers to "*the body of a dead human or animal; carcass, remains*".

This creates a situation where, based on the general wording of Article 120 CPP, it becomes unclear what type of cadaver is being examined, thereby complicating the formation of the operative investigation team with the necessary specialists (forensic doctor, another doctor, or veterinarian). The lack of clarity in Article 120 CPP concerning the type of cadaver is significant because it affects which specialist the investigating authority must invite to the scene.

For instance, when examining a human cadaver, the investigating authority will involve a forensic doctor, while for an animal cadaver, a veterinarian will act as a specialist. The situation becomes even more complex when the investigating authority requires other specialists (e.g., in ecological crimes involving deceased insects, fish, etc.). In such cases, the cadaver belongs to the fauna and is neither human nor strictly animal.

This necessitates legislative intervention to amend and supplement Articles 118 paragraph (1) and 120 CPP to regulate all types of cadavers, including human, animal, insect, and other living beings. Alternatively, Article 6 CPP could be amended to include a definition of "cadaver," covering all these categories.

Considering the views of specialized authors regarding the purpose of on-site investigations *(Antoniu Gheorghe, Volonciu Nicolae, Zaharia Nicolae, 2013)*, in correlation with Article 118 paragraph (1) CPP, we observe that the purpose of the evidence-gathering process is limited to "(…) discovering and collecting traces (…)" although other paragraphs (3)-(5) and (7) of Article 118 CPP identify an additional purpose – *investigating/examining objects and documents* – the current wording restricts the investigating officer's actions to discovering and collecting evidence. In this regard, considering Article 118 paragraph (1) of the Criminal Procedure Code (hereinafter CPP), regarding the purpose of on-site investigation, it is noted that the actions of the representative of the criminal investigation body conducting the on-site investigation must be limited only to the discovery and collection

of crime traces. In other words, during the preparation phase of the on-site investigation, before reaching the site, it is not necessary to involve other specialists (forensic doctor, IT specialist, biologist, etc.) in the operational investigation group, since the objects and documents, as well as the corpses found on-site, will not be examined but merely discovered and collected. This fact contradicts the provisions of Article 118 paragraphs (4), (5), and (7), and Article 120 of the CPP of the Republic of Moldova. For these reasons, it is necessary to amend and supplement the procedural criminal norms, particularly Article 118 paragraph (1) of the CPP, to include the investigation and examination of objects and documents as a purpose of the on-site investigation.

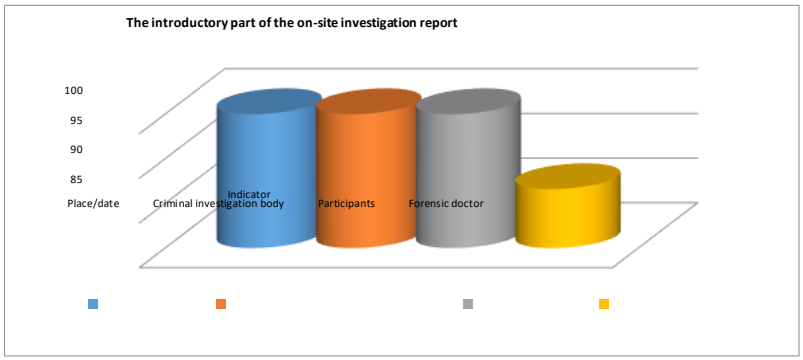
Moreover, the indicated procedural norm refers only to objects and documents, without mentioning corpses, liquid, and gaseous substances, etc. Therefore, the phrase "objects and documents" should be replaced with "objects, documents, corpses, as well as liquid, solid, and gaseous substances." In this sense, the procedural criminal norm will clarify several procedural and tactical criminal issues.

The need to examine discovered objects, documents, liquid, solid, and gaseous substances is imperative, representing the essence of the on-site investigation. Omitting this action will result in the inability to establish the individual characteristics specific to each object or trace, "the signs characterizing the individuals involved in committing the crime, such as their number, approximate age, physical features, presence of certain skills, capacities, various psychological deviations, etc., circumstances characterizing the objective aspect of the crime, time, manner, the perpetrator's actions, consequences of the crime, the causal link between the act and consequences, discovery of events characterizing the motive and purpose of the crime, discovery of circumstances contributing to the commission of the crime" *(Dolea Igor, 2020).* Consequently, the on-site investigation report will not be drafted objectively and comprehensively, leading to the neglect and violation of the active role of the criminal investigation body and the principle of officiality of the criminal process, as well as the guarantees *(Ostavciuc Dinu, 2022)* provided by Article 2 of the ECHR.

Tactical-procedural errors. To identify tactical-procedural errors, the examination of human cadavers was analyzed from both tactical and procedural perspectives, based on over 60 on-site investigation reports prepared by the criminal investigation authorities from various administrative-territorial zones of the Republic of Moldova over the past three years (see Diagram No. 1).

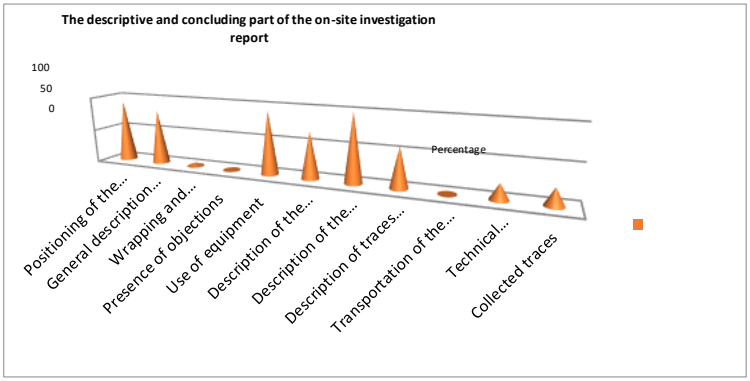
In this regard, it is noted that the introductory section of the on-site investigation report is subject to the fewest criticisms. Practically all the reports included the following details: The location and date of the criminal investigation action; The position, name, and surname of the person drafting the report; The name, surname, and role of the persons who participated in conducting the criminal investigation action, and, where necessary, their addresses, objections, and explanations; The date and time of the commencement and conclusion of the criminal investigation action, etc. *(Criminal Procedure Code of the Republic of Moldova, 2013).*

Diagram No. 1



An opposite situation is observed in the recording of information in the descriptive and final parts of the on-site investigation report. The procedural and criminalistic requirements that should govern the detailed description of the observed facts, as well as the measures taken during the criminal procedural activity, the mentions regarding the taking of photographs, video recordings, audio recordings, or the creation of molds and trace patterns, the use of technical means and the results obtained, as well as the mention that, before using the technical means, the participants in the criminal procedural activity were informed about this, are often neglected by representatives of the criminal investigation body (see Diagram No. 2).

Diagram No. 2 *(The described indicators – Positioning of the corpse, General description of the corpse; Wrapping and sealing of the corpse; Use of equipment; Presence of objections; Description of the circumstances; Description of the clothing; Description of traces on the corpse; Transportation of the corpse; Technical documentation; Collected traces)*



In addition to the presence of these deficiencies, we also identify tactical-procedural errors, which essentially demonstrate that the professionalism of some criminal investigation officers needs improvement.

Thus, in the descriptive and final parts of the on-site investigation report, the following errors are observed:

Mentioning the identity of the cadaver. In the case of examining a cadaver at the place of discovery or location, three scenarios may arise:

- A cadaver or parts of a cadaver with an unknown identity, without any documents to aid in identifying the person;
- A cadaver or parts of a cadaver with an unknown identity, accompanied by documents that could assist in identifying the person;
- A cadaver with a known identity.

We believe that regardless of the scenarios outlined above, the investigative body is not entitled to make subjective evaluations or draw conclusions. Its sole obligation is to completely and objectively describe the circumstances found at the scene in their original state. In this regard, the investigating officer is not authorized to mention the identity of the cadaver in the procedural action report, even if there are participants who are aware of the cadaver's identity. The actions of the investigating officer must be limited to the application of the rules of forensic identification, with the determination of the cadaver's identity to be carried out through other evidentiary procedures (e.g., statements, identification presentations, forensic examinations).

Conducting other procedural actions as an integral part of the scene investigation in cases of cadaver examination. It is pertinent to mention that doctrinal opinions can sometimes negatively influence practitioners' judgments and, consequently, the work of the investigative body. For example, the inclusion of the offense's narrative, victim statements, or witness statements in the scene investigation report has been debated. We disagree with this position, as such aspects should be included in other procedural documents, not in the scene investigation report. This report should only record objections raised by participants in the action. Otherwise, hearings and other procedural actions could influence the objectivity of the investigation.

Revisiting the issue of including witness or victim statements in the scene investigation report, it is worth noting that some authors *(Didac Veaceslav, 2007)* do not consider this practice to be an error and even provide a model of a scene investigation report that incorporates witness statements.

Inclusion in the on-site investigation report of the necessity to order forensic medical examinations of corpses and human body parts to establish:

- The cause, estimated time, and circumstances of death;
- The age of the injuries;
- The mechanisms of injury and their causal relationship with the death;
- The degree of bodily harm.

Including in the on-site investigation report the necessity to order forensic examinations or medical findings is considered a procedural mistake. The investigative officer should refrain from making such determinations regarding future actions to be undertaken. This approach is inadmissible from a criminalistics perspective as it disrupts the planning process of the criminal investigation, which represents "a complex process of analyzing the activities to be carried out and their logical sequence, constituting a guide that ensures perspective and efficiency in the investigation" *(Osoianu Tudor, 2020).*

"Planned conduct of criminal investigations also constitutes an important premise for increasing decisiveness against criminal actions".

Packaging and sealing of the human cadaver. None of the reports we reviewed contain mentions regarding the packaging and sealing of the cadaver. In our view, a human cadaver discovered at the crime scene represents, broadly speaking, a trace of the crime. Therefore, the general rules for discovering, examining, recording, and collecting traces must also be applied to the cadaver. In this context, the procedural report of the action should include information regarding the means and method of packaging and sealing.

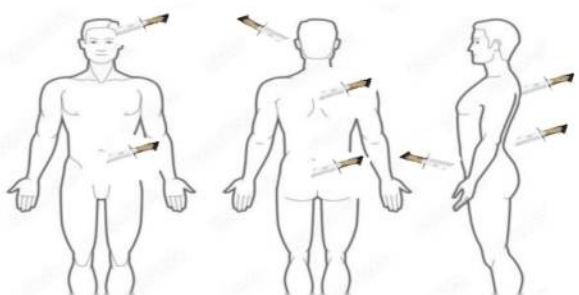
Removal of objects from the cadaver. The issue of researching the subject of object removal from the cadaver is addressed solely from the perspective of forensic medicine. In this regard, the national author Baciu Gh. states: "First, only objects that could have caused bodily injuries (a firearm, an axe or hammer, a chain around the neck, etc.) are examined and described. These objects and tools will be examined to determine whether they could have caused injuries similar to those found on the cadaver. Some objects may even be inside the deceased's body (a knife in the channel of a stab wound, a gag in the oral cavity, etc.). Removing such objects from the victim's body at the crime scene is strictly prohibited. Chains around the neck of a hanged individual should also not be removed" *(Baciu Gheorghe, 2012)*. A similar approach is also observed in the research of foreign authors.

"(...), objects embedded in the cadaver (e.g., a gag in the mouth, a knife in a wound) shall only be removed during the examination at the morgue" *(Vladislav Viter, 2016)*. "Certain objects may be located in the body of the cadaver. Their removal is unacceptable. Furthermore, the position of such instruments must be secured during the transport of the cadaver to the morgue" (Natalia Kachina, 2013). "It is prohibited to remove objects embedded in the cadaver or located in its natural orifices. These objects must be left in their discovered state, ensuring safety during transportation, for instance, by securing them with adhesive tape" *(Evgeny Bartenev, 2014)*.

Despite the consensus among forensic medicine specialists regarding this practice, no sources or arguments explicitly explain why objects embedded in the cadaver or present in its natural orifices must remain in place. To clarify such situations, consultations were held with local forensic specialists, whose argument was: "No object is removed from the cadaver because the forensic pathologist must directly perceive all circumstances that may influence the expert's examination process and conclusions."

This argument is plausible; however, challenges arise when multiple objects are embedded in the cadaver, protruding from various areas (e.g., back, abdomen, chest, lower limbs – see Figure 1), and it becomes impossible to transport the cadaver without altering the characteristics of the injuries or the positioning of the embedded objects.

Figure No. 1



Regarding the issue raised, we consider that the investigative body may extract objects embedded in or present within the corpse to examine and document them in the report of the criminal procedure action. This conclusion is based on the general rules of the tactics for conducting on-site investigations *(Odagiu Iurie, 2013)* and the provisions of Articles 118 (1), (3), (4), 120, and 260 (2), points 5-6, and (3) of the Code of Criminal Procedure (CPP). The procedural criminal legislation stipulates that objects discovered during on-site investigations must be examined at the location where the action is performed, and the results of the examination must be recorded in the report of the respective action. If the examination of objects and documents requires more time or in other specific cases, the person conducting the investigation may seize them for further examination at the premises of the investigative body.

Furthermore, it should be noted that when extracting objects from the corpse, they must not be altered (e.g., they must not be shaken, washed, etc.). The objects should only be examined to describe their general and individual characteristics, subsequently forming the subject of a comprehensive forensic examination that will include both the corpse and the extracted object. Additionally, objects extracted from the corpse should be examined on-site to detect, examine, document, and collect other traces (e.g., fingerprints on the knife handle).

We recommend that when objects are extracted from the corpse, measures should be taken to preserve the integrity of the wound (e.g., by covering the wound to prevent contamination of the bodily injury).

Who examines the body first? "The examination of the body must be carried out directly at the location where it was discovered, as otherwise, the connection between the elements of the crime scene – specifically the circumstances surrounding the discovery of the body, its position, and other identifying features – would be disrupted" *(Wilhelm J. G, 1946).*

In cases involving pieces of evidence, in addition to the forensic examination, the medical examiner will determine the correlation between the distinctive features of the evidence and the injuries observed during the examination of the victim *(Radu Vieru-Socaciu, 2002).*

Regarding this subject, it should be noted that if no medical assistance is required at the preparation stage for conducting the on-site investigation, the process will begin with the involvement of the forensic officer (documenting circumstances, objects bearing traces, the position of the body, etc.), followed by the involvement of the medical examiner or another doctor (determining the actual death of the individual, assessing the time elapsed since death, etc.). In our opinion, there cannot be a universal algorithm for involving specialists in the

advisory activities provided to the investigative authority during the examination of the body. Each case is unique in its way. Consequently, the investigative officer will proceed based on the case's circumstances, the specifics of the traces present, and other relevant factors.

A particularly significant issue is ***the transportation of the body from the site of discovery to the judicial expertise institution***. Although this activity is extra-procedural, proper transportation of the body affects the preservation of traces, existing injuries, and other factors that can influence the investigation of the case. Based on the analysis conducted, we can conclude that in 100% of cases, the discovered bodies should have remained at the scene or should not have been accepted by the forensic institution due to questions about:

– Who exactly is responsible for transporting the body from the discovery site to the forensic expertise institution?
– What means of transport will be used to carry the body?
– From a procedural standpoint, how is the body handed over for transport, and what procedural document is prepared?
– Who is responsible for ensuring the integrity of the body during its receipt, handover, and transportation?
– Who will receive the body at the forensic institution, and based on what documents?
– Is it necessary for the forensic institution to inform the investigative authority about the receipt of the body and confirm its integrity upon arrival?
– And other procedural and tactical aspects.

Clarification of these questions will be addressed in a separate scientific study dedicated to the transportation of the body to the forensic institution: tactical and procedural criminal issues. This topic is sensitive and warrants a distinct approach.

Conclusions

The examination of the human body at the place where it was discovered or where it is located represents a complex procedural and forensic tactical action that requires the involvement of various sciences, which, in essence, must form a cohesive whole.

The examination of the cadaver is possible not only as part of the crime scene investigation but also during other procedural actions, including as an independent procedural action. In this sense, to avoid ambiguous interpretations, it is necessary to amend and supplement procedural criminal legislation to regulate examination as a separate procedural action. We propose amending and supplementing Article 118 paragraph (1) and Article 120 of the Code of Criminal Procedure (CPP) to regulate all types of cadavers, including human, animal, insect, and other species. On the other hand, legislative intervention could amend and supplement Article 6 of the CPP to define the term "cadaver," which would encompass the indicated types.

At the same time, we propose amending and supplementing Article 118 paragraph (1) CPP to include the investigation and examination of objects and documents as objectives of the crime scene investigation.

Legislative intervention is necessary to replace the text "objects and documents" in Article 118 CPP with "objects, documents, cadavers, as well as liquid, solid, and gaseous

substances." In this sense, the criminal procedural rule will clarify several procedural and forensic tactical issues.

We make the following recommendations for the prosecutorial body:

– Not to request forensic examiners for substantiated conclusions regarding the examination of the cadaver at the crime scene, because these conclusions, firstly, are not within the competence of the forensic examiner acting as a specialist, and secondly, these conclusions will be made in the forensic report by the forensic examiner acting as a judicial expert;

– Not to mention the identity of the cadaver in the crime scene investigation report, even if it is known, as this is determined through other procedural actions;

– Not to conduct other procedural actions that are documented in the crime scene investigation report, as this contradicts both forensic tactics and procedural criminal law;

– To prohibit including the necessity of subsequent procedural actions, including ordering expert evaluations, in the crime scene investigation report;

– Mandatory packaging and sealing of the cadaver at the crime scene and ensuring its transport to exclude the possibility of substitution or modification of its characteristics, marks, or traces on it;

– Depending on the situation, the removal of objects from the cadaver is permitted;

– Depending on the circumstances, the prosecutorial body will decide who examines the cadaver first: the forensic doctor or the forensic officer.

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THE CLASSIFICATION AND TYPOLOGY OF THE OFFENDER'S PERSONALITY IN THE CRIMINAL LAW OF REPUBLIC OF MOLDOVA

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Abstract: *Criminal activity is committed each time by a perpetrator. The perpetrators, in turn, are of several types. Once a crime has been committed, the legal subject who committed it is also identified according to his social status. The perpetrators belong to different personality categories, depending on the crime committed. Personality is a result of social relations. It fulfills a system of functions, which determines the series of social relations. Personality behavior is determined by social, economic, political, psychological and psychic factors, which are closely related to the individual's status and role in everyday life.*

Keywords: *antisocial act, offender personality, crime prevention, types of offenders, awareness, society, irresponsibility, etc.*

Introduction

For this reason, most researchers and criminologists, since ancient times, have established that human individuals can be united in certain classes or groups based on the possession of common biological or social traits. This is how the notion of *type*, *types* of criminals or criminal *typologies* appeared. But no classic or contemporary typology manages to meet all the variety of human personalities, the notion of "type" being a mental construct, which facilitates the ordering process of social reality, serving as benchmarks whose knowledge can offer us an understanding and a treatment of the behavior of the studied individual.

Confronting these problems, criminological science resorted to the science of typology, "which deals with the classifications into types and the criteria according to which they are made" (Popescu Neveanu, 1978: 735-736), with the description of the types and the methods by which they can be determined. This science predicts the existence of groups of people, categories of criminals with similar features. People with such traits make up and belong to the same type, forming a model that represents them. In this way, the type is a concept, an idea, a scheme that represents all those who have such traits and belong to the same group or category.

By the notion of "*type*" we understand a totality of characteristic and distinctive features of a social group. For example, the military type, characterized by discipline, organization, punctuality or the artist type – a man full of imagination, less organized, etc.

The degree of investigation of the problem at the present time, the purpose of the research.

At the present moment, the importance and the purpose of the elaboration of this scientific approach, appears from the author's intention to reveal in the foreground some doctrinal and legislative landmarks in the field of elucidating and presenting to public opinion

different types and systems of characterizing the personality typology of criminals. At the same time, there is also the urgent need to carry out an extensive analysis regarding the essence of the research subject.

Materials used and methods applied.

In the process of elaborating the scientific article, we were guided by several and various scientific research methods that made it possible to properly investigate the titular subject, among which we can list: the analysis method, the synthesis method, the deduction method, the systemic method, the historical method, as well as the comparative method.

The theoretical-legal basis of the scientific approach includes the defining material such as local and international specialized literature – which directly or indirectly, addresses the essence and content of the subject under research.

The results obtained based on the scientific analyzes carried out.

Type can only be studied within typology, which could be defined as the science of types, classes, groups. In turn, the typology of the criminal personality cannot be studied separately from the *general psychological* typologies, because we do not have a „criminal psyche" or a „criminal genetic inheritance", but both the psyche and the genetic constitution contribute to determining human behavior, including to the criminal ones. These are joined by the social composition of the personality, which is of great importance. The way the individual went through the socialization process, assimilated social norms, created a system of individual values, which correspond or not to those unanimously accepted by the majority of individuals, is important in determining and choosing future behavior.

The basis of the typology of the criminal personality must necessarily be the psychological peculiarities: attitudes, goals, motivation, etc.

The classification criterion varies according to the conception of the genesis of crime. Thus, the anthropological, psychological, sociological, etc. criterion can be used. Among the first classifications we list that of Lombroso, who studies the physiological and psychological characteristics of criminals, showing the points of similarity and difference between them.

Thus, Lombroso classifies criminals into:

1) born criminals;

2) morally insane;

3) epileptic criminals (epileptoids);

4) passionate criminals;

5) insane criminals (this category also focuses on alcoholic criminals, hysterical criminals and semi-insane or mad criminals);

6) occasional criminals;

7) habitual criminals;

8) latent criminals (Pop, 2003: 29-30).

After Lombroso, Enrico Ferri proved and imposed the thesis of the need to classify criminals. It was only on the basis of Ferri's criticism that Lombroso accepted the idea of classification.

Ferri classifies criminals into five categories:

1) insane or insane criminals (the author claims that social responsibility is the only criterion that must exist for all criminals, including the insane; alienated criminals are distinguished from born criminals and morally insane, finding among the former different forms of mental alienation; they would be the individuals touched by the mania of persecution, argument, kleptomania, pyromania, etc., who without reason commit very violent crimes, like Sergeant Bertrand, who dug up 18 corpses, with which he satisfied his sexual desires and then cut them with a sword);

2) born or instinctive criminals (they are wild, brutal, cunning and lazy, who do not make any distinction between crime in general and a profession; for them punishment has no effect, they consider prison as a natural risk of their profession; in prison they do not suffer, feeling like a painter in his studio, thinking about a new "work"; they have hereditary tendencies to murder);

3) habitual criminals (recruited from individuals who commit their first crime in childhood, almost exclusively against property and whom prison corrupts morally and physically, producing in them the chronic habit of repeating the crime; the formation of habitual criminals also contributes society, which does not extend a helping hand to help them find their place in society, but, abandoning them, applies harsh police and judicial measures to them);

4) criminals of passion (they are rare and almost always commit crimes against individuals; they are of a bloody temperament, of an exaggerated sensitivity, committing crimes especially in their youth; anger, injured honor are the most frequent motives for their crimes; they commit the crime not with premeditation, but on the face and in the access of passion);

5) criminals of opportunity (they differ from born criminals in that external impulses do not have a determining force at the end; criminals of opportunity are influenced by chance, chance, which develops criminal tendencies when determining the crime).

Along the same line of research, in the history of criminology, the classification of R. Garofalo, who introduced the criterion of *moral anomaly*, was also included. In the author's view, there are, as in Ferri, five categories of "real" criminals, i.e. those who commit natural crimes:

1) murderous or typical criminals (defined as monsters in the moral order, having common characteristics with savages, lacking the instinct of benevolence or mercy);

2) violent criminals;

3) improbable criminals;

4) cynical criminals;

5) conventional criminals or "rebels" (their crimes consist in disobeying the law).

For his part, A. Lacassagne distinguishes:

1) criminals of sentiment or instinct (they are incorrigible, being driven to crime by hereditary tendencies, habit or vice);

2) action or opportunity criminals (also called passionate);

3) thought criminals or frontal criminals (among them are also alienated criminals).

4) At the base of this classification, Lacassagne puts the idea that cerebral life manifests itself in three forms: man loves, thinks and works. This is where the distinction between people comes from: for some, feelings predominate, for others, intelligence, for the third category, activity.

G. Tard also claims that criminals must be classified, but according to sociological criteria. Thus, distinguish:

1) urban criminals;

2) rural criminals;

3) murderous criminals;

4) violent criminals.

Among the Romanian criminologists, I. Tanoviceanu (Tanoviceanu, 1912: 38-42) stands out, who accepts three categories of criminals:

1) born criminals;

2) occasional criminals;

3) habitual criminals.

This classification corresponds to the three types of causes with a strong influence on the will:

a) human nature or heredity makes a born criminal;

b) bad education or a series of bad circumstances give rise to the habitual offender;

c) external circumstances, which influence the occurrence of occasional and habitual criminals.

In modern psychology and criminology, the criminal personality typology takes into account a wider circle of criteria. The first division is related to:

1) *the degree of awareness and mental direction of behavior*, where *normal* criminals and *abnormal* criminals are distinguished.

Normal criminals are not affected by mental pathologies, the crime being conscious. Thus, being aware of the antisocial nature of their behavior, these criminals have selfish motives, usually greedy, committing thefts, embezzlement, economic crimes, etc.

Abnormal criminals have mental disorders of various nature, pathologies that do not allow them a full and adequate awareness of their actions and behaviors.

2) The second division is made according to the tendency to repeat the crimes, where we distinguish *recidivist* criminals and *non-recidivist* criminals. Non-recidivist criminals can also be called primary criminals, who do not repeat the criminal behavior.

3) The third division is made according to the degree of criminal preparation. Here we highlight two types:

a) *occasional* or *situational* criminals;

b) *career* criminals.

Occasional or *situational* criminals are individuals who have committed crimes by virtue of special circumstances (material, emotional, etc.). For them, crime is a contradictory phenomenon to the usual way of behavior. Some authors highlight several subtypes of occasional (situational) criminals:

a) people with certain mental pathologies, which in extreme situations annihilate the possibility of self-directing behavior;

b) people with an inadequate self-assessment of their own possibilities, more often increased;

c) persons who committed crimes under the impact of mental states, following the actions of other persons;

d) socially maladapted persons.

Career criminals are oriented towards an antisocial way of life, crime becoming a job, a way of life. Among their defining features are:

a) crime is the main means of material insurance;

b) recourse to physical violence takes place only in extreme situations;

c) are aware of the prospect of deprivation of liberty;

d) in detention he continues to perfect his criminal skills, etc.

In Romanian criminology, one of the most interesting attempts to elaborate the typology of criminals belongs to the criminologist Ion Oancea, who united the forms of typology proposed by

E. Seelig and J. Pinatel, defining the following types of criminals:

1) the *aggressive* (violent) criminal;

2) the *acquisitive* criminal;

3) the *characteristic* criminal;

4) the criminal *without sexual inhibitions*;

5) the *professional* criminal;

6) the *occasional* criminal;

7) the *mentally retarded* criminal;

8) the *recidivist* criminal;

9) the *ideological* (political) criminal;

10) the *alienated* criminal.

The *aggressive (violent)* criminal is characterized by strong emotionality, accompanied by reactive discharges manifested through acts of violence. He is devoid of feelings of pity and compassion towards other people, showing only enmity and hostility. In the case of weak physical strength, he commits acts of verbal aggression, manifested by insults, slander, threats, etc. When the individual has a strong, athletic body build, then aggression is also manifested through the use of physical force, in the form of injuries to bodily integrity, even with the use of cold weapons and other objects (sticks, metal rods, stones, etc.). As a rule, they are known in their social microgroup as argumentative, aggressive, bullies, manifesting themselves suddenly, spontaneously, without good reasons.

The *acquisitive* criminal is characterized by the tendency to take, collect, purchase goods and material values for personal purposes: for gain, maintenance, enrichment, etc. This is a tendency common to animals and humans, having a biological substrate. But, in honest, non-criminal people, this tendency has certain limits, which are missing in the acquisitive criminal.

The *characteristic* criminal possesses some characteristic disorders, which place him in the series of transitions from the normal, mentally healthy man, to the abnormal, but not mentally ill, man. Examples are those expressed in the behavior of the stubborn man, of the man possessed by vices, passions and perversions, which he cannot control. In these cases, a first characteristic is that a certain tendency develops in a pronounced way and dominates the whole person, and the will and self-control cannot control it.

The criminal *without sexual inhibitions* commits crimes related to sexual life: rape, sexual perversions towards minors, etc. Sexual life is related to the sexual instinct, which aims at sexual relations between people of different sexes and which is a physiological, natural, normal and permitted necessity. It is permitted on the basis of free consent. When these prohibitions are violated, the individual becomes a criminal through lack of sexual restraints.

The *professional* criminal commits crimes systematically in order to gain life and livelihood resources. Professional criminals can be passive (they do not work and do not earn their living from work, but only from crimes) and active (they earn their living from complex, organized crimes: human trafficking, counterfeiting of money, burglary, etc.).

The *occasional* criminal commits a crime being pushed by external, occasional, special factors. The example of the minor, who, allowing himself to be trained by others, commits a theft. As a rule, until they commit a crime, they have a good conduct, they do not relapse and commit the act only because of an external circumstance, occasion or situation.

But not all those who find themselves in a critical situation, commit crimes; some resist and can control themselves. Hence the dilemma: opportunity gives rise to the thief (ie external factors are decisive) or opportunity discovers the thief (internal factors are decisive). Most researchers argue that in the case of the occasional criminal there may be a contribution of internal factors, but external factors are, however, predominant. There are certain situations, exceptional circumstances that can push a person to commit a crime who, in other circumstances, would not commit the crime.

The *mentally retarded* criminal possesses a series of specific features:

a) has limited limits to take into account other people and their reaction; he does not foresee that others can think better, more quickly, which is why he cannot adapt, he denies reality and does not realize that others know and understand more;

b) does not have the capacity to foresee the commission of the crime; possessing a temporal horizon, he does not foresee exactly the more distant consequences of his actions;

c) has a concrete, but infantile way of thinking, struggling with his work and needing support.

Mental retardation can be:

1) serious, composed of idiots and imbeciles, with an intelligence quotient up to 50, i.e. equal to the intelligence level of a child up to 10 years old;

2) easy, in which the borderline and sub-mediocre enroll, with an IQ of up to 90, close to normal intelligence.

The *ideological* or *political* criminal is the individual who, having certain political, scientific or religious ideas and convictions, commits criminal acts due to these ideas. As a rule, the political criminal is a militant who propagates and fights for certain reforms and social changes. According to the goals pursued, the political criminal differs from the common law criminal. Historical experience shows that many fighters, considered at one time as enemies and criminals, punished in camps and prisons, were later considered as heroes and applauded by the people. But those who accompany this struggle with assassinations, plane hijackings, catastrophes, etc. are not considered political criminals, i.e. people who commit acts of terrorism.

The criminally *insane* is the irresponsible, abnormal, mentally ill or alienated person. Although, from a legal-criminal point of view, they are not criminally liable and cannot be penalized, they are subject to safety measures of a medical nature. From a criminological point of view, the alienated criminal is of some interest for scientific research, namely, the data on the types, categories and characteristic features of alienated people need to be known. As a rule, they commit crimes unexpectedly, by surprise; many crimes are brutal, cruel, unexplained, absurd and incomprehensible.

Finally, a last attempt to develop the typology of criminals belongs to the American criminologist and psychologist Lewis Yablonski (Yablonski, 1990: 50-68), who used the personality traits of the individual as a classification criterion, highlighting four typologies:

1) *socialized* criminals become criminals as a result of the impact with the social environment, from which they take the negative values. The antisocial tendency of these criminals is a result of imitating and influencing the social microgroup, in which negative values predominate.

2) *neurotic* criminals, partially aware of their illness and critical of it. Neurosis is a minor mental disorder, as we have shown in one of the previous sections, a borderline pathological state that occurs in the case of nervous overload, repeated troubles and dissatisfactions of a personal, family or professional nature. Driven by anxiety, emotionality, etc., neurotics can commit crimes such as kleptomania, pyromania, etc. However, neuroses do not diminish the possibility of self-awareness of actions, affecting only behavior.

3) *psychotic* criminals are unstable, impulsive and difficult individuals, whose behavior causes their entourage to suffer in particular; socially maladjusted, they often have to deal with justice (Norbert, 1996: 251-252). Psychotic criminals present an increased social danger, being very aggressive, violent, cruel. Some authors (Enikeev, 1996: 128-133) distinguish several forms of psychopathy:

- psychasthenic psychopaths (tense, reactive, anxious);
- explosive psychopaths (irritable, violent, conflictual, brutal in communication, fond of gambling, debauchery or sexual perversion, drunks, etc.);
- hysterical psychopaths (demonstrative, insincere);
- paranoid psychopaths (arrogant, suspicious).

4) *sociopathic* criminals can cause moral, material and even physical damage, without feeling any anxiety or a sense of guilt. Sociopathy is manifested by self-centeredness, lack of compassion for other people or limited compassion. As a rule, sociopathic criminals are mentally healthy, calm, insincere, unstable, etc. Their character deficiencies include: lack of

remorse, fear, poor affectivity, indifference in interpersonal relationships, bizarre and unpredictable behavior, etc. (Norbert, 1996: 251-252).

Conclusions

The spectrum of criminal typologies also includes the classifications carried out in the national criminal legislation. Thus, according to the Criminal Code of the Republic of Moldova, we distinguish:

1) *dangerous* criminals, who have committed serious, particularly serious or exceptionally serious crimes, committed with intent and being aware of the prejudicial character of the action or inaction, as well as of its prejudicial consequences.

2) *occasional* criminals, who committed a crime out of imprudence, were aware of the prejudicial nature of their action or inaction, but easily considered that they could be avoided.

3) *responsible* criminals, i.e. people who have the capacity to understand the prejudicial nature of the act, as well as the capacity to manifest their will and direct their actions.

4) *irresponsible* criminals are people who could not realize their actions or inactions and could not direct them because of a chronic mental illness, a temporary mental disorder or another pathological condition.

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THE CRIMINOLOGICAL PERSPECTIVE ON THE PROFILE OF UNIDENTIFIED KILLER. THE DENIS RADER CASE

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Abstract: *Profiling is a technique for determining the personality and behavioral characteristics of an individual, taking into account his criminal past, personality types of offenders who commit similar offenses. The criminal is the subject of criminological research and can be defined as an individual who commits acts criminalized by criminal law or who has a deviant behavior that generates legal consequences. A murderer is a criminal who commits criminal acts that harm a supreme value, namely the life of the victim. The serial murderer is characterized by the killing of three or more persons within a time span of more than one month, with a lull between the criminal acts. It is eminently necessary for serial killers to be categorized and referred to as such that the murders take place at different times in separate events, which often have no explanation, the motive being the pleasure of the killer.*

Keywords: *serial-killer, profilling, victim, Denis Radler, criminologicat theories.*

Introduction

According to experts, "serial killers are often devoid of empathy and guilt and more often than not become egocentric individuals; these manifestations classify some serial killers as psychopaths. Serial killers often use a "mask of sanity" to hide their true psychopathic tendencies and to appear normal, even charming. (George E. Rush, Dictionary of Criminal Justice 4th Edition)

Similar to the term "crime", the term "murderer" has several meanings:

According to the common understanding of the term and without having specialized knowledge, by murderer we mean a person who suppresses the life of another, so we use the term murderer in the case of criminals who commit crimes followed by the death of the victim and we may in this context use synonymously the term ,,murderer".

In criminal parlance, by murderer we mean an offender who commits acts of a high degree of social danger, i.e. serious offences and not just acts against life. We regard murder, robbery, rape, etc. as crimes.

According to criminology, when analyzing this concept, we take into account the commission of any incriminated anti-social act, including deviant acts that generate legal consequences.

Practical cases have demonstrated that "the victim is chosen according to availability, vulnerability and desirability".Availability is explained as the victim's lifestyle or the circumstances in which the victim is involved, which allow the offender access to the victim.

Vulnerability is defined as the degree to which the victim is susceptible to attack by the offender. Desirability is described as the appeal of the victim to the offender.Desirability involves many factors based on the motivation of the offender and may include factors relating to race, gender, ethnicity, age of the victim or other specific preferences that the offender determines.Availability, vulnerability and desirability.Availability is explained as the victim's lifestyle or circumstances involving the victim that allow the offender access to the victim. Vulnerability is defined as the degree to which the victim is susceptible to attack by the offender. Desirability is described as the appeal of the victim to the offender.Desirability involves many factors based on the motivation of the offender and may include factors relating to race, gender, ethnicity, age of the victim or other specific preferences that the offender determines.Availability is explained as the victim's lifestyle or circumstances involving the victim that allow the offender access to the victim. Vulnerability is defined as the degree to which the victim is susceptible to attack by the offender. Desirability is described as the appeal of the victim to the offender.Desirability involves many factors based on the motivation of the offender and may include factors relating to race, gender, ethnicity, age of the victim or other specific preferences that the offender determines.

In common parlance, crimes are crimes against life, while from a criminological perspective, by crime we mean any act contrary to the law, which harms values inherent to the human being. In the above sense, crime is both an offense against life and an offense against property or any other value protected by criminal law.

The right to life is the most important right inherent to the human being; without the guarantee of this right, all other rights would be devoid of purpose.

Etymologically, criminology can be defined as the science of crime.

What is it that can induce an individual to commit acts that violate values inherent to the human being? What is it that causes a person to take another person's life? Is it genetic predisposition or the environment in which the individual lives? (Pleșa, 2020, p.85). When we use the term "criminal", we realize the association with a person who has committed a crime in the sense of a crime against life.

From a criminological point of view, 'criminal' is used synonymously with 'offender' and 'delinquent' to designate a person who has violated the Criminal Code by committing a crime. In order to be considered a criminal criminal, a final judgment of conviction is required.

According to the doctrine, "A criminal is a person who commits a crime in the sense of a criminal act or with a justified criminal appearance. (Cioclei, 2021, p.19). The crime is also a social fact and not merely a criminal fact". Thus according to the above opinion, which is also a general opinion, from a criminological point of view deviance is also a crime. Although deviance is characterized by a lower social danger, it is a crime because, like crime, it is detrimental to fundamental/essential values such as the norms of social coexistence.

In the opinion of Professor Egger of the University of Sangamon: A serial murder is when one or more individuals (in most cases male) commit a second and/or subsequent homicide and/or murder; it is without predetermination (there is no prior relationship between perpetrator and victim); it occurs at a distinct time and is apparently unrelated to the initial homicide, and is generally committed in a different geographical area.

1. The murderer. General aspects and profiling aspects of offenses with unknown perpetrators.

One of the objects of study of crime science is the murderer, along with the victim, crime, criminality and anticriminal practice. We can state with certainty that it is the most important object of study and at the same time subject of criminological research, because without it we would not have the other objects of criminology, thus the notions of crime, victim, criminality and anti-criminal practice would be alien, because the criminal is the one who generates them in the chain.

With regard to the profiling of the perpetrator of crimes with unknown perpetrators, the FBI methodology is briefly presented below. The methods and techniques used by the FBI for profiling are therefore as follows: (Whiteley, 2021, pp.16-19)

The stage of data assimilation at which the profiler collects the data (e.g. physical evidence and coroner's report). Categorizing the crime scene as organized or disorganized. Reconstitution/reconstruction (hypotheses about modus operandi, motive of crime-once known can connect the crime to others.

Profile generation stage - hypotheses about the offender are brought together (habits, lifestyle, personality dynamics)." (Whitely, 2021, p.20)

Thus the murderer can be categorized as organized / disorganized, making it easier to create a "portrait" of the subject (family environment, level of intelligence, etc.)

2. Dennis Rader

Dennis Rader was born March 9, 1945, Pittsburg, Kansas, USA. He is an American serial killer who murdered 10 people, the crimes spanning three decades before he was caught in 2005. He called himself BTK - short for the actions he took to achieve the life-suppressing result of tying up, torturing and killing his victims.

In terms of education, occupation and family background in the 1960's he served in the U.S. Air Force and in 1970 returned to Wichita, where he married and had two children. He held various jobs, including a brief stint as a factory laborer for the Coleman Company, a camping equipment manufacturer. In 1979 he graduated from Wichita State University, where he studied criminal justice. During that time, he began working for ADT, a home security company, and in 1991 became a compliance officer in Park City, Kansas. Rader was active in his church and served as a Boy Scout leader.

His church attendance supports Rafaelo Garofalo's theory that religious upbringing does not hinder the killer, and can only play a role if instilled in him early in childhood.

We also realize that there are no clear patterns in delineating the organized from the disorganized serial killer. The fact that he was educated, had an organized family environment and attended church did not prevent him from committing his acts with unbridled frenzy and cruelty.

According to the Encyclopaedia Britannica and other articles/documentaries sourced from internet resources including the press:

a. On Jan. 15, 1974, Rader committed his first murders, strangling four family members, including two children, in their Wichita home; the mother worked for the Coleman Company. Rader took a clock from the home and obtained souvenirs-often underwear-from subsequent victims. Taking souvenirs is typical of the organized serial killer.

b. In April 1974, Rader targeted a 21-year-old woman who was another Coleman employee. After breaking into her home, he also encountered her brother, who managed to escape despite being shot. Rader stabbed the woman before fleeing. Later that year, he wrote a letter detailing the January murders and saying that "code words for me will be... tie them up, torture them, kill them, B.T.K." He left the note in a book at the Wichita Public Library, and it was eventually recovered by police.

From the above we infer that like any serial killer even if he wished to carry out his criminal activity without being caught, he at the same time wanted his deeds to be noticed.

His slogans and the atrocity of his acts support Rafaele Garofalo's theory that "the murderer is a moral monster", which denotes that he lacks compassion and is unable to empathize.

c. Over the next two decades, Rader murdered five more women. His sixth victim was strangled to death in March 1977, after locking her three young children in the bathroom.

The less publicized death of his next victim in December 1977 caused him to snap. In a letter to a local television station, he wrote: "How many people do I have to kill before I get a name in the paper or national attention."

d. The resulting coverage helped spark a panic. Rader then waited eight years before murdering a neighbor in her home in 1985; a 28-year-old mother of two was killed in 1986, and in 1991 Rader committed his last murder, strangling a 62-year-old woman in her secluded home, then a lull settled over his criminal activity.

According to the source, in 2004, on the 30th anniversary of Rader's first murders, a local newspaper published an article speculating that the killer was either dead or in jail. Rader responded by sending a reporter various pieces of evidence from his ninth murder - most notably a copy of the victim's driver's license and photographs of her body. For the next year, he sent packages to the press or simply left articles around Wichita. He often used cereal boxes - possibly a reference to "serial killer" - to hold drawings; criminal memorabilia, including photographs; written descriptions of the murders; and even posed dolls to mimic the various deaths.In January 2005, police got a break after recovering a cereal box that included a note in which Rader asked police if they would be able to track a diskette he wanted to send them. Through a classified notice, law enforcement officials indicated it would be safe. He then sent them a disk, which police quickly traced to his church, where he served as president of the congregation. Rader's DNA was then matched to semen found at the first crime scene. He was arrested in February 2005 and soon confessed to the crimes - and expressed shock that police had lied to him. In June, Rader pleaded guilty and two months later was sentenced to 10 consecutive life sentences. (Tikkanen, 2024)

Conclusions

As for the case presented above, Denis Radder meets the characteristics of the "hybrid" serial killer, with elements specific to the organized killer (family background, level of education) and specific to the disorganized serial killer (the traces left, the desire to assert himself, the frenzy). The mind of the human being is an enigma, all the more so the mind/thinking of the murderer is an enigma, which has not been unraveled even by the great criminologists of all times. From Caesare Lombroso's theory that man is born a criminal with

certain stigmata (protruding eye sockets, protruding jaw), to Alexandre Lacassagne's theory that 'society has the criminals it deserves', to the socialist school's theory that 'inequality begets crime', to Freud's theory that 'the idea of crime is born in the unconscious', no one has yet been able to unravel the fundamental cause that causes an individual to become a criminal**.** As for the factors that contribute to triggering criminal behavior: "Neglect and abuse in childhood has been shown to contribute to an increased risk of violence in the future. Substance abuse can and does lead to increased aggression and violence. There are documented cases of people who suffered serious head injuries and eventually became violent, even when there was no history of violence". (Morton, 2005)

The symposium organized by the FBI concluded that there are a multitude of factors that contribute to the development of a killer: ,"Predisposition to serial killing, like other violent crimes, is biological, social, and psychological in nature and is not limited to any specific characteristic or trait; the development of a serial killer involves a combination of these factors, which exist together in a rare confluence in some individuals. They have the appropriate biological predisposition, molded by their psychological makeup, which is present at a critical point in their social development; there are no specific combinations of traits or characteristics shown to differentiate serial killers from other violent offenders; there is no generic template for a serial killer;Serial killers are driven by their own unique motives or motives;Serial killers are not limited to any specific demographic group such as their gender,age, race or religion. " However, it was concluded that more research is needed to identify specific developmental pathways that generate serial killers." (Dolan, 1997)

According to an opinion to which we adhere, "The psycho-moral portrait of the serial killer is as complex as the mechanisms of the transition to the act. "When the subject becomes an adult, he has the physical capacity to act. The first homicide of the organized serial killer generally results from revenge fantasies triggered by a stressor. When committing the crime, the killer externalizes a fantasy, but the reality is never identical to the fantasy, which causes him to relapse in an attempt to achieve perfection, which leads to serial killing." (Montet, 2002) What is it that can make a man commit a cruel murder? We believe that sometimes it is a combination of factors: predisposing genetics (and here we are not referring to the fact that his ancestors had criminal tendencies, but to the genetic information that appears in the individual from the moment of conception) which manifests itself in that thirst to kill, possibly a violent environment without moral values in which he is formed in the first part of his life, lack of empathy and here we can talk about the type of remorseless killer who has psychopathic personality traits. Sometimes we can also talk about the indiscriminate or impaired individual who commits the crime in a moment of rage, and when they come back to reality they either regret it or the blind spot appears in their memory and they no longer remember.

Sometimes it is a combination of factors, other times the criminal acts on impulse, but there are always small signs of behavioral disorders that should be a warning to those close to the perpetrator, who morally are not allowed to act passively, because in this case, from a moral point of view, those who do not try to prevent the crime even though they observe deviant behavior are the moral authors of the crime. (Pleșa, 2020, p.86)

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ROOTS AND DREAMS: THE CHILD'S RIGHT TO GROW UP IN HIS FAMILY

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Abstract: *Article 19 of the UN Convention provides for the protection of the child both in the home and outside the home. This is only possible by ensuring absolutely necessary protection systems, laws, regulations, policies and services in all social sectors, such as: education, health, justice and security, and social welfare, a set of services administered, for the most part, by the Government, designed in such a way as to ensure the protection of children and young minors with the aim of encouraging family stability.*

Keywords: *child, protection, social welfare, family, child protection, law, violence.*

Introduction

Since ancient times to the present, the status of the child has undergone dramatic changes. In a famous study, Phillippe Aries wrote: "Childhood, like the family, is a recent feeling in Europe." If in Antiquity, there was no concern for a special protection of children, in the Middle Ages, children were considered and treated as "little adults" because, from an early age, they contributed to the well-being of the family through work. Only in the century in the 17th century, once the religious orders inaugurated the schooling movement, "the well-to-do classes considered separately childhood and the birth of the family as a place of privacy and private affections" (Pascal Bruckner, 2005). Later, in industrialized countries from the end of the 19th century, beginning of the 20th century, children worked alongside adults, most of the time, in poor safety and hygiene conditions (Phillippe Aries, 1962).

In Romania, children were used for hard labor. For example, in the 30s of the last century, they were used in gold mining. Historian Liviu Zgârciu shows that: "There are photos and documents that show that in 1937, for example, children entered the galleries in Roșia Montană and carried ore on their backs. They were 10-12 years old. Being small, they entered the galleries more easily".

In the modern period, industries dedicated to children's entertainment grew, schools expanded. The generation of children from the interwar period "grew up in silence", the so-called Silent generation (1919-1942). The era of the Baby Boomers (1943-1961) follows, the birth rate increases, the generation of numerous, competitive, hardworking people. In our country, the phenomenon arrived in 1967 and ended in 1989. We are talking about the so-called “decrees”. The name comes from the decree issued by the communists that prohibited voluntary abortion. Thanks to the decree, the birth rate increased, on the one hand, but on the

other hand, the number of deaths also increased, because women resorted to all kinds of methods to have an abortion.

Between 1962-1977 we are talking about Generation X, the children neglected by their working parents. Between the years 1978-1997, we are talking about the Millennials, a large generation, adapted to technology, independent, adaptable. Between 1995-2010, we are talking about Generation Z, called digital natives, a generation that grew up with access to the Internet from an early age.

Children's rights to grow up in their families in Romanian legislation

In Romania, Law no. 272 of 2004, amended and republished, on the protection and promotion of children's rights, regulates the legal framework regarding the respect, promotion and guarantee of children's rights.

The legislator states that: "The child has the right to be protected against abuse, neglect, exploitation, trafficking, illegal migration, kidnapping, violence, Internet pornography, as well as any form of violence, regardless of the environment in which he is: family, educational, medical, protective, crime investigation and rehabilitation/detention environments, internet, mass media, workplaces, sports environments, community, etc. (Art. 89 paragraph (1), Law 272/2004). As can be seen from the article above, the family is also included in the regulation in the situation where, unfortunately, the child is subjected to abuse, exploitation, neglect, violence or other actions that, in one form or another, have an impact negative on him, even within the family by a family member.

Any form of physical, mental, sexual abuse or mistreatment, negligent treatment and any type of exploitation, which can have devastating consequences on the health and behavior of the child, on his development and dignity, in the context of a relationship of trust, responsibility or power, derives, most of the time, from the adult's inability to restrain his violent impulses, to control himself in the face of uncontrolled impulses due to frustrations and his own conflicts. Violence takes many forms and there are many classifications of forms of violence. Including threatening a person with harm, likely to cause them fear, constitutes violence (Morozan, 2014).

There are, unfortunately, situations in which the child suffers abuse in the family, some cases being known with the help of the mass media, cases that horrified public opinion in Romania, others less known or even not known at all, when the children have no chance to live decently because they choose, out of fear, shame or other considerations, to remain silent.

Competent institutions draw attention to the alarming increase in cases of domestic violence, in which children become victims of adults in their own family, adults who are supposed to have the duty to raise them and provide them with a peaceful and prosperous life. Statistics also show that in 2024, one out of ten abused children in our country were victims of sexual abuse, many of whom become victims of their own family members. Equally serious is the case of children who, instead of being protected by competent institutions, are physically and sexually abused by the employees of these institutions.

Nor are the cases of abuse against defenseless children in the care of foster care rare or negligible. Again, those who have the obligation, moreover, are paid, to take care of some children who, if they ended up in the care of a foster care, already have an unfortunate history, become the executioners of those whose upbringing they are responsible for. It is well known

the case of the three foster carers from Timiș, from June 2022, members of the same family (mother, father and son) who were sentenced to 23 and 4 months for ill treatment of the minor and qualified rape in repeated and continuous form of recidivism and post-execution. The girls were respectively 6 and 10 years old and the brother was 12. It was not enough that they were raped, physically and mentally assaulted, the three monsters forced them to wear nettles in their underwear, as the children recounted after coming out of the horror story they lived it.

Cases of abuse against minors are numerous and seem to never end. New cases are constantly appearing, terrifying cases, in which minors are victims of all existing types of violence. But what should be our reaction when we encounter cases where abuses are exaggerated and due to exaggerations or misunderstandings, children are removed from their own families that are considered harmful to their life and growth?

The legislator adopted Law no. 156/2023, law regulating the legal framework regarding the organization of activities to prevent the separation of the child from the family.

This law, in addition to the fact that it caused a national hysteria, which created a war in Romanian society, between parents, between parents and the school, between political parties, also led to the false promotion, in the public space, of the idea that they will be take children away from their parents, "they will be injected, removed from their families and adopted to strangers, even LGBTQ families."

It reached street protests. The Minister of Family, Youth and Equal Opportunities at that time, went out publicly to inform and explain to parents that this law does not take children from the family, but helps families raise their children.

The law we refer to comes to the support of parents and vulnerable families, precisely to prevent the separation of the child from the family. They will benefit from counseling and help in several areas, such as: health, education, employment, social protection, etc., precisely to help children not end up in foster care, but to stay in their own families.

The law shows the situations that lead to the separation of the child from the family. These situations are: a poor economic situation and poor housing conditions in the family or community, extreme poverty, the low level of education in the family, the poor state of health of one or more family members, including their disability, the existing violent environment in the family, abuses that affect children's growth and education, etc. Likewise, children who have delinquent behavior, who repeatedly leave their home, have become alcohol and drug users or have suicidal tendencies are also at risk.

The law shows that parents whose children are at risk of separation will benefit from emergency aid, psychological and psychotherapeutic services, courses to learn how to develop their parenting skills. Moreover, the establishment of day care centers, the so-called support centers intended to prevent the separation of children from their families, is expected, where children receive, in addition to education, at least a hot meal, that is, what the parent cannot provide. In this way, they are not taken from the family, on the contrary, they are provided with the psycho-emotional well-being that only the family can give them.

In Chapter III of the law, it is stated that, "At the national level, the National Child Observatory is established ... through which all children at risk of family separation are identified, registered and monitored". The Child Observatory, the platform designed by the Ministry of Family, is a module within an IT system, managed by the National Authority for the Protection of Children's Rights and Adoption, which is made available to local

administration authorities (Art. 16 paragraph (1) Law 156/2023). The data and information about those who are in vulnerable situations will be entered into the platform by the social worker or the person responsible for the activity of preventing the separation of the child from the family within the Public Social Assistance Service at the level of the commune, city and municipality.

From the above it appears that the Romanian state makes efforts to support parents whose children are in vulnerable situations that lead to the separation of the child from the family. The Romanian authorities have not proven so far that they want children to be removed from the family environment, the environment that is best able to offer stability, peace and harmonious development to any child.

Several cases of families who, wishing for a better life, left Romania with their children are well known to public opinion. I bring to your attention a case from 2014, the case of the Avrămescu Cruz family, two husbands with hearing disabilities, whose children were taken by the Norwegian authorities. Moreover, after being taken from the family, the children were separated in turn. Although there is a court decision, which established that the measure taken by Child Protection is not justified, not even a year after the decision, the children had not returned to their families, on the grounds that Barnevernet, the Child Protection authority, invoked the fact that they had not succeeded to train them in the mimic-gestural language. How much and what the two children, one 5 years old, the other 6 years old, understood from the experience they went through, is hard to assume. What was the impact on their psyche, how were their feelings affected after being separated from their parents, then separated from each other? Hard to determine... What is the impact of the monthly meetings that the children, under the strict supervision of social workers, had with their biological parents? Who can say?

Another case, another drama. The case of the Bodnariu family is similar to the one presented above. In this case, 5 children of the family were taken into the custody of the Norwegian state in 2015 on the grounds that the parents behaved violently. It was circulated in the media that religious issues would have been the basis of this dispute. Although it turned out to be false, several Christian groups protested, considering the Norwegian authorities' actions exaggerated and unfounded. In this case, the events had an extremely fast course. If on October 8, 2015, the director of the school where the two older daughters of the Bodnariu family studied, made a telephone report to the local Child Protection Service, already on December 15 (a record time), the same Service triggered the forfeiture procedure from parental rights for Marius and Ruth Bodnariu and the adoption procedure for the 5 children in other families. The youngest of the children was 4 months old. The children were separated and placed in three Norwegian families. The questions we had in the case above, we also have in this case.

We specify that the Child Protection Services in Norway, Sweden, Denmark and Finland have triggered several reactions from some NGOs and parents' organizations, who have complained about abusive practices. There is a dramatic episode in Norway's not-so-distant past when the Minister of Education at the time said: "the belief that parents are best suited to raise their children is wrong." This unfortunate statement remained in the collective memory and caused waves of disapproval.

The case of the Furdui couple, whose children were taken over by social services in Germany in 2021, following allegations of physical and mental abuse. The 7 children were separated and placed in different families. The Romanian authorities have identified members

of the children's extended family in Romania, as a more suitable option than the German authorities' separation and placement in different families.

It is difficult to establish the "fault of the parents" in the ways in which they choose to educate and raise their children, and it is even more difficult to establish when the authorities, which deal with the promotion and defense of children's rights, exaggerate and overcome certain barriers in their approach.

We can say that the Romanian state makes substantial and serious efforts to protect children, but Romanian society, which has great deficiencies in terms of education, economy, health, and not only, ensuring the protection of children and promoting their rights, is difficult and faces very many times of outdated, erroneous mentalities and even the inability of the authorities to deal with all the obstacles that intervene in their approach. In theory, Law 156/2023 looks very good, but there are many questions: are the authorities dealing with protecting children logistically, professionally and materially prepared for their actions? Can there be real and serious cooperation between institutions regarding the best interest of the minor? Can the state, as regulated by law, provide help in situations of vulnerability, to parents facing poverty, lack of education or other deprivations?

Unfortunately, the problems are old and deep. A restructuring of the entire Romanian society is necessary. The state must find concrete, viable solutions for the protection of children in Romania.

It seems that the abuse of defenseless children continues and does not end either in Romania or in other parts of the world. This year, in our country, the number of sexually abused children has increased, and in 80% of cases, the aggressor is a family member. The youngest victim is 4 years old. On average, every day 8 children are sexually abused. The actual number of abused children is unknown because many of them live in terror, afraid to report their abusers. Prosecutors and social protection workers say they are dealing with more and more cases of sexual and other violence.

The rights of children to grow up in their families in Italian law

The right of every child to grow up in its family of origin is a central and sensitive issue in contemporary societies, and in Italy it has generated a heated public debate.

In recent years, one case has captured the attention of the whole country: a young Sinti mother was separated from her daughter by the decision of the Juvenile Court in Rome, raising fundamental questions about when it is justified to remove a child from the family and this case highlighted the tension between the need to protect minors and the fundamental right to maintain contact with the family of origin.

Removal of the child from the family is an extreme measure provided only as a last resort in Italy, as in most European countries. This right to grow up in a family is enshrined in Italian Law 184/1983 which states that minors have the right to live within their own family and that the declaration of adoptability should only be considered after they have tried every possible alternative solution, it protects the family bond and provide support to families before taking drastic measures such as removal. These principles are supported by the main international child protection instruments, such as the UN Convention on the Rights of the Child and the European Convention on Human Rights (ECHR). Both treaties provide that

removal from the family must be a measure of last resort and that children must grow up in their family environment, unless there is a real and serious danger to their safety.

A fundamental aspect for understanding the circumstances justifying an expulsion is the principle of proportionality enshrined in the ECHR. The European Court of Human Rights has over time provided significant guidance on the separation of parents and children, establishing that this step should only take place if strictly necessary and based on a concrete and proven risk to the child's welfare. In the 2002 *Kutzner v. Germany* judgment, the Court condemned the German authorities for removing children from their parents without any real danger and clarified that any separation decision must be based on strict and objective criteria demonstrating the need for intervention. This ruling emphasizes that the state, before intervening, must consider all measures, the least invasive necessary to protect the child, without compromising the family bond. This principle recalls that the state has an obligation to provide concrete help to families in difficulty before resorting to adoption or placement, and must act as a support rather than a substitute for the family.

With this perspective in mind, it is important to deepen the meaning of the best interests of the child, which is the main guide for all legal decisions involving children. The best interests of the child are a complex concept that requires assessment of individual and contextual factors to ensure the child's maximum well-being and respect for his or her psychological, emotional and cultural needs. This principle calls on the authorities to: balance the need for child protection with the right to family stability by avoiding choices that may cause trauma or take the child away from the family without adequate justification. In practice, any removal decision must take into account the specifics of the case and the circumstances in which the child lives, carefully evaluating the available alternatives (Italian Civil Code).

A central aspect in decisions regarding children is the right to emotional and cultural continuity. Especially when the child belongs to a cultural minority, as in the case of the young Sinti mother, this aspect acquires a particularly significant value. In *K and T v. Finland* (2001) the ECtHR stated that the right to family life also implies the child's right to maintain links with its culture and traditions, as these roots are essential to the development of the child's identity and self-esteem the child. Cultural ties play an essential role in the construction of identity and are an integral part of the child's psychological balance, especially when it comes to minorities who transmit their values through the community and this right emphasizes that decisions about removing a child from a family belonging to a cultural minority must be taken with great care to prevent losing a sense of belonging and suffering emotional damage related to the loss of one's identity (Caruso, 2018).

With regard to situations of family hardship, it is essential to distinguish between temporary hardship and abandonment. Article 8 of Law 184/1983 establishes that the declaration of adoptability can only be ordered when there is a serious and lasting condition that demonstrates the inability of the parents to guarantee adequate care. ECtHR jurisprudence has made it clear that economic or social difficulties, which often underlie family difficulties, are not a sufficient reason to declare a child adoptable, as established in the 2008 Saviny v Ukraine judgment, which requires the state to provide all possible support families in difficulty. The state must not replace the family, but must act to strengthen it, giving parents concrete tools to deal with difficulties. Therefore, the concept of abandonment must be understood as a condition of effective and permanent inadequacy that cannot be solved with state aid.

An equally important aspect is the extended family network, which can be an important support in cases where the parents are unable to adequately provide for the child. Italian law states that before declaring a child adoptable, the judge must verify the existence of fourth-degree relatives, such as grandparents or uncles, who can care for the child. This principle of family subsidiarity aims to maintain the connection, whenever possible, and to ensure the child's upbringing in a familiar emotional context. This choice recognizes the importance of emotional continuity for the harmonious development of the child who needs to maintain stable family relationships and live in an environment that provides security (Guarnieri, 2020)

Social services are the main resource for supporting families in difficulty and monitoring the child's living conditions to ensure that each child grows up in a safe environment. ECHR jurisprudence requires social services to adopt a collaborative and non-repressive approach respecting the right to family life and to intervene with removal only in cases of extreme necessity. Decision *Wallová and Walla v. Czech Republic* (2006) emphasize the importance of a thorough assessment of the family situation to avoid decisions based on generic criteria that could lead to the separation of families that could be helped to stay together.

A further reflection concerns the role of the community and educational institutions Schools, teachers and school psychologists are often among the first to detect signs of distress or family difficulties. Collaboration between these figures and social services can be essential to prevent deterioration of the family situation and to activate support networks that can help parents in difficulty. The community is an important point of reference for the child, especially for children belonging to cultural minorities who can find in school and in the community an environment of integration and support in favor of their identity (Marconato, 2021).

Finally, it is also necessary to consider the possible psychological consequences that derive from a separation from the family of origin and which can have a lasting impact on the child's life. Separation from affective reference figures can actually cause trauma to the child, such as a sense of abandonment, isolation and lack of belonging, which can negatively affect his personality development. For this reason, it is essential that the authorities are aware of the importance of keeping the child in the family whenever possible and that removal decisions are only taken as a last resort, taking into account all the possible negative effects on the child's life.

In conclusion, the story of the young Sinti mother and her child invites us to reflect on the importance of respecting the cultural roots and emotional ties of minors and to ensure that any state intervention is proportionate and respectful of the child's right to his own cultural and family identity. Preserving the family bond is a priority enshrined in Italian and international laws that protect the child's right to grow up in an environment that respects its history, roots and aspirations. State intervention must always aim at strengthening the family unit and preserving the cultural context that represents a source of safety and belonging for the child.

CONCLUSIONS

Respecting the rights of the child is not only a moral obligation, but also a legal one, as the child acquires rights even before being born.

According to the Civil Code, the child acquires rights from the moment of conception. Art 412 of the Civil Code defines conception as the period of time between the three hundredth

and the one hundred and eightieth day before the birth of the child. However, the condition for his rights to be recognized from conception is that he is born alive. The child that is conceived is considered to be born whenever its rights are concerned. They acquire rights with the acquisition of the capacity for use. Before birth, they have anticipated utility, which is provisional. It has been stated that: "the embryo or fetus must be recognized as a potential human person who is or was alive and whose respect is due to all" (Ungureanu et al., 2013:42).

Wherever they are in the world, at whatever age of childhood and in whatever situation, children need the protection of adults. Human rights, respectively the rights of the child refer to those aspects necessary for a safe, healthy life and for the possibility of each of us to reach the maximum possible development. Only with the benefit of these rights can we be treated with respect and treat each other with respect.

However, children need special rights, special protection, which we adults do not need. During childhood, children depend on adults, on the people around them, otherwise they will not succeed in becoming independent adults and will not be able to develop. Help and respect for the most vulnerable is a duty of us, of all of us. To help children, adults have an obligation to promote a family climate based on feelings of love and safety. This is the only way children will understand what respect, appreciation, safety and support are.

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LIMITATIONS OF THE WILL OF THE TESTATOR IN THE CASE OF RIGHTS HELD IN HISTORIC COMMUNITIES OF PROPERTY OWNERS IN ROMANIA

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Abstract: *Since 2008, Romania's historical treasury also includes historical property owner communities, which regained legal status under art. 26-28 of Law no. 1/2000. These communities, such as freeholder communities, compossessorates and frontier forests each had different specific organizational and functional rules prior to the abusive takeover of their lands by the communist regime. Through the 1910 Forestry Code, a normative act that regulated until 1948 the functioning of these associative forms, "local practices" were validated, and rules that diverged from the civil code and procedure were established. Even today, general rules governing the freedom of will of the owner of property are not entirely applicable to jointly managed properties by these communities. Thus, with the exception of some transactions between people who are already members of the associative form, legal inheritance is the only way by which co-ownership rights can be acquired within these special legal entities. The possible testamentary transmission of these rights is also limited to the circle of legal heirs.*

Keywords*: Romania's historical treasury, historical property owner communities, freeholder communities, compossessorates, frontier forests.*

Introduction

Law no. 1 of January 11, 2000, by art. 26-28, regulated for the first time, explicitly, the possibility of the reconstitution of the property right in favor of the historical communities of owners, compossessorates, communities of collectively owners, communities of indivisible owners, frontier forests and other associative forms assimilated to them. Prior to this moment, throught point no.31 of Law no. 169 of October 27, 1997 a new article was introduced in Law no. 18 of February 20, 1991, art. 41^1, which established that the owner that used to have property in compossessorates can request the reconstitution of the ownership right for the lands they belonged to compossessorates or communities of collectively owners. This regulation seemed to order an individual reconstitution and not within the associative forms, situation corrected by Law no. 1/2000, which established retrocessions only within the old communities of owners (althought, through a regrettable technical legislative error, the provisions of art. 41^1 became art. 46 upon the republication of Law no. 18/1991, can still be found today, October 2024, in the first land fund law).

Analysis of legal provisions

By Emergency Order no. 102 of June 27, 2001, amended Law no. 1/2000, and in art. 26 two new paragraphs were introduced. Paragraph 7 had the following wording: "*In the event that there will be no legal heirs of the members of the associative forms established in the accordance with the provisions of this law, their respective quotas become the property of the state and for the use of the respective local council*". Paragraph 8 provided: "*The members of the associative forms cannot alienate their shares among themselves or to persons outside them and cannot transfer the rights by will or donation, but only by legal inheritance*".

By Law no. 400 og June 17, 2002, paragraph 8 of art. 26 is modified and receives the following wording: "*The members of the associative forms cannot alienate their shares to persons outside them*".

Through the amendments made to Law no. 1/2000, respectively by Law no. 247 of July 19, 2005 paragraph 8 became paragraph (6), with the following wording: "*The members of the associative forms in common or indivision forms cannot alienate their shares to persons outside them*", this regulation being in force at the date of this study.

A first analysis of these provisions was made by Decision no. 173 of June 12, 2002 pronounced by the Constitutional Court. The authors of the exception of unconstitutionality showed that the art. 28 paragraph (7) of Law no. 1/2000 "*violates both the provisions of art. 42 of the Constitution, which guarantees the right to inheritance, as well as those of art. 41, as it restricts the right of disposal*". Paragraph (8) of the same article would have represented "*a violation of art. 41 paragraph (1) of the Constitution, by the abusive restriction of the owner´s right of disposal, this time in the case documents between living persons*".

The Constitutional Court, responding to the critics of the authors of the exception, emphasized "*the atypical nature of the ownership right over forest lands reconstituted in favor of some associative forms that have not existed for a very long time in the legal system of our country*".

Historical communities of owners were recognized as such "*unusual forms of regulation*", the legislator bringing back "*ancient forms of organization*" to social life. The constitutional judges established that we are in the presence of "*a form of property that is reborn, through its pre-existing reconstitution*", and if it were not a "*traditional organization (which has proven its viability throughout history), singular and exceptional*", doubts would arise of constitutionality.

It was recognized that "*this archaic form is a sui generis modality of ownership*", and if indivisibility and its perpetual character were eliminated, a legal regime would be established that did not exist in the past. The Constitutional Court also held that "*admitting the replacement of a member of the association, as an effect of the will of the owner of a share, the will expressed by deed between the living or by will, would have the same effect: the abolition of undivided, forced and perpetual property*". It has been shown that common property can correspond either to the nature of the good or to a statement of the law.

The constitutional litigation court established that "*the reconstitution of the right of ownership in the case of forest areas located, on the date of their acquisition by the state, in the common ownership of the listed associative forms can only be conceived within those forms; the property right is to have the configuration, prerogatives and, in general, the legal*

regime of that era". The legal regime of these properties takes into account "*the economic and social particulatiries of the forms of exploitation prior to the transfer of the lands to the ownership of the state*".

It was concluded that "*the property right is reborn in favor of the former owners or their heirs, under the imperative conditions established by the legislator, without the regime thus regulated representing a deviation from the constitutional principles regarding the protection of private property*".

The limitation of some prerogatives of the property right stems from the fact that this right carries over a property in a perpetual forced indivision; the respective goods are administered and exploited exclusively in the associative forms provided by law. A particularity of this mandatory legal regime is that "*the mortis causa transmission of this share can only be done by legal inheritance*". It was found that the criticism regarding the violation of art. 42 of the Constitution, regarding the guarantee of the right to inheritance "*because the law is the one that establishes the forms of inheritance, and in this case the regulation of the right to inheritance is made in consideration of the special legal regime of this associative form*".

Although subsequent to this decision of the Constitutional Court, the analyzed provisions were modified, the prohibition of the alienation of shares between members of the associative form being eliminated, as well as the phrase "*I cannot transfer the rights by wil or donation, but only by legal inheritance*", the prohibition of alienation of rights to persons outside the community of owners was maintained.

However, the courts including in recent decisions, build their considerations starting from the ruling of the Constitutional Court recorded in Decision no. 173 of June 12, 2002. An argument in favor of such an interpretation is that in the subsequent decisions of the Constitutional Court, reference was made every time to its jurisprudence and to the concrete indication of the decisions by which the same exception was previoulsy analyzed with regard to the same text of law, decisions and arguments that the Constitutional Court kept.

For example, Decision no. 579 of May 4, 2010, of the Constitutional Court refers to the Decision no. 521 of May 31, 2007 of the Constitutional Court, noting that "no new elements have intervened to determine the reconsideration of the jurisprudence of the Constitutional Court, both the considerations and the solution of the mentioned decision are also valid in the present case". Decision no. 521 of May 31, 2007 of the Constitutional Court refers, in turn, to Decisions no. 584 of November 8, 2005 and no. 210 of March 7, 2006 of the Constitutional Court. It was noted again that "both the considerations and the solutions of the mentioned decisions are also valid in the present case, since no new elements have intervened to determine the reconsideration of the jurisprudence of the Constitutional Court". Finally, Decision no. 584 of November 8, 2005, but also no. 210 of March 7, 2006 of the Constitutional Court refers to Decision no. 173 of June 12, 2002 of the Constitutional Court, noting that "both the considerations and the solutions of these decisions are also valid in the present case, as no new elements have intervened to determine a reconsideration of the Court´s jurisprudence in the matter". Related to these successive references, the considerations of the Decision no. 173 of June 12, 2002 are still valid today.

Case studies

We referred, in another study (Tudor-Todoran, 2023:357-371), to the situations in which the courts were confronted with various legal strategies for circumventing the legal provisions analyzed above, situations that were sanctioned because "*in an evasive manner and by defrauding the legal provisions on the basis of which it was established and the community is functioning, undivided parts of its land were alienated to a person outside the community*". It was shown that "*the purpose of the regulations, contained in art. 26-28 of Law no. 1/2000, was to reconstitute the former forms of joint exploitation of communan forest and pasture areas of the former owners or their heirs*", and "*third parties do not have any rights over the reconstituted lands in favor of the composer*" since "*the purpose of the association is to maintain the continuity of the old community*" (Civil Sentence no. 216/2018). The same court also showed that the modification of the statute in the sense of introducing the possibility of receiving members who do not have the status of elders represents a "*modification contrary to the law and cannot be considered as a simple change in the perspective of the members of the community, because it does not represent changes in form, but of substance that flagrantly contravene the provisions of art. 28 paragraph 6 and 7 of Law no. 1/2000* ".

Other courts (Decision no. 879/2023) have shown that the statutes of associative forms, even if they allow alienations outside the community, "*can only be interpreted through the prism of the provisions of art. 28 paragraph 6 and 7 of Law no. 1/2000, respectively in the sense that the register of composers can be modified only with the consent of the general assembly on the basis of sale-purchase deeds concluded by the composing members as well as on the basis of legal inheritance documents, since only in these conditions are the provisions of art. 28 paragraph 6 and 7 of Law no. 1/2000 which prohibit any form of alienation, total or partial, of shares to persons outside the community*".

In the same decision, starting from Decisioin no. 173/2002 of the Constitutional Court, it was held that "*compositional rights can be transmitted, inter vivos, only between persons who already hold membership in the association, and mortis causa, only by legal inheritance, and not by bequest, regardless of whether universal, with universal title or with private title*". In this case, based on the provisions of art. 1247 paragraph (1) Civil Code, it was held that the sanction that intervenes must be the absolute nullity of the will by which the establishment of the lagacy with a special title on the compositional rights was ordered in favor of the person who was not a member of the associative form at the time of the manifestation of the will of the deceased. Another consequence, the application of the principle resoluto iure dantis, resolvitur ius accipientis, is that the reason for the nullity of the will also extends to the cortificate of legal and testamentary heir.

In another case (Decision no. 405/2024) in which the legality of a contract of donation of compositional rights to a person who did not have the capacity of a member was analyzed, it was held that in the situation where through a constract "*the compositional rights were alienated in a manner prohibited by law, its object it is an illegal one, a circumstance that attracts the absolute nullity of the contrcat*".

Another court (Decision no. 44/2024) established that the prohibition of the alienation of one´s own shares to persons outside the constituent members is a consition that "*refers to the fact that such alienation of individual shares is permitted by any legal act when the*

beneficiary is another constituent member, and when the beneficiary does not have this quality, he cannot be third party, except in the case of legal inheritance, because the legal heirs of the community members are hos successional vocation by the power of the law and therefore the transfer of such rights by way of testamentary inheritance is not recognized, acceptable".

Therefore, the rights within historical communities of owners can only be transmitted to the legal heirs, which are: the surviving spouse, the descendants (the children of the deceased, the children of their children and so on, without limitation regarding the degree of kinship), the ascendants (parents, grandperents and so on), and collateral up to the fourth degree inclusive, according to the art. 963 paragraph (1) san (2) Civil Code.

On the other hand, the testamentary inheritance "*wears the form of an alienation*", not being collected under the power of law as in the case of legal inheritance, being an act of disposition of the testator regarding his assets.

In another case (Decision no. 15/2024), in which, on appeal, the Court concluded that "*the statute of the composer could derogate from the legal regime and that the members of the composer are obliged to resoect this statute established by voluntaru agreement of the parties*", nothing that the statute provided for the possibility of alienating the rights and to persons who were not members of the associative form, the Court of Appeal, rejudging, changed the decision of the court of appeal, establishing that "*the provision of the statute invoked in the appeal had to respect the legal norms that regukated the regime of lands with forest vegetation owned by the community, including those that limited the right to alienate there lands*".

In another situation, in which the plaintiff invoked a donation contract concluded in authentic form, by which he has given a right within a community of property owners, the appeal court held that it was not proven that the donor "*had any dram in the community or membership in order to be able to transmit, in turn, the rights that he woul have held within the associative form to the appellant*", establishing that only annexes 54 and 51 (regulated by Regulation of land fund laws approved by Government Decision no. 180 of March 14, 2000) or annex no. 39 ((regulated by Regulation of land fund laws approved by Government Decision no. 890/2005) can prove membership of the associative form (Civil Decision no. 546/2023).

Finally, an unprecedented case, through the arguments retained by the court, stablishes, in the task of public notaries, a much more rigorous verification of the documents presented by the parties in order to proceed to the conclusion of a notarial deed regarding rights in the historical communities of owners. It was noted, in the sentence of the first instance (Civil Decision no. 529/20222) that "*simple certificates, issud by the 4 municipalities, were submitted in the succession files, which would attest to the quality of the deceased´s inheritance, as well as the rights he benefits from*". However, the court considered that in the notarial file "*annexe 54 should also be submitted, as well as the decision on the validation of the County Land Fund Comission, from which it can be seen that the deceased was validated with rights (lei) in those communes, at the time of the reconstitution of the right to property*", in the absence of these documents, the judge appreciating that the quality of heir of the deceased whose succession was debated was not proven before the notary. In this

context, the court ordered the absolute nullity of the heir´s certificates, since in them they were retained as part of the deceased´s estate, goods that did not exist in his patrimony at the time of the opening of the succession. In the same case, the Court held that "*only by submitting certificates issued by the respective community – under the conditions in which no other additional documents are invoked and submitted to base those certified by the certificates, and the deceased held rights in commons derived from successions that have not been debated*" the rights held cannot be proven with certainty[1]. It was also held that only by submitting certificates issued by the respective community – under the conditions in which no other additional documents are invoked and submitted to base those certified by the certificated, and the deceased held rights in the community derived from successions that did not were debated, "*it would end up being accepted that the rights of co-individuals can be established by the community, and not by the parties (by agreement), or, in otherwise, by the public notary or the court*". And the appeals court held[2], in agreement with the first two courts, that "*the governing bodies of the community do not have powers related to the debate of the successions of the members of the community in terms of the rights held within them*" and that the certificates issued by the community must always be accompanied by the decision to validate the right of ownership of the associative form and of the annex with fellow members and their rights.

Conclusions

In conclusion, the doctrine must focus more on these historical communities of owners and deepen all aspects of the regime this historical treasure of Romania, since, at the national level, there are hundreds of thousands of people who are members of these communities, and the legal life is meets more and more often with aspects related to the existance, functioning and activity of associative forms of property.

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NAVIGATING THE INTERPLAY: ESG, SUSTAINABILITY, AND SUSTAINABILITY REPORTING- AN EXAMINATION OF REGULATORY RISKS AND OPPORTUNITIES

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Abstract: *With the growing advocacy on Environmental, social and governance (ESG) concerns and sustainability of companies globally, there is a shift on how business is done. The paradigm shift is running businesses purposefully as against profitability alone. Consequently, it has become paramount for companies to prioritize both quantitative (financial) and qualitative (non-financial) factors with disclosures in their business reporting. These concepts raise opportunities and bring to fore risk management issues for companies, and the place of policy making in driving home the applicability of these concepts. This paper seeks to examine the concepts and dynamics of ESG, sustainability, sustainability reporting, and their relevance to the governance of companies in Nigeria as compared with international best practices. Most importantly, the role of the law and policy making in building sustainable and ESG compliant companies and businesses.*

Keywords: ESG, Sustainability, Sustainability Reporting, Law and Policy, Compliance, Nigeria

1. Introduction

Recently in the business and corporate environment worldwide, there is a clamour for organizations to operate their businesses in a sustainable manner that transcends generations. The focus is on running these entities not solely driven by profits but to consider the impact of their business on connected stakeholders namely: the host community, governments, employers, environment, suppliers, shareholders, investors and more. The relevant factors and metrics used to drive and determine sustainability in businesses are: ESG and sustainable reporting. Most importantly is the place of regulation, law and corporate policy to propel the enforcement and compliance of companies towards achieving sustainability. Although various initiatives have been created to guide companies on sustainability reporting, are companies complying with these standards? Are these sustainability initiatives addressing the core issues of negative influence of business activities on the environment and stakeholders, and driving change? Are there implications and consequences for non-compliance of sustainability regulations? These are the research questions to be resolved in this article.

In line with the United Nation Sustainability Development Goals (SDG), companies embracing ESG and sustainability will contribute to the progress of the global SDG objectives for a better world. For instance, SDG goal 5 is on achieving gender equality and empower all women and girls (social and governance issues), goal 8 is to promote sustained,

inclusive and sustainable economic growth, full and productive employment and decent work for all (social issues). Goal 13 is to take urgent action to combat climate change and its impact while goal 14 is to conserve and sustainably use the oceans, seas and marine resources for sustainable development (both on environmental concerns). In all, ESG and sustainability principles are connected to the advancement of UNSDGs (United Nations Sustainable Development 2015).

2. Conceptual Framework

It is important to define the key terms which are: Sustainability, Sustainability Reporting, Law/Policy and ESG.

i. Sustainability:

The United Nations Brundtland Commission 1987 (UN Report of the World Commission on Environment and Development: Our Common Future 1987. P. 41) defined Sustainability as *meeting the needs of the present without compromising the ability of future generations to meet their own needs.* It has three dimensions namely: Environmental sustainability (where human's rate of consumption and emission of greenhouse gases/pollution does not exceed nature's rate of replenishment and restoration respectively); social sustainability (ability of the society to uphold universal human rights and meet people's basic needs) and economic sustainability (ability of human communities to maintain independence and have access to the resources required to meet their needs) (McGill University). Sustainability has also been described as "adopting business strategies and activities that meet the needs of the enterprise and stakeholders, while protecting, sustaining and enhancing the human and natural resources that will be needed in the future (Fadi 2011, P.3)".

Sustainability impacts every facet of business and demands to be recognised, at a global level, as a strategic pillar to be tackled by the wider organisation. This shift, from an operational to a strategic approach, will put ambitious companies on the front foot and leave those who fail to embrace it lagging behind (Coburn 2024, P.3).

ii. Sustainability Reporting

Sustainability Reporting is the process of evaluating and summarising a business's performance with regard to its social, environmental, and governance responsibilities, often in compliance with a particular framework or standard. Sustainability reporting concentrates on specific metrics pertaining to social responsibility, environmental impact, and governance procedures (Setyaningsih, Widjojo & Kelle 2024). Sustainable reporting is a crucial facet or element of stakeholder engagement because it gives stakeholders the ability to evaluate the corporate plans and objectives, which serve as the foundation for stakeholder engagement (Aina 2017, P. 60).

iii. Environmental, Social and Governance (ESG) factors

Environmental, social, and governance factors denotes a wider range of non-financial performance indicators or basic metrics used to assess a company's overall sustainability and ethical business practices. These variables may include issues like labour practices, board diversity, carbon emissions, and ethical conduct. Businesses have the option to disclose their ESG performance in a number of ways, such as sustainability reporting, or to report on ESG

issues independently (Setyaningsih, Widjojo & Kelle 2024). It refers to a set of standards that businesses, investors, and other stakeholders use to assess the sustainability and ethical impact of a company. The performance of a company on critical environmental, social, and governance issues is evaluated using these criteria, which are becoming more and more recognised as significant determinants of long-term financial performance and risk management. Investors aim to promote sustainable business practices, lower the risk of investing in social and environmental issues, and match their investments with their values by taking into account ESG factors (Grant Thornton 2024).

The "E" - Environmental: this refers to an organization's effects on the environment, such as pollution, water use, greenhouse gas emissions, etc. "S" - Social: this refers to how issues affect people, such as employees, clients, and the community; examples include human rights, inequality, health and safety, etc."G" - Governance: how an organization is governed. The openness, independence of the board, rights of shareholders, leadership of an organisation (Grant Thornton 2024, P. 2). Businesses, it has been argued, support the E (Environmental) in ESG by setting clear goals and objectives and recognise the significance of the G (Governance). However, there has been a few improvements in providing thorough strategies and reporting for the S (Social). This is because a wide range of issues, such as diversity, equity and inclusion, employee engagement, human rights, health and safety, customer relations, and community impact, are included in the social aspect, which has been said to sometimes seem overwhelming. Also leaving them vulnerable to legal action and damage to their reputation regarding social issues (Grant Thornton 2024)

While many companies already monitor metrics on a number of these, the "S" in ESG refers to taking them all into account to give a comprehensive and transparent picture of the impact an organisation is having. Furthermore, understanding the distinction between social impact and social value in ESG is critical. Social impact quantifies the direct cause and effect of initiatives, outlining what transpired and to whom as a result of decisions made, while social value is less focused on a particular project and more holistic in nature, it refers to broader, long-term positive impacts. There is a social impact for every social value, but not every social impact has a social value (White- Christmas 2024).

The social pillar of ESG encompasses a wide range of issues, some of which are geopolitical risk, data protection and privacy, responsible supply chains, health and safety, and more. It is widely agreed upon that social risks require immediate attention. These factors include shareholder influence, board directives, employee retention goals, laws and regulations, and customer and client demand. In actuality, this will include a surge in more significant social initiatives carried out by businesses looking to achieve efficient compliance. Enhancing retention rates, attracting fresh talent, and building human capital all depend on effective social governance.

To effectively tackle these challenges at a reasonable cost, companies and investors will need to be creative. Using technology is one possible route forward. Even though supply chains are frequently complex and long, technology allows for instantaneous desktop reviews along the whole chain. The companies and operations that pose the greatest risk of non-compliance can be identified, and then targeted analysis can be conducted to understand exposure and address issues. In addition, ethical supply chains are being covered in order to stop human rights abuses, modern slavery, and human exploitation (Stafford 2024).

An Example of notorious social issues in Nigerian corporate /business space is the casualization of workers (precisely in the manufacturing industry especially those owned by foreign investors who compromise on health and safety standards and labour rights of workers. These persons are given the status of casual workers to be paid peanuts. The state of casual workers as a labour practice encourages poor working conditions. It has been an issue of concern to stakeholders. Companies substitute casual workers with permanent workers to save costs. Consequently, the ills of casualization are tripartite as it has effect on the employees who are the direct victims, the employers and on the economy as a whole. In general, it is a form of modern slavery and exploitation. According to Eyongndi (2016, Pp. 111-112) this can raise issues with investors.

3. Literature Review

*Agama and Zubair (*Agama & Zubairu 2022, P. 41) explicate that sustainability reporting has gained popularity because it forces organisations to increase their competitiveness by meeting the needs of shifting stakeholder interests. Making stakeholders aware of an organization's responsibility to care for the environment, society, and community while generating operating profit is typically an outside-in approach to ensuring stakeholder value. Small businesses find it difficult to compete in the market and satisfy the needs of society. Nevertheless, they argue that in order to manage organisational sustainability issues that call for strategic resource management, sustainability reporting is essential. In examining how firms' competitive advantage influences the impact of environmental, social, and governance (ESG) disclosures on firm performance.

Aina explains that involving stakeholders is crucial to businesses' corporate social responsibility and sustainable governance. Reporting to stakeholders on the company's activities on a voluntary basis is known as corporate sustainable reporting. Through sustainable reporting, stakeholders can evaluate how the company is acting in relation to its social, governance, and economic responsibilities. It is a crucial instrument for influencing stakeholder decisions during the engagement process, which in turn shapes stakeholder engagement (Aina 2017/2018, Pp. 35-38).

Masliza, *Muhammed and Wasiuzzaman* suggest that, a company's sustainability initiatives can help it manage resources more effectively, conduct business as usual, and address societal issues. In Malaysia, it has been discovered that ESG disclosure adds value for shareholders and serves more purposes than just winning over the market. ESG boosts a company's ability to compete (Masliza, Muhammed and Wasiuzzaman 2021, P.9).

Setyaningsih, Widjojo & Kelle in their study bridge a gap in the literature by attempting to understand the broad difficulties that SMEs have faced when generating sustainability reports. The difficulties faced by SMEs on their journey towards sustainability were summed up as follows: financial limitations, a general lack of awareness, knowledge gaps, technological barriers, organisational complexity, socio-environmental concerns, and potentially intimidating regulatory frameworks. Furthermore, SMEs may find it challenging to measure sustainability metrics. However, the capacity of sustainability reporting to involve stakeholders in making strategic choices is where the actual power resides. SMEs must

engage in this process in order to create significant sustainability reports, even in the face of budgetary, scheduling, and resource constraints (Setyaningsih, Widjojo & Kelle 2024).

This paper will assess the dynamics of ESG, sustainability, sustainability reporting and regulatory policy in Nigeria in equation with the United Kingdom; considering the issues, risks and opportunities in the pursuit of sustainable development in companies.

4. Methodology

The Methodology adopted is doctrinal research with the use of primary and secondary sources of data. Primary data used are: Nigerian Code of Corporate governance 2018, Companies and Allied Matters 2020, The Nigerian Stock Exchange Sustainability Disclosure Guidelines 2018. Secondary sources are: Journals, Newspaper publications, Internet sources and reports.

5. Theoretical framework

The Stakeholder theory of corporate governance and the sociological law theory of law are to be used in this article. Stakeholder theory focuses on how the activities of the company affect the stakeholders and the interests of these people (Fadun 2013, P. 291). It is aware that a company's action has an effect on the environment, necessitating the company's obligation to parties other than its shareholders (Mbu-Ogar., Effiong, & Abang 2017, Pp. 46-51). Managers of companies need to understand, appreciate and conscientiously apply the propositions of stakeholder' theory for effective practice of good governance stakeholders must make efforts to preserve and protect their interests for the survival of the company (Oso & Bello 2012, 1-16).

Law and society are intertwined, according to the sociological school of jurisprudence, and the law has an impact on society as a whole. The law or the legal system will be affected by a change in society, either directly or indirectly. It aspires to maintain harmony by weighing the needs of the state and of each individual in society (Ipleaders, 2019). In other words, as the society faces more issues or pressing challenges, the law adjusts to fix or to meet the society at its point of need. Law drives social change; the right laws will bring an improvement in social interaction. The theory of sociological school as propounded by *Roscoe pound* (1870-1964) is relevant to this article, He recognized that the legal system is not static as it may change as society changes due to new needs and new tensions.

6. Sustainability, Environmental, Social and Corporate Governance (ESG) Concerns

Principle 26 of the Nigerian Code of Corporate governance 2018 states that "paying adequate attention to sustainability issues including environmental, social, occupational and community health and safety ensures successful long term business performance, and projects the company as a responsible corporate citizen contributing to economic development". Furthermore, the recommended practices as specified by this provision will require the board establishing policies and practices regarding its social, ethical, safety, working conditions, health and environmental responsibilities as well as policies addressing corruption. The policy must include:

1. the Company's business principles, practices and efforts towards achieving sustainability;

2. the management of safety issues including workplace accidents, fatalities, occupational and safety incidents;
3. plans and strategy for addressing and managing the impact of serious diseases on the Company's employees and their families;
4. the most environmentally beneficial options particularly for companies operating in disadvantaged regions or in regions with delicate ecology, in order to minimise environmental impact of the Company's operations;
5. the nature and extent of employment equity and diversity (gender and other issues);
6. training initiatives, employee development and the associated financial investment;
7. opportunities created for physically challenged persons or disadvantaged individuals;
8. the environmental, social and governance principles and practices of the Company; and
9. corruption and related issues.

The Board ought to supervise the implementation of sustainability policies and report on the extent of compliance with the policies. Stewardship and sustainability are connected to ESG (Environmental, social and governance factors). Stewardship is the management of assets with the purpose of creating wealth sustainably for all stakeholders and leaving those assets to the next generation of managers in better shape than they are found. ESG is a necessity. This is because if companies prioritise making profits to ESG, the result is threat to human life (Godfrey 2018, Pp.24-26).

The success of a company has gone beyond making profits and giving out dividends, it has extended to how companies are able to positively impact their environment, and manage social and governance issues (ESG). Stakeholders are becoming interested in how the company handles these issues. This refers to building a purposeful business. Sustainable investment has emerged as a potential solution to social and ecological issues by rendering the financial markets more accountable for such impacts (Richardson 2013, Pp.311–338). Modern day Investors desire their investments to reflect these broader values and provide solutions to the larger issues. This desire enables for value-based investment or sustainable investment (Landier, A. and Nair, V.B. 2009). Sustainable investment refers to the integration of environmental, social, and governance (ESG) factors in investment decision-making (Talan & Sharma. 2019).

Corporate social responsibility (CSR) is a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on voluntary basis" (European Commission 2011) Being socially responsible means not only fulfilling legal expectations, but also going beyond compliance (Khan , Khan , Ahmed & Ali 2012, Pp. 41-52).CSR surpasses relationship between companies and the environment, it involves how companies regulate their business activities considering social issues. *Section 305(3) of the CAMA 2020* provides that a director of a company has the duty to ensure that the company's operations have regard for the environment and community where it carries on business operations. Where a company mismanages its corporate social responsibility, it may cause a huge damage on the company. Stakeholders may like to have discussions with the company on CSR and sustainability issues; the company secretary is the mouthpiece of the company on sustainability issues. Community engagement can be arranged

and supervised by the company secretary. The company secretary has the role to report compliance with government regulations on CSR and sustainability issues to stakeholders. The company secretary role extends to drafting the agenda and guidelines on sustainability for the board to follow. The company secretary should share responsibility with relevant specialist functions for ensuring that the board is aware of current guidelines in this area and that it identifies and takes account of the significance of corporate responsibility issues in its stewardship and oversight of the company. He should therefore try to ensure that interests of all important stakeholders are borne in mind when important business decisions are made, particularly those affecting employees. As regards the role of the company secretary as the conscience of the company, the company secretary should speak out against bad governance and unethical practice, and remind the board and senior executives of the appropriate course of conduct and the principles of good governance that they should apply (Aina & Adejugbe 2020, P. 1; Coyle 2012, P. 54). It is important to note that sustainability is not CSR (which can be for self-interests of companies) (Adesola 2024), sustainability pushes for long term value creation as societal and investors demands for accountability has increased.

In Nigerian corporate world, several businesses across diverse sectors have taken to the publication of annual sustainability reports. This is as a result of pressure from investors and other stakeholders, condition for international affiliations, regulatory and industry requirements, requirements as a multinational. This has in turn played vital roles in creating a shallow yet noteworthy pool of non-financial reporters. The benefit of sustainability reporting is that it helps investors and stakeholders make informed decisions, which will positively influence long term management strategy. It also helps companies to benchmark with other companies and industry players. Aspects of sustainability reporting will include Materiality, which involves material information that is likely to influence the assessments and decisions of one or more stakeholder groups. Companies often identify, assess and address material issues of concerns as they relate to the risks, opportunities and value creation of stakeholder interests. Other aspects will include data collection and information gathering and validating the reported information (Society for Corporate Governance Nigeria 2020, Pp. 4-5). Some of the regulatory bodies and laws directing sustainability reporting in Nigeria are: the Securities exchange commission, the Nigerian corporate governance code 2018, The Nigerian Stock exchange guidelines sustainability disclosure guidelines, 2018, among many others. It is important to note that the NCCG 2018 includes reporting Corruption or related issues as part of sustainability issues.

ESG and sustainability encourages institutional investors to factor ESG considerations into their stewardship activities. The Stewardship Code of South Africa includes the following principle: "An institutional investor should incorporate sustainability considerations, including ESG, into its investment analysis and investment activities as part of the delivery of superior risk-adjusted returns to the ultimate beneficiaries" (Shirashi, Ikeda et al. 2015, P.5). ESG factors can influence investment returns through their impact on the performance of portfolio holdings and through the risks they pose to economic growth and financial stability. For portfolio holdings, they provide signals about the management strength and business strategy of investee companies that are not picked up by typical financial models based on profit and loss or balance sheet analysis. At the macro level, they

highlight risks that are outside the analytical framework and possibly the time horizon of typical financial models (OECD 2017).

One of the major shifts in business scene internationally is an increased focus on sustainability. In the updated UK Stewardship Code, which became effective in January 2020, ESG integration was elevated to a separate principle. In March 2020, the Financial Services Agency (FSA) in Japan updated its definition of stewardship, which specifically incorporates the consideration of sustainability and ESG factors. The majority of its survey respondents supported incorporating sustainability into stewardship responsibilities. Also, asset owners and asset managers have a fiduciary duty to clients, and incorporating a focus on sustainability should be seen to complement these duties (CFA Institute 2020, P.3). The Corporate Sustainability Due Diligence Directive (CSDDD), which imposes legal responsibility on businesses for environmental and human rights abuses in their supply chains, was most recently approved by the European Parliament. To put it briefly, business is expected to contribute to environmental stewardship; the health of the natural world is not a "nice to have" for business, but rather a crucial component of stable economic growth. Furthermore, the interactions between emissions, the environment, and society present difficulties for many big businesses with intricate supply chains. Due to the complexity of these choices, a new business strategy that incorporates sustainability intelligence is needed. This strategy applies science and technology to obtain a centralised view of the business opportunities and risks that exist where nature and climate intersect, across business activities and decision points (Coburn 2024).

7. Responsible Investing

Responsible investing is the integration of environmental, social and governance factors into investment processes and decision making at equity and debt funds. It is an initiative from the United Nations Global Compact Initiative which has metamorphosed to a major investment trend. Information on ESG has become a significant part of investment analysis in the stock market in London. It is been used to draw conclusions about management quality, exposure to business and ethical risk and the ability to gain a better understanding of the company future prospects. For companies sourcing for investments, ESG performance is a determinant factor on how investors are attracted to invest in a company. This points that companies must be proactive in ESG concerns and ultimately imbibe responsible investment. Investors are not just attentive to good ESG scores, they also want to invest in hardworking companies who want to do what is right (Thomas 2019, Pp. 25-27)

Responsible investing consists of the following forms: ethical investment (the negative or exclusionary screening of companies engaged in activities deemed unethical by the investor or that are contrary to certain international declarations and voluntary agreements. Such unethical vices include Tobacco, pornography, gross violations of human rights etc.); socially responsible investment (approaches that apply social criteria and environmental criteria in evaluating companies. Examples are issues relating occupational health and safety performance, energy and resource efficiency, labour disputes, community welfare etc) ; sustainable investment (refers to portfolio composition based on the selection

of assets that can be defined in some way as being possible to continue into the long-term future); Best in class (ESG) investment (a composition of portfolios by the active selection of only those companies that meet a defined ranking hurdle established by environmental, social and governance criteria); ESG integration (here environmental, social and governance qualities of a company are analysed at a more fundamental level); Thematic investment (investment strategy of selecting companies that can be classified as falling under a particular investment theme e.g. Healthcare, pollution control etc.); Green investment (approaches that seek to invest capital "green" assets whether these are funds, companies, infrastructure, project, e.g. recycling, pollution control etc.) and impact investing (investments seeking a particular social or environmental objective e.g. provide employment, community projects etc.) (University of Cambridge I*nstitute for Sustainability leadersh*ip).

Although Investors prioritize ESG and sustainable investments in making their investment decisions, there certain arguments and issues raised as to the demerits of these concepts. Some of these issues will include: it lacks consistency across different geographical areas, both in practice and in principle (Bengtsson 2008, Pp. 969-983; Sreekumar Nair and Ladha, 2014.Pp.714–727), the development of sustainable investment although rapid in developed countries is slow in developing countries, ESG strategies have also led to inconsistency in sustainable investment decisions by companies and investors (Talan & Sharma 2019, P. 353) among other limitations.

The financial value of engagement is: increased returns as a result of improved sustainability performance of companies, improved returns to the market as a whole as a result of internalizing externalities. Non-final value created by responsible investing will include: improved ESG performance by individual companies such as fewer human rights breaches, increased job creation etc, better corporate disclosure, more stable markets, improved ESG performance across the market as a whole (University of Cambridge I*nstitute for Sustainability leadersh*ip).

According to Katelouzou (Katelozou 2019, P. 591) in *Shareholder Stewardship: A Case of (Re)Embedding the Institutional Investors and the Corporation,* Institutional shareholders can play a pivotal role in promoting corporate sustainability within planetary limits. In this respect, the adoption of the United Nations' Sustainable Development Goals (SDGs) may already provide a first, though preliminary, roadmap to promote strong corporate sustainability through institutional engagement. The SDGs encourage companies 'to adopt sustainable practices and to integrate sustainability information into their reporting cycle', and acknowledge that the financial industry has a key role to play in championing social responsibility. The SDGs, therefore, align well with the public-interest objectives of shareholder stewardship. Indeed, there is already some evidence that institutional investors are increasingly embracing shareholder stewardship. many institutional investors, despite seemingly supporting stewardship policies, are still exclusively focused on the business case for creating value for their end-investors and do not play an active role in championing strong sustainability as such. Law has strong potential here, as it shapes both the financial and corporate frameworks in which institutional investors operate, as well as their internal governance, such as relationships between trustees and beneficiaries.

8. Intricacies of Sustainability Reporting

Transparency and accountability are central principles in the governance of companies. For effective corporate governance, stakeholder engagement and disclosures are requisite. These can be achieved through reporting which ought to be a blend of quantitative (financial) and qualitative (non –financial) information. Sustainability reporting requires disclosing the non-financial information to the stakeholders and there are standards guiding this. It is noteworthy that there is a required international best practice standard on how sustainable reporting should be written and done.

The essence of sustainability reporting is to disclose to the stakeholders the company's efforts and performance in terms of; environmental, social and governance risks and opportunities the company encounters in the course of its operations, the forward-looking perspectives of the company and the actions the board are taking to mitigate the risk .The report should entail the ESG risk assessment of the board, the policies and procedures of the company on ESG risk and remuneration and ESG issues. The report should indicate whether the company in setting the remuneration of directors, considers the ESG issues at hand. The required style of reporting is narrative and should be included in the annual business review of the company (Coyle 2012, 270). A well-written sustainability report should be seen as a means of providing a target audience with an accurate picture of plans and progress so that they can make wise decisions. Disclosures about sustainability ought to be as strong and reliable as financial reporting. An efficient sustainability report will outline the organization's improvement plans, draw attention to significant problems, and offer insights into the ESG performance of the organisation. Organisations can use a variety of frameworks and standards to direct their sustainability reporting (KPMG 2022, P.4).

From the survey of the Society For corporate governance Nigeria (Society for Corporate Governance 2020) on a review of sustainability reporting in top thirty capitalized companies on the stock exchange in Nigeria in 2020, some of the companies had scanty information in their sustainability reports reflecting their company's activities on sustainability reporting as opposed to a very detailed reporting that is required internationally. Sustainability reporting should not be a mere compliance and box-ticking process for companies, otherwise it will not fulfill the purpose for which it was created. Companies ought to understand the required and ideal content to constitute a sustainability report. According to the KPMG 2022 survey on sustainability reporting (KPMG 2022, P.8) based on 100 publicly owned companies in Nigeria, the sustainability reporting rate in Nigeria in comparism to the global rate is 78 percent to 79 percent respectively. The pressing issues needing improvement in Nigeria according to the findings of KPMG (KPMG 2022, P.9) are: ESG governance is inadequate, Assurance of Sustainability/ESG report is undertaken by very few companies, Biodiversity risk acknowledgement is low. This implies that more needs to be done by companies in reporting their sustainability activities.

The Nigerian Stock exchange in its guidelines on sustainability disclosure 2018 issued these guidelines to encourage companies to disclose their impact on the economy, environment, and society (Grant Thornton 2024, P. 5). It highlights an approach to integrating sustainability in companies. The guidelines put the board at the fore of integrating sustainable business practices in the administration, growth and development of companies,

and to set and clarify corporate strategy, objectives and required outcomes from an ESG perspective.it further provides a step-to-step guide on how sustainability can be integrated:

a. Identify key issues and drivers
b. Develop strategy
c. Establish governance and accountability
d. Set targets and action plan
e. Monitor, report and evaluate

The guidelines encourage companies to go beyond compliance and embrace sustainability as part of their business ethics. The board of directors have the responsibility to incorporate the principle of the guidelines into their companies.it covers economic, social, environmental and governance issues. *Section 4 of the Nigerian Stock Exchange Guidelines* states the reporting requirements and format for listed companies. Although *Section 4 of NSE Sustainability Disclosure Guidelines 2018* provides for integrated sustainability reporting for companies, compliance is at its lowest ebb in Nigeria.

Furthermore, Nigerian companies employ various reporting standards and templates such as the Global Reporting Initiative (GRI), Sustainability Disclosure Guidelines by the Nigerian stock exchange, Principles for Responsible Investment (PRI) among others. The GRI guidelines are widely used by Nigerian businesses for their ESG reporting. GRI offers a global framework for thorough sustainability reporting that addresses important ESG factors like social well-being, governance, human rights, and climate impact. Some financial institutions in Nigeria have aligned themselves with the Principles for Responsible Investment (PRI), which encourages investors to use responsible investment to enhance returns and better manage risks—despite the fact that it is not a regulatory requirement (Grant Thorton 2024, P.5).

Most recently on the global scene, two voluntary standards (IFRS S1 and S2) were published in 2023 by the International Sustainability Standards Board (ISSB). They permit companies to report on issues that are financially significant to their operations and were created with investors' needs in mind. Right now, several nations including the UK are debating whether and how to implement these standards (Donnelly 2024). The ISSB Standards draw heavily on the reporting frameworks and standards that are already in place. The fundamental goal of the ISSB standards is to give information about the opportunities and risks associated with companies' sustainability so that investors and other capital market participants can make well-informed investment decisions. The new standards include "IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information," and "IFRS S2 Climate-related Disclosures." The core content of each standard includes disclosures relating to general sustainability and climate-specific risks and opportunities, respectively, including Governance, or the processes, controls, and procedures used to monitor and manage those risks and opportunities; Strategy or the approach used to manage the risks and opportunities Integrating ESG considerations into corporate strategy involves embedding sustainability principles into business operations, risk management, and performance measurement. This holistic approach fosters long-term value creation and resilience in a rapidly changing global landscape (Grant Thorton 2024, P. 7).

Nigeria is the first African country to adopt the ISSB standards (This day live 2023). The Financial Reporting Council of Nigeria (FRCN), the International Sustainability Standards Board (ISSB) and NGX Regulation Limited (NGX RegCo) on Monday, June 26, launched the first two IFRS Sustainability Disclosure Standards (IFRS S1 and IFRS S2 Standards). The recent issuance of two International Financial Reporting Standards (IFRS) sustainability disclosure standards marks a significant development, poised to usher in mandatory sustainability reporting for Nigerian companies. To implement the IFRS Sustainability Standards, companies are advised to adopt the Federal Reporting Council of Nigeria (FRCN) standards, which offer industry-specific metrics. Disclosure requirements, covering governance, strategy, risk management, and metrics/targets, align with the Nigerian Climate Change Act 2021 (Society for Coprorate Governance 2023). The FRCN created a working group the Adoption Readiness Working Group (ARWG) for the integration of the ISSB standards in Nigeria. The ARWG for sustainability reporting in Nigeria, had given regulatory discretionary reliefs with phased implementation plans of sustainability standard from 2023 through 2030 for reporting and assurance instead of ISSB's effective date of 2024 (Emejo, This day live 2024); (Agbakoba- Onyejianya, Agherario 2023).

The banking and financial sector are also working on implementing ISSB standards. The Central Bank of Nigeria (CBN) has said that it was at the forefront of promoting sustainable banking practices through the adoption of International Financial Reporting Standards (IFRS) as part of a broader strategy to attract foreign investment and achieve economic growth (Okpale 2024). It is important to state that prior to this development, the Nigerian Sustainability Banking Principles was approved by the Nigerian Banking Committee and by the CBN in 2012 (Nairametrics- Nigerian Sustainable Banking Principles 2013) to guide banks and financial institutions on issues of: Environmental and Social Risk Management, Human Rights, Women's Economic Empowerement, Financial Inclusion, Environmental and Social Governance, Reporting among others. The principles mandated 30 percent women on the board of Nigerian banks (Nigerian Sustainable banking principles 2012; Adejugbe 2024, P. 155). The principles enhanced disclosures in banks and also advanced gender diversity in the institutions.

The Pensions Commission (regulators of the Pension sector) and Nigerian Communications Commission (regulators of the Telecommunications sector) are working on reviewing the sustainability disclosures and reporting regulations for their sectors (SCGN Annual Corporate Governance Conference 2024).

9. Regulatory Risks and opportunities

It cannot be overemphasized that for sustainability and ESG factors to thrive in the business environment, regulation, law and policy needs to be strongly rooted. Where there are proper regulations in place, it will encourage companies to embrace and incorporate ESG and sustainability into their business models. It is remarkable that the regulators in Nigeria are working to align their sectorial regulations with best standards in sustainability and ESG, however implementation and compliance is crucial. Legal and regulatory compliance structures stem from effective governance frameworks (Akpata 2024). Non-compliance with regulations attracts penalties and regulatory sanctions which is a form of risk which

companies must avoid. Companies can navigate regulatory complexities while ensuring business continuity by creating effective governance and compliance frameworks, highlight checklists of regulatory compliance which overtime become part of their culture. Also, efficient risk management systems and internal controls in line with ESG and sustainability standards within the company, and a viable audit committee are other important factors for mitigating risk.

Reputational risk is another form of risk that companies can suffer where they neglect Sustainability and ESG concerns. This form of risk is costly on the corporate brand involved, as it becomes bad public relations and damage control may not be enough to redeem such a negative impact on the brand.

Sustainability comes with the following opportunities and more:

a. Enhanced long term success and value creation
b. Company becomes attractive for investors and can access financial facilities
c. Increased stakeholder value
d. Drives innovation
e. Adaptability and corporate resilience. corporate survival and resilience are benefits to companies who diligently imbibe sustainability principles, values and practices. It enables them to pull through tough challenges. As sustainability is no longer optional but an imperative for survival in a rapidly changing world
f. Balanced needs of stakeholders and the company. It is a win –win situation for all

Still, integrating ESG and Sustainability principles into Risk manangement processes is pertinent.

10. Best practices

a. *Companies intentionally making sustainability decisions to make changes to their business activities* such as reduction of Carbon emissions, opting for paperless options, inclusion, diversity, prioritizing health and safety of workers, compliance with legal and regulatory obligations, balancing triple bottom line standards (people, planet and profit), matching value propositions with sustainability and more.
b. *A Pro- Active Board:*

   The significance of establishing sound governance from the outset of a business's implementation journey is a common theme among sustainability reporting frameworks. Managing the disclosure requirements will require forming multidisciplinary teams, frequently with the board as a member. A board, committee, or other comparable body charged with governance is one example of the governance body(s) that an entity is required to disclose information about, according to IFRS S1. Therefore, in order to ensure that good reporting is promoted from the top, it is imperative that board members are knowledgeable about the most recent advancements in sustainability and the climate. Ultimately, in order for boards to fulfill their fiduciary duties to "Exercise reasonable care, skill, and diligence," they need to be suitably informed and involved. Professionals in accounting and corporate governance should also anticipate becoming increasingly involved in sustainability (Donnelly 2024).

Likewise, companies sometimes are faced with the dilemma of how to balance business decisions that will not negate environmental, nature, society (for instance in supply chains using mechanized equipment that will not destroy the environment at same time trying to use technology for speed in business operations at the same time balancing it with managing human talent and resources and not putting people out of their jobs indiscriminately etc.) such decisions can be complex to make, and will require 'sustainability intelligence " by the board (Coburn 2024).

Boards are to provide oversight, drive accountability and monitoring, employ best personnel or engage consultants and experts where necessary to direct the company on ESG and sustainability best practices. Sustainability comes from top to bottom, begins with leadership having a mindset which is translated into the people within the company. Building a culture that promotes sustainable values. Also, the board should access sustainability advisory, set performance metrics and targets.

c. *Importance of integrating ESG and sustainability principles into corporate policy, strategy and culture.* The tone of the board must be in line with policy and culture. Creating a positive culture takes time and effort, and it calls for strong non-executives who aren't afraid to speak up and a strong chair who can hold management accountable.

   A healthy behaviour code must be implemented and upheld by the CEO, senior management, and employees at all levels in order to move the organisation towards a wholesome culture.

   A company's culture needs to be reset if it hopes to win back the trust of the general public, employees, customers, and investors (Sullivan 2024).

d. *The Role of Institutional investors and shareholders in demanding ESG and sustainability standards in the companies they invest in.* Boards are facing demands from investors to take greater account of environmental, social and governance issues which will include Board diversity and climate change. Investors prefer to invest in not only financially balanced companies but also environmentally sustainable companies. Institutional investors can push companies to opt for cleaner and safer ways of production, they can also continuously monitor and engage and vote against these companies. Shareholder resolutions during annual general meetings is one of the ways for shareholders to make their voices heard on ESG issues (Nicholas 2018, P. 12). Institutional investors can engage with investee companies by integrating stewardship responsibilities in corporate strategy and effectively monitoring, holding investee companies accountable.

e. *Making ESG and Sustainability standards as prerequisites for obtaining financial facilities for companies in business in Nigeria.*

f. *The role of regulators* to push for regulations or tighten existing regulations and laws in line with global best practices and standards precisely on sustainability reporting is key. Enforcing these regulations with penalties attached for defiant companies (in a mandatory regulatory/ code system). Where the regulation or code structure is voluntary in nature, the "apply or explain" system should be implemented.

g. *Risk management*: Exposure to emerging trends and technological advancement brings risks. A robust risk management system and internal controls with an efficient audit committee is fundamental. Companies cannot afford to be involved with the risks such as: Regulatory penalties and fines for non- compliance, risks on social, environment, governance and health issues, damaged assets, legal liabilities and suits, negative implications on financials of the business, loss of significant brand value for the business. -risks from the angle of non-compliance and businesses not adapting to the global move.

h. *Stakeholder engagement* is vital. The board actively fuel engagement strategies and disclosures.

11. **Conclusions**

A company is not purposeful when it runs its business and regulates its activities solely on profit making and financial returns. It is built on purpose when it is highly considerate and intentional about its impact on the environment, on the people affected by its operations, and building good governance imperatives. Such a purposeful company is very attractive to investors, forward minded and sustainable, thus the need for forward thinking companies to adhere to regulatory directions and guidelines on ESG and sustainability.

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A COMPARATIVE ANALYSIS OF NON-JUDICIAL REMEDIES FOR ADMINISTRATIVE ACTS IN NIGERIA AND THE UNITED KINGDOM

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Abstract: *This study conducts a comparative analysis of non-judicial remedies for administrative acts in Nigeria and the United Kingdom. Non-judicial remedies play a vital role in administrative law by offering accessible and efficient avenues for addressing grievances arising from administrative decisions. The research examines the legal frameworks, procedural mechanisms, and practical effectiveness of non-judicial remedies in both Countries. By comparing the systems in Nigeria and the United Kingdom, the study aims to highlight similarities, differences, strengths, and weaknesses in the implementation of non-judicial remedies. Through this comparative analysis, insights are provided into the capacity of these remedies to ensure fairness, accountability, and transparency in public administration. The doctrinal method for data collection, comprised of the analysis of numerous primary and secondary sources of data, is utilized in this study, with a view of offering insights into the effectiveness of Non-judicial remedies in these Countries. The study finds that despite differences in legal frameworks and procedural mechanisms, both Countries face challenges in ensuring the effectiveness of non-judicial remedies in practice. Issues such as delays, bureaucratic hurdles, and limited awareness among citizens impact the efficacy of these remedies in addressing administrative grievances. The findings contribute to a deeper understanding of administrative justice systems and provide valuable insights for policymakers, legal practitioners, and scholars in both countries. This paper recommends the following: Increase Public Awareness and Accessibility; Information Dissemination; Strengthen Institutional Capacity/Funding and Resources; Training Programs; Promote Alternative Dispute Resolution (ADR); Encourage Freedom of Information (FOI) Act Compliance; Regular Audits; Foster Collaboration and Exchange of Best Practices/International Collaboration; Workshops and Conferences; Implement Monitoring and Evaluation Mechanisms/Feedback Systems; Performance Metrics, Legal and Policy Reforms ,Policy Updates, as crucial steps for improving the accessibility and effectiveness of non-judicial remedies in Nigeria.*

Keywords: *Non-Judicial remedies, Administrative Acts*

1. Introduction

In the realm of Administrative Law, non-judicial remedies serve as vital mechanisms for addressing grievances arising from administrative actions, providing accessible avenues for redress outside of traditional Court proceedings (Harlow 2013, P. 18). These remedies play a

crucial role in ensuring fairness, accountability, and transparency in public administration by offering individuals and entities recourse against perceived injustices or errors in administrative decisions (Kabir 2012, 89). The comparative analysis presented in this study focuses on non-judicial remedies for administrative acts in Nigeria and the United Kingdom, two jurisdictions with distinct legal systems and administrative practices (Oluyede 2007, 308). By examining the legal frameworks, procedural mechanisms, and practical effectiveness of non-judicial remedies in these Countries, this research seeks to identify similarities, differences, strengths, and weaknesses in the implementation of such remedies. Through this comparative lens, the study aims to provide valuable insights into the capacity of non-judicial remedies to uphold administrative justice, promote good governance, and enhance public trust in governmental institutions (Adangor 2018, Pp. 73-91). The findings of this analysis offer insights for policymakers, legal practitioners, and scholars in both Nigeria and the United Kingdom, with potential implications for administrative law and practice globally (Ajayi & Nwaechefu 2019, Pp. 167-179). The fundamental research questions that are called to mind are: What are the primary non-judicial remedies available for administrative acts in Nigeria and the United Kingdom? How do the legal frameworks governing non-judicial remedies differ between Nigeria and the United Kingdom? What procedural mechanisms are in place for individuals to access non-judicial remedies in both countries? How effective are the non-judicial remedies in ensuring fairness, accountability, and transparency in public administration in Nigeria compared to the United Kingdom? What challenges do citizens face when seeking non-judicial remedies for administrative acts in Nigeria and the United Kingdom? What are the strengths and weaknesses of the non-judicial remedies systems in Nigeria and the United Kingdom? What lessons can Nigeria and the United Kingdom learn from each other's experiences with non-judicial remedies for administrative acts?

2. Conceptual Clarification

A thorough analysis of the subject reveals two essential concepts that necessitate clarification in this context: non-judicial remedies and administrative acts.

2.1 Administrative Acts

An "administrative act" refers to a decision or action taken by a Government body or official, within the framework of public law, impacting the rights or obligations of individuals or entities (Smarter, 2021). According to (Davis 1958, 79) administrative acts is defined as those actions undertaken by administrative agencies under the authority of statutes, which involve applying general rules to specific cases. Davis emphasizes the discretionary nature of these acts, distinguishing them from purely ministerial tasks. In a nutshell, Administrative Act is an official decision made by a Government authority or agency, in accordance with legal rules and regulations. These acts can include orders, decisions, rules, or regulations. It encompasses a broad spectrum of activities, from issuing licenses and permits to imposing taxes and enforcing regulations. Administrative act is a fundamental concept within the field of Administrative Law, as it forms the backbone of how public administrative bodies interact with the law and the general public.

2.2. Non-Judicial Remedies

The first term that comes to mind in addressing the above concept is "remedies". The term "remedies" is defined by the Black's Law Dictionary as "the field of law dealing with the means of enforcing rights and redressing wrongs" (Garner 2009, 1407). On the other hand, the concept "non- judicial remedies" is sometimes referred to as "extra-judicial remedies" or "Administrative remedies". According to (Malemi 2013, P. 325) non judicial remedies or extra-judicial remedies are remedies outside the Court room. They are remedies which do not emanate from the Court, but are obtained outside the Court room, although with the help of Court sometimes, such as, negotiated settlement of a pending Court action, especially where there is a multi-door Court system, otherwise known as a multi-services Court system that provides services which include alternative dispute resolution and so forth, in addition to the normal hearing and decision of cases by judges. Ese Malemi stated further that in appropriate circumstances, instead of going to Court, the parties or people may explore other options available to resolve their differences or dispute with Government or administrative authority amicably. In a nutshell therefore, "Non-judicial remedies" refer to mechanisms and processes available for the resolution of disputes, grievances, or claims outside the traditional Court system. These remedies are designed to provide relief and resolution without the need for judicial intervention. Non-judicial remedies can include administrative procedures, arbitration, mediation, ombudsman services, and other alternative dispute resolution (ADR) methods.

2.3 Judicial Perspective for Non-Judicial Remedies in Nigeria and the UK

Nigerian Courts have increasingly recognized Non-Judicial Remedies and have on several occasions enforced ADR agreements. In the case of *M V Lupex v Nigerian Overseas Chartering and Shipping Ltd* (2003) the Supreme Court upheld an arbitration agreement, reinforcing the legitimacy and enforceability of non-judicial remedies. The UK Courts strongly recognizes Non-judicial Remedies and endorses ADR. In the case of *Halsey v Milton Keynes NHS Trust* (2004), the Court of Appeal emphasized that parties are encouraged to use ADR, and unreasonably refusing to do so could result in cost penalties, highlighting judicial support for non-judicial remedies.

The Commission handles complaints regarding injustice, corruption, abuse of office, and unfair treatment by public officers (Dada 2011, 118). Complainants can file their grievances directly with the Commission, which conducts investigations and makes recommendations. In relation to Internal Review Processes, various government agencies in Nigeria have internal review mechanisms where aggrieved individuals can seek redress. These processes often involve hierarchical appeals within the administrative body. Under this sub-head, we shall briefly consider the procedural mechanisms under the Ombudsman Services and Administrative Tribunals: Individuals can lodge complaints with various ombudsmen, such as the Local Government and Social Care Ombudsman and the PHSO, who have the authority to investigate and recommend remedies for administrative grievances (Oputa 1988, 57). Secondly, the UK has a well-structured Administrative Tribunals system, including the First-tier Tribunal and the Upper Tribunal, which handle a wide range of administrative disputes. These Tribunals offer a less formal and more specialized forum compared to traditional Courts.

The core principle of Nigerian law regarding rights and remedies can be succinctly summarized by the Latin maxim, *ubi jus ibi remedium* meaning wherever there is a right, there

isn't remedy. Non-judicial remedies for administrative acts in Nigeria are mechanisms that allow individuals and organizations to address grievances against administrative decisions or actions without resorting to the Courts. These remedies are crucial in ensuring accountability, transparency, and fairness in administrative processes. In Nigeria, several non-judicial remedies are available to an aggrieved party who seeks redress and they are discussed hereunder.

2.4 Filing a complaint with the Ombudsman

Ombudsman also known as the Public Complaints Commission (PPC) was a body established in 1975 by the Public Complaints Commission Decree No. 31. It is constitutionally secured by Section 315 (5) (b) of the 1999 Constitution. According to the ex-President Olusegun Obasanjo, the Commission was established to create a platform through which everyday people in the society could be defended and secure justice. Where a person is aggrieved by the conducts/Acts of Government bodies/establishment, a complaint is filed with the Commission for redress. The Ombudsman has the purposes of serving as a check to known government activities, overseeing the investigation of complaints, circumventing the high cost of access to the Courts, saving time and serving as an organ for Government to receive feedback from the public. The Commission's powers have however been hindered by the provisions in Section 6-8 of the PCC Act. For instance, the Commission can only make recommendations after investigation, and also, complaints cannot be made public.

3. Domestic/Internal remedy mechanism- internal Administrative Remedy

Internal administrative remedies are mechanisms within Governmental or organizational structures that allow individuals to seek redress for grievances without resorting to external judicial processes. These remedies are designed to address issues internally, promoting efficiency and reducing the burden on the formal legal system. Recourse to domestic/Internal remedy mechanism may take various forms such as oral appeals, complain, visits, dialogue, negotiation, writing petition, arbitration etc. Again, resource to internal administrative remedy may be a statutory requirement before action may be filed in Court. Where internal administrative remedy is available in a public establishment with which one is dealing, doing business or working, it is usually advisable to resort or have recourse to the internal administrative remedy mechanism, and where one has tried it and it fails, or remedy is denied, the person can then proceed to Court. Failure to explore internal administrative remedy/mechanism before proceeding to Court would render the suit premature and incompetent. We rely on the case of *Nigeria Communications Commission v MTN Nig Comm. Ltd* (2008) where the Court of Appeal held that the suit was premature and incompetent, as the plaintiff respondent did not first have recourse to the internal administrative remedy available in the Commission as required by section 87-88 of the Nigerian Communications Commission Act 2003 as a precondition for application to Court for judicial review of the acts of the defendant appellant commission. See also the case of *Olaniyan v University of Lagos* (1985) where the Court highlighted the importance of exhausting internal administrative remedies.

3.1 Petition to Administrative Authority

A Petitioner is a formal written request made to a government authority or public body, seeking redress or action on a specific issue. According to Malemi (2013, p. 218) a Petition is a written request to a person who is in a position of authority to grant a request, favour, or redress a wrong. In a modern democratic society, any individual who is aggrieved or has suffered a wrong has the right to petition the appropriate authority for redress or remedy. In Nigeria, petitions serve as a significant non-judicial remedy, providing a structured way for citizens to voice their grievances and seek solutions without engaging in formal judicial proceedings. This position was supported in the case of *Bakare v Lagos State Civil Service Commission* (1992) which demonstrates the Judiciary's recognition of administrative remedies and the role of Petitions in addressing grievances within public service structures before seeking judicial intervention. Also, in the case of *Olaniyan v University of Lagos* (1985) the Court highlighted the importance of exhausting internal administrative remedies, such as petitions, before approaching the court for redress. Again, in the case of *Federal Civil Service Commission & Ors v Laoye* (1989) the Supreme Court in this case emphasized the need for aggrieved parties to utilize available administrative remedies, such as petitions, before escalating the matter to the judiciary. Furthermore, Section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) guarantees the right to a fair hearing, which includes the right to seek redress through Petitions and other administrative channels before resorting to judicial processes.

3.2 Appeals to Executive/Legislative bodies

An Appeal generally, is a plea or request to a person in authority, Government or administrative authority for a decision, or act to be changed. It is a plea for a rethink to change a decision, or an act or to grant a favour. Appeals as a non-judicial remedy provide a mechanism for individuals to seek a review of decisions made by administrative or governmental bodies without resorting to Court proceedings. This process allows for the correction of errors, ensuring fairness and accountability within the administrative framework. There are several examples of Appeal, which include: an appeal to a superior Court against the decisions of lower Court with which the aggrieved parties are not satisfied; an appeal to the Government to release people who are detained for political reasons as evident in the case of *Uwazuruike v A G Fed* (2008).

3.3 Dialogue

Dialogue is an essential non-judicial remedy that involves open communication between disputing parties to resolve conflicts and reach mutually acceptable solutions without resorting to formal legal proceedings. According to Malemi (2013, 225) dialogue is discussion between parties to a dispute and an amicable resolution of the issue in dispute. Dialogue may be formal or informal, in the form of face to face discussion, round table conference, arbitration, mediation, conciliation etc.

3.4 Peaceful Assembly, Rally and protest

Peaceful assembly, rallies, and peaceful protests are important non-judicial remedies that allow individuals and groups to express their grievances, advocate for change, and draw attention to issues without engaging in formal legal actions. In a modern society or a constitutional democracy, every person or group of persons have a fundamental right to

peaceful assembly (as contained in Section 40 of the 1999 Constitution) and to peacefully protest any decision, measure, or act of government or a public authority that is unfavourable. An example of a Government decision or measure which is usually protested by people in Nigeria is the increment of the prices of petroleum products. The Nigerian Labour Congress (NLC), Academic Staff Union of Universities (ASUU), non-governmental Organization (NGOs) etc. often lead the people in these peaceful rallies and protest. In the case of *IGP v All Nigerian Peoples Party and others* (2007) the Court in upholding the rights to a peaceful assembly and protect, held that the Public Order Act 1990 (now 2004) was wholly unconstitutional for requiring a police permit to exercise the fundamental right to peaceful assembly. See also, the case of *Police v Comrade Adams Oshiomhole & others* (2004) where the Court held the strike illegal on the ground that the NLC did not give the 21 days prior notice required under the labour Law. It is however important to state that this decision places a clear hindrance on the provisions of the 1999 Constitution which provides for the right to freedom of expression, the press and peaceful assembly.

3.5 Media coverage

Media coverage acts as a powerful non-judicial remedy by highlighting issues, amplifying voices, and holding authorities accountable through public scrutiny. Stake holders, persons and groups promoting change in a Country, and the media may work together to engage on a media blitz coverage of the issue at hand. By virtue of Section 39 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) the right to freedom of expression and the press are guaranteed. It allows individuals to hold opinions and to receive and impart ideas and information without interference. Section 22 specifically mandates the press, radio, television, and other agencies of the mass media to uphold the responsibility and accountability of the government to the people. Also, Freedom of Information Act 2011provides for the right of access to public records and information, thereby promoting transparency and accountability in public affairs. It empowers the media and the public to seek and disseminate information about government activities. In the case of *Nwankwo v The State* (1983) the Supreme Court of Nigeria underscored the importance of freedom of expression, including the freedom of the press, as essential to the democratic process. Furthermore in the case of *Tony Momoh v Senate of the National Assembly* (1981) the Court affirmed the media's role in holding the government accountable, supporting the idea that the press serves as a watchdog in a democratic society (Okany 2007, p. 279).

3.6 Public opinion poll

A public opinion poll as a non-judicial remedy, involves gauging the views and preferences of a population on specific issues without resorting to formal legal or judicial processes. This approach can serve several purposes such as: Policy Guidance, Conflict Resolution, Transparency and Accountability etc. The media or other interest groups may conduct a public opinion poll on an issue to demonstrate public preferences or to highlight a decline in government popularity. This information can prompt the government or public authorities to take action to address the issues and improve their standing with the public.

3.7 Lobby

Lobbying is a non-judicial remedy that involves advocating for specific interests, policies, or changes within the Legislative and Executive branches of Government. This process is typically carried out by individuals, interest groups, or organizations seeking to influence public policy and decision-making. By way of a definition, the term "Lobbying" is the act of attempting to influence decisions made by Government officials, typically legislators or members of regulatory agencies. According to Malemi (2013 p. 334) the word "lobby" means to persuade, convince or influence someone or a group of persons, such as, parliament to act in a particular way, to do something, or to enact a law, for instance, by presenting information, facts and figures, reasons or a superior argument why they should do so. In the negative context, to lobby means to influence someone with cash or kind to make him or them do something which should not be done in the circumstance.

3.8 Referendum

Referendum is a non-judicial remedy that allows citizens to directly participate in the decision-making process on specific issues, laws, or policies by voting. This democratic tool empowers the electorate to make binding or advisory decisions on matters of public importance. By way of definition, a referendum is a direct vote in which the entire electorate is invited to accept or reject a particular proposal. This could be a new law, a constitutional amendment, or a specific government policy. The purpose of a referendum is to give citizens a direct voice in important legislative or policy decisions, thereby enhancing democratic participation and legitimacy. There are several types of referendums and they include mandatory Referendum: Required by law or constitution for certain decisions, such as constitutional amendments or significant policy changes. There is also optional referendum which is called at the discretion of the government or upon sufficient demand by the electorate, often through a petition process. There is the binding Referendum. The outcome must be implemented by the government. There is also advisory Referendum. The result serves as a recommendation and does not have the force of law, but it guides the government's actions.

Conclusively, Referendums serve as a powerful non-judicial remedy by allowing direct democracy to complement representative institutions, ensuring that citizens have a direct say in crucial decisions affecting their lives and society.

3.9 Alternative Dispute Resolution-Arbitration, mediation and conciliation

Alternative Dispute Resolution (ADR) encompasses various methods for resolving disputes outside the formal judicial system, including arbitration, mediation, and conciliation. These processes offers flexible, efficient and often less adversarial alternatives to litigation. We shall now briefly consider the above as follows. Arbitration is a process where disputing parties agree to submit their conflict to one or more arbitrators, whose decision is usually binding. The process involves parties selecting an arbitrator or a panel. The arbitrator listens to both sides, examines evidence, and makes a decision. The process is akin to a private Court proceeding but is generally faster and more flexible. The advantages include: Arbitration can be quicker and less costly than litigation. The parties have control over selecting the arbitrator, who often has specific expertise relevant to the dispute. The process is private, and the arbitrator's decision is typically final and enforceable.

Mediation is a facilitated negotiation process where a neutral third party, the mediator, helps disputing parties reach a mutually acceptable agreement. The process involves the mediator assisting the parties in identifying issues, exploring solutions, and negotiating a settlement. Unlike an arbitrator, the mediator does not impose a decision. The advantages of Mediation are that it is highly flexible and can be tailored to the needs of the parties. It promotes collaborative problem-solving and preserves relationships. The process is confidential and less formal than arbitration or litigation.

Conciliation is similar to mediation but often involves a more active role for the conciliator in proposing solutions and guiding the parties toward a settlement. The process involves the conciliator meeting with the parties separately and together, suggests possible solutions, and helps them reach a resolution. The conciliator may provide an expert opinion on the matter. The advantages of Conciliation are that it can be particularly effective in disputes where the parties need expert guidance. It is less formal than arbitration and can lead to a faster resolution. Like mediation, it is confidential and aims to preserve relationships. Conclusively on this sub-head, ADR methods like arbitration, mediation, and conciliation offer valuable alternatives to traditional litigation, providing more flexible, cost-effective, and collaborative means of resolving disputes. They empower parties to find tailored solutions, often preserving relationships and ensuring confidentiality.

3.10 Sanctions

Ordinarily, sanction is a penalty which is imposed for the breach of law, and to discourage other persons from breaching the law. Sanctions as non-judicial remedies are imposed by countries, international organizations, or other entities to influence the behavior of individuals, organizations, or nations. By way of definition, "sanctions" are punitive or restrictive measures that aim to change the behaviour of the targeted entity by creating economic, political, or social pressure. The primary purposes include deterring violations of international norms, punishing wrongdoing, compelling compliance with specific demands, and signaling disapproval of certain actions. These measures are used to enforce compliance with international laws, uphold human rights, and maintain international peace and security without resorting to judicial proceedings or military action. There are several types of sanctions and they include Economic Sanctions. These include trade restrictions, asset freezes, and financial prohibitions. Economic sanctions can limit access to markets, restrict exports or imports, and freeze the financial assets of individuals, companies, or nations. There is also political sanctions these includes measures such as travel bans, diplomatic isolation, and visa restrictions fall under this category. Political sanctions aim to isolate leaders or key figures from the international community. There is also military sanctions which involve arms embargoes and restrictions on military cooperation. Military sanctions are used to prevent the escalation of conflicts and limit the military capabilities of the targeted entity. We also have cultural and sports sanctions: These can include bans on participation in international cultural or sports events. Such sanctions aim to exert social and reputational pressure.

The advantages of using sanctions as a non-judicial remedy include non-violent pressure, which entails that sanctions provide a means to exert significant pressure without resorting to military action. Secondly is flexibility, as the use of sanctions can be tailored to

target specific entities or sectors, minimizing broader harm. Thirdly, is International Solidarity and when same is implemented multilaterally, sanctions demonstrate a unified international stance against unacceptable behavior.

4. Non-Judicial Remedies for Administrative Acts in the United Kingdom

In the United Kingdom, administrative decisions made by government bodies, agencies, and local authorities impact individuals and communities. While judicial remedies through the Courts are available for challenging such decisions, non-judicial remedies offer alternative channels for addressing grievances, resolving disputes, and seeking redress. This paper explores some selected non-judicial remedies available in the UK for addressing administrative acts, highlighting their importance in promoting accountability, transparency, and fairness in public administration. They include:

4.1 Ombudsman Services

Ombudsman services in the United Kingdom serve as vital non-judicial remedies for addressing grievances related to administrative actions. They provide independent investigation and resolution of complaints against government bodies, ensuring accountability and fairness in public administration. There are mainly two key Ombudsman services in the UK and they are parliamentary ombudsman. The Parliamentary Ombudsman investigates complaints of maladministration by government departments and agencies. It ensures adherence to principles of fairness and transparency in administrative decision-making. There is also the health service ombudsman. This service deals with complaints regarding the National Health Service (NHS), ensuring the quality and standards of healthcare provision. It investigates issues such as medical negligence, treatment delays, and service failures. In the UK, Ombudsman services operate independently from government influence, ensuring impartiality in their investigations. They provide a neutral platform for resolving disputes between citizens and public authorities. Ombudsman findings in the UK can lead to recommendations for remedial action, including compensation for aggrieved parties, policy changes, and improvements in administrative processes. Ombudsman services in the UK are readily accessible to all citizens, offering a free and straightforward process for lodging complaints. They provide an alternative to costly and time-consuming legal proceedings.

4.2 Administrative Review

Administrative review provides a mechanism for reviewing administrative decisions internally within the relevant administrative body. It allows for errors to be identified and rectified without resorting to formal legal proceedings. Complaints procedures serve as essential non-judicial remedies for addressing grievances related to administrative actions in the United Kingdom. These procedures are established by government departments, agencies, and local authorities to provide individuals with an accessible and informal means of raising concerns and resolving disputes. Complaints procedures are designed to be accessible to all citizens, offering a straightforward process for lodging complaints without the need for legal representation. Unlike formal legal proceedings, complaints procedures are informal in nature, with a less intimidating environment. Government bodies aim to resolve complaints promptly and efficiently, typically within specified timeframes, to ensure timely resolution and alleviate

distress for complainants. Complaints procedures promote transparency in administrative processes by requiring authorities to investigate complaints thoroughly and provide clear explanations for their decisions. Depending on the outcome of the investigation, complainants may receive various forms of redress, including apologies, corrective actions, and, in some cases, financial compensation. By providing a mechanism for holding public authorities accountable for their actions, complaints procedures help reinforce principles of good governance and public trust in the administration.

4.3. Public Inquiries

Public inquiries in the UK serve as non-judicial remedies for investigating matters of significant public concern. They are typically initiated by the government and are independent inquiries conducted by appointed experts, known as inquiry chairs. These inquiries have the power to summon witnesses, take evidence under oath, and produce detailed reports with recommendations for action. They are often convened to examine events such as disasters, scandals, or policy failures, aiming to identify causes, lessons learned, and areas for improvement in governance or legislation. Public inquiries play a crucial role in promoting transparency, accountability, and public trust in the UK's democratic system.

4.4 Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution (ADR) serves as a non-judicial method for resolving conflicts in the UK. It encompasses approaches like mediation, arbitration, negotiation, and conciliation, providing parties with alternatives to traditional court proceedings. ADR offers benefits such as flexibility, confidentiality, and cost-effectiveness, making it an appealing option for resolving disputes across various sectors, including commercial, employment, and family matters. Courts in the UK often endorse ADR, sometimes mandating its exploration before litigation proceeds. This can be seen in the following cases: In *Halsey v Milton Keynes General NHS Trust* (2004) the Court of Appeal emphasized the importance of parties engaging in ADR. While not making ADR compulsory, the court indicated that parties who unreasonably refuse ADR may face cost penalties. Also, *in Dunnett v Railtrack Plc.* (2002) the Court's power to encourage parties to consider ADR was highlighted. The Court of Appeal suggested that parties should at least consider ADR and failure to do so might result in adverse cost consequences. Similarly, in *PGF II SA v OMFS Company 1 Limited* (2013), the Court of Appeal emphasized the importance of parties responding promptly and positively to invitations to participate in ADR. Failure to engage constructively with such invitations may result in cost penalties. More so, in *Gore v Naheed* (2013) this case demonstrates the Court's power to penalize parties for unreasonably refusing to engage in mediation. The Court ordered costs against the unsuccessful party who had refused to mediate. Furthermore, in the case of *Burchell v Bullard* (2005) the Court of Appeal reiterated the principle that while parties are not required to agree to mediation, they must at least give serious consideration to the proposal and respond in a reasonable manner.

4.5 Freedom of Information Requests

Freedom of Information (FOI) requests provide individuals with the right to access information held by public authorities in the UK. This non-judicial remedy allows individuals to request information about the operations, decisions, and policies of government bodies, local authorities, public institutions, and certain private organizations performing public functions. The Freedom of Information Act 2000 outlines the procedure for making requests and sets out exemptions that may prevent the disclosure of certain information, such as national security or personal data. FOI requests empower citizens to hold public authorities accountable, promote transparency and openness in government, and facilitate informed public debate.

5. Effectiveness and Accessibility of Non-Judicial Remedies in Nigeria and the United Kingdom

The effectiveness of non-judicial remedies in Nigeria is often hampered by limited resources, lack of public awareness, and bureaucratic challenges. The Public Complaints Commission, while established, sometimes struggles with enforcement of its recommendations due to its advisory nature. Internal review processes vary in efficiency and accessibility across different agencies. In contrast, the UK's non-judicial remedies are generally more accessible and effective. The Ombudsmen and Tribunal systems are well-publicized and user-friendly, with clear procedures for lodging complaints and appeals. The decisions and recommendations of UK ombudsmen are typically respected and implemented, contributing to higher public trust in these mechanisms.

The key challenges affecting the efficacy of Non-judicial remedies in Nigeria include: inadequate funding, limited public awareness, and the non-binding nature of the ombudsman's recommendations. To improve in this regard, Nigeria could enhance the authority and enforcement powers of the Public Complaints Commission, increase funding for administrative bodies, and conduct public awareness campaigns about available non-judicial remedies. While the UK system is robust, challenges include potential delays due to high caseloads and the complexity of navigating multiple bodies for different types of complaints. Streamlining processes and increasing the capacity of ombudsmen and tribunals can further enhance effectiveness. Having examined non-judicial remedies for administrative acts in Nigeria and the United Kingdom, several comparative findings emerge, including the following.

Institutional Maturity: The UK's non-judicial remedies are more mature and integrated into the administrative framework compared to Nigeria's. The UK's extensive experience with ombudsmen and ADR reflects a long-standing commitment to alternative dispute resolution mechanisms.

Accessibility and Awareness: In the UK, public awareness and accessibility of non-judicial remedies are higher. The UK public is generally more informed about their rights to seek redress through ombudsmen and FOI requests, partly due to better public education and outreach.

Effectiveness and Enforcement: The effectiveness of non-judicial remedies in the UK is supported by well-funded and autonomous bodies that can enforce their recommendations. In Nigeria, resource constraints, bureaucratic hurdles, and political interference often undermine the effectiveness of non-judicial remedies.

Transparency and Accountability: Both countries have Freedom of Information (FOI) laws, but the UK's implementation is more consistent and robust. Nigerian authorities

frequently face criticism for non-compliance and lack of transparency, hindering the law's effectiveness.

Regulatory Framework: The UK's regulatory bodies are generally more independent and equipped with greater enforcement powers. Nigerian regulatory agencies often struggle with autonomy and enforcement, limiting their ability to provide effective non-judicial remedies.

In summary, while both Nigeria and the UK offer a range of non-judicial remedies for administrative acts, the UK's systems are more advanced, better funded, and more consistently enforced, providing a more reliable framework for citizens to seek redress outside the courts.

6. Conclusions and Recommendations

Non-judicial remedies are integral to modern legal systems, providing accessible, efficient, and less adversarial means of resolving disputes. Both Nigeria and the United Kingdom have established robust frameworks through statutory provisions and judicial endorsements to support these mechanisms, thereby enhancing access to justice and alleviating the burden on formal judicial processes. The comparative analysis conducted in this study reveals that while both Nigeria and the United Kingdom have established non-judicial remedies for administrative acts, the UK's system is more developed and effective.

Having examined non-judicial remedies for administrative acts in Nigeria and the United Kingdom, several recommendations come to mind, including:

Increase Public Awareness and Accessibility: Launch widespread public awareness campaigns to educate citizens on the availability and procedures of non-judicial remedies, such as the Public Complaints Commission (PCC) and the Freedom of Information (FOI) Act.

Information Dissemination: Utilize media, community outreach, and digital platforms to disseminate information about non-judicial remedies.

Strengthen Institutional Capacity/Funding and Resources: Provide adequate funding and resources to the PCC and other regulatory bodies to enable them to handle complaints efficiently and effectively.

Training Programs: Implement regular training programs for staff in these institutions to enhance their capacity to manage complaints and enforce decisions.

Promote Alternative Dispute Resolution (ADR): Create dedicated ADR centers across the country to facilitate mediation and arbitration in administrative matters and also train public officials and legal practitioners in ADR techniques to encourage its adoption and effective implementation.

Encourage Freedom of Information (FOI) Act Compliance: Strengthen the enforcement of the FOI Act by ensuring that all public institutions comply with information requests and are held accountable for non-compliance.

Regular Audits: Conduct regular audits and publish reports on the performance and compliance of public institutions with FOI requests. Also. There is the need to foster Collaboration and Exchange of Best Practices/International Collaboration: Facilitate partnerships and regular exchanges between Nigerian regulatory bodies and their counterparts in the UK to share best practices and successful strategies.

Workshops and Conferences: Organize workshops and conferences to discuss challenges and innovations in non-judicial remedies. Also, implement monitoring and evaluation mechanisms/feedback systems. Establish robust feedback mechanisms for citizens to report their experiences with non-judicial remedies, ensuring continuous improvement based on user experiences.

By implementing these recommendations, Nigeria can enhance the effectiveness, accessibility, and reliability of its non-judicial remedies for administrative acts, thereby improving administrative justice and public trust in governmental processes.

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EXPLORING PERCEPTIONS OF CORRUPTION: REGIONAL DISPARITIES IN ALBANIA'S RURAL DEVELOPMENT

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Abstract: *This study explores the perception and impact of corruption on rural development in Albania. Focusing on regional disparities and the role of media, it examines how corruption undermines economic growth, access to public services, and trust in governance. Using survey data from farmers and rural residents, the study identifies significant regional differences in corruption's effects, highlighting the critical need for tailored anti-corruption policies and enhanced transparency. The findings emphasize the importance of empowering rural communities and leveraging media to combat misinformation and foster development. This research contributes to understanding the perception of corruption's multidimensional impact on rural development and offers actionable insights for policymakers and stakeholders.*

Keywords: *Corruption, Rural Development, Media Influence, Transparency, Albania, Regional Disparities*

1. Introduction

Rural development is a key priority for many countries, including Albania, where challenges such as limited infrastructure, resource scarcity, and economic constraints hinder progress. These challenges are compounded by corruption, which diverts resources, erodes public trust, and undermines the effectiveness of governmental and non-governmental initiatives. Addressing corruption is crucial not only for improving the well-being of rural communities but also for fostering balanced national growth and reducing migration pressures on urban areas.

This study investigates how corruption is perceived within rural communities in Albania and examines its impact on development efforts. Specifically, it focuses on the influence of corruption in shaping access to resources, agricultural support, and infrastructure investments. Understanding the experiences and perspectives of those directly affected by corruption is essential for designing effective anti-corruption strategies and development policies. The study employs quantitative survey data collected from rural stakeholders, including farmers and local government representatives. By capturing regional disparities in perceptions and experiences of corruption, this research aims to provide actionable insights for policymakers, community leaders, and development practitioners. Ultimately, the findings highlight the importance of anti-corruption strategies on empowering rural communities, enhancing transparency, and addressing misinformation to promote sustainable rural development in Albania.

This study aims to address the following research questions:

1. How is corruption perceived by stakeholders in rural communities in Albania, particularly farmers and local government officials?
2. What are the specific ways in which perceptions of corruption influence rural development, particularly in terms of economic growth, access to agricultural resources, and infrastructure quality?
3. How do regional disparities affect the impact of corruption on rural development?
4. How do social media and traditional media shape public perceptions?
5. What strategies can be implemented to reduce corruption and promote transparency in rural governance?

1.1 Corruption and Rural Development in Albania: A Contextual Analysis

1. Corruption Trends in Albania

According to Transparency International's Corruption Perceptions Index (CPI) 2023, Albania has made notable strides in prosecuting high-level corruption but still faces significant challenges. With a score of 37 out of 100, Albania remains one of the most corrupted countries in Europe. The broader Eastern Europe and Central Asia region, which averages a CPI score of 35, ranks as the second lowest globally, reflecting systemic corruption. While efforts to combat corruption have gained momentum—particularly within political and public institutions—the effectiveness of these initiatives hinges on strengthening the independence of the judiciary and ensuring that oversight bodies, such as the parliament and civil society organizations, can operate free from political interference. Transparency International (TI) has consistently highlighted several key factors that contribute to corruption in Albania. The main factors often identified in their assessments include: Weak Rule of Law and Judicial System, Political Corruption and Patronage, Weak Institutions and Governance, Economic Factors and Poverty, Lack of Transparency and Accountability, limited media freedom and civic engagement as well as cultural aspects.

2. Anti-Corruption Efforts and Institutional Challenges

Albania has implemented several mechanisms aimed at addressing corruption, including the establishment of the Special Anti-Corruption Structure, responsible for investigating and prosecuting high-level corruption cases. Despite these measures, political parties often resist addressing corruption within their own ranks. According to Freedom House (2023), safeguards against corruption in Albania remain weak and ineffective, and the European Union has repeatedly called for more rigorous enforcement of anti-graft policies, particularly within the judiciary. Political challenges, including partisan resistance, continue to hinder substantial progress in the fight against corruption. Albania has undertaken a variety of anti-corruption strategies and reforms over the years, especially as part of its aspiration to join the European Union (EU). While challenges remain, the country has implemented several key strategies to combat corruption. These include institutional, legal, and procedural reforms, as well as efforts to improve transparency and public accountability. Some of the major anti-corruption strategies and reforms in Albania are: Judicial Reform, Vetting Process: Strengthening the High Council of Justice. From the institutional perspective one very

important step undertaken is the establishment of the Anti-Corruption Agency (ACC). The aim of this agency is to prevent and combat corruption, monitor public officials' assets, and promote transparency in public procurement. The agency is responsible for investigating and exposing corruption at the public administration level.

Although there have been notable successes, such as SPAK investigations and arrests in high-level cases, a lack of comprehensive reforms remains an obstacle to sustained change. The GRECO (2022) Compliance Report notes that only five of the twenty-four recommendations from the Fifth Round Evaluation Report have been fully implemented, with the majority either partly addressed or not tackled at all. These shortcomings contribute to the persistence of corruption in public and business sectors, with preventive measures proving largely ineffective, especially in vulnerable sectors such as healthcare and agriculture (EC, 2023).

3. Transparency and Media Independence

Albania's legal framework for access to information exists but remains underdeveloped in practice. Public procurement processes and financial management are often opaque, further reducing transparency in government operations. For instance, the approval of Albania's 2024 budget in November 2023 was marred by protests in parliament, highlighting the political instability surrounding critical government decisions. While the Albanian constitution guarantees freedom of expression, the Council of Europe (2022) notes that media independence is severely compromised. The concentration of media ownership among political and business elites limits the ability of the press to act as an independent check on corruption. Journalists face threats, including job insecurity, low salaries, and even physical violence, which undermines the media's potential to hold the government accountable.

4. Informal Payments and Corruption in Public Services

Informal payments, especially in sectors like healthcare, remain a widespread manifestation of corruption in Albania. OSCE (2021) research indicates that informal payments are especially burdensome for the poorest segments of society. Existing complaint mechanisms for reporting corruption are underutilized, as citizens lack trust in state institutions and believe that reporting corruption will lead to no meaningful consequences. Cultural factors, such as a normalization of corrupt practices, further prevent individuals from reporting corruption, particularly when they perceive it as a minor offense or believe they will gain no benefits from reporting it (Husted, 1999). This lack of accountability reinforces the persistence of corruption, particularly in rural areas, where economic hardships make such practices more entrenched (Olken, 2007).

5. Relevance for Rural Development

The persistence of corruption poses significant challenges for rural development in Albania. Rural areas, which already face economic constraints, are disproportionately impacted by corruption. This undermines efforts to improve infrastructure, access to services, and economic opportunities for farmers. Corruption within public services, such as healthcare and agricultural subsidies, prevents rural communities from accessing essential resources for sustainable development. A notable case of corruption involving EU funds for rural development highlights these challenges. Investigations by OLAF into misuse of IPARD II funds, which were meant to modernize the Albanian agricultural sector, uncovered serious

irregularities, including inflated prices, rigged contracts, and the requirement for grant applicants to pay a large portion of their funds to 'pre-selected' consultancy firms. These findings demonstrate how corrupt practices prevent the effective use of development funds intended for rural progress.

The continued lack of transparency and accountability in government operations hinders local capacity-building efforts, exacerbates inequality, and limits long-term economic growth. Corruption perpetuates a cycle of poverty and underdevelopment in rural communities, making it even harder for them to escape economic marginalization.

6. Study Focus

This study aims to explore the complex relationship between corruption and rural development in Albania. By examining how corrupt practices limit opportunities for farmers and rural communities to access essential services, government support, and development programs, the study seeks to highlight the need for stronger institutional reforms, enhanced transparency, and greater media independence. In particular, it focuses on how these factors contribute to the sustainability of rural development efforts and calls for more effective anti-corruption measures to promote long-term growth in Albania's rural regions.

2. Literature Review: The Impact of Corruption on Rural Development

Corruption remains a significant obstacle to rural development, undermining institutional integrity, economic opportunities, and social equity, particularly for rural communities. In this section, we review relevant theories that provide a framework for understanding the multifaceted effects of corruption on rural development. Specifically, we will examine **Power Asymmetry Theory**, **Weak Institution Theory**, and **Dependency Theory**.

Power Asymmetry Theory focuses on how corruption exacerbates inequalities by favoring the politically connected and those benefiting from corrupt systems, while sidelining ordinary farmers from vital development opportunities and institutional support (Mauro, 1995; Rose-Ackerman, 1999; Mungiu-Pippidi, 2015). Corruption leads to the exclusion of less powerful individuals, reinforcing unfair power structures that hinder equitable development in rural areas (Olken & Pande, 2011). In the case of Albania, for instance, political ties often determine access to agricultural subsidies or other forms of institutional support, sidelining many rural residents. The theory of power asymmetry is crucial in understanding how corruption in Albania's rural areas marginalizes farmers, especially in a context where access to resources is often contingent on political affiliation. Studies have shown that such power dynamics undermine farmers' ability to access essential services, perpetuating inequality and stifling development.

Weak Institution Theory posits that corruption weakens the institutions responsible for governance, ultimately undermining rural development. North (1990) and Acemoglu & Robinson (2012) highlight how weak, corrupt institutions fail to provide the necessary structures for supporting economic growth and social stability. Corruption hampers service delivery, reduces transparency, and discourages investment, all of which are crucial for development, especially in rural areas (Rothstein, 2011; Rose-Ackerman, 1999). In Albania, the weakness of rural institutions, compounded by corruption, severely limits the effectiveness

of governance and service delivery in agriculture and rural development. Corruption is a major barrier to accessing subsidies, financing, and other institutional support needed for sustainable rural development. This directly relates to weak institutional frameworks that fail to protect citizens' rights and ensure equitable growth.

Dependency Theory, as articulated by Andre Gunder Frank (1966), argues that underdevelopment is not simply the absence of development but is actively created by exploitative relationships between dominant and dependent groups. Cardoso and Faletto (1979) extended this by showing how internal elites, in collaboration with external powers, perpetuate systems of dependency that exploit rural economies. Corruption is central to this process, as it reinforces these unequal structures. In Albania, the rural economy is often heavily dependent on informal networks that perpetuate corruption, such as in land disputes or access to state resources. The theory of dependency helps explain how these relationships limit rural growth and foster an environment where political and economic elites maintain control over resources, leaving rural populations vulnerable to exploitative practices.

Rose-Ackerman's foundational works (Corruption and Government: Causes, Consequences, and Reform, 1999; Rose-Ackerman & Palifka, 2016) highlight the systemic nature of corruption and its impact on public decision-making. These insights are crucial in understanding how entrenched corruption affects rural governance in Albania. Similarly, North (1990) emphasizes how weak institutional frameworks foster environments conducive to corruption, particularly in regions with limited accountability mechanisms.

Huntington (1968) explores how political transitions exacerbate corruption, particularly in societies where traditional and modern structures coexist uneasily—a relevant context for Albania's democratic and economic transition. Mungiu-Pippidi (2015) and Persson, Rothstein, and Teorell (2013) argue that systemic corruption represents a collective action problem, where the widespread societal acceptance of corrupt practices prevents effective reform. Persson et al. (2013) emphasise that traditional anti-corruption strategies often fail because they assume that individuals act as rational agents in isolation, whereas systemic corruption is sustained by entrenched social norms. This perspective is particularly relevant for Albania, where rural communities often perceive corruption as an inevitable part of governance due to weak institutional enforcement and limited alternatives. Further, Treisman (2007) links corruption to weak governance and low trust levels, both of which are pressing issues in many rural regions. Rothstein (2011) builds on this, exploring how corruption erodes social cohesion and trust in public institutions, essential elements for effective rural development.

The economic implications of corruption are extensively documented. Mauro (1995) identifies corruption as a barrier to economic growth, reducing investment incentives and distorting resource allocation. Olken and Pande (2011) analyze its unique challenges in developing countries, where corruption disrupts market mechanisms and the provision of public goods. Xhindi and Gjika (2023) highlight these dynamics in the Western Balkans, emphasizing systemic governance challenges that disproportionately affect Albania's rural areas.

Hellman et al. (2000) introduce the concept of "state capture," where private interests significantly influence public policies—a phenomenon evident in Albania's governance challenges. Tanzi (1998) expands on the economic cost of corruption, illustrating its role in undermining state capacity and increasing rural poverty.

Kaufmann et al. (1999) and Olken (2007) provide empirical evidence showing that corruption siphons funds meant for rural development projects, perpetuating poverty cycles. These issues are exacerbated in Albania by high rates of emigration and weak infrastructure.

Strengthening governance and accountability is vital for mitigating corruption and fostering rural development. Transparency International's reports (2020, 2023) and the European Commission's Albania Reports (2020, 2023) highlight the structural issues hindering Albania's institutional progress, such as state capture and undue political influence. Andersson and Heywood (2008) argue for increased transparency and robust public monitoring mechanisms to enhance governance in rural areas.

The link between corruption and economic development has been widely explored in the literature. Fisman and Svensson (2007) examine whether corruption and taxation truly hinder economic growth, showing that the relationship is complex, but ultimately corruption remains a significant barrier to long-term development. They highlight that while corruption may initially provide short-term economic gains, its long-term effects are detrimental, especially in regions with weak institutions and governance structures. In this context, Imami, Pugh, and Lami (2024) provide insights into how fiscal enforcement and electoral dynamics intersect in highly corrupt settings, where fiscal policies are often manipulated to serve political agendas. These dynamics exacerbate developmental disparities, particularly in rural areas like Albania, where governance weaknesses allow corruption to distort resource allocation and hinder equitable growth.

This is particularly relevant for rural Albania, where corruption distorts market mechanisms, impacting investments and access to public goods. Such findings underscore the critical need for institutional reforms and the implementation of robust fiscal policies to counteract corruption's far-reaching effects.

Similarly, Galtung (2006) discusses how corruption acts as a tax on development, diverting resources away from productive uses and preventing the equitable distribution of wealth. His analysis underscores how corrupt practices increase the costs of public services and infrastructure development, a crucial concern for rural areas in Albania, where infrastructure challenges are compounded by systemic corruption.

Ghani and Lockhart (2008) argue that the failure of states to effectively manage corruption and implement reform leads to the destabilization of rural economies. Their framework on rebuilding fractured states highlights the necessity of strong institutions for development, particularly in post-conflict and transitional settings, such as Albania. The authors assert that governance reforms are pivotal for improving rural development, suggesting that a failure to address corruption hinders sustainable growth. Paldam (2002) explores the cross-country patterns of corruption, highlighting how cultural and economic factors interact in shaping corruption levels. His concept of "seesaw dynamics" suggests that attempts to reduce corruption in one domain often shift it to another, rather than eliminating it entirely. This dynamic is particularly relevant to Albania, where anti-corruption initiatives may push corrupt practices into informal or less visible areas, especially in rural regions with limited oversight.

Haggard and Tiede (2011) extend this argument by demonstrating how the "rules of the game" in certain countries can either inhibit or foster development, particularly in the context of governance. They show that Asian developmental states were able to overcome corruption

through strict institutional controls, suggesting that similar measures could benefit Albania's rural regions, where corruption and weak governance are particularly pervasive.

The concept of "quality of government" discussed by Holmberg, Rothstein, and Nasiritousi (2009) is also crucial for understanding the impact of corruption in rural Albania. They argue that when governments fail to provide high-quality services or maintain trust, development efforts are thwarted. In rural areas, this lack of trust in institutions undermines efforts to promote sustainable agricultural practices, further exacerbating inequality. The relationship between the quality of governance and corruption is a central theme in understanding development dynamics. La Porta, Lopez-de-Silanes, Shleifer, and Vishny (1999) emphasize the importance of government quality, arguing that countries with better governance systems tend to experience stronger economic performance. They propose that the roots of corruption lie in weak institutions, which fail to enforce rules, leading to a lack of accountability. Comparative studies provide valuable lessons for Albania. Fazekas et al. (2014) demonstrate how targeted transparency measures enhance governance. Klitgaard (1988) emphasizes the importance of integrity in public administration to combat systemic corruption.

The authors' argument aligns with Fisman and Svensson (2007), who suggest that poor governance exacerbates inequality by discouraging investment and inhibiting the proper allocation of resources. The quality of government, therefore, directly influences rural development outcomes, particularly in regions like Albania, where governance reform is essential for addressing both corruption and economic underperformance. Their analysis suggests that corruption can lead to inefficiencies in resource allocation and dissuade investment, challenges particularly evident in rural areas where development initiatives are often stifled by governance issues. This argument complements the observations by You and Khagram (2005) on corruption's exacerbation of social inequality and barriers, as well as Anderson and Tverdova (2003) on the erosion of public trust in rural communities. Dixit (2012) further elaborates on how economic inequality influences political power, which can perpetuate corruption and limit equitable development in rural areas.

These studies collectively contribute to the understanding that effective governance and the reduction of corruption are critical for rural development. Addressing corruption in Albania requires comprehensive institutional reforms and a commitment to improving the quality of government, as these are central to fostering trust and ensuring that resources are allocated to the most critical development needs.

Peiffer and Rose (2018) underscore the role of community engagement in successful anti-corruption campaigns. For Albania, fostering local participation in governance processes is key to sustainable rural development. Heeks (2011) adds that adopting digital tools for transparency could significantly strengthen anti-corruption efforts in the country's rural regions.

The social dimensions of corruption are particularly pronounced in rural settings. Sik (2009) examines the social structure of corruption, shedding light on how societal norms, networks, and relationships influence corrupt behaviours. He emphasises that corruption is not merely an individual failing but often embedded within the social and economic structures of a community. In the context of rural Albania, where tight-knit communities and informal networks play a significant role in daily governance, this perspective is particularly pertinent. Understanding the relational dynamics that facilitate corruption is crucial for designing

effective reforms aimed at fostering transparency and accountability in these regions. Husted (1999) and Chêne (2018) discuss how corruption disproportionately affects women, especially in patriarchal rural societies. In Albania, the OSCE (2021) highlights the gendered impact of corruption, emphasizing challenges such as limited access to healthcare, education, and resources for rural women.

Sachs et al. (2019) argue that achieving the Sustainable Development Goals (SDGs) necessitates addressing corruption as a core barrier. Lee and Chang (2011) explore the intersections of corruption, technological inclusion, and rural development, highlighting the potential for ICTs to foster more equitable resource distribution. These insights are particularly relevant for addressing Albania's digital divide in rural areas. Hamann et al. (2023) discuss how governance corruption derails environmental and energy transitions—an essential consideration for Albania's rural development agenda.

Further, Andersson and Heywood (2009) show that regional cooperation and alignment with international anti-corruption standards can drive reforms. Albania could benefit from EU integration processes to strengthen its rural development policies.

The literature highlights corruption's multifaceted impact on rural development, encompassing economic, social, and institutional dimensions. For Albania, addressing corruption requires a comprehensive approach, combining institutional reforms, enhanced transparency, and community empowerment. Future research should focus on localized solutions tailored to Albania's unique challenges, while leveraging international best practices to build resilient governance systems.

Relevance to the Research: Theoretical Framework in Albania

The theories reviewed provide an insightful lens for analyzing the impact of corruption on rural development in Albania. By applying Power Asymmetry, Weak Institution, and Dependency Theories, this study aims to explore how corruption disrupts the potential for equitable growth in rural communities. Specifically, the study will investigate the role of institutional corruption in exacerbating inequality in Albanian rural areas, where a lack of transparency and weak governance often result in the exclusion of farmers from development opportunities. Additionally, the research will examine how corruption contributes to the dependency of rural areas on informal networks, which undermines sustainable development and economic autonomy.

3. Methodology

This research follows a quantitative data collection technique to provide a comprehensive analysis of corruption's impact on rural development in Albania. The study aims to examine the perceptions of corruption and its effects on rural communities, with a particular focus on the role of social media and traditional media in shaping public perceptions.

1. Research Design

This study adopts a **descriptive research design** to explore the relationship between corruption and rural development. Descriptive analysis will be used to map the current state of corruption, the functioning of institutions, and the use of media in rural areas. Additionally,

comparative analysis will be conducted to compare different regions in Albania, taking into account factors like local governance, infrastructure, and access to information.

2. Sample Selection

The sample for this study consists of **farmers and local government employees**. These participants were selected through **stratified random sampling** to ensure that individuals from different sectors and regions are represented. A total of **131 respondents** were surveyed. The areas covered in the study include **Tirana, Fier, Berat, and Lushnje**, with a focus on both urban and rural settings.

3. Data Collection Methods

A **questionnaire** was developed to collect quantitative data on the perceptions of corruption and its impact on rural development. The survey includes closed-ended questions with Likert scale ratings to capture the intensity of respondents' perceptions and experiences. Topics covered include:

- **Corruption Perceptions** in local governance, public services, and access to development programs.
- **Impact of Corruption on Rural Development**
- **The Role of Media and Social Networks** in shaping perceptions of corruption.
- **Engagement in anti-corruption initiatives** and the role of the media in facilitating or hindering such efforts.
- **Anti-Corruption Strategies**

4. Data Analysis

The quantitative data were analysed using a combination of descriptive and inferential statistical techniques: Descriptive Statistics: Frequencies, means, and standard deviations were calculated to summarise the data and provide an overview of responses; Inferential Statistics: Correlation Analysis: Explored relationships between key variables, such as the connection between media usage and perceptions of corruption or the link between education levels and anti-corruption awareness; Regression Analysis: Examined relationships between variables, such as the impact of corruption on rural development and the moderating effects of social and traditional media use; ANOVA (Analysis of Variance): Assessed differences across regions to uncover variations in perceptions and experiences of corruption. The dataset includes responses to survey questions measuring perceptions and experiences of corruption. Key variables analyzed are: Perceived prevalence of corruption, Personal encounters with corruption, Payment of bribes for public services, Perceived impact of corruption on economic development, Perceived impact on infrastructure quality, Perceived hindrance to investment. Each response was numeric, with Likert-scale data representing the level of agreement or frequency. Data were grouped into four areas: Berat, Fier, Lushnje, and Tirana. For each variable, ANOVA was conducted to determine if the mean scores differed significantly between regions. Null Hypothesis (H_0): The means across regions are equal. Alternative Hypothesis (H_1): At least one region's mean differs from the others. Results were considered statistically significant at a p-value < 0.05.

These methods enabled a deeper understanding of the dynamics of corruption at the local level, particularly within rural contexts, providing valuable insights for targeted interventions and policymaking.

5. Ethical Considerations

Participants were informed about the purpose of the study, and their consent was obtained before participation. The study ensures confidentiality and anonymity of respondents, with all data securely stored and used solely for research purposes.

6. Limitations

The study's limitations include the potential for **response bias**, particularly in regions where participants may be hesitant to report corruption due to fear of retaliation. Additionally, the focus on specific regions may limit the generalizability of the findings to other parts of Albania. Finally, the self-reported nature of the data may not fully capture the extent of corruption in rural areas.

4. Discussion of Results

The demographic data collected from the survey provide insights into the characteristics of the participants, most of whom are farmers. This demographic overview provides context for understanding the survey responses and interpreting regional and thematic differences.

Table 1: Demographic Summary

Demographic Indicator	Categories	Percentage (%)
Gender Distribution	Male	60%
	Female	40%
Age Groups	18-30 years	20%
	31-50 years	50%
	51 years and above	30%
Educational Level	Primary Education	25%
	Secondary Education	50%
	Higher Education	25%
Regional Distribution	Berat	25%
	Fier	30%
	Lushnje	20%
	Tirana	25%
Occupation	Farmers	75%
	Other (traders, public employees)	25%
Experience with Development Programs	Participants	35%
	Non-participants	65%

Source: Authors' elaboration

The demographic data from the survey reveals that the participants are primarily male (60%), with a significant portion in the 31-50 age range (50%). Education levels are mostly secondary (50%), and most participants are farmers (75%). The sample is evenly distributed across the four areas (Berat, Fier, Lushnje, Tirana).

Additionally, 65% of respondents have not participated in rural development programs. This demographic profile provides a foundation for understanding regional and thematic differences in perceptions of corruption and rural development.

Impact of Education: Respondents with higher education (25% of the sample) are more likely to perceive corruption as a systemic barrier to development. Spearman's Correlation shows a positive relationship ($\rho = 0.45$, $p < 0.05$) between education level and awareness of corruption's systemic impact. Respondents with higher education are more likely to identify corruption's role in hindering infrastructure development and economic growth. Farmers, representing 75% of the sample, with primary or secondary education report higher sensitivity to corruption's impact on agricultural services.

Role of Profession: Farmers, being the majority group, express significant concerns over corruption in accessing agricultural subsidies and land management services. Point-Biserial Correlation reveals that farmers ($\rho = 0.39$, $p < 0.05$) are more sensitive to corruption's economic implications compared to non-farmers. Traders and public employees exhibit comparatively less concern about direct experiences of corruption. Gendered Experiences of Corruption: Female respondents report a higher frequency of corruption encounters (44.07%) compared to males (36.62%). This difference may reflect distinct social roles and exposures.

Analysis of Regional Differences in Corruption Perceptions and Experiences

This analysis examines regional differences in the perception and experience of corruption across four areas: Berat, Fier, Lushnje, and Tirana. The analysis of survey results reveals several regional differences in perceptions of corruption. Perceptions of corruption are uniformly high across regions, suggesting a nationwide concern about governance and integrity in public services.

Figure 1: Perception of Corruption by Area

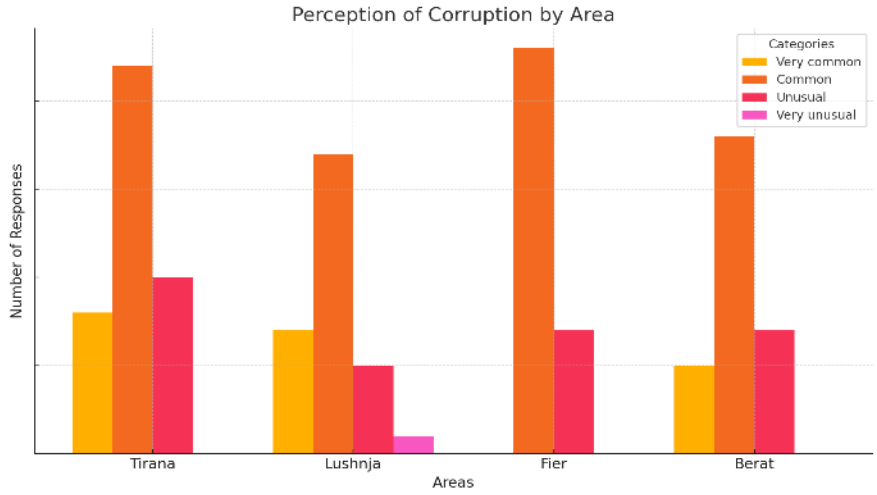


Figure 1 illustrates perceptions of corruption across four areas: Tirana, Lushnja, Fier, and Berat. Response categories include "Very common," "Common," "Unusual," and "Very unusual." The majority of respondents in all areas rated corruption as "Common," while the lowest percentage of responses fell into the "Very unusual" category. This suggests that corruption is widely perceived as a prevalent issue in most of these areas. A significant 60% of respondents have personally encountered corruption in their agricultural or economic activities,

while 40% have not. This suggests that a majority of individuals in the surveyed areas have experienced corruption in their professional lives.

Figure 2: Percentage of People Who Experienced Corruption in Different Areas

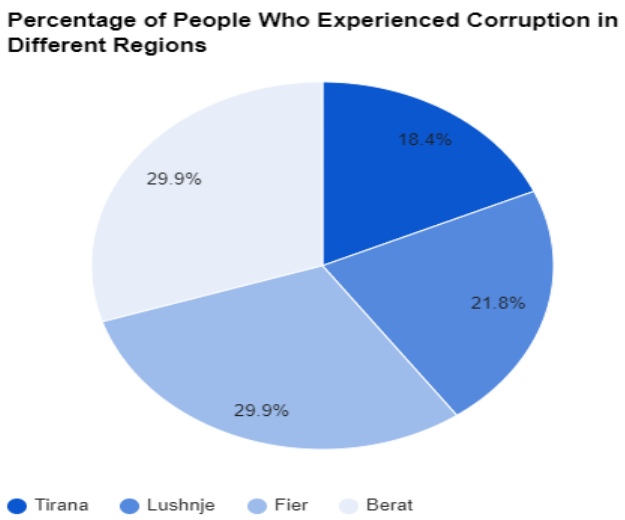
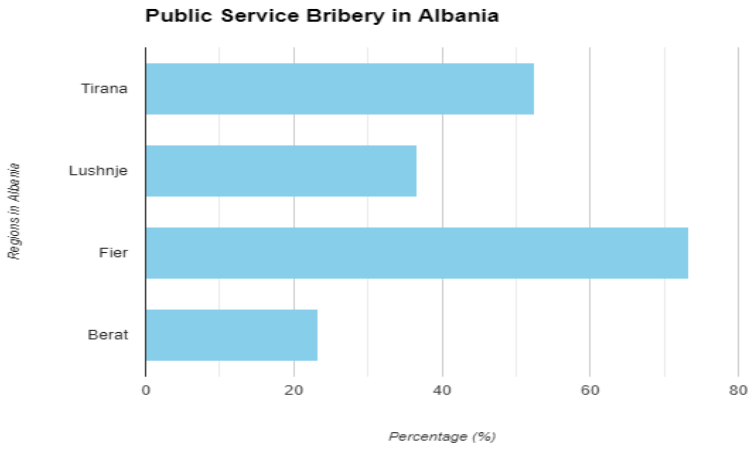


Figure 2 illustrates the proportion of individuals who have encountered corruption in various regions. It reveals that Tirana has the lowest incidence of reported corruption at 45%, while Fier and Berat exhibit the highest rates at 73% each. Lushnje falls in the middle with 53% of respondents acknowledging experiences with corruption. Overall, the data suggests that corruption is a prevalent issue across all regions, with Fier and Berat demonstrating notably higher levels.

Figure 3: Public Service Bribery in Albania



While no significant differences were found regarding the perceived prevalence of corruption, the payment of bribes for public services showed significant variation, with Fier and Tirana reporting higher frequencies.

The table 2 presents a comprehensive analysis of regional differences in perceptions of corruption, focusing on various factors such as education, frequency of encounters, and sectors most affected by corruption. It highlights that all regions show positive correlations between education and corruption perception, with Fier exhibiting a stronger correlation. In terms of corruption encounters, females report higher frequencies than males across all regions. Health is consistently identified as the sector most affected by corruption, followed by agriculture and public administration. The analysis also shows that a significant percentage of respondents in all regions agree that corruption hinders investment, with Lushnje showing the strongest consensus. Suggested anti-corruption measures vary across demographics, with younger individuals emphasizing education and transparency, while older respondents prioritize legal reforms.

Table 2: Regional differences in perceptions of corruption

Region	Correlation Between Education and Corruption Perception	Frequency of Corruption Encounters	Sectors Most Affected by Corruption	Impact on Investment	Common Consequences of Corruption	Suggested Anti-Corruption Measures
Tirana	Positive (0.39): Moderate correlation.	36.62% of males, 44.07% of females.	Health (most frequent), followed by Agriculture.	Highest mean response (1.20); 80% believe corruption hinders investment.	Lack of investments, reduced opportunities for economic growth.	Legal reforms, transparency, education about rights.
Lushnje	Positive (0.34): Moderate correlation.	Higher encounter rates in older age groups.	Health (most frequent), followed by Agriculture.	Lowest mean response (1.03), but 96.7% agree corruption hinders investment.	Poor infrastructure, difficulty in obtaining subsidies.	Community education, monitoring, transparency.
Fier	Strong positive (0.60): Higher education linked to greater perception.	Similar frequency for both genders.	Public Administration (most frequent), Health significant.	Mean response 1.07; 93.3% agree corruption hinders investment.	Barriers to accessing loans, deterioration of infrastructure.	Strengthening laws, internal monitoring.
Berat	Positive (0.31): Moderate correlation.	Encounters are more balanced across demographics.	Health (most frequent), Agriculture follows.	Mean response 1.17; 83.3% agree corruption hinders investment.	Reduced development opportunities, lack of financial support.	Transparency, strengthening local governance.

Source: Authors' elaboration

The ANOVA results highlight significant regional differences in certain aspects of corruption. Notably, disparities are observed in personal encounters with corruption, payment of bribes for public services, and the perceived impact on infrastructure quality. Significant

differences are also evident in access to agricultural services and financial support, particularly between Berat, Fier, and Lushnje. Conversely, no significant regional differences are found in the perceived prevalence of corruption, its impact on economic development, or its hindrance to investment. These findings underscore the need for targeted approaches to address corruption's varied effects across regions (table 3).

Table 3: ANOVA analysis on Regional differences

Variable	F-value	p-value	Significant?	Key Observation
Perceived Prevalence of Corruption	1.23	0.308	No	No significant regional differences.
Personal Encounters with Corruption	3.03	0.0319	Yes	There are significant differences in personal encounters with corruption among the regions.
Payment of Bribes for Public Services	6.26	0.0005	Yes	There is a significant difference in the payment of bribes between Berat and Fier (p-adj = 0.0004). There is also a significant difference between Fier and Lushnje (p-adj = 0.0168).
Impact on Economic Development	1,17	0.3231	No	There are no significant differences in the perceived impact of corruption on economic development among the regions.
Impact on Infrastructure Quality	7.46	0.0001	Yes	There is a significant difference in infrastructure quality between Berat and Fier (p-adj = 0.0001). There is also a significant difference between Fier and Lushnje (p-adj = 0.0024). Other comparisons do not show significant differences, as indicated by p-values greater than 0.05.
Hindrance to Investment	1.98	0.1208	No	There are no significant differences in the perceived hindrance to investment among the regions.
Impact on access to agricultural services and financial support	13.18	1.54	Yes	There are significant differences in access to agricultural services and financial support between Berat and Fier, and between Berat and Lushnje. The differences between Fier and Lushnje, as well as between Fier and Tirana, are also significant. Other comparisons do not show significant differences, as indicated by p-values greater than 0.05.

Source: Authors' elaboration

The role of media and social networks in combating corruption is strongly supported across all regions, with significant emphasis on disseminating information and organizing awareness campaigns. The majority of respondents (91%) believe that media and social networks can play a significant role in fighting corruption, with Fier shows unanimous support for the role of media and social networks, while Tirana and Berat exhibit slightly more scepticism. Preferred methods include: Disseminating information on corruption cases; Organising awareness campaigns; Encouraging community participation in reporting corruption.

Table 4: The Role of Media in Addressing Corruption and Promoting Rural Development

Aspect	Social Media	Traditional Media
Primary Source of Information	- Used by 50% of respondents. - Accessible, interactive, and real-time sharing.	- Used by 30% of respondents. - Provides in-depth news and analysis.
Strengths	- Easy access and quick updates. - Interactive platform for awareness campaigns.	- Higher perceived reliability due to fact-checking. - Comprehensive coverage of key issues.
Weaknesses	- Risk of misinformation. - Lack of fact-checking mechanisms.	- Limited accessibility in rural areas. - Often less focused on local issues.
Perceived Role in Awareness	- Effective for spreading quick messages. - Encourages participation in discussions.	- Informative for detailed analysis. - Supports public education on governance issues.
Trust Issues	- 35% highlight misinformation concerns. - 25% report political manipulation.	- Less dynamic but still affected by political influences in some cases.
Impact on Rural Development	- Encourages citizen participation. - Highlights local issues and promotes initiatives.	- Facilitates transparency in policy promotion. - Builds trust in government programs.

Source: Authors' elaboration

This structured table (4) provides a clear comparison of the roles, strengths, and weaknesses of social media and traditional media in the context of corruption and rural development. The survey data shows that social media is the primary source of information for around 50% of respondents, offering accessibility, interactivity, and real-time updates but also posing risks of misinformation. Traditional media, relied upon by 30%, is seen as more reliable due to stricter fact-checking, though it faces limitations in rural areas and focuses less on local issues. Regarding the media's role, 70% believe it is key in educating the public about corruption, while 40% see social media as encouraging participation. However, 35% express concerns over misinformation and 25% feel media is politically influenced. Both media types are recognized for promoting rural development, with 60% supporting their role in transparency and policy advocacy.

5. Conclusions and Recommendations

The analysis reveals significant insights into corruption perceptions and experiences across different regions and demographics. Education plays a crucial role in shaping individuals' awareness of corruption, with those holding higher education perceiving corruption as a more systemic barrier to development. Farmers, who represent the majority of respondents, show heightened sensitivity to corruption's impact on agricultural services and subsidies, compared to non-farmers. Regionally, while corruption is perceived as widespread across all areas, Fier and Berat stand out with notably higher frequencies of personal encounters, as well as issues related to

bribery and infrastructure quality. Health, agriculture, and public services providers are consistently identified as the sectors most affected by corruption. The findings also highlight the important role of media and social networks in combating corruption, with 70% of respondents acknowledging their effectiveness in raising awareness and advocating for transparency. However, challenges such as misinformation in social media and limited accessibility to traditional media in rural areas must be addressed. The results suggest that anti-corruption strategies should be tailored to specific demographic and regional needs, focusing on education, transparency, and legal reforms, while also strengthening infrastructure and addressing regional disparities to mitigate corruption's detrimental effects on rural development.

Addressing the research questions, this study finds:

Perception of Corruption by Stakeholders in Rural Communities: Corruption is widely perceived as a significant issue in rural communities, particularly among farmers and local government officials. Farmers, who make up the majority of respondents, report frequent encounters with corruption, especially in accessing agricultural subsidies and services. Local government officials also acknowledge corruption but often exhibit varying levels of engagement with anti-corruption measures, suggesting that it is both a systemic and culturally ingrained issue within rural governance.

Impact of Corruption on Rural Development: Perceptions of corruption significantly influence rural development, particularly in economic growth, access to agricultural resources, and infrastructure quality. Farmers with higher education levels are more likely to recognize corruption as a barrier to economic development and infrastructure improvements. Corruption hampers access to agricultural resources, such as subsidies and other financial support, which further affects the ability of rural communities to thrive. This results in stagnated growth, poor infrastructure, and limited opportunities for economic advancement.

Regional Disparities in the Impact of Corruption: Regional disparities play a crucial role in shaping how corruption impacts rural development. Fier and Berat show the highest frequencies of corruption encounters, with corruption affecting critical areas such as public services providers and agriculture. Significant differences are also evident in access to agricultural services and financial support, particularly between Berat, Fier, and Lushnje. Tirana, in contrast, reports lower corruption levels, likely due to its urban nature and stronger governance systems. These regional differences suggest that targeted anti-corruption efforts are needed to address the specific needs and challenges faced by rural areas.

Role of Media in Shaping Public Perceptions: Both social media and traditional media significantly shape public perceptions of corruption. Social media is widely used, particularly in rural areas, to disseminate information about corruption, although it faces challenges like misinformation and political manipulation. Traditional media, though more reliable in terms of fact-checking, is less accessible in rural regions and focuses less on local issues. Despite these limitations, both forms of media play an essential role in raising awareness and fostering public discussions about corruption and governance issues in rural communities.

Strategies to Reduce Corruption and Promote Transparency: Effective anti-corruption strategies must be tailored to the specific needs of rural communities. Key strategies include enhancing education about rights and transparency, strengthening legal frameworks, and promoting community participation in governance. The role of media—particularly social media—should be harnessed to promote transparency and accountability. Additionally, strengthening local governance and ensuring more effective monitoring mechanisms can help reduce corruption and build trust in public institutions.

Key Recommendations:

Addressing the pervasive issue of corruption and its impact on rural development requires a comprehensive and multi-dimensional approach. The following strategies are proposed to tackle this challenge effectively:

Firstly, strengthening governance is of utmost importance. Albania's Anti-Corruption Agency must be equipped with the capacity and resources necessary to address corruption cases, particularly those affecting rural areas. Judicial independence should be fortified to ensure enforcement is free from political interference. Furthermore, implementing transparent public procurement processes, particularly for infrastructure development in rural regions, is essential to prevent the mismanagement of resources and restore trust in public institutions.

Empowering rural communities is critical to combating corruption sustainably. Establishing community-based monitoring systems can provide citizens with a safe and effective means of reporting corrupt practices. Moreover, participatory budgeting initiatives should be introduced, enabling rural residents to have a direct voice in financial decisions that impact their communities. These measures not only increase transparency but also foster a sense of ownership and accountability within rural populations.

Public awareness must also be prioritised. Social media, with its extensive reach and interactive capabilities, should be utilised to disseminate anti-corruption campaigns tailored to rural audiences. These campaigns should focus on spreading clear and factual information to counter misinformation. Simultaneously, traditional media should continue to serve as a reliable source of in-depth reporting and analysis, helping to educate the public about the far-reaching consequences of corruption. To enhance the efficacy of these efforts, media literacy programmes should be rolled out in rural areas, empowering citizens to critically evaluate information and identify trustworthy sources.

Given the regional disparities revealed in this study, targeted interventions are essential. to effectively combat corruption and promote sustainable rural development. The findings highlight that regions like Fier and Berat experience higher levels of corruption, particularly in areas such as public administration, agriculture, and infrastructure, while Tirana exhibits lower levels of corruption due to its more developed governance systems. To address these regional challenges, interventions should be tailored to the specific needs and vulnerabilities of each area. This includes strengthening local governance, improving transparency, enhancing education about anti-corruption measures, and ensuring better access to agricultural resources and financial support. Additionally, media, both traditional and social, should be leveraged to raise awareness, combat

misinformation, and encourage public participation in anti-corruption initiatives. Such region-specific approaches will help foster a more equitable and transparent development process across rural communities in Albania.

The agricultural sector, a cornerstone of rural livelihoods, demands particular attention. Simplifying the processes for allocating agricultural subsidies is vital to reducing opportunities for corruption and ensuring farmers receive timely and fair support. Establishing an independent oversight body to monitor the distribution of agricultural resources will further promote equity and transparency, reinforcing farmers' trust in government programmes.

Finally, fostering collaboration across sectors is essential. Partnerships among civil society, academic institutions, and international organisations can provide the expertise and resources necessary to design and implement holistic anti-corruption policies. These policies must address the legal, economic, and cultural dimensions of corruption to ensure meaningful and lasting change. By working together, stakeholders can create a robust framework to mitigate corruption and support sustainable rural development.

In conclusion, while these recommendations require a concerted effort, political will, and sustained commitment, their implementation is essential to overcoming the barriers posed by corruption. By prioritising governance reforms, community empowerment, and public awareness, Albania can pave the way towards equitable development, enhanced trust in institutions, and a more prosperous future for its rural communities.

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STRENGTHENING UNIVERSITY TEACHING THROUGH FACULTY DEVELOPMENT: STRATEGIES TO REDUCE THE GAP BETWEEN RESEARCH AND TEACHING IN ITALIAN UNIVERSITIES IN LINE WITH EUROPEAN POLICIES

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Abstract: *This article intends to reflect on the current state of Italian universities, on new models and perspectives in an attempt to reinforce and promote attitudes and beliefs regarding various aspects of the role of the university lecturer, in accordance with the Guidelines for Quality Assurance in the European Higher Education Area (ESG) adopted by the ministers responsible for higher education in 2005 following a proposal prepared by the European Association for Quality Assurance in Higher Education (ENQA), in cooperation with the European Students' Union (ESU), the European Association of Higher Education Institutions (EURASHE) and the European University Association (EUA). In particular, the aim is to raise awareness of Faculty Developent activities; to establish an ongoing reflection and reconsideration of teaching strategies, with a view to making student learning more and more central.*

Keywords: *University; European policies; teaching; faculty development****;***

Introduction

The evolution of the Italian academic landscape, though rich in tradition and prestige, has undergone a series of substantial transformations over the past decades. From a time when academic research enjoyed primary attention over teaching activity, there has been a gradual shift of focus towards the recognition and enhancement of the pedagogical skills of university lecturers. This shift in perspective has been influenced by an international context in which educational institutions, particularly those in Europe (Yerevan, 2015) (Commission, 2013) (ENQA, 2015) (CRUI, 2014) (QUARC_Docente, 2020), have recognised the need for structural reforms aimed at ensuring high quality higher education that is more oriented towards the needs of contemporary society. The present article aims to explore this paradigm shift in Italian university teaching, focusing on the increasing importance attributed to didactics and the improvement of teachers' teaching skills. Through a historical analysis spanning the period from the 1999 Bologna Process to the present day with the implementation of Faculty Development programmes, we examine the crucial milestones and key initiatives that have contributed to redefining the role and approach to university teacher education and to bridging the gap between research and teaching. From the recognition of the urgency of a specific preparation in the field of teaching-learning, to the promotion of professional development programmes and the creation of centres dedicated to didactic innovation, we will explore the progress made in the Italian context, thanks also to the European policies promoted by ENQA and the strategic

objectives set out in Europe 2020 and Europe 2030. Furthermore, approaches and models adopted at national and international level will be analysed in order to draw lessons and promote an informed discussion on the future direction of higher education in our country. We aim to contribute to awareness of the crucial importance of the quality of university education in shaping the minds and perspectives of future professionals and citizens. In an ever-changing world where knowledge is becoming obsolete at an ever-increasing pace, investing in the training and support of teachers is essential to ensure a high standard of education that is inclusive and adaptable to the needs of the contemporary world.

From academic prestige to reflection on didactics

The figure of the university lecturer, in the common imagination, has often been shrouded in an aura of mystery and secrecy, arousing many questions and curiosity. As David Layton wrote, quoting Mathews in his book "University Teaching in Transition" (Layton, 1963):
«*University teaching may be regarded in the same way as a mystery profession. It is practised as if it were a secret ritual behind closed doors and is not a topic of conversation in polite academic society*».

In the past, it was possible to sustain this view of teaching in many universities, both Italian and foreign, where the idea seemed to be shared that the ability to teach was a kind of post-doctoral gift that was neither appropriate nor necessary to investigate. The transmission of knowledge was considered secondary to self-advancement, and the relationship between teaching and research was clearly unbalanced in favour of the latter (Nicholls, 2007). In the history of Italian university education, the focus on teachers' teaching skills has gone through variations over time. Traditionally, teaching skills and, more generally, teaching competences have not enjoyed the same degree of consideration as they do today; the academic prestige and research reputation of the lecturer assumed greater prominence than his pedagogical abilities. These aspects were commonly valued as fundamental priorities, while the act of teaching was sometimes considered a secondary task, if not a 'necessary evil' to be performed in order to maintain academic standing. In the late 1880s, Pietro Cogliolo (1859-1940) observed how:

«In Italy, the academic body was very little animated by 'class spirit' and did not always adequately fulfil the important educational and training function to which it was called. In his opinion, the lack of didactic activity was mainly explained by the privilege granted by many lecturers to professional practice, to the exercise of liberal professions and sometimes to the pursuit of a brilliant political career. Towards the end of the 1980s, the problem of restoring dignity to the figure of the university lecturer came to occupy an important place in the heated debate underway on the university question; the academic world was going through profound needs for renewal, which had matured first and foremost on the basis of a critical assessment of the actual training and educational capacities offered in Italy by the higher education system. If the basic problem of the Italian university was identified in the poor preparation it gave to the younger generations, it was widely believed that this mainly depended on its distinctly professional character. The widespread discontent and reflection on the problems of the higher education system lasted about thirty years. The debate had experienced its greatest expansion in the late 19th century and was rekindled again towards the end of the Giolitti era. The political and social context had changed profoundly, but the problematic nodes of the Italian university system continued to be more or less the same and, at least until the Gentile reform, would

remain so. The issues around which the professors' reflections had developed were theoretical and pedagogical in nature (such as freedom of teaching and study, the relationship between practical and scientific learning, between the structural characteristics of the higher education system and its formative and educational capacities) and of a more political nature, such as that of the relationship between the state, the university and science. This set of problems was to find in the question of higher education an important point of coagulation. Between the 19th and 20th centuries, it was this that accompanied, and profoundly marked, the formation process of the Italian academic body» (Verrocchio, 1997).

The predilection for research recognised as a primary need of the academy and the lack of attention to learning and teaching, however, has not only characterised past eras. In 2011, Ettore Felisatti wrote: «In the Italian university system, the gap between research and teaching is significant (Felisatti, 2011)». This statement soon triggered many questions: how is it possible that this gap is still tangible in the 21st century? How is it that in other school grades, teaching skills are a sine qua non for entering the teaching profession, while in the university environment this is not the case? What is being done to consider research and teaching as equal? The answers to the above-mentioned questions are not so easy to answer and can only be well understood if one resorts to a bit of history. In the following, a time span from the 1999 Bologna Process to the present day will be analysed in order to understand what initiatives have been taken both at the institutional level and by individual Italian universities in compliance with the European guidelines in the field of higher education.

The evolution of the Bologna process and the need to qualify university teaching in Italy

Over the last two decades, there have been many reforms and notable programmes at the European level that have shown an ever-increasing interest in improving higher education (ENQA, 2015) (EUA, 2018) (Commission, 2013). In particular, stronger ways have been adopted to open universities to the international dimension than in the past, with the shared goal of building the European Higher Education and Research Area. This implied a process of harmonisation and convergence of higher education and research systems involving both national and supranational administrations of European countries. This project is known as the 'Bologna Process', defined in the Bologna Declaration signed on 19 June 1999 by the ministers of 29 European countries (Bologna, 1999). As early as 1997, in the so-called Lisbon Convention, the Council of Europe and UNESCO drew up a convention allowing for the recognition of higher education qualifications acquired in Europe. As is well known, the milestones of this process begin with the Sorbonne Declaration, signed in 1998 by the Higher Education Ministers of Italy, France, Germany and the United Kingdom. Subsequently, the process continued with the Ministerial Conferences in Prague (2001), Berlin (2003), Bergen (2005), London (2007), Leuven (2009), Budapest and Vienna (2010), Bucharest (2012) and Yerevan (2015). One of the main objectives of this Process was to ensure the certifiable quality of higher education provided by individual educational institutions in European countries.

With the Bologna Declaration, the signatory ministers committed themselves to promoting national reforms in order to develop a university system that is convergent at the European level and competitive at the global level (Epasto, 2015). Thus, if at the European level a greater involvement of universities has been evinced, in the Italian reality there has been, on the one hand, a structural modernisation of courses of study, and on the other, there has been no impulse to the active protagonism of communities, teachers and students on didactic issues (Felisatti, 2020). The mainly

normative view of didactics has limited an in-depth understanding of its complexity, neglecting the crucial role of teaching and learning. It has underestimated the fact that without true teaching professionals, effective quality of education cannot be guaranteed. Today, the realisation is strongly emerging that this perspective is essential to truly improve the educational process. The document Standards and Guidelines for Quality Assurance in the European Higher Education Area (ESG) states:

«Responding to diversity and growing expectations for higher education requires a fundamental shift in its provision; it requires a more student-centred approach to learning and teaching, embracing flexible learning paths and recognising competences gained outside formal curricula» ((ENQA), 2015).

The concluding document, signed by the Ministers of Education of the 48 European countries, of the 2018 European Higher Education Area Ministerial Conference also reiterates how, in order to ensure high quality education is essential, academic career progression should be based on both success in research and success in teaching that is of high quality.

"As high quality teaching is essential in fostering high quality education, academic career progression should be built on successful research and quality teachin" (EHEA, 2018)

Being competent in research is essential in order to develop knowledge, contribute to solving the problems of today's society, and formulate theories that explain how the world works. It develops critical competences, forming individuals capable of critical thinking and problem solving, which are essential to face the complex challenges of society. However, this is not enough to make someone a good teacher. As reiterated by the European Science Foundation «While effective teaching is vital for student learning, in higher education, academics in Europe are not as well prepared for their teaching careers as they are for their research» (Pleschová G., 2012). Just as research requires specific preparation, so does teaching require adequate training. It is not enough to possess knowledge in order to be able to transmit it effectively; it is essential to master learning theories and to know various teaching methods to foster different learning styles in students. «Quality teaching implies that the teacher is not simply limited to knowledge of his or her discipline, but that he or she also masters theories of learning and is aware of the existence of multiple teaching methods to foster different learning styles in students» (Commission, 2013). The study Promoting a European dimension to teaching enhancement (EUA, 2017), conducted by the European Forum on Enhanced Collaboration in Teaching (EFFECT) and the European University Association (EUA) clearly shows how in some European countries - including Italy - there are no national Faculty Development strategies dedicated to the promotion of teaching and learning, or more generally to the promotion of teaching. Moreover, in Italy and other European countries, at least until 2015, there were still no national or legislative indications for the promotion and improvement of teaching by university lecturers. The desired renewal of university institutions, however, is taking hold and depends not only on well-conceived educational policies of the competent bodies, but also on the adaptation of structures and resources, and, above all, on the updating of teaching methodologies and the enhancement of teachers' professional skills. It is only through such a wide-ranging transformation that the implementation of education and training services, suited to the needs of a nation that must necessarily keep up with the times, can take place. Times that are accelerating, especially with regard to the ways in which knowledge is acquired and the ever decreasing time it takes to be considered obsolete (Epasto, 2015).

Therefore, reasoning and encouraging didactic qualification, initial and continuous training of university lecturers is one of the fundamental pillars for a global renewal; both of the academic

community and of society itself. A strong push in this direction was given by the ANVUR Governing Board, which, at its meeting held on 3 March 2015, set up a Working Group on the subject of the qualification and recognition of teaching skills in the university system, called QUARC_docente. With this decision, it was intended to develop some strategic guidelines for the enhancement of teaching professionalism and the improvement of the quality of teaching and learning processes (ANVUR, 2018). At this point in time, Italy finds itself confronted for the first time with a system that analyses and focuses on the teaching skills of university lecturers, «Innovative and quality teaching is realised through the reasoned realignment of functions, tasks, resources and structures, where central is the search for multi-perspective correspondences within and outside the system» (ANVUR, 2023). This represents an important step towards an official recognition of the importance of teaching in academia.

As can easily be deduced, reflection on the didactic qualification of university lecturers is a fairly recent issue, but one that is delicate and fundamental in the concerns of the bodies in charge of evaluation, both nationally and internationally. The *Guidelines for the professional development of teachers and strategies for the evaluation of teaching in universities*, published by the ANVUR QuarcDocente working group on 15 March 2018 , draw attention to the need to «raise the level of qualification and evaluation of university teaching, through strategic actions aimed at strengthening the teaching-learning skills of teachers» (ANVUR, 2018), and to deepen and explore new perspectives and actions aimed at enhancing innovation in education, with a focus on the quality assurance and continuous improvement process of universities in an increasingly competitive global context. Further confirming the need to strengthen teaching and learning skills is the establishment of the *Permanent Laboratory on Didactics* within the CRUI association which includes several working groups, including a group dedicated to the topic of "Learning and Teaching," with the aim of creating a network of dialogue between the various universities to improve the quality of the educational pathways offered to students. Similarly, the EUA's 2018 report "Trends 2018: Learning and Teaching in the European Higher Education Area" (EUA, 2018) and the EFFECT project (European Forum for Enhanced Collaboration in Teaching) highlight how national initiatives to boost teaching qualification and initial and continuing training of university teachers still represent a terrain of great heterogeneity within the European Higher Education Area. And they point to experiences in countries such as the United Kingdom and the Netherlands, which have long developed a common framework for the competencies of university lecturers, are models for many EU countries.

Promoting Teaching Innovation to narrow the gap between research and teaching: experience of the University of Molise Talent Center

The baseline condition indicated by international research for innovative teaching emphasizes the urgency of adequate preparation of teachers for teaching-learning activity, taking into account the diverse audiences of students accessing education. One of the main objectives of the Standards and Guidelines for Quality Assurance in the European Higher Education Area (ESG) is to contribute to the common understanding of quality assurance for learning and teaching across borders and among all stakeholders (ENQA, 2015). Indeed, it is required of faculty to be capable of preparing effective environments for student learning (Biggs, 2011) and of the academic community to develop actions to support the qualification of a faculty faced with new and emerging challenges in higher education (Yerevan, 2015). Universities are called upon to strongly support the revision of traditional models

of teaching and invest in the development of professional skills to modernize university teaching and learning (Commission, 2013). In this direction, there is a need to rebalance the relationship between research and teaching and in parallel to adopt devices for appreciating and enhancing the quality of teaching (EUA, 2018). In recent years, there has been a growing awareness in Italy of the need to enhance the teaching skills of university lecturers, especially thanks to the National Agency for the Evaluation of the University System and Research (ANVUR), several universities have initiated pedagogical training programs aimed at their lecturers, recognizing that the quality of teaching is essential to ensure a high level of education. The realization that a good researcher is not necessarily a good teacher is finally catching on, prompting universities to invest in training for their faculty. Recognizing that the quality of education cannot be separated from the qualification of teachers, who must be able not only to transmit knowledge, skills and competencies, but also to create stimulating and inclusive learning environments. This holistic approach aims to balance the importance of research with that of teaching, promoting an academic career model that enhances both dimensions «Teaching needs the discipline and without research it becomes replicative; research, deprived of teaching, loses its ability to affiliate new generations» (ANVUR, 2023). There are many universities that have established Teaching and Learning Centers (Teaching and Learning Centers) that offer courses, workshops and consulting to improve the pedagogical skills of teachers, promoting a more reflective and conscious approach to teaching.

Here I would like to report, in particular, on the Faculty Development activities initiated by the University of Molise. In 2023, the Talent, Teaching and Learning Innovation center was inaugurated. The mission of the TALENT Center is the promotion of initial and continuing training of teachers in the education and training system of all levels through the design and implementation of training and research activities in the educational field aimed at implementing the quality of teaching, with particular reference to the processes of inclusion. It aims to promote the dissemination of innovative teaching methodologies, with particular attention to the student-centered approach (student-centered) and inclusiveness. It is committed to the promotion of forms of research on teaching and learning processes, including through the activation of grants and doctoral studies on issues of university teaching. The University area of the TALENT center is responsible for organizing and coordinating all Faculty Development initiatives at the University of Molise. In particular, interventions are planned on the following areas:

1. **Teacher training for university teaching innovation:**

- workshop training aimed at newly hired faculty for the development of teaching and assessment skills according to a student-centered approach
- workshops and webinars on specific topics related to methods, techniques and tools for teaching and assessment
- self-study training on issues of university teaching.

2. **Support services and development of teachers' teaching skills:**

- syllabus drafting guidance and support for revision of teaching records
- support in the design of blended learning paths
- guidance in the use and selection of technology resources for learning
- support in classroom management and adoption of active learning methodologies

- interpretation of course evaluation results
- implementation of inclusive learning strategies and forms of assessment
- accompaniment and methodological-didactic support for LSCs that want to innovate the teaching of some of their courses

Currently, the Talent Center is in charge of training for the design and delivery of blended learning pathways for faculty members of the Law, New Technologies and Security CoS of the Department of Law. The University of Molise's Talent Center is an important resource for the academic institution, as it is actively engaged in promoting innovation and excellence in university teaching. Through its wide range of initiatives, the Talent Center serves as a hub for the development of faculty teaching skills, the promotion of a student-centered teaching culture, and ongoing research on teaching and learning processes. This commitment not only improves the overall quality of education at the University of Molise, but also contributes to strengthening the reputation and attractiveness of the academic institution, making it a dynamic and cutting-edge place of learning. «The continuous presence of professional development support plans, appropriately supported, monitored and evaluated, becomes a key element of appreciation of educational quality and innovation in universities» (ANVUR, 2023). In this regard, the initiative of the University of Molise's Talent Center emerges as a significant example of investment in pedagogical innovation and faculty professional development. The holistic approach promoted by the Center, which integrates training, support and research, reflects the urgency of adapting university teaching to the emerging needs of students and contemporary society. Its focus on student diversity, educational technology and inclusiveness testifies to a tangible commitment to enhancing the learning experience and promoting the quality of higher education.

Conclusions

The transformation of the Italian academic landscape, from the time when academic prestige dominated over teaching skills to current efforts to enhance university teaching, represents a long journey of change and awareness. Responding to the questions posed at the beginning of the paragraph, it is possible to say that although the focus on teaching is a recent issue, a significant shift to recognize its importance has begun in recent years. Numerous initiatives have been undertaken to enhance the pedagogical skills of university teachers and consider research and teaching with equal dignity. These initiatives include Faculty Development programs, which provide specific training to improve teaching skills, and the establishment of centers for teaching innovation, which support faculty in adopting innovative teaching methodologies. Regarding the evaluation of the teaching skills of university lecturers, in Italy there is still no evaluation system in place to obtain a teaching qualification to enter the teaching profession. In spite of this, in many Italian universities, teaching quality is an element evaluated along with scientific production in teacher evaluation procedures. It remains, however, imperative to think about how to ensure that teaching skills are also considered a fundamental and indispensable criterion for academic career progression. There is a need to develop more effective and objective assessment methods that recognize the value of pedagogical innovation and the impact of teaching on student learning. Possible solutions include the adoption of systematic student feedback tools, the implementation of peer reviews of teaching activity among colleagues, and the integration of mandatory professional development pathways focused on pedagogical competencies. In addition, encouraging faculty participation in workshops, seminars and refresher

courses on teaching and learning can foster an academic culture more attentive to teaching quality.

In parallel, it is crucial for academic institutions to recognize and value the time and effort devoted by faculty members to preparing lectures and adopting innovative teaching methodologies. This recognition can manifest itself not only through evaluation in career procedures, but also through prizes, awards and incentives that make visible the importance attached to teaching quality.

Although there is still a gap between research and teaching, the Italian university is taking important steps to close this gap. Enhancing the teaching skills of faculty members is crucial to ensuring high-quality higher education that is capable of meeting the needs of a rapidly changing society. Investing in the training and support of university faculty will not only improve the quality of teaching, but also contribute to a more balanced and inclusive academic environment where research and teaching are seen as integral and complementary parts of the educational mission. The path to high-quality undergraduate teaching requires a continuous and collective commitment from academic institutions, faculty, and educational policy makers. Only through a culture of university teaching based on innovation, critical reflection and professional updating will it be possible to ensure an educational future that is up to the challenges of the contemporary world. The future of university education in Italy depends on the ability of institutions to recognize and enhance the teaching skills of teachers. The gap between research and teaching can only be bridged through a cultural change that considers teaching an essential component of an academic career. It is essential to continue to promote teaching and technological innovation, implement constructive feedback evaluation systems, and support continuing teacher education. Ultimately, recognizing the importance of teaching skills is not just a matter of professional justice for faculty, but a necessity for the future of the education system. The journey to a balanced, high-quality university system is long and challenging, but the benefits it brings amply justify the efforts required

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REIMAGINING EMPLOYEE WELL-BEING: HOW DIGITAL HEALTH DRIVES THRIVING CULTURES IN ORGANIZATIONS

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Abstract: *As organizations confront increasing challenges such as elevated stress levels and burnout, prioritizing employee well-being has become essential for maintaining productivity and resilience. Presented research article examines the transformative role of digital health tools in enhancing employee well-being and fostering thriving organizational cultures. The study employs a mixed-methods approach, integrating qualitative insights from interviews and focus groups with quantitative survey data from 175 respondents, to assess the efficacy of digital health interventions. Through case studies of companies like Google and Zappos, the paper elucidates successful well-being programs that leverage digital health solutions, such as mindfulness training and holistic wellness initiatives. The findings indicate that organizations implementing these tools not only improve employee engagement and satisfaction but also enhance overall organizational performance. The article concludes by examining the challenges and opportunities associated with the adoption of digital health solutions, emphasizing the necessity for a balanced approach that considers both the advantages and potential disadvantages of technology implementation in the workplace. By prioritizing employee well-being through innovative digital strategies, organizations can cultivate supportive environments that foster resilience and long-term success.*

Keywords: *Employee well-being, digital health technologies for well-being, impact of employee well-being on performance.*

Introduction

Employee well-being has become a critical focus for organizations endeavoring to maintain a competitive advantage in an increasingly complex and dynamic business environment. Empirical research consistently demonstrates the correlation between employee health and organizational outcomes, indicating that healthier employees exhibit higher levels of engagement, productivity, and innovation. As workplaces confront challenges such as elevated stress levels, transitions to remote work modalities, and increasing rates of burnout, fostering employee well-being is no longer optional—it is imperative for organizational resilience and success. Employee wellbeing encompasses a comprehensive range of factors that contribute to an individual's overall health and satisfaction in the workplace. It extends beyond the mere absence of illness, encompassing physical, mental, and social dimensions that collectively enhance an employee's quality of life.

Key Components of employee wellbeing are - physical health - maintaining optimal bodily function through proper nutrition, exercise, and access to healthcare. Organizations frequently promote physical wellbeing through wellness programs, health screenings, and ergonomic workspaces (Enshaei, H., 2018); Mental Health: mental wellbeing refers to an individual's emotional and psychological state. It includes stress management, resilience, and the capacity to cope with challenges. Organizations can support mental health through counseling services, stress management workshops, and creating a supportive work environment (Molnár, C. et al., 2024). Another area of employee wellbeing is social wellbeing - this aspect focuses on the quality of interpersonal relationships within the workplace. Positive interactions with colleagues and a sense of belonging are crucial for social wellbeing. Companies can foster this through team-building activities and open communication channels.

Employee wellbeing also encompasses a balance between work responsibilities and personal life – work-life balance. Organizations that facilitate flexible working hours or remote work options assist employees in managing their time effectively, thereby reducing stress and enhancing satisfaction (Kumar, P.L. et al. 2023). Employee well-being is associated with an employee's engagement with their work and perception of purpose. When employees derive meaning from their tasks and feel valued by their organization, their overall well-being improves. The physical workspace and environmental quality play a significant role in employee well-being. Factors such as indoor air quality, illumination, and acoustic levels can affect comfort and productivity. Organizations are increasingly focusing on creating healthier work environments to enhance employee well-being. In summary, employee well-being encompasses a holistic approach to health that integrates physical, mental, social, and environmental factors. By fostering these aspects, organizations not only improve the quality of life for their employees but also enhance productivity and engagement within the workforce.

Employee well-being is crucial for organizations due to its significant impact on performance, productivity, and overall success. To review several reasons for this - employees with high well-being are more engaged, productive, and energized, directly affecting a company's bottom line (Yocum M.A. & Lawson Md, A.N., 2019).

The health and well-being of employees have a direct correlation to organizational performance. Companies that prioritize employee well-being often observe enhanced organizational performance and improved overall results. Moreover, when employees experience good well-being, they develop resilience as they gain energy, empowerment, and work towards positive growth. Improved resilience and adaptability of employees assist organizations in better navigating challenges and changes (Nurhidayati, N., et al 2023). To continue, reduced stress and burnout is another benefit - focusing on employee wellbeing can help manage stress levels and prevent burnout, which are significant issues in many workplaces (Xu, P., 2023).

Wellbeing strategies can help employees maintain a healthier work-life balance, leading to more satisfied and loyal staff. Furthermore, organizations that prioritize employee wellbeing are more likely to attract and retain top talent, as it demonstrates a commitment to their workforce (Murmyilo, J.D., 2023).

Employee wellbeing forms the basis of corporate social responsibility, enhancing organization's reputation and ethical standing. Wellbeing initiatives can foster better communication and collaboration among employees, leading to a more positive work

environment. By investing in employee wellbeing, organizations can potentially reduce healthcare costs and absenteeism related to stress and poor health (Murtaza, S. et al., 2023).

Scientific evidence demonstrates that the sustainable performance of employees is directly related to their mental health, vitality, and wellbeing (Van de Voorde, K. et al., 2012). By prioritizing employee wellbeing, organizations create a positive work environment that benefits both the employees and the company's overall success.

In this context, digital health solutions are emerging as transformative tools for addressing workplace health challenges. These technologies encompass a wide range of applications, including fitness trackers, mental health apps, telemedicine platforms, and AI-driven wellness programs, all designed to empower individuals to take control of their physical and mental health. By leveraging digital tools, organizations can implement scalable, accessible, and personalized interventions that cater to diverse employee needs while fostering a culture of care.

This paper explores the critical role of digital health in driving thriving organizational cultures. It examines the latest innovations and best practices in workplace health technology, showcases evidence of their impact through case studies, and outlines strategies for integrating digital health into corporate ecosystems. By prioritizing well-being through digital solutions, organizations can create environments where employees not only perform better but also thrive—ultimately enhancing the resilience and long-term success of the organization as a whole.

The purpose of the presented study is to explore the role of digital health tools and interventions in enhancing employee well-being and fostering thriving organizational cultures. To assess how organizations currently implement digital health solutions to support employee well-being. The goal is to evaluate the effectiveness of existing digital health initiatives in addressing physical, mental, and emotional health needs. Still another topic of the research was to identify challenges and barriers organizations face when implementing digital health solutions and to explore opportunities for innovation in the design and application of digital health tools to better support employee well-being.

Major research question is - How digital health tools and technologies influence employee well-being and contribute to fostering thriving organizational cultures?

Methodology

In accordance with research objectives and goals, a mixed-methods approach was utilized. More specifically, at the first stage of the research, semi-structured interviews were held with employees, managers and HR professionals. Moreover, focus group discussions were conducted with employees and HR specialists to facilitate dialogue about shared experiences and attitudes. Overall, twenty-five in-depth interviews were conducted and three focus-group discussions. Furthermore, case studies were analyzed to highlight best practices - how specific organizations have successfully implemented digital health tools. Qualitative data was analyzed using content analysis method, with manual coding.

At the second stage of the research, employees across various industries exposed to digital health initiatives were surveyed, using structured questionnaire. The survey was anonymous and conducted online with utilization of Google Forms platform. Aim of this

survey was to provide actionable insights for organizations to enhance their support for employee well-being, improve productivity, and ensure that resources align with employees' needs and preferences. Questionnaire was structured on the basis of the findings from qualitative study, to collect demographic information, to assess employees' engagement with various digital health tools, such as wearable fitness trackers, wellness apps, and telehealth services and to assess employee well-being etc. Various groups on social media platforms were used for the distribution of online survey, to reach target segment. Overall, 175 respondents participated. Survey results were analyzed using Excel software.

The literature search for case studies demonstrating best practices for employee well-being in organizations, identified the "Search Inside Yourself" (SIY) program by Google, which has been the subject of several studies exploring its effectiveness in enhancing mindfulness, emotional intelligence, and workplace competencies. Google's "Search Inside Yourself" (SIY) program is a mindfulness and emotional intelligence training initiative developed within Google and later expanded globally. It was created to enhance employees' well-being, emotional awareness, and interpersonal communication skills, contributing to a more collaborative and resilient workplace. The program integrates mindfulness practices with emotional intelligence development, leveraging research-backed approaches. Key Components of SIY are - mindfulness practices: participants learn meditation and attention-training techniques to improve focus and reduce stress; Emotional Intelligence - training focuses on self-awareness, self-regulation, empathy, and social skills. The program teaches how to apply these skills in professional contexts, such as leadership, decision-making, and team collaboration.

The key benefits of SIY are improved focus (mindfulness practices are shown to enhance cognitive focus and productivity), stress reduction (techniques help employees manage workplace stress), enhanced relationships (emotional intelligence training promotes better communication and empathy in team dynamics) and leadership development (the program aids in building resilient and compassionate leaders).

The success of SIY led to the establishment of the Search Inside Yourself Leadership Institute (SIYLI), which offers similar training to individuals and organizations worldwide. It combines neuroscience, emotional intelligence, and mindfulness research to create accessible and impactful courses.

According to the scientific sources of literature, the SIY program led to significant increases in mindfulness and the "awareness of emotion" components of emotional intelligence four weeks post-intervention. However, no significant changes were found in burnout reduction, active listening, or emotional management, suggesting that longer courses may be needed for these outcomes (Caporale-Berkowitz et al., 2021). A study involving an online mindfulness-based training program, similar in principles to SIY, showed improvements in resilience, positive mood, and reductions in stress and negative mood among participants. These changes were associated with better performance on key leadership competencies, such as decisiveness and creativity (Nadler et al., 2020).

Studies show that mindfulness programs in the workplace reduce emotional exhaustion, enhance job satisfaction, and improve emotion regulation. These benefits are mediated by reduced reliance on surface acting (emotion suppression) (Hülsheger et al., 2013). Furthermore, mindfulness training improves emotion regulation, reduces stress, and fosters emotional

intelligence, enhancing participants' ability to cope with workplace challenges (Hill & Updegraff, 2012).

Programs like SIY that integrate mindfulness and emotional intelligence are effective for diverse audiences and can be adapted to virtual formats without significant loss in impact (Salcido-Cibrián et al., 2019).

Another remarkable case with regard to employee wellbeing belongs to Zappos, the online retailer known for its strong focus on employee happiness and company culture, has implemented several initiatives to support employee well-being. Their programs emphasize creating a positive work environment, encouraging personal and professional growth, and fostering a sense of community. To illustrate some of the key aspects of Zappos' employee well-being initiatives, Holacracy and Culture of Empowerment should be emphasized. Zappos operates under a holacracy model, which removes traditional managerial hierarchies. Employees are empowered to take ownership of their roles and make decisions, fostering autonomy and reducing workplace stress. This unique organizational structure promotes psychological safety and innovation, both crucial for well-being. Moreover, Zappos offers on-site wellness initiatives to its employees, such as, free access to fitness programs, yoga classes and wellness activities to promote physical health. Furthermore, the company cares about healthy eating of their employees. It provides free healthy snacks and drinks to encourage nutritious eating habits.

The company has an entire division dedicated to training other organizations on fostering employee happiness. Employees are encouraged to participate in wellness challenges to build camaraderie and healthy habits. Focus on happiness should be emphasized. Zappos' 10 core values emphasize fun, creativity, and delivering "WOW experiences", which align with their mission to enhance employee satisfaction and engagement.

Still another approach is "Zapponian Perks" - free life coaching sessions and training programs. Reimbursement for courses or books that help employees grow personally or professionally. The company matches employees' charitable donations, encouraging them to give back to their communities, which can enhance mental well-being. Flexible work arrangements are offered to employees to help them balance personal and professional lives effectively.

Zappos encourages employees to integrate fun and creativity into their workday to make their time at the office more enjoyable. Zappos fosters a family-like environment where employees feel connected and valued. Regular team-building activities and celebrations ensure employees feel part of a supportive and inclusive community.

Zappos leverages technology to maintain employee engagement and well-being, including communication platforms and wellness apps to stay connected and provide resources. Zappos' approach demonstrates how a focus on happiness, empowerment, and holistic well-being can create a thriving organizational culture.

Scientific evidence on Zappos' employee well-being program and its effectiveness reveals insights into its unique culture and the broader implications of employee well-being initiatives. Zappos' employee well-being initiatives are embedded in a culture emphasizing fun, creativity, and empowerment. Their practices have led to low turnover (7% compared to industry averages over 150%) and high repeat customer rates (75%). This culture, while

unique, demonstrates the importance of aligning leadership styles, mission, and strategies for success (Warrick et al., 2016).

Programs like Zappos' show improved employee mental, physical, and social well-being through targeted interventions. These enhancements directly improve productivity and reduce absenteeism (Edwards & Marcus, 2018). Comprehensive programs aligning leadership, accessibility, and strategic goals have demonstrated ROI as high as 6:1, reflecting lower costs and improved morale (Berry et al., 2010).

Employee well-being initiatives contribute to fostering positive workplace cultures, reducing stress, and enhancing productivity. These outcomes depend on the integration of support at organizational levels (Debgupta, 2023).

Another company - Salesforce, a leading customer relationship management (CRM) software company, is well-regarded for its employee well-being programs, which emphasize mental, physical, emotional, and financial health. These programs are part of Salesforce's broader commitment to fostering a supportive and inclusive workplace culture. Salesforce's employee well-being programs are structured around four key pillars: mental health - supporting emotional and psychological well-being; Physical health: encouraging physical activity and healthy habits; Emotional health: building resilience and connection; Financial health: offering resources for financial security.

One of the main well-being initiatives is Mental Health Days. Salesforce provides employees with additional days off dedicated to mental health and wellness, encouraging rest and recovery. In scope of Employee Assistance Program (EAP), the company offers access to free, confidential counseling and mental health resources for employees and their families. Another initiative is Mental Health Advocacy - training and workshops on mental health awareness to reduce stigma and create a supportive environment. Moreover, employees can access guided meditation sessions, mindfulness workshops and the Headspace app to help manage stress and improve focus.

With regard to physical well-being, employees receive wellness stipends to cover fitness classes, gym memberships, or other health-related expenses. Some Salesforce offices include gyms and offer fitness programs such as yoga and Zumba. On-site cafeterias provide healthy meals and snacks to encourage nutritious eating.

Salesforce offers financial education for its employees in scope of financial well-being. It includes workshops and resources to help employees manage their finances and plan for the future. They give opportunities for employees to invest in Salesforce stock at a discounted rate. Moreover, comprehensive healthcare, retirement savings plans, and life insurance options.

Another interesting initiative is Volunteer Time Off (VTO). More specifically, salesforce offers employees 56 hours of paid volunteer time per year, allowing them to give back to their communities. The company has Wellness Champions - teams of employees dedicated to promoting well-being within their respective departments.

To focus on the main topic of this research - digital health tools utilized for employee well-being. Salesforce offers access to wellness apps that provide meditation, fitness tracking, and stress management resources. The company’s learning platform, Trailhead, includes modules on well-being topics, such as stress management and work-life balance. Moreover, it offers virtual well-being sessions - employees can attend virtual fitness, meditation, and wellness coaching sessions.

In scope of Mental Health Awareness Month, Salesforce hosts events, webinars, and resources to encourage discussions about mental health. Moreover, it has "B-Well Together" Program, which is a well-being webinar series featuring experts discussing health, mindfulness, and resilience topics.

Salesforce offers remote and hybrid work arrangements to accommodate diverse employee needs. Furthermore, "Success from Anywhere" Model is an initiative that reimagines the workplace to allow employees to work in ways that best suit their lives and well-being.

Impact of Salesforce's Well-Being Programs is high employee satisfaction and engagement scores, increased retention and loyalty as employees feel valued and supported. However, there is no valid scientific evidence on the effectiveness of Salesforce's employee well-being programs, neither about the role and the efficiency of digital health technologies in that regard.

For the purpose of the study, a literature review was conducted, identifying the key findings from recent studies, highlighting the adoption of digital health technologies and their effectiveness in improving workplace health outcomes. Digital health technologies have gained significant traction in organizational settings as tools for enhancing employee well-being. These technologies encompass a wide range of applications, including wearable devices, mental health platforms, mobile health (mHealth) applications, telehealth services, and digital health coaching programs.

Among the most widely utilized digital health technologies are wearable health-tracking devices, which are increasingly incorporated into corporate wellness programs to monitor employees' physiological and environmental conditions. These devices promote self-awareness and enable organizations to analyze aggregated anonymized data to optimize workplace environments. Despite their potential, challenges such as privacy concerns and balancing work-life dynamics persist (Yassaee et al., 2019).

Another solution is digital platforms offering on-demand mental health consultations and therapeutic interventions, which have become prominent in addressing employee mental health. These solutions improve access to care and engagement, particularly in organizational settings. However, many platforms lack integration with managerial communication and broader organizational strategies, limiting their full potential (Truong & McLachlan, 2022).

Furthermore, mHealth applications are employed to enhance productivity, engagement, and mental health among employees. Research indicates that these tools are cost-effective and positively impact workplace outcomes by reducing absenteeism and presenteeism (Stratton et al., 2021). Digital coaching programs, particularly those targeting older employees, focus on promoting healthy lifestyles and supporting transitions such as retirement. These programs address physical, social, and psychological well-being, although their adoption often neglects broader contextual factors (Stara et al., 2020). Gamification and digital tools implemented during workplace health events increase employee engagement, promote healthy behaviors, and foster a sense of community among employees (Bernovskis & Ščeulovs, 2023).

Telehealth services provide employees with accessible remote healthcare consultations, diagnostics, and follow-ups, overcoming temporal and spatial barriers. These services have demonstrated high employee satisfaction and effectiveness in delivering timely care (Lowery, 2020).

Still another approach involves Cognitive Behavioral Therapy (CBT)-based digital tools, which address stress, anxiety, and depression among employees. These applications are integral in fostering mental resilience and improving overall workplace productivity (Balcombe & Leo, 2022).

Comprehensive digital health systems combine multiple functionalities, such as health monitoring, personalized interventions, and workplace strategy optimization. These systems show promise in fostering a culture of well-being within organizations. However, further research is necessary to enhance their integration and address privacy concerns (Kechagias et al., 2024). The implementation of digital health technologies within organizational frameworks is transforming workplace health strategies. While instruments such as wearable devices, mental health platforms, and mHealth applications have exhibited positive outcomes, challenges pertaining to privacy, engagement, and integration with organizational structures persist. Addressing these concerns will be crucial in optimizing the potential of digital health technologies to enhance employee well-being.

Results

At the first stage of the research, in-depth interviews and focus group discussions were conducted with employees and HR professionals to gain qualitative insights into employee well-being and the role of employer initiatives. The key findings of the qualitative research are emphasized bellow. According to employee perspectives, mental health challenges were frequently mentioned, such as - high stress levels due to excessive workloads and lack of work-life balance. Many expressed the need for better access to mental health resources and supportive workplace cultures.

Participants appreciated the convenience and accessibility of digital health tools but noted that sustained usage often depended on personal motivation and employer encouragement. Furthermore, flexible working arrangements were highlighted as one of the most impactful well-being initiatives, enabling employees to manage personal and professional responsibilities effectively.

To review HR professionals' insights from in-depth interviews and focus-group discussions, program implementation challenges were accentuated. More specifically, HR professionals identified limited budgets and varying employee engagement levels as significant barriers to implementing effective well-being programs.

Moreover, there was a consensus that generic well-being initiatives are less effective, and programs should be tailored to address diverse employee needs and preferences. HR teams acknowledged the difficulty in quantifying the impact of well-being programs on productivity and employee satisfaction, calling for improved evaluation metrics.

Recommendations from respondents included need for enhanced communication. To illustrate, both employees and HR professionals emphasized the importance of regular communication about available well-being resources and their potential benefits. Fostering a workplace culture that prioritizes mental health and inclusivity was identified as a critical step in improving overall employee satisfaction.

Another recommendation was regarding training for managers. Respondents considered essential providing managers with training to support employee well-being and recognize signs of burnout.

At the next stage of the research, quantitative method – survey through the structured questionnaire was utilized. The employee well-being survey aimed to assess the overall well-being of employees, their use of digital health tools, and the effectiveness of employer-sponsored well-being initiatives. Conducted via Google Forms and distributed through various social media platforms, the survey sought to gather insights into the current state of employee well-being and identify areas for improvement.

The majority of respondents fell into the 25-34 age group, with a balanced representation across other age groups.

Table 1. Summary of Employee Well-Being Survey Results

Category	Metrics	Key Findings
Demographics	Age: (40%) aged 25-34 - Gender: Male (50%), Female (45%) - Experience: 1-3 years (35%)	Younger employees and early-career professionals dominate the sample.
Digital Health Tool Usage	Popular tools: Fitness trackers (60%), Wellness apps (55%) - Frequency: Daily (35%) - Duration: >1 year (35%)	Consistent use of tools, with fitness trackers being the most preferred.
Well-Being Ratings	Overall: Average (35%), Good to Excellent (50%) - Stress: Often/Sometimes (65%)	Moderate well-being with notable stress levels.
Impact of Tools	Physical health: Positive (65%) - Mental health: Positive (55%)	Tools benefit physical health more than mental health.
Productivity	High productivity: 60% (rated 4 or 5) - Productivity increase: 50%	Tools moderately enhance productivity and time management.
Employer Initiatives	Popular programs: Flexibility (60%), Mental health resources (50%) - Effectiveness: Moderate (40% rated 3 or 4)	Flexible working arrangements are the most impactful.
Participation	Regular/Occasional: 50% - Never: 25%	Engagement in programs remains an area for improvement.
Open-Ended Feedback	Positive: Improved tracking, mindfulness, accessibility - Suggestions: Counseling, better communication	Employees seek broader access and tailored support.

A diverse range of roles was captured among the respondents, with significant representation from employees having 1-3 years of experience in their current roles.

The most commonly used digital health tools, according to the results of the survey, are - wearable fitness trackers (e.g., Fitbit, Apple Watch) and wellness apps (e.g., Headspace, Calm). Telehealth services and health tracking apps followed closely. Moreover, over 60% of participants reported daily or several-times-a-week use of these tools. Most respondents had been using digital health tools for more than six months, indicating established habits.

With regard to overall well-being - a majority of respondents rated their overall well-being as average (3 on a scale of 1 to 5), with a substantial number indicating good to excellent well-being (4-5).

Concerning the impact of digital health technologies on physical and mental health, about 40% of surveyed individuals reported a somewhat positive impact, with 25% stating very

positive outcomes. Slightly fewer participants reported positive effects on mental health compared to physical health.

A significant portion of employees (around 50%) felt stressed at work "sometimes," while 20% reported feeling stressed "very often."

To review results in scope of productivity and time management, approximately 60% of respondents rated their productivity as high (4-5 on a scale of 1 to 5). While some (30%) reported increased productivity due to digital tools, 10% noted a decrease. More than half of respondents believed digital tools helped them manage time effectively at work.

With regard to employer well-being initiatives, employer-sponsored programs were utilized occasionally by most employees, with flexible working arrangements and mental health resources being the most accessed initiatives. Employer initiatives were rated as moderately effective (3-4 on a scale of 1 to 5) in supporting well-being.

Furthermore, to evaluate impact on mental health - about 45% reported somewhat positive effects, with 20% indicating very positive outcomes. Similar patterns as mental health was observed, though with slightly fewer number reporting very positive impacts. Around 50% believed employer well-being initiatives led to improved productivity.

To review other findings of the survey's open-ended questions, participants appreciated features like personalized insights, integration with fitness goals, and accessibility in digital health tools. As of the suggestions for employers, respondents called for broader access to mental health resources, more frequent wellness workshops, and enhanced communication about available well-being programs.

Digital Health Tools demonstrated a positive trend in supporting physical health more effectively than mental health, with notable benefits for productivity and time management. Persistent workplace stress signals a need for targeted employer initiatives addressing this issue. While moderately effective, there's room for improvement in customization and promotion of well-being programs.

Discussion

The survey results highlight the complex relationship between employee well-being, the use of digital health tools, and the effectiveness of employer-supported initiatives. While digital health tools have shown a positive impact on physical health and, to a lesser extent, mental health, their role in reducing workplace stress remains limited. This indicates a need for more targeted interventions that address stress management directly.

Participation in employer well-being programs was moderate, with flexible working arrangements and mental health resources being the most utilized offerings. However, the perceived effectiveness of these programs suggests room for improvement, particularly in tailoring initiatives to diverse employee needs and communicating their availability.

Productivity metrics reveal a mixed impact of digital health tools and employer initiatives. While a significant portion of employees reported increased productivity and better time management, some noted no change or even decreased productivity. This discrepancy underscores the necessity of personalizing solutions to fit individual preferences and job demands.

The open-ended feedback further reinforces the need for diversity in well-being programs. Employees emphasized the importance of mental health resources and expressed a

desire for more accessible and innovative initiatives. Employers must consider these insights to foster a more inclusive and supportive work environment.

Recommendations derived from the research concern need for enhanced communication, importance of clearly communicating available well-being programs and their benefits to employees in organizations. In this regard, utilization of multiple channels (email, meetings, internal platforms) is advised to promote initiatives. Another recommendation is to expand offerings – to introduce tailored well-being programs for specific demographics or job roles. Moreover, greater focus on initiatives addressing mental health and workplace stress was emphasized. To leverage digital tools and partner with leading digital health platforms to provide personalized well-being solutions. In addition, it is recommended to facilitate workshops on maximizing the benefits of digital health tools.

Employers were advised to conduct periodic surveys to evaluate employee needs and the effectiveness of existing programs. To use feedback to refine and improve offerings.

The presented research highlights the importance of integrating digital health tools and effective employer well-being initiatives to support employees. While there are clear benefits, there remains a significant opportunity to enhance both individual and organizational outcomes through targeted interventions and consistent support.

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SOME ASPECTS REGARDING THE CONTESTATION REGARDING THE DURATION OF THE CRIMINAL TRIAL IN ROMANIA

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Abstract: *The need to ensure procedural guarantees regarding the respect of individual rights and freedoms during a criminal trial brings together the will of the legislator to regulate through criminal procedural provisions the smooth conduct of the criminal trial with the practical possibility of solving criminal cases by the judicial bodies, respecting the attributions conferred by law according to their competence. This objective could only be fulfilled by regulating new principles that would ensure the conduct of the criminal process by separating judicial functions, by speeding up procedures and resolving criminal cases brought to trial within a reasonable time, respecting the right to freedom and safety, based on the evidence administered in good faith, excluding evidence obtained illegally.*

Keywords: *the principles of the criminal process, the defendant, the criminal investigation, the preliminary chamber, the trial, the appeal regarding the duration of the criminal process*

General considerations regarding the fundamental principles of the Romanian criminal process

The system notion of the fundamental principles of the criminal process involves two aspects, namely, on the one hand, the knowledge of its component elements and, on the other hand, the identification of the interdependence between these principles in the complex process of conducting the criminal process (Neagu, 2020:86). Moreover, the fundamental principles of the criminal process have a major importance both in the activity of creating substantive law, in its interpretation, and in its practical application, the functionality of the entire system of fundamental principles being ensured by their interaction and convergence, whose finality is concretized during the criminal process by fulfilling its purpose, namely, bringing those who have committed crimes to criminal responsibility (Theodoru, 2020:71).

In the provisions of Law no. 135/2010 on the Code of Criminal Procedure, along with the classic principles (of legality, finding the truth, the presumption of innocence, the right to defense, respect for human dignity, guaranteeing the freedom of the person), new principles were introduced, such as that of the right to a fair trial carried out within a reasonable time, of the separation of judicial functions in the criminal process, of the obligation of the criminal action closely related to the subsidiary of opportunity, ne bis in idem, and in the matter of probation, the principle of loyalty in obtaining evidence.

The principles are essential ideas, prior to the normative act that regulates them, having their source in the relationships between people, in the generalizations induced from

social experience or even from human nature, going beyond the legal, normative and jurisprudential origin, and in criminal procedural matters, the normative provisions of the legislative system presents itself as a systematized entity, with its own and unitary logic, correlated and explicable through each other, offering the image of a unitary whole, the result of a concern to place judicious and rational of the provisions that regulate the conduct of the criminal process (Neagu, 2020:88). Such a systematization demands the existence of guiding rules, without which the will of the legislative body could not be known, and the provisions would not have been adopted and applied coherently, in a non-contradictory way, in the form of the system of fundamental principles. What is actually worth noting in the system of the fundamental principles of the criminal process is the fact that each of them is in a close relationship with the other basic rules, as well as with the derived ones, as well as with all of them, they cannot be isolated from each other from the other due to the logical-legal connections that exist between them, being regulated in the Criminal Procedure Code at art. 2-12 (Gheorghe, 2021:45).

General considerations regarding the principle of fairness and the reasonable term of the criminal process

The provisions of art. 8 CPC establishes for the first time in the provisions of the Code of Criminal Procedure the principle of fairness and the reasonable term of the criminal process, adapting the internal legal framework to the requirements arising from the need for harmonization with the provisions of the European Convention on Human Rights.

In this sense, the judicial bodies have the obligation to carry out the criminal investigation and the trial respecting the procedural guarantees and the rights of the parties and the procedural subjects, so that the facts that constitute crimes are ascertained in time and completely, no innocent person is criminally liable, and any person who has committed a crime to be punished according to the law, within a reasonable time.

Art. 6 para. 1 of the European Convention on Human Rights recognizes to any person accused of committing a crime the right to obtain, within a reasonable time, a definitive decision regarding the validity and legality of the accusation brought against him. These provisions are currently found in the provisions of art. 8 CPP, the legislator thus regulating, distinctly in the current content of the Code of Criminal Procedure, the principle of operativeness.

This special procedure was implemented by Recommendation (2004) 6 of the Committee of Ministers to the member states regarding the improvement of internal appeals, which states that, according to art. 13 of the Convention, member states are committed to ensure that any person who has a credible complaint regarding the violation of his rights and freedoms guaranteed by the Convention has the right to an effective appeal before the national authorities.

The fact that any person who has committed a crime must be held criminally liable by applying a sanction within a reasonable time is part of the right to a fair trial, but the beneficiaries of this rule are not only the person accused of committing a crime, but also the injured person or the civil party, who are equally entitled to a trial with a reasonable duration or to the settlement of the civil action within a reasonable term (Volonciu, 2014:1397).

In assessing the "reasonable term" in criminal matters, the criteria regarding the nature and object of the case can be taken into account; the complexity of the case, including taking into account the number of participants and the difficulties of administering the evidence; the extraneous elements of the cause; the procedural phase in which the cause is located and the duration of the previous procedural phases; the behavior of the appellant in the analyzed judicial procedure, including from the perspective of exercising his procedural and procedural rights and from the perspective of fulfilling his obligations within the process; the behavior of the other participants in question, including the authorities involved; the intervention of legislative changes applicable to the case.

The main remedy established in the provisions of art. 488^1-488^6 CPP which regulates the appeal procedure regarding the duration of the criminal trial is represented by the acceleration of the resolution of the cases brought to trial, for the benefit of the parties and the subjects of criminal proceedings.

The appeal regarding the duration of the criminal trial

The appeal procedure seeks not only to establish the violation of the right to resolve the criminal case within a reasonable time, but also to speed up the procedure for resolving the case brought to trial. The provisions that regulate the institution of the appeal regarding the duration of the criminal process refer to the cases in which the criminal investigation or trial activity is not carried out within a reasonable time, which is why an appeal can be made.

Although the legislator did not provide it distinctly, from the interpretation of the provisions of art. 4881 CPP results that the object of the appeal is represented by the finding of the violation of the right to resolve the process within a reasonable time, a fact that constitutes a principle of criminal procedural law, as enshrined in the provisions of art. 8 CPP (Mateuț, 2024:975).

The acceleration of the procedure thus assumes, in the light of the provisions of the current Code of Criminal Procedure, that the judicial bodies carry out the procedural documents and the procedural documents within a certain period, established by the judge of rights and liberties or by the court, according to art. 488^6 CPP.

The holders of the appeal are distinctly provided, depending on the phase in which the criminal process is, namely, during the criminal investigation, the appeal can be introduced by the suspect, the defendant, the injured person, the civil party and the civilly responsible party. Any of these parties or procedural subjects can formulate the request, and during the trial, the appeal can be introduced by the defendant, the injured person, the civil party and the civilly responsible party, as well as by the prosecutor.

According to the provisions of art. 488^3 CPP, the appeal is formulated in writing and must include: the name, surname, domicile or residence of the natural person, respectively the name and seat of the legal person, as well as the capacity in question of the natural or legal person who prepares the request, the name and capacity of the person who represents the party in the process, and in the case of representation by a lawyer, his name and professional office, mailing address, the name of the prosecutor's office or the court and the file number, the factual and legal grounds on which grounds the appeal, date and signature.

The terms in which the appeal regarding the duration of the criminal process can be formulated were established by the legislator within the provisions of art. 488[1] para. (3) CPP, and thus an appeal can be made: after at least one year from the start of the criminal investigation, for the cases that are in the course of the criminal investigation; after at least one year after being sent to court, for the cases that are in the course of the trial in the first instance; after at least 6 months from the filing of an appeal with the court, for cases under ordinary or extraordinary appeals.

Analyzing the provisions that regulate the term for filing an appeal regarding the duration of the phases of the criminal trial, we can see that these regulations do not apply in the preliminary chamber phase, as the text of the law does not explicitly regulate the possibility of introducing the appeal route regarding the duration of the preliminary chamber procedure as such as provided for the criminal investigation phase and the trial phase in the first instance, in ordinary or extraordinary appeals (Negruț, 2024:682). Thus, the appeal can be introduced only after the start of the trial, although, from the judicial practice, there are situations in which the duration of the preliminary chamber procedure exceeds the term provided by the legislator in the content of art. 343 CPP, namely "the duration of the preliminary chamber procedure is no more than 60 days" counted from the date of registration of the case at the court competent to judge the case at first instance (Chiriță, 2015:1).

The Pre-Trial Chamber and the implications of exceeding the duration of proceedings within it

According to the Statement of Reasons for the draft of the new Code of Criminal Procedure, the preliminary chamber was intended to be a new, innovative institution in the landscape of criminal procedural law institutions, created in order to create a modern legislative framework, which would eliminate the excessive duration of the procedures in the phase of court and which has the competence to solve the issues related to the legality of the referral to court and the legality of the administration of the evidence, ensuring the prerequisites for the speedy resolution of the case on the merits, pursuing in this way the elimination of some deficiencies that led to the conviction of Romania by the European Court of Human Rights for the violation of the excessive duration of the criminal process.

Currently, by reference to art. 3 paragraph (1) lit. c) CPP, we note that, in terms of exercising the judicial function of verifying the legality of sending or not sending to court, the preliminary chamber fulfills a well-defined function through the powers exercised by the judge of the preliminary chamber according to the provisions of art. 54 CPP.

In addition, the object of the preliminary chamber procedure is the verification, after the referral to court, of the competence and legality of the referral to the court, as well as the verification of the legality of the administration of evidence and the execution of documents by the criminal investigation bodies, in order to establish the formal suitability of this procedure to trigger the third phase of the criminal process, namely the trial of the merits of the criminal case (Micu, 2021:13). The preliminary measures are expressly stipulated in the content of art. 344 CPP, so that, after the court is notified by indictment, the file is randomly distributed to the judge of the preliminary chamber.

If requests or exceptions were made or if exceptions were raised ex officio, according to art. 344 para. (4) CPP, upon expiry of the terms provided for in para. (2) and (3), i. e. of the minimum 20-day terms, the judge of the preliminary chamber sets the term for their resolution, with the summons of the parties and the injured person and with the participation of the prosecutor.

According to the provisions of art. 345 para. (1) CPP, the judge of the preliminary chamber solves the requests and the exceptions formulated or the exceptions raised ex officio, in the council chamber, listening to the conclusions of the parties and of the injured person, if they are present, as well as of the prosecutor, to be pronounced in the council chamber, based on the papers, the material from the criminal investigation file and any other means of evidence.

It should also be mentioned that in a criminal case it is possible for the prosecutor's indictment to be based on evidence that constitutes classified information, in which case the preliminary chamber judge from the competent court to judge the case at first instance must urgently request the competent authority declassifying such information or moving it to a lower level of classification, granting defense counsel for the parties and the injured party access to the classified information, based on their possession of the authorization of access provided by law, and in the event that they do not hold such authorization, and the parties or, as the case may be, the injured person does not appoint another defense attorney who holds the authorization provided by law, it is necessary for the judge of the preliminary chamber to take measures for the appointment of ex officio lawyers who hold such authorization.

The conclusion by which the preliminary chamber judge pronounces is immediately communicated to the prosecutor, the parties and the injured person. Analyzing the case file, as well as the referral document, the preliminary chamber judge can: find irregularities in the referral document; to sanction according to art. 280-282 CPP criminal prosecution acts carried out in violation of the law; to exclude one or more tests administered.

In such cases, within 5 days from the communication of the conclusion, the prosecutor must remedy the irregularities of the referral act and communicate to the judge of the preliminary chamber if he maintains the order of referral to court or if he requests the return of the case to the prosecutor's office.

In the event that no requests and no exceptions were made and no exceptions were raised ex officio, and the judge of the preliminary chamber ascertains the legality of the referral to the court, the administration of the evidence and the execution of the criminal investigation documents, he orders the start of the trial.

If he rejects the requests and exceptions invoked or raised ex officio, by the same conclusion the judge of the preliminary chamber ascertains the legality of the referral to the court, the administration of the evidence and the execution of the criminal investigation documents and orders the trial to begin.

In all other cases in which he found irregularities in the reporting act, which, although not remedied, as would have been necessary, according to art. 345 para. (3) CPC, does not prevent the establishment of the object or the limits of the trial, excluded one or more administered evidence or sanctioned according to art. 280-282 CPP criminal investigation documents carried out in violation of the law, the preliminary chamber judge orders the start

of the trial. The preliminary chamber judge who ordered the start of the trial exercises the judicial function in the case, and pronounces in the preliminary chamber procedure on preventive measures. Against the solutions ordered by the preliminary chamber judge according to art. 346 para. (1)-(4^2) CPP can appeal to the prosecutor, the parties or the injured person. It is true that the preliminary chamber procedure is an integral part of the criminal process, being also considered a distinct phase of it, i.e. one of the phases of the criminal process, just like the criminal investigation phase and the trial phase.

In this procedure, the way of carrying out the entire criminal investigation is verified, and after its completion the trial can begin and as long as the criminal investigation and the trial are subject to a reasonable term, it follows that the intermediate phase of the preliminary chamber should also be resolved in - a reasonable term, being able to use the same procedural remedy in case of exceeding this term, although, unlike the other two phases of the criminal process, the preliminary chamber is limited in time to a duration of 60 days and we believe that this is the reason why the possibility of filing an appeal in the preliminary chamber was not expressly provided for.

The term of 60 days is a recommendation term as no penalty has been provided for not falling within this time frame, but, on the other hand, it represents a purely theoretical term, because in practice it has been proven that the 60 days are exceeded in most of the causes, even in criminal cases considered to be "simple", with a small number of crimes or defendants, the 60-day deadline being difficult to meet, and in the case of causes with a high degree of complexity, the preliminary chamber procedure lasts at least several months, which also represents an exceeding of this term.

Consequently, as it can be considered a term of recommendation for the preliminary chamber judge, the provisions of art. 4881-4886 of the CPP that regulates the institution of the appeal regarding the duration of the criminal trial, and for the reasons stated above, moreover, the High Court of Cassation and Justice ruling moreover, by the Criminal Conclusion of 28.10.2015 that, in the procedure of the preliminary chamber, the appeal regarding the duration of the criminal trial meets the conditions of admissibility, (solution based on the provisions contained in art. 6 and 13 of the European Convention on Human Rights), and fixed a deadline for the completion of the judicial procedure regarding the commencement of the trial in question (Chiriță, 2015:2).

Conclusions

Through the criminal procedural system, society organizes its defense strategy against criminal acts, with the aim of protecting the main social values, both passively, by imposing the prospect of applying a criminal law sanction, and actively, by holding criminally liable those who committed crimes.

We therefore consider it appropriate as a proposal for a ferenda law in the matter of the institution of the appeal regarding the duration of the criminal trial, or the inclusion in the provisions of art. 488^1 para. (3) lit. b) CPP of the procedure of the preliminary chamber, so that the mentioned text has the following expression "after at least one year from the referral to court, both in the procedure of the preliminary chamber and in the trial phase, for the cases that are in the course of the trial in the first instance court", or by a decision of the Î.C.C.J. which will contribute to the uniform interpretation and application of the current provisions

of art. Art. 488[1] para. (3) lit. b) CPP, in the sense of giving the possibility to file an appeal regarding the duration of the criminal trial and regarding the duration of the preliminary chamber procedure, with the amendment of the provisions of art. 343 CPP which stipulates that "the duration of the procedure in the preliminary chamber is no more than 60 days from the date of registration of the case at court", since the interpretation of this term of 60 days is considered to be a "recommendation term".

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DIMENSIONS OF ARTIFICIAL INTELLIGENCE ETHICS FROM AN INTERNATIONAL AND EU PERSPECTIVE

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Abstract: *Today, we live in a time when humanity is marked by an extremely complex political and economic context, by chaos, crises, but also by a fulminant development of science and, above all, of artificial intelligence (AI). In the period of the "fourth industrial revolution" (or "(r)evolution AI"), we must be aware that, in addition to the multitude of advantages it brings to humanity, it also generates multiple ethical problems, given the lack of a clear legal framework at Union and international level. In the face of these challenges, fortunately, the reactions did not take long to appear at the international level, at the European level and of the EU institutions. This study proposes a brief reflection on the issue of ethical principles that have been taking shape in recent years at the European and international level in the field of AI, based on the fundamental idea of promoting a human-centered AI that serves the common good, that respects fundamental rights and general ethical values.*

Keywords: *artificial intelligence, principles of ethics, fundamental rights, international perspective, union perspective*.

1. Introduction

Because today we live among digital assistants (Siri, Alexa, Cortana), autonomous cars, smart cameras with facial recognition or systems capable of making predictions regarding future behaviors, fifth generation wireless technologies (5G), medical devices remotely guided through technology, robots that save lives, etc., this paper aims to bring to attention several aspects of the AI Ethics Dimension from an international and EU perspective.

It is undeniable that Artificial Intelligence is a reality, a way of life installed subtly and imperceptibly in our behavior, a reality that generates both undeniable positive effects for humanity, but also negative ones, especially in conditions where the development and use of AI takes place without a stable and transparent legal framework. (Duminică & Ilie, 2023).

Artificial intelligence systems promise widespread benefits for society, while also presenting substantial risks in almost all sectors. Over the past few years, a number of different groups and initiatives have tried to outline and agree on principles to guide the application of AI in society, but the lack of a clear legal framework at EU and international level "generates ambiguity and, proportionately, risks to social organisation [...]" (Drăgușin, 2020).

Thus, both at the international and EU level, the foundations of an applied ethics are already being laid, known as Cyber-ethics and the ethics of artificial intelligence, also called robo-ethics.

Cyber-ethics is considered to be a set of rules that "aim to prevent abuse or violation of human rights as a result of various operations on computer media, data transfer, the protection of human dignity, privacy and intellectual property through the extensive use of computer networks" (Crăciun & Jianu, 2019).

Artificial intelligence ethics, also known as robo-ethics, is a multidisciplinary discipline made up of the totality of moral values and principles that guide the creation, development and use of artificial intelligence with the aim of optimizing the beneficial impact of AI and, simultaneously, reducing its risks and negative consequences.

Even though cyber-ethics and the ethics of artificial intelligence are sometimes analyzed distinctly, they are nothing more than aspects of the same type of problems, caused by the interaction between humans, their personality, their consciousness, and new technologies. (Crăciun & Jianu, 2019).

As a result of the international and EU-level efforts to outline the legal framework for the use of AI, on May 4, 2023, in Romania, the Romanian Committee for Artificial Intelligence was established. The main objective of the Committee stipulated in art. 3 paragraph 2 of Ministerial Order no. 20,484/2023 (published in the Official Gazette, Part I no. 382 of May 4, 2023) is to create an artificial intelligence ecosystem based on excellence, trust and respect for ethical principles, coherent, efficient and sustainable, which generates added value in social and economic terms through the use of artificial intelligence technologies. Several structures, councils and working groups will operate within this Committee, including the Scientific and Ethics Council for Artificial Intelligence, which will provide the Government of Romania with scientific advice on the responsible and ethical use of artificial intelligence.

2. Research

2.1. AI ethics at the international level

The 193 member states of the U.N., within the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO), meeting in Paris in its 41st session, recognizing the positive but also negative impact of artificial intelligence (AI) on societies, the environment, ecosystems and human lives, including the human mind, adopted, on November 23, 2021, the Recommendation on the Ethics of Artificial Intelligence.

This document thus becomes the first global agreement on AI ethics, a first “set” of common, universal rules, stemming from the need to regulate a rapidly expanding field worldwide. The stated goal was to define policies and principles that would form the basis for the functioning of AI systems for the good of humanity, individuals, societies, the environment and to prevent harm. At the same time, it was intended to be a globally accepted normative instrument, focusing not only on identifying values and principles, but also on their practical implementation.

The foundation of this Recommendation lies in the instruments of the international human rights framework, namely: the Universal Declaration of Human Rights (1948), the Convention relating to the Status of Refugees (1951), the Convention on Discrimination (1958), the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), etc.

Given that artificial intelligence technologies can be beneficial to humanity, but also raise fundamental ethical concerns, which can lead to discrimination, inequality, digital divides, exclusion and a threat to cultural, social and biological diversity and social or economic divisions, the purpose of the Recommendation is found in the idea that AI must be human-centered and serve the interest of humanity.

The objectives set by the Recommendation (UNESCO, 2021) consist of:

(a) to provide a universal framework of values, principles and actions to guide States in formulating legislation, policies or other instruments on AI, in accordance with international law;

(b) guide the actions of individuals, groups, communities, institutions and private sector companies to ensure the incorporation of ethics into all stages of the AI system life cycle;

(c) protect, promote and respect human rights and fundamental freedoms, human dignity and equality, including gender equality, in order to safeguard the interests of present and future generations, to conserve the environment, biodiversity and ecosystems; and to respect cultural diversity at all stages of the AI system's life cycle;

(d) encourage multidisciplinary and pluralistic dialogue and consensus building on ethical aspects related to AI systems;

(e) promote equitable access to developments and knowledge in the field of AI and the sharing of benefits, paying particular attention to the needs and contributions of low- and middle-income countries, including least developed countries, landlocked developing countries and small island developing States.

The Recommendation (UNESCO, 2021) enshrines four values that can be considered the foundations of artificial intelligence ethics:

a) respect, protection and promotion of human rights and fundamental freedoms and human dignity.

The enshrinement of human rights and freedoms in international legal instruments and in modern democratic constitutions is the result of a long historical process that includes philosophical, legal and political conceptions, theories, doctrines, but also different forms of recognition and normative consecration of them. Fundamental human rights and freedoms and human dignity are a constitutional reality, with profound implications for the existence of each human being, also representing an existential reality of each person, of society as a whole and a dimension of democracy. Thus, the respect, protection and promotion of human dignity and rights, as established by international law, are essential throughout the life cycle of AI systems.

According to the Recommendation, "new technologies should provide new means to uphold, defend and exercise human rights, not to violate them."

b) sustainable development of the environment and ecosystems.

Sustainable development, that development that meets the needs of the present without compromising the ability of future generations to meet their own needs, must be promoted throughout the life cycle of AI systems.

c) ensuring diversity and inclusion.

The Recommendation states that this objective can be achieved by promoting the active participation of all individuals or groups, without discrimination on any grounds.

d) ensuring living in peaceful, just and interconnected societies. "This value requires that peace, inclusion and justice, equity and interconnectedness are promoted throughout the life cycle of

AI systems, to the extent that the processes of the life cycle of AI systems should not lead to segregation, objectify or undermine the freedom and autonomous decision-making, as well as the safety of human beings and communities, divide and turn individuals and groups against each other, or threaten the coexistence of humans, other living beings and the natural environment." (UNESCO, 2021)

At the same time, in addition to these values, the Recommendation outlines ten principles (UNESCO, 2021) of AI ethics, namely:

a. proportionality and non-maleficence
b. safety and security
c. fairness and non-discrimination
d. sustainability
e. right to privacy and data protection
f. oversight and human determination
g. transparency and explainability
h. responsibility and ownership
i. AI awareness and literacy
j. adaptive and multi-stakeholder governance and collaboration

In summary, this Recommendation represents a first step in creating a universal framework of values, principles and actions to guide States in drafting legislation, policies or other instruments on AI, in compliance with international law, while protecting human rights and fundamental freedoms, human dignity and equality, including gender equality. The objective of the Recommendation is to protect the interests of present and future generations, to conserve the environment, biodiversity and ecosystems and to respect cultural diversity at all stages of the life cycle of the AI system, encouraging multidisciplinary dialogue and consensus-building on ethical aspects related to AI systems (Duminică & Ilie, 2023).

UNESCO does not stop there, however, so among its latest actions in this field we point out the initiative of March 30, 2023 to once again ask governments to implement much more solid ethical rules in the field of AI. The reaction came as a result of the call of over 1,000 experts who called for a moratorium on new AI systems, the main issues raised being discrimination and stereotypes, as well as disinformation, personal data protection, human rights and those regarding environmental protection (www.agerpres.ro, Unesco calls for more solid ethical rules regarding artificial intelligence, 2023).

2.2. The Union and European perspective on AI ethics

At the European Union level, given that it is an essential part of the digital single market strategy, artificial intelligence (AI) and its regulation are currently on the list of priorities, and in this regard we recall the European Parliament Resolution of February 16, 2017 containing recommendations addressed to the Commission regarding civil law rules on robotics (European Parliament Resolution, 2017), this being a first alarm signal regarding the fulminating developments of AI that must be subsumed under ethical and legal principles.

In 2018, the European Commission adopted the "Communication on Artificial Intelligence" (European Commission, Communication 237/2018), which aimed at numerous

measures to develop technological capabilities at EU level, recognizing that the EU was lagging behind in AI investment compared to Asia or the US.

Also in 2018, the European Commission established the High-Level Expert Group on Artificial Intelligence (Al HLEG), an independent group of experts to support the implementation of the European Strategy on Artificial Intelligence.

From the group's perspective, trustworthy AI has three components that ideally should work in harmony and overlap and should be fulfilled throughout the system's lifecycle: (a) AI should be legal, complying with all applicable laws and regulations; (b) it should be ethical, ensuring compliance with ethical principles and values; (c) it should be sound, both from a technical and social perspective, because even with good intentions, AI systems can cause unintended harm. The expert group also identified four ethical principles that should underpin trustworthy AI: respect for human autonomy; prevention of harm; fairness and explainability. These rules are complemented by seven requirements considered key requirements for achieving trustworthy AI: human involvement and oversight; technical robustness and security; data confidentiality and governance; transparency; diversity, non-discrimination and fairness; environmental and societal well-being; responsibility (High-Level Expert Group on Artificial Intelligence).

Also in the field of AI ethics, it is worth mentioning that on October 20, 2020, the European Parliament adopted the Resolution containing recommendations addressed to the Commission on the framework of ethical aspects associated with artificial intelligence, robotics and related technologies (European Parliament Resolution, 2020), which outlines the following ethical rules:

- artificial intelligence, robotics and related technologies should be human-centered, created and controlled by humans;
- mandatory conformity assessment of high-risk artificial intelligence, robotics and related technologies;
- security, transparency and accountability;
- safeguards and remedies against bias and discrimination;
- the right to compensation for damage;
- social responsibility and gender equality in artificial intelligence, robotics and related technologies;
- artificial intelligence, robotics and related green and sustainable technologies;
- respect for privacy and limitation of the use of biometric recognition;
- good governance in the field of artificial intelligence, robotics and related technologies, including data used or produced by such technologies.

Subsequently, on 9 March 2021, the European Commission adopted the communication entitled Digital Compass 2030: a European blueprint for the digital decade (European Commission, Communication 118/2021), which aimed to provide a vision of what a successful digital transformation means by 2030. This context created the premises for the initiation on 21 April 2021 of the Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Regulation) and amending certain Union legislative acts, with the declared aim of transforming the EU into a global hub for trustworthy AI. The proposal for a regulation (Proposal for a Regulation of the

European Parliament and of the Council on harmonised rules on artificial intelligence) is intended to support the development and adoption of trustworthy, human-centric AI, while ensuring the health, safety and fundamental rights of people in line with Union values and principles.

Last but not least, at the European level, the adoption in 2018 by the European Commission for the Efficiency of Justice of the Council of Europe of the first European document establishing ethical principles for the use of artificial intelligence in judicial systems is of particular importance in establishing the principles of AI ethics. This is the "European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their environment" (2018), which lists the following key principles aimed at helping policymakers, legal professionals and private sector companies to ensure that the use of artificial intelligence respects human rights, privacy and data protection:

1. *Principle of respect for fundamental rights:* the design and implementation of artificial intelligence tools and services are compatible with fundamental rights.
2. *The principle of non-discrimination:* specifically prevents the development or intensification of any discrimination between individuals or groups of individuals.
3. *The principle of quality and security:* with regard to the processing of court decisions and data, certified sources and intangible data with models developed in a multidisciplinary manner will be used, in a secure technological environment.
4. *Principle of transparency, impartiality and fairness:* data processing methods shall be accessible and easy to understand, external audits shall be authorized.
5. *The "user-controlled" principle:* excludes a prescriptive approach and ensures that users are informed actors and control the choices made.

3. Conclusions

Like any other science, ethics is constantly changing and its principles must be adapted to the times and the field so that we can benefit from all the advantages offered to humanity by AI, without endangering security, human rights, and the well-being of societies.

Without contesting the advantages of artificial intelligence, although we welcome the efforts being made at international and European level to lay the foundations of AI ethics, we nevertheless consider that it is not sufficient to outline sets of principles that can sometimes be too general, can be interpreted differently or can sometimes come into conflict when applied to concrete situations.

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CONSIDERATIONS REGARDING THE APPLICATION OF ART. 26 OF THE ROMANIAN CONSTITUTION IN RELATION TO THE MATERIAL REALITIES OF THE AVERAGE CITIZEN

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Abstract: *We are living in bizarre context of global capitalism or as other academics took to calling it, neoliberalism. This specific context has resulted in atrocities that we came to accept as realities of the market and necessary evils. In this article, we shall observe how the oath taken by the Romanian government trough the gaze of constitutional law is broken by conditions that go far beyond the life of the average person or even the national economy.*
Keywords: *constitutional law, neoliberalism, Gilles Deleuze, Hannah Arendt, family law.*

1. Introduction. *When it doesn't start with a kiss*

Law is a complicated business for lack of better words. Whenever we observe the application of law results may vary. In some instances, law is mired with the practical issue of the parties that must respect and suffer the effects of applied law. Constitutional law is regarded as the backbone of rights and obligations with which the citizenry is imbued. The issue lies in the parties of the legal relation. On one hand, the citizen is bound to respect the rights of others which gives birth to obligations of a social nature. By such logic, the state must respect the rights that they provide to individual citizens. In this specific context, the state is both bound to offer and to respect certain liberties and rights granted to its citizens and strip such rights from those who disobey the laws of the land. Article 26. of the Romanian Constitution grant the right to private life, more specifically, "Public authorities respect and protect intimate, the familial and private life". This statement looks suspiciously simple and clear on its surface, however, there are many fundamental issues to such a declaration.

Firstly, we must separate the specific issue that this article tries to present, mainly, how does this right of the citizen manifest in the form of an equivalent obligation towards the citizen. In order to have a better grasp regarding this obligation, we might as well deconstruct the article in itself. The public authority is a notion used for all state institutions and fact simile of such government functions. The life in question is that of individual citizens and that of family units that are considered by most legal scholars as the nucleus of all society. By the notions of intimate, familial and private life we understand that a citizen has the right to live a life as set person sees fit. The true issue comes in the form of the action. The idea of respecting and protecting the life of the citizen has come under fire in recent years. The main issue that has come to light is the private, intimate and family life of LGBTQ+ people. Both in the Coman-Hamilton decision and in the Buhuceanu decision, decided by different courts, has pointed out that gay couples should have the right to form a familial unit of sorts.

In the Coman-Hamilton case, a homosexual couple formed of a Romanian national and an American citizen asked for permission to gain residency for the latter husband (https://romania.europalibera.org/a/adrian-coman-rezolutie-parlament-european/31460028.html). The public authorities denied such a request basing their decision on article 277, points (2) and (4) of the Romanian Civil Code.

Point 2 of the article states that "Marriages between same sex people, officiated in a foreign country by a Romanian citizen will not be legally recognized on national soil". The Constitutional Court of Romania decided that article 277 is partly unconstitutional as it impedes of the rights of Romanians to private life in Decision 534/2018. In the case of Buhuceanu, the stated person and another 20 other couples have sued the Romanian state at the European Court of Human Rights. The point of the lawsuit was to prove that the lack of rights to marriage or the lack of civil partnership as a legal institution infringes on the constitutional right to a private/intimate/family life. We see a similar situation that is argued on different terms than the decision of the Constitutional Court. The decision of the ECHR was just affirming the previous decisions in cases such as *Olari and Others v. Italy* (18766/11) or *Fredotova and Others v. Russia* (40792/10).

In all three cases, the court cites that article 8 of the Declaration of Human Rights as imposing on all signatory countries that they must provide freedom to individuals to have family lives. By not offering the right to form a family to people of different sexual orientation, the states are infringing upon the rights of their citizens. In a broader sense, such trials lead to the inclusion of civil partnership as an institution or to radio-silence from the states.

In these two instances we notice the fundamental issue of granting civil liberties and rights by any state. The state has to offer the rights and protect them, but due to historical and cultural conditions the state might do a poor job in practice. This space of interpretation leads to a plethora of incongruences in national and international law.

2. *All along the watchtower*

In a more concise way, who watches the watchmen? Who is there to grant the rights that are supposed to be protected by the state when international courts and conventions can't benefit from the brutality of a police force or an active military? We must be precise here; I am not asking for the ECHR to get a standing military. However, I believe that the simple decision of the court or the signing of a convention is a feeble excuse of a greater warranty than those afforded by any state. A signature is not a shield, is a scrape of ink laid upon paper by a politician representing a country. The alienation and the distance between a person and that convention is crushing. The best explanation of this is presented by Hannah Arendt in her seminal work, *The Origins of Totalitarianism.* In chapter 9, she fundamentally dismantles the notion of human rights in a manner that no jurist had or will ever do.

To get specific, Arendt identifies the issue of ethnic minorities that occurred after the first world war. In her words, many people were left without a state to call their own. Due to the changing landscape of Europe, the new ethnic groups had to survive by the mercy of new nation-states that would sign a minority treaty (Arendt, p.270). By these treaties, a state would act fairly and give certain privileges towards minority groups residing on their territories.

As Arendt elaborates, these treaties were guaranteed by the western powers in Eastern and Southern Europe and by the League of Nations. Arendt spells out the fact that a convention

is just a piece of paper and that an international institution has as much legitimacy as the states participating in any convention gives set organization (Arendt, 272)

In that specific historical context, the nationality of a person bound them to the state of belonging. As such, the ethnic minorities of Eastern and Southern Europe were never meant to be full citizens of the country that they reside in (Arendt, 275). These formulae were abandoned after WW2 but they were not fully erased from the collective consciousness of European political forces. This reality of laws being difficult to apply when the state is both the donor and the guarantor of such rights can be applied to all constitutional law regardless of country. Article 26 in itself is not the problem, the problem is the alienation occurring between the beneficiary of set rights as granted by a constitution or a treaty, and the state in charge of both administrating and delivering set promise.

We saw an example of how internationally recognized rights can be poorly applied by states manifest in the above-mentioned case law. The laws are nothing but suggestion in the absence of potentiality which ensures both the respect and the enjoyment of rights and obligations. Another problematic aspect that is rarely tackled by jurists of all nations is the material conditions in which the legal dialectic between state and subject take place. The issue that we must tackle now is that of material conditions and how they shape the possibility of a family/intimate/private life.

3. *Do the evolution!*

As humanity progressed in technological and social terms, humanity has shifted the way that they live substantially. These shifts are bound to modify the human as a beast and as a concept. If we were to ask a wealthy American what a human is in the 18th century, they would describe an Englishman. The same question proposed in our current age would widen to all humanoid formations of matter, and in some instances, they would extend empathy to animals as intelligent forms of life detaining some semblance of rights. We went from nomad tribes, to villages, to city states, to states, empires and now in the global paradigm of international trade routes solidified by neoliberal values as birthed by Raegan and Thatcher. This evolution has brough obvious benefits but also detrimental aspects to the many selves that form a society. The main defect of all modern lives is that of alienation.

By the term alienation we of course mean it in the Marxian sense of the word. In the process of creating money and economical systems a separation appears between the owner and the owned good (Marx, p.75). This alienation is transferred to the psyche of humans. Beyond being alienated from day-to-day goods from the lack of knowledge of their origin, we alienate ourselves from others. In many instances, we may alienate ourselves from the self. A loss of personal identity is bound to happen in the context of poor economic conditions as we are headed to strange times.

In a neoliberal paradigm, alienation is the standard state of all happenings. We have Korean televisions, exotic fruits in the markets, foreign films that have no connection to our phenomenology and any other commodity one may “need”. Are these luxuries a bad thing into themselves?

No, and yet, this fundamentally dissolves the structures that were valid and lively less than half a century ago. In ye olden days, if a person wished for a chair, they had to build one. As society evolved a carpenter appeared to handle all the needs for chairs and other wooden furniture. This allowed individuals to specialize. A symbiosis of workers emerged under a bourgeois whip. Each person knew their little sector and excelled in it.

We can boldly state that in this context of evolution there are no better authors to present the metaphysical aspect regarding labor than Deleuze and Guattari. In their seminal work, *A Thousand Plateaus*, they dedicate a whole chapter to the way that society is segmented. This segmentation is done in a circular fashion (Deleuze, Guattari, p.209).

Just as primitive people would sit around a fire and form circles, our world functions in similar models. A concentric source of power extends in different rings fulfilling different roles. The individual can shift their position in regards to the center of power in some instances.

Another manner in which society is segmented is linearly. In a linear segmentation, proceedings follow one another in order to form a chronology of events. These linear structures can easily be applied to the way that we apply laws. After a deed is committed or a juridical issue arises, the normal proceedings are followed and the necessary steps are taken to achieve a solution (Deleuze, Guattari, p. 210).

These two forms of segmentation are not mutually opposing and the circular forms of segmentation is not always concentrical to the same power nucleus. These forms are more so put in place in order for us to have a grasp regarding a vast interconnected landscape of many moving parts.

In this cacophony of geometrical figures representing the hierarchical functions of society, the segments can be rigid or supple. A rigid segment is set in stone while a supple segment allows for passage of the individual or idea trough its form or membrane.

We observe segmentarity in our modern cities and the way that the global segments intersect, crash into each other, reconstruct, deconstruct, become rigid and how these movements form the places that we reside in. To understand the material conditions of the average Romanian citizen is not to just state that the economy is not doing good. The main point of contention that we can finally analyze is the way cities are built.

4. *21st century schizoid man*

One deeply cumbersome result of the global market, and inherently, of the world-finance structure is the lack of work in local areas. Law 350/2001 is the legal frame of urban development and city planning. From article 1, point 5, the law state that: “The management of the territory aims to ensure individuals and collectives the right of equitable, responsible and efficient use of the territory, adequate living conditions, the quality of architecture, protection of the architectural, urban and cultural identity of urban and rural localities, working conditions, services and transport that responds to the population's needs and resources, reducing energy consumption, ensuring the protection of landscapes both natural and built, biodiversity conservation and the creation of ecological continuities, public security and sanitation, rationalization of travel requests.”

This in a sense is the modus operandi of the law. A big sprawling declaration of the many issues that any decent legislator would have in mind when planning the law that is used

to plan cities. The simplest analysis of such imposed and guaranteed ideals proves that the state is lacking in regards to their own obligations.

In the sense of economic prosperity, Romania has been on the up and up. According to a study coming from the World Bank, the economy of Romania has been growing for years and the recovery from covid was relatively swift. However, this growth is linked to consumption. There is a clear decline in essential sectors such as production and agriculture (World Bank, p.23). In more clear terms, a consumption economy is unsustainable.

Another issue that is slowly gnawing at the social fabric is migration. Due to the previously stated issue of a consumption economy, people are having a hard time finding any sort of employment. This factor leads a whole population of able body workers to seek for better salaries. Even based on these factors we can see the Romanian state has failed to fulfill the promise of the social contract as manifested in constitutional law. This is not an issue specific to Romania. All states are having some sort of infrastructural failure that creates classes of people condemned to alienation in rigid segments.

In a perverse twist of faith, the holistic structure of economical markets has created the conditions to take the situations experienced by ethnic minorities in Eastern and Southern Europe in the interwar period from a particular expression of oppression to a universal state as felt by all working-class people.

It's not the individual elements or some curse bestowed by an alien entity. It's the little cracks in the whole machinic assemblage that result in failures of all sorts. In themselves, both article 26 and law 350/2001 are great pieces of legal writing, however, the whole structural functions fail to meet the criteria the laws impose on the state and its citizens.

The poor state of infrastructure leads the average Romanian to spend hellish periods in transit (https://pressone.ro/infrastructura-romaniei-de-ce-nu-avem-autostrazi-si-cai-ferate-moderne-dar-si-de-ce-romania-din-2030-va-fi-mult-diferita). These waiting periods unavoidably result in the loss of all important resources mentioned by law 350/2001. It leads to a waist of energy and unnecessarily so. Even if projects are undergoing there is a precedent for the political class to never fully deliver on promises.

There are severe problems regarding the thermal insulation and the access to warm water in urban areas (https://newsweek.ro/actualitate/termoficarea-din-romania-ciur-mii-de-apartamente-ingheata-in-bucuresti-craiova-timisoara) and in rural areas there are places that don't have access to water at all (https://www.zf.ro/eveniment/romania-profunda-jumatate-din-populatia-moldovei-nu-are-acces-la-apa-22500078). Under these conditions, the population is denied the right to have rights. In the absence of elementary living conditions, no citizen can benefit from the protection of rights that are not allowed to be born.

All of these little cuts in the body of society result in a deep dissonance between the law and the application. The law becomes a gathering of letters on paper in the absence of greater planning and continuity regarding national, local and familial projects.

Due to what can be called a tumultuous political evolution since the 2008 market crash, most nations have to face the absence of continuity and clarity in the face of many coming crisis, be them economical, ecological, immigrational in nature. No matter how we approach this issue, there seems to be no quick or simple solution to the crisis of national economies.

In the specific case of Romania, we depend on foreign commerce as most nations do nowadays. In a better-balanced global market, it would not be an issue. In the current volatile and war thorn state of the international economy, the lack of national production of most things becomes a huge problem which, again, lead to a failure of the state keeping it's promise.

5. Conclusions. *Barbarians/Overseas*

The few issues that we have presented are not solitary or unique. There are many more issues that we could address but it would lead us to the same conclusions. There are issues regarding working conditions, health care access and many other domains. All of these issues come back too the lack of material conditions and the absence of good planning at both national and local levels.

In Romania, these material conditions make article 26 and all connected laws impossible to apply or respect in all aspects. The promise of freedom that was gained in the 89 revolution is broken by petty political squabbles and precarious economic conditions. All populations owe themselves and their ancestors to live fulfilling lives as communities and as individuals. The many forms that power takes are in continuous dissonance. In this landscape, the average citizen is deprived from the right to have rights. The average citizen is deprived of the potential to form a family and to have an actual intimate or personal life in the struggle for survival. No person is free unless all humans are.

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EUROPEAN EDUCATIONAL AND NEW PERSPECTIVES FOR TEACHERS' SKILLS

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Abstract: *This paper explores the evolving landscape of 21st-century skills required for teachers, with a focus on aligning these requirements with current European educational policies. It underscores the critical role of teacher professional development in addressing the challenges posed by a rapidly changing society and in fostering essential competencies among students. The introduction contextualizes the urgency highlighted by the OECD PIAAC survey (2013), which revealed that Italian adults exhibit significantly lower skill levels compared to their counterparts in other high-competency countries. The discussion on "21st Century Skills" examines the shift from traditional knowledge-based education to a more integrated approach that combines fundamental skills, transversal competencies, and character qualities. This section also aligns with the European Skills Agenda (2020), which emphasizes the need for continuous learning, digital inclusion, and the integration of cross-disciplinary skills into curricula. An in-depth analysis of the OECD PIAAC results from the first cycle illustrates the concerning state of literacy and numeracy skills among the Italian adult population, highlighting the percentage of low-skilled learners, including those with higher educational qualifications. This analysis is extended with data from the second cycle (OECD 2021), which confirms persistent deficits in basic skills, especially in literacy and numeracy, indicating a continued need for targeted policy interventions. The paper concludes by emphasizing the importance of teacher professionalization and the integration of European educational policies into teacher training practices. It advocates for continuous monitoring of PIAAC data and the implementation of effective measures to address adult skill gaps. Future perspectives include fostering innovative teaching methods, international collaboration, and a focus on inclusive education to enhance teaching quality and student outcomes in alignment with 21st-century demands.*

Keywords: *European, education, teacher, skills.*

1 Introduction

This paper seeks to shift the academic discourse towards the imperative of developing 21st-century competencies within the educational framework, particularly emphasizing the integration of these competencies into teacher training programs. As societies continuously evolve and face unprecedented challenges, the ability of educational systems to adapt and equip students with relevant skills becomes increasingly critical. The role of teachers in this context is pivotal, as they are responsible for not only imparting knowledge but also for fostering a range of competencies that students need to navigate and succeed in a complex world. The OECD Programme for the International Assessment of Adult Competencies (PIAAC) provides a crucial lens through which to examine the effectiveness of current

educational practices. The 2013 PIAAC survey underscored a pressing concern regarding the competency levels of Italian adults, revealing that their skills were markedly inferior when compared to adults in other high-performing countries. This disparity highlights the need for a transformative approach to education that extends beyond traditional content knowledge to include critical skills such as problem-solving, digital literacy, and emotional intelligence. The integration of European educational policies into this discussion is essential, as these policies outline strategic directions for developing a resilient and competent workforce. For instance, the European Skills Agenda (2020) emphasizes the importance of continuous learning, digital integration, and the incorporation of transversal skills into educational curricula. These policies reflect a broader recognition of the need to align educational practices with the demands of a rapidly changing labor market and societal expectations. In this context, teacher training emerges as a critical area of focus. Effective professional development programs must not only address current educational needs but also anticipate future demands. This requires a paradigm shift in how teachers are prepared and supported throughout their careers. Embracing a lifelong learning approach, integrating innovative pedagogical practices, and ensuring alignment with European educational standards are key to enhancing teaching quality and, consequently, student outcomes. By examining the implications of the PIAAC findings and the relevance of European educational policies, this paper aims to provide insights into how educational systems can better prepare teachers and students for the complexities of the 21st century. The goal is to contribute to the development of educational strategies that are both responsive and proactive, ensuring that they meet the evolving needs of society and the global economy.

2 21ST CENTURY SKILLS AND EUROPEAN EDUCATIONAL POLICIES

The term "competence," derived from its Latin origins, denotes the capacity to move together towards a common goal. This definition reflects the dynamic and interactive nature of competencies, which encompass not only theoretical knowledge but also practical skills and personal dispositions. In recent years, European educational policies have increasingly emphasized the importance of competencies that extend beyond mere factual knowledge. This approach is exemplified by the document "New Vision for Education: Fostering Social and Emotional Learning Through Technology," published by the World Economic Forum (2016), which identifies 16 fundamental competencies divided into core skills, transversal competencies, and character qualities.

2.1 *CORE SKILLS*

Core skills include basic competencies such as literacy, numeracy, scientific literacy, technological literacy, financial literacy, and social and civic literacy. These skills are essential for active participation in contemporary society and form the foundation for the development of more complex competencies.

2.2 *TRANSVERSAL COMPETENCIES*

Transversal competencies encompass critical thinking and problem-solving, creativity, communication, and collaboration. These competencies are vital for addressing complex

problems, working effectively in teams, and adapting to new contexts. The ability to think critically and creatively, communicate clearly, and collaborate with others is increasingly demanded in both the workplace and daily life.

2.3 *CHARACTER QUALITIES*

Character qualities such as curiosity, initiative, determination, adaptability, leadership, and social and cultural awareness are equally crucial. These qualities influence how individuals tackle challenges, adapt to changes, and interact with others. Promoting these qualities in young people is essential for preparing them to become responsible citizens and effective professionals.

2.4 *EUROPEAN EDUCATIONAL POLICIES*

European educational policies, such as the European Skills Agenda for sustainable competitiveness, social equity, and resilience (European Skills Agenda, 2020), aim to develop an education and training system that equips citizens with the skills necessary to face future challenges. Strategic priorities of the European Union include promoting lifelong learning, digital inclusion, and integrating transversal skills into school curricula. The European skills agenda emphasizes the importance of continuous and flexible learning that allows individuals to update and expand their skills throughout their lives. This vision acknowledges that the skills required for personal and professional success continually evolve and that formal education must be complemented by opportunities for non-formal and informal learning.

2.5 *COMPETENCY-BASED TEACHING*

According to Comoglio (2004), competency-based teaching necessitates a significant shift in pedagogical practices, as it involves the integration of various dimensions of knowledge and the promotion of meaningful learning. This approach highlights the importance of teaching that values both theoretical knowledge and practical skills, aiming for the holistic development of the individual. Competency-based teaching focuses on active and participatory methodologies that engage students in authentic learning experiences. These methodologies include cooperative learning, problem-based learning, project-based learning, and the use of digital technologies to facilitate personalized and interactive learning. The goal is to develop competencies that are relevant and transferable to different contexts of daily life and professional environments.

3 THE OECD PIAAC SURVEY: FINDINGS FROM THE FIRST CYCLE

In 2011, the OECD launched the decennial Programme for the International Assessment of Adult Competencies (PIAAC), which evaluated the skills of adults aged 16 to 65. The first cycle of this survey provided a comprehensive overview of literacy, numeracy, and problem-solving competencies among adults in participating countries, including Italy.

3.1 *KEY FINDINGS*

- ***Literacy Skills***

The results for Italy revealed low literacy skills within the adult population. The term "literacy skills" refers to the ability to understand and use written information in various contexts. According to the collected data, a significant proportion of Italian adults exhibited difficulties with these fundamental skills. Specifically, the results indicate that 27.9% of the Italian population falls into the category of low-skilled learners, meaning individuals with a low level of literacy proficiency. These alarming data suggest that a substantial portion of the Italian adult population is unable to perform reading and writing tasks deemed essential for active participation in contemporary society. For instance, many adults struggle to comprehend complex texts, interpret graphs and tables, or draft written documents effectively.

- ***Numeracy Skills***

The numeracy skills of Italian adults, which include the ability to use and interpret numbers and mathematical data in every day, work-related, and social contexts, are equally concerning. The percentage of individuals with low numeracy skills is high, indicating widespread difficulty in applying basic mathematical knowledge to practical situations. This gap can have significant implications for personal financial management, understanding health information, and making informed decisions in daily life.

- ***Problem-Solving Skills***

Another area assessed by PIAAC concerns problem-solving skills in technology-rich environments, referring to the ability to use digital tools to solve problems and complete complex tasks. Here too, Italy's results were below the average of participating countries. Poor familiarity with digital technologies and limited capacity to utilize online resources for solving everyday problems represent additional barriers to social inclusion and improved employment opportunities.

- ***Demographic Analysis – Educational Attainment***

The analysis of the data revealed that skill levels are closely related to educational attainment. Among those categorized as low-skilled learners, 20.9% have completed secondary education, while 4.1% hold a university degree (INAPP, 2017). These data suggest that, although higher formal education can enhance competencies, it is not always sufficient to ensure adequate levels of literacy and numeracy.

- ***Demographic Analysis – Age Groups***

A concerning finding is that approximately half of the low-skilled adults are under 44 years of age, with nearly 25% in the 25 to 34 age brackets. This generation, generally considered to have the highest productive and innovative potential, instead shows significant gaps in fundamental skills. This may represent a severe limitation for employment prospects and the ability to adapt to an increasingly dynamic and technologically advanced labor market.

- ***Implications for Educational Policies***

The results from the first cycle of the OECD PIAAC survey underscore the urgent need for targeted interventions to improve the competencies of Italian adults. Educational policies should focus on:

- Lifelong learning: promoting continuous education programs that enable adults to update and enhance their skills.
- Digital inclusion: developing initiatives that facilitate access to digital technologies and acquiring skills necessary to use technological tools effectively.
- Targeted support: providing personalized support and educational resources for adults with low skills, particularly targeting vulnerable groups such as young adults and those with low levels of formal education.
- Cross-sectoral collaboration: engaging educational institutions, employers, and civil society organizations in an integrated approach to address skill gaps and promote more effective and inclusive learning.

4 THE OECD PIAAC SURVEY: RESULTS FROM THE SECOND CYCLE

The latest data from the OECD PIAAC survey, published in 2021, confirms that Italy continues to show significant deficiencies in basic skills, with difficulties in literacy and numeracy. The PIAAC survey evaluated adult competencies in three main areas: literacy, numeracy, and problem-solving in technology-rich environments.

- ***Literacy Skills***

The report from the second cycle of the OECD PIAAC survey (2021) highlights that 28% of Italian adults possess literacy skills below Level 2 of the PIAAC scale. This level represents a critical threshold: adults below this level often struggle to understand and effectively use written texts in every day and work contexts.

- ***Numeracy Skills***

Numeracy skills present an equally concerning picture: 32% of Italian adults have numeracy skills below Level 2. These skills are essential for a wide range of daily activities, such as managing money, interpreting statistical data, and using measurements and graphs. Adults with low numeracy skills often encounter difficulties in solving basic mathematical problems and applying numerical concepts to practical situations, limiting their ability to make informed decisions and fully participate in society.

- ***Problem-Solving in Technology-Rich Environments***

In addition to literacy and numeracy skills, the survey assessed problem-solving abilities in technology-rich environments, which include the capacity to use digital technologies to solve complex problems. Here too, Italy falls below the OECD average, with a significant percentage of adults demonstrating difficulties in effectively using digital technologies for problem-solving. These competencies are increasingly crucial in a rapidly evolving labor market, where the ability to adapt and utilize digital tools is fundamental for productivity and employability.

- ***Demographic Analysis – Educational Attainment***

The demographic analysis of the second cycle data confirms that skill levels are strongly influenced by educational attainment. Adults with higher levels of education tend to have better competencies than those with lower levels of education. However, there remains a significant percentage of low-skilled learners even among adults with secondary and higher education diplomas. This suggests that while formal education is an important factor, it is not sufficient on its own to ensure adequate levels of literacy and numeracy skills.

- ***Demographic Analysis – Age Groups***

Demographic data also show that skill deficiencies are not limited to older adults. Approximately 25% of adults in the 25-34 age group display literacy and numeracy skills below Level 2. This is particularly concerning, as this age group represents a crucial phase for professional development and active workforce participation. The presence of significant gaps in basic skills among young adults can have serious implications for the country's competitiveness and economic growth.

- ***Implications for Educational Policies***

The results from the second cycle of the OECD PIAAC survey highlight the urgent need for targeted policy interventions to improve basic skills among the Italian adult population. Educational policies should address the following key areas:

- Strengthening basic education: it is essential to improve the quality of basic education to ensure that all students acquire adequate literacy and numeracy skills. This includes updating school curricula and adopting effective teaching methods that promote active and engaging learning.
- Lifelong learning and continuing education: promoting lifelong learning programs that allow adults to update and enhance their skills. This requires creating flexible and accessible training opportunities that meet the diverse needs of the adult population.
- Digital Inclusion: Developing initiatives that facilitate access to digital technologies and acquiring the necessary skills to use technological tools effectively. This includes digital training for adults and the promotion of digital skills in schools.
- Personalized support: providing personalized support and educational resources for adults with low skills, with particular attention to vulnerable groups. This may include tutoring programs, adapted educational materials, and specific training courses.

5 Conclusions and future perspectives

In recent decades, the value of competencies as educational outcomes has gained increasing prominence in global educational discourse. The transformation of schools in response to socio-economic and technological changes has placed greater emphasis on the importance of training students not only with solid theoretical knowledge but also with the ability to apply such knowledge in complex and dynamic contexts. In this regard, the professionalization of the teaching workforce and the continuous professional development of teachers have become strategic priorities to ensure high-quality education and to promote key competencies among students.

5.1 *THE PROFESSIONALIZATION OF THE TEACHING WORKFORCE*

The professionalization of teachers is a crucial component for improving the quality of education. In a rapidly evolving world, it is essential that teachers not only have a solid initial preparation but also participate in continuous professional development programs that update them on new teaching methodologies, emerging technologies, and best pedagogical practices. Initial training must be designed to provide teachers with a strong foundation in pedagogy and subject content, while also integrating transversal skills such as problem-solving, creativity, and the management of emotional and social dynamics in the classroom. The approach of lifelong learning is particularly relevant in this context. Continuous professional development should be seen as an opportunity for teachers to update and reflect on their professional practice, adapting to the new demands of the educational system and emerging societal challenges. This requires significant investment in resources and time by educational institutions and governments, but it is essential to ensure that teachers can effectively respond to the needs of students and the evolving educational context.

5.2 *INTEGRATION OF EUROPEAN EDUCATIONAL POLICIES*

European educational policies, as outlined in the European Skills Agenda for Sustainable Competitiveness, Social Fairness, and Resilience (2020), provide valuable guidance for the implementation of targeted educational strategies. These policies emphasize the importance of developing an education system that promotes not only technical and professional skills but also transversal and socio-emotional competencies. Integrating these policies with teacher training practices can help improve the quality of teaching and, consequently, student learning outcomes. For instance, the inclusion of digital skills and emerging technologies in school curricula and teacher training programs is crucial for preparing students to face the challenges of an increasingly digital world. Moreover, policies promoting personalized learning and educational inclusion can help ensure that every student, regardless of their needs and background, receives high-quality education.

5.3 *MONITORING AND ADAPTATION*

It is essential to continue monitoring the data from the OECD PIAAC surveys and to adopt effective measures to address the gaps in adult competencies. The OECD PIAAC surveys provide a critical overview of adult competencies and the challenges that need to be addressed. The results of these surveys offer valuable insights into where improvement efforts should be concentrated, and which areas require urgent attention. Continuous analysis of PIAAC data allows for the identification of emerging trends and the adaptation of educational policies and training programs in response to these trends. Policymakers, educational institutions, and training organizations must use this information to design targeted and evidence-based interventions that can effectively address skill deficiencies and promote continuous and inclusive learning.

5.4 *FUTURE PERSPECTIVES*

The future perspectives for the Italian educational system and the professionalization of teachers should include:

- Educational innovation: experimenting with and implementing innovative teaching methodologies that promote active learning, collaboration, and student autonomy. The

use of digital technologies, gamification, and project-based learning can provide new opportunities to engage students and develop their competencies.

- International collaboration: participating in international educational initiatives and projects to share best practices and experiences with other countries. International cooperation can provide insights and effective strategies for improving competencies and education globally.
- Focus on inclusion and equity: ensuring that educational policies and training programs address the needs of all students, including vulnerable and disadvantaged groups. Promoting an inclusive and supportive educational environment is essential for improving learning outcomes and reducing inequalities.

In conclusion, addressing the challenges and opportunities that emerge from the OECD PIAAC surveys requires a coordinated and strategic commitment from all stakeholders involved in the educational system. Only through an integrated, evidence-based approach oriented towards continuous improvement can high-quality education be ensured, preparing students to face the challenges of the 21st century with competence and resilience.

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DEEP FAKE VULNERABILITIES IN PUBLIC ADMINISTRATION DURING THE ELECTIONS PERIOD

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Abstract: *The speed of technology development, digitization, has marked a radical transformation of our society, managing to significantly influence the way we communicate, inform ourselves or interact. The technological advance in the field of artificial intelligence has created the conditions for the emergence of a new form of manipulation that is still widespread in the online environment: deepfakes. Deepfakes become a problem when fake content can be created to harm a private person's reputation or life. In situations regarding future elections and candidate selection, a malicious deepfake message to put the adversary in a position of incompatibility for election to public office or to manipulate public opinion regarding the possibility of certain candidates being "suitable" for a certain function, knowing this type of tool can mean the difference between winning or not.*

Keywords: *Deepfake technology, Social engineering, Public administration, Manipulating elections through deepfake technology*

1. Introduction

Public life has become a particularly important asset, the image is well formed, structured and delimited over time and yet so vulnerable to the problems that have arisen with digitalization. In the National Strategy for Artificial Intelligence (AI) 2024-2027, we recognize that the use of AI technology makes it possible to be attacked by a new type of threat, hybrid warfare, through disinformation and influence operations. While altering images or video is not as much of an issue, large-scale access to deep fake technology can be a threat. Technological advances in artificial intelligence and digitization have made it possible to create a new form of digital manipulation, the deepfake. Deepfake is a form of digital manipulation that uses advanced artificial intelligence techniques to create fake images or audio-video content. It can have significant consequences for society, including impacts on security and public trust in online information. In this context, it is crucial to be aware of the new challenges in this area and therefore to be able to identify and manage fake content appearing online. Public life has become a particularly important asset, the image is well formed, structured and delimited over time and yet so vulnerable to the problems that have arisen with digitalisation. In the National Strategy for Artificial Intelligence (AI) 2024-2027, we recognise that the use of AI technology makes it possible to be attacked by a new type of threat, hybrid warfare, through disinformation and influence operations. While altering images or video is not as much of an issue, large-scale access to deep fake technology can be a threat. Technological advances in artificial intelligence and digitisation have made it possible to create a new form of digital manipulation, the deepfake. Deepfake is a form of digital manipulation that uses advanced

artificial intelligence techniques to create fake images or audio-video content. It can have significant consequences for society, including impacts on security and public trust in online information. In this context, it is crucial to be aware of the new challenges in this area and therefore to be able to identify and manage fake content appearing online.

The rapid development of technology and communications has brought great benefits to everyone, and it is only logical to understand that this has also increased vulnerability to cyber-attacks. Increasing digitization, connectivity as well as the use of new technologies have led to worsening cybersecurity risks. To this end, the National Cyber Security Directorate was established by GEO no. 104/2021. The National Cyber Security Directorate is a Romanian institution under the coordination of the Prime Minister. DNSC's main tasks are prevention, analysis and response to cyber incidents, cyber awareness and international cooperation. This institution has a particularly important role as cyber security is a major concern in today's digital society. All national critical infrastructures such as power grids, financial systems and health systems can be vulnerable to cyber-attacks. DNSC has an important role in protecting these infrastructures and ensuring Romania's cybersecurity.

The Directorate of National Cyber Security (DNSC) released a guide to identify deepfake material in a press release on the first day of April 2024. The guide is a well-developed guide that provides detailed information on what deepfake is, the process of how it is made and how to identify such material. By understanding these concepts, users will become more aware of the risks associated with this type of technology and gain knowledge on how to defend themselves. Understanding the concept of deepfake is crucial and has significant implications for society, politics, cybersecurity and the manipulation of public trust. The deepfake guide is a trusted source of information that explains how deepfakes can distort reality through video or audio content that is difficult to identify from authentic material and how this can undermine trust.

One role of the guide may be to better understand how we rely on information to make decisions and of course to use more critical thinking and to check the veracity of information and its sources. This paradigm shift in which access to information is close to 100% compared to times in the past when access was much harder and information was much harder to find, makes us vulnerable to novelty. We can observe the adverse effects of this era, namely the fact that nowadays we can find a plethora of information results requested through the internet, but we lack a reliable source of its veracity. In this respect, we come up against information from false registrations involving people in activities that they have not carried out, false identities through which unauthorized access to information or financial resources is sought.

In public administration we can see the strongest impact because this is the most suitable area for attacks to manipulate and misinform public opinion. It is within anyone's reach to use a tool that can discredit the adversary and create confusion, and even more if it achieves its purpose, to influence important decisions such as influencing elections or conspiracy theories. This type of technology has a strong social, ethical and moral impact and without the right information and decisions can become a threat to anyone. In order to defend ourselves against this type of attack, we need to prepare for the future and understand how this technology works. At a larger level, there are technologies that are able to thwart attacks of this kind and that build on exactly what makes this technology so special.

The use of artificial intelligence and machine learning algorithms is a great way of using deepfake technology and that is a perfectly calibrated surgical tool for this type of activity. We therefore understand that it is important that we develop a collective level of understanding of deepfake and its destructive potential. We are in the digital age, a world in which technology is the greatest challenge to the human factor because it is increasingly difficult for us to distinguish reality through the manipulation of content. However, there are certain clues that can betray deepfake material. The only constant is change and understanding phenomena that create effects for everyone.

In order to understand even more and to speak from the experience of what we have learned, we can take as an example the communication through social networks in the coronavirus pandemic. Fake news was a very effective way of manipulation and disinformation. Cifuentes-Faura (2020) explains how people react in an emergency or disaster. The rapid lack of a prompt response from the authorities makes citizens seek information themselves in the media or through social networks but without verifying the source of this information. In this way misinformation and fake news create panic and promote inappropriate attitudes and behavior. One of the main distribution channels for fake content is WhatsApp. The app is the most suitable channel for spreading fake news because it works based on direct trust in the people we have in our address book, in the sense that people share what they get from people in their environment and much of the information shared is false, managing to lead to wrong decisions. We are therefore identifying the need for a reference guide to check the veracity of information so that we do not find ourselves in the situation of being yet another source of false news. The most important and first signal that we might be dealing with fake news is the headline. In the age of social media, the headline needs to be short, concise and visual. In the case of fake news, headlines are often too prominent and include information that is hard to believe. In the top three most searched headlines on the Google search engine in 2020 was the coronavirus pandemic but also a movie that referred to a similar pandemic. I wanted to highlight the fact that by understanding the trends, you can easily produce material that for some people becomes a reality and that they no longer question the aspects presented or the fact that it is not real. In this sent we can deduce that the non-identification of the owner of the news, the information of the communication channel and the fact that it uses trends is another sign of fake news.

The fake news from the coronavirus pandemic was usually unknown media sources offering exclusivity for certain channels. This is false given that the importance of the message of a news message that everyone is waiting for, such as the vaccine or how best to protect ourselves from coronavirus, is something that needs to be carried on all channels. On top of that, to raise even more questions, the format of the message is atypical and gives even more power and diversion. False information is usually posted without the date being given, and some have spelling mistakes and are found on media-like internet addresses. In order to provide an official news source, the Romanian Government, through the Romanian Digitization Authority and the non-governmental organization Code for Romania, launched the online platform for official news in 2020. The findings presented by Shweta et al. (2021) refer to the fact that the recent advancement in the field is not effective as long as there is so-called „gap" with the meaning of incomplete work . Citizens can use effective identification methods that detect deepfakes, but this requires certain knowledge in the field that not everyone has. So the

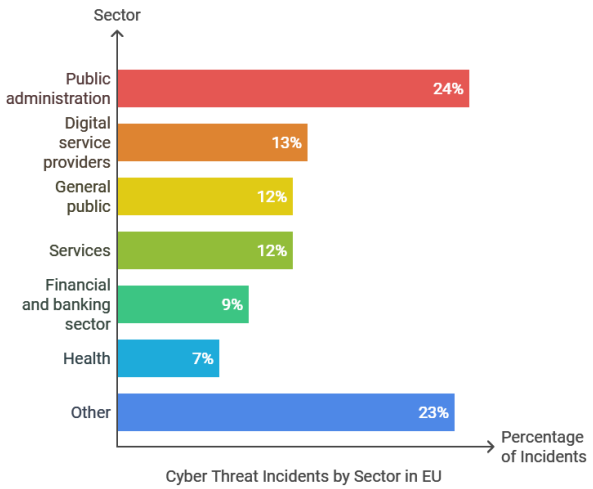
authorities could step in and implement a solution like the Screening presented in the review above, and legal requirements could be made for tech companies to be obliged to include limitations in the platforms through which people create digital content or create metadata that is fingerprinted by time, location or content.

2. Manipulating and stealing public image

Social engineering is just one of the threats the European Union is tackling to promote cyber resilience and combat cybercrime. Social engineering is a strategy used by individuals or groups of individuals to manipulate and mislead people into disclosing sensitive information that compromises them or others to whom they have access (https://www.consilium.europa.eu/ro/policies/cybersecurity/cybersecurity-social-engineering/).

This is based predominantly on human psychology and understanding of human behavior. In social engineering attacks, the attacker often pretends to be a trustworthy person or a trusted source to gain the trust of the intended victim. Tricking victims into opening malicious documents, files or emails, or visiting certain websites thus giving the attackers unauthorized access to systems or services. The most common attack of this kind is phishing (via e-mail) or smishing (via text messages). The attacker will use tactics such as identity theft, means of persuasion to extract valuable information. In public administration social engineering attacks can take various forms, the strategy being to exploit human vulnerabilities to achieve objectives. Because we are talking about the central public administration system it goes without saying that we are dealing with a very well-prepared system if we are to talk about the strong, technical link in terms of data protection and security and cyber security. The weak link, on the other hand, can be considered to be man.

Figure 1. Looking at the top 6 sectors affected by cyber threats



Source: https://www.europarl.europa.eu/topics/ro/article/20220120STO21428/securitate-cibernetica-principalele-amenintari

The 24% percentage of reported incidents in public administration related to the main threats observed by the European Union Agency for Cyber Security in 2022 has given us an indication that civil servants may be at risk of security incidents.

Cyberspace is characterized by its border lessness, dynamism and anonymity, which creates both opportunities for the development of the knowledge-based information society and risks to its functionality, whether at the individual, state or even cross-border level. By this we mean the duality that the more computerized a society is, the more vulnerable it is, and that ensuring the security of cyberspace must be a concern for all state institutions. A good example to follow is the course of the Information Technology and Cybersecurity Service organized in Moldova and funded by the European Union, which organized in April 2024 a course for civil servants from various government institutions with the aim of providing participants with an understanding of cybersecurity concepts and practices to protect information assets in the online environment (https://stisc.gov.md/ro/comunicate-de-presa/stisc-continua-instruirea-iso-securitate-cibernetica-functionarilor-publici).

In order to compromise a person, we can identify different techniques used in social engineering such as phishing, pretexting, bait phishing, spear-phishing, vishing, ransomware and extortion, luring and identity theft.

- **Phishing**: Attackers send misleading emails, messages or links to legitimate-looking websites to persuade recipients to click and reveal sensitive information such as passwords, credit card numbers or personal data;
- **Pretexting**: Attackers create a fabricated scenario or pretext to obtain information. This often involves impersonating a trustworthy person such as a colleague or bank representative;
- **Bait Phishing**: Attackers mainly target users of social media platforms and often take advantage of popular topics or trending topics to create misleading messages, making them relevant and trustworthy;
- **Spear-phishing**: Similar to phishing, but highly targeted. To appear even more convincing, attackers tailor messages based on information about the potential victim;
- **Vishing**: A form of phishing that occurs through voice communications, usually phone calls. Attackers impersonate trusted identities and persuade victims to reveal sensitive information;
- **Ransomware and extortion**: Attackers threaten to disclose sensitive information or disrupt systems unless a ransom is paid. They instill fear to coerce their victims;
- **Luring**: Attackers offer something attractive, such as free software downloads, in exchange for personal information or system access. This may involve infected files or links;
- **Impersonation:** Attackers pretend to be someone else, either online or in person, in order to gain the victim's trust and manipulate them into divulging confidential information or performing certain actions.

To be able to avoid these types of attacks, we must be vigilant and recognize the signs. Something that seems too good to be true can always be a scam. Sensitive, institutional or personal data should not be shared, such as passwords, credit card numbers or personal data in messages or emails, regardless of who requests it. We should also avoid clicking on links or opening emails from unknown sources.

A highly publicized example of a deep fake scam was in Hong Kong Japan, where through social engineering, a single person was chosen as a target. The person was sent some emails to make some bank transfers. The Hong Kong fraud most likely used deep-fake technology in real time, the attacker managing to achieve his goal. To confirm the transfers requested by email, the victim was called and put in a conference call with some of the

employees and the company's CEO, all the content being fake, to confirm that he had to make those requested transfers and that he did. The value of the fraud was over 25 million dollars. This is a good example of how deepfake technology and social engineering were used and which makes us think about the risks to which each of us is exposed and even more so a public institution.

Detecting a deepfake is quite difficult but a trained eye can still detect it. In the early days of deepfakes, detection was relatively easy and simple by observing whether the eyes blinked or not. Eyes that did not blink signaled a deepfake, because the technology was not advanced enough to create blinking eyes. Technology has advanced and this is more difficult to detect. Other signs that we can look at are (https://dnsc.ro/citeste/dnsc-scamadviser-deepfake-ce-este-recomandari-securitate-online): • Improper lip sync; • Unnatural blinking; • Stuttered movements; • Missing shadows and unnatural lighting; • Unmoving hair or unnatural hair movement.

Conclusions and proposals

Knowledge of deepfake technology can mean an extra step for those who will not fall into this manipulation trap, but it is not enough as we have observed. Actors interested in manipulating public opinion in favor of an event candidate in the elections can achieve their goal through social engineering. Public institutions are vulnerable to possible cyber-attacks, but especially to direct attacks on the person. However, by acquiring a minimum of information such as that in the guide posted in April 2024 on the website of the National Directorate of Cyber Security, they can form a filter through which reality is closer to the truth. This paradigm shift achieved through digitalization makes us understand how important it is to define a context for new technologies and how controlling them is necessary through a clear delimitation of competencies**.**

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ENSURING A HEALTHY COMPETITIVE ENVIRONMENT IN THE FIELD OF LEGAL PROFESSIONS

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Abstract: *Legal professions play a fundamental role in maintaining order and justice in society. Lawyers, notaries, and legal advisors are essential for ensuring compliance with the law and protecting the rights of individuals and companies. However, the legal services market is not immune to anti-competitive practices that can distort competition and affect the quality of services offered. This material aims to explore in detail the main types of anti-competitive practices in the legal professions, their impact, applicable regulations, and relevant cases.*

Keywords: *competition, anti-competitive practices, antitrust regulations, legal professions.*

Introduction

In Romania, anti-competitive practices in the field of legal professions are regulated by various laws and legal provisions designed to ensure a fair competitive environment and protect consumer interests.

- *Competition Law No. 21/1996 and subsequent amendments*

Romania's Competition Law represents the primary legislation governing anti-competitive practices in general. It prohibits actions aimed at or resulting in the obstruction, restriction, or distortion of competition in the market.

- *The Romanian Lawyer's Code of Ethics*

Lawyers in Romania are subject to a code of ethics that regulates ethical and professional practices. This code may include provisions prohibiting certain anti-competitive practices or promoting fair and transparent competition among lawyers.

- *Bar Association Regulations* (https://www.unbr.ro/legislatie/legislatie-romana/)

Bar associations in Romania can issue regulations and standards governing lawyers' practices and promoting fair competition. These may include, for example, rules on advertising, fees, and territorial restrictions.

- *Specific Regulations for Legal Professions*

Certain aspects of anti-competitive practices may be specifically regulated for legal professions such as public notaries, bailiffs, or legal advisors. These regulations can be issued by competent authorities for each profession.

- *The National Authority for Consumer Protection (ANPC)* (https://anpc.ro/legislatie-generala/)

The ANPC has the authority to monitor and sanction unfair commercial practices that may affect consumers. It can intervene in cases where anti-competitive practices in the legal professions negatively impact consumers.

- *The Competition Council* (https://www.consiliulconcurentei.ro/)

The Competition Council is the body responsible for enforcing competition law in Romania. It can investigate anti-competitive practices and take measures to prevent and sanction such behaviors.

In summary, Romania has a legal and regulatory framework aimed at ensuring a healthy competitive environment in the field of legal professions. These regulations are essential for promoting fair competition, protecting consumer interests, and maintaining the integrity and prestige of the legal profession.

1. TYPES OF ANTI-COMPETITIVE PRACTICES IN LEGAL PROFESSIONS

Competition is viewed in specialized literature (Boroi, 1996:5) as "the confrontation between professionals with similar or related activities, conducted in open market fields, aimed at gaining and retaining clientele to optimize their enterprise's profitability."

Anti-competitive practices refer to behaviors or policies that impede, restrict, or distort competition in the market. In the context of legal professions, these practices may include:

- Access Restrictions: Strict conditions for admission to the profession that limit the number of practitioners.
- Price Fixing: Setting minimum or maximum fees for legal services.
- Territorial Restrictions: Limiting lawyers' rights to practice in certain geographic areas.
- Advertising Restrictions: Strict regulations on how lawyers can promote their services.
- Non-Competition Agreements: Agreements between firms or practitioners not to compete in certain market segments.

Access Restrictions

Access restrictions (Aina, 2013) to legal professions are commonly encountered and can take various forms, such as:

Bar Exam

In many countries, admission to the bar is conditioned on passing a difficult examination. In Romania, for example, the bar admission exam is known for its high difficulty level. This can ensure a high standard of professional competence but may also restrict market access.

Mandatory Training

Requirements for internships or continuous training courses can be very rigorous and costly. In Romania, the internship period for lawyers lasts two years, during which interns must participate in professional training courses.

Impact of Access Restrictions

Access restrictions can have the following effects:

- Reducing Competition: A limited number of practitioners leads to less competition.
- Increasing Prices: With fewer service providers, the prices for legal services may rise.
- Decreasing Innovation: Fewer competitors mean less pressure to innovate and improve services.

Price Fixing

Price fixing is a practice where minimum or maximum fees are established for certain legal services. This can be implemented through regulations by professional associations or agreements between firms.

Mandatory Minimum Fees

In some jurisdictions, bar associations set mandatory minimum fees for legal services. For instance, in Italy, the bar association established minimum fees for various legal services. This was considered an anti-competitive practice by the European Commission, which mandated the removal of these fees.

Impact of Price Fixing

- Limiting Competition: Eliminating price-based competition may disadvantage consumers who could benefit from lower fees.

- Maintaining High Prices: Mandatory minimum fees can result in persistently high prices, affecting the accessibility of legal services.
- Reducing Transparency: Price fixing can reduce market transparency, making it harder for consumers to compare the costs of legal services.

Territorial Restrictions

Territorial restrictions involve limiting the ability of lawyers to practice in specific regions. These restrictions can reduce competition and access to legal services in certain areas.

Local Regulations

In some countries, local regulations allow only lawyers who are members of a specific local bar association to practice in that area. For example, in France, lawyers must be registered with a particular bar association to practice within that region.

Impact of Territorial Restrictions

- Reducing Access to Legal Services: In rural or less populated areas, such restrictions can drastically limit access to legal services.
- Strengthening Local Monopolies: Local law firms may become monopolistic, eliminating competition and increasing prices.
- Regional Disparities: Territorial restrictions can lead to disparities in the quality and availability of legal services across different regions.

Advertising Restrictions

Advertising restrictions can include the prohibition of certain types of advertising or the imposition of strict rules regarding the content and manner of promoting legal services.

Advertising Rules

In many countries, bar associations impose strict rules regarding lawyer advertising. For example, in Germany, lawyers are not allowed to advertise on television or radio and must adhere to certain ethical standards when promoting their services.

Impact of Advertising Restrictions

- Reduced Visibility: Smaller or newly established lawyers may struggle to get noticed.
- Maintaining the Position of Large Firms: Well-known large firms can maintain and strengthen their dominant position in the market.
- Limiting Information for Consumers: Consumers may have difficulty finding and comparing available legal services.

Non-Competition Agreements

Non-competition agreements are agreements between firms or practitioners not to compete with each other in certain market segments. These agreements may include restrictions on geographic areas, types of services offered, or pricing practices.

Examples of Non-Competition Agreements

- Market Sharing: Two law firms may agree not to offer their services in the same city or region to avoid direct competition.
- Pricing Agreements: Firms may agree to charge the same rates for certain legal services to keep prices high.

Impact of Non-Competition Agreements

- Reduced Competition: Non-competition agreements eliminate competition between the firms involved, negatively affecting consumers.
- Maintaining High Prices: Pricing agreements can lead to the maintenance of high prices for legal services.
- Limiting Innovation: The lack of competition reduces the pressure for innovation and improvement of the services offered.

2. RELEVANT CASES AND JURISPRUDENCE

In Romania and at the European level, there have been several relevant cases concerning anti-competitive practices in the legal profession. These cases reflect how competition authorities monitor the behavior of professional associations and their regulations to prevent practices that could harm consumers and the market.

Case of the Bucharest Bar (Romania)

The Romanian Competition Council previously investigated decisions made by the Bucharest Bar regarding the establishment of minimum fees for lawyers' services. Such regulations were considered contrary to competition rules because they prevent lawyers from competing by offering lower prices, thereby restricting competition in the legal services market.

Case of the French Bar

In France, the competition authority investigated a regulation that imposed restrictions on lawyer advertising. Regulations that disproportionately limit marketing may be considered anti-competitive because they reduce the public's access to information about available services and affect competition between lawyers.

Notary Associations (Romania)

In 2011, the Romanian Competition Council investigated an alleged agreement among notary associations to set fixed or minimum prices for certain notarial services. It was found that these practices affected competition by eliminating the possibility of competing through lower prices.

Cases Related to Admission to Legal Professions

Authorities have examined regulations that limit access to legal professions (such as a restricted number of spots in bar or notary exams). Such limitations can be considered anti-competitive if they are not justified by the need to ensure high-quality standards.

Case of Professional Orders in Italy

In Italy, the competition authority sanctioned the professional orders of lawyers for imposing limits on lawyers' ability to expand their activities into other regions. This was considered a restriction on competition between professionals.

Case of Wouters v. Algemene Raad van de Nederlandse Orde van Advocaten

In this case, the Court of Justice of the European Union analyzed Dutch regulations that prevented lawyers from entering into partnerships with accountants. The Court ruled that these rules could be justified if they were proportional and necessary to ensure fair and independent legal services.

Italian Lawyers' Tariff Case

The European Commission intervened against the minimum tariffs set by the Italian Bar, arguing that these tariffs contravened competition principles. Italy was forced to eliminate these minimum tariffs, allowing for freer competition.

3. REGULATIONS AND POLICIES TO COMBAT ANTI-COMPETITIVE PRACTICES

Antitrust Legislation

Antitrust legislation aims to prevent and penalize practices that restrict competition. The EU's competition policy seeks to ensure fair and equal competition between businesses in the European internal market. The legal framework for protecting against anti-competitive practices in the EU is based on principles such as the prohibition of anti-competitive agreements, the prohibition of abuse of dominant market position, and the control of economic concentrations (Vidican, 2023: 72-77). As a result, the European Commission acts both to prevent and to punish violations of EU competition rules (Vidican, 2019: 17).

Regarding the EU, the main competition regulations are included in the Treaty on the Functioning of the European Union (TFEU) and in Regulation (EU) No. 1/2003 on the

application of competition rules under Articles 101 (which prohibits agreements between companies that affect trade between Member States and aim to prevent, restrict, or distort competition) and 102 (which prohibits the abuse of a dominant market position that affects trade between Member States) of the TFEU.

Role of Competition Authorities

Competition authorities play a crucial role in monitoring and investigating anti-competitive practices. In Romania, legal protection against anti-competitive practices is ensured by the Competition Council (Dumitru, 2011:97), which is the independent authority specialized in the enforcement of antitrust legislation. The Competition Council has the power to investigate anti-competitive practices, take corrective actions, and impose sanctions.

The main legal acts governing competition protection in Romania are the Competition Law No. 21/1996 and the Unfair Competition Law No. 11/1991.

The efforts of the Competition Council will continue to focus on areas such as: eliminating tariff regulation and restrictions on advertising, which are considered disproportionate in relation to their goal of ensuring quality and consumer protection, especially when associated with other restrictions like numerus clausus; removing, where unjustified, territorial limitations on professional competence, ending exclusive rights, and allowing non-professionals (e.g., non-notaries) to provide less complex services in the legal field; allowing non-lawyers to own or manage law firms (Chirițoiu et al., 2013).

Conclusions

Anti-competitive practices in the legal profession can negatively impact access to justice and the quality of services offered. It is essential to promote a healthy competitive environment through appropriate regulations and the active involvement of competition authorities. Only in this way can it be ensured that legal professions fulfill their crucial role in society, protecting the rights and interests of citizens.

Regulating and prohibiting anti-competitive practices in the legal profession are essential for several important reasons, as outlined below:

Protecting Fair Competition

Anti-competitive practices can distort the market and create an environment where certain firms or practitioners have unfair advantages over others. Regulations that prohibit such practices ensure that all legal service providers compete based on quality and efficiency, not on unfair advantages.

Promoting Accessibility and Diversity in Legal Services

Anti-competitive practices, such as restrictions on access or price-fixing, can reduce the accessibility of legal services and hinder the diversity of services offered. Regulations prohibiting these practices can help ensure a wider variety of legal services are available to consumers and facilitate their access to quality services.

Protecting Consumer Interests

Prohibiting anti-competitive practices in the legal profession is crucial for protecting the interests and rights of consumers. Such practices can lead to higher prices, lower service quality, and fewer choices for consumers. Regulations that ban anti-competitive practices help protect consumers and ensure they receive accessible and high-quality legal services.

Maintaining Professional Integrity

Regulations that prohibit anti-competitive practices help maintain the integrity and prestige of the legal profession. Such practices can erode public trust in the legal system and damage the reputation of professionals in the field. By imposing high standards of fair competition and ethics, these regulations contribute to maintaining the integrity of the profession and fostering public trust in legal services.

Promoting Innovation and Efficiency

Regulating and prohibiting anti-competitive practices can promote innovation and efficiency in the legal profession. Removing entry barriers and fostering competition can stimulate innovation and encourage practitioners to offer more efficient and innovative services. This can ultimately lead to significant benefits for consumers and improve the overall quality of legal services.

Promoting Competition

To promote competition in the legal profession, it is essential to:

- Relax access restrictions: Simplify admission procedures and reduce excessive training requirements.
- Eliminate price-fixing: Allow lawyers to set their own fees based on market competition.
- Review territorial restrictions: Permit lawyers to practice in a broader geographical area to increase service accessibility.
- Liberalize advertising: Enable lawyers to promote their services in a transparent and responsible manner.

The Role of Education and Ongoing Training

Continuous and high-quality professional training is essential for ensuring a high level of competence in the legal field without imposing unjustified barriers to entry into the profession.

- Ongoing education: Continuing education programs should be accessible and relevant, encouraging constant professional development.
- Support for trainees: Trainees should have access to adequate support and training opportunities to facilitate entry into the profession.

Monitoring and Sanctioning Anti-Competitive Practices

Competition authorities must remain vigilant and take firm actions against anti-competitive practices, ensuring a fair and competitive market.

- Proactive investigation: Authorities should proactively investigate potential anti-competitive practices and apply appropriate sanctions.
- International cooperation: Cooperation between competition authorities in different countries can help combat cross-border anti-competitive practices.

In conclusion, regulating and prohibiting anti-competitive practices in the legal profession are essential for protecting fair competition, promoting accessibility and diversity in legal services, protecting consumer interests, maintaining professional integrity, and fostering innovation and efficiency. These regulations contribute to ensuring a healthy competitive environment and facilitating the fair and efficient operation of the legal services market.

It is essential for legal professionals to be aware of the applicable legislation and avoid any behavior that could be considered anti-competitive to maintain the integrity and competitiveness of the legal services market.

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THE NOTION OF ATTEMPT IN THE ROMANIAN CRIMINAL LAW

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Abstract: *The proposed project explores and analyzes the concept of "attempt" within the general criminal law, with the objective of developing a comprehensive understanding of this phenomenon. In a complex legal context, the research paper focuses on the legislative, jurisprudential and ethical aspects associated with criminal attempts. In the introduction, the topic choosing is justified and the purpose and objectives of the project are established. Throughout the research paper, the constitutive elements of the attempts are highlighted, including the differences with respect to the consummated crimes, as well as the causes and reasons influencing their appearance. The legal procedures, ethical and legal aspects are examined, including the debates on the culpability and punishment in the case of attempts. A comparative jurisdictional section provides an insight into the diversity of the legal practices in dealing with criminal attempts.*

Keywords: *attempt, criminal, law, Romania.*

Introduction

Within the complex legal landscape of criminal law, the concept of "attempt" is an essential element with profound implications on how society and the judicial system perceive and deal with crimes in progress. The attempt, defined as the criminal act that does not reach the stage of complete consummation, adds a layer of complexity to the legal interpretation and associated punishments. As defined by the Criminal Code, the attempt consists in "the execution of the intent to commit the criminal offence, which was however interrupted or did not produce its effect" (Art. 32 of the Romanian Criminal Code). Therefore, the attempt, marked by an incomplete development or by the absence of the final result, represents an unusual type of the criminal offence, placed between the phases of preparation and consummation of the criminal act. It is an intermediate stage between the preparatory acts and the complete achievement of the criminal offence.

The distinction between the attempt and the preparatory acts of a criminal offence is based, mainly, on the fact that the attempt already involves the commission of certain acts of execution of the crime, marking a transition to the consummated criminal act. However, this delimitation becomes difficult to achieve, especially in the context of the preparatory acts that are immediately adjacent to the socially dangerous stage of carrying out the crime. These preparatory acts often have an univocal nature and induce a state of obvious danger to the protected social values, which complicates the clear distinction between the two phases of the criminal process.

I. Forms of attempt

The classification of the attempts in criminal law represents a complex analysis of the types and degrees of development of the criminal acts not fully consummated. This categorization can be generalized in two essential dimensions: the actual attempt, characterized by the incomplete development of the crime, and the preparatory acts, which precede this phase and are adjacent to the beginning of the execution. Within the attempts, we can also distinguish subcategories depending on the degree of advancement in the commission of the crime or according to the results achieved until the intervention of the authorities. This classification provides a more detailed perspective on the diversity of the criminal attempts, contributing to a deeper understanding of this crucial aspect of the legal system.

a. Interrupted attempt:

"The interrupted attempt (unfinished, imperfect, incomplete) is a form of the attempt that consists in the execution of the intent to commit the crime, execution that is interrupted before the consummation of the crime" (Streteanu et al., 2014: 215).

The interrupted attempt, also called unfinished, imperfect or incomplete, represents a particular form of the criminal attempts. This form involves initiating the execution of the intent to commit a crime, but the process is interrupted before the crime is fully consummated. It is characterized by the initiation of the acts aimed at committing the crime, but with the occurrence of some factors that prevent the complete achievement of the criminal act. This type of the attempts provides an insight into the moment when the intervention or unforeseen circumstances influence the course of the events, thus generating an interrupted attempt.

b. Completed or perfect attempt:

The completed or perfect attempt is another distinct form of the attempts as foreseen in the criminal law. This form is characterized by the fact that the criminal offender intends to commit a crime, begins to perform the necessary acts, and the process reaches a stage where the crime could have been completely consummated. However, the intervention of external circumstances, including the actions or forces of opposition, prevents the completion of the criminal process. In essence, the completed attempt indicates a significant closeness to the complete achievement of the crime, being interrupted at a subsequent time, but before its final consummation. The uninterrupted attempt is committed with intent and is only found in the result crimes (Streteanu et al., 2014: 216).

c. Absolutely improper attempt:

The absurd attempt represents a non-criminalized type of the attempts provided in the criminal law, manifested by an attempt to commit a crime, although the method of its execution is so unfeasible or absurd that it would not lead to the actual commission of the act. In this situation, the execution can be interrupted or can take place without producing effects, and the impossibility of consummating the crime becomes the result of the ineffective or impractical way in which the attempted execution was conceived. It is a particular form of attempt where the criminal plan is so unnatural or improbable that it cannot be rationally carried out.

d. Impossible criminal attempts

In general, there are certain criminal offences for which an attempt is not possible because they involve a specific element of danger or damage to social values that cannot be reduced to a failed attempt. Here are some examples of criminal offences where, in some jurisdictions, the attempt may be considered impossible or may have limited application:

In general, the crimes of omission, which consist of the failure to perform a legal obligation or duty, are considered to be actual acts, and the concept of attempt may not apply in the same way as to crimes of commission. This is because the attempt traditionally involves an active attempt to commit a crime, and crimes of omission derive precisely from the failure to fulfil a duty. Instant crimes are characterized by their immediate consummation, without a period of development or attempt to commit them. This type of crime takes place within a moment and is consumed on the spot, without offering the possibility of an actual attempt. Therefore, for instant crimes, the concept of attempt is often inapplicable because they are completely and immediately committed at the time the respective actions take place.

In general, jeopardy crimes involve the creation of a risk or danger to the legal assets protected by law, and not necessarily the production of an actual result or damage. However, the applicability of the concept of attempt in the case of these crimes may vary according to the specific jurisprudence and legislation of each country.In contrast to criminal intent, where there is a conscious will to commit the criminal act, in the case of criminal negligence, the focus is on the lack of attention or caution that led to negative consequences. Because attempt usually involves a deliberate and intentional action, applying the concept of attempt in the case of criminal negligence can be problematic and is not commonly used in this category of criminal offences. In general, in the case of praeter intentionem (exceeded intent) crimes, the applicability of the concept of attempt can be influenced by how this category of crimes is defined in the respective legal system. In many jurisdictions, where praeter intentionem crimes involve a grading of the will over the intent, we cannot speak of a possible attempt because the culpability that encumbers the original intent does not allow a deliberation prior to the moment of committing the crime with the exceeded intent. It is important to note that these aspects may vary according to the specific legislation of each jurisdiction and the specific interpretations of these concepts in different legal systems.

II. Attempt sanctioning

The sanctioning of the attempt refers to the infliction of criminal punishments or penalties for the attempt to commit a criminal offence, even if the crime was not fully consummated. In many legal systems, the attempt is dealt as a distinct crime and is specifically punished, but to a lesser extent than the actual consummation of the crime. This reflects the principle that the act of attempting to commit a crime should be sanctioned, even if the end result was not achieved.

Limited criminalization law refers to the situations in which an offence is limitedly or partially criminalized. For example, a law might criminalize a particular act only if certain elements or circumstances are met. In such cases, the attempt could be sanctioned appropriately, given the limited criminalization of the crime (Pușcașu, 2024:291). As set out in Art. 33 paragraph (1) of the Criminal Code: ”The attempt is punishable only when the law expressly provides it”.

Considering that in the special part of the Criminal Code or in the special laws with criminal provisions it is only mentioned that the attempt is punishable, the determination of the sanctioning system is carried out by applying the provisions of the general part of the code. According to Article 33 of the Criminal Code, which regulates the sanctioning system of the attempt, it is established that it is punished with the penalty provided by law for the crime consummated, and the limits of this penalty are reduced by half. This approach reflects the legal principle that the attempt to commit a crime entails a sanction, but it is proportionately less than that imposed for the crime committed in its entirety (Streteanu et al., 2014:221). The general principles of sanctioning the attempt in Romania can be summarized as follows:

1. Lesser criminal sanctions: In general, the penalties for the attempt are less than those for the fully consummated criminal offence. This reflects the idea that the attempt represents a lower degree of social danger than the actual crime committed.
2. Degree of culpability: In determining the sanctions, courts take into account the degree of culpability of the person who attempted to commit the crime, as well as the specific circumstances of the attempts.
3. Individualization of penalties: The sanctions for attempt are individualized depending on the circumstances of each case, and judges have flexibility in imposing the punishments, taking into account factors such as the intent of the offender, the degree of social danger and the potential consequences.

II.1. Attempt impunity cases

Attempt impunity is a complex matter in the legal system and can be influenced by many factors, including legal principles, specific circumstances of the case and the criminal policies of a jurisprudence. In general, in criminal law, the attempt may not be punished in certain cases, and this may be justified by considerations of criminal policies or by fundamental legal principles.

1. *Desistance: is a legal concept that refers to relinquishing or abandoning the intent to commit a crime while attempting to commit it. It is a situation in which the offender voluntarily and sincerely renounces to continue the criminal act. Desistance highlights the importance of understanding that crimes are not only about committing illegal acts, but also about the individual's ability to voluntarily and sincerely withdraw from illegal situations before they are fully consummated. It is important to consult the specific legislation of each jurisprudence to understand how desistance is dealt with in the context of local criminal law.*
2. *Preventing the outcome from occurring:*

In criminal law, the hindering of the outcome from occurring by the offender can be interpreted as a form of attempts impunity. This aspect refers to situations in which, after initiating an attempt to commit a crime, the offender subsequently acts to prevent the consummation of the act. It is important to note that this form of attempts impunity may vary depending on the jurisprudence and specific interpretations of the law in each country or jurisdiction. Consulting specific criminal law is crucial to understanding how such matters are dealt with within a particular legal system.

II.2. Case study

Case: Attempted Aggravated Theft in accordance with the Romanian legislation

Description: Andrei, a 22-year-old young man, is a university student in a small town in Romania. Finding himself struggling with financial difficulties, Andrei decides to commit a theft in an electronics store near the university campus. Andrei plans his theft for several days, researching the store's routine and finding a way to enter without being detected. On the night when he decides to act, he sneaks into the store by breaking a back window. While being inside, the store's alarms go off due to a motion detector and Andrei is caught red-handed by the police.

Legal consequences:

1. *The indictment: Andrei is arrested and charged with attempted aggravated theft according to the Romanian Criminal Code, which considers aggravated theft a serious crime.*
2. *Judicial proceeding: During his trial, Andrei admits that he tried to steal from the store and explains his financial motivation. His attorney tries to argue mitigating circumstances, such as Andrei's lack of criminal record and young age.*
3. *The sentencing: The court finds Andrei guilty of attempted aggravated theft, and the punishment is established in accordance with the provisions of Romanian Criminal Code.*
4. *The punishment: According to the Romanian Criminal Code, the attempted aggravated theft can be punished with imprisonment from 6 months to 5 years. The court will take into consideration the individual circumstances of the case in determining the final punishment.*
5. *Further consequences: In addition to the imprisonment punishment, Andrei may have difficulties in finding a job or enrolling in other educational institutions due to his criminal record.*

Andrei's hypothetical case highlights the serious consequences of attempted crimes and the importance of obeying the law. In any legal system, attempting to commit a crime is treated seriously and can have long-term repercussions on the life of the individual involved. It is essential to understand that the acts have consequences and that breaking the law can bring serious harm to both the individual as well as to the society as a whole.

Conclusions

In conclusion, the topic of attempts in criminal law represents a complex and diversified field, addressing various aspects of the criminal process. The attempt reflects the act of trying to commit a crime, even if the final result is not achieved, and is governed by principles such as degree of culpability, social danger and proportionality in imposing the sanctions. By analyzing subtopics such as hindering the outcome from occurring and desistance, a complex overview emerges on how the legal system approaches the situations in which the offenders act to prevent the consummation of the act. In the context of this topic, the general principles of criminal law, such as intent and social danger, combine to create a comprehensive framework for assessing the attempts and their associated sanctions. The assessment of the individual circumstances and the fair application of the law in these situations are critical aspects in ensuring the fairness and effectiveness of the legal system in the management of criminal attempts.

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CRIMINAL LAW AS A BRANCH OF ROMANIAN LAW

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Abstract: *Throughout history, criminal law has known several definitions, all of which finally have its presentation as a branch of law, made up of a totality of legal norms, which establish the facts that constitute crimes, the conditions of criminal liability, the sanctions and the manner of their application. From the presented definition, we can deduce the fact that criminal law is a distinct branch of law, along with civil, administrative, constitutional, commercial law. Also, it is composed of the general part and the special part, but the structure is unitary, one cannot exist without the other. The general part provides the general rules, rules on how to apply the law, the governing principles, the typicality of crimes, the manner and rules of sanctioning. Instead, the special part of criminal law includes the rules of criminalization and the content of crimes. Consequently, criminal law aims to defend legal values against crime and at the same time combat it, especially, criminal law is the main guarantor of the norms and rules provided by the Romanian Constitution, having as its main objective the independence and unity of the state as well as the safety of citizens.*

Introduction

Law, regardless of the branch of which it is a part, represents the sovereignty of the state that developed it and that applies it, a fact that demonstrates the spatial limitation of the law. As for the criminal law, it is subordinated to the principles of sovereignty, the application of the law of a state cannot be extended beyond its borders (Boroi, 2022: 2).

1. The evolution of the concept of criminal law and the principle of territoriality

Criminal law is in a continuous evolution due to the various new methods of committing existing acts as well as the emergence of new crimes determined by the emergence of the technological sphere. So, both the Romanian and the EU legislators must consider updating and improving the system in order to reduce crime. The Romanian Penal Code has undergone more than 5 changes over time, the French Code being often copied by the legislator and applied also in the Romanian space without, however, corroborating the legislation with the needs of the citizens and at the same time with the increased crime in our country. CP currently it is provided by Law 187/2012 which was aligned with the requirements of the European Union legislation as a consequence of Romania's accession to the European space in 2007.
We can say the same thing within the principle of territoriality whose rules evolve along with the crime phenomenon. Even if the rules of a state are applicable only within the borders, we must also take into account the new methods of committing acts such as cybercrimes, the commission of which is increasingly common in criminal law.

1.1. General aspects regarding the principle of territoriality

In the following, we want to present the conceptual aspects of the subject of analysis, so that the principle of territoriality is presented as "that principle according to which the norms of Romanian criminal law remain applicable to all crimes committed on the territory of Romania, a consequence of the sovereignty of the state vested with jus puniendi [(expr. lat. "the right to punish") - the state's right to penalize certain acts] (Pușcașu, 2022: 2)." Also, by identifying the applicable criminal law, the criminal investigation bodies will be able to establish the typicality of the act, its classification and the application of criminal sanctions.

The territory of Romania is defined by article 8 C.P. as being the expanse of land, the territorial sea as well as the waters with the soil, the subsoil and the air space included between the state borders (Udroiu, 2019:42). According to O.U.G. no. 105 of 2001, Article 1, state borders mean the real or imaginary line that passes from one border mark to another, from one coordination point to another (Criminal Code of Romania, 2023:17).

Also, article 8 of C.P. also defines crimes committed on the territory of Romania, more precisely, any crime "committed entirely on the territory of the Romanian state, or on a ship under the Romanian flag or an aircraft registered in Romania.". Before moving on, it is important to also define the term sovereignty because it is closely related to the principle of territoriality. According to the common language, sovereignty is presented to us as the attribute of the state to benefit from the inalienable and indivisible character, the supremacy of state power within its borders. We can also distinguish between national sovereignty which presents the independence of a state from other states, the sovereignty of the people being the ultimate power.

1.2. The seat of the matter is provided both from the perspective of national and European Union norms

As far as national regulation is concerned, the principle of territoriality is defined by the Criminal Code, General Part, Title I on Criminal Law and its limits of application, Section 2a, Application of criminal law in space article 8. Also, the criminal law is corroborated with the Constitutional laws that provide for the norms of sovereignty, integrity and independence of the country. At the same time, we can also mention the Emergency Ordinances that provide for the limits of territoriality, the rules regarding state borders, the conditions of extradition.

Through Romania's accession to the European space in 2007, it also brought with it the implementation of some Union norms, which have priority, the national legislation having a subsidiarity character, the updating of the national legislation being carried out according to the governing principles of the Community acquis. Even so, by joining the countries to the union space, they retain their sovereignty and character as an independent, inalienable state.

2. The governing principles of criminal law

Finally, we want to present the general principles that govern criminal law because they define the territoriality and applicability of the criminal law on the territory of Romania.

To begin with, we recall the principle of the legality of criminalization and punishment which states that no deed can be considered a crime if there is no legal basis and also no criminal sanction can find its applicability in conditions where the criminal law does not provide for it.

The principle of territoriality is closely related to the legality of criminalization from two aspects

First of all, we must see that, if an action or an inaction was committed on the territory of Romania whose sanction and legislative framework is not provided for, we cannot hold the person in question responsible. Secondly, we must also look at things from the perspective of committing the criminal act in another country, which criminalizes the act, and Romania does not, the author of the act by moving to Romania cannot escape the application of the punishment. We thus observe the importance of committing the act on the territory of a country and the application of the governing norms of that country (Anghel, 2010:19).

The principle of minimum intervention (Streteanu et al., 2014:41) implies the subsidiarity of criminal law because criminal law has a more drastic sanctioning character, deprivation of liberty. This principle is also taken into account in the case of committing criminal acts on the territory of Romania, the intervention being subject only in cases that foresee a seriousness of the act.

The ne bis idem principle implies that no person can be tried twice for the same act. In this case, we will be able to observe cases involving continuous crimes, whose action takes place on the territory of one state and the result on the territory of another state, in which case, the person will not be held liable twice for the same deed, applying the mentioned principle. In the following, we will present the existing solutions in cases of this kind, which provide for crimes with a duration of consummation.

The legislation provides several principles that determine the application of the criminal law in the event of the commission of the crime. We have thus:

- The principle of personality;
- Principle of reality;
- The principle of universality;
- The principle of territoriality.

In the following we will refer to the analysis of the principle of territoriality, and in the following chapters we will briefly present the other principles, with the aim of being able to differentiate between them and the principle of territoriality.

The territoriality of the country includes, as we mentioned above, the land surface, the territorial waters, including the territorial sea, the subsoil and the air space.

The land surface includes the land area between the political-geographic borders that are established by border conventions with each neighboring state, the surface on which the state exercises its sovereign power.

Regarding territorial waters, here we mention inland waters through all rivers, lake areas and the territorial sea, contained between state borders.

The territorial sea is also regulated by Law no. 17/1990, article 2 which provides that the inland sea of Romania includes the strip of sea adjacent to the shore or, as the case may be, the inland maritime waters having a width of 12 nautical miles, the equivalent of 12,224 meters, measured from the baseline. It is important to correctly delimit the Romanian space and how far the jurisdiction of the Romanian criminal law extends in order to be able to properly apply the law and avoid violating the Conventional rights of citizens.

The basement, represents the sub-terrestrial area, including the one under the territorial sea and the expanse of water, measured as far as the current, contemporary technical-scientific means can penetrate, considering the technological evolution.

The last one, the airspace, is regulated by Decree 516/1953 which provides that Romania is sovereign over its airspace, being represented by the column of air above the territory.

According to new concepts, the headquarters of diplomatic representatives and consulates are also part of the country's territory, even if they are located in another country. These spaces benefit from a special regime that we will analyze in the chapter dedicated to this topic. We must also take into account the determination of the place of commission of the criminal act. In general, if the action or the result occurs on the territory of the country we can talk about the applicability of the territorial law. The problem arises when the result of the crime occurred on the territory of several states. For example, to understand better, if a person sends a package from Spain that produces a criminal act in Romania.

In this case the question is which law will be applicable? The specialist literature considers two theories as the answer.

The theory of the action, the crime being committed where the action was committed even if the result occurred in the territory of another state, referring to the case mentioned above, the law of Spain would be applicable.

The theory of the result states that the deed is considered committed on the territory of the state where the result occurred, regardless of where the action was committed, so that, in the present case, the Romanian law will be applied.

Unfortunately, these theories do not categorically cover all the methods of committing the acts, leaving room for the offender's evasion of responsibility.

Consequently, numerous legislations sought to enshrine the theory of ubiquity.

3. The theory of ubiquity

Criminal law enshrines the theory of ubiquity as the criterion by which the place of the crime is determined. More precisely, the theory of ubiquity represents the possibility of the theory being everywhere. Romanian criminal law is applied according to the principle of territoriality, if there was an act of execution or the result occurred in this territory. In aid of this principle, the theory of ubiquity intervenes, which is determined according to the place where the act was committed.

The crime is considered committed on the territory of Romania, if an act of execution has been committed regardless of whether it has been completed or remains in the attempt phase. "The Romanian criminal law, based on the principle of territoriality, applies to all crimes committed on the territory of Romania, and the theory of ubiquity gives meaning to the place where the crime was committed in the sense of the aforementioned

Consequently, the theory of ubiquity within the framework of the application of the Romanian criminal law is also applicable in cases where a crime is committed entirely on the territory of Romania, or if it is found that only acts of execution or its result have been committed. The development of society and, of course, technology, has consecrated the appearance of several methods of committing criminal offenses, which is why, we consider it appropriate to apply the theory of ubiquity, "the current

development of information technology and the Internet, also reflected in the increasing number of acts of nature crimes that are committed / can be committed online, raise new, modern challenges." (Streteanu et al., 2014:172)

× The ubiquity criterion is applied in special cases such as the character of continuous or continued crimes, being considered committed wherever the criminal action or inaction has been prolonged. In this case, if the act was prolonged on the territory of the country, the Romanian criminal law will be applied, the conditions being met.

It will also be applied in the case of crimes committed out of habit, even if only one illegal act was committed in Romania and a plurality of acts in the territory of another state, the Romanian criminal law finds applicability. In this case we can talk about crimes like harassment.

3.1. Case concerning the principle of territoriality

In this case, E.M. he was fishing on the Black Sea, in a boat with several fishermen. He wanted to move to another place for fishing and while driving the boat, precisely when he started, he made a wrong maneuver during which one of the other fishermen O.I. fell into the water. He hit his head during the fall and was found only after two hours floating in the sea.

In this case, through the indictment, the prosecutor qualified the act as manslaughter, but is the Romanian criminal law applicable? The question arises because E.M. drove the boat into the territorial sea belonging to Romania, but the victim's body exceeded the limit established for Romania when it was found.

3.2. Rule of law and court decision

The court administered more evidence in the case. To begin with, the questioning of the defendant was considered. He admitted that he was driving the boat and that at one point he made an unusual maneuver because he wanted to move to another place because he learned that another place would be better for fishing. When he started the boat and started to move to the desired place, the victim, who was not wearing a life jacket, lost his balance, hit the boat when he fell and although both the defendant and the other fishermen tried to find him, this it was impossible. The other fishermen also appeared before the court. During their testimony, the state of facts as presented by the defendant was confirmed, they admitted that the victim had taken off his life jacket and was walking on the side of the boat, he was distracted because he had had some discussions with his family. The moment the boat was started, he got scared, lost his balance and fell into the water.

The necropsy report showed that his death was due to drowning, but the victim was unconscious due to the blow to the head. The experts concluded that if the victim had been rescued from the water, the blow to the head would not have put his life in danger, therefore the act would not even have been qualified as personal injury due to negligence.

With regard to the issue raised with reference to the application of the criminal law in space, the court takes into account the fact that, based on the principle of territoriality, the territorial sea is also considered, the entire adjacent strip of the coast, as well as the inland maritime waters, the width being 12 miles maritime, according to article 2, paragraph 1) of law 17/1990 on the territorial sea and inland maritime waters of Romania and article 8 of the Criminal Code In this case, the act was committed in waters belonging to the Romanian state, so the law applicable to this case is Romanian law, regardless of the fact that the victim was

found in an area that exceeds the 12 nautical miles from the shore belonging to the Romanian state. The court sentenced the defendant to 1 year and 6 months of suspended imprisonment. When individualizing the punishment, it was taken into account that the defendant had to make sure when starting the engine that all the passengers are safe and that they can wear life jackets. It was also noted that he immediately tried to find the victim, alerted the other fishermen to notify the authorities and jumped into the water to try to save her. Unfortunately, his attempts were in vain, the victim being nowhere to be found at that time.

The court decision is based on the legal provisions regarding the territoriality of the criminal law. We believe that in the case shown, the Romanian criminal law is the applicable one because the place where the act was committed is taken into account, and not the place where the victim was found. The criminal code takes into account both the territorial space, the Aryan one as well as the territorial sea when it establishes the sovereignty of the Romanian state regarding the applicability of the criminal law.

Conclusions

The territorial limits of a state, as well as the importance of respecting the territorial sovereignty of states, are points that ensure peace and respect between neighboring states. If there are no rules that are applicable and accepted by the states regarding how to investigate and solve cases regarding crimes that take place in different states and that have foreign citizens as parties, or that are discovered or committed at the points of border, there will be problems regarding the prosecution of the guilty persons

Consequently, we can say that the identification of the principle of territoriality, geographical is the essential element in criminal law and also in a social democratic state, thus taking care to hold the person who committed the act accountable and at the same time to apply the corresponding criminal law, each individual state having its own law and its own power to decide and legislate, apply the rules according to the customary rules and norms, public order, Conventions and ratified treaties, without violating the rights and the democratic freedoms of the person concerned.

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COMPARATIVE ASPECTS BETWEEN THE CRIME OF ROBBERY AND OTHER CRIMES PROVIDED BY THE CRIMINAL CODE IN ROMANIA

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Abstract: *The robbery constitutes a serious prejudice to the bodily integrity of the person and his patrimony. The written and unwritten laws of all times have protected the person and all his attributes, including the patrimony, since their defense is a constant feature, common to all the legal systems. In a community where social harmony prevails, people act daily to meet needs considered natural, without embarrassing other members of the community who act for the same purpose.*

Keywords: *robbery, criminal, code, Romania.*

Introduction

Often, some people act in contempt of this social harmony, preventing the balanced and sustainable development of the community and are responsible for disrupting the quality of life and creating a state of insecurity for those around them, hence, deriving the need to impose on them a reaction of removing their antisocial behavior, containment and re-education, which seek to restore the state of equilibrium with which they have interfered as a result of harmful actions.

Over time, several theories of crime have spread in the field of criminology. The theological theory has long held that the inclination to crime would be the consequence of original sin, while others, J. J. Rousseau, for example, blamed society for justifying the behavior of criminals, claiming that they are born good people but society is pushing them towards crime.

Science, however, is of the opinion that at the base of the offenders' behavior are either certain biological deformities that do not allow the perpetrator to master his antisocial outbursts, or various social and economic factors.

1. The robbery

The robbery is a regulated crime under Article 233 of the current Criminal Code as: „ the theft commited using violence or threats or by putting the victim unconscious or unable to defend herself or himself or, as well as the theft followed by using such means to preserve the stolen property or to remove traces of the crime.”

The robbery is part of the category of crimes against the patrimony and it represents the most serious form in which the theft can be commited since it involes the simultaneous violation of two categories of legal norms, on the one hand, the rules that are intended to protect

the life, the bodily integrity and the health of the person and, on the other hand, those that ensure the protection of a person's heritage.

The robbery presupposes a high level of social danger, the prepertrator's goal is to commit the theft and the violence is just a way in which he reaches his goal.

II. The robbery and the blackmail

The Criminal Code defines the blackmail in Article 207 as: "the constraint of a person to give, to suffer something in order to unjustly acquire a non-patrimonial use for oneself or for another", the assimilated form of the blackmail is the constraint consisting in "the threat of revealing a fact that can be real or imaginary, compromising for the threatened person or a family member."

Despite the fact that the use of threats and acts of violence are the essence of the crime of robbery and also of the crime of blackmail and that both of the crimes have special legal objects, social relation relating to the freedom of the person in the case of blackmail and social relation relating to the property of the person, in the case of robbery, these are two crimes that differ in many ways.

The robbery is a crime against the patrimony while the blackmail is a crime against the freedom of a person.

The robbery presupposes an immediat, imminent danger, as opposed to blackmail that involves a future danger which will occur if the victim does not adopt the behaviour claimed by the perpetrator.

In regard to the material object, it always exists in the case of the crime of robbery (mainly, the property owned, possesed or detained by another and the body of the person, in the secondary) unlike blackmail that in principle does not have one (except for the victim's body in the situation in which acts of coercion are exercised directly on it and not just threats are involved)

From the analysis of the objective side of these crimes, it follows that blackmail requires the existence of a time interval between the exercise of coercion and the activity of the victim to give, to do or not to do while the robbery does not provide the victim with time of thought between the moment of the theft of the good and the moment of the use of acts of violence.

Although both crimes are commited with direct intent, it qualifies for different purposes, obtaining an unpatrimonial and injust benefit for oneself or for another in blackmail and appropriation of the stolen good, keeping the stolen good, ensuring the escape, respectively removing the traces of the crime in robbery.

The attempt is possible in both crimes but it is only incriminated for robbery, not for blackmail.

III. The robbery and the piracy

The Article 235 of The Criminal Code defines the piracy as: "the theft commited by violence or threat, by a person who is part of the crew or passengers of a ship on the high seas, goods found on that ship or another ship."

The piracy is therefore the robbery commited on the high seas or in airspace against ships or aircraft and naturally its content is similar to that of robbery but it has some specific particularities.

The first difference between robbery and piracy is given by the fact that the secondary legal object of piracy, namely the use of violence, can be directed against goods as well, unlike robbery where it refers only to the integrity of the person (Bodea et al., 2018:228).

Another difference between these two crimes is that in the case of piracy, the legal provision that incriminate this act provides for a special active subject, respectively "a person who is part of the crew or passengers of a ship or aircraft" while the legal provision that incriminates the robbery, the Article 233 of The Criminal Code, does not assume a determined active subject which means that it can be any person (Bodea et al., 2018:228).

Regarding the subjective side, we find direct intention both at piracy and robbery but in the case of piracy, it is necessary that the action of theft meets a special requirement, namely to be carried out for personal purpose, to the advantage of the perpetrator, the lack of this requirement entails the criminalization of another criminal act.

Regarding the sanctions, the criminal law is tougher in case of piracy, punishing the perpetrator with imprisonment from 3 to 15 years while the robbery is punishable by 2 to 7 years in prison.

The objective side of these crimes is simmilar because two activities are included in the composition of both crimes: the removal of goods from the ship or aircraft and the perpetration of acts of violence against persons or property on the ships, for exemple: lifebroads, parachutes, etc. or even against the ship as a whiole.

What these crimes also have in common is the fact that they are consumed at the same moment, that is, when the act of taking with the help of violence has been completed and that the attempt is punished both at the robbery, as well as the piracy.

IV. The robbery and the murder

The murder is incriminated in Article 188 of the Criminal Code and it constitues "intentionally suppresing the life of a person." (Udroiu, 2020:1)

The legislator considers that killing for the purpose of obtaing a material benefit or an advantage is a particulary serious act.

The gravity of this act results from the motive of the crime.

The material interest is the objective pursued by the perpetrator by commiting the crime and it may consists of money, things of patrimonial value, advantages at work, debt settlement, inheritance of wealth, etc.

In the doctrine it was argued that what distinguishes the killing commited from material interest from the robbery that resulted in the death of the victim (The article 236 of the Criminal Code in relation to The article 233 of the same Code) is the way in which the perpetrator acts in order to obtain the material interest.

In the case of murder commited for material interest, the perpetrator will obtain the material benefit by apparently legal means, for exemple the estate vacation, while in case of robbery, the perpetrator aquires certain goods or rights by using violent means, which is why the material use in injust and the goods are not even apparently due to him, hence the fact that he will be reserved when it comes to their use, for the fear of their origin to be discovered.

As regards the liability of the perpetrator, it is not relevant wheter the material benefit was actually obtained or whether it is of a third party, it is only important that he acted for this purpose.

Thus, in judicial practice, it was decided that the defendatns who acted intentionally in connection with the crime of robbery, but it the form of guilt against the more serious consequences they caused, this is, the death of the victim, which they did not forsee but they had to and could have to, acting with praeterinenti, will be liable for the crime of robbery followed by the death of the victim stipulated in Article 236 of The Criminal Code in force (Decision no. 239/2011).

The life of the person is the central element of the value system that the law protects, therefore, the legislator also granted the committed murder in order to facilitate or hide the commission of another offense a place on the level of crimes against the person, the, it is committed either to facilitate the commission of another crime or to conceal the previous commission of a crime.

V. The robbery and the trespassing

The trespassing is a crime that belongs to the class of crimes that affect home and private life and is regulated both in the Criminal Code and in the European Convention on Human Rights.

According to Article 224 of the Criminal Code, the trespassing is: "Parting without right in any way, in a house, room, outbuildings or fenced place, taking them, in, without the consent of the person using them, or the refusal to leave them at its request"

Art. 8 para (1) of the European Convention on Human Rights states that: "Any person has the right to respect for his private and family life, his or her domicile and correspondence." (Radu, 2018:143). Over time, several guidelines have been outlined in the specialist practice regarding the application unitary legal provisions incriminating the crime of robbery.

In a first orientation, the applicants claimed that the crime of home violation is not absorbed by the crime of robbery committed in a house or in its dependence, there being a contest of crimes. On the same matter, some courts have argued that the crime of trespassing is absorbed by the crime of robbery committed in a dwelling or in its dependencies.

Other courts have also adopted a contrary solution claiming that the person who enters without right into the courtyard of a dwelling and, subsequently, into the dwelling for the purpose of committing a robbery, he'll be liable for one crime, namely robbery.

The different way in which the courts approached this subject led in practice to different solutions with different legal frameworks and different sanctioning treatment for identical facts, which led to the complaint The High Court of Cassation and Justice with appeal in the interest of the law in order to interpret the legal provisions.

Currently, the courts no longer face this problem of interpretation because they have at their disposal the current Criminal Code which is drafted in an explicit manner and which expressly specifies in art. 234(1) f) that the robbery committed by home violation is a qualified robbery and according to Decision no. 2194 Of 2014 pronounced by the Criminal Section of the High Court of Cassation and Justice the qualified robbery offense absorbs the crime of home violation, with a unique offense of qualified robbery.

Conclusions

From my point of view, the causes leading to the commission of the robbery can be classified into objective cases and subjective causes.

Objective causes refer to the big problems that are well known in our country such as poverty, corruption, unemployment and alcoholism, and those of a subjective nature refer to the person of the perpetrator and imply lack of interest in acquiring the necessary things honestly, desire for rapid and laborless enrichment, behaviors that are based on deficiencies in education, conduct and deviant parental attitudes, lack of supervision from parents, etc.

Despite the fact that there are a lot of rules of conduct in society and that it is not by chance that we also find among the ten commandments, known as the law of God, such rules, such as, for example: "Do not steal!", "Do not kill!", official statistics show significant increases in the crime rate.

I believe that, in order to limit the worrying dynamics of the criminal phenomenon, the state authorities must be more involved in movements to prevent and combat antisocial facts in this regard, we need more information campaigns aimed at helping to identify criminogenic risk factors in a timely manner and to raise awareness of the consequences of committing a crime.

Also, in my opinion, the state is obliged to provide its citizens with a sense of security, which is a primary element when it comes to quality of life, therefore, in order to make it harder for robbers to work and deter them, they must invest more in public lighting infrastructure or the installation of more surveillance cameras in public.

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THE FAULT, FORM OF GUILT IN THE ROMANIAN LAW

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Abstract: *In this paper, I briefly presented the definition of the crime, its structure, and its features will be briefly addressed. the notion of guilt and its 3 forms: intent, culpa, and overriding intent. Guilt is an important example of perspective differences in legal life. In the following lines, I will try to offer a small gateway to the infinite land of human perception of reality. Kind of a glass half full or empty situation. Crimes against life are the most serious, because by committing them, man is robbed of the most valuable thing, namely life, Titus Lucretius Casus, a Latin poet and philosopher, said "life is not the property of anyone, but the usufruct of all". And yet, although no one disputes this great truth, crimes against life have occurred and continue to occur in society, therefore acts directed against human life have been criminalized since the most remote times, always being punished with great severity.*

Keywords: *crime, fault, guilt.*

1. Features of the crime

To be able to start talking about fault in the legal light, as an individual element, I will briefly present what exactly constitutes a crime and I will give a brief description of each element that it contains.

The Criminal Code (C.P) brings a reform to the definition of the crime, leading to the modification of the general theory of the crime in Romanian criminal law. According to the old Penal Code, art 17, paragraph 1, the crime was the deed presenting a social danger, committed with guilt and provided for by the criminal law. Starting from this description, the crime is characterized by three fundamental features: provision in the criminal law, social danger and guilt.

According to art. 15 paragraph 1 C.P., the crime is the deed provided by the criminal law, committed with guilt, unjustified and imputable to the person who committed it.
The first observation that can be made is that the current Criminal Code abandons social danger as a general feature of the crime, a feature specific to Soviet-inspired legislation, unrelated to the traditions of our criminal law.

Abandoning the regulation of the social danger of the crime does not bring with it the bringing into the scope of the punishable offense of some clearly unserious facts, because their situation will be resolved, in the context of the regulations of a new code of Criminal Procedure (C.P.P), based on the principle of the opportunity of criminal prosecution (Streteanu, Morosanu, 2010).

a) Provision of the act in the criminal law

By the provision in the criminal law of the facts, the crime is differentiated from other forms of legal wrongdoing. This aspect is also known in criminal doctrine as typicality.

The act must correspond to the abstract model described in the law. In order for the deed to constitute a crime, it must meet all the conditions described in the criminal law, i.e. there is a perfect overlap between the conditions in which the deed was committed in reality and the abstract, typical model (pattern) shown in the criminal law (Mitrache, Mitrache, 2014).

b) The act committed with guilt

Guilt represents the subjective aspect of the crime and includes the public attitude of the perpetrator towards the committed act and its consequences (Petrovici, p.295). As a mental attitude, guilt is the result of the interaction of two factors: consciousness and will. Consciousness is the feeling, the intuition that the human being has about his own existence and the will is the psychic function characterized by the conscious orientation of man towards the achievement of goals and by the effort made to achieve them. While consciousness is an abstract element, intimate and specific to each individual, will is a concrete element, denoting firm decision and perseverance.

c) The act is unjustified

This element is also called "illegality", which indicates the existence of a contradiction between the committed deed and the requirements of the legal order.

d) The fact must be imputable

Unlike guilt, imputability is not susceptible to forms, it may or may not be ascertained by judicial bodies.

If we are dealing with an act that is typical, but not illegal, its imputability will no longer be checked. The constitutive elements of the offense are checked in cascade. When one of the elements is not checked, the act can no longer represent a crime.

2. The guilt

Guilt comes in three forms:

a. Intention

b. Blame

c. Exceeded intention (praeterintenie)

a) Intention is the form of guilt that leaves the least room for interpretation by the litigant. This is divided into two other sub-notions: direct intention and indirect intention.

b) Guilt is the form of guilt with an exceptional, subsidiary character, having a lower degree of danger than intention. This is clear from the fact that there are no offenses provided for in the Penal Code that can be committed exclusively through negligence, because criminalizing acts committed through negligence and not criminalizing the same act committed with intent would be absurd.

c) Exceeded intention is characterized by intention (direct or indirect) with regard to the sought or accepted result and guilt with regard to the worse result. The worse result is only foreseen but not accepted by the perpetrator. If the result is foreseen by the perpetrator, the act will be considered to have been committed with indirect intent.

3. The fault. The concept of fault and its methods

Fault is a mistake that consists in the non-compliant fulfillment of an obligation or in its non-fulfilment; wrong that consists in the commission of an act that is harmful or punishable by law.

Fault is a form of guilt that highlights a lower degree of subjective dangerousness of a person who has committed an incriminated act.

According to art. 16 paragraph (4) of the Criminal Code, the legislator established two main ways of fault:

a) Fault with provision

b) Fault without provision

Thus, according to the Criminal Code, art. 16, paragraph 4, letter a, we can find ourselves in the situation of fault with provision when the perpetrator foresees the result of his deed, which he does not accept, considering without grounds that it will not occur.

The assessment is made according to the experience, development or mental training of the perpetrator, based on certain objective or subjective factors, but there is an overestimation of the role played by these factors, which means that they unfoundedly assess the non-production of the result, it being produced and leading to the apprehension of the deed committed based on this form of fault, the one with foresight.

The fault with provision presents problems of delimitation in relation to the indirect intention, being similar in that it foresees the result of the deed, a result that is not accepted.

Unlike indirect intent, in the case of premeditated guilt, the perpetrator does not accept the eventual consequence, but considers, based on certain objective grounds, wrongly evaluated, that he can avoid or prevent the consequence. In the situation where the perpetrator's assessment is based on chance, and not reasonable objective foundations, it will be considered that he committed the crime accepting the result of his action or inaction, so with indirect intention (Udroiu, 2017, p.54).

Indirect intention and fault with foresight have as a common element the existence of foresight of the possibility of the occurrence of socially dangerous consequences. But in the case of indirect intent, the offender accepts the possibility of the eventual consequence, being regardless of whether it will be realized or not, while in the case of premeditated guilt, the consequence is not accepted, because it is based on the existence of a real, objective circumstance, and not by chance, as in the case of indirect intention, but which they estimate inaccurately (Bulai, 1992, p. 255-256).

In criminal law, no distinction is made between the modes of intent and guilt in terms of their severity and criminal treatment. They are however defined in order to differentiate the indirect intention from culpa with provision and culpa without provision and the fortuitous case, because they have different legal consequences.

"Guilt without foresight is the form of guilt of the perpetrator who did not foresee the result of the act, although he should and could have foreseen it." (Criminal Code, art. 16, paragraph 4, letter b).

Fault without foresight is the only form of guilt that lacks foresight of dangerous consequence, because in this situation the breach of duty of care is not done knowingly.

Although the criminal law mainly criminalizes acts committed with intent, some acts committed out of imprudence are also criminalized, and this is expressly provided for in such cases. Such acts are also criminalized, because they manifest a mental attitude of carelessness, lack of discipline, attitudes that generate dangerous consequences for society.

It is important to delimit the crimes committed by fault or with intent, for several reasons.

First of all, the criminalization of acts committed by fault, are sanctioned less severely and only when the law provides for this form of guilt in the structure of the crime.
The crimes of murder and manslaughter are part of the group of crimes against the person and the subgroup of crimes against life, bodily integrity and health.

These two crimes have the same special legal object, namely the life of the person and the social relations regarding the right to life protected by the criminal law by criminalizing the facts that harm or endanger them, as well as the same material object, the body of the living person. The crime of manslaughter, like murder, is a comissive act, which can result from a positive activity, as well as from negative attitudes and a material crime.

For any of the two crimes to be apprehended, it is necessary that the immediate consequence is the death of the victim.

However, the two crimes are, and remain, essentially different in terms of the degree of social danger, as well as in terms of the criminal treatment that was intended for them by the legislator. These criminal acts are particularly dangerous due to the consequences they produce, suppressing a person's life, jeopardizing the security of social relationships. From the subjective aspect, they differ fundamentally, manslaughter being an unintentional crime, and murder, a crime committed with intent. The social impact produced by the crime of murder is indeed deeper than that determined by the crime of manslaughter, the social significance of the two crimes being differentiated.

The specialized literature also distinguishes certain degrees of guilt:

1. grave(lata),
2. light (levis),
3. very light (levissima),

as well as other classifications, for example – as the form of guilt of guilt characterizes committed acts:

- by action (in agenda),
- by omission (in omittendo),
- common, when the result is the result of the culpable activity of both the perpetrator and the injured person
- concurrent when the result is caused by the culpable activity of several people.

Conclusions

Guilt is a mistake that consists in the non-compliant fulfillment of an obligation or in its non-fulfilment; wrong that consists in the commission of an act that is harmful or punishable by law. According to art. 16 paragraph (4) of the Criminal Code, the legislator established two main ways of guilt, culpa with provision and culpa without provision.

In any of its ways, guilt must be proven just like any other constituent element of the crime. This implies for the judicial body, the verification of all the circumstances in which the acts were committed, both objectively and subjectively, if the agent could foresee the result and follow the rules of diligence to avoid repercussions. If a negative answer is given to the first action, namely the objective aspect of fault, the subjective aspect is no longer checked. The fault cannot be explained only by a deficiency of attention, as there are culpable acts that are committed with increased attention, nor exclusively by not observing the rules of diligence, since such an omission can be intentional.

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