



**NEW PERSPECTIVES  
ON CONTEMPORARY SOCIAL STUDIES**

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## Mediation's role solving conflicts in corrupted judiciary systems

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### Abstract

*Mediation in conflict resolution constitutes a new trend in restorative justice. Mediator's procedures are "sanctioned" since Antiquity and later in the years 1999, 2003 and 2011. However, only after the first licensing of mediators and the Creation of National Chamber of Mediators in Albania we can seriously talk about the beginnings of the institutionalization of mediation. Why Albanian State and USAID and JUST program are investing in mediation conflict-resolutions? The main reason is because Albanian Judiciary System is estimated, perceived as extremely corrupted. Mediation is extremely important in corrupted judiciary systems as arrives to resolve conflicts satisfactorily for conflicting parties, it takes less time and less financial costs. It looks like mediation solving conflicts gives to the conflicting parties what the corruption denies. This paper will analyze the role of mediators in the resolution of conflicts, the need to bring qualitative changes in the practices of conflict resolution, the big challenge of establishing trust and everything connected with a biased process. The paper will be described by some questions and above all the question mark is if it possible to extend the mediation procedures in all conflict resolution? What is public impact of mediation? Is it possible to have corrupted mediation as corrupted as judiciary system? What is the solution if it happens? Some findings and conclusion will be the last session of the paper bringing us a clear picture of what the mediation should be.*

**Keywords:** Corruption; role, mediator; solving conflicts, judiciary system

### Introduction

Judiciary system is part of tripartite system as described firstly by Baron de Montesquieu. Montesquieu goes further when he said that "the independence of the judiciary has to be real, and not apparent merely". "The judiciary was generally seen as the most important of powers, independent and unchecked", and also was considered dangerous. (Montesquieu, Charles-Louie. The Spirit of Laws). More and more governments in the world are reforming judiciary system trying to establish an effective, professional and impartial judiciary system. Apart institutional commitment, success or not of judiciary reform agenda, it remains one of the most controversial powers, more so in judicial systems that are perceived by the public as corrupted. Firstly it is important to deal with the concept used in this paper. What is corruption and what is mediation or mediator? As we all know there is not a universally recognized definition of corruption, many practitioners in the field use Transparency International's definition, or "the abuse of entrusted power for private gain." In international law, a person commits the criminal act of corruption when he or she "promises, offers, or gives" undue benefits to a public official "in order that the public official act or refrain from acting in the exercise of his or her official duties." If a public official solicits or accepts such an undue advantage, that also counts as corruption. (United States Institute of Peace, Study Guide Series on Peace and conflict). The second key concept of this research paper is mediation. Sometimes it is used mediation or ADR. Is ADR the same concept as mediation? The doctrine says no because using the concept ADR we mean processes that may be used within or outside courts and tribunals to resolve disputes, where the processes do not involve traditional litigation processes. The term describes processes that are non-adjudicatory, as well as adjudicatory, that may produce binding or non-binding decisions and includes processes described as mediation, evaluation, case appraisal and arbitration. It is understood that ADR is a wider concept as mediation and it refers all alternative dispute resolutions.

According to legal dictionary mediation is "the attempt to settle a legal dispute through active participation of a third party (mediator) who works to find points of agreement and make those in conflict agree on a fair result. Mediation differs from arbitration which the third party (arbitrator) acts much like a judge but in an out of court less formal setting but does actively participate in the discussion. Mediation has become very common in trying to resolve domestic relations disputes (divorce, child custody, visitation), and is often ordered by the judge in such cases. Mediation also has become

more frequent in contracts and civil damages cases. There are professional mediators, or lawyers who do some mediation for substantial fees, but the financial cost is less than fighting the matter out in the court and may achieve early settlement and an end to anxiety. (<http://legal-dictionary.thefreedictionary.com/Mediation>)

However, mediation does not always result in a settlement. We used this definition to introduce in the paper and in the linkage between mediation—corruption and judiciary system.

#### Background of the research

The Albanian term mediation first surfaced in the anquity. This does not mean that mediation as a mode of dispute resolution was hither to unknown in the Albania. Mediation, as a process of third party assisted bargaining, had existed for several centuries, performed as assemblies, presbyteries, blood feuds reconciliation commissions and social courts. These methods of dispute resolution were commonly practiced as a side-activity by judges, mayors, or yet other functionaries, using their intuition, experience of life, or mere authority. The "mediation" was regulated by albanian Canon(Canon of Lekë Dukagjini, article 668, 682), different laws (Law no. 83, dated 23. 05. 1928 "On the civil administration of the Albanian Kingdom", or Law No. 4406, dated 24. 06. 1968 "On the organization of the judiciary system"). In the customary law mediation was part of judiciary system, in so called social court, at that time part of judiciary system. The social court (including village court or neighborhood court) should take all appropriate steps to resolve disputes by reconciliation (Mandro, 2008). Here lies an essential difference with the modern mediation in Albania. There are three laws, the first one of the years 1999, the second one the law of 2003 and the last one of the year 2011. The last legal framework is in full accordance with the international legal framework regarding mediation, the directives of European Union and the European Code Ethics of Mediators. It is possible to discuss about modern concept of mediation referring the last legal framework. According to the law of 2011 mediation and all legal acts regulating mediation process, mediation is as an extra judicial independent activity, undertaken voluntarily by parties in civil, commercial, labor and family disputes, and in certain penal cases. The current Mediation Law, which entered in force on April 9, 2011, assigns the Ministry of Justice the responsibility of creating and maintaining the Register of Mediators, and establishes the National Chamber of Mediators. The law obligates judges to invite parties in relevant court cases to participate in mediation, thus providing an important tool for faster decisions and increase transparency in the courts. The law sanctioned criteria for mediators and only after being licensed from the License Commission in the Ministry of Justice and after registered in Mediator Register a person or a mediation office could mediate cases. Actually in Albania it is established National Chamber of Mediators (Since July 7th 2013) and actually there are 54 (Fifty four) mediators and two mediators office or foundations. (Ministry of Justice, June 2014). However before the Law of 2011 entered in force there are some important projects of JuST and USAID in Albania with four district courts since February 2009. USAID JuST a very important partner and counterpart is a five-year project to increase court transparency, fairness and efficiency; bolster watchdog and anticorruption roles of civil society organizations and media; and strengthen the legal profession and legal education in Albania. Thanks to this project, regarding its benefits in the mediation the process is a successful story and the statistical data show that the Albanian people are supporting the mediation bringing the cases before the mediators, avoiding courts. Describing the background of the research only dealing with the mediation as a new alternative of resolving disputes it is not enough and it doesn't explain the linkage between the mediation, corruption and the judiciary system. Albanian judiciary system is perceived as most corrupted. It is widely accepted and confirmed from all researchers, Albanian or not that judiciary system in Albania is corrupted. The last report (2013) of U. S Department of State concluded that corruption is one of the main violators of human rights in Albania and it continues to be a serious concern. More regarding the corruption, it is the interview of chef of Euralius Mr. Joaquin Urias. He said there are not statistical data and concrete numbers of corruption in Albania because the corruption is not punished (an other grave problem) but the whole system of justice is corrupted. According to him corruption has become systemic, being thus the rule and not the exception(See more <http://www.infocip.org/en/?p=1199>). It is possible giving justice in a corrupted judiciary system? Head of High Court of Republic of Albania, Judge Xhezair Zaganjori in the conference "Rule of Law and Reforms in Albania" co-organized in Brussels by foundation "Hanns Seidel, declares "There is no court when the judge declares the verdict based on political influence or corruption because there is no impartial and efficiency, two fundamental values of judiciary system." Corruption is structurally rooted, and officials often ignore or bend laws and policies, report false information and neglect the welfare of the population under their constituency (Lieberthal, 2004). Even though bureaucratic and commercial corruption is highly undesirable, judicial corruption is far more problematic. Courts are legitimately supposed to realize the law's corrective justice with reasonable competence. A clean judiciary could not fundamentally curb governance problems; but a corrupt judiciary will not only be irresponsible but also intensify rising complications. Corrupt judges placed on the frontiers of exercising legal power are largely

unfit to give fair adjudication, because their own objectives often go beyond the proper application of the law. Their actions may be motivated by self-interest and subjected to interventions by sources of corruption. (Eric Chi, 2008). A justice system, and the processes located within it, ought to deliver justice. (Welsh, Vol. 5:117). While you are reading this the first question you have is justice delivered equally for all? Even the principle of equality is old as humankind it is not applied perfectly. The corruption affects the public services, and so on the corruption in judiciary system affects equal delivering of the justice, and impacts mostly the poor. Courts possess the decision, which is binding on the parties to the judicial process to be implemented and executed but let's think for a moment . . . a judicial decision which one of the parties does not believe that it is in accordance with the law not only does not solve the conflict but also generates a new conflict that will accompany the execution phase of decision. We can not completely avoid conflicts but can find the best solution for them. Michael Barker said in his article in web page State of Nature "Conflict is not the enemy, but instead is the means of promoting justice. Unresolved conflicts that are "resolved" without adequate justice (via ADR and the like) are ultimately the enemy of all humankind, as they help institutionalize inequality. "According to Barker and the others, mediation is estimated as A. D. R ( abbreviation of alternate dispute resolution) and now on it is estimated as Adequate Dispute Resolution regarding greater flexibility, costs below those of traditional litigation, and speedy resolution of disputes, among other perceived advantages. In this paper observing role of mediation in corrupted judiciary system it is important to emphasize advantages of mediation in dispute solving. According to Laura Nader in her review of Jerold Auerbach's book *Justice Without Law?* (Oxford University Press, 1983), Laura Nader recounts how Auerbach wrote that prior to the Civil War, "alternative dispute settlement had expressed an ideology of community justice. Thereafter, " Nader continues "according to Auerbach, it became an external instrument of social control and a way of increasing judicial efficiency. "

After introducing shortly the background of the paper, the chronological presentation of mediation in Albania, on arrival in the contemporary concept of mediation, as it is taking place recently in one of the most judiciary corrupted system in Europe and not only in the second session it will be discussed about methods used in this research paper, an analytical discussion will be about the linkage between them trying to point out some conclusions and recommendations about the future of mediation in Albania.

## **Method**

### **Mixed methods of research**

The author decided to use mixed methods research because of the advantage of mixed methods. It is argued that mixed research methods have several advantages. Mixed methods provide guidance for others in connection with what researchers are intended to do or have done (Creswell 2003). Mediation (contemporary concept of it in Albania) is a new process so there are not a lot of statistical data and it is much more important providing some conclusion on it, trying to go beyond of the barriers.

## **Materials**

Quantitative data of cases of conflicts resolute by mediation. Data are provided by Ministry of Justice in Albania, National Chamber of Mediators, Foundation of Solving Conflicts and Reconciliation of Disputes and data of 4 (four) Court Districts in Albania where it is implemented a pilot project of mediation (Korca District Court, Durrës District Court, Saranda District Court and Gjirokastra District Court as well) Statistical data are provided as well by JuST and USAID, two very important counter-parts of this project.

There are some qualitative researchers on mediation in Albania, especially in penal process. We will use some of their finding just to elaborate a common sense of mediation and how it is perceived by the scholars.

## **Results**

The main aim of this study was to evaluate role of mediators in solving conflicts in corrupted judiciary system. For this purpose, firstly it is important to clarify if presence of mediation affects or change something in corrupted judiciary system. Secondly it is as much important to distinguish the voluntary choice of parties in a mediation process. The choice is due to the negative effects of corruption or because of bureaucracy, formal procedures and inherent complexity of having a trial process.

## Findings

Using secondary data of researchers about mediation and the reason why the parties choose mediation, the reasons are as below:

- Through mediation, the parties reduce the expenses
- Reduce stress of court proceedings
- Reduce the emotional toll of conflict.
- In divorce mediation and other family mediations (such as elder mediation, estate planning mediation, and family business mediation), the participants benefit greatly by preserving the possibility of ongoing relationships in the future, if they so choose.
- It gives substantial control to the parties, rather than a judge or a court
- Mediation provides privacy and confidentiality, while the trial is public. This is extremely important in the disputes relating so called "private life".
- Disputes are solved in a creative way.
- The mediation solve the conflict while the Court Decision is about the case.

Using secondary data we listed the reason and now it's time to discuss what is not offered in trial process because of the corruption.

The first reason is reducing expenses. Expenses, financial costs are the most notable effect of corruption. Bringing the case before the court where the judges are corrupted costs more. Mediation costs less than a court trial process. Costs refer to official fee to present the case before the court, acquisition of the documents, fee of services of attorney and the costs of corruption). Choosing the mediation you choose to pay only fee of services of mediators. The fees are approved by National Chamber of Mediators.

The second reason of the parties is reducing stress of court proceedings. The court proceedings are stressful even for the lawyers and other professionals so it is easy to understand how stressful they are for parties in the conflict for who the court proceedings are not familiar. We will not stop at this reason and other reasons that are not because of the corruption but because of the organization of judiciary system.

An other reason, strongly related to the corruption is because the parties are not confident to judicial system. According to them the verdict courts are given affected of corruption or political influence. The verdict's court often is partial. The international statistical show that more and more people are losing faith in judicial system. The U. S State Department, year 2013, referring Albania regarding the corruption address: "State institutions that treat the fight against corruption remain vulnerable to political pressure and influence, while the fight against corruption in the judiciary has made limited progress". The corruption in judiciary system is a double problem cause it means not only not delivering justice but as well not punishing it. In a democracy based on the rule of law, the role of the judiciary, as an independent and equal branch of government, is to protect human rights and civil liberties by ensuring the right to a fair trial by a competent and impartial tribunal. All citizens expect equal access to the courts and equal treatment by the investigative bodies, prosecutorial authorities, and the courts, regardless of their position in society. Yet, under most corrupt judicial systems, the powerful and wealthy can escape prosecution and conviction, while large segments of society are excluded from their rightful access to fair and effective judicial services. (Pepys, 2003). Concluding the findings corrupted judiciary system affect:

- Faith of public in judiciary system
- More and more expenses
- Stressful court proceedings
- Violates equality before the law and access in the justice

For all above reasons more and more people are choosing mediation. According to American statistical there was a similar view expressed among the sixty disputants involved in in-depth interviews. Many expressed the view that they would wish to avoid the courts in the future, and ADR as well as lawyer-to-lawyer discussion were pathways to do so.

The mediation exist, the legal framework as well but are the parties informed about it ?

The mediation is more popular and known among professionals of the field than in the public. People missed the important information that agreement of a mediation process has the legal effect of a court verdict. The National Chamber of Mediators, judges, police officers, officials of probation services and mediators itself should inform parties for this advantageous alternative of dispute solving.

According to Ministry of Justice of the Republic of Albania for the years 2013-2014 the number of conflicts(disagreement) solved through mediation are shown as below: The total numbers of cases presented to solve through mediation is 167 .

From that : 90 cases belong to Korca Court District , 35 cases belong to Durres Court District , 43 cases belong to Saranda Court District and only five of them belong to Gjirokastra Court District. 75% of the cases are solved through mediation . (Speech of Minister of Justice of the Republic of Albania, Mr, Nasip Naco in the meeting "Mediation , a new alternative of solving conflicts in Albania", organized by National Chamber of Mediation, in the attention of Ministry of Justice ")

## Discussion

In the discussion session of this research paper I would like to pay attention to some debated question.

After proved the linkage between corruption in judiciary system and positive effects of mediation in fighting corruption, which is the guarantee that the theory that mediation fight corruption in judiciary system is true and can be implemented successfully?

There are enormous theories of combating corruption in judiciary system. They vary from new selection systems, higher salaries, guaranteed tenure, ethical training, courtroom automation and improved monitoring and discipline . They have different rates of success, but none of them could vanish corruption . Going further UN Office on Drugs and Crime (UNODC) said it became evident, however, that judicial corruption could only be addressed effectively as part of a broader, systematic and sustainable approach aimed at enhancing both the integrity and the capacity of the judiciary and the courts. ( Hammergren, 2003). Why we should believe that mediation could seriously fight corruption?

The mediation's role fighting corruption in the judicial system it is mainly because of removing the monopoly-power of judicial system to resolve conflicts. An other reason is because judges and other law enforcement bodies of the judiciary in Albania are threatened due to the refusal of public regarding judicial system. This refusal is expressed through strongly support of mediation. The other theories of combating corruption have been focused inside the system. It will be interesting to see how an other structure "outside" of courts will affect the court, and the last but not least is that mediation will face the judiciary system with new standards, widely approved.

An other debated question is what kind of justice is delivered by the mediation process? We will introduce to the question shortly presenting the colonist view towards juries. They considered juries as as the "guardians of local community values against outsider judges appointed by the royal governor" and "as bulwarks of integrity against corrupt public officials. (Welsh, 2004) Are the mediators replacing juries, can we consider them guardians of local community values? Is mediation agreement delivering social justice, deeply wanted by community ? ? Mediation is part of a real and genuine reform in judiciary system . In every time, but mostly now we need to highlight the need of a professional, efficient and impartial judiciary system. Other way there is no sense discussing about the rule of law or human rights protection. Starting from the point of view of judge Wayne Brazil who has urged that the process "democratized our institution [the courts] in potentially profound ways because mediation permitted, in fact actively encouraged, the parties to decide for themselves which values were most important to them, then to use ADR to pursue those values.", in my opinion mediation it is not only alternative dispute resolution, even adequate dispute resolution but is a way tackling corruption. It represent a new standard of justice, community justice, not an abstract concept of justice as it sanctioned in legal instruments, but a kind of justice coming from the parties including in conflict. Justice coming the parties is accepted, is not controversial and the parties have faith in it and believe in real equality. In that sense, mediation is what justice is missed and what people strongly wish to find in judiciary system. Let's go back in the very beginnings of the contemporary mediation movements , in the late years 1970s and the early 1980s when the movement was inspired by the principles of democracy. (Welsh, 2004)

Albania missed time to reform judiciary system and make this system more efficient, transparent and impartial. Mediation is part of reform agenda and it is time to play much more significant role in delivering the missed justice.

This research paper outlined the linkage between corruption in judicial system and mediation. It is accepted the positive effects of mediation in fighting corruption in judicial system but policy makers should keep in my mind that it is one of the ways and it should be combined to the others to be real and successful.

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<http://www.usaid.gov/news-information/press-releases/usaids-supports-court-mediation-albania>

## Tables

Table 1. Mediation versus Court

COMPONENTS	MEDIATION	COURTS
Time (Faster)	Mediation cases take an average of two weeks to a few months for conclusive resolution	Can take at least a year and half on the average to resolve, not to talk about possible appellate processes in the higher Courts. Further, time for execution of the judgment could take a further couple of years sometimes.
Party control	Substantial party control.	There is no substantial party control.
Human Rights	Respected and equal for everyone	Fair trial process and other human rights sanctioned are violated in corrupted judiciary system
Simpler	It takes less time, it is less stressful, it is not as formal as court	Court proceedings are formal, timetable decided from the administrative staff or the judge

	proceedings. Disputes are solved in a creative way	. Takes more time and it is more stressful.
Confidentially	The parties have full faith in the mediator. They choose him or her voluntarily. They believe he/she is able to solve their disputes. The mediation agreement is signed by the both parties and they are winner-winner	The judge or the panel of judge are determined by lottery. The parties have their opinion about his/their impartiality. Sometimes they do not believe he/she/they are able. They are doubtful about selection criteria of the judges. Undoubtedly one of the parties, mainly loser, or sometimes both of them loser and winner believe that the verdict court is not in accordance with the law.
Voluntary	Parties decide about the mediator. Parties decide if they want to solve the dispute through mediation	The parties do not decide about the judges or the panel of judges. If one of the parties bring the case before the court, it is not important the will of the other party. An absence court decision is always possible.
Access	The poor and the other discriminated target group of the society could access the mediation process.	In a corrupted judiciary system the poor and discriminated is denied the access in the judicial system
Effective	It resolve the disputes, conflicts. After the mediation process both parties have a common future	It gives a decision court about the case. The decision court could generate a new conflict between parties.
Justice	Social justice close to the citizens – an essential factor of social cohesion	Conventional, abstract justice In the best way it is in accordance with the legal provisions, abstract articles.

Table 2. Cases that should try to be resolved by mediation before going in the Court (According to Albanian law)

Law No 10385 dated 24.2.2011 "For the mediation solving disputes in the Republic of Albania".

#### Penal Cases

Sanctioned in the article 59 and 284 of Criminal Procedure Code for criminal cases category, such as beating, serious injury by negligence, injury due to negligence, violation of domicile, defamation and other cases, it results that the injured, (the victim) has the right to directly petition the court the criminal case and to take part in the hearing as a party, to prove the charge and to obtain compensation.

Also, under Article 284a of the Criminal Procedure Code are defined cases of criminal prosecution conflicts starts from prosecution or judicial police only based on the

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	complaint of the victim, the injured party against the defendant, who may withdraw the appeal by addressing mediation stage of the proceedings. These cases are injury due to negligence, manslaughter, insult and slander because of duty, etc..
Family Cases	Divorce, child custody, parental obligations , and all the cases of the high interest of child
Civil Cases	Civil, labour and commercial cases

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Table 3.How mediation reduce corruption in judicial system?

Removing monopolistic power of judicial system in resolving conflicts

Establishing an “outside” court structure

It is a clear example of refusal of corruption in judicial system

It represent new standarts of justice , which should be part of conventional justice given in trial process

New standarts of professional conduct

## A Comparative Study on Emerging Modern and Traditional Rich People Lifestyles in Tehran City (Iran)

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### Abstract

This study was compiled in measuring method and in the statistical population of all the family guardians of Tehran city residences in districts 1,2, and 3 in year 2010, and in a sample of 397 people, who were chosen in multi-step cluster sampling method, to achieve the purposes of three main and eleven sub theories. The required information was collected using a 59-itemed questionnaire with a proper reliability and validity between 0.72 to 0.79 for the whole questionnaire and its components, while the data were statistically analyzed using the descriptive statistics (frequency tables, central bias, distribution indexes and chart), and inferential statistics methods (Man Whitney). The study findings show that: (1) there is a meaningful difference between the main theories of emerging and traditional rich people lifestyles ( $p < 0.01$ ); (2) there is a meaningful difference between the type of economic structures of emerging and traditional rich people lifestyles ( $p < 0.01$ ); (3) there is a meaningful difference between the type of emerging and traditional rich people lifestyles ( $p < 0.01$ ). Also regarding studies on eleven sub theories it was revealed that: (4) there is a meaningful difference among the level of education, belief in chance, belief in body management, way of passing leisure time, consumption model, and work styles variables between the emerging and traditional rich people ( $p < 0.01$ ); and (5) there is observed no meaningful difference among the taste, religious principles, belief in the position of women, financial criterion, type of clothing variables between the emerging and traditional rich people ( $p > 0.05$ ).

**Keywords:** *Lifestyle, Socio-cultural Structure, Economical Structure, Emerging Modern Rich people , Traditional Rich people*

### Introduction

Lifestyle is one of the discussions which highly focused by the scholars and practitioners during the past couple of decades. It is one of the social phenomena which enjoy a certain position in today's life. Some issues such as fashion, taste, lifestyle are methods which are applied both to make distinction between one and others, and provide one's need for social coping. Apart from their functions in the social classification system, these factors result in social dynamism, by connecting to which one may also promote within the social dynamism (Simmel, 1981, Bourdieu, 1984, Gronow, 1991). Among the respective practitioners, Anthony Giddens more emphasizes on the lifestyle identity giving of the lifestyle (Fazeli, 2003: 110). Gioddens (1999) believes that due to increased communications and personal interests in the modern societies, people choose their certain lifestyles among a variable set of lifestyles, and also the lifestyles visualize for others the certain narration which one has chosen for his/her personal identity for others (Giddens, 1999: 28). According to the Giddens idea with respect to the lifestyle issue, the lifestyle study includes the effort to realize a regulated set of behaviors with action models chosen by people, whose actions in their daily lives are directed by those models. It is important that such choices are available in any level, and no culture would avoid people from their choices completely (Fazeli, 2003: 66).

Style means as the type of doing something (Aryanpour, 2001: vol 1, 103). The word lifestyle indicates various methods of living. Also, this expression may indicate the comparison of the lifestyles discovered among different groups of the society. Also, the word lifestyle as the meaning of "way of living" has been conceptualized. Usually, way of living is realized via values and methods of consumption, which are resulted from the increasing distinction of the developed capitalist societies (Babaei, 2005: 15). The methods of life are in fact the distinct model of communicating among the people, while people use the concept of lifestyle in their daily lives without considering explanation of their purpose as necessary (Chini, 1996: 4-5). According to personality value viewpoint, Wales and Lycert (1979) believe that the lifestyle thinking is understood as the interfering variables between difficult economical conditions and real consumption behaviors, while considering the lifestyle characteristics as including the activities, interests and beliefs. Also Sobel (1981) believes that the lifestyle and societies social structures are related. However, the options for anybody are highly dependent on one's position inside such structure (Gibbons and Bourimer, 2002: 113). These positions are formed based on the social opportunities structure and public availability of the opportunities, attributive characteristics such as gender, race, age and living change for the people and groups. According to Webber, lifestyle is applied in three meanings: style of life, lifestyle of action, life conduct. Lifestyle of action refers to the options of the people, while living chance is the potential to achieve the options (Dazeli, 2003: 28).

The lifestyle indicates one's actions within the scope of this life. In the traditional societies, the options based on consumption are highly dictated based on class, category, rural or family environments, while in the modern societies after all the people have more freedom in choosing the goods, services and actions which create the social identity (Solomon 1994: 438, quoted by Rasouli 2004: 54). Lifestyle is usually connected to social and economical class and is reflected in one's made image (Asaberger, 2000: 141).

According to Webber, apart from establishing the differences among the groups, the lifestyles explain the superiority of positions and classes. These groups are converted into reference groups via lifestyles and also define the social judgment and ethical assessment criteria. This thought has seriously been followed-up in Peir Bourdieu works (1980). In this regard, Bourdieu has referred seven concepts of field, capital, habituate, practice, symbol, class, taste in lifestyle analysis (Fazeli 2003: 37).

Apart from Robert discussions (1999) and his other supporters, it seems that lifestyle has been regenerated in these years (Rimmer, 1995). The changes made since Marx until today's era in capitalism and passing through the production to consumption step and besides that relative improvement of middle and lower classes in Europe and USA and growth and development of middle class have made a kind of personal independence in practice and personal freedom to choose (Chani, 1996:4). During the recent years, lifestyle is not considered in studies of social classification and as a way to determine the social class, but a modern social formation which is merely meaningful within the cultural changes of the modern era and consumption culture growth and development (Chavoshian, 2004: 6). Today, the concept of lifestyle has highly been changed due to changes of the western capitalist system in the works of the social sciences thinkers, so that from the prestige models which are totally dependent on the economical components, materialistic values and wealth, and study the lifestyles in certain classes to the models based on the consumptions of cultural and art goods and way of passing leisure times and have different shapes in various social classes and groups are included herein (Chenni, 1999: 19).

Various factors affect lifestyle (Moradi, 2004: 229). The lifestyles are considered as a set of actions and orientations which are meant in certain basis and are dependent on cultural states. Lifestyle is a state and way to use the goods, locations, and certain times which identify a certain group. However, it may not express the whole social experience of the same (Chini, 1996: 4,5). In the class and contemporary sociologists works, the lifestyles with two dependent and independent variables may also be indicated. In the sociology literature in the primary formulation which dates back to 1920's, lifestyle, wealth consumption and social position of people have mainly been used as an index to determine social class (Abazari and Chavoshian, 2002: 6, quoted from Chaen, 1955, Chapman 1935). In second formulation, the lifestyle in the social classification studies is not considered as a way to determine the social class, but is considered as a modern social form which is merely meant within the cultural changes of the modern era and consumption culture growth and development (Chavoshian, 2004:6). In this regard, the lifestyle is a way to define the values, visions, behaviors or identities of people which is of increasing importance for social analysis (Abazari & Chavoshian, 2002: 6).

Whereas theoretically an important part of this study is referred to the emerging rich people, in order to understand the concept of emerging rich peoples in Iran, the reasons to apply the word is mandatory. In definition of class, Bokhinsky (1995) writes: classes are groups of people from whom one may possess the other's job following in his position change in a certain socio-economical system. Kohen et al (1996) state in defining the social class that it is a group who are defined based on their relation with the ownership and control on the production factors and on others' manpower (Rafipour, 1999).

These definitions show that classes are in two formats, i.e. are in two distinct groups. Thus, their classification is made nominally. Lipist et al classify all the social class definitions in two groups 1. realistic definitions 2. nominal definitions of the social class. In realistic definitions, they address three major criteria: (1) mutual action (social class as a group who have mutual actions distinctive to other classes members) (2) members class knowledge from the class categorization from the economical and political interests and membership in a class (3) different class culture with a certain lifestyle for each of the social classes, Shumpiter (1919-1927), Makyor and Peach (1949) and Pasovsky (1957) emphasize in these bases (Lipist et al, 2992: pp 130, 131). Also Lensky (1966) has addressed in his studies that due to the limited valuable sources in each historical era, we would like to know why some rich people have more shares in the style of such sources. The response to these questions and many other questions means talking about the existence and socio-economical, political and cultural results of social class, social grouping, social inequality and their effects on the public actions of life.

Since the beginning, the thinkers have shown certain interest on social grouping and have pointed out the inherent and sustainable features of such conditions while addressing their role in the social life. Aristotle talked about and Plato studies these conditions (Darenbdrov ,1968: 153). Plato addressed the classified society discussion in making his new society based on justice, and internal social stability (Taamin, 1994:25).

Among different groups of people, this study focused on rich people. Here, rich people mean those who have power purchase higher than the costs of the essential goods and issues and comforting needs on their demand, while their preferences are also achieved. Thus, the indexes to be rich are 1. power of buy demands and 2. achieved preferences. The purchase power is analyzed in micro level cultural aspect, i.e. lifestyle. In Iran, rich people include the top and rich middle classes. In this study, the emerging rich people are those who have recently ascended from lower to higher social layers via inter- or intra- generation class dynamism and became rich. That is, they have the purchase power for their various needs and demands.

Tony Fitz Petrick in the book titled the theory of comfort, analyzed and criticizes some five indexes to define comfort in micro level. These five indexes, each of which are focused on certain aspects of comfort, include: (1) happiness, i.e. the satisfaction and happiness due to achievement of wishes. While sometime being rich may result in happiness (2) security, i.e. one benefits from security, income, employment and housing. Security means prior knowledge on that one's life will not be subject to disorder in near future. (3) preference, a person whose preferences are achieved has more comfort than the others. In case I wish to buy a new car and may pay for it, then my satisfaction and comfort level are higher than one who wishes to buy such car but does not have the money. The importance of this definition is its measurability. (4) needs, all the types of needs achievements may not be thought to be equal to comfort according to importance. There shall be considered difference between the needs. a. fundamental needs, b. non-fundamental needs, c. preferences. fundamental needs may be considered to be connected to the comfort. However, the other two classes are not essentially of such position. (5) rightness. Rightness refers to the a balanced point between partnership and reward. For instance, in case I participate double as you in an investment project, then my dividend shall be double as yours. In case I get more than that, it will be injustice against you, and if less, then I will be subject to injustice. (6) relation comparison, in real world, the comfort level of each person is totally dependent on the level of comfort of those of his type, i.e. those to whom he is comparing himself. Comfort is in a way linked to this feature of one who always compares himself with others (Tony Fitz Petrik, 2002: 20-30).

Regarding the positions and features of emerging, Max Webber says: according to the class position, facilities and economical life opportunities, the recent rich are in the same position of the top groups. However, these groups are not totally acceptable of highly prestigious groups. In fact, these groups are acting as trainees to be introduced to the features of high prestigious group. In order to withdraw emerging people, the highly prestigious people uses various excuses. For instance, they state that emerging have not enough education, of low information and knowledge, or that they do not know how to spend their money, or at last but not least they state that their parents are not known (Khodabandelou, 1999: 33, quoted from Henry Menderas 1990).

Lloyd Warner believes that the top down group of people are wealthy, and even often wealthier than the top of the tops class; but they have become rich recently and may even be too recently. They do not have proper family background, these two factors have separated them from top class of the society. According to the income, residence and level of social participation, top-down class are like top of the tops class, but they do not have the proper glory and correct tastes and acceptable social procedure (Adibi 1975, 226, 227).

According to the aforesaid, lifestyle is one of the discussions which have been considered in various fields especially sociology during the recent decades, and some studies have been made regarding the modern and traditional rich people lifestyles, however not enough. Thus, it has been tried to fulfill researching on this issue and clarify the same sociologically. The main question here is that whether there is any difference between the lifestyles of modern emerging and traditional rich classes in Iran, and how it is in their lifestyle, and what is these two classes behavioral model? Is there any behavioral difference between these two groups? How is the clarification this difference sociologically? How is its appearance in their consumption model? What are its aspects and structure? How are its experimental effects?

## Method

This study was compiled in measuring method and in the statistical population of all the family guardians of Tehran city residences in districts 1,2, and 3 in year 2010. According to the statistics obtained from Tehran (Shemiranat) Municipality General Administration, these three districts have 21 counties, with a population of 1,646,076 in 485,873 families; a sample of 397 people were chosen as statistical sample in multi-step cluster sampling method, to achieve the purposes of three main and eleven sub theories. The sampling method in practice was so that first of all some of the aforementioned districts counties were chosen randomly and then some of the family guardians were chosen as the statistical sample.

In this study, a questionnaire made by the author was used which contained 59 questions with proper reliability and validity as the information collection tool. In validity study, the same was obtained between 0.72 and 0.79 using the Cronbakh Alpha factor, for questionnaire and its components. Also in information collection, by referring to the houses during 20 days, approximately 20 questionnaires were completed per day (except holidays) by four surveyors, who were scholar master's degree students who enjoyed the required explanations and training to complete such questionnaires and there was no need to give information to them. Also in statistical analysis, the central bias indexes and distribution and indexes and charts have been used in descriptive level; while in the inferential level the Man Whitney test have been used to study the research theories.

## Study Findings

The findings of study and testing the theories indicate the following:

- (1) There is a meaningful difference between the main theories of emerging and traditional rich people lifestyles ( $p < 0.01$ ); so that it may be said there is differences between these two groups according to the education, believe in chance, body management and way to pass leisure times (Table 1).
- (2) There is a meaningful difference between the type of economical structures of emerging and traditional rich people lifestyles ( $p < 0.01$ ); so that it may be said there is differences between these two groups according to their type of consumption model (Table 1).
- (3) There is a meaningful difference between the type of emerging and traditional rich people lifestyles ( $p < 0.01$ ); so that it may be said there is differences between these two groups according to their lifestyles (Table 1).

**Table 1- Man Whitney Test Results in Main Theories Study**

Theory	Compared variable	Rich people	Average rank	Meaningful level
1	Social and cultural structure	Traditional	210.45	.000
		Modern	143.63	
2	Economical structure	Traditional	204.31	.000
		Modern	173.29	
3	Lifestyle	Traditional	202.24	.005
		Modern	183.31	

- (1) in studying the first sub theory, as "there is a meaningful difference between the emerging and traditional rich people regarding level of education", the results approve the same, so that the level of education of modern group was higher than the same for the traditional group ( $p < 0.01$ ).
- (2) in studying the second sub theory, as "there is a meaningful difference between the emerging and traditional rich people regarding taste", the results reject the same, ( $p > 0.05$ ).
- (3) in studying the third sub theory, as "there is a meaningful difference between the emerging and traditional rich people regarding religious principles", the results reject the same, ( $p > 0.05$ ).
- (4) in studying the fourth sub theory, as "there is a meaningful difference between the emerging and traditional rich people regarding believe in chance", the results approve the same, so that the orientation to superstition of modern group was higher than the same for the traditional group ( $p < 0.01$ ). (table 2)
- (5) in studying the fifth sub theory, as "there is a meaningful difference between the emerging and traditional rich people regarding belief on women position", the results reject the same, ( $p > 0.05$ ). (table 2)
- (6) in studying the sixth sub theory, as "there is a meaningful difference between the emerging and traditional rich people regarding believe in body management", the results approve the same, so that the orientation to body management of modern group was higher than the same for the traditional group ( $p < 0.01$ ). (table 2)
- (7) in studying the seventh sub theory, as "there is a meaningful difference between the emerging and traditional rich people regarding the way to pass leisure time", the results approve the same, ( $p < 0.01$ ). (table 2)
- (8) in studying the eighth sub theory, as "there is a meaningful difference between the emerging and traditional rich people regarding the consumption model", the results approve the same, ( $p < 0.01$ ). (table 2)
- (9) in studying the ninth sub theory, as "there is a meaningful difference between the emerging and traditional rich people regarding financial criterion", the results reject the same, ( $p > 0.05$ ). (table 1)
- (10) in studying the tenth sub theory, as "there is a meaningful difference between the emerging and traditional rich people regarding way of clothing", the results reject the same, ( $p > 0.05$ ). (table 2)
- (11) in studying the eleventh sub theory, as "there is a meaningful difference between the emerging and traditional rich people regarding the type of working style", the results approve the same, ( $p < 0.01$ ). (table 2)

**Table 2- Man Whitney Test Results in SubTheories Study**

Theory	Compared variable	Rich people	Average rank	Meaningful level
1	Three- level academic degree	Traditional	167.16	.004
		Modern	135.83	
2	Taste	Traditional	195.24	.097
		Modern	217.18	
3	Religious principles	Traditional	198.17	.194
		Modern	203.00	
4	Believe in superstition	Traditional	200.06	.000
		Modern	170.66	
5	Believe in women position	Traditional	183.62	.106
		Modern	161.62	
6	Believe in body management	Traditional	203.69	.000
		Modern	103.50	
7	Passing leisure times	Traditional	191.97	.002
		Modern	233.03	
8	Consumption model	Traditional	209.52	.000
		Modern	148.09	
9	Financial criterion	Traditional	179.40	.950
		Modern	180.04	
10	Type of clothing	Traditional	199.75	.722
		Modern	195.36	
11	Work style	Traditional	206.06	.000

	Modern	131.48	
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## Discussion and Conclusion

The most important findings of this study focused in comparison of the two traditional and modern rich people, indicate the existence of meaningful differences between the socio-cultural, economical structures and lifestyles of these two groups.

In order to clarify these findings as per the reliable sociology theories, it may be said that in fact lifestyles include models for the behaviors which distinct people from each other. Mainly, different life models are positioned in culture expression and also culture may be explained so that it is a set of people lifestyles including their common customs, visions, values and understanding, which link then as a society to another. Socio-cultural structure includes a set of variables such as high education, taste, etc.

According to Weblen, high education was primarily of the tasks of the traditional lazy classes, however, after industrial societies' progress, the orientation with respect to high education was changed. Due to the findings of this study, the modern rich people were more educated than the traditional rich people.

According to Bourdieu, the difference between today and past generation as per the taste criteria is because the economical status has changed; thus, due to the existence of public communication means, there basis to grow taste was developed which is also including various criteria. Due to the findings of this study, even the traditional rich people's tastes are being modernized.

According to Weblen, observation of religious orders is a way of thinking which has certain economical value, and is assessed via the effect of the same on one's profitability and his industrial and production efficiency, which may be different for various classes; however, Due to the findings of this study, the religious beliefs in these two groups are almost the same.

Also Weblen suggests that brilliance and type of clothing indicate laziness, especially for the recently industrialized societies emerging layers, the type of clothing and wearing are important. Due to the findings of this study, we understand that the way of shopping and type of clothing is moving towards modernity among rich people.

"In fact, these groups are acting as trainees to be introduced to the features of high prestigious group. In order to withdraw emerging people, the highly prestigious people uses various excuses. For instance, they state that emerging have not enough education, of low information and knowledge, or that they do not know how to spend their money; or at last but not least they state that their parents are not known "says Max Webebr regarding the position and features of the emerging rich people. Classification of people in prestigious classes is mainly based on their consumption model. Prestigious groups are mainly those people related to the lifestyles and social respect. These people consider limits for their relations with people not belonging to their groups and expect its members to have social distance from those of lower prestige; however, according to this study, the tradition group members are also moving towards modern consumption model.

Due to the findings of this study, it may be concluded that the mental contradiction and gap is one of the Iranian social gaps and contradictions occurred between tradition and modernism. It seems that tradition is under the process of regeneration and that the traditionalists shall avoid some their positions and these people are more modern than their ancestors.

Evidently, lack of cultural integrity is the result of the process and regeneration of a society, which has affected the old values and interests and brings new interests and values.

In the third world societies, the passing era from the traditional to modern society is considered by the sociologists and social sciences practitioners due to their effects on the social structure. In this regard, like many other developing countries, our country is affected by the passing era issues in the fields of culture, values and social structure.

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## Facebook as Space of Resistance for Indonesian-Postcolonial Identity

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### Abstract

*This paper aims to answer the problem of how Facebook functions to re-construct the Indonesian-postcolonial identity by means of narrative in marking the transition from colonized subjects to liberated beings. The reason why colonial discourse still dominates modern society is due to its ability to possibly re-generate the feeling of inferiority in native culture and perpetuate the patterns of behaviour even after the era of colonialism was over. Evidently, the coming of Internet in Indonesia is significant and highly relevant to postcolonial study only if it is grasped in relation to the preceding history of Indonesian 'old' media. If Internet is socially imagined as a powerful tool of opposition to authoritarianism, I will show how Facebook makes room for a voice of disapproval of the dominant systems and create an independent surveillance over state, opening up unconstrained participation of people who are used to live under authoritarian regimes. My analysis will be focused on the way Facebook provides a mechanism to formulate a 'new' community that hold power to form a collective struggle of those who were considered as the 'other' – the ones formerly excluded or marginalized from the oppressive discourse. Certain ideas are liberally spread out in Facebook, creating an unstoppable flow of resistance toward the dominant discourse and changing the face of the nation. I see narrative as the ideological apparatus that seeks to liberate marginalized subjects by giving them the power to interpret their own experience and subjectivity without conforming to the dominant discourse. The medium is now giving a sense of pleasure and fascination in designing the conception of being a free agent. The process of self-identification produces acts of contestation by making clear the fact that identity is historically unstable and an object of change and reconstruction.*

**Keywords:** Identity, Narrative, Resistance, Postcolonial, the Other, Facebook

### Introduction

Having suffered colonial domination and oppression for hundreds of years, Indonesia is struggling with the idea of being a nation in contemporary society. Even though the colonial period has ended, the colonial discourse remains and gives shape to anti-colonialist debates in the post-colonialist era which is materialized in the huge range of issues that shows the problematic concept of post-colonialism itself. The emergence of new media appears as a new area of enquiry within the discourse of post-colonialism and the problem of agency is the specific issue I focus on. The question of identity is central within postcolonial theories. It also has a considerable impact on the study of media. Postcolonial theories are continuously struggling with the idea of 'culture' especially when they claim to speak from the position of the marginal or the silenced. It means that these theories will always deal with identity as a construct, shaped and continuously transformed within new cultural conditions. The notion of agency is important in my thesis since I will scrutinize how identity under postcolonial discourse needs to be re-situated within the emergence of new media that put forward the political economy of signs as an inevitable part of hyper-capitalism. Thus globalization will never leave individuals free without trying to transform them as commodity. As the notion of power has unquestionably characterized the postcolonial discourse, it is interesting to see how new media have acted as an apparatus that bring the power of consumption as a means of understanding oneself. For this reason, my thesis is certainly an interdisciplinary study, positioning identity in contradiction - as an active agent that makes the most of new media but also nothing but a coded object materializing as an image.

Defined by anything but the West, Indonesia, which is living with the history of a former colonized country, was politically positioned to comply with the fate of being the 'Other'. Therefore, the notion of colonialism in this paper will be scrutinized within the discourse of Orientalism which gives a crucial impact in constructing the binary opposition of the Orient (the East) and the Occident (the West) in the contemporary system of representation. Said's thesis about Orientalism will be best in making clear that the Orient is not a natural condition - rather a construction made in order to support the authoritative position of the West, a western style for dominating, restructuring, and having authority over the Orient (Said, 1978; 3). The

binary opposition the Orient - the Occident is not simply produced without involving a structured political domination between engaged parties.

While I focus my paper on the representational domain, I am fully aware that the relevance of postcolonial studies remains central. Its heterogeneous inter-disciplinary nature opens up diverse meanings and implications of the term 'postcolonialism'. The question of superiority and inferiority in the production of knowledge is mostly evident in the process of naming as it implies the power relation between the dominant and the dominated. A contemporary study on postcolonialism should take a specific case that illustrates the mechanism through which the former discourse of colonialism has been challenged by the emergence of new media as colonialism had deployed diverse strategies and methods of control and representation (Lomba, 1998; 19). As Orientalism proposes imaginative assumption about what Orient is, it is necessary to see how the so-called 'Orient' produces text about 'the self' instead of just becoming a fabricated construct, manufactured by the West. Therefore, the scope of my analysis in this chapter will be limited to answer the question whether the Indonesian-Orient can liberate themselves from the logic of subjugation and domination or reinforce the assumptions/stereotypes posed by the West to the Orient.

I will advance my analysis by bringing the identity of the Orient into light pertaining to the problematical conception of agency in the virtual domain. Participatory culture as suggested by Jenkins has made it possible for the average consumers to archive, appropriate and re-circulate media content in powerful new ways (Jenkins, 2009; 8). Hence, it is hard to consent with Fernandez who says that postcolonial studies has a very few points of intersection (Fernandez, 1999; 59). Quite the contrary, key postcolonial issues, such as identity, representation, agency, gender, power and space have been inherently assigned to the new media discourse.

I have chosen Facebook as a specific case relating to the idea of agency, because during its rather short existence this social networking site has become the top-ranked site in Indonesia, beating Yahoo and Google.<sup>1</sup> This fact was published in The Sidney Morning Herald and this news story triggered some debates among local religious groups, responding to the popularity of Facebook with accusations of spreading lies and gossips. When The Sidney Morning Herald announced about the popularity of Facebook in Indonesia, the article acknowledged Facebook as a current phenomenon, dictating public actions. In the article in this online newspaper, Facebook has been accused for strongly arousing moral indulgence, enabling people to exploit this site in an inappropriate manner. Facebook even brought together Indonesian Muslim clerics to come together and criticize the existence of this social networking site that has successfully attracted around 1-2 million people and makes Indonesia the fastest growing country on Facebook in Southeast Asia.<sup>2</sup> About 700 Muslim clerics agreed and decided that Facebook is forbidden if it is used for spreading lies, gossips and sexual content, even though this edict did not carry any legal weight. The involvement of religious groups in the evaluation of Facebook has opened up a valuable debate about the meaning of technology for human experience and the consequences of adapting 'the self' in technoculture, where identity is judged by the way individuals relate themselves to technology.

If technology continues to penetrate everyday life, it is understandable to worry about its capability to dominate both private and public spheres and challenge what was considered to be traditional values. Facebook can probably be perceived as seduction, provoking people to consume more texts and explore all the possibilities of what the medium can do. The seductive nature of the medium might also be the reason why the local government in Surabaya, the second biggest city in Indonesia, block access to Facebook and two other social networking sites for their employees during the office hours, arguing that civil servants, working for the local government, have wasted too much time using these services.<sup>3</sup> What is it on Facebook that creates fascination and dread at the same time, establishes link between human and machine, fuses the real and the virtual in the new realm of reality', based on self-production and participation? This 'new reality' is the subject of my thesis which also bring me to examine how Facebook has promoted a space for resistance to the dominant ways of seeing by welcoming the users to create their own narratives and contribute to the definition of the new media.

New media now appear as a contemporary colonial discourse that works through the specific rhetoric, engaging people in a voluntary support of the imperialist projects. Facebook is a virtual world industry, an economic-oriented space intended

<sup>1</sup> <http://www.smh.com.au/world/indonesia-gives-Facebook-the-nod-but-no-flirting-please-20090522-bi9v.html>. Retrieved: 10-09-2009

<sup>2</sup> <http://www.smh.com.au/world/indonesia-gives-Facebook-the-nod-but-no-flirting-please-20090522-bi9v.html> & <http://globalvoicesonline.org/2009/01/11/indonesia-Facebook-users-on-the-rise/>. Retrieved: 10-09-2009

<sup>3</sup> <http://www.smh.com.au/technology/technology-news/Facebook-blocked-for-indonesia-city-employees-official-20090911-fjtt.html>. Retrieved: 10-09-2009

to be the market leader in the real world. Sign becomes a commodity by generating 'needs' and offering a sense of individuality. The parade of images on Facebook reveals the fact that key categories of colonialism have been incorporated into the global market. Virtual commodities are linked with the actual substance, which distort the assumed border, dividing the virtual from the actual, which might not have actually existed before. It is intriguing to see how Facebook as a medium has captured the 'real self' and turned it into a sign that refers to 'the self'. At this point it is hard to recognize which one can be considered 'the real self', since this digital apparatus replaces the real subject with an object. If this is the case, I wonder if Facebook has actually put an end to the notion of 'the subject'.

This makes me think that there is still a question that has not been answered adequately yet, namely, how the agency of the self should be re-positioned in the tension between the sovereign power of the subject, making the production of knowledge possible through re-narration, and the supremacy of the objects that forcefully transform any matters into signs? I believe that postcolonial studies need to be rethought within the political economy of signs, because colonialism is manifest in numerous different institutional and cultural practices. If this is the case, then I believe that the analysis of Facebook within the Indonesian context will produce a valuable study on how new media studies and postcolonial theory can mutually collaborate to tackle the challenge in incorporating the postcolonial subject not merely within a system of representation, but also by dealing with the propensity of the medium to absorb the content and question the supremacy of 'the subjects'. I will focus my analysis on the specificity of Facebook as the medium which brings the relation between the material and the ideological to light. The aptitude of Facebook will be elaborated to demonstrate the way postcolonial subjects represent themselves and are now responsible for their own images.

I will consider Facebook as narrative machine that provides freedom for users not only to relocate their world into texts within the realm of representation, but also to actually create the world in which the notion of agency manifests through the interpretation of events, without probing whether the events are real or imaginary. Rather I locate users' narratives within the social, cultural and historical frame in order to trace how Facebook gives form and mechanism for the reconstruction of the postcolonial subject. My research will explore the nature of Facebook and how it functions within the larger context of modern Indonesia. This thesis will define and typify what exactly within Facebook gives raise to the idea of the transformation of the colonized subjects into liberated beings in the contested sphere of the digital media. It is crucial to note that the agency of the self is placed in the paradox of having an ability to create narratives and being commodified as a system of sign at the same time.

Moreover, this thesis will also draw attention to the way new media possibly create a new form of narrative caused by its digital materiality - not simply technological, but also ideological. Considering narratives not only in terms of what they say or mean, but also in terms of what they do (Bassett, 2007; 41), I will closely delve into Facebook to give an idea on how postcolonial identity can be historically made and challenged by unmasking the work of new media as means to provide the subjects with a space to articulate their past and present, as well as organize their experience and make it meaningful to them. I will take Ricoeur's viewpoint that corresponds with Wittgenstein who says that the meaning of human existence is itself a narrative (Bassett, 2007; 27). By considering Facebook as a space allowing users to rethink current cultural moment, my analysis will be aimed to ask how new forms and elements of narratives evident in Facebook show that the relation between human and machine enables to rethink and reconstruct the agency of subject through the process of production and interpretation of texts. At this point, I depart from the premise that material reality exists outside Facebook, even though it can not be assured whether the narrative has been based on the real or imaginary events. What will be considered as 'the real' is everything that has been documented on Facebook, a cultural artifact that plays with three different principles of narrative discourse – mythic, historical and fictional (Ricoeur in White, 1987; 170). I attempt to uncover how the relation between these three principles turn human experience into signs, which possibly happens through human agents, active subjects and their quest for the meaning in their life.

## Method

In order to produce critical insights for answer to the main research question this thesis is developed by investigating how the theoretical frameworks function throughout my analysis. I will draw on web sphere analysis and cybercultural studies to capture the means, patterns, artifacts, and mechanisms on Facebook with the intention to explore how postcolonial identities are reproduced through the relationship between the nature of Facebook as a medium and as a form of narrative, formed by abundant content produced by its users. My analysis is based on an understanding that Facebook brings about

the problematical nature of the narrative in the digital age, since the process of remediation from old to new media has challenged the narrative's centrality and makes various forms of signs pervasive.

Since web materials are time-sensitive in their nature, an attempt to capture the reproduction of postcolonial identity should include the unique mixture of ephemeral and permanent aspects of the Web. This needs to be done as I will bring together the materiality of Facebook as a medium and the text - the content produced by the users. According to Kirsten Foot, there are two aspects of the ephemerality of Web content: firstly, it is ephemeral in its transience as it can be expected to last for only a relatively brief time, but still can be viewed again at a later time; secondly, it is ephemeral in its construction where the content, once presented, needs to be reconstructed or represented in order for others to experience it (Foot in Silver & Massanari, 2006; 90). At the same time, Foot explains that the Web has a sense of permanence which is different from its predecessors (*ibid*). I agree with Foot when she says that the permanence of the Web is somewhat fleeting, since it will be regularly demolished each time it is updated by its producers. However, this concept can not be fully employed to clarify the mechanism of Facebook, as it broadly gives room for the users either to restore prior content or to remove it.

The position of the researcher should be clarified and taken into consideration in order to ensure that the research material will be properly approached and investigated by answering the proposed research question. Having said this, I will interactively engage with the objects, since the position of the researcher in the hermeneutical cycle is critical and therefore requires participant observation, whereby the researcher will be an observer and a participant at the same time. This course of action is essential for the interpretation of texts as a way to engage with postcolonial subjects and identity, which will also be claimed and taken by the author of this thesis. For this consideration, as a researcher, I will actively engage with the texts investigated. It means that I will simultaneously play with the production and consumption of the text on Facebook. This should be done as means of understanding how the relation between machine and humans is persuasively affecting the formation of identity in the digital realm. This can be achieved only if I become part of the system - as a producer, turning myself into a sign, a text, and the object of study all at once.

There are two areas on Facebook as mechanisms of self-identification that I will investigate in order to see how subjectivities are performed by the postcolonial subjects, which are: 1) identification under the profile picture where the users can narrate their identity, and 2) political views under the section 'Info'. Considering the numerous amount of information that I can get from 1132 friends on my Facebook account, I will select only several relevant narratives that show variation of data.

## Discussion

### Re-Self-Narrating the 'Indonesian-Orient'

As the Orient was destined to be repressed and reduced to silence, new media have emerged to promote the participatory culture that provide a way for the Orient to have their own voices articulated and expressed without restraint. But it will be premature to suggest that new media stand only for the sake of the Orient, since no arena is completely free from ideological contestation. In order to show how the 'Orient' is a contested category and problematically constructed on Facebook, I will firstly take three statements made by the users on Facebook that address the idea of colonialism.

The first statement made by Jones Batara Manurung that directly articulates his thought into words: "Against Colonialism" as a way to portray his identity. I also take a look at the second statement made by Yordan M. Batara Goa on his profile which does not straightforwardly take in the word 'colonialism': "In which there is no exploitation of man by man, there is no exploitation of man by the state, no capitalism, no poverty, no slavery, no women who desperately miserable because of the double burden". The third statement is written by Budiman Sudjtmiko: "My life is going through the agreement I have made with the conscience of humanity. If we are willing to listen, this conscience of humanity will be here, sneaking in our childhood naïve questions. My life is seeking for the answers of those childhood questions". He also describes himself in these words: "I am a Palestinian in the West Bank of Jordan river, an Aymaran-speaking Indian who lives in the city of La Paz, an Afro-American in Mississippi... fighting for freedom, justice and liberation".

Yordan has cited one of Sukarno's speeches as a way to reveal himself and Budiman Sudjtmiko was well-known as Indonesian activist and politically abused in the New Order era. It is interesting to relate Yordan's profile with the fact that Sukarno employed Communist-rhetoric in his political system 'Guided Democracy'. Sukarno's vision of the nation was based on socialism. His support for the latter stems from his advocacy of the Third World as the opposition of imperialism, where the US and Britain are seen by him as the chief international agents (Vickers; 2005; 149). This policy was the complete opposite to the New Order which returned Indonesia to a basically pro-Western and pro-capitalist development

(Philpott, 2000; 164). After Sukarno was overpowered by Suharto, communism was prohibited in Indonesian society which led to the ban of any literature or media suspected of propagating this political agenda. There was nearly no media that gave significant space for self-articulation where Indonesian citizens could freely express their own political view and put their own viewpoint into words.

I see that the tendency of bringing the political affiliation publicly in the process of identification is made possible not only because Facebook provides the specific section about political view but also through the specificity of this medium in creating a space for 'forbidden' identity that formerly was restricted in the era of New Order and cannot be done in other kinds of media. Writing any statements that are opposed to the dominant discourse used to be considered as the act of threatening the unity of Indonesia and going up against the ruling government. The New Order effectively barred political activism and even political debate, exercising the authoritarian theory of media for the purpose of nation-building. (Sen & Hill, 2000; 3, Kitley, 2000; 4). For me, it speaks to the fact that the emergence of new media fundamentally influences the formation and representation of the self since individuality is taking a crucial place in the media landscape.

Access to technological device is the vital thing needed to play part in the national discourse. Is the quest for hope to recover Indonesia from a long practice of colonialism finally realized by the new media? Have postcolonial subjects who are still striving to be completely free from modern colonialism worked out by indigenous people really been able to become the knowable man that can liberally perform their resistance strategically? Surprisingly, there is no word of Indonesia mentioned in these two statements and in other sections on his Facebook account. Instead of mentioning 'Indonesia', stating three other national identities all at once is his choice. At this point, narratives, symbols and rituals that constitute a sense of mutual and national belonging are something that can possibly be shared with other nations. Freedom, justice and liberation are what Budiman has in mind when he personally approaches the idea of nation, not by plainly ascribing the mutual sense of community as a nation but also positioning nationalism in the global perspective. Budiman Sudjatmiko has mentioned three different identities that both represent the trivial figure, marginalized groups of people that live in separate geographical space but share the same vision of freedom, justice and liberation. Every identity might experience the different sites of oppression, diverse ideological principles and each has to contribute to the very fundamental conception and vision of emancipation which are relevant to their unique characteristics.

The history of Indonesia is marked with violence therefore it is not surprising that most people see power as a destructive force that was frequently deemed in parallel with domination. Foucault makes a clear explanation that domination is not the essence of power and as a matter of fact, power is exercised upon the dominant as well as on the dominated; there is a process of self-formation or auto-colonization involved (Foucault in Dreyfus & Rabinow, 1982; 186 and Smith, 2006; 100). Foucault has made it clear when he envisioned that the fundamental technical inventions and discoveries, a new technology of the exercise of power has emerged which is probably even more important than the constitutional reforms and new forms of government established at the end of the eighteenth century (Foucault, 1980; 12). Mostly, users who address the key issues of colonialism do not clearly state how colonialism can potentially be materialized in contemporary world, even for someone who explicitly states the word 'colonialism' like Jones Batara Manurung.

Articulating his thought into words: "Against Colonialism" on his Facebook account, Jones Batara Manurung stimulates a question about what colonialism means on his account when he wrote this word and how diverse forms of struggle can be brought to light in the contemporary society. At this point, there is no such thing as an inherent meaning since the readers consciously determine the meaning of what is written. This appears with their subjectivity and makes the authority over meaning present once they start to comprehend the word (Muller, 2004; 113-114). In order to understand how this works in new media, I need to clarify that there has been a change in the social and cultural implication of writing caused by the new media..

### **Where Am I Politically? Resistance and Power in the Digital Realm**

I choose national issues depicted in the section of 'political view' on Facebook as a space that defines the subjects not only based on their political affiliations but also their capacity to overcome the possibility of oppression. Since the beginning, the Indonesian society has struggled to deal with diversity in political agenda which has frequently been seen as a threat to Indonesian unity. This illustrates current struggle between modernity and tradition. The parade of diversity in political principle is one of the radical changes that revolutionary transform Indonesian citizens from passive subjects into the subjects of knowledge.

There are quite a lot of political views stated by the users on Facebook which never imagined to be seen publicly before without causing a problem for the subjects such as: "Left Hedonic" (by Airlangga Pribadi), "Transrational" (by Novri Susan), "No Facism" (by Jojo HateFesbuk), "Liberal" (by Eka Rahma), "Abstain" (by Kristina Lydia), "Apathetic" (Cindy Tomaso), "Other" (Harris Abdullah), "Neutral" (Alexa Saxon), "Political What?" (Satrya Wibawa) and "Proud to be the member of People's Democratic Party" (by Tulang Iyck Marpaung). I believe that a range of political views should be seen as the end of dominating and homogenous system of knowledge where individuals are not determined by dominant discourse in formulating and displaying their self-images. The self and the political are obviously conjoined regardless of how apolitical their statements are for whoever reads them. I know that I should retain information about the historical fact that politically relates with this word.

Convincingly testified, all those political declarations above are defending beliefs and becoming a struggle for emancipation. For me, they are arguing on the importance to keep identity heterogeneous by standing up against the Unitarian system that attempts to keep other voices but the dominant one silenced. When Kristina Lydia goes for "abstain", the political statements posed by Cindy Tomaso have the same tone with 'abstain' as she states 'apathetic' in her profile which is also analogous with Satrya Wibawa has 'political what?' in his Facebook account. The self and the political are obviously conjoined regardless of how apolitical their statements are for whoever reads them. I know that I should retain information about the historical fact that politically relates with this word.

Refusal to vote for any parties and abstain from Indonesian politics formerly was considered as a subversive act. As a matter of fact, individuals who decline to vote in the election are called *golongan putih* (*golput*). Literally, it means 'white group', but it signifies the non-voters. Even though the values and the consequences of abstention are still debatable, the New Order had frequently propagated a campaign against *golput* even though there are no laws prohibiting the Indonesian citizens to abstain. Accused of being rebellious and disrupting the public order, Indonesian citizens were politically forced to vote while there were still individuals or groups who insisted to be non-voters and considered it as a kind of political act. Among various reasons why people do not vote, *golput* was commonly deemed as the expression of apathy toward the government and political order in Indonesia. Astonishingly, after the New Order was over and reformation era has come forward, the total amount of *golput* has significantly increased. According to recent survey in Indonesian election 2009, the number of *golput* has approximately reached 50 millions of people or 30 percent from Indonesia's total population.<sup>1</sup> Whoever abstained in the election can never be detected - these citizens remained anonymous, except for who choose to explicitly state political standpoint in public

### Performing a Nation without a Nationality

Although Facebook is understood as a social networking site, the assumption that technology will consequentially be utilized to bring the world, strictly speaking, the others, closer than before has been challenged by a range of categories of subjectivity as it becomes harder to recognize who should be counted as the 'Other'. Facebook does not provide any section for nationality which means that this specific kind of identity categorization has been obscured and made invisible. If technology's greatest promise is to eradicate otherness as indicated by Nakamura (Nakamura, 2002; 4) and if the Orient take the chance to reveal their postcolonial identities and challenge the stereotypes projected by the West to them, how does it make their origin visible if it does not even appear on their Facebook account? It seems that the subjects on Facebook mostly use their personal social background as the basis of making a national statement to others. The fact that online world can easily be manipulated is well-understood which enables any virtual spaces to forcefully stand for their own sake and the subjects behind it.

Taking all statements, I am continuing my analysis into the point where the otherness functions well in picturing the profile of a nation with no reference to its own name. As I have mentioned before, the term 'Indonesia' has been concealed in all those political views. At this point, narratives, symbols and rituals that constitute a sense of mutual and national belonging are something that can possibly be shared with other nations. Freedom and liberation in political views are values attached by the users when they approach the idea of nation, not by plainly ascribing the mutual sense of community as a nation but also positioning nationalism in the global perspective. This is done by featuring ideas that represent the condition of marginalized groups of people that possibly live in separate geographical space but share the same vision of freedom, liberation and even rebellion. Every identity might experience the different sites of oppression, diverse ideological principles

<sup>1</sup> www.nasional.kompas.com. Retrieved: 02-12-2009

and each has to contribute to the very fundamental conception and vision of emancipation which are relevant to their unique characteristics. However, by posing the issue of self-sovereign in global digital media like Facebook, they all argue that this is an urge for all nations, especially those who still strive for liberation from colonial forces in all senses.

I agree with Nakamura's argument that chosen identities are not breaking the mold of unitary identity but rather shifting identity into the realm of the 'virtual' and it can definitely create and reproduce stereotypes as well (Nakamura, 2002; 4). Identity is truly traveling now, traversing the frontiers between the offline and the online screen. I also concur with Bhabha on his theory that postcolonialism will always operate through the dimension of time, history and space, both geographical and political by positioning new media as a space through which activities by which new identities, new geographies, and new conceptualization of the world are fashioned and performed (Young, 2001; 66). Formulating national identity can no longer be done by simply drawing a strict line that physically separates one object from another. Even though national heritages are apparently materialized in tangible or natural matter and marked out by geographical borders that did not happen by accident rather were contested, defended and constructed (McLeod, 2000; 68), national identity has possibly been envisioned by positioning one's nationality among others, exercising the notion of differences as well as similarity.

I believe that the invisibility of national identity does not automatically mean that national identity has not been taken into account. Being promoted from an object of history to the rank of creators (Abdel-Malek in Brydon, 2000b; 829), the Orientals should think how to call themselves. Living in the world called the Oriental, the resistance to the politics of Orientalism can be performed by asking what Said has asked in 'Orientalism Reconsidered' -who writes or studies the Orient, in what institutional or discursive setting, for what audience, and with what ends in mind? (Said in Brydon, 2000b; 848). Posing these questions will lead to a wide range of answers that convey a problem about how postcolonial identity (the Orient) can produce non-dominative and non-coercive knowledge without being trapped to think within the logic of colonialism.

### **Religion, Nation and Multiple Images of the Orient**

When new media are believed promoting no boundaries in the physical world, the same thing also happens in the incorporeal realm where the border that constructs the basic conception of religion itself has been stretched out beyond the conventional principles. It is not my intention to say that before the reformation, Indonesian people were frightened to stand for what they believed. Yet it must be clearly recognized that every cultural phenomenon leads to significant changes in ways of thinking. I concur with Schaeffer (Schaeffer in Smith, 2006; 20) who claims that "If we are to understand present-day trends in thought, we must see how the situation has come about historically and also look in some detail at the development of philosophic thought-forms". I believe that the conception of the self will always be embedded by what the history has brought to the subjects and the way it shapes the actuality of identity in all notable moments. I will bring the historical context of Indonesians in order to show how this nation is very familiar with the tradition of violence even in the realm of religion. It needs to be done before understanding how new media, and Facebook in particular through the section of 'religious view', function as a break down that can potentially disrupt the dominance of tradition for having religious matter as a grounding of coercion.

Islam, Christianity, Catholicism, Buddhism, and Hinduism are five official religions acknowledged by the Indonesian government. Other believers are prohibited to engage in religious practices or worship and also are not allowed to bring up any disciples or followers. In Indonesian context, the first of the five principles in Pancasila, the philosophical foundation of the Indonesian state, which is 'Believe in the one and only God' (Ketuhanan Yang Maha Esa) has established a strong interrelation between the State and religion. All believers are not merely convinced by the dogma to have faith in God but are also required by the State to confess one of six officially recognized religions. This first principle was initiated as an alternative to the creation of an Islamic state, even though there were many who were in favor of founding the state on the basis of the religion of the majority (Vickers, 2005; 118). With the endeavor to recognize the value of other religions and minority groups, the first principle was set up to guarantee the rights of all Indonesian citizens to hold any acknowledged religions. In fact, the use of the term 'official religion' (agama resmi) is still debatable until now.

In 1978 the government issued the circular letter of the Minister of Home Affairs which stated that there were only five religions in Indonesia even though the higher constitution, the former Presidential Decision No. 1/Pn.Ps/1965 1/Pn.Ps/1965 recognized Konghucu as a valid religion together with the other five. As a consequence of this circular letter, all citizens were ordered to fill in the religion section in their National Identity Card (Kartu Tanda Penduduk /KTP) by choosing one of five religions. Konghucu was excluded until K.H Abdurrahman Wahid, the fourth Indonesian president, annulled this in 1978 and acknowledged Konghucu again as one of six official religions in Indonesia. Even though the 1945 Constitution does

not explicitly state these six religions, it is still generally assumed that Indonesia recognizes only them which leaves out other forms of indigenous spiritualism. Until now, religious affiliation still needs to be listed by all Indonesian citizens in their National Identity Cards which brings many discrimination practices based on religious differences in reality.

There are multiple images of the Orient portrayed on the section of 'religious view' on Facebook which should not be oversimplified as they reflect the intricate concept of culture itself which. Its "differential and relativist" functions are precisely what is important (Clifford in O'Hanlon & Washbrook in Brydon, 2000; 905). The absence of a unified identity is the most obvious feature displayed on Facebook and religious view is the section where the Orient is constantly performing their cultural differences, bringing any possible form of subversion, mockery and cynicism into play as an effort to deconstruct any single master narrative and reject all universal forms of cultural centralization. At this point, being modern or staying traditional may not be the main issue for the Orient. Rather what is at stake is the construction of new ways of exercising knowledge about oneself and the others. Facebook equally privileges the voices of indigenous individuals and gives space for the Orient to reinvent themselves in unpredictable ways.

The online religion emerges as a response to the call to deconstruct grand narratives. The word 'others' used by Nayarini Estiningsih when she defines her religious view on her Facebook account is quite provoking as it implies a distance, a separation from anything that has existed before. One intriguing statement is written by Muhammad Amin: 'Religion' and 'Atheism' are the same stupidity with different name whilst PennyRoyal Tea writes down 'Believe 1 God' for her religious view'. For many and nearly all people, cyberspace is a playful and sacred space at the same time. Imagination and vision about the self, others, society and nation are all penetrating this virtual terrain and showing the unstoppable transformation of reality and history. Social, political and religious institution are about to change by the power of free will, a will for interpretation and multiple production of identities. Satrya Wibawa passionately envisages that spiritual experiences are expected to happen in cyberspace when he says this appealing statement in his religious view: 'God is in Internet! Believe me'. All these users are reluctant to state or choose one of 'official' religions. As an alternative, they put forward their enthusiasm of playing part in the self-determination and taking advantage of Facebook that allows their identities to be embedded as unconventional towards religious views. Some of them still correlate their religious view with the existence (or extinction) of God to different extents whereas others prefer to approach religious matter quite unconventionally. How can one comprehend such words like 'agnostic', 'toujours fidele', 'progressive muslim', 'proud to be infidels...they shall enjoy freedom, democracy, art and rock music', 'esoteric', 'inheritance' (warisan), 'monyetism' ('monyet' means monkey) or 'samawi religions' (agama samawi) with no trouble at the first reading of subject's account on Facebook?

Some phrases might be relatively more familiar because they make use of concepts that are generally recognizable and highly allied with religious matter. Some labels are considered as unusual for naming a religion since they widen the very conception of what should be considered as religion, especially when the enduring religious traditions have habituated the followers to get familiarized only with major religious affiliation which are Islam, Christianity, Catholicism, Buddhism and Hinduism. In her book 'Give Me That Online Religion', Brenda E. Braser has explored more than one million operating online religion websites. They encompass every major religious traditions in the world, most new religious groups and innumerable social movements that function as de facto religion for their follower (Braser, 2001; 6). This online phenomenon provides evidence on the aptitude of new media to promote an interreligious understanding. The challenge to traditional religion has been set up not only by modern religious institutions but also it is made possible by every single individual in the virtual space. This way narrative introduces an opposing point of view, perspective, consciousness to the unitary web of vision (Said 1978; 240). For me, the fundamental issues of human and social life are now under erasure since everyone starts asking the essence of being which in my opinion arguing that there is no essential being that can escape from the historically-cultural shift. All ideas are seeking for self-expression and new media overpoweringly endows individuals with an immense power to pose their incredulity toward meta-narratives.

If the religious freedom comes to be construed as the individual's right to worship any god or none at all (Tipton in Arjomand, 1993; 274), it does not automatically render the position of religion outside of public life. But if God is in Internet as said by Satrya Wibawa, then God must compete with the others positioned as the center of religion in the online world. Religion may still need God, but speaking of religious view, any corporeal matters or forms of knowledge can potentially catch the attention of a new devotee without being institutionally engaged. The way the internet fascinates its users may be the main reason why Satrya Wibawa argues that God (must be) in the Internet. Re-fashioning God and giving Him/Her the new look that goes well with face of the digital era can be the case here, but erecting boundaries that formerly existed between faith and knowledge is quite liberating for many people. Religious skepticism (a religion without religion) may be the product of postmodern religious faith which is not linked to any particular dogma, doctrine and denomination (Smith, 2006; 119). If

Satrya Wibawa's statement should be considered as a radical view for bringing the Internet as the new sanctuary where everything that people believe in God are already provided by technology, how about the indigenous religions which actually exist in the Indonesian society? Do new media bring their existence back or make them present in Indonesian people's lives after prolonged concealment in nearly all media representations?

Indonesian government has chosen to call the indigenous Indonesian religion as 'aliran kepercayaan'. It is analogous with a cult which means that it is not acknowledged as a religion, but only as a spiritual practice that believes on the existence of God. Personal experiences and relationships between the followers and their God is the basis of the practice that combines different system of religious beliefs with mystical elements that are typical to local values among particular ethnicities. In some areas in Indonesia, there are existing indigenous beliefs, such as the 'Sunda Wiwitan' embraced by the community in Baduy, Lebak, Banten and also known as CIGUGUR religion (and there are several other names), 'Buhun religion' in West Java; 'Kejawen' in Central Java and East Java; 'Parmalin religion', an indigenous Batak religions; 'Kaharingan religion' in Kalimantan; 'Tonaas belief' in Minahasa regency, North Sulawesi; 'Tolottang' in South Sulawesi; 'Wetu Telu' in Lombok or 'Naurus IslandSeram' in Maluku Province. These indigenous religions are degraded as a doctrine of animism, pagan or just as a cult as I mentioned before. The religious matter had been exercised by the government as the instrument of oppression instead of being developed as national heritage.

I used my personal Facebook account to ask other users whether any of them write down the indigenous Indonesian religion or not in the 'religious view' section. None of my friends on Facebook responded positively. This implies different meanings. The users may not know what the indigenous Indonesian religions are or they choose not to relate with traditional values. It is easier to find various religious views which are not rooted in Indonesian ritual or tradition. The Orient occupies the virtual terrain and brings representational images posed by the West to trouble. This is the point of departure for the negotiation of the self, the process of destabilizing the firm construction of the Orient by progressively challenging any homogenous intellectual, cultural and political narratives.

If the essence of Orientalism is the ineradicable distinction between Western superiority and Oriental inferiority (Said, 1978; 42), does the formulation of contemporary religious view on Facebook point towards the idea of bringing the Orient closer to modern realities as a refusal to accept the binary distinction made by the West? When While Said says that everywhere among Orientalists there was the ambition to formulate their discoveries, experiences and insights suitably in modern terms (1978; 43), I personally find out the paradox between the potential to break out from the stereotypes of the Orient and the tendency to intensify the constructed figure of the Orient. By realizing that the construction of binary positions was based on the imaginative vision about the Orient who is oddly different – unusual, fantastic, bizarre, irrational, extraordinary, or abnormal (McLeod, 2000; 44) – and that history is made by men, 'religious view' materializes power exercised by what has been called the Orientals in order to give shape to the new material reality of the Orientals.

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## The influence of Austrian voting right of 1907 on the first electoral law of the successor states (Poland, Romania [Bukovina], Czechoslovakia)

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### Abstract

*As a result of collapse of the Central Powers in 1918 in Central Europe have emerged new national states e.g. Poland, Czechoslovakia, Hungaria, SHS Kingdom some of states that have existed before the Great War have changed their boundaries e.g. Romania, Bulgaria. But what is most important newly created states have a need to create their constituencies, so they needed a electoral law. There is a question in what manner they have used the solutions that have been used before the war in the elections held to the respective Parliaments (mostly to the Austrian or Hungarian parliament) and in case of Poland to the Tzarist Duma or Prussian and German Parliament. In the paper author will try to compare Electoral Laws that were used in Poland Czechoslovakia, and Romania [Bukowina]. The first object will be connected with the question in what matter the Austrian electoral law have inspired the solutions used in respective countries after the Great War. The second object will be connected with showing similarities between electoral law used in so called opening elections held mainly in 1919 in Austria-Hungary successor states. The third and final question will be connected with development of the electoral rules in respective countries and with explaining the reasons for such changes and its influence on the party system in respective country: multiparty in Czechoslovakia, hybrid in Romania.*

**Keywords:** Poland, Romania, Czechoslovakia, Electoral law, politics.

In the countries that emerged in 1918 after the collapse of the Austro-Hungarian Empire, also known as the successor states, all political principles had to be built from scratch. On the one hand, it was a unique opportunity to try new political solutions.

On the other hand, using commonly known rules might be considered useful in stabilizing the country, since the elections, one of the key elements of democracy, could be held according to widely accepted principles that were attributed to the former political system, which helped to raise the trust of the new country's citizens.

The article aims to trace the main regulations of Austrian electoral law of Imperial Council in 1907 and find their influence on first electoral law in the successor states (Romania [Bukovina], Czechoslovakia) and Poland.

The starting point of the research is the Austrian law governing the elections to Imperial Council in its final version of 1907, when in the effect of the so-called Beck's electoral reform, general and equal voting right was introduced in Austria.

The tradition of general elections in the Austrian Empire itself was formed in 1896 (due to Badeni reform), when to the previously existing four classes of voters, formed on the financial possibilities, a fifth class was added, with every citizen with voting right being able to make his choice.

Apart from the issue of generality, the reform in question introduced the idea of unequal voting and plural voting. It was possible due to granting voting right to the members of the fifth class, and also those who were allowed to vote in classes I-IV, which made it possible for them to vote twice (Starzyński, 1907, p. 75). It should be mentioned that in the end of the 19th century Austrian electoral law was not extraordinary. Plural voting existed in other countries, in Belgium on the country level and in Sweden - on the local level.<sup>1</sup>

New electoral law, introduced in the Austrian Empire in 1907, meant serious changes in the basic rules of voting, since it replaced the former rule of political representation typical of class voting with the principle of citizen representation.

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The additional aim of the new law was to reconcile different nations of the Austro-Hungarian Empire by granting mandates to particular nations living in precise electoral districts. It was clearly visible in the region of Moravia, where it was possible to set electoral districts in such a way that mandates would be given to particular peoples (Starzyński, 1907a, p. 289), thanks to the 1905 national cadastre.

It is worth mentioning that the idea of introducing similar changes in other parts of the Empire, Galicia included, were facing strong opposition of the local politicians, especially in regions inhabited by mixed nationalities. In other parts of Austria of the time, similar division was meant to be introduced in a more subtle way (Buszko, 1956, p. 30-31), but with a superior idea of a balance between Slavic and Germanic-Romanic element (Starzyński, 1907a, p. 290).

An element meant to regulate political life in Austria was introducing a partial reform of the House of Lords (Higher House of the Parliament). It involved setting a definite maximal number of its members appointed by the Emperor to 150-170, which disabled halting virtually every new statute drawn by the Lower House of the Parliament by appointing numerous members.

The outcome was dubious, since it also made it difficult to have a majority in voting a new project over. The second element of the reform was to allow hereditary peers of the House of Lords to run in the elections to the House of Representatives, on condition that their membership would be suspended while belonging to Imperial Council.

An important novum introduced by electoral law of 1907 was the possibility of direct vote for all the voters. Such opportunity had been possible earlier only in classes I-III, in lower classes it was only one of many options. It used to be a common situation in Europe, for instance in Romania, so Austria was not archaic in that sense.

A curious fact in Austria was that passive voting right was slightly broader than active. In this particular case there did not exist domicile status, which was obligatory in case of active voting right and set to last one year, the obligation of one year permanent residence in a certain electoral district was a result of a compromise. The Left wanted to remove this entry from electoral law as designed against workers who used to migrate in search of work, whereas Christian Democracy postulated obligatory residence of 3 to 5 years, which was to support the settled (Starzyński, 1907a, p. 293).

Another novum put forward by Beck's law was an introduction of single-member districts, with the possibility of existence of double-member districts in the areas ethnically non-homogenous, where the second mandate was meant for a person belonging to an ethnic minority group. It was practiced only in Galicia (Starzyński, 1907a, p. 434)<sup>1</sup>, where in the areas dominated by the Ukrainians, it was used to help Polish representatives in being granted a mandate (J. Buszko, 1956, p. 78).

This new law secured the interests of the ethnic minority groups, by granting the representative of such group the opportunity to enter Imperial Court on condition that he was supported by at least 25% of the voters of his electoral district. It was a novelty in Austrian solutions.

It should be mentioned that this way of choosing a minority MP was faced with considerable restrictions. One of them was the necessity to acquire at least 50% of votes by the representative of the majority, and in case of not gaining such number of votes by a candidate from a district in question, the voting procedure had to be repeated, no matter whether the threshold of 25% had been passed or not (Starzyński, 1907a, p. 299).

The voting was based on the principle of a single non-transferable vote (SNTV), used then in Brasil on provincial and municipal levels (Starzyński, 1907a, p. 300). The procedure of granting seats in the Parliament itself was obviously based on the plurality voting system, with the use of ballot which took place one week after the first voting. Only two candidates who acquired the majority of votes in the first voting ran in it. As previously mentioned, it took place almost everywhere in Austria, except 36 country districts. The rules in those districts were more complicated, and in extreme cases as many as 4 dates of voting were needed to choose two MPs, but this could only happen when the majority candidate was the only person who got votes, which was hardly possible.

Nevertheless, using the voting procedure in question with proper division of rights and high political awareness of the majority of voters, it was possible to choose two majority candidates in one electoral district. There was no solution to such

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<sup>1</sup> 70 electoral districts were established there: 34 single-member town districts and 36 double-member country districts.

behaviour of the majority, despite the existence of other aspects of voting, especially its secrecy (Starzyński, 1907a, p. 443)<sup>1</sup>.

Due to the introduction of the minority MP, the institution of substitute MP was also introduced. He was appointed when the elected MP was not able to fulfil his duties. Every MP had his substitute MP appointed<sup>2</sup>. In case of majority voting, additional voting is much more common to the institution of substitution MP. It was not possible, however, if having in mind that minority groups were supposed to be represented as well, since it would violate the rule of general elections (only the minority group in a particular electoral district would vote) or the rule of secret ballot (voting cards would have to be signed or every vote should be recorded on the voting lists).

Substitute MPs were chosen in voting similar to voting for MPs, with the restriction that the choice would only be valid on condition that the MP whom the substitute was to represent, would be chosen as well. In case of runoff voting, a second voting for the substitute MPs was usually arranged as well. In case of death of a substitute MP during the tenure, whether he was a member of the House or not, his mandate was considered vacant.

An important new element introduced in 1907 was a strict definition of the date of mandate verification by the House itself, which had not had any regulations earlier. It sometimes happened that no statute at all was introduced because of that. Due to new regulations, it was meant to happen during the first year of the House tenure, which was a very liberal attitude anyway, since in the same period in other countries, for instance in Romania, the mandate verification was done even before the first meeting (Dubicki, 2013, p. 98).

Class system was eliminated, which, together with making it easier for a man to vote, strengthened the idea of general voting. The way to give a vote was much easier since the polling places were set locally, not on county levels. The only exception was again Galicia, where national authority allowed the areas having less than 1200 citizens to organize common voting. The only condition was that there should not be more than 5000 people voting together.

The regulations in question were probably introduced to lower the costs of voting. The group of offences because of which the citizens were deprived of the right to vote was enlarged. Some of them were common crimes, like for instance, drunkenness.

A characteristic feature of the new law was the introduction of compulsory voting on the country level, which meant that all the parts of Austria had the right to decide upon its potential introduction and decide on their own how to carry it out (Starzyński, 1907a, p. 230). The autonomy of the voting right was linked to the features of particular regions, especially in mountain areas where the citizens used to travel together with their herds to the fields and used to stay there for as long as six months, so it was scarcely possible for them to fulfill their voting duty. Until 1907 voting duty was introduced in: Lower Austria, Upper Austria, Moravia, Silesia, Salzburg and Vorarlberg. It was meant to be introduced in Tyrol and Bucovina as well, whereas in Bohemia this matter was not solved in 1907 (Starzyński, 1907a, p. 236). The fine for the absence at the voting was from 1 to 50 kronas and it could not be changed for imprisonment. The only possible punishment was a fine.

In Galicia as well, in the elections to The Diet of the Kingdom of Galicia and Lodomeria, the rule of proportional counting of votes was tried to be introduced; in the heated debate before the introduction of general voting right in Galicia there appeared some ideas of common voting right by Stanisław Głąbiński and Józef Buzek.

When speaking about contemporary voting right and its features compared to world regulations, Buzek's project is important because it was the first moment when the idea of proportionality and choosing a particular candidate, so using open lists during proportional voting, were introduced (Starzyński, 1907a, p. 219).

From the point of view of subsequent practice, the method suggested by Buzek had been important, since the author was one of the key authors of new electoral law of The Second Polish Republic (Buzek, 1922)<sup>3</sup>.

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<sup>1</sup> In Moravia there was such a possibility, but it involved signing the voting papers. When a particular MP was discharged from a local parliament in a district, his substitution MP was chosen only by those who voted for the MP in question. It involved an infringement of the idea of secret ballot and keeping voting papers during the whole tenure.

<sup>2</sup> This voting method can be compared to the American way of voting for president as it was formed after 1804, when it was possible to point a particular common candidate for president, and different candidates for vice-presidents.

<sup>3</sup> His main ideas concerning electoral law between the wars were presented in the book: J. Buzek, *Ordynacja wyborcza do Sejmu i Senatu*, Warszawa-Lwów, 1922.

### **Electoral law valid in Romanian Bucovina in the period 1919-1926**

After the end of World War I and the collapse of the Austro-Hungarian Empire, the territory of Bukovina was located within Romanian borders. Due to this fact, it became necessary to organise a separate electoral law for Bukovina. It was in accordance with the rule, approved in the whole country, of holding elections on the basis of various electoral laws. The rule was unique, as far as Europe was concerned. Separate solutions were organized for particular parts of the country, which belonged to different states before WWI. Romanian Old Kingdom, Bessarabia, Transylvania and Bukovina were using different solutions, whose one shared feature was the electoral law of 16 November 1918. Its main idea was the introduction of general voting, and a proportional system of counting voices, however, these were very general guidelines, eventually introduced in the whole country not before 1926, with another electoral law coming into effect.

An electoral law for Bukovina territory was constructed on the basis of the nationwide law. Here, in accordance with the 26 August 1919 act, elections were supposed to be: general, equal, direct and secret. The rule of compulsoriness was not forgotten either. Here, plurality voting system was supposed to be used, and a senator and an MP were to be chosen in each election district. Three MPs were to be chosen only in Cernauti, according to the proportionality principle. Thus, it was a mixed voting system. In Bukovina, 26 MPs were to be elected in general election (23 in single-member districts and 3 in a multi-member district), together with 12 senators (Mamina, 2000, p. 61)<sup>1</sup>. Those who committed hostile acts against the state or the Romanian nation would also join the group of people deprived of voting rights. Those who did not accept being naturalised or who renounced Romanian citizenship, those who did not swear an oath to be loyal to Romania and people with no political rights, were also deprived of voting rights. When it comes to these people, a solution, inspired by the Austrian model, was making it impossible to vote for people who were under the surveillance of the police (Radu, 2005, p. 165). The Acquisition of some solutions that had been successful before, in the period of Austria-Hungary, could be seen here. The introduction of single-member districts (23) in the country was most undoubtedly caused by the will to maximise the amount of mandates for the Romanian MPs and senators.

The organisation of elections was supposed to be slightly different than in Romanian Old Kingdom; here one central election committee was to be created and perform all the necessary election procedures. The voting procedure itself was supposed to be slightly different here as well. Every electoral register should be printed on paper of a different colour. The unwanted lists were supposed to be left in a ballot box which was to be found in the voting booth, while the list chosen by the elector was to be placed in an envelope and handed in to the chairman of the election committee, who would place it in the proper ballot box. The voting certificate would be stamped and returned to the elector in case of subsequent runoff voting. It was important, because in Bukovina in case none of the candidates reached absolute majority of voices (50% + 1), another round had to be run, between the candidates with most voices. This was an idea taken from the Austrian electoral law. If it turned out that both candidates were awarded the same number of voices in the second round, assigning mandates would be performed using lottery-drawing. In case of Cernaui, the same as in Romanian Old Kingdom, the mandates belonging to municipalities in the election to the Lower House, were supposed to be split according to d'Hondt method (Radu, 2005, p. 165).

The abovementioned regulations were upheld in Bukovina until 1926, when a nationwide unified electoral law was introduced, in which none of the solutions adopted from the former Austrian law were used.

### **Czechoslovakia and its electoral law**

In the newly established Czechoslovakian country, legislative authority was given to a two-chamber National Assembly, consisting of Chamber of Deputies and Senate. The right to candidate, in case of Chamber of Deputies, was given to every person who was at least 30 years old, and every 21-year-old, or older, person was entitled to suffrage. In case of Senate, these numbers were higher, respectively: 45 in case of the right to candidate, and 26 in case of suffrage (Starzyński, 2010, p. 165, 166).

Electoral law was described as consisting of 6 adjectives, which means that the "standard" equal, proportional, free, secret and general became accompanied by compulsory. Voting was compulsory under penalty of fine or jail. This idea was quite

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<sup>1</sup> Bukovina was granted a certain number of seats in the Senate, being given after appointment.

common back then and it was adopted into the Czechoslovakian electoral law from Belgium (Starzyński, 2010, p. 165)<sup>1</sup>. Every electoral register had to be supported by 100 electors. It was prohibited to candidate in several districts simultaneously, as well as to run for MP and senator at the same time. The latter restriction was practically applied when elections to both chambers took place at the same time. Should they take place at different times, an MP could run for senator, and vice versa. According to legislators, such possibility would occur relatively infrequently, as the Czechoslovakian voting system was characterized by extremely long tenures – Chamber of Deputies was supposed to be chosen every 6 years, Senate every 8 years. Thus, it is easy to count that, apart from the first election, which had not taken place until 1920 (Bohemia and Slovakia) and 1924 (Carpathian Ruthenia), the first mutual election would take place after 24 years, in 1944, theoretically. However, due to the shortening of both chambers' tenures, the elections were mutually held in: 1920 (Chamber of Deputies election on 18 April 1920; Senate election on 25 April 1920); 1925 (15 November); 1929 (27 October); 1935 (19 May).

Allocating seats after the election proceeded as follows: an electoral quotient was established, which later helped to allocate particular seats for an adequate party. In case one list was allocated more seats than candidates on electoral registers, the vacant seats would be transferred to the countrywide pot, divided by the central election commission 8 days after the election. In this second deal, the entire country became one election district. In that case, only people who run for mandate in general election could candidate. What is more, only the parties which obtained at least one seat before had the right stand for this deal. This procedure was justified by the fact that only a person who had been verified to a certain degree during the election could be chosen<sup>2</sup>. This time, the election committee worked out another electoral quotient, taking into consideration the remaining voices across the country, the ones which were not used when allocating seats. They were used to calculate a number of mandates to be allocated in round two. In case the number of MPs did not reach 300, yet another, third, round of allocating seats took place.

Czechoslovakian Senate consisted of 150 senators, it was appointed for 8 years, as it has been mentioned earlier, but no term of office lasted that long. The longest tenure was in the years 1929-1935, when the Chamber of Deputies managed to hold, in other cases the tenure was shortened. This fact may lead to two ideas.

First of all, the myth of endurance and stability of Czechoslovakian democracy has to be revised, since only one Parliament (or rather its half) during the interwar period managed to work during its entire term of office (Tomaszewski, 2006)<sup>3</sup>. Romania had higher rates, since there were two full terms of office completed (1922-1926, 1933-1937) (Dubicki 2013, p. 439).

Another matter to consider is the influence of the length of the tenure on the stability of the Parliament. It is clearly visible that the idea that was supposed to stabilize the rule, worked the opposite. In case of Czechoslovakia, it can be said that the fight to stabilize political situation with the use of "five" had measurable benefits that could trigger dissatisfaction of the citizens, especially in Slovakia.

It can be even concluded that constant presence of the same politicians in the circle made Czechoslovakia resemble a type of democracy in which the citizens were able to control only the highest authorities, which made it almost impossible to change them. In case of any social or ethnic tension, the electorate might get discouraged from being interested in politics, or even express their social discontent, which eventually led Czechoslovakia to disintegrate.

In case of the Higher House of Czechoslovakian Parliament there existed a possibility of office workers standing for elections. During the tenure they were on a leave from their office. It was forbidden to combine the MP mandate with the membership of local assembly, Constitutional Tribunal or Electoral Tribunal. It was also forbidden to be both an MP and a Senator.

It was possible to take away the mandate from a person who was excluded from a party because of "low reasons" or dishonest behaviour, which was meant to stabilise the rule of the authorities. Another way of losing a mandate was after

<sup>1</sup> Imprisonment was a new penalty for absence during voting in Czechoslovakia, since earlier the Austrian regulations had been using fine only.

<sup>2</sup> In similar circumstances, there appeared an accusation of creating a possibility of allocating seats taking into account people who did not take part in the elections during a debate on a reform of electoral law in Romania in 2008.

<sup>3</sup> Despite its polarisation, Czechoslovakian Parliament used to function in a proper way due to the creation of not formal and outside Parliamentary forum, called *pětka* (the five), which took care of keeping the authority majority for Jan Černý's cabinet. Since this solution worked well, later it was practiced as well. From 1926 the fraction gathered 8 most prominent politicians of the state.

being taken away civil rights because of a court judgement. S. Starzyński considered that solution a judicial protection of party loyalty (Starzyński, 2010).

Sessions of the Parliament were held twice a year: during spring time (in March) and fall time (in October). Those were obligatory Parliament meeting times, but the President could ask the Parliament to meet on a special session, on his will or when suggested by one of the Houses. In that case, the range of issues raised during the debate had to be given. There was also a rule ordering the Houses to meet not later than 4 months after the last session.

Both Houses used closed list voting, which was modelled on German law. To count the votes during the first voting round, Hare quota formula was used on the state level (Buzek, 1922)<sup>1</sup>. Using this method of counting votes resulted in only a part of the mandates being allocated during the first round of voting<sup>2</sup>.

During the next rounds, the lists could be suggested only after the elections, but the order according to which the candidates appeared on voting lists did not necessarily have to use their former result. In the next round, Hagenbach-Bischoff's quota (Starzyński 2010) was used. In the third round, mandates were distributed to particular political parties according to the result of the second voting round, until there was no free seat.

More serious changes were made in 1925, when next elections took place. This time electoral law was adjusted to new administrative division of the country (the division into 20 *zhupas*). The number of candidates on the voting lists was limited to the number of mandates to be distributed in a particular electoral district and the right to take part in the second round of mandate distribution was only given to those parties who received at least one mandate in general elections.

The procedure of the distribution of votes in the second round was changed as well. This time the number of unused votes was divided according to Hare quota from the first round. The rules of distributing votes in the third round were changed in a similar way as well, ethnic minorities and the parties whose members had already got mandates during the second round of voting being preferred.

Next amendments were introduced in 1927 and 1935. In 1927 military men in service were effused voting right according to the rules valid in the neighbouring countries' legislation. In 1935 the method of voting distribution in the second round was being manipulated again.

Only those parties who acquired at least 20 000 votes (or 35 000 when it comes to the Senate) in one electoral district, or 120 000 votes on the country level, were allowed to take part in the second round of elections. Generally, the electoral law in Slovakia during the I Republic involved the use of close lists, Hare quota and Hagenbach-Bischoff quota. There was no threshold, but using the two methods mentioned above, it was not necessary.

The system that resulted from it can be classified as multiparty in which different political parties were considered relevant and possessing strong coalition value. That can be said about almost all political parties except The Communist Party of Czechoslovakia and the party of the Sudeten Germans. Thus, according to Sartori, this can be called a multiparty polarised system. The classification is justified by the presence of strong opposition, not able to come to agreement (there was no possibility of the communists coming to terms with the Sudeten Germans).

The formation of multiparty polarized system meant the existence of many political parties, and the lack of threshold enabled many political parties, whose exact number is not possible to estimate due to many changes in the near-electoral period, to enter the Parliament.

An additional political matter was the fact that in the first period of the existence of the country, the main distinguishing factor was not ideology, but ethnic belonging, which made Czechoslovakia similar to The Kingdom SHS.

The President was entitled to dissolve the Parliament in general, or one House only, but he was not allowed to do so during the last 6 months of his presidential term of office.

What is important, even though the Constitution mentioned free mandate, it was rather imperative mandate that was present in Czechoslovakia. Parliamentary mandate was treated as belonging to a particular political party. To assure an MP's loyalty, the party usually threatened him not only to move him out of any of the parliamentary Houses, but also to make use of the promissory notes he had been made to sign before the elections. It was such common a practice that sometimes in

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<sup>1</sup> Precise rules connected with distributing mandates in Czech see: J. Buzek, op. cit., s. 50.

<sup>2</sup> In smaller electoral districts even half of the mandates were not fulfilled

the commentaries on Czechoslovakian political system there appeared voices that it cannot be considered to be a state with the existence of free mandate (Starzyński, 2010, p. 167).

It can be attributed to the fact that during the first elections in Czechoslovakia in 1919, the Parliament was chosen due to a deal: the political parties who in great majority had existed before the war, got the right to represent the state politically on the basis of the voting results from 1911. They received an appropriate number of mandates, but the exact personal decisions were left to political parties to make (Tomaszewski, 2005, p. 35).

The division into electoral districts was not equal. The number of citizens living permanently in a particular electoral district was taken into consideration. The electoral district of Prague was the biggest, with 45 MP mandates to be distributed and Liptovsky Mikulas- the smallest, with only 6 mandates. They were still very big electoral districts, with ethnic minority groups and small political fractions being favoured.

It was beneficial for the Czechs, especially in the Sudetes and in electoral districts in Cieszyn Silesia, where they were not a visible majority. The density of population being taken into consideration, most of the mandates were given to Czech, where 157 MPs, so the majority of the House, were chosen. In Moravia 63 MPs were chosen and in Slovakia 61.<sup>1</sup>

### **The solutions introduced by so-called Moraczewski Electoral Law in Poland**

In Poland, reborn in 1918, after 123 years, a need to conduct parliamentary elections was soon expressed, which triggered the appearance of the first electoral law very quickly, as early as in November 28, 1918, almost simultaneously with the document setting the date of elections for January 26, 1919. In Poland the situation differed from the one in Czechoslovakia, where first elections took place in 1920 and in Romania- in November 1919, since the elections immediately followed the proclamation of new electoral law.

Such rapid legislative process can be attributed to the postulate of the Head of State, Józef Piłsudski, to conduct the elections as soon as possible to legitimise the right to rule of the new authorities. According to Piłsudski's memoirs, it was drafted by Jędrzej Moraczewski's government in 10 days (Watt 2005, p. 21).

In theory, the elections were to be held according to the rule of the five adjectives. Belgian regulations, with a small modification enabling the creation of so-called electoral blocks (Buzek, 1922, p. 31) to make it possible to count together the voices given to forces belonging to them, were being looked up to. According to J. Buzek, such action had not been thought over, since it made it easier for smaller parties to get a mandate, which introduced even greater element of insecurity to elections and it broke the idea suggested by d'Hondt method, which is known to promote bigger political parties (Buzek, 1922, p. 36)<sup>2</sup>.

The right to candidate and the right to suffrage was limited with a relatively low age qualification – 21 years (Buzek, 1922, p. 22). What was new, was granting the voting right to women. When it comes to the voting formula - d'Hondt method was used in plural mandates electoral districts that differed from each other in terms of the number of seats to take. In the biggest district, the district of Warsaw, 16 mandates were ready to be taken, the smallest electoral districts (with only 3 seats) were in Cieszyn Silesia.

In general, there was a rule that was used later as well, linking the number of seats in a particular electoral district with the number of citizens living there – the proportion was estimated as 1: 50 000.

Overall, the estimated number of MPs was 513 but finally there were 442 deputies, but only 364 of them were elected, the rest (78) were appointed.

That electoral law was heavily criticised just from the beginning. Right-wing and agrarian fractions put forward their doubts claiming that it was an element of socialists' dictate, not including their demands. What is more, especially people's party demanded changes in electoral law leading to the introduction of single member districts, with which they had had experience before 1914 and they knew how to conduct electoral campaign (Cimek, 2005, p. 33). The new project was heavily criticised by people connected with the circles around Regency Council, who before November 1918 prepared new

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<sup>1</sup> It should be reminded that in Carpathian Ruthenia elections were not held until 1924, when 18 MPs were chosen.

<sup>2</sup> According to J. Buzek, list blocking was possible only in electoral districts not homogeneous ethnically, but it should be forbidden in ethnically homogeneous ones. Buzek claimed that in countries consistent ethnically, like Germany or Austria, the experiment of blocking the lists was allowed in "opening elections" only, whereas in the following elections it was out of the question.

projects of electoral law of the Kingdom of Poland (which was founded on the basis of Act of 5th November) to the order of Regency Council itself. Prof. Józef Siemieński paid attention to serious differences in the size of electoral districts and in the number of mandates to be taken, since in small districts it was necessary to get around 30% of votes, whereas in bigger districts to become an MP, one had to acquire less than 10% of votes.

The technique used to conduct the elections involved a serious threat to the idea of proportionality: if there was only one voting list or many lists but with the number of candidates equaling the number of seats to be taken, the elections were not carried out. It leads to the conclusion that votes were distributed proportionally on the level of an electoral district, without the use of Czechoslovakian system of state list, since in that case a problem of dealing with districts in which elections were not held would occur. Thus, Polish electoral law seemed similar to the regulations used in Romanian Transylvania in 1919 and 1920.

According to some experts of that time, the proposed proportional system could be introduced only in a state with fully developed party system and established democracy, which could not have been said about Poland of that time, since almost all institutions connected with public life were only starting their activity on state level (Ilski, 2014). Because of that, the decision of Head of the State to introduce the electoral law in question may be a sign of heavily criticised by him party politics.

When it comes to the voting method itself, it should be stressed that closed lists were used at that time, with the voter was only to underline the number of voting list he wanted to support. It involved getting to know the lists of candidates in advance. Distribution of numbers of voting lists was performed according to the order of declaring them to the election committee (Dziennik Praw, 18/1918, art. 45). What is interesting is that the possibility to stand as a candidate for elections in many electoral districts, known before Great War, was still practiced. It demanded further declaration which electoral district one wanted to represent and the next person from the list replacing the first one.

Nowadays, the obligation to buy a voting card by a person who wanted to make use of their voting right can be considered controversial. The price of the voting card was 5 Polish fenigs or 10 hellers in Galicia. Electoral law established some precautions against the attempts to rig the elections. A voting card bought had to be put into an envelope that was to be stamped in a polling station (Dziennik Praw, 18/1918, art. 70). Voting cards without envelopes were considered not valid. Privatness of the elections was also secured – every citizen could fill out the card at home.

Finally, the elections were conducted only some part of Poland, and in hostilities areas (in Galicia especially), MPs representing those regions in the lower House of Austrian Parliament in 1918, were appointed as additional MPs.

The most intriguing situation took place in Lwow, where two seats were vacant because of the death of two MPs. A decree of the Head of the State ordered to fill them upon elections which were to be conducted on the basis of old Austrian electoral law of 1907, not on new Polish one (Dziennik Praw, 18/1918, art. 47). It was the only example of the use of Austrian regulations in successor states to such an extent.

Summing up, the adoption of proportional electoral system by reborn Poland was a way of leaving the well-known plurality voting systems that had been known and used for most electoral acts in the annexed lands before World War I. It was surely triggered by the eagerness to dissociate from the tradition of foreign states but it was also connected with the European trend to use proportional electoral law.

To sum up, Austrian electoral law was a breakthrough since it introduced the idea of equal and general voting. It also set democratic standards on the area where it used to be valid in the years 1907-1918.

Successor states, en bloc, decided not to keep it after 1918, which can be attributed to several factors. First of all, it may have been triggered by ambition to dissociate from the criticised Habsburg state. It can be ascribed to Poland, where people's party, during a debate over the first electoral law, demanded the introduction of rules taken from Austrian regulations, which was opposed by the socialists.

Secondly, the introduction of plurality voting system on regions not homogeneous ethnically would be politically dangerous since it transferred electoral competition from political to ethnic matters, which was not welcome in view of the need to consolidate democracy in new states.

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1 When it comes to Prussian Partition, majority and general regulations functioned in case of the Parliament for all of Germany. Till the end of existence of German Empire, Prussian Parliament was elected due to class electoral law.

A controversial thesis can be given that the 1907 regulations could not have been hold because of a completely different political situation in successor states. In 1907 it was all about relieving the social tension; after 1918, in newly created states especially, the consolidation of the country, with the use of proportional elections, was the most important. Proportional elections made fair distribution of seats, without the discrimination of particular ethnic minority groups, possible. It was of utmost importance to build a positive picture of a new political entity on international level.

It should be stressed that Beck's electoral reform set political minimum that could not be crossed by any country. It should also be reminded that some solutions that had been functioning since 1907 were later adopted by the successor states, especially in terms of order regulations, or so called incomaptibilitas. Austrian law can be called vital for further functioning of democracy in the successor states.

Austrian regulations of 1907 were valid the longest in Bucovina, where they were used for the last time during 1922 elections. It should be reminded that there was an incident of acting upon Austrian regulations during elections in 1919 in the Polish city of Lwow.

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## Discourse and/as Social Practice – the Analysis of the Problem of Resistance and Hegemony

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### Abstract

*The aim of this paper is to discuss how approaches to discourse can face the charges for discursive idealism, and to show it empirically through the analysis of gender discourse in the mapping and reception of the life and work of Marija Jurić Zagorka, the first Croatian woman journalist, proto-feminist and the writer of popular fiction. The method is critical discourse analysis, which follows Foucault's concept of discourse, but attempts to overcome the criticism Foucault received for overemphasizing the potential of discourse to manipulate people. This is the reason motivating many revisions of Foucault's method mainly by attempting to introduce a theory of action in order to make a socially active subject link discourse and reality. CDA authored by Norman Fairclough introduces a three-dimensional concept of discourse (as text, discursive practice and social practice) and uses the Gramscian concept of hegemony (rather than ideology) to strategically try and surpass the charge for discourse determinism. Seeing discourse as social practice enables us to combine the perspectives of structure and action, because practice is at the same time determined by its position in the structured network of practices and a lived performance, a domain of social action and interaction that both reproduces structures and has the potential to transform them. Gramsci's concept of hegemony sees cultural production as a tool that maintains domination by securing the spontaneous consent of the subordinated. The results suggest a possible (subversive) intervention into the sphere of discursive practices (hegemonic struggle of different voices for supremacy in the order of discourse defining the reception of Zagorka) and indicate that detailed empirical research on discursive effects in a series of domains is a method of research on political investment of the order of discourse into social change.*

**Keywords:** discourse, gender, popular culture, hegemony, social practice

### 1. Introduction

The research attention paid to discourse in humanities and social sciences in the last several decades presents a ramification of the so called linguistic turn, which has directed the mainstream research interests towards the questions of meaning-production, subjectivity, social construction of identity etc. Although discourse was originally studied predominantly within the framework of linguistics, the influence of deconstruction, poststructuralism and the performative turn have widened the meaning of the term discourse. Consequently, there are today quite a few definitions of and approaches to discourse analysis, such as that of Fairclough (1995), Wodak (2001), van Dijk (1990) etc. Sociologically relevant conceptualizations of discourse are particularly the ones influenced by Foucault's method, because, among other reasons, Foucault sees social power as discursive. There is almost an overload of interpretations and (mis)uses of Foucault's approach, although there is no one Foucault's method. Our task is therefore to firstly give an overview of the history and (disciplinary) versions of discourse analyses and then to move towards outlining Foucault's notion of discourse. We will discuss some criticism Foucault received, particularly the charges for discursive idealism, and try to show how a critical discourse approach, specifically the one authored by Norman Fairclough, works to overcome the criticism Foucault received for overemphasizing the potential of discourse to manipulate people, and offer a view of the potentially subversive social action. There are two main foci Fairclough complements the method with to achieve this objective: he conceptualizes discourse as consisting of the three dimensions (text, discursive practice and social practice), and he introduces the concept of hegemony over that of ideology to provide for the struggle between tactically polyvalent voices for supremacy in the order of discourse.

Having leaned the methodological framework of critical discourse analysis against a background, the paper proceeds to empirically apply the method through the analysis of gender discourse in the mapping and reception of the life and work of Marija Jurić Zagorka (born 1873, died 1957), the first Croatian woman journalist, proto-feminist and the writer of popular fiction. Zagorka was on the one hand adored by her readers, immensely popular, and due to that in the position to mobilise action towards feminist goals. On the other, however, she was severely criticized and even treated with utter disgust by the established critics. This duality is also evident in her invisibility in the overviews of the history of Croatian literature and journalism, critical treatises, encyclopaedias, or scientific debates; and on the contrary her immense visibility and presence in the popular cultural imaginary. Our analysis in this paper specifically focusses on the gender discourse that spans past the borders of science and literature and can be, as the results suggest, considered as their confluence. Informing the critical analysis of gender discourse with the analysis of context and paying heavy attention to the critique of ideology, the paper reveals power-imbued strategies of the certain historical mapping and reception of Zagorka's life and work. Increased academic interest in popular culture enabled this new visibility of previously absent objects from the scientific study, although new investments into the power regime must not be disregarded. We will in this paper, accordingly, analyse the status and (in)visibility of Zagorka as an instantiation of popular culture in the Croatian context. As this is also a contribution to feminist epistemology and the critiques of androcentric theories of modernization, special awareness of reflexivity regarding positionality will be pursued throughout.

## **2. Methodological framework – on analysing language, culture, and society**

### **2.1. On discourse and discourse analyses**

The last several decades have been marked by the appearance and development of various interdisciplinary fields, including systems theory, cognitive science, and discourse analysis, which presents a refreshing contrast compared to self-isolating tendencies of scientific disciplines on the one hand (cf. Beaugrande, 1996) and the ambitions to create a unified science on the other (Beaugrande, 2006: 29). Discourse analysis as a qualitative methodological approach in social sciences and humanities presents an umbrella term (Cameron, 2001: 1) and includes various research approaches, like ethnography of speaking, conversation analysis, interactional sociolinguistics and critical discourse analysis (Wetherell, 2001).

Discourse analysis is the ramification of the so called linguistic turn in social sciences and humanities, and although there is a multitude of approaches, they all share the attitude that what makes the social world, including our identities, can partly be found in discourse. What is it then that we analyse in discourse analysis? Discourse is primarily a term from linguistics, where it denotes language beyond sentence-level and includes a series of texts. Litosseliti & Sunderland (2002) add the interpersonal focus to this definition, stressing that discourse is not only a supra-sentential element, but that it is functional in terms of language use, which means that it communicates meanings in a certain context. Also, discourse is used to refer to the language particular to certain social situations (e.g. classroom discourse). Various authors have defined it in different ways: as the real practice of speaking and writing (Woodilla, 1998), or, more specifically, as an interconnected set of texts and the practices of their production, distribution, and reception (Phillips & Hardy, 2002: 3). Social reality is constructed and made real through discourses, and social interactions cannot be understood without reference to discourses that give them meaning (Phillips & Hardy, 2002: 3).

Text should be distinguished from discourse, which is text in context (van Dijk, 1990: 164), although it cannot be separated from discursive and social practice (Fairclough, 1992). Texts can be considered discursive units and material manifestations of discourse (Chalaby, 1996). The notion of text includes many different forms, from written texts to pictures, symbols, artefacts etc. (Grant, Keenoy, and Oswick, 1998). Texts are places in which the complexes of social meanings are produced in a certain historical situation of their production, which in a partial way notes the history of participants in the production of texts and the institutions involved – thus, a partial history of language and social system. Discourse analysis is thus aimed at establishing the constructionist effects of discourse through the structured and systematic analysis of texts. However, discourse does not possess meanings immanently, it is shared and social, and emanates from interaction between groups and institutions. Accordingly, if we aim to understand discourses, we must understand the contexts in which they appear (van Dijk, 1997).

The Dictionary of sociology (Abercrombie et al., 2008: 50) defines discourse as the corpus of language use unified by some common assumptions, which implies that discourse allows us to think, speak and do one thing, and exclude the thinking, speaking and doing of the other, directing the attention of sociology to the social effects of that exclusion. This interest in

studying the processes of social construction of the invisible reality, reality that is taken for granted, with focus on the connection between the power regime and knowledge is strongly influenced by the work of Michel Foucault. Our task is therefore to look more closely into this intellectual heritage.

## 2.2. Foucault's heritage and influence

Foucault's decision to focus on discursive practices is an attempt to avoid structuralism and hermeneutics (Dreyfus & Rabinow, 1982: xiii-xxiii). Foucault dealt with discourses of human sciences (medicine, psychiatry, economics, grammar), but his method is in principle generalizable to all discourses (Fairclough, 1992: 38). He does not put accent on the analysis of texts, but on the conditions of possibility of discourse and the rules of formation that define the possible objects of knowledge, subjects, concepts etc. (Robin 1973: 83, as found in Fairclough, 1992: 38).

Foucault differentiates between discourse and language. He is less interested in the formal possibilities offered by the language system, and more in the fact that certain words have been uttered. Discourse is thus for Foucault not only the form of knowledge about the way of thinking and acting in a given culture, but also an event. Also, discourse is historical, but with a lasting relevance, as archive, which denotes the accumulated existence of discourses (Foucault, 1989: 25). Discourses exist in a net-like relationship with other discourses, and that relationship is hierarchical (the order of discourse).

The idea of discourse developed by Foucault has been accepted by a number of analysts interested in the relationship between society and language. Foucault's method is according to Kendall and Wickham (1999) an important contribution to qualitative research in social sciences for several reasons: it deeply problematizes simplified categories, it has no assumption of progress, speaks of the history of the present, disturbs the assumed and the taken for granted, looks for contingencies instead of causes and exposes oppositions.

Although qualitative social science research seems much indebted to Foucault, there is no one or strictly defined Foucauldian method of discourse analysis. There are various models developed on the basis of Foucault's contribution (cf. Bannister, 1995; Fairclough, 1995; Parker, 1992; Potter & Wetherall, 1987), and many of them differ according to how they position themselves regarding the criticism addressed to Foucault on several accounts. Two most widespread critiques revolve around the potentially present discursive idealism and the problematic status of the possibility of subversive action, or in other words, the relationship between power and resistance.

The criticism stresses that although Foucault discusses (1982) various forms of fight and resistance, he leaves us with the dominant impression that people are entirely subject to the systems of power, which are impossible or almost impossible to subvert and resist. Also, Foucault does not speak so much of the real practice of writing and speaking, but of the discursive practice as a system of anonymous historical rules (1989), which is a move that reduces the notion of practice to its customary opposite, structure.

Some scholars of Foucault (Hooks, 2001) have, however, warned that Foucault emphasizes the political utility and critical capacity of analysing discourse as a powerful means of enabling forms of critique and resistance, even when his method is read in a 'descriptivist' manner and turned into a kind of diagnosis of culture and society, enabling only a characterization of a variety of historical phenomena (like for example in case of McHoul and Grace, 1997). The often confusing and criticism-inspiring moments in Foucault's writing revolve around his conceptualization of the relationship between discursive and non-discursive, knowledge and power, especially when Foucault stresses the effects of discursive practices that make it virtually impossible to think outside of them (Hook, 2001). To be outside of discourse is to be mad, by definition, to be beyond comprehension and reason (Young, 1981). Discourse is so tightly associated with the regime of power, it ensures the reproduction of the social system through forms of selection, exclusion and domination (Young, 1981). Foucault's theorization of truth and authorship as the functions of discourse particularly fuelled the criticism in this direction, because by demonstrating how certain understanding re-circulate, Foucault seems to suggest that we "have dangerously over-estimated the creative and resourceful abilities of discourse" (Hooks, 2001: 11).

We agree that Foucault's position should be read as going against a deterministic discursive idealism in the sense that not everything can be analysed as a text or a language only, and towards the re-acclamation of the material forms of power. However, we feel that to analytically show the social practice quality of discourse, we need to include direct analyses of real examples of that practice, including texts, without which it is hard to imagine the possibility to extrapolate from structure to practice. This effort is, close to Foucault's concept of discourse, undertaken by Norman Fairclough, who has developed a model of critical discourse analysis that takes text and context into account in analysing discourse, and that has been

reviewed as usable in social sciences. Fairclough's two important strategies in that effort are his three-dimensional concept of discourse and the inclusion of the theory of hegemony, along Gramsci's (1971) lines. We therefore proceed to give an outline of his method.

### 2.3. Critical discourse analysis

Critical discourse analysis (CDA), heavily informed by the work of Michel Foucault, is the method of research into the place of language-in-use in the construction and regulation of the social world. It presents an attempt to overcome the accusations for discursive idealism and the passivation of social actors by analysing discursive building blocks of the processes of social construction of reality. CDA offers the theory of the connection between social practice and discourse structures, as well as a wide range of tools and strategies for analysing concrete contextualized uses of language/performances of meanings. The critical approach to analysing discourse should be positioned between theory, methodology and politics (Meyer, 2001: 15), with the procedure that reduces rather than extends the textual in its analysis (Meyer, 2001: 16).

The "critical" dimension of this method refers to the practical linking of the social and political engagement with the sociologically informed construction of society, with the recognition that the interconnectedness of things and the cause-and-effect chain are deformed *inter alia* discursively; and that the task of critique is to make this interconnectedness visible (Wodak, 2001: 2). Fairclough (1995: 50) defines the critical task as commitment to the dialectical method. Consequently, CDA demands of us to distance ourselves from the data, to embed them into the social, to explicitly take a political stand and to be self-reflexive in the course of research (Wodak, 2001: 9).

CDA is for Fairclough both theory and method, in a transdisciplinary dialogue with other theories and methods (2001: 121). Relevantly, it is a view of semiosis as an element or 'moment' of material social processes, which enables a new way of analysing semiosis within wider analyses of social processes (Fairclough, 2001: 121). The motivation to focus on the social practice perspective lies in the possibility to combine the perspectives of structure and agency, because practice is at the same time determined by its position in the structured network of practices and a lived performance, a domain of social action and interaction that both reproduces structures and has the potential to transform them (Fairclough, 2001: 122).

According to Meyer (2001: 22), Fairclough takes a specific position of the middle-range theory and focusses on the social conflict in the neo-Marxist tradition, with special emphasis on the elements of domination and resistance as manifested in discourse. Economic activity, social relationships, identities, values, consciousness and semiosis are dialectically connected elements of practice, never completely separable. Social practices connected in a certain way constitute a social order, and the order of discourse is its semiotic aspect (Fairclough, 2001: 124). The order of discourse is thus the social structuring of a semiotic difference – a certain social ordering of relationships between different ways of giving meaning, or different discourses and genres.

As indicated earlier, Fairclough (1992) develops a three-dimensional framework for analysing discourse. The first dimension is discourse as text - it refers to linguistic features like the choice of vocabulary (expression, metaphors), grammar (transitivity, modality), cohesion (conjunctions) and text structure. The second dimension is discourse as discursive practice – it refers to the production, circulation and consumption of texts. This means that in analysing the grammar, vocabulary or structure of texts, the attention is paid to speech acts, coherence and intertextuality – the aspects of text that connect it with context (Blommaert & Bulcaen, 2000: 449). The third dimension is discourse as social practice, which implies ideological effects and hegemonic processes in which discourse participates.

These three dimensions help Fairclough operationalize the Foucault-informed statement about the socially constitutive properties of discourse. Such conceptualizing of discourse accentuates the mutual determination and connection of the part and the whole, the micro and macro levels, which helps frame this model within the theory of ideological processes, because discourse is seen in terms of hegemonic processes and changes in hegemony.

The notion of hegemony is very important here as a certain social structuring of semiotic difference may become hegemonic i.e. a part of the legitimizing common sense that supports the relationships of domination. However, contrary to the dominant ideology thesis, hegemony can be to a greater or lesser extent challenged, implying that the order of discourse is not a closed and rigid system but subject to risks springing from real interaction (Fairclough, 2001: 124).

When considering the relationship between language, power, and ideology, Fairclough speaks of ideological-discursive formations (IDFs), which is a direct influence of Althusser (1971). IDF is an ideological position that strives to affiliate with different forces in institutions. The way a subject speaks is normatively connected with the position they occupy, because

it is from this position that they acquire a way of seeing underlying a certain way of talking, always shaped by ideological norms. Ideology can, thus, be understood as the representation of the imaginary relationship of individuals towards the conditions of their existence. It interpellates individuals as subjects or, in other words, places them in a position within the ideological frame. Patriarchal ideology, for instance, interpellates individuals as more powerful men and less powerful women, and some claim that popular culture interpellates readers as consumers (cf. Strinati, 2004: 142). However, we wish to distance ourselves here from the dominant ideology thesis and the determinism of class, and so introduce Gramsci's concept of hegemony into the perspective, because the notion of hegemony tries to overcome the assumption of the ultimate primacy of the production mode. Also, Gramsci (1971) makes a difference between coercive and consensual control, defining hegemony as a cultural and ideological means of perpetuating domination by securing the spontaneous consent of the subordinated.

Here is where the potential to theorize subversion appears. Namely, the naturalized discursive conventions are the most efficient way of reproducing cultural and ideological dimensions of hegemony (Fairclough, 1995: 94), which makes the effort to denaturalize existing conventions an important goal of challenging the hegemonic struggle. In other words, the hegemony of one group over the other partly consists of the possibility to intervene into and form discursive practices. This intervention is also called the technologization of discourse, and Fairclough (1995: 102-104) describes it as the process of possible intervention into the sphere of discursive practices with the aim to construe a new hegemony in the order of discourses of a certain institution. Also, Foucault (1981) sees the technologization of discourse as a powerful connection between social sciences and the structures of power in constituting modern biopower. Discourse can in this context be seen as one of the forces in what Rose and Miller (1990) call the "technologies of governance", which include strategies, techniques and procedures that different forces use to try and make their programs feasible.

Technologization of discourse brings changes to the hegemonic struggle. It is for our analysis important to stress once again that people can react to it in different ways: accept the demands for change, tactically act they accept them, reject them etc. Such view of the hegemonic struggle of discourses for supremacy is extremely relevant in this approach, as it provides for a less violent reading of the role and place of Marija Jurić Zagorka and her popular fiction in the Croatian cultural history. In the following chapter we analyse the discourse surrounding the interpretation of her work and producing the dynamics of her visibility/presence/adoration and invisibility/absence/detestation. We retain the awareness about qualitative shifts in the social functioning of discourse in different historical moments or in the cultural dominant of an epoch (Williams, 1981), as well as of the multifunctionality of discourse and inherent polysemy of language. Zagorka was a producer of texts for massive audience at times of big social, economic and political changes – when discourse technologization is particularly visible – and she had to work with different constructions of social identities. All texts express the social identity of their producers and address the supposed identities of their readers, and texts for massive audience, especially when they have explicit politics and purpose in mind (as Zagorka's do) actively construct imagined identities for their consumers, creating for them positions they may or may not occupy (Fairclough, 1995: 123). Thus, detailed empirical research of discursive effects in a series of domains is a method of research into progressive political and ideological investment of the order of discourse into social change (Fairclough, 1995: 123), along the lines of what Spivak (1988) calls strategic essentialism.

### **3. The case of Marija Jurić Zagorka – critical discourse analysis of her life, work and reception**

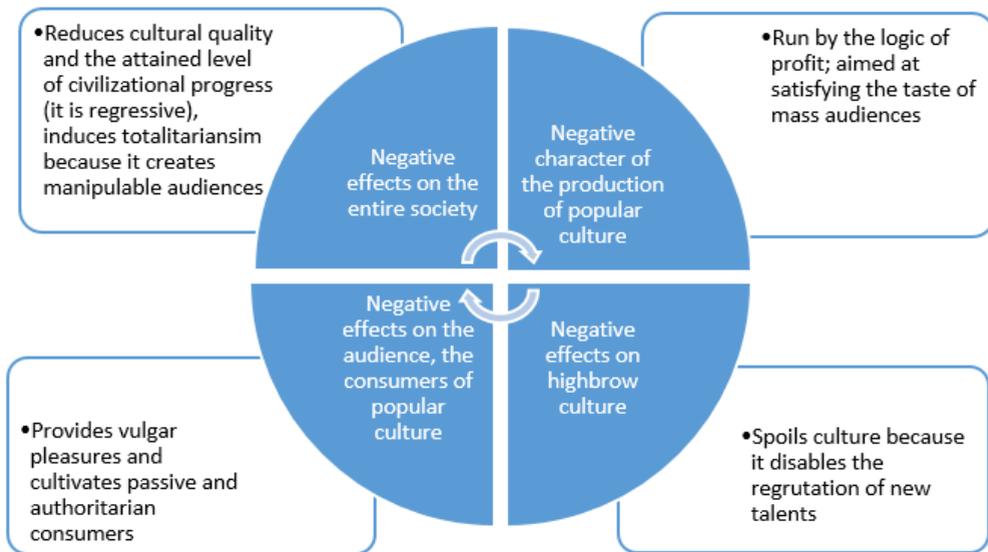
#### **3.1. The problematic status of popular culture or on the politics of exclusion**

Here we will attempt to show on a concrete contextualized example that detailed empirical research of specific discursive effects is a means of research on the investment of the order of discourse into social change (Fairclough, 1995: 123). On the analysis of the critical reception of popular culture, we will show that the effects Zagorka's popular cultural production exerted cannot be adequately grasped without taking the mentioned complementary perspectives of discourse as live social practice and hegemony as the struggle of voices for supremacy (always in negotiation with the dominant discourse) into account.

Popular culture is here revealed as the exemplary place of hegemonic negotiation of different discourses. There are different approaches to define popular cultural practices and their social functions. Popular culture was frequently associated with the rise of national consciousness from the late 18th century on (e.g. Burke, 1978), but its meaning is not that strictly defined. Williams (1976) states that popular can mean from the point of view of the people, but also from the point of view of those who want to govern the people, usefully noticing that it is not the people who talk about popular

culture. He also mentions the definition of popular culture as inferior, the culture produced so as to appeal to the recipient, to mass audiences. Generally, there has been a strong trend of viewing popular cultural production in pejorative terms (in neo-Marxist theories of cultural industry, theories of mass society, the Frankfurt School, and even some feminist theories), especially the one primarily written for women and with extra-literary political objectives in mind. Various negative effects of producing and consuming popular culture have been emphasized (Lewis, 1978: 9): the negative character of the production of popular culture, negative effects on highbrow culture, the consumers of popular culture, and the entire society (see table 1).

Table 1. Overview of pejorative critiques of popular culture



At first view, Zagorka may seem to yield to such criticism. On the level of narrative structure, Zagorka's novels are schematic, simplified, and episodic (which is also conditioned by the modes of production and distribution of texts), and on the level of narrative strategies they stimulate empathy, identification, and intensive physical sensation caused by the experience of reading (the novels are interesting, full of intrigues, cliff-hangers, and suspense; characters are mostly flat, and a happy ending is a generic must). Also, Zagorka produced texts in lucrative quantities, for massive audiences and with political objectives in mind. Zagorka depended on and adjusted to the audience and the market, but at the same time never gave up her political aims. Her heroines use discursive strategies in order to appropriate the male perspective and so make a change regarding the rights of women. The end of the story establishes what we would call a strong patriarchal discursive formation, because the heroines find happiness in marital union. This has been the main reason for even some feminists (Modleski, 2008; Snitow, 1996) to accentuate the passivizing effects of this type of literature, because it locks women in traditional roles.

However, there have recently appeared alternative analyses of popular culture as a potential source of or resource for the mobilization of social change; its diffuse character has been seen as opening up the space for subversion parallel with the discourse of decadence in mapping the effects of popular culture. The differences in the interpretation of popular culture ranged from those that see it as a social problem that needs to be dealt with to those that contrarily see it as a social asset in a plural society. The field of the study of popular culture includes consequently the question of whether social structure holds primacy over culture in the processes of social change or of whether culture may potentially be the space for the

creation of new political identities and movements (Lewis, 1978: 12). It is therefore necessary to move away from one-sided views of the relationship between culture and society and to start from the analysis of interdiscursivity and the socio-historically contingent negotiations between ideological forces contained in performing discourse.

The effects of Zagorka's writing can it seems be far better understood along these lines, especially if we take the perspective of communication with readers into account. Namely, although the romances she wrote confirmed the patriarchal matrix on the ideational level, they were the first widespread literature actually read by a great number of women. In pursuing what Janice Radway termed in her analysis of reading the romance (1991) an ethnographic turn to the reader, we separate the novel as a market product and its textuality from the very act of reading. Contrary to some mentioned androcentric readings of harmful effects of romances and popular culture for women in general, we claim that the act of reading is more subversive than what is read, whereby the spread of the market can play an important liberating function. Zagorka started writing engaged historical novels, with the aim to squeeze out German popular fiction<sup>1</sup> and educate the readership in Croatian. Feuilletones, novels published in series, are the offspring of daily press intended for massive consumption (Nemec, 2006: 143).<sup>2</sup> An important contextual assumption of this type of novel publication is the changed readership structure, because of obligatory schooling and the rise of literacy, which brought wider reception horizon, market democratization, and the fast growth of all types of language communication (Nemec, 2006: 143). The intended consumers were women, still prevalingly out of the public sphere and the labour market at the time (Watt, 1972). This is why the diversification in the production and consumption of culture had a liberating potential for women. Popular culture produced by Zagorka it seems then helped destabilise the boundary between the private and the public sphere, because it offered to women the possibility of the experience of being modern (together with fashion, magazines, department stores, romance novels etc.), and thus went hand in hand with the general democratization regarding the freedom of movement and the spread of literacy, which brought certain advancements to the positions of women.

The results of the analysis of Zagorka's place in Croatian cultural history show that the case of Zagorka and her popular literature cannot be adequately grasped from the perspective of the binary distinctions (male/female, highbrow/lowbrow, fact/fiction, public/private) that helped organize the discourse of social theory on modernization processes. The malestream criticism of popular romances in the context of early 20th century modernization is thereby particularly revealing, and the analysis has shown that a different, female-oriented reading of modernization is needed as a complement.

### 3.2. The cultural politics of exclusion – on the dynamics of (in)visibility and the discourse of modernization

Similarly to the position of popular culture which has until recently held the position of low visibility in sociological research, the problem of writing women into the cultural history and of their writing<sup>3</sup> are also the problems of (in)visibility, although both are and have been extremely present phenomena in the social life. The status of popular culture and of women's writing in the official cultural history are the symptoms of invisibility, which is in critical analysis of discourse an important factor of the processes of social exclusion and thus power. We have shown that from the perspective of live communication with readers, Zagorka's popular romances can be read alternatively to the customary pejorative criticism as potentially subversive and mobilizing social action. The reading of romances can thus be seen as a stake in the processes of democratization and modernization.

As a woman in the profession traditionally granting access to men only, Marija Jurić Zagorka was frequently faced with heavy insults and even disgust. Having a woman in the newspaper was a shame, but Zagorka's texts and feuilletones sold newspapers, so Zagorka was kept hidden as a madwoman in the attic of *Obzor*, the newspaper of her first employment.<sup>4</sup> The ideological interests behind this degradation are to maintain the boundary between male and female spheres, to mystify the imagined essence of good journalism and literature, and exclude the threats to the positions of superiority and power. The reception of Zagorka and her work from the official critical establishment is well-illustrated by the labels attached to her: of a person who attacks everything that is elegant and cultured in Croatian society, because she is a writer of trash for peasants (cf. Lasić, 1986); a hermaphroditic type of woman who is out of her prescribed roles (in the kitchen, with children

<sup>1</sup> The publication of German novels decreased by at least 70% (Zagorka, 1953: 74).

<sup>2</sup> The first such novel was *Robinson Crusoe* by Daniel Defoe, which unlike Zagorka's novels is free of similar pejorative criticism and is a classic.

<sup>3</sup> We are aware of Foucault's recommendation that one should pursue a different ethos of academic reading, read and do research on everything (1996: 14), avoid the "possession" of the material, and forget about the author, but this is not the topic here.

<sup>4</sup> See Gubar and Gilbert (2000).

and in the church); the writer of pulp fiction courting the most vulgar taste (cf. Nemeč, 2004: 651); literary weed and rubbish (cf. Kolanović, 2006: 327) etc. The mention of her is accordingly absent from the overviews of the history of Croatian literature and journalism; she is not even mentioned in the *Obzor's* Tribute Book published in 1936 although she was the editor in chief for a while. The *Encyclopedia of the Yugoslav Institute of Lexicography* gives only a circular entry on her: volume 4 (Zagreb, 1959: 55) directs from "Jurić, Marija" to "Zagorka"; and volume 7 (Zagreb, 1964: 737) directs from "Zagorka" to "Jurić, Marija".

On the contrary, Zagorka was visible and adored; her jubillaeums were celebrated, she received many letters from her readers, people waited in queues for her novels. She organized typographic workers into a union (*Kolo radnih žena*), conducted the first women's demonstrations in Croatia (especially during the regime of Khuen Héderváry), held hundreds of public lectures on women and politics, stepped out of traditional roles of women (which was interpreted as a sure sign of insanity), proclaimed the necessity to reveal the role of women in history by publishing a series of women's portraits, discussed on the position of modern women, emancipation and gender equality, created pictures of active women etc. (Sklevický, 1996). She was the editor-in-chief of the first Croatian magazines for women (*Zenski list*, 1925 to 1938, and *Hrvatica*, 1939 to 1940). She produced the largest opus in Croatian literature and was the most widely read Croatian writer probably throughout the twentieth century (Nemeč, 2004: 651). Zagorka dedicated her life to making women visible in public and created the possibility to articulate female experience, especially the experience of modernity. This is a contextual reason for reading her popular romances as possibly empowering, and not in line with the pejorative effects discussed above.

Critical denigration of Zagorka on the one hand and wide popularity on the other reveal the oppressiveness of critical labels given to Zagorka and her work and expose the discursive aspect of the ideological matrix with a gendered subtext. It is therefore methodologically and epistemologically important to reveal this part of female cultural production, together with the politics of concealment that has haunted it. It turns out that Zagorka was never actually absent, but only made invisible in the circles symbolically designated as belonging to high culture. She can therefore be called a public secret according to Tatjana Jukić (2012: 355, highlights in the original), because she is, as public, the knowledge of the community, not an individual, and thus political knowledge par excellence. As a secret, however, she is the knowledge that the community wishes to keep away from its legitimizing processes, but precisely because of that the knowledge that discloses the very conditions of the legitimizing processes in the community, and is thus political knowledge par excellence.

This dynamics of visibility, presence, and adoration of Zagorka on the one hand, and her invisibility, absence, and detestation on the other are mapped by the gender discourse, which is underwritten by the division of male and female spheres, the private and the public, work and home, culture and nature. The analysis of Zagorka's case reveals gender discourse as the one that maps the distinctions according to which we analyse for instance the differences in tastes (Bourdieu, 1984) or modes of cultural production and reception. Gender discourse is thus the confluence of scientific and literary writing, especially regarding the way in which the discourse of modernization has established itself, primarily by fundamentally relying on the exclusion of woman.

Woman is dominantly constructed through the discourse of non-alienated nature (and past), which is longed for, or the nature that needs to be put under control and civilised. Within the boundaries of the regime of power, as we shall see, Zagorka uses various strategies to try and mobilise feminist action, find a female political subject, and all that not by claiming any essence or nature of some imagined woman, but by occupying typically male domains and discourses – which is a strategically essentialist effort (Spivak, 1988) aware of the inability to find an authentic female voice, but not giving up political action on that account. Zagorka's position, the critiques that characterize her reception, the narrative techniques she used, and the conditions of distribution and publication of her work (serial publication) are treated here as contextual elements of discourse.

<sup>1</sup> A simple ethnography of reading done during a walk through the library reveals Zagorka's novels as very popular and read; contrary to for example canonical Križeva, whose books are mostly neat and tidy. To illustrate Zagorka's popularity: her *Grička vještica* was published in 1963 in ten thousand copies, and then in 1964 in another ten. Collected works follow in 1972 in another ten to fifteen thousand (Hergešić, 1983: 398-401). In the preface to her works fifteen years after her death, Hergešić states that Zagorka is still in fashion (1983: 399), and Nemeč in the afterword written about fifty years after her death (2004: 651) that Zagorka is becoming more visible in the discourse of academic disciplines. Her popularity persists: Zagorka's novels are being republished in both luxury (*Školska knjiga*) and paperback (EPH) editions, both with major interest of the reading audience.

To autoreflect, this sociological investigation must not forget its own discursive presuppositions. Tönnies, Weber, and Simmel (Lichtblau, 1989) in their narratives on the modernization process for instance treat woman as the natural Other of culture (Sydie, 1987). The critique of classical sociological tradition warns against exclusive positioning of the modernizing process into the public sphere of work, bureaucracy, and market (Wolff, 1990), because such approach directly results in implicit or explicit exclusion of woman from it, putting her outside of the basic dynamics of social change (Sydie, 1987).

Riggs (1988), Radway (1986) and Bersani (1976) have accentuated that the critics of popular culture reduced female cultural practices by equating the consumption of lowbrow fiction with "swallowing" as a mechanistic and vulgar, and thereby perpetuated the ideology of aesthetic distinction which has a clear gender subtext. Consequently, consumerist society gets to be symbolically equated with the female principle: consumption is seductive, it gives pleasures and passivizes the consumer by capturing it within its reproductive strategies (Felski, 1995). The derogatory institutional critiques addressed to Zagorka as the writer of pulp have been analysed in this context. Still, the implications of the connections between women and consumption are not that simple. The dominant conceptualizations of the modernization process in social theory is founded on the aspect of production, not consumption. However, to look at modernization also from the point of view of consumption would unmask the narrative of rationalization as a less convincing narrative of modernization, because consumption is not only a reflection of the economic interest; it is at the same time a desire reflecting gender and ideological interests. Not only goods, but also the very act of consumption are sold – which is trace Radway (1991) follows in her analytical separation of the novel as merchandise from the act of reading. Even if the dominant influence of the profit logic dominantly lurks from the background, the fact remains that romances, similar to fashion or department stores, influenced the sublimation of desire and the changes in the relationships of intimacy, as well as the changes in the patriarchal family, social and sexual identities.

To conclude, although woman may have been excluded (or sometimes despised) as a part of the natural pole that needs to be civilised and put under control at the early stage of modernization, she can become excluded also as a part of culture which is full of artificial glow and spectacle. This analysis thus does not aim to glorify the perspective of the consumer as subversive in itself, but only serves to challenge the distinctions that produced an over-simplified picture of female cultural practices and the female experience of and role in the modernization process. Although the act of reading romances could have had a relatively empowering effect for women, it simultaneously meant the appearance of new forms of control and discipline (especially over gender).

The less visible control means the more effective discipline. The question of the final outcome of the hegemonic struggle therefore remains. To conclude in an autoreflective tone, Zagorka is today more visible both in academic circles<sup>1</sup> and outside of them, <sup>2</sup> warning us that there is a cultural politics to it, because new visibilities produce some other invisibilities against which they establish themselves.

#### 4. Conclusion

This paper offered an attempt to deconstruct the discursive construction of some myths that conceal the cultural politics helping shape our social and cultural imaginary. We applied the qualitative method of critical discourse analysis to look into the processes that produced the dual position of Marija Jurić Zagorka and her writing, aimed primarily at providing the ideology critique. To avoid the dangers of discursive determinism and the consequent view of social actors as impotent and passive, the aspect of discourse as social practice was particularly stressed and the theory of hegemony was offered, as the one better suited than the dominant ideology approaches, for the analysis of the struggle between different voices for a certain positioning in the order of discourse (Zagorka's feminist political goals in the patriarchal matrix). The heritage of Foucault's method was discussed with the perspective of introducing a theory of action and of discovering possible subversive strategies at disposal to social actors.

The discursive approach interested in analysing power helped reveal the coupling of popular culture and women, here through the analysis of contextualized meanings and negotiations with a certain audience and through ideological

<sup>1</sup> This very paper is a contribution to that visibility. Also, there is an international scientific conference dedicated to Zagorka going on since 2007, with the fifth proceedings published.

<sup>2</sup> There is a film Zagorka directed by Biljana Čakić Veselić (FADE IN, HRT, Zagreb film, 2008); a play Zagorka by Ivica Boban; a millennium photograph was taken in 2012 by photographer Šime Strikoman of the people named after Zagorka's characters; the press room in the Croatian parliament is named "Marija Jurić Zagorka"; an annual award for written journalism is called after her...

interdiscursive forces that constitute dominant meanings. The exclusion of Zagorka from serious literary discussions and overviews of the history of Croatian culture and literature is shown to be an effect of gendered distinctions that organize the social space. The position of Marija Jurić Zagorka as a woman and the writer of popular fiction in the Croatian cultural history is exposed to be relevantly determined by the distinctions that also help establish a certain view of the processes of (cultural) modernization and that strategically work to preserve the dominant status of man as producer of culture.

Zagorka was viewed pejoratively primarily on two accounts: for following the simplified narrative framework in her romances that keep spoiling the readership and 'doing harm' to young women, and for pursuing the logic of market and profit in the discursive practice of her writings (serially published novels, which are enormously long). The results of our critical analysis of gender discourse reveal the ideological burden of such criticism and its patriarchal and androcentric subtext. The analysis deals with a very specific and concrete example to show that rather than distinction-and-quality-reducing (dangerous) and stupefying, Zagorka's novels are, from the perspective of live communication with her audience, actually empowering for women, because the act of reading is seen as more important than what was read (cf. the ethnographic turn to the reader, Radway, 1991). Zagorka's popular romances thus provided the experience of modernity for that half of the population which was still predominantly locked in the private sphere in the first half of the 20th century. In this sense, this analysis is the contribution to the critiques of the theories of modernization in social theory, bringing the perspective that takes account of the female experience, the private sphere, and the logic of consumption (and not only of the public sphere of work, politics, rationalization) in the formation of what we call modernity. Although Zagorka leans against a dominant discourse and follows the market logic, the results show a possible (subversive) intervention into the sphere of discursive practices (hegemonic struggle of different voices for supremacy in the order of discourse defining the reception of Zagorka) and indicate that detailed empirical research on discursive effects in a series of domains is a method of research on political investment of the order of discourse into social change. The problems of the final outcome of the hegemonic struggle, new forms of discipline silently introduced by Zagorka's new visibility, and a possibly different interpretation remain.

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## I Believe so that I Might Understand: An Epistemic Study on the Relation of Belief to Knowledge in Saint Augustine

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### Abstract

If we weren't creatures hungry to believe, we could not reach the belief. The confirmation of the need to believe depends upon the mind's awareness of its limits. Life is so short that, if we wait for all our questions to be answered, our life does not suffice. Probably no one lives so long to get immediate and individual knowledge of all truths. Besides, belief is brought to be necessary by the constraints of human knowledge. None of us can ever be in a situation in which we can know everything immediately. Every time there are a great many truths that should be approved depending on the testimony of some authorities. We know much more through belief than that we know through experience until now and those things are much more important from the point of our spiritual and worldly happiness. Once we decide not to believe anything that we comprehend by means of our senses, then no human institution can remain robust. Faith also stands in the foundation of love and respect. As parallel to his thoughts, Augustine's understanding of knowledge is opposite to the contemporary empirical understanding. Contemporary empirical understanding allocates knowledge to the assertions which are believed by people depending upon a robust evidence when they are true. However, for Augustine (AD 354-430), basic knowledge is belief. Belief is necessary, because it's antecedent to understanding temporarily. The person who doesn't believe will not understand. Because the people who don't believe will not experience and the people who don't experience will not know. It's our duty to understand what we believe in sincerely and to get sight of the rationality of our belief. Understanding is not only getting an additional evidence for belief to justify belief, but also in understanding foundations of belief or meaning of the thing believed or both of them become more robust.

**Key Words:** Augustine, belief, faith, knowledge, understanding, the relation of belief to knowledge, the relation of belief to understanding.

### Introduction

Augustine's view to the concepts of belief and knowledge and the relation he sets up between these concepts are characteristic for both his general philosophy and his philosophy of knowledge. For him knowledge and the belief relation to knowledge have an importance beyond the practical life. That all data we have do not have the characteristic of knowledge and also our own beliefs and also although those beliefs we own are different from the point of both their construction and the way they are obtained, they are inevitable for us, because they constitute an important part of our life and our actions, to investigate the structure and characteristics of the concept of belief and the relation of belief to knowledge are extremely important both from the point of philosophy of knowledge and religious and daily life.

As a person who struggled with scepticism, Augustine, in addition to knowledge, argues that "belief is the only likely treatment for his spiritual condition."<sup>1</sup> With the words of Schmitt, "belief is necessary for the rational order of things. If scepticism was confirmed, the intelligible and harmonious structure of the world became scattered."<sup>2</sup> Nash also indicates to the same point but he does this coming up with some conditions. According to him, "it's necessary for us to believe in something but we should direct our belief to the objects that are most worthy to believe."<sup>3</sup> The reason for his thinking like this, on the other hand, is to establish the credibility of religious and ethical facts. In this issue, "Augustine may be affected by the Stoic thoughts concerning the connection between epistemic certainty and morality."<sup>4</sup> It seems that Augustine

<sup>1</sup> Stephen Menn, *Descartes and Augustine*, Cambridge 2002, p. 187.

<sup>2</sup> Charles B. Schmitt, *Cicero Scepticus: A Study of The Influence of The Academics in the Renaissance*, The Hague, Martinus Nijhoff, 1972, p. 148.

<sup>3</sup> Ronald H. Nash, *The Light of The Mind: St. Augustine's Theory of Knowledge*, Ohio 2003, p. 22.

<sup>4</sup> Gerard O'Daly, "The Response to Scepticism and the Mechanism of Cognition", *The Cambridge Companion to Augustine*, Cambridge 2006, p. 164.

appreciates the social and practical necessity of belief. Whether we are conscious of or not, our basic relations are based on our beliefs. In this meaning, association of scepticism about the ability of human reason's obtaining knowledge with a belief pertaining to the truth itself, made lead Augustine to the conclusion that the only way of solution was faith or belief. For this reason, he proposes the analysis of many kinds of credibility: Facts to be believed. Firstly, we have historical truths in which we can only believe, because we don't have any immediate, first hand knowledges about them. He attracts attention to that we know execution of Cateian assassins only through the authority of Cicero (106-43 BC). This authority is robust like authorities depending on them we know who our parents are. It would be nonsense to reject having respect for our parents, by asserting that we don't know who they are. Augustine was affected by the fact that some of the most basic relations –love of child for parents and affinity of friends and married couples each other- depend upon reliable belief.<sup>1</sup> The function of belief in this context is beyond our estimations. "We know much more things via belief than that we know via experience until now and those things are much more important from the point of our spiritual and worldly happiness. Once we decide to do not believe any thing that we can not comprehend by means of our senses, than no human institution can remain stable. The trust that is at the root of faith is also at the root of friendship, love and respect that are the foundations of society."<sup>2</sup> He gave priority to belief but didn't neglect the importance of knowledge. "Throughout his writings he insist that knowledge is not to be sought for its own sake; instead man should seek knowledge so that through it he may attain true happiness. Augustine's view is not so much that knowledge will make the attainment of happiness easier but that the knowledge of absolute truth is a necessary condition for happiness. Although Augustine's practical interest in knowledge keeps him from giving us the kind of systematic discussion of certain topics that one finds in Hume or Kant, there is nonetheless a certain benefit that follows. The fact that knowledge is related to God and to human quest for happiness insures the importance of epistemology for Augustine."<sup>3</sup>

### Knowing By Seeing And Knowing By Believing

In this context he firstly separates knowing to two categories as knowing by way of belief and knowing by way of knowledge (seeing) and examining how they can be obtained questions their reliability. According to him, in knowing by the way of belief there is not the credibility that is in knowing by way of knowledge. "The first Augustine calls belief (the way of faith) and the second he calls "understanding" (the way of reason). Both modes of knowing seek to bring about the union between knower and the thing known which is the essence of knowledge. In the case of understanding there is an immediate contact between the two, a direct confrontation in which the knower perceives the object by a type of 'vision'. Since my experience of such truths is so immediate, they seem to force themselves upon me. I can not deny the pain in my leg nor the noise of the street nor the remembered facts of my past. I may try to ignore them but I can not deny them once they capture my attention. Moreover, once attended to, they have a tendency to move me by their presence. My contact is so intimate that once I see them as true, I easily move to see them as good or bad. I quickly move from being a knower to a lover, reaching out to embrace those realities which promise to bring satisfaction and happiness when possessed."<sup>4</sup>

Knowing by the way of belief is very different from the other way. "Knowledge by the way of belief (faith) does not possess such power. The truth of the object known is not known directly but only through the testimony of others. Whatever is good and desirable about the object is known by hearsay, not vision. The immediate contact of the knower is with that witness who testifies to the truth perceived. It is not the truth of the object that forces itself upon knower. It is the credibility of witness, a credibility that rest on a conviction that this witness is (1) knowledgeable, that is, is in a position to know the facts and (2) trustworthy, that is, is not likely to misrepresent the facts. Only rational beings can serve as such witnesses and since humans, angels and God are wrapped in mystery, we are never overpowered by evidence of credibility unless we want to be. It is for this reason that Augustine will define faith or belief as an act of thinking with assent"<sup>5</sup> Helm argues that this uncertainty which exist in the concepts of belief and faith is a necessary result of the structure of these concepts. According to Helm, "without risk there is no faith. Faith is precisely the contradiction between the infinite passion of the individual's inwardness and the objective uncertainty. If I am capable of grasping God objectively, I do not believe, but precisely because I can not do this I must believe. If I wish to preserve myself in faith, I must constantly be intent upon

<sup>1</sup> John M. Rist, *Augustine, Ancient Thought Baptized*, Cambridge, 1997, p. 56.

<sup>2</sup> Donald X. Burt, *Augustine's World*, London, 1996, p. 45.

<sup>3</sup> Ronald H. Nash, *Ibid.*, p. 22.

<sup>4</sup> Donald X. Burt, *Augustine's World*, London, 1996, p. 44

<sup>5</sup> *Ibid.*, p. 44.

holding fast the objective uncertainty, so as to remain out upon the deep, over seventy thousand fathoms of water, still preserving my faith."<sup>1</sup> This view can be striking for believers like us but it is clear that it may help us seriously to understand some of the most essential concepts we have. "On this view faith is inherently risky, not because there is in fact little evidence for what is believed and more would be desirable, but because whatever evidence there is is in some way against the truth of the proposition believed, and thus faith 'contends' with evidence against. It is a mistake to think that such a view of faith cannot be defended; it does not follow that there are no reasons for holding the view that religious faith is not reasonable."<sup>2</sup> As we saw here, for a thinker who adherent to the Platonic tradition, to think on the borders of our knowledge helps only reevaluation of the lower position of belief and identify the credible authorities.

Augustinus rethorically makes a sharp separation between the exactness of knowledge and baseless structure of belief. "Despite his positive expressions about belief such as rational, proven and worthy of trust, he argues that belief has not the first hand proofs that knowledge has. Besides, it is out of immediate proof which sense perception has. A well-approved sense perception is a form of knowledge, in the meaning that historical testimony never become."<sup>3</sup>

Nevertheless, the concept of faith enters into our lives indispensably, because when it requires to know the truth, though the human mind is necessary, it is not sufficient. According to Augustine, "the created light of human mind requires a light from outside. Even created intelligible light could not explain the human knowledge without unchanging, immanent and active being of God. But the light with which the human soul is illuminated is different. Such that the soul by oneself or in that light can see every thing through reason and truly. Because the light is God' itself. Nevertheless, every thing that the soul grasp or can grasp via reason spring up from that light."<sup>4</sup>

The use of the concept of faith embraces both the issues about God and issues about external world. "Faith is the response to God's self revelation and the only access to God as trinity. By faith persons communicate with God, who communicated with them by creation and by sending the Son and Spirit."<sup>5</sup> Human transcends the world with that act of faith. "The act of faith belongs to the rational (practical) mind, which focuses on the temporal Christ, his life, words, death and resurrection. Human beings ascend from knowledge (*scientia*) in this temporal life to wisdom (*sapientia*) in eternal life where God is contemplated."<sup>6</sup>

But, as we said, faith is not peculiar only to religion. According to Nash, "Augustine raises an additional argument, however, in claiming that faith is not peculiar to religion. It is, in fact, indispensable in every area of life. To take a simple example one's knowledge of his own identity depends upon faith, for how else would one know that the people who claim to be his parents really are unless he either trusts their word or the word of someone else? Moreover, all learning depends upon faith. If we refused to believe things that we have not experienced personally, we could never know the facts of history, which are based upon the testimony of others whom we take to be authorities. This, Augustine insists, is faith."<sup>7</sup>

Paul Helm, in his book called *Faith and Understanding*, in which he investigates these issues elaborately, speaks of these two meanings of faith and exemplify Augustine' use of faith concerning world we mentioned before under the names of individual and propositional faith. For Helm, "faith can be used in at least two quite distinct senses, and each sense is important. The Word can be used as shorthand for 'the faith', that is, for a body of beliefs of a theological or religious character which forms the cognitive content, or the core of the cognitive content, of some recognizable religion. Thus it is part of the faith of Jehova's witness that they believe that Jesus Christ is a creature, whereas it is part of the faith of a Christian that they believe that Jesus Christ is God. When man and women confess their faith, whether they are Muslims, Hindus or Christians, then what they are confessing is the set of propositions, together with the associated practices, which they regard as essential to their faith and which includes those beliefs which are distinctive of it. And the reason why this body of propositions is referred to as *the faith* is, quite simply, that it is that set of propositions which express what the holders regard as trustworthy truths about God, about themselves in their relation to God, and so on. One could use 'faith' in this sense to refer to the convictions of an atheist, for the atheist also has a set of beliefs. Naturally, being an atheist, he does not include in this set any beliefs which he believes imply the existence of God. Nevertheless an atheist may, in this

<sup>1</sup> Paul Helm, *Faith and Understanding*, Michigan 1997, p. 14.

<sup>2</sup> *Ibid.*, p. 14-15.

<sup>3</sup> Gerard O'Daly, *Ibid.*, p.164.

<sup>4</sup> Augustinus, *De Genesi Ad Litteram XII*, 31, 59.

<sup>5</sup> Mary T. Clark, "De Trinitate", *Cambridge Companion to Augustine*, Cambridge, 2006, p. 97.

<sup>6</sup> *Ibid.*, p. 99.

<sup>7</sup> R. H. Nash, *Ibid.*, p. 25.

sense, be said to have a faith... Such faith involves understanding, for a person can hardly believe what he does not to some degree understand. But he may not understand it very much and may seek to understand it more. Increased understanding of the propositions of the faith enhances the way of faith as a whole. It is sometimes suggested that there is a sense of faith which is 'personal' and which is to be contrasted with a 'propositional' sense of 'faith'. But this distinction does not seem to be a watertight one. If my friend Jones says that he will lend me his ladders and I believe what he says, then my reliance upon him – my faith – must have both a propositional and personal aspect to it. I believe Jones. I may or may not give him unconditional belief, believe him whatever he says. But what is undeniable is that I believe him in respect of the ladders. The proposition expressed by the sentence 'Jones will lend me his ladders' is believed by me because it is taken to be a trustworthy assertion of Jones. In believing the proposition, I believe – trust – the person, and in believing the person on this occasion I believe what he says, his utterance about the ladders. So the two senses of faith, the personal and the propositional, are interconnected, and highlight two aspects of one situation. Though, understandably enough, the faith of an atheist cannot have this personal aspect, since he cannot regard the propositions of his faith as being the personal statements of anyone."<sup>1</sup>

While this long quotation is noteworthy from the point of being explanatory, it still does not hold forth explanation enough concerning to the relation of the concept in question to knowledge. The response of this question lies in the separation we made above. According to Nash, "as long as faith is understood in the first sense noted – as acceptance of authority or indirect knowledge – the it is true by definition that faith plays no role in immediate *scientia*. There are two obvious examples of this kind of knowledge. One can know his own soul directly by intuition and one can perceive sense objects directly. It would be a contradiction to assert that faith (in the sense of being considered) plays any role in my present perception of a sensible object."<sup>2</sup>

I think, we can solve this contradiction by examining the other meanings of this concept. "There is another sense of the word in which faith does play a part in immediate *scientia*, at least in sense perception. Unless one assumes or presupposes that the senses are reliable, he will not regard the information received through them as knowledge. The Academician's depreciation of sense perception is proof of this. One need not be or aware of the confidence he has in the senses, for example, but when he becomes conscious that he no longer trusts their reports, they will no longer be regarded as a source of knowledge. Thus if faith is understood as the act of assuming (consciously or unconsciously) that something is the case, there is a sense in which it is indispensable, even for immediate *scientia*. A knowledge of anything depends somewhat upon one's presupposing certain other things. This is, of course, most clear in geometry, where there can be no knowledge until certain axioms and postulates are assumed. This is just as true of other areas of knowledge. For example, The Thomist thinks he can reason his way to God's existence without faith. Perhaps he can, in a particular way, he would not succeed if he had no confidence (faith, in another sense of the word) in the reports of his senses or in the laws of logic."<sup>3</sup>

What we have explained until now can be assumed to prove that Augustine believed that a real philosophy was in the same time was a real theology. His that belief puts in the words a common quality of middle age philosophy. Moreover, he was at the beginning and foundation of an understanding that dominated to the middle age. In middle age philosophy, faith and reason were not activities that could be investigated separately from each other, they were not psychologically different activities. For this reason, that Augustine's use a religious concept in explaining philosophical subjects is not an extraordinary situation. If we deal with in the context of our subject, Augustine states this truth by saying 'I believe, so I can understand.' The reason for that he states question so, is that faith and reason both two are necessary elements of knowledge. With these expressions, Augustine made faith, or as sometimes used belief, necessary component of philosophy of knowledge. This situation is very original in the history of philosophy, because before Augustine the relation of faith to reason and especially the subject of faith had not been discussed so elaborately. In the history of thought the subject of faith firstly with Christianity enter into philosophy and the person who discussed this subject in philosophical context so deeply was Augustine. In the history of humanity firstly Augustine united religious faith and knowledge in a melting pot and after Augustine until today in Christian World these two areas have never separated from each other. At this point, I think, Christian World is very lucky, because they are indebted their scientific and cultural development to this synthesis of faith and reason (secular reason of Ancient Greek). The nations who could not comprehend reason of Ancient

<sup>1</sup> Paul Helm, *Ibid.*, p. 9-10.

<sup>2</sup> R. H. Nash, *Ibid.*, p. 28.

<sup>3</sup> *Ibid.*, p. 28-29.

Greek and could not unite this reason with their religious faiths have not realized any important development in scientific and cultural areas. So they are sentenced to being slave by themselves.

### The Relation Of Belief To Understanding

The relation of belief to understanding is a subject which originates from the structure of belief and knowledge. The relation in question is important especially in the context of religious belief. "Augustine his *Soliloquies* with the confession that the two things he wants to know are his soul and God. In the second book of *De Libero Arbitrio*, Augustine says to his interlocutor, Evodius: 'At any rate you are quite certain that God exist.' Evodius replies, 'I firmly believe it, but I do not know it,' a characteristic Augustinian idea, which is later picked up by St. Anselm. This section ends with Evodius' saying 'but we want to know and understand what we believe.'<sup>1</sup> The search of understanding Evodius mentioned composes the basis of the problem. John M. Rist indicates this issue saying that "the limitations of 'certain knowledge' compelled Augustine to a radical re-evaluation of the philosophical status of belief and its relation to understanding."<sup>2</sup>

At this point we want to attract attention to an other original aspects of Augustine. Bubacz states this originality associating it with contemporary philosophy: "Augustine's understanding of knowledge is opposite to the contemporary empirical understanding. Contemporary empirical understanding allocates knowledge to the assertions which are believed by people depending upon a robust evidence when they are true. However, basic knowledge is belief. Belief is necessary, because it's antecedent to understanding temporarily."<sup>3</sup> Because he dealt with these issues in a philosophical ground thoroughly, Augustine may be thought as the source of the tradition of faith looking for understanding.

In the frame of relation of belief to knowledge, one of the issues Augustine treated was priority of belief to understanding or knowledge. "First believe, then understand" is a theme that recurs throughout Augustine's writings. 'We believed that we might know; for if we wished first to know and then to believe, we should not be able to know or to believe.' Augustine does not mean by this that we begin with faith and then go on to knowledge. He is teaching, instead, that we must believe in order to know. Faith, in a sense, is a precondition of knowing."<sup>4</sup>

This situation we mentioned above paragraph goes for not only spiritual themes, it goes for also the themes which are not spiritual. When he deals with these issues, Nash gives that explanation of Augustine as an argument: "Thus, although we can see bodies with our physical eyes and see our own thoughts and will by the eyes of our mind, we cannot see the minds of other people. Yet no Manichean seriously maintains that other people have no minds; he sees their physical actions and hears their words, but he takes it for granted that they have minds. This, Augustine informs him, is not sight but faith. 'Will you haply say that you see the will of another through his Works? Therefore you will see acts and hear words, but, concerning your friend's will, that which cannot be seen and heard you will believe.'<sup>5</sup>

One of the benefits of such that kind of belief is that it also provides understanding in daily life. Augustinus states this by saying "credo ut intelligam"<sup>6</sup> (I believe so that I might understand). Burt, as parallel to Nash, appreciates the wordly and religious importance of the contribution of this belief: "Even on the humble level of everyday living, belief opens the door to great vistas of knowledge that we only later come to understand. A baby left to its own direct experience and purely personal interpretation of it would not progress far in accurate knowledge of reality. Probably none of us would have survived without the trust we developed in the friendly giants who were constantly telling us what was and was not good for us. And when it comes to beatifying knowledge, that knowledge that is crucial for our eternal happiness, the priority of faith is even more important. In our present condition we cannot know much about God except by believing. Once we believe in the fact of Trinity, we can then go onto try to understand what the mystery means."<sup>7</sup>

In fact the concept of faith may seem to indicate every time to the spiritual world, it nourishes from the material world. "Although understanding lies in the sight of Eternal, faith nourishes with milk in the cradles of temporal things. Now 'we walk by faith and not by sight'. Unless we walk by faith, we shall not be able to come to that sight which does not fail but

<sup>1</sup> Gareth B. Matthews, "Knowledge and Illumination", *The Cambridge Companion to Augustine*, Cambridge 2006, p. 182.

<sup>2</sup> John M. Rist, *Ibid.*, p. 56.

<sup>3</sup> Bruce Bubacz, *St. Augustine's Theory of Knowledge, A Contemporary Analysis*, New York 1981, p. 124.

<sup>4</sup> R. H. Nash, *Ibid.*, p. 26.

<sup>5</sup> *Ibid.*, p.26.

<sup>6</sup> Augustinus, *De Libero Arbitrio* II, 2, 6; *Epistolae* 120, 1, 3.

<sup>7</sup> Donald X. Burt, *Ibid.*, p. 46.

continues through a cleansed understanding uniting us with Truth. On account of this principle one said 'If you will not believe, you shall not continue,' and another said, 'If you will not believe, you shall not understand. Therefore do not seek to understand in order that you may believe, but believe in order that you may understand.'<sup>1</sup> Helm interprets quotation above that he gave from Augustine like that: "In these slogans sometimes the stress is placed not on the understanding as the outworking of faith, as what faith leads to, but on faith as the condition of understanding; if I want to understand, I must first believe. It is as if faith involves or possesses no understanding itself but is purely functional or instrumental. Though as we shall shortly see matters are not quite as straightforward as that. Now it is faith to believe that which you do not yet see; and the reward of this faith is to see that which you believe. Here faith is contrasted not with understanding but with sight, and the reward of faith is equated with seeing, not vision in the strict sense, but with direct or immediate knowledge of the sort that vision conveys. As we noted, one thing that Augustine has in mind is the biblical contrast between faith and sight. Faith, unlike sight, is at best indirect; or perhaps it is more accurate to say that it is less direct than sight. Understanding makes faith more direct, more like sight, than it would otherwise be."<sup>2</sup>

It is necessary to come up to the act of understanding and knowing after act of belief. "Because we want to understand and know what we believe in,"<sup>3</sup> and there are positive effects that these acts of understanding and knowing add to the belief. "The understanding does not consist simply of gaining additional evidence for the belief in order to justify it, but in understanding the grounds of belief, or the meaning of what is believed, or both, better."<sup>4</sup> Again, making a quotation from Augustine, Helm interprets like that this mutual dependence of belief and knowledge to each other: "I considered the innumerable things I believed which I had not seen, events which occurred when I was not present, such as many incidents in the history of the nations, many facts concerning places and cities which I had never seen, many things accepted on the word of friends, many from physicians, many from other people. Unless we believed what we were told, we would do nothing at all in this life. Finally I realized how unmoveably sure I was about the identity of my parents from whom I came, which I could not know unless I believed what I had heard.' Augustine says that such trust of another person is not something that one could gain from experience but is itself a pre-condition of understanding and accepting much that we presently experience. How could I gain from experience the knowledge that X and Y are my parents? I need someone to tell me, since necessarily I could not, in infancy, have come to know such facts for myself, and I can not now reach back in time. The idea that one might, even in principle, get down to a bed-rock of experience each item of which one had personally verified is an illusion."<sup>5</sup> It seems here that Augustine affiliates understanding into the scope of philosophy of knowledge. According to Jeaneau, Augustinus formulated this situation by saying "Understand so that you might believe, believe so that you might understand."<sup>6</sup>

According to Jeaneau, these thoughts of Augustine, on the contrary to the false beliefs, show that reason was not leaved aside in middle age philosophy and Augustine's these thoughts affected other thinkers who came after him. "Christian belief does not deactivate reason, does not thrust aside investigation, does not destroy thinking. For this reason the best minds of middle age will keep the Augustinian advice. Ofcourse all of them didn't show the same consistency in conforming their knowledge and belief. According to this scheme, The situation of a Christian thinker takes place in movement with three times: In the point of departure there is a belief which believe without seeing anything, at the point of destination there is contemplation of a person who see but don't believe, between them is belief searching for understanding. Here, philosophy is that search. Neither church fathers nor middle age people had the anxiety of making seperation between these disciplines that today we make. They were going to the truth with all their sincerity and if they had make philosophy, they were doing this as believing peoples. Except a small group, it didn't come to their mind to construct a temple of wisdom whose base did not Christian."<sup>7</sup>

Nash says that in connection with religious faith the priority of belief to knowledge is connected to a passage from Holy Bible. According to Nash' quotation, "For some kinds of things are those which we do not believe, save we understand them; an other kinds of things are those which we do not understand, save we believe them. For since 'faith cometh by hearing, and hearing by the Word of Christ' (Rom. 10:17), how can one believe him who preaches the faith, if he-to say

<sup>1</sup> Paul Helm, *Ibid.*, p. 26-27.

<sup>2</sup> *Ibid.*, p. 27.

<sup>3</sup> Augustinus, *Sermones* 43.

<sup>4</sup> Paul Helm, *Ibid.*, p. 16.

<sup>5</sup> *Ibid.*, p. 20-21.

<sup>6</sup> Edoward Jeaneau, *Orta Çağ Felsefesi*, trans. Betül Çotuksöken, p. 15, 1998, İstanbul.

<sup>7</sup> *Ibid.*, p.15-16.

nothing of other points-understands not the very tongue which he speaks? But unless, on the other hand, there were some things which we can not understand, unless we believe them first, the prophet would not say, If you will not believe, you shall not understand."<sup>1</sup>

According to Helm, Augustine sometimes reverses the relation of belief to understanding. Depending upon a quotation from *Sermones*, Helm explains this situation like this: "My opponent too... has something when he says: 'I would understand in order that I may believe. Certainly what I am now saying, I say with the object that those may believe who do not yet believe. Nevertheless, unless they understand what I am saying, they cannot believe.'"<sup>2</sup> Here understanding is a condition of having faith. These seemingly contradictory claims, that understanding follows faith and that understanding is needed for faith, can be reconciled if we bear in mind Augustine's view of faith. Faith has some cognitive content; and so a person needs to have some understanding of this content in order to have faith; otherwise how would his faith in God be distinguishable from faith in anyone else? It is this initial understanding which directs what what ought to follow; the understanding that is to follow keeps to the parameters of the basic cognitive content of faith and attempts to fill out the detail and so deepen the understanding. For the primary cognitive content of faith is limited; and so understanding gains a fuller appreciation of this content without going outside its limits.<sup>3</sup>

Giving one example, Helm tries to make clear Augustine's thought concerning to the relation of faith to understanding. According to Helm, "in this words Augustine makes clear that faith involves some understanding, for understanding is a necessary condition of faith, and that the understanding which faith then seeks is further understanding, building upon the primary understanding involved in the first steps of faith. Perhaps what Augustine takes to be the primary understanding of faith is not the direct comprehension of spiritual realities, but the understanding of words. What Augustine is saying is that it is necessary for anyone who believes anything first to have a form of words proposed for their belief, just as a novice joiner may believe that he needs a set-square without knowing what a set-square it. And then a fuller comprehension may follow this believing, a greater awareness of those realities which the language of their faith denotes and connotes. To understand is thus more than comprehending the meanings of words, it is an appreciation of those realities which the words represent."<sup>4</sup>

At this point, it appears that there are two situations of faith-understanding relationship: The priority of faith/belief to understanding and the priority of understanding to faith. We should examine them in relation to each other. "Belief is a necessary means to beatification but it is not meant to be the ultimate stage in our knowing. We believe now so that someday we can come to a time and a place where we will finally and forever understand ourselves and our God. We seek now by faith; then we shall find by understanding. Then we shall know the truth of Augustine's words: Understanding is the reward of faith. Then we shall finally see what now we can only believe."<sup>5</sup>

Stephen Mann also signifies to that relationship. According to him, "thus we must begin by believing what we read in scripture, and then press on to understand it. This means, most obviously, to know or understand *that it is true*; but for Augustine, much of the difficulty lies in the preliminary task of understanding *what it means*."<sup>6</sup> By saying "in the areas of immediate knowledge too, one should firstly believe before understanding,"<sup>7</sup> Nash enlarges the function of belief. However, "the ability to reason is a necessary condition for believing... No one can believe what he does not understand."<sup>8</sup> Augustine was aware of this mutual relationship of faith and understanding as far as we understand from his writings.

In *In Johannis Evangelium* he says: "We believe that we might know; for if we wished to know and the believe, we should not be able either to know or believe."<sup>9</sup> In *Epistolae* "but faith gives the understanding access to these things, unbelief closes the door,"<sup>10</sup> he says. Norman Geistler gives this quotation to exemplify this situation: "But unless, on the other hand,

<sup>1</sup> R. H. Nash, *Ibid.*, p. 33.

<sup>2</sup> *Sermones* 43.

<sup>3</sup> Paul Helm, *Ibid.*, p. 27-28.

<sup>4</sup> *Ibid.*, p. 28

<sup>5</sup> Donald X. Burt, *Ibid.*, p. 46.

<sup>6</sup> Stephen Menn, *Ibid.*, p. 193.

<sup>7</sup> R. H. Nash, *Ibid.*, p. 29.

<sup>8</sup> *Ibid.*, p. 30.

<sup>9</sup> Augustinus, *In Johannis Evangelium* XXVII, 9.

<sup>10</sup> *Epistolae* 137, 4.

there were somethings which we cannot understand unless we first believe them, the prophet would not say, 'If you will not believe, you shall not understand'"<sup>1</sup>

These quotation from Augustine may help us best to put forth the relationship between these concept: "However I also believe all things that I understand, but I don't know all things that I believe. Because I know every tings that I understand. Although most of the things left unknowable for me, I know the benefits of belief."<sup>2</sup> "In this situation we are indebted to reason what we understand, what we believe in to authority and on what we have estimation to mistake."<sup>3</sup>

### Afterword

In the beginning we stated that the relations of these concepts in question depend upon the limited structure of reason. As far as we can understand, Augustine paid attention to this situation and he opposed to all kinds of irrationality. That he makes emphasis on the functions of belief and priority of belief in some situations does not mean that he is an irrationalist. From the point of relation of belief to knowledge, Burt explains this situation like that: "It was impossible for Augustine to be either a pure fideist because he was convinced that understanding and belief were intertwined, each depending on the other. If we were not beings of reason with a hunger to know, we could not come to belief. Recognition of the need to believe rests on reason's awareness of its own limits. Recognition of possibility of belief rests on reason's acceptance of the proposed truth as at least believable. Finally, for belief to be truly well-founded there must be some rational analysis of the credentials of the authority on which the belief is based. In all of these ways reason seems to have priority over faith and justifies the truth of Augustine's assertion that: *Intelligo ut credam* (I understand so that I might believe)."<sup>4</sup>

However the act of believing provides some advantages to believer that unbelievers cannot have any time. Belief provide for believer entrance ticket to enter into some areas. "He who does not believe will not understand. For he who does not believe will not experience, and he who has not had experience will not know. For the knowledge of the one who experiences is superior to the knowledge of the one who hears, to the same degree that experience of a thing is superior to hearing about it."<sup>5</sup>

On the other hand faith is not an act realised blindly. "Faith is assent to a proposition in virtue of its having been put forward by an authority one has accepted on rational grounds, so that the understanding which faith then seeks is of a piece with the primary understanding which is required to make the propositions initial act of faith credible. Understanding is assent to a proposition in virtue of its having been clarified or supported (or both) by one's reason on the basis of analysis and argument. Such clarification would involve, for example, the removal of ambiguities which make for misunderstanding, the drawing out of logical implications of the proposition of faith, and the rebutting of *prima facie* reasonable objections to the meaningfulness or the truth of such propositions."<sup>6</sup> Besides, "what the gaining of understanding provides, insofar as it is achieved, is an increasingly informed acquaintance with the one who is, initially, trusted in faith, and so a richer experience. Here the dominant contrast is between faith and vision, or faith and sight; between the gradual replacement of what is indirect with what is direct as when, having had a letter from someone, I then meet them and make their acquaintance directly and more fully. One might even say that the personal trust of faith provides the one who trusts with a minimal direct acquaintance, as the one who receives a personal letter is minimally directly acquainted with the sender, in friendship, a person may come to know his friend better and better."<sup>7</sup>

If we think so, knowledge and faith will not contradict to each other. "Knowledge, even the incomplete knowledge of this life, is not incompatible with faith, because faith for Augustine is not primarily belief, but it is primarily reliance upon what is known; it is the act of relying on what is known, as distinct from trusting and departing from what is known. It is the role of faith to renew this natura for innate knowledge of God. What reason gives is a clarification and intensification of a persons own natural and direct (non-inferential) knowledge of God. Faith is thus at least partly a moral agency; through it the perversity of the will is progressively removed, a perversity which until it is fully removed blocs further knowledge. As it is

<sup>1</sup> Norman Geisler, *What Augustine Says*, p. 16. Oregon, 1982.

<sup>2</sup> Augustinus, *De Magistro* XI.

<sup>3</sup> Augustinus, *De Utilitate Credendi* XXV.

<sup>4</sup> Donald X. Burt, *Ibid.*, p. 46.

<sup>5</sup> Paul Helm, *Ibid.*, p.40.

<sup>6</sup> *Ibid.*, p. 37.

<sup>7</sup> *Ibid.*, p. 10.

removed, the knowledge progresses through love of object of faith and increased acquainted with it, in a sort of reciprocal, upward spiral."<sup>1</sup>

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<sup>1</sup> *Ibid.*, p. 45.

## Managing Ethnic Relations Using Local Wisdom Approaches: the Case of Malaysia

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### Abstract

*In the period of the 20th century we witnessed the new shape of the pattern of Malaysian society. The British developed the peninsular Malaysian economy on a pattern based on the production of raw materials for export such as rubber, timber, oil-palm, iron ore and tin, while foodstuffs and manufactured goods were imported from the metropolitan centres. Ironically, it has been argued that the local Malay population for political, cultural and other reasons was not interested in selling its labour force in these export oriented industries and therefore cheap immigrant labourers from China and India were brought in large numbers. Thus a multi-ethnic society was created; the Malays, the Chinese, the Indians and others working in different jobs but living side by side in apparent harmony. One of the least known developments of the period was the growing political consciousness among both the indigenous and the immigrant population. Islamic reformists (a West Asian and Indian phenomenon) and Chinese revolutionary ideas found enthusiastic support among segments of the people here. Most of the Malay reformists confined their campaign to the press and the few religious schools, better known as Sekolah Pondok (or Huts School) which they had established. Until now most Malaysians have categorised themselves and others by communal categories, which usually take preference over class, regional, and employment basis, among other things. To explore and identify these communal issues we shall look at and examine some of its indicators such as the profile of ethnicity, inter-communal relations, organisation of communal politics, the use of symbols system, the language issue, and the economics growth and its distribution. This paper, which is the analysis of the Malaysian style of the conflict management process, will survey the methods and techniques used to overcome the problem. This is necessary if we are to understand the nature of the conflict management process in Malaysia. This paper will look at how the government institutionalised and socialised the local wisdom values (particularly at the community level) as a mechanism in conflict management and how it has developed. Management of the conflict and promotion of ethnic unity as well as national integration cannot be achieved just by ad hoc experiments but through careful planning in the various aspects of the social life of society.*

**Keywords:** Local Wisdom, Ethnic Relations, Conflict management, Government, Non-Governmental Organisation.

### Introduction

This paper will discuss about the issues of inter-ethnic management in Malaysia, and will do two things. Firstly, it will look at community-based initiatives, particularly by non-governmental organisations which complement government initiatives of ethnic conflict management. Secondly, this paper will analyse government and non-governmental organisation initiatives in addressing the issues of ethnic relations using the values of local wisdom. Although this paper is not about how non-governmental organizations tackle ethnic divisions explicitly, it is about inter-community and cross-community relations at local levels which includes many NGO initiatives as well as government policies. The aim is to illuminate the scope for complementary relations between government and local community based initiatives, and we will be using some of the Mari Fitzduff's<sup>1</sup> typology to illustrate this point. Analysis of Inter-ethnic conflict management efforts by the government and community-based initiatives: a local wisdom perspectives.

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<sup>1</sup> Mari Fitzduff is one of the leading peace activist who made a tremendous effort particularly in the community relations field trying to promote understanding between the antagonist groups in Northern Ireland. With the research and practitioner background and training in conflict resolution, she generated a "Typology of Community Relations Work" in 1989 in order to assist in the development of community relations work in Northern Ireland. This typology is derived from a survey of different kinds of approaches to the community relations work in Northern Ireland. The typology that she has formulated provide a guide to shows where the theory is applied into practice at community level. For this reason this typology gives a direction of the possibilities that the situation in Malaysia can be applied

The discussion takes this exploration a stage further with an assessment of government and local-level (especially NGOs) initiatives of ethnic conflict management. These assessments are based within the frameworks of three of Mari Fitzduff's typology of cross-community relations work under the spectrum of local wisdom (i.e., Anti-Sectarian Work, Cultural Traditions Work (CTW), and Conflict Resolution Work (CRW)). The conflict management process will be analysed according to three broad descriptive account as follows: i. Rationale, ii. Examples of Work, and iii. Analysis,

### **Anti-Sectarian Work**

**Rationale:** The core practice of ethnic relations management in Malaysia is equality, and a fairer share of the national wealth, irrespective of ethnicity.

**Examples of work:** The New Economic Policy (NEP), language and religious policies, and the Rukunegara.(or National Ideology).

**Analysis:** The NEP has tried to promote equality in the country 's socio-economic distribution. Under this NEP program, the technique used is to help the poor group without jeopardising the interests of the rich group. The objective is, to equalize the opportunities and interests of all groups (Lee Hock Guan, 2013, Gomez and Saravanamuttu, 2013). Dr. Chandra Muzaffar (1997), on commenting this issue says;

“As a society which was underdeveloped economically during colonial and feudal era, thus, the bumiputera need a special help and protection. The protection was given through several phases in the Constitution, which is known as “Bumiputera Special Privilege”. Without this privilege, there is a high possibility that Bumiputera cannot develop in several economic and social areas, including higher education, become the member of a professional, business and industrial body. Even though the government has ascertained that the bumiputera’s special privilege cannot be threatened by any parties, they also make sure that non-bumiputera will also have the opportunity to venture in all economy sectors, through open market”.

A fair approach to the use of language was also implemented. As the result from the Musyawarah by community leaders, who represented their community interest, Malay language was accepted as the lingua franca and as the official language since it is the most dominant one and originated from this part of the world. However, other languages are also used freely. Similarly, in terms of religious practice, Malaysian citizens are also given the freedom to practice their own religion. This freedom and the right to practice is secured by the constitution. According to Chandra Muzaffar (1997),

“Islam has a close relationship with the history and evolution of Malaysian society, therefore it is declared as an official religion. Meanwhile, other religions practiced by majority of other ethnic within the Constitution. The equalization in practicing their own religions is fair to both Muslim and non-Muslim”.

As far as the work relevant to anti-sectarian areas is concerned, Chandra suggested that community leaders in general and community relations officers in particular must develop a more profound understanding of ethnic trend in the post 1970s. There are major developments which are taking place in both the Malay and non-Malay communities as far as ethnic relations go. Within the Malay community for instance, the following factors have resulted in a psychologically more secure response to ethnicity: (a) the resolution of the language and culture issue; (b) the stronger position of Islam; (c) greater economic security and mobility for the middle and upper classes; (d) a stable political position; and (e) expansion of the Malay middle-class. Consequently, an influential stratum of Malay society feels that it is now in a situation to come to grips with ethnic questions. This is particularly true to certain young Muslim groups. Similarly, among non-Malays, one of the major obstacles to communicate with the Malays in the past was the absence of a common language. According to Chandra, this is fast disappearing among young non-Malays. As Malays and non-Malays develop a common basis for communication, he suggested that certain common values and ideals can now be nurtured which can hold both parties together. To equip them for the challenges ahead, he referred back to his idea of 1980, which suggested the need for more comprehensive training programmes to be held.

“There should be a permanent community relations training institute in which short-term and long-term courses on ethnic problem and

how to deal with can be conducted. Priority should be given to the people involve in community relations work”.

The Rukunegara Project is also relevant to anti-sectarian work. Faaland, Parkinson and Saniman (1990; 2003) stressed that;

“The political statesmanship and foresight of this approach (Rukunegara) to nation building by means of consensus instead of confrontation and through frank but closed door discussions of sensitive national issues, has been demonstrated by the uninterrupted political stability of the country from 1969 to recent years”

According to Faaland (et.al), the New Economic Policy was formulated by the government after the riot of 1969 as ‘the economic foundation’ of the Rukunegara 1. The importance of the Rukunegara as the pillar of social stabilization was stressed by Tun Abdul Razak. He argued that “important though the ideals of Rukunegara and consensus building might be, the battle for unity would be won or lost in the economic and social restructuring of the nation. The NEP was therefore designed with the intention of giving content and substance to the new Malaysia ideology of nation building as embodied by the Rukunegara. It was based on the construction of new alliances of moderate political elements within the society and on a new formula”

The implementation of several policies, such as the NEP as well as action plans taken by the Department of National Unity is aligned with the objective of providing an equal opportunity to all parties in all life aspects. Community-based organisation also played their role to help bolster the government effort. This is the anti-sectarian work coincides with the anti-sectarian activities described by Fitzduff, which are to decrease discrimination at the individual, group and institutional levels.

### **Cultural Traditions Work (CTW).**

Rationale: Pluralism within and between the multi-ethnic society should be respected. Differences such as that in culture and religion should not regarded as a threat to one another.

Examples of work: Rukun Tetangga, 2 Unity Kindergarten, School, Mass Media.

Analysis: Most of the aspects highlighted by Fitzduff are similar to the ethnic conflict management practice in Malaysia. The neighbourhood methods (particularly through Rukun Tetangga organisations) of informal interactions has contributed to closer inter-ethnic co-operation. According to Wan Halim (1996),

“ this is because of the informal nature of neighbourhood interaction and its intimate social and emotional environment which is rarely

found in other fields such as the work-place. Relationship within a neighbourhood tends to be more personal and informal. When

compared to the work-place, it is more relaxing and natural and the relationship, whether positive or negative tends to be more durable.

Since neighbourhood interaction also involves not just individuals but families as a whole, it is potentially more important in

promoting inter-group understanding.”

The CTW activities are geared towards a spirit of tolerance amongst children and have had an effective impact. The Unity Kindergarten programme has attracted voluntary participation at all levels from the parents and teachers as well as from pupils of different ethnic groups and background. In fact the Unity Kindergarten is the most effective parameter in combining the participation from the government and private sectors and also the public in the form of cross-ethnicity. (Government of Malaysia, 2014)

<sup>1</sup> The words of the Rukunegara are perhaps better understood and appreciated by those with a fluent command of Bahasa Malaysia. It has sometimes been translated into English as the National Ideology which is not a very accurate or indeed helpful translation. Rukunegara should be regarded as the pillars of the nation. The nation must be firmly established upon all the pillars of the Rukunegara which it would be the duty of everyone to uphold and defend. All the pillars are equally inviolate, all are necessary to maintain the equilibrium and structure of the nation (Ghazali Shafie)

<sup>2</sup> The Rukun Tetangga (Neighbourhood Organisation) scheme was introduced on 29th August 1975, under the Essential (Rukun Tetangga) Regulation 1975, (P.U (A) (279/75). Through this scheme, the government aim was to monitor the unity among the population in the residential areas using neighbourhood based activities.

The mass-media also played a major role in the CTW. According to Wan Halim, inter-ethnic relations are “influenced by the kinds of information that are generated, evaluative statements made concerning the ethnic groups, and model of behaviour towards in-group and outgroups.” The electronic media (such as internet, television, and radio) and printed media (such as newspaper, magazine and book) play an important role in developing the society, and at the same time functions as a major agent in the socialisation process. Therefore, we can utilise the media to promote unity, “as primary face-to-face social contact” declines in frequency and intensity, particularly in a modern urban society, secondary sources of information through the media increases in relative significance (Utusan Malaysia, 2014). However, it is important for us to accept the fact that a totally free media is rare. The media will play a positive or negative role, depending on the situation such as political influences in the society. This is due to the media’s own orientation and objectives.

Being optimistic, Wan Halim argues that it is important that mass media is made aware of its potential role and responsibility in the society. The policy maker has come out with certain rules and regulations in order to safeguard offending ethnic sensitivities (Chandra Muzaffar, 1986) These rules and regulation, though essential, constitute the passive aspect of inter-ethnic promotion. Therefore, they need to be complemented with the active efforts in terms of constructive social themes in media reporting. Wan Halim suggested that research and analysis needs to be done on how the ‘role and regulations came into being, and whether they are based on correct assumptions or merely ad hoc inventions’. Furthermore, he suggested that content analysis of mass media coverage should be carried out for all levels of society in order to ‘identify the degree to which mass-media is helping to produce future generations who are proud of their Malaysian identity’.

Education is also one of the vital parameters in CTW. Despite the fact that education has played its role in strengthening ethnic relationships, there are still a lot of unsettled agendas. According to Lee Hock Guan (2013) the Malays were underrepresented in higher education was already recognised by the Carr-Saunders Commission which proposed ‘appropriate adjustments’ to increase the number of qualified Malay students for admission into higher education but without compromising the merit-based admissions policy. This matter has captured the interests of many scholars and social analysts. Wan Halim, argues that “bringing together the children of the various ethnic groups by itself, does not guarantee the development of goodwill and understanding since it may well produce the opposite result.” Wan Halim, who has been involved in a wide range of research in this area, suggested that close scrutiny needed to be given to specific aspects of the educational system such as;

i) Curriculum. The civics and moral education aspects of the curriculum need to be strengthened in order to promote a sense of national

pride. Other subjects such as geography, history and natural sciences should also be geared towards increasing the knowledge of the

students concerning the past, present and future development of the country.

ii) Contact. The Classroom and school environment should encourage inter-ethnic contact and co-operation and efforts at desegregation

need to be a clearly defined policy.

iii) Extra-curricular activities. These should not ignore the need to integrate the various ethnic groups. Through group activities,

subconscious learning can be fostered which will promote more positive inter-ethnic perception and attitudes.

iv) Student-teacher relationship. Teacher need to project a positive and unbiased image of themselves particularly when dealing with

students of other ethnic groups. No amount of preaching on positive values will produce much effect if prejudice attitudes and

favouritism are demonstrated by teachers in their daily contact with the students.

To conclude, the CTW is contributing towards establishing a stable social relationship and should be continued and strengthened.

### **Conflict Resolution Work (CRW).**

Rationale: Within the Malaysian context, conflict resolution work needed to tackle both tangible and intangible sources of ethnic problem.

Examples of work: The New Economic Policy (NEP) and the Department of National Unity (DNU) programmes.

Analysis: Conflict resolution work is referred to the efforts undertaken by the DNU and the NEP to tackle the underlying sources of ethnic problem, in order to achieve positive peace in the society. In this context, the main task of the DNU is to strengthen "the ethnic relations network". For instance, the cross-community trips, neighbourhood work camp, neighbourhood campaign, integration outdoor activities, recreation, family picnic and gotong-royong have been utilised by the DNU in the process of building and strengthening "the ethnic relations network". At the same time the NEP programs aim to bridge the socio-economic gap between the ethnic groups in achieving the social justice. Thus, in this context both DNU and NEP programs are compatible with the ultimate objective of conflict resolution technique, to change the situation and remove the underlying source of conflict.

To enhance the areas and impacts of the CRW, Chandra Muzaffar suggested that the government should help established an independent, autonomous research institute on ethnic relations. The institute has to be completely independent if it is to function well. This institute has to look at state policies as they affect various spheres of society just as it has to study interaction among communities, conflict-generating situations, ethnic stereotypes, the emergence and perpetuation of prejudice, cultural commonalities and the role of universal ethical values in the nation-building process. Chandra said that in more ways than one, Malaysia is indeed the best available laboratory for the analysis of ethnic relations. He emphasised that research by individual scholars whether local or foreign is no substitute for the sort of institution that is being suggested here for what is sorely needed is a systematic, holistic approach to the ethnic problem which garners the skills of different type of specialists in a gigantic intellectual effort that will span a few decades. From time to time, the institute could of course make recommendations to Parliament to which it would be directly responsible. This suggestions, if accepted, could be implemented by the Community-based organisations.

### Conclusion.

From the discussion above it is clear that considerable effort in conflict management related to the ethnic issue in Malaysia has been carried out. These paper also show that Fitzduff's typology of community relations work have a useful function in investigating and analysing these approaches by the government as well as community based organisations in managing inter-ethnic related conflict. The approach taken by the government in handling this issue is mainly through the legislative procedures. This approach coincided with the explanation by Mc Garry and O'Leary (1993), regarding the taxonomy of the macro political form in the ethnic conflict regulation framework. As a third party, the government (who possesses political power) became the main actor and 'arbiter' in order to regulate problems related to inter-ethnic relations. The formation of the New Economic Policy, as well as the establishment of the Department of National Unity are relevant examples of the government's roles.

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## Negotiating boundaries: Gender and social identities in the Ottoman Christian communities; the case of divorces (1647-1923)

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### Abstract

*The aim of this study is to identify the negotiation of boundaries between the social identities of gender. This process focuses on the prevailing perceptions of the social role of the man and the woman. It attempts to identify the different reasons for seeking divorce between men and women and the integration of these differences in a social context and determine the qualitative characteristics of the gender ratio of women and men that is articulated by the invocation of divorce. This research has a historical character and focuses on the period from 1647 to 1923 and is realized within the Ottoman Orthodox Christian communities and the divorces issued by these. This study uses content analysis to examine divorces. The most significant source of data collection, for the content analysis, constituted published and unpublished Codes of Metropolises from the Ottoman Christian communities, such as the Metropolitan Codes of: Larissa:1647-1868, Mytilini:1705-1773, Veria:1825-1862, Triikalon:1828-1865, Moglenon & Florinas:1901-1909. The process of divorce was a different function of the Spiritual Courts within a predetermined law. Issues, like alimony after the dissolution of marriage, dowry cases, disputes arising as a consequence of dissolution of marriage or betrothal, are listed in the Codes of the Spiritual Courts. In this study, the gender is used as a social and cultural construction. Also, it is argued that the social gender identity is formed through a process of 'performativity', namely, through adaptation on the dominant social ideals.*

**Keywords:**Divorces, Ottoman Christian Communities, Stereotypes, Gender Identities, Social Identities.

### Introduction

The dissolution of marriage from divorces augmented in frequency, since the Restoration until the 20th century. The history of divorce became an issue for international literature (Stone, 1990; Phillips, 1991; Stone, 1993; Seymour, 2006). As Riessman (1990), suggested, gender is linked with different perceptions of what a marriage should provide and differences on reasons of divorces. In this study, gender (Mpakalaki, 1993, 1994 & 2013) is seen as a social and cultural construction (Rosaldo & Lamphere, 1974; Leacock, 1978; Ortner & Whitehead, 1980; Papataxiarchis & Paradellis, 1992; Skouteri-Didaskalou, 1991; Evans, 2003; Maruani, 2005; Kantsa, Moutafi&Papataxiarchis, 2010). At the same time it asserts that gender converses with the concepts of class, race or ethnicity (Lord, 2005; Moore, 2006) and that the sense of social gender identity is formed through a process of 'performativity', ie adjusting the dominator in given society ideals (Butler, 1997). Specifically, the aim of this study is to evaluate, within the specific framework of the Orthodox Christian communities of the Ottoman Empire (Papastathis, 1984), and with field focus the divorces issued from these, the process of negotiating the boundaries between the social identities of gender. A process which takes into account the prevailing perceptions about the social role of man and woman, as members of specific kinds of religious communities, these of Orthodox Christian Communities, as formed and administrated in the Ottoman Empire. For the Orthodox Church, in the period of our study (1647-1923) the legality of divorce is given, if there are specific statutory preconditions allowing the dissolution of the marriage up to two times (Papadakis, 2008; Academic Dictionaries and Encyclopedias, 2014). The legislative framework for the divorces, of the Ottoman Christian communities, is divided into three main periods: 1. Early judicial institutions in

privileged communities (1647-1774): in 1453, after the conquest of Istanbul, Ottomans recognized the Orthodox Christian church the privilege of keeping the same law, as well as the judicial jurisdiction, on matters of family and inheritance law (Paparrigopoulos, 1955; Pantazopoulos, 1947; Pantazopoulos, 1968). 2. Gradual establishment of the bourgeoisie (1775 - 1856): The organization of the ecclesiastical court was not uniform, it varied by district and determined by local customs and Regulations. The Orthodox church, apart from judicial powers, gained, with the passage of time dietary jurisdictions as well, which were recognised indirectly by the Ottoman power. (Pantazopoulos, 1947). In insular Greece, in some cases, thanks to privileges granted by the Sultan 'achtinamedes', Community Courts developed as well. (Siatras, 1997; Bakalopoulos, 1991; Zotos, 1938). 3. Development of the Community institutions and nationalism (1857-1923): The jurisdiction of the ecclesiastical courts, which were once widespread, limited during the period of Tanzimat, when the power went to institutional organized communities (Papastathis, 1984; Theotokas, 1897). Attempts to homogenize the administration of justice by the Community courts occurred during the period of the Ottoman reforms, the General Regulations of the Patriarchate and the Synodical Circulars of 17 January 1891 and 31 January 1891. According to 'veziriki Circular 17 January 1891' Patriarchal courts, the period of the Tanzimat reforms, were three: Spiritual Ecclesiastical Court, the Holy Synod and the Permanent Gross Council. The provincial ecclesiastical courts were two kinds: Spiritual and Gross introduced at the headquarters of the Metropolis. They judged first instances, the differences of Christians and also, on appeal, the judicial decisions of the first instance court cases, given in the courts of the bishops who belonged to the Metropolis. The courts were located in the headquarters of Metropolis and Bishops were set up in accordance with the customs on site and Regulations. The Provincial Spiritual Courts comprised of between two and four clerics, while the Metropolitan or his Commissioner presided. The Members of the Spiritual Courts were appointed by the on site Metropolitan, amongst the most educated clergy. The Spiritual Courts judged in camera. Their responsibilities were: on the betrothal, on the formation and termination of marriage, alimony after the dissolution of marriage, and on the issues related to marriage. The Gross Courts comprised of between five to six members of the populace and from one or more clerics. The members of the populace of these Courts were elected by the habitants of their region and the clerics were appointed by the Metropolitan and publicly judged the material matters falling under the jurisdiction of the Ecclesiastical Courts. These judicial matters related to wills, votive papers (vakfije), alimony after the dissolution of marriage, trachoma cases and dowry, disputes arising, as consequences of the marriage or betrothal dissolution or, intestate succession cases, demands of the parties, cases of legalization and adoption of childcases, issues of will and codicil, monastic disputes, custody and guardianship issues, issues its own clergy and monks, on the grounds that they were material differences. The divorce proceedings were a separate operation of Spiritual Courts which fell within an identified case, defined by the Circular on divorce of the years 1882 and 1894. The claim presented under Commercial Law (articles 1-2) in which was stated: treatment exposed dispute writings on duty. The jurisdiction of the ecclesiastical courts in matters of divorce included: a) separation from table and bed, b) the sentence of divorce, c) the reconstitution of a dissolved marriage. The separation from table and bed or otherwise, the local dimension of husbands was different from that in force in the Western Church. The Spiritual Court drew the grant within 15 days in order to create the conditions for reconciliation and if the deadline expired without achieving the desired result, the Court imposed 3, 6 or 9 months separation on them, defining the place of residence of the wife and requiring the husband to pay for the amount of time required for maintenance and for the maintenance of their children. The obtaining of the divorce was realised if the woman was invited three times in writing and refused to appear, assuming of course that there were compelling and legitimate reasons that justified the disjunction. In these cases the spiritual court could proceed to the obtaining of the divorce even in absentia. But it must notify its decision to the woman and indicate that they had the right to request reopening. If they did not, then the divorce was considered intact and valid (Theotokas, 1897). In case of a marriage dissolution at fault with a man, the woman took back her dowry, the premarital donation and part of the estate of her husband, which was an amount equal to one third of the pre-nuptial donation (Proceedings of Holy Synod, 11 December 1869, Proceedings of Holy Synod, 25 October 1871). The laws under which the administration of justice was, were: a) The Rules of the Apostles, local and Ecumenical Councils, b) Roman law, Justinian, in the mean time per Vasilikois and Armenopolou, c) conditions, volumes, sigils, notes, evidence of the Ecumenical Patriarchate, d) prevailing local customs and traditions and e) Ottoman commercial procedure, Annex of commercial law and the law on the capital of Civil Procedure (Theotokas, 1897).

## Method

As they testify the inquiring questions that were reported, the management of subject presupposes the coupling of two methods: a) the historical hermeneutics (Cohen & Manion, 1994) which develops the sources of the historical period and

as well as, b) content analysis (Berelson, 1952; Kyriazi, 2011) of reasons of divorces that is included in the Code of Intellectual Courts (1901-1909). Tables developed for a more detailed and systematic presentation of quantitative data (Bell, 1993). This historical research was based on a random sample, determined by already existing data (Cohen & Manion, 1994), as a consequence cannot be evaluated as reliable (Bell, 1993) as to capture the whole picture of divorces of Orthodox communities in Ottoman Empire. This study, even without generalizable results, is a first attempt to approach the issue in a wide geographical and temporal context. Also, research can reliably provide us important information about individual study areas.

### Research subject

Particularly extensive is the geographical boundaries of research, designed to study exclusively Orthodox communities of the Ottoman Empire. Specifically, the study includes areas: a) insular Greece and specifically the area of the Aegean (Mytilene), b) from central Greece (Larissa and Trikala), and c) from Macedonia (Florina and Veria). These geographical regions of the Ottoman Empire, were divided into two categories: a) those who finally were included in the Greek State and are studied on the issue of divorces the period before their integration in Greece: Larissa (1647-1868) and Trikala (1828-1865) which were included in Greece in 1881, Mytilene (1705-1773), Veria (1825-1862) and Florina (1901-1909) included in Greece in 1912 (History of Greek Nation, 1977), and b) those who finally were included in Turkey as Adrianople (1856-1923), which is studied on the issue of divorces until the dissolution of the Ottoman empire and the establishment of modern Turkey in 1923 (Fragoulis, 2012), in which eventually forms the city. The period 1647-1911, which was chosen to study the divorces, spans four centuries, from the 17th century until the 20th. This period was divided according to distinct historical sections, on subperiods: a) 1647-1774 season early judicial institutions unprivileged communities, b) 1775 – 1856 period the gradual establishment of the bourgeoisie, and c) 1857-1911 after the Tanzimat period of growth Community institutions and nationalism.

### Materials

Research was based on primary sources of data, published and unpublished: a) unpublished: 1) Code of Daniel (1825-1862) Veria, 2) 'GAK, ABE 27 ΣΑΕ 198', Code of Decisions of Spiritual Court 1901-1909. His title is: 'Codex of Decisions'. 3) GAK, Historical Archive of Macedonia, GRGSA-IAM\_REL003, Holy Metropolis of Adrianople [1856 – 1944]. Retrieved from <http://arxeiomnimon.gak.gr/>. And b) published: 1) Spanos, A. (2006). Codex A' of Holy Metropolis of Mytilene (18th century.). Mytilene: Publications of Holy Metropolis of Metilene, 2) Kaloussios, D. (2009). The Codex of Metropolis of Larissa, EBE 1472: 1647-1868. Larissa: Thessalian Calendar, 3) Nimas, Th. (2013). The B' Codex Trikkis (Trikalon) or Codex Barlaam, number 287, The religious, social, economic and educational history of Trikala from 1828 to 1865. Trikala: Literary Historical Association (F.I.L.O.S.) Trikala.

### Results

The main aim of this study was to evaluate if divorces are an attempt of a renegotiation and reconstruction of gender identities and for this reason the examination of those divorces in the codes of the Metropolises is of exceptional interest. In individual research, goals attempted: a) the identification of different reasons for seeking divorce between men and women and the integration of these differences in social context, and b) the mapping of the qualitative characteristics of the gender ratio of women and men which was articulated by the invocation of the divorce.

### Findings of Bishops

Divorces recorded in Codices:

1. Metropolis of Larissa (1647-1868): The total number of divorces in the code is 21 and extend over a period of 221 years (1647-1868). The average ie the submission of a recommendation for divorce is 0,09 a year.
2. Metropolis of Mytilini (1705-1773): The total number of divorces in the code is 28 and extend over a period of 68 years (1705-1773). The average ie the submission of a recommendation for divorce is 0.41 year.

3. Metropolis of Veroia (1825-1862): The total number of divorces in the code is 56 and extend over a period of 37 years (1825-1862). The average ie the submission of a recommendation for divorce is 0,66 year.
4. Metropolis of Trikkis (1828-1865): The total number of divorces in the code is 8 and extend over a period of 37 years (1828 to 1865). The average ie the submission of a recommendation for divorce is 0.21 year.
5. Metropolis of Moglenon and Florinas (1901-1909): The Spiritual Courts functioned from 1901 in Florina on Metropolitan Ioannikios ('GAK, ABE 27 ΣΑΕ 198', Code of Decisions of Spiritual Court 1901-1909. His title is: 'Codex of Decisions'), while the community (Iliadou-Tachou, 2003-2004; Iliadou-Tachou, 2004; Andreou & Iliadou-Tachou,2007) had already established in 1905 on Metropolitan Anthimos (Iliadou-Tachou, 2001). The decisions of Spiritual and Gross Courts were recorded in the Code of Spiritual and Gross Courts of Metropolis Moglenon and Florina ('GAK, ABE 27 ΣΑΕ 198', Code of Decisions of Spiritual Court 1901-1909. His title is: 'Codex of Decisions'),The total number of divorces in the code is 32 and extend over a period of 9 years (1901-1909). The mean ie the submission of a recommendation for divorce is 3.55 year. The number seems excessive, not in proportion to the polulation (The Greek Orthodox community of Florina consisted, in accordance with the electoral list in1914-1915 in many communities: the population group was superior to that of Muslims who accounted for 54.2% of the total population, second largest religious group was the Christians who accounted for 42.8% of the population. The point, however, must be stressed that the group was split into the Orthodox community which recognized the jurisdiction of the Bishop Moglenon and exarchate community which was under the jurisdiction of the Bulgarian Exarch, although exarchikos Metropolitan did not exist in the city, but in relation to the cultural context of the region which distinguished: a) the asymmetry of gender relations, b) for the dominant discourse of the Church, which viewed divorce as a threat to the existence of society, and c) for traditional power structures within the family.
6. Metropolis of Adrianople (1856-1923): The total number of divorces in the code is 20 and extend over a period of 67 years (1856 to 1923). The average ie the submission of a recommendation for divorce is 0.29 year.

### Finding on dissolution of Engagements

In Larissa we have a dissolution of Engagement (1752) due to the abandonment of fiancée. The dissolution was a request of the fiancée due to four year abandonment (Kaloussios, 2009).

In Mytilene we have a dissolution of Engagement (1759) due to the abandonment of fiancée. The dissolution was a request of the fiancée due to three year abandonment (Spanos, 2006).

In Florina we have a dissolution of Engagement (1907) due to the will of fiance. The dissolution of engagement was judged against the fiance,becauseof false accusations against the fiancée ('GAK, ABE 27 ΣΑΕ 198', Code of Decisions of Spiritual Court 1901-1909. His title is: 'Codex of Decisions').

In Adrianople we have a dissolution of Engagement (1893) due to will of fiancée (unknown reason), (GAK, Historical Archive of Macedonia, GRGSA-IAM\_REL003, Holy Metropolis of Adrianople [1856 – 1944]. Retrieved from <http://arxeiomnimon.gak.gr/>).

### Discussion

According to table 2, the gender distribution on 165 requests of divorces examined, suggests that the common request of divorce accounts only a percentage of 16,38%. It is clear that divorces were probably result of contest, in a percentage of (83,63%), between husbands. Furthermore, it is indisputable that on the one hand women represented the main percentage of requests, almost one to two requests (56%), and on the other hand men account for almost one per third of requests (30,30%). The percentages, of the 'gendered' requests of divorces, allow us to identify the divorces as 'female' and 'male'. However, the quantitative dominance of 'female' requests of divorce, against 'men' requests, does not allow us to identify divorce as feminine. Although, even the approximate equivalence-of-'female' and 'masculine' divorce, is given, it requires interpretation. We made the hypothesis, that could be interpreted on the basis that the man has a greater interest in preserving marriage, than the woman after marriage and we focus in this context in the spearhead of gender imbalance and with the institutional imposition of male hegemony. In contrast, the 'female' divorce predominance over the 'male', which should be mainly attributed to a dire relationship of women in this cultural context, is not necessarily attributed to a dynamic awakening. It is interesting to examine the main reason of a woman siking divorce. The main reason for woman divorces was 'abandonment' of the wife by the husband (37,50%), while 'abandonment' of the wife represented only the

16% of husband requests. The most common reason of 'female' divorces are dropping of women by their husbands, mainly due to migration, which is in line with the socio-cultural context of space. It is also interesting that abandonment of fiancée seems to be a significant reason for betrothal dissolution. Even so, the ratio of 'female' divorce indicate a female attempt to rebuild the social contexts within a new marriage after the 'abandonment'. The implementation of the provision of the Spiritual Courts, lies in the existence of a significant social need: the pursuit of a second marriage from the women's side, in order to survive. It is therefore obvious that the marriage which demonstrates the magnitude of asymmetry of gendered identities, serves in this case as a life boat for the weak social woman, which after the divorce, falls to new forms of dependency. Reasons for women seeking a divorce are usually due to: wife abuse (10,23%) and husband's inability to provide basic everyday expences (13,64%). Generally in divorces, it is seen that low living standards, renders unrealistic the establishment of alimoni, allowances etc. for the satisfaction of women persecuted, while it is clear that some of the compromises that men accept, should be attributed to their inability to pay their own expenses, or alimony, due to a low social - economic status. The reasons for men seeking a divorce differ to those that women seek a divorce. It is also very important that men, in their turn, when requests divorces, use the social construction of gender in order to make sense of realities of gender relations in their daily life and to enhance their hegemony. Men claim management of the sexuality of women, denouncing adultery (24%), as well as their ability to perform housework (8%). Another parameter in 'male' divorces is the impossibility of childbearing women (10%). Having children is connected with the idea of masculinity, as this is perceived in specific cultural contexts. It is also, worth mentioning, that the religious differences (Orthodox-schismaticos) act decisively: the 'female' divorces are easier when directed against schismatic spouse, something laid down by the case law, namely that the change of religion, and the accession for example in the exarchate of one of the spouses after marriage, is a cause for divorce. A general onservation would be that during the procedure of divorces the intervention of priests and notables is allowed, intervention is a kind of public opinion with witness features on outcome of the divorce. Neighbors finally function as witnesses and their opinion is weighty. The intrusion but the above mentioned, not only contributes to the fragmentation of the dominant discourse and the creation of alternatives, but borrows the same cultural components and replicates the hierarchy gender identities in the communities.

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## Tables

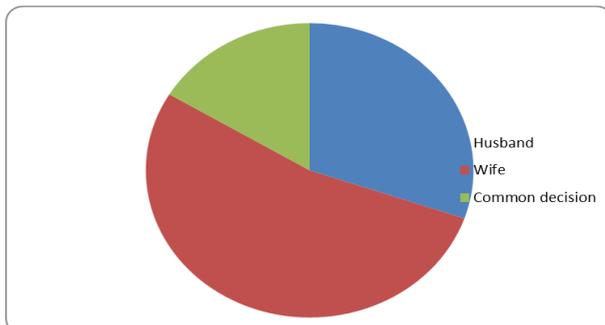
Table 1. Number and requests of divorces

Metropolis	Years	Number of divorces	Average per year	Request of divorce		
				Husband	Wife	Common decision
Larissa	1647-1868	21	0,09	6	10	5
Mytilene	1705-1773	28	0,41	10	14	4
Trikkis	1828-1865	8	0,21	1	0	7
Moglenon & Florinis	1901-1909	32	3,55	12	19	1
Andrianople	1856-1923	20	0,29	8	12	-
Veroia	1825-1862	56	0,66	13	33	10
Total		165		50	88	27

Table 2. Percentages of the number of requests of divorces

	Number of divorces	Percentage of Divorces
Husband request	50	30,30%
Wife request	88	53,33%
Common decision	27	16,36%
Total	165	100,00%

Graph 1: Number of requests of divorces per men, women and a common decision



## Nature Of Certain Criminal Acts Against The Property Foreseen By Kosovo Legislation Overlooked By Material Target

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### Abstract

*Crimes against property in general and in particular those directed against property represent a challenge to the country's economic development, the legal system in general, and the wealth of natural and legal persons. Kosovo and other countries also in the region, have given legal criminal protection to the public and private property, through criminal legislation and other legal acts. Therefore my definition in this paper is to analyze several offenses against property, with special emphasis against property, observed by material target. Nowadays there is no doubt that this group of offense. Cause to Kosovo's economy and its citizens millions of euros, which fact we actually support, often because, whether the property is either public or private, is attacked by the negligent actions of different persons, through arson, destruction of public installations, disposal, illegal occupation of real estate, actions that Kosovo Criminal Code of 2012, which is in power, has incriminated them as criminal offenses. From these criminal actions, are created illegal material benefits, which seriously harm the economy and create informal economy, harm legal competition, raise prices, and as a result of all this, is the damage caused to the state's economic development and social welfare in general. In this work, these criminal offenses will be treated by the material target also, the similarities that have with offenses against economy. At the end of the paper, i will analyze measures and penalties that the Kosovo criminal legislation provides for the perpetrators of these acts.*

**Keywords:** Target material, penal code, criminal offenses, property, criminal sanction.

### General overview

Criminal offenses as illegal acts, by which are violated, legal benefits protected by law, such as: human life, property, economy, freedom of movement, health, etc. in all criminal legislation, were given to them a legal –criminal protection. Kosovo criminal legislation has arranged these criminal offences in a special groups, however seeing the defense target of these criminal offenses, it is often difficult to make a complete separation between them. What makes these offenses not differ among themselves, are basic elements of criminal offense such as: Human action, its definition by law, illegality, guilt and punishment<sup>1</sup>. However, despite the common fundamental elements, that criminal offenses have, they have their own specifications by material target and material goods that they threat. Crimes against property have similarity with offenses against the economy, official duty or as provided in the Criminal Code of Kosovo in 2012, named "official corruption and criminal offenses against official duty"<sup>2</sup>. Criminal acts in general and especially those against property, are similar to other groups of offenses. This correlation exists for the fact that, they have common essential offense elements and the same defense target. For these reasons, difficulties emerge for lawmakers, to make a clear separation, and to arrange some of the offenses in the appropriate group. This difficulty is particularly pronounced for offenses against the economy and wealth. In this group of criminal offenses, target against whose is taken the unlawful action, Is the property of a natural or legal person and the purpose of perpetrators is unlawful acquisition of wealth.

Therefore there are hardly noticed differences between offenses against the economy and property. Therefore, there are differences present, at the persons who commit these criminal offenses, where they are different, such as: Crimes against economy such as: causing bankruptcy, creditors damage or misuse of economic authorizations, can perform only those persons, who are responsible in business organization or legal persons.<sup>3</sup> While fraud as a crime against property<sup>4</sup>, which can be performed in the field of economic business, is committed by any person who brought himself or other unlawful property profit. Crimes against property and in the sphere of economy in some states, are foreseen only in one group such as: French Penal Code (1994), the Swiss Penal Code in Chapter Two, in the Albanian Criminal Code of 1995, in the third chapter. It is worth mentioning, that the majority of offenses against property and economy in the interim criminal code and the new criminal code of Kosovo of 2012, are foreseen in the Criminal Code of Albania of 1955. In my opinion some offenses found in the group of offenses against property in the Provisional Criminal Code such as: Fraud (Article 261), cheating on subsidies (Article 262), abuse of trust (neni269), smuggling of goods (Article 273), organized crime (Article 274)<sup>5</sup>, should

take place in the group of offenses against the economy. It is worth mentioning that these offenses have remained in the framework of crimes against property in the new Criminal Code of Kosovo in 2012<sup>6</sup>. I also think that some offenses found in the group of offenses "Against the environment, animals, plants and cultural facilities" as destruction of forests (Article 357), theft of forest (Article 358), illegal hunting (Article 359) as provided in the penal code of 2012<sup>7</sup> and 2004<sup>8</sup>, should be systematized in the group of offenses against the economy, for the fact that, they cause a great damage to the country's economy.

I think that the lawmaker, should make the separation of criminal offenses against economy and property, on the basis of unlawful activities and infringement of property. All illegal acts, directed against the economy, the financial system, customs and property of business entities, should have been incriminated in offenses against the economy, and actions directed against the wealth of natural persons, should be incriminated in the group of offenses against property. I think that the Kosovo lawmaker, has acted straight, when has removed, from the group of criminal offense against property, the offense "Organized crime" (Article 283), placing it into a special group of criminal offenses<sup>9</sup>, because I believe that organized crime has its specifications in terms of organizing, structuring, to the legal goods that is addressed, and the consequences that brings for citizens and the state in general. The term "organized crime" is used for the first time during the year of 1986, in the report of Association for Crime Prevention in New York. The report, considered as organized crime, illegal businesses in which were included politicians, police officers, lawyers and professional thieves, where their crime was organized<sup>10</sup>. This dangerous form of crime, has abilities and premises, to appear in various social and economic activities, not only within states, but also internationally. Then such forms of criminality creates large capital, where then criminals through the capital, exert influence in the legal institutions, that may have consequences for the country<sup>11</sup>. Namely, for the fact that organized economic crime, poses great risk for damage of state and a serious threat to mankind, by which I consider that the Kosovo legislator, rightly has arranged this act, in a separate chapter in Kosovo's criminal code, and has drafted state strategy<sup>12</sup>, to combat this sophisticated form of crime in general and especially in the field of economy.

### **Damages in the field of property from such offenses**

Property as a fundamental right, is protected by the Constitution of the Republic of Kosovo in Section 46 The first paragraph states "The right of property is guaranteed<sup>13</sup>. The economic system of the Republic of Kosovo is based on public and private property and the free market economy, This right is regulated by law, based on Article 121 of the Constitution of Kosovo. Criminal legal protection of property, regulates the Kosovo Criminal Code of 2013 in Chapter XXVII, in group of criminal offenses against the property<sup>14</sup>. Kosovo Constitution and our laws protect and secure property of individuals and foreign international organizations. According to the Kosovo Constitution Article 121, paragraph 2, states "Foreign individuals and foreign organizations in accordance with the law, can provide the right of ownership of immovable property, in compliance with reasonable conditions, prescribed by law and by international treaties<sup>15</sup>. Criminal legal protection of the property provides the Albanian Criminal Code too of 1995, in the third chapter, of the third section in the group of offenses against property and sphere of economy<sup>16</sup>. Protection of property is regulated also by international documents, European Convention on Human Rights in Article 1 Protocol supplement states: "Every natural or legal person has the right, his property to be respected, No one can be deprived of his property, except for the public interest reasons and in the conditions provided by law and the principles of international law<sup>17</sup>. So private property of natural persons, legal entities and state property due to the great economic importance that they have, enjoy protection by constitutional acts and legal acts, international acts and criminal legal protection, in the criminal codes of all states, of all criminal actions such as: theft, fraud, destruction etc. So these criminal acts directed against property, undoubtedly bring great losses and damage to the state's economy, legal and natural persons, therefore rightly Criminal Code of Kosovo and Albania, have foreseen criminal sanctions against perpetrators of these criminal acts. The main aim of the perpetrators of these acts, is generally acquisition of private or state property, and damage or destruction of property. So from this elaboration, we can understand that the goal of the perpetrators of these crimes, is material harm to the property - economy of state, and to natural and legal persons. Obviously in these criminal offenses, their figure changes, because, for example in the offense of stealing, perpetrator intends to obtain an unlawful material benefit for himself or for other, while at the damage or destruction of property, this intention does not exist. This category of criminal acts directed against property in the Penal Code of 2013, found in chapter offenses against property. A common group target of these acts is: Legal established relationships, to ensure the right of property as a fundamental right.

## 2. Nature of certain offenses related to property damage, target material orientated

Offenses in the economy are a challenge and obstacle to the economic development of every country, especially of countries in transition, such as our country Kosovo. This group of acts, that are directed against the economic system and wealth of natural and legal persons, whose target is, a illegal enrichment and destruction of property through criminal actions. So the consequences of these criminal actions, batter material base of society, therefore it is fair to say, that these criminal offenses are an obstacle to the development of society<sup>18</sup>. The nature of each offense against the economy, has its special specifications of target material, but common specification of target material and criminal legal defense, are establishment of legal relations, for normal development of the economy, economic entrepreneurship, protection of property from damage etc. So the material target, of criminal offenses directed against property, are public or private property in general, Well it is important to have economic value, and simply not to be junk<sup>19</sup>. For some crimes against property damage, target material changes, for example criminal offense: "Destroying, damaging or removing public installations" provided for in section 366 of the Criminal Code of Kosovo in 2013, target of this crime are public equipment and installations that serve to fulfill the needs of citizens, so these installations are of a great importance for economic activity, and generally to people's lives, and their destruction may cause major disruption to citizens to get supplied with, water electricity, heating and with no doubt cause great economic damage, therefore this criminal offense can be considered as an offense against the economy<sup>20</sup>. Therefore destruction of these devices, causes endangering of life, body integrity and human health, or property on a large scale, therefore rightly, Kosovo Criminal Code of 2013, has foreseen this act, in the group of criminal offenses against the general safety and property, which means that the material target, is specific and differs from other acts, directed against the property.

Below we will present some crimes against property oriented by target – material

### 2.1. Destruction or damage of property (Article 333)

This offense carries anyone who damages, destroys or renders another person's property and makes it unusable in paragraph 1, the perpetrator shall be punished with imprisonment of up to (1) year. If the offense by this paragraph results in material damage exceeding (5,000) euros, the perpetrator shall be punished with imprisonment from (1 to 3) years. Under paragraph 3, qualified form of this offense is considered, if it is committed against the property or asset that has a cultural, religious, historical, value, it is of a special scientific, artistic importance, or it is protected part of a private or public collection, or it is a public item, that serves for the decoration of a square, street or park, where the perpetrator shall be punished by a fine and imprisonment of up to (3) years<sup>21</sup>. In the fourth paragraph is prescribed, the severe form of this offense, which is considered to exist if the property damage of the other is motivated by prejudice associated with ethnicity, nationality, religion, gender or language. This act has been envisaged in the Criminal Code of Kosovo in 2004 named "damage of moveable property "(Article 260)<sup>22</sup>. I believe that the current code has much better regulated the issue of legal-criminal defense of property from damage or destruction, for the the fact that it is not limited only to the moveable property, but also of immovable property, harmonizing it with criminal codes of neighboring states, such as Montenegro and Bosnia-Herzegovina, which also do not have restrictions only to movable property. I think that extending of protection toward the immovable property, is thoughtful because: for example, the house as a real estate may be destroyed by fire or other means.

Material target of crime of this criminal offense "destruction or damage of property", or as required by the Criminal Code of Albania, 1995 named "destruction or damage of property", where the property is private or public, and is sufficient for it to have a value, and it must be a matter of valuable items, to which can be caused damage, either in the content or appearance. So as it is understood, the property must be someone else's, but it can even be to another person. So the act of committing this criminal offense is defined alternatively when a perpetrator: a). only damages someone else's property, b) destroys it, c) makes it unusable<sup>23</sup>. The criminal offense it's considered to be committed, when someone's object or property is destroyed or made unusable.

Subject - the perpetrator of this crime can be any person who has reached the age of criminal responsibility and is accountable. From the objective side of view, the act is committed by unlawful act or omission. From subjective side, the offense is committed intentionally, which means that the perpetrator is aware, that is damaging or destroying property of other person. The criminal offense that we have treated, is provided in the Criminal Code of Kosovo of 2013, group of offenses "against property", where the Criminal Code of Kosovo SAP 1977, has also foreseen this offense named " damage of someone's object Article 145"<sup>24</sup>. Common subject of these acts is to bring material harm to natural persons,

legal or state. However, these acts have substantial differences among themselves. For example, in the offense of theft, perpetrator has as intention, a illegal acquisition of someone else's assets for himself or other, at the damage of property that purpose lacks, where the perpetrator in general, causes great economic damage to the state or Persons. Therefore I consider that the Albanian Criminal Code of 1995 has much better adjusted the disposition of this offense, in the group of offenses against property and economic sphere, considering that property damage regardless of the manner of performance, cause severe damage either to state or private economy.

## 2.2.Arson (Article 334)

With the criminal offense of arson, we understand that anyone who alights or causes explosion with intent to damage property of another person, the perpetrator shall be punished by (6) months to (3) years<sup>25</sup>. From objective stand, the act is performed by omission, or active actions using dangerous tools for fire, to damage or destroy the property of another person, public and private property. What makes this act serious by the objective point of view is material damage caused to property or consequences caused to life and health of people. Penal Code, section 3 has provided that if the offense in paragraph 1 and 2, causing material damage in amount of (20,000) euros or more, or causes to other serious body injury, the perpetrator shall be punished by (3) to ten (10) years<sup>26</sup>. With what has been proved, that this offense can cause great harm to the state's economy and natural persons, but this can also cause death of persons, so if this act results with the death of the person, the perpetrator shall be punished with at least (10) years imprisonment or life imprisonment<sup>27</sup>. Meanwhile Criminal Code of the Republic of Albania, has incriminated this act in Article 151 section three, stating that if the destruction or damage of property by fire is done intentionally, the perpetrator shall be punished by a fine or imprisonment of up to (5) years, and if from the criminal offense are caused significant material consequences, the perpetrator shall be punished up to this (10) years imprisonment, and when serious consequences are caused, for the life and health of people, the punishment of imprisonment will be imposed by (5) to (15) years<sup>28</sup>. This fact shows that the Republic of Kosovo in order to protect property, especially state and private economy, and particularly the health and lives of people, has provided very severe penalties, in serious cases, up to life imprisonment, where the consequences of this act resulted in the death of any person<sup>29</sup>. The subject of crime is any person who has the age of criminal responsibility and is accountable.

The nature of the material target is similar to the act that we have covered previously, wealth - public and private property in general, it is important to have economic value, and not be junk<sup>30</sup>. Criminal offense of arson, is foreseen for the first time in Kosovo criminal legislation in 2012, group of offenses against property, while neither the Kosovo criminal law of 1977, nor penal code of 2004, did not foreseen this offense. I consider that the state of Kosovo, through harsh punitive policy for this offense, has developed the prevention, that in case the perpetrators deliberately took action, in order that with fire damage, public or private property, or the life and health of people in general, be clear about the consequences that will be able to suffer.

## 2.3. Destroying, damaging or removing of public installations (Article 366)

The criminal offense that harms or destroys public or private property, that causes major economic damage in general to population, and to state economy is: "Destroying, damaging or removing public installations" (Article 366)". This act is performed by damaging or destroying electrical conductors, gas, water installations, heating, telecommunications equipment, feathers, and other similar devices. Therefore the Criminal Code: Destruction or damage of this equipment by anyone, when there are caused disturbance of supplement to the population or economy, has incriminated it by foreseeing imprisonment of up to (5) years<sup>31</sup>. But if criminal offense of , destruction or removal of these devices, causes a great threat to life, body integrity and health of people, or their property on a large scale in general, in paragraph 3 is provided: pris on sentence (1) through (8) years<sup>32</sup>, while the fourth paragraph provides that: "If the criminal offense under paragraph 1 of this Article results in death of one or more persons, the perpetrator will be sentenced to imprison from (3) to (12) years<sup>33</sup>. So incrimination goal is to protect public installations, in order to supply the population with no obstacles for normal life and development of their economy.

Material target, of this offense are: aforementioned public equipment and installations, which serve to fulfill the needs of citizens, and to carry out various economic activities<sup>34</sup>. While according to prof. Ismet Elezi on the special part of criminal law, material target of criminal offense, "Destruction of electrical network" as named in the criminal code of Albania are: Cables, transformers, telephone and electric cables, private and public property. Perpetrator of this crime is any person,

who has reached the age of criminal responsibility and is accountable. Regarding the way of performing of this offense, it is alternative and it's manifested by removing these installations, by destroying, damaging or make them unusable. As for the guilt concern, this offense can be committed intentionally and negligently. Regarding the criminal sanction, it can be with fine and imprisonment. Serious form of this offense is considered, when has resulted with serious body injury, or substantial property damage, where the offender can be sentenced up to (8) years in prison, and if results with death of one or more persons, the perpetrator shall be punished from (3) to (12) years. If we compare the punitive policy for this offense with the same material target, but with different label, under the criminal code of Albania, it is punishable by a fine and imprisonment of up to (3) years. It is worth noting that this code, has provided a total of 13 offenses against property destruction, in section three in the group of offenses against property, and in the sphere of economy. By my opinion, the criminal code of Albania of 1995, has specifically and in detail arranged these acts. This offense has been envisaged in the Provisional Criminal Code of Kosovo in Section 292, the same content, label and criminal sanction<sup>35</sup>. The criminal law of Kosovo of 1977 Kosovo, has foreseen this offense too, but has provided only its basic form in paragraph 1 of Article 158, which predicts that whoever destroys, damages or makes unusable installations of public use, and causes considerable disturbance in the lives of ordinary citizens, shall be punished from (6) months to (5) years in prison, and if the offense is committed by negligence the perpetrator shall be punished with imprisonment up to (3) years<sup>36</sup>. Finally we can say that the penal code of 2004 and that of 2013, have provided for this offense, the qualified and basic form, whereas the criminal law of SAPK, only regulated the basic form, whereas the Albania's penal code, has split this criminal offense, the into several offenses such as: destruction of the electric grid (Article 156), destruction of irrigation network (Article 157), the destruction of water supply (159) etc.

## Conclusion

Crimes against property, with special emphasis in the area of property, represent a great loss not only to public property but also private one. Offenses discussed in this paper, are steadily increasing and present danger to the economic system in Kosovo, especially affecting in the growth of organized crime in general. The main purpose of the perpetrators of these criminal offenses in general, is appropriation of public or private property, damage or destruction of property. In this paper, by study is concluded that the purpose of the perpetrators of these criminal acts is to bring to the state economy, property - material damage, and to the legal and natural persons. Material target of criminal acts directed against property, are public and private property. By treating material target of some criminal offenses, "Destroying, damaging or removing public installations", as envisaged in Article 366 in the Penal Code of 2013, Shows that the object of this crime are public equipment and installations that serve to meet the needs of citizens, so these installations are of great importance for economic activity and in general for human life's. Their destruction could cause major disruption, on supplying of people with water, electricity, heating, and undoubtedly causes great economic damage, therefore this offense can be considered as a criminal offense against the economy. Thus destruction of these devices, causes endangering of life, body integrity and health of people or property on a large scale. Therefore Kosovo Criminal Code of 2012, rightly has foreseen this offense, in the group of offenses against the general safety and property. Target material at offenses against property, is specific and differs from other criminal acts, and property in general should be of economic value, so not simply being junk. By this we can conclude, that people could every day be victims of such offenses as: arson, destruction or damage of property, destruction, damage or removal of public installations, therefore the state of Kosovo must consistently convey this kind of criminality, in order to create legislation that will not be operational as a pre action and nod after action in relation to its development trends. I consider the state of Kosovo through the development of appropriate legislation and harsh punitive policy for such offenses, has made prevention, that in case if the offender intentionally takes action, to damage public or private property by fire, or the life and health of people in general, be clear about the consequences that will be able to suffer. Kosovo needs deep reforms in the judiciary to combat this type of crime, judges and prosecutors should be specialized in different areas of the economy, should be provided, experts who will work in support of the prosecution bodies, should be created databases, for providing data for potential criminal cases. Finally I think, that official records that the bodies of justice possess, for the number of criminal offenses in property, are not realistic in relation to offenses carried out in practice, but unfortunately they remain undiscovered or not declared at all.

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## Legal elaboration, principles and the process of Integrated Border Management. Observation of the legal framework of Kosovo

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### Abstract

*The aim of this piece of work is to examine the legal aspect and explain the process of Integrated Border Management as one of the essential criteria of the European Union in the process of visa liberalization dialogue and other integration processes in Europe. Integrated Border Management is a very complex process and this complexity involves: the increased number of immigrants; combat and prevention of terrorist acts in the continent, narcotics smuggling, human trafficking, acts of criminal groups in the form of organized crime, etc. Integrated Border Management in the Republic of Kosovo faces some difficulties making this process complicated in relation to other countries in the region, such as: unwillingness of the Republic of Serbia to establish interstate relations based on good neighborly relations, failure to exert full power in the northern part of the country, failure to define the green line and border demarcation with all its neighbors, etc. In view of this, the topic of this piece of work is to look into the legal and institutional mechanisms which are linked to the process of Integrated Border Management. This paper also strives to carry out a formal analysis of the Integrated Border Management process in order to draw conclusions and recommendations, which will facilitate the implementation of this process in the future. The key issues to be addressed in this paper are: the international legal framework which addresses and regulates the border crossing, the national legal basis for the management of state borders, primary and secondary legislation of Kosovo, the institutions and their responsibilities in this process.*

**Keywords:** Legal elaboration, Integrated Border Management, legal framework of Kosovo

### Introduction

The aim of this piece of work is to examine the legal aspect and explain the process of Integrated Border Management as one of the essential criteria<sup>1</sup> of the European Union in the process of visa liberalization dialogue<sup>2</sup> and other integration processes in Europe, which appears to be a topic of interest and significance for both, researchers on this issue and those who exercise this profession in practice. Parallel to its information aspect, this piece of work strives to contribute to the practical aspect as well. Considering that Kosovo is in the process of implementing the Integrated Border Management with its neighboring countries, as one of the criteria for integration and membership in the European Union.

The Integrated Border Management is a very complex process and this complexity involves: the increased number of immigrants<sup>3</sup>; combat and prevention of terrorist acts in the continent, narcotics smuggling<sup>4</sup>, human trafficking, acts of criminal groups in the form of organized crime<sup>5</sup>, regional cooperation of criminal groups and the use of technology in committing criminal acts, etc. Therefore, being part of the European continent, the Republic of Kosovo is also affected by these phenomena. Integrated Border Management in the Republic of Kosovo faces some difficulties which make this process complicated compared to other countries in the region, such as: unwillingness of the Republic of Serbia to establish interstate relations based on good neighborly relations, failure to exert full power in the northern part of

<sup>1</sup>European Union Progress Report I year 2010 - 2011

<sup>2</sup>Visa liberalization means free movement within the Schengen area. Liberalization allows for visa free travel only for 90 days (every six months), for free travel and cannot be used for work or for other benefits.

<sup>3</sup>With the term emigrant we mean a person who goes to another country in search for better economic, professional, religious, etc., possibilities, respectively he emigrates from an old country and immigrates into a new country, for more see Joshua S. Goldstein, International Relations, printing house Dituria, pg. 523.

<sup>4</sup>With smuggling narcotics we mean an unlawful form of production and circulation, in mediating in unlawful trade of narcotics, in purchasing narcotics in an unlawful manner and in transportation of narcotics in an illegal way, for more see Latifi V. Criminology, Pristina, 2011, pg.295.

<sup>5</sup>With organized crime we mean whoever willfully or knowingly, be it the aim and the overall activity of the organized criminal group or group or the intention of the group to commit one or more criminal offenses which are punishable with imprisonment of at least four (4) years, actively takes part in the criminal activities of the group knowing that such participation will contribute to the realization of the criminal activities of the group, is sentenced with a fine up to two hundred e fifty thousand (250.000) Euro, and imprisonment of up to seven (7) years, Criminal Code of Kosovo, Article 283, Nr. 04/L-82, 20 April 2012

the country, failure to define the green line and demarcation<sup>1</sup> of the border<sup>2</sup> with all its neighbors, etc. In view of this, the topic of this piece of work is to look into the legal and institutional mechanisms which are linked to the process of Integrated Border Management. This paper also strives to carry out a formal analysis of the Integrated Border Management process in order to draw conclusions and recommendations, which will facilitate the implementation of this process in the future.

The key issues to be addressed in this paper are: the international legal framework which addresses and regulates the border crossing, the national legal basis for the management of state borders, primary and secondary legislation of Kosovo, the institutions and their responsibilities in this process.

### **International Legal Basis for the controlled border management**

The Integrated Border Management is not purely a national issue but a process which implicates two or more countries, and as such it represents a mechanism for cooperation and coordination of actions to ensure a higher degree of security towards potential phenomena and events which could jeopardize the general public safety.

International legal acts which regulate border crossings, also contain provisions which regulate the process of Integrated Border Management. In this regard, especially since 1985 onwards, significant results have been achieved. In view of this, bordering countries have signed bilateral and multilateral memoranda of cooperation, thus defining and regulating the Integrated Border Management. The most important international Conventions and documents on this issue are: the Schengen Convention of 1990 adopted by the European Union<sup>3</sup>; Schengen Border Code 15 March 2006<sup>4</sup>; EC Regulation No. 562/2006 of the European Parliament and Council; Guidelines - the European Parliament Council Commission communique on the Integrated Border Management of member states of the European Union (Brussels, 07.05.2002); Guidelines for Integrated Border Management of Western Balkan countries adopted by the European Commission (October, 2004) and amended and supplemented in 2007, etc.

All these international legal acts (conventions, codes, guidelines, statements, etc.) address legal regulation of interstate border issues, including the definition of the terms: border, inner and outer border of the European Union, border crossing point, border control, and the principles of application by the competent authorities for Integrated Border Management. According to Schengen border Code, the term inner border means common borders such as rivers and lakes, borders of the European Union states, airports for domestic flights and sea, river, lake and ports for regular ferry connections<sup>5</sup>, while the outer borders include land borders of the European Union countries, including the borders of rivers and lakes, sea borders and airports, river ports, sea ports and lake ports, provided that they are not inner borders<sup>6</sup>.

International legal acts define the meaning and the ways of establishing border crossing points between countries. According to the Convention, a border crossing point is any crossing point authorized by the competent authorities for crossing outer borders<sup>7</sup>. However the Convention does not provide the location and the number of border crossing points, this falls under the authority of neighboring countries based on their political and economic interests and other specificities that may have.

In order to ensure a continuous basis for cooperation and in order that this cooperation takes its normal flow regarding the border crossings between states, the Convention defines the meaning of the border crossing, which is "a check made at a border as a single response for the purpose of crossing the border"<sup>8</sup>. The cooperation between neighboring countries is vital for the development of a common understanding and respect for the principles in the implementation of the process of the Integrated Border Management. In order to conduct a more effective border management which would enable people to live in a safe and free environment, to move freely, to facilitate and develop cross-border trade, to combat international crime, etc., the international legal acts have defined the concept of the Integrated Border Management, which implies coordination and cooperation between all relevant authorities and agencies involved in the border

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<sup>1</sup> Defining the overall direction of the state border with documents is called DELIMITATION, while drawing the border in the field is called DEMARCATION. This is done by mixed commissions or an international commission, for more see GrudaZejnullah, International Public Law, page 167, Pristina.

<sup>2</sup> Until the date of the publication of this piece of work Kosovo has not completed the process of demarcation with Serbia and Montenegro.

<sup>3</sup> Schengen Convention was named after the town of Schengen/Luxembourg where the Convention was signed on 19 June 1990 by countries of Benelux, Germany and France. It entered into force on 26 March 1995, <http://www.hri.org/docs/Schengen90/body8.html>

<sup>4</sup> Schengen Border Code REGULATION (EC) Nr.562/2006 of the EUROPEAN PARLIAMENT AND COUNCIL of 15 March 2006, a code of the European community setting up rules on governing the movement of people along borders.

<sup>5</sup> Schengen Border Code approved by the European Parliament, Article 2, paragraph 1

<sup>6</sup> *ibid*, Article 2, paragraph 2

<sup>7</sup> Schengen Convention, Article 1, paragraph 7

<sup>8</sup> Schengen Convention, Article 1, paragraph 8

security and in easing trade, in order to create an effective and efficient management within the integrated border system border to reach the common goal of open borders, but controlled and safe"<sup>1</sup>.

The concept of Integrated Border Management defined in international documents means that the process of Integrated Border Management is a multi-dimensional starting with: control and surveillance of borders according to principles and standards set by the Schengen Convention and Code, as well as other legal documents, detection and investigation of national and international crime by undertaking all actions in coordination with the competent authorities based on the applicable laws in this field, mutual cooperation between agencies and the competent authority in managing borders (border guards, customs officers, police and other relevant authorities) including the coordination and coherence of activities of member states in the European Union institutions.

The provisions of international legal acts show that the process of Integrated Border Management is regulated only in principle, whereas the regulation of concrete issues related to the practical implementation of the Integrated Border Management process remains under the jurisdiction of states and their legislation according to international standards.

### Legal elaboration of the IBM process according to the legislation of the Republic of Kosovo

The Constitution of the Republic of Kosovo defines the Republic of Kosovo as an independent, sovereign, democratic, unified and indivisible state<sup>2</sup>, with the right of the competent authorities to control the borders in its territory<sup>3</sup>. As in most modern states, in the Republic of Kosovo the legal elaboration of border control has been regulated through a special law. The Government of the Republic of Kosovo has established the essential legal basis for elaboration of the Integrated Border Management by drafting the law on the integrated management and control of the state borders<sup>4</sup> and by drafting and adopting sub-legal acts which derive from this law. There are also other legal acts containing provisions that indirectly address the border management process such as the Law for the Control and Supervision of the State Border<sup>5</sup>, the Asylum Law (no. 03 / L-073); Law on Amending and Supplementing the Law on Asylum (no. 03 / L089); The Criminal Code of the Republic of Kosovo (No. 04 / L082); Police Law (no. 04 / L-076); Law on Foreigners (no. 04 / L-069, etc.). The legal framework in which the process of Integrated Border Management is directly or indirectly addressed has been complemented by the Government during the drafting and adoption of the National Strategy for the Integrated Border Management of the Republic of Kosovo; Strategy for Combating Terrorism, organized crime, human trafficking, etc.

The Law for the Control and Supervision of the State Borders contains provisions of material, procedural, executive and punishment nature - offenses which satisfactorily regulate the legal elaboration of the Integrated Border Management process and ensures the functioning of the open border movement, safe and well controlled<sup>6</sup>. This law incorporates international standards in developing an effective system of control and management of the state border<sup>7</sup>, which allow free movement of people and goods, prevention of cross-border crime while respecting human rights and freedoms. The general provisions proclaim the goal of regulating border control, police powers within the state, the cooperation among state institutions which have competence in the border management<sup>8</sup>. However if we interpret other provisions of the law, it is evident that the priority has been given to the procedural regulation in the exercise of powers – authorizations as well as the cooperation between the competent authorities in the implementation of the Integrated Border Management process. In

<sup>1</sup>Guidelines for integrated management of borders in Western Balkans I, reviewed in 2007, by the European Commission, page 14.

<sup>2</sup>The Constitution of the Republic of Kosovo approved by the Assembly of the Republic of Kosovo and entered into force on 15 June 2008, Article 1, paragraph 1.

<sup>3</sup>Ibid, Article 125, paragraph 1.

<sup>4</sup>Law on Integrated Management and Control of State Borders nr. 03/L065, approved by the Assembly of Kosovo on 21 May 2008, marks, for the first time, a legal elaboration of the Integrated Border Management process through a separate law.

<sup>5</sup>Law on Control and Management of State Borders nr. 04/L-072, approved by Kosovo Assembly on 21 December 2011, declared by the President of Kosovo through a decree nr. DL-001-2012, dated 06.01.2012.

<sup>6</sup>The Law consists of Chapters I – XIII and contains 63 Articles. Chapter I includes general provisions and consists of Articles 1-4; Chapter II includes provisions of powers and authorization to conduct border control and consists of Articles 5-8; Chapter III includes provisions on crossing the state border and consists of Article 9; Chapter IV includes provisions of border control and consists of Articles 10-26; Chapter V includes provisions on border crossing points and the zone of the border crossing point and consists of Articles 27-34; Chapter VI includes provisions on the supervision of the border and consists of Articles 35-39; Chapter VII includes provisions on border line and consists of Articles 40-45; Chapter VIII includes provisions on police measures inside the country and consists of the Article 46; Chapter IX includes provisions on the cooperation of state bodies which have the authority in border management and consists of Articles 47-49; Chapter X includes provisions on cross border police cooperation and consists of Articles 50-53; Chapter XI regulates collection of personal data and consists of Articles 54-58; Chapter XII includes provisions on border offences and consists of Articles 59-62; Chapter XIII includes transitional and final provisions and consists of Articles 63-64.

<sup>7</sup>State borders are defined as lines separating the territory of one state from the territory of another state or the territory of one state and an open sea or as lines until where the territory and sovereignty of a state stretches, for more see GrudaZenullah, Pristina International Public Law, page 164.

<sup>8</sup>Article 1, Law on control and supervision of the state border nr 04/L-072, approved on 21 December 2011 by the Kosovo Assembly

order to achieve effective cooperation, to facilitate data and information exchange, and have greater efficiency of the system for the integrated border management, the National Center for Border Management has been established<sup>1</sup>. Blanket provisions of the law imply that the assistance and cooperation of state institutions involved in the border management is carried out through the Strategy for the Integrated Border Management<sup>2</sup>.

In addition to creating and harmonizing primary and secondary legislation with the EU Acquis, the Republic of Kosovo has advanced and functionalized its key Agencies and Institutions involved in the implementation of the IBM process, such as: Kosovo Police - KP; Kosovo Customs - KC; Food and Veterinary Agency of Kosovo - FVAK<sup>3</sup>.

The state Agencies and Institutions of the Republic of Kosovo are guided by some basic principles which directly or indirectly are incorporated in the provisions of the Law on the Control and Supervision of the State Border, as well as in the National Strategy for Integrated Border Management, thus providing guarantees for the implementation and realization of the objectives of the Integrated Border Management process:

- Implementation of relevant legislation for the three pillars ensuring that the authorized agencies for the integrated management and control of the state border will be organized and operate as required by the EU.
- Cooperation and coordination of activities of the agencies involved in the border control and reforms in their organizational and management structure.
- All procedures of the border agencies regarding human resources, training, finance and logistics are determined by internal regulations in joint consultations among them.
- Proper procedures for selection and appointment of staff in the border agencies should be applied in order to increase the professionalism and quality.
- Communication and exchange of information among authorized border agencies should be improved to create an overall information management system.
- Development of infrastructure and adequate equipment to support the efforts of the agencies in providing professional services to citizens and other beneficiaries.
- Ensuring sustainable funds for continued exercise of operations in the integrated border management system and the creation of mechanisms to ensure international donations.<sup>4</sup>
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### **Administrative and Territorial features of the Republic of Kosovo**

During history, depending on political and economic changes and overall development of the society, the territory of Kosovo has changed as of February 17, 2008, when the Declaration of Kosovo's independence was adopted by the leaders of our nation, elected in a democratic way, through the declaration they proclaimed Kosovo an independent and sovereign state<sup>5</sup>.

After the declaration of independence of Kosovo, the international borders of the Republic of Kosovo include a territorial area of 10,907 km<sup>2</sup>, which is defined in the border line of the former Autonomous Province of Kosovo within the former Socialist Federal Republic of Yugoslavia<sup>6</sup>.

The territory of Kosovo is situated in the south-eastern Europe, having a central position in the western part of the Balkan Peninsula and borders with: the Republic of Albania with 113,551 km of border length; the Republic of Macedonia with 170,772 km of border length; the Republic of Serbia with 380,068 km of border length and with the Republic of Montenegro with 79,165 km of border length<sup>7</sup>. The terrain through which the state border line of the Republic of Kosovo passes through consists of generally rugged mountains, hills, fields and

<sup>1</sup>Ibid, Article49, paragraph 1.

<sup>2</sup>Ibid, Article 49, paragraph 2.

<sup>3</sup>In addition to KP, KC and FVAK in implementing IBM, other relevant institutions play an important role, such as Ministry of European Integrations, Ministry of Transport, Forensic Institute, Ministry of Health, Ministry of Public Administration, Ministry of Agriculture, Forestry and Rural Development, Ministry of Security Force of Kosovo.

<sup>4</sup>National Strategy of the Republic of Kosovo for the Integrated Border Management, pages11 – 12, approved by the Government of Kosovo, April 2009, Pristina.

<sup>5</sup>Kosovo's Independence Declaration, approved by the Kosovo Assembly, 17 February 2008, Article 1, Pristina.

<sup>6</sup>KOSOVO SPATIAL PLAN 2010-20, Pristina, page 20.

<sup>7</sup>Ibid, page 19

lakes<sup>1</sup>. Geographical elements show that Kosovo's territory has an important strategic position connecting central Europe and the Mediterranean Sea. In order to facilitate the movement, competent state authorities of Kosovo authorities have put into function 13 border crossing points of road and rail types with the neighboring countries, by applying physical controls. Between the Republic of Kosovo and the Republic of Albania there are 3 road type border crossing points: Vermica; Qafa e Prushit and Qafa e Morinë. With the Republic of Montenegro the border crossing point Kulla is in function. Between the Republic of Kosovo and the Republic Serbia the largest number of border crossing points – 6 (six) in total are operational and are of road type: Bernjak, Jarinie, Merdare, Mutivode, DheuBardhë, Muçibabë. Between the Republic of Kosovo and the Republic of Serbia there used to exist tow rail type border crossing points: Merdare and Leshak which are no longer operational<sup>2</sup>. With the Republic of Macedonia there are two border crossing points Hani iElezit and Gllaboqica, which are of a road type, whereas the border crossing point in Hani iElezit isof a rail type.

All border crossing points of the Republic of Kosovo operate according the national and international legislation, and their categorization and standardization has been done according to internal and external factors based on bilateral and multilateral agreements.

## Conclusions

The time, the phases and the process of establishment and transformation of border control institutions in the territory of Kosovo has not been the same, due to particular political effects and the rule of law, the success of the implementation of the law has not been the same in all border crossing points.

Due to the prevailing nationalist ideas regarding the border demarcation and the complicated political situation between the Republic of Kosovo and the Republic of Serbia, it was very difficult to transform the border crossing system according to the rules set forth by the IBM process. Therefore these components did not guarantee progress in the implementation of IBM along the border between Kosovo and Serbia, where as a consequence free movement of people and goods is put into danger, inefficiency in preventing and combating cross-border crime which manifests itself in the form of organized crime by certain groups of interest. Having this situation in mind, competent state institutions have supported the development of IBM process in terms of legal aspect in using international principles and integration criteria set forth for the Western Balkans. The aim of developing and proclaiming liberal integration ideas in order to challenge nationalist ideas and enhance the integration process of the Western Balkan countries have contributed to a large extent to the overall development of institutional relations on border control, but not in eliminating completely the challenges in implementing IBM process.

Creation of the legal framework and strategies required to address the process of IBM, shows the special care state institutions pay in the implementation of IBM as one of the conditions for visa liberalization in the process of integration into the European Union. Alongside the development and harmonization of legal basis with the EU *acquis*, the state institutions should pay inter-institutional attention and professionalism in the implementation of this legal basis for the full implementation of IBM in all border crossing points.

The Republic of Kosovo is still in need to invest in building and strengthening the mechanisms and institutions in charge of implementing the IBM process according to applicable law. In this regard it is worth noting the insufficiency of the mechanism for border control as one of the factors for the implementation of the IBM process. Formal controls made by state border police, I think represents more of a formal and superficial control and not a border control with stopping, monitoring and with special emphasis on risk assessment and criminal intelligence to ensure the control of persons, vehicles and goods crossing the border, by applying effective monitoring at all border crossing points.

Applicable laws allow key agencies and institutions involved in the IBM process, such as the Kosovo Police; Kosovo Customs; Food and Veterinary Agency of Kosovo, to undertake actions and decisions in a discreet and autonomous manner in implementing IBM which could be incompatible with the actions and decisions of other institutions. In order to avoid these actions and decisions, operational cooperation and coordination between key institutions involved in the IBM should be developed and professionalized. Likewise, based on the legal provisions of the national and international character these institutions should enhance institutional cooperation in order to reach the full functioning of all border crossing points, be it road or rail type, depending on the border terrain wherever possible to erect joint points of border crossing, through the coordinated operations of monitoring and patrolling of static and mobile units

Finally, I consider that Kosovo despite the fact that it established the legal basis, must constantly undertake political and economic measures to ensure its implementation in the process of IBM, as an aim and an objective to fulfill the preconditions for membership in the European Union institutions.

<sup>1</sup> Dr. Rizai. Çavolli, Kosovo's Regional Geography, page 319.

<sup>2</sup>Until the date of the publication of this paper, railway traffic between the Republic of Kosovo and the Republic of Serbia through the border crossings of Merdareand Leshakhas not been functionalized. Reasons for its non-functioning are of political and objective nature – damages to railroad infrastructure during and after the war, years 1997 – 2000.

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Schengen Convention was named after the town of Schengen/Luxembourg where the Convention was signed on 19 June 1990 by countries of Benelux, Germany and France. It entered into force on 26 March 1995, <http://www.hri.org/docs/Schengen90/body8.html>

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Guidelines for integrated management of borders in Western Balkans I, reviewed in 2007, by the European Commission, page 14

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## Preventing Human Trafficking in the Western Balkans - a Particular Review in Albania, Kosovo and Serbia

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### Abstract

*Preventing and combating trafficking in human beings represents one of the major tasks today that Western Balkan countries have, because the access right of these countries to this phenomenon, can open or close your path towards the European Union. This is because most people trafficking in most cases is part of organized crime, as a condition for being part of the European Union is to prevent and combat organized crime and also trafficking of human beings. So, successful prevention also is the successful fight of human trafficking. A special importance, prevention of human trafficking, has also reports of the United States of America, which issued for each year, where the U.S. do not merely report only on U.S. territory but also for other countries in the whole world, including the Western Balkan countries and where a part of this report is devoted to the prevention of human trafficking in each of these countries and recommendations for improving the situation on the ground. The purpose of this paper is to present approaches in the Western Balkan countries to prevent human trafficking and approaches of these countries in the issuance and adapting national laws in line with European Union documents.*

**Keywords:** prevention, trafficking, human, beings, Balkans

### 1. Introduction

After the evaluation of risk that might threaten the trafficked victims and their family members or evidence itself or other important evidence for criminal procedure, it is also necessary to look into taking measures for protection of victims, either when they are only victims, or when they are witness, too, or also when they do not want to cooperate at all.

Protection of victims is necessary from the moment of victim identification and identification and evaluation of risk, therefore, protection of trafficked victims can be divided into three stages, as in the following: pre-trial stage, the stage of the development of regular criminal procedure and the stage after the regular criminal procedure is over.

The division of these stages is important not only for the criminal procedure but also for the victim itself, taking into consideration that in these three stages different actions need to be taken for the protection of victims, measures which could be related also with the measures of assistance and support to trafficked victims in the aspect of health, shelter, clothing and food.

Anyway, according to Law on Prevention and combat against trafficking in human beings and protection of trafficked victims<sup>1</sup>, personal data, private life, victims' identity of trafficking in human beings is protected by the authorities of law enforcement during the criminal procedure, whereas, registration, maintenance, and using of trafficked victims' personal data is accomplished in accordance with conditions prescribed by Law on Protection of Personal Data.

Regarding this, also the compilation of agreement on exchange of information is prescribed between the authorities which deal with the identification and assistance of victim, as well as criminal investigation via respecting in

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<sup>1</sup> Law on Prevention and combat against Trafficking in Human being an Protection of Trafficked Victims in Kosovo, 2013, Article 18, p.11

general the protection of personal data and privacy and victims' safety. All exchanged information between the victim and the professional who provides medical, psychological, juristic, or other assistance services, are confidential and are not exchanged with third persons without the consent of the victim, and in cases when the victim is a child, without the consent of his/her legal representative. Furthermore, according to this law, it is prohibited to disclose the data related to state protection measures for victims of trafficking in human being, persons who provide such a protection, as well as persons who provide assistance in combating the trafficking in human beings.

Today, all Western Balkan countries have promulgated their laws on protection of witnesses and taking into consideration all these countries, intentions to get the membership in the European Union, their laws are mainly the same, except nominations and some internal specifications, but the purpose of all these laws is to provide the trafficked victims with assistance in the three aforementioned stages.

Besides the laws on protection of witnesses, there are also criminal procedures codes in all Western Balkans countries, which have prescribed provisions on protection of witnesses, but, although, at the first sight the existence of two legal acts, codes and abovementioned laws looks as unnecessary, these legal acts are not in contradiction with one another, but rather, supplement one another, because, as criminal procedures codes foresee provisions which regulate issues of criminal procedure, the law deals with conditions for protection, kind of protections, competencies of bodies that provide that protection and other administrative issues.

Any person who is a witness, or injured party, who reports or testifies on facts and circumstances, who are objects of a relevant proof in a criminal procedure can be a person under protection in Kosovo, for criminal acts for which is foreseen sentence by imprisonment of 5 years and more, in which is included also trafficking in human beings and due to these reports and evidences is in a serious risk<sup>1</sup>.

In Albania also persons protected together or individually, are witnesses, co-operators of justice and persons related to them, which means that this counts for the witness of justice, respectively, for the person who is a witness, or injured party, testifies or provides statement on facts or circumstances statements of evidences is put in danger, because of blood connections, marriage, co-living of fact or close personal relationship that they have with the witness ...<sup>2</sup>.

In Croatia a protected person is one who is in risk him/herself and also his relatives who are exposed to a serious danger with their life, health, their body, freedom or property in a big amount is outraged, because of the testimony in the criminal procedure for criminal acts prescribed by Law on Protection of Witnesses<sup>3</sup>.

In Bosnia and Herzegovina a threatened witness is the one whose personal safety or his family's safety is risked due to his/her participation in the criminal procedure, as a result of threatening, frightening or similar actions that are related to his/her testimony, or the witness considers that there are grounds for fear that such a danger for sure may be the case as a result of his/her testimony<sup>4</sup>.

In Montenegro, a person may be a protected witness when there are grounds for fear either for him/her or for his/her relatives, due to providing testimony to prove the criminal act which is prescribed by Law on Protection of Witnesses, the possibility to protect witnesses is foreseen, if there a serious danger for their life, health, physical integrity, freedom and property in great amount, whereas, other measures for protection are not sufficient<sup>5</sup>.

In Serbia, a threatened witness is the one whose safety or the safety of his/her family (those who have the right to not testify in a criminal procedure) is in danger because of his/her participation in criminal procedure as a result of threaten, fear, or similar actions that are related with his testimony, whereas, an endangered witness is the one whose physical, psychological integrity has been seriously endangered, traumatised of circumstances at which the criminal act

<sup>1</sup> Law on Protection of Witnesses, in Kosovo, No. 04/-L-015 of 1 September 2011, Article 3 paragraph 1, sub-paragraph 1.3, p. 1

<sup>2</sup> Law on Protection of Witnesses and Co-operators of Justice, in Albania, No. 10173 of 22.10.2009 amended by Law no. 10461 of 13.09.2011, Article 3, paragraph, 1 point 5, p. 2

<sup>3</sup> Zakon o zaštiti svedoka Hrvatske, br.NN.163/03, 18/11, 2004, Article 1, p. 1

<sup>4</sup> Zakon o zaštiti svedoka pod pretnjom i ugrozenih svedoka Bosne i Hercegovine, 2003, Article 3, paragraph 1, p. 1

<sup>5</sup> Zakon o zaštiti svedoka Crne Gore, sluzbeni list RCG br.65/04, 2004, Article 1, p. 1

was conducted or suffers from serious psychological disturbances who render him/her extraordinarily sensitive, and the juveniles<sup>1</sup>.

In comparison with other West Balkans countries which have nominated laws on protection of witnesses or co-operators of justice, in Serbia, the law has a more specific name as it is nominated as a Law on Programming the Protection of Participators in Criminal Procedure, and their relatives, too, who due to submission of statements or important information for verification of factual state in criminal procedure are submitted to danger for their life, health, physical integrity, freedom or property<sup>2</sup>

In Macedonia, a victim who reports as a witness is the one who has been injured by a criminal act or a personal or property right of his/her is threatened, who possess important information for criminal procedure, the provision of which would endanger his/her life, health, freedom, physical integrity or property in a great amount, if he/she reports as a witness in the criminal procedure and if co-operates with judiciary bodies, whereas, as a protected person is considered the witness, co-operator of justice, a victim who reports as a witness and his/her relatives, who from the counsel on protection of witness entered in the program for protection and was agreed with for protection by witness protection units<sup>3</sup>.

## **2. Stages of protection of trafficked victims**

### **2.1 Protection of victims prior to the beginning of criminal procedure**

The beginning to undertake measures for protection of victims can be made much earlier than the beginning of criminal procedure, because not always the trafficking offenders are aware of the time when the identification of victims is done or identification of danger, therefore, it is very important to not wait the beginning of a criminal procedure, but to start with the identification of risk indicators, their analyses, assessment and management of risk on time and in the most appropriate manner, so that when the criminal procedure begins, the victim is prepared for his/her testimony without being under pressure of fear and threatens by trafficking offenders.

Taking into consideration that the victim from the moment of identification, hence, before the beginning of criminal procedure, there may be different needs that relate with needs of health care, food, clothing or sheltering, as well as the need to move from one place to the another, without putting their lives, health, large volume property at risk or eliminating or reducing such risks, the directorate for protection of witnesses in co-operation with investigators, too, and with the competent prosecutor should undertake necessary measures, firstly for humanitarian reasons, thus to save victim's life and his/her relatives' lives, or health and property, but also because of the importance that the testimony of the victim might have as a witness in a criminal procedure.

Duration of the protection of victim in preliminary stage can never be determined preliminarily, because the necessary time for trafficking offenders to be arrested and start of criminal procedure can never be determined precisely, taking into account that usually trafficking in human beings is part of organised crime and investigatory actions usually can take time until the arrest of trafficking offenders

### **2.2 Protection of victims during the criminal procedure**

#### **2.2.1 General aspects**

As it was mentioned above, in all countries of West Balkans, protection of victims during a criminal procedure is regulated by two basic laws, such as by criminal procedure code and law on protection of witnesses and co-operators of

<sup>1</sup> Zakon o zaštiti svjedoka u krivičnom postupku Srbije, službeni glasnik Republike Srbije, No. 48, 2003, Article 3, p. 1

<sup>2</sup> Zakon o programu zaštite ucesnika u krivičnom postupku, Sl. Glasnik RS br.85/2005, Article 1, p. 1

<sup>3</sup> Zakon za zaštita na svedoci, sl. vesnik na Republika Makedonija, No. 38/05, 2005, Article 2, paragraph 3 and 5, p. 1 & 2

justice. In this chapter, the treatment of protection at this stage shall be treated in accordance with the basic laws of Albania, Serbia and Kosovo, as three countries of West Balkans, to see the way of treatment, similarities and differences between them as well as to draw conclusions for better practices.

Criminal Procedure Code in Kosovo of 2012 and Criminal Procedure Code of Serbia of 2013, are new codes and have much more provisions that regulate the position and protection of victims during a criminal procedure, than the Criminal Procedure Code of Albania.

In Kosovo this has come as a consequence of participation of representatives of European Union and United States in Kosovo, in drafting laws in Kosovo, which are engaged within the scope of European mission of the Rule of Law known as EULEX, which are part of police, prosecutorial and judicial system of Kosovo and have executive competencies in these three fields. Also the engagement of many international experts who were included within the scope of international missions in Kosovo, had an impact that the same give their contribution also in compilation of many laws of Kosovo, including the Criminal Procedure Code of 2012, which was compiled by experts of United States of America and Kosovo, and later were engaged also experts from European Union.

According to Criminal Procedure Code of Kosovo, the first duty of the police, after the identification of trafficked victim, is the notification of the Unit on Protection of Victims<sup>1</sup>, as a special unit created only for assistance and support to victims. Among all countries of West Balkans, only Kosovo possesses this unit or division, which has taken this as a model form United States of America, where these units or divisions have shown many results in practice and have created a respectful system in service to the victims of crime in general and trafficked victims in particular.

In Kosovo also in regard of protection of victims during a criminal procedure, provisions are foreseen by law on prevention and combat of trafficking in human beings, too, and protection of trafficked victims, in which possibilities are foreseen that in cases when before a court are reviewed issues in relation with acts according to this law, for persons identified as victims, the prosecutor and other authorised parties should request from the court to permit the application of special investigation possibility, in compliance with Criminal Procedure Code<sup>2</sup>.

When the question is about trafficked victims – children during investigations and criminal procedures in Kosovo also are foreseen some specific rules, according to which without prejudicing the rights of protection, and in compliance with the individual evaluation conducted by authorities, child victims receive a special treatment which aims prevention of re-victimisation.

Number of interviews of child victims, may be more than one, just for the purpose of special and complex investigations, in compliance with the Juvenile Justice Code, Criminal Code and Criminal Procedure Code<sup>3</sup>.

According to Criminal Procedure Code of Albania from 2008, which has undergone some changes until 2011, the protection of witnesses and co-operators of justice was treated, only in relation to essential procedural issues, including questioning of these persons from a distance, with the purpose to protect their identity and take appropriate measures in order to enable that the face and voice of the person to not be distinguished from parties, but, if in case the recognition of an identity is necessary or looking at a person, the court orders taking the necessary measures to avert the distinguishable view of the face of a person, whose identity had been changed<sup>4</sup>.

Criminal Procedure Code of Serbia has foreseen many provisions on protection of witnesses from the beginning of a criminal procedure until its end and regardless if the question is about protection of witnesses, in this case it should be meant also protection of victims of the injured, because usually victims are the ones who experienced the consequences

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<sup>1</sup> *Criminal Procedure Code of the Republic of Kosovo, 2012, Article 77 paragraph 1, p.28*

<sup>2</sup> *Law on prevention and combat against trafficking in Human Beings and Protection of Trafficked Victims in Kosovo, 2013, Article 15, p.10.*

<sup>3</sup> *Law on prevention and combat against trafficking in Human Beings and Protection of Trafficked Victims in Kosovo, 2013, Article 15, p.10 and 11*

<sup>4</sup> *Criminal Procedure Code of the Republic of Albania, 2008 with amendments, Article 361, paragraph 7 and 361/a, p.145*

of trafficking in human beings and are the most important witnesses in criminal matter, therefore, their protection as witnesses means also their protection as victims.

### **2.2.2 Protection of victims, according to Criminal Procedure Codes – comparative aspects in Albania, Serbia and Kosovo**

In procedural - criminal aspect, Albania has not foreseen any concrete provisions that would treat the protection of victims of the injured in a criminal procedure, but, it refers this matter to the Law on Protection of Witnesses and Co-operators of Justice<sup>1</sup>, in cases when the question is about witnesses and co-operators of justice.

According to Criminal Procedure Code of the Republic of Albania, in Article 103, paragraph 4, attention was paid to the protection of the identity or generalities and publication of photos of the defendants and juvenile witnesses, accused and injured by the criminal act, whereas, there is only one exception, when the publication turns in the interest of the juvenile or when the juvenile reaches the age of 16, which means that the adults or persons above 16 years-old do not enjoy protection as per this provision.

Provision of article 157, paragraph 2 of the Criminal Procedure Code of the Republic of Albania, which cites for the right of witness to not testify on facts from which can result a criminal responsibility for it, although it does not expressly mention the victim or the injured by the criminal act, this provision is applied also in the cases when the victim reports as a witness in a criminal procedure.

Also in cases of holding trials with closed doors, in the Republic of Albania was foreseen the possibility that in case the question is about the need to protect the safety of witnesses, the trial shall be held with closed doors<sup>2</sup>. In these cases, the possibility to have a trial with closed doors means also the possibility for trafficked victims, because usually these victims are also witnesses in a criminal procedure.

It is also worth mentioning that the provision of Article 361, paragraph 7 of Criminal Procedure Code of the Republic of Albania<sup>3</sup>, according to which the witness may be questioned from a distance inside or outside the country through audio-visual appliances, but, paying attention to protection means, whereas, this provision is supplemented also by provision of Article 361/A of this code, where it was foreseen that the face and the voice of a person to not be distinguishable by the parties.

Furthermore, the provision of Article 364 of the Criminal Procedure Code of the Republic of Albania is interesting<sup>4</sup>, too, according to which provision the court may examine the witness at his home, too, in case of the absolute impossibility to report to court, one of the members of trial panel in presence of parties but excluding the public has the possibility to take the testimony from the witness. In this case, too, the court may apply this provision in cases of trafficked victims, if they cannot report to court. Here, it is worth mentioning that the text "absolute impossibility" is not very clear, however, hereby the court is given the right to decide what can be understood by the word "absolute impossibility".

As a kind of protection at a criminal procedure can be considered also the exclusion from the obligation to testify, for the person who is injured or one of her relatives in that criminal procedure<sup>5</sup>.

This is because the injured party in such cases can choose if she will use this possibility and continue with providing evidence or not, in case she considers that the testimony would endanger her safety.

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<sup>1</sup> Ibidem, Article 37/A, paragraph 2, p. 28

<sup>2</sup> Ibidem, Article 340 paragraph 1, point c, p. 180

<sup>3</sup> Law No. 9276 of 16.09.2004 on amendment of the Criminal Procedure Code of the Republic of Albania

<sup>4</sup> Law No. 8833 of 13.06.2002 on amendment of the Criminal Procedure Code of the Republic of Albania

<sup>5</sup> Ibidem.

In case of Serbia, the Criminal Procedure Code of 2013 has foreseen special measures on the protection of witnesses, which means also the protection of the injured when they report as witnesses, taking into account special protection measures.

According to Article 102 of the Criminal Procedure Code of Serbia of 2013, the body that hold the procedure is obliged to protect the injured or the witness from insults, threatens or any kind of attack. In the provisions of this code is included also the hiding identity not only from public but in extraordinary cases also from the defendant and his defence<sup>1</sup>, this protection is provided in accordance with official duty or the request of parties or the witness herself<sup>2</sup>.

This defence in accordance with the Criminal Procedure Code of Serbia means that the bodies which conduct the procedure are obliged to consider every situation as per their official duty, when the witness/victim needs protection and meanwhile action even if there is a request by the parties in procedure or the witness of victim herself as a witness.

It is for appraising that the existence of a special category of witnesses, in the code of Serbia and existence of witnesses with special sensitivity, which are distinguished from other witnesses as per age, life experience, life style, gender, health state, nature, the manner and consequences of conduction of a criminal act, respectively, other circumstances of special sensitivity. In this category may be included also trafficked victims, therefore, the protection of these victims, in special manner means also the protection of trafficked victims when they are witness in a criminal procedure, because the manner of the interview itself of these persons means the need to be treated differently from other persons.

According to Article 105, paragraph 2 of the Criminal Procedure Code of Serbia of 2013, means for special protection, by which the right of defendant and his defence is denied to have access in the data or identity of the protected witness. The court may undertake exclusively if two conditions are fulfilled, such as: by the statement of witness or prosecutor it is verified that life, health of freedom of witness or her relatives are in danger in the amount that the restriction of the right of defence is justified and that the witness should be reliable, respectively, her statement should be true.

In the occasion of taking protective measures of the witness in Serbia, the judge of the preparatory procedure in the decision to announce a person as a protected witness notes only a nickname of the protected witness, the duration and manner of applying the protective measure, the change and removing the evidence of the data on the identity of witness, hiding the view of the witness, interviewing her in special premises besides changing her voice, making the interview through technical appliances transformation and change of the voice and photography<sup>3</sup>.

Moreover, during the interview of the witness/victim in accordance with Article 109, paragraph 3 and 4 of the code of Serbia of 2013, the court draws the attention of all the participants that they are obliged to protect as secret the data of the protected witness and her relatives as well as other circumstances which may result up to the disclosure of the identification of the witness and that the disclosure of this secret presents a criminal act. In this case, the court prohibits any question that requires an answer through which the identity of protected witness could be disclosed.

As regards Kosovo, in addition to general provisions mentioned above, related to protection of witness and injured identity, the Criminal Procedure Code of the Republic of Kosovo has foreseen one more specific chapter related to protection of injured and witnesses and this is the chapter XIII, in which details have been foreseen for all actions which need to be undertaken in the course of a criminal proceeding with the aim of protection of injured and witnesses, including the definitions of serious risk, anonymity and members of families.

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<sup>1</sup> Criminal Procedure Code of the Republic of Serbia, "Sl. glasnik RS", no. 72/2011, 101/2011, 121/2012, 32/2013 and 45/2013, Article 105, p. 53

<sup>2</sup> Ibidem, Article 107, p. 53

<sup>3</sup> Criminal Procedure Code of the Republic of Serbia, "Sl. glasnik RS", no. 72/2011, 101/2011, 121/2012, 32/2013 and 45/2013, Article 108 paragraph 2, p. 54

As regards identity of victim witness, the Criminal Procedure Code of the Republic of Kosovo in many provisions has foreseen restrictions for persons who are entitled to be notified about the case files, in cases of protected witnesses or also in cases of interviewing where the possibility is foreseen to interview in distance through video or audio link<sup>1</sup>, thus giving a higher importance to protection of victim witnesses than the right to have access to case files.

According to Kosovo code, family members entitled to protection are considered as follows: husband, extra-marital husband, a person in direct blood relation, adopting parent, adopted child, brother, sister or adopting parent<sup>2</sup>. As noted, uncle (father's brother or mother's brother) and aunt (father's sister or mother's sister) cannot be considered as members of family, except sister or brother although they are in indirect blood relation and also family members cannot be considered father in law and mother in law or their children.

Although the Criminal Procedure Code of the Republic of Kosovo has not expressly specification of situations when a person is protected only by public and situation when a person is protected also from the defendant and exceptions from the defence of the defendant, this may result from the provisions which deal with protection of witnesses.

Protection from the public implies protection of identity from public, thus, is this situation the identity of victim or witness is known for the defendant or his defence, but not for the public although in these cases the defendant and the defence of the defendant are obliged not to make public the identity of protected person and this obligation derives from court order for witness protection.

In certain cases, abovementioned measures are insufficient and the need arises to undertake additional measures for protection in effective manner the person who needs protection and by undertaking these additional measures a higher degree of protection is achieved known as the stage of anonymity.

Anonymity according to Article 220 paragraph 1.3 of the Criminal Procedure Code of the Republic of Kosovo implies as follows: lack of information given for identity or whereabouts of the injured, cooperative witness or witness, identity or whereabouts of family members of the injured, cooperative witness or witness, or the identity of whichever person that is related to the injured, cooperative witness or with the witness.

The stage of anonymity can be applied in cases when: there is a serious risk for witness or member of his/her family and full anonymity of the witness is necessary to prevent such a serious risk; the evidence of witness is so important for the matter so that it makes unfair the realisation of protection without it; the credibility of witness is investigated and disclosed fully for the judge in a closed session; and the need for witness anonymity is more important for doing justice than the public interest or the interest of the injured to know the identity of the witness in implementation of the procedure and anonymity would prevent the serious risk for the injured, cooperative witness or the witness<sup>3</sup>.

An analysis of the criminal procedure codes of the Republic of Albania, Republic of Kosovo and the Republic of Serbia indicates that the codes of Kosovo and Albania have many more advantages than the code of Albania, because they have provided for numerous provisions regulating to detail the protection of witnesses, inclusive protection of victims of trafficking when they are as witnesses, whereas the code of Serbia in relation to the code of Kosovo has also provisions regulating protection of other persons involved in protection of witnesses which are not foreseen in the code of Kosovo, such as: covert investigators, experts, professional advisors and other professional persons and the obligation of police and prosecutor to notify citizens when obtaining information related to protective measures.

These novelties brought by the code of Serbia are very important for the progress of criminal proceeding and for the safety of involved persons in protection of those persons and at the same time they have their impact in disciplining bodies of prosecution: police and prosecution while collecting information in such cases.

As regards Albania, it is necessary that the criminal procedure code is amended and needs to include all provisions provided for by codes of Kosovo and Serbia and at the same time provisions which may suit better to the legal

<sup>1</sup> Criminal Procedure Code of the Republic of Kosovo no. 04/L-123, 2012, Article 96 paragraph 4.7.3, p. 43, Article 130 paragraph 3, p.43, Article 149 paragraph 8, p. 68 and Article 213 paragraph 3 and 8, p. 96

<sup>2</sup> Ibidem, Article 220 paragraph 1 sub-paragraph 1.2, p. 100

<sup>3</sup> Ibidem, Article 223 paragraph 3 and 224 paragraph 2 point 2.2 and paragraph 5, pp. 101 and 102

- criminal system of Albania and the needs for protection of witnesses and trafficking victims when they appear as witnesses, based on circumstances and conditions which are specific for Albania.

### **2.2.3 Victim protection in accordance with the laws on protection of witnesses and justice cooperative witnesses or parties in criminal proceedings**

Protection of trafficked victims as mentioned above must be treated into two aspects, in the procedural aspect and in the operational or administrative aspect, because while in the procedural aspect victim protection is treated in relation to the criminal proceedings, according to operational aspect the protection is treated also in relation to measures undertaken by the directorates for protection of witnesses. Both these aspects are important for the trafficked victim, because they are interrelated with each other and they complement each other, so that the victim and its relatives feel safe not only in the course of criminal proceedings, but also before and after conclusion of the criminal proceedings.

Conclusion of the regular trial proceedings does not imply automatic cease of potential risk existence for the trafficked victim, for his/her relatives and for his/her property in a large volume, in contrary, exactly the reasons for revenge because of the imposed sentences shall be even stronger after conclusion of the criminal proceedings.

In cases when along with the sentences, the trafficking criminals are also confiscated the property obtained through commitment of criminal offences, shutting down of businesses where trafficking was carried out, and obliging for compensation of damages caused to the trafficking victims, are additional reasons indicating that trafficking offenders have enough reason to take revenge and to endanger the life, health, freedom and property in a large volume to trafficked victims who need protection also after conclusion of criminal proceedings.

In Kosovo, Albania and Serbia, witness and witness victim protection is regulated by specific laws, which are named by different denominations. This law is named in Kosovo as Law On Protection Of Witnesses, in Albania it is named as Law on Protection of Witnesses and Justice Co-operators, whereas in Serbia it is named as Law on the Program for Protection of Parties at Criminal Proceedings, but, although denomination of these laws for protection vary in names, in essence these laws contain quite similar provisions, because their aim is almost the same.

Although Kosovo law is denominated as Law on Protection of Witnesses, when it deals with the scope of the law, it specifies that this law offers protection for witnesses and for co-operators of justice<sup>1</sup> and when it elaborates issues of persons enjoying the right to protection, it includes as follows: witnesses or injured persons who make announcements or witness about the facts and circumstances amounting subject to relevant evidence in a criminal proceeding<sup>2</sup>, therefore, denomination of this law in Kosovo does not reflect the purpose it has as a law, but this purpose derives from the content of the law itself, whereas according to Serbia's Law on Program for Protection of Parties at Criminal Proceedings, in the category of persons enjoying protection are included as follows: the suspect, the defendant, cooperative witness, witness, the injured, expert or professional person<sup>3</sup>, whereas as far as Albanian Law is concerned, although it does not mention victims, in essence it includes the victims too, but on condition that they are witnesses in the criminal proceedings.

The problem stands more at cases when victims of trafficking do not want to give their testimony and to cooperate with justice, because all the three abovementioned laws require that for a person to enter in protection program, he/she must cooperate with justice<sup>4</sup>, or such persons should give their evidence and due to such evidence the risk may appear for them or for their relatives.

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<sup>1</sup> Law on Protection of Witnesses, in Kosovo no.04/-L-015, 2011, Article 2, p. 1

<sup>2</sup> Ibidem, Article 3, p. 1

<sup>3</sup> Zakon o programu zastite ucesnika u krivicnom postupku, Sl. Glasnik RS br.85/2005, Article 3, p. 1

<sup>4</sup> Law on Protection of Witnesses, in Kosovo no.04/-L-015, 2011, Article 5, paragraph 2 point 2.2, p. 2 and Law on protection of witnesses and justice co-operators, in Albania no.10173, 2009, as amended by Law No. 10461,2011, Article 10 paragraph 1, p.5 and Zakon o programu zastite ucesnika u krivicnom postupku Srbije Sl. Glasnik RS br.85/2005, Article 1, p. 1

In such cases, these stances at first glance will seem as if they were in contravention to international standards for support and giving aid to trafficking victims, and for lack of punishment of it in cases of non-cooperation, but if this problem is seen in the aspect of justice interest, so, to decide rightfully in a criminal case, which aims at protection and support of trafficking victim, by making justice in the country and by giving the opportunity to the victim to be compensated, in a costly procedure for the country, then it would be considered as normal and logical for the state to receive the support or the cooperation from the victim in order to bring justice to place. So, it would be a reciprocal support between the state and the victim, even more when in such cases lack of victim cooperation would bring irreparable damages to victim herself and would also lead to failure of the criminal proceedings, because the victim is the most appropriate person to shed light to many important facts in a criminal proceeding, because she herself was part of the whole history of her trafficking.

Criminal punishment of the offender of the criminal offence of trafficking in human beings is another distinctiveness between Kosovo, Albania and Serbia, because trafficking victims in Kosovo can benefit from the program of witness protection if the offender is charged by a criminal offence where the foreseen punishment is 5 or more years of imprisonment and for other specific offences such as offences against international law where trafficking in human beings is included, whereas in Albania this punishment must be not less than 4 years as minimum and it applies for all such offences without specifying any other type of criminal offence, whereas in Serbia no punishment has been foreseen but there are only mentioned the criminal offences for which the program of protection applies, and the criminal offences are as follows: criminal offences against the constitutional order and security, those against humanity and other goods protected by international law and organised crime<sup>1</sup>.

#### 2.2.4. Conditions for victim protection

As regards to conditions for protection of victims when they are witnesses, codes of Albania and Kosovo have not foreseen provisions to regulate the procedure for introduction of witnesses into their protection programs, but they have referred to special laws for this field, namely those for protection of justice co-operators, in this case also of the injured or victims in case they are reported as witnesses, thus criminal procedure codes have only regulated the procedural matters which are related to measures needed to be undertaken in cases when protected persons are summoned to give their testimony, for the manner of posing questions and preservation of their identity in the criminal proceedings, and not their protection following completion of the criminal proceedings.

To be part of the protection program in Albania, the following conditions must be met: implementation of usual measures of protection has not been sufficient and suitable for protection of witness of justice co-operator, if he (so, the witness or the injured as witness) accepts to willingly cooperate with the prosecution and the court, and through statements and/or full testimony, given without conditions or reserves, to give grounded details which constitute decisive evidence for discovery, investigation and trial of crimes and their perpetrators. Implementation of witness protection program for the witness or justice co-operator is decided only if he is at a dangerous situation, is appropriate to be included in the program (will implement the rules of protection program and will not endanger his own life and health, the life and health of other persons) and by his/her own free will accepts to actively participate in implementation thereof<sup>2</sup>.

In Kosovo, the protection measures can be implemented against a person if: information given by a person is important, which is deemed admissible as evidence while in trial review and that is considered that it cannot be ensured through any other alternative source, the risk is serious, readiness of the person proposed to be included in the program to cooperate with investigation and court bodies while implementing the program and eligibility of the proposed person for

<sup>1</sup> Ibidem, in Albania, Article 2, p.1 in Kosovo Article 4 paragraph 1, p. 2, in Serbia Article 5, p. 2

<sup>2</sup> Law on Protection of Witnesses and Justice Co-operators, in Albania no. 10173, 2009, as amended by Law no. 10461,2011, Article 10 paragraph 1 and 2, p. 5

inclusion into the program in order to operate in concordance with the program for convincing that displacement of witness will not cause any risk for life or health of other persons<sup>1</sup>.

As it may be seen, Albania and Kosovo at this point have two conditions in common, they are: cooperation with justice and existence of risk, whereas for other points, the law of Albania is more comprehensive and has more in detail foreseen conditions as to when a person may in this case a victim be included in the protection program, whereas as regards to Serbia, almost all conditions are required as in the case of Kosovo.

### 2.2.5 Types of protection measures

As far as protection measures are concerned, in Albania the following measures have been provided for: changing of identity; changing the residence; issuance of false documents; temporary protection of the identity, of the data and documents; giving testimony through another identity and administration through special means for voice or view image distortion and other types of forms as provided for by the law, in compliance with the Article 361/a of the Criminal Procedure Code (**the question of justice co-operators and protected witnesses**); physical and technical protection at the place where the person stays, and while in his/her moves; social rehabilitation; providing financial support; professional requalification; provision of advice and specialised legal support; any other measure which is estimated and approved as necessary in compliance with this law.

The following protective measures are provided for in Kosovo: physical protection of the protected person; temporary displacement of protected person to a safe place; special procedures for access to data and documents related to protected persons, from the office for issuing documents and other formal databases; change of residence, work or education of the protected person; changing the identity of the protected person; change of physical appearance of protected person including plastic surgeries; financial support for protected persons; social, legal and any other type of support, as necessary for the protected person and special regime for protected person in custody, in correctional institutions<sup>2</sup>.

The following protective measures are provided for in Serbia: physical and property protection, change of residence and settling in any other security institution, hiding of identity and the data for ownership and changing of identity<sup>3</sup>.

From this diversity of protective measures, it resulted that there are some distinctions between Albania, Kosovo and Serbia, given that the laws in Kosovo and Serbia have expressly foreseen the measures, whereas in Albania except expressive numbering of some measures, the text also is added specifying that "every other measure assessed and approved as necessary in compliance with this law", this implies that the law of Albania has left the possibility open to undertake other measures which have not been expressly numbered in this provision and it is completely implementable.

An essential similarity between the above mentioned laws of Albania, Kosovo and Serbia is also the fact that by the three laws, each protective measure can be implemented only upon consent of the protected person and not against his/her will. In the three, signing of agreement is required in between the directorate and the protected person and if deemed necessary other urgent protective measures can be taken too, until a decision is made by Commission for protection.

### 2.2.6 Responsible bodies for implementation of protective measures

As regards the responsible bodies for preparation, evaluation, approval and implementation of the witness and justice co-operators or parties at a trial proceeding protection program, in the three cases, the following have been foreseen:

<sup>1</sup> Law on Protection of Witnesses, in Kosovo no. 04/-L-015, 2011, Article 22, p. 8

<sup>2</sup> Law on Protection of Witnesses, in Kosovo no.04/-L-015, 2011, Article 5, paragraph 2, p. 3 and Law on Protection of Witnesses and Justice Co-operators, in Albania no.10173, 2009, as amended by Law no. 10461.2011, Article 12, p. 6

<sup>3</sup> Zakon o programu zastite ucesnika u krivicnom postupku Srbije, Sl. Glasnik RS br.85/2005, Article 14, p. 5

the Commission for Evaluation of the Protection Program, then in Albania and in Kosovo – Directorates, whereas in the case of Serbia – the Unit for Implementation of the Program for Enforcement of Protective Measures.

In Albania, the Commission is chaired by Deputy Minister of Internal Affairs, covering the issues of public order and it consists of the following: a judge proposed by High Council of Justice in the position of deputy chair; a prosecutor proposed by General Prosecutor in the position of a member and a judicial police officer as proposed by General Director of State Police in the position of a member and the director of directorate (for witness protection) in the position of a member<sup>1</sup>.

In Serbia the Commission consists of one judge from Supreme Court of Serbia as appointed by the President of Supreme Court, a deputy Republican Prosecutor as appointed by Serbia Republican Prosecutor and the chair of the Unit (Directorate) for implementation of protective measures<sup>2</sup>.

In Kosovo, the Commission consists of three (3) members: Chief State Prosecutor of the Republic of Kosovo, chair of the office of investigation from Kosovo Police, and the Director of Directorate for Witness Protection, whereas the Chief State Prosecutor is the chair of the Commission<sup>3</sup>.

As it may be noted, and as regards to the responsible bodies for implementation of witness and justice co-operator and trial proceeding parties protective measures, there are distinctions related to related to the level of representations, because while in Kosovo members of the Commission hold leading positions in the institutions they come from, in Albania and Serbia there come persons who are proposed by leaders of institutions they come from, except the director or head of the directorate or unit for witness protection coming based on the position.

From the composition of the commissions, the power and the level of responsibility of commission results proportionately in the cases when decided to include a person in the protection program, therefore Kosovo has an advantage in this direction, because the responsibility has been conveyed to higher levels of bodies dealing with provision of protection for endangered persons and this indicates a serious approach when treatment of this important matter is in question, not only for the lives of protected persons, but for the criminal proceeding too and for the integration of these countries into European Union.

### 2.2.7 Duration of the protection program

As regards the duration of the protection program, this program in Albania as a rule is implemented for an indefinite time and can extend into all stages of criminal proceedings, and even after their conclusion, and this depends on the existence and condition of the risk, eligibility of the protected person, in relation to the particular protective measure that is being implemented, and based on the implementation by the protected person as regards to protection agreement foreseen obligations.

In Serbia the program of protection of parties at a trial criminal proceeding is implemented in a duration as estimated by Commission and the duration depends on the case circumstances, whereas in Kosovo the duration of protection program for some measures is not defined, for some of them it may last initially up to a maximum of 12 month duration, but it can be extended again if the same ground conditions continue to exist based on which the measures have been assigned<sup>4</sup>.

<sup>1</sup> Law on Protection of Witnesses and Justice Co-operators, in Albania no. 10173, 2009, as amended by Law no. 10461,2011, Article 9 paragraph 2, p. 5

<sup>2</sup> Zakon o programu zastite ucesnika u krivicnom postupku Srbije, Sl. Glasnik RS br.85/2005, Article 7, p. 3

<sup>3</sup> Law on Protection of Witnesses, in Kosovo no. 04/-L-015, 2011, Article 15, paragraph 2 and 4, p. 5

<sup>4</sup> Ibidem, in Albania Article 11, p. 6, in Serbia Article 31, p. 12 and in Kosovo from Article 6-14, p. 3-5

As for the program duration compared between Albania, Serbia and Kosovo, there are two distinctions, one of them is related to initial duration, considering that this duration in Kosovo is set for 12 months, whereas in Albania and in Serbia it has not been defined and the other one is related to initiation of application of the protection program. In Kosovo this program includes the pretrial stage of the procedure, the stage while the criminal proceeding is ongoing and after the criminal proceeding conclusion, whereas in Albania and in Serbia this program may be implemented only during the criminal proceeding and after conclusion of the criminal proceeding, whereas the pretrial stage of the criminal proceedings is not included.

### **2.2.8 International cooperation while implementing the protection program**

Taking into consideration the sensitivity of protection of witnesses and justice co-operators or parties at trial criminal proceeding, Albania, Serbia and Kosovo have foreseen international cooperation, in the cases of including certain persons in the protection program. This cooperation is necessary because in certain cases it is almost impossible to provide safe protection for certain persons depending on the seriousness of the criminal offence and the type and level of risk involved.

In Albania, the international cooperation is provided for by Article 27 of the Law on Protection of Witnesses and Justice Co-operators and it is carried out based on obligations deriving from international agreements, in which the Republic of Albania is a party, or through agreements for concrete cases made by the director of directorate with the similar units in other countries. According to this law, the agreements for the concrete protection program may provide for the mutual implementation of protection program, including the change of residence and stay of protected persons in respective territories of the parties.

Law on Protection of Witnesses, in Kosovo, has provided for the international cooperation by Article 28, and according to this provision the international cooperation must be approved based on the international agreements, bilateral and multilateral agreements, based on comity, following the approval by the Commission also in other individual cases.

As regards Serbia, the international cooperation has been foreseen by Article 39 of the Law on Program for Protection of Parties at Trial Criminal Proceedings, and based on such provision this cooperation is realised based on international agreements or based on reciprocal agreements and based on the request for protective measures from the other state as submitted to the Unit for Implementation of Protective Measures.

In this case also, it is obvious that the international cooperation is mainly normed in the same way, but there are differences contained in the law of Albania related to "classified information" contained in the international cooperation agreement, for signing the agreement, because the general rules are not adhered as in the case of international agreements and in this case the agreement shall be signed by the director of directorate, whereas according to the law of Serbia, the Unit (directorate) for implementation of protective measures is competent for international cooperation, whereas according to the law of Kosovo, it is said that the agreement is signed by the Commission.

## **3. Concluding summary**

As a conclusion in dealing with protection of victims in Albania, Serbia and in Kosovo, it may be stated that these states have the same aims which are related to trafficking victims' protection when they appear as witnesses, always based on victims consent or will, and that the directorates/units of the three countries have the possibility to undertake similar measures for protection of witnesses, which are foreseen by respective laws of these countries.

In the three cases the state has taken as obligation creating of mechanisms for protection, it has allocated financial means for functioning of directorates for witness protection, they have established or helped in establishing shelter

facilities or safe houses for protected persons, although in the financial aspect of supporting directorates and safe houses, the government of both countries would need to do more to achieve the goal of protection.

Likewise, the three countries have acted in accordance with the European Council Convention on actions against trafficking in human beings of the year 2005, requiring from member states (although Kosovo is not yet a member of Council of Europe) that each party will protect the private life and the identity of victims, will approve the measures to secure, in particular that the identity or details allowing identification of children, victims of trafficking are not made public, through media or by any other means unless in extraordinary circumstances and in compliance with Article 10 of the Convention for Protection of Human Rights and Fundamental Freedoms, interpreted by the European Court of Human Rights, will approve measures aiming at encouragement of media to protect the private life and identity of victims through self-regulation or through regulatory measures or co-regulation<sup>1</sup>. Thus, all the three states have undertaken the measures as required by this convention by making protection of witnesses and justice co-operators as part of laws.

Aiming at protection of trafficking victims, Albania has foreseen as obligations to make the national strategy and the operational cadre for improvement of special programs for witness protection, through strengthening the directorate for protection of witnesses and justice co-operators<sup>2</sup>, whereas Kosovo and Serbia although in their strategies or action plans have foreseen protection of victims, they have not provided for any plan or action towards improvement of the program for witness protection.

Also when in question is protection of trafficking victims, a cooperation will be necessary not only between Albania, Serbia and Kosovo, but also between these countries with other states of Western Balkans and other states of European Union, because all countries of Western Balkans are small countries by territory and number of inhabitants and the possibilities of risking the trafficking victims are always present. Therefore, this cooperation would help in cases when it is required for victims to be sent to third countries or where they would be safer.

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<sup>1</sup> Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw 2005, Article 11

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## Referendum As a Constitutional Right of Citizen Participation in Albania

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### Abstract

*The referendum is one of the oldest forms of putting directly the democracy into use. The referendum represents a personal, direct statement of the citizens for any legal act or any "other matters of special importance", so that the state must take citizens' opinions before taking a decision. This notion implies the coexistence of sovereign representative bodies (assemblies) and direct popular intervention procedures. The idea of developing referendums in Albania for various issues, has become one of the main subjects of the political debates; especially when dealing with political disputes and the debate fails to find consensus. Although every political debate mentioning the idea of a referendum, once they have achieved the political consensus they let the will of the people in limbo. Unlike many other countries of the world, where the organization and development of referendums is common, leaving people the right to decide on certain issues, Albania after the dictatorship have been organised only three referendums. The referendum as a form of direct democracy is provided in the Constitution of the Republic of Albania in Articles 108/4, 150, 151, 152, 177/4, the Law No.7866, 10.06.2004 "On Referendums" and the Code election of the Republic of Albania in Articles 118-132. The paper analyses different forms of referendums as an important tool for the citizens' participations. A special attention is paid to the case in Albania. Below there is a brief analyse about the referendums in Albania by bringing the practice and facing it with albanian consitution provisions. Event though it is a common form of direct democracy in different countries, Albania has a poor experience which had faced several problems and arised different discussions through researchers of citizens participation right.*

**Key words:** citizens, referendum, constitution, government, decision-making

### Referendum

The referendum is one of the oldest form of practicing directly the democracy. The referendum represents a personal, direct and secret statement of the citizens for any legal act or any "other matters of special importance" that the state must take citizens' opinions before taking a decision.

This notion implies the coexistence of sovereign governance and direct popular intervention procedures.

"Referendum" is the term given to a direct vote on a specific issue, in contrast with votes cast at elections, which are made in relation to parties or individual candidates and generally reflect voters' preferences over a range of different issues. Referendums may be held in relation to particular circumstances (e.g., to amend a country's constitution) or in relation to particular political issues (e.g., whether or not to join an international organisation) but are in general held in relation to issues of major political significance. The terms used to define referendums may differ in different countries; the following are the most common types of referendums held in countries across the world.

A referendum usually offers the electorate a choice of accepting or rejecting a proposal, but this is not necessarily the case. In Switzerland, for example, multiple choice referendums are common.

For easier study, referendums are usually classified using two criterias:

**I. According to the type of the act or decision that is taken by the referendum under this criteria there is a classification:**

**a- Constitutional Referendum** means when the highest act of a state, in this case the Constitution, should be put to a referendum entering into force. In this case the referendum has constituent character or decision making character.

Constitutive character means that Parliament should take the consent of the people before approving the constitution and as such, it is binding for the Parliament. Decision making character is expressed in those cases when the constitution is approved by parliament. Furthermore, asking the consent of the people in a referendum has such a binding character.

**b-Legislative Referendum** is similar to that Constitutional except that in that case we are dealing with a particular law of a particular importance. In such cases parliament requires the consent of people through referendum. This referendum has a decision-making character or the referendum is organised before parliament approve it and in this case it has a constitutive character.

**c-Political-statutory Referendum** is seeking citizens ability not to deal with things that are not in a right manner and that have the will to decide on matters of political or statutory importance. This referendum is used when formed a new state, or when required the division from another state or when it comes to creation of a federation or confederation, in case of change of political regimes etc.

**d-Local Referendum**, in addition there is also a kind of referendum which compared to others is partial and is organised only in a few of territorial administrative units. This type of referendum is used in cases of local administrative matters such as in the case of investments in municipal infrastructure, investment in urbanism, etc.

## II. According to the character or the consequences of the decision making through the referendum, there are:

**a-Obligatory Referendumes**. This type of referendum is used to decide about important issues, which are explicitly provided to be decided through the referendum. This referendum has constitutive character and obliges state authorities to act on the basis of the results obtained in the referendum.

**b-Facultative Referendum** Compared with the Obligatory Referendumes, which is resolved by law or any other action, the Facultative Referendum is not obligated for the state authorities. But this referendum is used in cases when the organ itself find it necessary such a thing. Even though it is not obligated, with its application it is converted as obligated for the state authorities and they need to follow it strictly. In contrast of obligatory referendum which is provided by law or by any other act, facultative referendum is not mandatory for state authorities to implement it, but used only when it is decided as necessary. Although not mandatory, on the occasion of his application the its results becomes obligatory to be applied from state authorities.

**c- Consultative Referendum**. The difference with the two other types of referendums is that this kind of referendum is not mandatory for state authorities and does not require them to apply. But it has more advisory character from which the state authorities may take appropriate decisions, based on the results of the referendum. So this kind advises, does not obligate.

### Arguments for and against referendums

Supporters of the use of referendums argue that, in the context of increasing voter apathy and disenchantment with traditional forms of democracy, direct democracy can help to re-engage voters with politics and democracy. Another argument advanced in favour of referendums is that they can be used to resolve political problems, particularly for incumbent governments; where a governing party is divided over an issue, for example, holding a referendum can help reach a solution on the issue without splitting the party (one example of this is the 1975 UK referendum on whether the UK should remain in the EC, over which the ruling Labour government was deeply divided).

There are also a number of arguments made against the use of referendums. One is that it weakens representative government by undermining the role and importance of elected representatives. Another is that voters do not always have the capacity or information to make informed decisions about the issue at stake, and instead may make ill-informed

decisions based on partial knowledge or on the basis of unrelated factors such as the economy or support for the government. This trend may be exacerbated in the case of referendums on complex issues such as constitutional change or international treaties, with which voters are likely to be unfamiliar.

Opponents of referendums also argue that, if the executive has the power to determine when referendums are held, they can be used as a political tool to suit the needs of the governing party rather than in the interests of democracy. They also claim that, since in many countries turnout at referendums is lower than at national elections, the argument that referendums increase the legitimacy of political decisions does not stand up. However, experts in Switzerland (where a number of direct democracy votes take place each year) believe that, although turnout at referendums is around 45%, more than 45% of electors participate in direct democracy, since different voters participate in the different votes that interest them.

### **The Referendums in Albania**

The idea of developing referendums in Albania on various issues, has become the main subject of political debates, especially when dealing with political disputes and that the political debates fail to find consensus. Although every political debate mentions the idea of a referendum, once it is achieved the political consensus the will of the people is left in limbo.

Unlike many other countries of the world, where the organization and development of referendums is common, leaving people deciding by their own on certain issues, Albania after the dictatorship have only been organised three referendums.

The first one was held in 1994 for the purpose of approving the new Albanian Constitution. The second was on 29 June 1997. The referendum was organised together with the elections for the new parliament, where citizens voted if Albania should be a monarchy or a republic. A year later, in 1998, a popular referendum was organised to vote for the Constitution of the Republic of Albania.

The referendums focused on organising referendums about local issues and that should be noted that the initiative for organising it requires only 10 percent of the signatures of the municipality's or commune's population. The organisation of the local referendum can be requested as well by a number of municipal or communal councils which represents not less than one third of the population of a region, about a local issue of local government issues at the regional level.

One of the most discussed in the field of law for local referendums in Albania remains the denial of the request to hold a referendum in Vlora which has been debated for years about building a petrol station named "La Petrolifera" at the Adriatic coast at the city of Vlora. In this case by the majority of the votes the Central Election Commission (CEC) has denied the request for a referendum.

From the point of view of the Albanian laws, it has an uncertainty about the competence of the CEC to decide about the object of the referendum, to review its content and relations it creates with the legal framework. In my opinion CEC has no such jurisdiction as neither the Constitution nor the Electoral Code, ninth section of which sets out the legal framework for referendums, by not mandating CEC to enter the judgment of the object and the content of referendums.<sup>1</sup>

The right to judge on the content of referendums the Albanian law recognizes only to two institutions:

1. The President of the Republic, who "decides whether or not" only for the referendums "on issues of a particular importance"<sup>2</sup>
2. The Constitutional Court which is the competent body to judge "about the constitutionality of the referendum and verifying its results" and that, in a determined order – for the "constitutional referendum" and "general referendum"<sup>3</sup>.

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<sup>1</sup> "CEC decides to accept or reject the request - sanctioned in Article 122, Paragraph 2 of the Electoral Code are based only on the regularity of the presented documentation"

<sup>2</sup> article 129, point 3, Electoral Code

<sup>3</sup> article 129, point 2, Electoral Code

Regarding the constitutionality of the referendum, the Court must verify whether, in the case under consideration are present restrictions of the type envisaged by Article 151, paragraph 2 of the Constitution, which makes it necessary to interpret this provision.

Taking the example of the citizens' of Vlora demand for a referendum because of the "La Petrolifera" issue that questions naturally whether there is a legal right local community expressed through the referendum on such an issue that is related to the environment?

The virtue of the "On Environmental Protection" principle which termed "the awareness and public participation in environmental decision-making" as one of the "basic principles of environmental protection". This law stipulates that "local government represent the most important governmental structure for the management and protection of the environment under their jurisdiction". In the process of environmental impact assessment and strategic environmental assessment under the legal definition attended by all stakeholders, "it is especially the local government, public and environmental nongovernmental organizations" which has given the constitutional principle according to "local self-government units is exercised through their representative organs and local referendum" environmental law. It expressly recognizes the "public and non-profit organizations" right to request" general organization of referendums or partial environmental issues". Principles and norms of international law contained in the reports of the public to environmental issues, have become an integral part of the Albanian positive law, and, as such "guarantee public access to environmental information, to participation in the environmental decision making and access to justice in relation to environmental issues".

### **Referendum as an expression of sovereignty**

Article 177 and Article 150 of the Constitution regulate the various procedures and ensure fair referendum, from one side to the Parliament, as the representative of authority delegated by the people (Article 2.2 of the Constitution); and on the other hand, for the people, to whom belongs the sovereignty of the Republic of Albania (Article 2.1 of the Constitution).

The spirit of the Constitution and its specific provisions, so far, guaranteeing the right of the people (the sovereign) to repeal any law passed by Parliament, except those explicitly defined in Section 151.2 of the Constitution. These are the only laws in order to determine more precisely the correct and for which has not been granted to the people by the Constitution repealed by referendum. For any other law, including the revision of the Constitution, or other relevant laws, the people have the right to exercise its powers through a referendum abrogates. Actually, the article no. 117<sup>10</sup> of the constitution fixes the procedures for "constitutional referendums". Their designation in this way has to do with the fact that this referendum is required for approval or the ratification of the constitutional changes. It is obvious that in this case we are dealing with the Consultativ Referendum, or in other words "citizens consultation". This kind of referendum cannot be initialised by the citizens (via 50.000 voters), but it is anticipated as a possible procedure for the adoption of constitutional amendments, the permission for their use, or consultations with the citizens for the presentation of the special attention laws (this kind of referendum is stipulated on the articles 177.4, 177.5, 150.2 of the Constitution).

In all cases, Consultativ Referendum is developed before the legal norms (amendment, draft-law) have the legal permission for their use, and unless it is considered necessary by the proceeding body. Certainly that the Consultativ Referendum expresses in a straightforward way the will of the citizens, and that means that the mass has the power, but in this case, it is not straightforward. We need to distinguish the direct expression of the citizens' will from the direct action of the citizens. There is another case of the will expressed directly by the citizens – general elections; and there is no practice of the sovereignty but a procedure for the pass of the right to practice it to the elected representatives.

Direct practice of the sovereignty is when the citizens, in accordance to the specific procedures, without being conditioned from the will of any other organ, initiates and concludes a legal process expressing directly its will, which creates legal consequences.

This case is anticipated only in the article no. 150.1 of the Albanian Republic Constitution. Unless it is initialised a general referendum for the repeal of a law, after the completion of the formal and procedural papers, that no "authority body" has the possibility to "prevent" its development. This is the direct practice of the sovereignty, as it is mentioned in the article no. 2.1 of the Constitution.

It is needed the clear differentiation between a amendment (review) process practiced by citizens power and an abrogation process (repeal, derogation) exercised by another branch (in this case refer to formally sovereign supreme power). According to the Constitution of the Republic of Albania, in any case that will undertake a process to amend the Constitution, therefore, a positive legislative process, clearly must follow procedures laid down in Article 177.

General abrogative referendum has nothing to do with the process of amendment. Through abrogative referendum provision may only remain without power, turning the legal rate in the previous situation (when we repeal of an amendment), or leaving the legal relationship. In the second case, a positive process begins immediately legislative body to extract new legal rate according to procedures. More clearly, in the second case, the referendum repealed a constitutional provision, the Assembly begins proceedings under Article 177 for the adoption of new legal norm regulating the corresponding relationship.

Article 177 of the Constitution establishes a procedure that follows the Albanian Parliament to amend the constitution, while section 150.1 defines a general security, in fact the only control of people (the) on whose authority has passed the right to exercise sovereignty (Assembly). In any case, the practice of sovereignty by selected representatives is checked and after being elected the representatives of sovereignty practiced primarily through the issuance and enforcement of laws, the right to abolish laws is the only means of control, (but highly effective) against elected representatives. The only laws, which people have removed the right to control themselves, are those mentioned in Article 151.2 of the Constitution." Issues related to the territorial integrity of the Republic of Albania, the restriction of freedoms and human rights, the budget, taxes and financial obligations of the state, and the lifting of state of emergency, declaration of war and peace and the amnesty cannot be submitted to a referendum". This is the position of the sovereign who adopted the Constitution and only for those laws he has given the right to himself.

This has to do with the special nature of these laws that makes it impossible to be submitted to an objective popular judgment. There is not even the Constitution of the Republic, as the highest law of the Republic, or amended laws.

Constitutional amendments, to change one or several provisions of the Constitution, as the form, the content, are in themselves elements of a law, therefore, under Article 150 of the Constitution the people through 50,000 voters have the right to request repeal of this law, without prejudging the outcome of the referendum. In the end, put the people themselves, as if the amendments will not be canceled, meaning that it is the right one is adopted. Albanian legislation has oriented referendums' options, while the institution of the referendums determining (ratification, suspension or rescinding) is specifically prescribed by law: constitutional referendum, for the total and for a referendum on an issue of particular importance.

While consultative referendums regarding Albanian jurisprudence through decisions of the Supreme Court, despite more than modest experience of the practice of referendums, has been identified as an essential feature of a consultative referendum, the fact that he and his score directly produces no obligation to intervene in the content of the normative act on a specific issue, to suspend or abolish it.

The decision as voters as well as the Assembly to pass a referendum will be reviewed by the Constitutional Court. This control is very important because the phrase "issues of particular importance" are reviewed by the Constitutional Court because it is a very general term that can be abused. The Constitutional Court considers that the review of the constitutionality of the requirement for a referendum, calls for clarification of the general conditions associated with the institution of the referendum in general and the abolishment in particular, in view of Article 151 of the Constitution.

In a general perspective, the position of the constitutional referendum as a tool, is linked to the notion of sovereignty<sup>1</sup>, which is exercised by representatives chosen by him<sup>2</sup>. In this regard, the fundamental importance takes the issue of determining the conditions and cases in which people can practice sovereignty firsthand. According to the doctrine, the principle of the practice of sovereignty by people, implies a democratic concept according to the criteria of a representative democracy that

<sup>1</sup> Article 2/1 of the Constitution

<sup>2</sup> Section 2.2

contains elements enabling the direct practices of constitutional democracy. This means that people with the right to practice the legislative function, normally not for themselves directly but through their elected representatives.

The Assembly may decide an international agreement to be ratified by the referendum. The idea was that if such an agreement does not unanimity within a political force that has the power, it calls people to solve its dilemma. Furthermore, the Constitution recognizes the local referendums, or in other words referendums that are held by local governments. In this case the referendum is held at the time as one or several territorial administrative unit .

Voters do not have the right of initiative to amend the Constitution. In this sense, the initiative to challenge the law on the Electoral Code is an inefficient operation. Such an initiative belongs to the Assembly. Assembly has no draft constitutional obligation to lead to a vote by referendum. 3/5 of the members of Parliament are enough to make such changes. It belongs to the political realities of the moment and the desire to know the opinion of the sovereign (the people) to decide whether an amendment will be voted by the referendum.

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# Transformational Leadership and satisfaction of Egyptian Academics: The Influence of Gender

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## Abstract

*Leadership is one of the topics that have been widely discussed in the literature. Researchers have been concerned with studying the influence of leaders on different organizational outcomes such as employees' satisfaction. This study explores the influence of gender differences on leadership styles of Egyptian academics and its impact on subordinates' satisfaction. The study aims to compare research results in an Arab country with previous research results in the West. Questionnaires and interviews are used for data collection. Data are collected from three Egyptian universities. Similar to Western countries, the leadership style is found to be significantly related to subordinates' satisfaction. Further, transformational leadership is significantly correlated to subordinates' satisfaction. Regarding the relationship between gender and leadership style, gender is found to be insignificant in determining the leadership style as differences exist across males as well as across females. An important finding of this study is that subordinates of the opposite gender of their leaders are more satisfied. The results of this study are significantly important to organizations that aim to achieve high levels of employees' satisfaction and exceed the required results. There is a significant need to develop transformational leaders both at the macro and micro levels.*

**Keywords:** Leadership style, gender, subordinates' satisfaction, transformational leadership, transactional leadership.

## 1. Introduction

Leadership is one of the topics that have been widely discussed in the literature. Many researchers have been concerned with discussing the concept of leadership and many related issues. This concern with studying leadership has not been limited to management academics and professionals but extended to include historians, philosophers, and researchers in different fields (Ali et al, 2013; Bass, 1990).

Researchers argue that leadership styles contribute significantly to the failure and success of their organizations (Oshagbemi & Ochoi, 2006; Lok & Crawford, 2004). Also, many researchers have studied the impact of gender differences on leadership (e.g. Swanwick & McKimm, 2011; Parker, 2005; Kan & Parry, 2004; Appelbaum et al, 2003; Eagly et al, 2003). There is evidence that female leaders tend to be more transformational, interactive and committed whilst male leaders are more transactional as they don't excite, transform, empower or inspire people to focus on the interests of the group or organization (e.g. Bridges, 2009; Drucker, 2009; Fernandez & Rainey, 2006; Ahn & Dombusch, 2004; Eagly et al, 2003; Alimo-Metcalfe & Alban-Metcalfe, 2001).

There is a common agreement in the West that Western and Eastern cultures are different and can hardly meet (Zakouk, 2001). This view is based on the influence of Islamic principles in shaping the Eastern culture. Despite this, Khatemy (2001) argues that the West and the East are not separated as there has been always religious and cultural communication between them. Accordingly, this study aims to investigate differences and similarities between Western Leaders and their counterparts in the East. The study focuses on studying the influence of gender differences on leadership styles of Egyptian academics. Further, the study explores the impact of transformational leadership on subordinates' satisfaction in an academic setting.

## 2. Research Background

Leadership is one of the terms that can be hardly defined. Researchers have introduced different definitions of leadership using different perspectives (e.g. Ali et al, 2013; Long & Thean, 2011; Hersey et al, 2001; Schermerhorn, 1999). According to Long & Thean (2011), the idea of leadership is all about introducing a future vision as well as the strategies needed to achieve this vision. Schermerhorn (1999) defined leadership from an organizational perspective as motivating

and influencing others to work hard to achieve organizational goals. In supporting Schermerhorn (1999), Hersey et al (2001) believed that leadership is all about influencing others' behaviors based on individuals' and organizational goals. In general, leadership is about elements such as 'group', 'influence', 'support', 'individual & organizational goals' (Ali et al, 2013; Bryman, 1992).

Leadership style has been always related to the ability of leaders to achieve organizational goals (Oshagbemi & Ochoi, 2006). One of the most influential theories of leadership in the last few decades is transformational-transactional leadership discussed by many researchers (e.g. Oshagbemi & Ochoi, 2006; Pastor & Mayo, 2006; Miller et al, 2002). Transformational leadership is about creating an emotional attachment between leaders and employees. It is the ability to motivate and encourage intellectual stimulation through inspiration (Avolio & Bass, 2004; Dvir et al, 2002). As stated by Jin (2010) '*transformational leadership integrates the elements of empathy, compassion, sensitivity, relationship building, and innovation*' (p.174). Transformational leadership is based on the idea of changing followers' values so that they share the same goals and values of the organization. By doing so, employees achieve organizational goals not because they will be rewarded but because these goals are consistent with their personal goals (Ali et al, 2013; MacKenzie et al, 2001).

Nevertheless, transactional leadership is an exchange-based relationship. It is based on using rewards to motivate employees and accomplish specified goals, i.e. complete tasks on hand (Huberts et al, 2007; Pearce & Sims, 2002). In this type of leadership, followers are expected to perform their tasks according to given instructions (Huberts et al, 2007).

Generally, Transactional-transformational leadership theory is concerned with explaining how leaders influence their followers. The heart of these two types of leadership is the leader-follower relationship. In transactional leadership, leaders and followers consider each other as a tool for achieving their goals. Specifically, leaders use followers to achieve specific work goals. In return, followers consider achieving the specified goals as the main source for receiving rewards. On the other hand, Transformational leader motivates and inspires followers. The relationship between the transformational leader and followers is characterized by motivation, devotion, self-sacrificial, and exceeding self-interests for the sake of the organizational benefits (Bass, 1997). The transformational leader is visionary, charismatic, sensitive to followers' needs, and inspirational (Pastor & Mayo, 2006).

Research on gender differences argues that female leaders tend to be more concerned with the welfare of other people rather than their male counterparts e.g. Swanwick & McKimm, 2011, Parker, 2005; Kan & Parry, 2004; Appelbaum et al, 2003; Eagly et al, 2003). It is argued that male leaders tend to focus more on goal achievement (Gibson, 1993; Eagly & Johnson, 1990; Eagly, 1987). Conversely, female leaders are regarded as visionaries, more collaborative and less authoritative (Vinnicombe, 1987). Rosener (1990) found that female leaders tend to encourage participation, share power, energise and enhance the self-worth of others. However, male leaders view their job in transactional terms and rely heavily on formal authority.

Thus, there is evidence from the literature that female leaders encourage involvement, participation and empowerment of individuals (e.g.; Williams, 2012; Bridges, 2009; Drucker, 2009; Fernandez & Rainey, 2006; Ahn & Dornbusch, 2004; Eagly et al, 2003; Alimo-Metcalfe and Alban-Metcalfe, 2001; Eagly & Mary 2003). Precisely, female leaders tend to be more transformational, interactive and committed. On the other hand, male leaders are more transactional as they don't excite, transform, empower or inspire people to focus on the interests of the group or organization.

Also, Leadership style has been related to job satisfaction. The importance of job satisfaction stems from the argument that it highly influences employees' commitment and loyalty (e.g. Pandey & Khare, 2012; Markovits, 2011; Donovan et al, 2004). Further, it is one of the important factors used to predict employees' turnover and productivity levels. In general, job satisfaction can be defined as employees' feelings and attitudes towards their jobs (Armstrong, 2003). Voon et al (2011) believe that job satisfaction does not reflect only employees' attitudes to their jobs, but also to the organizations that employ them. According to Armstrong (2003), satisfied employees have favorable and positive attitudes to their jobs, whilst dissatisfied employees have unfavorable and negative attitudes to their jobs.

Job satisfaction is influenced by many factors. Some factors are related to the organization such as working conditions and financial benefits. Others are related to management such as the type of support managers give to their employees. One of the factors that influence employees' job satisfaction is the type of leadership exercised by their managers (Voon et al, 2011).

The leadership style influences employees' satisfaction and accordingly their commitment, loyalty, and productivity. Researchers have been concerned with studying the ability of male and female leaders to satisfy their subordinates (e.g. Parry, 2000). Some researchers argue that gender does not influence leader's ability to satisfy subordinates (e.g. Powell, 1990). Others, believe that female leaders can better satisfy their followers than their male counterparts (e.g. Parry, 2000). This is based on the argument that female leaders are transformational whilst male leaders are transactional. This view believes that transformational leaders can satisfy their followers more than transactional ones. Based on this difference, this study needs to investigate differences in the leadership styles of Egyptian leaders and how these styles influence subordinates' satisfaction. The role of gender in determining leadership style as well as subordinate's satisfaction needs further exploration.

## 5. Research Objectives

This study aims to explore the relationship between leadership style, gender, and employees' satisfaction in an Egyptian academic setting. Achieving the research aim requires achieving the following objectives:

1. To investigate differences in leadership styles of Egyptian male and female academics.
2. To compare leadership styles of Egyptian leaders to their counterparts in the West.
3. To discuss the relationship between leadership styles and Egyptian employees' satisfaction.
4. To demonstrate the influence of cultural factors on shaping the relationship between leadership style, gender, and job satisfaction.
5. To explore the role of gender and experience in shaping the relationship between leadership style and employees' satisfaction.

## 6. Research Hypotheses

Research on leadership shows that transformational leadership builds an emotional attachment between leaders and employees while transactional leadership is an exchange-based relationship (Jin, 2010). In transactional leadership employees get work instructions and are rewarded for achieving specific objectives. Employees in transformational leadership may exceed expected outcomes because they feel attached to their organizations. Thus, it is possible to assume that employees are more satisfied with transformational than transactional leadership. This leads to the following research hypothesis:

**H1: There is a significant positive relationship between transformational leadership and subordinates' satisfaction.**

Transactional leaders reward their employees for achieving specific work objectives. Thus, one might expect young academics with limited experience in the academic field to be more satisfied with transactional leaders. Young employees are usually seeking financial satisfaction that can be easily achieved through transactional leadership. On the contrary, older academics with more experience tend to be more concerned with recognition and appreciation that can be achieved through transformational leadership. This leads to the second hypothesis.

**H2: subordinates' experience is positively correlated to their level of satisfaction with transformational leadership.**

It is unclear whether gender influences academics' satisfaction with their leaders or not. Some people prefer to be supervised by individuals of the same gender; others work better with supervisors of the opposite gender. Thus, it is important to investigate the role of gender in influencing subordinates' satisfaction in an academic setting. Accordingly:

**H3: there is a significant negative relationship between gender similarity (of leaders and subordinates) and subordinates' satisfaction.**

## 7. Research Methodology

The study explores the relationship between leadership style and subordinates' satisfaction considering the influence of gender and years of experience. Thus, two variables are studied: an independent variable (leadership style) and a

dependent variable (subordinates` satisfaction). In addition, two intermediate variables are studied (gender & experience) – Figure 1.

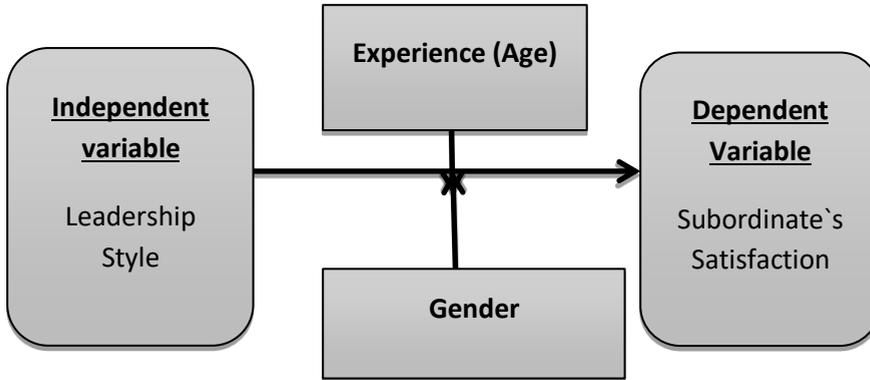


Figure 1: Research Variables

7.1 Research Setting & Sample

The study was conducted in three academic settings: Helwan University, Sadat Academy for Management Sciences, and Modern University for Information and Technology (MTI). Whilst Helwan University (a public university) and MTI (a private university) under the authorization of the Ministry of Higher Education, Sadat Academy is a public Academy under the authorization of the Ministry of State for Administrative Development.

The study was conducted at the faculty level as it was difficult to access university level (Chancellor and vice Chancellor). Data was collected from the Faculty Dean and Vice Dean(s) in each Faculty. This presented top management level. The middle management level included Head of Departments who were also considered as subordinates to top management. In addition, data was collected from staff members in each department. The study focused on academics only. Administrative staff was not included in this study. The total number of participants is summarized in Table 1.

Table 1: Classification of Research Sample

Number of Participants	
185	Males
135	Females
35	Less than 5
60	From 5 to less than 10
95	From 10 to less than 15
130	More than 15
187	PhD
85	Master
48	Bachelor
320	Total

## 7.2 Data Collection

Data was collected using two methods: questionnaires and interviews. Combining qualitative and quantitative sources of data collection was useful in increasing reliability of data collected (Yin, 1994.). Whilst quantitative methods allow the researcher to be familiar with the issues being studied (Golafshani, 2003), qualitative methods provide in-depth analysis and understanding of these issues (Yin, 1994). Data collection was conducted on two stages:

### Stage 1: Questionnaires

The first stage of data collection used questionnaires. The study used the Multifactor Leadership Questionnaire (MLQ) for measuring leadership and subordinates' satisfaction. The MLQ was developed by Bass & Avolio (2000) and has been used by more than 200 research studies over the past years. The questionnaire has a well-established reliability and validity as a leadership instrument for both industries and service settings (Muenjohn & Armstrong, 2008). The MLQ is provided in both Self and Rater forms (Bass & Avolio, 2004). Whilst the Self form measures the leadership style, the Rater form measures subordinates' satisfaction with this style.

MLQ is the most widely used instrument to assess transformational leadership (Kirkbride, 2006). Further, it is considered *'the most validated measure of transactional and transformational leadership'* (Ozaralli, 2003, p.338). The questionnaire uses five main scales for measuring transformational leadership: idealized influence attributed and behavior, inspirational motivation, individual consideration, and intellectual stimulation. Also, it uses three scales for measuring transactional leadership: contingent reward, management-by-exception-active, and management-by-exception-passive.

A previous study on the impact of leadership style on management of change in Egypt concluded that using questionnaires for data collection was not useful in an Arab culture (Metwally, 2010). Metwally (2010) argued that being a young, single, female researcher in an Arab culture gave employees a negative impression that the researcher was unqualified. Accordingly, the researcher had to build rapport and gain employees' trust through spending time discussing issues and exchanging ideas. This was done through interviews and observations. This was not the case in this study as being an academic made it easy for the researcher to collect data using questionnaires in academic settings.

### Stage 2: interviews

Interviews were used for data collection at this stage as they provided in-depth analysis of emerging themes. Interviews aimed to identify the influence of gender differences on leadership styles. Specifically, it aimed to explore answers to the following:

- **What is the leadership style of Egyptian male and female leaders?**
- **To what extent does the leadership style differ across male and female leaders?**
- **Is transformational leadership exercised by female leaders only?**
- **How does gender influence subordinates' satisfaction?**

Semi-structured interviews were conducted at the faculty level. Although interviews had a general guideline to follow, the interview allowed for an exchange of thoughts and ideas between the interviewer and interviewees. Further, it allowed interviewees to express themselves freely. This was useful in raising issues that were not covered by the interview guideline. The interview guideline focused on the same themes of questionnaires regarding the assessment of transactional and transformational leadership. 40 interviews were conducted including 20 interviews in each university. The researcher kept interviewing until it was believed that nothing new is added by new interviewees.

## 7.3 Data Analysis

The Statistical Package for Social Science (SPSS) software was used for data analysis. The scores have been correlated to elements of transformational and transactional leadership styles as well as subordinates' satisfaction. The aim was to test research hypotheses aiming to examine of transformational leadership on subordinates satisfaction taking into consideration gender. Descriptive statistics were also used including mean, standard deviation. Pearson correlation has been used to examine the correlation between dependent variable (job satisfaction) and independent variable

(leadership style). In addition, multiple regression analysis has been used to examine the effect of leadership style on subordinates' satisfaction using two mediating variables: gender and years of experience.

## 8. Results

Pearson's Correlation was used for data analysis to investigate the influence of transactional and transformational leadership styles on subordinates' satisfaction- Table 2.

**Table 2: Correlation between Leadership Style and Subordinates' Satisfaction**

Subordinates' Satisfaction	Transactional Leadership	Transformational Leadership		
.574**	.278*	1	Pearson Correlation Sig.	Transformational Leadership
.000	.048	.000		
51	51	51	N	
.178	1	.278*	Pearson Correlation Sig.	Transactional Leadership
.211	.000	.048		
51	51	51	N	
1	.178	.574**	Pearson Correlation Sig.	Subordinates' Satisfaction
.000	.02	.000		
51	51	51	N	

\*\* Significant correlation at the 0.01 level (2 tailed)

\*Significant correlation at the 0.05 level (2 tailed)

As shown in Table 2, there is a significant relationship between leadership style and subordinates' satisfaction. However, this relationship is stronger and more significant in the case of transformational leadership ( $r=0.178$ ,  $p=0.02$ ) (transactional leadership,  $r=0.574$ ,  $p=0.000$ ). This implies that transformational leaders can better satisfy their subordinates compared to their transactional counterparts. In other words, subordinates are satisfied with transformational more than transactional leaders. These results support the first hypothesis. Thus:

**there is a significant positive relationship between transformational leadership and subordinates' satisfaction.**

Also, leadership style is not related to gender. As, differences in leadership styles occur among male leaders as well as among female leaders. Thus, the relationship between gender and leadership style is insignificant ( $p > 0.1$ ).

Comparing means and standard deviations of leadership styles on the one hand, and gender on the other, shows an interesting result as transactional leadership is practiced by female leaders more than their male counterparts.

**Table 3: Gender and Leadership Styles**

Leadership Style	Male Leaders		Female Leaders
	Mean	SD	Mean
Transactional	2.28	0.61	2.33
Transformational	2.32	0.75	2.17

Regarding the relationship between years of experience and satisfaction with transformational leadership, data analysis shows a very strong positive significant correlation ( $r= 0.478, p=0.001$ ) between subordinates' experience and satisfaction with transformational leadership. Accordingly, the second hypothesis is supported as:

**Subordinates' experience is positively correlated to their level of satisfaction with transformational leadership.**

Also, data analysis show a significant negative relationship between gender of the leader and subordinate on the one hand, and subordinates' satisfaction, on the other ( $r=-0.576, p= 0.045$ ). This implies that leaders and subordinates of the opposite gender work better together. Accordingly, the third hypothesis is supported:

**There is a significant negative relationship between gender similarity (of leaders and subordinates) and subordinates' satisfaction.**

## 8. Discussion

Although questionnaires were useful in investigating the relationship between leadership styles and subordinates' satisfaction, more understanding of different themes related to gender, transformational leadership, and subordinates' satisfaction was needed. Interviews were very useful in providing in-depth understanding and exploration of identified themes. This is discussed below:

### 8.1. Gender and Leadership Style

The literature presents different views regarding the influence of gender on leadership styles. While some researchers believe that females employ a different leadership style than males (e.g. Lyons & McArthur, 2007; Heilman et al, 2004; kim & Shim, 2003; Kabacoff, 2001), few researchers believe that gender is not the only factor that influences leadership style (e.g. Anderson et al, 2006; Morgan, 2004; Chemers et al, 2000). findings of this study show that leadership styles differ across male as well as across female leaders. Transactional and transformational leaders are found among female and male leaders.

An interesting research finding of this study is that Egyptian female leaders tend to be more transactional. This is in contrast with the large amount of research classifying females as transformational (e.g. Heilman et al, 2004; kim & Shim, 2003). As explained by interviewees, this is closely related to the idea of 'glass ceiling' which is regarded as a barrier that excludes women from higher level leadership positions. This barrier is usually related to prejudice and discrimination (Morrison et al, 1987). Interviewees (males and females) suggest that women have been prototyped as emotional and spend most of their time in socialization rather than work achievements.

Thus, females in their organizations try to employ behaviors that do not fit with the leadership prototype held by their followers as well as other members of the organization. As Halford & Leonard (2001) conclude, men and women are different within their organizations. Halford & Leonard argue that this difference is reflected in the preference of males rather than females.

Nevertheless, considering the classification of the Egyptian culture as masculine (Rehm et al, 2008; EL-Zahhar & Hocoovor, 1990), females found that the only way to grow in their organization and break the 'glass ceiling' was by acting like males.

### 8.2. Individuals of the opposite gender work better together

Another research finding is that individuals of the opposite gender work better together. Regardless of leadership style, female subordinates are found to be more satisfied with their male leaders. In contrast, male subordinates are more satisfied with female leaders. This supports a previous research finding (Ahmed, 2002). Three cultural perspectives have been raised during the interview phase and are useful in explaining this type of relationship: Suspicion, Prototyping, and reliability.

- *Suspicion*: 'suspicion' is a basic feature of the relationship between individuals of the same gender. This is also referred to as 'jealousy'. Suspicion results in misinterpretation of behavior. This may results in a poor communication between leaders and followers.

- *Prototyping: female leaders have been prototyped as supportive, caring, and emotional encourage. This encourages followers to develop a flexible, stable, and relaxing relationship with their female leaders. On the other hand, female workers prefer to work with male leaders who are precise, rational, and goal oriented. Moreover, this is a good opportunity for females to change the usual prototyping of females as unreliable or undependable.*
- *Reliability: in an Arab culture, female leaders prefer to work with male followers as they believe they are reliable, dependable, and hard workers. On the other hand, male leaders prefer to work with female followers as they easily accept and follow work instructions with little arguments.*

### 8.3. Experience

Data analysis shows that subordinates' experience positively influences level of satisfaction with transformational leadership. As explained during the interview phase, older academics with a long working experience are more satisfied with transformation leadership compared to young academic with a limited experience. This difference can be explained using Maslow's hierarchy of needs (Maslow, 1962; 1954; 1943). First: individuals usually focus on financial satisfaction at the beginning of their career. As individuals are financially satisfied, they aim to achieve other goals. Some goals lead directly to financial satisfaction; others are related to nonfinancial satisfaction. Academics with a long experience tend to be more concerned with issues such as recognition and appreciation as well as loyalty to their organization.

Second, transactional leadership seems to be more effective with young academics as they will be rewarded against achieved work objectives that lead to financial satisfaction. However, Transformational leadership tends to be more accepted by academics with more experience aiming to a higher level of achievements, appreciation, and recognition. This can be easily done by relating individual interests to organizational interests which is the heart of transformational leadership.

## 9. Research Implications

Leadership style is not an end in itself. It is the output of different personality dimensions including values and beliefs. Subordinates' satisfaction is highly influenced by the extent to which their values and beliefs are in accordance with those of their leaders. Values and beliefs form individuals' attitudes that are expressed through different behaviors in different situations.

Considering the extraordinary impact of transformational leadership on the individual and organization level, there is a need to encourage the application of transformational leadership in today's organizations. Organizations should select leaders who have the necessary personality traits to exercise transformational leadership. In Egypt, like other Arab countries, practicing transformational leadership needs a crucial shift in individuals' values and beliefs which makes change a necessity. This change occurs at two dimensions: organization (micro) level and country (macro) level.

Change at the organization level should focus on changing values and beliefs of organizational members in general, and leaders in specific. The way to achieve this is through *'training'*. The traditional type of training that focuses on *'situational, single-loop learning'* is no longer useful in this case (Argyris, 1976). As it develops leaders' abilities to develop solutions suitable to the problem they face without changing their mental structure (Pastor & Mayo, 2006; Kim, 1993). Training used to build transformational leaders has to be a *'double-loop'* learning (Argyris (1990, 1991). Double-loop learning occurs when people change their values, beliefs, and mental map. It results in a long term change in behaviors.

The difference between transformational and transactional leaders is in the mental structure (values, beliefs, thoughts) rather than managerial skills (Pastor & Mayo, 2006). Thus, training has to focus on making necessary changes in individuals' values and beliefs to ensure that dimensions of transformational leadership are deeply rooted in individual's personality.

However, creating transformational leaders through changing values and beliefs needs more effort than just training at the organization level. Egyptians tend to be individualistic as they believe in individual rather than group work. Also, Egyptians value the *'father leader'* in guiding and leading family/group members (Bochner, 1994). The *'father leader'* is similar to the *'transactional leader'* who guide followers by giving instructions and providing rewards for achieving goals. Thus, developing transformational leaders needs deep change in the Egyptian culture including Egyptians' values, beliefs,

and way of thinking. This cannot be accomplished over a short period rather; it needs a deep change in the education system including teachers, teaching methods, curricula, and methods of evaluation.

## 10. Limitations & Further research

In this study age was used to reflect years of experience. Thus, older academics have more experience than younger ones. This is not always the case. Sometimes individuals decide to change their careers and begin an academic job after spending many years in another nonacademic job. Thus, further research that separates age from experience is needed.

The study was conducted over a short time period. The most effective way in studying change is to study change over a long period of time (Dawson, 2003). This allows observing change, implementation, identifying errors, and making necessary changes when needed. Using a longitudinal study to test research hypotheses can provide more interesting results.

Conducting the same study in other industries and comparing results to the results generated in the academic field is an interesting future research. This is expected to illustrate the influence of *organizational culture*.

Future research is also needed to demonstrate the influence of organizational culture in public universities in comparison to private universities. Whilst the current study focused on academics, future research is needed to study the influence of gender on leadership styles and subordinates' satisfaction among administrative staff.

Finally, it is very important to investigate reliability of the Multifactor Leadership Questionnaire (MLQ) in Egyptian organizations. One of the reasons for using the MLQ in this study is the high reliability proved by many researchers in different Western settings. However, retesting the reliability of the MLQ in an Arab culture may provide different results. Doing so was behind the ability of this study as it requires in-depth analysis of data collection using a large sample over a long time period.

## 11. Conclusion

This study explored the influence of gender differences on leadership styles of Egyptian academics and its impact on subordinates' satisfaction. The study aimed to compare research results in an Arab country with previous research results in the West. The study used questionnaires and interviews for data collection. Data was collected from three Egyptian universities. Similar to Western countries, the leadership style is found to be significantly related to subordinates' satisfaction. Further, transformational leadership is significantly correlated to subordinates' satisfaction as Egyptian leaders can satisfy subordinates more than their transactional counterparts.

Regarding the relationship between gender and leadership style, gender is found to be insignificant in determining the leadership style as differences exist across males as well as across females. The idea of 'glass ceiling' and the stereotyping of females in Arab cultures have highly influenced females' leadership styles. Females tend to behave as males to break the glass ceiling and be accepted in their organizations. An important finding of this study is that subordinates of the opposite gender of their leaders are more satisfied.

The results of this study are significantly important to organizations that aim to achieve high levels of employees' satisfaction and exceed the required results. Transformational leadership needs change in values and beliefs of individuals. This change can be achieved using training programs at the organizational level. However, a change in the educational system at the country level to support a change in the mental structure of Arab individuals is the way to build new generations of transformational leaders.

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## Judicial Control of the Administration in the Republic of Kosovo

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### Abstract

*In all countries with developed democracy, the control of the work of the administration by the courts is an acceptable and applicable principle in the best European practices and wider. The building of a modern, professional and efficient administration is the goal of every country that is aspire the integration to the European Union. The development of the public administration and the reforms in this sector aims to bring closer the public administration with the citizen and offering more effective and quality services. But all this important and wide variety of activities offered by the administration cannot remain uncontrolled, because the lack of control may result in violations and abuse of the rights of citizens. In this aspect the judicial control is considered as the most effective mean to protect the individual rights of the citizens from eventual violations and abuse by the administration. The Republic of Kosovo has made some important steps in this direction. The adoption of the new Law on Courts and the recent amendments to this Law, present the clear steps which have been undertaken with the purpose of improving the performance of the judiciary. The establishment of a special department within the Basic Court of Pristina, is expected to efficiently and effectively impact the hearing of the administrative cases, and at the same time it will have an impact on improving the work of the administration. The administration needs to be aware that there will be a substantial control over the legality of the acts such administration passes.*

Keywords: Administration, legality, court, control, judicial.

### I. INTRODUCTION

In all countries with developed democracy, the control of the work of the administration by the courts is an acceptable and applicable principle in the best European practices and wider. The building of a modern, professional and efficient administration is the goal of every country that is aspire the integration to the European Union. The development of the public administration and the reforms in this sector aims to bring closer the public administration with the citizen and offering more effective and quality services.

But all this important and wide variety of activities offered by the administration cannot remain uncontrolled, because the lack of control may result in violations and abuse of the rights of citizens. In this aspect the judicial control is considered as the most effective mean to protect the individual rights of the citizens from eventual violations and abuse by the administration.

The Republic of Kosovo has made some important steps in this direction. The adoption of the new Law on Courts<sup>1</sup> and the recent amendments to this Law, present the clear steps which have been undertaken with the purpose of improving the performance of the judiciary.

The establishment of a special department within the Basic Court of Pristina, is expected to efficiently and effectively impact the hearing of the administrative cases, and at the same time it will have an impact on improving the work of the administration. The administration needs to be aware that there will be a substantial control over the legality of the acts such administration passes.

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<sup>1</sup> Law on Courts, Nr. 03L – 199, as amended with Decree of the President of the Republic of Kosovo. DL-047-2010, Date 09.08.2010 (Official newspaper of the Republic of Kosovo / Pristina: Since V / no. 79/24 August 2010).

## II. DEVELOPMENT

### 1. The Overall review of the work of the administration and control

The public administration represents an important sector within the country. The average workload of its sectors commitments is significantly large. The control of the work of administration is considered to be means of prevention or elimination of intentional or unintentional mistakes of administration employees.

The control of the work of administration is performed in two different ways: 1. the internal control and 2. the external control.

The internal control is conducted by the higher bodies of the administration. In the contemporary administrative systems there are two types of internal control of the work of administration: a) the institutional control, as a rule is accomplished based on a dissatisfaction expressed by a party, namely, according to the appeal. Through the appeal the concrete lower administrative body act is ahead the highest administrative body. b) The hierarchical control, is the form of control realized on the hierarchical authority, and hence the higher authorities not only have the right to supervise the work of lower bodies but they have an obligation to perform it. This type of control is committed through the inspection and audit.

The external control is conducted by specialized bodies that have the competence and the right to operate in this field. This type of control is committed by several bodies, among them may be, the parliament, the ombudsperson and the courts. Among the most important forms, what in theoretical aspect is also considered to be the most controversial form of work control of the administration, is the judicial control, consequently this is going to be the key part of this analysis.

### 2. The judicial review of the administrative actions

The judicial control of the administration, implies the authority that is given to the political and administration independent body, to resolve conflicts that have been incurred by the functioning of the administration<sup>1</sup>. The conflict in the administrative field arises when a party alleges that through a particular administrative act subjective rights have been violated, respectively there were legal violations. In this regard the institution of judicial control is presented as a constitutional guarantee for the protection of the freedoms and human rights through the fair and public trial from independent<sup>2</sup> court.

#### 2.1. Forms of the judicial control

Courts during the inspection of the work of administration, actually do the control of the legality of administrative acts, which control is performed or accomplished in two main forms:

1. The general control, accomplished through administrative conflict procedure and
2. The judicial protection of human rights, conducted by the Constitutional Court, when it is determined that the specific administrative act violated human rights.

Typical form of administrative judiciary is an administrative dispute (conflict).

#### 2.2. Administrative conflicts

The aim of administrative conflict is provision of judicial protection of rights and interests for legal and natural persons and other parties, the rights and interests that have been violated by individual decisions or by actions of public administrative authorities, as well as the protection of lawfulness.

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<sup>1</sup> Esat Stavileci, "Hyrje në shkencat administrative", Prishtina, 1997, p.129.

<sup>2</sup> Sokol Sadushi, "E drejta Administrative", Tirana, 2008, p.266.

The issue of administrative conflict in the Republic of Kosovo is regulated by the Law on administrative conflict<sup>1</sup>.

With this law are regulated competencies and composition of the court as well as the rules of procedure, based on which the competent courts shall decide on lawfulness of administrative acts by which the competent authorities of public administration shall decide on rights, obligations and legal interests of legal and natural persons, and other parties, as well as for the lawfulness of actions of administrative authorities<sup>2</sup>

Based on a law, an administrative conflict can start only against the administrative act issued in the administrative procedure of the court of appeals, but in some cases an administrative conflict procedure can also start against the administrative act of the first instance, against which in the administrative procedure, complain is not allowed<sup>3</sup>. But there is another situation where a party can open an administrative procedure that occurs in the case of inaction of the administrative body, even after the appeal in second instance. Therefore, the party who is dissatisfied with the decision of the first instance authority, carries the right to appeal within the legal deadline<sup>4</sup>, but the body does not issue a decision on the appeal<sup>5</sup>, what then arises the right to address the court<sup>6</sup>.

Administrative Conflict begins with the claim. The plaintiff of administrative conflict may be a natural person, legal person, the ombudsperson, the associations and other organizations, that act for protection of the public interest, who considers that the administrative act has violated directly or indirectly any right or interest, based on the law.

### 2.3. The judgment of administrative acts by the Constitutional Court

In the theory of law it is considered a very controversial issue, the ratio of the constitutional court with the regular courts, that adjudicate administrative issues, therefore which acts are the subject of which court. Clarifying the above mentioned division of control, it should be said, that there is an agreement that the acts of general character (normative) should not be subject of the regular courts interpretation, but that competence should be left to the Constitutional Court.

In this regard only the acts of individual character can be treated in administrative judiciary contexts, and they may be the subject to regular courts<sup>7</sup>. This attitude, in a way is the matter of the law on administrative conflict, wherein in article 15, paragraph 3, states: "Administrative conflict cannot be developed against administrative acts that constitute a general obligation issued by administrative authorities, unless they violate legitimate rights of the parties". Constitutional Court of the Republic of Kosovo, in many cases has decided on institutions decisions, by which decisions the rights and freedoms of citizens have been violated, as defined in the constitution. Only in 2011 there were 18 cases or 10.98% of the requests to the court, referring to the decisions of government institutions<sup>8</sup>. The decisions that allegedly violated human rights and freedoms are guaranteed by the Constitution.

### 3. Judicial administration control systems

There are mainly two administrative judiciary systems in the world, the French system and the Anglo-Saxon system. The French system envisions the creation of specific administrative courts that will have the competence of

<sup>1</sup> Law No.03/L-202 Administrative Conflict, 16 September, 2010

<sup>2</sup> Ibidem, article 1.

<sup>3</sup> Ibidem, article 13

<sup>4</sup> Legal deadline for appeal in second instance is 30 days. Article 131, Law no. 02 / L-28 on Administrative Procedure

<sup>5</sup> In theory this is known as "administrative silence"

<sup>6</sup> The current law on administrative proceedings, refers incorrectly to civil proceedings rather than the law on administrative conflict, probably this will be changed by this law amendment.

<sup>7</sup> For more information read, Sokol Sadushi, "Kontrolli Kushtetues", Tirana, 2004, p. 96

<sup>8</sup> Constitutional Court of the Republic of Kosovo, Annual Report, 2011,

<http://www.gjk-ks.org/repository/docs/Raporti%20Vjetor%202011%20Versioni%20Final.pdf>.

judgment on administrative issues, exclusively. Whereas Anglo-Saxon system foresees that administrative issues should be resolved within the regular courts.

This system is a characteristic of Anglo-Saxon countries (common law), but it is also implemented in other countries. According to this system the public administration activities are subject to the ordinary jurisdiction trial.

In theory, there are various discussions about the factors that influence the country to choose the specified type of judiciary administrative acts control. At present, in sixteen<sup>1</sup> European Union countries particular administrative court exists. Whereas in eleven<sup>2</sup> other countries, administrative rights are being operating by specialized subsidiaries, within the framework of regular courts, commonly within the Supreme Court.

The great importance given to administrative judiciary within the European Union, has influenced various debates, to talk about what is already called the "Europeanisation" of the administrative judiciary. 'Europeanisation' implies the standards within the EU, as regard the field<sup>3</sup>.

Kosovo has selected to meet the Anglo-Saxon system of administrative judiciary, where the administrative litigation are resolved within the regular courts. Until January the 1<sup>st</sup> of 2013 the Supreme Court was responsible of judgment on administrative matters, respectively the special room for administrative disputes, which operated besides it<sup>4</sup>.

After the reforms and after the new law for the courts has come into force, administrative issues are within the exclusive competence of the Court in Pristina<sup>5</sup>.

#### 4. The functioning of the administrative judiciary in Kosovo

Since the end of the war the Republic of Kosovo has been the target of criticism from both local and international stakeholders. Numerous international reports<sup>6</sup> have revealed major deficiencies in functioning, ascertaining major violations of human rights and freedoms in many judicial proceedings.

The judicial protection of the rights of citizens guaranteed by the Constitution of the Republic of Kosovo<sup>7</sup>, the Law on Courts<sup>8</sup>, and the European Convention for the Protection of Fundamental Human Rights and Freedoms with its Protocols being directly applied in Republic of Kosovo<sup>9</sup>, continues to be accompanied by the numerous challenges. Despite the efforts, many promises and declarations of progress in this field, due to poor conditions in the judicial system in the country<sup>10</sup>, great difficulties in realizing of this right has been faced.

<sup>1</sup> Germany, Austria, Belgium, Finland, France, Greece, Italy, Latvia, Luxembourg, Netherlands, Poland, Portugal, Czech Republic, Sweden, Romania and Bulgaria.

<sup>2</sup> Cyprus, Estonia, Denmark, Ireland, Lithuania, Hungary, Malta, Spain, Slovenia, Slovakia and the UK

<sup>3</sup> Esat Stavileci, "Gjyqësia administrative, mundësit dhe përparësitë", Paper presented at the conference organized by the University "Marin Barleti" në Tiran, on 4.02. 2011

<sup>4</sup> Article 31.5 Law on Regular Courts, Official Gazette of SFRJ, no. 21, April 28, 1978.

<sup>5</sup> Article 11.3 Law No.03 / L-199 on Courts, July 22, 2010

<sup>6</sup> European Commission, "Communication from the Commission to the Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo", Brussels, 10.10.2012.

[http://ëëë.meiks.net/repository/docs/Dokumenti\\_punues\\_i\\_Komisionit\\_Evropian\\_mbi\\_SF\\_per\\_MSA\\_mes\\_BE-se\\_dhe\\_Kosoves.pdf](http://ëëë.meiks.net/repository/docs/Dokumenti_punues_i_Komisionit_Evropian_mbi_SF_per_MSA_mes_BE-se_dhe_Kosoves.pdf).

<sup>7</sup> The Constitution of the Republic of Kosovo, Article 54: "Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated".

<sup>8</sup> Law on Courts, no. 03L-199, Article 7. p. 3 (Official newspaper of the Republic of Kosovo / Pristina: Year V / no. 79/24 August 2010): "Every person has the right to address the courts to protect and enforce his or her legal rights. Every person has the right to pursue legal remedies against judicial and administrative decisions that infringe on his or her rights or interests, in the manner provided by Law"

<sup>9</sup> The Constitution of the Republic of Kosovo, Article 22, p (2) European Convention on the Protection of Human Rights and Fundamental Freedoms and its Protocols.

<sup>10</sup> The Ombudsman of the Republic of Kosovo, Annual Report, 2011, pp 98-

105.[http://www.ombudspersonkosovo.org/repository/docs/91976\\_RAPORTI%202011%20shqip.pdf](http://www.ombudspersonkosovo.org/repository/docs/91976_RAPORTI%202011%20shqip.pdf).

Since January of current year, the Law on Courts<sup>1</sup>, came into force in its general form, through which the judicial system in Kosovo has conducted the reform. Will these reforms prove success, it remains to be seen in the future, for it is still early to make judgment, as only few months have passed since the judicial system has started to function based on the new law.

### **5. The judgment of the administrative issues**

Kosovo is at a very important stage of the reforms on public administration, with the intention to establish an administration that functions according to the European parameters and which is able to provide efficient services to all, services that are based on the law and with no violation of them.

On ensuring that the administrative acts issued by public administration are in accordance with the law, the process of judicial control is considered. As regards the above mentioned judicial reforms, besides other changes, it has also brought changes in judgment of administrative issues. Currently, in this course, the judgment of administrative conflict issues, is the exclusive competence of the Court in Pristina<sup>2</sup>.

This court is the only one in Kosovo that is going to have the Department for Administrative Affairs. In this department, the law provides that the administrative issues are judged by a professional judge. If the party is not satisfied with the decision taken in the framework of the Basic Court, then the Court of Appeal can be addressed, which has jurisdiction to review all appeals against the decisions of the Basic Court<sup>3</sup>. In the Court of Appeal issues are judged by three professional judges<sup>4</sup>.

The Department of Administrative Affairs in the Basic Court in Pristina, consists of three judges that adjudicate cases of administrative dispute. Commitment in this department, regarding the review of lawsuits has started on 28 of March<sup>5</sup>. Since January the 1<sup>st</sup>, when judicial reform in this department has started, cases from Supreme Court have been received, this procedure lasted until March 25<sup>th</sup>. During this time 1,800 cases in total, have been received. So far, the department has not released any judgment<sup>6</sup>. Not issuing any judgment, leaves no reason of justifying the commitment of the department, although the judges of the Basic Judge, associate the delay with the reform process. They say that the transfer of cases from the Supreme Court has created difficulties in this regard.

The greatest problem in this department remains small number of judges, there are three judges at the present time, what is considered to be very small number, regarding the large number of cases that were transferred from the Supreme Court.

### **6. The necessity of establishing the administrative court in Kosovo**

Current approaches of administrative issues settlement, that are conducted by regular courts of Kosovo makes it to be the part of the Anglo-Saxon system, where special administrative courts exists.

Due to the need of the time and the processes through which are passing, most countries in the region have established these courts. Building the rule of law, first of all, is based on the protection of human rights and freedoms, which protection can best be accomplished by issuing legal decisions that affect individual interests. Therefore, in this respect Kosovo should review the possibility of establishing a specialized court for administrative matters<sup>7</sup>.

It should be stated that Kosovo, in terms of legislation, is close to the European Union ones, meanwhile it still has not passed the challenges that the region countries have faced in terms of harmonization of legislation with EU standards, thus this could be an advantage towards establishing an administrative court.

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<sup>1</sup> Law on Courts, no. 03L-199, Article 7. p. 3 (Official newspaper of the Republic of Kosovo / Pristina: Year V / no. 79/24 August 2010).

<sup>2</sup> Law No. 03 / L-199 on Courts, Article 11.

<sup>3</sup> Ibidem, article, 18.

<sup>4</sup> Ibidem, article, 20.

<sup>5</sup> Personal interview with Mr. Krenar Berisha, a judge in the Basic Court in Pristina-department administrative issues, date April 2, 2013.

<sup>6</sup> Ibidem

<sup>7</sup> The Chairperson of the Judicial Council Mr. Enver Peci, in a personal interview declared pro on the establishment of the Administrative Court.

Reform which has occurred by the new law for the courts, seems that have been overshadowed, as well as it has not adequately addressed the issue of administrative judiciary. Changes on the law on administrative procedure, should have been a priority in this regard.

The academic Esat Stavileci while analyzing the advantages of establishing an administrative court, highlights three main aspects:

Firstly, in the effort to build the rule of law, the role of administrative judiciary is of particular importance, in terms of strengthening the protection of rights and interests of citizens.

Secondly, in the efforts to institutionalize legal protection in general, the administrative judiciary could be regarded a powerful impact on protection and safety of objective lawfulness, that in the past was violated and continues to be breached even nowadays.

Thirdly, in an effort to ensure that the same bodies are examining the law compatibility of the administrative acts, or with any higher legal norm, administrative courts should be presented as a powerful instrument of guaranty of that review<sup>1</sup>.

## II. CONCLUSION

Based on the reviews, studied in this paper, conclusions could be summarized in several key aspects:

Firstly, the process of reforming the judiciary under the new law on courts has brought improvement in the work and functioning of the judiciary. However, there were delays on the start of the work. The work on the review of the case, was supposed to start earlier and not having delays. The proof relays on the fact that the Department for Administrative Affairs of the Basic Court in Pristina has failed to decide on any case since January.

Secondly, the laws regulating administrative field in Kosovo, constitute a good foundation for the functioning of judiciary control of administrative work. But in this regard necessary changes should be made, particularly in the law on administrative procedure, as the current law allows the implementation of law on Administrative Procedure of Socialist Federal Republic of Yugoslavia, claiming that: "It replaces all of the provisions of the applicable law that are incompatible". As these two laws have the same scope, meanwhile the purpose of the new law is the development of completely new administrative procedure, reasonably the new law would have to completely replace the SFRY law. While not stating that supersedes the old law, the new law inevitably creates confusion, as both instruments remain effective, thus for each administrative issue, administrative authorities or court that addresses an administrative matter, need to determine which provisions of the old law are applicable.

Thirdly, the Republic of Kosovo needs to establish a special administrative court due to current conditions of the resolution of administrative issues. The small number of judges within the department on administrative issue at the Basic Court in Pristina, has no capacities to withstand.

Finally, the number of the judges in the Department on administrative issue should be increased as soon as possible. Available number of three judges, is considered too little to judge all those case that are already transferred from the Supreme Court, what leaves no space of consideration for new cases to come.

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<sup>1</sup> Esat Stavileci, "Gjyqësia administrative, mundësit dhe përparësitë", Paper presented at the scientific conference organized by the University "Marin Barleti" në Tiran, on 4.02. 2011

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## State and Citizenship in Former Communist Countries, the Albanian Case

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### Abstract

*The goal of this article is to establish the degree of interrelation between state and society as well as the implications that come from this interrelation by focusing on the Albanian case. If the state is perceived in relation with the society, then what comes as a result of this relationship will be seen as Plexus. On the other hand Nexus is the way the Albanian society perceives the relation between state and society, mostly represented by the functioning of state, where the state is the central axis and the society has no influence on it, this derives mostly from the political culture which has been shaped during communism. Countries that experienced totalitarian regimes tend to have similar behavior and perception towards politics which is the product of political culture. In this regard the political culture in post-totalitarian regimes shares similar elements such as: lacks of civic participation, people usually do not trust their governments or politics. The Albanian society usually does not participate in protests or other civic participations unless there is something directly related to their harm. In this regard our society behaves mostly like a post-modern society divided in various small groups of interests that are mostly incapable in achieving their aims because they lack a greater support. Although nowadays there is a greater civic participation during the transition period we lacked this participation due to some elements discussed in this paper.*

**Keywords:** State and citizenship, state and society, relation with the society, greater civic

### Introduction

The concept of "social system"<sup>1</sup> has moved to the center of sociological theories, political theories, together with other concepts related to it, such as "social structure" and "social function" which are conceived to serve only as theoretical tools, to study the society in a given country at a given time where changes are perceived as unstructured or in other words as historical changes. In sociology state is mostly perceived as a social relationship, a rational technical or bureaucratic organization. States can be seen as places where people live and therefore influence, protest, destroy or develop. Meanwhile some sociologists see the state in relation to society; others think that the states are in fact a reflection of society representing beliefs that civil society has major influence in statehood. Our goal is to establish the degree of interrelation between state and society as well as the implications that come from this interrelation in Albania and in countries that had similar experiences. If the state is perceived in relation with the society, then what comes as a result of this relationship will be seen as PLEXUS. "PLEXUS" means multiple discrete forms linked together in complex ways. On the other hand NEXUS explains a series of connections established or located in a central entity.<sup>2</sup> Nexus is the way the Albanian society perceives the relation between state and society, mostly represented by the functioning of state, where the state is the central axis and the society has no influence on it, this comes mostly from the established Albanian political culture which has been shaped during communism. Although we should not deny that for major issues that pertain to a large extent, the reflection and reaction of the population is greater. The process of statehood did not end after the formation of the state it was not simply related to independence, or to some reform developments that lead Albanians towards some exact conclusion, statehood is a continuous process which is accompanied by ongoing structural changes. Developments are not related only to the constituent rules and institutions although they play a crucial role in achieving some objectives in relation to organization and expectations. In this regard it would be better to say that "policies" that affect the structure of the state are part of an ongoing constituent process that include a number of elements and influences coming from different sources. Weber argues that local religious cultures have shaped and are shaping organizational practices, which helped modernize practices, modern capitalism, and the modern bureaucratic state system. In case of Albania, the religious cultures have been subject to constant changes and volatilities by failing to inculcate the bureaucracy and perhaps create an appropriate environment for anarchy in Albanian perception. Also religion was not inculcated in Albanian society being subject of various religious changes and impositions did not create a close spiritual relation to the different coexisting religions which were introduced by the greater powers. The lack of religious close relation is explained also by Edith Durham by writing

<sup>1</sup> Parsons, T. (1951). The social system, New York, NY, USA: Free Press, pp. 575

<sup>2</sup> Carroll, P. (2006). Since, Culture and modern state formation, Berkeley, and Los Angeles, California, University of California Press, pp. 3-4

that if you pass through Romania and ask them; what are you? They say Catholics, in Bulgaria they say Orthodox but in Albania they say Albanians.<sup>1</sup>

Does this mean that our society has suffered from the genesis the lack of organizational practices? This will be limited evidence as organizational forms existed in our society; it is enough to mention the existence of old statutes as a regulatory form of social relationships. Aubrey Herbert stated that Albanians are people who want mostly their freedom, they will never pay taxes.<sup>2</sup> It is true that during the rule of Zog, who started to collect taxes regularly to all Albanians, the demonstrations of the population against taxation were limitless especially during 1923-1924, according to the journals of the time there were almost 2000 protests almost two demonstrations per hour.<sup>3</sup> This record in the history of Albania shows that they have protested mostly because they did not want to pay the taxes because it directly damaged them although it could help develop the country, if the government appropriately used the gains. Referring to this assertion the anarchic nature of Albanians has not changed in its nature entirely, even now days the taxes are not paid by everyone but could it be true the supposition that the Albanians go to the protests only when something is related to them or when they fear a direct damage, if a policy will be undertaken? In this regard my work focuses in two main research questions which are: Does the civil society in Albania and the society in general lack civic participation in order to influence government policies? And the second research question which relates to the first one is: If there is a lack of civic participation in Albania what are the factors that are influencing mostly this behavior?

## 1. Civic participation in Albania

In order to prove this we should look first at the number of protests that are organized in a given time and the reasons these protests are organized excluding the political gatherings or meetings as they are mainly well organized and the people that participate are related in some ways. The biggest demonstration in Albania from 1990 was the student's demonstrations that brought to the collapse of the communist regime. In the beginning of 90s Albania lacked any established and widely accepted rules of the political games, perhaps the only rule well established was the emergence and sustainability of multi-party system which was the basic element towards democracy. This unclear version of politics came after one of the most world severe dictatorship regimes. Communist regime in Albania was of no doubt the most severe regime in the region followed by Romanian communist regime that was also harsh. This regime in Albania it is often argued that "captured the person" mainly by propaganda and the induction of fear. People were not allowed to speak their mind otherwise they were imprisoned, they were not allowed even to believe in God or claiming for the bad economical situation. The regime had a direct impact on the reformation of citizen and leadership, by inducing also a certain political culture which dominates the mind and perception of Albanian people today. After 1991 there was a lack of demonstrations until 1996 and in the beginning of 1997 these demonstrations escalated to anarchy and statelessness. The protests started when the Pyramid schemes were closed after IMF stated that they were making money laundering, so they should be closed. This anarchy was not cause as a result of solidarity but as a personal need to have the money back from the Pyramid schemes. The result was not only the collapse of these pyramids but the collapse of government and the system as whole. In 1997 was an anarchy which had very tremendous results after the opening of the army and the possession of the arsenal by the people. In this regard 1997 was not reflected as a civic resistance towards the government but as an anarchic situation that nobody wanted to experience once again. The general perception after 1990-s in Albania is that there is a lack of civic resistance, and lack of organization in our society, as we will see from the studies below. Very often the civil society has been reprimanded for supporting the governments or political parties in order to benefit from their powers. In this regard social organizations were prejudiced of fulfilling the interest of various parties and not supported even when they argue government policies. In order to understand and make an accurate observation why people are usually indifferent to the policies that are introduced from the institutions such as parliament, government, etc., I shall analyze two levels of perception, the first relates to the changing forms of governance and power in Albania, and the second relates to the social product which reflects the construction of the constituent structures.

## 2. Power, state and society

It is clear that societies are composed of subsystems of different types. With subsystem we suppose any type of organization which has components related to each other such as interest groups, individuals etc. All subsystems of a society constitute "the social system" while state agencies are physical manifestations of "the social system". Various times and places reflected structures, forms, roles and functions of different states. In order to better understand the present and future of the Albanian statehood, we will look briefly at state-society relations from the Communist period until today. In this context, let us focus on a general division of states on the basis of authority and their impacts on society and vice versa:

<sup>1</sup> Durham, E. M. (1905). *The burden of the Balkan*, London: Nelson

<sup>2</sup> Destani, B. & Tomes, J. (2012). *Miku i madh i shqiptarëve, Aubrey Herbert dhe krijimi i Shqipërisë së sotme*, Via Egnatia, Tiranë, Albania

<sup>3</sup> Gazeta "SHQIPËRIA E RE", (e diel, 18 mars 1923), Konstancë, v.I, nr.132, pp.1

**a) Totalitarian and dictatorial states**, which are characterized by higher authority, where the state intervention is limitless. The state is managing and implementing economic, social and individual activities. Dictatorship in Albania may be represented by this form of state. Communism in Albania produced intervention and the use of force produced a general fear which kept the individuals in silence. Another characteristic of communism was the propaganda introduced by the state and was mostly believed by the people that lacked the information how things were outside Albania. As Alexander Wendt states places like Albania have been called "autistic", mainly because its society had no connection to the outside world and the international system did not "construct" the state as constructivists claim.<sup>1</sup> Communism brought to customization of society with the rules, lack of creativity, competition, lack of freedom, lack of speech etc.

**b) Weak states**, these states have little power and may occur during transitions. The intervention of state is limited there is high informality, free markets. Transition periods are associated with high uncertainty and informality. After communism Albania had undergone through a transition period and in some aspects and fields there is still transition such as political transition. The political transition can be understood from the continuing need for consensus which does not leave space for competition. The Albanian transition like the others as well was and in some ways still is characterized by limited interferences from the government which has brought to a lot of costs coming from informality. The Albanian transition for many analysts finished in 2005 where the political rotation gave hope that a quasi democracy was established in Albania, they are not wrong but some other analysts argue that the transition is still present as there is still a lot of informality.

**c) Consolidated state**, these states have democratic institutions, at this stage the state has taken form, formality is increasing. The state might have balanced authority, quasi democracy. In this case the state intervention is based on the requirements of conditional priorities for governmental continuity. State at this stage of implementation formalizes rules and then integrates them into society.

An example that describes this stage may be the law of "legalizing the illegal" constructed buildings in Albania. It was thought by the politicians that the decision would meet the requirements of a great number of citizens who had built their houses illegally. At the same time we observe that the group affected by this chaos, such as the previous owners showed little resistance to change. They did not organize many protests and they did not show any willingness to continue their protest in order to be compensated more and for a shorter period, they did not try also to prevent this law to be amended. Here are some of the problems observed from this situation and obtained from the interviews with the former owners<sup>2</sup>.

- a) Owners were not organized in a stable resistance and meshed that with the onset of the problem, as a result of uncertainty surrounding the property as well as its procedure.
- b) Another problem was the distrust in the institutions from the interest group which mainly believed that the resistance would not produce any solution to their problems.
- c) Also the heads of the Former Owners association were dominated by the Republican party which was supposed to support them but being in coalition with the governing party did not want any trouble, so persuaded the leaders of the interest groups to be silent on the matter.
- d) On the other side also the interested group on legalization did not make any effort to legalize houses as they thought that this law would be proposed even by the opposition as they needed the votes of this people. Even in certain cases it is also seen as an obligation of the state to their perception.

These perceptions derive mainly from the so called communist rule that treated property as a common property, a property for people and of nobody.

The lack of resistance in our society is due to several crucial factors: Firstly people in Albania disbelieve that things can change if faced with continued resistance. This confidence comes as a result of our political culture, which is shaped after a big disappointment coming from the dictatorial regime, although lately there are some evidences that this perception is changing by inducing a change in political culture as well. The disappointments were for the most part of the population in the early 1990s, people after many great expectations and confidences coming from the regime's propaganda understood that it was almost everything a lie. After communism Albanians recognized that the communist propaganda was just an illusion. This distrust has continued and even deepened by some abortive models of resistance, which in some cases have become part of the narrow interests of certain groups.

Another belief formed and established during the communist system was that the state should take care and think about everything without asking "anything". This is another critical behavior of Albanian society which again stems from its political culture, they are used to expect from state. This perception has brought towards an "apathetic society", thinking that the state has the power and it is its duty to accomplish everything, without feeling any responsibility to change anything by giving in the end the "fault" only to public authority and to politics in general. Another legacy of the past is the fear from government which induces obedience, and in some other cases domination. The

<sup>1</sup> Wendt, A., (1999), *Social Theory of International Politics*, New York, Cambridge, Cambridge University Press, pp. 2

<sup>2</sup> the owners that possess the land before communism

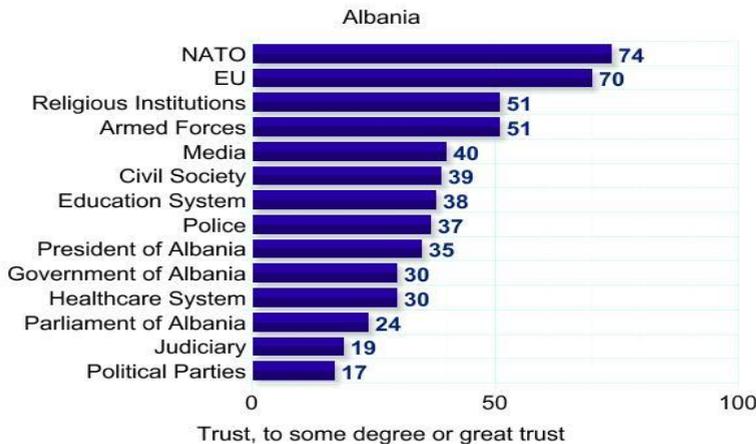
domination from government and politics has different shapes as we will see. In order to induce a change or protect our interested we need to demand that change with persistence. Balanced intervention requires useful people, active civil society, people and society should demand more from themselves and less from the state. Nietzsche states that: "The state is the coldest of all cold monsters"<sup>1</sup>. For Nietzsche where the state stops, begins the man who is not useless. This statement recognizes the need for useful people, which in the post-modern world seems to be the way for achieving political goals. Now days this perception has changed and even if the state is not perceived as Nietzsche presumes the power of people or citizens could be enormous if people are "useful" or in case of Albania if they believe in it, and act. In this regard the question that we face is: How useful are we to ourselves and to what extend does this usefulness influences government decision-making?

The answer to this question relies on three main elements of political culture that were established during dictatorial regime not only in Albania but also in the other countries that experience totalitarian regime.

The first element as mentioned above is the lack of trust that characterizes the citizens that have experience this regime, or the younger people that are influenced by the elders who experienced it. Lack of trust is manifested not only towards government but also towards other people that might represent for instance the civil society by implying a lack of civil participation at the political life. The lack of trust is manifested in different ways, some think that the best punishment towards politics is not participating in election. According to Central Election Commission in Albania known as CEC, just after communist regime in Albania there were high rate of people participation in elections. In 1991 just after the collapse 99 percent of Albanians voted, until 1996 there was only 10 percent decrease of voters participating in elections and in 1997 after the pyramidal schemes it dropped at 43 percent.<sup>2</sup> The hopes in the beginning of 1991 had a drastic decline after the chaos of 1997 in Albania which created the idea that politics was nothing but a struggle for power. After this period it has been some irrelevant ups and downs that describe the lack of trust generally in politics. This assumption would be just speculation if we do not take into consideration the people beliefs.

In this regard we completed a questioner in Tirana where 65 percent of people did not believe in government and political parties. Another questioner in Tirana made in 2014 shows that 95 percent of people do not have trust in anything or anyone. Another poll shows that: "many types of CSOs and state organizations have the trust of only 40%. However, religious organizations, charitable and other humanitarian organizations such as women's organizations have public trust as high as 60%"<sup>3</sup>. Another survey made from PASOS for six countries in the Balkans shows that people in **Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, and Serbia** do not trust the public institutions and the political parties. For instance in Albania people believe that the institution that has the greater ability to influence the government policy is the Parliament.<sup>4</sup> As we can see from the table below Albanians believe more in international organizations than in political parties and government.

Table 1



Source: Institute for Democracy and Mediation

<sup>1</sup> Nietzsche, F.W. (1976). "On the New Idol", *Thus Spoke Zarathustra* (Part One), in *The Portable Nietzsche*, tr. & ed. by W. Kaufmann, Viking., New York, pp.160.

<sup>2</sup> [http://lajme.parajsa.com/Politike/id\\_98835/](http://lajme.parajsa.com/Politike/id_98835/)

<sup>3</sup> <http://socs.civicus.org/CountryCivilSocietyProfiles/Albania.pdf>

<sup>4</sup> <http://pasos.org/12122/pasos-poll-citizens-of-six-balkan-countries-identify-political-parties-as-the-most-untrustworthy-institution-in-their-respective-countries/>

The second element is related to the inherited fear to speak the truth, although this doesn't seem a concerning element in Albania from the general debate that generates in the media, some different reports regarding family abuse on women from different organizations such as UNICEF UNDP, and other organizations show that a major problem is the silence of women and the lack of denunciation that comes from two main factors, the first relates to the lack of law implementation, and the second relates to the lack of substantial income of women to live alone.<sup>1</sup> Another survey made from the Faculty of Social Sciences shows that people are afraid to complain at the directors at the working places. The repression in terms of Foucault produces silence<sup>2</sup> he explains it through the "repressive hypothesis" where he assumes that repression continues once it has become a state of mind. In this regard he wrote: "This explains the solemnity with which one speaks of sex nowadays. When they had to allude to it, the first demographers and psychiatrists of the nineteenth century thought it advisable to excuse themselves for asking their readers to dwell on matters so trivial and base"<sup>3</sup>. Although his studies were focus on the prohibition of speaking about sex the analogy works also in regard to the prohibition of speaking once mind during communism in Albania. In this context nowadays if anyhow someone feels there might be consequences they prefer silence. But if someone has no job and not much to lose from the government policy or politics, he might be perhaps more inclined to speak against it.

The third element inherited from past is the perception that the state has the power for everything and it is responsible for everything. All the above elements induce the lack of civil participation in politics and the lack of a functional civil society. Another question in relation to this and especially to the civic participation is: Are we ready to have a liberal approach to governance or is necessary that the state intervenes in our relations in all fields? The liberal approach in this context refers to the liberal theory of international relations that presumes that the state should not intervene at the market because as Adam Smith states "the invisible hand" will regulate the market, or the market regulates itself.<sup>4</sup> In case of Albania economically speaking citizens expect that the state should regulate the market by creating quotas for higher education which might structurally provide jobs for everybody like it was during the communist regime. In this regard our society in relation to its political culture, generally perceives that decisions should come from "above", the government must think for us while we remove all the responsibilities from ourselves. At this stage we should focus more at the Foucault's perception of power and promote this in our society as a way to enhance their participation and resistance.

### 3. Power as a product of society

We might conclude that political culture in Albania lacks the confidence in politics and governance. The natural question that comes from the above analyzes is: If someone does not believe in politics and government why should he expect from them?

The expectations in the Albanian society are related to the perception formed during communism that the state owns everything, because everything was public property, and the state has also all the organizational materials and resources. This mentality embeds the idea that the state has all the powers to do whatever it aims. By thinking like this, once again most of the people in Albania do not believe in their own capabilities in changing things. From the regards above we can understand that the political culture in Albania is filled with factors that create a hesitation to resistance. Post-structuralism argues that the creation of identities, capacities and concerns that come from social groups should be seen as power. While pluralist perspective sees social groups as groups that seek to maximize their interests.<sup>5</sup> This perception is often encountered in Albanian society where usually is believed that these groups are closely related to their interests and thus not to the product they might produce for the whole society. If we want the power to be reflected by post-structuralism terms then we must also examine the concept of power.

According to Foucault Power is equal to Product. Foucault does not see the power in state institutions, but weighs "Power" in the details of social practices to the point where it produces effects.<sup>6</sup> Pluralism and power are exercised in endless ways, for Foucault they are not driven by politics or by a single project but rather from systematic and numerous projects. According to Foucault all social relations and identities produce power while the product is not always helpful or nice, even Foucault criticizes the way power is used in society because the concept of power suggests that during its exercise there will be dominance. Dominance comes from the hierarchy that is present everywhere in society, even in a small group like family. In this context, Foucault says: "Power is everywhere, not because it embraces everything, but because it comes from everywhere".

Product as a result of the exercise of power would be helpful if we had resistance.

Government acts only to those who resist Foucault says while government institutions are only one aspect of governing strategy. Another aspect of governance is the new forms of politics in contemporary societies. "Foucault defines "government" as "the conduct of conduct",

<sup>1</sup> [www.unicef.org/albania/sq/domviol-alb.pdf](http://www.unicef.org/albania/sq/domviol-alb.pdf)  
[www.al.undp.org](http://www.al.undp.org)

<sup>2</sup> Foucault, M., (1978), *The history of Sexuality, First Volume*, Random House, pp. 8-10

<sup>3</sup> Foucault, M., (1978), *The history of Sexuality, First Volume*, Random House, pp. 6

<sup>4</sup> Parkin, M., (2013), *Economics*, 11<sup>th</sup> edition, Prentice Hall

<sup>5</sup> Nash, K., (2000), *Contemporary Political Sociology*, Massachusetts USA, Blackwell, pp. 14

<sup>6</sup> *Ibid*, pp. 20-27

<sup>7</sup> *Ibid*, pp. 23

the attempt to influence the action of free subjects"<sup>1</sup>. In this context, the behavior of the society might determine the government behavior as well, in case they act as free subjects by resisting to inconvenient power of authority. Thus the society can guide the behavior of its governments the same way they try to influence them. If the exercise of power will cause dominance then how can we overcome this challenge? Foucault believes that discourse as a new form of exercise of power in modern societies is a good power to resist domination. It requires knowledge of multiple discourses in order to argue thoughts and suggest the best alternatives. In this context, discourse contributes to the organization's performance by improving institutions, these institutions are considered as non - discursive because their primary purpose is not discourse but service. Exercise promotes institutional practices or performance and produces discourse.

In this context the Albanian society relations that are dominated by government and are not subject to resistance is likely to give an unprofitable distorted product. While the "free subject" those that are not dominated by government might consequently become instruments of political parties or of the government. On the other hand the "free subject" that is not an instrument to any party might use discourse to improve the functioning of institutions. These may include academics, civil societies, who are not immune from possible instrumentation. Therefore required with broad participation of society and interest groups, as the increase in quality and quantity through discourse as a result of increased public awareness of the discourse itself, would complicate the instrumentalization and domination, prompting more representative politics and therefore good. In case of Albania this article shows that our society has shown a lack of resistance and a lack of trust, as resistance cases are seen as instruments of political parties or small interest groups thus not fighting for the implementation of just policies. I argue that this has been mostly a consequence which relates and derives from the forms of governance and political culture described above. The events of 1997 which developed as a result of income loss of people involved in pyramid schemes showed a disorganized revolt and resistance creating initially an uncertain situation and fear in the population as a result of the anarchy created. The creation of the anarchic situation did not bring any solution to the problem but it resulted only in overthrowing the government. Although resistance existed, it failed its initial intent to return the money from pyramid schemes or government but had the consequences of early elections and anarchy. Pyramid schemes came as a result of the application of liberal economy which relies on the idea that the market regulates itself while another element that favored the situation was the weak Albanian state in the post - communist period, according to the above classification. In this context the resistance of Albanians seems to be present only when they are affected directly but not as a gesture of solidarism with a group of people. While the state characteristics are closely related to the behavior of society we can see that the movement of the Albanian state from a weak state to a state with democratic consolidated institutions begins in 2005 when the rotation of government after the election was mainly accepted from the political parties. Consolidation of democratic institutions took another dimension, showing that the ongoing political transition phase was about to end in 2013 elections, as the next rotation was without any dispute and accusation of manipulation. These developments increased the confidence of society in politics by believing that the period of manipulation and lies had come to an end. Increase citizens' confidence shows a change in attitude and mindset of the political culture which has reduced mistrust in institutions.

By early 2013 it was still believed that resistance and organization of the Albanian society was absent but the news for the arrival of Syrian chemical weapons for demolition in Albania, threatened the Albanians. The threat that Albania might become a place for chemical weapons demolition and this might have terrible impact to the health of people made the resistance toward the government policy very persistent and massive engagement of the youth. The protests begin on Nov. 8, 2013 and after a week the resistance won the battle by influencing the government policy in not accepting the Syrian weapons. What happened can be explained by the Foucault's perception on power.

According to Foucault any troubles should be articulated with words and arguments. Foucault assumes that power relations reproduce themselves deep in society there is no such thing as the opposition between the state and civil society. There is a central conflict, but a plurality of mobile fights. If this claim of Foucault would count as true for Albania then a major challenge is raising, that of citizen to be more participatory in politics or policy compositions, through resistance becoming more responsible and believing that their resistance will bring the change they want. This resistance had also the support of the opposition as well but without taking any meritocracy. Although the developments in the protest showed a lack of organization where some pioneering organizations were not having a central organization, which caused clashes between organizers in terms of meritocracy and the desire to run, however, the determination of the resistance and durability united the society by providing the requested product.

## Conclusions

This article presumed that the lack of civic participation is a characteristic of post-communist countries and more generally of post-authoritarian states as they share some similar elements which compose the lack of this participation such as: people do not believe that their behavior or opposition to some policies will consequently change government's policies, they fear the consequences that might follow as they are not "free subjects", people do not trust civil society as they believe that their organizations and actions have hidden agenda, and mostly they are pushed by their immediate interest which does not represent people's interest in general. Driven from the studies of political culture I presume that there is a connection between countries that experience government repression for a long time as they tend to have similar behavior although the study expresses this connection it does not explore further experiences to make this a comparative study but helps to develop similar articles with similar cases. The aim of the article is to give answers on the existence of the lack of civic participation in Albania and try to provide continuous solutions to these believes and behaviors.

<sup>1</sup> Ibid, pp. 25

We can say that the Albanian society on this issue showed that in fact Foucault is right when he states that the state is the "the conduct of conduct"<sup>1</sup> and as a result the state will seek the guidance but the society can push the government to change many elements of its guide. Ernesto Laclau and Chantal Mouffe think: "Everything is cultural" and therefore social order is constructed, challenged and reproduced by culture.<sup>2</sup> In this context if people believe that together they can act as "free subjects" with no fears and they can change unpleasant situation and policies than the impact on government policies will be of no doubt present no matter to what extent this influence will be. Previous theories of political sociology view society as a unified unit, while post-modernism sees culture and society fragmented, indecisive and unstable. Post-modern thinking on how the economy and the politics are highly dependent on culture, and if culture is undecided the discourse may then bring to an improvement of social structures and functions entirely. The discourse if well articulated and argued could influence politics. In conclusion, not only the discourse but also resistance to government's policies should promote the desirable policies that contribute to the greater benefit of society. Any concern should be articulated and argued by constantly resisting to power. Unless efforts are ongoing we cannot say that there is resistance and therefore if this product is local resistance and without impacts then we have no reason to complain about the government policy as long as we have not sought or resisted against anything.

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<sup>1</sup> Ibid, pp. 25

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## How the Karabakh Khanate Joined to the Russian Empire: Historical Myths and Realities

Tarana Amiraga Shirvanova

### Abstract

*With the arrival of Russia in Karabakh at the beginning of the 19<sup>th</sup> century, a new political situation arose. The policy of Russia, directed toward the establishment of a social-ethnic base in the form of Armenians, led to the strengthening of the Christian element in Karabakh. The essence of the disputes observed today, have roots that reach precisely to those times. Having finally conquered Georgia in 1801, Russia moved toward the borders of Azerbaijan. General P.D. Tsitsianov, who commanded Russian forces in the Caucasus, laid siege to Ganja, the largest of the cities of Azerbaijan, in March 1803. Having overcome the serious resistance of the population led by Javad-khan, Russian forces entered the city on January 3, 1804. In order to strengthen his position in the Transcaucasus, Tsitsianov had to conquer the Karabakh, Sheki, and Shirvan khanates, which were considered the strongest in this region. During the course of long negotiations, Tsitsianov threatened these khanates, demanded that they consider the sad experience of Ganja and, taking into consideration the military might of Russia, accept its protection without resistance. In doing so, Tsitsianov understood perfectly well that Iran had interests in the region and therefore did not push events. Moreover, he had to consider the far from small military potential of the Muslim khanates themselves.*

**Keywords:** Karabakh Khanate, Russian Empire, Historical Myths, Realities



Annexation of Northern Azerbaijani khanates by Russia Empire

### Introduction

Finding himself constantly "between the hammer and the anvil" (Russia in the North and Iran in the South), Ibrahim Khalil-khan, the ruler of Karabakh, decided to conclude with Russia "a solemn promise," a treaty which in fact became the first legal document on the path of the joining of Karabakh to Russia. The treaty between the Karabakh Khanate and the Russian Empire about the transition of the khanate under the power of Russia was signed on May 14, 1805 in the military encampment at Kurakchay, and therefore it passed into history as the "Kurakchay Treaty." The document consists of 11 articles and gives Russia a one-sided primacy. From then on, the Karabakh Khanate passed under the protection of Russia and rejected any attempt at independent international ties with third countries. More than that, it was especially noted that the Karabakh Khanate lost the right of independent communication with the neighboring khanates. And the Karabakh khan was also obligated to contribute to the Russian treasury every year 8,000 *chervontsy* (24,000 Russian rubles) and also to pay for the expenses of his grandson who was kept in Tiflis in the residence of the commander in chief as a hostage. One of the most difficult conditions of the treaty was an agreement on the dislocation in the Shusha fortress of 500 Russian soldiers with cannon.

The only article of the Kurakchay Treaty, which could be considered as favoring Ibrahim Khalil-khan, was the obligation by Russia not to interfere in the internal affairs of the khanate. It is interesting to note that immediately after the signing of the treaty, Ibrahim Khalil-khan by a decree of Aleksandr I on July 8, 1805, was given the rank of general and from that time forward as a lieutenant general he was forced to subordinate himself to the commander-in-chief of Russian forces in the Caucasus. This treaty, being a diplomatic document, testifies that the Karabakh Khanate became a protectorate of Russia precisely as a Muslim state. [1]

The seizure of the strategically vital Karabakh Khanate, in fact, meant the beginning of the complete subordination of all the khanates of northern Azerbaijan. The mountainous part of the khanate allowed for the exercise of real control over all the western districts of

Azerbaijan. Subsequent actions did not represent a major problem for Russia. At the same time, while considering each in his own way the historical fates of the people, the khans could not create a single union. Justly assessing the importance of the joining of Karabakh to Russia, Prince P.D. Tsitsianov after the conclusion of the Kurakchay Treaty on May 22, 1805, reported to the Russian emperor that Karabakh by its geographic location is the gate to Azerbaijan and that Karabakh brings Georgia closer to Baku, the seizure of which was planned for the fall. [2]

The Azerbaijani khans followed with interest the course of the first Russian-Iranian war (1804-1813). While they desired the victory of the southern neighbor, they were also afraid of it and did not cease to hope that by the results of the war they would be able to increase their own independence. In its turn, the Russian Army did not especially trust the local Muslims. In 1806, when Iran attempted an attack on Shusha, Major Lisanevich, the chief of the fortress garrison, wary of the unexpected actions by the Karabakh khan, slaughtered the entire family of Ibrahim Khalil-khan with the exception of one son, Mehdi Guli-aga. This event only confirmed the symbolic nature of the appointment of the Karabakh khan to the rank of lieutenant general of Russian forces. At the same time, having dealt summarily with Ibrahim Khalil-khan, Russia did not change the status of his khanate. Mehdi Guli-aga by order of the Emperor Aleksandr I of September 10, 1806, was named ruler of Karabakh in place of his father. [3]

As a sign of Mehdi Guli-aga's status as the administrator of the khanate, Emperor Aleksandr I presented him with a banner and sword set with precious stones. And just as in the Kurakchay Treaty, so too in the emperor's appointment of Mehdi Guli-aga as ruler of Karabakh, there is reference to the Javanshir family as the rulers of Karabakh, both mountainous and lowland, and to the fact that all strata of the population of these regions are subordinate to Mehdi Guli-aga. The new khan was filled with hatred to the Iranians and distrust to the Russians who had slaughtered his family, but in the end, the anti-Iranian attitudes came out on top.

The victory over Napoleon led to a toughening of the Eastern Policy of Russia. General A.P. Yermolov, who was appointed governor of the Caucasus in 1816 from the very first days did not trust the Muslim people, seeing them as a potential enemy. For this reason, he sought the opportunity for the formal liquidation of the khanates, which he thought at any moment could become the nucleus of a movement for independence. The representative of Yermolov in Northern Azerbaijan, an Armenian General V.G. Madatov, actively helped him in this. Slowly, but faithfully, they realized their plan. In 1819, they liquidated the Shaki khanate. Not being able to resist Russian pressure, Mehdi Guli-aga fled to Iran, and the Karabakh khanate was converted into a Russian province. A. Griboyedov wrote that together with the khan, three thousand Muslim families moved to Iran. And, thus, in spite of what had been written in the various treaties, the process of the liquidation of the khanates reached its logical conclusion.

In 1826, the second Russian-Iranian war began. And again, the main events developed in Karabakh. For 48 days, the Iranian forces laid siege to Shusha, but they were not able to take the city. On February 10, 1828, in the settlement of Turkmanchay near Tabriz, the two sides concluded a new peace treaty, according to which all the khanates of Northern Azerbaijan, including Karabakh, Nakhchivan and Irevan khanates finally became part of the Russian Empire.

There were many interesting moments in the process of uniting the South Caucasus to Russia. In recent times, a number of Armenian and Russian historians, as well as certain political circles, have been asserting the Karabakh was joined to Russia as an Armenian district. Certain contemporary Russian and Armenian scholars insist that in the course of the entire 18<sup>th</sup> century, the Armenians of Karabakh made up 97 percent of the total population of this region. A question arises in this case: if this was really so, why then wasn't it an Armenian state that arose in Karabakh in the middle of the 18<sup>th</sup>, but it rather was the Karabakh khanate, which was headed by representatives of the famous Turkic tribe of the Javanshirs? Indeed, there is no single case in history where three percent of the population could create a state on the backs of the other 97 percent.

However, a careful study of the international legal documents of this period raises some interesting questions concerning the form of the inclusion into Russia not only of Karabakh, but also of Armenia itself. Thus, Georgia, according to the Georgian treaty of 1801 and the Azerbaijan khanates by the Gulistan (1813) and Turkmanchay (1828) treaties were included in Russia. A reasonable question arises: According to what treaty, agreement or declaration did Armenia and the territories to which it makes claims pass into Russia? Well-known Armenian historians have found a very easy answer to this question. Not observing scholarly ethics and historical evidence and not being restrained by long established historical truth, they write that "According to the Gulistan Treaty of 1813 which ended the Russian-Persian War of 1804-1813, along with other northeastern provinces of Eastern Armenia (Lori-Pambak, Shamshadin, Zangazur, Kafan and Shoragel districts), the Ganja and Karabakh khanates were transferred to Russia as well ... According to the terms of the Turkmanchay Treaty (February 1828), which ended the second Russian-Persian War (1826-1828), the Yerevan and Nakhchivan khanates and Ordubad district passed to Russia. This completed the final unification of all eastern Armenian lands to Russia." [4]

In an effort to support their falsification of history, they cite the collection of documents published by G. Yusefovich in Petersburg in 1869. [5] They do so even though they know perfectly well that neither in the Gulistan nor in the Turkmanchay treaties published in Yusefovich's collection, there is no reference to any Armenian lands—neither eastern nor Western; nor is there even a single reference to Christian lands. There is only reference to Muslim khanates and their unification with Russia. The absolute majority of the population of the Irevan khanate consisted of Muslims and this was reflected in Russian sources. In 1828, for example, when the "Armenian oblast" was created within the borders of the Irevan and Nakhchivan khanates, three-quarters of its population consisted of Muslims. This is confirmed by a letter of General Paskevich to the chief of the General Staff, in which he expresses his dissatisfaction with the actions of General Krasovsky, who was named chief of the "provisional administration" of Irevan and of Archbishop Nerses, a member of this administration. Paskevich

criticizes Krasovsky for allowing Nerses to exercise unlimited influence over all affairs and in the harmful protection of Armenians, when "three quarters of the population of the oblast consist of Muslims." [6]

The khanates' loss of their special status meant the transformation of Karabakh into a colony, and this process lasted for decades. Over the course of this period, the administrative division of the Trans-Caucasus was frequently changed and only had finally formed by the second half of the 19<sup>th</sup> century. Following the liquidation of the khanates, the *comendant* system of administration was introduced in Northern Azerbaijan. All of Karabakh with a center in Shusha was included in the Military-Muslim District. However, such distribution certainly did not correspond with the ethnographic, historical, and religious peculiarities of the local population. In Karabakh, this took place in a particularly sharp way.

Demography was gradually converted into an instrument of policy. At the dawn of Armenian resettlement into these areas, a document of July 19, 1811—one that was prepared for the Ministry of Internal Affairs of Russia—noted that there lived 12,000 families in Karabakh oblast, of which 2,500 were Armenian and the remainder were followers of the religion of Muhammad. [7] In 1823, the Russian administration prepared "A Description of the Karabakh Province," which contained statistical data about the population of this district and its ethno-religious composition. Judging by the statistical data prepared by Russian institutions and included in this valuable source, there were 600 settlements in the Karabakh oblast at that time, of which 450 were Muslim and only 150 registered as Armenian. [8] According to this reliable source, 20,095 families lived in Karabakh oblast in 1823, of whom 15,729 were Muslims and only 4,366 (21.7 percent) were Armenians.

According to the 1832 census, the number of families in Karabakh reached 20,456, but the number of Armenian families over these very same ten years rose to 31.6 percent. [9] In Shusha, which was considered the center of Karabakh, of the 1,532 families in 1823, 1,111 were Muslim (72.5 percent), 421 were Armenian (27.5 percent), but already by 1832 because of Armenian re-settlers, this figure reached 44.9 percent. The Russian military historian V. Potto notes that the first major resettlement of Armenians to Karabakh took place in 1828. He writes that on March 16, 1828, 40,000 Armenian families left Persia for Irevan oblast. However, because of a shortage of bread, 5,000 families—the first group of re-settlers—were forced for a long time to wait on the shores of the Araz, but were eventually sent to Karabakh. [10]

The Russian writer S.N. Glinka provides some interesting data on the movement of Armenians from Iran to Karabakh. The political character of the resettlement of Iranian Armenians in Muslim lands just seized by Russia is clearly evident in the appeal to the Persian Armenians by an active participant of this resettlement, G. Lazarev: "Christians! According to reliable rumors which have reached me, badly intentioned people are trying to disseminate not only foolish and false news, but even to sow fear in those seeking resettlement about Russia's good intentions and thus to change the desire of their hearts." [11] He writes further that "Armenians from various settlements, emboldened by Turkmanchay, moved toward Karabakh," [12] and in the course of three and a half months, "more than 8,000 families crossed the Araz." [13] In the spring of 1828, when the flood of Armenians moved toward the Araz, a directive from Paskevich was issued to resettle the poorest in Karabakh, and this also found reflection in the Russian literature of that time. [14] As a result, in 1832, Armenians formed 31.6 percent of the population of Karabakh, with Muslims still retaining their majority of 68.4 percent. [15]

After 1828, the resettlement of Armenians into the Muslim provinces of the South Caucasus was regulated by Paragraph XV of the Turkmanchay Treaty. [16] By a decree of Emperor Nikolay I on March 21, 1828, "an Armenian oblast" was established on the lands of the former Irevan and Nakhchivan khanates. [17] The Russian general and Georgian Prince A. Chavchavadze was named the head of "the Armenian oblast." [18]

In the second volume of the historical novel of Catherine's time, "The Favorite" by V. Pikul, the well-known author of historical novels, there is an interesting conversation between Count G. Potemkin and Catherine II, in which the former advises that the appearance of new Armenian communities in the Transcaucasus will create problems if not now then in the future. When he was creating his historical works, Pikul scrupulously worked in the archives and strictly guided himself on the basis of historical documents. At the moment of the formation of this oblast, 75 percent of its population consisted of Muslims. If during the period of the Russian conquest, 49,875 Muslims lived with 20,073 Armenians, then immediately after the formation of "the Armenian oblast" 45,200 Armenians were resettled from neighboring countries. [19] The situation in Nakhchivan oblast evolved in a similar way. At the moment of the completion of the Russian occupation, 17,138 Muslims and only 2,690 Armenians lived there. With the liquidation of the khanate, 10,670 Armenians in a short interval of time resettled there. In an analogous way, in the Ordubad part of Nakhchivan, where initially 7,247 Muslims and 2,388 Armenians lived, 1,340 Armenians were resettled in order to change the balance between them. [20]

The Russian researcher N.I. Shavrov in 1911 published a book in which, basing himself on documents, he noted that 40,000 Armenians from Iran and 84,600 from Turkey resettled in the Caucasus in 1828-1830, and they were settled in Yelizavetpol and Irevan guberniyas, where before this, the number of Armenians was almost equal to zero. N. Shavrov wrote that "of the 1.3 million Armenians who are living in the Transcaucasus, more than a million are re-settlers. We resettled them here." [21]

Apparently, the desire to completely Christianize the Transcaucasus was strong. But the specific features of the situation led the Russians to act carefully, and A. S. Griboyedov, the Russian ambassador to Persia, warned that the Armenians would remain permanently in the lands to which they were resettled, something that could trigger problems with the indigenous Muslim population. [22] Such concerns, which were shared by the Azerbaijanis, were justified. The Armenians settled down on Azerbaijani lands and a little later began to display

hostility toward the masters of these lands. I. Chavchavadze justly noted in his appeal to Armenians seeking to settle in Georgia that they must not view those accepting them as enemies. [23]

In the course of the entire 20<sup>th</sup> century and especially in the last two decades, Azerbaijan and the Azerbaijani people have experienced and are experiencing pain and suffering for their "hospitality" in relation to Armenians, one which A. Griboyedov and I. Chavchavadze so precisely predicted.

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## Social Media and its Impact on Decision Making for Trip

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### Abstract

*Social networks are not a new phenomenon of the human community. Social communication tools represent a revolution in terms of the possibility of publicity for enterprises. In this way mechanisms of social networks have not only changed the instruments, but also the communication. Social media is not focused exclusively on the development platform of promotion and communication, but also in the implementation of services to create new business opportunities and career. Professional groups present in networks are often closed and specifically dedicated towards specific groups in order to achieve defined objectives and set by direction of the company that benefit from these platforms. Social communications tools represent a revolution in terms of publicity opportunities for enterprises. Social media is becoming the key marketing tool for organizations who manage tourist destinations, in this way having a major impact on tourism markets. The role which social media is playing in various aspects of life is becoming increasingly every day, especially in areas such as social interaction and cultural and educational aspects of our lives. Social media are becoming important tools in marketing management for companies of tourist destinations, having a major impact on tourism markets. The arrival of new technologies such as social media have made it possible to change the way consumers seek information on their buying decisions. Ease of use, flexibility and interactivity offered by these social sites makes it easy for customers to get information that after all generate sales. These interactive web pages that have the status of social communities encourage consumers to interact with the community, strengthening prospects of customers. This will be resulted in customers who visit the community more often to get the desired information (Poon, A. 1993). With advices or knowledge that they get from the community they build the perception of destination and are used for making decisions by consumers. The purpose of this paper is to highlight the use of social media and the impact of social media in the decision making to travel by consumers choosing Albanian.*

**Key words:** social media, internet, decision making, tourism, consumers

### 1. Social media and consumers attitudes

To consider social media as a marketing communication tool must understand every aspect of them. Kaplan and Haenlein (2010) define social media as a grouping on the Internet based on the applications that have built ideological and technological foundations of Web and allow the creation and exchange of content created by user (Sinclair and Vogus 2011). However, there are some basic characteristics necessary for a website to be called the site into a social network. Pages should contain user profiles, content, a way that allows users to have contact with each other to communicate, to post comments on sites to each other and to join in virtual groups based on common interests (Gross and Acquisti, 2005; Ellison, Steinfield & Lampe, 2007; Lenhart & Madden, 2007).

So, social media is the environment in which social networks have taken place and have changed the way that consumers gather the information you need to make decisions. It is vital for retailers to be aware of the factors that influence the attitudes and motivations of consumers because consumers are changing the concept that for the markets (Heinonen

2011). As a result, current research, show which aspects of social media websites are affecting consumer attitudes and motives.

One of the most visible phenomena of new media is that it has grown and has established new forms of social interaction. People spend more than a quarter of the time on the Internet including communication activities (eg, emails and social networks), a time equal to the total time spent for fun (Hill & Morgan, 2011). Consumer behavior studies show that individuals give greater consideration to the information shared on the Internet, spend more time on websites that offer of third parties assessments (Huang et al. 2009) and other studies show that this information can directly affect the buying decision (Awad et al 2006; Weiss et al, 2008). Actually, many of the benefits reported for the use of new media are increasing reputation and the predictability that dealing directly with aspects of its social interaction (Kollock 1999; Arthur et al 2006).

As noted by Steuer (1992) quoted by Ronald P. Hill and Nora Moran (2011) differently from watching TV or listening to the radio, new media interactivity allows customers not simply remain passive receiver of the message but to become active. Interactive is one of the definitions of characteristics of new media technology, providing greater access to information, as well as supporting the growth of user control and engagement with social media content (Fiore et al. 2005). Interactivity depends on the context. In a context of social networks on the Internet, interactive refers to a user therefore concentrated connection with computers, messages or other users focusing on experimental aspect of networking.

People have communicated through writing, photos and videos about years and years and just social media on the Internet provides a medium to continue this trade. Safko & Brake (2009) even argue that it is possible about any one to have participated in social media without admitting it p.sh reading: a blog, the messages of another member of a community or watching a video on Youtube.

In social media anyone can create and distribute free content that can be viewed by millions of people (Zarella 2010). Consequently Safko & Brake (2009) explain that the difference of social media is that basically all have the ability to influence, for example, a citizen becoming a witness of an event and its publication on the Internet or marketing of a product by the recommending to others. In the new world of social media and the rapid growth of many different channels of social media, it is almost impossible to not have people talking about the company or their product. On this basis it is necessary to understand social media by each business in the modern world. Social networking sites are intended to unite people together and provide a place where conversations can be made between people and there is no limited space and time (Safko & Brake, 2009). Social networks are based on human interaction making online conversations. In social networks people relate to their colleagues helping each other, transfer and receive information.

Facebook is the largest social network in the world that connects us to people you know (Pearlman & Abram, 2010). Facebook is a social utility that helps you communicate with your friends, family and friends (Mashable 2011). Facebook is free and open to everyone from students to professionals, teenagers to grandparents, ordinary people and celebrities even though it was originally designed only to Harvard students in the United States (Pearlman & Abram, 2010). According to Vander Veer (2010) Facebook combines the best blogging, forums and online groups, distributing pictures and much more. Diversity of Facebook provides opportunities for various businesses and service popularity makes it one of the most important tools for social media marketing purposes. The company develops technologies that facilitate the sharing of information through its digital mapping and social relationship of people (Mashable 2011).

## **2. The use of social media and its potential impact on travel decisions**

Some researchers reviewed at how consumers use social media when planning a trip, where most of them came to the conclusion that different types of social media are playing an important role in planning the trip, but not as the only source and not at each stage of the travel planning process (Gretzel & Yoo 2008; Cox et al, 2009; O'Connor, 2008).

Gretzel & Yoo (2008) examined the use and impact of online travel websites (TripAdvisor), where their findings indicate changes in the use of these reviews in various stages of travel planning and travel aspects. They argue that the critics are already used in the idea stage, and not only in critical phases that determine the election.

Cox et al. (2009) found in his research that the different sites of social media are considered useful but in different levels, eg, photos and locations posted by real travelers were argued as the most useful, followed with little difference from the reviews travel and lastly social networking sites, as only 25% of respondents considered them useful. Thus, 51% of online buyers who participated in the survey stated that social media helped them to limit their choices, 23% argued that social

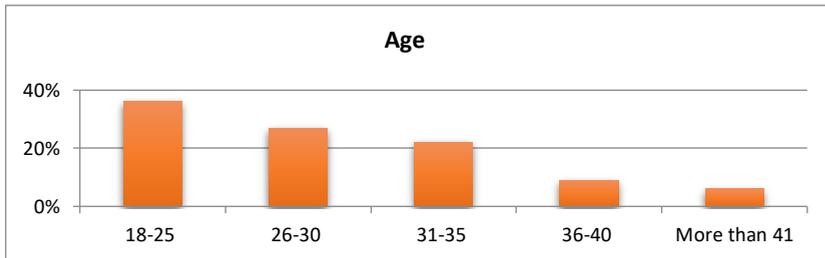
media played a role in the confirmation of their choice, while 15% used it to determine the final choice. However, the impact of social media after the purchase is important among those who have used social media during the travel planning process.

According to the results of a study published by the European Commission on developments in the tourism market in Europe, in terms of resources that are used by tourists to decide where to spend their holidays for 2011, with respondents from 27 European Union countries, shows that 52% of respondents claim that the recommendations of friends, colleagues or relatives are very important when they make decisions about where to spend the holidays, while 4 in 10 people or 40% of respondents claim that the websites are very important in the decision to perform holiday. While regarding the study done through interviews in this paper show that 97% of respondents definitely influenced by the negative comments of their friends in the choice of destination and 3% of them will never influenced. According to the European Commission report "Attitudes of Europeans Towards Tourism", which takes into account the 27 European Union countries in 2011, 53% of those who did vacation, used the internet to carry out bookings, so it is a significant percentage compared with the rest of the respondents.

The study was based only on those people who spent at least 4 days holiday and who constituted 60% of total respondents. Only 23% of respondents said they planned their vacations addressing tourism travel agencies, followed by 22% of respondents who stated that they booked their vacation through someone who knew. Similarly, 1 in 5 people or 18% of respondents performed bookings via telephone, while less than 9% of respondents stated that bookings performed on-site, as well as through transportation companies with only 4%. Also, the study showed that the higher the education level of the respondents, the more likely was that he / she to had booked holidays through the Internet. At the same time, employees and self-employed, about 63% more likely to organize their holidays through the internet, than the unemployed or laborers, who usually plan vacations by asking friends or relatives.

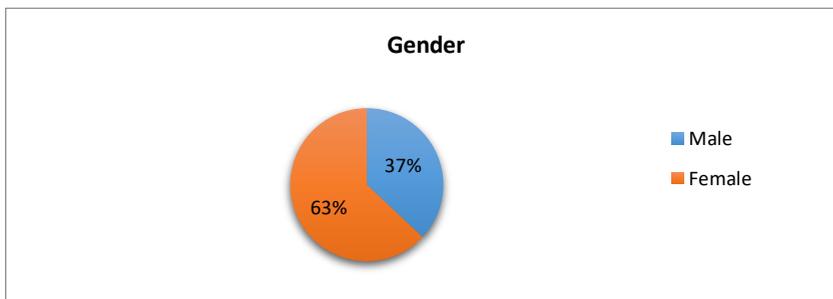
### 3. Data analysis

Results for the age of the respondents (graph 1), show that the highest percentage among them, is comprised of 18 to 25 years old with 36%, and a significant part of the age category 26 to 30 years old with a rate of 27%.



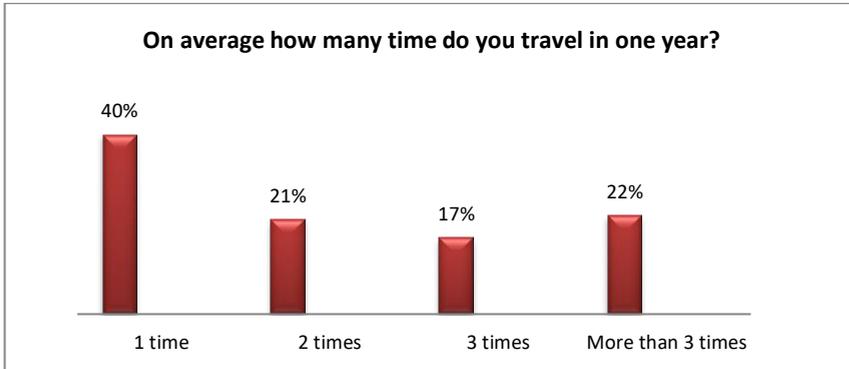
Graph 1. Age

Category with the smallest proportion is over 41 years old age with 6% and that for the fact that this age is less active in their involvement in social networks. The ratio between men and women is 63% female and 37% male (graph 2).

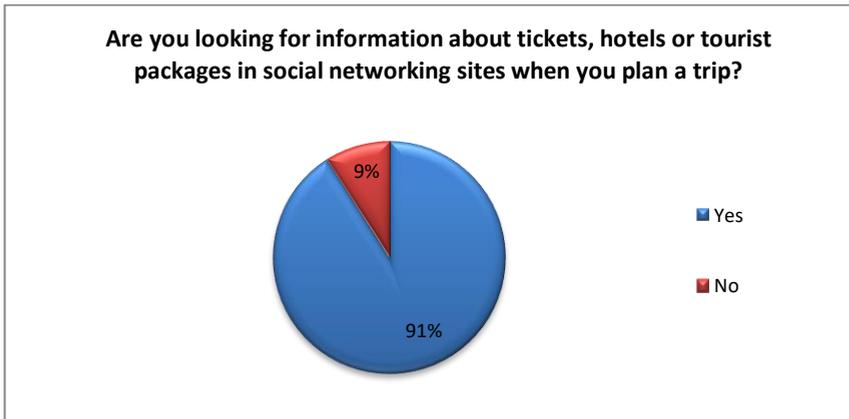


*Graph 2. Gender*

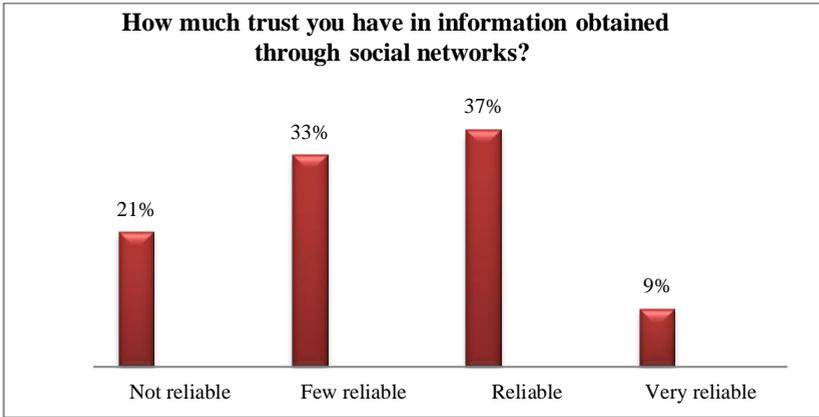
40% of respondents, traveling on average once a year; 21% travel on average twice a year; 17% travel three times a year and 22% of them travel more than three times a year (graph 3).

*Graph 3. The frequency of travel within the country or abroad*

According to data obtained, 91% of respondents would seek information on social networks when deciding to make a trip and 9% would not use social networks to be informed (graph 4).

*Graph 4. Search for travel information on social networking sites*

In terms of trust that respondents in information obtained through social networks, 21% of respondents think that this information is not reliable at all, 33% of them consider this little reliable information, 37% of respondents think that the information is reliable and a small percentage of 9% consider this information very reliable (graph 5).



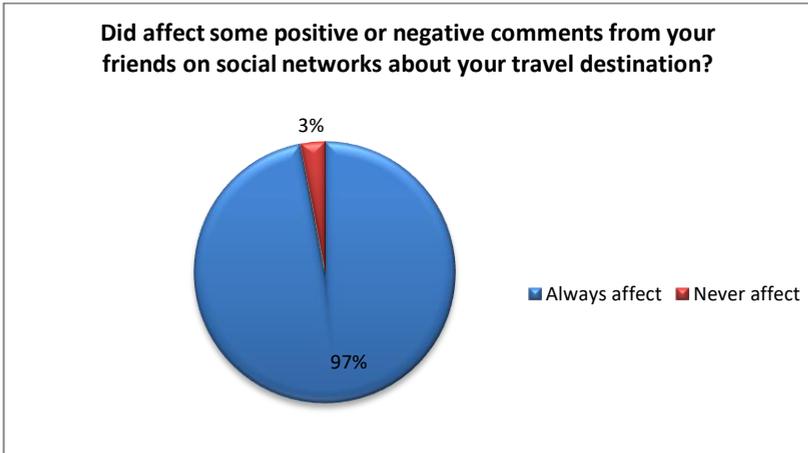
Graph 5. Trust on information obtained through social networks?

From the data provided in graph 6, it appears that individuals, in relation to travel, have more confidence in conversations they have with friends and less confidence they have in comments in social media.

Table 6. Reliability of sources of information

	Not reliable	Few reliable	Neutral	Reliable	Very reliable
Site of internet	11%	23%	30%	24%	12%
Comments in the social media	10%	28%	31%	22%	9%
Conversation between friends	0%	2%	17%	38%	46%
Travel agencies	7%	15%	26%	39%	13%

97% of respondents definitely are influenced by the negative comments of their friends in the choice of destination and 3% of them will not be affected never (graph 7).



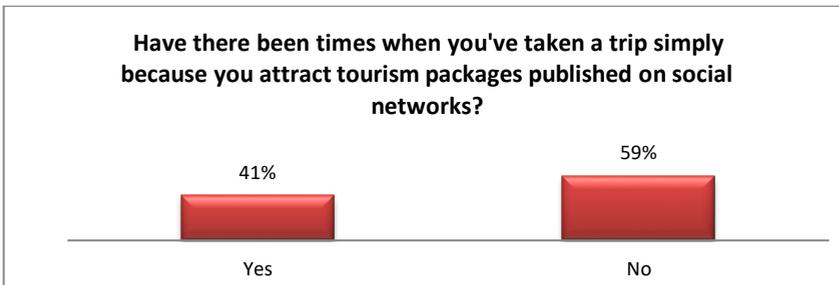
Graph 7. The influence of friends' comments in social networks

From the above graph, 9% of respondents always click on social networking sites, 23% click often, 43% sometimes, 21% rarely and 6% do not ever click on these package tours (graph 8).



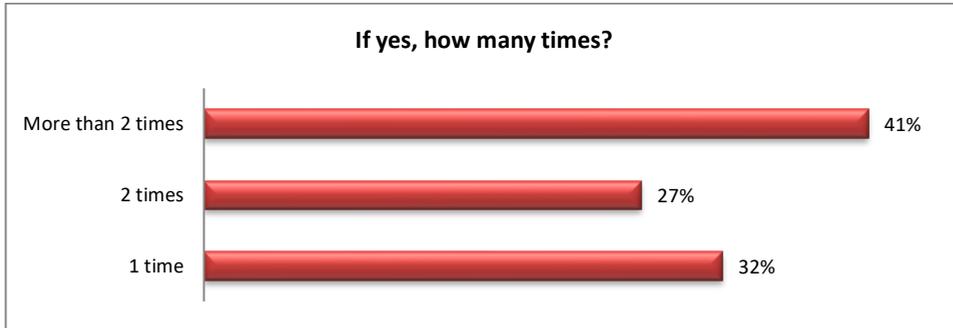
Graph 8. Frequency of clicking on tourist packages

Based on data collected, only 41% of respondents have taken a trip, because published tourist package has been attracted, but most of them- 59% is not affected by this reason and undertake trips for other reasons (graph 9)



Graph 9. Have taken a trip simply because of attracted tourism packages published on social websites.

By the interviewees 41% have taken more than twice journey simply because they are attracted tourist packages published on social networking websites, 27% twice and only one time have experienced 32% of respondents (graph 10).



Graph 10. If yes, how many times?

#### 4. Conclusions

Social media brings a series of promotional advantages and it is because social media enables the combination of a variety of elements such as text, video, audio and photos. This combination brings a great advantage in integrated marketing communications. Social media is a new trend but fast growing and therefore it must be managed well.

Social networks such as Facebook, Youtube & Webpage have gained popularity and trends are showing that consumers more educated and young people have started to be every day more connected with them, thus being part of their everyday life.

Social networks are a good tool to promote because they recognize high use, are reliable, there is interest for the information they provide and have a high monetary cost.

Social media in some way converts customers, ie users of social media, as advertising and promotion channels. Customers can create positive or negative pressure for the company, its products and services, depending on how the company is presented to them. So the image or the perceived quality of consumers, affects opinion or message that they will transmit to others in social media.

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## Civil Society Development and its Impact on the Democratization Process in Kosovo

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### Abstract

*The process of establishing a sustainable and active civil society that effectively and responsibly participates within a democratic system of governance is crucial for transitional countries. After years of conflict and political uncertainty, Kosovo's independent status poses great challenges, including healing ethnic and political conflicts while rebuilding the nation's economy and infrastructure. The fragile society of Kosovo faces many challenges, the development of civil society is just one of them. Unfortunately Kosovo's civil society is not yet an effective and influential partner of government public decision-making. Civil society in Kosovo went through two developmental phases: the so called 'civil resistance' against Milosevic's regime in the 1990s, and the post-war period under international administration and building of democratic governance. In Independent Kosovo, problems of political and economic nature concerning the building of new institutions require the support of public discussion. The role of NGO's whose focus is political activism that tends to expand the practices of citizenship is reduced, and true public debate and coverage of all sides of important issues – elements crucial to a functioning democracy – are hampered if not prevented. Hence, the process of democratization of Kosovar society is negatively impacted. This article will explore the process of civil society development in Kosovo, from its days of origin, through the complicated political situations of the 1990s, and its increasingly active role in contributions toward the current democratization process.*

**Keywords:** NGO sector development, EU integration, state-building, political activism, democratization

### 1. Introduction

During the 90s in Kosovo a number of civil society organizations were established. This was the beginning of the development of an early form of civil society. Albanian political parties founded in a later stage were direct continuation of these associations. With the disintegration of the former Yugoslavia, these political parties developed into a national Albanian movement. The so-called "civil resistance movement" organized parallel institutions of Kosovo as a public reaction to Serbia's isolation of Albanians from public life. The basic aim of Albanians was to fulfill their social needs of culture, education and common public life through civil society. The period under Serbian occupation led to the creation of a more or less active civil society.

After the war under the UNMIK administration the solidarity and voluntary engagement of the people of Kosovo for public causes has weakened. A huge number of small Non Governmental Organizations (NGOs) and local Media were formed solely for the purpose of soliciting grant money. As we shall see later in this study, Kosovar civil society was heavily impacted by the 1989 – 1999 repression of Serbian regime and the radical change of circumstances under UNMIK administration that followed the war in 1999. While Independent Kosovo is at the beginning of EU Integration process, progress towards acceptance into the EU involves annual progress reports that among other public aspects of society, assesses the status of civil society. Kosovo civil society and media has been continually assessed as weak. Now is the time for NGO representatives to establish more effective networking and integrative approach in order to play their important role for the democratization process in Kosovo.

On the other side despite the government's positive vision of civil society, there is a lack of institutionalized cooperation between the Government and civil society representatives. The government should help civil society in many aspects, and capacity building is one of them. The government needs to be more receptive of civil society criticisms and create circumstances that will allow civil society representatives to perform their role as watchdog with enthusiasm.

This study explores the process of civil society development in Kosovo, from its days of origin, through the complicated political situations of the 1990s, and its increasingly active role in contributions toward the current democratization process. My study begins with the discussion of the various meanings of civil society and various existing discourses of civil society and continues by describing the historical roots of civil society development in Kosovo before the war of 1999. The second part of the study includes the period under communist Yugoslavia and years of repression under Milosevic's regime and the process of establishing and developing NGO sector as part of civil society after the war, under the United Nations Mission in Kosovo (UNMIK) administration and in Independent Kosovo. The reason why NGO sector development will be in particular elaborated is that it represents the part of Kosovo's civil society that international agencies have mostly focused on through donor funding that particularly targeted NGOs. After the war in Kosovo the term NGO has become so popular and almost interchangeable with the term civil society. As a result, NGOs became very relevant for the political agendas of both international and national authorities. Finally in conclusions I try to compare and analyse the role of civil society before and after the war by indicating challenges that civil society, namely NGOs must overcome in order to meaningfully contribute to the current democratization process in Kosovo and the risks that they can pose when they decide not to become force for democracy.

## 1.1 Civil Society from historical to contemporary perspectives

### 1.1.1 Origins and history of civil society

There is no commonly agreed definition of civil society. Civil society elements are diverse and complex. Some of the literature considers whether it is this very fuzziness that explains the present popularity of civil society in that "it can be all things to all people" (Glasius, 2004,). However, it is important to clarify its historical roots before we see how the concept came to be understood in different contexts. Although it now relates to societies of different civilizations, civil society roots lie mainly in the West. Romans spoke for the first time of "societas civilis", a term introduced by Cicero. Socrates supported the idea that conflicts within society should be resolved through public debates, and Plato saw the ideal state as a society in which people dedicate themselves to the common good, while Aristotle saw the 'polis' as an 'association', that enabled citizens to share in the virtuous task of ruling and being ruled (O'Brien, 1999). Nevertheless, neither Greece nor Rome distinguished between state and society.

The medieval idea of differentiating between state and society was lost in the work of Hobbes, who in religion found only potential for conflicts. He wrote that if a society is to be held together at all, it must be through the power of the sovereign. But Locke, in 'Two Treatises of Government' (1663) provided a distinctively modern form of differentiation by combining the concept with that of voluntary association. Adam Ferguson developed the concept of civil society as a moral sphere in which human interactions can be protected from the state (O'Brien, 1999). On the other hand Tocqueville presented civil society as a network of non-political social organizations that strengthen democracy (Tocqueville 1969,). Hegel understood the distinction between market and state. In Hegel's analysis of society, the economy is a part of civil society, which is identified with market relations. Marx argued that civil society was strongly shaped by class antagonism and Rousseau thought that of the society where state should be absorbed into civil society. On the other hand Gramsci developed a concept of civil society that differentiated it both from the economy and the state, although he had a difficult time expressing the independent role of civil society without it being an instrument of state politics (Gramsci, 1971).

If we exclude the classical period, civil society meant every aspect of society that was not functionally and institutionally included within the State. The seventeenth and eighteenth century separation of state and society was a step of great significance. This later allowed theorists to conceive society as a social space in which the individual, alone or with others, could view the acts of society in order to oppose an oppressive state.

## 1.2 Definition and concept of civil society: Theoretical and normative dimensions

Many scholars think that because of its ambiguous nature the definition of the civil society concept sometimes is meaningless. Civil society belongs to a group of sociological and political theory concepts such as freedom, justice, equality and democracy that are also not clearly demarcated. At least two specific dimensions of the civil society concept are

distinguishable: the theoretical and the normative role. In the context of theoretical role the concept of civil society analyzes dimensions of social life and social values, with citizens and civil organizations as key actors.

The normative role serves to motivate and mobilize citizens and other social actors for the establishment and development of various contents and forms of civil activities. The normative function is mostly manifested during periods of transition from less to more democratic societies. Both dimensions of the civil society concept have played significant roles, especially in countries where the position of civil society has traditionally played a marginal role.

Discussing the concept of civil society is quite fashionable today. Civil society is a popular term with politicians, academics and international agencies. We frequently hear politicians talk about the needs of the state and the market for a civil society. Civil society should provide an intermediate layer of governance between the citizens and the state that is capable of resolving problems without public coercion. (Edwards, 2004) The idea of civil society within the context of modern history offers perspectives on state-society relations. Within these perspectives, the state should be differentiated from civil society as a binding or organizing principal of political order. In this analysis, individuals and different organizations are part of the political order to the extent that they seek to participate in those processes. The concept of civil society has been defended in various ways by a variety of political and social theorists. Today's content of civil society does not result with a commonly accepted definition of the term, but focuses on whether the term should be a normative or non-normative tool of social science, and whether economic, religious and family relations should be considered as part of it. Walzer has defined civil society as the space of (politically) un-coerced human association and also the set of relational networks-formed for the sake of family, faith, interest and ideology. Civil society is also seen as a sphere of social interaction between economy and state (Cohen and Arato, 1992).

Most of definitions try to describe civil society as part of the society, but not directly part of the state, consisting of different organizations, which operate in the interest of the common good. One of the significant functional goals of civil society is to act as a force maintaining liberal freedom. This key function is a set of diverse non-governmental institutions, which are strong enough to counterbalance the state. Civil society is: 'a society in which polity and economy are distinct, where polity is instrumental but can and does check extremes of individual interest, but where the state is in turn checked by institutions with an economic base; it relies on economic growth which, by requiring cognitive growth, makes ideological monopoly impossible' (Gellner, 1994). While these are but a few of the formulations of civil society (some of them exclude familiar, religious, and economic realms) most of them share the most common definition of the term: the 'separateness of civil society and the state.'

### 1.2.1 The idea of civil society: From normative to functional definition

The core idea of civil society embodies an ethical ideal of the social order, one that harmonizes the conflicting demands of individual interests and social good (Seligman, 1995). In this context, its existence as independent from the state is a very important aspect. As we saw from the historical perspectives, the concept of civil society was defined differently by a range of German, French and Scottish Enlightenment figures, but common to all attempts was the articulation of the civil society's main problem: the relation between the private and public, the individual and social, and between individual desire and public concerns. In this context, civil society could be seen as autonomous sphere and independent from the state, but regulated by the state (Shills, 1991). This idea of civil society is not the focus of power balances between the state and civil society, but their inter-dependence.

Civil society should be considered as the location of independent thought. As a result, a functional definition of civil society could replace the predominant normative definition: 'that civil society should not be defined negatively as opposition to the state, but positively, in the context of the ideas and practices through which cooperation and trust are established in social life' (Shills, 1991).

### 1.2.2 Civil society and democracy

Citizen participation in processes of public decision-making is an essential part of the democracy. Through its social and political activism, civil society gives voice to groups of citizens that don't feel represented in democracy. Civil society can be viewed as a solution to many challenges in contemporary democracies. Amongst other potentials, civil society organizations have expert knowledge in many areas of concern, and so are able to serve governments as counselors. (Habermas, 1989). Participating in the system can be a good experience for citizens, allowing for a positive identification with their political system. This is how civil society can help strengthen some of the weaknesses in democracy and lower citizen dissatisfaction. This doesn't necessary mean that civil society organizations have identical interests and are always homogeneous. In essence there are many organizations within civil society that are undemocratic in their platform. Through the employment of disruptive, violent, illegal or socially irresponsible strategies, civil society organizations accustom their members to behavioral patterns, which are diametrically opposed to those necessary for the smooth functioning of democratic regimes. Non-democratic goals and strategies of some civil society organizations may generate openly non-democratic views and forms of conduct at worst (Forbrig, 2002). These aspects can directly threaten the maintenance of democratic regimes. It would therefore be misleading to conclude that all civil society organizations are interested in making democracy a reality.

### 1.2.3 Democratic functions of civil society

Civil society in the context of communist regimes had a different meaning compared to the meaning of civil society in the context of contemporary democracies. Because of the limited freedom of expression in communist regimes, civil society existed in someone's living room, in churches or in cafes (Brinton, 1990). Under the communist regimes independent civil society usually took on the form of small groups of citizen activism. Both representatives of independent and of the broad civil society contributed with different means and forms to overthrow communist regimes and follow transition toward democracy (Skovajska, 2008). As outlined above, at its best civil society can make a positive contribution to democracy, but at its worst may undermine democratic regimes. Some major functions through which civil society contributes to strengthening democracy are identified as: 'The Lockean Function (Control of State Power), The Hegelian Function (Interest Mediation), The Pluralist Function (Social Integration), The Non-Profit Function (Service Provision) and The Tocquevillian Function (Political Socialization) (Forbrig, 2002).

Although it is possible to identify some major functions through which civil society contributes to strengthening democracy, this doesn't necessarily mean that we do have a precise definition agreed from all authors for the concept of civil society. Many authors give different meanings to the notion of civil society. Not everyone means the same thing when they discuss it. Consequently, it is difficult to formulate a precise research question which contains a concept which itself is not precise.

In general, civil society is seen more as a multifaceted concept, although it is noticeable that the differentiation between the state and civil society is mostly discussed. Within this context, my research remains within the concept that defines civil society as autonomous sphere and independent from the state, but regulated by a legal framework from the state. This is the concept of civil society that is not defined negatively as opposition to the state, but positively, in the context of the ideas and practices through which cooperation and trust is established between the state institutions and civil society thus contributing to the democratization processes.

Having in consideration that the relationship between civil society and Kosovo institutions went through two very different stages of development, the general research question that guides my study is: What are the differences between the roles and contributions of civil society in Kosovo before and after the war of 1998-1999? In order to answer to my research question I will focus in two different circumstances, the pre war situation under the Milosevic's regime and the post-war period under international administration and building of democratic governance.

## 2. Civil Society in Balkans: In transition from communism to post communism

Active civil society fosters democracy in a number of ways: by dispersing power and thereby keeping a check on the state and by developing social capital. Very few countries, if any, that had no tradition of developing civil society during the communist period, emerged with a strong civil society after the communist period (Miszlevitz, 1999). Any countries that had

a relatively well-developed tradition of civil society before (or during) communism ended with weak civil societies by the end of communist rule. 'Their competitive advantage was, however, to have the blueprints of civil society still present in their institutional memory, this was a legacy on which they could base their efforts to reconstruct their democracies.' (Hann, 1992).

Civil society in post communist Europe is poorly developed. Because of the underdeveloped civil society in Eastern Europe and South Eastern Europe some authors refer to this as 'illusory civil society'. This is because the number of individual participants in civil society is low compared to the impressive number of NGOs. Another concern about these organizations is that most are one man shows, with little political or social influence (Whitehead, 2004). Politicization of civil society leaders in post communist countries is also evident, as some move into high political or the state administrative sphere after a very short period working with the civil society.

In order to achieve a better understanding of the complexities of civil society in post communist countries, it is important to address some of the key relationships between civil society and the state, which affects the democratization process in these countries. As discussed earlier, the relationship between the state and civil society is the subject of among different authors, philosophers, scholars and academicians, beginning from the Enlightenment period until modern times. While overthrowing communist regimes leading South-East European dissidents have chosen the 'anti-system' model because of the communist dictatorships (Mudde, 2003). However, while leading civil society organizations against communist regimes, some dissidents became state leaders in the transition (Vaclav Havel, Lech Walesa), some authors believed that this is the ultimate victory for democracy, while others argue that unification of civil society and the state in post-communist countries is the structural destruction of civil society. Because of the 'anti-system' model and approach during communist rule, civil society was believed to be 'anti-state & anti-institutional' irrespectively of the state of regime. This remained the belief following the fall of communism (Mudde, 2003).

The idea of civil society groups as state resistance and alternatives to political parties finds its best expression in many post-communist European countries, whereas in Western Europe civil society is a sphere of social autonomy or voluntary cultural and social organizations. Although civil society organizations led the opposition to communist states they should not necessarily be seen as adversaries of the state. To some degree it is possible for civil society to join state efforts in establishing and consolidating new democracies. Therefore, it is possible to elaborate the current perspectives of civil society development in post-communist countries, only by searching for the origins and effects of civil initiatives before and after the fall of communism.

Eastern and Southeastern European countries shared certain features, including party-state control over the most important institutions and other sectors of public life: supervision over organized social activities, widespread police control, suppression of independent activities outside of state control (including the private economic sector) and the outlawing of any activities deemed challenging to the ruling party. However, not in all of these countries the situation was the same if we compare state control over civil society. Best illustration for this is 'Solidarity', a social movement during the 1980s' in Poland that was using the methods of civil resistance to advance the causes of workers. After nine years of existence they finally managed to outmaneuver the communist leadership. There were growing and very well organized dissident groups in Czechoslovakia and East Germany, while Hungary had a substantially developed private sector. Social activism organized around these movements produced alternative or independent cultural elites.

On the other side, since the fall of communism in the 90s, the Western Balkans had been undergoing fundamental and multiple transformations. At the early phases of the transition there are numerous constraints on the development of civil societies in Western Balkans, such as: the legacies of communism, impact of nationalism, and the manipulation of ethnic politics. It is obvious that the question of nationalism and ethnicity impacted negatively on the development of a civic-based democracy in the Balkan region. Kosovo is no exception here.

## 2.1 Legacies of communism and nationalism

The legacies of communist rule on civil society have proven to be negative. In most of the South East European countries, communism reinforced collectivist models of individual and social obligations to the state rather than individual liberties. With little tradition of mediation and resolving group conflicts, including religious and ethnic conflicts, it missed an essential process for the development of a fully functional and active civil society. Civil society elements during communism and the

post-communist transitional period were the embodiments of this culture. On the other hand, the negative nationalism that characterized the Balkans during the 1990s promoted authoritarianism, which fostered an intolerant political culture, and justified government controls over the mass media and other public and private institutions with the pretext of defending endangered national interests. The road to an active and diversified civil society can be especially long and arduous where the legacies of communism are reinforced by the deliberate manipulation of nationalism.

Kosovo illustrates well the important role that nationalism and myths play in shaping human behavior. Manifestations for a myth known as Kosovo battle fought in 1389, marked the beginning of the collapse of ex-Yugoslavia. With the fall of the most of the communist regimes in Central and South Eastern Europe the concept of civil society discourse entered Kosovo in the beginning of the 1990's. This concept was not seeking one objective as most of South Eastern European countries did (to turn down communism and start the democratization process) but to start the state building process in conjunction with democratization and transition process (if possible at all in those circumstances). Civil society activism in Kosovo began as a reaction to Milosevic's regime and his hegemonic program inspired by a nationalistic myth. Before we examine forms of civil resistance against Milosevic's regime and how Albanians used civic activism as a form of national emancipation in 1990s, it is worth considering civil society in Yugoslavia with Kosovo as a part of it.

### 2.1.1 Yugoslav Civil Society from socialism to pluralism

The disintegration of Yugoslavia actually started with the abrogation of autonomy of Kosovo. The first civil initiatives in Kosovo took place after 1989. The institutional vacuum created in 1989-1990 after a very rapid disintegration of the Kosovo communist party and abrogation of autonomy created space for new initiatives, particularly from new generations struggling for more pluralism. But under Milosevic's repression, pluralism was impossible. Starting from 1991-1992 Albanians were interested in lobbying for independence. During the socialist Yugoslav rule civil society discussions in terms of their spectrum and intensity were fewer and weaker in Kosovo compared to other Yugoslav Republics. In the other republics: Serbia, Bosnia and Herzegovina, Croatia, Montenegro and Macedonia debates for civil society were predominantly theoretical and lacked energy of the new social movements. Slovenia brought fresh civil and democratic ideas such as the de-politisation of public sphere and introduction of multiparty pluralism, which were rejected by strong republics like Serbia. Slovenia was left with no other political alternative than the Yugoslav one, and this is how, both theoretically and practically, they continued to use the concept of civil society as a form of national emancipation.

By the end of the 1980s, other Yugoslav republics had designed their national programs. These were nationalist programs without civil society, whereas the Slovenian program included 'nationalism plus civil society'. In Serbia and Croatia, it appeared that the only alternative to communism was nationalism. 'There were, however, efforts in most Yugoslav republics to develop a non-nationalistic, democratic and pluralist system. One of them is the formation of the Association for a Yugoslav Democratic (UJDI) initiative, which aspired to be equivalent to East German New Forum.' (Ingrao,2009). In Kosovo the UJDI failed to attract members of different nationalities, thus obtaining the membership of only few Serbs and hundreds of Albanians.

Another influential center for Albanians in 1980s was the Writers Association, which throughout Yugoslavia supported intellectual freedom (Clark, 2000). The Kosovo Writers Association defended alleged 'Albanian separatists' who were facing prison from the system. In the years to come the president of the Association, Ibrahim Rugova, became one of the main voices of Kosovo for the international and domestic press as a head of the political movement: the Democratic League of Kosovo (LDK), which was founded in December 1989 (Clark, 2000).

## 3. Civil Society in Kosovo before the war of 1998- 1999

### 3.1 Kosovo civil resistance movement in 1990's

During 1990 LDK together with other civil society organizations established a united front against Serbia's regime by providing guidance for the civil and peaceful resistance against the regime in Belgrade. In many observations of Western journalists and politicians at the beginning of 1990s criteria for 'civil society' in Kosovo was never agreed (Kipred, 2005). For some of them LDK was identified as a civil society organization; for others who recognized LDKs political character and activism as a national political movement.

Between 1989-1990 civil society gained further substance with the foundation of a variety of other civil non-state organizations and political parties, such as the Social Democratic Party, Youth Parliament of Kosovo, and Green Party. All of them together were identified as 'Kosova alternative' (Clark, 2000). In the same period came the formation of different independent organizations, such as the Council for the Defense of Human Rights and Freedoms (CDHRF) (1989) and the Union of Independent Trade Unions (UITU) (1990).

Apart from non-violence protests solidarity among Kosovo Albanians was a very important element of the national and civil resistance in the 1990s. In this context, the Albanian movement directed its attention to the violence within their community: the blood feud. The most common customary law among the Albanians was the The Code of Leke Dukagjini (from here "The Code"). "The Code" included an elaborate legal rule that tried to regulate the blood feud. The initiative for reconciliation of blood feuds amongst Albanians became a widespread social movement that promoted a very positive social change in the society. Other forms of civil resistance were developed in the beginning of 1990s (Ingrao, 2009). 'Thousands of people would put candles in their windows or balconies, which marked the beginning of the curfew, a symbolic expression that despite the state of emergency Kosovo Albanians still held the key to the situation. At the beginning of 1991 an hour long silent demonstration took place in Prishtina, with the posters declaring 'Stop the violence'. " (Clark, 2000).

The intuitive non-violence movement taken up by Kosovo Albanians from 1989-1992 and absorbed into their identity and culture was a durable foundation for civil resistance. Not just civil resistance, but solidarity among the population, was one of the overarching principles. The 'Mother Teresa Association' was another very important NGO, becoming the backbone of the Kosovo Albanian parallel healthcare system after thousands of Albanian personnel were dismissed from their positions in public hospitals. "Mother Theresa' provided medical services and distributed food all over Kosovo to all categories of the civil Albanian population. The organization was funded by private donations from inside Kosovo, and later out of solidarity contribution of 3 percent of wages by the Albanian Diaspora (Khdr, 2008). This money was collected from financial councils that were established by LDK in the early 1990s. It is important to note that 'Mother Teresa' conducted a no-cash policy because of the risk from raids by the Serbian police (Clark, 2000). On the other side, all state media in Kosovo in the 1990s was at the service of policies of Milosevic's repression and genocide. 'Under these circumstances, during 1990-93, a "parallel society" in Kosovo developed with the efforts of Albanian professionals, teachers, and activists to maintain the functioning of society, and to exhibit a political will, which used the ensuing institutional basis to claim statehood for Kosovo' (Kipred, 2005). This repressive situation pushed the Albanian community to look for other alternatives.

As a form of their civil resistance to Serbia, Albanians created their own system of education out of the public facilities. 'Self-financed post-autonomy graduates in Kosovo were the generations of the Kosovo Republic. They no longer studied the people's heroes who had fought for 'brotherhood and unity' of Yugoslav nations and nationalities' (Schwandner –Siewers and Jurgen Fischer, 2002). Education was organized in private houses and garages, especially for high schools and University of Prishtina (UP). New curricula were enacted with an aim to promote the Albanian national identity. 'This came to be known as parallel education. It was the cause that galvanized the entire Albanian community in Kosovo into action, triggering its unprecedented homogenization. Albanian parallel education in Kosovo emerged as an embodiment of the Albanian civil and peaceful resistance, and an argument used to prove the existence of the Albanian independent state in Kosovo' (Kostovicova, 2005). Parallel institutions became a point of national pride and motivation for further solidification among Albanians for their statehood. The launch of the parallel system was also a gesture by Albanians to show to the international community 'the independent Kosovo'.

LDK leadership used this model of success as an important symbol and proof of Albanian statehood in Kosovo. One Albanian analyst suggested that Ibrahim Rugova should more accurately be called "President of the parallel schools of Kosovo" than 'The President of Republic of Kosovo', his official title. Civil society in Kosovo emerged and took its form within the context of non-violent civil resistance led from LDK and Mr.Rugova. 'The non-violence movement became part of the modern Albanian identity that drew together both village patriarchs and urban intelligentsia in a common effort to avoid a tragedy' (Clark, 2000). While in much of the communist bloc, peaceful transition from totalitarian and one-party rule to plural and democratic regimes, buttressed by civil society contributions, was made possible, Kosovo's civil society experienced a different kind of development (Khdr, 2008). The distinction between civil and political society was blurred. The reason was very close cooperation and sometimes the uniform actions between political parties and civil society that were imposed from the deteriorating political and economic conditions in Kosovo. One can say that pre-war civil society

organizations were strongly politicized and nationally oriented as they embodied the goals of the Albanian Kosovar nationalist struggle by means of peaceful resistance under the civil society umbrella (Sterland, 2006).

### 3.1.1 Kosovo Civil Society after the war of 1998- 1999

After the withdrawal of Serbian forces in 1999 the political circumstances in Kosovo changed radically. Kosovo entered a unique historical period to be followed by controversies with UNMIK, protection of minority rights and its status issue. Kosovo turned into experiment for different formulas of peace building and reconciliation. After the war of 1999 the majority of international donors and agencies interested in civil society development have focused their funds mostly on NGO sector. NGO sector role was so relevant to UNMIK political agenda after the war, but not less important to Kosovo institutions and political parties of Kosovo after UNMIK became irrelevant. Under UN administration and protection by NATO troops, Kosovo society was impacted by the mass arrival of international non-governmental organizations (INGOs), most of them with the objective to provide humanitarian aid, reconstruction and reconciliation. The INGO 'boom' in the aftermath of the conflict impacted the massive expansion of the local NGO sector.

Radical socio-political change in post war Kosovo is not the only reason for the quick development and new strength of the NGO sector. The legacy of the 1990s also explains that despite operations under Serbian repression and pressures to maintain one singular course within the national civil resistance, independent organizations experienced some kind of pluralism during the 1990's. Therefore, pluralism was not totally inexperienced, or better to say, unknown (Clark, 2000). As a result, at least some of the independent organizations that existed before the war in 1999 onwards had to go through slight reconfiguration and continue to expand within a new context. While civil society in the 1990s was associated with civil resistance, after 1999 under the new circumstances of constructing a new political system, civil society underwent a necessary transformation. This process of transformation was rapid as it shifted radically the focus of civil society organizations from the politics of resistance to the politics of reconstruction and peace building (Kipred, 2005).

Compared to pre-war circumstances, NGO sector after the war experienced a UN-sponsored language of peace building, reconstruction, reconciliation and multi-ethnicity. In order to please UNMIK and lots of international donors all types of associations and NGO's mentioned above were chasing donors whose funds they embezzled by organizing largely meaningless trainings, conferences, and roundtables on how to reconcile Serbs and Albanians just couple of months and years after bloody war was finished (Khdr, 2008). Most of the NGO's will become politically relevant only when UNMIK and other international donors needed them to implement similar short-term projects. Consequently the rise of thousands of local NGOs was accompanied by a feeling of public skepticism and a fear that they are not driven by authentic needs but apply for similar projects to please foreign donors.

In 2002, after the new Kosovo institutions were established the relationship between these NGOs and state institutions needed further reconfiguration. At this point NGOs formed after the war removed from UNMIK structures and no longer had any direct influence in policymaking. This phase of development of NGO sector as part of civil society has proven to be quite challenging, especially for that part of NGOs that emerged after the war (Brand, 2003). On the other hand, several major associations that existed before the war registered as NGOs. These organizations together with others that have succeeded from the disbanded Kosovo Liberation Army (KLA) were connected to major political parties and had better access to the government resources when their respective parties would come in power.

Another serious problem that started between the years 2003 and 2004 was the decrease of international donations. This started to affect the financial sustainability of most NGOs. At this point from 2003 to 2005, not only as a result of the proliferation of NGOs but also because of the antagonistic relationships between major NGOs, the Civil Society of Kosovo gradually began to lose its pre war homogeneity.

The antagonistic relationships within the NGO sector were mostly a consequence of a variety of historical reasons and competition born out of competition for foreign and domestic funding. After the formation of Kosovar institutions, powerful NGOs started to take political sides and represented interests based on organizational histories and inter-NGO linkages, rather than based on the forms of their activities (Atrc, 2008). Consequently, NGO sector became divided between different types of groups, from large-scale network organizations that have pre-dated the war to NGOs that emerged after the war (Kipred, 2005). As a result of this division a good number of NGOs failed to build their own identity as part of civil society, instead they formed particular 'cliques' within Kosovar institutions and political parties, or within the international community

in Kosovo. Such cliques are usually connected to major sources of donor money like the international organizations coming both from U.S. and EU and later to the Kosovo Government and sometimes with political parties (Kipred, 2005). This antagonism impacted fair competition, because animosities and intolerance usually stretched into a highly personal level, thus preventing NGO networks from having a more unified voice towards the Government.

Similar animosities reflected the important interaction of some NGOs with the Kosovo institutions, as cooperation would often be sporadic and too dependent on individuals. The government(s) felt quite comfortable, as this fragmentation existed and as long as Kosovar media gave only limited space for NGOs to organize true public debate and coverage of all sides of important issues. Consequently, the political system these days remains partly open for cooperation with NGO sector and their input in the policy process and political influence is greatly constrained.

#### 4. Summary and Conclusions: Looking Forward

##### 4.1 Birth or Rebirth of Kosovo's Civil Society

During the breakdowns of the communist regimes there is no doubt that civil society played an important and historic role. Civil society's contribution was also significant in the process of democratic consolidation that followed the breakdown of the communism in East Central European countries. The East Central European movements of 1989 sent reverberations throughout the continent, including the former Yugoslavia, and by default in Kosovo (The Independent International Commission on Kosovo, 2000). As outlined earlier civil society in Kosovo went through two developmental phases: civil resistance and solidarity before the war of 1998/1999, and the post-war period and building of democratic governance after the war. Consequently, these days NGO sector in some of its nuances is still divided among NGO's that pre dated 1999 and those that were formed after the 1999. Relationship between these two groups of NGOs is still antagonized.

In a given setting in order overcome these antagonisms, become a force for democracy and be able to contribute to the democratization process by deliberating public problems, most of the NGOs should first start to address their internal problems such is the legal framework, prepare a strategy to strengthen their participation in the European integration process, reach out to their target groups, address their financial sustainability problems and improve cooperation with the Government. NGO's should be persistent on drafting legislation that will better facilitate their activities in the future.

NGOs are among the most important actors in the complex constellation of stakeholders in the EU Integration process. As the integration process develops in the future, Western Balkan countries will continue working to secure and/or improve present positions with regard to their European agendas. This ultimate goal continues to be challenging and it will call for an action from multiple society layers, whereas NGOs as an important part of civil society can contribute to the quality of and public support for pre-accession related reforms. NGOs could play an indispensable role in sustaining democratic development and good governance, especially against the background of historical complexities and challenges of transition in Kosovo. NGO sector can become one of the main partners in Kosovo's EU integration process, but their capacities for participating in policy- and decision-making need to be improved (Progress Report, 2008). The leadership of both Kosovo institutions and NGO sector in cooperation with international actors involved in Kosovo should prepare a strategy in order to strengthen the role and participation of NGOs in the European integration process.

There are several instruments that NGOs can use to participate in the process. Kosovo needs to develop a sustainable triangle between the government, the EU and civil society relations. NGOs need also to reach out more often to their target groups in order to create stronger networks between them. It is important to shun the individualistic and narrow interests when it comes to networking, and see the benefits of NGO joint action, which is ultimately a more powerful force compared to their individual capacities. They need to reach out more to their target groups and apply a more focused approach in their mission, rather than opportunistically shifting towards donor priorities.

Another serious problem that remains to be addressed from NGOs is that of financial sustainability. NGOs should not depend solely on international donors. Government funding, private donations and other funding options would help to ensure institutional and financial sustainability. Last but not least cooperation between the Government and NGO sector should be based on acceptance of shared responsibilities for relevant matters, recognition of shared values, and in sharing financial and human resources. In order to do this not just NGO's but government institutions should also reconsider being the exclusive provider of public services and identify activities the NGO sector could perform. NGOs should work to build

their capacity and professionalism and duly inform the public about their activities, as well as improve cooperation between NGOs. The Kosovar government should also be aware that it cannot address all the needs of a transforming society alone, which is why they need NGO efforts to complement them. This could possibly reduce current antagonism within the NGO sector that does enormous harm to the political efficacy of the civil society by taking different forms in practice.

At the time of democratic transitions in South Eastern Europe, different models existed in the West regarding the cooperation between the civil society and the state. Those are mostly models of a close relationship and cooperation between civil society and the state institutions, both in Western European countries and in United States. Leading dissidents and other groups in South Eastern Europe, including Balkans, have chosen the model of complete 'opposition' or 'anti-institutional' behavior. This model was not supported only because of the particular context of the dictatorship regimes, but because civil society was believed to be inherently 'anti-institutional' irrespective of the nature of the regime. While in South East European countries this behavior marked the period after the fall of communism, in Kosovo similar relationship between NGO's and state institutions took place after 1999 (Atrc, 2008). It means that some NGO's even after 1999 in many situations continued to practice that same aggressive negativity towards the Kosovo state institutions as they did during the 1990s under the circumstances of apartheid against the Serbian regime. It is understandable that this frustration comes as a result of highly centralized political party structures in the Government(s) which supports only particular NGOs and prevents other NGOs from having greater access to the policy making process, but this could also be a justification only for a number of NGOs that do not have well formulated policy goals so they could contribute to the policymaking process.

Regardless of this situation many of these NGOs are needed for the democratization process, especially NGOs with strong constituencies and those interested in impacting state policies. However, some of these NGOs need to change their approach and this would mean not only to offer alternatives for the problems they identify, but look for ways to actively participate in the policymaking process.

What remains ahead for NGO sector as a very important part of civil society is try to articulate a new vision for Kosovo's future (Kipred, 2005). This would be possible also with a more integrative approach from the political parties, and by drafting legislation that will enable NGOs to participate in the decision making process, using EU mechanisms and instruments to contribute to the democratization processes and by improving communication between media and NGO sector. NGOs should be more independent from state but more active on behalf of citizens towards the state. 'This doesn't mean that they should take the role of the state or of other actors in the society, but they should improve the interplay of citizens with the state and achieve better effectiveness and responsiveness of its institutions.' (Spurk,2008). In order to establish a collective identity within Kosovo's new polity, NGOs, apart from sensitive historical elements and meaningful civic ideologies, need to articulate the civic engagement and activism. While articulating the overall values of active citizenship, political engagement, plurality and solidarity, NGO sector will complement the so-called 'bigger picture' by becoming a central factor for the development of a sustainable democratic community.

It is also important to define their agendas and build constituencies. Thus, a better cooperation between the Government and NGOs could be established. First step towards a meaningful cooperation between the government and NGO sector is to define the rights and responsibilities through a legal framework, which would formalize the cooperation between each of the sectors. It is the duty of the Government to create a favorable climate in order for NGOs to become more functional. Because the Government is dominated by rigid party structures it is not expected that they will be the first ones to start this reform. If communication between Government and civil society representatives brings no results, NGO representatives could use EU Integration as a process in order to address this concern within the European Partnership instrument. The EC has a huge bargaining power within the EU Integration process, and they address issues regularly with national authorities, and follow up whether the government has implemented their recommendations and report accordingly in the progress report.

As outlined earlier various authors conceptualized the relation between civil society and the state in different ways. 'Historical examples of this interpretation include Locke's thesis that civil society offers protection from the potential abuses of state power. Similarly, Montesquieu argued for a balance between state and civil society. Likewise, deTocqueville advocated self-government and civic participation as a means for counteracting power abuses by the state and/or other social majorities.' (Fischer 2006). Civic performance in its essence implies good behavior of a citizen and his or her acting for a "good cause" that is in favor of the interests of the entire community. The civic performance does not necessarily imply "anti-state", "anti-social-order" or anti-institutional actions, although, most frequently, it may seem to belong to the "anti"

type of behavior. It seems that under new circumstances NGO sector is having problems to understand its new role. Their role as part of civil society is not to change the system (this was pre 1999 goal), they should be contributing to the development of the system regardless of the fact that this might sound complex if we take into consideration constants clashes between major NGO groups with the Government.

NGOs interested in impacting state policies should look for the instruments and mechanisms that will help reshape and improve their cooperation with the Government structures. In order for this to happen a contribution from both NGO sector and of the state is needed. Only when this happens will the new generations of Kosovo NGOs see the state as their protector, and political leaders will see civil society representatives as their supporters rather than a threat to themselves, only then, will a truly vibrant civil society be able to develop in Kosovo. However, this is not an easy mission. It is important to be recognized that participation of more citizen groups and civil society organizations in governance could potentially produce conflicts of interests between them. This is likely to happen in transitional societies like Kosovo. To avoid similar situations state institutions should enforce consistently legal and judiciary system reforms in order to settle disputes between all possible parties involved in the future public decision-making.

The Republic of Kosovo, in its seventh year as an independent state, faced significant challenges in addressing international and domestic events. Kosovo made global headlines when the International Court of Justice declared that Kosovo's unilateral declaration of independence did not violate international law. The country's image in the international arena was seriously tarnished when a member of the Parliamentary Assembly of the Council of Europe, Dick Marty, came out with a report on alleged criminal activities of the Kosovo Liberation Army during and after the war. The dialogue between Kosovo and Serbia may improve regional stability and cooperation, but as EU does not have a unified position on Kosovo independence, it may face similar problems also when its concerns the dialogue. In the meantime, the Kosovo Government will continue to struggle for a stable coalition, and their main challenge will be to rally the political potential in order to fight organized crime and corruption. There is a question whether they will manage to implement fully their executive mandate, specifically in the northern municipalities, in order to build a state with a functional rule of law.

These circumstances are the opportunity for NGO sector as part of civil society to play a role in determining the parameters and the quality of governance and social policy during the process of peace & state building. As it can be seen, civil society groups were a factor under the circumstances of apartheid and can be potentially a force for peace and democratization process. 'Civil society actors can strive for democratic values and reconciliation. But in many countries undergoing transitions from violence to peace, civil society per se does not necessarily contain an emancipatory potential. This is further undermined when the civil society itself must be democratized.' (Fischer, 2006). In today's world 'Civil Society' has become a widely used term, essentially it is "the big idea on everyone's lips" (Edwards 2004). Instead of aiming the job 'everyone wishes to perform', Kosovo's NGO sector as important part of civil society should go through the process of internal democratization before its serious engagement in the very important processes of state building and EU integration. This could be the so-called process of 'rebirth' of the civil society in Kosovo.

Democracy is a process and it will take some time for Kosovo NGO's to develop their political activism. Citizens in democracy have both rights and duties and this is the fundament for the democratic governance as they are given the opportunity to actively shape their individual interests within the public sphere. To understand socio-political changes in the 'New-Born' Kosovo, civil society needs to be taken into account in order to give answers to many ethical questions regarding the political and institutional practices in independent Kosovo. Effective civil society requires effective state institutions. Government structures will have to allow greater presence of NGOs in policy-making process.

The above initiatives followed with an action plan from all sides are relevant to foster and enable a better environment for the NGO sector development, which could in a later stage produce a healthier STATE-NGO relationship. With similar actions taken from all possible stakeholders NGO's could potentially overcome the current fragmentation and antagonisms. This would be a new atmosphere with no need for the so-called 'anti institutional' model of behavior for many NGOs, because there will be less space for the Government to play favoritisms among different NGOs and associations, and because fair and open competition will be guaranteed by law. Operating in such circumstances many NGO representatives would gradually realize that civil society's pre 1990 role was different from today's. Today, their roles and contributions are different as they can seriously contribute to develop the system, not necessarily by using the 'anti-system' approach. It is civil society's role to make state institutions more accountable and effective in order to strengthen citizen's respect for the state and encourage their positive engagement. The fact the civil society is independent doesn't mean that it should be in tension with the state institutions and permanently criticize and oppose them.

This is a fantasy of a creative, fluid and free civil society. This is the concept of civil society that is not defined negatively as opposition to the state, but positively, in the context of the ideas and practices through which cooperation and trust is established between the state institutions and civil society thus contributing to the democratization processes and potentially becoming a 'postmodern' panacea for the Kosovo society.

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## International Administration of Kosovo as a Driving Factor in Appearance of Trafficking in Human Beings

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### Abstract

*Opinions, stances of the Albanian community about self-determination and the political demands for an independent political and territorial status of Kosovo by various colonial regimes, are longstanding. The disintegration of the Socialist Federal Republic of Yugoslavia (SFRY) was followed with wars among its constituent parts, and after the international military intervention, the peace was established in the region. By the Resolution 1244 of the Security Council of the UNO, in its 4001 meeting, adopted in June 1999, Kosovo was set under the international civil administration, which was accompanied by the deployment of military defence structure of KFOR, reaching a number of 35 000 soldiers, and the UNMIK civilian structure comprising a staff of 15 000 officials. A lot of various international non-governmental and governmental organizations were also deployed to Kosovo, which tremendously increased the presence of persons with origin of other countries. Such a situation created some favourable conditions for the criminal groups in order to expand the phenomenon of trafficking in persons to such a place as Kosovo being until 1999, trafficking in persons appeared on a low capacity and dynamics, and mainly as a transitional country with the intent of sexual use, while domestic trafficking was still unknown. However, this criminal phenomenon has been constantly increasing and reaching a concerning level, especially after 1999, on the occasion of setting Kosovo under the international administration by the UNO, the territory of Kosovo was no longer considered only a transitional country but also as destination location for the victims of trafficking in persons. The introduction and prevalence of this criminal phenomenon is as a result of Kosovo getting opened to the world, the organization of national criminal groups in cooperation with international organized criminal network. Undoubtedly, the increased number of persons originating from other countries as personnel of the international organizations to Kosovo contributed in increasing the number of trafficking in persons, because it was established that many potential clients using victims sexually were foreign citizens. Moreover, the lack of legal infrastructure on the combat and prevention of trafficking in persons as defined by international legal acts.*

**Keywords:** International Administration, Kosovo as a Driving Factor, Trafficking Human Beings

### Introduction

Opinions, stances of the Albanian community about self-determination and the political demands for an independent political and territorial status of Kosovo by various colonial regimes, are longstanding. In the course of history, Kosovo has gone through various stages of functioning, thus always as a political-legal and territorial autonomous entirety, this is proved also by the period of Ottoman Empire ruling, wherein Kosovo functioned as a special administrative – legal unit established by the Turkish regulation of 1864, naming Kosovo Vilayet, which was one of four vilayets of the Ottoman Empire.<sup>1</sup> The constitutional – legal position of Kosovo constantly underwent changes based on the flow of political events after the end of world wars and the regional ones. The Constitution of the Socialist Federal Republic of Yugoslavia (SFRY) 1974, likewise the Constitution of the Socialist Autonomous Province of Kosovo (SAPK) of 1974, determined Kosovo as: a political, territorial autonomous unit and a constituent element of Yugoslav federalization<sup>2</sup>. The disintegration of the Socialist Federal Republic of Yugoslavia (SFRY) was followed with wars among its constituent parts, and after the international military

<sup>1</sup>Sh. Rrahimi, Vilayet of Kosovo, published by Office of Textbooks and Teaching Materials of KSAK, Prishtina, 1989, pg. 12

<sup>2</sup>A. Bajrami, Kosovo Law in Transition, published by Prishtina University, Prishtina, 2002, pg. 48

intervention, the peace was established in the region. By the Resolution 1244 of the Security Council of the UNO, in its 4001 meeting, adopted in June 1999, Kosovo was set under the international civil administration.<sup>1</sup> The international administration of Kosovo by the Resolution 1244 was of an interim character and aimed the establishment of proper democratic conditions for resolution of the final status of Kosovo.<sup>2</sup> At that moment, a military defence structure of KFOR, reaching a number of 35 000 soldiers, and the UNMIK civilian structure comprising a staff of 15 000 officials, were deployed. A lot of various international non-governmental and governmental organizations were also deployed to Kosovo.<sup>3</sup>

Such a situation created some favourable conditions for the criminal groups in order to expand the phenomenon of trafficking in persons to such a place as Kosovo being until 1999, trafficking in persons appeared on a low capacity and dynamics, and mainly as a transitional country with the intent of sexual use, while domestic trafficking was still unknown. Before 1999, the territory of Kosovo was not a destination of victims of trafficking, but a transitional country for other countries (Macedonia, Serbia, Montenegro, etc.). However, this criminal phenomenon has been constantly increasing and reaching a concerning level, especially after 1999, on the occasion of setting Kosovo under the international administration by the UNO, the territory of Kosovo was no longer considered only a transitional country but also as destination location for the victims of trafficking in persons. The introduction and prevalence of this criminal phenomenon is as a result of Kosovo getting opened to the world, the organization of national criminal groups in cooperation with international organized criminal network. Undoubtedly, the increased number of persons originating from other countries as personnel of the international organizations to Kosovo contributed in increasing the number of trafficking in persons, because it was established that many potential clients using victims sexually were foreign citizens, as well as the lack of legal infrastructure on the combat and prevention of trafficking in persons involving the international personnel employed in Kosovo. Trafficking in persons causes direct and multiple damages to the quality of life to each society in which it appears, regardless of the fact whether the country of such society is the origin, transition or destination.<sup>4</sup>

This can be verified in the best way by the cases assisted for rehabilitation of victims of trafficking who did not have Kosovo citizenship. A Turkish victim reported the UNMIK Police in Rahovec that she had been raped and forced to prostitution by a Kosovo man called N.C. She also stated that some of her clients were UNMIK Police Officers, stationed in Rahovec, and that she could identify them easily, she should even show where their apartments were.<sup>5</sup>

The international staff deployed in Kosovo not only incited smugglers to increase the number of victims of trafficking for sexual use as clients, but some UNMIK employees<sup>6</sup> even contributed in increasing and developing this criminal offence, by providing assistance in transporting victims of trafficking. In one case, victims of trafficking stated that they were transported by UN white-coloured vehicles (known as their official vehicles) from Mitrovica to Fushë Kosovë. The vehicle was driven by a Russian member of UNMIK.<sup>7</sup> The involvement of UNMIK staff in criminal offences – trafficking in persons in Kosovo – is verified also by the UNMIK press conference, held in Prishtina on 13 August 2001, which confirms the dismissal of four members of UNMIK, being the only punishing measure against them as a result of such involvement, which were considered as violation of code of conduct and norms.

Participation of some of KFOR and UNMIK staff members, at least as users of services provided by victims of trafficking, is indicated by the fact that mainly the public houses/bars being full of victims are situated at locations visited by KFOR and UNMIK members or in the vicinity of KFOR military bases and UNMIK. Participation of individuals of UNMIK personnel, who had immunity, in such a criminal phenomenon, was a serious obstacle in combating and preventing this criminal offence by the KSP, the prosecution office and local judges.

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<sup>1</sup> A. Bajrami, *Parliamentarianism*, Publisher by Fama College, Prishtina, 2010, page 381.

<sup>2</sup> It should be emphasized that Kosovo declared its Independence on 17 February 2008, and on 15 June 2008, the Constitution of the Republic of Kosovo entered into force, while UNMIK started reconfiguration of its presence in this country.

<sup>3</sup> B. Reka. *UNMIK as an international governance in post-war Kosovo: NATO's Intervention, UN Administration and Kosovar Aspirations*, p. 153

<sup>4</sup> S. Gërzhaliu, *Trafficking and Prostitution of Women*, ADEA, Prishtina, 2003, p. 181

<sup>5</sup> OSBE/SMSL Report, p. 55

<sup>6</sup> Clarification: No official evidence was published, which would contain the exact number of persons as staff members in UNMIK and KFOR, who were accused or convicted for commission of the criminal offence of trafficking in human beings for the period 2000-2006.

<sup>7</sup> OSCE Report, *Kosovo of the Criminal Justice System*, 01 September 2000 – 28 February 2001.

## Kosovo Legislation on Trafficking in persons

As stated above, the first report on existence of criminal phenomenon, such as trafficking in persons, in the Republic of Kosovo occurred in 1999. The applicable law of Kosovo at that time had no legal provisions sanctioning this criminal phenomenon. This legal gap was an obstacle to fight and prevent trafficking in persons. Such a circumstance was used by criminal organizations by increasing the level and dynamics of prevalence of trafficking in persons. The approach in fighting and preventing trafficking in persons, under the situation of lacking legal regulations, became a significant challenge for the law enforcement bodies and for the judiciary.

Following the entry into force of the Regulation No 4/2001, on 12 January 2001,<sup>1</sup> an instrument was provided, which addressed all forms related to combat and prevention of trafficking in persons, at the meantime the legal gap in the applicable law of Kosovo was eliminated.

The UNMIK Regulation No 4/2001, of 12 January 2001, established a part of legislation that could particularly serve for prosecution and punishment of the perpetrators of the criminal offence of trafficking in persons and for assistance and protection of victims of trafficking until drafting and approval of the Criminal Code of Kosovo. This regulation comprises of three chapters, divided into 15 articles. The Chapter I, which comprises of 4 articles, provides the definition of the criminal offence and the sanctions. The Chapter II, which comprise of 4 articles, deals with criminal prosecution, confiscation and court proceedings. The Chapter III, the last one, comprises of seven articles and it administers protection and assistance to the victims of trafficking.

In compliance with international conventions and other acts, the Criminal Code of Kosovo, which entered into force on 6 April 2004, in its chapter XIV, wherein criminal offences against international law were foreseen, has foreseen four articles sanctioning various forms of slavery: establishing slavery, slavery-like conditions and forced labour, Article 137 of the Provisional Criminal Code of Kosovo (PCCK), smuggling of migrants, Article 138 of PCCK, trafficking in persons, Article 139 of the PCCK and withholding identity papers of victims of slavery or trafficking in persons, Article 140 of the PCCK.<sup>2</sup> Because of the entirety that is reviewed this paper, a special significance in the paper is given to the explanation and interpretation of Article 139 of the PCCK,<sup>3</sup> trafficking in human beings.

By analysing and comparing the definition provided in Article 139 of the PCCK with the definition provided in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, we identify 3 constituent elements of this criminal offence: actions, means and the purpose, which are presented as in the definition of Article 139 of the PCCK, as well as in Article 3 of Palermo Protocol, which is recognised as international definition. The two first elements are objective, while the third element is subjective. In order to find guilty and sentence a suspect for committing the criminal offence of trafficking in persons, three of these elements should be present. According to the fourth paragraph of Article 139 of the PCCK, this criminal offence is committed by a person who negligently facilitates the commission of trafficking in persons, whereas according to the fifth paragraph of this article, this criminal offence is considered to be committed by a person who uses the victim of trafficking for sexual service.<sup>4</sup> The qualified forms of the criminal offence of trafficking in persons are foreseen by paragraphs 3, 6 and 7 of the Article 139 of the CCK. Along these serious forms of this criminal offence, I consider that that a more severe form should have been foreseen in cases when trafficking in persons is committed in a way that it causes danger to the life and security of trafficked persons.

Moreover, a more severe form of this criminal offence should be foreseen also the fact that if by a dangerous manner of trafficking in persons death was caused to one or more persons.<sup>5</sup> Foreseeing these two forms, sanctioned by Article 139 of the CCK, by applied a severe punishable policy, would increase the efficiency in fighting and preventing the criminal offence of trafficking in persons.

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<sup>1</sup> See UNMIK Regulation 4/2001.

<sup>2</sup> See: Provisional Criminal Code of Kosovo, adopted by the Kosovo Assembly, 2013.

<sup>3</sup> Provisional Criminal Code of Kosovo, Article 139.

<sup>4</sup> This provision was applied for the first time in Sweden in 1998. This law is called "Women Peace" that sanctions the use of sexual services from victims of trafficking.

<sup>5</sup> I. Salihu. Criminal Law, CC; Prishtina University, Prishtina, 2006, p.97.

All of these forms of this criminal offence, foreseen by Article 139 of the PCCK, may be committed by a person with criminal liability, except for the criminal offence foreseen by paragraph 7 of Article 139 of the PCC, which can be committed only by an official person.

With regard to the guilt, all forms of this criminal offence may be committed willingly, the only exception here is the form of the criminal offence foreseen by paragraph 4 of Article 139 of the PCCK, which may be committed as a result of negligence.

Article 139 of the PCCK also foresees criminal sanctions that may be imposed to the perpetrators of all forms of the criminal offence, trafficking in persons, foreseen by the paragraphs of this Article.

If a comparative overview is made to the UNMIK Regulation 4/2001 and Article 139 of the CCK, it is noted that in the Criminal Code of Kosovo some articles are not corporate, which have a special significance in fighting and preventing the criminal offence, trafficking in persons, and there is no clarity whether respective articles of the Regulation 4/2001 also after 6 April 2004, when the PCCK entered into force, are applicable. According to the statement of the legal advisor of the SRSG, in the Memorandum 2004 – 01323, a part that is referred to protection and assistance of the victim (Sections 2, 3 and 4) of the UNMIK Regulation No 4/2001, remains applicable, since they were not included in the CCK or in the Criminal Procedural Code of Kosovo.<sup>1</sup>

From the analysis of the provisions of the UNMIK Regulation No 4/2001 and the Article 139 of the PCCK, it comes out that Kosovo should amend and supplement its legislation in fighting and preventing trafficking in persons.

## Conclusion

Trafficking in persons is still today an extremely concerning criminal phenomenon in all modern societies, including also the Kosovo state. Studies and analyses conducted so far have indicated that there are all form and types of this criminal phenomenon in Kosovo, which are present either with local victims or victims coming from other countries, as well as clients coming from Kosovo or from other countries transforming Kosovo from a transit country into a destination for trafficking in persons. Moreover, it appear that in Kosovo, this criminal phenomenon was present at locations where international bodies were deployed or at locations visited by the employees coming from other countries. Undoubtedly, this is related to the fact of impact by many factors (economic – social, political, educational, etc.) that make such a criminal phenomenon to happen. Eros and sentimental feelings are considered as inner psychological traits and their appearance in the client type of manner using sexual services of victims of trafficking is concerning for the entire modern society, because by trafficking in persons the integrity and dignity of a person is violated. However, this was regulated by the UNMIK Regulation No 4/2001, the Provisional Criminal Code of Kosovo (PCCK), and by other laws, but not directly. Nevertheless, the legislation should be amended by provisions concerning a certain rehabilitation and reintegration of the victims in society, in relation to protection of victims of trafficking, compensation of victims in criminal proceedings, meaning while examining the criminal matter and imposing the sentence to the perpetrator of the criminal offence – trafficking in persons, to decide also on compensation of victims of trafficking, establishment of a public fond to ensure compensation of victims of trafficking and the use of confiscated items in order to raise such a fund. Regulation of the status of victims of trafficking should define the incitement of trafficking in persons as a criminal offence.

The necessity to provide a legal basis for such amendments derived from the international conventions and other acts, such as UN Convention against International Organized Crime, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Framework Decision of the Council of Europe dated 12 July 2002 on Combat against Trafficking in Persons, European Convention on Action against Trafficking in Human Beings of the Council of Europe (2005 CETS No 197).

With regards to the consequences of this criminal phenomenon, of course they are huge consequences, including: psychological, social, ethical, economical and many other consequences.

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<sup>1</sup> Trafficking of Children, UNICEF, Prishtina, 2004, p. 15.

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## Educational Research Projects as New Form of Educational Methodology

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### Abstract

*Research study has focused on investigating: could we transform today's outmoded education system to a vibrant learning ecosystem that puts learners at the center?, how technology is changing the way we teach and more importantly the impact it has on the way students learn? The study focused primarily on two objectives. Firstly on assessing and evaluating issues and deficiencies in the current state of technology enhanced education, the second objective, proposing and recommending solutions to the findings from the secondary research and answer both research questions from above. Creating personalized learning for all the learners requires a paradigm shift in current educational methodologies in practice and a deep commitment in order to guide this process tempered with wisdom and based on evidences of practical benefits. The research study is primarily trying to answer these research questions and focused on devising a set of guidelines and recommendations for designing new educational methodology based on the previous analyses. Findings and recommendations are provided.*

**Keywords:** Educational methodologies, educational research projects, technology enhanced education, learning modeling approaches, e-learning

### Introduction

Education has seen big changes, many of which have been technology-driven: social networking tools like facebook, twitter, google +, LinkedIn,, the expanding role of e-learning, sophisticated learning-management systems, and new communication tools. Also major impact is realized from, open educational resources (OERs), massive open online courses (MOOCs), and the benefits and challenges of online learning.

Perhaps the most important issues concern how technology is changing the way we teach and more importantly the impact it has on the way students learn. Technology enhanced education also known as e-learning is becoming very important. There has been a greater need for learning technologists to step in and help communities benefit from technology. The role of learning technologists is essential to integrate new technologies and education.

The main research focus of the study is can we transform today's outmoded education system to a vibrant learning ecosystem that puts learners at the center and enables many right combinations of learning resources, experiences, and supports to help each child succeed? Creating personalized learning for all the learners requires a paradigm shift in current educational methodologies in practice and a deep commitment in order to guide this process tempered with wisdom and based on evidences of practical benefits.

## Literature Review

There is evidently a lack of support for instructional techniques and pedagogical learning models, as well as procedures or guidelines how, when and for what particular situation each pedagogical learning model should be supported in the software development process and its conjunction and correlation with the instructional strategies (Fetaji, 2007d).

Instructional strategy is a very important concept that needs to be addressed because the main purpose of any learning activity should be clear to the learner (Merrill et al. 1996).

Instructional design in an e-learning environment can foster the alliance between technology and education for pushing higher education to transform the academic environment. A properly executed instructional design can help faculty and academic departments develop new modes of instruction that use various technologies and teaching strategies. Instructional design represents analysis of learning needs and systematic development of instruction. Instructional design models typically specify a method in using the technology that if followed will facilitate the transfer of knowledge, skills and learning process (Merrill et al. 1996). This learning dimension should provide the context of instruction and desirable outcome. The learning environments require high level of self-organization and metacognitive abilities from the learners engaged in the process of learning that should be captured by the instructional techniques.

There are five main instructional strategies that are currently considered: Problem Based, Project based, Inquiry-based Learning, Task based and Game based learning (Helic et al 2005), (Marjanovic, 2005), (Schroeder, et al 2006), (Mitchell, 1993).

Problem based learning represents the learning that results from working with problems that needs solving. The entire learning process is set around a problem introduced and the knowledge is developed as a consequence of trying to solve the problem. Official description offered by (Mitchell, 1993) generally describe it as "an instructional strategy in which learners confront contextualized, ill structured problems and strive to find meaningful solutions and learn in the process of doing it." In general it is an approach to learning focusing on the process of solving a problem and acquiring knowledge. The approach is also inquiry-based when learners are active in creating the problem. The learners are elevated to the position of analyst and problem-solver and have specific objectives and deadlines to meet. According to (Savery, et al 1995) there are two critical issues involved in presenting the problem. First, if the learners are to engage in authentic problem solving, then they must own the problem. A second critical issue in presenting the problem is to be certain that the data presented does not highlight critical factors in the case. Either the problem must be richly presented or presented only as a basic question. Learning should be synthesized and organized in the context of the problem.

Project-based learning (PBL) is a model that organizes learning around projects. Definitions of "project-based instruction" include features relating to the use of an authentic ("driving") question, a community of inquiry, and the use of cognitive (technology-based) tools (Krajcik, et al 1994). Project-based instruction is an authentic instructional model or strategy in which learners plan, implement, and evaluate projects that have real-world applications beyond the classroom (Harwell, 1997). Projects sometimes go off track, with teachers and students pursuing questions that are peripheral to the subject matter of interest. The solution, according to (Blumenfeld et al. 1991) is to find ways for projects to center on "learning appropriate goals."

Inquiry-based Learning according to (Lin, et al 2006) represents an instructional strategy where involvement in learning implies processing skills and metacognitive abilities in order to seek answers to questions and issues while at the same time constructing new knowledge. Numerous inquiry-based instructional models, such as Authoring Cycle and Inquiry Cycle have been developed to support different learning activities. "Inquiry" is defined as seeking information by questioning. While questioning and searching for answers are extremely important parts of inquiry, effectively generating knowledge from this questioning and searching is greatly aided by a conceptual context for learning. According to (Helic, et al 2006) it usually begins with posing a problem or question, followed by generating and pursuing strategies for investigating, collaborating, reflecting, and justifying the solutions of the problem or answers to the question, and communicating the conclusions.

Task-based learning is an educationally sound, effective and efficient instructional strategy for learning focusing the learning activities around tasks. The term "task-based learning" according to (Nunan, 1989) originated primarily from the work done

in language education. According to (Harden et al, 1996) the learning tasks play a fundamental role in determining the learning outcomes. According to (Harden et al, 1996) it has three advantages:

1. TBL is learning built round tasks is more effective than traditional didactic memory-based or purely apprenticeship-type learning;
2. TBL is learning structured round the tasks is an efficient approach to learning;
3. TBL is likely to lead to more relevant and appropriate education;
4. TBL links theory with practice. The practical task becomes the starting point for the theory: in turn, theory informs and leads to a better understanding of the task (suits to curricula study program);
5. TBL provides an appropriate framework for planned education (curricula driven) where it makes explicit what is to be achieved and how the learner should do this (efficient learning);
6. A TBL approach is likely to result in greater relevance of curriculum content (appropriate for curricula learning).

TBL offers a focused and structured approach to learning and increases the learners' satisfaction and motivation, and at the other side is consonant with current theories of education (Harden et al, 1996). This is the reason we decided to implement a task-based model for the prototype.

Task-based learning offers action and reflection, while in contrast, rote learning is low in action and in reflection. According to (Harden et al, 1996) incidental learning, such as occurs in on-the-job learning, is rich in action but may be low in reflection. Classroom, or formal, learning is frequently high in reflection but low in action.

Game based learning or also lately referred to as digital game-based learning (Prensky, 2001), goal based scenarios and instructional games and simulations are alternatively used to describe the instructional strategy were learning activities are organized around a game or simulation. The academic community regarded game based learning as part of problem based learning using simulations and did not give much of attention in its research, and still today there are a lot of opinions in this regard (Yacci, 2004). According to (Yacci, 2004) educational games and simulations are defined as activities that have rules and constraints, a goal, and an emphasis on competition and also has the additional feature of having a primary objective of enabling a student to learn either facts, skills, attitudes, or all three. (Eklund, 2000) suggests that transfer of knowledge is aided when students actively construct explanations for events. Perhaps the biggest benefit for game -based learning is the fact that it involves students who need to learn complex skills and need to transfer these skills to real life.

However there are no clear procedures, methodologies or rules what learning modeling approach is more appropriate to use when developing e-learning solutions and especially its conjunction and correlation with the instructional strategies discussed previously.

The design and development of e-learning can not be based only in the existing practice of technology, it is necessary to understand the relation between theory and practice to ensure that the design of practice is founded on the learning theory. This concept defined by (Harmon, et al 2003) is given in the figure below:

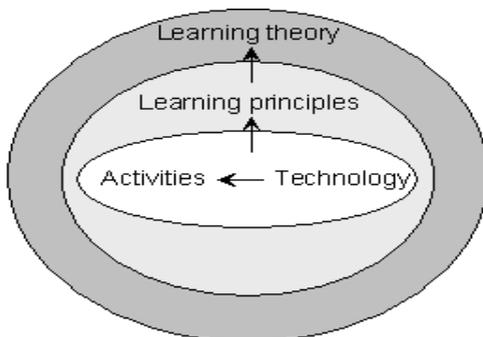


Figure 1 - Theoretically grounded evaluation of technology (Harmon, et al 2003)

E-Learning modeling approaches are very important in the process of the development of e-learning solutions as software products. Although recently in the e-learning community there is acknowledged the importance of pedagogy however there is little research on learning modeling approaches.

It describes that the different learning activities that are driven in the learning environment are supported by the e-learning instructional technologies stated above. The learning principles are formed by the learning activities to be done to produce the learning outcome. The learning activities are crucial to define the features and abilities the learning environment has to support and are supported by the technology.

According to (Marjanovic, 2005) the e-learning solutions development process adopts one of the following learning modeling approaches:

1. the content-oriented,
2. the tool-oriented, or
3. the task-oriented approach

The **content-oriented** approach deals with management of learning content. It is mainly concerned with supporting authoring, structuring, delivering, sharing, re-using, and querying the content (Helic, 2006). The design and authoring of e-learning content requires major input from instructional designers, graphics designers, and programmers. Normally the instructors are expected to develop the content for e-learning on their own. However content creators search for a theoretical basis to justify their designs (Eklund et al. 2003). Normally the instructors are expected to develop the content for e-learning on their own. However they are not aware of the effective methods which can be used to present their content to users. Especially the novice instructors need additional support in developing interactivity since it involves programming. Support might include collaborative tools for enriching the learning content by writing comments and annotations, tools for tracking the student progress with the content, or tools for adapting the content to the students' preferences (Helic, 2006).

**Tool-oriented** approach is based on using the technological infrastructure in the learning process. Learning sessions which follow this approach are organized around the use of the developed software (Helic, 2006). The developed software solution is the main vehicle into increased transfer of knowledge. This learning modeling approach provides clear support and focuses the learning process around the developed tool of instruction as medium.

**Task-oriented** approach deals with learning tasks or learning activities which learners need to perform in their learning sessions. Those tasks are typically structured in very simple learning sequences that the students need to pass in a sequential mode (Helic, 2006). This learning modeling approach clearly support and focuses the learning process on previously created scenarios of sequential tasks that will guide the learner activities into more efficient and higher level of knowledge transfer.

## Conclusions

There are a lot of new methodologies that are considered as advanced and that are considered as the future of e-learning. Learning object methodology, semantic web, Learning Activity Management System (LAMS) and others are considered as new trends and hot topics in e-learning. However, based on the conducted review and important synthesizes of current state of the art in the field of e-learning and e-learning solutions applied the study represents the next conclusions.

Most of the published research papers evidence that different e-learning projects are consisted of only monolithic learning systems and also many current e-learning initiatives follow the "one-size-fits-all" approach (Fetaji et al 2007). Typically, this approach is related to lack of knowledge of the learner audience or factors influencing that audience and therefore fail to provide satisfactory support for most of the learner audience. Conclusion is that we need to focus on some other issues first before we offer learners one of the above discussed monolithic systems.

Regarding the first objective 1) assessing and evaluating issues and deficiencies in the current state of e-learning projects a conclusion is that there are a lot of deficiencies. Some of the most important have been reviewed and analyzed above. The most important issue remains the one dimensional approach to e-learning and failing to recognize and acknowledge its multidimensional nature. A conclusion has been achieved that among the main reasons for the current unsatisfactory results in many e-learning initiatives and in meeting the e-learning expectancies are the above mentioned deficiencies. Therefore, the research strategy should try to address and solve the above identified issues.

Regarding the second objective, 2) Proposing and recommending solutions to the findings from the secondary research based on analyses and literature review. The conclusion is that there is a need to raise the awareness of the factors influencing e-learning in order to enhance learning and identify the nature of obstacles being faced by e-learners as well to approach e-learning recognising its multidimensional nature and trying to address several issues using a methodology that interconnects all of these issues but still addresses their multidimensional specifics.

Therefore, we believe that no new systems are needed but a series of experiments has to be conducted to see what does and does not work in a particular situation and to provide guidelines and recommendations for that situation.

Based on the findings of the research study there are too many factors and personalization that it would be wrong to view the entire process in global. The study views each particular e-learning initiative as specific in many particularities and requires special approach for each one that needs to start with assessment, measurement and evaluation of the defined e-learning indicators. The study proposes is that as starting point in any e-learning initiative to start from measuring and evaluating the factors influencing e-learning that are represented as e-learning indicators, (Fetaji et al 2007).

Therefore there is a need to raise the awareness of the factors and concepts influencing e-learning in order to enhance learning and identify the nature of obstacles being faced by e-learners through the e-learning indicators methodology proposed by Fetaji (2007) and undertake several experiments to see what works in particular situation and try to propose recommendations, procedures and guidelines regarding the gained insights from the experiments.

Based on the review of Learning theories and analyses of learning modeling approaches the study as new learning methodology proposes to engage learners with educational small projects that would require the learners to engage in research within each of the courses. This means that will embrace Project Based Learning which will offer learners the opportunity to be engaged in hands on study and practice the learned content through the project.

In the south East European University – SEEU, under the Instructional Support Center (ISC) (<http://www.seeu.edu.mk/english/isc/home.html>) the faculty are encouraged to use the practical information gained from these research findings and most important tried-and true techniques form these research to improve instruction of their e-learning content. Instructional design in an e-learning environment can foster the alliance between technology and education for pushing higher education to transform the academic environment. The questions that we have opposed the tutors and students to are the next: What does this mean to me? How can I use it? Is this better than what I am doing now? Trying to answer these questions helped tutors to create e-learning content with instructional sound design that will invoke higher level of knowledge and level of learning.

Embracing instructional technology methods helped in increasing the learning process while decreasing costs at the same time. For example we have used it to provide the opportunity for students to interact with experts, even they were not located physically in the campus but were from the region. In order to realize this we have used discussion forums and video conferencing sessions in real time that did prove very efficient and were highly welcomed.

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## Cultural Specifics of Life Values and Subjective Well – Being

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### Abstract

*The objectives of the study were to reveal cultural specifics of modern life values and subjective well-being, individual and cultural values interrelations, life values and subjective well-being correlations at Russian residents, belonging to different religions. The main methods were Scales of: Value Orientations Actual Structure (Bubnova), Psychological well-being (Ryff), Life Satisfaction (Neugarten, Havighurst, & Tobin), Subjective Happiness (Lyubomirsky & Lepper), Student's T-test, Spearman's rank correlation. The sample consisted of 330 persons (18-55 years old) of 10 different nations and 5 religions. By the time of the survey all the participants had lived in Russia for some (not less than 3) years. For each studied religious groups their dominant life values were revealed. It was discovered, that people of different cultures associate their well-being and lives satisfaction with different life values. However, in general, life satisfaction correlates with those values, which are less important for certain culture. Perhaps, persons, oriented on traditional and culturally important values are less happy than those, who are oriented for their individual ones. May be in assessing realization of individual values people use their own criteria, which are not as strict as criteria of common cultural values' realization. The results of this study allow us to draw the following conclusions. Significant cross-cultural differences in life-values and subjective well-being have their sources in religious attitudes and settings. People of different cultures associate their well-being and lives satisfaction with different values. Generally, well-being and life satisfaction are directly related to the values, less important in certain culture.*

**Keywords:** Life Values, Subjective Well-being, Cross-Cultural Differences, Life Satisfaction, Religion.

### 1. Introduction

The last decades' practice of the intense intercultural contacts in different places of the world shows that the different nationalities and religions peaceful coexistence is impossible without understanding and respecting of each other worldviews and values. Ignoring of cross-cultural worldview differences lead to ethnic and religious tension and hostility. It is important in cross-cultural studies to take into account the mutual influence of different cultural factors, such as ethnicity and religion, country of residence and so on. Again, generalization of the studies of social tension, tolerance, social distance, cultural conflicts shows that people feel tension in intercultural contacts when they perceive the situation as threatening their well-being. (Chebotareva, 2014 a-d).

Subjective well-being (SWB) has become one of the most popular subject of psychological research over the past decades (Diener et al, 1999). Currently, it is common to identify two components of subjective well-being: affective and cognitive. The affective component is considered as a hedonic balance (balance of pleasant and unpleasant affects). The cognitive component is understood as a person's evaluations of his or her life according to some standards. Such standards are primarily linked by researchers with the culture in the broadest sense of the notion.

Many researchers proved that both components of SWB are influenced by personality (Diener et al, 1999) and by culture (Diener & Suh, 1999), but most studies considered personality and culture in isolation, although they often recognize the mutual influence of these two factors. U. Schimmack and others (2002) state that conjoint investigation of personality and cultural SWB determinants has the advantage of identifying possible interactions between personality and cultural variables. For example, in their research they demonstrated that self-esteem was a stronger predictor of life satisfaction in individualistic cultures than in collectivistic cultures because individualistic cultures emphasize a positive self-view; they also showed that the influence of extraversion and neuroticism on life satisfaction was moderated by culture (Schimmack

et al., 2002). Oishi, Diener, Lucas, and Suh (1999) found that freedom was a stronger predictor of life satisfaction in individualistic cultures than in collectivistic cultures.

The studies of SWB and culture interaction showed that culture influences SWB directly and indirectly. There are a lot of evidences that people in individualistic, rich, and democratic cultures have higher levels of SWB than in collectivistic, poor, and totalitarian cultures (Diener & Suh, 1999; Veenhoven, 1993). Besides, culture moderates the relation between hedonic balance (important aspect of SWB) and life satisfaction. For example, it was demonstrated that the relation between hedonic balance and life satisfaction was significantly stronger in individualistic cultures than in collectivistic cultures (Suh et al., 1998). SWB in individualistic and collectivistic cultures is determined by the fact that individualistic cultures emphasize individuals' needs and freedom of choice, whereas collectivistic cultures emphasize others' needs, duties and reliance on one's fate (Triandis, 1995). Luo Lu proved that culture-specific modes of self-construction lead to the diverse meanings people hold for happiness and well-being in different societies. In particular, the author said that subjective well-being for the Chinese was construed around fulfilling one's obligations and maintaining homeostasis (dialectical balance). In contrast, modern Western individual-oriented view of the self was related to understanding happiness as "a prize to be fought over, and entirely one's responsibility to accomplish this ultimate goal of life" (Lu, 2008, 290).

Therefore, culture serves as a major force determining the way people conceptualize the self, understand happiness, set life-goals and select strategies of the goals achieving. That value orientations can be seen as a mediator between culture and personality, one's outlook and one's life esteem. Value orientations are the results of the social relations reflection and system-forming factor of personality. As the values serve phenomena of reality, significant for an individual, including public relations. Most studies have focused on the question, how subjective well-being and life satisfaction can be modeled by cultural values (Schwartz & Bilsky, 1990; Schwartz & Bardi, 2001; Schwartz et al., 2001).

Many researchers to reveal the relations between life values and SWB actively used Schwartz values paradigm (Sagiv and Schwartz, 2000; Hofer et al., 2006; Joshanloo & Ghaedi, 2009; Cohen and Shamai, 2010; Bobowik et al., 2011). L. Sagiv and S. H. Schwartz (2000) showed that SWB was directly related the values of stimulation, self-direction, achievement, benevolence and universalism; and inversely – to the values of conformity, tradition, security and power. M. Bobowik et al. (2011) found in European population direct relationship between SWB individualistic values and inverse relationship between SWB and values of power and conservatism and other more collectivistic values. J. Hofer et al. (2006) reported similar results concerning value of benevolence for persons originating from Germany, Costa Rica and Cameroon. A. Cohen and O. Shamai (2010) in Israel also found direct relations between SWB and the values of benevolence, self-direction and achievement; and inverse – between SWB and the values of power and tradition. M. Joshanloo and J. Ghaedi (2009) discovered in Iranian population positive relation of SWB with value achievement, and negative – with value of tradition

A number of empirical studies proved promising approaches to the SWB study in relation with the life values and their cultural specifics (Oishi et al., 1999; Yetim, 2003; Pienaar et al., 2006; Lu, 2006; Vansteenkiste et al., 2007; Georgellis et al., 2009; Welzer & Inglehart, 2010; Joshanloo, 2010; Huta & Ryan, 2010; Yang and Stening, 2012).

S. Oishi and others found that life satisfaction was more strongly related to financial satisfaction to in poorer nations, and – with home life satisfaction in wealthy nations; with esteem needs - in individualist nations, than people in collectivist nations (Oishi et al., 1999).

It was proved, for example, that at Spanish adolescents overall satisfaction with life was positively correlated with non-materialistic values (Casas, et al., 2004). Across countries study by these authors revealed the direct relations between Life satisfaction and values of benevolence and hedonism values, and inverse relations between life satisfaction and values of power and security. But they also discovered the differences in the nature of links between countries with high and low Human Development Index (HDI). In particular, the value of achievement was positively related to life satisfaction in low HDI countries, but negatively in high HDI countries (Casas, et al., 2004).

Therefore compilation of the data from different empirical studies lets us to reveal not only cultural specifics of the nature of SWB and life values interaction. The main conclusion is that the dimension of collectivism - individualism is an important factor defining life satisfaction level and understanding of well-being in different cultures. But by now not enough studies of different cultures have been accumulated in order to be able to deduce some universal laws. Moreover, most cross-cultural

studies were conducted with representatives of different countries or with emigrants and locals. We consider it is important to study how the values of the culture of origin correlate with subjective well-being of residents of one country.

## 2. Method

### 2.1. Participants

The empirical study sample consisted of 330 persons (18-55 years old) of 10 different nations (Russian, Ukrainian, Byelorussian, Armenian, Georgian, Azerbaijan, Tatar, Uzbek, Tajik and Jew). Among the participants there were representatives of 5 religions: Orthodox Christians (90 persons), Catholics (44), Muslims (65), Buddhists (71), Jews (60). All the religious groups were aligned by gender and age. The respondents were not very religious, but they were brought up in the spirits of their religions. By the time of the survey all the participants had lived in Russia for some (not less than 3) years.

### 2.2. Materials

Personal information form consisted of questions about gender, age, profession, country of origin, nationality, religion, period of stay in Russia.

"The Scale of Value Orientations Actual Structure" (Bubnova, 1999) measured the participants' life values. The technique is aimed at studying the implementation of the person's value orientations in real life conditions. It includes 66 closed questions, distributed on 11 scales reflecting the generalized value orientations: pleasant pastime, high material well-being, enjoying beautiful, help and compassion for others, love, cognition of nature and human, high social status, recognition, respect and influence on others, social activity in order to achieve positive changes in society, communication and health.

Subjective well-being was estimated by 3 techniques "Scales of psychological well-being" (Ryff, 1989, adapted by Shevelenkova, Fesenko). The inventory consists of 84 statements reflecting the six areas of psychological well-being: autonomy, environmental mastery, personal growth, positive relations with other, purpose in life and self-acceptance. Indicators of different scales are combined into three integral indicator: affect balance, meaningfulness of life, openness to the world.

"Life Satisfaction Index-A" (LSI-A)" (Neugarten, Havighurst, & Tobin, 1961, adapted by Panina) measures the overall psychological state of the person, which is determined by the personal characteristics, the system of one's relations in various life aspects. It consists of 20 questions; the results of the responses are reduced to 5 scales characterizing different aspects of the person's life satisfaction. These include zest (as opposed to apathy), resolution and fortitude, congruence between desired and achieved goals, positive self-concept and mood tone. The persons showing high scores on the questionnaire, usually take pleasure in their daily activities, find their life meaningful, and have feeling of success in achieving major goals, positive self-images and optimism.

"Subjective Happiness Scale" (Lyubomirsky & Lepper, 1999, adapted by Leontiev, 2000) is the express (4-item) scale, designed to assess the current psychological state of the person. It shows a subjective assessment of whether one is a happy or an unhappy person.

### 2.3. Procedure

The procedure of the research was approved by the Department of Social and Differential Psychology of Peoples' Friendship University of Russia (PFUR). We used snowball sampling method: first members of international research group recruited the subjects from their acquaintances working in different spheres, then these people recruited their acquaintances and so on. The surveys were conducted personally during 2-3 meetings, 30 minutes each. All the participants were informed by the researchers about the aims of the study before the measures were administered. For obtained data analysis we used statistical techniques: Mann — Whitney U-test, Spearman's rank correlation coefficient.

### 3. Results

#### 3.1. General characteristics of life values and subjective well-being.

Table 1 presents the significance degrees of life values for different cultures representatives.

Table 1. *Cross-cultural peculiarities of life values*

Life values	Orthodox Christians		Catholics		Muslims		Jews		Buddhists	
	M	St. D.	M	St. D.	M	St. D.	M	St. D.	M	St. D.
Recreation	3,949	1,38	4,750	1,29	3,965	1,45	3,714	1,84	3,676	1,61
Material prosperity	3,318	1,47	3,250	1,96	3,544	1,54	3,643	1,59	3,270	1,82
Enjoying beautiful	3,749	1,54	4,083	1,73	3,491	1,68	3,857	1,41	4,459	1,48
Charity	4,308	1,32	3,750	1,96	4,649	1,38	4,536	1,45	3,946	1,96
Love	3,882	1,46	3,417	1,73	3,719	1,22	4,036	1,57	3,865	1,53
New knowledge	3,492	1,49	3,250	1,76	3,491	1,36	3,464	1,64	4,162	1,34
Social status	3,133	1,47	3,333	1,87	4,000	1,42	3,679	1,63	3,162	1,75
Recognition and respect	3,985	1,37	4,417	1,31	4,509	1,27	3,643	1,36	4,081	1,71
Pro-social activity	3,005	1,56	3,667	1,56	3,368	1,38	3,500	1,47	3,919	1,40
Communication	3,323	1,44	3,083	2,1	3,157	1,37	3,536	1,53	3,568	1,67
Health	3,605	1,43	4,250	1,71	1,45	1,45	3,500	1,62	4,108	1,59

According to the data from the table, we can define dominant life values of each studied religious group. The value of charity is the leading for Jews and Muslims, as well as for Orthodox Christians. For Catholics, the leading values are pleasant pastime and recreation, which take the middle positions for the other cultures. Values of recognition and respect are particularly important for Muslims, while for the other cultures, it take the second - third places. For Buddhists, the value of enjoying beautiful play the leading role.

Table 2. *Cross-cultural peculiarities of life satisfaction and SWB.*

SWB & Life-satisfaction indicators	Orthodox Christians		Catholics		Muslims		Jews		Buddhists	
	M	St. D.	M	St. D.	M	St. D.	M	St. D.	M	St. D.
Life Satisfaction Index										
Zest	5,25	1,58	5,83	1,40	5,22	1,74	5,71	1,27	5,40	1,46
Resolution and fortitude	5,95	1,79	5,75	1,66	6,17	1,72	6,50	1,83	5,86	1,84
Congruence between desired and achieved goals	5,35	1,84	5,75	2,26	5,36	2,00	6,17	1,74	5,35	2,04

Positive self-concept	5,22	1,69	6,00	2,30	5,89	1,58	6,60	1,42	5,75	1,69
Mood tone	5,45	1,70	5,33	2,19	5,56	1,99	5,92	1,76	5,67	1,84
Overall level	27,20	5,68	28,4	5,85	28,29	6,44	30,92	5,12	27,97	5,45
Subjective Happiness	19,19	4,17	19,2	4,35	21,19	3,63	21,17	4,29	21,1	4,85
Psychological well-being										
Positive relations with other	59,50	12,83	63,50	13,25	62,28	14,23	64,60	15,30	68,59	12,79
Autonomy	61,23	13,58	56,0	14,00	62,71	13,30	67,14	16,73	67,43	16,77
Environmental mastery	59,80	13,53	58,16	13,98	62,82	15,03	67,32	17,98	68,51	16,19
Personal growth	64,00	12,12	60,66	13,29	66,00	11,89	66,53	15,97	67,83	13,73
Purpose in life	63,82	14,26	65,6	13,75	67,14	15,08	69,25	14,51	72,56	12,94
Self-	59,99	13,63	56,1	15,01	64,00	11,97	67,92	17,11	68,24	13,71
Affect balance	90,73	22,86	100,	28,68	86,80	23,34	85,60	22,40	89,97	19,95
Meaningfulness of life	92,00	17,71	81,16	21,53	93,77	22,86	94,35	19,14	96,59	20,37
Openness to the world	64,19	11,80	58,66	14,65	66,73	10,68	65,14	12,85	66,16	14,87
Overall level	539,2	124,7	545,	95,51	540,68	134,6	570,42	160,2	544,9	163,8

We can see from the table that people, belonging to Judaism, have slightly better results on all the scales of "Life Satisfaction Index" as well as on overall level of life satisfaction. Orthodox Christians showed the lowest result on overall level of life satisfaction and on scale of positive self-concept. Muslims responded the lowest level of zest for life, Catholics - the lowest level on the scale of resolution and fortitude, Buddhists showed lowest results on the scale of congruence between desired and achieved goals.

The data on the Subjective Happiness Scale show the higher level of it at Muslims and the lowest – at Orthodox Christians.

The data of Psychological Well-being Scale show that overall level of SWB again is the highest at Jews, and the lowest at Orthodox Christians. However, in separate scales we can see a bit different results: in most scales of the test, Buddhists responded the highest results, and Catholics – the lowest results. Only on the scale of the balance of affect, Catholics have best results, and Jews – the lowest one.

### 3.2. Cultural differences in life values and subjective well-being.

To assess statistical significance of identified cross-cultural differences between analyzed groups, pairwise comparisons were performed using Mann — Whitney U-test.

Significant differences of life values between Orthodox Christians and Catholics, and Orthodox and Jews were not revealed. In addition, differences between Catholics on one hand and Muslims and Jews on another hand were not found. In comparison with Buddhists, for Orthodox values of enjoying beautiful ( $p=0,01$ ), new knowledge ( $p=0,01$ ) and pro-social activity ( $p=0,001$ ) are less important. For Muslims in comparison with Orthodox Christians the values of social status ( $p=0,0001$ ), recognition and respect ( $p=0,01$ ) are more important. Muslims also exceed Jews in importance of value recognition and respect ( $p=0,005$ ).

Differences in life values between Buddhists and Jews were not discovered. For Buddhists, in comparison with Catholics, the value of recreation is less important (0,04); in comparison with Buddhists, the values of enjoying beautiful (p=0,005) and new knowledge (p=0,02) are more important; values of charity (p=0,04) and social status (p=0,13) are less important. Pairwise comparison of indicators of life satisfaction and subjective well-being gave us the next results.

Only one statistically significant difference were revealed between Orthodox Christians and Catholics - on the indicator of meaningfulness of life (p=0,04). The indicator is higher at Orthodox.

Not much significant differences were found in SWB of Orthodox Christians and Muslims. Muslims reported higher results in subjective happiness level (p=0,001), in positive self-concept (0,008) and in self-acceptance (p=0,05) than Orthodox.

Many significant differences in SWB were found between Orthodox Christians and Buddhists. Buddhists responded better results on subjective happiness (p=0,01) and on many scales of SWB: positive relations with other (p=0,0001), autonomy (0,01), environmental mastery (p=0,0006), purpose in life (p=0,0006) and self-acceptance (p=0,0008).

Similar results were obtained in comparison of Orthodox Christians and Jews. Overall life satisfaction of Jews is much higher, than of Orthodox Christians (p=0,001), as well as congruence between desired and achieved goals (p=0,03) and positive self-concept (p=0,00005). Jews' data were also significantly higher than the data of Orthodox on scales of autonomy (p=0,04), environmental mastery (p=0,009) and self-acceptance (p=0,006).

Catholics significantly exceed Buddhists in autonomy (p=0,04), self-acceptance (p=0,01) and meaningfulness of life (p=0,03).

Only one significant difference exists in SWB of Catholics and Muslims – Catholics are more open to world than Muslims (p=0,03). And one difference was found in SWB of Catholics and Jews – Catholics' self-acceptance was higher than Muslims (p=0,05).

Buddhists responded higher scores on the scale of positive relations with other (p=0,03) than Muslims; and lower overall level of life satisfaction (p= 0,02) and positive self-concept (p=0,02) than Jews. Muslims also reported lower level of positive self-concept (p=0,05) than Jews.

### 3.3. Correlations of subjective well-being and life values

Correlation analysis conducted on the total sample revealed multiple statistically significant correlations between indicators of SWB and life satisfaction with life values. Values of social status, pro-social activity, communication and health are more closely related to overall levels of SWB and life satisfaction and to separate scales of the test. The values of recognition and respect and material prosperity have less significant correlations with different scales. The value of enjoying beautiful significantly correlates only with life satisfaction and happiness, but not with SWB scales. The value of charity positively correlates only with overall level of life satisfaction and with the scales of resolution and fortitude and congruence between desired and achieved goals of the test of Life satisfaction. The value of new knowledge relates only to zest. The value of recreation doesn't have significant correlations with life satisfaction and SWB.

Correlation analysis conducted in each religious subgroup indicated different correlations of life values and life satisfaction and SWB. In particular, for Orthodox Christians, well-being and life satisfaction are related mostly to the value of pro-social activity, which is less important for this group, and they are also related to the values of communication, health and social status, which are on middle positions in this group. For Buddhists, life satisfaction is directly related to the values of material prosperity, social activity for positive change in society and social status, which are not so popular in this culture.

For Catholics, life satisfaction is related to the values of social status and charity. For Muslims it is associated with values of communication and respect, for the Jews – with the values of enjoying beautiful and new knowledge.

## 4. Discussion

Most received data on life values and SWB and life satisfaction are consistent with other empirical studies results and with basic principles of considered religions. According to our data, people belonging to the Jewish religion, are significantly more satisfied with their lives than all the others. People brought up in the Orthodox Christian culture, are the least satisfied with their lives. In many subjective well-being indicators, representatives of the Buddhist and Muslim cultures show quite good results

Each cultural group has specific structure of subjective well-being indicators and specific correlations of subjective well-being with their live values. The results of the study may be used in developing culturally sensitive methods of psychological support and psychotherapy.

People of different cultures associate their well-being and lives satisfaction with different life values. However, in general, life satisfaction correlates with those values, which are less important for certain culture. Perhaps, persons, oriented on traditional and culturally important values are less happy than those, who are oriented for their individual ones. May be in assessing realization of individual values people use their own criteria, which are not as strict as criteria of common cultural values' realization. These results may also be due to the erosion of traditional cultures in most modern societies, the desire of individuals to the maximum realization of their individuality.

These ideas are supported by the data of many empirical studies, mentioned above, that proved closer connections of subjective well-being and life satisfaction with individual values than with collectivistic values.

## 5. Conclusions.

There are significant cross-cultural differences in life values and subjective well-being among residents of one country, belonging to different cultures. These differences have their sources in religious attitudes and settings. People of different cultures associate their well-being and life satisfaction with different values. Generally, well-being and life satisfaction are directly related to the values, less popular in certain culture.

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## Diversity Management in the Campania Region (Italy): A Case Study

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### Abstract

*This contribution revolves around the main topics regarding the impact of gender on the culture of organization. The specific objective is exploring the organizational context and the working conditions within good examples of Diversity Management. The research, in fact, aims at developing a model of knowledge that is useful to re-think the existing forms of flexibility with the purpose of increasing female occupation and promoting sustainable territory development. All of this thought in the perspective of spreading the culture of Diversity Management and having an effect on social and working inclusion of women and young graduates, especially in the field of cooperative enterprises. For such a purpose, a case study on Diversity Management is shown with the goal of analyzing organizational models including young female entrepreneurs as protagonists that are active in Campania, a region of southern Italy in which the University of Salerno operates.*

**Keywords:** Diversity Management, Campania Region, female occupation, promoting sustainable territory development

### 1. Introduction

This paper presents the first results of an extensive research on diversity management, which includes case studies, finalized to analyze virtuous models of female entrepreneurship that are present in particular in the territory of Campania, the region of southern Italy in which the University of Salerno is located.

As a starting point, we have launched a first survey on a company having educational purposes, "Crescere Insieme", working in Mercato San Severino (SA). It has been founded by two young women, Alfonsina and Rosa, who have both graduated in Educational Sciences at the University of Studies of Salerno.

For simpler reading, information related to the company are summarized in the grid below.

General information		
Company name	Crescere Insieme	
Address	via Trieste 49, 84085 Mercato San Severino (SA)	Tel. 089 890441 Cell. 3331640306
Website	www.asilonidocrescereinsieme.it	
Founder members and managers	Alfonsina Della Rocca, Rosa Santoro	Age at the start of company activities: both 26. Qualifications: Degree in Educational Sciences for both.
Start of activities	First opening 8th of July 2011; Start of activities 11th of July 2011	
Hours open to the public	Monday: 7: 40 – 18: 30 Saturday: 8: 00 – 12: 00	

Number of users (male and female children)	100	
Educational services offered		
Nursery		
Maternal school		
Playroom		
Parties and animation		
Mess hall		
Afterschool activities	For children attending primary school and first level secondary school	
Laboratories		
English courses for children		
Baby parking		
Summer camp	In June, July and August, Monday to Friday from 8. 00am to 5. 00pm.	
Pediatric guidance		
Psychopedagogy guidance		
Coach service	For children attending the nursery and maternal school, as well as users of the mess hall and afterschool activities.	

## 2. From idea to project

Alfonsina's tale of the various steps which have led to the birth of the Educational Centre offers food for thought. From the very way in which the project was conceived interesting elements emerge about the *modus operandi* of the young entrepreneur:

"This idea was born a bit before my degree [...] my friend and I thought we would create something of our own, so to set up a kindergarten, a kindergarten because in our area, we evaluated, there were no such facilities so we thought we would start a business of our own. [...] We noticed that the facilities already working [in our area] were simply playrooms [...] there were no kindergartens in our area and so we thought [...] we would start this business, I mean, because there was a demand".

The idea to start a business of their own, which matured before the end of their education, has then evolved into a project. Such a project was developed joining market demands and personal aspirations. This last aspect was the prevailing factor for motivation. In fact, this initiative sprouted from the personal desire shared by both of them to work in children education:

"We like the kindergarten branch, the maternal school branch, of course we have only evaluated this branch, I mean, because since we're studying Educational Sciences, that is since we study in this very field, by going in various traineeships we realized it is what we wanted to do and so we did surveys related to this branch."

To overcome the lack of experience, the two young entrepreneurs gathered information from experts of various fields, from public institutions to private subjects, in order to draw a clear picture of how to get ahead and make their project a reality. Their statements reveal an active approach, a strong will but also the openmindedness to confront other people and acquire knowledge on all aspects of their business:

“In the beginning we talked about it with competent people then [...] with people already having such a facility, of course not in this area, but in others, then we talked about it with our mayor, with some of the members of his council, with the ASL (Local Health Companies) and other people like our accountant, some lawyers, to get a rough idea of how to create this facility and get some directions [...] then anyway, since we didn't have great economic resources to do this thing, we tried to understand how to get some help, some funding to start this business.”

### 3. The courage to get in the game

Good intentions aside, economic resources were needed to sustain the investment. For this reason, the two girls decided to ask for a loan of 70. 000 euros to Invitalia, the National Agency for Attracting Investments and Company Development. They did not succeed at first try. Nevertheless, Alfonsina and Rosa were not brought down by that and improved their project then reapplied the following year:

“The first time it was rejected, the second time it was accepted. Of course, we had an interview and after this interview we were answered positively. [...] We showed our whole project again, starting from what facility we wanted to create, what personnel to employ in this facility, so all the activities we wanted to do and why we had chosen this thing. [...] After an evaluation Invitalia called us for an interview and during this interview it asked us a lot of questions on this project of ours. [...] After the interview they replied after a couple months. After this we basically came back there to put our signatures on everything, the contract and all that and then we started to build up I mean we started going to suppliers to do invoices, to call the company which took care of refurbishments, we restructured the premises, to fill in the due forms at the town hall of Mercato San Severino (SA) and then little by little it came out...”

Once the red tape had been dealt with, the premises had to be rented and restructured, furniture had to be put in and everything necessary had to be done. The loan of 70. 000 euros, half lump sum and half to be given back in 5 years with an interest of 1% - so not 35. 000 but 41. 000 euros – was supplied in various instalments.

“They give you the money when you have a payment, a check, a money transfer which proves the existence of the payment to the suppliers, generally. [...] They wouldn't give you this money right away. They basically gave them in various instalments. We had to pay in advance for everything and later we were reimbursed. [...] Then they came to the premises to control whether all we had declared had been done or not. [...] In the end we are going to pay back 41 thousand euros, because it's half of it plus interest, but in five years so until 2018, in tri-monthly investments”.

### 4. The family support

An element not to be underestimated in this story is family support, be it material or moral. Alfonsina stresses that the loan Invitalia agreed on was supplied in investments that could only reimburse expenses that had already been made. Therefore, notwithstanding the funding, a starting capital was needed.

“Family was always there, always agreeing, I mean they had faith in what we were going to create [...] friends too, but sometimes they didn't even realize all that we were doing, so, in the end, when we opened [...] they congratulated us for this thing. [...] Family supported us economically for starters, because other than the funding we had to spend some of our own money because the sum we had applied for wasn't enough to get the job done anyway, to create all of this facility. So they gave us a big hand economically for starters, then they stayed close to us, they helped us economically throughout our journey. They (also) did hands-on work where cleaning was needed [...] during the opening [...] they are still there today and help us with this thing.”

## 5. Youth and gender between prejudice and stereotypes

Alfonsina says that throughout the various steps that eventually led to the birth of their company, her partner and her met an ambivalent attitude in the various characters they have met since 2011 to present day.

About the specific purpose of their activity, children's education, nobody argued with them: in fact, being women they were believed to have an actual advantage in the field of education.

For what regards, instead, their young age, this was seen as a setback by the various characters the young entrepreneurs had to deal with. First, bureaucratic institutions tried to undermine the initiative by making known that they saw youth as a limit. More specifically, the ASL (Local Health Company – regional public entity embodying National Health Service) personnel in charge of verifying the required documentation attesting that the health norms had been respected tried to convince the girls to give up on realizing such a complex activity from the very start.

"Because we were women [...] anyway it's an activity we [...] as women can carry out well enough, so they had no problems with that; about our young age somebody doubted that we could manage a company like this, a facility hosting 100 children so somebody was a bit doubtful. In the beginning of our project some people even said: - you are taking a risk, you are creating a very big project, what about maybe doing something simpler, don't throw yourself blindly in this important thing -. Some people, as we asked them information or guidance on this thing, they said: - you shouldn't be doing that, don't do this thing, do something smaller, something more limited-.

I'm talking about people [...] at the ASL. Regarding the town hall, the mayor has always given us freedom, has never limited us in anything, has always given us freedom to do this thing [...], he has always believed in this thing and always believed in us, in short, he has never been an obstacle".

The effort required for such an activity, according to the prejudice the girls met, would be out of reach for two girls this young. The advice they were given was to give up on such an ambitious and complex project, to start from something simpler. These attempts, by the way, did not discourage the two educators-entrepreneurs, but were instead interpreted as incentive, as a challenge to prove how relevant passion and vocation can be. These two last aspects are the strong points by which external pressures were endured. It was thanks to hard work and achieved results that the two young girls have managed to prove even their harshest critics wrong. What Alfonsina and Rosa are proud to have demonstrated is that youth is not a limit but a resource that, if adequately used, can give the strength to make one's wishes come true.

The same skepticism about the managing abilities of the two young entrepreneurs was expressed even by some user-mothers, who entering the facility with the intention of signing their children up were perplexed by the owners' young age. Such doubts were made openly known with questions such as: "you're so young, are you sure you can manage all these children?", or "you know there is work to come, you're so young and still you already want to work every day, for all this time?", and also "do you know that dealing with parents is by all means a hard thing to do?"

Notwithstanding this external pressure, not only did Alfonsina and Rosa fulfil their ambition, but with years they also extended the range of services offered and enlarged the very premises, to face an increasing demand.

"At the start we started with 15 children, today we have [...] (about) 80-100 children [...] (and) our services let's say have been extended. I mean we tried to offer new things also. For example [...] the first year we were a private maternal school (childhood school) then we asked to get the status of comprehensive and now we are a comprehensive maternal school (childhood school). Then other than this we have extended our range of services, meaning that as of today we also have a coach service [...]. We bought a coach last year and we have offered coach service since January. For children coming from the province of Avellino, that is from Montoro [Inferiore (SA)] and so in the morning they come with us, we go to their homes and pick them up [...] and also children coming to our kindergarten from home [...] and also we pick up children as soon as they come out of school, elementary school (primary school) and first level secondary school, and who come to us for our mess hall and afterschool services. In addition to that, we organize birthday parties, by the way our services have extended because the demand has risen. Actually, we have also made our premises larger to face all the requests we were having. We have extended its surface by other 100 m<sup>2</sup> square meters. It currently covers 600 m<sup>2</sup>."

Age was a weakness to suppliers too, who were unfair in inflating their prices trying to take advantage of the alleged inexperience of the two young women. However, thanks to the guidance of experts, the two owners were able to avoid various attempts to fraud them.

## 6. Female gender as a guarantee in education

The children's fathers, as opposed to mothers, have showed trust in the educational qualities of Alfonsina and Rosa right from the start. We can assume that some known stereotypes regarding female gender according to which childcare and education are natural tasks of women had a final say in it.

Another type of prejudice we can notice in the critical attitude of mothers, who felt challenged as mothers and as elder women, and as such more expert in childcare and education.

Nevertheless, this initial element of competition did not make for an invincible obstacle.

Against such prejudice, the two young educators have managed to reassure the worried mothers by answering their critics with the efficacy of their effort. In such a way they have proven that passion, goodwill to improve, experience acquired in traineeships and a course of study in the pedagogic field are strong points that can make them apt and able to manage the delicate and difficult activity they had chosen to take forward.

"The (our) reply was [...] that for starters age does not matter, passport age at least, meaning that experience as well as willingness to do, to learn and work, those do count I mean, and by the way we are confident about what we have learned, want to do and do, so in the end this activity does not scare us.

About the fathers [...] they complimented us, the mothers instead many times [...] they believe we are too young for this thing, but then [...] after a positive feedback [...] in the end they changed their mind and today they respect us. [...] On the other hand there's another group of mothers who [...] believe [our young age] to be a selling point because we have the energy to work, because being young means we have different perspectives, different projects than those an elder person would have."

## 7. An organizational model based on assertiveness, cooperation and flexibility

The business model adopted within "Crescere Insieme" was not the product of a rigid pre-existing idea the two aspiring entrepreneurs had, but matured following actual experience on the field, other than the willingness to learn, through educational models of cooperation and work.

"Before the opening, my partner went on traineeships also to understand how to run a business like this. Then little by little we were helped by accountants, lawyers, work consultants who walk us through these things. A selling point is also that I, aside from a degree in Educational Sciences, also have a diploma in accounting and as such I'm able to manage the bureaucratic part of the company. On the other hand, my partner [Rosa] is also a major in Educational Sciences and having under our belts traineeships we did together in various kindergartens we have managed to sort it all out... the bureaucratic part on my shoulders mainly, the managing part regarding children class management, parents management and personnel management on hers instead. Of course a big help has come from these people guiding us, walking us through. What also helped was experience: after four years of experience we are able to better manage the situations we are presented".

The willingness to get better and openness to criticism did not run out in the initial phase, since as of now the girls are continuing to ask various professionals for advice. The pilot survey and the internship in similar companies have been useful as a way to approach the field. Yet, the organizational model only matured afterwards following the different personal and professional skills.

In fact, the organizational formula the two owners adopted consists of a role division based on personal resources and professional background of each of them. Alfonsina copes with bureaucratic matters, while Rosa deals with the public relations with personnel, parents and children. Nevertheless, their work is not done after the general coordination and administrative tasks have been carried out, but is also made of fieldwork: manager responsibilities do not stop them from working as educators themselves. Even in this sense, a further division of roles ensues: Alfonsina is in charge of the nursery, hosting children from 0 to 3 years of age, while Rosa cares for childhood education for children from 3 to 5 years.

Regarding relationship and communication model, the basic ideology behind "Crescere Insieme" is about perceiving themselves as "a family". This is especially true in relations with the personnel working in education: among the members of this family, owners included, there are no hierarchies, let alone an authoritative principle marking the relationship. The

secret sauce to get better at one's job, according to the way Alfonsina sees it, is being open to constructive discussion and speak to each other with sincerity and serenity.

Speaking about relations with the children's parents, in this sense also the main idea is adopting a not-too-detached or professional-looking attitude. Dialog is built on some ingredients that are considered essential: loyalty and sincerity. As soon as a problem or situation requiring special attention shows up, i. e. a child showing disruptive behavior or the arisen suspicion of a learning impairment or other psycho-somatic deficiency, a professional opinion is given to parents, but all is done in the general climate of mutual cooperation, in order not to burden the family with a final diagnosis or a rigid solution.

"If we speak about wrong attitude [...] in class [...] we immediately report to parents because we believe that school and family must collaborate and cooperate anyway, so in the end we think a parent should be informed of such things. We simply tell him [...] we always get in these terms, I mean we inform the parents of their child's attitude in class and of what we may think about that, then of course we don't take decisions, it's the parent's responsibility to decide the course of action.

[Then again] it depends on situation, it depends on what happened, it depends on the parents you are dealing with because for each parents you have to adopt a different methodology [...]. Still we always try to get on their level [...] we try to inform them in a very relaxed way. [...] We look for cooperation, that's it, so inform them in order to find a solution together. It depends then because staying in contact with parents means you are able to understand each parent and for each you select a different approach".

According to Alfonsina's point of view, flexibility and the ability to adapt to people and context is a key point for a correct educational intervention. The parents' situation must be taken into consideration depending on who you deal with, after which you try to negotiate a possible common educational strategy. In this sense, you try to stimulate the family into being more and more capable to make self-analysis.

This horizontal and cooperative relationship model also encompasses relations with personnel, which in turn are based on giving value to each one's skills and on constructive confrontation.

For every problem that arises you try to discuss together to find the best solution depending on case.

Because of that, internal hierarchies regulating interactions among employers and employees do not exist. From the moment they are employed, all educators are told:

"we're a family here. [...] We have never said: - we're the bosses and you're the employees -, or things such as: - we're the owners. We always get on equal level, we have never said: - I'm the owner and you will do what I say - or similar things. Hierarchies do not exist here, we're all the same, in the same way. [Although there were] arguments which might have brought to an educator or teachers leaving, [...] most of our discussions [are aimed at] improving ourselves [...] constructive criticism is done".

## 8. From kindergarten to kindergarten: a tale of friendship

The cornerstone the whole project has been built on is the strong bonds of friendship joining the two co-founders together, a relationship going back to the times when they attended kindergarten together.

The idea of creating this facility came from the desire to make something together, before they finished their University studies, which were another shared experience.

"Aside from the fact that it's a bond going strong since our childhood, so in the end today we're both 29 and we've known each other for 29 years. It's obvious that as in any company, in any relationship discussions have to be had, but they're discussions we have in order to find a solution together, not discussions leading to arguments or damage, absolutely not. When the end comes, everything is just the way it used to be, a good solution for both is found and that is that. [...] We have separate [roles], each of us deals with a branch, I deal with the nursery, she [Rosa] deals with maternal school (childhood school), then in the end let's say we discuss, then each deals with her own branch. Then perhaps for what

regards choosing how to handle an even, on how to manage personnel, work hours, various things in short, we might have different ideas on something, then we discuss it and get to a solution that meets the needs of both. In the end we almost always agree on 90% of things, I mean we almost always think the same way, so finding a solution is always easy, so we have never found it difficult to solve anything”.

The strong harmony between them has made company management clear of critical conflict, as of today. There have never been times of misunderstanding or resentment between the two. Every confrontation has been made with the aim of doing what is right and to the benefit of the educational company, putting selfishness and personal claims aside.

“In the end it's a delicate relationship meaning you always have to keep the balance and so if you can keep the balance then you go forward and work well, otherwise, no, I mean [...] you always have to keep in mind you can't be the only one to decide, you always have to confront to another person and you must be open to thoughts, opinions that other person has, you can't do everything by yourself, yes so you have to discuss [...] about anything. I know having a company is difficult, a work relationship in this sense, yet as we speak we have never had these difficulties because there is just this sincerity-based relationship, this trust-based relationship coming from both of us and I also think the important thing is that we have a shared goal”.

## 9. Some thoughts

This first part of our observation on “Crescere Insieme” showed virtuous aspects on various levels. On the level of approach, the stereotype implying lack of assertiveness in women has been defeated. On the contrary, all the various phases that have led to the realization of the project, and to its more than positive development, have been handled with rationality, determination and a professional approach.

Human resources, in the sense of personality-driven factors, coming from willpower and personal vocation, have constituted the funding element. The way in which to carry out the chosen mission has been chosen considering personal skills. The ability to form relationships has been extended to relations with all the players, vertically as well as horizontally. In building rapport with parents as well as with employers and between partners, symmetric communicative exchanges are preferred which are based on sincerity, loyalty, the right amount of emotional involvement and the ability to communicate in an effective way.

The role and task division sprouting from such a model shows itself able to employ everyone's resources in the best way possible. The follow-up to this research will furtherly investigate this model in order to better analyze not only its strong points and weaknesses but above all discover the factors that make it a model characterized by gender, as stated in our starting hypothesis.

For what regards the overcoming of prejudice and stereotypes connected to gender and age, we have covered that already, but this aspect will also be furtherly and more closely analyzed with a focus on relationships with families and the surrounding environment.

Qualitative interviews will be had with a significative number of subjects involved, and participating observation will be done as well.

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## Efficiency in the Criminal Procedure for Juveniles and the Protection of the Dignity of Juveniles

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### Abstract

*Criminal-procedure law is characterized by four stages of development: the investigative stage, the stage of the indictment and the defendant's statement, the trial stage and the stage with respect to remedies. The procedure for juvenile criminal offenses also goes through these stages. Juveniles participate considerably in crime, which means that society's concerns for further work are juvenile perpetrators of criminal offences. This obliges holders of responsibilities, prosecutors, judges, the police and other authorities that work to implement the legal provisions that refer to juvenile perpetrators of criminal offenses as the most sensitive categories of criminal procedure requires special attention. It works like acts and international agreements and domestic legal framework guaranteeing the rights and fundamental freedoms, which guarantee and protect the dignity of juveniles. Juvenile Justice Code was promulgated in the spirit of the Constitution of the Republic of Kosovo as well as acts of international agreements. Diversity measures oblige prosecutors and judges to new challenges in working with juvenile perpetrators of criminal offenses. In order to maintain the dignity of juvenile perpetrators of criminal offenses there should be constantly support on positive legal provisions, involving the guarding of human character, educational, economic, etc..*

**Keywords:** carrier responsibilities in juvenile criminal proceedings, concern for society, crime prevention, criminal procedure efficiency, diversity measures, procedures for the juvenile criminal offenses, the preservation of the dignity of minors.

### INTRODUCTION

The criminal legal procedure goes through those stages of development: the procedure of investigations, stage of filing of indictment and pleading of the accused, stage of main hearing and the stage about legal remedies which is the same also for juvenile perpetrators of criminal offences.

Causes of dissatisfaction led to the review of the mentioned Regulation and it was decided to rectify it by issuing the UNMIK Regulation No. 24/1999<sup>1</sup> which improved the existing Regulation. In Article 1, Item b, *inter alia* it reads: "**the law that shall be applicable in Kosovo is valid for the laws promulgated until 22 March 1989**", with other explanations until Article 2.

In the general criminality, the juveniles participate with a percentage of about 7.5% which means that the concern of the society for further work are mainly juvenile perpetrators of criminal offences. This obliges the ones responsible, prosecutors, judges, the police and other authorities to implement legal provisions at work that are related to juvenile perpetrators of criminal offences.

### 1. Background of the Criminal Procedure for Juveniles in Kosovo

After 10 June 1999, once the war was over, Kosovo was left without institutions, therefore, in order to have the function of the general social order; it was more than necessary to start with constituting provisional institutions of self-governance.

<sup>1</sup> UNMIK Regulation No. 24/1999, 12 December 1999.

The Provisional Administration in Kosovo started to be installed in the functioning of the governance starting from the legislative and executive ones as well as the administration of justice authorities exercised by the Special Representative of the Secretary General of the United Nations (SRSG). The same Regulation also foresees the laws that will be applicable as well as the entry into force of the Regulations that would be issued by UNMIK.

Since it was seen that there was a gap and lack of clarity about application of the laws in force and in order to eliminate those uncertainties, the Regulation 1/99 was supplemented with Regulation 24/99 in which in Article 1, Paragraph 1.1 (b) decisively it was emphasized that "the Laws applicable in Kosovo shall be all laws that were applicable until 22 March 1989".

Criminal legislation was applicable in Kosovo according to UNMIK Regulation No. 1/99<sup>1</sup> and 24/99<sup>2</sup>, which have foreseen the procedures with juvenile perpetrators of criminal offences. After the entry into force of the Criminal Code of Kosovo (hereafter referred to as CCK), the gap was noticed in relation to preparatory procedure with the juvenile perpetrators of criminal offences, therefore, there was rapid work done on the issuing of the Juvenile Justice Code of Kosovo (hereafter referred to as JJCK)<sup>3</sup>.

The juveniles are a sensitive category of the society; therefore, the legal infrastructure needs to be more adequate for the ones responsible - Justice Authorities and other organizations. Thought is given that juveniles as perpetrators of criminal offences with participation in general criminality should have the necessary care by the society. Based on general statistics on a state level, the participation of juvenile perpetrators of criminal offences in Kosovo is about 7.5 %<sup>4</sup>. The preparatory procedure and the court hearing for juveniles require special laws for the work with juveniles. There is constant work on enhancement of the legislation. In pursuit of this issue, it was the task of the respective authorities to work on arrangement of JJCK as to the substantive and procedural side. During the work, the difficulties in application of JJCK are identified and after the identification of deficiencies and uncertainties, this lead to promulgation of the Juvenile Justice Code<sup>5</sup> (hereafter referred to as JJC). With this law promulgated, it is thought that the best solution has been done.

Special care has been shown to the category of juvenile persons as a special procedure has been conducted also according to the laws that were applicable in the in-existent state, former Yugoslavia. Legal provisions that referred to the work with the juveniles were foreseen in the Law on Criminal Procedure of the SFRY (LCP)<sup>6</sup>, which has abolished the LCP that was applicable according to the official gazettes of SFRY No. 50/67, 54/70 and 6/73. Rules based on this Law and other provisions are in contradiction with LCP according to the official gazette of the SFRY No. 26 dated 16 May 1986 entered into force with LCP, Chapter 27 according to the legal provisions that refer to the criminal procedure for juveniles<sup>7</sup> adapting other legal provisions during the work.

Considering this fact, it is necessary that the human rights and freedoms are guaranteed with legal infrastructure. This means that the juveniles too should have the fundamental rights and freedoms like the right for life, for education, for communication, for freedom of expression etc., because denying these rights put them in an inferior position.

Also other international instruments and acts that need to be in force have been foreseen which refer to the guaranteeing of Fundamental Human Rights and Freedoms, with special emphasis by protecting the personality and integrity of the juveniles. Special emphasis here is the International Convention on the Rights of the Children dated 20 December 1989.

The work of courts and prosecution offices in Kosovo started with the mentioned Regulations foreseeing *ad hoc* courts and *ad hoc* prosecution offices with the mentioned legal framework. All Regulations issued by the SRSG were valid for the whole territory of Kosovo until the promulgation of JJCK without excluding the other international instruments and acts.

<sup>1</sup> UNMIK Regulation No. 1/1999 dated 25 June 1999, on the Authority of the Interim Administration in Kosovo.

<sup>2</sup> UNMIK Regulation No. 24/1999, 12 December 1999, on the Law Applicable in Kosovo.

<sup>3</sup> UNMIK Regulation No. 2004/8 dated 20 April 2004.

<sup>4</sup> Perpetrators of criminal offences reported by the police reach the number of 8.000 cases, just for information, from 01 January 2007 to 31 March 2009, there were 8.280 cases reported where perpetrators of criminal offences were juveniles<sup>4</sup>.

<sup>5</sup> Juvenile Justice Code No. 03/L-193

<sup>6</sup> Official Gazette of SFRY No. 4/77 dated 01 July 1977.

<sup>7</sup> The same, Article 452-492 of LCP.

There was no Criminal Code for Juveniles in Kosovo but the laws and other international instruments and acts that were in force in the in-existent state were applicable until the promulgation of the Criminal Procedure Code of Kosovo (CPCK)<sup>1</sup>, Criminal Code of Kosovo (CCK)<sup>2</sup>, so that there is no legal vacuum. With the suggestion of local and international experts, the procedure for promulgation of JJCK was expedited in order to protect the work with the juvenile perpetrators of criminal offences as to the procedural aspect.

Promulgation of JJCK marks an important era in the work of the justice authorities like prosecution offices and courts as Kosovo had its JJCK for the first time enabling the regulation of the work of the Justice authorities with special laws. Of course the part of the work on JJCK and of the ones in charge for Justice Authorities were also the other legal provisions of CPCK, and international instruments and acts which need to be applied while exercising the work.

JJCK, which is in force since 20 April 2004, in its content, has foreseen five parts, each of them with its own characteristics.

JJCK is drafted in the spirit of international instruments and acts by not excluding the Instructions of the United Nations on the Prevention of Juvenile Delinquency (Riyadh Instructions) adopted and published with the Resolution 45/112 of the General Assembly on 14 December 1999, 68th plenary session, Minimal Standard Rules for Non-punishment Measures (Tokyo Rules) adopted with the Resolution 45/110 of the General Assembly on 14 December 1990, Minimal Standard Rules of the United Nations for Justice Administration for Juveniles (Beijing Rules) adopted with the Resolution 40/33 of the General Assembly in November 1985. As a novelty in JJCK and in the spirit of this instructions and regulations, an integral part of this code were foreseen to be also the diversity measures as part of criminal sanctions that could be imposed to juveniles along with educative measures and other punishments<sup>3</sup>. Diversity measures are imposed to juvenile perpetrators of criminal offences in order to prevent when there is legal possibility not to start with the criminal procedure against the juvenile perpetrator for criminal offences and in order to assist in rehabilitation and reintegration in the society so that the deviating behaviors are not repeated.

As to the JJC, which is in force since 08 July 2010, it differs from JJCK which was applicable until the promulgation and entry into force of JJC, which foresees six dividend parts in 22 chapters. Part one - Guiding Principles and introductory provisions, Part two - Applicable Measures and punishments, part three - Procedure, part four - Mediation and execution of measures and punishments, part five - proceedings involving criminal offences committed against children, part six - transitional and final provisions.

### 3. Main characteristics in the preparatory procedure for juveniles

Before initiation of the preparatory procedure, a prosecutor should eliminate the dilemma whether the criminal offence is punishable with a imprisonment sentence up to 3 years or with a fine in order to decide for the imposition of the diversity measure, otherwise shall start the procedure for issuing the ruling on initiation of the preparatory procedure. Then, the prosecutor starts with collection of necessary evidences that follow the criminal case respecting the rights and freedoms guaranteed with positive local laws and other international acts and instruments.

It is important that if the juvenile while commission of the criminal offence was under the age of 18, then after the age of 18 until the age of 21 the procedure will be conducted as if he/she was of the age of 18. After turning 21, the preparatory procedure is not conducted. Despite the fact that there is no adequate legal provision based on judicial practice, the practice is that for the persons who have committed criminal offences until the age of 18 and the procedure is not finished, the procedure is then terminated.

There is a possibility that a prosecutor does not finish the preparatory procedure; he/she may ask for extension of the preparatory procedure for a legal period of time<sup>4</sup>. Depending on the nature of the case, a prosecutor decides for one of the measures foreseen for ensuring the presence of the reported juvenile<sup>5</sup> and depending on the measure decided, the provisions of CPCK are applied *mutatis mutandis*. But special care should be shown to the reported juvenile as the detention

<sup>1</sup> UNMIK Regulation No. 26/2003 dated 6 July 2003.

<sup>2</sup> UNMIK Regulation No. 25/2003 dated 6 July 2003.

<sup>3</sup> Article 6 Paragraphs 1 and 2 of JJCK

<sup>4</sup> Article 59 of JJCK and Article 159 of CPCK.

<sup>5</sup> Chapter X, from Article 161 of CPCK.

is initially decided for duration of one month and may be extended with the proposal of the state prosecutor for another 2 months.

So, the duration of the detention cannot be more than 3 months in the preparatory procedure whereas while in the detention center, the juvenile should not be kept together with adult detainees as is negatively affected in the personality of the juvenile.

During the preparatory procedure after all collected evidences are evaluated, after the conclusion of the preparatory procedure the prosecutor issues the proposal for imposition of the educative measure or the proposal for imposition of the punishment, depending on the circumstances in the flow of the criminal case. The juvenile judge should be notified for each document, collected evidence, and proposal coming from the parties interested in the procedure, during the preparatory procedure.

After it is considered that it is over with the collection of evidences and the juvenile judge as well as the defense counsel of the juvenile and the juvenile is notified about it, the prosecutor evaluates the collected evidence and decides for proposal of imposition of educative measure or proposal for announcement of the punishment.

The state prosecutor files the proposal for imposition of the educative measure against a juvenile who at the time of the commission of the criminal offence is not of the age of 16 so that the juvenile is given the possibility to improve and be reintegrated in the society with the belief that the proposed measure would have effect on the juvenile and that the wanted effect would be achieved but depending on the type of the criminal offence the possibility of proposal of such type is not limited also for juvenile perpetrators of criminal offences who are over this age.

The proposal for announcement of the punishment, proposed by the prosecutor, is filed after the legal conditions are met against the juvenile perpetrator of a criminal offence who at the time of commission of the criminal offence is of the age of 16. This circumstance should be proved during the course of the preparatory procedure.

The proposals foreseen in the JJC should be justified with the evidences that are collected and evaluated so that the criminal case is presented in an adequate manner and in line with the legal framework, otherwise, the juvenile judge may decide to dismiss the proposal filed at the court as inappropriate for further work or to return it for supplementation.

If the juvenile has committed a criminal offence together with an adult, the public prosecutor files the proposal for joinder of the criminal procedure with the adult. The trial panel of the competent court decides on this.

When the foreseen legal conditions are fulfilled, the work is continued at further stages as foreseen, like, initiation of the court hearing by the juvenile judge of the respective court and the participation of the prosecutor is mandatory.

For the efficiency of the criminal procedure, the prosecutor decides for one of the measures for ensuring the presence of the reported juvenile as foreseen with the legal provisions of the CPCK which are applied *mutatis mutandis* also for juveniles. Detention can also be imposed against a juvenile which initially is imposed with a duration of one month and may be extended for another 2 months by the juvenile panel of the competent court with the proposal of the prosecutor with the intention to achieve the requested efficiency in the procedure. Detention is imposed in accordance with the legal provisions<sup>1</sup>, as a measure to ensure the presence of the juvenile in order to achieve the requested rhythm of the work.

In order to respect the dignity of the juvenile while his/her stay in the detention center<sup>2</sup>, the juvenile should not be kept at the same place with the adult detainees but the detention should be served in a respective penitentiary institution for juveniles.

The prosecutor files the proposal for imposition of educative measure against a juvenile who at the time of the commission of the criminal offence is not at the age of 16 so that the juvenile is given the possibility to improve and be reintegrated in the society with the belief that the proposed measure would have effect on the juvenile and that the wanted effect would be achieved but depending on the type of the criminal offence the possibility of proposal of such type is not limited also for juvenile perpetrators of criminal offences who are over this age.

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<sup>1</sup> Article 187, CPCK, conditions for imposition of detention.

<sup>2</sup> Article 194 read with Article 197, of CPCK.

The proposal for announcement of the punishment, proposed by the prosecutor, is filed after the legal conditions are met in line with JJC and is filed against the juvenile perpetrator of a criminal offence who at the time of commission of the criminal offence is of the age of 16. This circumstance should be proved during the course of the preparatory procedure

The preparatory procedure against the juveniles is conducted with a special care considering the juvenile against whom the procedure is conducted in order to retain the personality of the juvenile, spiritual, psychological development, sensitivity of the juvenile. When the gaps are noticed at work, the provisions of CPCK and the other international instruments and acts are applied *mutatis mutandis*.

In the preparatory procedure for juveniles, the prosecutor issues the ruling on initiation of preparatory procedure and from that moment he/she starts with the investigation of the criminal case for gathering of necessary evidences by applying positive legal provisions until the conclusion of investigations and decision to send the criminal case to further work. Once the criminal report is filed, it is important to determine the type of the criminal offence as the juveniles are mainly perpetrators of different types of criminal offences

Diversity measures are foreseen in the second part, chapter four. There are 8 (eight) types of it. They are imposed by the state prosecutor through a Ruling and without conducting a preparatory procedure. This does not mean that if the diversity measure imposed did not achieve the foreseen legal effect (verified by the work of the subjects in the procedure) the preparatory procedure cannot be initiated.

#### 4. Efficiency in the criminal procedure for juveniles and protection of the dignity of the juvenile

Starting from the United Nations Universal Declaration of Fundamental Human Rights and Freedoms<sup>1</sup>, European Convention on Human Rights<sup>2</sup>, Facultative Pact on *Civil and Political Rights*<sup>3</sup>, Universal Convention for Protection of the Rights of Children<sup>4</sup>, Constitution of the Republic of Kosovo<sup>5</sup> local legal framework, Criminal Procedure Code of Kosovo (CPCK<sup>6</sup>), Criminal Code of Kosovo (CCK<sup>7</sup>) Juvenile Justice Code of Kosovo, now in force JJC<sup>8</sup>, special care is shown for the efficiency of the preparatory criminal procedure for juveniles. Respecting the international instruments and acts and the local laws increases the efficiency and protection of the fundamental human rights and freedoms, in the concrete case the dignity of the juvenile.

Juvenile perpetrators of criminal offences as the most special category in the work require privileged treatment during the work. There is a need for adequate legal infrastructure and offering of better conditions at work based on the local and international legal framework. There is a legal definition at JJC as to the juveniles so the juvenile is a person who at the time of the commission of the criminal offence was for 14 (fourteen) to 18 (eighteen) years old. The legal definition of the category of juvenile persons is also provided in the international convention.

<sup>1</sup> United Nations Universal Declaration of Fundamental Human Rights and Freedoms dated 10 December 1948.

<sup>2</sup> European Convention on Human Rights, 1950.

<sup>3</sup> Facultative Pact on *Civil and Political Rights* 1966.

<sup>4</sup> Universal Convention for Protection of the Rights of Children 1986.

<sup>5</sup> Constitution of the Republic of Kosovo dated 9 April 2008, in force since 15 June 2008.

<sup>6</sup> Criminal Procedure Code of Kosovo, UNMIK Regulation 26/2003, July 2003, in force since 6 April 2004.

<sup>7</sup> Criminal Code of Kosovo, UNMIK Regulation 25/2003, July 2003, in force since 6 April 2004.

<sup>8</sup> JJCK, UNMIK Regulation No. 6/2004 dated 20 April 2004, amended with JJC since October 2010, promulgated in the spirit of international instruments and acts by not excluding the Instructions of the United Nations on the Prevention of Juvenile Delinquency (Riyadh Instructions) adopted and published with the Resolution 45/112 of the General Assembly on 14 December 1999, 68th plenary session, Minimal Standard Rules for Non-punishment Measures (Tokyo Rules) adopted with the Resolution 45/110 of the General Assembly on 14 December 1990, Minimal Standard Rules of the United Nations for Justice Administration for Juveniles (Beijing Rules) adopted with the Resolution 40/33 of the General Assembly in November 1985. As a novelty in JJCK and in the spirit of this instructions and regulations, an integral part of this code were foreseen to be also the diversity measures as part of criminal sanctions that could be imposed to juveniles along with educative measures and other punishment. Diversity measures are imposed to the juvenile perpetrators of criminal offences in order to prevent initiation of criminal procedure against the juvenile perpetrators for the criminal offences as foreseen in the law.

In order to have a better efficiency, prosecution offices and courts should have sufficient number of prosecutors and judges<sup>1</sup>, and now the number of prosecutors and judges is being increased as a result of the process of reappointments and reformation of the judicial and prosecutorial systems. This is expected to improve the material status of the judges and prosecutors with the increase in their salaries.

Starting of the work of courts and prosecution offices in the territory of Kosovo has vitalized the life in the jurisprudence and there were efforts for a contribution in preventing the spreading of the criminality. With the Regulations, the work of courts and prosecution offices was of *ad hoc* character. The applicable law according to the Regulations issued by the SRSG is applicable in the territory of Kosovo together with other international instruments and acts.

Promulgation and entry into force of JJC marked an important achievement for the work of justice authorities as they work with a codified material which makes the further work easier. The subjects and parties in the procedure have the possibility to have better rhythm and efficiency during the work. Being equipped with the legal infrastructure, the police, judges and prosecutors shall have the possibility not to do mistakes and violate the fundamental human rights and freedoms of juveniles during the work and will protect the dignity of the juvenile. While hearing the juvenile, the guaranteed rights should be respected; otherwise, each violation is registered and poses a responsibility for a subject.

The diversity measures as a novelty in JJC, present the integral part of the work with juvenile perpetrators of criminal offence that are applied before initiation of the work on preparatory procedure with the juveniles and after finishing the work with them educative measures or other punishments are imposed. The diversity measures are imposed to the juvenile perpetrators of criminal offences with the aim to prevent the initiation of preparatory measure for juveniles in cases as determined by law.

## 5. Preparatory procedure for juveniles

Initiation of the preparatory procedure against the juveniles is linked with the procedural principles like the principle of publicity, the principle of division of the preparatory procedure, the principle of fair trial within a reasonable time, the principle of economization etc., that directly have impact on the efficiency of the procedure. The ones in charge of responsibilities should have the necessary knowledge on implementation of the legal provisions as during the work they should care for protection of the dignity of the juvenile. All these principles follow the preparatory procedure so that the dignity of the juvenile is protected and that there is no concern that reflects negatively on the juvenile.

The preparatory procedure for juveniles starts with the initiation of the ruling on initiation of the preparatory procedure after the criminal report is assessed and offers the necessary basis for initiation of the procedure. Once the preparatory procedure is initiated, the rhythm of the work is set by coordinating actions with the other subjects in the procedure. In line with the respective provision, the on-call authority of the Center for Social Work, the Correctional Service are informed in order to receive the social inquiry as well as the other parties as mentioned in the legal provisions.

Protection of the dignity of the juvenile starts from the first contact at the police, the juvenile needs to be respected, should not be subjected to physical and psychic maltreatment, should be enabled to have contact with the legal representative - parent, his defense counsel etc., as foreseen with the legal provisions.

In line with the legal provisions of JJC, CPCK, the state prosecutor conducts the preparatory procedure, gathers the necessary evidences, evaluates them and following the conclusion of the preparatory procedure decides for filing of the proposal for imposition of educative measure or the proposal for imposition of a punishment. This obliges the prosecutor to be efficient at work.

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<sup>1</sup> Number of prosecutors with respect to the number of inhabitants. If a comparison is done between the number of prosecutors in Kosovo with the number of prosecutors from the countries in the region, the difference is as follows: in Kosovo for 100.000 inhabitants there are 3.7 prosecutors, in Bosnia and Herzegovina for 100.000 inhabitants there are 7.3 prosecutors, in Slovenia for 100.000 inhabitants there are 8 prosecutors, in Croatia for 100.000 inhabitants there are 13.0 prosecutors and in Montenegro for 100.000 inhabitants there are 13.4 prosecutors (Source: report on the programs - July 2009, page 89 on internet webpage: <http://www.eulex-kosovo.eu/news/docs/programmereport/EULEX-PROGRAMME-REPORT-July-2009.new-AL.pdf>)

Respecting the dignity of the juvenile during the work applies also while undertaking procedural actions, starting from interrogation, verification of the date of birth, if the juvenile was under police custody all measures should be undertaken that the juvenile is sent to the Center of Family Medicine to find out about his/her health status in relation to facing the custody and stay in the detention for the further procedure.

The following conditions should be fulfilled during the interrogation of the juvenile:

- his legal representative - parent should be present;
- if he has no parent, the adopting parent or the custodian of the juvenile should be present,
- depending on the stage of the preparatory procedure, the public prosecutor should be careful that the juvenile is assigned with a defense counsel,
- to respect all rights guaranteed that pertain in line with Article 231 of CPCK when he is in front of the prosecutor for giving a statement and if he is interviewed at the police in line with Article 214 of CPCK. The rights should be respected also when he is before the juvenile judge.
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## 6. The State Prosecutor in the preparatory stage for juveniles

A juvenile is a person from 14 to 18 years old, an age that offers legal conditions for initiation of the preparatory procedure for juveniles. The preparatory procedure cannot be conducted against a juvenile person who has committed a criminal offence and has not reached the age of 14.

Categorization of persons as juvenile is foreseen with legal provisions<sup>1</sup>, in which there is an expressional definition for this category but this division of juveniles was also foreseen in the applicable laws based on which the preparatory procedure for juveniles were conducted<sup>2</sup>. JJC contains respective provisions for regulating the preparatory procedure for juveniles starting from material, procedural and provisions for execution of criminal sanctions.

The preparatory procedure against the juveniles is conducted with a special care considering the juvenile against whom the procedure is conducted in order to retain the personality of the juvenile, spiritual, psychological development, sensitivity of the juvenile. When the gaps are noticed at work, the provisions of CPCK and the other international instruments and acts<sup>3</sup> are applied *mutatis mutandis*.

In the preparatory procedure for juveniles, the state prosecutor issues the ruling on initiation of preparatory procedure and from that moment he/she starts with the investigation of the criminal case for gathering of necessary evidences by applying positive legal provisions until the conclusion of investigations and decision to send the criminal case to further work. Once the criminal report is filed, it is important to determine the type of the criminal offence as the juveniles are mainly perpetrators of different types of criminal offences.<sup>4</sup>

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<sup>1</sup> Article 2, JJC

<sup>2</sup> Applicable LCP, on chapter 27 has foreseen the procedure against juveniles starting from Article 452 – 492.

<sup>3</sup> Inter alia, Minimal Standard Rules of the United Nations for Justice Administration for Juveniles (Beijing Rules) adopted with the Resolution 40/33 of the General Assembly on 29 November 1985, Instructions of the United Nations on the Prevention of Juvenile Delinquency (Riyadh Instructions) adopted and published with the Resolution 45/112 of the General Assembly on 14 December 1999, 68th plenary session, Minimal Standard Rules for Non-punishment Measures (Tokyo Rules) adopted with the Resolution 45/110 of the General Assembly on 14 December 1990.

<sup>4</sup> Criminal offences that characterize juvenile perpetrators of criminal offences are offences against life and body, chapter XXV (criminal offence of murder – Article 146 of CCK, criminal offence of aggravated murder – Article 147 of CCK, criminal offence of light bodily harm – Article 153 of CCK, criminal offence grievous bodily harm – Article 154 of CCK, criminal offence of participation in a brawl – Article 155 of CCK, criminal offences against sexual integrity, Chapter XIX (criminal offence of rape – Article 193 of CCK, criminal offence of sexual abuse of persons with mental or emotional disorders or disabilities – Article 197 of CCK, criminal offence of sexual abuse of persons under

When we are at the work and development of preparatory procedure, we need to consider that the juvenile perpetrators of criminal offences are persons of different genders, they are male or female. Males in general delinquency participate with about 97 % whereas females as juvenile perpetrators of criminal offence participate with 3 %.

According to LCP, the preparatory procedure for juveniles is initiated with the request of the prosecutor for preparatory procedure, whereas the juvenile judge has issued the ruling on initiation of the preparatory procedure who also organizes the work on collecting the necessary evidences<sup>1</sup>.

The State Prosecutor should be careful that during the preparatory procedure, he/she should respect the dignity of the reported juvenile from the first moment in the procedure, to verify the date of birth by ensuring a birth certificate, should know whether the juvenile was sent to the Center of Family Medicine to find out about his/her health status. If the case is with detention, it should be verified whether the juvenile can face the imposition of detention or not.

The juvenile should not be interrogated more than two times and the following conditions should be fulfilled during the interview of the juvenile:

- his legal representative - parent should be present;
- if he has no parent, the adopting parent or the custodian of the juvenile should be present,
- depending on the stage of the preparatory procedure, the public prosecutor should be careful that the juvenile is assigned with a defense counsel,
- to respect all rights guaranteed that pertain in line with the CPCK.

## Conclusion

The Criminal Procedure for juveniles has many specifics which are characterized with the efficiency in protecting the dignity of the juvenile. The preparatory stage starts with the issuance of the Ruling on initiation of preparatory procedure, than goes with collection of evidences – personal and material ones.

From this point of direction, the procedure goes through the stage of preparatory procedure, the procedure of deciding to present the respective proposal, to present the subjects and parties in the main hearing and the procedure about the legal remedies.

Hence, respecting the human rights is a crucial issue as the fundamental human rights and freedoms are guaranties with the constitution and laws without excluding other international acts and instruments.

This has made the subjects and parties in the procedure to respect the rights of the juvenile starting from:

- the right for life,
- the right for identity,
- the right and freedom for expression in all types of procedure,
- the right for defense and defense counsel,
- not to be misused and abused during the procedures,

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the age of sixteen years – Article 198 of CCK, etc.), criminal offences against public health – Chapter XXI (criminal offence of unauthorized purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances from Article 229 of CCK), criminal offences against economy – chapter XXI (criminal offence of counterfeit money – Article 244 of CCK), criminal offences against property, chapter XXII (criminal offence of aggravated theft – Article 252 of CCK, criminal offence of Robbery – Article 255 of CCK).

<sup>1</sup> Article 470, LCP

- to respect the interest and the dignity of the child who needs to have additional care,
- to have the right for time off and use of free time,
- to have the right to fight all forms of exploitation or discrimination,
- to have the right not to be deprived of liberty illegally and to have the legal defense,
- to have the diversity measure imposed more by prosecutors and judges during the procedure in order to increase the efficiency considering the aim of imposing those measures,
- alternative sentences foreseen in JJC should increase during the work
- social inquiry should be more all-inclusive and should not contain the proposal for imposition of eventual measure,
- placing the juvenile in detention should be as limited as possible,
- a respective service should be established in the state level for the care of children who are perpetrators of criminal offences of the age of fourteen (14) (considering the fact that we have perpetrators of criminal offences of this age, and nothing is regulated in the law as to the treatment that should be offered to this category),
- to adapt the legal provisions so that there are no difficulties at work in relation to their implementation,
- during the interrogation of the juveniles in the capacity of the reported party, injured party or witness, they should not have psychical burden that would affect the statement.

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## The Inappropriate or Negligent Medical Treatment in Albanian Criminal Legislation

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### Abstract

*We are all testimonials for the failure or on-go of the medical treatment and of all the medicine in general, even though we are in a century of considerable scientific evolution. The inevitable involvement of doctors in the everyday life of human beings, leads to the necessity that people must have legal protection from medical offense. The most important right, the right to live, requires that doctors and medical staff have to protect and respect the life of the patients, but the careless treatment and medical neglect in many cases has led to permanent injuries of human health or lost of life. The cases that have been submitted in the court have been suspended, discontinued or the doctors have been declared innocent, because of impossibility to prove that the pretended medical offense has led to severe impairment of health or even worse to death. According to this situation hundreds of cases have not been reported, and as a result the repetition of these medical offenses and lack of awareness from the medical staff, regarding their professional liability. Taking into account that the evidence of the Albanian criminal legislation provides de jure protection for its patients, in reality this protection de facto does not operate properly, i have introduced my project which is divided into 3 parts/sections. In the first part I have mentioned the evolution of medical outlook, from the antiquity to modern times, the international devices that protect and guarantee the freedoms and right of the patients and the modifications in the relationships between doctors and patients. Further, in the second part I have been focusing on "negligent medical treatment" in our legislation, and in the experience of some more European countries and more. In the third and last part I have submitted the whole economical, social factors that do affect the actualization of this offense otherwise known as "medical neglect" and the possible preventive provisions of this offense.*

**Keywords:** *patient-doctor relationship, negligent, court, negligent medical treatment*

### 1. Introduction

Medicine is a science developed enough that, thanks to advanced technology, have made possible a health welfare unimaginable couple of years ago. Nowadays, thanks to this medical development, humans fight most of the disease and live longer. However, we all are conscious for the other side of the medal which represents the dark side of science. Failures are those that stand alongside the accomplishments and make us think that should still much work to be done. But what are these failures and what is their origin? Are doctors irresponsible or is the science that leaves spaces for misinterpretation? "Who" and "how" will respond to this failure? In these conditions, who is the victim: patients and their families or doctors who will face criminal responsibility? Based on this situation, I introduce this paper non pretending that I have answered all questions possible but hoping that the situation change for the better.

#### 1.1 Evolution of medical ethics fundamentals and changes in patient-physician relations.

Life and human health have been under special care by the entire society since the earliest times. People in ancient times, having no obvious reason why the disease would naturally capture a person and not another, tried to find reasons in the supernatural. In that time magic and religion were a fundamental part of a healing practice (Pikoulis, Msaoue and Avgerinos). Deceitful individuals would use the healing process as a "gift" of their own, whose power depended on the ignorance of others. The first example of organized medicine appeared in ancient Egypt, practiced by Imhotep (2667-2648 BCE), popularly known as the father of medicine. (Shehata) We can relate some data from that medicine organization with the modern practice, for example: a) Patients did not have to pay doctors for their medical care, as they were supported by community. b) Strict and strong rules were set on the experimental treatment.

c) There was no responsibility in the event of the medical treatment failure, if all written rules were followed, etc.

Different punishments were set for those who had not been aware of these rules because they were expected to know the rules, even better than the specialists before them. In the 5th century BC, Greek philosophers were those who through logical process, observation and deduction, would doubt the strong influence of religion in medical treatment. Hippocrates, the most famous figure in medicine and Greek philosophy, established some principles and lines of medical ethics and later developed the so called "Hippocratic Oath". This is a statement that requires young doctors to solemnly swear to uphold specific ethical standards on their practice, an oath forwarded nowadays with occasional modifications (Miles).

Humans health and its care is very important, as noticed from antiquity, people with primitive tools and limited available options have always taken care of their health, same goes on even nowadays. In the patient-physician relations, for centuries, doctor's figure has been very important. Patients were afraid of their diseases and their treatment methods, as they had no knowledge, while control of the patient's health was a franchise of health professionals. Only in recent years the right of patients to be informed, to get explanations about their health conditions and to get involved in their health care began to gain ground. An increasing trend of patients who are controlling their health medical management is noted recently and this thanks to changes in social and economic reality (Coulter and Ellins).

The idea that all people have some fundamental rights has been at the center of attention of international organizations like the United Nations Organization or the World Health Organization. In its establishment in 1948 was defined: "to have the highest possible standards of health is a fundamental right for every human being regardless of race, religion, political beliefs, economic or social status ". Declaration of the World Health Organization for the Promotion of the Patients Rights in Europe, Amsterdam 1994, later on states: "Patients have the basic right to privacy, confidentiality, to accept or evaluate treatment and to be informed of medical procedures and their potential risks". This convention along with international acts, such as the United Nations Charter of (1945), the Universal Declaration of Human Rights (1948); European Convention of Human Rights in (1950), the European Social Charter (1961), International Treaty on Civil and Political Rights (1966), all establish the protection of fundamental human rights and simultaneously constitute the basis for protection of patient rights.

Lastly, the European Charter of Patients' Rights drafted on November 15, 2002, in Brussels paid full and specific attention to the patient's rights, constituting up to date and the full frame work defining the concept of patients' rights (European Economic and Social Committee).

## 2. Overview of the offense "Careless Medication" in Albanian Criminal Code

In actual Criminal Code of the Republic of Albania, the legislator has provided the special provision offenses that endanger human life and health. In the medical field these are: medical negligence, failure to provide assistance, HIV infection, organ transplant trafficking, falsifying medical documents, failure in keeping patients information confidential, illegal abortion etc. The fact that the criminal code expressly provides these specific acts is a good indication of the great importance legal and criminal defense pays on life and human health.

Nevertheless, the health system is not as secure as it should be and we want it to be. One of the most confusing offenses in the health care system is exactly " Careless Medication ". There have been too many dismissed cases as a result of the inability to prove medical alleged violation which brought severe damage of the patient's health or even death. But what does the term "Careless Medication" stand for? According to Article 96 of the Albanian Criminal Code expressly and superficially this would only apply on patient's treatment. Although this in the medical sense constitutes only the second stage of the patient's treatment does not mean that it leaves aside the first stage, the diagnosis. By using the term "medication" the legislator would not consider just the narrow sense of the word, simply the treatment, but rather an extensive medical treatment of the patient starting from the moment of diagnosis until the advent of effect of the treatment. Forensic experts play a determining role in assessing whether the acts and omissions of doctors or medical personnel have been illegal. Under the law, doctors are forced to practice their profession in accordance with rules and protocols of medical science. Their actions would be considered illegal if they would not be in accordance with the above.

From the medical science standpoint, medical treatment of the patient goes through two main stages:

1) diagnosis: the entirety of medical operations patient undertakes in the process of identifying the disease he suffers from.

2) treatment: the entirety of the medical operations for determining the disease treatment scheme in accordance with the diagnosis and the application of this treatment.

The term "Careless Medication" in the direct sense of the word, may allow a path to a narrow interpretation, which is not the purpose of the legislature, to sum it up it will be, all the careless actions or omissions by the physician or medical personnel during patient's treatment (Meksi). With the above in mind we conclude that in the court practice, the offense "Careless Medication" should take into account and include all negligent acts or omissions of the physician or medical staff in the process of prevention, diagnosis and treatment of patients. In cases of medical errors, according to the Albanian criminal doctrine, doctors or medical staff is charged with criminal responsibility only when the error is professional and not in cases of scientific errors. A scientific error arises as a result of uncertainties in the science of medicine, as some notions that can be considered fair and appropriate nowadays, cannot be considered so in the future. Professional error is the one that matters for criminal responsibility (P.Pavli). The criteria on which the jurisprudence refers to the assessment of the existence of guilt in physician behavior, are the anticipation and avoidance, in the phases of diagnosis as well as in treatment. The physician or medical personnel are excluded from responsibility, when it's objectively impossible to predict and avoid risks. The court must also assess the doctor's professionalism, whether he is a general practitioner or a specialist. One cannot ignore the fact that the doctor is a general practitioner or a specialist, and a famous professor. For the doctor to be found guilty of the criminal offense of "Careless Medication" all the above causal link need to be proven (that there have been these illegal acts or omissions causing serious harm to health or death of the patient)

The doctor shall be criminally liable if it is proven that: 1. There have been careless actions and omissions, inaccurate diagnosis or treatment against the rules of medicine. 2. The fault exists. 3. The death of the patient or serious damage to his health is verified. 4. If the diagnosis would have been accurate and the therapy appropriate, injury or death wouldn't come, or would be verified at a later period, or would be less damage (Lole). According the court practice everywhere, including Albania, it would be difficult to determine with certainty a causal connection, if the diagnosis would be correct or therapy would be appropriate, injury or death would not come, or would be verified in a subsequent period, or would be less damage. Under these circumstances, it is impossible for the prosecution bodies to raise charges against doctors, because, any doubt concerning the charges shall be deemed to favor the accused person, the universal principle of criminal law, and provided in section 4 of Penal Procedure Code.

## 2.1 Other countries experiences

In The Criminal Code of Kosovo, in the chapter "Criminal Offences against public health", we encounter the offense "Unconscious Medical Treatment" provided in article 260. This offense is carried out by doctors or health workers as an illegal action and omission, or as an inappropriate method of treatment or failure to use appropriate hygienic measures and thereby caused the deterioration of the patient's health condition or his death. As we notice, in the designation of the offense, the lawmaker has used the term "treatment" in place of the term "medication" aiming to encompass all phases of medical treatment and avoid possible misunderstandings.

In France one of the key factors that explains a more extensive criminalization of medical negligence is the substantive offense which offers a wide range of possible criminal charges in the context of injury caused by negligence. The Criminal Code provides that there is *délit* "in cases of recklessness, negligence, or failure to observe an obligation of due care or precaution imposed by any statute or regulation, where it is established that the offender has failed to show normal diligence, taking into consideration where appropriate the nature of his role or functions, of his capacities and powers and of the means then available to him. We should note the very broad extent of the criminalization of involuntary conduct in this definition, from simple negligence to recklessness (Kazarian, Griffiths and Brazier).

According to Italian experience, if a medical procedure is vitiated by a serious error in conduct, which causes injury to the patient, and there is a chain of causality between medical error and the damage suffered by the patient, the doctor may be held criminally liable for negligent personal injuries. Indeed, in Italian law, a crime for negligent personal injury is criminally liable to private prosecution by the person offended (in this case the patient). In the Italian penal code, the negligent injury is described as "an event that, even if it happened against the intention, occurred due to negligence, imprudence, unskillfulness or failure to comply with laws, regulations, orders and disciplines" (Traiana).

In Greece, in case the wrongful act, omission or behavior that resulted to personal injury or death simultaneously constitutes a "criminal act" pursuant to the Greek Penal Code or other specific criminal laws, and criminal charges are brought against the responsible person, the injured person or the family of the deceased are entitled to intervene in the criminal proceedings as "civil claimants" in support of the criminal charge, and at the same time apply for the award of compensation from the Criminal Court (Pavlakis).

In England and Wales medical negligence usually only becomes a crime if negligence is gross, the patient dies and it caused or is a significant contributory factor to the death. There is no general crime of negligently causing injury. It does not matter how serious or even reckless the error is, the doctor will escape criminal liability if the patient survives, even if he is terribly disabled. For any prosecutor two major problems affect any charge of medical manslaughter, establishing that the error met the elusive concept of grossness and proving causation (Kazarian, Griffiths and Brazier).

Under Canadian law, adverse events may in principle be redressed through criminal, contract, and tort law remedies. However, the criminal law plays a very minor role in addressing medical malpractice, primarily because of the higher substantive and procedural standards required to impose criminal liability compared to civil liability. In addition to being infrequently used, the criminal law is poorly equipped to deal with medical misconduct because health professionals often work collaboratively, making it difficult to assign sole responsibility and blame (McDonald).

### **3. Factors affecting consumption of the offense "careless medication" and possible preventive measures.**

There are a variety of factors, social, economic and cultural all of these combined with one another affect the consumption of criminal acts that damage human life and health in the field of medicine. A main cause of consumption of these offenses, especially the offense "careless medication" is negligence and carelessness of the medical staff.

Often doctors neglect their duties and do not take all appropriate measures when they face medical cases that put their professional skills in dilemma. Therefore, carelessness shown by medical personnel, in the form of negligence and excessive self-esteem affects the consequence of the offense and its risks.

Another cause is the incompetence of the medical staff, lack of professional qualifications and specialization or lack of specialized tools needed to exercise the appropriate medical activities. A great number of cases from the practice show that the authors of the offense "careless medication", perform medical acts for which they do not possess sufficient professional knowledge exceeding their competences on the role as medical staff. So, generally entities carrying out such offenses lack sufficient training to exercise the respective tasks.

Temperament and level of intelligence as an expression of the individual reaction (ie physician) to the harassment and external incitement, is another factor influencing the consumption of this offense. It may happen that a member of the medical staff under the pressure of strong emotions like fear and insecurity, would manifest changes of the mental status and activity, which may lead him to perform actions that may contain elements of the offense.

In the optics of a broader perspective, there are measurements that need to be taken to prevent this crime, like: improving the situation by increasing the welfare, reducing unemployment or informing all the social links about their rights and obligations by developing informational and cultural programs. Also improving the work conditions for medical staff, especially doctors, and endowing hospitals with sophisticated equipments for diagnosis and treatment of patients would significantly reduce the potential undesirable consequences. Enabling doctors and medical staff to have access in recent discoveries of medical science through qualifying programs will significantly increase their qualification level and would make possible the avoidance of many negative consequences coming from deficiency in knowledge and information.

### **4. Conclusion**

"Careless medication" was the offence with the lowest number reporting in Albania, only few years ago. Generally the victims were withdrawn from denunciation. Causes for this situation could have been many, like, lack of information about the existence of the relevant provisions, the connections or social relations they had with the persons responsible of the offense, to maintain the case secret and not make it public, or simply because they would not believe that justice could be granted, etc.

There has been an increase in denunciations of cases consuming the offense "Careless medication" compared with previous years. The law is still very faint and unclear in relation to this offence and this situation directly or indirectly creates psychological and professional pressure to medical staff.

It would be appropriate to make some changes in the Article 96 of the Criminal Code starting with the name "careless medication" to "careless treatment", since the term "medication" includes only the second stage of the patient's treatment, and then the interior of the article needs to clarify and concretize the range of possible indictments, based on the contemporary experience of international legislations.

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## Friendly Relationships among Youths

Alma Vögeli

Ada Ruçi

### Abstract

*This study will be focused on a very important social relationship that is friendship. Humans are social being and are born to be socialized with others. Isolation and solitude is not its characteristic. Friendship refers to a close and personal relationship, the care with its attributes such as: reciprocity, common choices, trust, openness and loyalty. Circumstances affect the types of friendship at youth age or early adulthood. (Adams and Blieszner, 1996). Friendly relationships in high school are based upon interests is the hypothesis this study will be based on. Subjects that will be part of this study are youths. The study is conducted among students of the State University of Tirana. 50% of selected subjects study at social-oriented departments and the other 50% study at science-oriented departments. The selected methodology is quantitative. The type of systematic randomized sampling is used on this study. The hypothesis this study was based on resulted to be true. The study proved that friendships at faculty are based upon interests. The primary interest where the friendship relationships are based includes interests related directly to school. The main subjects resulted to be the free time spent together and doing the homework together. The females resulted to be more sociable, as the major number of students has mostly female friends within their close friendship circle. Students socialize with individuals that meet their economic state, expectations in school grades and personal characteristics. Reciprocity in friendship relationships while at faculty is very important and males value it more than females.*

**Keywords** – Relationships, Youths, invest, inters

### 1. Friendly Relationships among youths

This study will be focused on a very important social relationship – friendship. Friendship is an inevitable relationship in one's life. Man is a social being and is born to socialize with others and loneliness and isolation are not his characteristic. Various social activities are often the initiators of friendly relationships. Being together and sharing interests with one another encourages youths to build and strengthen further their friendly relationship (Cherly Maeder, 1999). Circumstances affect forms of friendship in juvenility or in early adulthood (Adams and Blieszner, 1996). Subject of this study will be youths. At this age, approximately at 20 years old, youths start to emotionally detach from their parents and family and move toward a greater individuality (Levinson, 1978). This is a great move, which brings many changes in various social aspects and one of these changes is the making of new friendships. Juvenile individuals are relatively free of social obligations such as marriage and parenting, compared to those of middle age and older. The socialization with friends of both genders is more present than in any other age.

#### 1.1. Why youths make friendly relationships

There are several reasons that push youths to get involved into friendly relationships while in faculty. According to Mickulincer and Selinger (2001), there may be a major number of benefits. Fear and social isolation, the need to be heard, encouragement, counseling, sharing in confidence and economical help are some of them. Friendship is a mutual relationship, where the realization of interests that depend on friends takes a very important place and friendship is a voluntary relationship, where personal preferences have a significant place too. According to sociologists, Adams and Graham (1998), besides personal preferences, circumstances, society and culture we belong, play an important role.

Some of the key questions to explore friendly relationships at universities are:

- *Why accompany is important?*
- *Who do we quickly make friendship with?*
- *Where is the university friendship based on?*
- *How much do we invest in a relationship?*
- *How mutual are the friendly relationships?*
- *Does interest affect the choosing of friendships?*

## 1.2 Hypothesis

In order to explore the fore mentioned issues and identify their extension in the friendly relationships among youths at university, one comes to conclusion, upon which this study is based, that: Friendly relationships at university are based on interests.

## 1.3 Operational Definitions

Main concepts used in this study will be defined below in an operational manner.

**Interest:** Emotional, material and social benefits from a friendly relationship.

**Friendly relationships at university:** in this study it refers to relationships of an individual with people whom he gets along the most.

**Investment in friendly relationships:** in this study it refers to emotional investment, time investment and material investment.

## 1.4 Purpose of Study

Purpose of this study is to explore whether the friendly relationships at university are made based on interests and identifying the main ones.

## 1.5 Objectives

Based on the main purpose of the study, objectives aimed to be achieved are:

1. Identification of main reasons for the creation of friendly relationships at university
2. Identification of gender differences in choosing friendship.
3. Identification whether studying at science-oriented university branches and social-oriented university branches influences the interests in choosing friendship at university.

## 2. Methodology

Methodology used in this study is quantitative. The selection of this method was due to its adaptability with the subject of study. The purpose of study is to explore the interests in friendly relationship among university students. Based on the subjects' extension the quantitative method has been considered as more appropriate. For the realization of the study literature review will be used and collection of data will be conducted via questionnaire. Subject lists of faculties of State University of Tirana are used in this study, for the record of required subjects. Type of questionnaire is assorted.

## 2.1. Sampling

Type of systematic random sampling is used in this study. This sampling procedure aims not only at random preselection of units, but at the fact that this random selection is distributed in the entire list of sample setting, based on sampling fractionating method. From the random selection, number 2 and 21 has been chosen per each group. Should the search in finding these numbers becomes impossible, an approximate number will be used. Sampling number is 100 subjects. 50% of subjects study at science-oriented university branches and the other 50% study at social-oriented university branches. Respectively, subjects studying at social-oriented direction, at the Social Sciences Faculty, History- Philology faculty and Foreign Languages Faculty. 50% of selected subjects studying at science-oriented direction, respectively studying at Medical Faculty, Economic Faculty and Nature Sciences Faculty. Out of random selection 31 males and 69 females resulted to be part of the study.

## 3. Nature of friendly relationships

Frequent Interactions give opportunity to people to discover similarities of one-another, as well as feel the empathy of one another (Arkin and Burger, 1980). The general tendency is one chooses his/her friends for what they are. But in reality we socialize with people who like us and support us (Dragoti, 2004). In the interpersonal attraction, the principle of reward takes effect: we like people who support us in the maximum of assessable reward by spending the minimal cost. Not only do we benefit from others concrete material rewards, but also a social one, where the later is even more important. When friends give us social support in our difficult times, when they respect or admire our qualities, this reward becomes so intense that in most cases the attraction between people becomes mutual. Most of interpersonal relationships are consistent with the principle of reciprocity: we tend to like people who like us. The nature of friendship in itself, contains the mutual care, intimacy and the sharing of activities. Reciprocity is an important condition for a friendly relationship to continue (Friedman, 1993; White, 2001). Friends should share their feelings with one another, rejoice over their friends' achievements, be near them when they are frustrated and dissapointed. Friendship is a relationship not based on blood relations. Friendship has many forms and sizes. It is the place of love and affection, the place where we feel loved, respected, supported and happy. When two people share a strong bind of reciprocity, respect and love, step toward an eternal friendship are taken. Being friends means being there for each other. Annas' viewpoint is that a friend is the one who wishes and desires the best for his/her friend; he desires the friend to exist and live, spends time with the friend and makes the same choices as friend.

### 3.1 Gender differences in friendly relationships

Males and females in general have different kinds of relationships. Males tend to have friendly relationship between one another, but less intimate. Males search friends based on similar interests, prefer common activities and do not pay too much attention to discussion about feelings (Sherrod, 1989). Females tend to have more intimate, opened and emotional relationships (Ritchie and Mill 1998; Sapadin, 1998). Relationships between females are characterized by many positive attributes that are apparent through the whole life such as: trust, loyalty, joy, care love and compassion. Females discuss continuously with one another and their discussion is profound when it comes to intimate issues regarding themselves or their family. For males intimacy often means discussing or making things together when it comes to work, sport or politics, whereas for females frienship intimacy means sharing feelings and worries.

### 3.2 Role of investment in friendly relationships

Investment is very important for the continuity of a friendly relationship. Friendship aims at being more reciprocal than other forms of attraction, such as respect (Sega, 1970). Once the reciprocity starts to shake, the friendship starts to change. In a friendly relationship friends share similar interests, mutual respect and strong relation with one another. It is noticeable that an important component for a friendly relationship is the similar interest. A true friendship is proven to be such based on altruism, sacrificing personal interest for that of friends. When we are awake we spend 20-60% of our time in accompany with others (Dealux, 1978). This shows the fact that besides other investments, we invest a lot from our time with friends.

#### 4. Results

The study proved the fact that sociableness at university is based on interests. Primary interest where university friendly relationship are based, includes interests related directly to school. The main ones resulted to be: doing homework together and spending free time together. Females resulted to be more sociable, since that the majority of students have females in their close relationship circle. Students at university make friends with individuals with the same economic state, same expectations for school grades and same personal characteristics. Reciprocity in friendly relationships while in faculty is very important and males value reciprocal relationship more than females. Females invest more in a friendly relationship and consider friendship as valuable relationship.

The conclusion from this study was that the main reason students make friends is to avoid loneliness. But within this conclusion it resulted that students who follow a university social profile branch, value the fact of feeling good themselves with friends more, than the desire to not be alone. The most valued friendship characteristic in faculty is sincerity. An important role takes also the readiness to help friends, by defining it as a sincere interest in a friendly relationship.

From the study it resulted that science profile and social profile, do not influence friendly relationships in high school. From the study it resulted that friendship in faculty is not a friendship based on strong trust, love, care and altruism. Its main base is reciprocal help and the realization of interests closely related to friendship.

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## Innovation Journalism: The New Way of the Media Development

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### Abstract

*The article is dedicated to the innovative journalism, directed to incorporation of the media in the innovation process in order to highlight and explain the essence of intellectual economy, the consequence of which is the increase of essence of innovation understanding in society. The formation of innovative economy in the world in the second half of the XX century caused the emergence of a unique communication area: between the scientific community, business and government. The main purpose of communication is to organize dialogue between all participants of the innovation space, promotion of innovation as a key factor for sustainable development of competitive state and society. The dynamic development of the social, scientific and technical and economic sphere, the emergence of the new knowledge and technology on the same level with the increase of the information flow modifies journalism. Even today, scholars fix signs of the restructuring media-information space on a planetary scale, which is connected with the global competition between traditional and online media. Such competition leads to a series of epochal changes in the activities of international and national newspapers and magazines, radio and television, news agencies and the press centers. Undoubtedly, all these factors contribute to the emergence and the development of innovation journalism, which in many ways is more multifaceted than its traditional counterpart.*

**Keywords:** innovation journalism, electronic media, media market, digital technology, online journalism.

### Introduction

In the last quarter of the XX century humankind entered a new stage of its development – the stage of post-industrial society construction, which is the result of social and economic revolution in the modern world. It is known that basis of every social and economic revolutions are specific technologies, industrial and technological system and industrial relations. First of all, information technologies, computerized systems, advanced manufacturing play the main role for post-industrial society, which are the result of the new physical-technical and chemical-biological principles. These principles are based on the innovative technologies, innovative systems and innovative organization of different spheres of human activities [Dzyaloshinsky, 2007].

In the world economic practice the concept "innovation" is interpreted as a process of transformation of the potential scientific and technological progress in the real world, which is embodied in new products and technologies. In the monograph of scientists' team, led by Professor G.A. Krajukhin [Krajukhin, 1997], studied the different definitions of the term innovation. The term "innovation" was firstly appeared in scientific studies of foreign culturologists in the XIX century. The meaning of this term was the introduction of some elements to another culture [Moiseeva, 1993]. Only at the beginning of the XX century regularities of technological innovations were started to study. In the world economic literature two approaches of innovation can be found. The classical sample of the first approach is the term of the English economist J.Schumpeter. In 1911 in his work "The Theory of Economic Development" [Schumpeter, 1982] J.Schumpeter spoke about the process of introducing new combinations in the following five cases (the introduction of a new product, the

implementation of a new method of production, the opening of the new market, the conquest of a new source of raw materials or semi-finished products, implementation of a new organizational structure in any industry). In 1930s J. Schumpeter used the term "innovation", meaning any changes related to the use of the new or improved solutions in engineering, technology, organization of production, sales and procurement processes, etc. Collins Dictionary defines "innovation" as "something newly introduced, such as a new method or device, act of innovating" [Collins National Dictionary]. At the same time the creation of innovation complex, multifaceted process that involves the generation of new, original ideas in order to ensure the survival of society. This process requires from all participants special training, great mental, physical effort moral strength and the corresponding state of socioeconomic infrastructure.

The term "innovation journalism" was coined by David Nordfors - the founder of the Innovation Journalism Initiative hosted by Stanford University [David Nordfors, 2003]. Modern scholars tend to describe the innovative journalism using four key mutually connected processes (or features): convergence, digitalization, interactivity and apurtenance of media data to the network space.

Thus, the list of media formats can include:

1. Web portal;	7. Movies for Internet audience;
2. Online media;	8. Social Network (including social network for children);
3. Internet television (webcast);	9. Twitter;
4. Internet radio (podcast);	10. Virtual Communities;
5. Mobile TV;	11. Virtual Games;
6. Blogosphere;	12. Other resources Web 2.0.

As we can see, innovation changes not only the image of journalism, but also radically modifies the format of presenting the material. B.A. Igorev says: "The processes that are connected with the necessity of the information space formatting in the structural, functional and organizational areas of the media, happens in the newspaper, magazines, TV programs, radio broadcasting, online media release conditions. Keen competition between the media, also the low purchasing power of the audience causes a significant differentiation of the media structure. The word "size" becomes a keyword in this procedure" [Igorev, 2009].

### Three areas of Media Updating

In the modern world media industry must be significantly updated. Here are three directions of such updating.

**Firstly**, the use of new methods in searching and processing information. The Internet has already accumulated more than 1 billion pages, and the number of public websites is close to 40 million. Every day the number increases to 50 thousand. Search technologies are designed to help users in the ocean of information and implement e-business strategy. Now search technologies have become a mission-critical tool for journalists: the information necessary can be anywhere. The other problem that was caused by the internet is accelerating the pace of information production. It is necessary to permanently keep abreast of developments, monitor multitude of information sources, to find out important news in time. It is not anymore effective to find out information monitoring websites and reading news. The aggregation of information is needed here in order to collect all relevant information on multiple personalized pages. Permanent monitoring of information sources requires a substantial diversion of resources, as well as automation.

**Secondly**, transition to the new scheme of manufacturing organization, production and distribution of media products. The success of the editorial board of the XXI century will be determined by conveying to the audience current and fascinating information at anytime. Media companies worldwide scrutinize readership and convert the received information in a new and exciting genres. Newspapers produce content using their own brands and convey it to the reader in various ways - WEB, mobile devices, WEB-TV, interactive television, podcast, radio, magazines, citizen journalism and etc. It is really

necessary today to fully serve the needs of the modern audience and not only to keep but also to increase market share. To this the problem of blogs can be attributed. Ordinary people, who have something to say and to show, started to maintain a blog. New tools became available for millions of people, which help them to publish their articles in the Internet. People can get valuable information using e-mail, chats, and private web-diaries. Sometimes bloggers are the primary sources of information from places, which attract the attention of the whole world. The sample can be South Asian tsunami in Phuket in 2004. The tragic event attracted attention of a large number of journalists who covered it in their media as well as other observers. They could only get information and monitor materials, which were provided by the mass media. Other observers could only go to the islands or base on information from local sources. In one word, the original materials were not so much. And here tourists' mobile blogs came to the rescue. Those blogs were the only source of photos and videos from the site of the disaster, because there were no internet connection in that area. Before that event, even the world's leading media companies couldn't attract readers' attention to the mobile services on their websites and after that events in Phuket, the situation changed.

There were cases where bloggers were reporting live fighting scenes in Iraq; in the Russian segment of the Internet "classics of the genre" is Yelena Skochilo's reports, the citizen of Bishkek, who published photo reports about the Tulip Revolution in Kyrgyzstan (later Yelena was ROTOR blogs award winner in the nomination "The blogger of the year"). The explosions in the UK capital made largest media companies transform the mode of breaking news, but the audience didn't see anything except bloody people who were running out from subway. But during the first tragedy hour, passengers, who survived, sent MMS with pictures of the explosion site. Numerous blogs have received pictures of explosions first, before the audience of CNN and Sky News, who accustomed to the incredible speed of information flow.

**Thirdly**, formation of a new professional culture. The Professor Dzyaloshinsky notes that in the framework of the Russian professional journalistic culture several alternative paradigms of professional activities coexist. These all components are different from each other, including moral and ethical components [Dzyaloshinsky, 2007]. All of them are arranged in a "space" which is defined by three vectors. These vectors serve some fundamental social and professional settings, which determine the overall relationship of the journalist to the audience, the right to consider their audience as an object of management (education, formation) and itself as a carrier or a translator of management programs of different types and levels. In one word the way of reaching the ultimate meaning of the journalist's activities is the word "impact". Second installation places journalist close to the audience and directs it to the relationship information. In this case, the journalist considers his duties as delivering information, data, materials, assisting in the expression of opinions to his audience. Both of these settings, despite the significant differences, lead to alienation of the audience from the media.

The third fundamental installation requires journalist to be in a certain human community, consider themselves as stakeholder, joint the search of solutions to an audience of complex life problems. The main idea of such journalism is that journalists should consider readers, audience, listeners, not as a background or passive observers, but as participants in solving important issues. This journalism defines itself in the following terms "civil", "communitarian", "humanitarian", "journalism of complicity", etc.

### Interactive Environment

The main function/role of journalism becomes "dialogue moderator". This means that journalism can and should create a platform for equal dialogue between different social groups (even if they are different in their views, aims and organization), during which social contradictions and conflicts can be solved. Journalism can and should be combined in a single information space of contradictory opinions and attitudes. If they become public, new convergence ways can be found or arguments. This feature is particularly important for society, torn by conflict and split up into camps, societies, which are not able to find reconciliation in the squares and stands. This is the function that is able to transfer the conflict, which destroys the unity, into the conflict that identifies a problem in order to bring it not at the level of a street brawl, but to the positions of rational and pragmatic public dialogue. In America the same idea was realized in the concept of public journalism. At the forefront it is not the journalists' rights, it puts journalists' responsibilities to the society. Such journalism requires editors and news service managers perform journalistic work in order to help people to overcome a sense of apathy, helplessness and alienation, impel them to action, and trying to turn them from passive viewers into active participants in civil actions. According to one of the publications, which is devoted to public service, "the importance of public broadcasting is not something taken for granted. It took several decades to find its place among the media, fully

controlled by the state or commercial. Today the unique nature of public radio and television is no longer cause doubts, well-known examples of such services is BBC. The irreplaceable role of the public service is to provide information to audience to enrich their knowledge and leisure regardless of the commercial, government or political reasons. This service should give every citizen the opportunity to take an equal basis of participation in the life of society, the part of which he or she is, and actively promote the organization of such a life. Public service broadcasting must be independent from the party or government pressure, should serve everybody and be the instrument for the common good. It must maintain its independence, having at the same time stable financial resources". This type of journalism assumes the implementation of the certain functions of the media, the most important among them is the dialogue between society and the authority, inciting citizens to active social and political life, the elimination of conflict situations. It is assumed that the role of journalists is to fully and adequately inform the audience about the events, the priority for media workers is the public interest. At the same time politician, representatives of public organizations are given equal opportunities to express their views in the media. In addition to this, the perfect embodiment of the idea of public journalism is independent radio or television station from the ideological influence of the state and private capital.

Journalists and the media play an increasingly significant role in the development of society, they manage people's attention and they can send it to the innovative activity and create a certain attitude.

Traditional approaches of the media are not so effectively handle with the task. That is why in the traditional journalism thematic categorization was adopted: the journalist concentrates on his subject - politics, new technologies, culture or business. Today mostly the information about innovation focuses on its technological aspect - the invention. Innovation is a wider concept, penetrating into all areas of our lives. All over the world people are already talking about innovation in the arts, education, governance, innovation in communications, new forms of cooperation, which are aimed to create a constructive dialogue between innovators.

## Conclusions

To sum up, we note that important areas of communication in the field of innovations are:

- a) communication in science, their mission is to support the production of knowledge and its introduction into the economic system and the promotion of innovative products;
- b) innovative journalism, a conceptual framework which tries to stimulate the media play a leading role in highlighting and popularizing innovation to the general public.

With the rapid development of communications in the Internet social network, blogging, microblogging, video channels, podcasts, the impact of journalism expanded. The "new media" in the Internet is used by communications in order to foster innovations. Example of the realization of these practices can be an electronic journal East-West Digital News, the creators of which talk about Russian innovations and venture capital market around the English-speaking world.

Innovation can be considered as a journalism, which is characterized by three characteristics - it uses new methods of searching and processing information; relies on the new scheme of production and release of a media product; focuses on fundamentally different, in comparison with traditional journalism, meaning of their activities. Of course it is only an attempt to describe the contents of the new concepts. Today the media industry needs a huge demand in innovation-minded employees as well the governing and performing managers. But one thing is clear: innovation journalism is focused on the development of the whole society, so that it could become a full member of post-industrial socioeconomic formation.

Innovative journalism does not focus on one aspect of innovation, but strives to provide the public a complete picture, an objective opinion about the development of innovative processes about the interests and plans of the stakeholders and the role of innovations in society. Moreover, such journalism should see and be able to describe innovation from different sides presenting readers the different points of view, talking about the positive or negative consequences of a particular innovation. Being a kind of mediator, journalism should attract the attention of people to provoke public discussions and call to joint search for new solutions.

Journalism, which is included in the innovation process, meeting the requirements of time, undergoes changes in favor of increasing audience reach and ways of broadcasting information. So, at the moment there is a transition from multimedia

editors to convergence and cross media, which in itself considered as innovation. Thus, journalism and innovation are interpenetrating phenomena.

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## Belgrade Pride Parade 2014.: Tabloidization and Parody of the Process of EU Integration

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### Abstract

*Print Serbian media presented Belgrade Pride Parade 2014 in an ambivalent way - as a successful state project, on the one hand, and as a threat to the national security, on the other. Contradictory media discourse related to the promotion of human rights favored the tabloidization of almost all contents related to the Belgrade Pride Parade 2014. In this way in the focus of tabloidization was put wider cultural and social contexts including issues such as the process of EU integration, the effort of redefining national identity in the context of EU, and, finally, the very role of the LGBT community in organization of Belgrade Pride Parade. Tabloidization of the issue of EU integration was achieved mostly through indirect reporting on Belgrade Pride Parade by the combination of the articles which - in the same issue and often within the same section - reported on the Pride mutually quite contradictory for the audience, in sensationalist and confusing ways. The result of such reporting is, quite unexpectedly, the strategy of constant parody of topics which are declaratory considered to be policy priorities of Republic of Serbia while in the Serbian cultural and media practices are called into question and ridiculed. This kind of parody is based on a hidden affirmation of (in) equality and discrimination, as well as on the violation of journalistic ethics codes. The aim of the paper is to analyze - in the case of reporting on Belgrade Pride Parade 2014 - the narrative forms and the communication effects of this populist-based media parody, as well as to deconstructs its ideological reception and consequences.*

**Keywords:** parody; discrimination; media discourse; tabloidization; Belgrade Pride 2014, EU integrations

### Introductory Explanation: Organization of 2014 Belgrade Pride Parade, the Matter of Security and the Role of Media Reporting on Security Matters

Belgrade Pride Parade 2014 was realized after intensive public debate about the Pride as the event of the high risk. After one month long debate about security of the Belgrade and Serbia citizens, in which right wings parties strongly opposed Pride in the name of the public peace and security, none transparent political conclusions were brought: all options (*pro et contra*) stayed open during the whole debate as well as during the very night before Pride Parade, the night between 27<sup>th</sup> and 28<sup>th</sup> of September 2014. Although expected and waited from all media official allowance for Belgrade Pride Parade 2014 was not given by government who was holding session of the Bureau for Coordination during the whole night: „Even after five hours of the start of the session Bureau for Coordination of Security has not said whether the Pride Parade approved. On the other hand Parade organizers say that the parade be held because the legal deadline for the ban on public gatherings has expired.“ (1) However, the Ministry of Police has previously reserved the right to cancel the Pride at any time if security is threatened. (2)

After the midnight Goran Miletic, activist for human rights and member of Pride organizational committee, said that the Pride board did not receive information that at the meeting of the Bureau for Coordination of Security holding Pride is prohibited. He gave the statement to all media in front of the organizational board of 2014 Belgrade Pride Parade that Pride would be held in accordance with Constitutional rights on free gathering of citizens of Republic of Serbia. (3) Even after this statement government did not confirm that the Belgrade Pride Parade 2014 could be held. But on 28<sup>th</sup> of September seven thousands policemen were on Belgrade streets protecting participants of the Parade and politicians who support Parade by their presence and speeches. The path of the Pride march start in front of government buildings in Nemanjina street in the center of Belgrade and ends in front of the building of Serbian Parliament at the Square of Nikola Pasic (Illustration nb. 1)

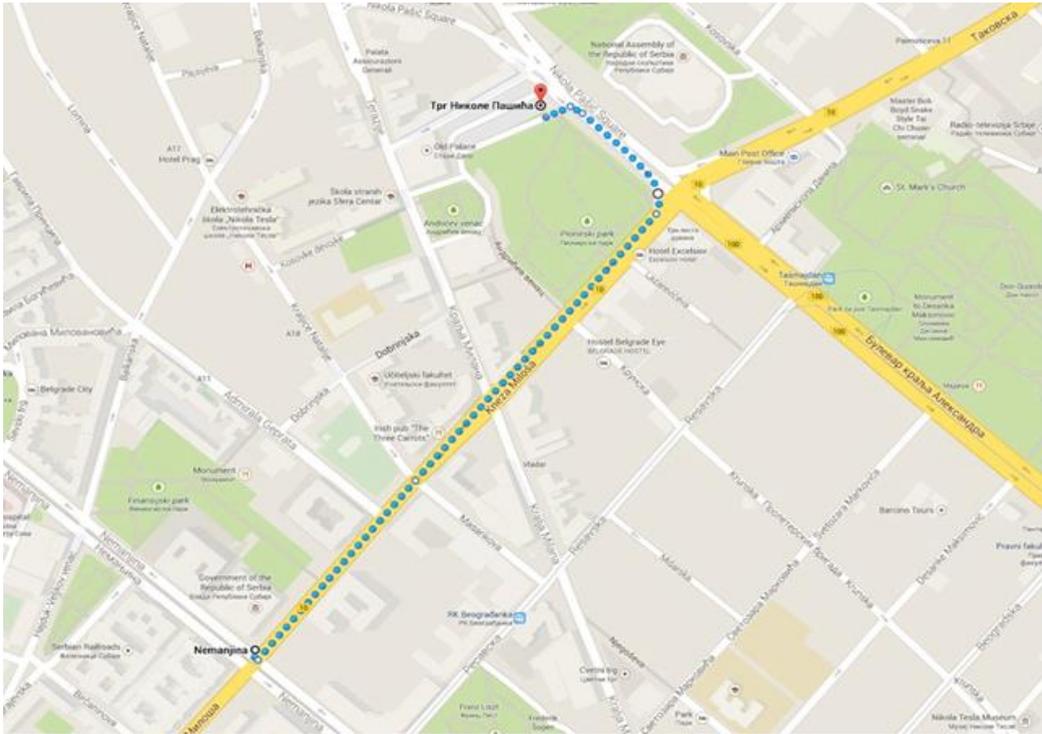


Illustration nb. 1.

The march lasted almost one hour, and at the end, in front of the Serbian Parliament members of organizational board, LGBTQ activists from Serbia and ex-Yugoslav region, as well as Serbian and foreign politicians delivered speeches in which Pride Parade and EU support to this event was celebrated. Michael Davenport, the EU ambassador to Serbia, addressed the Pride saying it is "very good that this parade took place. It sends a strong message to everyone, especially the LGBT community, but also a message to those who use hate speech that such a behavior in Serbia is not acceptable." (4) Mayor of Belgrade, Sinisa Mali told reporters in front of the government that he came to show his support to Pride and that it is a very important to show that: "Belgrade is an open city, which means it is open to all and that everyone here is equal." (5) Great kiss between Boban Stojanovic and his partner, Adam Puskar, finalized the celebration. (6) Premier Aleksandar Vučić speech in which he pointed out that he would not join the 2014 Belgrade Pride Parade participants himself - instead he planned to visit households in the flooded areas and then went on a family Sunday lunch – seemed forgotten. (7) But the metaphor of family Sunday lunch used in Aleksandar Vucic speech symbolizes persistent resistance to Pride Parade as something deeply opposed to traditional Serbian values. As symbol of heterosexual family and coherent national attitude this metaphor reveals hidden discursive strategies of political rhetoric on GMG social inclusion in Serbian public discourse.

What was claimed in Serbian media to be the utmost political will of the new, pro EU oriented Vucic government (8) was, however, annihilated by the social and cultural practices presented by the very same media. Thus official statements on Belgrade Pride Parade 2014 given both by politicians and LGBTQ activists are shaped by the same ambivalent discursive strategies; they praised the role and importance of the state instead of carnival joy of differences and power of love characteristic for the Pride as cultural, social and political event. The policy of media reporting on GMG is marked by the very same ambiguity which could be detected in speeches of official representatives of Serbian political institutions: on power is the secret rule which asks hidden stigmatization of GMG *versus* declarative advocacy for GMG rights as transparent political will of Serbian government and people.

In the paper is analyzed the case of media reporting which is considered as representative example of reporting on gender minority groups (GMG) rights in Serbian print media during Belgrade Pride Parade 2014. Case is taken from daily tabloid Kurir and can be seen as paradigmatic discursive practice of tabloidization of media reporting on GMG in Serbian media *in general*, characterized by ambiguity and strong tension between support and conviction of GMG community. The case also raises question about the real role of LGBT activist elite in organization of Belgrade Pride 2014 as a state project intended to be implemented at all costs. The paper aims to explore what is the real role of LGBTQ elite in tabloidization of the media reporting on Belgrade Pride Parade 2014 and how does the EU integrations narrative function in the context of media discourse tabloidization.

### **Intertextuality and Montage as Strategies of Media Reporting: Daily Tabloid Kurir, 23<sup>rd</sup> September 2014**

On 23<sup>rd</sup> September 2014 two articles considering GMG and LGBTQ population were published in daily tabloid "Kurir". (9) Articles were published five days before Belgrade Pride Parade was held, in the midst of public debate about the Pride as the event of high risk. The two texts were published on the same page, side by side. The first one is interview with Boban Stojanovic, one of the organizers of Belgrade Pride, in which he describes his impressions after his meeting with Ministry of Police, Nebojsa Stefanović. In this interview Stojanović emphasis his belief in the importance of the state support to organization of upcoming Belgrade Pride.(10) The second article describes the protest against "gay tourism" which is planned to be improved by opening touristic resort on Goli otok (in literally translation: Naked Island) in Croatia – the infamous jail built in Titos regime. (11) It was a place where many people were tortured and murdered during and after 1948., the historical moment of breaking up of SFRJ and USSR. The text also quotes the President of the Association of Detainees who survived the jail torture. He states that, unfortunately, the Association cannot do anything on this issue although there were mostly Serbs at Goli otok. He also notes that Goli otok is now a part of Croatian territory and therefore Serbia has no jurisdiction to seek memorial park on the island instead of the tourist resort. While in the first text struggle for GMG rights is given in the light of the optimistic visions of successful cooperation between the LGBTQ community and Serbian state in the second text stigmatization of GMG groups occurs through the activation of various stereotypes about LGBTQ community as dangerous entity that jeopardizes that same state.

It is obvious that there is hidden intertextual connection between the two texts. Existing social and political tensions are activated by this editing montage: nationalist tensions between Serbian and Croatian nation / state; class prejudices about gay people as a very rich; resistance to EU, which in this case is represented by its new member, the Republic of Croatia, which contempt both history of a communist-guerrilla struggle and history of, now non-existent, SFRJ. But, this kind of the connection should influent reader in quite opposite way from the connection which is usually implied by the usage of the term intertextuality in the postmodern theory of the discourse in which this term marks „that demands of the reader not only the recognition of textualized traces of the literary and historical past but also the awareness of what has been done-through irony-to those traces. The reader is forced to acknowledge not only the inevitable textuality of our knowledge of the past, but also both the value and the limitation of that inescapably discursive form of knowledge, situated as it is "between presence and absence". (12) In tabloid media intertextual connection should stay hidden, and should „work“ or connect two texts on subconscious level: from reader is not asked or demanded to become more critic but to become more biased, more committed to its own prejudices. The strategy of tabloid intertextuality is to stay unconscious, and to influent reader in discursive form which is not form of knowledge but of misinterpretation.

The official rhetoric of advocating for the rights of GMG is completely canceled by the second text published in Kurir in which GMG community is put in a problematic historical and social context, and accused for immorality, historical irresponsibility and lack of class empathy. The issue of gay tourism on Goli otok actually activates both class and ethnic stereotyping about GMG as social threat. GMG community is represented as community devoid of any respect for the traditions and historical scruples, being shaped by influence of the foreign and hostile political (Croatian/Western) forces. Gay population stands out in the text as one that spends an extremely high amount of money on travel and entertainment per year all around the world which is in social contrast with economic crisis which heavily strakes Serbia under Vucic governance.

The logic of tabloid editing policy is based in binary opposed codes - reader should choose one option; reader is booster who should confirm his/her loyalty. In this way, many target groups of readers are caught in the process of potential identifications that are actually located on the line long advertised strategy against Pride in Serbian public sphere which

claimed that gender minority groups usurp the rights of the majority and thus implemented violence over public space. The comparison between these two minority groups, one that presented as repeatedly sacrificed (firstly in 1948, then followed by the breakup of Yugoslavia and globalization) and the other presented through Stojanovic activist negotiating optimism put the reader of „Kurir“ in the situation of political choice. The members of the first group do not speak to journalist but to own representatives and representatives of related groups in the name of abolishing historical injustice and return to the position they unjustly seized. “Minority” that speaks in this text represents public opinion that gladly represent Serbia as a country deprived of its historical autonomy, so the voice of this minority is actually a majority voice of the Serbian society, who requires return to seemingly deprived decision-making position, the position on which no minorities should threaten the majority. Empathy and identification with gender minority groups cannot take place since these groups are seemingly about to realize their rights while the Serbian people as the only minority group in Serbia is always again deprived from its own rights – the fact that 2014 Belgrade Pride Parade is going to be held is, for reader of „Kurir“ , just one reason more which leads to such political conclusion.

### PARODY OF EU INTEGRATIONS NARRATIVE

The shocking montage characteristic for tabloid editing policy is applied both on visual and on verbal level of the media content. It is the most obvious on the „Kurir“ cover on which both above mentioned texts are merged in one gathered image printed in the lower left corner of the cover. (Illustration nb. 2) The image is supposed to be ironic and sarcastic toward the “enemies” – Croat state and gay population of the Serbia are merged in collage which represents hybrid strategies of tabloid reporting aiming to confuse the audience playing with the subconscious fantasies, desires and prejudices of the readers.



(Illustration nb. 2: Croats find a solution for gays (the first line on the image) forcing gays to Goli Otok (the second line) Serbian gays: the parade will be (the third line) Minister guarantees it to us (the fourth line))

The vivid images are juxtaposed in quite unusual and shocking way, in a good all manner of avant-garde montage: carnival photos of drag queens are mixed with black and white photographs of run-down building on Goli otok while Boban Stojanovic photo (left corner of the image) is opposed to the photo of the Ministry of Police of Republic of Serbia, Nebojsa Stefanovic (right corner of the image) in a mimicry of fragile political balance.

EU is represented through comparison and competition with Croatia, the youngest member of EU which is in post Yugoslav space geographically the closest one to Serbia and which enters EU with the burden of unclear relationship with Serbs related to the Second World War and concentration camps such as Jasenovac. The avant-garde strategy of shock and montage – same as the discursive strategy of intertextuality – should influent readers of tabloid print unconsciously, making parody of EU integrations narrative which dominates official political discourse of Serbian government. Through its embodiment as Croatia island of gay joy, island at which heroic past and epic tradition are annihilated, EU narrative is connected with recent communist i.e. Second World War past and represented as something false, hypocritical, nontransparent, autocratic, with the regime which does not deserve neither respect nor obedience. EU integration narrative is represented as narrative imposed from outside and it is nothing else except false fair-tale to mocking with, regime whose

rules will be tricked by the same playful and resistant epic spirit of Serbian people which has been denied and defeated at Goli otok.

The photos of drag queens and transvestites have powerful meaning in this ideological battle. Represented as morally problematic, LGBTQ community is identified as usurper who will luckily, in the name of justified historical revenge, find its territory on the enemy Croatian land – hidden humor which shapes „Kurir“ cover has its roots in the parody of the political Otherness, either Croat or EU entity, who - in traditional, hyper masculinized Serbian patriarchal public space - represents unworthy opponent which will be punished by metamorphosis in the drag queen. Continuous exchange between the role of political enemy (Croat) with the role of gender otherness (gay/drag queen) is a kind of mockery in which both denial of the EU values and the rejection of the process of EU integrations as process of needed social and political change occurred. As all others discursive strategies parody used in tabloidization process loses its critical potential – parody is used as vulgar way of humiliation of the unwanted ideological Other.

### Conclusions and Questions

What was response of LGBTQ elite to the text in tabloid „Kurir“ in which was manifested discrimination and homophobia together with the open hate speech and violation of the basic regulations of reporting on gender minority groups? Did Boban Stojanović react to this kind of tabloid editing, asking the withdrawal of his interview from „Kurir“ and apology from „Kurir“ editorial staff to LGBTQ community in Serbia? Nothing similar happened. Melodramatic aspects of betrayed hope could be detected in such media situation – hope supported by the very interview which Boban Stojanovic gave for „Kurir“, assuring audience that Serbia is getting closer to the abolition of media stigmatization of GMG.

But the real relationship between official media rhetoric of advocating for GMG rights, on the one hand, and, on the other, simultaneous media stigmatization of GMG in Serbian media implied LGBTQ elite as hidden partner in the media strategy of stigmatization of GMG. These elite takes part, on its own, in the deliberate parody of EU narratives and tabloidization of media reporting on GMG. Therefore the following questions should be explored in further research of media discourse on GMG in Serbia: a) in which way LGBTQ elite is self-represented in the context of media reporting on Belgrade Pride Parade 2014 and b) in which way the media image of gender minority groups (which that elite try to advocate for) is really established?

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## ***Jalabi* Practice: a Critical Appraisal of a Socio-Religious Phenomenon in Yorubaland, Nigeria**

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### **Abstract**

*Jalabi is an extant historical phenomenon with strong socio-religious impacts in Yorubaland, south-western part of Nigeria. It is among the preparatory Dawah strategies devised by the Yoruba Ulama following the general mainstream Africa to condition the minds of the indigenous people for the acceptance of Islam. This strategy is reflected in certain socio-religious services rendered to the clients, which include, but not limited to, spiritual consultation and healing, such as petitionary Dua (prayer), divination through sand-cutting, rosary selection, charm-making, and an act of officiating at various religious functions. In view of its historicity, the framework of this research paper revolves around three stages identified to have been aligned with the evolution of Jalabi, viz. Dawah, which marked its initial stage, livelihood into which it had evolved over the course of time, and which, in turn, had predisposed it to the third stage, namely syncretism. Triangulation method will be adopted for qualitative data collection, such as interviews, personal observation, and classified manuscript collections, and will be interpretively and critically analyzed to enhance the veracity of the research findings. The orality of the Yoruba culture has greatly influenced the researcher's decision to seek data beyond the written words in order to give this long-standing phenomenon its due of study and to help understand the many dimensions it has assumed over time, as well as its both positive and adverse effects on the socio-religious live of the Yoruba people of Nigeria.*

Keywords: Jalabi, healing, Islam, Dawah, syncretism

### **Introduction**

*Jalabi* in the Yoruba-Nigerian <sup>1</sup>context designates certain socio-religious services rendered by the Yoruba *ŪUlamÉ*<sup>2</sup> to their clientele, which include, but not limited to, religio-social consultation, charm-making, spiritual healing and an act of officiating at various religious functions. Mustapha Bello defines it as “a system whereby a scholar prepares charms, which are believed to possess supernatural powers for protection against evil and for bringing good fortunes to traders, enhancement of luck...etc. in return for monetary compensation.”<sup>2</sup> Mustapha's definition is not thorough and comprehensive, as it tends to restrict its focus only on one tiny aspect of *Jalabi*, i.e. charm making, and therefore could not rightly put the phenomenon in its proper context.

<sup>1</sup> Yoruba is one of the major ethnic groups, and second most populous, in Nigeria. The people occupy the south-western part of the country, stretching from the upland area to the hinterland of the Lagoon. They speak Yoruba and constitute over 35 million people in total, the majority of whom is from Nigeria, while others spread across West Africa including Togo, Liberia, and Sierra Leone. For more details on Yoruba, see: Samuel Johnson. (1921). *The History of the Yorubas from the Earliest Times to the Beginning of the British Protectorate*. U.S.A: Cambridge Press., T.G.O. Gbadamosi. (1978). *The Growth of Islam Among The Yoruba 1841-1908*. Lagos: Longman Press., Saburi Oladeni Biobaku. (1973) *Sources of Yoruba History*. Clarendon Press.

<sup>2</sup> Bello, A. Mustapha. (2011). Between jalb practitioners and traditional healers of South West Nigeria: A synthesis of method and approaches. *Anyigba Journal of Arabic and Islamic Studies*, V (1), p. 66.

This paper sets about to inquire into the origin of the phenomenon of Jalabi, how it came about and the issues surrounding its inception. The bulk of the discussion therein is tailored towards appraising the phenomenon through its stages of development and certain socio-religious impacts it has got, not only on the Yoruba society but also on their religious belief.

## Etymology

*Jalabi* is a domesticated Arabic word stemming from the triconsonantal Arabic root of *j-l-b*, which has got various meanings and connotations. According to the classic Arabic lexicographers<sup>1</sup>, *al-jalb* is synonymous with *al-Jazb*, meaning to draw or attract. It could also mean to drag something from one place to another if one considers its grammatical inflexion and transitivity as in *jalabahu*, *yajlibuhu* or *yajlubuhu jalaban* or *jalban*. Likewise, it is synonymous with *al-Kasb*, meaning to earn a living or to obtain something as in *jalaba li nafsihi*, or to bring about benefit, good luck or fortune as in *jalaba nafan*. These meanings are particularly relevant, as they not only depict the material end of some *Ulama's* activities, but also the type of spiritual assistance commonly rendered to their clientele to repel evil and bring about fortune. With regard to this meaning, the general statement: *jalb al-manfaah wa da'fu al-madarrah* (bringing about the benefit and warding off the evil) is very well applicable.

Interchangeably, *Ise Alfa* (vocation of the clerics) is common in use among the Yoruba Muslims to designate the practitioner of Jalabi. This terminology needs further clarification to avoid any confusion that may arise thereafter. *Ise Alfa* has a generic connotation in its literal form. Anyone who is versed with the traditional Islamic education would normally be referred to as *Alfa*, thus his practice be described as *ise Alfa*. The nature of this *ise Alfa* is noticeably diverse, for there are *Alfa* who have committed themselves to teaching, while others are known as preachers. In most cases, one *Alfa* may combine two or more *ise Alfa*. At this junction, reference should be made to Sheikh Adam al-Ilori, who, in his *Nas'Em al-Qaba' f'E Akhb'Er al-Isl'Em wa NUlam'E' Bil'Ed Yoruba*, arranged them into four categories;

- a. *Al-Wu'NE'd* (the preachers) both settled and itinerants.
- b. *Al-Mu'Nallim'En* (the teachers), who teach Qur'En at their homes, shops, and mosques free of charge, as they possess other source of income, such as tailoring, weaving and farming, etc.
- c. *Al-NUbb'Ed* and *al-Zuhh'Ed* (devout worshippers and ascetics)
- d. The physical and spiritual healers, who are further divided into three sub-categories: conversant with the prophetic medicine, experts in traditional herbs and their use to cure ailments, and the well versed in *Khatt al-Raml* (sand cutting) and *al-Takahhun* (divination).<sup>2</sup>

The above classification seems to narrow the scope of the phenomenon to involve only the last sub-category. This, on the one hand, is contrary to the general stand maintained by those interviewed among the *NUlam'E'*, who proudly consider *Jalabi* as their profession. On the other hand, it does not put the phenomenon into its proper historical context either. Although, the acts of sand-cutting and divination prevail over the practice of *Jalabi* nowadays, it, nevertheless, does not embody what *Jalabi* is all about.

Whereas, in a more technical manner, *ise Alfa* distinguishes the *Alfa*, who practices *Jalabi* from those who do not, as it implies, first and foremost, the type of practices that are typical of the healers. The Yoruba *NUlam'E'* engaged in the practice of *Jalabi* could be divided into the following categories:

<sup>1</sup> Al-Jawhar'E, Isma'El bin xamm'Ed, *al-Qil'E' TE'j al-Lughah wa Qil'E' al-N'Arabiyah*, (D'Er al-N'ilim li al-Mal'Éy'En, 1990), Al-Mut-iariz'E, N'Esir bin N'Abdul al-Seyyid, *al-Mughrib f'E Tart'Eb al-Mu'Nrib*, (xalab: Maktabah Us'Emah bin Zaid, 1979), Al-zab'Ed'E, Mu'ammad bin Mulammad bin N'Abdul Raz'Eq, *Taj al-N'Or'Es min Jaw'Er al-Qam'Es*, (Kuwait: D'Er al-Hid'Éyah, 2008), Al-Far'Éhid'E, al-Khal'El bin Almad, *Kit'Eb al-N'Ain Murattaban N'al'E' xur'Ef al-Mu'Njam*, (D'Er al-Kutub al-N'Ilmiyyah, 2003), Ibn Man'ðh'Er, Mu'ammad bin Mukrim, *Lis'En al-N'Arab*, (Beirut: D'Er Q'Édir), Abu al-xusein Almad bin F'Éris, *Maq'Éy'Es al-Lughah* (Ittil'Éd al-Kutt'Eb al-N'Arab, 2002), Al-U'Éliq'En'E, Isma'El bin Abb'Ed bin al-N'Abb'Es, *Al-Mul'Éi f'E al-lughah*, (Beirut: N'Ólam al-Kutub, 1994).

<sup>2</sup> Ilori, Adam Abdullah, *Nas'Em al-Qab'E' f'E Akhb'Er al-Isl'Em wa NUlam'E' Bil'Ed Yoruba*, (Cairo: al-Ma'ib'Nah al-Nam'Édhajiyah, 1987) p. 43.

- a. Those who are consulted by people for special prayer using, among others, the Quran, *DalÉ'í al-KhayrÉt*,<sup>1</sup> and other supplications carefully documented and transmitted from one generation to other. This category may best be designated as Quran-oriented *ÑUlamÉ'*, as they do not mix this practice with other method of healing, whether traditional or prophetic.
- b. Those who combine the traditional method of healing with the Islamic, and perform different types of divinations, such as *Khat al-Raml* (sand-cutting), Jin companionship, etc.
- c. Those who have received special training in traditional but not Islamic healing method are referred to as *onisegun* (herbalist). There usually is no difference between this category and the traditional herbalists.
- d. The *gbajue* type (fraudsters), who lead their lives on deceptions and lies. This category is replete with youth and emerging *Alfas*, who are desperate to become wealthy overnight and do not have the mastery of the *ise Alfa per se*.

Of these entire categories, only those that fall in the category 'C' may be excluded from the general reference to the *Jalabi* practitioners. Nevertheless, it was later realized that this category is also consulted for Islamic spiritual healing even though some of them may not want *Jalabi* be associated with them.<sup>2</sup>

All in all, the phenomenon of *Jalabi*, as previously defined, seems to have been widely practiced across Africa under different names, the most common of which is *Mganga* or *Mwalimu*, the terms used to designate a person who practices a healing job in East Africa.<sup>3</sup> *Mganga* is a Swahili word derived from the root *ganga*, which means 'to bind up', or mend what is broken. By extension, *ganga* has become a generic term for healing.<sup>4</sup> While *Mganga* is used for both Muslim and unlettered traditional medicine men, *Mwalimu* is a reserved term for a Muslim, who had studied and learned his skills, and does not treat his client without following procedures described in a written text.<sup>5</sup>

### Origin of Jalabi

The origin of *Jalabi* has been associated with the coming of Islam into Yorubaland, but since one cannot say in precision when the infiltration of Islam actually began in this part of the world, we may not equally know with exactitude the beginning of *Jalabi* practice in Yorubaland. Given the fact that *Jalabi*, from a broader perspective, was among the strategies devised by the Yoruba *ÑUlamÉ'* to win over the animists to Islam, it may well be classified as part of a general mainstream Dañwah strategy in West Africa.

<sup>1</sup> The full title is *DalÉ'í al-KhayrÉt Wa ShawÉriq al- AnwÉr fÉ dhikr al- ØolÉt ala al- Nabi al- MukhtÉr* (rendered in English as the Waymarks of Benefits and the Brilliant Burst of Sunshine in the Remembrance of Blessings on the Chosen Prophet). It is a famous collection of prayers for the Prophet Muhammad, which was written by the Moroccan Sufi and Islamic scholar Muhammad al-Jazuli (died 1465). It is popular in many parts of the Islamic world, most especially West Africa, and is divided into sections for daily recitation. The *Dala'il al-Khayrat* is one of the most popular and universally acclaimed collection of *SalawÉt*. Among some Sunni religious orders, most notably the Shadhili-Jazuli order, its recitation is a daily practice. In others, however, its recitation is a purely voluntary daily practice. The work begins with the ninety nine names of God, and then a collection of over one hundred names of Muhammad.

There are five ways to read *DalÉ'í al-KhayrÉt*: 1- all together in one sitting, 2- in two halves divided over two days, 3- in three third over three days, 4- in four quarters over four days, 5- in eight sections (called *hizb*) over one week. It is traditional to begin the recitation of *DalÉ'í al-KhayrÉt* with the *AsmÉ' al-xusnÉ* and the name of the Prophet (S.A.W). See: al-JazÉlÉ, Muammad b. SulaymÉn, *DalÉ'í al-KhayrÉt Wa ShawÉriq al- AnwÉr fÉ dhikr al- ØolÉt Ala al- Nabi al- MukhtÉr*, edited by Sheikh Abdul Kerim al-Kibrisi. Trans. S. Ahmad Darwish. p. 18. www.naksibendi.org (retrieved 20 January, 2014).

<sup>2</sup> Interview conducted with Mr. Muhalli Abdul Aziz, a Muslim herbalist in Iyana ilogbo ogun state, Nigeria, on 12 June, 2013.

<sup>3</sup> Swantz Lloyd W., *The Medicine Man Among the Zaramo of Dar es Salam* (Sweden: Bohuslaningen, Uddevalla 1990) P. 11-14. Spertling David, *The Frontiers of Prophecy: Healing, the Cosmos, and Islam on the East African Coast in the Nineteenth Century*, In *Revealing Prophets: Prophecy in Eastern African History*, edited by David Anderson and Douglas L. Johnson, (London: James Currey Ltd, 1995) P. 89.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.* 91.

This strategy began the moment the Muslim clerics emerged from quarantine, as Ryan puts it,<sup>1</sup> in the wake of the growth of Muslim communities in many part of West Africa. Initially, they performed variety of clerical functions for these budding communities to which they later added petitionary prayer, healing, divining, and the manufacture and sale of charms and amulets. It is to be added that the side of their activities that touched on magic and superstition constituted the major appeal of Islam in non-Muslim eyes and through this way they won respect and prestige among them.<sup>2</sup>

The earliest Jalabi-related practice was referenced by al-Bakri (1094 C.E) in his monumental work on the History of Africa. He mentioned a chiefdom of Malal, beyond the upper Senegal, that was going through an unending period of drought. Despite the efforts exerted by the priests, the situation even took a turn for the worse. Thereupon, the king appealed to his Muslim guest, who promised to help on condition that he accepted Islam. When the king agreed, the Muslim taught him some easy verses in the Quran and instructed him on fundamental religious obligations. On the following Jumua night, after the king had purified himself, the two set out to a nearby hill. All that night the Muslim prayed and was emulated by the king. The dawn only started to break when Allah brought down abundant rain. The king then ordered the idols be broken, expelled the sorcerers and became Muslim together with his family and the nobility save the common people.<sup>3</sup>

### Jalabi as a Da'wah Strategy

The genesis of the phenomenon of *Jalabi*, as previously mentioned, is ascribed to the effort exerted by the itinerant scholars, who are seen as the possessors of spiritual power to solve many enigmatic problems and to offer special prayers for protection against witchcraft and help cure the people's physical and spiritual maladies. This, perhaps, accounts for the initiative of prince Oluaji, *inter alia*, who is said to have invited some Fulani Muslims to the town during the reign of Oba Alawusa (1739-1774).<sup>4</sup>

A similar but distant incident occurred in other places in Yorubaland, where an Alfa is expected to demonstrate his supernatural ability to make the impossible possible, thereby staking his reputation on his success in performing such miracle. Sheikh Adam al-Ilori reported one such incident in a Yoruba city where the ÑUlamÉ' were forced into a fierce competition with the sorcerers to see whether they would come out of it triumphant and thus establish the genuineness of their mission.<sup>5</sup>

Almost all the Yoruba ÑUlamÉ' are thoroughly acquainted with different ways of preparing medicinal concoction, amulet, charm for whatever purpose. The effectiveness of such activity added to the people's respect and honour for them. This is not surprising given the fact that some of the indigenous Alfa then were either *Babalawo* (traditional herbalist) themselves before they embraced Islam, or had in the line of their ancestors who are renowned for their supernatural power, and its knowledge came to them by way of inheritance. Therefore, the acceptance of Islam, to them, does not mean a complete abandonment of their traditional legacy. In fact, it could be argued that their new religion is believed to have provided them with an additional power and strength.<sup>6</sup> It is even asserted that many of the Yoruba traditionalists, who accepted Islam, did so, not out of absolute conviction but rather for the spiritual power inherent in Islam.<sup>7</sup>

The Islamic teachings they were introduced to did not stress the Islamic law and theology any better than its spiritual aspects. So little did they have of the knowledge that may enable them to measure all that is un-Islamic, until the advent of

<sup>1</sup> P.J. Ryan, S.J. *Imale: Yoruba Participation in the Muslim Tradition*, (Harvard: Harvard Theological Review, Harvard Dissertations in Religion, 1978), p. 4.

<sup>2</sup> El Fasi, p. 72.

<sup>3</sup> Al-BakrÉ, AbÉ ÑUbayd ÑAbdullah b. ÑAbdul ÑAzÉz, *al-MasÉlik wa al-MamÉlik* (Tunis: al-DÉr al-ÑArabiyyah li al-KitÉb, 1992)875., Levtzion Nehemia, *Pattern of Islamization in West Africa* in Conversion to Islam, ed. N. Levtzion (New York: Holmes & Meier, 1979)209-210.

<sup>4</sup> Adebayo, Ibrahim R. (2010). "The Role of the Traditional Rules in the Islamization of Osun State Nigeria". *Journal for Islamic Studies*. Vol. 30.

<sup>5</sup> al-Ilori, p. 42.

<sup>6</sup> This is based on the interviews conducted separately with the following ÑUlamÉ': Sheikh Alhaj Zakariya Yusuf, a retired soldier and founder of kulliyat al-ThaqÉfÉt al-Islamiyyah li al-DirÉsÉt al-ÑArabiyyah wa al-InjilÉsiyyah, in an interview conducted on 15 June, 2013, Alhaj Imam Musa Adayemi, chief Imam of Oke land and the proprietor of Guidance Academy Nursery and Primary school, on 15 June, 2013.

<sup>7</sup> Ibid.

Sheikh Alim Junta and the subsequent establishment of the Ilorin emirate, through which many cities in Yorubaland witnessed an unprecedented influx of the ÑUlamÉ'.

It is pertinent to add here that these scholars, with sincere and intense conviction preached Islam with the little knowledge they had and put their lives on the line to defend its cause. It is not recorded that they ever practiced Jalabi for a living or to preserve their interest, as many of them had what they could call career. On the contrary, Jalabi practice to them was more of humanitarian and preventive.

Several examples of the ÑUlamÉ's tendency to promote Islam through their mystic and spiritual power have been collected from different sources, most of which are the first-hand experiences of those interviewed on the subject.

- In Ibadan, it was reported that the animosity between the traditionalists and the ÑUlamÉ' reached its apex and the situation became so tense that the tiny Muslim community in Ibadan then were forbidden to make *adhan*, and anyone who attempted in defiance of the order would pay with his life. The situation was beginning to take a turn for the worse when sheikh Uthman Basunu performed some special prayers then instructed the Muadhin to resume his duty. Upon hearing the sound of Adhan, all the shrines immediately caught fire. This incident helped the Muslims gained more freedom, respect and caused many people to accept Islam.<sup>1</sup>
- In Lagos, it was narrated that sheikh Abubakr bin Abdullah al-Sunni, a prominent preacher had an encounter with one of the leaders of idol worshippers in 1890 C.E., who threatened to put a hex on him if he does not abstain from insulting their gods. When the man wanted to cast a spell on the sheikh, the sheikh recited some verses of the Quran and blew it on the magician, who, instantaneously fell down in a swoon. Having observed this, the people hastily embraced Islam.

There are countless other isolated cases that could also add to the previously mentioned. They are the efforts made by some individual ÑUlamÉ' who singlehandedly restored the wavering faith of many Muslim families that had almost deflected to Christianity or to the traditional cult in quest for salvation. The sufferings of these families are varied; while some are in dire need of a means of sustenance, some are dying to become parents. Under the guise of total salvation and the gospel of success, many ordinary Yoruba had been lured into Christianity. In a society where the majority of the people are Muslim, it is a shame on the ÑUlamÉ' to see their followers and other fellow Muslims being taken away by their counterparts.

To counter this trend, the ÑUlamÉ' deployed all power at their disposal to see to the problems of the people and go at length to do anything that could possibly help them restore confidence back in the people's mind and convince them of the mighty power of Islam to solve any problem. Consequently, there is a sudden upsurge in the ÑUlamÉ's reliance on the traditional charm and amulet alongside the 'Islamic' healing rituals, divinations and other spiritual manipulations.

The above references illustrates how the early Yoruba ÑUlamÉ' practiced Jalabi as a strategy to propagate Islam among the traditional Yoruba. It could not be considered as something unprecedented, as the practice follows the mainstream African strategy in promoting Islam.

### Jalabi Practice for a Living

*Jalabi* has been initially practised by the ÑUlamÉ in Yorubaland for humanitarian purposes without expecting any compensation whether in cash or kind, but later evolved into a means of livelihood when there were no other practical alternatives. Three factors are identified to have contributed to this new dimension, namely educational, economic and social factors.

#### Educational factor

The introduction of Islam in Yorubaland was an important turning point, as it marked the dawn of a new era when the advancement of unbelief was brought to an abrupt end. This is so because the introduction of Islam to this part of the world

<sup>1</sup> Interview with Alhaji Haruna suara Baosar, Chief imam of Ibadan oyo state on 1st June 2013 at his home residence.

was coupled with the emergence and later the spread of scholarship. The warmest reception, commitment and passion accorded to this new religion by the early indigenous Muslims aided the transformation of Yorubaland from where “unbelief predominates”<sup>1</sup> to where considerable number of believers dwelled and thrived. This positive attitude travelled far afield to invite a horde of learned Muslim scholars, such as Sheikh Aġmad Qifu of Katsina origin and Sheikh ŃUthmĒn bin AbĒ Bakr (a.k.a Basunu)<sup>2</sup> of old Borgu origin,<sup>3</sup> and a host of others, to settle in Ibadan<sup>4</sup> for the purpose of propagating the knowledge of Islam. Many of these scholars had first settled in Ilorin,<sup>5</sup> the first centre of Islamic learning in Yorubaland, before they finally dispersed across other Yoruba cities in the south-west.

Students from every corner of Yorubaland where Islam had penetrated flocked to Ilorin or otherwise moved to Ibadan, which later became a reputable centre of learning, especially, under Sheikh HarĒn bin Sultan, a disciple of Sheikh Abubakr bin al-QĒsim (alaga).<sup>6</sup> This is how students gathered around these early scholars, and, after completion of their studies, they themselves became notable scholars in their hometowns where they established a similar system of learning. Hence, a system of *madrasah*, known in Yorubaland as *ile kewu*, eventually emerged.

The early form of *madrasah* was more or less a *katĒtĒb*-like situated in a scholar’s residence (in his parlour, veranda or under the shade of a tree) with a number of pupils ranging from ten to forty or even more sitting in a semi-circle, holding their wooden slate and chanting repeatedly verses of the Quran written on their slates. This rote learning would eventually help the pupils not only to memorize the selected chapters in the Quran but also to acquire rudimentary skill of writing.<sup>7</sup> The completion of this stage does not signify the end of Islamic learning at *madrasah*, but rather the end of what may be regarded as the primary level of the system, at the end of which a *Walimot* ceremony would come up.

Students at the secondary level of the system receive much broader knowledge; they would start by learning the *TafsĒr* (Quran exegesis) of the memorized chapters. Besides that, they are also introduced to subjects like Hadith, Fiqh (Islamic Jurisprudence), *al-Nalw* and *al-Āarf*, (Arabic syntax and grammatical inflexion), *al-BalĒghah* (rhetoric) etc. At the successful completion of this stage, students would have acquired some proficiency in the Arabic language and are able to read, understand and interpret many of the works of earlier scholars and be ready to be awarded a licence empowering them to practice as teachers and imams.<sup>8</sup>

The system outlined above portrays the *madrasah* in its primordial form, but as time went by many reforms had been introduced into the system that considerably improved it. As a result, there emerged new forms of modern Islamic *madrasah* with a clear goal and unique system of learning. Prominent among which are *Markaziyyah*<sup>9</sup> and *MĒnahdiyyah*<sup>10</sup> systems. They all employed the tripartite *IbtidĒ’iyyah-IĒidĒdiyyah-ThĒnawiyyah* system but without any established standard curriculum. Certificates are awarded to successful students at the completion of each stage of learning, and the total years of study, with variation, would be eleven to twelve years.

<sup>1</sup> This is an often quoted statement of the former Sanhanja scholar, Ahmad Baba al-Timbuktu, on the Yorubaland. Since Ahmad Baba died in the first half of the seventeenth century, we can safely assume that this part of the world was by then known to the Muslims. But, there is nothing that may suggest that the Yorubaland was not known even before that time.

<sup>2</sup> al-Ilori, Adam Abdullah, *NasĒm al-ĀabĒ’ iĒ AkhbĒr al-IslĒm wa ŃUlamĒ BilĒd Yoruba* (Cairo: al-MaĒbĒnah al-NamĒdhajjiyyah, 1987)138.

<sup>3</sup> Borgu is an inland region of western Africa, covering parts of what is now Benin and Nigeria and bounded northeast and east by the Niger River. "Borgu." Encyclopædia Britannica. Encyclopedia Britannica Ultimate Reference Suite. Chicago: Encyclopedia Britannica, 2012.

<sup>4</sup> Ibadan is the capital city of Oyo State and the third largest metropolitan area, by population, in Nigeria, after Lagos and Kano

<sup>5</sup> Ilorin is one of the largest cities in Nigeria and is the capital of Kwara State.

<sup>6</sup> Fafunwa A. Babs, *History of Education in Nigeria* (Ibadan: NPS Educational Publisher Limited, 2002),52.

<sup>7</sup> The students acquire writing skill by copying whatever their teacher wrote on the board several times on their wooden slate, washed it and start over again. It is so slow and painstaking but very effective, especially for the Quran memorization. Any *ĒĒfĒz* trained in such manner would hardly have problem recollecting what he had memorized of the Quran.

<sup>8</sup> Fafunwa, p.55-57.

<sup>9</sup> *Markaziyyah* refers to the first modern *Madrasah* system emerged as a result of reformation introduced to the Islamic learning system. It was founded by Sheikh Adam Abdullah al-Ilori in 1952 under the name *Markaz al-TaĒlĒm al-ĒArabi al-IslĒmĒ* (Center for Arabic and Islamic studies) and located at Agege, a suburb and local government area in Ikeja Division of Lagos state, Nigeria.

<sup>10</sup> This system was introduced through the founding of *al-MaĒhad al-NajĒĒrĒ* by sheikh Alhaj Murtadah Abdul Salam in Ibadan in 1957.

Interestingly, in principle, the proprietors of the reformed *modrasah* are not hostile to western education; rather they encourage their student to pursue it to complement their religious training since the fear they used to have of the possibility of their pupils being evangelized is no longer a reality. Yet, unfortunately, there are many challenges in this new educational policy facing students previously trained at the *madrasah*, the major of which lies with the certificate that would qualify them for the higher learning, since the government does not recognize any certificate awarded by these *madrasahs*.

To respond to this challenge, some proprietors have their *Madrasahs* affiliated to Ahmad Bello University (ABU) in Zaria, and, as a result, modified their curriculum or initiated a new Diploma program along the ABU accredited curriculum. Any graduate of this new program would gain a direct entry into Ahmad Bello University. This step really proves effective, but many proprietors seemed not to be ready to follow suit.

Alternatively, by virtue of a keen interest that many governments of Arabic speaking countries, both in Middle East and North Africa, showed in the affairs of Nigerian Muslims, the graduates of these *Madrasahs* are offered scholarships to further their studies at Saudi Arabian, Egyptian, Sudan and Libyan universities, etc.

Conversely, a particular quarter among the *ŪlamÉ*, known nationwide as *Zumratul Mu'minĒn* (a.k.a *Mokondoro*), have stubbornly refused to budge and resisted any reform of any kind that will change their orientation. They are always scornful of those that have had their systems reformed and labelled it unworthy type of Islamic education. They do not allow their children be sent to any *madrasah* except those established by their graduates. They also forsake western education, except until recently, and adopted a policy of isolation to insulate their children from being proselytized. Consequently, this attitude was to their own disadvantage. Hence, while there are many opportunities for the students graduating from the modern *modrasahs*, graduates of the *mokondoros*' are stuck in dead ends. They could neither make it to a higher institution nor affiliate their schools to either a local or an international institution. Instead their graduates prefer to start up their own *madrasahs* and search for students everywhere in their community.

It is never difficult to fill these newly established *madrasahs* with pupils, as the Muslim parents would readily enrol their kids, especially when they realize that they are always free of charge. These budding *Alfas* are not only expected to teach, but also to play the role of custodian for their pupils. In some cases, the *Alfa* would take the responsibility of feeding and clothing the pupils, who are left with them at the request of their parents. Some parents may not even bother to pay a visit to their children in a year round, leaving their fate at the hand of their teachers. While this addresses the religious needs of the community, it leaves the question on the survival of the *Alfas* unanswered. Whether they impose a meagre fee on the pupils (usually in modern *modrasahs*) or not (as it is the case in *mokondoros*'), whatever they eked out is barely enough to live on.

Thus, since all the effort to improve their living through their establishments had proved futile, these religious teachers are left with no option except to have recourse to *Jalabi*.

### Economic factor

The economic factor that contributed to the rise of the Yoruba *ŪlamÉ* in *Jalabi* practice is not unconnected with the embarrassing failure of the Nigerian government in administering fair and even distribution of the nation's wealth among all its people. However, in the context of the present study, it is an offshoot of the educational factor. When the graduates of the *Madrasah* system, are not equipped with any other skills that may serve as an alternative source of income and the certificate awarded to them are not recognized by the government, they would therefore devise a means for their survival.

Additionally, the time spent at *Ile kewu*, which is quite longer than the one spent by those who attend government schools, could not afford them the opportunity to try out other profitable vocations. Where they are intent to do so, they would definitely forsake being apprenticed to their age group. In order to survive and at the same time discharge their religious duties, they are compelled to take to teaching. Frankly speaking, this type of teaching job does not have any stake for them, as it could only provide them the opportunity to subsist on the donation, either from the community or from the parents of their pupils.

On the other hand, it is considered a taboo from the *Mokondoro* point of view that its graduate be employed under the government or elsewhere. They do not look out for jobs, as they have been considered, upon their graduation, as *ŪlamÉ* qualified to set up their learning centers, give social and religious consultation, engage in healing practice and preside over

any religious gathering. They never take any salary or collect any fees from their students; instead they spend on them having complete reliance on Allah.<sup>1</sup> This principle features in their popular poem which runs thus:

Eba wa beluwa eyin baba  
 Kewu wa tiake ni wajuu yin  
 Kama mosi kasi remi gigun lo  
 Kama fi lawani serusin ljoba

Translation

Pray for us o' you our teachers  
 That our study under you  
 Should make us prosper and elongate our lives and  
 keep us away from being government servants.

The above poem shows how detestable is the idea of being employed by the government to any member of the *Mokondoros*, to the point that they have to make special supplication in that regard.<sup>2</sup> In an occasion where one of the members built a house, or bought a car, etc. they demonstrate the sufficiency of their *kewu* (Islamic education), and the fact that it is Allah that provides for them, in the following poem:

Omo ko lagbe fi sose  
 Omo ko lagbe fi sose  
 Kewu ti ake losi ogbodota  
 Omo ko lagbe fi sose

Translation

We do not use the kids for money ritual  
 On the contrary, it is our *kewu* that defies poverty

It will become apparent that *Jalabi*, to these *Alfa*, should not only be practiced for humanitarian purpose, but also as a means for their survival.

### Social factor

In Yorubaland the clerical work means more than what has been mentioned so far. The *ŃUlamÉ'* are believed to possess super natural power and have knowledge by which they can allegedly see into the future. They could cause the rain to fall during a drought, make the rulers win their wars, offer special prayer for protection against witchcraft, etc.<sup>3</sup> On this basis, people from different walks of life and diverse religious backgrounds patronize them for spiritual consultation. They come to them for issues ranging from health to a more complex and rather personal, and are entertained with prayers (wherever

<sup>1</sup> An interview conducted at Ojoo, Ibadan Oyo state with Alhaj Muhamad Olore, the khalifah of the late famous Olore and one of the prominent leaders of Mokondoro, who revealed that a Mokondoro graduate should not work but cater for social and religious need of his community by teaching the children.

<sup>2</sup> It was also further justified by a belief that if a scholar receives a salary from the government or elsewhere, it would affect his spiritual power that enables him to have his prayer accepted whenever he did.

<sup>3</sup> Balogun S.A. "History of Islam up to 1800" in *Groundwork of Nigerian History*, edited by Edited by Obaro Ikime (Nigeria: Historical Society of Nigeia, 2004), 221.

it is appropriate), charms, amulet, sand-cutting, and so on. From this perspective, their job looks so similar to that of *bablawo*.

In the practice of *Jalabi*, the ÑUlamÉ' do virtually everything that the *bablawo* does, to such an extent that one may hardly find any difference between the un-Islamic local tradition and Islam. However, to them, this is justified, as they see it as a means to not only gain the confidence and patronage of their clientele, but a way to prove to the Muslims that every problem can be managed within the fold of Islam.

If at all the the ÑUlamÉ' forsake practising *Jalabi*, it would create a vacuum that might be filled with *bablawo* and evangelists of salvation. In Yorubaland today there is hardly a Muslim who has never experienced *Jalabi* in one way or the other, which demonstrates its steady growing influence. It has become a popular industry offering services which people from every walk of life are willing to pay for. This suffices to endear *Jalabi* practice to many ÑUlamÉ', who do not have sufficient and regular income. Regrettably, due to its alluring prospect, many unprofessional and amateur young *Alfas* (and even sometimes non-*Alfa*), having stumbled on some records detailing the use of herbs with verses of the Quran, greedily forced themselves into the system.<sup>1</sup> While the elderly among the ÑUlamÉ' still live below poverty line, these set of people, with their unorthodox method of operation, lead a luxurious and flamboyant lifestyle.

### Jalabi as Syncretism

The term syncretism, or otherwise known as eclecticism, whose equivalence in Arabic is *al-TakhlĪĪ*, denotes the merger, combination or the alliance of different, often seemingly opposing, religious or philosophical beliefs, thereby creating a linkage between orientations that are intrinsically disparate.<sup>2</sup> Syncretism hinges on the assumption that the people practicing it have inappropriately and chaotically mixed what are essentially alien to each other. While the term is occasionally used to delineate the mixing of sectarian positions, like the fusion of different theology within the same religion, as is the case with Shiite and Sunni theologies, it is more often than not associated with inter-religious encounters, such as Catholicism and Voodoo in New Orleans,<sup>3</sup> Islam, Christianity, Hinduism, Jainism and Zoroastrianism in the Mughal empire at the time of its emperor, Akbar (1506 C.E).

As far as *Jalabi* is concerned, there is no gainsaying the fact that it has been practiced in different ways employing different approaches, some of which are claimed to be Islamic while others are typical of Yoruba tradition. On this basis, the method employed could be classified into two categories: *Jalabi* with Divine method, *Jalabi* with a mixed method.

### Divine Method

Unlike what is accustomed to by the early generation of Islam, Yoruba ÑUlamÉ' applied the Divine method in a wider and diverse manner. Perhaps what gives this diverse application its basis is the flexible and open-ended nature of this category, which is grounded in both the Quran and the Sunnah. In the Quran Allah says:

*Indeed We send down of the Quran that which is healing and mercy for the believers...<sup>4</sup>*

In his *al-LubÉb fĒ ÑUIĒm al-KitÉb*, al-NuÑmĒnĒ stresses that the Quran in its entirety is a cure for those who believe in it. It cures spiritual diseases (both of bad ideology and morally condemnable acts) and physical diseases if one seeks the blessing of Allah through its recitation.<sup>5</sup> This interpretation is agreed upon by all Quranic exegetes without any difference

<sup>1</sup> The researcher has lived in the same community with such people, and was able to observe them during his field research in south-western Nigeria.

<sup>2</sup> Stewart Tony K. and Ernst Carl W. "Syncretism" in *South Asian Folklore: An Encyclopedia*, ed. Peter J. Claus and Margaret A. Mills. <http://www.unc.edu/~cernst/pdf/Syncretism.pdf> (accessed 29 March, 2014).

<sup>3</sup> Maranise Anthony M. J. (2012) "Investigating the syncretism of Catholicism and Voodoo in New Orleans" *Journal of Religion and Society*, Vol. 14. Pg. 1.

<sup>4</sup> Sura al-Israa, verse 82.

<sup>5</sup> Al-NuÑmĒnĒ, AbĒ xafĪ SirĒĵ al-DĒn ÑUmar bin ÑAIĒ, *al-LubÉb fĒ ÑUIĒm al-KitÉb*, vol.12 (Beirut: Dar al-Kutub al-Ilmiyyah, 1998) 369.

of opinion as to whether the *shifÉ'* (cure) mentioned in the above verse is used in its real sense or figuratively.<sup>1</sup> In another verse, Allah says:

*And if there was any Quran by which the mountains would be removed or the earth would be broken apart or the dead would be made to speak, (it would be this Quran), but to Allah belongs the affair entirely...<sup>2</sup>*

The above verse is a conditional sentence (*al-Jumlah al-Sharġiyah*) which consists of two clauses; a conditional clause specifying a hypothesis and a consequence clause indicating what follows from that condition. However, in this verse, a conditional clause is stated while the consequence clause is omitted. According to the Quran exegetes, the omission of the latter occurs for different reasons, but in the current context it emphasizes how mighty is the power inherent in the recitation of the Quran, the extent of which is left to our unending imagination. The presumed consequence clause could therefore be *lakÉna hÉzÉ Qur'Én* (it would be this Quran).<sup>3</sup>

The Yoruba ŃUlamÉ' find strength in this verse and the presumed consequence clause to embark on healing practices using verses of Quran in different ways that have never occurred to the early generations of Islam. They believe that if the recitation of the Quran is so powerful that it could be used to remove a mighty mountain or break the earth apart, could not it then be used against black magic or for healing from irremediable diseases?<sup>4</sup>

Moreover, there is a prophetic tradition narrated by Imam Ālmad on the authority of ŃAbdullah bin MasŃÉd that the Prophet said while teaching them *al-Tashahhud*: "... then let everyone chooses the supplication that interests him and supplicates Allah with it". This Sunnah has given a complete freedom and authority to Muslims to choose whichever *DuŃÉ* they like to supplicate Allah with.<sup>5</sup> While *al-ma'thÉrÉt* (supplications from Quran and sunnah) remains the best option,<sup>6</sup> it is sunnatic that a Muslim chooses for himself a *DuŃÉ* that is good as long as it does not involve any *shirk*.

On this basis, healing with divine method has been practiced in different ways, some of which are truly divine while others are not but a travesty of divine. Common Jalabi practices with divine method are: the recitation of the whole Quran or certain selected suras or verses, writing of the whole Quran or some selected verses on a slate, mirror, cloth, paper or other clean objects, the recitation and writing of Allah's names (both known and unknown), and those of the Angels, and Jinns, the codification of all the above mentioned in a talismanic way known as *Khatim* (katimi) to complement the above methods in order to give an effective result.

Various ways of using the Quran in this category had been found in some personal collections consulted during the fieldwork in Lagos, Oyo, kwara, Osun and Ogun states. Documents in forms of manuscript in Arabic, Ajami and Yoruba formats retrieved from these personal collections are so large in quantity but not organized. Many of them are not dated neither do they bear the names of their authors, perhaps due to the oral method of its transmission from one person to another. Where a name is mentioned, it would not be that of the author, but rather of the one from whom the *nakali* was obtained. This appears to be just a sign of acknowledgement.

<sup>1</sup> For more detail see: al-SaŃdÉ, ŃAbdul RaġmÉn bin NÉġir, *TaysÉr al-KarÉm al-RaġmÉn fÉ TafsÉr KalÉm al-MannÉn* (Mu'ssasatul RisÉlah,2000)465., al-TafsÉr al-WasÉġ li al-Qur'Én al-KarÉm authored by a group of scholars under the auspices of al-Azhar Center for Islamic Research. Vol.5 (Cairo: al-Hayhah al-ŃŃmmah li al-Shu'Én al-MaġÉbi' al-AmÉriyyah,1973) 795., al-ShingÉġÉ Muġammad al-AmÉn bin Muġammad al-MukhtÉr, AdwÉ'u al-BayÉn fÉ TafsÉr al-Qur'Én bi al-Qur'Én, vol.3 (Beirut: Dar al-Fikr li al-ŃibÉŃah wa al-Nashr, 1995), 181.

<sup>2</sup> Sura al-RaŃd, verse 31.

<sup>3</sup> Ibn ŃŃshÉr Muġammad al-ŃÉhir bin Muġammad al-ŃÉhir, *al-TaġrÉr wa al-TanwÉr*, vol.2 (Tunisia: al-DÉr al-TÉnisiiyyah li al-Nashr, 1984), 94., al-BiqÉŃÉ IbrÉhÉm bin ŃUmar, *Nadhm al-Durar fi TanÉsub al-Ńyat wa al-Suwar*, vol. 10 (Cairo: DÉr al-KitÉb al-IslÉmÉ),266., al-BaydÉwÉ NÉġir al-DÉn ŃAbdullah bin ŃUmar, *AnwÉr al-TanzÉl wa AsrÉr al-Ta'wÉl*, vol.3 (Beirut: DÉr ġyÉ al-TurÉth, 1418), 188.

<sup>4</sup> Al-ġlori Ńdam ŃAbdullah, *NasÉm al-ŃabÉ fi AkhbÉr al-IslÉm wa ŃUlamÉ' BilÉd Yoruba* (Cairo: MaġbaŃah al-NamÉdhajiiyyah,1986),41.

<sup>5</sup> Ālmad bin xambal, *Musnad al-Imam Ālmad bin xambal*, vol. 4 (Cairo: DÉr al-xadÉth, 1995),143., al-BayhaqÉ Ālmad bin xuseyn, *al-DaŃwÉt al-KabÉr*, vol.1 (Kuwait: GarrÉs li al-Nashr wa al-TawzÉŃ,2009),179.

<sup>6</sup> See for more detail: al-Imam Jalġl al-DÉn al-SuyÉtÉ. (1994) *DÉŃÉ al-FalÉġ fÉ AdhkÉr al-MasÉġi wa al-ŃabÉ'i*. Cairo: al-DÉr al-Maġriyyah al-LubnÉniyyah.

Interestingly, there is sufficient evidence to assume that many of these manuscripts could have been written about a century ago or even earlier. The frequent mentioning of the words sultan, horse and slave in these documents<sup>1</sup> suggests that they had been written as early as the era of Islamic emirates in this part of the world. The nearest one that comes to mind is non-other than the Sokoto and Ilorin emirates, where the title 'sultan' is used solely to address the supreme leaders of these Islamic states. The contexts in which the term sultan appeared typified the time when Sultans became indispensable, at whose mercy were all the subjects. In this kind of situation, what people would ever hope for is how to get closer to the court of the Sultan by all means, a fact which explains the proliferation of magical practices and fetishism. This assumption is supported by the many attempts to win the affection of the Sultan or to gain his favor through different kinds of supplications and talismanic applications recurred in those documents.

It is noteworthy to add here that the recurrent themes of all the manuscripts at hand, having been thoroughly scrutinized, falls mainly into three categories; wealth and prosperity (*jalb al-Rizq*), love (*Jalb al-Malabbah*) and protection (*jalb al-ʾifḍ*). But this does not mean that the manuscripts deal exclusively with these three themes. Quite on the contrary, there are tens of problems addressed therein ranging from a mild issue of 'memory boosting' to a complex issue of killing one's adversary.

### Traditional and Mixed Methods

Regarding the traditional and mixed methods, there are ample evidences to argue that many of them do not fall within the parameter of the Sharʿiḥ. There is nothing wrong in the pure traditional method, as it is equivalent to the natural method practiced and approved by the Prophet. The traditional medicine may also be referred to as folk, complementary or indigenous medicine. All these terms are often used interchangeably, but sometimes due to certain overtone that one may want to highlight one particular term would be preferred.

According to the definition of the World Health Organization, this medicine is " the sum total of the knowledge and skills and practices based on the theories, beliefs and experiences indigenous to different cultures, whether explicable or not, used in the maintenance of health, as well as in the prevention, diagnoses, improvement or treatment of physical and mental illness. <sup>2</sup> The above definition highlights the general nature and development over generations of the traditional medicine and its diverse practices across human cultures.

In many places in the developing world, particularly in Africa, an overwhelming majority of the people still relies on traditional medicine for their health needs. The traditional medicine that is peculiar to the Africans involves, but not limited to, charm, amulets, ritualistic incantations or the use of animal (or human) part, minerals and crude plant materials, such as leaves, fruits, roots, seeds, stems, bark or other plant parts, which may be ground up to small particles or powder and subsequently steamed or steeped, or entirely burned to black substances. The common herbal preparation with animal or human organ involves grinding and mixing with other herbs, or roasting or burning to black substance, which may later be mixed with palm oil or the Yoruba traditional corn starch porridge (*ogi/eko*).

The general principle guiding the use of the traditional medicine in Islam is not based on the practice of one particular culture or nation, as wrongly perceived by some Yoruba Muslims, who stubbornly preach against the use of the Yoruba traditional medicine in favour of the Arabs folk's medicine. It is important to point out that the use of herbs to treat any kind of diseases is a common phenomenon among the people of different races, and that both its documentation and usage form central part of their medical scholarship. In the case of the Arabs, for example, Ibn Khaldun, in his famous *Muqaddimah*, observes that the pre-Islamic Arabs used herbs and plants for medical purposes, mainly based on individual experiences as handed down by the *shaykhs* and old women of the tribe.<sup>3</sup> He also mentioned one famous Arab medical expert, called al-ʾErith ibn Kalada, and his sojourn in Jundishapur near Ahwaz in Iran to seek more knowledge of herbal medicine in the pre-Islamic period.<sup>4</sup>

<sup>1</sup> "Seeking fine cloth, horse and money", (no date). (Ar.). Personal collection, no. 102. (Retrieved 12 April, 2014).

<sup>2</sup> Zang Xiaorui, *General Guidelines for Methodologies on Research and Evaluation of Traditional Medicine* (Geneva: World Health Organization, 2000) 1.

<sup>3</sup> Ibn Khaldun, *The Muqaddimah* (trans.) Franz Rosenthal (U.S.: Bolingen series Princeton, 1969), 935.

<sup>4</sup> *ibid*.

Apart from herbs, the traditional medicine also involves the use of charm, talisman, amulets and spells, as the people believe in supernatural forces, such as evil spirit, witchcraft and so on. Thus, they seek traditional medicine to repel evils and shield themselves against any imminent danger of supernatural origin.

Islam deplores all such rituals of seeking refuge from evil spirit and considers it as a sort of polytheism, which Allah will not pardon until one repudiates all his polytheistic acts and return to the true faith.<sup>1</sup>

In the Yorubaland today, the majority of the ÑUlamÉ' believe in these two types of healing methods and practice them on daily basis. They do not seem to see them as contravening with the principle of Islam; instead they adamantly defend them, and would be ready to fight to their last breath with anyone who criticizes them. These idolatry practices, no wonder, have defiled the pristine Islamic teachings and principles, and have created confusion in the mind of the generality of the Yoruba Muslims. People do not seem to know what constitute Islam anymore, because of the accommodating method of the ÑUlamÉ' to all the un-Islamic practices in the society.

## Conclusion

It has been deliberated upon throughout the foregoing pages that *Jalabi* is an extant historical phenomenon with a strong connection to the coming of Islam. It was used as a mechanism to condition the mind of the Yoruba animists to accept Islam and thereafter consolidate their faith after they have embraced Islam. Its origin remains shrouded with mystery, as no specific date could be assigned to its inception. All we may say, based on the available resources, is not more than its companionship with Islam during the latter's infiltration into Yorubaland. Its impacts on the lives of the Yoruba are immeasurable, as the phenomenon has become an important fabric of their society that could neither be abolished nor possibly forsaken. Admittedly, it has been hijacked and utterly abused by certain quarters among the Ulama out of covetousness and greediness, which has eventually plunged the practice of *Jalabi* into syncretism, an act that is outrightly condemned in Islam as being in direct conflict with its fundamentals. Nevertheless, this does not by any means render its essence un-Islamic. It is therefore a matter of necessity to sift the practice from what has been associated with it based on strict Islamic principles.

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<sup>1</sup> al-MiÉ, MubÉrak bin MuÍammad, *RisÉlah al-Shirk wa MaÐÉhiruhÉ* (Saudi Arabia: Dar al-RayÉl li al-Nashr wa al-TawzÉÑ, 2001)213-239.

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## Confusion Concerning the Use of *Maqasid Al-Shari'ah* in some Social Issues in Malaysia

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### Abstract

*Social issues relating to the Muslim ummah's permissibility of polygamy for males and obligatory veiling (hijab) for females have become polemic in Malaysia. This polemic is dealt with by using the argument of maqasid al-shari'ah (purposefulness of shariah). However, there is much confusion in presenting the argument of maqasid al-shari'ah whereby the role of reason is given priority over considerations of explicit meaning of the text or evidence in shariah when a social issue is submitted. Hence, this paper explains the confusion in order that any form of resolution to social issues is in accordance with the spirit of al-Quran and Hadith. The method used in this study is document analysis. Among the documents used is, The Relationship Between Islamic Human Rights And The Maqasidic Approach, Muslim Women's Quest for Equality: Between Islamic Law and Feminism, Feminist Movement, Gender Equality and Religious Understanding and Dawabit al-Maslahah fi al-Shari'ah al-Islamiyyah (The Guidelines for Public Interest in Islamic Shariah). Research results find that the dawabit (parameters) control the application of maqasid al-shari'ah (the ultimate objectives or goals of Shariah). This is because dawabit plays a role in balancing between proof of Shariah text or evidence in partial (juz'iy) form and maqasid al-shari'ah in general or universal (kulliy) form. These dawabit (guidelines) are compiled to ensure that the application of maqasid al-shari'ah fulfils the true discipline of jurisprudence in the context of textual interpretation of al-Quran and al-Sunnah when issuing rulings extracted from these sources.*

**Keywords** : Social, Maqasid al-Shari'ah, al-Quran, Hadith

### INTRODUCTION

Malaysia has several social issues that have become polemic among the Muslims here. For example, the Joint Action Group for Gender Equality (JAG) (2014) cannot accept it that women would have to cover their hair from the sight of a 'non-Mahram' (marriageable individual). According to JAG, this is against the principles of universal justice; what more if it is associated with Islam, which is formed based on justice. In other words, JAG is of the view that in order to achieve *maqasid al-shari'ah* (the ultimate objectives or goals of Shariah), freedom should be given to women to abstain from wearing the *hijab* so that there is fairness between man and woman on the issue of clothing. However, the religious authorities in Malaysia have an opposite view, whereby to wear the *hijab* is *maqasid al-shari'ah* and not vice versa. Feminist movements in other places shared the same view held by JAG. For example, Iran and Malaysia were accused of misinterpreting the al-Quran on this issue (Sanam Wakil, 2004), which had caused the failure to achieve *maqasid al-shari'ah*.

Besides that, the issue on polygamy is also fiercely debated. From one aspect, the Sisters in Islam (SIS) are steadfast that Islam only allows a Muslim man to marry one woman at any one time (1993). Marrying more than one woman is considered as deviating from the teachings of Islam (Abdullah et. al, 2015). SIS is of the view that achieving *maqasid al-shari'ah* in a fair and harmonious marriage is not to practice polygamy. From another aspect, the majority of Muslims, especially the religious authorities, do not forbid the permission for any qualified individual to practice polygamy. This group argues that achieving *maqasid al-shari'ah* is to practice polygamy with the intention of helping women experience the essence of marriage, especially when the ratio of unmarried women far outweighs men.

Both these issues could be used as examples of polemic in Malaysia that is based on *maqasid al-shari'ah*. Hence, a guideline on the use of arguments about *maqasid* (objectives or goals) recognised by *syarak* should be set up. The guidelines or *dawabit* for the *maqasid* is necessary in order to identify the Islamic law according to the al-Quran and Hadith. Thus, the study on *dawabit maqasid al-shari'ah* has not received much attention from researchers in the field of *maqasid*, although researchers have laid emphasis on the application of *maqasid al-shari'ah*. For example, Husni, A. B. M., et al., (2015) emphasised the important role of *maqasid al-shari'ah* in solving problems related to working wives. Omar, A. F., et. Al (2012) and Mohd Nor, A. H., et. Al (2012) applied *maqasid al-shari'ah* in the formation of national policies. Laluddin, H., et. Al (2012) also applied it to research on human rights. Other researches include its application in the financial and banking sector (Mansour, W, et. Al, 2015, Mansour, W., 2014, Belabes, A. S., 2014, Mohammad, M. O., & Shahwan, S., 2013) and many more.

Hence, by looking at the early history of *maqasid al-shari'ah*, al-Shatibiyy, as among the figures that pioneered the debate on *maqasid al-shari'ah*, had not elaborated further about *dawabit*, although it is necessary when ensuring that the rulings (*hukum*) based on *maqasid al-shari'ah* do not contradict the al-Quran and Hadith. This is because the *maqasid al-shari'ah* is only *ma'na kulliy* (complete induction), which is the summary of a collection of rulings (*hukum*) in the form of *juz'iyy* (partial rulings) that is based on *tafsiliyy* (in detail or comprehensive form). Therefore, *maqasid* must be monitored to ensure a balance between the objective that is based on *kulliy* and the religious references for the rulings (*dalil hukum*) that are based on *tafsiliyy*. When the balance has been achieved between the *kulliy* and *tafsiliyy*, the contradicting issues between *maqasid al-shari'ah* and the other religious references (*dalil*) from the *syarak* would not arise. This is because the *dawabit* acts by exposing the meaning of *kulliy* and at the same time becomes a binding force for the religious references (*dalil*) related to the rulings that are in the form of *tafsiliyy*.

#### **DAWABIT AL-MASLAHAH IN THE CONTEXT OF DISCUSSING MAQASID AL-SHARI'AH**

The relationship between *al-maslahah* and *maqasid al-shari'ah* is clearly seen in the definitions of both these terms. The definition for *maqasid al-shari'ah* is "an objective determined by Islamic *syariat* and achieved in the interest of human beings" (al-Raisuniyy, t.th). The objective covers several elements such as *daruriyyah*, *hajiyah* and *tahsiniyyah* (al-Shatibiyy, t.th), which contains five basic elements such as religion, the soul, the mind, family lineage and property (al-Butiyy, 2010). Whereas, the definition of *al-maslahah* according to scholars on *fiqh* is summarised<sup>1</sup> as "benefits referred to by Allah SWT, The Most Wise, for his subjects who preserve and nurture their faith, soul, mind, family lineage and property" (al-Butiyy, 2010).<sup>2</sup>

Based on both the definitions above the common factor between both the definitions is the preservation and nurturing of faith, soul, mind, family lineage and property, which is found in three segments such as *al-daruriyyat*, *al-hajiiyyat* and *al-tahsiniyyat*. Therefore, *maqasid al-shari'ah* and *maslahah* are actually two faces of the same coin. Hence, indirectly *dawabit* for *maslahah* is similar to *dawabit* for *maqasid al-shari'ah*. Thus, elaborations about *dawabit al-maslahah* are important, especially when discussing *maqasid al-shari'ah* as an instrument for formulating rules (*hukum*) on *syarak* based on references from the Al-Quran and Hadith.

#### **DAWABIT AL-MASLAHAH AL-SHAR'IYYAH**

*Dawabit* is the plural for *dabit*, which means "to protect or preserve (al-Raziyy, 1992) something from mixing with something else" (al-Butiyy, 2010). *Maslahah* needs to be protected by *dawabit* because *maslahah* is not a religious reference by itself, such as the al-Quran, al-Sunnah, *ijmak* or *qiyas* but it is only *ma'na kulliy*. This means that *maslahah* is formed based on the conclusions made after compiling the rulings (*hukum*) in the form of *juz'iyy*, which relies on religious references that are *tafsiliyy* (al-Butiyy, 2010).<sup>3</sup> Hence, *maslahah* (*benefits*) must be nurtured and controlled so that there is a balance between its meaning according to *kulliy* and the rulings (*hukum*) based on the religious references (*dalil atau nas*) that are *tafsiliyy*.

<sup>1</sup> This is because there are numerous definitions given although the topic of discussion is the same.

<sup>2</sup> This is the result of the conclusion made by al-Butiyy based on the definitions by al-Ghazali and al-Razi.

<sup>3</sup> After *istiqra'* is initiated towards all the religious references in the *syarak*, either the al-Quran or Hadith, thus it was found that it was intended to safeguard the *maslahah* and reject the *mafsadah*.

In other words, the benefits (*kemaslahatan*) accrued via cognizance and observation of the rulings (*hukum*) in the *syarak* in the form of *juz'iy* is congruent and does not contradict the religious references (*nas*) in the *syarak*

Therefore, when considering the benefits (*maslahah*) according to Islamic legislation, from one aspect, it must be subjected to guidelines (*dawabit*) that act to restrict its meaning according to *kulliy* and from another aspect; it must be reconciled with religious references on *tafsiliyy* pertaining to rulings on *syarak* until there is compatibility between *kulliy* and *juz'iy*.

Hence, there would be a contradiction between the *maslahah* (*maqasid al-shari'ah*) and other religious references from the *syarak* because the existence of guidelines (*dawabit*) act as an introduction to a meaning that is *kulliy* and at the same time become a binding force to the religious references (*dalil*) used in the rulings (*hukum*) in the *tafsiliyy* form. Thus, if there exist some contradiction between *maslahah* and the religious references in the *tafsiliyy* form, then the contradiction could be either between a false *maslahah* or between a *maslahah* that relies on religious references in the *juz'iy*, which could be reconciled according to methods found in the principles of Islamic jurisprudence (*Usul al-Fiqh*). The guidelines (*dawabit*) are divided into five sections, namely *maslahah*, which is a part of *maqasid al-Shari'*, *maslahah* that does not contradict the al-Quran, *maslahah* that does not contradict the Hadith, *maslahah* that does not contradict the *qiyas* or neglect a *maslahah* that is as important as or more important than it is.

### **Maslahah that is a part of maqasid al-Shari'**

*Maqasid al-Shari'* is intended to safeguard the benefits (*kemaslahatan*) and global human well-being. It is divided into five elements such as religion, the soul, the mind, family lineage and property. These five elements are further grouped into three groups according to their significance, such as *al-daruriyyat*, *al-hajiyat* and *al-tahsiniyyat*. The core matter among the five *maqasid* above is the platform for realising one objective only, which is all Muslims who are *mukallaf* (come of age) are subjects of Allah SWT. Therefore, actions of the *mukallaf* that contradict the meanings of the *syarak* are presumed irrelevant to the *maslahah* that are accepted by *syarak* (al-Butiyy, 2010).

### **Maslahah that does not contradict the al-Quran**

The second guideline (*dabit*) states that the *maslahah* should not contradict the rulings extracted from the religious references (*nas*) quoted from the al-Quran. One such religious reference is the exhortation by Allah SWT meaning,

*"And judge, [O Muhammad], between them by what Allah has revealed and do not follow their inclinations and beware of them, lest they tempt you away from some of what Allah has revealed to you. And if they turn away - then know that Allah only intends to afflict them with some of their [own] sins. And indeed, many among the people are defiantly disobedient."*

(Al-Maidah, 5:49)

This verse clearly indicates that Allah SWT commanded that every verse delivered by HIM should become the main reference. References that do not rely on Allah SWT in reality do not refer to religious references but follow human impulses. Hence, the ruling (*hukum*) for solving any discord that arises is to refer to religious references (*nas*) from the al-Quran or Hadith.

Hence, if there are contradictions between *maslahah* and the al-Quran, then what could occur is an encounter between *maslahah mawhumah*<sup>2</sup> and religious references from the al-Quran, either in the form of *qat'iy*, *zahir*, *jaliyy* or *ghayr jaliyy*. Conversely, if *maslahah* is a branch of the original religious reference that is coalesced with '*illah qiyasiyyah*'; hence, this contradiction in reality is a contradiction between two religious references that occur as *juz'iy*, such as *al-khas* and *al-'am* or *al-mutlaq* and *al-muqayyad*. At that instance, *ijtihad* (independent reasoning) is permitted, either to perform *takwil*

<sup>1</sup> There could be some confusion about the first *dabit*, considering the *maslahah* itself could be *maqasid al-Shari'* and at the same time, it is monitored by *maqasid*. However, this confusion is settled easily because *maqasid* acts as an introduction to the meaning of *kulliy* for *maslahah*. In other words, a particular matter could be *maslahah* if it intends to address five basic issues, namely religion, the soul, the mind, family lineage and property, which happens to be *maqasid al-Shari'* or *al-shari'ah*. Whereas, the remaining four *dawabit al-maslahah* act to bind the *maslahah* and the religious references (*dalil*) for the ruling (*hukum*) that are in the form of *tafsili*.

<sup>2</sup> *Maslahah* that does not rely on religious references from the al-Quran or al-Sunnah.

(exegesis) or *tarjih* (elimination by comparison) in order to determine the position of being benevolent (*amal*) with the *masalah* and religious references (al-Butiyy, 2010).

### **Maslahah that does not contradict the Hadith**

Besides the al-Quran, *masalah* cannot contradict religious references in the Hadith that clarify a ruling (*hukum*). The verse in Surah al-Ma'idah mentioned above is enough to prove the third *dabit*. In addition, Allah SWT had exhorted:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ  
ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا

"O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is the best [way] and best in result."

(Al-Nisa, 4:59)

The religious references above clearly show that any discord must be referred to the al-Quran or Hadith. Hence, each ruling (*hukum*) that refers to the *masalah* cannot contradict the Prophet's SAW Hadith. If there is a contradiction, possibly the *masalah* is only a presumption or the contradiction is in the form of *juz'iy*, which could be resolved using methods found in the principles of *Fiqh*, as stated in the second *dabit*.

### **Maslahah that does not contradict the al-qiyas**

The fourth *dabit* is *maqasid al-shari'ah* or *masalah* that does not contradict the *al-qiyas*. This is because *al-qiyas* functions to safeguard *masalah* so that it remains at the same branch (*furuk*) or category as *masalah mutlaqah* or *masalah mursalah*. Thus, the ratio between *al-qiyas* and *masalah mutlaqah* is general and specific because *al-qiyas* addresses *masalah*, in fact with an addition, namely the *'illah* in the *al-qiyas*. The situation is different when solely addressing the *masalah* because it is more general in nature due to *masalah mursalah*. Hence, *masalah* must be monitored by *al-qiyas* because every *al-qiyas* would surely address the *masalah* but not vice-versa (al-Butiyy, 2010).

Besides that, it would be difficult for the *masalah* to contradict the *al-qiyas* because of the *'illah*, which is one of the rulings (*hukum*) in *al-qiyas*. This is because the strength of the suitable character (*wasf al-munasib*) that causes the existence of this ruling (*hukum*) differs, such as<sup>1</sup> *mu'aththir*, *mula'im*, *gharib* and *mursal* (al-Taftazaniyy, 1317H). This differentiation is an important guide for setting the decorum and order pertaining to the position of the characteristics that should be considered if there is a contradiction (*ta'arud*) during efforts to identify and substantiate the rulings (*hukum*) from *syarak* (al-Butiyy, 2010).

### **Maslahah that does not neglect a more important masalah or one of similar importance**

The final *dabit* involves a *masalah* that does not neglect a *masalah* that is more important or of similar importance. This is because the *masalah*'s order of priority, although not consistent, differs in importance. This is viewed from three aspects, namely from the essence of the *masalah*, its scope or assurance of the desired outcome. The first aspect is divided into three levels according to the decorum that must be given priority if there are any contradictions, namely *masalah daruriyyah*, *masalah hajiyah* and *masalah tahsiniyyah*. If the contradiction occurs at the same level, then it would be evaluated according to its scope whether the *masalah* is *'ammah* (general) or *khassah* (specific), with the *masalah 'ammah* given priority compared to *masalah khassah*. The most important and basic aspect is the presumption that the

<sup>1</sup> According to a descending order (from the strongest to the weakest).

*maslahah* would materialise (*rujhan al-wuqu'*) in reality and is evaluated to determine whether it belongs to the category of *daruriyyah*, *hajjiyyah*, *'ammah* (al-Butiyy, 2010).

## CONCLUSION

After elaborating on *dawabit* or the guideline for *maqasid al-shari'ah*; hence, the polemic of the two issues raised earlier in the study, which is the issue of the need for women to cover their *aurat* and the issue of polygamy, could be resolved easily. This is because both these issues have religious references (*nas*) found in the al-Quran and Hadith. Among the religious references (*nas*) from the al-Quran related to the covering of the *aurat* is found in verse 59 Surah Al-Ahzab.

يَا أَيُّهَا النَّبِيُّ قُلْ لَأَزْوَاجِكَ وَبَنَاتِكَ وَنِسَاءَ الْمُؤْمِنِينَ يُدْنِينَ عَلَيْهِنَّ مِنْ جَلَابِيبِهِنَّ ذَلِكَ أَدْنَىٰ أَنْ يُعْرَفْنَ فَلَا يُؤْذَيْنَ وَكَانَ اللَّهُ غَفُورًا رَحِيمًا

"O Prophet! Tell thy wives and daughters, and the believing women, that they should cast their outer garments over their persons (when abroad): that is most convenient, that they should be known (as such) and not molested. And Allah is Oft-Forgiving, Most Merciful"

The religious reference above shows that Allah SWT had commanded pious women to cover their *aurat*. Thus, *maqasid al-shari'ah* in this issue is that the *aurat* should be covered and not exposed because *maqasid al-shari'ah* cannot contradict the religious references found in the al-Quran. Meanwhile, a religious reference (*nas*) from the Hadith mentioned:

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Meaning: Women (in themselves) are the *aurat*.

The religious reference from the Hadith narrated by al-Tirmizi clearly shows that the woman's body is the *aurat*. Hence, it must be covered. Based on the second *dabit*, the *maqasid al-shari'ah* cannot contradict the religious reference (*nas*) from the Hadith.

This is similar to the issue of polygamy, in which a verse from the al-Quran explicitly allows men to practice polygamy. Allah SWT exhorted (al-Quran, 4:3)

"If ye fear that ye shall not be able to deal justly with the orphans, Marry women of your choice, Two or three or four; but if ye fear that ye shall not be able to deal justly (with them), then only one, or (a captive) that your right hands possess, that will be more suitable, to prevent you from doing injustice"

فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ وَرُبَاعَ

The religious reference above binds the *maqasid al-shari'ah* by stating that men are permitted, according to certain conditions, to practice polygamy, and not the opposite.

Hence, the debate on guidelines (*dawabit*) for *maqasid al-shari'ah* is important because it is related to identifying rulings (*hukum*) based on the *syarak*. This understanding can be confusing especially if it is intentionally staged by enemies of Islam who wish to attack the perceptions held by Muslims. The attacks are usually through the mode of *ijtihad* and *al-ra'y* (views) by using false *maslahah*. Pertaining to this matter, Dr. Muhammad Said Ramadan al-Butiyy (2010) said:

"This is a new round started by the enemies of Islam in their efforts to wage war with Islam. Thus, with a responsibility shouldered by Muslims today to arrest this attack and create awareness about it, I have been thinking for some time now to initiate a study on *Dawabit al-Maslahah fi al-Shari'ah al-Islamiyyah*."

The above statement clearly shows that the original intention to formulate the *dawabit maslahah* was to safeguard the method of deducing religious references based on the *syarak* from being disrupted by irresponsible parties who wish to destroy Islam. This is concrete proof that jihadist scholars of Ahl al-Sunnah wa al-Jama'ah are steadfast in ensuring the use of the original principles of Fiqh in the context of interpreting religious references from the al-Qur'an and al-Sunnah. *Ijtihad*, or more specifically *ijtihad al-maqasidi*, should be approached with caution and care since it is subject to methods and disciplines mentioned in the al-Qur'an and al-Sunnah that should be adhered to in order to avoid being misled. Dr. al-Butiyy (2010) again explained:

"Every time I read or hear a call for *ijtihad* at the present time by considering the *maslahah* as a benchmark for understanding the *syariah*, I feel the over-compelling question within me that asks, "what is the *dawabit al-maslahah* that is frequently talked about?" If to *ijtihad* is considered compulsory for the *ulama*, even once, is it compulsory for them a thousand times over to endeavour tirelessly to understand the reality of *maslahah shar'iyyah*, its limitations, its *dawabit* or even its foundations?"

Pertaining to the truth of this *ijtihad*, al-Shaykh Dr. 'Abd. al-Halim Mahmud *rahimahuLLah* stated:<sup>1</sup>

"The actual meaning of *ijtihad* is to effortlessly and continuously try to obey and adhere to every action and deed carried out by the Prophet SAW and to subject all new problems to the ancient methods summarised from the exhortation of the Prophet SAW and the *al-Quran*. *Ijtihad* has no other meaning other than this" ('Abd al-Halim Mahmud, t.th).

The statement above shows that the practice of depicting rulings (*hukum*) from the *syarak* is subject to *manhaj* (methodology of receiving, analyzing and applying knowledge) that existed then, ever since Prophet Muhammad SAW<sup>2</sup> delivered it. *Manhaj* is a guide for understanding and interpreting the religious references (*nas*) found in the *al-Quran* and *al-Sunnah* when summarising the rulings (*hukum*) of the *syarak* and guiding the thinking process or *ijtihad*. This *manhaj*<sup>3</sup> has become a principle held by the entire generation of Muslims since the existence of Islam in their efforts to understand the *al-Quran* and *al-Sunnah*. Therefore, Muslims who are committed to the *al-Quran* and *al-Sunnah* possess a permanent measure for interpreting religious references. At the same time, *manhaj* acts to guide, bind and ensure that the actual and authentic views or *ijtihad* adhere to the potent religious references.

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<sup>1</sup> He (*rahimahullah*) was the former Shaykh al-Azhar (the highest position in al-Azhar al-Sharif). He was born in Egypt, in a village called al-Salam, located in the Sharqiyyah area on 10 Mei 1910. He had attended innumerable conferences on Islam in and outside the country. He was a visiting professor at several universities in Tunis, Libya and the Philippines. His literary work covered various fields such as *tasawwuf*, philosophy, *fiqh* etc. consisting of more than 64 books. The titles of his works were *al-Islam wa al-Iman*, *al-'Ibadat*, *al-Ta'rif al-Falsafi fi al-Islam* and *al-Islam wa al-'Aql*. He died on 17 October 1978.

<sup>2</sup> *Manhaj*, pertaining to either the principles or the practice of Islamic academic knowledge, have existed from the times of the Prophet SAW and HIS companions but the study, research and writings as well as the editorial work on *manhaj* only emerged halfway through the *salaf al-salih*.

<sup>3</sup> *Manhaj* here does not mean a technique or a system of studying academic knowledge but a path (*al-tariqah*) that would lead a researcher towards the truth, either in the form of news that should be authenticated or an issue whose evidence that needs to be authenticated and verified.

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## eParticipation Issues in Contemporary Europe

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### Abstract:

*Today, Information and Communication Technologies have developed to the extent of amplifying political procedures that are central to the contemporary civic society, such as political participation and citizen engagement. eParticipation is a multidisciplinary field of study, which is particularly relevant in several contexts and environments, e.g. digital democracy, public services, open government, popular social media etc. This paper addresses the eParticipation framework in the European context, during the last 10 years. Our research will explore theoretically and empirically how citizen participation is achieved through social media and digital public services. The article explores both the cultural and political environments that favor the development of eParticipation initiatives, with the study of networking interactions based on social and public policy initiatives. We are particularly interested in the public policy formulations that embrace eParticipation and most importantly the recent developments in the field, which include a number of eConsultation, ePolling, eLegislation, eElectioneering, eVoting etc. A review of the good practice examples in eParticipation policy development will help us identify the strengths and weaknesses of the digital framework. Within the context of social value, we want to explore the aspect of eParticipation in the broader political scene, by examining the role of digital participation in political crises. By drawing examples based on case studies of public policy formulation in European countries, the research suggests a correlation between digital innovation and challenging politics. The framework is originally designed to be sustainable for the European societies and it places citizens in the center of its conception. It is, however, argued that the interaction between public policy innovation and citizen engagement needs continuous scholarly attention and study.*

**Keywords:** eParticipation, innovation, eGovernment, social media, citizen engagement

### I. Introduction

The potential for Information and Communication Technologies (ICTs) to increase political participation and address the growing democratic deficit across Europe and elsewhere has been the subject of many discussions. However, only recently a sufficient application of ICTs for the support of democracy has put this 'potential' in a real-world context. Past scholar work (Macintosh et al, 2003) considered two components to eDemocracy, one including eVoting as a part of the electoral process, and the other including eParticipation as a part of democratic decision-making. This article concerns the use of Information and Communication Technologies as a process that reinforces democratic participation and focuses on the value and use of ICTs in participatory democracy, while special attention is paid with regards to European democracies. The review of the eParticipation practice aims to clarify some possible prospects and limitations offered by ICTs in the participatory process. An important part of research on digital democracy in the last decade highlights the political advantages deriving from the use of the internet (Delli-Carpini, 2000; Coleman & Götze, 2004; Stanley & Weare, 2004). Given that citizen participation in technological resources is becoming increasingly common in Europe, learning from the recent experiences should be of particular interest to scholars and practitioners working in the field of eParticipation. The article builds on these earlier relevant studies and uses the definition of eParticipation as the use of ICTs to support information provision and 'top-down' engagement or 'ground-up' efforts to empower citizens, civil society organisations and other democratically constituted groups in order to gain the support of their elected representatives. Effective information provision is often seen as the conclusion of effective engagement and empowerment (Macintosh & Whyte, 2008).

As eParticipation applications gradually multiply both in the European Union and internationally, new systemic challenges emerge. Design of evolved services, new political initiatives and technological developments have to be examined under the light of a maturing domain. Within this context, the article will bring together a review of programs that are currently being implemented with the theoretical base founded upon, in order to discuss issues of both ideological and practical nature, so that a real exchange of knowledge and experience can be achieved. Specific attention will be paid, apart from

policy and technology issues, to implementation-related issues, such as good practice examples. Among other findings, this paper discusses the political value of the initiative for the contemporary European societies, as well as its role in political crisis. It is expected that the outcome of this research will contribute to the literature on electronic and participatory democracy, as well as provide a policy evaluation of the use of ICTs in a large-scale participatory initiative. The article will highlight four main challenges for eParticipation. The first will focus on the dual perspective; from the citizen's point of view how can technology enable an individual's voice to be heard and not be lost in the mass debate? There is a great need for technology and supporting measures to enable virtual public spaces such that an individual's voice develops into a community voice. From a government's perspective, there is the challenge of how to listen to and respond to each individual. Fostering online communities and developing e-engagement tools to support such communities could enable a more collective approach. The second challenge is how to build capacity and active citizenship by controlling ICTs power to encourage involvement of more citizens on public issues. This creates the requirement for accessible and comprehensible information and the opportunity to debate on important social issues. The third challenge concerns coherence. New information and communication technologies can be used to support the information, consultation, participation and analysis, as well as evaluation. Finally, consideration should be given to knowledge management methods and approaches so that they can support policy-making. It is expected that the outcome of this research will contribute to the literature on electronic and participatory democracy, as well as provide a policy evaluation of the use of ICTs in a large-scale participatory initiative.

## II. Understanding eParticipation

Online political participation is a challenging topic and object of research. In the literature, it is frequently found under eDemocracy, since both eParticipation and eDemocracy are conceptual compounds of the use of Information and Communication Technologies that link citizens with one another and with their elected government (Gadras & Geffet, 2013). This normative assumption is based on the conception of digital technologies that is supported by political actors and interest groups promoting eDemocracy. In this perspective, technologies are concerned to be a modern way to the re-invention of political networking and re-establishment of citizen-centred systems (Rosanvallon, 2008). The 'digital agenda for Europe', the initiative of the European Commission as a part of the *Europe 2020* programme, reflects and puts these concerns into perspective and terms of public policies (Chrisaffis & Rohen, 2010). The phenomenon of eParticipation has received increased attention during the last ten years, due to late technological advancements, experiments, policy reports and research implementations. Understanding this emerging field of politics is not easy as there is no approved definition of the field, no specific overview of the research disciplines or methods and because the boundaries of the field are undecided (Sæbø et al, 2008). Traditional literature will help us to identify scientific considerations important for the field's theoretical development. The theories used for this chapter provide the starting point for a grounded analysis that leads to the deployment of a general model: the eParticipation seen from a researcher's point of view. The theories provide structure for understanding the developing field, as well as an initial suggestion of its content. It also provides the basis for developing research guides for the future. eParticipation involves a technology-based interaction between citizens and the political sphere and between citizens and administration (Porwol, 2013).

The utilisation of information and communication technology in political participation enables public participation and interactiveness through simultaneous feedback and opens up a new channel for political participation while strengthening existing citizen engagement (Dijk, 2000). These notions of eParticipation as a consultative, democratic process which involves citizens in policy-making does not consider communication among citizens on informal channels such as social media. This chapter is a first step towards the understanding of citizen-focused eParticipation. We aim to develop an analytical framework for the understanding of government and citizen-led eParticipation; defining the conditions under which the integration of the two types of eParticipation produce the best outcome; and determining the potential of government and citizens to embrace eParticipation. To attempt a first approach of the concept of eParticipation, we need to analyse the term: 'e' and 'participation'. Participation is generally understood as 'joining' in the sense of taking part in some communal form of action, or in the sense of undertaking a role in decision-making (Sæbø et al, 2008). Though participation is the subject of many theoretical discussions (e.g. participatory management, community participation, participatory research), eParticipation is usually associated with some form of political initiative or decision-making. Participation is an integral part of the democratic political system (e.g. voting or activism). This literature research focuses on political participation in the decision-making sense and covers participation within and outside the formal political system.

The 'e(lectronic)' in eParticipation has a direct association with recent 'e' disciplines (e.g. eBusiness, eGovernment) and refers to the leverage of information and communication technologies (mainly, the internet) for the transformation of citizen involvement in decision-making processes.

eParticipation is largely understood as the technology-moderated interaction between the social and political spheres and between civil society and administration (Porwol, 2013). The focal point of eParticipation is the citizen, i.e., the target of eParticipation is to increase citizens' participatory power through digital governance. A number of other social initiatives, such as voluntary organizations and businesses, are also relevant in this context, but they are not the principal focus of eParticipation. Technology-based interaction between the political sphere and the administration sphere, which does not involve citizens, is thus less in focus in eParticipation (Sæbø et al, 2008). As a research area, eParticipation is related to other research areas. eParticipation is a subarea of eDemocracy (Macintosh et al, 2003). If eDemocracy is concerned with the mechanisms that strengthen democratic decision-making through technology, then eVoting and eParticipation focus on the means to achieve this. The main differences between the three: eDemocracy concerns itself with the structural democratic relationships in a society. eParticipation better defines a set of technology-mediated participatory processes, while eVoting focuses on one particular participatory process common to all representative democracies, the way that technology helps to enact the process (Sæbø et al, 2008).

The disciplines that are most usually connected to eParticipation is political science, political and social theory, public administration and sociology. A smaller number of contributions comes from other disciplines such as information systems, computer science, communications and science and technology studies. Models of democracy are frequently used for characteristic forms of participation (DiMaggio et al, 2001; Lourenco & Costa, 2006), while Habermas (1996) offers a more philosophical background for studying social participation (DiMaggio et al, 2001). A number of theories have been considered relevant, but only appeared inconsistently. DiMaggio et al. (2001) refer to innovation diffusion theories (Rogers, 1995), the network society (Dijk, 1999), and social capital (Putnam, 2000), among others. There is little common theoretical background on eParticipation, with an exception of theories from political science and political philosophy. Theories are used for a particular purpose by some researchers, linked to a particular theory or a particular research task (Sæbø et al, 2008). It is to be expected in a very young research area, there is little consistency or continuity in the choice of theories or research methods. There is no evidence of the emergence of a theory, or theories of eParticipation, whereas there is a considerable focus on the empirical examples.

eParticipation should be reviewed in the context of participatory culture. Contemporary eParticipation 'seeks to empower people with the help of Information and Communication Technologies, enable them to integrate in bottom-up decision-making processes, and to develop social and political responsibility' (Maier-Rabler & Huber, 2010). Modern ICTs offer more possibilities to citizens with regards to their political choices. The means to achieve participation in society and politics have been simplified. However, instead of making things easier for citizens with a variety of participatory means at their disposal, it poses greater challenges to them. If people want to move from occasional eParticipation to sustainable eParticipation, they need to learn how to make informed choices among the available ICTs and adequately use them. Acquiring capabilities for the informed usage of social media is therefore at the heart of modern participatory society (Maier-Rabler & Huber, 2010). A participatory society is featured by its participatory culture. "A participatory culture is a culture with relatively low barriers to artistic expression and civic engagement, strong support for creating and sharing one's creations, and some type of informal mentorship whereby what is known by the most experienced is passed along to novices. A participatory culture is also one in which members believe their contributions matter, and feel some degree of social connection with one another" (Jenkins et al, 2006, p. 3). The classifications of participatory activities individuals are engaged in reflect different perspectives from the different bodies of literature, ranging from the institutional to the individual. These classifications can include different forms of public participation which connect the individuals and the State, as well as social participation or individual acts of engagement, and this has led to our three-fold classification of public, social and individual participation (Brodie et al, 2009).

More specifically, public participation is the engagement of individuals in the various structures and institutions of democracy. This form of participation is often referred to as *political participation*. A good example to understand political participation is the act of engaging people to make their voices heard and giving them the right to influence these decisions that affect them, as well as enhancing the delivery of services (Cornwall, 2008; Involve, 2005). These meanings of public participation often privilege an institutional perspective and focus on the engagement of individuals in decision-making processes within existing political structures. *Social participation* refers to collective activities that individuals may elaborate

as part of their daily routines. It is associated with an individual's associational activities in both formal and informal contexts (Jochum et al, 2005), and include cultural or voluntary and community engagement (Jochum et al., 2005). People often choose to participate in associational life for a range of reasons that may have little to do with the State or the institutions of governance. People also engage on an individual basis. In this category, participation is based on an individual's personal values and worldviews as much as on personal experiences. Individual participation covers the choices that individuals make as part of their everyday lives, and reflects on the kind of society they wish to create and live in (Brodie et al, 2009). Within each of these three broad forms of participation there is a great number of individual participation activities, which can overlap between public, social and individual participation.

### III. The Potential of Social Media

Participation is a key feature of a democratic nation, despite the varied forms of democracy existing. The liberal democratic approach considers elections as the central element of a democracy, while the deliberative theory of democracy includes public discussion and consultation of the citizens during the legislative process (Maier-Rabler & Neumayer, 2008). Therefore, societal and civic dialogue is an important part of political participation. The vision that new Information and Communication Technologies (ICTs) would increase citizen participation and especially among youth, has always followed the introduction of new media. The internet due to its interactivity and its nature as the promoter of user-generated content was perceived as a technology that would encourage democracy and participation. Nowadays, the internet and internet-based technologies are in the centre of communication infrastructure for developed economies. The use of positive potential of ICTs is a new challenge for both politics and society. ICTs can help to actively engage more citizens and - especially - youth into politics.

According to Fuchs (2008), communication and cooperation can be ameliorated by Web 2.0-technologies due to their new 'architecture of participation' (O'Reilly, 2005). The collaboration, decentralization and universality of the user-centered applications supports the transformation of the user into a producer and thus a more active aspect of the process (Birdsall, 2007). More importantly, for those who are skeptical about traditional forms of participation, the internet and Web 2.0 applications can serve as a channel for political engagement. Meaningful preconditions for eParticipation to ensure the democratic and political potential of ICTs are necessary, as well as the commitment of the existing political system for their protection (Maier-Rabler & Neumayer, 2008). These assumptions are in line with a participatory perception of democracy that merges eParticipation into the process of civic engagement.

Social media represents today a too high share of internet traffic<sup>1</sup>, as people spend more and more time on social media sites, such as Facebook, YouTube and Twitter. The internet is a vital part of modern generations' lifestyle and especially appealing to the youth. With the turn of the millennium, the character of the internet changed rapidly by Web 2.0 applications such as MySpace, Facebook or Wikipedia (O'Reilly, 2005). These types of online activities are perceived by most people as trendy, easy and appealing, leading us to note that the strengths of social media are the alleged weaknesses of the pioneering eParticipation projects (Sæbø et al, 2008). Social media platforms are lowering obstacles to access and participation in conversation compared to governmental services. Participation is made easy in numerous ways, as for example, through national and local government adopting social media channels for citizen communication; or community groups using social media to engender community action. More importantly, this participatory culture creates the perception that developments can help modern democracies to include their citizens in the political process. Therefore, the use of social media can be considered as an effective way for filling in the gaps that prevent eParticipation from becoming part of people's lives.

The features of Web 2.0-based democracies extend the capabilities citizens have, in order to participate actively in democratic processes. Allegedly, the use of social media can: a) raise general awareness of important issues, b) make eParticipation platforms more accessible to audiences that are not involved in political discussions and c) utilise the newest trends in online communications to its advantage, making users' participation easier and more intuitive (Lacigova et al, 2012). Additionally, to address the political participation gap by the means of the internet and social web, closing the digital divide between the social media literate and illiterate must be set as an equally important goal. If eDemocracy policies aim

<sup>1</sup> More than half of the world internet user have a social media account on the most popular sites, i.e. Facebook, Twitter and Pinterest, according to Internet Live Stats, <http://www.internetlivestats.com/>.

to enhance and support civic participation, then the average individual citizen has to be empowered to the maximum in his ability to participate in the democratic procedures (Maier-Rabler & Hubler, 2010). The social web is not simply a solution to the democratic question, rather than a challenge to its improvement.

Access to information is the main argument for complimenting new information and communication technologies as an enabler for citizen participation and thus more democracy in the society. Moreover, it is understandable that access alone is not enough and that people need to develop skills and literacy to acquire the desired information. Hardly ever this missing link between access and literacy, which is motivation and interest for political engagement receives enough attention (Maier-Rabler & Hubler, 2010). In ICT-favoured circles, people learn to handle new technologies and social media at ease, but this is not the case for most average citizens. To actually encourage people to use the newly acquired skills for participatory purposes, further motivation and guidance is needed. The integration of the two separate spheres of formal education in school and informal ICT learning in computer-based spaced would be vital to the support of development of civic and political engagement.

In order to illustrate the importance of using social media as an enabler for eParticipation, the validity of the above claims has been proven by demonstrating the utilization of social media by currently running eParticipation projects. OurSpace<sup>1</sup> sets the perfect example: an open-source social networking, designed to provide a forum for large groups of young people, regardless of nationality or language. The OurSpace project was an initiative of nine organisations from six European countries (Austria, Belgium, Greece, UK, France and Czech Republic) and was funded by the European Commission under the ICT Policy Support Programme in 2013. OurSpace included the commonly used features, such as user's profile, invitations, recommendations, rating and statistics, in a more appealing to young audiences way. Additionally, it had reached out to wide audiences by its own Android App, iGoogle gadget and a Facebook app, enabling mobile access to the platform and adjusting to the current trend that an increasing number of people use their mobile phones rather than their laptops to engage in online activities (Lacigova et al, 2012). The promotion of OurSpace on popular social networking sites, such as Facebook and Twitter, generates daily a wide user base from young audiences. In conclusion, the use of social media for increasing eParticipation can be a valid, cost-effective way to establish participation in policy projects, by promoting them as part of people's everyday lives.

#### IV. The value of eParticipation in modern democracies

Participation has become a motto in modern societies. Not only frequently used by policy-makers, it is also seen as a synonym of engagement, involvement and empowerment, in a context that involves 'public' or 'community'. Generally, the advantages of participation relate to service effectiveness and efficiency, decision-making quality and legitimacy and active citizenship (Smith & Dalakiouridou, 2009). In this chapter, we will examine the terms and social value of eParticipation, and summarise the current state of research in this field. Our analysis is focused on whether Information and Communications Technologies or electronic forms of participation enhance democratization and how.

The use of ICTs in the interim of democratic participation has made public participation more engaging to more target users, including citizens living abroad, younger generations, companies and organizations that had limited access to participation before. Medimorec, Parycek and Schossböck studied the influence of the ICT penetration on participatory democracy, in the Eastern Europe and Austria, and they observed a parallel shift of democratic mindset alongside internet penetration (2011). One of the many advantages of eParticipation was linked to the flexibility it offers in terms of time and location. Another one is the variety of choices offered to its participants. One sense of flexibility can be geographical, but flexibility can also define adjustable timing. Online services can be set up quickly and easily be adapted to different needs and are more up to date than offline tool (Medimorec et al., 2011). Additionally, eParticipation offers different forms of information, giving users the possibility to decide which services they need to use, how to access them and what kind of information they wish to have. It should, however, be noted that despite the length of opportunities provided are readily available, not all governmental sites take advantage of the possibilities on offer. A past review of state and federal government websites in the US revealed that key features that would facilitate connections or interactivity between government and citizens, such as email, comments or complaints, chat rooms, search features, broadcasting of government events, and website

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<sup>1</sup>OurSpace, <https://www.joinourspace.eu/>

personalization were readily available for use. However, most governmental sites have not made enough progress at incorporating these democracy-enhancing features (West, 2004).

Personalisation allows users to customise and personalise their profiles, therefore increasing the usability of online services and applications. Interactivity is another major advantage. Today there are a number of ways users can provide feedback using a range of aspects, such as maps, construction documents, Web 2.0 modules or other interactive means (Medimorec et al., 2011). Interactivity improves the services offered by public administration, especially because it allows prompt reactions and the ability to provide more information when needed, thus improving relationships with users. Most US governmental websites reviewed between 2000 and 2001 increased their potential of communication because they included features of two-way interaction (West, 2004). Modern and interactive ICTs offer numerous opportunities to the user, to communicate simultaneously and non-simultaneously at the individual or collective level. According to producers of civic websites for youth, many young people are frequently contributing to websites, creatively engaging in invitations to join, to have their say and to represent themselves. The research project *UK Children Go Online* (UKCGO) investigated 9-19 year old users of the internet in the United Kingdom to find an increasing virtual engagement on behalf of the youth (Livingstone, 2010). The role of the youth and essentially the hope that ICTs can lead to more participation of youth, to more political awareness and increased engagement is evident in the eParticipation efforts, regardless of the fact that many initiatives fail to achieve that through implementation. A number of youth-targeted surveys were conducted in Austria to record the preferences of youth in political participation, the internet and Web 2.0 technologies. The results highlighted a reverse ration of interest between traditional politics and Web technologies: the more increased interest for Web 2.0 technologies one had, the more decreased an interest in traditional politics was expressed. (Maier-Rabler & Neumayer, 2008). It was, hence, assumed that Web 2.0 technologies can play an important role in the revitalization of political participation.

Other social utilities of eParticipation (and eGovernment, in general) include the ability to envisage policy, to offer to citizens the means to control the government and its policies, to balance the power of lobbies, to avoid corruption and to foster active citizenship, all with the long-term objective of strengthening representative democracy. Therefore, according to an OECD (Organisation for Economic Cooperation and Development) report, the objective of technology-enabled information dissemination, consultation and participation is to improve the policy-making process through a range of mechanisms designed for (2003):

- Engaging with a wider audience through counsel and participation technologies, which are adjusted to broader participation.
- Providing relevant information, in an accessible and comprehensive format, to the target audience in order to enable more informed participation.
- Enabling in-depth consultation and supporting online advisory debate.
- Encouraging the analysis of contributions to improve policy.
- Providing relevant feedback to citizens to ensure transparency in the policy-making process.
- Monitoring and evaluating the process to ensure continuous improvement.
- Therefore, it is important to distinguish the level of participation, the technology used, the level of the policy-making process and various other issues, which include the benefits that online participation potentially offers (Macintosh, 2004).

Based on data provided by the European Commission, many people today are losing interest and trust in the way their governments proceed with policy-making (Gatautis, 2010). There are issues of trust, openness and transparency, which remain the main concern, as the public lacks of confidence in governmental institutions (Panopoulou et al, 2009). In the meanwhile, public indifference and dissatisfaction is massively expressed through low turnout rates at elections, which further lead to representatives elected by a minority of the electorate. In this context, citizens increasingly demand greater transparency and accountability from the government, and favour public participation in the shaping of policies that they become the subject of (Gatautis, 2010). For these reasons, participation is gradually gaining vital importance in modern societies. The pursuit of governmental goals involves an effort to mobilise individuals, groups and communities, through perceiving active citizenship both as a responsibility as well as a right. Thus, participation starts develop in a moralising rhetoric, a functional condition of the state and a regulating discourse (Smith & Dalakiouridou, 2009). Empowering people

and inviting them to 'cooperate' and get involved with the government is a key strategy to achieve the welfare state they demand.

eParticipation has become a key strategy with regards to the democratic deficit that Europe is facing. The term *democratic deficit* has appeared in connection with the EU, above all to indicate the opaqueness of decision-making (Smith & Dalakiouridou, 2009). Great effort has been put into the upgrade of transparency and accountability in public power in the EU and the enhancement of its legitimacy. "Transparency is perceived as a necessary condition for democracy, as it ensures that citizens obtain all the information they need to call public authorities to account. Legitimacy demonstrates the capacity of European institutions to provide a system of good governance and fulfil their functions in an impartial manner. Citizens and other actors reflexively assess both the processes and the outputs of governance in terms of their legitimacy" (Smith & Dalakiouridou, 2009, p. 4). A number of initiatives promoting transparency and accountability have already been initiated by EU institutions, to evidently provide citizens with more opportunities for information, but in reality citizens feel insecure in front of increasing amount of information and remain reluctant to form their future as Europeans, an insecurity which results in a passive expression of citizenship (EACEA, 2013). The following good governance principles were formulated as an answer to the perceived mistrust of European citizens in the European structure. From 2000 onwards, the policy documents adopted by the European Commission make a clear reference to the transparency and accountability needed, while from 2002, consultations are given more importance as a citizen contribution to the policy-making.

The EU Research Framework Programmes 5, 6 and 7, following the logic of the first four framework programmes (1984-1998) for the support of the community research and technological development, have addressed various technological issues and tested a range of eParticipation services. More specifically, Framework Programme 5 launched an important number of projects to enable the online participation of all stakeholders in decision-making, in topics such as the improvement of interaction between citizens and public administrations, on-line mediation systems for citizens and their representatives, the enhancement of the former's participation etc (Chrisaffis & Rohen, 2010). The current framework programme (2014-2020), ambitious *Horizon2020*, continues to direct policy-making in Research and Technological Development, under the auspices of the European Commission.

## V. Design of digital participatory public services

eGovernment development is based on strategic planning, usually under the responsibility of national governments, which defines the common targets set for public administration: modernised services, with low cost and time minimization for public service execution and the development of improved, citizen-centered practice. A number of tools, which are used to increase eParticipation, have been identified, also referred to as *eMethods* and includes many of the functionalities that we are already aware of, such webcasts, FAQs, blogs, chat rooms or discussion forums. These web-based tools cover many areas of participation, such as legislation, policy-making or social action.

Generally, the development of eGovernment strategic plans is a *top-down* procedure, which means that central governments supervise the design and execution of national eGovernment initiatives. The *top-down* procedure is defined with means of educational methods, as a scheme where the instructor presents the general conception of a system and then proceeds to its subsystems (Jorgensen, 2005). In eGovernment initiatives, the instructor is the central government, who plans and monitors multiple projects. *Top-down* eGovernment plans contain policies and project goals, but not methods and principles. Information and Telecommunication Technology vendors provide mainly eCommerce-based applications as solutions for eGovernment and for digital service execution, after being transformed and adapted to public administration methodologies (Lowry et al, 2002). Another approach to eGovernment design is the *bottom-up* procedure. A *bottom-up* approach, in contrast to *top-down*, refers to a decentralised procedure of eParticipation, which allows for individual research to design and drive their own projects in a controlled environment, while targeting and prioritizing specific problems and then expanding to a wider system architecture (Zissis et al, 2009). Interestingly enough, surveys on eGovernment show that although a number of eGovernment initiatives achieved their goals in time and cost savings for both citizens and public administration, the design procedure of national governmental planning creates problems to eGovernment reception by both citizens and public administration (Anthopoulos et al, 2007). Skepticism incommodes governmental planning, with regards to the success and development of eGovernment.

Each one of the eMethods used to support eGovernment projects are accompanied by a SWOT analysis. SWOT, which stands for 'Strengths, Weaknesses, Opportunities and Threats' analysis is a descriptive method used to identify and list positive or negative factors about an issue, in a more consolidated way. In the final stage, all the data from the SWOT models are combined in one form, in order to make a comparison between eParticipation tools. The first step for the SWOT analysis is to establish a series of criteria. These criteria are thoughtfully selected in order for the balance to be maintained after technical and social requirements (Anthopoulos et al, 2007). There is a number of technical requirements to enable the effective implementation of eParticipation tools. The first and foremost prerequisite is related to security and privacy in the eParticipation context. eParticipation services need to be user-friendly, as simple as possible and time-effective, in order to ensure the participation of users. The value of security and privacy measures is high, not only to ensure that users will use but to trust the system, as well. A lack of trust on the security variables of the system will result in low participation rates and thus an ineffective system. Thus, the proper balance of between security, usability and openness is highlighted as vital in the effort to implement effective eParticipation services (Fraser et al., 2006). Anthopoulos *et al.* identify a number of technical requirements to facilitate this implementation (2007), such as: a) deployment complexity (i.e. how difficult the deployment of an eParticipation tool is), b) Information richness (i.e. the amount of information the specific eMethod is able to contain) c) Security (e.g. in the case of a user's navigation), d) Interactivity (i.e.g. to what degree are the communication channels interactive), e) Scalability (i.e. how effectively can the application scale up to a broader public).

The variation of necessary parameters to be taken into account show that, thanks to design choices and software features that promote participatory behavior and trusted consultation, citizen-oriented services are more than an online area where citizens can only report problems for their local government. Much more importantly, they create an environment where, due to changing political circumstances, the social actors can undertake a variety of actions to cope with actual problems (De Cindio, 2012). Research suggests that this variety of design choices and software features enhance engagement around open data, as they enable conversations around them and promote people's collaboration on issues that involve data. From a technical point of view, the tools that support data analysis are absolutely necessary, but there is also an increasing demand to explore tools that support social communication and interaction, as well (Davies, 2012). Undoubtedly, more research interventions will add value and increase the understanding of data use and support the development of improved strategies for data engagement. However, when studying a policy initiative depending of technology, one should always anticipate that emerging technologies will eventually challenge the framework and its ability to deal with new concepts, tools or applications. At the same time, it will be tested by the success, failure, results and difficulties of each specific case based on the rule that all successful models evolve through exploration (De Cindio, 2012).

## VI. Developments in eParticipation

Recent initiatives based on the analysis and assessment of democratic systems offer theoretical and empirical insights towards the development of eDemocracy frameworks. From a theoretical point of view, those initiatives support developments in the democratic process; while from an empirical point of view, they contribute in identifying formulas and criteria for the evaluation of practices, which can be relevant for offline and online modes. Here, we consider tools and methods that directly promote citizen participation in policy-making rather than the ones that support group discussions only.

### eVoting

Electronic voting (eVoting) refers to the ability to vote via the internet. eVoting refers to both the electronic means of casting a vote and the electronic means of arranging votes. In some countries, punch cards (e.g. USA) and optical scan cards (e.g. Germany and Scotland) are tabulated using electronic means, and they have been in use for decades. Electronic voting in polling stations is being used in some of the world's largest democracies, such as France, Italy, Netherlands, and Norway etc. A number of EU member-states, including Czech Republic, Finland, Greece, Latvia, Lithuania, Romania and other, are currently developing pilot programmes of eVoting systems to improve various aspects of the electoral process (Ace, 2010). eVoting is often seen as a tool that helps to advance democracy, to build trust in electoral management and add credibility to the electoral process. The technology is rapidly evolving to invite election managers, international organizations, vendors and authorities to continuously update their methodologies and approaches (IDEA, 2011). In recent elections, internet voting

has attracted wide interest, creating hopes that communications technologies may lead to increased voter turnout, and the inclusion of voting groups that had abstained from elections. Estonia was the first country in the world that allowed internet voting in the 2007 national parliamentary elections, and has thereafter served as an important case for studying the state of eDemocracy (Bochsler, 2010).

Specialized techniques used in other domains have been proposed to contribute to the development of eVoting systems. These techniques aim to bring a higher level of competitiveness in the design and implementation of voting systems. Helios is the first web-based cryptographic eVoting system. It has a single component and uses a public bulletin board (Adida, 2008). A. F. N. Al-Shammani, A. Villafiorita and K. Weldemariam describe the consecutive phases of voting (2012). In registration phase, voters first obtain their password via email. Helios separates the process of voting in preparation from casting. Anyone using the system can check the authentication of the ballot, since every user is given only at ballot casting time. After the ballot has been completed from the user side, the voting system proceeds with the encrypted vote by displaying a sign of the ciphertext. The preparation of the ballot can either be audited, or the ballot can be cast after the voter has been authenticated. In the case the vote decides to audit the ballot, the ciphertext and the randomness used for encryption is displayed, which allows the user to check that the vote was properly transformed into the ballot. As soon as the ballot is cast, the voter receives a hash for the encrypted vote, which is also posted on the BB next to his name. In tallying phase, the ballots are mixed and decrypted, providing proofs of correctness for both steps.

During the past two decades, researchers have been developing verifiable eVoting systems, however only few of the developed systems have been used in real-world elections. The eVoting systems that have been used in large countries, such as India, Brazil and the US are unverifiable and there have been concerns about security implications. The biggest problem with developing verifiable eVoting technologies seems to be the public distrust on responsible authorities. Since 2013, Dr. Feng Hao's has been developing a project that aims to devise a secure eVoting system: "We aim to provide a means whereby voters can independently verify that their votes are accurately captured and tallied by the system; ensuring that the integrity of their vote is maintained. In the process, we eliminate reliance on authorities who tally the cast votes, so the election is self-tallying" (Hao, 2014). In the EU the eVoting initiative is still in the beginning. Estonia was the first country to start an actual eVoting project in 2003, which has been used in the 2005 local government council elections for the first time, to continue its success with the national elections in 2007 and every 4 years ever since. Germany and Netherlands that were using electronic voting machines since 1998, stopped their eVoting projects in 2009 and 2008 respectively, until further testing is completed (Ace, 2010). In the case of Germany, it was suggested that the use of voting machines was "unconstitutional", while the Dutch government decided to address security concerns and other issues emerged by returning to paper voting (NDI, 2014; NDI, 2014a).

### **eConsultation**

eConsultation designates interactive online platforms where citizens, civic actors, experts, and politicians gather to provide input, consider, inform and influence policy and decision-making. Introduced by political institutions or non-state actors, eConsultation can take different forms, target on different groups or issue areas, in the use of technical tools at which they are launched (Coleman & Götze, 2004). Sometimes, they incorporate spaces for citizen-to-government as well as citizen-to-citizen interactions. What makes eConsultation unique in comparison to other spaces of the virtual public sphere, is the ability to cause influence on the policy-making process. Informal electronic spaces such as virtual communities, local forums, chat rooms and participants interact in a way that allows them to exercise political influence (Tomkova, 2009). The goal of eConsultations is to affect formal political and decision-making processes. Additionally, the purpose of eConsultation has been to enable citizens with relevant experience and expertise to inform and advise legislators on specific areas of policy (Coleman & Götze, 2004). eConsultations is a more formal and organised form of eSpace compared to other forums or digital attempts in the virtual public sphere. They tend to have a set duration, agenda and pre-defined topics for discussion by the host. Given that it is government agencies that usually start eConsultations and not individuals, the difference in level between the actors involves variation in levels of authority, expertise and access to decision-making processes (Tomkova, 2009). *Your Voice in Europe*<sup>1</sup> is the European Commission's 'access point' to a number of consultations, discussions and other tools allowing citizens to play an active role in the European policy-making process. It is argued that

<sup>1</sup>*Your Voice in Europe*, <http://ec.europa.eu/yourvoice/>.

eConsultations provide functional and deliberative communication benefits, enhance social inclusion and citizen-government interactivity and make public policy making processes more transparent and legitimate.

### **ePolling**

Online polls are another type of eConsultations offering snapshots of civic temperature on a specific public issue. As a quick web-based survey, ePolling allows participants to select one answer from a list of alternatives in response to a simple statement or question. Once an answer has been submitted, current poll results are usually displayed along with relevant numbers or percentages. Typically there is no collection of personal or demographic information. Therefore, unless users' Internet Protocol (IP) addresses are logged in, it can be difficult to stop participants responding more than once. Quick polls are generally employed as light-weight, fun e-tools, rather than contributing to any weighty policy debate (Macintosh et al, 2005). Examples of more elaborate ePolls or eSurveys include the ones utilised by the EU Commission, as part of the *Your Voice eInitiative*, while the simpler one-shot polls appear as a sub-feature on government websites.

eDeliberative polling combines online deliberation in small group discussions with random sampling to facilitate public engagement on specific issues. A variety of these surveys and discussion forums support such this eDeliberative polling. Directly addressing the issues raised by traditional offline engagement techniques for policy development, ePolling has a major advantage: it involves the public in all key issues. The concept of deliberative engagement address the problem by prompting the gathering of public views by a process of deliberation. Although the potential for eDeliberative polling has been recognised by a number of well-respected organisations, such as the Internet Corporation for Assigned Names and Numbers (ICANN), it yet lacks to be its wide application in the local government context (Macintosh et al, 2005).

### **ePetitioning**

The so-called web-based system hosts online petitions and allows third parties to be signed up to by addition of their name and address online. ePetitions are another form of eConsultation which enable citizens to enlist issues, complaints or requests directly to the government. Usually, the names and addresses need previous verification, but as ePetitions are only informing the local councils about an issue, and not presenting it (which will lead to legal enforcement), the level of control does not need to be the same as for eVoting. Additional features can enhance the quality of ePetitions and the transparency of the process (Macintosh et al, 2005). In some cases, an integrated discussion forum can be incorporated in order to offer the users the possibility to argue about their support on certain petitions. The format and procedure followed in ePetitions varies from local government to local government. In modern democracies, this form of participation is legally integrated. In the EU member-states, for example, the right to petition is protected by national constitutions and in some cases European regulations (Riehm et al, 2011). They are mainly intended to serve as a bottom-up participatory tool, but they have also been hosted by governments (Tomkova, 2009). UK government's popular 10 Downing Street and the European Parliament's petitions initiative set a good example of such online spaces (Tomkova, 2009).

Generally, the right to petition ensures access to all institutions of the political-administrative system at all levels (state, regional, local). However, in some cases specific institutions are established to act as responsible for the processing of petitions. These institutions play the role of mediator between citizen and executive power and maybe even an advocate of the petitioner (Böhle & Riehm, 2013). From a study conducted in 29 countries (EU member-states and Switzerland), a total of 59 national state-level parliamentary petition bodies and ombudsman institutions were identified (see table below). In the majority of these countries, there is a pattern where both a parliamentary petition body and an ombudsman institution processes petitions to the parliament (Böhle & Riehm, 2013). Seven countries do not support the possibility of petitions to parliament (Cyprus, Denmark, Estonia, Finland, Ireland, Latvia, and Sweden), while only three of the 29 countries (Germany, Italy and Switzerland) have no parliamentary ombudsman institution at all.

**Table 2: Possibilities for petitioning national parliaments.**  
 Note: ● Petition system provided; ○ No petition system; — No upper house.

Country	Petition body/institution		Ombudsman–Institution
	Lower house	Upper house	
Austria	●	●	●
Belgium	●	●	●
Bulgaria	●	—	●
Cyprus	○	—	●
Czech Republic	●	●	●
Denmark	○	—	●
Germany	●	●	○
Estonia	○	—	●
Finland	○	—	●
France	●	●	●
Greece	●	—	●
Hungary	●	—	●
Ireland	○	○	●
Italy	●	●	○
Latvia	○	—	●
Lithuania	●	—	●
Luxembourg	●	—	●
Malta	●	—	●
Netherlands	●	●	●
Norway	●	—	●
Poland	○	●	●
Portugal	●	—	●
Romania	●	●	●
Slovakia	●	—	●
Slovenia	●	○	●
Spain	●	●	●
Sweden	○	—	●
Switzerland	●	●	○
United Kingdom	●	●	●
<b>Total</b>	21	12	26

**Source:** Böhle & Riehm, 2013

The most important contribution of the petition systems, which is greatly enhanced by the help of the Internet, is the strengthening of the public participation. This is gradually coming into realisation, firstly, by designing ePetitioning systems in a direction that enhance democracy and secondly by ameliorating the democratic system itself as to be more open to dialogue and citizen participation.

### **eLegislating**

When it comes to legislation, the question that arises as a result of the synchronisation of the field by computing trends, is not only how it is possible to make digital laws, but also whether digital media will change the forms of law-making. The success of user-friendly software and websites has developed a great sense of convenience, which has become one of the major features and thus norms of online communication. The interactive, informative and engaging nature of the internet is what makes it popular to users, alongside with the simplicity of using its online libraries. Users that become familiar with informal, user-friendly cyber-formats may even come to reject the stiffness of conventional legal texts compared to the ones they access online (Howes, 2001). eLaw is a new concept, which is used in Europe since 2004. It refers to electronic legislation and to the different aspects of electronic publishing of legislation. eJustice is a similar concept, including the use of electronic technologies in the field of justice (European eJustice portals etc.). The EU Council has an eLaw and eJustice working group, exchanging information on the practices of EU Member-States and developing policies at the EU level. The European Commission has created EUR-Lex as a one-stop shop to European legislation (EUR-Lex which includes N-Lex, a portal of national legislation in EU Member-States) (Hietanen, 2012). EUR-Lex is estimated number of 13 million visits per month (Trafficestimate, 2015). European legislation today is made available in most of the European member-states free of charge. However, there are differences in the way legislation is made available. There are types of legislation varying from limited period legislation to legislation of the last century, consolidated or unconsolidated form with amendments etc. In some countries, the original versions of legal acts are available, while in others the consolidated versions of legal acts are also available. An eLegislation portal has a number of features that can either support the top-down flow of knowledge from the government to citizens. Based on a DMS (Document Management System) that is used to track and store electronic documents, eLegislation is capable of storing any type of legal document (Ona, 2013). It appears, thus, that eLegislation portals increase the volume of information that becomes available to the larger audience, making citizen participation more expansive. The main challenge, however, is the need to ensure that this increase in volume of information does not affect the role of such portals being meaningful and actionable.

### **eCampaigning**

eCampaigning defines the use of 'new' communication technology, such as the internet and mobile telephones, in campaigning. eCampaigning can be a quick, cost-effective and efficient way of contacting, informing and mobilizing large numbers of people in contexts where electronic tools are easily accessible and widely used. World-wide data show that average internet use tends to increase more rapidly than gross national product (Rosling, 2006). eCampaigning involves both passive and active tools, often combined. Passive tools use a one-way communication: users receive information via email or by reading a website. During the last years, emailing, comment and posting functions on websites and blogs, social networks and other new technologies enabled two-way conversation, sometimes in real time, elevating the internet into an active tool (UN Women, 2012). Campaign messages can spread through social networks only with a mouse click, on a spontaneous, unregulated way that never could before.

Studies on the implementation of eCampaigns and eVoting in different European countries, show that the Internet is often associated with the professionalization of the voting process as well as the electoral campaigns (Norris, 2004; Norris, 2002). However, new concerns have arisen that relate to trustworthiness and identity in campaign management, and involve issues of targeting, personalization, complexity and negative campaigning. While, though, networked technologies promote public participation and engagement on a way not possible in the pre-digital era, they are as well source of tensions and conflicts which are posing new questions to traditional models of power and control, creating new balances (Marcheva, 2010). Therefore, the same technologies that could create spaces for public and networked engagement, may as well allow citizens to organize other than social gatherings or political protests, such as terrorist attacks.

The first tangible example of the use of ICT technologies in electoral campaigning comes from Spain, which went through a so-called "Americanization" of politics, following the successful pattern of the Obama social media campaign, in 2008. In the aftermath of 2008, Spain and Catalonia have embraced new technologies by opening up online channels for disseminating electoral content (Xifra, 2011). Three years later, the Finnish national elections showcased an extensive use of social media in the electoral campaign. Despite the fact that citizens' participation in eCampaigns was limited, there were indications of mobilization and 'potential of change' regarding the citizen activity (Strandberg, 2013). The 2009 European

Parliament elections represent the first eCampaigning effort on a pan-European level, where many different online applications (Facebook, YouTube, Twitter, MySpace and Flickr) were used systematically (Vesnic-Alujevic, 2011).

### **Participatory Budgeting**

Participatory budgeting (PB) is the online process that allows citizens to participate in the decision-making process of budget allocation and it has been considered as one of the main innovations that aim to reinforce accountability on a governmental level. Thus, it belongs to the online public practices that reinforce democracy at both local and regional levels. It provides citizens with the opportunity to approach governmental operations and to participate, discuss and control the allocation of resources. "The enhanced transparency and accountability that participatory budgeting creates can help reduce government inefficiency and curb clientelism, patronage, and corruption. Participatory budgeting also strengthens inclusive governance by giving marginalized and excluded groups the opportunity to have their voices heard and to influence public decision-making vital to their interests" (Shah, 2007). Provided that it is administered properly, participatory budgeting can elevate governmental services and strengthen the quality of democratic participation.

Thus, it is not a coincidence that the inclusion of participatory budget practices in European states has increased. In the UK, the government expected to have PBs implemented at all administrations supporting local governments by 2012. Local authorities from Barnet, Northamptonshire and Maidstone used an online budget simulator to consult citizens on their preferences, regarding to the allocation of the budget (Daventry District Council, 2009). In Germany, after a pilot project in 2005 in Berlin, where the local council received budget proposals from citizens online, the city has repeated the operation. Since then innovative initiatives have been conducted in the cities of Cologne, Hamburg, Freiburg and Leipzig (Luehrs, 2009). Combining online and offline methods, in 2006 the city of Modena in Italy set an experiment in which citizens could send email suggestions while they were watching live video streaming of the meeting. The use of SMS in order to reach a broader and younger audience has been used in more Italian public budgeting processes, such as those of Rome, Bergamo and Reggio Emilia (Peixoto, 2009). According to Peixoto, the budgetary allocations were increased based on large citizen demand, and the amount of proposed workings was larger than the original planning provided (2009). Therefore, the participation altered the original budgetary planning both quantitatively and qualitatively.

## **VII. eParticipation and European Good Practice**

The potential for ICT to alter the negative democratic balances across Europe and increase the level of political participation has been the subject of academic discourse. However, only relatively recently there has been adequate practical design and application of eParticipation to consider this potential in a real-world context. The development of such advanced information systems has enforced a growing community of research and practice which analyzes eParticipation. Current analysis includes understanding the role of technology in public participation and learning from the experience of European countries. The achievement of eParticipation initiatives is the relationship created between citizens and government assumed as one of a partnership. Since the promise of eParticipation is the ability to deploy ICTs to establish a partnership between governed and governing, as to neutralise the declining public confidence in democratic institutions and meet new expectations of increased popular participation in governance (Schmitter and Trechsel, 2004). eParticipation is, therefore, one of the reforms that representative democracies are currently experimenting with in the hope that participation counteracts public discontent. Estonia and Sweden have provided us with invaluable case studies from the study and practical application of eParticipation projects, in their democratic efforts to increase citizen participation.

Estonia, an EU member-state of 1.3 million inhabitants, has established a successful record of pioneering eParticipation projects, also known as the first country to introduce eVoting for the national elections of 2007 (Charles, 2009). One of the projects worth examining, both in terms of citizen mobilization and government response, was the eParticipation application known as TOM, which stands for "Today I decide" in Estonian (Glencross, 2009) kicking off in 2001. This was a pioneering move since it enabled Estonian citizens to participate in the national legislative process; other eParticipation initiatives around the world have been restricted to the local or regional level (Carman, 2007). Starting in 2001, the Estonian TOM platform provides until today a valuable model for understanding the dynamics of eParticipation. This Estonian case provides lessons for eParticipation in practice so that the expectations of users and government officials both benefit from such initiatives.

According to the OECD theoretical framework for categories of citizen engagement, the TOM platform fits the model for using Information and Communication Technologies to promote active citizen participation rather than providing information or as a consultation mechanism (OECD, 2001). At first, the TOM project was more ambitious than similar projects. Rather than being a simple medium for collecting signatures, the TOM tool became a forum for citizens to discuss legislative proposals, within a ten-day period following submission, and to vote upon them. After an idea been proposed by a user the system functions first allow for discussion between TOM users (participating citizens), then authors of legislative proposals have three days to amend them before they are voted by users. Once a proposal is voted by a majority, it is forwarded to the relevant government department, which then has a month to respond to the proposal explaining the argumentation behind an action. This formal government response is then posted on TOM (Glencross, 2009). The experience gained from launching and developing TOM and the central participation tool was further used as a model for international product such as TID+ ('Today I Decide' International<sup>1</sup>), an open-source software that can be used for the collection of public proposals (Åström et al, 2013). A number of legislative ideas were discussed and gained momentum on TOM, such as traffic policy, taxes, constitutional affairs, crime and alcohol policies (Glencross, 2009).

The Interregional Cooperation Programme INTERREG IVC, which is financed by the European Union's Regional Development Fund since 2010, records successful eGovernment programmes throughout the European Union (Lukka, 2010). The city of Tartu in Estonia has followed a successful pattern to update the electronic profile of the city. The local authorities decided to involve the Tartu residents in this process from the beginning. At first, the city residents contributed with their opinion on the new website's schemes, and in the second phase, the website architecture was built. A number of methods were used to engage citizens; from public polling to testing of navigation, the needs and wishes of the ordinary people were taken into consideration about the new website. The goal of the project, which was to create a standard methodology and a working prototype with maximum involvement of the city residents, was achieved. The project, also, has been a huge success because the city residents participated actively and expressed interest, the methods produced results and the project was completed in a timely manner. The most important thing was the chance that the city residents were given to express their opinions and the subsequent efforts have relied on those opinions. Social media proved extremely helpful as well; Facebook was used to achieve communication with the city residents, including posts inviting all to take part in the public poll and share their ideas about the website. During the second phase, at the creation of the website prototype, fewer participants were considered which, however, secured a high quality of results, because the ones involved were motivated and competitive enough to ensure effectiveness.

In Sweden, at the local level, eParticipation initiatives are only a few. However, they offer important examples of eParticipation practices run by Swedish local authorities. A number of online 'deliberative referendums' were undertaken in small cities such as Malmö, Vara and Sigtuna. In the city of Sigtuna, ten online referendums were conducted in one year and the results were promising: a relatively high percentage of citizens took part in these online referendums (30-60%) and the contributions made by participants did have an impact on final policy decisions (Åström et al, 2011). Other initiatives include the Gothenburg Online Forum and the Malmö Initiative. In 2004, the city of Gothenburg launched an online forum with regards to a redevelopment project, in their effort to create new structures for policy-making and planning (Benesch and Ullmark, 2008). The redevelopment of the city Södra Älvstranden included two challenging tasks: a) the planning and development of the municipal area with the minimum financial impact on the taxpayers and b) and the broadening of citizens' participation.

To achieve the attraction of investors in the area and enhance citizen participation, the municipality contracted a company named Ävstranden Utvecklings AB (ÄUAB), which was responsible for both urban planning for the indirect dialogue with citizen (Åström et al, 2013). The following dialogue with citizens was conducted in two ways: an online forum and an exhibition at the City museum. By November 2006, 980 posts had been registered on the forum. Many contributions were direct proposals and opinions focusing on the city life, housing, transport, environment and the new city look. In the end, the impact of citizen participation was valued as limited and it was noted that citizens and decision-makers had different perceptions about the development of the process. Citizens taking part in the online debate expressed expectations about an open process where participation would directly influence the process, while representatives of ÄUAB and the planning department supported the view that 'online deliberations' preceded formal planning, in any case (Åström et al, 2013).

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<sup>1</sup>*Today I Decide' International*, <http://tidplus.net/>.

Despite the subsequent dissent, the Gothenburg Online Forum serves as model of citizen participation in terms of sharing problems rather than sharing power.

The first ePetitioning system was launched in 2008 in the city of Malmö. The most defining aspect of ePetitioning systems is the willingness of public authorities to take petitions seriously when preparing an institutional plan. In a similar to the Gothenburg case, broadened participation was achieved in quantitative terms with nearly 200 ePetitions in the first year. But the political and administrative decision-makers refused to give a formal response to petitioners, which the petitioners themselves had taken for granted. One year and a half afterwards, the actual participation in the Malmö petition system added up to 210 initiatives and 5,500 signatures (SALAR, 2010). On a survey that asked the petitioners what motivated them to participate in the Malmö Initiative, they replied that *simplicity* was crucial. Additionally, the collection of online signatures is important, as well as petitions' ability to generate awareness and publicity in local media (Åström et al, 2013). What is even more crucial, though, is the potential to address democratic concerns in real political issues, the time they arise.

### VIII. Conclusions

Lately electronic participation has evolved enough to start re-engaging citizens with the democratic processes by exploring the potential of ICT in the public sector. At the academic level, a number of frameworks have helped us to understand eParticipation, through the most familiar disciplines and social initiatives that approached contemporary models. At the practical level, a large number of eParticipation initiatives have been launched at all levels, some with larger success than others. In this article, we examined the use of ICTs and the main aspects of eParticipation initiatives from a social and political perspective. Additionally, we provided an understanding of the progress and current trends of eParticipation. For that purpose, we summarised the European experience with eParticipation and analysed information gathered from the relevant literature and the implementation of political initiatives.

In general, it can be concluded from the research that there is increasing activity in the field of eParticipation in Europe, as well as there is a number of exceptional initiatives already implemented and fully operational. However, there are still many opportunities to be explored and a lot to be achieved with the cooperation and sharing of good practice between countries and regions, but also across the different levels of participation (Panopoulou et al, 2009). Furthermore, practical implementation of eParticipation initiatives suggests that the scope of eParticipation initiatives narrows the potential outcome, allowing more active participation and more specific outcomes. This empirical conclusion could be the basis for further consideration of the prospects and restraints of eParticipation. It should be further examined whether eParticipation can indeed essentially involve the public and in what ways this could be achieved. Hopefully, the research presented in this article will contribute to the future work and research of eParticipation developments and will facilitate the transfer of eParticipation good practice.

Yet, one of the greatest challenges to eParticipation is the fear of unfulfilled expectations. Based on Hirschman's model it appears that eParticipation models alone are no solution for the problem of public distrust of political institutions. Citizen participation may be successful in the promotion of loyalty only if the use of the participation leads to reform; when participation seems pointless, the result is simply disengagement (Hirschman, 1994). From this perspective, governments seeking to implement eParticipation will be successful only if citizens' willingness to trust the eParticipation process can be sustained, and if the system has notable effects on the legislative decision-making process. Thus, the government's willingness to take eParticipation initiatives to the next level should be evaluated not only on the basis of planning and implementing such opportunities, but indeed taking into consideration the outcome of citizen participation. In that matter, citizens are concerned by the extent to which their participation counts as important.

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## Local Public Sphere for Discursive Public Service in Indonesia: Habermas Perspective

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### Abstract

*Democracy is an important issue in the practice of public administration. Until the contemporary situation, democracy is a process that is constantly maintained to accommodate public aspirations. In the context of the democratic process, local public services could be determined by opening the deliberative public sphere and increasing public participation to think together what public services to be provided. This paper is an effort to explore the challenges, opportunities and possibilities of the terms of the acceptable public services for more stakeholders in Indonesia. In contrast to the practice of citizen charters that tend monologue in determining the services contract, the idea of local public sphere, public organization opens dialogue with all stakeholders including the public service users. Habermas's thought about public sphere be an inspiration in building the model of discursive public services. Historically, Indonesia has actually already had a concept of "musyawarah mufakat" (consensus) that is similar to deliberative democracy. Therefore, the prospect to create the public service policy that formulated together is possible. To open the possibility the theory into praxis, then the adaptation of Habermas's thought is formulated on a local scale, namely in the regions in Indonesia. Here, public sphere articulated with media or forum for all elements stakeholders for discussion and deliberation in defining public services. Now days with the development of technology, the opportunities will open widely. Beside to modernize and simplify the structure of the service process, technology can facilitate access to interact between the government and the public to create discursive public services.*

**Key words:** Democracy, Habermas, Local Public Sphere, Public Service

### Introduction

Public service is an important part that can't be separated from the social life between public and the state. Quality of public services provided can be a parameter level of the organization of the governance. Indonesian people has a bad history of public services quality in the New Order (Orde Baru) regime, which the worst bureaucracy momentum in Indonesia. After the New Order regime in 1998 cave, government made some efforts to improves in public services. But there is an interesting note, the results of research conducted Agus Dwiyanto et al (2002) which shows the performance of the public service performed by the bureaucracy after reformation era are not many experiencing significant changes. Accountability, responsiveness, and efficiency in public services is still low. In the contemporary situation, the practice of corruption is still dominant in the body of the government bureaucracy. According to Indonesia Corruption Watch (ICW) in 2014 increased by 12% the amount of corruption from the previous year as many as 560 cases of alleged corruption (The Wall Street Journal, 2015). This indicates that Indonesia can't be free from the old disease, called corruption.

The survey results integrity KPK shows that public service quality Indonesia recently reached the score becomes 6.84 from 10 to central institutions, and 6.69 for unit public services in the region. The score integrity in characteristic quality in public services, such as whether there exists a bribe, there is whether this process of naming a Standar Operating Procedur (SOP) the similarity service with SOP that is, information, justice and service speed and simplified public complaint (Direktorat Aparatur Negara: 2010).

Public services are closely related to the implementation of good governance. Kaufman (in Kumorotomo, 2007) conducted a survey in hundreds of countries shows elements of good governance, among others fulfill the political rights of citizens, the state's ability to control bureaucratic corruption, make conducive regulations, and the ability in public service. Than it is in line with the spirit of New Public Service paradigm initiated by Denhart and Denhart (2003) on the importance of the role of democracy in the administration and public service organizations. Especially after decentralization began, local

governments have to compete to perform and make initiation of reforms in the public service according with the public voice.

Public services is not living in a vacuum, it dialectically necessary adaptive to the spirit of the age. Ideally it is not time for ABS (*Asal Bapak Senang* [The Important thing is the boss happy]) typical New Order bureaucracy. Public organizations must not provide services to the leaders but fulfill the constitutional rights of public as citizens. But unfortunately the reality shows different things. The process of public services that the government is still addressing the people as passive customer that limit citizens participation (Maani, 2010). People are marginalised of their own rights. Many medias in Indonesia report in some local areas there are people who refused treatment by the hospital. This is certainly an irony, amid calls for democracy in the services, people just do not have sovereignty to access public services.

To encourage quality of public services, some local governments initiated adopt citizen charters as a form of contractual agreement in the standardization of public services. Obviously, it needs to be appreciated as an important innovation in the implementation of public services in Indonesia. Citizen charters put service users as the most important element. Therefore public organizations as service providers invite stakeholders and users to dialogue together define the various procedures and service standards, including the rights and obligations of the various stakeholders.

Citizen charter was first introduced in England in the time of Prime Minister Margaret Thatcher led government. In this case it is better we need to understand the context of the current political economic policy Thatcher became prime minister. For Thatcher no such thing as society there are only individuals. The premise of Thatcher thought is a free market economy. Then some of the critics gave the title as *neoliberal*. Thatcher believes the market will work efficiently if left free. Policies that were made since it first became Prime Minister in 1979 was highly controversial, such as financial deregulation, free markets, low taxes, and block all the trade union movement at the time. So the idea of citizen charter can not be separated from the context of the rationale of the "iron lady". Borrowing explanation Gaster (1995: 100), citizen charters only focused approach to the relationship between service providers and individuals as users. Citizen charter is basically a social contract between the bureaucracy and the customer that can ensure quality of service. Assumptions in this charter advocating citizen as a user in the service rather than as members of the organic community. Relationships is between the provider-user, the consequences of participation which opened not emancipatory. In this paper, the authors trying to deconstruction the idea of the citizen charter and give antithesis of it. The authors use Habermas thought about public sphere which opens up the possibility of a more emancipatory society involvement.

## Method

In a systematic, the method used in this paper is library research and content analysis. Data was collected find secondary data and information dissemination of scientific meeting

## Result and Discussion

Some local areas in Indonesia have started doing innovations citizen charters in the implementation of public services. Especially in some areas of Central Java and East Java. As a new approach, it is certainly worthy of appreciation. But epistemologically, the concept of citizen charters low relevance to the spirit of mutual cooperation (*gotongroyong*) is typical of Indonesian society. As alluded earlier, the citizen charter presupposes a provider-user relationship. In other words, society is only the user, consequently the power of emancipatory is low. The spirit of citizen charter relevant to the development paradigm of public administration as New Public Management (NPM) or other designations market-based public administration, the post-bureaucratic paradigm and entrepreneurial government. Terms were basically describes the phenomenon is an alternative for the way traditionalbureaucracyn conducting business public (Denhardt and Denhardt: 2003).

Osborne and Gaebler (1992) summarizes their approach in some dictum; Government directs that acts as a catalyst rather than rowing the organization; Government belongs to the people who gave the authority rather than the servicing; Competitive government inject competition in the provision of services; Government driven by the mission rather than the rule; Results-oriented government.

As an alternative idea in the development discourse paradigm of public administration, NPM has a novelty that needs to be appreciated, but in the context of social public services, this was a problem. Discuss this issue it is worth referring Denhardt and Denhardt on the concept of New Public Service (NPS). NPS is one of the roots of the theory of democratic citizenship. In theory democratic citizenship, governments have an obligation to ensure the rights of individual citizens through various procedures. Denhardt and Denhardt said, "The role of government is to make sure that the interplay of individual self-interest operates freely and fairly. Which, then citizens involved in government policy determinations. In that spirit, borrowing a phrase Mansbridge (1994), they referred to as "public spirit". On the important point is where the public service as a derivative of the emancipatory public services.

Public service is an important issue how to discourse about government and public relations. In NPS, Public services that are carried out did not place its citizens only customers such as the paradigm NPM. Citizens is a fundamental state which government is responsible for ensuring various interests of their needs. Denhardt and Denhardt said that citizens not only "customer", but the "owner". The citizens is not as customers who choose things according their have been willing. In contrast, the citizens of demanding that the government provides something that according to them is important. On the other hand the government is generally responsible to the citizens as a constituent; Not to the "customers" are confined to their personal interests only. And finally the main orientation of the state is not profit or citizen satisfaction, but is accountable as a public organization regulated by law.

### **Public Services and Local Government**

The quality of public services in every area are different according to the nature of the society. Moreover, with the condition of Indonesian society that is plural, it will present a different public services depends on the uniqueness of each. In this case Hoessein (2001: 5) explains:

"Given the diverse conditions of the local society, the local government and local autonomy will be diverse as well. Thus the function of decentralization (devolution) to accommodate the aspirations of the plurality of local society will also be diverse. Decentralization (devolution) gave political variety and structural variety to deliver local voice and local choice. "

Reviewing Hoessein explanation in advance, the goal of decentralization to improve the quality of public services within the framework of this democratic model should really uphold the values of democracy and independence that is rooted in local society. Through their representatives, the public can determine the expected service quality criteria in various fields: education, health, transportation, economic, social, cultural, and others. The citizens can determine areas of service that need to be given priority; how to determine the priority; by whom and where services were provided; how to care effectively, efficiently, representing the public needs and interests, and many other criteria that need to be explained. Hence the determination of all of these criteria in a model of democracy is determined society itself. It is certainly not easy and is highly dependent on changes in vision, mission, strategy, and implementation of the local government in making government policy. So far, there is a tendency that quality of public services is determined by the government or institution that provides services, not co-between provider with the user, customer, client, or citizen as community service users; which reflects democracy and independence.

### **Public Services and Habermas Perspective**

Public Service rates relations between the government and the society. Among These relationships are known as a public participation or community involvement in public policy and government role in public policy, which is in its development, public participation or community involvement was continued to experience the development and changes from time to time. E. Vigoda, as quoted by Subando Agus Margono (in Kumorotomo: 2010) revealed that evolutionary process took place in the context interaction between public administration and the society. She describes the process of initial evolution, where the position citizens as subjects and public administration as rulers, move to as citizens voters and public administration as trustees, then shift more to as citizens clients/costumer and public administration as managers, and for the next citizens as partners and public administration as partners, finally, citizens place on as and public administration as subjects.

Jurgen Habermas, a social scientist second generation critical Frankfurt School, offered about democracy deliberative. Habermas criticized his predecessor who understand rationalisation (Marxian) only as approach reaffirms safety. In fact, Hegel's concept divided into two parts: approach reaffirms so work and communication.

The background of his thoughts is pessimism of Western rationalism in capitalism society. In capitalism age, the ratio just means dominant through the work just for economic and instinct.

Borrowing the term J. F. Lyotard also observed in a postmodern, which can be a way out of deadlocked modern man in capitalism age is emancipatory communication. Communication that is not master-servant, co-equal, but free from the domination to become the basic deliberative democracy. Then he actualizes communication in humanity, in the concept of public sphere. Democracy deliberative is derivation the concept of public space in political theory.

In a simple, democracy deliberative is marked with a space to confide, of origin, or criticism of the entire elements of the people, no compromise, in order that all humanity can be absorbed by political system and economic or economic-politics. He dreamed that communicative power through the public networking communication civil society has been created. Policy no longer monopolised by the elitist, both state or even the owner of financial capital, "wild" discourses happens in the society can affect the construction of public services that are required for public.

Locus of Habermas thought is capitalism age Eastern Europe or America. But it does not mean the mindset does not apply to the context of Indonesia. Moreover, Indonesia has Pancasila as the basic for democracy. Pancasila democracy to prioritize mutual agreement, and so have common point with democracy deliberative. Democracy deliberative give priority to use how to decision-making that emphasizes deliberation and excavations problems through dialog and exchange experience between public.

### Open Public Sphere

Community or society involvement in participate is the core of deliberative democracy. Deliberative democracy is different with representative democracy, which today applied in Indonesia, which in fact it's just procedural democracy. Public services in the local had a big opportunity in opening the public sphere for discursive public services. Public Service which is produced from multi-stakeholders, and the most important thing is emancipatory community involvement as the "owner".

The idea of emancipatory community involvement refers to process of communication and decision-making process (to achieve a consensus) in the process of formulation public services, in which the participants will be urged to make communication process in the open, and using approach conference in reach an agreement that values the majority and minority opinions. Practice of the process of drafting public policy or public service must advance principle of equal and openness in the process so that it is able to process conference that's fair.

Through the balance in the right and authority from the experts or professional, bureaucracy, the commission legislative, and community in the dialog forum, it will create communication is equal. For example, when there is a side which is not yet agreed to, say society or community, the public forum process could not be continued and deal with a high standard of services public not to be able to be approved by government officials. Here, there is a balance power relations, which in turn will push orientation of the participants forum to propose togetherness, or things that larger from self-interest and group-interest.

Jurgen Habermas's thought about action communicative and consciousness consensus-oriented to become the basis analysis in this paper, in which Habermas considered that communication process should equal in order to achieve an agreement to be able to received all stakeholders, or in other words, Habermas see social integration can only be achieved through the process action communicative that achieve consensus. In this case, Habermas (1984) explains that action communicative should be explained as,

"...reach understanding [verständigung] is considered to be a process of reaching agreement [einigung] among speaking and acting subjects... it has to be accepted or presupposed as valid by participants... a communicatively achieved agreement has a rational basis; it cannot be imposed by either party, whether instrumentally through intervention in the situation directly or strategically through influencing the decision of opponents..."

Through a mutual understanding between subject or partisan forum in a communicative can be accomplished. But when there is forcing and lies, and action communicative change just to action and strategic instrumental that will not lead to a consensus, but self-control and to fulfill the goals of self-interest. As explained earlier, implicitly public sphere function significantly, is as a room where public opinion that an authentic and critical of the political and economic power in order to achieve the balance and social equity, can be formed and spread to all citizens, as well as pressurer against forms manipulation public sphere. The manipulation public sphere is that must be monitored by the participants in the dialog forum.

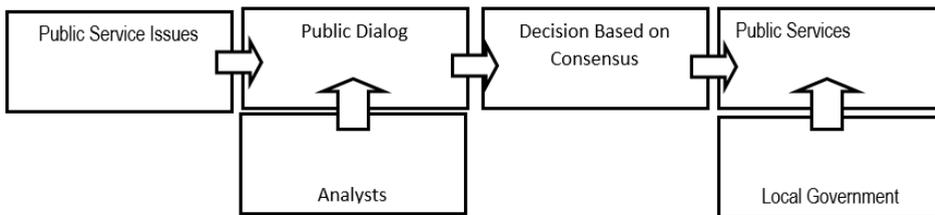
The process of making citizen charter today, in which the society can only be placed in a position that can only give criticism or input, but not created equality. This condition is only process of communication that created-oriented instrumental or strategic, so the public service standards and then it was cretaed is not a product of consensus, but instrumental or strategic pro-self-interest or interests of a number of stakeholders. In other words it was called as manipulation public sphere. So, to ensure holding action communicative in forums fomulation of making public service standards, so each participant, whether it's bureaucracy, experts and society must be guaranteed by regulation regarding rights and authority in the forum will equal.

In the context of local public sphere for discursive public service, the first thing that has to be done is revitalizing public sphere. In the current situation, the role of local government more dominant of providing public service. In fact the public also have the same potential as possible to provide public service. Other sectors should continue to precious things, not even be removed, local government because of limited public services to give to the public. Public needs is constantly growing, both quantity and quality, and will not be met by the local government fully. Thus, local government should consider an alternative that supports developing other sectors outside of the Government. Thus the local government should become a facilitator in opening local public sphere for the public to the freedom and autonomy the participants. Public sphere can be implemented a free press, a political party, freedom intelligent person, freedom, freedom to grasp that people freedom demonstrated, freedom in his defense, freedom defended the community, regional autonomy, independence, and justice system of law (Saefullah : 2000).

Local public sphere can be articulated in the form mutual consultation or construct media with all the elements stakeholders, both in the form material or immaterial. In the material thing that could have been attempted is by holding dialog together with all stakeloders like local government and community or society representatives to consults from procedures, service duration and service cost (if needed). Action communicative must continue to be continually encouraged to a consensus is achieved.

Decision in forum for dialog which will be done in local public sphere is then taken to government policy government policy of standard public services. So the process needs analysis of public services is no longer will be done only by the technocrats, but all the stakeholders involved directly.

The public service which is made by mutual agreement is very different from the role technocrats model because analysts or experts only as a facilitator for the public find their own decisions theirself. This process can simplified as follows:



Source: *Adaption from Nugroho (2012)*

The role of government here more as a legislator of "public willing". While the role of the analysts or experts could be processor of the process of public dialog order to make public services that it was agreed by consensus. This model is well-known in Indonesia as *musyawarah mufakat*. In the villages in the past every decision always made by the public, a resident of the village, then consults, and achieved consensus. This agreement which is referred to as a discursive public service.

Then, the development of technology today will open more width of the gate deliberative democracy for discursive public service. In addition to modernize the structure and simplifies process service, the technology can make it easier access interaction between the government and the public to create the public service diskursif. For example through the social media line with the real time, or through informatics system that enough, the government can hear many opinion directly from the society. Consequence of the open local public sphere apparatus need to have more emphatic, because later public service is not only contract but a consensus (*musyawarah mufakat*).

## Conclusion

Habermas offers agenda to revitalise public sphere with how to start the process on efforts formation of a consensus rational together and emphasis on public opinion which are critical. The idea local public sphere is expected to public opinion was later will influence the decision-making process of public service standards. The role of government in local public sphere as a legislator of "public willing". While the role technocrats, analysts or experts only as a facilitator for the public find their own decisions theirself. This model is well-known in Indonesia as *musyawarah mufakat*. The discursive public service that has been formulated together with all the stakeholders hopes will be the standard public services that more qualified and humanist and socially equitable.

As culturally-embeded social practice, public sphere in daily life becomes a local-to-day activities. Therefore the communities or society can directly control the quality of public services provided by the government. The presence various technology can be carrying capacity of local public sphere that was built, to modernize the structure and simplifies process service, and make it easier access interaction between the government and the public to create discursive public services.

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## Life Satisfaction and Intercultural Tolerance Interrelations in Different Cultures

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### Abstract

*Summarizing the results of different researches on intercultural interaction, we can state that people feel tension in intercultural contacts when they perceive the situation as threatening their well-being. There are also many empirical evidences that people belonging to different cultures understand well-being in different ways. This understanding depends also on social, economic and other factors. Thereby it is important to study general relationships of subjective well-being and intercultural tolerance and cultural specifics of these relationships. Objectives of the empirical study was to analyze the satisfaction with life as an important factor of cross-cultural interaction; to reveal cultural specifics of modern representations of subjective well-being, and interrelations of the styles of intercultural interaction with subjective well-being in different cultures. **Methods: Scales of: Psychological well-being (Ryff), Life Satisfaction (Neugarten, Havighurst, & Tobin), Subjective Happiness (Lyubomirsky & Lepper), General Communicative Tolerance (Boiko) and Ethnic Identity Types (Soldatova, Ryzhova), Student's T-test, Spearman's rank correlation. Sample: 330 persons (18-55 years old) of 10 different nations and 5 religions. By the time of the survey, all the participants had lived in Russia for some (not less than 3) years, all of them lived in some biggest Russian cities. Results: It was discovered, that people's satisfaction with their lives directly relates to general and intercultural tolerance. People, more satisfied with their lives, are usually better control their negative emotions, adapt to changing situations, forgive others' mistakes. Such people admit their and others' ethnicity and more rarely exhibit extremism in inter-ethnic relations, although they often avoid contact with other ethnic groups. Cross-cultural differences in well-being were revealed among residents of modern Russian big cities. In particular, people belonging to the Jewish religion, were significantly more satisfied with their lives than all the others were. People brought up in the Orthodox culture, were the least satisfied. In many subjective well-being indicators, representatives of the Buddhist and Muslim cultures showed quite good results. Different statistically significant connections between subjective well-being and tolerance were revealed in cultural subgroups. For example, for people belonging to Jewish religion, general tolerance is associated mostly with meaningfulness of life and openness to the world; and ethnic tolerance is associated to environmental mastery and personal growth. For Buddhists meaningfulness of life positively correlates with general and ethnic tolerance, and personal growth correlates only with ethnic tolerance. Muslims showed the similar results, but besides – the correlations of both types of tolerance with purposefulness and overall mood tone. For Orthodox Christians, both types of tolerance is mostly related to positive relations with others and overall level of subjective well-being. Conclusions: the life satisfaction and subjective well-being are important factors of intercultural interactions. There are common and culturally specific mechanisms of these factors interaction. In psychological support of cross-cultural interaction it is important to take into consideration cultural differences in well-being understanding and its relations with general and intercultural tolerance.***

**Keywords:** Ethnic Identity, Ethnic Tolerance, Life satisfaction, Subjective well-being, Cross-cultural differences, Religion

### 1. Introduction

Globalization processes of the recent decades have made the problem of cross-cultural tolerance among the most pressing. Tolerance is seen as one of the central mechanisms of cross-cultural adaptation, that aims to ensure the person's optimal entry into new society and the optimal development and functioning of society as a whole (Novikova, Ibadova, 2009). More and more researches on this issue reject the understanding of tolerance as a passive acceptance of new rules and regulations, and increasingly spreading the view that tolerance is an active acceptance of the world diversity, active attitude towards the others based on respect and acceptance (Vinogradov, 2002). With such understanding of tolerance its essence is considered by modern researchers as a value attitude of the person to another person. The following components are allocated: the empathy for others and the recognition of the value of cultural diversity (Asmolov, 2000; Soldatova & Shaygerova, 2008), the readiness for the dialogue with others (Mirimanova, 2004), the attitude toward mutual changes during such a dialogue (Lektorsky, 1997).

I. Novikova and T. Ibadova in their empirical study showed that the tolerance as a complex concept includes various levels and, consequently, the variety of factors, among which social and social-psychological factors have the leading role. The following features characterize the subject of tolerance – the tolerant person: it is friendly and altruistic, not selfish and aggressive, open for various forms of social interaction (Novikova, Ibadova, 2009).

Interethnic tolerance is also considered in the context of John Berry's theory of intercultural strategies. Berry understood the strategy of intercultural interaction as the link between attitudes and actual behavior (Berry, 1997). Numerous empirical studies have shown a relationship between acculturation strategies and styles of ethnic identity (Chebotareva, 2012, 2014 a,b,c; Novikova, 2011; Novikova & Novikov, 2013, Novikova & Novikov, 2015). Berry allocated the types of ethnic identity with different quality and degree of ethnic tolerance on the basis of a wide range of ethnocentrism scale, ranging from identity denial when negativity and intolerance towards one's own ethnic group are fixed, and ending national fanaticism - the apotheosis of intolerance and a higher degree of negativity towards other ethnic groups. He considered integration, wherein minority representatives harmoniously combine positive attitudes toward their own culture and dominant community. The assimilation (abandoning of the traditional cultures to strengthen ties with the dominant culture) and the separation (avoidance of the ties with larger society) are considered less positive strategies. The most destructive strategy, according Berry, is the marginalization (lack of adherence to any culture). Berry (1997) The extreme forms of ethnocentrism is associated with religious fanaticism and racism and lead to violence and aggression (Saressalo, 1977).

On the basis of Berry's theory G.U. Soldatova and S.V. Ryzhova developed the typology and technique for assessing the ethnic identity types. They allocated the following types: Ethnic nihilism – removing from one's own ethnic groups and looking for social ties not on ethnic criteria; Ethnic indifference - ethnic identity blurring, irrelevance of the ethnicity; Positive ethnic identity - optimal balance of tolerance towards one's own and other ethnic groups; Ethnic egoism - recognition of own nation's right to solve problems for the "foreign" account; Ethnic isolationism - belief in one's nation superiority and xenophobia; Ethnic bigotry (fanaticism) suggesting the willingness to go all lengths for the sake of ethnic interests, denying the other nations rights to use any resources and social privileges, recognition of the priority of ethnic rights over human rights, excuse of any sacrifice in the struggle for own nation well-being (Soldatova. & Shaygerova, 2003).

Often, as a system component, the foundations of tolerance the subjective well-being is pointed out, providing the foundation and premise of tolerant behavior of the person (Bakhareva, 2004).

Subjective well-being (SWB) has become one of the most popular subject of psychological research over the past decades (Diener et al, 1999). Currently, it is common to identify two components of subjective well-being: affective and cognitive. The affective component is considered as a hedonic balance (balance of pleasant and unpleasant affects). The cognitive component is understood as a person's evaluations of his or her life according to some standards. Such standards are primarily linked by researchers with the culture in the broadest sense of the notion.

Many researchers proved that both components of SWB are influenced by personality (Diener et al, 1999) and by culture (Diener & Suh, 1999). The studies of SWB and culture interaction showed that culture influences SWB directly and indirectly. There are a lot of evidences that people in individualistic, rich, and democratic cultures have higher levels of SWB than in collectivistic, poor, and totalitarian cultures (Diener & Suh, 1999; Veenhoven, 1993). Besides, culture moderates the relation between hedonic balance (important aspect of SWB) and life satisfaction. For example, it was demonstrated that the relation between hedonic balance and life satisfaction was significantly stronger in individualistic cultures than in collectivistic cultures (Suh et al., 1998). SWB in individualistic and collectivistic cultures is determined by the fact that individualistic cultures emphasize individuals' needs and freedom of choice, whereas collectivistic cultures emphasize others' needs, duties and reliance on one's fate (Triandis, 1995). Luo Lu proved that culture-specific modes of self-construction lead to the diverse meanings people hold for happiness and well-being in different societies. In particular, the author said that subjective well-being for the Chinese was construed around fulfilling one's obligations and maintaining homeostasis (dialectical balance). In contrast, modern Western individual-oriented view of the self was related to understanding happiness as "a prize to be fought over, and entirely one's responsibility to accomplish this ultimate goal of life" (Lu. 2008, 290).

Therefore, culture serves as a major force determining the way people conceptualize the self, understand happiness, set life-goals and select strategies of the goals achieving. Most studies have focused on the question, how subjective well-being and life satisfaction can be modeled by cultural values (Schwartz & Bilsky, 1990; Schwartz & Bardi, 2001; Schwartz et al, 2001).

Therefore compilation of the data from different empirical studies lets us to reveal not only cultural specifics of the nature of SWB and life values interaction. The main conclusion is that the dimension of collectivism - individualism is an important factor defining life satisfaction level and understanding of well-being in different cultures. But by now not enough studies of different cultures have been accumulated in order to be able to deduce some universal laws. Moreover, most cross-cultural studies were conducted with representatives of different countries or with emigrants and locals. We consider it is important to study how different types of cultures (nationality, religion and region) together influence the person's subjective well-being in the context of intercultural interaction.

In one of our research it was shown that different types of cultures in conjunction influence persons and their social interaction styles. For example, that Muslims from different regions of the world have different styles of interethnic interaction (Chebotareva, 2014a). Therefore it is important to complete numerous cross-ethnic studies with the studies of other types of cross-cultural differences, including cross-religious.

In our previous studies it was discovered that there are significant cross-cultural differences in life values and subjective well-being among residents of one country (Russia), belonging to different cultures. These differences have their sources in religious attitudes and settings. People of different cultures associate their well-being and life satisfaction with different values. Generally, well-being and life satisfaction are directly related to the values, less popular in certain culture (Chebotareva, 2015). The aim of this paper is to discuss the satisfaction with life as an important factor of cross-cultural interaction; to reveal cultural specifics of modern representations of subjective well-being, and interrelations of the styles of intercultural interaction with subjective well-being at people, belonging to different religious, living in one country.

## **6. Method**

### **6.1. Participants**

The empirical study sample consisted of 330 persons (18-55 years old) of 10 different nations (Russian, Ukrainian, Byelorussian, Armenian, Georgian, Azerbaijan, Tatar, Uzbek, Tajik and Jew). Among the participants there were representatives of 5 religions: Orthodox Christians (90 persons), Catholics (44), Muslims (65), Buddhists (71), Jews (60). All the religious groups were aligned by gender and age. The respondents were not very religious, but they were brought up in the spirits of their religions. By the time of the survey all the participants had lived in Russia for some (not less than 3) years.

### **6.2. Materials**

Personal information form consisted of questions about gender, age, profession, country of origin, nationality, religion, period of stay in Russia.

Subjective well-being was estimated by 3 techniques "Scales of psychological well-being" (Ryff, 1989, adapted by Shevelenkova, Fesenko). The inventory consists of 84 statements reflecting the six areas of psychological well-being: autonomy, environmental mastery, personal growth, positive relations with other, purpose in life and self-acceptance. Indicators of different scales are combined into three integral indicator: affect balance, meaningfulness of life, openness to the world.

"Life Satisfaction Index-A" (LSI-A)" (Neugarten, Havighurst, & Tobin, 1961, adapted by Panina) measures the overall psychological state of the person, which is determined by the personal characteristics, the system of one's relations in various life aspects. It consists of 20 questions; the results of the responses are reduced to 5 scales characterizing different aspects of the person's life satisfaction. These include zest (as opposed to apathy), resolution and fortitude, congruence between desired and achieved goals, positive self-concept and mood tone. The persons showing high scores on the questionnaire, usually take pleasure in their daily activities, find their life meaningful, and have feeling of success in achieving major goals, positive self-images and optimism.

"Subjective Happiness Scale" (Lyubomirsky & Lepper, 1999, adapted by Leontiev, 2000) is the express (4-item) scale, designed to assess the current psychological state of the person. It shows a subjective assessment of whether one is a happy or an unhappy person.

The tolerance was diagnosed by two techniques. The technique "Types of ethnic identity" (G.U.Soldatova, S.V.Ryzhova) allows the diagnosis of ethnic identity and its transformation in the context of the ethnic interaction. The questionnaire contains six scales that correspond to the types of ethnic identity, described above. (Soldatova & Shaygerova (Ed.), 2008).

"Diagnostics of the General Communicative Tolerance" (V.V. Bojko). The questionnaire items are grouped into nine scales: Rejection or misunderstanding of other persons' identity; Using oneself as a standard when assessing the behavior and way of thinking of other people; Categoricity or conservatism in the estimates of other people; Inability to hide or smooth over bad feelings when faced with some uncommunicative characteristics of the partners; Desire to change, reeducate the partners; Desire to fit partners for themselves, to make them "convenient"; Inability to forgive the others' mistakes, clumsiness, unintentionally caused trouble; Intolerance to physical or mental discomfort caused by the other people; Inability to adapt to the character, habits and desires of others. (Soldatova & Shaygerova (Ed.), 2008)

We used statistical techniques: descriptive statistics, Mann — Whitney U-test, Spearman's rank correlation coefficient.

### 6.3. Procedure

The procedure of the research was approved by the Department of Social and Differential Psychology of Peoples' Friendship University of Russia (PFUR). We used snowball sampling method: first members of international research group recruited the subjects from their acquaintances working in different spheres, then these people recruited their acquaintances and so on. The surveys were conducted personally during 2-3 meetings, 30 minutes each. All the participants were informed by the researchers about the aims of the study before the measures were administered. For obtained data analysis we used statistical techniques: Mann — Whitney U-test, Spearman's rank correlation coefficient.

## 7. Results

### 7.1. Cross-cultural peculiarities of life satisfaction and subjective well-being.

The assessment of life satisfaction and subjective well-being levels of different religions representatives with all three techniques showed that the overall satisfaction with life in the whole sample is average. Among the indicators of life satisfaction resolution and fortitude and positive self-concept are most expressed, though the average for the sample of these indicators does not exceed the average values of other scales. Among the indicators of subjective well-being scales of affect balance, meaningfulness of life and openness to the world are most expressed.

The comparative analysis says that people, belonging to Judaism, have slightly better results on all the scales of "Life Satisfaction Index" as well as on overall level of life satisfaction. Orthodox Christians showed the lowest result on overall level of life satisfaction and on scale of positive self-concept. Muslims responded the lowest level of zest for life, Catholics - the lowest level on the scale of resolution and fortitude, Buddhists showed lowest results on the scale of congruence between desired and achieved goals.

The data on the Subjective Happiness Scale show the higher level of it at Muslims and the lowest – at Orthodox Christians.

The data of Psychological Well-being Scale show that overall level of SWB again is the highest at Jews, and the lowest at Orthodox Christians. However, in separate scales we can see a bit different results: in most scales of the test, Buddhists responded the highest results, and Catholics – the lowest results. Only on the scale of the balance of affect, Catholics have best results, and Jews – the lowest one.

Pairwise comparison of indicators of life satisfaction and subjective well-being helped us to find main religious differences. So, people belonging to the Jewish religion, are significantly more satisfied with their lives than all the others. People brought up in the Orthodox Christian culture, are the least satisfied with their lives. In many subjective well-being indicators, representatives of the Buddhist and Muslim cultures show quite good results.

Comparative analysis of life satisfaction and subjective well-being among representatives of various religious groups in connection with their life values are represented in our article «Cultural Specifics of Life Values and Subjective Well – Being» (Chebotareva, 2015). It is shown that each religious group has specific structure of subjective well-being indicators and specific correlations of subjective well-being with their life values. However, in general, life satisfaction correlates with

those values, which are less important for certain culture. Perhaps, persons, oriented on traditional and culturally important values are less happy than those, who are oriented for their individual ones.

### 2.3. Cross-cultural peculiarities of tolerance.

Table 1 presents the data on the ethnic identity styles severity in the studied groups. According to these data, the representatives of all religious groups have most strongly expressed positive ethnic identity, the second most popular style is ethnic indifference. The rest of the ethnic interaction styles in different religious groups are represented in different ways, but less than the first two styles. The positive ethnic identity is most strongly expressed at the representatives of Islam and Buddhism, and the weakest – at the Jews. The highest ethnic nihilism and ethnic indifference found at Catholics, the lowest – at the Jews and Muslims. The indexes of all three hyper-identity styles are most strongly expressed at Catholics and least expressed - at Buddhists.

Statistically significant differences in positive ethnic identity styles between the discussed groups were not identified. According to the degree of ethnic indifference Catholics significantly superior to the Orthodox, Buddhists and Muslims. According to the degree of ethnic nihilism Catholics significantly superior only to Buddhists.

Thus, along with total domination of positive ethnic identity, representatives of various religious groups are significantly different in the degree of severity of other styles of interethnic interaction. In general, Catholics more than others tend to underestimate the importance of ethnic differences, do not take into account the cultural identity in interpersonal interaction. Buddhists less than others tend to ignore their own ethnicity. Almost all indicators of hyper-identity revealed significant differences between the Buddhists and all other groups. Buddhists less than all others inclined to put the interests of their ethnic group above others.

Table 2 presents the data on the communicative tolerance of members of religious groups. In general, they confirm and clarify the results of the comparative analysis of the ethnic identity styles. The overall level of intolerance is highest at Catholics and lowest – at Buddhists. Significant differences in this parameter are revealed between Catholics on the one hand, and Buddhists and Orthodox - on the other. In the separate parameters of communicative intolerance significant differences are found between the Catholics on the one hand, and Buddhists, Muslims and Orthodox on the other hand in the indicators of rejection of others' identity, categoricity or conservatism, inability to hide bad feelings. Moreover, Buddhists much more likely than Catholics to forgive the others their mistakes. But the Orthodox, compared with the Catholics, are more tolerant to psychological and physical discomfort. Buddhists, compared with the Orthodox and Muslims, are much easier to forgive others their mistakes and to adapt themselves to the peculiarities of other people.

There were no statistically significant differences in the communicative tolerance of Muslims with Orthodox and Jews, between Buddhists and Jews. Jews, compared to Catholics, better accept the individuality of others, and in comparison with the Orthodox, less eager to change the others.

Thus, a relatively low tolerance of Catholics is manifested primarily in their lower acceptance of individual characteristics of different people, in greater conservatism and categoricity, in lower ability to keep their negative feelings. The relatively high tolerance of Buddhists is shown in their greater ability to adapt to others and to forgive their mistakes. Judah relatively better take other people's individuality and does not seek to re-educate and change them.

### 2.4. Life satisfaction and tolerance interaction

We can see in the table 3, that positive ethnic identity correlates directly with the overall level and with the most life satisfaction aspects. This result support widespread idea, that any tension in interaction is connected to person's perception of their well-being, level of their needs satisfaction, threats of their life values.

We can also see that indicators of hyper – identity in interethnic interaction doesn't show significant correlations with life satisfaction. Only hypo-identity indexes correlates inversely with life satisfaction. Overall level of life satisfaction and positive self-concept negatively relate to ethnic nihilism and ethnic indifference. The result is also quite predictable. Positive attitude to oneself interrelates with positive attitudes to the others, including representatives of other cultures. Resolution and fortitude negatively relates only to ethnic nihilism.

According to the table 4, the index of subjective happiness, reflecting emotional aspect of SWB, does not show any significant correlations with the positive ethnic identity. It correlates directly with ethnic isolationism and inversely – with ethnic indifference. Therefore, people, who feel more happy, have a tendency to pay more attention to the ethnic differences and to avoid contacts with other cultures representatives.

As seen in Table 5, subjective well-being indicators show significant correlations with many styles of ethnic identity. The positive ethnic identity is directly related to positive relations with others, positive self-acceptance, with meaningfulness of life and the presence of clearly aware purposes of life.

Among the scales of subjective well-being of the greatest number of relations with the styles of ethnic identity discovered the scales of positive relations with others, self-acceptance, meaningfulness of life and openness to the world. Less associated with the styles of ethnic identity are the purpose in life, environmental mastery and personal growth.

All the revealed correlations reflect a general trend: any distortion of the positive ethnic identity toward either hypo-identity, or hyper-identity is inversely associated with different scales of subjective well-being. Ethnic indifference inversely relates with almost all scales of well-being, except the balance of affect. That is, people who are satisfied with their lives, are less inclined to ignore the ethnic features or to confront other ethnic groups. Rational and value aspects of subjective well-being are more concerned with the styles of interethnic interaction than the emotional aspect.

According to the table 6 data, life satisfaction mostly correlates negatively with such evidences of communicative intolerance as inability to hide bad feelings, inability to forgive the others' mistakes, inability to adapt to the other people. There are also positive correlations between the desire to change the partner of interaction with the scales of resolution and fortitude and positive self-concept. There is no significant correlations between subjective happiness index and communicative tolerance indicators.

As we see in the table 7, almost all the scales of communicative intolerance (except the desire to change the partner) inversely correlate with the overall SWB level. In SWB only the scale of affect balance doesn't have significant correlations with the scales of communicative intolerance. And self-acceptance has only one significant negative correlation with the person's inability to adapt to the others.

Among the SWB scales positive relations with others, environmental mastery, meaningfulness of life and openness to the world are more closely related to the communicative intolerance. Among the scales of communicative intolerance the rejection of the others' personality, inability to hide bad feelings and inability to adapt to others have more ties with SWB.

The comparative analysis of the relations of tolerance and life satisfaction in the studied subgroups revealed correlations, specific for representatives of different religions. There are no significant correlation, which present in all five groups. Only four ties are present in four groups of five. It says about grate religious diversity in this question.

For the Orthodox, the degree of their objectives achievement is directly related to positive ethnic identity. For Buddhists this life satisfaction parameter is directly related to ethno-isolationism, for the Jews - with ethno-nihilism. That is, the Orthodox, who mainly manages to achieve the goals is more likely to accept positively their own and the other's ethnicity. Buddhists in this situation are more likely to avoid intercultural contacts, extolling their own ethnic group, and the Jews more likely ignore the ethnic characteristics of people. The Orthodox ethno-nihilism is directly linked to their zest. That is, if the Jews ignore the ethnic characteristics, when they eager to achieve their goals, the Orthodox do it, when they are full of general vitality, zest for life. Ethno-nihilism at Orthodox and Muslims inversely relates to their resolution and fortitude. Representatives of these groups in the focus on achieving the goals are more likely to ignore ethnic differences. Ethnic indifference of the Orthodox and Buddhists inversely relates to their positive self-esteem. That is, people of these cultures are more positive about themselves are less likely to ignore the ethnic features of their own and of other people.

Catholics having positive self-esteem is more inclined to ethno-egotism. People belonging to the Catholic religion, having high self-esteem, tend to put the interests of their own ethnic group above others. While Orthodox Christians, Buddhists and Muslims with higher self-esteem tend to pay more attention to the ethnic peculiarities of others.

For Muslims and Jews overall positive mood background is directly related to positive ethnic identity. In addition, Muslim's mood is directly related to ethnic indifference and inversely - with their ethno-egotism. At the Jews, although the correlation

has not reached the level of significance, there is an opposite trend - a positive mood inversely associates with ethno-indifference. That is, for these two religious groups positive relationship with other cultures is related to the emotional aspect of well-being. But, for Muslims the positive mood has more to do with ignoring ethnic differences, and for the Jews - with great attention to ethnicity.

The links of communicative tolerance with life satisfaction also show cultural differences. For the Orthodox and Muslims inability to hide negative emotions inversely related to the congruence between desired and achieved goals and general background mood. The Orthodox zest is directly linked to their desire to re-educate their partners in interaction. This is consistent with the above mentioned correlation of zest and the denial of ethnic differences and, apparently, determined by the general tendency to ignore individual characteristics in people with high levels of zest. Buddhists' desire for re-education of the others has more to do with their resolution and fortitude.

The inability to forgive others their mistakes at Orthodox is inversely associated with resolution and fortitude and coherence between the stated objectives and the progress. For Muslims the last indicator of coherence is negatively related to their inability to adapt themselves to others. For the groups of the Jews and Catholics significant connections between communicative tolerance and life satisfaction were not found. For Orthodox and Muslims the scale of subjective happiness is directly related to the desire to limit the cross-cultural contacts.

The relationship between indicators of subjective well-being and styles of ethnic identity revealed three significant correlations similar in four groups of five. Ethno-nihilism is inversely related to a meaningfulness of life in all the groups, except for the Jewish. Ethnic indifference is inversely related to the environmental mastery and openness to the world in all groups, except Catholics. Common to most people, regardless of religion, are the connections of hypo-identity indicators with meaningfulness of life, openness to the world and confidence in their ability to manage it.

A positive identity is directly connected with a positive attitude to other people in groups of Orthodox, Buddhists and Jews. Ethnic indifference is inversely related to autonomy and personal growth at the Orthodox, Buddhists and Muslims. But, in addition, for Orthodox these scales of subjective well-being are directly related to ethno-isolationism. Specific to the Orthodox group is the negative links of many indicators of ethnic identity with a positive attitude to others; a greater amount of negative ties of ethno-nihilism with indicators of subjective well-being.

A distinctive feature of the Buddhist groups are the inverse relations of meaningfulness of life with all the deviations from the positive ethnic identity. The Muslim group deviations from the positive identity inversely associated with the presence of clear goals in life, self-acceptance and personal growth. Specific for Catholics correlations are the direct links of positive identity with affect balance and openness to the world. For the Jews, positive identity is directly linked to autonomy, environmental mastery and presence of clear goals in their lives.

Among the relations of subjective well-being with communicative tolerance the following cultural -specific correlations are identified. In the group of Orthodox there are large number of inverse correlations of positive attitudes towards others and the environmental mastery with intolerance indicators. In this group also the desire to re-educate their partners directly connected with the presence of clear goals in life. A distinctive feature of the Muslims is a great connection of clear life purpose with intolerance. The Jews found more inverse relations of intolerance indicators with personal growth and meaningfulness of life.

Thus, were observed the large variation in the correlations between life satisfaction and tolerance among representatives of different religions who live in one country, in similar socio-economic conditions. Identified cultural-specific correlations in many ways substantively relate to the values and traditions of the religions.

## Conclusion

Along with total domination of positive ethnic identity among the representatives of various religious groups living in Russia, there are significant differences in the degree of severity of other styles of interethnic interaction. In general, Catholics more than others tend to underestimate the importance of ethnic differences, do not take into account the cultural identity in interpersonal interaction. Buddhists less than others tend to ignore their own ethnicity. Almost all indicators of hyper-identity revealed significant differences between the Buddhists and all other groups. Buddhists less than all others inclined to put the interests of their ethnic group above others.

There are also significant religious differences in overall level of life satisfaction and in satisfaction with different life aspects. In general, people belonging to the Jewish religion, are significantly more satisfied with their lives than all the others. People brought up in the Orthodox Christian culture, are the least satisfied with their lives. In many subjective well-being indicators, representatives of the Buddhist and Muslim cultures show quite good results. Life satisfaction directly related with those values, which are less important for certain culture.

Positive ethnic identity and ethnic tolerance generally correlates directly with the overall level and with the most life satisfaction aspects. Among the indicators of life satisfaction and SWB more closely relate to the communicative tolerance: positive relations with others, environmental mastery, meaningfulness of life, openness to the world, acceptance of the others' personality, abilities to control feelings and to adapt themselves to others. Any distortion of the positive ethnic identity toward either hypo-identity, or hyper-identity is inversely associated with different scales of subjective well-being. Ethnic indifference inversely relates with almost all scales of well-being, except the balance of affect. That is, people who are satisfied with their lives, are less inclined to ignore the ethnic features or to confront other ethnic groups. Rational and value aspects of subjective well-being are more concerned with the styles of interethnic interaction than the emotional aspect.

The most general religious peculiarities of ethnic tolerance are the following. Relatively low tolerance of Catholics is manifested primarily in their lower acceptance of individual characteristics of different people, in greater conservatism and categoricity, in lower ability to keep their negative feelings. The relatively high tolerance of Buddhists is shown in their greater ability to adapt to others and to forgive their mistakes. Judah relatively better take other people's individuality and does not seek to re-educate and change them.

There are cultural-specifics in correlations between life satisfaction and ethnic tolerance, which substantively relate to the values and traditions of the religions. These specifics should be considered in developing psychological programs of intercultural communication support, intercultural competence development, intercultural conflict mediation and so on. These results also will be useful in developing culturally sensitive methods of psychotherapy.

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## Tables

**Table 1.** *Ethnic identity stiles of different religious groups*

	Orthodox Christians		Buddhists		Catholics		Muslims		Jews	
	M	St.D.	M	St.D.	M	St.D.	M	St. D.	M	St.D.
Ethnic nihilism	5,91	5,8	5,97	6,1	8,42	5,4	5,00	4,9	4,43	5,8
Ethnic indifference	10,15	4,4	9,24	4,4	13,33	4,2	9,21	4,3	9,93	5,3
Positive identity	14,59	4,9	15,35	4,8	14,83	4,7	15,44	5,7	14,54	5,0
Ethnic egoism	7,28	4,9	4,13	6,0	9,25	5,8	7,53	5,5	6,89	4,7
Ethnic isolationism	7,37	5,7	4,54	6,0	9,17	5,4	6,79	6,0	6,86	5,1
Ethnic bigotry	7,67	4,4	5,29	6,3	9,08	5,1	7,63	5,1	7,43	4,0

**Table 2.** *Communicative tolerance of different religious groups*

Indicators of intolerance	Orthodox Christians		Buddhists		Catholics		Muslims		Jews	
	M	St.D.	M	St.D.	M	M	St.D.	M	St.D.	M
Rejection of others' identity	6,32	3,2	5,46	3,5	9,00	3,6	5,75	4,7	5,61	3,4
Using oneself as a standard	6,63	3,7	5,73	4,9	8,17	4,5	6,26	4,8	7,00	3,9
Categoricity or conservatism	7,21	3,8	6,35	4,3	9,50	3,8	6,93	4,3	6,57	4,5
Inability to hide bad feelings	6,23	3,4	5,94	3,7	8,58	3,9	5,49	4,6	6,54	3,2
Desire to change the partners	6,28	3,6	5,76	3,7	7,17	4,1	6,47	5,0	7,90	4,2
Desire to fit partners for themselves	6,20	3,6	5,43	4,7	6,42	4,7	6,84	4,7	5,57	4,3
Inability to forgive	6,06	3,0	4,76	3,4	7,50	4,1	5,91	4,9	6,50	3,7
Intolerance to discomfort	4,86	3,9	6,38	4,8	7,25	4,1	5,53	4,6	4,82	8,1
Inability to adapt to others	5,31	3,5	3,30	3,9	5,25	4,5	5,60	4,3	4,75	3,1
Total	54,97	23,6	48,92	21,1	69,00	26,5	58,54	34,5	55,25	24,4

**Table 3.** *Correlations of life satisfaction index and ethnic identity styles*

Life satisfaction scales	Ethnic nihilism	Ethnic indifference	Positive identity	Ethnic egoism	Ethnic isolationism	Ethnic bigotry
Zest	0,05	0,06	0,07	-0,04	0,02	0,02
Resolution and fortitude	-0,24	-0,11	0,10	-0,01	0,04	0,06
Congruence between desired and achieved goals	-0,05	-0,06	0,15	0,01	0,07	0,00
Positive self-concept	-0,16	-0,24	0,16	-0,04	0,08	0,02
Mood tone	-0,07	0,00	0,13	-0,11	0,03	-0,05
Overall level	-0,12	-0,14	0,16	-0,04	0,08	0,03

**Table 4.** *Correlations of subjective happiness index and ethnic identity styles*

	Ethnic nihilism	Ethnic indifference	Positive identity	Ethnic egoism	Ethnic isolationism	Ethnic bigotry
Subjective Happiness	0,02	-0,14	0,08	0,07	0,14	0,00

**Table 5.** Correlations of subjective well-being and ethnic identity styles

SWB scales	Ethnic nihilism	Ethnic indifference	Positive identity	Ethnic egoism	Ethnic isolationism	Ethnic bigotry
Positive relations with other	-0,26	-0,27	0,23	-0,12	-0,07	-0,15
Autonomy	-0,03	-0,29	-0,02	-0,01	0,06	-0,01
Environmental mastery	-0,11	-0,32	0,08	-0,12	-0,01	-0,10
Personal growth	-0,05	-0,24	0,06	-0,09	0,03	-0,14
Purpose in life	-0,10	-0,21	0,17	-0,11	0,00	-0,06
Self-acceptance	-0,14	-0,17	0,13	-0,12	-0,03	-0,10
Affect balance	-0,10	-0,01	0,07	-0,07	-0,05	-0,10
Meaningfulness of life	-0,23	-0,20	0,20	-0,13	-0,06	-0,20
Openness to the world	-0,16	-0,26	0,06	-0,12	0,00	-0,07
Overall level	-0,17	-0,16	0,07	-0,09	-0,03	-0,08

**Table 6.** Correlations of life satisfaction and communicative intolerance indexes

	Rejection of others' identity	Using oneself as a standard	Category conservatism	Inability to hide bad feelings	Desire to change the partners	Desire to fit partners for themselves	Inability to forgive	Intolerance to discomfort	Inability to adapt to others	Total
Zest	-0,01	0,03	0,06	-0,01	0,01	0,03	-0,08	-0,06	-0,10	-0,03
Resolution and fortitude	-0,04	-0,01	-0,02	-0,11	0,12	0,06	-0,11	-0,05	-0,11	0,00
Congruence between desired and achieved goals	-0,01	0,02	0,02	-0,15	0,06	-0,02	-0,16	0,05	-0,19	-0,03
Positive self-concept	-0,09	-0,01	0,01	-0,10	0,13	0,15	-0,09	0,01	-0,08	-0,01
Mood tone	-0,10	-0,04	-0,04	-0,18	0,06	0,01	-0,07	-0,02	-0,14	-0,06
Overall level	-0,06	-0,01	0,01	-0,16	0,10	0,07	-0,15	-0,01	-0,18	-0,04

**Table 7.** Correlations of subjective well-being and communicative intolerance indexes

	Rejection of others' identity	Using oneself as a standard	Category conservatism	Inability to hide bad feelings	Desire to change the partners	Desire to fit partners for themselves	Inability to forgive	Intolerance to discomfort	Inability to adapt to others	Total
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Positive relations with other	-0,22	-0,11	-0,08	-0,14	0,01	-0,16	-0,14	-0,12	-0,22	-0,16
Autonomy	-0,21	-0,06	-0,09	-0,16	-0,07	-0,09	-0,10	-0,09	-0,19	-0,17
Environmental mastery	-0,18	-0,12	-0,13	-0,24	-0,02	-0,07	-0,14	-0,02	-0,17	-0,16
Personal growth	-0,16	-0,05	-0,03	-0,22	0,04	-0,03	-0,13	-0,04	-0,20	-0,11
Purpose in life	-0,16	-0,05	-0,06	-0,15	-0,03	-0,03	-0,10	-0,04	-0,15	-0,10
Self-acceptance	-0,09	0,00	0,00	-0,05	0,09	0,04	-0,07	0,03	-0,15	-0,02
Affect balance	-0,05	-0,05	0,03	-0,04	-0,03	-0,10	0,00	0,01	0,02	-0,01
Meaningfulness of life	-0,20	-0,08	-0,18	-0,18	-0,09	-0,15	-0,19	-0,02	-0,17	-0,16
Openness to the world	-0,20	-0,11	-0,13	-0,12	0,00	-0,06	-0,15	-0,11	-0,19	-0,14
Overall level	-0,24	-0,14	-0,11	-0,27	-0,02	-0,12	-0,20	-0,14	-0,22	-0,24

## The Adaptation to the Community System : Problems in Fieri in Receiving the E.U. Directives and Regulations and Apparent Problems about Limitation of Sovereignty - the Albania's Case

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### Abstract

*All european countries that entered in European Union had problems about juridical relationships, and especially in order to adaptation at european normative system. Albania formally obtained the status of candidate one year ago. For this reason in a few years the Country will be a real member of E.U. : so, it is compulsory to think about legal solutions to solve probable legal conflicts, and to harmonize the albanian legislation at european law's system.*

**Keywords:** Community system, European Union, Albania, directives, regulations, sostitutive power, supporting, proportionality

### Introduction

The Republic of Albania officially obtained the status of “candidate” to entry in the E.U.: just a year ago, on the 27th june of the last year 2014, in fact, the E.U. - after a troubled iter - formally accepted the candidacy of the Country, from Tirana government. This appens after five years since the date of the spent time, after becoming affective of the agreement of stabilization and association that appened on the 1st April 2009, with which Albania had ratified the engagement already taken during 2006.

With the decisive entry of the ‘Eagle Country’ among the Community Countries that, as we wish can be soon , it is easy foresee as inevitable a series of law's problems to harmonize and fit the only subjects and laws already controlled by the inside legislation of Albania with the so called community derived right: this will happen after the sostitutive power of the Union so happened before in the other States taking part in the Union, and in Albania will be placed the judicial problem, relating to the laws of E.U. inside the judicial Albania system.

In this way it will be useful to but above-mentioned questions to solve easily and promptly the eventual contrast (of the future and very probabile) in controlled subjects either from the inside system or community one.

By the way we have to observe preliminarily that Albania Republic began a process of harmoniring for a long time with a European legislation: in fact there have been published in the last decade, a series of important law reforms according to Europe.

For expository clarity and consideration said above, it seems necessary to speak about c.d. general principles that regulate the relationships between the right of E.U. and the right of the state – members of E.U.

Actually the relationship between the E.U. and the operative right in the state members, that is the relationship between the laws of E.U. , on one hand (either those in treatises or those issued by the E.U.) and from the other hand, the single judicial problems of the States that have joined the Union, provoked and provokes big discussions and conflicting positions either in the academic doctrine or in the jurisprudence.

Actually in the international right the so-called dualistic approach (or better the pluralistic one) is on the general principle of the clear separation of the inside the national law system, in comparison with the international one: so you can't determine any form of hierarchy between the inside laws of the single state and the international ones.

Therefore it is useful to observe the system, they, in reality differ either for the people (having the inside right character interpersonal, and the right international character inter-state) or regarding, obviously, the same sources.

It is, so, necessary first of all to explain (clarify) the hierarchical relationships that are between these judicial systems (that are, under all the ways, real different systems among them).

In particular, it is useful to define (determine) the existing relationships between the national system of the single state-member on the supranational one of the E.U. because it is clear in the right that is issued by the E.U. , it belongs to the second typology.

It is known that with the joining to the institutional treaties of the E.U. , the joined countries accept "ipsofacts" a series of limitations of their own sovereignty (in determined fields): with the consequent transfer of the respective powers that regulate (control) the same subjects for the community organizations (bodies).

There are lonely apparent problems in limitation of sovereignty.

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Guizzi Vincenzo, Diritto dell'Unione Europea – Quarta edizione, E.S.I., Napoli 2015- p.14 and ss.

In fact, as I said, overcome the problem so that to confer with the European laws, there is evidently the judicial real question of the relationship between the right that is effective in the E.U. and the so called "inside" right (or that is effective in the single state-member) also by the light of the different constitutional system and of possible conflicts in the subjects controlled by the different system: such a question is not referable to the usual relationship between international right and the inside right; even if it doesn't mean that there is a practical problem of adaptation of the Union right to the inside right of the state-member.

However it is necessary to highlight since the beginning as this mechanism must happen on various and different suppositions: in fact, while the relationship between the international system and the inside system is resolved with a coordination relationship between two judicial system reciprocally indifferent that between the judicial Union system and the state-member system is a relationship of integration, as they are not in a mutual and equal relation, because the Union system aims to combine in the inside system.

This tight mutual relation is strengthened also by the duty, for the state-members, according to what is confirmed by the article 4 T.U.E. , to adopt "all the measures of general or particular character fit (suitable) to ensure the execution of the duties deriving from the treaties or consequent to the acts of the Union institution. They refrain from any measure that risks to danger the achievement of the Union aims (c.d duty of mutual collaboration).

The stated principle by the above art. 4 T.U.E rises from the consciousness the Union system, is not closed and self-sufficient system, but it needs, because it completely realitas, of the integration of the state-member system.

The tight existing integration between the European normative system and that is in various state-members implies a coordination and a harmonization that not always are realized in the practice in fact there have often happened phenomena among the different arrangements contrast dictated by the different systems.

The solution of such conflicts, obviously, it is important in those hypothesis in which the Union right establishes rights and duties for single citizens with an immediate efficacy: one of the elements that characterizes the relation between the Union right and the inside right is, in fact, the community of the people because the consignees of the European and national disposition coincide.

In these hypothesis the risen questions from a possible contrast are the following: 1) to establish in the first moment disposition of the Union right must be considered with direct efficacy;

2) to establish wich disposition must prevail in the conflictual situations.

Both the questions have been faced more than once by the justice of European Union, that, through a contrast judicial interpretation , has confirmed two judicial principles of great importance.

Beside, we must say that exist some general principles that regulate the subjects founded on the so-called principle of "supporting" and proportionality.

To harmonize the process of European law integration the state-members were obliged to limit part of the mutual "sovereignty" giving the E.U. institutions the power to adopt binding decisions for all the States and so recognizing the direct applicability of the E.U. right inside the same state-members.

With the enlarging of the intervention sectors of the Union in fact we felt the necessity to define the limits of the national and European skills.

So we have to trust in two regulating principles said above that is "supporting" and "proportionality".

They are confirmed by the article 5 of the T.U.E. and also by protocollo 2 (on the application of the supporting and proportionality principles) attached to the text of Lisbona.

According to the supporting principle, foreseen by the art. 5 to par. 5 of T.U.E. , the Union intervenes in those sector that aren't of its skills only when its action is considered more effective than the national one. Such intervention must be graded for the reaching aim and not to go beyond that is tightly necessary (the proportionality principle).<sup>2</sup>

The supporting principle foreseen, instead, the decisions must be taken for the citizens, leaving the power belonging to a superior level interests only of some subjects that can't be treated to an inferior level (local authorities).

The above principle must be put beside the poportionality principle (art. 5 T.U.E.) : it foresees that the contest and the form of the Union action must be limited to what is necessary to reach the aims of the tratises.

The supernatural character of the E.U. implies the possibility to reach better results and will physiologically push to enlarge the exercised skills in common; even if there is the opposition some State-members that are afraid to see "further limited" their own powers.

From here: the necessity to research new forms of different integration, expecially for future members like Albanian Republic, that can enlarge actionfield of the European Union, proteeting the sovereignty of the dissenting states, as well as the prediction of new law tools, that can permit to those last ones not to take part in the forms of establishing cooperation (for example it's possible apply to the so called like "derogation").<sup>3</sup>

## Endnotes

<sup>2</sup> Strozzi Girolamo, *Diritto dell' Unione Europea*, Ediz. Giappichelli, Torino 2015 – p. 26 and ss.

<sup>3</sup> Martinelli Francesco, *Compendio di diritto dell' Unione Europea*, Simone Editore, Napoli 2012 – p. 11 and 12

## Family and family life in Azerbaijan - The Development of Ethnography in the Azerbaijan Republic

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### Abstract

*The traditions of Azerbaijanis which have been filtered from the millenniums haven't lost actuality and value. On 18 October our state upheld its independence and investigators began to learn protuberantly family and family life of Azerbaijan people. So family is the basis of state, bringing up in the healthy spirit of the society and young generation and to be faithful to customs became after ancestors family is important. When Azerbaijan was in the composition part of the USSR, survival customs of family and family life of our country was learned superficial. But after gaining independence, was begun make serious steps in this direction. Investigation on above mentioned considerable problem conducts scientists of the different fields-philosophers, psychologists, jurists and etc. However, naturally the fact that, this sphere, as a component part of the ethnographical science, absorbs more deep attention by the specialists of this fields than representatives of the other sciences. Family keeps hereditary traditions down the centuries. Family forms the meaning and fundament of the family life [4, 10]. Family is society's basis, standard and criterion. Family is the biggest wealth of the mankind and the small part of the state. Family as the historical category presents the small collective in the society. Family formed at the end of the Eneolithic Era [17, 297; 16, 4; 19, 104]. Azeri historic has two forms of the family: the numerous patriarchal family and individual family. These two forms distinguished each other with their structure and number of members. The numerous patriarchal family or family community consisted of the representatives of three, four and sometimes up five descendant. These kind of family unified father, son, grandson and seven brothers [4, 374]. All the component parts of this family were included into family community, lived together in on big house "karadame" and have common economy. The family community was led by patriarch. In XIX-XX centuries in Azerbaijan although were existed in a slight number the patriarchal families, but the dominated form of the family was individual family, which was formed as a result of disintegration the family community and separation adult sons after marriage [4, 379-380]. The numerous patriarchal and individual families distinguished also with the other two qualitative features. First of all, the numerous patriarchal families' property belonged to all the members of the family community. The individual family's property was considerate as a property of the head of family only. Secondly, the numerous patriarchal family consisted of 3-5 descendants vertically, and 7 brothers horizontally. The individual family consisted of 2 or 3 descendants vertically.*

**Keywords:** ethnography, author, Azerbaijan, independence, book

### Introduction

The individual families divided into two types, commons and compound. The common family consists of two descendants; the compound consists of three descendants. Accordingly to the Azeri national traditions, in each family father was obliged to bring up, train and marry off children. This father's charges are provided with his three main functions: housekeeping, continuation the generation an upbringing children. Interrelations among the family members are on the basis of traditions closely related with the mentioned function. All these questions are widely covered in this article on the basis of ethnographer's researches.

Great ethnographer H.Havilov's book "Azerbaijan ethnography" was published with the same period of our republic upheld its independence. The book deals with the traditions that have been trickling filter of time and about its old history. The author also gives the information about the character of a nation-wide traditions, forms of marriage [13, 210], the wedding ceremonies [13, 214-215], the birth of children, the festivals hold after be born of the children and about funeral. It should be noted that author have brought examples of recent practices during talking about the funeral. The book is intended as a textbook for higher educational institutions and that's why it's fit to learn traditions and family life general rule. So it's not just about family life, deals with only in one chapter.

Notable ethnographer Q. Qeybullayev aims to explore purely family life in his penned book "Family and marriage of Azerbaijan people" which published in 1994 and consists of 2 parts. The first volume of the author's family structure, large families, small families, family relationships [17, 84-119], the marriage-forms, rules, customs, marriage forms of access [17, 120-159], the wedding ceremony, customs on the talked about [17, 160-263]. The function of the second volume is continuation of the first volume. In this chapter the author deals with about birth and children's family education [17, 264-339]. The author also informs about national traditions of other ethnic groups [17, 78]. Although the scope of the author's research covers the beginning of the nineteenth and twentieth centuries, he begins to deal with information about customs, traditions, family life and relationships in ancient State of Albania (ancient Azerbaijan country) and lasts in the I quarter of the XX centuries.

One more book was published in independence years was H.Q.Qadirzade's, about "Customs, faiths, ethnogenetic connections connected with family and way of life". Author has given information about bringing up and upbringing of the children, wedding and marriage habits, habits and faiths connected with death, burial and mourning. When he dealt about ancient religious, believes author prefer all-Turkish folklore, investigations of other ethnographers, researches specialist in folk-lore scientists, special investigations of himself and "Qurani Karim". When author dealt with forms of wedding which is the inseparable composition of the family and family life he gave information about marriage rules exiting the ancient time, the Middle Ages (referring to "Qurani Karim" and folklore model) and nowadays. According to investigation materials author divides marriage attitudes into two groups: 1) Marriages connected with old habits; 2) Attitudes of marriage which has occurred with influence of the Islam. The marriage settlements ortokuzen, krosskuzen, levirate, sororat have included into first group [16, 21-25]. The based on folklore example author has emphasized existence of the habit of "deyilik" ("beshikkasma", "gobakkasma"). Author also has given information about habits of "qizbeyenme", "elchilik" (match-making), engagement ceremony and habits during engagement, carrying out of the wedding, wedding ceremony, next habits after wedding. In the part of "Being born and upbringing of the children" was given information about patron spirits connected with childbirth, evil strengths and ethnic parallels, children plays and services to children [16, 129]. In the part of burial, death, faiths was given information connected with mourning, washing, shroud, burial of deceased, mourning habits, burial habits and their mutual parallel till Islam [16, 125]. In the part of "Archaic faiths" was given information about faith, mountain, stone, cave, water, mythical faiths of creature, faiths of animals [16, 274]. Author has selected Nakhchivan Autonomy Republic as the object of basic investigation in his book. In the monograph author effort historical roof of customs and family traditions in Nakhchivan and decided that most of customs in Nakhchivan are similar with other Turkish people's customs. On the basis of these author decided that Azerbaijanis are also Turkish by rootstock.

One more writers who investigate of Azerbaijan family is A.Aliyev. The book "Family way of life of the Georgia Azerbaijanis at the beginning of XIX-XX centuries" author deals with customs, ceremonies, bringing up of the children and etc. Author decided that some of them are local, and others are common with other Caucasian traditions. For the first time in the nineteenth and early twentieth century family life of Azerbaijanis in Georgia are being investigated. In this book also was given information about large and nuclear families [2, 8-24], "qizbeyenme", "elchilik" (match-making), engagement ceremony and habits during engagement, carrying out of the wedding, wedding ceremony [2, 50-76], bringing up and upbringing of the children [2, 76-133], habits and faiths connected with death, burial and mourning of Azerbaijanis families which lives in Georgia. Time investigate the family and family life of the Georgia Azerbaijanis author discovered that exciting habits, customs in this territory are identity family and family life of the western region (Qazax-Agstafa region) of Azerbaijan. Author has explained this with a few factors: 1) Get up in the family root of the population living in the both region of the same Turk tribes, he has emphasized being connected with memories passed, immortalized protect their generation; 2) Both of the areas were part of Azerbaijan; 3) Having the same border. Some habits of Georgian Azerbaijanis are the same with other ethnic groups living in Georgia, and some similar features with Georgians also. It becomes clear with neighbourhood relations of the people which have settled in this area historically. It has opened the way to pass culture to each other. But Georgian Azerbaijanis have their own special customs and author connects it with Azerbaijan Turks indigenous in this area. The book is efficient visual aids for learning region habits.

M.Pashayeva devoted her monograph "The ethnic traditions in the ceremony of Azerbaijanis family" to the research of northern-west part of Azerbaijan Republic. In this monograph the author gave information about the landscape of Shaki-Zagatala zone, and also marriage ceremonies, births, funeral ceremony of Azerbaijani Turks, Sakhurs, the Avars, Rutuls, Lazgin, Udi and Ingilois. The author, while giving general information about the region includes Gakh, Balaken, Zagatala, Sheki, Oguz, Gabala such as researching regions. The author divides ethnic composition of population in terms while searching period. The author gives valuable information about each ethnic group: Azerbaijani Turks [15, 16], Saks [15, 23],

the Huns [15, 25], Oguz [15, 26], mugols [15, 29], the Avars [15, 32], sakhurs [15, 39], rutuls [15, 46], Lezghins [15, 47], Ingiloys [15, 49]. The author gives information about each ethnic group's traditions at the chapter wedding ceremony, birth rites and education, funeral ceremony and family faith.

One more work belongs to ethnographer N.M.Guliyeva. It is known that Baku, the capital of Azerbaijan, has had ancient history and at the same time is of possession of rich, distinctive spiritual heritage. One of the urgent tasks today is to collect these spiritual values as they are now, which are kept in people's memory for centuries and observed in national customs and traditions and go from generation to generation, and pass them to the next generations. This monograph represents a brand new study of the family life of Baku population in the 19th-20th centuries.

In her book "Family and family life of Baku's urban population in the 19<sup>th</sup>-20<sup>th</sup> centuries" she deals with traditional customs of Baku citizens, their cuisine [85-88] ceremonies, marriage customs, engagements, wedding rituals [10, 88-116], funeral rituals [10, 116-127], household [10, 127-141], spiritual life [10, 141-146] and etc. Author deals with Baku cuisine such as chicken pilaf, saffron pilaf, greens pilaf, milky pilaf, pilaf with pieces of meat, pilaf with sorrel, pilaf with haricots, fisinjan-pilaf, dushbara, gutab, khashil bozbash, piti, dolma with grape or cabbage leaves or with tomatoes and eggplant, tikyakebab, lulya-kebab, syabzigovurma, gutabs with camel meat, beef, pumpkin and greens – all they were often cooked by Baku residents. She adds that they use camel meat also. Baku residents used various spices such as primarily, yellow root, cinnamon, cardamom, cloves, anise, barberries, ginger, pepper, saffron, etc. In the wedding rituals chapter author deals with customs such as "khari (yes)" [10, 89], wedding music instruments [10, 92], "paltar kyasdi (making dress)" [10, 94], "adamchagyran (inviting person)" [10, 93], "magar (place of wedding, also called toykhana)" [10, 93], "kyabin (religious ritual)", wedding meals, singers, dancers, musicians [10, 100], rituals after wedding and etc. About funeral rituals author gives information that under the rite, standing near a dying person should be a mullah or a man, who knows Islamic rules and can read kyalmeysi-shahadat – the death prayer – to allow a dying person to die calmly. A dying person's face is turned toward kiblah. A woman should not stay near a dying person alone. It is forbidden to cry or speak too loudly near a dying person or leave a dying person alone in a room. The first sura of Koran – Fatiha – should be read. After a dead body is taken away from a yard, the place where the dead body was is cleaned, and all the belongings are thrown out [10, 119]. A dead woman is buried with people keeping a kerchief over her face so that her face remains unseen. At this moment, one of her close people, most often brother goes down into the burial place whereas a mullah reads prayer "Tyalgin" upstairs. If a woman is buried, her husband, uncle, father or brother-in-law can also go down into her burial place to see her off. Cousin is not allowed to do it so. After prayer "Tyalgin" is read, this man climbs up from the grave. Then, the grave is covered with stone labs, which are subsequently covered by earth, with stones laid on the edges. After a grave is dug, its walls are covered by cemented stones. Women's graves are comparatively deeper than men's: 1 meter against 60 to 80 centimeters, respectively [10, 120]. After burial is over, water is poured onto the grave. And author also gives information about funeral rituals after cause of dead person. The book is interesting to get more information about Baku urban.

In the article "The function of way of life and household at Azerbaijan families in the 20-50<sup>th</sup> years of XX centuries" also author gives information about farming life of families, about teaching to children of the family traditions and etc [12, 233-237].

The other book of the author "Azerbaijan families in the years of independence" deals with Azerbaijanis living after gaining independence, the position of women in the public life [9, 33-48], weddings, marriage [9, 48], Azerbaijanis living, family and some of the pressing issues of life [9, 9] and etc. Also author gives information about family and way of life problems [9, 55], about family, respect for elders, parents and children are under the protection of the state administration on the basis of socio-psychological [9, 55-68], conducted research on family issues of refugees and internally displaced persons [9, 68-87]. In the book is dealt with processes taking place in Azerbaijan which entered a period of capitalism - market economy. The book explored the state of the modern study of rural family, a great family, patronymy remains, a small family, social and professional composition of the family, the family structure, the concept of loneliness, kinship system, family relationships, family and children's growth [9, 123], children's education [9, 132], way of life and other functions, marriage, weddings, birth and child-related traditions, family traditions, of divorce and its causes [9, 244], funerals [9, 255], Azerbaijanis and other Turkic peoples parallels in marriage and family relations, the family's socio-cultural, vital issues. In this "Azerbaijan families in the years of independence" book N.M.Guliyeva dealt with information about the holiness of the family, about its historical roots came from ancient times, about "The Book of Dada-Gorgud" epos where family was holy, and attitude about the role of parents and family in children's upbringing. The author tells the story of the growth of children, when they open their eyes their parents take care of them [9, 41]. What is the matter of age, most children are moving as

his father and mother, attitude repeat their character. Children are more influenced by the mother's upbringing. With the children's education mothers deal, all manners, etiquette teaches children with the most delicate issues. The strength of the family tradition is respect for parents, as well as the attitude of the mother due to her husband. Under such conditions, the attitude, confidence and mutual respect among parents, plays a great role in the children's life. In addition, author said in 1918 during the period of Democratic Republic of Azerbaijan, the women had obtained the right to vote together with the men in the political arena for the first time [9, 42]. Guliyeva gives information also about "beshikkartma", "gobakkasdi", "betroted", "polygamy," "qızqachırma" little chance of "joined escape" and etc [9, 48].

N.Guliyeva in the "Modern rural family and family life" book deals with information about the family which is a remnant of the past patronymic [11, 16], the role of patronymic families in the community. As well as large families stay till the beginning of the twentieth century, author connects it with the collection of taxes named "smoke money". Thus, the "smoke money" was collected taxes is not for the number of family members, it was collected for the number of smoke from the chimneys. Large families had special features. They had total cemeteries, traditions, rules for using household [11, 18]. Patronymic (nuclear families) formation of families has increased steadily in the 30s of the twentieth century. The difference between the two is a large family in a small family: First, the number of family members, and secondly, in the case of a large family fortune belongs to the entire family, at a small family-man belonged to his head [11, 27]. If several families live in a family that family calls compound family. If the family lived in a two-generation family, so that family was called nuclear family [11, 28]. Besides these the author also gives information about family structure, child growth, demographic, social, ethnic relations, the impact of an increase (p 67), children's education in the family [11, 132], marriage customs [11, 173], economic and social function and etc [11, 145].

The important work- habit of Azerbaijan family in the Middle Ages, was investigated by our ethnographer Sh.T.Bunyadova. In her monograph "Azerbaijan family in the Middle Ages" author investigate "qızbeyenme", "elchilik" (match-making), engagement ceremony and habits during engagement, carrying out of the wedding, wedding ceremony [5, 21-66], bringing up and upbringing of the children [5, 148-224], habits and faiths connected with death, burial and mourning of Azerbaijanis families in the Middle Ages. Ethnographer give information that about wedding boys want to send match-making to those girls they love. About wedding ceremony author also gave information about "khina party" [5, 55-66]. It's like the wedding party but only females take part. Author also gave information about "sunnet (ritual circumcision)", "chille kesmek", "adqoyma (naming)", "talaq (to divorce)", "nursery", "bath culture" and etc. Author involve for investigation N.Ganjavi's, Fuzuli's, Maragaly Avhadi's, Xagani's, N.Tusi's and other classic writers and poets works, epos, and herself investigation. Wide information about nursery [5, 224-236] and bath culture [5, 114-136] makes the book specific. At the article "Family relations in the readings of Maragaly Avhadi" author deal with concerning of family mode of life, marriage, match-making (elchilik), getting familiar with maiden (qızbeyenme) and etc. customs of Azerbaijan people in the Middle Ages. Investigating the family relationships in the creative works of the poet ethnographer gives information about attitude in the family, about affability, cordial attitude, condemning of the fortune-tellers and etc [7, 199]. The article is important to get information about family and family life at the Middle Ages.

At the other monograph "Family at Fizuli's works" author Sh.Bunyadova investigates of Fizuli's works-lamp of the medieval world of the science. Thus, prominent Azerbaijani poet Fizuli gave valuable information about traditions, family relationships, ceremonies and so on in his works. In the article, ethnographer deals with information about importance of love in the world of the family is the main factor consider by Fizuli [6, 193], wedding traditions [6, 195-197], birth and upbringing of children [6, 198-199], burial customs [6, 200] and etc. Ethnographer, as well as has attracted on a variety researchers of Fizuli's works and it made article priceless.

The author's "Nizami and ethnography" book under the title "Family and family life" was given information about common family life issues, marriage, matchmaking, wedding, education, information about the funeral in the great Azerbaijani thinker Nizami Ganjavi's works [8, 67-93]. Sh.Bunyadova investigated family way of life which was the contemporary of great poet and some of them came to our century from the filtered through the filtration of time.

Other ethnographer V.Veysalova's book- "Azerbaijan love eposes as the ethnographical source" were researched family life, wedding customs, mourning customs and etc. by the author [19, 77-149]. During the author researched the eposes she also got information about family life in the Middle Ages and she decided to deal it with the readers.

At the "Y.V.Chemenzemini's ethnographical meet" dissertation author R.Ibrahimova "qızbeyenme", "elchilik" (match-making), engagement ceremony and habits during engagement, carrying out of the wedding, wedding ceremony [14, 66-

77], bringing up and upbringing of the children [14, 78-86], habits and faiths connected with death, burial and mourning of Azerbaijanis families in the XIX-XX centuries. Ethnographer investigating Chamanzaminli's creativity deal with that, a prominent writer used the contemporary traditions of his time, and also benefited from the old traditions with great competence emphasized.

The other ethnographer H.Zahidova studied ethnographic motives in the great playwright J.Jabbarli's creation. At the second chapter which called "Family and family life" H.Zahidova gives information about weddings, naming, children's education, said that the information about the funeral on the base of works and memories associated by the great poet. Ethnographer has introduced family and family life under four subtitle, such as marriage settlement, wedding traditions, bringing up issues, funeral ceremony. At the wedding chapter ethnographer gives information about wedding tradition, joined the escape, mixed marriages and others [20, 114-116]. The great dramatist draws attention to the importance of education at the women's life, the children's family education and the ethnographer researched all these at the chapter about education [20, 139]. About the funeral ethnographer gives information base on the great dramatist's works and also his memories about his brother's death and his best friend Hajibaba Sharifzadeh's death [20, 148-160]. The book is important because the great dramatist used common folk and ethnographic materials, and the ethnographer researched all these. That's why it gives potential to the young generation to learn their historical traditions, customs.

The other ethnographer S.M.Ahmadov in his book-"Traditional behaviour rules in the family way of life of the Azerbaijanis" investigated bringing up of the children with traditions, family rules, family rulers and etc. At the article was given information about the family forms which are the core of the state and the community [1, 237], relations between married couples, the man's superior position in the family, administration of the family by the men, the attitude to the bride in the family, while upbringing their children to discipline them [1, 238].

Ethnographer S.Aliyeva penned "The development of ethnography at the first half of twentieth century" for the degree of the candidacy in 2001. At thesis principles of family life and spiritual culture that existed in the family during 1901-1950. At the monograph the author gives information about the traditions which are residual from ancient times [3, 46-52], forms of marriage, public holidays which are the part of the spiritual world [3, 83-89], religious ideas and information about membership. The information was given on the base of other researchers books, and in this candidate the author researched ignored problems. The way of family life was researched on the chronological periodization at the monograph. The author divided candidate into three chapters. At the first chapter involved the time from 1901 to 1918, the second chapter from 1918 to 1940, the third chapter from 1940 to 1950. Author's gives information about her researches connected with family life at each chapter of the monograph.

On the II volume of the book of "Azerbaijan ethnography" which published in 2007, the part of "Family and way of life of family" was investigated by our great Azerbaijan ethnographer Q.Rajably. In this part of the book one can get more information about customs which are famous all area of Azerbaijan. The author deals with information about large and small families [18, 298-307], about marriage forms (monogamous, polygamy, exogamous, endogamous, levirate, sorority, abduction, matchmaking, weddings, joined escape [18, 308], weddings, children's education, about funeral, divorce. The author gave information on the base of field research experience, the medieval sources, and the researched materials of other ethnographers, medieval legends, classical compositions, folk literature. When the author gives information about wedding he also gave information about wedding ceremony, dresses, wedding places, wedding meals, wedding songs, singers and music instruments [18, 324]. At the chapter education author gave information about the role of children in the family, the election of the names for children, about nursery, circumcision ritual and etc. The last part of the section "Family and family mode of life" dedicate to mourning and funeral rituals. Here is given funeral rites, connected with bewailing decedents, mourning motets, funeral repast and maintenance the ritual "Gara bayram (Black Holiday)" by the member of family and closely relatives along the one year after the dead day of death.

Gaining independence of the Azerbaijan Republic opened the general way to development of all sciences. One of them is ethnography. Scientific investigations that we described above are evidence that ethnography of our county is developing now also. We had some insufficiencies in the development of ethnography, but in spite of the ethnography science is developing day by day. Young generation do everything to protect their customs and pass it to there followers.

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## Determining the Margin of Error that Introduces Systematic Sampling of Public Opinion Polls (the Case of the Current Electorate of Tirana)

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### Abstract

*In polls that conducted today in Albanian reality, note that the margin of error is in the level  $\pm 3\%$ , regardless of other elements that affect in the validity of the polls. In the validity of answers, affects negatively also the questions with delicate problems<sup>1</sup>. For getting these sincere responses, an important role plays the nature of the questions. If the questionnaire is composed of questions that can be characterized as fragile, then for the question that in itself treat political topics, the interviewer has a tendency to not show sincere to these questions. Questions with delicate topics tend to give respond less valuable<sup>2</sup>. The methodology suggests that, when it is not possible to avoid delicate questions, become our best to preserve the anonymity of the respondent, which does not sure by the systematic sampling, which inevitably makes the respondent identifiable. So in this sample, respondents perceive themselves as identifiable. This causes them to feel threatened, if they give honest answers. Insincerity produces additional error that is intended to determine in the context of this paper. The study is not type explanatory, that uses working hypothesis as an assumed response to a research question, but experimental exploratory type, which seeks to test empirically the basic assumption and simultaneously determine the margins of error that are made in measurements to the public opinion when not respected the anonymity of respondents when we make delicate question. The experiment on which this paper is based, aims to test the basic assumption: The error that inserts when is not ensuring the anonymity of the respondents in a systematic sampling, when are made question that considered as delicate.*

### Methodology

To implement this empirical study, was needed a survey to evolve *in parallel* at the same time by two groups of interviewers, one family and one on the street. Was conducted a survey with a sample that does not identify respondents, namely, with quote to the last link of sampling. Also was conducted analog survey (with the same questionnaire), but with the sampling that identified respondents, according to a systematic sampling ("from gate to gate") in the last link of sampling.

More specifically, the two surveys, except that did with the same questionnaire in the street and in the family, they were performed *simultaneously (in parallel)* and in the same place and with the same sample size), but one of them assured anonymity of respondents through selection in last link of respondents with quote, by sex and age group with a questionnaire that had no delicate questions, while the other followed systematic method for selecting of families or working environments.

With a high degree of mistrust, nor can be expected that respondents believe to the promises of interviewers that, everything that they say "will remain among them." Therefore, to have data more reliable from the surveys, should not believe the "formula" that promises conservation of confidentiality of the answers given by respondents<sup>3</sup>. If we use a scheme of probabilistic sampling type (casual or systematic), which seeks to contact persons to be surveyed in a way, they perceive themselves as easily identifiable (by name, location, place of work), then it makes no sense to talk about maintaining of their anonymity. The only thing that we can promise the respondents in this case is to promise the confidentiality of their responses. But such a promise, not results reliable in a society where the confidence level is too high (over 90%).

<sup>1</sup>Kocani A., Metodatat e kërkimit sociologjik: Tiranë, UFO 2006, fq 79

<sup>2</sup>Kocani A., Metodatat e kërkimit sociologjik: Tiranë, UFO 2006, fq 92

<sup>3</sup>Feraj H., Kocani A., (2013) *Anonymous or Confidentiality in Opinion Survey? (The Selective Approach for Sampling in Surveys where are Included Delicate Questions)*, Mediterranean Journal of Social Sciences, Vol 4 No 2, May 2013, ISSN 2039-9340

Then, it remains to be devised a sampling that allows to ensure anonymity of respondents. Namely, that allows respondents to perceive that they are not identifiable and, thus, frees them from fear that they could suffer, if will give honest answers to questions that they consider as sensitive. And this can be accomplished if in the design of the sampling, in the last link (which contacts persons to be interviewed) used the quota method (by age group and gender). According to our experience of surveys since 1998, the use of quotas in this last link, provides really noidentifiability of respondents, therefore the sincerity of their answers. In this way, can be taken with measurements the reliable data, which then can be extracted also the relatively reliable conclusions, which constitutes the main goal of each scientific research.

We emphasize once again that such a thing can be achieved in that the interviews make not in families and environments where respondents can be identified as such, but on the road away from their homes or their work, where they are seen as passers. But in this case, in the last link of sampling, we are forced to use a type of sampling **is not probabilistic** type, quota sampling. Such a sampling form contains an unspecified error, on standard, that should be measured with an ad hoc procedure type.<sup>1</sup>

## RESULTS OF DATA PROCESSING

### *The error that inserts non consideration anonymity of respondents, when we make delicate question.*

Also, to calculate the differences in the value of the answers on the questions that are made in the family (systematic sampling)), was elected as the indicator of aggregate type, the indicator of Subjective Welfare (ISW) provided by R.Inglehart. Through the creation of tables of frequency was conducted the calculation for ISW of answers in family and for the answers on the road. The difference between values of these two ISW would constitute the required difference, that involve the error that inserts quotas (survey on street), the error that inserts non considering the anonymity of respondents and the statistical error that inserts sampling rate representation (survey in family). More specifically we have the following.

#### A. Survey on the road:

1. *The first question: Considering everything, do you think you are / satisfied with the life you do now?*
2. According to this question we have:
3.  $\Delta$  (**satisfaction from life**) = [(satisfied + quite satisfied) - (not satisfied + little satisfied)] = [(30.4% - (26.6%)] = + 3.8%.
4. So we have to  $\Delta$  (**satisfaction from life**) value of + 3.8%.
5. Let us find now than is the value of  $\Delta$  (happiness). We have:
6. Second question: *In general, you feel yourselves:*
7. According to the second question we have:
8.  $\Delta$  (Happiness) = [(Very/ happy + quite / happy) - (Not at all / happy + Not / happy)] = [(49.4% - (14%)] = + 35.4%.
9. So we have to  $\Delta$  (Happiness) value of + 35.4%.
10. We have the value of ISW on the road:
11.  $ISW$  (street) = [ $\Delta$  (life satisfaction) +  $\Delta$  (Happiness)] / 2 = [+ 3.8% + 35.4%] / 2 = + 39.2% / 2 = + 19.6%
12. So we have to  $ISW$  (street) = + 19.6%

#### B. The survey in the family:

1. The first question: *Satisfaction from life?*

<sup>1</sup> Kocani A., (2011) Përcaktimi i marzhit të gabimit që fut kuota në hallkën e fundit të kampionimit të një anketimi kundrejt kampionimit sistematik, AKTET Revistë shkencore e Institutit Alb-Shkenca, Vëll.IV, Nr.4, ISSN 2073-2244.

According to the first question we have:

$\Delta$  (satisfaction from life) = [(Fully / satisfied + Quite satisfied) - (Not at all satisfied + little satisfied) = [(66.6%) - (12.5%)] = + 54.1%.

So we have to  $\Delta$  (satisfaction from life) value of + 54.1%.

Let us find now the value of  $\Delta$  (Happiness). We have:

$\Delta$  (Happiness) = [(Very happy+ quite happy) - (Not at all happy+/ Not happy) = [(76.0%) - (5.2%)] = + 70.8%.

So we have to  $\Delta$  (Happiness) value of + 70.8%.

We have to value the ISW in the family:

ISW (family) = [ $\Delta$  (life satisfaction) +  $\Delta$  (Happiness)] / 2 =

[+ 54.1% + 70.8%] / 2 = + 124.9% / 2 = + 62.45%

So we have to ISW (family) = + 62.45%

Margin required is:

**ISW (family) = + 62.45% - ISW (street) = + 19.6% = + 42.85%**

As the margin it will be [- 42.85%, + 42.85%]. From this margin will be "expected" statistical error, that inserts the sample of size (for sampling with size 100 units) is + / - 10.6%. We will have: (- 42.85%) - (- 10.6%) = - 32.25% and (+ 42.85%) - (+ 10.6%) = + 32.25%.

So the margin remains [- 32.25%, + 32.25%].

From this margin will be "expected" the error that inserts quotas, which from the measurements made by the "parallel" survey, it appears that is given from the margin [-7.35%, + 7.35%].

We do "cutting": (- 32.25%) - (-7.35%) = - 24.9% and

(+ 32.25%) - (+ 7.35%) = + 24.9%

So the error that inserts non consideration of anonymity of respondents, when we make delicate questions is:

[- 24.9%, + 24.9%].

## CONCLUSIONS

From tables of frequencies, results that the differences between ISW values of responses to answers of analogue questions (on the road and in the family) form a segment, which has as the smallest margin -3.25% and the largest margin + 3.25%. From the smallest limits and the greatest limits, we should subtract the error that associated with systematic sampling depending on its size; Respectively statistical error is +/- 6.10% (for sampling the size 100 units).

Segment [-7.35%, + 7.35%] makes the proposal for the required margin of error that introduced quotas in the last link of sampling.

Also, the error that introduces non consideration of anonymity to respondents when making delicate question is:

[- 24.9%, + 24.9%].

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## Psychological Aspects and Adjustment of Pediatric Patients with Chronic Renal Disease

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### Abstract

*There is an ever increasing number of studies on the experience of pediatric patients suffering with Chronic Kidney Disease (CKD) resulting in the conclusion that chronic kidney disease affects the development of these patients, their behavior, emotions and social relations, causing a series of psychological reactions. The aim of this study was to make a review of the existing literature on psychological experience of patients with chronic kidney disease and their adjustment. The study findings are in the context of previous research and existing theories. Research was made in professional literature related to Chronic Kidney Disease in children and adolescents, selecting works published between years 1981 and 2014, using key terms such as children, adolescent, chronic kidney disease, in different combinations. Children starting from school age and later in their adolescence are in constant change, not only as regards their physical growth but also their emotional and sexual growth and coexistence for a long time with such a problem as kidney disease is very difficult and affects their lives in many ways. Simultaneously, CKD causes grave psychological damages. Survival to the disease is not satisfactory so deepening on disease perception, social and psychological factors affecting patients, are very important elements to improve the quality of life of these patients. Comprehension of their experiences is very important in order to decrease the effect of CKD on their lives and for them to receive the most effective treatment. Nephrologists and psychologist can work together by helping make the connections between psychosocial and biological factors.*

**Keywords:** pediatry, psychological reaction, chronic kidney disease, adjustment

### 1. Introduction

The aim of this study was to make a review of the existing literature on psychological experience of patients with chronic kidney disease and their adjustment. The study findings are in the context of previous research and existing theories. Research was made in professional literature related to Chronic Kidney Disease in children and

adolescents, selecting works published between years 1981 and 2014, using key terms such as children, adolescent, chronic kidney disease, in different combinations. Medical progress such as dialysis and kidney transplant have obviously increased the chances of survival for children and adolescents with CKD. However, non-function of an organ is corrected only partially, leaving great consequences on general health and quality of life of patients (Roventa et al., 2011).

Remarkable advances in the understanding and treatment of ESRD have been achieved over the last 20 yr, there has been increasing attention given to the individual characteristics of patients with an emphasis placed on understanding the effects, the patients' social situation, perceptions and responses to the illness. Although this area of "psychonephrology" has been a subject of research for many years, recent work in patients (Kimel, 2002; Cukor et al., 2006). A wide range of interventions have been designed and delivered to children with chronic illness and their families and reported in the peer-reviewed literature (Kibby, Tyc, & Mulhern, 1998; Bauman et al., 1997).

In earlier work by Bury, chronic illness was conceptualised as a "biographical disruption" that disrupted the patients' relationships and the practical tasks of living. (Bury, 1982).

By Stein et al. Chronic disease is defined as a state of health (a) lasts for years or longer; (b) requires specialised treatment or technology; (c) causes limitations in functioning, activities or social role of patients compared to physically healthy age mates (Stein, Bauman, Westbrook & Ireys, 1993). In 1981 Drotar stresses that prevalence of disease impact is affected by the type of chronic disease and disease needs (Drotar, 1981).

Charmaz brought focus to patients' perspectives in the day-to-day contexts within which they live, the 'loss of self,' and highlighted the complex interactions between different aspects of the illness experience (Charmaz, 1983). Over the past decades, a tremendous amount has been learned about the physiological and psychological reactions of dialysis patients. Despite this growing body of research, there are many essential elements that are still unknown (Cukor et al., 2007). The role that quotidian dialysis might have upon psychosocial variables has also not been studied in a rigorous manner (Cohen et al., 2007). However many studies are inclined towards clinical studies focusing on psycho-social issues that patients' with chronic kidney disease go through.

## 2. Emotional state and psychiatric changes

Patients with chronic renal disease must adapt themselves to complications caused by the disease on their health, identity, emotions, family, lifestyle, and their relations with others. Excess fatigue, complex treatments, side effects, limitations in consumption of liquids and/or food cause problems in patients. They need a long time to understand the diagnoses and adapt to it, to integrate medical treatment with their daily routine and to reset a sense of normality in their daily life (Tong et al., 2008). Presence of chronic diseases (CD) during childhood and adolescence considerably increases the risk of emotional disorders and those of behavior (Holden, et al., 1997).

According to a study of Madden et al. (2003) which explored the cognitive and psycho-social results of children receiving dialysis since little age, it resulted that more than half of participants demonstrated behaviour and emotional problems. Different studies showed that correlation analyses identified a number of important factors associated with poor adjustment to dialysis and/or anxiety and depression in children and parents (Fielding & Brownbridge, 1999).

Depression is generally accepted as the most common psychological problem in chronic renal patients. Although depressive symptomatology is commonly encountered in dialysis patients, the syndrome of clinical depression includes sadness, guilt, hopelessness, helplessness and changes in sleep, appetite and libido (Finkenstein, 2000).

Lopes *et al.* (2002) found a trend toward greater prevalence of depression, in patients treated for ESRD for 1 yr. The study of Hedayati *et al.* (2005) showed that over the course of 2 yr, a diagnosis of depression was associated with more hospitalizations and increased duration of hospitalization but not with overall mortality when variation in demographic and medical factors was controlled.

According to data from literature, prevalence of psychiatric changes among children adolescents with CKD is different. However, it was higher than those observed in healthy population in different studies (Marciano et al., 2010). A series of hypothesis have been suggested to explain this increase in the spread of mental disorders. In addition to stress related to CKD and its treatment, studies have revealed other factors that contribute on the predisposition towards psychiatric disorders in this group. From them we could mention the lowering in levels of neurotropic factors deriving from the brain (BDNF) and low levels of serotine serum in patients with CKD. They also reveal uremia, which may be accompanied with irritation, trouble, sleeplessness and delayed development of secondary sexual features (Bakr *et al.*, 2007; Fadrowski *et al.*, 2006). Also Gerralda et al. (1988) compared psychiatric elements of children waiting to receive dialyses and were receiving Hemodialyses with a control group. The diseased children reported symptoms related to internalizing symptoms. They reported higher internalizing symptoms for children in the illness groups (McEvoy, 1990).

## 3. Quality of life

According to the World Health Organization (WHO), QoL is the "individual's perception about their position in life, in cultural context and value system of the place where he lives and in relation to your goals, expectations, standards and concerns". When health-related QoL refers to the measure of the patient's functioning, its physical-psycho-social well-being (The World Health Organization Quality of Life assessment, 1995). QoL of patients with end-stage renal disease is influenced by the disease itself and by the type of replacement therapy (Cernuşcă-Miţariu et al., 2013).

Once patients with ESRD start to receive HD, they must face the chronic stress related to restrictions on their time, the economical and vocational costs related to treatment, functional limitations, dietary constraints, and possible adverse

effects of medications. Numerous studies have demonstrated that these patients have a lower QoL than that of healthy populations (Kao et al., 2009; Wolcott et al., 1988).

The study of Tjaden et al. (2002) described that children undergoing dialysis experience impaired growth, invasive procedures, school and social constraints. They often have poor self-esteem and a pervasive sense of losing their identity, body integrity, control, independence and opportunity. Several studies have suggested that QoL is enhanced dramatically in patients with ESRD treated with quotidian dialysis (Kurella et al., 2005; Heidenheim et al., 2003). The cognitive function of patients with CKD must be worse than that of their healthy agemates. This impairment must be related to their exposure to the disease. Cognitive changes are mainly related to learning and intelligence. (Bale et al., 1980).

Wasserfallen et al. surveyed 455 HD patients and 50 PD patients. Recruitment rates were more than 75%. The 2 groups were similar in age, sex, and duration of treatment for ESRD. QOL was similar in both groups, except for a perception of greater restriction of activities by the PD patients. Pain and discomfort and anxiety and depression had the most impact on QOL scores in HD and PD patients, respectively. (Wasserfallen et al., 2004). Anxiety as part of their emotional state is perceived as one of the most important aspects of quality of life related to health. Because of this anxiety must be identified at an early stage and be treated (Goldstein et al., 2007; Grootenhuys et al., 2006; Fadrowski et al., 2006). Although anxiety which coexists with CKD may have negative effects in functioning and physical health, so far there is no sufficient data on QOL which indicate that psychological treatment of stress and difficulties in patients with CKD improves clinical symptoms and quality of life (Reuben et al., 2012).

#### 4. Adolescents and Chronic Kidney Disease

In patients with CKD, adolescence usually brings about a worsening in clinical control and therapeutic adherence. Moreover, there is an additional stressor, which is the change in the healthcare team that cares for the patient. A worsening in the clinical control has been demonstrated when these patients were referred to healthcare teams that treated adult patients (Reynolds et al., 1993). It was observed that the adolescents with CKD presented a high level of dependence, associated to the overprotection by family members and teachers. When these patients became adults, they reported that their inclusion in the treatment and clinical decisions and adequate explanations were considered very important contributions in their own management of the disease. (Reynolds et al., 1993).

In the study by McDonagh, the CKD itself, plus the side effects of the medications, the school absenteeism and the psychosocial alterations, notably the low self-esteem observed in these patients, resulted in growth and development retardation, pubertal delay and worse cognitive performance. (McDonagh, 2000, Choquet, Du Pasquier, Fediaevsky & Manfredi, 1997). These pubertal patients showed more concern regarding the normal adolescence questions, such as alcoholism, illicit-drug use, sex, weight, contraception and wanted these subjects to be debated during the treatment. (Choquet Met et al., 1997; Reynolds et al., 1993).

#### 5. Intervention

A chronic illness can affect the individual child's psychological adjustment as well as his or her activities and level of functioning in a wide range of important settings, such as health care, school, and with peers. In addition, the impact of a pediatric chronic illness transcends the individual child and includes his or her family members (Drotoar, 2006). The multifaceted impact of pediatric chronic illness has a number of relevant implications for the design and implementation of psychological intervention research. First to be more effective, interventions generally need to be focused on specific target problems that are interfering with child's functioning (health or psychological adaptation) in specific settings (Kazdin, 2000). Target problems should have a clinically significant impact on the current functioning of children or family members in at least one clinically relevant context (Drotoar, 2006). Research on childhood chronic illness has considered a number of potential targets for intervention methods and outcomes (Kibby et al., 1998; Bauman et al., 1997; Thompson & Gustafson, 1996; Eiser, 1990; Garrison & McQuiston, 1989; Hobbs & Perrin, 1985; Pless & Pinkerton, 1975;). Theoretical models and frameworks can facilitate practitioners and researchers decision making concerning designing and delivering psychological interventions with children with chronic illness.

Concern to promote quality of health care in children with (CKD) has developed together with the model of humanization of medicine which cares for patient satisfaction, suggesting special management choices which may have been adapted according to the needs of patients and personal choices (Varni, 2004). Addressing of patient's preferences and needs in order to improve health care is ever more acknowledged as an important component to offer better health care especially to patients with chronic disease (Tong *et al.*, 2008). However, treatment remains very invasive and requires deep changes in behaviour and lifestyle. Based on this fact treatment of chronic kidney disease requires multidisciplinary care: medical, psychological and social treatment. Medical issues are doubled by psychological effects and other personal factors such as difficulties of age, kind of family and educational level. Patient's survival is not sufficient, in that aspect offering of care is important to increase quality of life (Iorga *et al.*, 2014). Interventions on patients are important to increase their abilities to manage the disease, to engage themselves in the community, to participate in creative activities, and to stay attentive towards dialyses and respective treatments (Tjaden *et al.*, 2012).

Several studies have suggested interventions to increase exercise are associated with improved QOL in patients with ESRD. Although this is not unexpected if the criterion is functional scores, some investigations have suggested effects on mood predominate. (Koudi, 2004). Few studies have focused on the treatment of depression and anxiety disorders in ESRD patients. Treatment options including psychotherapy, cognitive behavioral therapy, and pharmacologic agents are similar to those used in the general patient population (Cohen *et al.*, 2007; Mann, 1819–1834, 2005;). Ameliorating the symptoms of depression is important because it may improve other adverse outcomes associated with ESRD, including poor nutritional status and treatment compliance. (Kimmel & Peterson, 2006).

CKD patients and their families need to understand the importance of resilience, and medical personnel need to be educated in this area as well, in order to provide timely correct messaging that will help reduce the stress and frustration associated with chronic disease. An important factor affecting resilience in patients with CKD is the failure to give sufficient attention to health-promoting behaviors such as good nutrition, self-realization, stress reduction, proper sports, and fitting leisure time. Ignorance of such health promoting behaviors can lead to increased morbidity and mortality and even suicidal behavior (Hedayati & Finkelstein, 2009). The treatment options for anxiety disorders are similar. Like antidepressants, adjustment of anxiolytic dose for level of GFR is needed when these agents are prescribed. (Rickels & Moller, 2002). The study of Balen *et al.*, showed that stimulation of these children to carry out activities that are normal for their peers may be useful (Balen *et al.*, 1996).

## 5.1 Coping with the stressor

Some literature has called engagement coping with the engagement coping with the stressor "primary control engagement coping" stressor and engagement with one's emotions about the problem "secondary control engagement coping" (Connor-Smith *et al.*, 2000). The third dimension represents "disengagement" or efforts to withdraw from the stressor and one's emotions. According to this model, primary control engagement coping includes: problem solving (e.g., "I try to think of different ways to change the problem or fix the situation"), emotional regulation (e.g., "I get help from other people when I'm trying to figure out how to deal with my feelings"), and emotional expression (e.g., "I let someone or something know how I feel"). Secondary control engagement coping includes: positive thinking (e.g., "I tell myself I can get through this or that I'll do better next time"), cognitive restructuring (e.g., "I tell myself that things could be worse"), acceptance ("I just take things as they are, I go with the flow"), and distraction ("I think about happy things to take my mind off the problem or how I'm feeling"). Disengagement coping includes: denial (e.g., "I try to believe it never happened"), avoidance (e.g., "I try not to think about it, to forget all about it"), and wishful thinking (e.g., "I deal with the problem by wishing it would just go away, that everything would work itself out") (Connor-Smith *et al.*, 2000). Initially, cognitive distraction was placed under disengagement coping, but factor analyses revealed that it correlated more strongly with secondary control coping than with disengagement.

The authors noted that because distraction requires engagement with a thought or activity unrelated to the stressor, with the goal of decreasing emotional arousal, it is a form of secondary control engagement coping (Connor-Smith *et al.*, 2000). Using this model, both primary and secondary control engagement coping were related to lower levels of internalizing and externalizing symptoms, and disengagement coping was related to higher levels of internalizing and externalizing symptoms (Connor-Smith *et al.*, 2000). Snethen *et al.*, (2004) investigated the coping strategies used by adolescents with end-stage renal disease. Within this group of adolescents, the most frequently used coping strategy by healthy and ill

children was listening to music, with over half of the participants indicating they used this strategy “most of the time.” Strategies that were “never” used by most of the participants included: taking drugs not prescribed by the doctor and talking to a rabbi/priest/minister.

Adolescents with end-stage renal disease used different coping strategies than healthy adolescents, but they used a similar number of total coping strategies. Compared to healthy adolescents, adolescents with end-stage renal disease more frequently coped by venting their feelings (e.g., letting off steam by complaining to family members) and avoiding problems (e.g., telling yourself the problem isn't important), and less frequently coped by engaging in demanding activities or seeking professional support. It is concerning that adolescents with end-stage renal disease were less likely to seek professional support; perhaps because they were so involved with the medical profession, they perceived seeking professional support as a further sign of weakness or another invasive procedure (Snethen et al., 2004).

Support received by others is also important in addition to self-adaptation of patients with chronic renal disease. Social support and integration are now acknowledged as important factors in adjustment to chronic and acute illness. Social support has been broadly and consistently linked to improved health outcomes in a variety of chronic illnesses in numerous studies independent of geographic settings, SES, and ethnic backgrounds (Christensen et al., 2000; Brissette et al., 2000). A wide range of interventions have been designed and delivered to children with chronic illnesses and their families and reported in the peer-reviewed literature (Kibby, Tyc & Mulhern, 1998; Bauman et al., 1997).

Pediatricians and pediatric nephrologists as well as other health care providers such as nurses and social workers remain the cornerstone for early detection and intervention. They may assume the supervisory role of direct patient care, provide emotional support and perform or supervise follow-up activities (Assadi, 2013).

## 6. Conclusions

Reconsidered studies revealed that chronic renal disease is a very serious chronic state which has an important impact on the lives of adolescents, causing a series of improper psychological reactions. Understanding of their experiences is very important to reduce the effect of CKD on their life and in order to receive effective treatment. Nephrologists, psychosocial can work together to understand the connections between psychosocial and biological factors. Survival from the disease is not sufficient so deepening on the perception of the disease, social and psychological factors which affect patients are important elements to improve the quality of life of these patients.

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## Contemporary Models of Organization of Power and the Macedonian Model of Organization of Power

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### Abstract

*This paper is a critical analysis of the model of organization of power, which intends to prove that the traditional dichotomy parliamentary - presidential system has a relative methodological value in view of the character of the contemporary organization of power models. The Macedonian organization of power model is no exception to this statement. The political system is not determined only by the constitutional framework. It is also determined by the (un)democratic tradition, the model of political culture, the electoral and party system. In this sense, the same normative model works differently in different countries or different periods of development of the same political system. This is especially evident in the relations between Parliament and Government. The dominance of the executive government is not characteristic only of the organization of power model in the Republic of Macedonia, it is a global tendency as well. In that sense, the Assembly of the Republic of Macedonia shares the "fate" of the representative bodies in the contemporary parliamentary system. However, in the absence of a democratic tradition, the presence of subject political culture, strong elements of partocracy and party state, fragile and fragmented civil society and weak general public, the dominance of the executive over the legislative government acquires dramatic dimensions.*

**Keywords:** organization of power; legislative power; executive power; political control

### 1. Introduction

The separation of powers as a fundamental principle of the organization of state government has a long tradition and is an essential element of the philosophy of important political thinkers in search of ways and instruments to limit the absolute monarchical power. The idea behind the separation of powers is the guiding idea in overcoming absolute monarchy. This line of thought was supported by Thomas Hobbes, John Locke and Charles Montesquieu. Montesquieu, raised the question of separation of powers in book XI, Chapter 6, "*On the spirit of laws*"<sup>1</sup> in describing the English Constitution, although he did not specifically mention the phrase "separation of powers". It seems that the basic premise summarizing the theory of Montesquieu on the separation of powers is as follows: "*To prevent the abuse of power, it is necessary from the very nature of things that power should be a check to power.*" Montesquieu advocated separation of the legislative (puissance legislative), the executive (puissance executive) and the judiciary (puissance de juger).<sup>2</sup>

The doctrine of Montesquieu on the separation of powers was brought to life in the U.S. Constitution, dated 1787, which inaugurated a presidential system of organization of power. "The intent was to remove the misunderstandings occurring at that time; it was to save the people from autocracy, by applying the principle of separation of powers."<sup>3</sup> Although the Constitution of the United States does not contain an explicit affirmation of the principle of separation of powers and government, it is nevertheless obvious, as the first, second and third article refer to the legislative, executive and judicial power. The legislative power belongs to Congress<sup>4</sup>, the executive to the President<sup>5</sup>, and the judicial power is exercised by

<sup>1</sup> Charles- Louis de Secondat (Montesquieu), *De l'esprit des lois*, Paris, as found in R.Malnes, K.Midgard, *Политичка филозофија*, Скопје, 2008, pg.307

<sup>2</sup> R.Lukic, *Monteskejeova politička teorija*, Arhiv za pravne i društvene nauke, Beograd, 1995, pg.119-134

<sup>3</sup> TH.O. Sargentich, "The limits of the Parliamentary Critique of the Separation of Powers", 34 Wm. & Mary L. Rev.679, (1993)

<sup>4</sup> Article 1, Section 1 of the U.S. Constitution

<sup>5</sup> Article 2, Section 1 of the U.S. Constitution

the courts or, i.e. the judicial power of the United States has been entrusted with the Supreme Court.<sup>1</sup> "Every American knows that power in America is divided into three segments ... The function of Congress is to make laws, the President, to execute the laws, and the Court, to interpret the laws."<sup>2</sup>

When we say that the system is based on the principle of separation of powers, this means that the relations between the holders of state power are characterized by organizational and functional independence. In this respect, we refer to systems based on the principle of strict separation of powers (presidential system) and systems based on flexible separation of powers (parliamentary and mixed systems). It is notable that all forms of organization of state power occurred and developed empirically.<sup>3</sup> The parliamentary system originated in England, and the presidential system in the U.S. In fact, political science, builds the model of the parliamentary system based on the English political experience, and the presidential system based on the American model.

## 2. Important features of the parliamentary system

The parliamentary system of government is based on the principle of flexible separation of powers. Unlike the parliamentary system, the presidential system is based on the principle of strict separation of powers.<sup>4</sup>

In the parliamentary system there is a balance of the three powers, and mutual relations are regulated by mechanisms of cooperation of the legislative and executive authorities.<sup>5</sup> Apart from the flexible separation of powers, an important characteristic of parliamentary systems is the interdependence, i.e. the political responsibility of the Government to the Parliament, where the Parliament has the power to vote no confidence to the Government and the Government can ask the Head of State to dismiss Parliament. Furthermore, the ministerial and parliamentary functions are compatible, because members of the cabinet (the Government) must be members of Parliament, as is the case in England, but not in the Netherlands<sup>6</sup> Norway<sup>7</sup> and Luxembourg<sup>8</sup>.

The birthplace of the pure/classical parliamentary system is England (Mater Parliamentorum).<sup>9</sup> Although Great Britain has a constitution in the material sense, it is a specific example in its modern constitutionalism, in the absence of written, i.e. codified constitution. This legal and political paradox springs from and responds to a unique historical tradition in which the fight against absolute power, in support of limited power, and the recognition of the Parliament, as the carrier of the sovereignty and a school of democracy, along with the rule of law and the changing constitution discarded the need for a written Constitution.<sup>10</sup> In Great Britain, the contemporary model of government organization qualifies as a cabinet system or a system of cabinet government, even as a prime minister system, because of the dominant role of the cabinet, or the prime minister. In England, the House of Commons (lower house) selects the Cabinet and the Cabinet is accountable to the House of Commons, however the Cabinet can also dismiss the House of Commons in case of a no-confidence vote against them, according to the maxim stand or fall together. As for the responsibility of the Cabinet to the Parliament, the rare occurrence of a no-confidence vote does not diminish its importance.

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<sup>1</sup> Article 3, Section 1 of the U.S. Constitution

<sup>2</sup> The Federalist, 1961, No.48. pg. 347

<sup>3</sup> С. Климовски, В. Митков, Т. Каракамишева и Р. Тренеска, *Уставно право*, Просветно дело, АД. Скопје, 2003, pg.350

<sup>4</sup> R.J Krotoszynski, " The separation of legislative and executive powers" , in Tom Ginsburg, Rosalind Dixon (eds) , *Comparative Constitutional Law*, Edward Elgar Publishing, Cheltenham, 2011, pg.234.

<sup>5</sup> С.Шкарик, Г.Силјановска, *Уставно право*, Скопје, 2009, pg.508.

<sup>6</sup> Article 57, line 2 of the Constitution of the Kingdom of the Netherlands.

<sup>7</sup> Article 62 of the Constitution of the Kingdom of Norway

<sup>8</sup> Article 60 of the Constitution of Luxembourg

<sup>9</sup> С.Шкарик, Г.Силјановска, *Уставно право*, Скопје, 2009, pg.512.

<sup>10</sup> In this respect see also О. Диамел, *Уставно право-Демократиите*, Скопје, 2004, pg.108

In this country, the parliamentary system actually arose from and in relation to the political responsibility of the government and its two essential elements; first: the government is fully accountable for its work, i.e. the entire cabinet must enjoy the confidence of the House of Commons, and second, in case of no-confidence, the government resigns<sup>1</sup>. However, there are still cases where the Prime Minister was overthrown by the House of Commons, the one with MacDonald in June 1924 and the one with Callaghan in March 1979<sup>2</sup>.

With respect to the relationship between the legislative and executive power, it must be noted that, in England, although the legislative function is formally in the hands of parliament, in over 90% of cases, the Cabinet proposes the laws. The situation is similar in other modern democracies, with the exception of the U.S., where Congress has still retained a proactive role in the legislative process, and only the members of the House of Representatives and the Senate are authorized to propose and adopt laws. Nevertheless, the aforementioned statement with respect to the British parliamentary reality does not mean that British MPs have given up proposing legislation. It only means that in today's environment, the control function towards the Cabinet has become the dominant feature of the House of Commons. The budgetary function and control, has also been reduced to the close supervision of the executive branch policy, particularly with the departmental select commissions, introduced in 1979.

Throughout history and even today, the parliamentary system is found in various forms in Italy, Belgium, the Netherlands, Sweden, Norway, Japan, India, Canada and other countries.<sup>3</sup> After World War II, the Constitution of Italy introduced features of a classic parliamentarism. The organization of power is based on the principle of separation of powers.<sup>4</sup> The characteristic of the Italian parliamentarism is the responsibility of the Government before the two houses, unlike other countries with a parliamentary system in which the Government answers only to the House of Commons (lower house). The Parliament can delegate the legislative function to the Government, but only with prior, set out principles and guidelines by the Parliament, and only for a limited time and in certain areas.<sup>5</sup>

### 3. Presidential model of government organization

The presidential system is based on the principle of strict separation of powers into legislative, executive and judicial, as well as the system of checks and balances. This system ensures the independence of the three branches of government. The name of this system comes from the shape of the executive power, which is performed by a collegiate body – the President. The function of the head of state and head of government are united in one person – the President.<sup>6</sup>

Therefore, the flexibility of the executive functions in the collegiate body is the key feature of the presidential system.<sup>7</sup> Apart from that, the presidential system is characterized with: relations between the legislative, executive, and judicial powers, structured on the principle of checks and balances. In a presidential system, there is a greater degree of independence of each of the three powers, in comparison to the parliamentary system.<sup>8</sup>

There is no clear constitutional model of the presidential system in the modern democracies, except in the United States.<sup>9</sup> The U.S. Constitution introduces not only a model of presidential republic; it also introduces a model of a presidential system of organization of state power. More than two hundred years after the adoption of the U.S. Constitution of 1787,

<sup>1</sup> С.Шкариќ, Г.Силјановска, *Уставно право*, Скопје, 2009, pg.512.

<sup>2</sup> О. Диамел, *Уставно право- Демократиите*, Скопје, 2004, pg.117.

<sup>3</sup> On the British cabinet system, the French fragmentary parliamentarism of the III and IV French Republic and the German chancellor system see V. Vasovic, str. 336-405; 456-466 and 577-639.

<sup>4</sup> Articles 55-137, of the Constitution of the Republic of Italy

<sup>5</sup> Article 76 of the Constitution of the Republic of Italy

<sup>6</sup> С. Климовски, В. Митков, Т. Каракамишева и Р. Тренеска, *Уставно право*, Просветно дело, АД. Скопје, 2003, pg.358

<sup>7</sup> С.Шкариќ, Г.Силјановска, *Уставно право*, Скопје, 2009, pg.503.

<sup>8</sup> Sokol-Smerdel, "Organizacija vlasti", *Narodne novine*, Zagreb, 1988, str.115.

<sup>9</sup> B.Guy Peters, *The Separation of Powers in Parliamentary Systems*, Chapter III, p. 68, in *Presidential Institutions and Democratic Politics- Comparing Regional and National contexts*, edited by Kurt Von Menhethen, London, 1997.

the U.S. presidential republic and the American presidential model of government organization still function efficiently with the help of the checks and balances among the three powers.<sup>1</sup>

The aim of the founding fathers of the American constitution was to create a government organization which will provide the right balance between the legislative, executive and judicial power. However, the relationship between the legislative and the executive power is not always determined solely and exclusively by the constitutional framework. In certain situations, the President can interfere in the legislative activity, which is the responsibility of Congress. When talking about presidential powers it should be underlined that he/she possesses the *de facto* authorities, which are not provided for in the Constitution. Many presidents in the American constitutional history have adopted executive orders. This power of the President of the United States is also seen in the recent initiatives of the incumbent President Barack Obama. Namely, on issues that he cannot push through Congress, he invokes the executive orders, which, in turn stimulates debate on the constitutionality of these Presidential acts.<sup>2</sup> In the case of international agreements, which fall under the authority of the President, that should be in turn ratified by the Senate, before entering into force, the practice shows cases in which American presidents sign so-called executive agreements, bypassing international treaties that require ratification.

Different political systems recognize different types of veto: pocket veto, partial veto, package veto.<sup>3</sup> The U.S. Constitution offers a pocket veto, which is often used. Namely, if Congress passed a legislative proposal and submitted this to the President for signing in the last ten working days before the end of session, the President can decide not to respond in any way, because from a formal aspect he is robbed of the possibility to state his position in the ten-day deadline which is provided for in the Constitution. By putting a pocket veto the president feels more comfortable, since it enables him to avoid explicitly explaining his reasons for not signing, the ordinary veto may create certain political problems. Basically, the consequences of pocket veto are that the specific legislative proposals must again go through the whole procedure of adoption, which in any case, creates difficulties for the proposal/bill to become a law. This demonstrates the importance and role of the President in such a system of separation of powers.

In the American political system, the President, as head of the biggest world power, *de facto* elected by the people, freely defines the composition of his "government" that the Congress cannot topple, and armed with the powers and means, he runs the country.<sup>4</sup> Since he/she is elected on direct elections, the President is not accountable to Congress, i.e. has no political responsibility, and remains in his post until the expiry of the four-year term, regardless of his/her policies and regardless of whether Congress or the voters are satisfied or not with his work. Accordingly, the only sanction which the U.S. President is subject to is him not getting re-elected on the following elections. In the U.S., in addition to the President, the President's aides and associates, as well as the members of his cabinet have no responsibility before Congress. They are appointed and replaced depending on the will of the President. Therefore, the principle of separation of powers in this regard is very consistently applied: independent in relation to the legislative, the executive does not bear political responsibility before the legislative branch.<sup>5</sup>

The President can only answer to impeachment charges<sup>6</sup>. In such circumstances, the procedure for liability begins in the House of Representatives, where the impeachment charges are raised with a 2/3 majority vote. Then, it goes to the Senate, which, in this case, is not chaired by the Vice President of the United States, who usually chairs the Senate, but the Chief Justice. In 1868, the Senate was one vote away from impeaching former President Andrew Johnson. In August 1974, the U.S. President Richard Nixon resigned to avoid impeachment on the Watergate Affair. In January 1998, impeachment was also raised against President Bill Clinton, but it failed because the Senate did not provide two-thirds of the vote required for his impeachment.

<sup>1</sup> Г. Силјановска-Давкова, "Современи "модел" на организација на власта: дилеми и предизвици", *Zbornik pravnog fakulteta u Zagrebu* br.2, 2011, pg. 365-391

<sup>2</sup> Available in [www.usnews.com/debate-club/is-obamas-immigration-executive-order-legal](http://www.usnews.com/debate-club/is-obamas-immigration-executive-order-legal)

<sup>3</sup> Б. Ванковска, *Политички систем*, Скопје, 2007, pg.122.

<sup>4</sup> О. Диамел, *Уставно право-Демократиите*, Скопје, 2004, pg.122.

<sup>5</sup> М. Jovicic, "Parlamentarni sistem nasuprot predsednickom i skupstinskom sistemu", *Arhiv za pravne i drustvene nauke*, 1992. Beograd, pg. 43-64.

<sup>6</sup> The U.S. President can be impeached in cases of treason, bribery and other high crimes and misdemeanors.

#### 4. Mixed model of organization of power

The combined or mixed system is a form of state government, which is a combination of principles and decisions taken from the parliamentary and presidential system. This system appears as a way out of the difficult dichotomy presidential - parliamentary system. The theoretical literature devoted to this system is relatively poor. Sartori is one of the few proponents of the mixed system which gives an advantage over the extreme parliamentarism and the extreme presidentialism.

Robert Elgie distinguishes three kinds of definitions for determining its main features. The first is governed by the real power of political institutions. As a semi-presidential system, this type of definition gives the double-hatted executive power to the president who has pronounced powers.<sup>1</sup> In order to determine the existence of this system, it is sufficient to determine the greater power of the President in comparison to that of the prime ministers and cabinet. This definition, as a reflection of the semi-presidential system refers to most countries from Central and Eastern Europe, including the countries that emerged from the Soviet Union.

The second type of definition, combines constitutional decisions to the current power of the holders of executive power. According to Maurice Duverger, the first theorist who used the term mixed system, the semi-presidential political system is one in which the constitution contains the following elements: the President of the Republic is elected in direct elections based on the universal suffrage; he/she has greater powers; and opposite him/her, the President has the Prime Minister and the Ministers who have executive and administrative powers and can retain the position as long as they have the support of Parliament.<sup>2</sup> According to this definition, the semi-presidential system refers only to France and Portugal.

The third approach focuses on the institutional model, regardless of the actual relationship. Accordingly, there is a mixed system where the directly elected president, with a fixed term, exists side by side with the Prime Minister and Cabinet, which are accountable to Parliament for their work.<sup>3</sup>

The French Constitution of 1958 contains a model of a combined system. In this document, the most dominant and key figure in the constitutional system is the President of the Republic.

The President of the Republic appoints the Prime Minister. When the Government of the Prime Minister resigns, the President of the Republic dismisses him/her from office<sup>4</sup>, adopts laws, opens and closes sessions of the French Parliament by decree. The French model of state power also has characteristics of a parliamentary system: the political responsibility of the Government to the Parliament; the legislative initiative of the Government; the great influence of the Government in drawing up the agenda of the parliamentary sessions.

Although previously, the combined system was defined as a way out of the dichotomy of the presidential - parliamentary system, this model itself is somewhat contradictory and confrontational, especially when the President and the parliamentary majority are not from the same political camp. The result of this relationship is an increase in the risks of possible conflicts and freezes of the institutions.

#### 5. Macedonian model of organization of power

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<sup>1</sup> Г. Силјановска-Давкова, "Современи "модели" на организација на власта: дилеми и предизвици", *Zbornik pravnog fakulteta u Zagrebu* no.2, 2011, pg. 369

<sup>2</sup> M. Duverger, "A new Political System Model: Semi-Presidential Government", *European Journal of Political Research*, 1980, no.8, pg. 166, as found in Б. Ванковска, *Политички систем*, Скопје, 2007, pg.144.

<sup>3</sup> E. Robert (ed.), *Semi-Presidentialism in Europe*, Oxford: Oxford University Press, 1999, p.146.

<sup>4</sup> Article 8 of the Constitution of the Republic of France

The European political space is a world of hybrid models of organization of power.<sup>1</sup> The Macedonian model of organization of state power belongs to the group of combined systems. Although it is dominated by elements of the parliamentary system, it has elements of the presidential system as well.

The parliamentary characteristics of the Macedonian model of organization of power are: the double-hated executive power; Government derives from the parliamentary majority, and is accountable to the Assembly; the Government is an (un)stable element of the executive power. However, some standard elements of a parliamentary system are lacking, such as: the compatibility of the MP and the ministerial position<sup>2</sup>; there is no possibility for dissolution of the Assembly by the President, at the request of the Government.

The elements of the presidential system can be identified in: the direct election of the head of state; the right of suspension veto; the responsibility of the head of state for violating the Constitution and laws (impeachment). Therefore, it is clear that this is neither a "clean" parliamentary nor a presidential system. This is a combined model of governance, in which there are relicts of the parliamentary system, or, as Professor Gordana Siljanovska refers to it, "Macedonian constitutional cocktail of the organization of power".<sup>3</sup>

Academician Evgenij Dimitrov<sup>4</sup> has an original view of the organization of state power in the Republic of Macedonia. He believes that the Macedonian model of organization of power has combined the parliamentary model with certain elements of the assembly system. "Regardless of whether this will be a temporary or a lasting phenomenon, in addition to the existing basic forms of organization of the state, the current theory of constitutional law and political systems should define another new model, which could be labeled as a parliamentary system with elements of the assembly system. A system to which the Macedonian model of organization of state power would most certainly belong."<sup>5</sup>

### **The impact of Government (executive) on the Assembly (legislative)**

The legislative and executive powers are two wheels of the same machine, if their movements are not harmonized, the machine will not function properly.<sup>6</sup> The relationship between the legislative and executive authorities is not one-sided, on one hand, the legislature affects the executive, and on the other, the executive has tools to influence legislative. To assess the impact of the legislative power over the executive, the following issues are important: first, the method of determining the holder of executive power, second, the political control over the work of the executive power, i.e. the political accountability of the executive power and third, the change of the holders of the executive power.<sup>7</sup>

The general tendency in the parliamentary system is also present in the Republic of Macedonia, i.e. the imbalance in the separation of powers in favor of the Government, which becomes much more than the executive power. The Government of the Republic of Macedonia is deeply involved in the legislative authority through: the actual status of dominant proponent of the laws; proponent of the budget and other regulations; stating their opinion on the proposed laws and other regulations proposed by other authorized bodies; participation in the work of the Assembly and its working bodies and the right to request convening a sessions of the Assembly. Here, it is worth noting that over 95 percent of the adopted laws have been

<sup>1</sup> Г. Силјановска, "За македонскиот модел на организација на власта", во *Реформата на институциите и нејзиното значење за развојот на Република Македонија*, Скопје, pg. 371.

<sup>2</sup> Similar in the French model, institute vigorously support by De Gaulle

<sup>3</sup> Г. Силјановска, За македонскиот модел на организација на власта, во *Реформата на институциите и нејзиното значење за развојот на Република Македонија*, Скопје, pg. 347.

<sup>4</sup> PhD Evgenij Dimitrov, the first professor of Constitutional Law in the Republic of Macedonia

<sup>5</sup> Е. Димитров, "Специфичностите на Парламентаризмот во Република Македонија според Уставот од 1991", во *Пет години од Уставот на Република Македонија*, Здружение за уставното право на Македонија, Скопје, 1998, pg.208

<sup>6</sup> Е. Жиро, *Извршната власт во демократските на Европа и Америка*, Париз, 1938,pg.19, преземено од М. Ристовска, Односи меѓу законодавната и извршната власт во Република Македонија, *Пет години од Уставот на Република Македонија*, Здружение за Уставно право на Македонија, Скопје,1998, pg.230

<sup>7</sup> Ibid, pg. 230

proposed by the Government and passed by the MPs, as they have been proposed, sometimes even without any discussion, in the style of the subject political culture and party obedience.

By the adoption of the Rules of Procedure in 2008, the Government had the right as the proponent to submit amendments right until the end of the debate. The practice shows that the government often abused this right. Sometimes, at the last minute, it proposed amendments that actually changed the previous content of a certain provision of the proposed law.<sup>1</sup>

The so-called "aggressive" government policy that literally models the parliamentary (dis)satisfaction depending on their needs<sup>2</sup> is constantly present in the current parliamentary life in the Republic of Macedonia.

## Conclusion

Constitutional norms and guarantees have proven to be insufficient for the democratic political system based on the principle of separation of powers. The lack of a longer democratic tradition, the (un)democratic political culture, with strong elements of patriarchy and servitude not only in the interparty relations, but also in the work of the Assembly and the Government, as well as in their inter-relations stimulates undemocratic tendencies and distortions in the political system of the Republic of Macedonia, which has inevitably led to lagging behind in the European integration processes.

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<sup>1</sup> С.Гушева, *Законодавната дејност на Собранието на Република Македонија*, Скопје, 2009.

<sup>2</sup> Т. Каракамишева, "Основни забелешки за системите на организација на власта и за потребата од реформирање на политичките институции во Република Македонија", во *Реформата на институциите и нејзиното значење за развојот во Република Македонија*, Скопје, 2009, рр. 393-405.

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