

# EMF 2016



## 5<sup>th</sup> EURASIAN MULTIDISCIPLINARY FORUM

Tbilisi, Georgia

27-28 October 2016



# **PROCEEDINGS**

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**European Scientific Institute, ESI (publishing)**

### ***Impressum***

Bibliographic information published by the National and University Library "St. Kliment Ohridski" in Skopje, Macedonia; detailed bibliographic data are available in the internet at <http://www.nubsk.edu.mk/>;

CIP – 3(062)

COBISS. MK-ID 102161418

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PROCEEDINGS: 5th Eurasian Multidisciplinary Forum (5, 2016; Tbilisi)  
/ 5th Eurasian Multidisciplinary Forum, EMF 2016, 27-28 October, Tbilisi, Georgia

European Scientific Institute, ESI, 2016. (464 p.) : ilustr. ; 21 cm

Kocani, Republic of Macedonia

Email: [contact@eujournal.org](mailto:contact@eujournal.org)

Printed in Republic of Macedonia

**ISBN 978-608-4642-53-4**

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# **PROCEEDINGS**

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# **The Suggestion of an Economic Growth Model: The Analysis of Production in Ancient Rural Settlement**

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## **Abstract**

In this paper, the way to determinant of growth and development is tried to be introduced with a theoretical model that suggests growth is the result of technological development. Countries' own technological development and technology creating centre can be generated by connecting this to the model of the production, reproduction and redistribution systems of crops in an old village. This traditional way of producing crops in the past is taken as a clue to create technology centre for countries today. The point is how we can produce technology by local technological firms now based on the acceptance of certain principles as old villagers produced, reproduced and distributed in the past. Today, the state replaced the duties of chief of the village providing trust and local technological firms replaced households units of the village where each of them have certain duties like reciprocity and cooperation towards each other. 'Clustering' is an important concept in growth and development and in this paper 'social clustering' is suggested and validity and sustainability of this is searched. Free market is necessary but not sufficient condition for growth. In order to attain high growth rates, a mixture of competition and co-operation is required. Free Market gives special importance to competition that may undermine the trust in the society and may therefore lead to a weakening of consensus necessary for sustaining uninterrupted growth over time. The state can play a positive role in the development process by its organizational characteristics including the quality of its personnel, degree of its autonomy. Therefore, technology creating centers under the leadership of state could reinforce cooperation and make selective firms more competitive in international markets.

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**Keywords:** Growth and Development, Technology centre, Free Market, Social Clustering

## **Introduction**

Growth and development has become one of the most talked about issue in government's agenda recently. There are several reasons behind this. The first one is related with widely accepted thoughts of neoclassical paradigm. If countries sustain high growth rates they will solve other problems like high unemployment rates in the following period. We live in a materialistic world and in order to satisfy our material needs, to create new jobs, to reduce unemployment and to maintain higher standards of living countries need to grow. For these reasons growth rates and development have become one of the most important hot topics in countries and the key issue that needs to be focused on.

Growth and development processes was tried to be understood by many explanatory factors of which cultural, institutional social, political, economic and technological ones deserve special interest. Briefly, for some people monetary benefits are significant determinants of growth. For some people the culture of the society and its positive attitudes towards hard work has a great appeal. For some people maintaining macroeconomic policies of the mainstream economy and free market are the sole determinant of growth. For some people the reason is high saving rates while others think that the emergence of certain institutions is the basic explanation. For the last couple of decades endogenous growth theory and the technology play an important role in explaining the success and catch up processes and pave the way to growth and development process.

In spite of these differences they share very important thing in common. The importance of money incentives and bonus of occupations, the work ethic and the development of positive attitudes of an individual toward his/her large community could be a solution and work best under free market system in which people derive benefit from it and so does the society. But free market is necessary and but not sufficient condition for growth. Free market constitutes laboratory environment for firms and entrepreneurs where good works are rewarded and insufficient ones are punished. When people choose their job, start a new business, save and invest in financial markets, markets give signal to them. Free Market are perceived as a system of rewarding people who give at least enough labor, effort and value to market related jobs and punishing people who don't. Markets give more weight to efficiency compare to equity. Within this framework market are the test places where people complete their self actualization and improve others. On the other hand there are some prerequisites to make this system functioning well. The juridical system of a country must be fair and must treat everyone equally and not discriminate anyone. Bank credits should be open to all independent of any discrimination and open to people who have profitable

projects, for different job positions, candidates must be selected on the basis of their talents rather than their dependency to inner group relations.

Although Free Market provides a good environment for firms, people and the country in general, it sometimes fails. Firms which are exposed to intense global competition become vulnerable to external shocks. In Fukuyama's words free market is eighty percent of times correct (Fukuyama Francis, *Trust; the social virtues and the creation of prosperity*, p.13). There is every reason to believe that we should develop certain policies on macro level to save the future. So there is an urgent need for planning so that competitive advantage of national firms can be created, some resources could be used in favor of growth and development under the state guidance. This planning is also essential for supporting competitive private firms against intense global competition in the global market. In the second part, I offer a theoretical model that suggests growth is the result of technological development that gives an emphasis to the importance of creating countries own technological development and technology creating centre by connecting the planning, distribution, production and reproduction system of crops in an old rural settlement area as a representative model. The point is how the country can produce technology by national technological firms now with the acceptance of certain principles as old villagers produced, reproduced, distributed and redistributed in the past. Today the state replaced the duties of chief of the village providing trust and national technological firms replaced households units of the village where each of them have certain duties like reciprocity and cooperation.

### **How to become competitive under intense global competition**

There are many articles in the economic literature indicating how important is the biological metaphors are in explaining economic process. In these studies, firms do not maximize their profit on the output level where  $MC=MR$  (Marginal cost is equal to marginal revenue). Since firms do not know their real cost curves they determine their profit level by mark-up. But profit maximization is seen as an ultimate aim for firms and it is these firms that maximize their profits and that will survive in natural selection process.

Firms have organizational memory. Detailed procedures of the firm about work, demand, production and investment policies, R&D, advertising and product differentiation are among this. When they make profit, they sustain their way of doing things. But if profit is under certain level they need technological improvements to stay in the business. The more difficult it becomes to survive under existing situation, the greater desire for firms required for changes that are adjusted to external environment. In case of profit, firms save their way of doing things but if not, they need some

technological improvements to survive. In this respect, technological improvement is of great significance as an engine to growth.

In real situations, the good performance of the strongest firms is attributed to their high profits. Firms that are best adjust to changing market conditions, that invest in its technology and that take necessary steps for innovation stay in the business in natural selection process. But what if there is a stiff international competition, lack of perfect information available, the existence of bounded rationality and more importantly stock of technological knowledge is not symmetrically distributed between developed and underdeveloped countries.

In order to compete with great economic powers, countries do not necessarily have specific comparative advantages like endowed with rich natural resources; rather they can determine their strategic policies in which competitive advantage of nations is dependent on. Clustering seems to be efficient by all means since exchange of ideas between firms and spread of technology through mobile skilled labor force is possible. But here in this model, one important actor (state) is added and clustering turns to social clustering because the operation of the system relies on some social virtues like trust, reciprocity and cooperation in light of national priorities, mutual benefits and common interest. It is claimed that a firm benefit derived from being a part of it is expected to be higher compare to situations in which a firm may act independently.

The scattering around these centers could be supported through taxes, through monetary and non-monetary contributions of firms and of provision of some important, competent scientists and specialists by technological firms and the state. These centers give their contribution to firms on the basis of the principle of reciprocity.

A contribution of a firm might be its organizational, managerial and technological knowledge and its tacit knowledge about how it operates; each firm transfers their knowledge to the centre and state also put reciprocity in use. Firms are connected to general technological information network. Financial funds can be channelized into these firms in line with reciprocity. State's contribution can be different for different firms and its contribution must be no less than each firm's contribution.

Several questions may come to mind after this. Why do national firms pass their technical, managerial, tacit knowledge to these centers even they could get financial and technical support in return in the future. Is there a mechanism to give guarantee for the operation of the system? Of course, we live under free market system and firms are borderless and belong to no nation. Equity holders of different firms can be from all over the world. But the world has been turning to neo-mercantilist system where nation state is taken as a basic unit in the analysis and where the protection of national

firms and the economy against vulgar intense international competition should be given high priority. The predictions of neoclassical theory didn't be realized up to now. According to economic theory, capital would have gone to countries where there is scarcity of capital and where the rate of return is considered to be higher. But it did not happen. Capital was concentrated in the hands of already high income countries and a few developing ones. Without adequate capital, these countries couldn't establish their own technological infrastructure. Another prediction was the convergence in growth and development of countries with a changing degree of development. According to economic theory one day less developed nations will converge developed ones with the diffusion of technology around the globe and concentration of capital will be gathered in the hands of capital scarce countries due to reasons mentioned before. High income countries did not share their technology with the rest of the world and saved their national firms against their international rivals.

Keeping these stories in mind, local technological firms can support these technological centers and as a result of common interests they can cooperate with other firms and the state on this basis. This is the mechanism keeps firms operating under the same goal. What should be done for this and for attaining socio-technological background is the next topic to be discussed.

It is necessary to have gene pool to improve technology because instead of advancing by the single process technology could advance in places where there is information flow between firms and the state. Especially on enterprise level there must be some problems about R&D expenses and the measurement of the efficiency of expenses. For example, in some empirical studies, although successful and unsuccessful firms had same amount of R&D expenses, the difference between the market successes stem from a dense network of important scientists.

There exist some externalities created in these centers. I will return to this subject after I give the production consumption and exchange relations in primitive societies of which it can be used as a representative model in favor of these technology centers.

### **The Production and Distribution in Ancient Rural Settlement**

Production and reproduction, distribution and redistribution model is as follows. In this model households production levels differ depending on the manpower and endowment of some basic goods they have and they change from one household to another. Since there is no market even in its simplest form, families give some of their crops to the chief. In this model reciprocity is prevalent. Production is gathered in one hand. Having had some positive personality traits like generosity is the main reason why the

chief is widely accepted by the community and his belongings -most of them are consist of gifts from households- are redistributed among households independent of how much they contribute the public wealth. For this reason every crops would be consumed at different rates by households. Before adjusting this old social relations to the creation of technology centers let's focus on the social, economic relations in this ancient rural settlement and derive some conclusions for contemporary applications.

Chief or tribal leader had certain personality traits and the most important one is generosity. Economic relations are dependent on reciprocity and mutual aid in this old village. The economic relation of giver-receiver is transformed into political relation of leader-follower. This is the operative ideology in this model. A relation can't be both reciprocal and generous. Because household goods that flow to the chief question generosity of him but to stimulate production above subsistence level, chief offerings to different titles and different households should be reciprocal and different households should offer something to the chief in return. It is the way the political economy operates.

*“The chief only returns to the community what he has received from the community. Reciprocal then? Perhaps he did not return all of that. The cycle has all the reciprocity of the Christmas present the small child gives his father, bought with money his father had given him. Still this familial exchange is effective socially and so is chiefly redistribution. Besides when the timing and diversity of the goods redistributed are taken into consideration, the people appreciate concrete benefits otherwise unobtainable. In any case the material residue that sometimes falls to the chief is not the main sense of institution the sense is the power residing with the chief from the wealth he has let fall to the people. And in a larger vantage by thus supporting communal welfare and organizing communal activities, the chief creates collective good beyond the conception and the capacity of the society's domestic groups taken separately. He institutes a public economy greater than the sum of its household parts. This collective good is also won at the expense of the households parts. Too frequently and mechanically anthropologist attribute the appearance of chieftainship to the production surplus (For example Sahlins). In the historic process, however the relation has been at least mutual and in functioning of primitive society it is rather the other way around. Leadership continually generates domestic surplus. The development of rank and chieftainship becomes development of productive forces. In brief testimony, the remarkable ability of certain political orders*



*distinguished by advanced idea of chieftainship to augment and diversify production. (Marshall Sahlins, Stone Age Economics p.140)”*

Indeed the chief plays an important role in some areas of which is the improvement of once marginal areas and development of some irrigation methods. The people owe their labor and their products. And with these funds of power the chief indulges gesture of generosity ranging from personal aid and massive support for economic enterprise. Another contribution of chief is his provision of surplus quantities of food, tools and weapons to household goods. But redistribution is not without material benefit to the chief. If an historical metaphor be permitted what begins with would be the headman putting his production to others benefits ends to some degree with others putting their production to the chief's benefit. This old social relation has an appeal in today's world. For the functioning of the system well, firms in technology centers today must contribute and transfer some of their managerial, technological knowledge and market experience into these centers.

In this old settlement, the chief uses all his household manpower for the benefit of others.

*“To this end of accumulation and generosity, the chief typically attempts to enlarge his domestic working force perhaps by polygyny. ‘Another woman go garden, another woman go take fire-wood, another woman go catch fish, another woman cook him- husband he sing out plenty people come kaikai (eat).’ (Landtman, 1927, p. 168).”*

Similarly, state in modern world must employ the most talented staff in these centers to help private firms in their R&D activities. State must evoke the wheels of exchanging ideas of different organizations.

According to Lewi-Strauss Chief must not merely do well: he must try and his group will expect him to try to do better than the others. How does the chief fulfill these obligations? The first and main instrument of his power is his generosity. Generosity is among most primitive peoples, and above all in America, an essential attribute of power it has a role to play even in those rudimentary cultures where the notion of property consists merely in a handful of rudely fashioned objects. Although the chief does not seem to be in a privileged position from the material point of view he must have under his control surplus quantities of food, tools, weapons and ornaments which, however trifling in themselves are or the band as a whole nonetheless considerable in relation to the prevailing poverty. When an individual, a family, or the band as a whole wishes or needs something it is to the chief that an appeal must be made. (Lewi-Strauss, 1969, p.304)

What are special about the chief are his great supports for his followers: The provision of tools, technology and other forms of aids is beneficial but one point should be reminded. The chief does not gain significant command over the output of other domestic groups and the surplus of one house put to the benefit of others. The lesson that can be drawn from these domestic modes of production is that when technological centers adopt this primitive production and distribution model, it should be accepted that cooperation between firms is possible and having endowed with technological products provided by state make it possible for them to advance in technology and this increases the chance of profitability. This is the necessary step to be taken to pursue growth and development in the country. The second reason that explains why we can use this primitive model in creating technology centers is that provision of diversity in goods by chief appears to be similar to what technological centers try to do today. Product development requires dense networks between state and firms. Having had different technological information can be a solution for this.

This model can be used to acquire knowledge in technology centers. Each household (firm) give their products to the chief (state) and the principle of reciprocity reward them in return for this. These rewards might be in the form of exchange of ideas between existing firms, the network of scientists, financial aid and technical assistance. Under the efficiency and productivity framework, these contributions would lead to positive returns and access to information system that is not known before by firms. To be accepted by these centers, firms must have comparative advantage and each firm has different levels of contribution under the belief that they will be compensated somehow.

In order to operate the system better, good education and training should be taken into account and the training of skilled labor force should be secured. Unlike in this ancient rural settlement where young and strongest people had no obligatory work until their marriage the most skilled people should be trained in each firm and take part in the meetings organized by the state in exchanging ideas today.

## **Conclusion**

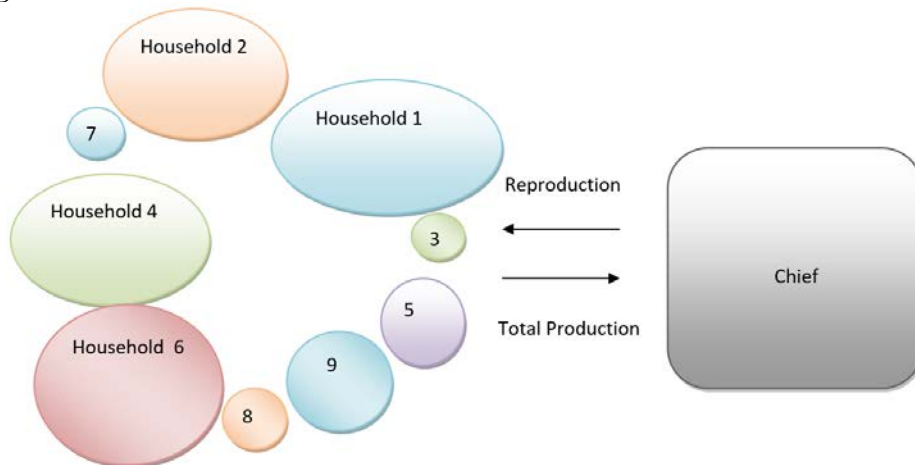
The advantage of these centers that are illustrated in figure 2 and figure 3 is ordered as following;

- They give perfect information about the market and decrease bounded rationality.
- They create positive externalities. The exchange of information and technology make exchange of ideas between skilled labors possible.
- Innovations and technological improvements can be tested in the market.

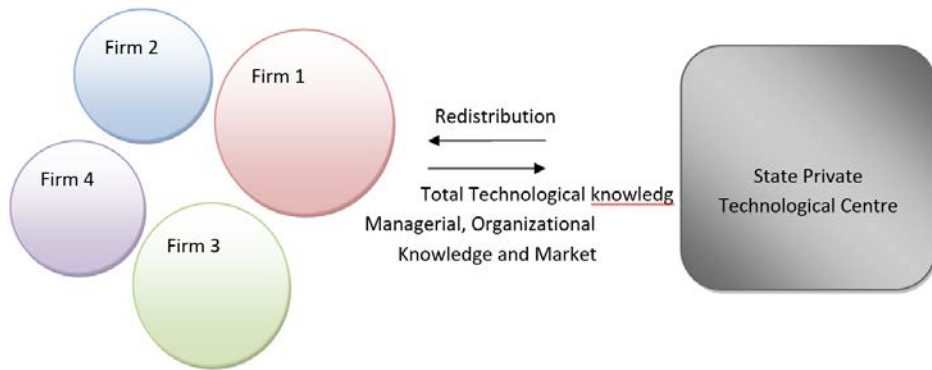
- High R&D expenses could be reduced.
- Alternative policies could be developed in global competition
- Contribution fee of firms is small as compared to their gains.
- Free-Riders problem do not take place (Because every firm contributes as every households give some gifts to the chief)
- It can be applied for selective Industries and key industries. (Even the firm who contribute less could be chosen without taken into account its real contribution.)

The countries need technological improvements to make to their competitive firms more competitive. With the adoption of the old principles existed in an old rural settlement, Firms could cope with difficulties and problems which they would experience under intense competition.

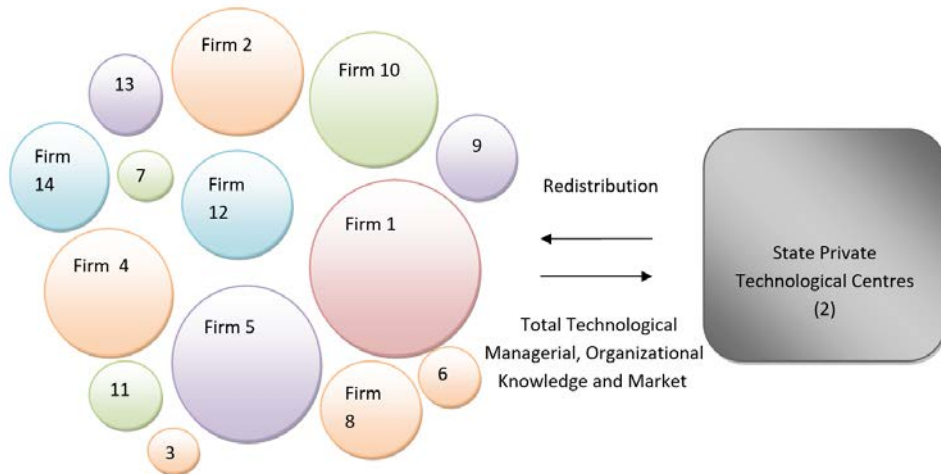
### Figures



**Figure 1.** The Production and Redistribution in Primitive Societies



**Figure 2.** The Redistribution of Technology in Large Scale Enterprises



**Figure 3.** The Redistribution of Technology in SMEE's

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## Internationalization of Georgian Companies

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### Abstract

Nowadays, people are interested in internationalization of markets and business. There are new companies on the market which from the start-up have the aim to internationalize. In general, they have not enough resources for internationalization. In this topic we will discuss particular resources which should be internationalized and be part of international business. There are some types of such businesses, such as international entrepreneurial organization or born global companies. Of course, study of such companies should be started based on traditional strategies of market penetration, such as export strategy, licensing, etc. Afterwards, we will discuss new trends which help new-born companies to penetrate from the start-up into new markets and increase their sales based on export. Such trend can be learning process established in companies or experience of the managers who have operated in international markets. There is one type of research which indicates such trends. This type of research is empirical analysis. There are good examples of such business. For example in Australia or Lithuania there are many businesses internationalized from the start. We will present results and factors from research which have been conducted in these countries. And finally, we will discuss Georgian market and companies which have already been internationalized.

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**Keywords:** International Markets; Market Penetration; Export Strategy; Business Competitiveness

### Introduction

Certain processes, including globalization has become more intense in the 21<sup>st</sup> century. Globalization has been caused by the number of different factors. Well developed and easy communications are among the factors leading to globalization. People can exchange information in a few seconds and distribute any desirable information throughout the world. Naturally, business is also changing in such changing environment. The companies using old methods cannot survive in the new circumstances. There are

advanced companies on the market able to acquire modern approaches. Such companies have appropriate skills to use their resources fully and enter international markets. On its turn, entering international markets gives them new opportunities.

Companies of the above mentioned type have not been fully studied. Their success formula linked with various factors has not been known yet. We can say for sure that such companies have not lost their importance, on the contrary, more and more organizations try to share their experience and many researchers study the way of their success. For today, many international companies are operating on the markets, respectively, many companies are trying to share their experience. Apart from the above, easy channels of communication enabled the companies to export their output outside their countries and become international players. Internationalization of the companies still remains very significant; moreover, the topic is being developed, improved and enriched with new components. Because the theme of internationalization is quite wide, we tried to identify several topics in order to give thorough analysis.

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Small and medium enterprises and international entrepreneurs are paid great attention nowadays. Such small firms accumulate economic knowledge and experience that is further acquired by large companies. Business strategy and attitude to the markets of the small and medium enterprises conditions their penetrating into international markets and fast coverage. It is interesting that this phenomenon is observed not only in developed countries, but also in relatively less developed countries. For example, in Bangalore, India, IT industry has developed very fast. There are many companies in China exporting their output from their start-up. It is interesting that such perception of the market has not been caused by either technological or human resources. Even in case when the company has no exclusive human resources and technologies, it may become international entrepreneurial unit. There are certain cases when small and medium enterprises enter international markets while many far larger companies are unable to do so. This issue has always been under research. Despite the fact that large consortiums and conglomerates cover large part of international markets, small and medium enterprises also play an important role. Such small and medium companies can be regarded to be backbone of the economy while they are providing larger organizations with numerous spare parts and other items. There are number of questions or issues regarding such type of companies; for example, importance of the company's strategy for entering international markets. Experience and connections are very important factors for SMEs and international entrepreneurs. They have no material assets and experience is their main asset. We can see later that the

process of learning practiced by these companies and experience accumulated from both top managers and business environment is the most important factor for success. According to one viewpoint, success of SMEs on international markets from their start-up is linked to unification of three categories of resources: innovation, activity and healthy approach to the risk. Integration of these resources ensures their penetration into the market. Continued process of creativity, orientation on experience and learning on mistakes are important factors for the success of such companies.

Globalization is very important factor for development and innovations. Globalization equally changes and renews business strategies in all fields, such as production, marketing, finances, research and development. Increased globalization has significantly affected global trading and investments. Fast technological changes in transport and communications, as well as decreased level of regulation of entry the markets in many countries have importantly affected both the structure of the industry and business competitiveness. Globalization created opportunities for the companies to enter such markets where they could have become not only providers, but also consumers. Accessibility to such markets was the most important instrument to cut expenses and respectively take advantage in competition. All the above led to the appearance of the new players and competitors on the markets, especially in such countries where labor expenses had been particularly high, for example, in Australia.

From the early 1990-ies, appearance of growing and attractive markets in central and eastern European countries has given very good opportunities to the number of companies to enlarge their international activities. However, because of undue competitiveness and experience only small number of eastern European companies was interested to enter foreign markets. For today, such a situation has entirely changed. Many companies registered in these countries have been involved in the export and the flow of foreign investments increased for the last years. It is expected that the process of companies' internationalization in the countries of transition economy will be different from the traditional model of internationalization observed by Scandinavian researchers. For example, dimension of local market and low level of purchasing power may trigger companies to accelerate internationalization process. At the same time, in relatively small countries the average scale of the companies is smaller than it is in larger countries. Their expenses of research and development are relatively low and respectively their production looks primitive.

Assessment of international opportunities deals with entrepreneurs or individuals who can demonstrate new abilities on the market and turn them into the products or services. The process involves revelation, assessment and use of these abilities. This process requires involvement of individuals at

any stage, as well as basic knowledge, skills, and desire. Connections and private contacts are very important as well. Entrepreneur should have opportunity to get information and process it respectively. All these happen when the world is changing everyday and is affected by numerous factors. The skill of information processing is very important while assessing the abilities. Experience enabling entrepreneurs to raise their awareness plays an important role nowadays. Experience ensures due involvement in international processes, understanding of opportunities and resolution of business problems. Sources of information, social networks and private contacts are very important as well. They give entrepreneurs opportunities to check correctness of information and improve business model. International creative efforts are the first steps in the model of international entrepreneurship that include utilization of abilities. Thinking like international entrepreneur and implementing operations likewise enables companies to multiply and separate business operations in different countries as desired. Use of individuals and organizations on the one hand and the skills to assess abilities on the other are the first stage of explanatory model of international entrepreneurship. Mobilization of international resources – the companies can take several ways for resources' mobilization:

- Acquisition/attraction of external resources;
- Internal development of resources;
- Partnership with other companies and sharing various resources.

Internationalization of small and medium companies has become urgent in recent years. Such kinds of companies accumulate knowledge and experience that leads to internationalization. From the very start-up they are oriented on international market. They know that the world market is the one market for them. For example, as a result of technological advancement strategies for penetrating into foreign markets have been totally changed for such industries. Wine market in Australia is a good example of international entrepreneurship. The study of this market showed how the family business had turned into the international company. This study differs from traditional empiric researches because of three reasons. The first one is that other studies have been usually oriented only on one issue (for example, family business, export, etc.); this study reviews these questions in complex. The second reason is that the author reviews such companies in the context of small and medium enterprises. And the third, the study is focused on common and distinctive factors for family business and international entrepreneurship unit. Until collection of information, it is necessary to formulate concept and elaborate hypotheses. The concept actually defines the subject of the research or the field of interest, while hypotheses are drawn based on assumptions. Hypothesis may be certain viewpoint related to the results of the research that may be rejected or accepted based on the



information collected. Naturally, such approval or rejection will be proved by certain data that is related to the sampling volume. *Strategic parameters of SMEs are the factors causing internationalization.*

While taking decision on internationalization, apart from geographical and psychological distance among the countries, companies also take into consideration dimension of targeted markets. For example, as a result of the analysis of Spanish companies Galan, Galende and Gonzalez-Benoto made conclusion that in selection of targeted market its size and growing potential had been the major determinants. The company may begin international operations both in large and smaller countries. There is no standard rule for taking such a decision. However, taking into account the example of Sweden, Jonson and Wiedersheim-Paul conclude that the companies operating on relatively small markets might prefer to operate on small foreign markets because of similarity to local markets, less competitiveness of local players and need of relatively fewer resources (Johanson 1975). While making decision on internationalization, such attitude may be profitable for Estonian companies.

Johanson & Vahlne presume that decisions have to be taken step by step, in consideration of enough finances in order to insure the risks of internationalization. The company also has to take into account market homogeneity and its previous experience in operating on similar markets (Jonson 1975). Stray, Bridgewater and Murray claim that decrease of the barriers among markets will facilitate penetrating concurrently into several foreign markets and initiate the necessity of “international birth” (Stray 2001). Mascarenas says that if targeted markets are small, the company should enter several foreign markets at the same time in order to use scale economy. This approach to international enlargement is especially convenient for industrial products and homogeneous international demands (Mascarenas 1992). Similar tendency can be identified in the process of internationalization of Estonian companies since several targeted markets (for example Lithuania, Latvia) are relatively smaller. Oviatt & McDougal define international company as “business company trying from the very start-up to achieve important competitive advantage in many countries at the expense of the use of resources and sale of products” (Oviatt 1994). Taking into consideration the number of the countries involved in the value chain activities, they defined four types of international companies.

Naturally, there are also companies in Georgia which have entered international markets and increased their export share. For the first, internationalization of Georgian companies was caused by due legislative bases and quality of the products. Soft and alcoholic drinks, such as wine and lemonade, are the main export products. The companies producing these

output have not been operating on the market for the long time, however, they already managed internationalization.

Teliani Valley JSC, top wine producing company, was founded in 1997 on the bases of "Teliani Winery of Vintage Wines", which had been built in Tsinandali in 1954, in the neighborhood of Teliani's vineyards. Share of Teliani Valley on internal bottled wine market equals 48% (according to 2007 data), and the share of export is approximately 12% (2007 data) that is 65% of the total output produced by the company, which is exported in foreign countries. In 2007, the company produced 1.4 million bottles while its repository had 4.5 million liters capacity ([www.telianivalley.com](http://www.telianivalley.com)). With the help of LG, the company entered and traded on the Georgian Stock Exchange (GSE: WINE). Currently, 48% of shares are in free trading. In 2007, as a result of LG investments in Teliani Valley all assets of the company were consolidated in one holding company - JSC Teliani Valley. This company is the largest wine producing organization in the field and apart from the company itself includes "Teliani Trading" and "Teliani Trading Ukraine". 100% of shares of both affiliates, carryings out distribution of output produced by Teliani Valley and third persons in Georgia and Ukraine, are owned by the Holding. Teliani Valley also owns 100% of shares of "Le Caucase LLC" (brandy producer) and 70% of shares of "Cupa LLC" (oak barrel producer). All the above enables Teliani Valley to be horizontally and vertically integrated business and cover the development of vineyards ("Teliani Valley"), oak barrel production ("Cupa"), production of wine and chacha ("Teliani Valley"), production of brandy ("Le Caucase), distribution networks ("Teliani Trading" and "Teliani Trading Ukraine"); as well as import of bear Heineken, vodkas of SV, Medoff and Granini, and juices ("Teliani Trading"). Teliani Valley (owns 85 ha of vineyards and lands for growing up wine trees) strategy is directed to the bottled wine market of Georgia. The company tries to strengthen its position on this market and enlarge its activates outside the country. Teliani Valley production is diverse and innovative and involves both full spectrum of Georgian traditional wines and production got through the mixture of juices from Georgian and foreign grape species. Mr. Giorgi Dakishvili, acknowledged to be the best and most creative wine maker in Georgia in his generation, is responsible for production development.

Georgian company Lomisi JSC, known in Georgia as Natakhtari Company, has also attracted attention. Natakhtari was set up in 2005 through Georgian and foreign investments. Only in a few years the company became the leader on the market and overtook Castel and Kazbegi, prominent beer producing companies. In two years Natakhtari covered 60% of the market. International giant beer producing company Efes took interest in the success of Natakhtari and acquired 10% of its shares. Now Natakhtari is managed by

Efes. Internationalization of Natakhtari was accelerated by this acquisition, however, beer and lemonade had been exported before Efes entered Natakhtari. Naturally, popularity and efforts of Efes played an important role in the increase of export. For today, beer is exported in neighboring countries of Georgia and lemonade is exported in 16 countries of the world. In this case, the main factor of internationalization is the unique features of lemonade and international management. Team of managers having contacts on international markets brought certain experience in the company. In view of this case, importance of mobilization of knowledge and experience for internationalization is clear.

### **Conclusion**

Nowadays, internationalization of markets and businesses is paid great attention. Companies oriented on internationalization from their start-up have appeared on the market. At the first glance they have no enough resources for internationalization. This paper reviews those resources through which the companies enter international markets in several years from their start-up and local market become less important for them. Such organizations include international business units, for example, international entrepreneurial organization. For the first, such companies were studied through the analysis of those strategies based on which these companies had penetrated international markets. Secondly, new trends according to which newly created companies had become international units were identified. For example, company's focus on learning or experience of managers on international market can be regarded to be such trend. Those countries (such as Lithuania and Australia) in which internationalization of the companies has been successful, are the good cases for the research.

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# The Scope of Discretionary Authority of the Administrative Body While Proceeding Tax Dispute

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## Abstract

Tax dispute is one of the types of administrative proceedings which has its peculiarities. Tax dispute takes place in the Ministry of Finance of Georgia and in the Court. Proceeding of Legal regulation of tax dispute and determining the scope of the discretionary powers of the administrative body is carried out according to the tax code of legal procedures, as well as the General Administrative Code of Georgia, the Administrative Code, the Administrative Procedure Code, the Civil and Civil Procedure Code, Criminal Code, the Law on “Entrepreneurs” and other acts. While resolving tax disputes, it is important to define the scope of the discretionary powers of the administrative body.

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**Keywords:** Tax dispute; the scope of the discretionary powers of the administrative body

## Material and Formal Grounds for Raising a Tax Dispute

Proceeding tax disputes gives a real opportunity to taxpayers to protect their rights and legal interests. The material basis for raising the tax dispute is the violation of obligations, determined by the Code, by tax authority or taxpayer / tax agent or other responsible person. The formal basis for raising the tax dispute is submission a "tax demand" to the taxpayer / tax agent or other responsible person by a tax authority, or submission of administrative act issued according to the Code to the taxpayer / tax agent or other responsible person.

Tax dispute resolution forms are: a dispute resolution within the system of the Ministry of Finance; Dispute resolution in the court.

Dispute resolution in the system of the Ministry of Finance consists of 2 stages:

- Dispute resolution in the Revenue Service of the Ministry of Finance;
- Dispute resolution in the board of appeals at the Ministry of Finance

During tax dispute proceedings, the scope of discretionary powers of the administrative body considering the complaint starts with a discussion of

the act issued by the subordinated body. This excludes impartiality. Consequently, we think that tax dispute should be led by not subordinated, neutral, separate administrative body. Dispute resolution Administrative body should be guided by principles of fairness, objectivity, impartiality and equality. Worsening taxpayer's tax debt provisions is inadmissible in the system of Ministry of Finance. There are guiding principles, such as the principle of justice, which implies a fair treatment and respect to a person. The principles of fairness provide equal access to justice for the complainant and defendant. These principles complete and develop the principle of equality before the law. Tax Dispute trial examining body must be guided by the principle of objectivity, which means investigating all the circumstances of the case completely and impartially. Tax dispute resolution body should evaluate the evidences based on inner conviction, which should be based on the merits of a comprehensive, full and objective examination of the case. According to the principle of equality, tax dispute parties should be on equal footing. Parties of the dispute should enjoy equal opportunities to protect the subjective rights and legal interests. To follow the principle of equality during a tax dispute resolution means the constitutional equality before the law. During tax dispute examining the administrative authority should be strongly adhered to the principle of impartiality. Subjective factors should not influence the process. Examining a particular tax dispute the administrative body should stay far from officials', mass media and social influence. Dispute resolution body should meet the standards of impartiality while hearing of any tax dispute.

According to General Administrative Code of Georgia, Article 2, paragraph 1, subparagraph „ L’’, the discretionary power grants an administrative body or an official freedom to select the most appropriate decision that is in compliance with the law, considering public and private interests. Seeking for justice in every particular case is considered to be the scope of discretionary powers. The result can be achieved by means of juxtaposition of public and private interests. Administrative authority benefits with freedom in determining the legal outcome. The Administrative Legislation of Georgia determines the discretionary power and establishes a proper rule of its provision. According to the Article 6 of the Administrative Code of Georgia, the administrative body is obliged to exercise the discretionary power within the legal framework and only for achievement of the purpose that the administrative body was assigned and the discretionary power was granted.

Consequently, according to both Georgian and German legislation, violation of the scope of law and ignoring its objective will cause inaccuracy in implementation of discretion authority and unlawfulness of the made decision.

In the system of the Ministry of Finance tax dispute is carried out within the legal terms. In addition, a tax payer is not required to pay any costs, fees or taxes for tax dispute. There are three stages of tax dispute resolution in all three instances of the court where proceeding of tax dispute requires payment of the state taxes. Tax dispute on the trial stage, administrative body is exempt from state taxes. Thus, if the tax dispute takes place in the court, the taxpayer has to pay large sums of money – at the first instance court 3% of the object of dispute, at the second instance court 4% and at the third instance court 5%, 12% totally. This violates the principle of equality.

The Supreme Court's Administrative Chamber made an important explanation on the discretionary right of the administrative body (Case 1655-1627 (3-11). While imposing sanctions using discretionary power the Cassation Court did not rule out obligation of the administrative body to consider its proportionality, mitigating circumstances, gravity of the offense, offender's personality what ultimately determined the adequacy of the sanction imposed.

Within the scope of discretionary powers, on the basis of protecting public and private interests the administrative body was obliged to select the most appropriate decision in accordance to the legislation. The Cassation Court stated that while proceeding an administrative complaint, the administrative body was checking not only the legality of the issue, but also its expediency.

The discretionary power of the administrative body does not mean feasibility of neglecting the principle of proportionality and legality. According to the Supreme Court, the use of discretionary powers requires special attention in order to avoid procedural violations, staying beyond the scope of the law, which could lead to violation of property and individual rights of a person.

Exercise of discretion by the administrative body and the reference on the use of law provisions do not constitute sufficient grounds to make a negative decision against a person in a tax dispute. Alongside with this, the Supreme Court examines the legality of activities of administrative bodies and is not limited by discretion of administrative bodies. The Supreme Court explained that as a result of issuing an administrative act by the administrative authority, the damage caused to lawful rights and interests of a person should not substantially exceed the benefits for which the act was issued. Administrative and legal measures prescribed by the legal act within the discretionary powers shall not cause unreasonable restriction of a person's legal rights and interests. Obligation of justification is conditioned by providing control over activities of the administrative body. Justification should imply the views, opinions and circumstances on which the

administrative body relied while making a decision. Ignoring justification by the administrative body is the basis for revocation of the act and impossibility of determining errors while exercise of discretion.

The European Court of Human Rights during a tax dispute 'Perazini vs. Italy' explained that an individual may have the financial obligations to the state which clearly falls within the sphere of public law; a fair trial for the purposes of protection of the Convention does not apply. The Court considers that despite the changes carried out in the field of taxation since adoption of the European Convention, the tax liability and the fundamental nature have not changed. Tax issues still remain in the sphere of state authority. In addition, the court explains convention articles in conjunction with additional protocols and indicates to the first article of the additional protocol according to which the government retains the right to enact laws to ensure the tax levy and which is not the part of the Article 6 of the European Convention. Thus, it is the part of public sphere.

Thus, European Human Rights Court Case Law underlines the importance of the scope of discretionary powers of the administrative body, particularly, indicates the large discretion of the administrative body, but points out that mechanisms of tax levy used by the administrative body are not unlimited. Authority of the administrative body is restricted by setting a fair balance between public and private interests and proportionality of the means used.

Importance of effective tax collection is clearly understandable for the administrative authority; however, it does not exclude that abuse of power will take place. Imposing tax liability to a person is unacceptable if the offense does not contain a big risk for the public.

As Convention and the enclosed protocols have binding character, they are subject to be reflected in the legislation and practically used by the Member States.

### **Conclusion and recommendations**

The scope of discretionary powers of the administrative body while proceeding tax dispute is based on:

- Justice, fairness, equality, impartiality, setting fair balance of private and public interests.
- Provision of moderate exercise of discretion by the administrative body while justified restriction of the lawful rights and interests of a person.
- During the validity of the obligation to use discretion.
- Substantiation of the obligation while applying discretion.

If the act against a taxpayer issued by the subordinate body of the administrative authority is claimed, the principle of impartiality



cannot be used. Since the complaint is handled by the higher administrative body who issued the contested administrative act, it is necessary that the independent structure carry out a tax dispute. While proceeding tax disputes the principle of equality is violated as obligation of paying the state tax is imposed to one party – taxpayer. The principle of objectivity is also violated, as the tax dispute can be handled for a long period (3 years).

It is very important to follow and exercise the aforementioned principles while proceeding tax disputes.

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# The Challenges and Importance of Teaching Effective Business Writing to EFL Students

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## Abstract

Writing, in general requires conscious effort and much practice in composing, developing, and analyzing ideas. Students writing in a second language are also faced with social and cognitive challenges related to second language acquisition. The Article explores some of the challenges of in particular business writing in English and once again emphasizes the importance of teaching effective business writing to EFL Students for their better career opportunities and further success.

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**Keywords:** Effective; composing; editing; analyzing; business correspondence; reader-friendly environment

## Introduction

Language is the principal means of communication. To the manager it is very important, because there is no communication unless the receiver of the written communication understands the thoughts and ideas of the writer.

The basic purpose of any written communication is to convey a message to the reader. To serve this purpose well, the message must be easily understood and quickly read.

A well-written document approaches the subject logically and shows the writer has a thorough knowledge of the subject. The message is simple, clear, and direct.

The ability to write well is not a naturally acquired skill; it is usually learned or culturally transmitted as a set of practices in formal instructional settings or other environments. Writing skills must be practiced and learned through experience. Writing also involves composing, which implies the ability either to tell or retell pieces of information in the form of narratives or description, or to transform information into new texts, as in expository or argumentative writing.

We all understand that being able to write in a clear and professional style is important to your business. For most people, business writing is simply a challenging and overwhelming task. In this type of writing, there

are so many factors that you need to take into consideration just to get your message across.

The decision to use a written rather than oral communication often rests with the manager - the communicator. In such cases, the communicator must weigh the advantages and disadvantages of each form of communication in order to make an intelligent decision.

The advantage of oral over written communications is that a complete interchange of thoughts and ideas can take place faster. The speaker is in direct contact with the listener (receiver) and is challenged to make himself understood. Too frequently the listener fails to ask the right questions, so he does not receive the message clearly. This, in turn, can result in wasted efforts and costly errors.

Written communications also have advantages. They are usually more carefully formulated than oral communications, so the message conveyed tends to be more clearly stated. Written messages also can be retained as references or legal records.

There are some disadvantages to written communications. First, the writer often fails to carefully compose his thoughts and ideas. When a poorly prepared message has to be followed by many written or oral communications to clarify the writer's original written word, the real message becomes garbled and the process becomes costly and time-consuming.

Second, people tend to retain voluminous written documentation for use as a means of defense or attack. A file of such documentation is often referred to as a "Pearl Harbor file." The advantages of written information for legal purposes are usually obvious; however there are occasions when such information is either duplicative or unnecessary. Effective managers recognize the importance of document retention and develop sensible procedures and practices for that purpose.

The most important question that you, as a manager-and writer-can ask yourself is, "Have I stated my message clearly?" If you are to be an effective writer, you must do a good job of informing the intended receiver of your message. There is nothing more important to you, if you wish to be an effective manager, than being informative and properly understood.

A message that is easy to understand is informative. This does not imply that it is "readable"; i.e., easy to read. In recent years there have been many presentations or articles on readability. These articles have offered some simple solutions to common writing problems, such as: use everyday words, short sentences, and brief paragraphs; keep the "fog content" down; don't use complicated or foreign expressions, overworked phrases, and unfamiliar jargon. Compliance with this advice may appear to be quite simple, but cannot be considered a panacea for all writing problems. Strict

adherence to the advice in these articles does not ensure that your next staff paper or report will be informative. Informative writing involves paying proper attention to the choice of words, construction of sentences, and logical presentation of thoughts and ideas.

The meanings assigned to words have two characteristics - denotation and connotation. Denotation is the meaning or idea conveyed by the word through common usage; connotation is the thought (personal or emotional) attributed to the word. "Democracy," for example, generally has a denotative meaning. From a connotative aspect, its meaning is much broader. In trying to communicate effectively - in writing as well as speaking - we risk being misunderstood. We can only hope to know the common meanings (the denotative characteristics) of most frequently used words. Unfortunately this is not always a simple task. The uniqueness of a word should be known by the writer when he chooses it to convey an idea. The importance of selecting the right word has been recognized since biblical times. In Proverbs 25:11 we find the statement that words fitly spoken (or written) are like "apples of gold in pictures of silver."

Despite of the advantages of written communication a number of business people make a number of mistakes when they are writing. Here are some of the main ones.

The first big mistake I've noticed is that writers tend to write for themselves and not for their readers. But readers don't have the same understanding of the subject, the same objectives and the same interests as the writer. So, if you don't think of the reader's needs as you write, you simply won't engage them.

Secondly, I've noticed that writers often fail to make their point early on. You need to bear in mind that readers are busy people. If you bury the important point halfway down the page, they may never get that far.

The third common error is failing to stick to the point. As you are writing, something else occurs to you and you veer off at a tangent, exploring another interesting but not vital subject area. This lack of focus is confusing for the reader as it blurs the key message.

Poor structure is the fourth frequent problem in business writing – and it occurs because people fail to plan before they write. If the structure of a document is poor, readers will not be able to follow what you are saying. Again, they may give up before they reach the main point you are trying to communicate.

But structure isn't just about organising the content in a logical sequence. Many business documents are poorly structured at a deeper level. To write well you have to consider the structure of your paragraphs and your sentences. Structure is a vital part of your reader's experience, they won't particularly notice if it is good, but they will be most confused if it's bad.

Correct grammar and punctuation are major hurdles for many business writers. The nuts and bolts of writing really do matter – both to make your meaning clear and to support the image you are trying to create of a competent person who knows what they want to say.

Last but not least in this list of problems is the failure to write clearly and simply. Years ago most people in business thought that elaborate, jargon-filled written language helped to communicate and enhance their status. But if you write like that today, your meaning will not be clear and people will think that you are stuffy and old-fashioned. So get rid of the bureaucratic words and phrases and just try to write more as you would speak.

### **Effective Business Writing for Success**

Reports, emails, plans, minutes, articles and presentations: business writers have to write any of these, and write them well. Poor writing causes irritation and lost opportunities. Good writing saves time and gives your organisation a professional image.

Teaching effective business writing will give your students the skills definitely useful in their further career and confidence to make the right impact, no matter which kinds of documents you have to compose.

There are eight reasons why we should care about teaching effective business writing to EFL students:

#### 1. Everyone writes.

With a computer in every office and lab and at every worksite, employees in all disciplines are required to write. Yet few have learned to write effectively. Many U.S. employers believe that only about a third of their employees actually have the writing skills most valued by the organization, according to surveys published in 2004 and 2005.

#### 2. Everyone sends email.

For tasks that formerly meant picking up the phone or meeting in person, people now send email. The surveys linked above have shown that 98+ percent of U.S. companies and state governments use email to communicate "frequently" or "almost always." Yet in a recent survey conducted by Information Mapping, 40 percent of respondents stated that they wasted 30 minutes or more each day because of ineffectively written email.

#### 3. Readers have changed.

Our readers used to be down the hall or across the country. Now they speak English as a second, third, or fourth language, and they work around the globe. An estimated 1.4 billion people use English in business communication, yet only 400 million of them are native English speakers.

Having a global reading audience places new demands on writers. Your writing should be reader-friendly to get the best outcome.

4. Schools don't teach business writing.

Colleges and universities require undergraduates to take composition and rhetoric--not business writing. Graduate schools require research papers and dissertations---not persuasive proposals and action-oriented email. Academic writing is different from business writing. (Email me for an article describing how it is different, with tips and strategies for making the shift to business writing.)

5. Even highly talented associates may not write well to varied audiences.

Data analysts may write perfect reports for other analysts. Engineers give the right detailed findings to their fellow engineers. But when any employees communicate outside their peer group--let's say, to senior executives or customers--they need special skills to organize information, eliminate jargon, and focus on their readers' needs.

6. Smart software doesn't ensure smart writing.

Templates, wizards, spell-checking, and grammar-checking do not guarantee documents that are clear, concise, strategic, and focused on the reader's needs. Unfortunately, software builds false security--not strong documents. When company administrators say, "We have the budget for only essential classes like software training," those who care about writing need to respond, "But what do employees do with the software they learn to use? They compute, design, analyze, and write."

7. Bad writing is as damaging as bad customer service and bad products.

Everyone has horror stories describing situations like these:

Ineffective, embarrassing messages are sent to customers, clients, and other stakeholders.

Time and money are squandered to rectify writing errors--sometimes in court.

Proposals fail when writers don't meet readers' expectations or deadlines.

Supervisors and managers waste time editing and rewriting documents.

Employees miss out on opportunities to contribute. They don't write proposals, recommendations, and other important documents when they lack skills and confidence.

8. Good writing can do great things.

Effective reports, proposals, requests, assessments, and other business documents can:

Get results.

Inspire action, confidence, and commitment.

Sell products and services.

Create and maintain goodwill.

Save time and other resources.

Lead to personal fulfillment and professional success.

Therefore, how can we support EFL students to excel at business writing?

1. Establish your objectives. This is by far the most important element in business writing. Before you start tapping on your keyboard, think of the things that you would like to achieve in writing your business communications. Would you like to inform? Would you like people to take action? Would you like to reprimand somebody? Would you like to motivate your people? If you cannot establish an objective for your message, then there is really no point in taking up your audience's time with it, right?

2. Define your audience. You need to know ahead of time the people to whom you are writing your messages for. You need to know their level of comprehension, their language, and the things that can push their buttons. Knowing these people inside and out can help you choose the best strategies and writing techniques so you can easily get your message across with minimal or no confusion at all.

3. Anticipate questions. Know all the questions that your audience might have when reading your messages. Make sure that you answer all the who, what, why, where, when, and how questions of these people to promote better understanding.

4. Create a draft. After collecting and putting your thoughts into writing, have an objective third party to read it. This is very important so you can determine if you have the right tone, the right words, and the right information. Consider revising your draft to make it more appropriate to the audience that you are serving.

5. Keep it simple. You really don't need to sound like a rocket scientist when doing business writing. Keep in mind that your main goal is to inform and this will not possibly happen if you make it extremely difficult for your audience to understand you. Use terms that your audience are familiar with and define highly technical terms before using them on your content.

6. Keep it short. More and more people have limited attention span these days. If really want your target audience to read your messages in their entirety, I highly recommend that you make all your messages short, brief, and to the point.

### **Conclusion:**

**To conclude** we need to constantly tell our students that the only way to improve their writing is to keep writing--thinking that with enough practice in writing and revision (involving problem solving and reflection),



they would eventually acquire the fundamentals, or at least the standard, required of academic discourse. We also need to convince our students that the basic purpose of any written communication is to convey a message to the reader. To serve this purpose well, the message must be easily understood and quickly read. Besides this, a well-written document approaches the subject logically and shows the writer has a thorough knowledge of the subject. The message is simple, clear, and direct.

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# The Role of Digital Learning in Contemporary Education

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## Abstract

The objective of this paper is to briefly discuss the role of digital learning in contemporary education. In this paper I am going to describe the types of digital learning and overview its main components as well as the ways of integrating it with traditional academic methods. I am going to list some main advantages and disadvantages of digital learning and try to find the best solutions in the process of integrating digital technologies in academic learning.

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**Keywords:** Digital learning, Contemporary education, Educational technologies, Collaborative, Interactive learning method, Digital education

## Introduction

We live in digital age that has affected in general all areas of our lives, it changed the nature of resources and information, transformed several basic social and economic initiatives and transformed contemporary society, our lifestyles have changed dramatically. Both the amount of information and access to it have grown exponentially.

It is no surprise that significant potential for using varied resources in numerous ways for instruction and learning has emerged. However, several issues related to the educational uses of varied resources (e.g., people, place, things, ideas) must be addressed if we are successfully to implement resource-based learning environments.

## Definition of digital learning

In order to overview some main aspects of digital learning, I would like to describe its main components and define the general terms:

**Educational technology** is defined by the Association for Educational Communications and Technology as "the study and ethical practice of facilitating learning and improving performance by creating, using, and managing appropriate technological processes and resources. The

theory and practice of design, development, utilization, management, and evaluation of processes and resources for learning.

Educational technology refers to all valid and reliable applied education sciences, such as equipment, as well as processes and procedures that are derived from scientific research, and in a given context may refer to theoretical, algorithmic or exploratory processes: it does not necessarily imply physical technology.

**Computer-supported collaborative learning (CSCL)** uses instructional methods designed to encourage or require students to work together on learning tasks.

Learning takes place through conversations about content and grounded interaction about problems and actions. This collaborative learning differs from instruction in which the instructor is the principal source of knowledge and skills.

CSCL uses social software such as blogs, social media, wikis, podcasts, cloud-based document portals (such as Google Docs and Dropbox), and discussion groups and virtual worlds such as Second Life.

Social networks have been used to foster online learning communities around subjects as diverse as test preparation and language education. Mobile-assisted language learning (MALL) is the use of handheld computers or cell phones to assist in language learning.

Collaborative apps allow students and teachers to interact while studying (MathChat, Khan Academy).

Other apps are designed after games, which provide a fun way to revise. When the experience is enjoyable the students become more engaged.

**Virtual classroom** - A virtual learning environment (VLE) simulates a virtual classroom or meetings by simultaneously mixing several communication technologies. For example, web conferencing software such as 'GoToTraining', 'WebEx Training' or 'Adobe Connect' enables students and instructors to communicate with each other via webcam, microphone, and real-time chatting in a group setting.

Participants can raise hands, answer polls or take tests. Students are able to whiteboard and screencast when given rights by the instructor, who sets permission levels for text notes, microphone rights and mouse control.

A virtual classroom provides the opportunity for students to receive direct instruction from a qualified teacher in an interactive environment.

Learners can have direct and immediate access to their instructor for instant feedback and direction. The virtual classroom provides a structured schedule of classes, which can be helpful for students who may find the freedom of asynchronous learning to be overwhelming.

Each class is recorded and stored on a server, which allows for instant playback of any class over the course of the school year. This can be

extremely useful for students to retrieve missed material or review concepts for an upcoming exam.

Parents and auditors have the conceptual ability to monitor any classroom to ensure that they are satisfied with the education the learner is receiving.

**Online courses** - Modern educational technology can improve access to education, including full degree programs. It enables better integration for non-full-time students, particularly in continuing education, and improved interactions between students and instructors. Learning material can be used for long distance learning and are accessible to a wider audience. Course materials are easy to access.

**Massively open online courses** (MOOCs), although quite popular in discussions of technology and education in developed countries (more so in US), are not a major concern in most developing or low-income countries.

One of the stated goals of MOOCs is to provide less fortunate populations (i.e., in developing countries) an opportunity to experience courses with US-style content and structure. MOOCs also implies that certain curriculum and teaching methods are superior and this could eventually wash over (or possibly washing out) local educational institutions, cultural norms and educational traditions.

With the Internet and social media, using educational apps makes the students highly susceptible to distraction and sidetracking. Even though proper use has shown to increase student performances, being distracted would be detrimental. Another disadvantage is increased potential for cheating. Smartphones can be very easy to hide and use inconspicuously, especially if their use is normalized in the classroom. These disadvantages can be managed with strict rules and regulations on mobile phone use.

**Distance learning** is not a new phenomenon. With the development of the postal service in the 19th century, commercial correspondence colleges provided distance education to students across the country. This trend continued well into the 20th century with the advent of radio, television, and other media that allowed for learning at a distance.

In the last decade, distance education has changed significantly with the use of computer-mediated learning, two-way interactive video, and a variety of other technologies.

Colleges and universities are forging ahead to provide learning at a distance, and many institutions are making substantial investments in new technologies for teaching.

The amount of written material devoted to distance education is extensive, with few exceptions, the bulk of these writings suggests that the learning outcomes of students using technology at a distance are similar to the learning outcomes of students who participate in conventional classroom

instruction. The attitudes and satisfaction of students using distance learning also are characterized as generally positive. (Phipps, Ronald; Merisotis, Jamie, 1999).

### **The role of digital media and Internet in transforming education**

Achieving effective learning via digital media continues to be a major concern in contemporary education. Today's technologies relate to education in many ways instead of the historical pedagogies of a one-way discussion as an educational procedure. Today, individuals employ digital media and the Internet in naturally occurring ways, and education in this form is contemplated in the context of social change, which in turn, is fully integrated with digital media. The daily use of all forms of digital media is part of our lives and therefore becomes a key component of education. Truly effective contemporary education must consider these elements—the changes they bring about in our social and cultural environment—and apply them today. In modern society, people use digital media daily and seamlessly, and educators need to consider the integration of digital media today and for the future. Historically, educators have reviewed digital media in education, thinking of it in a range of roles, including tutor, supplier, communications facilitator, motivator, stimulator of a specific activity or thought, and more, as digital media can serve this and beyond. Educators are yet unable to see all the potential of these tools. However, often on their own initiative, they show commitment and preparation, bearing proof of their belief in the value of this component in education. Where teachers are open to these tools and techniques for learning, students are encouraged to explore the application of digital media and technology.

The society of today is viewed as a digital society. People enjoy using digital media and have many of its elements integral in their daily lives. Because discussing educational reform is crucial, however, the most critical point for any tool within the framework of pedagogy is to assist educational reform to understand the best techniques and environment of students' lives as they take up new ideas in learning.

For educators to attain the levels of advancement in interest, capability, and stimulation within the grasp of the attention of their students, careful consideration must be given to the process of digital media.

With the change from the "lecture and learn" model to fully interactive learning available through digital media, students gain greater responsibility for their own education and view it as a process of lifelong learning; they learn the consequences of enhanced thinking ability and problem-solving skills connected to the many tools around them.

It is essential to describe digital media as a means for creating new approaches to learning. The purpose for using these technologies in

education is not just to prepare students for their careers, but also to nurture a new generation of creative thinkers who are fluent using digital media. (Chien, J., 2012).

### **Disabilities and digital learning**

The design of e-learning platforms in ways that enable universal access has received attention from several directions, including the World Wide Web Consortium's Web Accessibility Initiative (WAI).

WAI provides universal formatting standards for websites so they can remain accessible to people with disabilities. For example, developing or adopting e-learning material can enable accessibility for people with visual impairment.

Online education may appear to be a promising alternative for students with physical and sensory disabilities because they get to work at their own pace and in their own home.

Through the use of educational technology, education is able to be individualized for each student allowing for better differentiation and allowing students to work for mastery at their own pace. (Ross, S., Morrison, G., & Lowther, D. (2010).

### **Advantages of online education**

One of the advantages is that students usually learn more in less time when receiving computer-based instruction and they like classes more and develop more positive attitudes toward computers in computer-based classes. Students can independently solve problems. There are no intrinsic age-based restrictions on difficulty level, i.e. students can go at their own pace. Students editing their written work on word processors improve the quality of their writing.

According to some studies, the students are better at critiquing and editing written work that is exchanged over a computer network with students they know.–Studies completed in "computer intensive" settings found increases in student-centric, cooperative and higher order learning, writing skills, problem solving, and using technology. In addition, attitudes toward technology as a learning tool by parents, students and teachers are also improved.

Employers' acceptance of online education has risen over time. More than 50% of human resource managers SHRM surveyed for an August 2010 report said that if two candidates with the same level of experience were applying for a job, it would not have any kind of effect whether the candidate's obtained degree was acquired through an online or a traditional school. Seventy-nine percent said they had employed a candidate with an online degree in the past 12 months. However, 66% said candidates who get

degrees online were not seen as positively as a job applicant with traditional degrees.

The use of educational apps generally has positive effect on learning. Pre and post-tests reveal that the use of apps on mobile devices reduces the achievement gap between struggling and average students.

Some educational apps improve group work by allowing students to receive feedback on answers and promoting collaboration in solving problems. Mobile devices and apps have also been shown to assist in the education of disabled students, with one study reporting increased engagement and accelerated comprehension and learning.

### **Disadvantages of online education**

New technologies are frequently accompanied by unrealistic hype and promise regarding their transformative power to change education for the better or in allowing better educational opportunities to reach the masses.

Examples include silent film, broadcast radio, and television, none of which have maintained much of a foothold in the daily practices of mainstream, formal education.—Technology, in and of itself, does not necessarily result in fundamental improvements to educational practice.

The focus needs to be on the learner's interaction with technology—not the technology itself. It needs to be recognized as "ecological" rather than "additive" or "subtractive". In this ecological change, one significant change will create total change.

Adaptive instructional materials tailor questions to each student's ability and calculate their scores, but this encourages students to work individually rather than socially or collaboratively (Kruse, 2013).

Social relationships are important but high-tech environments may compromise the balance of trust, care and respect between teacher and student.

According to Branford et al., "technology does not guarantee effective learning" and inappropriate use of technology can even hinder it.

### **Conclusion**

As we live in digital era, the task for educators is to review and design innovative educational approaches supporting students in their good use of digital media and technology.

In actuality, it is not an idea for more consideration but a necessity of paramount and urgent importance. Moreover, the framework that guides our educators' beliefs and actions is important, because this framework will guide the style of the programs of digital media that are implemented, as well as the new kinds of learning cultures that will emerge from their realization.

Educators need to continue to help students become active participants as well as authors of their own identity and creativity. The act of learning, along with new literacy, should develop informed, reflective, and engaged members of society, essential to becoming a modern citizen. These issues are central to the experience of growing up in a world full of mass media, personal recognition, diverse cultures, and digital media.

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# The Role of Cash Management Policies in Corporation Governace

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## Abstract

Financial management in companies assumed a cash flow management as one of the most important instruments to increase the company's value. The present study has as main objective to carry out a literature review regarding cash flow management policy and to withdraw the main aspects of managing in order to create an objective image upon this indicator. The contribution to current state of research is providing a literature review study, focused on a comparative approach. The results proved that there is no generally accepted definition and cash flow management method, which can be widely used by corporation for achieving the best result of financial performance. The study concluded that raising the quality of knowledge and skills in managing cash flows can be considered as a core ingredient for any business survival and developmental growth.

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**Keywords:** Cash flow; Cash flow management models; Cash flow policy; Cash requirements; Optimal amount of cash flow

## Introduction and Purpose of the Study

Maximization of enterprise owner's wealth is the basic financial aim in management. Cash management must contribute to the realization of this aim. This policy is one of the most important areas in finance literature. In a fast moving and transforming reality the financial strategy of any company cannot be set without taking into account the corporation's cash flow policies (Fisher, 1998; Quinn, 2011).<sup>1</sup> Many researchers have studied why this policy has a strong impact of corporation financial performance. Since 70s of the

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<sup>1</sup> Fisher, L. M. (1998). Inside Dell Computer Corporation: Managing working capital. *Strategy + Business*, accessed

June 7, 2012, from [mhttp://www.strategy-business.com/article/9571?gko=d8c29](http://www.strategy-business.com/article/9571?gko=d8c29). Quinn, M. (2011). Forget about profit, cash flow is king. *Wall Street Journal*, accessed July 15, 2012, from

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last century, a different academic public have published several papers dealing with cash flow and methodology of cash flow evaluation. Bankruptcy of many companies was the result of inadequate analysis and calculation of cash flow, illiquidity and insolvency and inappropriate cash flow management models.

Accounts receivable, accounts payable and inventory are all components of working capital that companies can streamline to access cash trapped on their balance sheets (Richards & Laughlin, 1980; Stewart, 1995)<sup>2</sup>. Proper management of this components can be represented by effective cash management. This issue is of critical importance for both theory building and managerial decision-making with regard to finance management. Cash flow is essential because it is the main indicator of business' financial health. The function of cash management has the responsibility to mobilize, control and plan the financial resources of companies (Srinivasan & Kim, 1985)<sup>3</sup>. Cash management is something all the companies need to consider. Cash levels must be maintained so as to optimize the balance between costs of holding cash and the costs of insufficient cash. The type and the size of these costs are partly specific to the financial strategy of the firm.

The key to increasing income, reducing debt and creating emergency funds is proper cash flow management, that is a very broad subject and includes a lot of factors, that need to be discussed. There are some different way for improving corporation cash flow strategy by manipulating their cash flows in financial management theory (Farris & Hutchinson 2002, 2003; Christopher & Ryals, 1999; Moss & Stine, 1993; Stewart, 1995)<sup>4</sup>. Rare is the business that has not suffered a cash flow problem. All of this practically leads to the conclusion that not enough attention is paid to cash management by modern companies.

The purpose of this research was to review the academic literature regarding cash flow strategy, and to withdraw the main pro's and con's in order to create an objective image upon an appropriate cash flow management for corporation.

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<sup>2</sup> Richards, V. D. & Laughlin, E. J. (1980). A cash conversion cycle approach to liquidity analysis. *Financial Management*, 9(1), 32-38.

<sup>3</sup> Srinivasan, V. & Kim, Y. H. (1986). Deterministic Cash Flow Management: State of Art and Research Directions. *OMEGA – International Journal of Management Sciences*, 14.

<sup>4</sup> Farris, M. T. II & Hutchison, P. D. (2002). Cash-to-cash: The new supply chain management metric. *International*

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## International studies

The recent financial crisis has put cash and its management back in the spotlight, forcing financial managers to focus their efforts on ways to improve their companies' cash management policy. Cash flow indicators become a popular measure of corporation performance among practitioners. Some investors prefer cash flow indicators since they believe it represents a better picture of the sustainability and wealth.

Cash flow management is as critical as a profitable business model to the success of a business. Companies suffering from cash flow problems have no margin of safety in case of unanticipated expenses. They also suffer in finding the funds for as innovation as well expansion. Finally, it is very important issues that poor cash flow makes it difficult to hire and retain good employees.<sup>5</sup> Failure to perceive cash flow management as an ongoing discipline that requires a collaborative effort can ultimately lead to business failure (D Rigby, 2009; Fisher, 1998; Quinn, 2011)<sup>6</sup>. It is, therefore, important to realize that proper cash flow management requires to review relevant theoretical literature.

The basics of cash management and its techniques have been discussed in academics literature (Miller & Orr, 1966; Stone, 1972; Baumol, 1952, Parkinson, 1983, etc)<sup>7</sup>. The basic terms of cash management, their definitions, models and techniques have been present in the business literature for so long, that they have become an integral part of classical corporate finance textbooks (for example Brigham & Daves, 1999, Fabozzi & Petersen, 2003, Allman-Ward & Sagner, 2003, etc.).<sup>8</sup> Early study of the costs and benefits of holding cash was studied by Keynes (1936), which

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<sup>5</sup> Davidson, Jeffrey P., and Charles W. Dean. *Cash Traps: Small Business Secrets for Reducing Costs and Improving Cash Flow*. New York: Wiley, 1992.

<sup>6</sup> D Rigby. *Winning in Turbulence*, Harvard Business press 2009.

<sup>7</sup> Miller, M. H., & Orr, D. (1966). A model of the demand for money by firms. *Quarterly Journal of Economics*, 80(3), 413–415; Stone, B. K., & Wood, R. A. (1977). Daily Cash Forecasting: A Simple Method for Implementing the Distribution Approach. *Financial Management*, 6(3); Parkinson, K. L., & Kallberg, J. G. (1993). *Corporate liquidity: A guide to managing working capital*. Homewood: Business One Irwin; Brigham, E. F., & Daves, P. R. (2004). *Intermediate Financial Management* (8th ed.). Mason: Thomson South-Western;

<sup>8</sup> Brigham, E. F., Gapenski, C. G. & Daves, P. R. (1999). *Intermediate Financial Management* (6th ed.). Orlando: The Dryden Press. Fabozzi, F. J. and Markowitz, H. M. (2006): *The Theory and Practice of Investment*. London:

Wiley; Allman-Ward M., & Sagner J. (2003). *Essentials of managing corporate cash*. New York:

John Wiley & Sons, Inc.

suggested that firm's cash management policy should depend on the access to external financing.<sup>9</sup>

Many academic research proves the strong link between an appropriate cash flows management and financial performance (Ebben & Johnson, 2011; Farris & Hutchinson 2003; Quinn, M. 2011).<sup>10</sup>

Financial managers need to know the current financial position of the firm (problem of financial performance), continuing with problems and control functions.<sup>11</sup> In the most cases, suppliers are interested in the firm's liquidity because their rights are generally on a short term and the company's capability to pay is best reflected by the liquidity indicators.<sup>12</sup> Cash flow information makes clear for financial statement users in obtaining the relevant information concerning the use of resources of virtually the entire financial resources. (Ross, et al 2007)<sup>13</sup>.

**No financial discipline is more important--and more misunderstood as cash flow management.**<sup>14</sup> There are opinions stating that cash management deals with managing a company's short term funds in order to support and maintain its ongoing activities, mobilize funds and optimize liquidity (Allman-Ward & Sagner, 2003).<sup>15</sup>

The primary goal of cash flow management is to minimize the amount of cash a firm must hold in order to carry out its normal business activities on one side, and on the other, to obtain sufficient cash funds that

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<sup>9</sup> JM Keynes. The General Theory of Employment Interest and Money. MacMillan. 1936. <http://cas.umkc.edu/economics/people/facultypages/kregel/courses/econ645/winter2011/generaltheory.pdf>

<sup>10</sup> Ebben, J. J. & Johnson, A. C. (2011) Cash conversion cycle management in small firms: Relationships with liquidity, invested capital, and firm performance. *Journal of Small Business and Entrepreneurship*, 24(3). Farris, M. T. II & Hutchison, P. D. (2003). Measuring cash-to-cash performance. *The International Journal of Logistics Management*, 14(2). Quinn, M. (2011). Forget about profit, cash flow is king. *Wall Street Journal*, accessed July 15, 2012, from

<http://online.wsj.com/article/SB10001424052970204524604576609740825745286.html>

<sup>11</sup> Bodie, Z Kane, A. and Marcus, J. (2004): *Essential of Investments*. 5th Edition. New York, Irwin

<sup>12</sup> Fabozzi, F. J. and Markowitz, H. M. (2006): *The Theory and Practice of Investment*. London: Wiley

<sup>13</sup> Ross, S. Westerfield, R. and Jordan, B. (2012): *Fundamental of Corporate Finance*. New York: Pearson – Patience.

<sup>14</sup> The Art of Cash Management. [inc.com.magazine. http://www.inc.com/magazine/19981001/1019.html](http://www.inc.com/magazine/19981001/1019.html)

<sup>15</sup> Allman-Ward M., & Sagner J. (2003). *Essentials of managing corporate cash*. New York: John Wiley & Sons, Inc.

would enable to meet unforeseen cash needs in accordance with corporate strategy (Brigham & Daves, 2004; D. Masson and M. Krawczyk, 2010)<sup>16</sup>.

Brealey and Myers (2011) suggest four reasons for the maintenance of cash balance<sup>17</sup>: 1. Transactions – funds held in cash to fulfill commitments because of the temporal mismatch between the outputs (payments) and inflows (receipts) of money; 2. Precautionary – funds held in cash as maintaining a safety reserve for contingencies; 3. Speculation – funds held in cash to take advantage of opportunities to obtain discounts or favorable applications; 4. Bank reciprocity – funds held in current accounts to meet the requirements of some banks as compensation.

Graham and Harvey (2001) proved that management value flexibility over other measures in their financial management when making decisions.<sup>18</sup> The use of models to support decision making becomes relevant, since they can achieve a comprehensive view and optimization, which can hardly be acquired without the use of methodologies for this purpose (see Table 1. Cash Flow Management Models: A Literature Review).

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<sup>16</sup> Brigham, E. F., & Daves, P. R. (2004). *Intermediate Financial Management* (8th ed.). Mason: Thomson South-Western; D. Masson and M. Krawczyk, *Essentials of Treasury Management*, Third Edition. Association of Financial Professionals, 2010

<sup>17</sup> Brealey, Richard A. *Principles of corporate finance* / Richard A. Brealey, Stewart C. Myers, Franklin Allen.—10th ed. Published by McGraw-Hill/Irwin, a business unit of The McGraw-Hill Companies 2011;

<sup>18</sup> Graham, J. & Harvey, C. The theory and practice of Corporate Finance: evidence from the field. *Journal of Financial Economics*, 60 (Nos. 2-3, May), 2001.

<b>Authors</b>	<b>Research summary</b>
Baumol (1952)	Proposes that the available cash balance is a commodity inventory
Tobin (1956)	Adjusts the Baumol model, so the number of transactions becomes a positive integer value
Archer (1956)	Suggest that cash balance should be based on the need for transactions and precautionary balance
Beranec (1963)	Suggest that cash balance should be based on certain cash receipts and expenditures
Miller and Orr (1966)	Analyze the cash balance as having a random variable with an irregular fluctuation and proposed a stochastic model for managing the cash balance
Stone (1972)	The Stone model is somewhat similar to the Miller-Or model so far as it uses control limits. However, it incorporation look-ahead forecast of cash flows when an upper or lower limit it hit to take account the possibility that surplus or deficit a cash may naturally correct itself.
Whalen (1966)	Presents a model based on the concept of inventory considering the cost of illiquidity, the opportunity cost of maintaining a precautionary cash balance and the average volume and variability of inflows and outflows
Lockyer (1973)	Suggest that cash balance should be based on existence of credit facilities.
Daellenbach (1974)	Concludes that in cases where cash flows are non-stationary series, the optimization models cannot make significance gains if the transfer costs are low
Gibbs (1976)	Suggest that cash balance should be based on the risk of cash outs
Gregory (1976)	Presents a survey by the models until the mid-1970s focused on variants of the Miller and Orr
Tapiero and Zuckerman (1980)	Present a stochastic model based on the premise that cash inflows and outflows have random behavior
Milbourne (1983)	Presents a model separating the transfer costs into two categories, in other words, cost for currency units to adjust the cash balance up and cash balance down
Srinivasan and Kim (1986)	Present the principles of deterministic models until the mid- 1980s
Smith (1986)	Develops a stochastic dynamic model, considering the cash flow as a diffuse process
Ogden and Sundaram (1998)	Propose the utilization of a credit line if the firm gets a cash deficit considering an interest rate associated with this credit line and the assumptions of Baumol
Pacheco et al. (2000)	Develop a genetic algorithm to determine investments in financial products available on the market based on the projected cash flow
Hinderer and Waldmann (2001)	Propose the utilization of Markov chains in the problem
Barbosa and Pimentel (2001)	Develop and applied a model in civil construction projects very successfully
Baccarin (2002)	Proposes a modeling variation that changes the focus of the optimization problem
Premachandra (2004)	Shows a model considering the assumptions of normal distribution of net cash flows and that the fixed transfer costs are relaxed in order to obtain a model closer to reality
Volosov et al. (2005)	Develop a stochastic programming model in two states, based on scenario trees, for the problem of cash balance Computational Optimization and Applications

Yao et al. (2006)	Show a single-period model, considering the demand for money according to fuzzy logic concepts, for the problem of cash balance
Gormley and Meade (2007)	Propose the utilization of dynamic policy for cash balance that minimizes transfer costs when cash flows are not independent or identically distributed in a general cost structure
Liu and Xin (2008)	Propose an adaptive algorithm with characteristics of changing the management policies at the beginning of each period to know the upper and lower demands for money
Baccarin (2009)	Presents a standard n-dimensional Wiener process using the impulse control method, for the problem of cash balance
Mierzejewski (2010)	Develops a stochastic model considering the premise of the demand for cash balance with normal distribution and applied the value at risk (VaR)
Melo and Bilich (2011)	Propose the use of dynamic programming to minimize the cost of cash, considering the cost de rupture cash

Table 1. Cash Flow Management Models: A Literature Review<sup>19</sup>.

In order to manage its cash balance, the company can employ a mathematical model. There are two main cash management models that is the Baumol –Allouis –Tobin (BAT) model (Tobin, 2006). This cash management model can be used to calculate the optimal amount of securities to be liquidated whenever the refer demands cash. Similar to the Baumol (1952) model, the purpose of the Miller-Orr model is to minimize the loss of possible interest earned by holding cash balances while taking into account the risk of having deficient balance of cash flow. Another cash management model is the Miller-Orr stochastic model which assists the company to meet its cash requirements at the lowest possible cost by placing upper and lower limits on cash balances. This model assumes that the firm sells securities when a lower limit of cash is attained. Marketable securities are purchased when the upper limit of cash is reached for reducing cash. When there is no attempt to manage cash balances clearly the cash balance is likely to ‘meander’ upwards or downwards (Tobin, 2006). It should be admitted that this theoretical model does not represents how the company can manage its cash balances. Recall that the Miller-Orr model requires selling and buying marketable securities. Whalen (2004) set outs that the cash balances reaches a lower limit, the firm sells securities to bring the balance back to the return point.

There is very important to prepare an appropriate cash flow forecast, because using information about future cash inflows and outflows, financial managers have possibility to apply, for example, the Baumol model or the Beranek model. If corporations anticipate that cash inflows are greater than outflows, they are able to use the Beranek model (W. Beranek 1963 also: F. C. Scherr 1989) to resolve cash flow management. On the other side, if it is

<sup>19</sup> M. B. da Costa Moraes, M. Nagano and V. A. Sobreiro. Stochastic Cash Flow Management Models: A Literature Review Since the 1980s. Published in Decision Models in Engineering & Management; 2015

predicted that cash outflows are greater than inflows they use Baumol model (Baumol 1952). When forecast long-term cash flows are impossible, for a period longer than approximately 14 days, they are able to use the Stone model (B. Stone 1972; T. W. Miller 1996) to determine cash flow management. However, when we cannot predict future cash inflows and outflows at all, the Miller-Orr model can be used to resolve cash flow management.<sup>20</sup> It is important admitted, that studies on developing models for managing the cash flow since 2000 mostly are presented in journals of the areas of computing and management sciences. All of these models focus on the efficiency of optimization, but do not study all aspects of managing cash.

The research proved that there is no generally accepted definition and cash flow management method, which can be widely used by corporation for achieving the best result of financial performance. The study concluded that raising the quality of knowledge and skills in managing cash flows can be considered as a core ingredient for any business survival and developmental growth

## **Conclusion**

Widespread opinion among scholars and practitioners is that a firm's future success and survival ultimately depend on an appropriate cash management policy. Cash management policy deals with managing a company's short term resources in order to support and maintain its ongoing activities, mobilize funds and optimize liquidity. The principal goal of this policy is to allocate cash resources as efficiently as possible and in accordance with corporate strategy.

All financial managers are expected to demonstrate sufficient knowledge in cash management techniques such as cash budgets and cash mathematical models in order to assist a company to manage its cash properly. It is widely known that financial theorists have developed mathematical models (Baumol, 1952; Tobin 1956, Miller & Orr, 1966; Stone, 1972, Srinivasan & Kim 1986 and et all) to help firms find an optimal "target" cash balance, between the minimum and maximum limits, that balances liquidity and profitability concerns..

The study highlighted that, without proper cash flow management policies and procedures in place, the business is less likely to be profitable and sustainable for the future. Cash management is vitally important as it is essential to the health of a business.

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<sup>20</sup> Michalski G. Target Liquid Balances and Value of the Firm. Zagreb International Review of Economics & Business, Vol. 12, No. 1, pp. 1-18, 2009



As a conclusion, we can admitted that although the literature contains numerous studies that examine the rare is the business that has not suffered a cash flow problem. The key to increasing income, reducing debt and creating emergency funds is proper cash flow management policy. The results proved that there is no generally accepted cash budgets and cash computing models, which can be widely used by corporation for achieving the best result of financial performance. The study concluded that raising the quality of knowledge and skills in managing cash flows can be considered as a core ingredient for any business survival and developmental growth.

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# Legal Regulation of Electronic Contract and General Review

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## Abstract

New informational era requires innovative approach to old problems (2). The mankind has entered a new phase of civilization development in XXI century. We live in the information technologies ongoing progress and the so called internet expansion era (3). Nowadays, informational awareness of society has reached the level that we hardly may imagine the field where information and communicational technologies are not applied to some extent. Information and communication technologies constitute quite a significant factor of influence onto society in the twenty-first century. Their innovative influence is related to people's lifestyle, their education and work as well as interrelation between government and civil society. "Information and communication technologies have becoming quickly a stimulus of the vital importance for global economics development" - this is how the Global Informational Society Okinawa Charter starts provisions of which are dedicated to economic and social transformation incitation through information and communication technologies. The President the largest company of information technologies Cisco Systems Inc John Chambers states that "the scales of the outcomes of the social union revolution may supposedly exceed the industrial revolution; it equals conditions and creates unprecedented opportunities for countries, companies and individuals all over the world. Its outcomes may be economics success and survival basic factors of which are response velocity and changeability skills, but not size, geographical location or material resources (5). An electronic contract constitutes a transaction executed in the electronic form which does not apply a written form of any kind except the electronic one and which is signed electronically. For example, if you send such a contract to your business partner who signs it electronically and returns to you, such a contract is valid. An electronic contract may exist in the so called "click-to-accept" form which is mainly applied in relation to programs to be uploaded. In this case a user presses "I Agree" button and a contract is executed (6).

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**Keywords:** Electronical contract; Commercial contract; Electronic signature

## **Introduction**

Participants of civil turnover exercise the freedom of will in the most efficient way when executing contracts.

In the material law, a contract is considered as a classical kind of a bilateral transaction where contracting parties have appropriate rights and commitments in relation to each other. Hundred million contracts are executed in the world each day. People often cannot recognize that they become contracting parties and therefore, they are often engaged in international private law relationships.

Material law determines division of contracts as unilateral and bilateral (multilateral), real and consensus, payable and gratis, etc. The major part of European countries' Civil Codes separately defines the most frequent kinds of contracts. The most noteworthy of them are sale, shipping, gift, loan, lease, demand, bank, insurance, leasing and other contracts. Therefore, international law studies international sale, international shipping, and other contracts (1).

## **Electronic Contract (Agreement)**

New informational era requires innovative approach to old problems (2). The mankind has entered a new phase of civilization development in XXI century. We live in the information technologies ongoing progress and the so called internet expansion era (3). Nowadays, informational awareness of society has reached the level that we hardly may imagine the field when information and communication technologies are not applied to some or another extent. Information and communication technologies constitute quite a significant factor of influence onto society in the twenty-first century. Their innovative influence is related to people's lifestyle, their education and work as well as interrelation between government and civil society. "Information and communication technologies have becoming quickly a stimulus of the vital importance for global economics development" - this is how the Global Informational Society Okinawa Charter starts provisions of which are dedicated to economic and social transformation incitation through information and communicational technologies.

The President of the largest company of information technologies Cisco Systems Inc John Chambers states that "the scales of the outcomes of social unions revolution may supposedly exceed the industrial revolution, it equals conditions and creates unprecedented opportunities for countries, companies and individuals all over the world. Its outcomes may be economics success and survival basic factors of which are response velocity and changeability skills, but not size, geographical location or material resources (5).

An electronic contract constitutes a transaction executed in the electronic form which does not apply a written form of any kind except the electronic one and which is signed electronically. For example, if you send such a contract to your business partner who signs it electronic and returns to you, such a contract is valid. An electronic contract may exist in the so called “click-to-accept” form which is mainly applied in relation to programs to be uploaded. In this case a user presses “I Agree” button and a contract is executed (6).

It is noteworthy that electronic agreements may not be executed in relation to all kinds of legal documents. The legislation of the USA establishes certain exclusions for that. Such exclusions are related to wills and apostilles, powers of attorney, court resolutions, petitions and other relevant procedural documentation, eviction and execution orders, insurance compensation documents, divorce, adoption and other marital matters, hazardous and explosive substances and products carriage as well as bankruptcy and related issues.

### **Subject of the Electronic Contract (Agreement)**

Execution of a contract is obligatory to carry out any foreign trade operations, render various services. Basically, a subject matter of a contract is emphasized when executing a contract. In the case of commercial contract, a subject matter of a contract constitutes qualitative and quantitative performances of goods, information about delivery terms, carriage conditions, etc.

### **Applicable Country Law**

The Article 35 of the Georgian Law on International Private Law defines that contracting parties may choose the law, in particular, “Determination of the rights and commitments proceeding from the contractual relationships, in particular, interpretation, fulfillment, termination as well as consequences of annulment, breach of commitments, including violation or pre-contract and post-contract commitments shall be governed by the law chosen by contracting parties”. Chinese Law on Foreign Trade Contracts and the Swiss Law on International Private Law are based on this principle. However, it should be noted that the legislation of China provides maximum interference of the state in private legal relationships: “When selecting the laws, contracting parties shall take in consideration that such laws do not contradict to state and public interests of Chinese Peoples Republic”.

International contract law enables contracting parties to have quite wide right for the applicable laws selection; it includes the right for the third country law selection. Contracting parties apply this principle in practice

quite often. The basic reason of this is that contracting parties prefer to apply “the neutral” country law for the better equality and impartiality. However, in this case, parties should take in account whether laws of such a country completely and impartially govern their contractual relationships as well as whether one of contracting parties may put under question some or another legal norm in future on the grounds of their inconformity to its country public order or imperative norms<sup>7</sup>.

International contract law allows parties to make various articles of a contract conformable to laws of various countries which implies that the form of an agreement may be executed according to the German law, rules of payment may be regulated by the French law, while risk of destruction may be governed by the Austrian law.

The second paragraph of the Article 35 of the Georgian Law on International Private Law provides that by contracting parties’ agreement, applicable law may be changed for another country law after a contract execution, while the paragraph 3 of this Article determines that choice of law is considered nil and void if it does not take account for the imperative norms (8) of the country, which is the most tightly related to the contract.

It also should be noted that the Article 36 of the Georgian Law on International Private Law points out law of which country should be applied. If parties do not selected law of any country, a contract shall be governed by law of the country which is the most tightly related to the contract. Supposedly, a contract is the most tightly related to the country where the contracting party which shall fulfill contractual commitments has got a regular location or administrative residence. In the case, the subject matter of a contract is right for a land plot or right for a land plot usage, it is considered that a contract is the most tightly related to the country where such a land plot is located.

In the case of goods shipping contract execution, it is considered that a contract is the most tightly related to the country where a carrier’s basic office is located if goods loading, uploading place or a consignor’s basic location is in the same country. In other cases, the conditions provided by the first paragraph of this Article are valid. When executing an insurance contract, it is considered that it is the most tightly related to the country where the basic part of risks to be insured exists.

### **Vienna Convention on Goods International Sale Contracts**

Vienna Convention on Goods International Sale, which was passed by the United Nations Organization in 1980, constitutes the most recognized multilateral contract in the international purchase law.

This Convention was passed by the United Nations Organization on 11 April of 1980 (in Georgia the Convention has come in force on the

grounds of Georgian Parliament's resolution adopted 03.02.1994). The Convention is based on the resolution passed by the sixth special session of UN General Assembly according to which, contracting states consider that "development of international trade on the basis of equality and mutually favorable conditions constitutes a very important element, contributing to amicable relationships between states; adoption of similar norms shall regulate goods international sale contracts and contributes to prevention of various social, economic and legal barriers and development of international trade" (9).

The abovementioned Convention regulates execution of a sale contract and rights and commitments of a buyer and a seller arisen out of such a contract. Vienna Convention also contains significant provisions related to a sale contract form. In particular, the Article 11 of the Convention points out that "it is not compulsory a sale contract to be executed or affirmed in writing or to be subject to some other requirements related to its form". It may be certified by any means, including witnesses' evidences.

The second clause of the Convention is entirely dedicated to a contract execution and the offer and acceptance phases based on the legal principles of continental Europe. In particular, the Article 15 states that an offer comes in force when it is accepted by such an offer addressee. For purposes of the Convention clause II an offer - an application for acceptance or intentions statement or any other statement of intentions - is considered accepted by an addressee when an addressee is notified about that orally or it is delivered by hand or sent to an addressee's commercial enterprise or a postal mail; while in the case of commercial enterprise or a postal mail absence, it is sent to an addressee's permanent residence mail. A contract is considered executed from the moment when acceptance comes in force according to the Convention, i.e. pursuant to common rules. It is done when an offerer receives an acceptance.

It is noteworthy that some state parties of the Convention have not adopted that entirely. Many countries ratified the Convention or joined that with certain escalator clauses, having great practical significance.

## **Conclusion**

Despite the fact that the contracts executed in an electronic form greatly accelerate and contribute to efficient business activities, provision of such contracts security is important. Many technical facilities and software may provide that; cryptographic method is one of the most frequent and safe ones.

Cryptography is a science about information security safeguarding. At present, safety experts give priority to the cryptography signature method known as Public Key Infrastructure (PKI). Since adoption of the



abovementioned act in the USA in 2000, many companies dealing with online services have been applying namely this kind of electronic contracts and signatures. This method functions the same way as we use the so called PIN codes for our bank cards.

From the viewpoint of protection of consumers' rights, this law obliges companies to offer consumers usual contracts executed on paper alongside with electronic agreements. This commitment provides possibility of a written contract execution after an electronic contract is done. Besides, an electronic contract and an offer generally shall take into consideration the software and technical facilities which are necessary for online transactions execution. Absence of such information may become grounds for termination of executed electronic contracts (10).

Proceeding from the abovementioned, it is very important to adopt the legislation on electronic agreements in Georgia. Despite the fact that the valid legislation of Georgia does not prohibit execution of electronic contracts for the purpose of protecting consumers' rights, facilitating companies' activities, decreasing expenditures and improving the efficiency of the taxation process, adoption of specialized improved legislation regulating this field is necessary.

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## **Diversification of Funding Models of Higher Education Service Market in Georgia**

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### **Abstract**

Georgia's European choice and the desire to get closer to European standards make the country face the particular challenges. According to the value and scale of changes, higher education service market occupies the specific place. Higher education services market as the core resource of the formation of professional staff, presents a key factor for sustainable and dynamic business development. On the basis of the aforementioned, in Georgia, it is especially important to promotion the diversification of funding for higher education market.

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**Keywords:** HE market of Georgia, funding models of HE

### **Introduction**

Higher education is an innovative providing foundation of economy and the only undisputed alternative for the country's sustainable development. Support for higher education is willingness to cooperate with the European structures and the possibility of confirmation. In May of 2015, the long-term implementation Policy Paper of the Association Agreement was prepared by the National Center for Educational Quality Enhancement (NCEQE), which considers the implementation of the recommendations and decisions of the European Parliament and the European Council and collaboration in the sphere of higher education in 2015-2017 what is considered by the appendix of the Association Agreement. The ultimate aim is to approach the relevant EU policies and practices. This cooperation will be focused on the following areas of development:

- Lifelong learning, which represents a key opportunity for career growth and aspects for provision of jobs, and enabling citizens to fully participate in public life;
- Modernization of Education and training systems
- Improvement of education quality

- Providing relevance and accessibility at every stage of education and arising the higher education market competitiveness.

It is impossible to achieve high-quality education on the higher education service market without a significant financial investment. Despite the fact that higher education research activity is a national priority in Georgia, the funding allocated for these areas is not enough to ensure creation of a competitive product in the region and worldwide.

It should be noted that in Georgia, the state funding mechanism for higher education and research creates the volatile environment for higher education institutions. Higher education funding mechanism puts higher education institutions in unenviable position. Georgia's education expenditure to GDP ratio is around 2.7% in 2015, only a third of which is spent on higher education, i.e. about 0.9% (7).

A similar rate of the Baltic Sea region countries, where gross domestic product per capita is almost 4 times higher than in Georgia, ranging from 2-3% which is undoubtedly a solid figure. Particularly, in Estonia, the rate is 2.9%, in Lithuania - 2.4%, while in Latvia - 2%. Considering the solid budget, financial support is quite high in both the Eastern and Western European countries. Expenses spent on higher education in Poland make 2,8%, in Finland – 3%, in the Netherlands – 3%, in Germany - 3.2%, and in Austria - 3.1%.

Therefore, for our country it is crucial to come close to the European orientation, which is 3% of gross domestic product.

Currently in Georgia, sources and forms of higher education and research funding are not properly diversified in order to ensure the quality and availability. Though in Estonia, Lithuania and Latvia the National Examination practice still exists, about 20-25% of total number of students are given the opportunity to participate in international exchange programs with the support of the state. A special support is provided for students being at the third stage and 10% of PhD students are financed (5).

In accordance with the reality of the issue, it is becoming increasingly urgent to diversify higher education funding on the market.

In this respect, the experience of Western Europe and the Baltic Sea region countries is very interesting. The country's leading scientists and practitioners of higher education in economics and management system offer a variety of funding sources and models with theoretical grounds, their strengths and weaknesses; they also bring evidences of the interrelation of private and public funding.

In European countries attention is focused on the following models of financing: bureaucratic, collegial, market model, institutional, model of financing programme and service recipient and the model block-grant

funding. Let us discuss conceptual and qualitative aspects of each model and analyze their pros and cons (3,10).

According to the bureaucratic model of funding of higher education service market, funding comes from the state budget. In turn, this would directly affect the funding of all legal and financial terms. It is able to determine the structure of funding, number of departments, employees and the number of students accepted, scientific research trends and needs, etc. In fact, the state takes full control over the financial administration resources. State may transfer the functions to the various supervisory bodies (councils, the Commission, committees, etc.) where the representatives of the academic community will be present.

The main advantage of this model is that the state is in fully compliance with the requirements of the labor market, medical specialists, adequate staff and experts. However, this model also has its disadvantages:

- The arisen centralized finances almost entirely restrict the autonomy of higher education institutions and academic freedom in the process of solving the most important issues of the University life;
- Such higher education institutions do not have the right to find independent financial resource;
- Using of the existing financial resources of each new phase depends mainly on the experience of the previous year. It does not take into account the new requirements which can change on the higher education service market during the year;
- Possibility of implementation of limited financial changes which is related to a quick decision as the decision-making process, as a rule, requires a lot of bureaucratic regulations.

The collegial model of financing is also interesting. The mentioned model describes the actions of the institutions of higher education which are only partially subsidized by the state. Higher education institutions have the right to attract private funds (financed by tuition fees, in exchange for a variety of service projects, as a result of scientific researches of economic institutions, a variety of programs, scholarships and funding); they also have the right to freely dispose all resources available to them.

The structure of the mentioned model is based on a traditional idea of financial independence of higher education institutions, also on trust based relations between the state and universities. The right of financial independence given to higher educational institutions enables universities to choose the principle effective expenditure. Public subsidy includes budget and the right it to be spent by HEI's institutional level – the senate and the board (3,20).

One of the shortcomings of the abovementioned model is that, as a rule, all specialties and directions are not equally demanded at higher

education institutions. Accordingly, less popular specialties and directions appear. In such a case, providing them with private funding causes difficulties what is finally reflected on ineffective administration, and hence, on the quality programs and future perspectives of their development. If we take into consideration the situation when fundamental sciences such as exact and natural sciences are often among unpopular education directions, they should necessarily be subsidized by the state.

In Baltic Sea region countries, a special attention is focused on the so called “market model” of funding the higher education service market. Proceeding from its content, the model has the unified character and what is most important, it obliges universities to be in close cooperation with each entity of the higher education service market.

Just within the frames of the model, higher education institutions are in close business and partnership relations with students and academic staff, as well as with the various representatives of private sector, especially with direct employers. The existing administration mechanism of the model enables universities to create stable guarantees for further development. The model does not share the opinion that future study and sector priorities should be determined by the state itself and completely supports the idea according to which, direct beneficiaries of market products must be involved in the process. (Namely, society, business and producing).

Another priority of the model is to work out distinct and transparent financial plans, reports, forecasting data and offer them to potential investors (the state, private companies, private investment funds, etc.). This process will increase the competitiveness of the higher education service market and promote the development of keen competition on the education market to obtain financial resources (3, 20).

At the same time, the mentioned model makes the higher education institution market more flexible to meet the most significant and modern challenges. In other words, to meet the most urgent requirements of the higher education service market.

The model has its shortcomings. Referring to the model, the attention is more focused on the promotion of the programs and the projects that have high feedback in a short-term period. Besides, on the one hand, strong financial control has positive effect, but on the other hand, it requires hard work and too much energy from academic staff (presenting various financial reports, filling in financial forms and documents, making analysis, proving expediency of various teaching programs) that may be complicated by bureaucratic processes.

Institutional model of funding is also attractive. As the other models mentioned above, it is very popular in modern world by its content as well as by simplicity of model realization. The model takes into consideration and

underlines especially teaching quality and scientific activities at higher education institutions.

Apriority of the existing public funding model is to increase and improve the competitiveness of the higher education service market at the state level. The model is entirely compatible with bureaucratic as well as with collegial model. It can also be used in market model for providing public funds (4, 9).

According to the abovementioned model, higher education institution have to submit a financial application every year to the corresponding educational and financial establishments and prove urgency and efficiency. In case the submitted application is approved, the funds allocated to education are liable to strong financial assignments by the donor as well as by the audit service of HEI. Unspent financial resources must be returned as their expenditure for other purposes is not admissible.

It should also be noted that the donor financial institution, as a rule, reduces funding amount for those higher education institutions that have undrawn financial resources by the end of the year. This supports the refinement and improvement of financial plans of higher education institutions.

The precondition of funding this model is also interesting as far as a special attention is focused on the purposefulness and significance of each demand of the submitted financial document including even the most insignificant details. Such problems as: maximum capacity of students (ability to admit as much students as possible) at higher education institutions, correlation of academic staff and students, data of scientific activities and scientific publications, the index of habilitation of defended theses. The discussed models are used in developed countries, like Finland, Denmark, Netherlands, Sweden, Germany, Austria and so on (4,29).

The model of program funding and funding of service beneficiaries are matter of interest too. The main principle of the model realization is to concentrate on highly demanded higher educational institutions. The uniqueness of the model lies in the fact that higher education institutions are practically independent from the state regulations from financial viewpoint.

Direct supplier of financial resources for higher education institutions is the entrant himself as far as it is the beneficiary him/herself (university entrants, future students) who chooses one or another university and the state is obliged to finance the HEI chosen by the entrant. Due to the high degree of decentralization, this model of funding is considered to be closer to market model funding.

The model has its advantages and disadvantages. The situation, when in some cases the state independently determines the amount of funding, especially if the tuition fee greatly exceeds the state subsidy, may be

considered as disadvantage. As a rule, in most cases, the state covers a student's tuition fee completely or its 70%.

The advantage is that government has active consultations with higher education institutions when determining the funding amount for education. In its turn, funding amount is changeable and depends on the study program preferred by the student. Another positive fact is that exactly the program-funding model and the service beneficiaries funding model are considered as a serious motivator of promoting the competition and increasing the competitiveness of higher education market in European countries. It is also significant that a student has the right to claim for providing additional financial resources within the frames of the abovementioned funding model.

At higher education service market in European countries there is widely recognized the so-called "block grant" model of funding. This model is successful in many European countries like Sweden, Great Britain, Austria, Greece, Turkey, Slovenia, Estonia, Lithuania, and Latvia.

The model underlines the possibility to allot study grants from the state budget to higher education institutions along with the block grants whose amount will be calculated on the basis of formula including the following components.

- Number of academic staff;
- Qualification of academic staff;
- Quality of academic programs and teaching;
- Degree of internationalization of higher education institutions;
- Data of relationships with the private sector (4, 36).

The advantage of the model is that universities can dispose these direct finances according to their consideration.

## **Conclusion**

The existing grant funding system of Georgia does not provide increasing of the competitiveness of private sector and its sustainable development at the higher education market. Accordingly, taking into consideration the experience of the higher education service market of European and Baltic Sea countries, it is expedient to diversify the funding sources of the higher education service market in Georgia. The share of higher education and science funding is low in Georgia - 0,9-1% of GDP that hampers increasing the competitiveness higher education institutions of private sector and hinders its development. For 2020, it is expected to increase the share of funding on higher education and science by 2 % of GDP as a minimum, taking into account European trends which is 3 %.

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# **Corporate Social Responsibility and Sustainable Development: The Review of Marketing Implications in Nigerian Tourism and Hospitality**

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## **Abstract**

In the past few decades tourism industry has been faced with the challenges of destination images. Much emphasis has been placed on destination positive image due to the important role it places in tourist behaviour towards choosing a destination for holiday. This study aims to investigate the perceptions of tourists about Nigeria as a leisure tourism destination. The outcome of the study shows that Nigeria has a lot of attractions that can support successful leisure tourism, but lack a strong and positive image that can act as a pull factor for its tourism demand.

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**Keywords:** Marketing, tourism, destination, development

## **Introduction**

Due to the unprecedented growth in the tourism industry in the last five decades as literatures reveal, “image of a destination has become a crucial determining factor of a destination development and success”. According to Chan & Tsai quoted in Lepp et al (2011), ‘image plays a major role in travel decisions and choice of destination’. As a result, for a destination to be successful must project an attractive and positive image.

The aim of this study is to investigate Nigeria’s leisure tourism destination image. In order to achieve this aim specific objectives are set to guide the study. The objective of this study is to identify potential image characteristics of Nigeria’s leisure tourism destination. The study examined the perceptions of potential tourists about Nigeria as a leisure tourism destination. Specifically, the set objectives for this study include:

1. To examine the differences in the image formed by respondents who have visited Nigeria and those who have not visited.
2. To investigate the effect of safety and security attributes of Nigeria on its leisure tourism as perceived by potential tourists.
3. To identify which sources of information mostly influenced the image formed by the respondents.
4. To explore perceptions of the subjects on health and hygiene attributes of Nigeria in relation to its leisure tourism destination.

Thus, the research questions asked in relation to the set objectives are as follow:

1. Is there any difference in the image formed by those who have visited Nigeria and those who have not visited?
2. Do potential tourists and those who have visited a destination view the issue of safety and security differently?
3. Is there any difference in image formed through primary and secondary sources of information?
4. Will health and hygiene issues in Nigeria prevent tourists from visiting Nigeria for a holiday?

According to Echtner & Richie (2003) “tourism industry is becoming more dependent on image as there are more and more areas of the world being developed for tourism, making more choices available for tourists to choose from”. Hence, it is very important for an “emerging tourism destination” like Nigeria (Esu & Ebitu, 2010) to key into this development by promoting good images that can attract tourists at international level.

### **Rationale**

The study of destination image has been a subject of interest which has received much attention from academic researchers in the field of tourism (Echtner and Richie, 2003). According to Prayag (2010), “the proliferation of research works carried out on this subject is due to the importance of the role it plays in the process of tourist decision making when choosing a holiday destination. Destination image is also seen as a ‘determinant’ of a destination success and development (Prayag, 2010). However, among the numerous studies carried out on destination image very few and limited cases are related to Nigeria destination, although there are more works based on Africa as a continent. Specifically, Awaritiefie in 2004 and 2005 respectively carried out a research on Nigeria in this subject and addressed the area of ‘destination image difference between culture and nature destination visitors, and secondly, motivation and other considerations in tourist destination choice’. Esu and Ebitu (2010) also carried out a study on promoting emerging tourism destination though not directly on Nigeria but on a particular region (Calabar) in Nigeria. However, the issue of tourist

perceptions of Nigeria as a leisure tourism destination has not been addressed directly. As a result of this development this study is aim to investigate what image potential tourists associate with Nigeria as a leisure tourism destination.

According to Esu and Ebitu (2010) “Nigeria’s tourism is beginning to emerge” and with much emphasis on destination images the Nigeria destination is likely to face the challenges of competing with other destinations for international tourists. Destination image has now become a major consideration by international tourists when making decision of where to spend their holiday, and such has been recognised as significant determinant of destinations success and development. Hence, the need to project a positive and attractive image in order to survive the stiff competition for international tourists becomes imperative. Echtner and Richie, (2003) argued that “the growth of tourism globally has made available more choices of tourism destinations for tourists”. As a result “tourism marketers are now faced with influencing consumers’ decisions making in an increasingly complex and competitive global market place”. This development is a big challenge for emerging tourism destination like Nigeria if the country has to survive the competitive global market as the need to ‘favourably’ and ‘strategically’ position the destination in the mind of tourists becomes imperative.

The main purpose of this study is to investigate potential tourists’ perceptions of Nigeria as a leisure tourism destination with the hope of generating useful information that could be handy for the promotion and marketing of Nigeria tourism destination. Several studies have shown that destination images are very significant as they influence tourists’ behaviour, and there is a general consensus that “destinations with strong, positive images are more likely to be considered and chosen in travel decision process” (Goodrich, 1978; Woodside and Lysonski, 1989). Nigeria, being an Africa country shares the general perceptions of international tourists about Africa tourism destination categorised to have ‘weak and negative’ images (Nuade & Saayman, 2004).

Most importantly, due to lack and limited research on tourists’ perceptions of Nigeria as leisure tourism destination the research would be particularly useful to the Nigeria tourism marketing institution. By carrying out this study new knowledge is being added to the body of academic literature of tourism research which could serve as a platform for future studies. The information that would be generated could be also useful to some Africa destinations that have similar challenges like Nigeria. It is possible to propose this framework for tourism destination management.

Figure 1. Sustainable tourism destination management framework



Source:<http://www.sustainabletourisonline.com/destinations-and-communities/implementation/ongoing-management/tourism-success-factors> , accessed on 7/28/2016

Studies on destination image have often followed either qualitative or quantitative approach. However, Echtner & Richie (1993) quoted in Styliado et al., (2008:9) stated that a combination of both quantitative and qualitative can be used to assess a destination image in order to capture the complex assessment of the destination. As a result this study adopts both structured and unstructured questionnaire design to gather primary data. In order to validate the responses from the questionnaire some Nigerian’s tourism board executives were interviewed to have a clearer picture of the image issues about Nigeria. By triangulation Nigeria leisure tourism image is measured from two points of view (that is from potential tourists and from the Nigeria tourism board executives). According to Veal (2011) triangulation is a method which involves the use of more than one research approach in a single study to gain a broader or more complete understanding of the issues being investigated. This approach makes it possible to assess the validity of the outcome. The questionnaire design include a set of scales questions to measure the common attributes based components of Nigeria leisure tourism

destination; and open-end questions to capture the holistic components of the destination (O'Leary & Deegan, 2003). Following Echtner & Richie (2003); Beerli & Martin (2004) suggestions on the use of destination attributes in measuring its image, specific attributes relating to leisure tourism were included in the scale question.

### **Importance of the study**

The study of tourists' perceptions of a destination image is very important to understanding of tourists' behaviour in terms of choice or demand for any destination. As such it becomes imperative for every destination to know its competitive advantages and position through research among global destinations competing for international tourists. The best way of knowing this is to carry out a study on the targeted tourists (tourism segment) by exploring their views or perceptions about the destination. According to Marino (2007:2) "understanding potential tourist differences in image perceptions and motivations towards a destination is very key to comprehending and predicting tourism demand and its impact on the tourism destination". This process provides basis for effective and more efficient future strategic planning of a destination. Sirakaya et al (2001) quoted in Marino (2007) sees the study of tourists' perceptions of a destination image as a prerequisite to a successful marketing strategy. Pike and Ryan (2004) quoted in Marino (2007) see the study as a "major objective of any destination positioning strategy which should reinforced positive images already held by the targeted audience, correct negative image, or create new image. This however, can only be possible by evaluating the result or outcome of such study. Carrying out a research on a destination image is very fundamental to developing a tourist area. Marino (2007) argued that destination marketers need to evaluate the strengths and weakness of their tourism area, as it is important to traveller". One of the ways of successfully achieving this is through research by analysing and evaluating the research outcome.

To this end understanding the perceptions of potential tourists about Nigeria leisure tourism destination image become very critical as a destination identified to be emerging. Nigeria is rich in tourism resources (The Report: 2010) and this make the country particularly attractive for all kinds of tourists, especially leisure tourists.

### **Literature Review**

#### **Definition of destination image**

According to Bignon et al. (1998) quoted in Styliado et al (2008) destination image has many definitions depending on the researcher. For instance Crompton (1979) defines image as the sum of beliefs, idea and

impressions that a person has of a destination, while Hunt (1975) cited in Styliadis et al (2008) defines image as perceptions held by potential tourists about an area. Hose & Wickens (2004) cited in Marino (2007:4) gives a different definition which states that “destination image is any visual, oral, or written representations of tourism location that is recorded and can also be transmitted to others”. This definition seems to consider only information sources that influence image formation but did not include the tangibility attributes of a destination. Destination image is formed from the knowledge of different factors or attributes of a destination. These attributes include tangible and intangible attributes. As such a complete definition of destination image should include the elements of tangibility and intangibility. Hose and Wickens definition explain why destination image can be perceived differently by individuals due to the sources of information and how the information is transmitted or received. Thus, the image formed by visual (for instance information received from internet, televisions documentary); oral (such as word of mouth, information from friends and relatives); written information sources (such as internet and all form of publication about a destination) can be different depending on how the information were passed and how they were received by the individual.

For the purpose of this study, destination image would be defined as sum of beliefs, ideas, impressions, and perceptions that individuals have of a place in relation to its attributes (tangible and intangible) as a result of exposure to information about the place or through personal experience (first-hand experience or personal visit to the place). This definition is coined from the definition of Crompton (1979), Hunt (1975), and Hose & Wickens (2004).

However, Gallarza et al (2002) proposed a theoretical model to define image in terms of four characteristics: complex, multiple, relativistic, and dynamic (Beerli & Martin, 2004). Following the above proposed model it is understandable that the measurement of destination image will carry with it great varieties of methods due to the complexity, multiplicity, relativistic, and dynamic features of individual destination.

### **Measurement of Destination Image**

According to Beerli & Martin (2004) “there is no universally accepted, valid, and reliable scale for the measurement of destination image” hence, they proposed a frame incorporating every aspect of a destination which could be used as an instrument of measurement. Thus, every aspect of the destination and attributes are included in the scale as factors influencing the image assessment made by individuals and these attributes involve: *natural* resources, general infrastructure, tourist infrastructure, tourist leisure & recreation, (culture, history & art), political & economic factors, natural

environment, socio-environment, and the atmosphere of the place. They added that it is not necessary that all the attribute must be used but selection of the attributes of each destination will depend largely on the attractions of each destination, its positioning, and the objectives of the assessment of perceived image, which also determine whether specific or more general attributes are chosen. As a result this study focused more on leisure tourism destination's attributes rather than the general tourism attributes of the Nigeria destination. In order to achieve this it will be important to understand how image of a place is formed.

### **Image Formation**

Image formation is based on the perceptions of the individual which is related to the impact of internal and external factors. Marino (2007:4) explain that “the internal factors are the knowledge and the emotional feelings the individual have about the place while the external factors refers to influence of friends and relatives, publications, advertisement, news reports, word of mouth. According to Gunn (1998) cited in Marino (2007:5) images are formed at two different levels which he terms organic and induced level. That the organic image developed internally as a result of actual experiencing or visiting the destination while the induced image is formed as a result of externally received and processed information such as information received from conventional advertisement in mass media, information from tour operators, trip advisors, documentaries about a destination, films and movies, internet etc. Marino also added that image is formed on the basis of an exchange of value between the value sought and expected and the effort made to get these values. Marino quoting Gunn (1988) argued that images are formed through multiple processes or stages from first time accumulation of mental images of the destination which are modified by further information received through induced process. Researchers have argued that familiarity with a destination has appeared to be a significant determination of destination image, for instance, Baloglu (2001) cited in Marino (2007). It is also argued that there is a link between high degree of familiarity and positive image. This argument of image formation process leads to another objective of this study aiming to explore the impression of tourists about Nigeria overall image if there is difference in the image formed before and after visiting Nigeria. According to Marino (2007) that “the more the tourist is familiar with the tourism destination the better the image he or she has of that destination”. Law (1995) quoted in Marino (2007) stated that “the perceptions of the majorities of tourists who have experienced other destinations tends to be influenced by comparing among facilities, attractions, and services standard. Due to the fact that

images are formed in different ways they open to changes to some extent in different ways according to Vaughan (2007).

### **Information Sources**

It is generally agreed that individual perception of an image of a destination results from the amount and the various nature of information sources they are exposed to. Information consulted and the information used by tourist according to Frias et al (2008:165) is generally believed as one of the potential factors influences formation of destination image. McCartney et al 2008 quoted in Chang & Lynch (2011) suggested that a detailed understanding of the influences of information sources can help destination marketers to create effective destination marketing promotional strategies. Thus, the use of official and appropriate media becomes very important. Literature review on destination image reveals that tourists get information about a destination from varieties of sources which could be paid or unpaid sources. Paid sources may include mass media news, broadcasting documentaries and television programmes, while unpaid sources may include information from printed documents like books magazines, newspapers, films, travel programmes, and especially, recommendation from families and friend who may have visited the destination. One of the objectives of this study is to find out the major sources of information through which potential tourists formed their opinions about the image of Nigeria leisure tourism destination. The information source was termed by Baloglu & McCleary (1999a) as stimulus factors or image forming agents, and Gartner (1993) as forces influencing the formation of perceptions and evaluation. According to Gartner (1993) image formation information sources can be classified into five categories and with the fifth category ending the continuum of the forming process. The five categories include:

- Overt induced – information received from conventional advertising in mass media, relevant institutions in the destination, tour operators and wholesalers
- Covert induced – information received from destination reports or articles
- Autonomous - information received from mass media, broadcasting new, documentaries, films, television program, internet
- Organic – information received from people like friends and relatives, giving information about places based on their knowledge or experience either by request or volunteered
- First hand information – visit to the destination

Beerli & Martin in explaining Gartner (1993) model of image formation added that the first four categories of information sources (overt induced, covert induced, autonomous, and organic) are usually the one



perceived before experiencing a destination and are referred to as “secondary image” and the last category forms the primary image according to Phelps (1986), by actual visitation of the destination involved.

### **Characteristics of Individuals:**

Individuals, personal characteristics are unique and different from one another. Though there could be similarities to some extent. In terms of consumer behaviour individual characteristics refers to socio-demographic attributes (gender, age, education level, family cycle, lifecycle, social class, place of resident etc.) Beerli & Martin (2004) argued that “personal characteristics affect one’s cognitive organisation of perceptions, thus also influencing the perceptions of the environment and the resulting image”. Hence, the perceived image will be formed by the image displayed by the destination and the individual’s characteristics. As a result the individual tends to have different evaluation of a destination at a given point in time (Bramwell & Rawding, 1996). However, this study will not evaluating the individual, personal characteristics in terms of image formation about Nigeria leisure tourism destination. On the other hand, the demographic data will only be considered in the level of representativeness in terms of how many male or female students responded either positively or negatively to the research questions. It is therefore suggested that the analysis of demographic characteristics of respondents can be included in future study.

### **Destination Attributes (the “Pull Factor”):**

Destination attributes are the centre of attractions which are regarded as the ‘pull’ factors of tourism destinations. Those resources found in individual destination which could be tangible or intangible (Awaritefe, 2004), natural or man-made, cultural & historical resources that make a tourism destination unique and different from every other destination (Baloglu & Uysal, 1996), which are easily “recognised and recall by visitors”. The composition of the tourism resources of a destination are the ‘pull’ factors that make people want to visit such places in addition to the perceived “holistic” images of that destination. The ‘pull’ factors attract the individuals towards a destination due to its situation/region and perceived attractiveness of the destination (Joyathsing et al, 2010). The pull factors are also seen as responsible for the success and development of a destination (Prayag, 2010).

For a leisure tourism destination tourist would be looking for what will satisfy their holiday needs. Trends in tourism indicate that people are becoming more experienced in travelling and careful in their choice of destination (Bonarou, 2011:327). Among the basic needs of most leisure traveller is safety and security.

According to Boakye (2011:328) “security and safety is an important element in leisure tourism”. Boakye argued that “any destination that ignore the responsibility of providing security for tourists stands to lose out of the keen completion for tourists dollars”. He further pointed out that in order to provide security for tourists their views about the security matter have to be sorted. Hence, one of the objectives of this study is to examine how potential tourists perceive Nigeria as a leisure tourism destination from the perspective of security and safety attributes. Boakye (2011:328) quoting Sonmez & Graefe, (1998) said that “security is perhaps the single most important determinant of destination’s ‘allure’ as a result all destination strive to present themselves as paradise”. For emerging tourism destination like Nigeria a study of safety and security from the tourists’ perspective become imperative and cannot be ignored. However, tourists perceive the issue of safety and security differently and this borders on cognitive fear of current issues as perceived by the tourist, affective (emotional) behaviour towards safety and security as categorised by Vandereen (2006:13) cited in Boakye (2011:328). Thus given the current issues of safety and security of a destination, according to Boakye, tourists’ reaction will depend on how they perceived the situation and the emotional attachment they have about the whole thing. While some tourists may react sharply expressing their concerns and anxieties about safety and security of a destination others may not bother so much about the issue. The result of this difference lies on the fact that people see and feel things differently. Hence, while some tourist will react negatively to spending a holiday in a destination perceived to be unsafe others tend to see the destination’s attributes that can meet their holiday requirement as a result will not be looking at safety and security as top priority. The latter category of tourists is argued by Michalko (2003) cited in Boakye (2011) as tourist who enjoy the thrill of danger as an attraction giving the examples of Naples and New York. However, no matter what tourist perceptions are about the safety and security of a destination the impact of negative safety and security impact could be enormous. For example it could result in suppressed demand for the destination, cause shift in demand to other destination and the consequence of negative image as a result of different perceptions by tourists.

Destination attributes are also referred to as the perceptions and expectations of travellers in terms of destination attributes which influences destination choice and how travellers form the ‘image’ of the destination (Baloglu and Uysal, 1996). Researchers like Beerli and Martin (2004); Baloglu and McCleary (1999); Gartner, 1993; and Meng et al. (2008) argued that destination ‘image’ have long been recognised as “influential pull factors” in a destination choice. Klenosky, (2002) added his point that the ‘pull’ factors are described as those attributes influencing when, where, and

how people travel and relates to the features, attractions or attributes of the destination. He also argued that “the relative importance of ‘pull’ factors seems to differ for visitors in different socio-demographic subgroup (Andrue et al (2005); Kim et al (2003); Klenosky, (2002). Prayag, (2010) added that “the pull factors determines the attractiveness of a destination for tourists given the initial desire to travel”. In addition, Hunt (1975) quoted in Prayag (2010) stressed that “the importance of the intangibility of a destination attributes” by adding that “images, beliefs, and perceptions that people have about a destination can influence the growth of a tourist area as much or even more than tangible resources”.

More also, Witt and Mountinho (1989) quoted in Prayag (2010) classified ‘pull’ forces into three important factors namely static factors (including climate, distance to travel facilities, natural and cultural landscapes, historical and cultural features); dynamic factors (including accommodation, service levels, entertainment, sports, political atmosphere, and trends in tourism); current decision factors (including pricing, marketing strategies, projected/induced image of a destination). Other researchers recognised pull factors as been universally important in destination selection” (Prayag, 2010). Destination attributes in tourism though may vary from one destination to the other, are the factors influencing the competitiveness of every destination. For any destination to survive and be successful among other destinations internationally in the phase of the stiff competition for tourists, destination marketing and promotion become imperative.

### **Destination Marketing and Promotion:**

There are different ways of strategically marketing and promoting a destination images to potential tourists. Such strategic methods could include advertisement which may play important role in promoting a tourism destination by creating awareness of the destination as a possible place to visit. Advertisement helps to create positive image of destination and at the same time motivates potential tourists to visit the destination. The significance of advertisement is link to the fact that the formation of images of a place is influenced by varieties of information. Extensive use of travel brochures, films, independent tourism information could be another means of strategically disseminating information about a destination to the targeted audience. Also, Destination Marketing Organisations (DMOs) could organise a familiarisation trips for travel media and sponsors who could help to create more awareness of a destination. A destination Marketing Organisation is charged with the task of convincingly appealing to potential tourists as such attracting them to their destination. It is generally acknowledged that tourists do not constitute a homogenous group, therefore,

Destination Marketing Organisation is faced with the challenge of identifying sub market of tourists. According to McCartney et al (2008) cited in Chang & Lynch (2011:3) “a key challenge facing tourism organisation is the effectiveness and relevance of marketing and promotional practices to enhance destination selection in today’s fierce competitive environment. The internet, television is another medium which is becoming more widely use in tourism marketing by showcasing a destination image that can stimulate tourists to demand for such destination.

However, following the outcome of the study carried out by Govers et al (2007) the findings suggested that tourism promotion does not have major impact upon the perceptions of travellers and that “other sources of information have a much greater bearing on the formation of destination image” Govers et al (2007:16) and that tourism authorities should understand that successful tourism promotion is dependent on broad range of external influences”. Promotion of destination image is usually intended to portray favourable and positive image which Govers et al (2007:16) described as “largely skewed towards a set of favourable experiences”. They argued that “if visitors encounter settings or experiences that are different from their expectation to a greater extent, their evaluation can be very negative”. To this end, Govers et al pointed out that promotion projected by tourism industry should be anchored to some extent on true destination identity and if the tourism products of a destination are not communicated in line with true identity of that destination can create a tourism development gap”.

## **Conclusion**

Destination images have been recognised to play a vital role in the development and success of destinations (Beerli & Martin, 2004). This is due to the influence it has on tourists’ behaviour in the process of choosing a destination for a holiday. It is believed that tourists will prefer a destination with strong and positive images than one with weak and negative images. This phenomenon is the reason behind the proliferation of research works carried out in the field of tourism industry. The outcome of such study could help to understand tourists and how they form images of a place. With such understanding the marketing organisations would be able to strategically plan and put in place marketing and promotional techniques that can favourably display positive images in the mind of tourists.

Researchers attempting to define the concept ‘image’ discovered its complexity as no single definition has been accepted. As such the term destination image has been defined by researchers to suit the purpose of the study being carried out. However, Gallarza et al (2002) suggested a model to define image in terms of four characteristics namely complex, multiple, relativists, and dynamic (Beerli & Martin, 2004). Due to the fact that

destination image reflects the four characteristics mention above makes it difficult to adopt a general scale for its measurement. Therefore, Beerli & Martin (2004) proposed that destination image could be measure by its attributes. Destination attributes refers to the “pull” factors that attracts tourists to want to visit a destination. This Awaritefe (2004) termed “tangible and intangible tourism resources; easily recognised and recall by visitors (Baloglu & Uysal (1996); attractions of a destination (Joyathsing et al, 2010); success and development determinant by Prayag (2010).

In order to measure a destination image it is important to know how the image of a place is formed. Formation of destination images has been addressed extensively by academic literature and different models have been designed to explain how image of a place is formed by tourists. For example, Marino (2007:5), explained that image of a place is formed base on the perceptions of the individuals which is related to the impact of internal and external factors. Gunn (1998) cited in Marino (2007) argued that image are formed in two levels which he refers to as induced and organic. Beerli & Martin (2004) identified two related component in image formation which they refer to as cognitive and affective components. The diversities of image study matches Gallarza et al (2002) model which has the characteristics of multiple, complex, relativistic and dynamic.

Images are argued to be formed by tourists as a result of information they are exposed to or information they consult. Sources of information have been identify to be crucial factor influencing formation of a destination image (Frias et al, 2008:165).

Understanding of tourists’ perceptions of a destination is seen to be very crucial to the marketing organisations in making appropriate plans and strategically using appropriate marketing and promotional techniques to favourably portray a favourable and positive image in the mind of tourists. McCartney et al (2008) quoted in Chang & Lynch (2011:5) argued that effective and relevance marketing and promotional practice is a key challenge facing tourism organisation as much emphasis is given to positive destination image.

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## Characteristic of Vicarious Liability

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### Abstract

Vicarious liability may be determined as the liability of one party for the damage caused by a third party. Unlike personal liability, a person is responsible for the damage who is not guilty and is not involved in the occurrence of the harm. It is believed that it is unfair to impose the liability to a person for a harmful action of others; however, it is considered that this rule serves to the principles of fairness.<sup>21</sup> The legal principle of vicarious liability is accepted in society. This is the occurrence when unification of the risk and interest takes place. A person who engages another person for fulfilling his/her goals easily determines the result. Accordingly, the probability of the occurrence of damage by the agent objectively increases.<sup>22</sup> In this regard, it is paramount to define the preconditions according to which, responsible persons are determined for indemnification. This issue is differently regulated under Georgian and foreign legislations.

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**Keywords:** Vicarious liability, liability, damage, employer, employee, activity creating increased danger

### Introduction

The effective legislation of Georgia, which regulates the occurrence of vicarious liability, mostly differs from the legislation of foreign countries. It should be noted that in compliance of the Civil Code of Georgia the Vicarious Liability is established only during the existence of employment relationship and unlike the legislations of foreign countries, does not spread it to other civil legal relations – for example in case of existence of the assignment agreement. The Civil Code of Georgia does not regulate the rule of responsibility of employer and employee at the time of existence of enterprise risk, while the action of the employer creates increased danger. Exact regulation of the mentioned issue is paramount, because a human encounters similar relations in everyday life.

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<sup>21</sup> H.Wicke, Vicarious liability: not simply a matter of legal policy, *Stell LR* 1998, p. 21.

<sup>22</sup> H.Wicke, Vicarious liability: not simply a matter of legal policy, *Stell LR* 1998, p. 23.



The aim of this research is to detect the drawbacks in Georgian legislation that regulates the vicarious liability and to plan possible ways to resolve it.

Tort law has the function of protecting safety of civil relations; furthermore, it has the function of fairly allocating the risks and civil liability. Tort law ensures protection of the rights and interests of individuals and excludes undue interference in it. Natural law prohibits interference in the interests and right of individuals without their will. Should a person's rights and interests be violated, a victim is eligible to make a claim for damage and demand restoration of the violated rights. The claim for compensation of damage is the legal means to protect the disbalance arising from the damage. A tortfeasor is liable to redress the damage and in this way the negative results is eradicated for the victim. This rule clearly indicates that the primary role of the tort law is to compensate the damage. At the same time, the tort law has the function of prevention.<sup>23</sup>

Based on the estimation of the conceptions of national law, tort law is divided into two main directions. The first direction is fault-based liability and the second direction is liability without fault. The first one imposes the liability to a person based on his/her faulty action, which is a deviation from the standard of conduct. The second one relates the cases when a person is liable to compensate the damage without his/her fault and regardless whether his/her action is in compliance with the standard of conduct or not.<sup>24</sup>

One part of scientists justifies the principle of liability without fault due to the protection of the interests of a victim. Although it is unfair to hold the most prudent person responsible, however the principle of justice prevails.<sup>25</sup>

Nowadays, the law of continental Europe as well as common law foresees the imposition of liability without fault. However, it should be mentioned that in the law of continental Europe the liability without fault is exception from the general rule, as for the common law, liability without fault is the general rule, especially in the contractual relations.<sup>26</sup>

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<sup>23</sup> G. Batlidze, The responsibility caused by faulty action in tort law, The review of Georgian business law, 4<sup>th</sup> edition, 2015, p. 17-18.

<sup>24</sup> G. Batlidze, The responsibility caused by faulty action in tort law, The review of Georgian business law, 4<sup>th</sup> edition, 2015, p. 17.

<sup>25</sup> K. Kochashvili, Fault as the condition of civil responsibility, Law journal #1, 2009, p. 112.

<sup>26</sup> K. Kochashvili, Fault as the condition of civil responsibility, Law journal #1, 2009, p. 108.

The absence of a fault does not preclude subjective condition of the imposition of liability. The subjective condition for the imposition of the liability is the risk of tortfeasor. The risk is a subjective condition when the person more or less consciously makes the probability of damage in the future; however, the person is not obligated to determine the inevitability of the damage in advance, because the damage may not occur. As to the fault, in case of its existence, the tortfeasor always knows the likelihood of the occurrence of unlawful consequence, while in case of existence of the risk, it is assumed unlawful outcome.<sup>27</sup>

The vicarious liability is the absolute liability when a person is responsible for the damage caused by the third person who acts in compliance with the interests and in favour of the principal. The vicarious liability is one of the form of strict liability when the principal is jointly liable together with the agent to compensate the damage, inflicted the damage by the agent in course of performance of the duty.<sup>28</sup> According to this arrangement, not only the agent, but also the principal is obliged to protect the law and order, their action is to be placed in the framework of the law. Such regulation is efficient, because the principal will always try to control the agent to the extent possible and will take all necessary measure to avoid the harm.<sup>29</sup> Meanwhile, in the most cases, the responsible person is the solvent principal together with the tortfeasor agent what facilitates for the victim to satisfy his/her demand to receive inflicted damage.<sup>30</sup>

The fact that the principal is responsible to compensate damage without any action or fault, confirms that the vicarious liability is one of the form of the liability without fault. However, this does not exclude the possibility that there may exist a fault of the principal.<sup>31</sup>

There is a different opinion whether the vicarious liability is the liability without fault or not. One part of scientists believe that the vicarious liability is the liability without fault, since at the first stage the responsibility is imposed on the non-culpable principal. According to the opposite opinion of the second part of scientists, as the principal has the possibility to demand redress from the agent (tortfeasor), the liability without fault does not exist.<sup>32</sup>

We encounter the most cases of vicarious liability in employment relationship; namely, the employer is responsible to compensate the

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<sup>27</sup> Dmitrieva O.V. Liability without fault in civil law, Russia 1997, p. 21.

<sup>28</sup> Reineir H. Kraakman, Vicarious and corporate civil liability, 1999, p. 669.

<sup>29</sup> Reineir H. Kraakman, Vicarious and corporate civil liability, 1999, p. 670.

<sup>30</sup> J.W.Neyers. A Theory of Vicarious Liability, Alberta Law Review, 2005, p 6.

<sup>31</sup> J.W.Neyers. A Theory of Vicarious Liability, Alberta Law Review, 2005, p 2.

<sup>32</sup> Dmitrieva O.V. Liability without fault in civil law, Russia 1997, p. 29-30.

damage that is inflicted by the employee during the performing of labour duties. It should be noted that such rule is not limited with the employment relations. In the countries of the common law, the similar regulation is also applied in cases of the existence of the assignment contract.<sup>33</sup> In most cases, the principal is obligated to compensate the damage caused by the agent when the latter is the executor of the principal's will and he/she acts in compliance with his/her interests.

Vicarious liability is the rule for responsibility. In this case, the principal is responsible not due to its action, but on the basis of legal relations which the principal has with the agent. This rule is different from the traditional form of liability according to which, the person is liable for his/her action.<sup>34</sup>

Vicarious liability is regulated in compliance with the Article 997 of the Civil Code of Georgia according to which, a person shall be bound to compensate the harm caused to the third person by his/her employee's unlawful act when the latter was on duty. The liability shall not accrue if the employee acted without fault. The third person is any person, regardless he/she is the employer's worker or not. The person that is liable to compensate the harm for the unlawful act of his/her employee, may be a legal entity or a physical person. The act of an employee has to be estimated as the act of an employer. Meanwhile, the employer is not liable to compensate damage, should employee acted without fault.<sup>35</sup>

According to the commentary on the Civil Code of Georgia, from the content of this article derives that the victim is not eligible to demand the compensation of harm to the employee. The victim has the right to sue the employer. In case of accepting the claim, the employer has the right to demand from the employee to compensate the damage as a regress. For the harm caused by the employee, even if the existence of the employer's fault, but not in course of performing his/her duty, the responsible person is only the employee and not the employer.<sup>36</sup> Regardless of this interpretation, in accordance with the existing case-law, not only the employer is bound for the compensation of the harm, but also the employee. Namely, the employer is bound to compensate the harm on the basis of the Article 997 of the Civil Code of Georgia and the employee is bound to compensate the harm on the basis of the Article 992 of the Civil Code of Georgia. The last, is the general article for imposition of the liability.

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<sup>33</sup> H.Wicke, Vicarious liability: not simply a matter of legal policy, *Stell LR* 1998, p. 21-22.

<sup>34</sup> Paula Gilika, *Vicarious liability in Tort: A comparative perspective*, p. 2.

<sup>35</sup> The commentary of civil code of Georgia, 4<sup>th</sup> volume, 2001, p. 400-401.

<sup>36</sup> The commentary of civil code of Georgia, 4<sup>th</sup> volume, 2001, p. 402-403.

The Article 997 regulates the special rules of compensating the harm occurred while performing the employee's duty and establishes the liability for the person to compensate the damage. For the imposition of the liability the following conditions must jointly exist: a) harm; b) an unlawful act of the tortfeasor or inaction; c) causal connection between an unlawful act and harm; d) fault of tortfeasor; e) existence of employment relationship between the tortfeasor employee and employer. Meantime, the faulty action, existence of which is a mandatory condition for imposition of the liability, must be caused by the employee.<sup>37</sup>

It should be noted that the Civil Code of Georgia determines the vicarious liability only in case of existence of employment relationship and it does not apply on the other civil relations – for example – on the assignment agreement. Within the framework of the assignment agreement, the Civil Code of Georgia does not foresee the principle of vicarious liability. Particularly, according to the Article 718 of the Civil Code of Georgia, if the harm is caused by the agent, the responsible person towards the victim is the agent and not the principal. The principal is bound to compensate the damage only in case the damage occurred as a result of significant danger associated with performance of the mandated task in accordance with the principal's instructions. Therefore, if the instruction is connected with the performance of a dangerous act, only the principal is bound to compensate the damage.

The Civil Code of Georgia does not regulate the rule of liability of an employer and an employee at the time of existence of enterprise risk while the action of the employer creates increased danger. From the characteristic of performing increased dangerous activity, the harm may occur without the employee's fault. As the harm occurs while performing increased dangerous activity, it is justifiable to bind the employer liability to compensate the damage. In this case, the responsibility of the employee has to be excluded. In contrast, the Article 997 of the Civil Code of Georgia, in case of non-existence of the fault employer's responsibility is excluded and in fact it establishes the responsibility only for the employee. Such regulation clearly contradicts the rules that enacts the liability without fault. To sum up, at the time of existence of enterprise risk while the action of the employer creates increased danger, for determining of liability of employee, decisive must be the cause of damage – the harm occurs due to unlawful action of the employee, or the harm occurs with the increased danger.

In the countries of common law, only the harm caused by the employee is not sufficient for imposition of liability to the employer. The tortfeasor must be the employee or the agent. Meanwhile, the harm must

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<sup>37</sup> The decision of supreme court of Georgia of 16 December, 2013. Case #660-627-2013.

occur during performing the duty. The liability of the employer does not exclude the liability of the employee; consequently, both of them is liable to compensate the damage<sup>38</sup>. To impose the liability, legal relations between the employer and the employee should necessarily exist. It is not mandatory such legal relation to be only employment agreement. The responsibility may be bound even if the assignment agreement exists.<sup>39</sup>

The classical example of vicarious liability is the enterprise relationship. In this case, the basis for imposing responsibility is only one circumstance when with the harm occurs due to the fault of the employee while performing his/her duty. Such responsibility is considered as the liability without fault, since the employer is liable regardless his/her fault. Such responsibility is based on enterprise risk activities. While existence of enterprise relations, in most cases the employer is bound to compensate the damage not because that it engages the tortfeasor employee, but because, the employer's business creates dangerous risk in which the employee is involved. There is also another consideration stating that the liability of the employer which is provoked by the harm caused by employee is established for the breach of own obligation by the employer.<sup>40</sup>

At the time of existence of enterprise relationship, the employer is bound to the responsibility for the activity which creates increased danger. The employee is involved in performing the duty which creates increased danger. In this case, the liability of the employer for the activities of increased danger is not accidental; furthermore, the employer controls the activities of the employee.<sup>41</sup> At the time of existence of increased dangerous activity, the liability of the employer replaces the liability of the employee, since the employer him/herself creates increased danger and, of course, takes responsibility for negative results.<sup>42</sup>

Unlike the enterprise relationship, while the activity does not cause increased danger, the responsibility of the employee together with the employer is preserved. There is no doubt that the employee's responsibility should exist when damage is caused by his/her intentional and unlawful act.

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<sup>38</sup> J.W.Neyers. A Theory of Vicarious Liability, Alberta Law Review, 2005, p 3-4.

<sup>39</sup> The enterprise risk theory: redefining vicarious liability for intentional torts, Anne E. Spafford 2000, p.16.

<sup>40</sup> The enterprise risk theory: redefining vicarious liability for intentional torts, Anne E. Spafford 2000, p.11.

<sup>41</sup> The enterprise risk theory: redefining vicarious liability for intentional torts, Anne E. Spafford 2000, p.17.

<sup>42</sup> The enterprise risk theory: redefining vicarious liability for intentional torts, Anne E. Spafford 2000, p.20.

It is necessary the employee to maintain his/her responsibility in order all prudential measures to be taken and the harm to be avoided.<sup>43</sup>

In the Civil Code of Germany, vicarious liability is regulated with the Article 831 according to which, the person that engages another person to fulfill his/her assignment is liable to compensate the damage caused by the latter while performing his/her duty. The principal is not liable if it takes all necessary care while choosing the agent. Furthermore, the principal is not liable if it must purchase instrument or device either to lead performing of assignment and it takes all necessary care while purchasing or leading the assignment. The responsibility is excluded even when such damage would occur in case of the respective care.<sup>44</sup>

According to the commentary on the Civil Code of Germany, the responsibility provoked by the agent is not the responsibility for the principal instead of the third person. This interpretation determines the breach of own obligation by the principal which is caused by careless choosing of the agent or improper control of his/her activity. The characteristic of responsibility is that the fault and causal connection is assumed at the time of choosing the agent for performing the duty. In accordance with the Civil Code of Germany, the agent is the person who is liable to fulfill the principal's instructions. The principal always determines the characteristic of activity, its content and capacity. The responsibility is imposed regardless of the faulty action of the agent. The harm has to be caused in course of performing the duty. In accordance with the case-law, the causal connection must exist between the assignment and the harm.<sup>45</sup>

## Conclusion

To sum up, in the Georgian legislation there exist some drawbacks which need to be correctly regulated. The Civil Code of Georgia determines the vicarious liability only in case of existence of employment relationship and it does not apply on the other civil relations – for example – on the assignment agreement. Within the framework of the assignment agreement, the Civil Code of Georgia does not foresee the principle of vicarious liability.

The Civil Code of Georgia does not regulate the rule of liability of the employer and the employee at the time of existence of enterprise risk while the action of the employer creates increased danger. From the characteristic of performing increased dangerous activity, the harm may occur without the employee's fault. As the harm occurs while performing

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<sup>43</sup> The enterprise risk theory: redefining vicarious liability for intentional torts, Anne E. Spafford 2000, p.22-23.

<sup>44</sup> Civil code of Germany, GTZ Tbilisi 2010, p. 176.

<sup>45</sup> Jan Kropholler, the commentary of civil code of Germany, 2014, p. 653-654.

increased dangerous activity, it is justifiable to bind the employer liability to compensate the damage. In this case the responsibility of the employee has to be excluded. In contrast, in accordance with the Article 997 of the Civil Code of Georgia, in case of non-existence of the fault, the employer's responsibility is excluded and in fact it establishes the responsibility only for the employee. Such regulation clearly contradicts the rules that regulate the liability without fault.

The review of foreign law revealed that vicarious liability may occur not only at the time of the existence of the assignment agreement, but also at the time of the existence of the employment agreement. The agent is the person who is liable to fulfill the principal's instructions. The principal always determines the characteristic of activity, its content and capacity. At the time of existence of increased dangerous activity, the liability of the employer replaces the liability of the employee, since the employer him/herself creates increased danger and, of course, takes responsibility for negative results.

At the time of existence of enterprise risk, while the action of the employer creates increased danger, for determining the liability of the employee, decisive must be the cause of damage – the harm occurs due to the unlawful action of the employee, or the harm occurs with the increased danger.

Considering the above mentioned it is necessary to alter the rules enacted in Georgian legislation and vicarious liability must be established not only at the time of the existence of the assignment agreement, but also at the time of the existence of the employment agreement. While the action of the employer creates increased danger and the harm occurs due to dangerous activity, the responsibility has to be determined only for the employer and the responsibility of employee must be excluded.

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## Surgical Treatment of Scoliosis in Marfan Syndrome: A Case Report

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### **Abstract**

Marfan syndrome (MFS) is a connective tissue disorder of variable inheritance that affects multiple organ systems. Scoliosis affects around 60% of Marfan patients and may progress rapidly during growth spurts, leading to marked deformity, pain and restricted ventilatory deficit. The purpose of this paper is to describe a 13-year-old female patient with Marfan syndrome and surgical treatment of scoliosis. The results indicate that posterior-only surgery with instrumented fixation and fusion is effective and safe for the treatment of scoliosis in selected patients with Marfan syndrome.

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**Keywords:** Marfan syndrome, scoliosis, surgical treatment

### **Introduction**

Marfan syndrome is a disorder of the connective tissue that is inherited in an autosomal-dominant inherited disorder caused by mutations in the fibrillin-1 (FBN1) gene located on chromosome 15q21 that typically affects the cardiovascular, skeletal and ocular systems. Although the clinical manifestations of MFS are highly diverse within affected families, the primary skeletal manifestations, such as tall stature, chest wall abnormality and scoliosis are relatively common characteristics of MFS. These primary skeletal manifestations affect the growth pattern in MFS (1, 3).

Scoliosis affects around 60% of Marfan patients and may progress rapidly during growth spurts, leading to marked deformity, pain and restricted ventilatory deficit (4).

Adequate treatment should be provided for those with scoliosis to reduce pain, to improve overall cosmetic appearance and, most important, to improve pulmonary mechanics through reduction of spinal and chest-wall deformities. Patients with curves greater than 40-50° or with associated abnormal sagittal curvature deformities require surgery.

Surgical treatment of scoliosis associated with Marfan syndrome poses a challenge to spine surgeons (2, 5). The treatment of scoliosis in MFS has been reported to pose unique challenges. However, the information on surgical outcomes is sparse. In clinical practice, surgery for scoliosis in MFS is reported to confer higher perioperative risks and instrumentation-related complications compared with adolescent idiopathic scoliosis because of atypical and rigid curve patterns and the underlying desmogenic disorder (5).

### Case presentation

A 13-year-old female patient with Marfan syndrome was first seen in the outpatient department in 2015. The patient presented skeletal abnormalities including increased height, extremity length, ligamentous laxity and scoliosis; deformities of the lens of the eye and cardiovascular abnormalities and positive family history were observed (Fig.1).

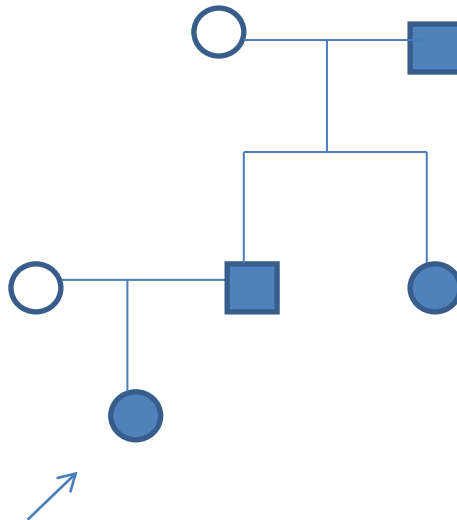


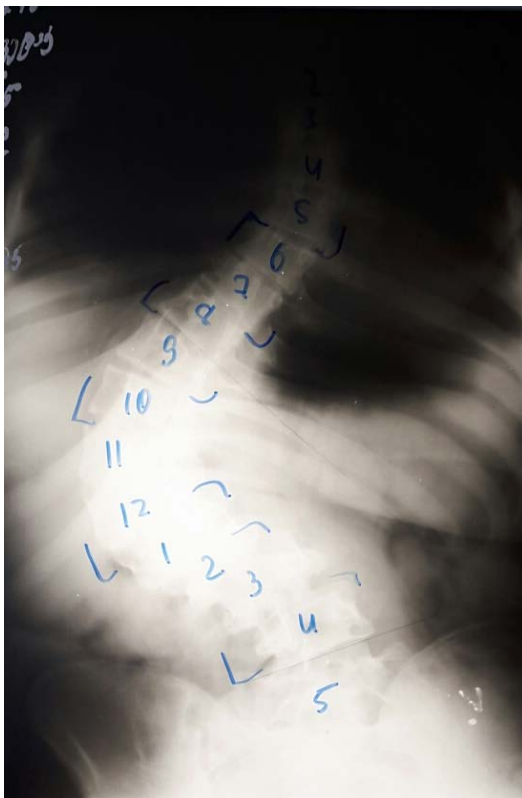
Fig.1. Pedigree of the family

### Patient presenting with a scoliosis of the thoracolumbar spine

She reported of an augmenting side bolster on her loins. X-rays showed a scoliosis of 85° Cobb left-convex with an apex at the 10/11thoracvertebral body and hemi-vertebra Th11-Th12. There were no signs of neurologic symptoms.

X-ray in dynamics showed the progressive deformation of the thoraco-lumbar vertebrae in a patient with Marfan syndrome; there is loss of the normal vertebral concavity associated with progressive antero-lateral growth reduction with exaggeration of vertebral flattening associated with the development of marginal osteophytes Th10, Th11. Ligamentous laxity is

also a cause of the precocious axial osteoarthritis in Marfan syndrome (Fig. 2).



(Fig. 2). X-ray in dynamic showed the progressive deformation of the thoraco-lumbar vertebrae in dynamics in a patient with Marfan syndrome, there is loss of the normal vertebral concavity associated with progressive antero-lateral growth reduction with exaggeration of vertebral flattening associated with the development of marginal osteophytes Th10, Th11. Ligamentous laxity is also a cause of the precocious axial osteoarthritis in Marfan syndrome.

Operative procedure was planned in one steps. First, a ventral release was done at the level L1/L2, L2/L3, L3/4, L4/L5. The dorsal fusion with CD instrumentation of L1, L2, L4, Th7, Th8, Th9, Th10, Th12 with spinal husk fixation in the right position was done. After neurologic control in anesthesia, the fusion was prepared by autografts (Fig. 3).



(Fig.3): Operative procedure was planned in one steps. First, a ventral release was done at the level L1/L2, L2/L3, L3/4, L4/L5. The dorsal fusion with CD instrumentation of L1, L2, L4, Th7, Th8, Th9, Th10, Th12 with spinal husk fixation in the right position was done. After neurologic control in anesthesia, the fusion was prepared by autografts.

Before the operation Cobbe angel was  $85^{\circ}$  and the patient had psychological problems for her spine deformity, but after the operation Cobbe angel was  $25^{\circ}$  (Fig.4,5,6,7). The patient returned to the normal rhythm of her life.



Fig.3, 4. Before the operation

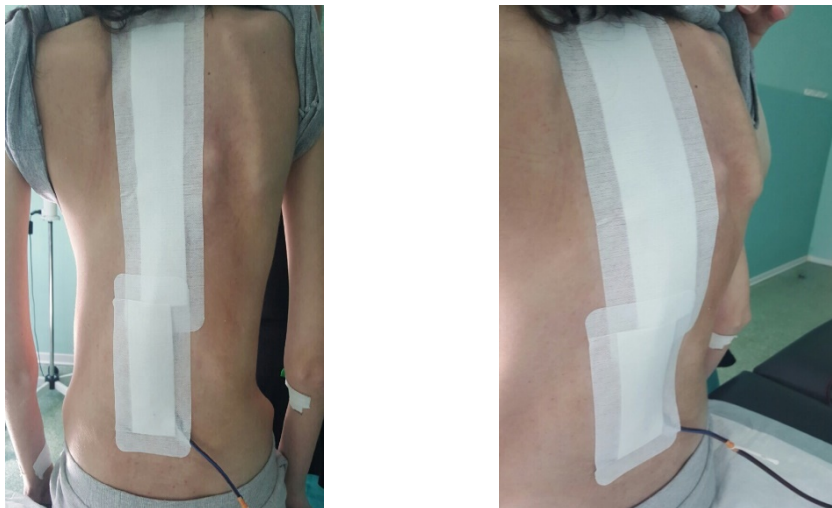


Fig.5, 6. After the operation:

### **Discussion:**

The treatment of scoliosis in MFS, taking into account the individual challenges of the underlying desmogenetic disorder, can be performed with a moderately increased risk for surgical complications compared with adolescent idiopathic scoliosis (5).

Although phenotypic expression can be variable, affected patients often present with skeletal abnormalities including increased height, extremity length, ligamentous laxity, and scoliosis. Deformities of the lens of

the eye and cardiovascular abnormalities as well as positive family history is observed [4]. Our patient presented with all the mentioned symptoms.

The Marfan syndrome scoliosis patients had similar correction results, while having longer operation duration and more blood loss compared with adolescent idiopathic scoliosis (8).

As compared to anterior release combined with posterior spinal fusion, posterior-only spinal fusion could yield comparable clinical outcomes for scoliosis associated with Marfan syndrome (1).

In this case, the report before the operation Cobbe angle was 85° and patient had psychological problems for her spine deformity, but after the operation Cobbe angle was 25° and the patient returned to the normal rhythm of her life.

### **Conclusion**

The results indicate that posterior-only surgery with instrumented fixation and fusion is effective and safe for the treatment of scoliosis in selected patients with Marfan syndrome.

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## Social Media Perspectives in Informational Society

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### Abstract

The main aspects of social media and various attempts of its interpretation are reviewed in the article. The concept, main functions of social media are highlighted, its positive and negative sides and expected tendencies of development are presented. Position of social media optimists is shared in the article according to which, functions and importance of social media is positively seen and understood despite certain resistance. The above phenomenon entirely changed the communicative paradigm of the epoch which became a reason for significant social transformation, on its part. In particular, engagement of citizens in social-political processes, social awareness and level of democracy sharply increased which predetermined significant expansion of area of opportunities of an individual.

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**Keywords:** Informational society, social media, social network, social media optimists and pessimists

### Introduction

The new informational and communication technologies have introduced rather new standards of public life. Internet became the main basis upon which the main aspects of social development are based. Therefore, it is the reference point where fundamental changes were well identified not only in terms of communications, but also in the form of the entire communication paradigm change. It exerted a great influence on social and political life, introduced new symbols, concepts and meanings which became a part of the everyday life.

The concept of informational society is not the sole concept describing a new stage of social development in modern social philosophy and sociology. The following concepts are used to characterize the state of the modern society: "post-industrial society", "knowledge society", "post-bourgeois society", "technological society", "post-market society", "digital society", "network society", etc. Such terminological variety is explained by a qualitatively new reality as it represents a significant change of political, economic, social and cultural life of society which is based on increase of



significance of informational capital and intellectual activities and making them the main style of social life.

One of the most significant phenomena which accompanies formation of informational society is development of social media.

The purpose of this article is to show the main aspects of social media, outline the concepts and functions, present its positive and negative sides and understand the expected tendencies of development.

There are many definitions of social media. Regardless of the fact that the above definitions focus on various aspects of social media, they are not contradictory and mostly express its diversity.

According to Webster's dictionary, social media is forms of electronic communication (as websites for social networking and microblogging) through which users create online communities to share information, ideas, personal messages, and other content (as videos) (23).

Apart from this general definition of social media, we can outline its various features which are mainly accentuated by the above media researchers. For example, in the opinion of Heidi Cohen, social media covers a wide range of content: including videos, audio, photography, PDF, PowerPoint. Sharing by e-mail and through the social network is possible within the framework of one or several platforms of social media. This allows users to create, comment and generally get involved in social networking, increases information dissemination speed and the wide range, provides opportunity of one-to-one, one-to-many and many-to-many communication. It enables communication both asynchronously and synchronously in real time, using wide means of network access, telephones, computers etc. (22)

Part of researchers accentuates effectiveness of using social media in marketing and discusses its aspects within this context, as dissemination of business idea, brand creation, communication with customers etc. became easier by means of the social media.

There are various perceptions, various interpretations of the issue in connection with the social media aspects and they are established in the form of ideas of the "new media optimist" and "pessimist" researchers. Both part of researchers have rather strong arguments and none of them can be ignored, however, it should be mentioned from the beginning that the arguments regarding the positive influence of social media are stronger.

One of the most significant aspects of social media is that it allows disseminating the news faster than the traditional means of communication, radio and TV, could manage. Therefore, development of social media made essential changes to the understanding of the journalist and consumer, significantly changed the journalistic process common for the traditional media. A journalist is not associated only with person having education any

more. So-called "civil journalism" was developed where any citizen connected to the Internet has an opportunity to express his/her opinions and disseminate information. A journalist acquired a wider meaning. Social media helps to unite the people who possess information and allows the consumer to be available for the target audience everywhere and always. On the other hand, recipient of information is not a passive object as well, but a feedback is established between the issuer and recipient of information by means of social media. The process of communication becomes interactive and the consumer personally becomes a creator and disseminator of new information in this process.

Social media researcher Glenn Reynolds, the author of the book "An Army of Davids" considers that while the power was in the hands of few professionals earlier, now the power is in the hands of many inexperienced people, beginners. This is the area where news can be created by everybody (the name of the book, "An Army of Davids" also originates from here). In his opinion, bloggers look like David who fights with the goliath media (i.e. traditional media) (14). Significant part of researchers considers that the above events raised social awareness and made a qualitative change in the process of communication.

Frank Webster provides a different interpretation of this process. In his opinion, unawareness of social issues by many people under modern conditions is caused by the fact that media is oriented at info-entertaining which is even compared to fast food outlets in terms that as fast food outlets offer food of low quality and harmful for health to consumers, the same does the modern media. As a result, the audience which finds it difficult to distinguish between healthy and unhealthy information from this "menu", is forced to rely on images and personal features when making significant decisions (19).

Social media enthusiasts do not agree with this opinion. In their opinion, social networks are not intended only for entertainment. This is a place where one can study social norms, interaction, narratives, personal and group stories etc.

One of the significant signs which positively differentiates the new media from traditional media is the function of the fastest social mobilization of social media which became particularly stronger after creation of Twitter. A number of examples may be provided to illustrate how the fast and effective mobilization of society occurred through it. It is effective means for stimulation of civil activism of population even in the case when the authoritarian regime imposes restriction on other means of communication. It is far more difficult to control Internet activism. Accordingly, activist networks may put the most significant problems for society on the agenda through the Internet and urge political actors to accentuate them. Therefore,

social media optimists concentrate on its function - to oppose the monopolistic possession of power of the political elite over means of communication by which citizen-based democracy is facilitated.

However, this opinion also has opponents. One of the significant problems when considering the information disseminated through social media is that differentiation between rumors and facts may be vague which may create real problems in terms of reliability of information. This, on its part could cause dissemination of wrong information and misleading the society.

Matthew Hindman provides data that majority of people who use the new media to receive information, visit primarily several webpages. Therefore, according to him, despite the excess of information, it cannot be directly correlated with increase of the level of democracy. Moreover, according to some researchers, the new media may even cause weakening of democracy because "citizen journalists" disseminate much unchecked information. (4) Social media researcher Andrew Keen asks a rhetoric question to describe this process – "When everybody is an author, who can be trusted?!" (4, 36).

Michel Foucault used to say prior to development of social networks that the worldwide web creates a certain masked panopticon because the world citizens have brought the spy ears of the state in their homes and it is possible that the wires through which they enter information into our homes can likewise take the information from our house and bring it to other concerned people (11). This threat was intensified under the conditions of development of information technologies and there have been many cases of surveillance and blackmail of citizens and later it is circulated through the social media. This event is demonstrated in such an acute form sometimes that even causes fundamental social-political changes in the society.

There are different opinions among researchers on the role of social media in acquisition of social capital. According to some of them, social media has a favourable instrument of acquiring and maintaining of social capital which is demonstrated in the ability of transformation of social life of the individual as it facilitates connection of people, giving an impetus to their relations and self-realization. Such actions of users have both a rational and emotional meaning. Rational because here the "user" is allowed to "sell" himself/herself to potential employer, position himself/herself as a qualified person interesting for society which will result in increasing one's social capital. Accordingly, apart from rational reasons, self-representation in the Internet may have emotional reasons which also serve self-affirmation. Despite the above positive aspects, social network as the bearer of function of definite facilitator of social relations has its opponents who first of all focus on the virtuality, excessive convenience and flexibility of these

relations. It strongly differs from real social relations which require development of other skills. According to Zygmunt Bauman, "But it's so easy to add or remove friends on the internet that people fail to learn the real social skills, which you need when you go to the street, when you go to your workplace, where you find lots of people who you need to enter into sensible interaction with". (20)

One more important aspect of social media is its function to control social norms. This can be considered as a positive characteristic, however, the issue is related to violation of privacy which on its part, has negative consequences because individual becomes more unprotected from various rumors and disclosure of details of personal life.

In the opinion of one of the researchers, Daniel J. Solove, in big cities where anonymity and privacy are at the high level, society is not able to control norms and Internet performs this function. But at the same time, it has a certain negative side which means that the so-called "Internet shame" is very acute sometimes and sometimes it becomes a "digital burden of the respective person and it becomes impossible to withdraw or change it. (16)

Critics consider violation of privacy as the most significant problem of social media. In particular, private life of Internet users is less protected. The most interesting thing is that individuals often disclose this information themselves which afterwards becomes damaging for them. Susan Barnes introduced a term "privacy paradox" to describe the phenomenon that people care about protection of their privacy and at the same time, disclose much detailed information in the social network themselves. This threat deserves great attention from the media, while social networks offer more and more functions to user for protection of their privacy. Users have to maintain balance between demand of privacy and the desire to make an impression (18).

There is a variety of opinions regarding the prospects of development of social media and its role. However, there is an opinion that its importance will be increased together with development of technologies and this will be demonstrated in various social areas. The level of internetization of this or that country should also be taken into consideration. In this context, opinion of Umberto Eco on the new two-class society is important where in his opinion, the society is divided into "users" and "non-users". The first includes young, educated, high-income professionals from the most prestigious fields and the other includes politically and socially passive, less educated and lower-income people interested in mass culture products which are not necessarily older (17).

Results of the quantitative research on social media conducted in Georgia in 2013 to a certain extent summarize and reflect basic theoretical narratives which are outlined in the scientific literature. In particular, several

positive aspects were outlined as a result of the research which were expected by respondents: raising public awareness - 28.5%, increase of democracy of the country under the conditions of information abundance - 24.6%, expansion of social networking - 22%, increase of the role of social networks in civil activities - 19%.

The following basic factors were outlined among negative prospects: replacement of virtual reality by actual reality - 32%, stealing and misuse of personal information - 28%, use of social media as a political control instrument - 17%, difficulty of identification of reliable information under the conditions of information abundance - 17%. (1, 145-147).

### Conclusion:

To summarize, we may see that both positive and negative results are common for development of social media. Researchers may be divided depending on which results they give advantage to. Therefore, there are categories of "optimists" and "pessimists" among researchers.

Opinions of both groups can be briefly summarized. According to "optimists", development of social media has the following results:

- 1) increases civic engagement and accordingly, level of democracy;
- 2) intensification of relations between various groups;
- 3) facilitation of self-representation of individuals and accumulation of social capital;
- 4) increase of international attention to local problems becomes easier;
- 5) facilitation of economic development and modernization.

According to "pessimists", development of social media has the following results:

- 1) Democracy of social media is only illusive and the situation is not changed actually. On the contrary, the state may use social media for surveillance on its citizens;
- 2) Relations of social groups formed by the Internet are very weak;
- 3) Social media is available to comparatively small groups of citizens as compared to traditional media. Therefore, researchers talk about "digital inequality", "digital controversy";
- 4) Privacy of individuals is violated by means of social media;
- 5) A threat of mixing reality with virtuality occurs.

In my opinion, positive functions and characteristics of social media are much more substantial rather than negative. Therefore, formation of social media should be reviewed as the fact which became the basis of significant changes which is expressed by increase of the social engagement and level of democracy. Accordingly, today an individual is not limited by a specific social environment and the area of self-affirmation is significantly extended which gives the individual a chance to realize his/her skills to the

maximum extent possible. Also, development of social media caused elimination of the problems common for the traditional media. Today we have an irreversible increase of influence of social media all over the world, including Georgia. Increase of influence of social media in the Georgian reality is also predetermined by the fact that the traditional media cannot ensure proper public awareness. Therefore, social media which is free from various types of influences, opens the discussion space which is avoided by the traditional media.

Certainly, all significant changes do not have only the positive side, however, it should also be considered that the humankind cannot refuse to use those fundamental goods. This would be the same as to refuse using cars in the fear of significant increase of victims as a result of car accidents. It is certain that the "new media" has caused new problems, for example, the fact that recently terrorists have tried to promote their ideas and recruit new members mainly through the Internet which is done rather successfully and yet the civilized world is powerless before them. However, the main mistake of social media sceptics is that they pay less attention to the basis of changes and pay the entire attention to negative details which regardless of their reasonableness cannot outweigh the goods brought by development of social media. The task of researchers should be to study and analyze the problems created as a result of development of social media but the positive significance of the factor determining social media as fundamental changes is evident as compared to its negative aspects.

Due to the above mentioned reasons, we should positively evaluate the prospects of social media development in Georgia which will become more "social" because as the country becomes internetized, more and more users will be engaged in it. Accordingly, influence of social media on social-political processes will increase more. Certainly, it should be mentioned that Georgia also cannot avoid the accompanying problems which causes social media development. Therefore, proper research of this issue is important for reduction of possible negative results.

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# Visual and Verbal Communications: Similarities and Differences

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## Abstract

Communication is a process of transmitting some information or data, ideas, thoughts, feelings, emotions through speech, writing, gestures, mimics, eyes and even nonverbal signals. In other words, communication is a process of establishing contacts and developing relations between people. The mostly widely spread types of communication is verbal and nonverbal. Namely this is the subject of research of the presented paper; though, it focuses on the subtype of nonverbal communication – visual communication. The papers deals with similarities and differences between these most important types of communication. The first and most vivid similarity between these types is that in both case we deal with the process of transferring and receiving the information. Secondly, both of them are connected with brain. In both cases, perceptual processing determines the type and amount of information that is sent to the brain for further thought. But if in verbal communication brain receives the information through the organs of hearing (by the uttered words), in the second case the process is accomplished through the organs of vision (by the viewed object). In both cases, the addressee should be very well aware of codes sent by the addresser; otherwise there will be no communication. But in case of verbal communication words, phrases and sentences should be properly understood and in case of visual communication – the objects, images should be properly perceived where symbolism should definitely be minded.

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**Keywords:** Verbal communication, nonverbal communication, visual communication, addresser, addressee, transferring and receiving information

## Introduction

The word communication comes from Latin “communicatio” that means the message or transfer. Generally speaking, we understand *communication* as exchange of information between interlocutors or transferring message from one person to another. One thing is obvious - if

communication between two and more participants of the dialogue is not effective, people will not be able to come to agreement and achieve any goal. Moreover, the term *communication* is closely connected with the social sphere of human life.

Communication is a process of transmitting some information or data, ideas, thoughts, feelings, emotions through speech, writing, gestures, mimics, eyes and even nonverbal signals. In other words, communication is a process of establishing contacts and developing relations between people.

Without communication it is impossible even to imagine nowadays life. It is an integral part of any kind of relation. Knowing its basic principles, it is possible to build more effective relations both in private life and in work.

Communication is a process as a result of which the message is transferred from the addresser to the recipient. If we want our message to be apprehended properly and our communication be effective, we have to show great consideration for creating the message, choosing channels of its transfer, a context, and also feedback. In the course of communication namely an addresser is a source of information. Namely addresser is a person on whom depends how the message is presented, whether it is emotionally colored, how subjective or objective it is, etc.

In the process of transferring the message different barriers can arise overcoming of which depends whether the expected effect of communication will be achieved or not. Barriers can be various: language barriers - if the sender and the recipient of the information are carriers of different languages; notional barriers - if people participating in communication belong to different social groups, have various education level, etc.; semantic barriers - when the sender and the receiver have different understanding of the sent message. The context or conditions of communication also play an important role in achieving efficiency of transferring and receiving the message. It is necessary to consider that the surrounding environment can both impede and contribute to this process.

Nowadays, there exist different types of communication: **Communication within social sciences** (political science, sociology, cultural science, linguistics, philosophy, history, etc.) is the process directed to establishing interrelations between members of society. **Communication in psychology** is focused on exchanging information between living beings, establishing contacts between particular people and groups of people. This is interrelation between an individual and society. **Mass communication** is a process of forming mass consciousness in society with the help of various kinds of media: TV and radio broadcasting, press, etc. **Cross-cultural communication** is communication between representatives of various cultures. But the main and mostly widely spread types of communication is

verbal and nonverbal. Namely this is the subject of research of the presented paper; though, it focuses on the subtype of nonverbal communication – visual communication.

In order to determine the concept "verbal communication" it is necessary to understand what its purpose is and what it is based on.

The closest meaning of the word "communication" is contact, relations between people. The most significant means of communication between people is the use of language. It acts as the tool of knowledge and the tool of thinking. However, the main goal of verbal communication is exchange of any kind of information. Though, this goal can be achieved not only by means of the language. From the earliest times, society used additional sources of transmitting information and establishing communication. Some of them exist even today. For instance, in some African countries, people still use drum signals, whistle language, signals of hand bells, etc. for exchanging messages. In the East, the so called "language of flowers" is used for this purpose. It is used when information cannot be put into words. For example, a rose is a symbol of love, an aster is a symbol of grief, etc. In this case symbolism is involved and in order to establish proper communication, everybody should be well aware of symbolic meanings of each flower. People of those societies consider the mentioned sounds or symbols as a part of verbal communication as they contribute to achieving the main goal - that is to exchange information. But we suppose that it would be better if we discuss them as a part of nonverbal communication owing to the fact that only exchanging information is not enough to refer something to verbal communication. In verbal communication using words should be a must.

Verbal communication is based on three important factors: verbal behavior, verbal relations and speech act. The term "speech relations" is the synonym of the term "verbal communication". Both of these concepts mean bilateral process, and also interaction of people in the course of communication.

The term "verbal behavior" is used to show a unilateral process. It includes the features characterizing speech reactions and the speech of one of participants of the situation - either the addressee, or the sender. This term can be applied to describe making speech at a meeting and in other situations. However, it cannot analyze dialogue because in this case it is necessary to reveal not only verbal behavior, but also mechanisms of verbal interactions. Thus, verbal relation just includes verbal behavior. The term "speech act" denotes specific speech actions of a person who speaks within any communicative situation.

It is clear that the process of verbal communication often assumes using these means of language, its grammar and vocabulary. However, for

successful exchange of information, it is important to know the conditions under which these or those language units and phrases are used. Thus, verbal communication is the broad concept including various methods of exchange of information that allows both - society in general and each person separately to develop.

In everyday life, everybody has got used to communicate with other people by means of words and the interrelated speech. But many of them are well aware of the expression "to understand each other without words". This phrase speaks namely about nonverbal communication.

Actually, all people know nonverbal communication. In the English language there are a lot of such set phrases. For example, it is possible to tell about a joyful, smiling person that he/she "is shining with happiness", "is radiating with joy". When a person is frightened or horrified, it is possible to use such expressions as "fossilated with horror" or "stiffened from fear". The rage and anger are described by the expressions "will burst with rage" or "shivers from rage". At a nervous condition people begin to bite their lips. In all these cases feelings are expressed by means of nonverbal communication. While getting acquainted, interlocutors find nearly half of information about each other not through words, but through nonverbal communication.

Quite often nonverbal communication is called a language of gestures. Understanding of nonverbal language is really very important. Such necessity is conditioned owing to many reasons. Firstly, sometimes only words are not enough to fully understand a person's feelings and disposition. Very often people say such a phrase "I cannot put it into words". Secondly, a person's ability to understand the language of nonverbal communication speaks about his/her ability to be self-controlled. Nonverbal communication can tell what an interlocutor actually thinks of another person. Also, the value of nonverbal communication is that it happens unconsciously and spontaneously. Mimicry, gestures, intonation of a voice can tell about a person much more, than habitual words in everyday life.

Mimicry is a person's countenance. It is the most widespread and understandable manifestation of feelings in nonverbal communication. Positive emotions, such as love, surprise and joy are recognized best of all. It is more difficult to perceive negative emotions. It is more difficult to recognize anger or rage than joy as people can hide anger better than happiness.

There are several main characteristics which speak about a certain feeling what is called body language. For instance, raised eyebrows, widely open eyes, dropped down tips of lips and the slightly opened mouth can tell that a person is surprised. Anger is shown by lowered eyebrows, bent on a forehead wrinkles, closed lips and clenched teeth. A crumpled nose, lowered eyebrows and the lower lip which is stuck out forward express disgust.

Some people do not understand nonverbal communication at all, others understand it partially, and some of them know this language quite well.

One of the most important subtypes of nonverbal communication is visual communication. Visual communication is transmission of information by means of visual language (images, signs, etc.) on the one hand, and on the other hand – by means of visual perception (organs of vision, perception). In everyday life, visual communication can be defined as “everything I see”. However, nowadays visual communication is extremely developed and complicated both at the level of language and at the level of perception due to active development of visual art and electronic and digital technologies.

In XX century, visual communication deeply penetrated in all spheres of culture. Consequently, such concepts as *visual text*, *visual language* and *visual culture* were coined. Visual communication is one of the basic components of modern mass media creating the visual interface of transmitting information, and also transforming and transferring any information to visual language (images and press portraits, photos, etc.). Sometimes, in human consciousness visual side is more effective than content. Content is more forgettable for the mind than an image.

One of the most important pieces of visual communication puzzle is aesthetics. The nature of beauty and why it affects us so deeply seems to be mysterious. But we think that in reality it should be obvious. Beauty arises everything positive in a human being. So, it communicates. Very often, looking at somebody beautiful, one can understand this person’s nature. This fact can be proved by a well-known phrase "a sound mind in a sound body". It is a well-known fact that beauty cannot be put into words, it should be only perceived.

The aesthetic aspects of communication are visible, structural and configurational in nature. It is noteworthy that philosophy, art and science are those disciplines that should be minded while studying the issues about visual aesthetics. Out of the mentioned three disciplines visual art is most important as it gives really complete understanding of visual communication. It is certain that visual communication should apply the same human perception system as art objects do.

It is noteworthy that any physical object contains noticeable relational properties among and between all the visible elements. Every line, shape, value, color, and so on, is related to other visible elements. Out of the mentioned, we would like to emphasize color as, to our mind, color has the greatest power of communication. In this aspect symbolism plays the huge role. It is a well-known fact that colors have special symbolic meanings and in order the communication to be effective one should be have proper understanding of the symbolic value of this or that color.

Creating meaningful connection between the developing visible form and a hoped for message is the goal of the maker. The physical, particular nature is vital to both the viewer and the maker, helping them connect and communicate.

As the image-maker engages in shaping the emerging system of phenomenological elements, an intimate relationship develops between the object and its maker. To fully participate in the creative process, the maker must focus on all emerging physical relationships, mental nonmaterial relationships, plus the relationship to personal intentions and goals. There must also be a concern for the potential response of the viewing audience.

While creating, the maker also serves as an initial viewer of the emerging image. Other viewers will also get visible information from the perception of the object. Short of explicit verbal statements of intention by the maker, the visually literate viewer needs to complete the maker's creative act by interpreting these relationships among visible relationships in the created object.

After analyzing verbal and nonverbal communications (particularly, the subtype of the latter – visual communication) we would like to focus on similarities and differences between them.

## **Conclusion**

The first and most vivid similarity between verbal and visual communications is that in both cases we deal with the process of transferring and receiving the information. Secondly, both of them are connected with brain. In both cases perceptual processing determines the type and amount of information that is sent to the brain for further thought. But if in verbal communication brain receives the information through the organs of hearing (by the uttered words), in the second case the process is accomplished through the organs of vision (by the viewed object). In both cases, the addressee should be very well aware of codes sent by the addresser; otherwise there will be no communication. But in case of verbal communication words, phrases and sentences should be properly understood and in case of visual communication – the objects, images should be properly perceived where symbolism should definitely be minded.

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## ***Heterorhabditis Bacteriophora: An Ecofriendly Biological Control Agent***

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### **Abstract**

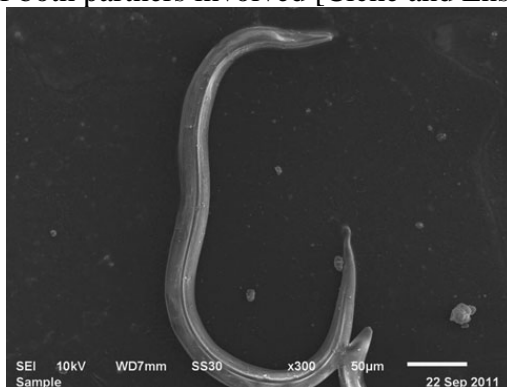
The entomopathogenic nematode, *Heterorhabditis bacteriophora*, is an environmentally safe alternative to chemical pesticides. It is half of a symbiotic relationship with the bacteria, *Photorhabdus luminescens* which lives in the nematode gut. *Heterorhabditis bacteriophora* has a wide range of susceptible insects making it a very effective alternative to current biological control practices. The nematode has been proven to be safe to humans, non-target insects, wildlife, fauna, and water. For this reason, as well as consumers' increasing consciousness of health issues, *Heterorhabditis bacteriophora* should be considered as a viable alternative and researched more thoroughly.

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**Keywords:** *Heterorhabditis bacteriophora*, *Photorhabdus luminescens*, Biological Control, entomopathogenic nematode

## Introduction

*Heterorhabditis bacteriophora* (Hb) is a microscopic entomopathogenic nematode (EPN) that is commonly referred to as a roundworm [Inman et al., 2012]. It is a non-segmented worm that is tapered at both ends (shown in Figure 1). The nematode is one half of a mutualistic relationship with the bacteria *Photorhabdus luminescens* and dwells naturally in soils around the world [Upadhyay et al., 2015]. Due to *Heterorhabditis bacteriophora* naturally occurring in soil, it has been used as a natural biological control agent by growers for many years [Lord, 2005]. The use of this nematode as a biocontrol agent is environmentally safe to humans, animals, plants, other insects [Lacey et al., 2001] and the environment. Hb is economically beneficial because of its ease of use and application, its relative ease of production and its low cost when compared to chemical biological control agents in use today [Lacey et al., 2001]. The presence of the *Heterorhabditis* nematode in itself is not enough to cause virulence in the insect host. Only when *Photorhabdus luminescens* bacteria are present in the gut of the nematode is virulence shown in insect hosts [Holmes et al., 2016]. With this being said, the relationship is not obligate but mutualistic because the nematodes provide a route inside the host for the bacteria and in return, the bacteria kill the insect host and provide food for the reproduction of both partners involved [Ciche and Ensign, 2002].



**Figure 1.** *Heterorhabditis bacteriophora* nematode shown under a scanning electron microscope [Inman et al., 2012].

## Relationship with *Photorhabdus luminescens*

*Heterorhabditis bacteriophora*, is part of a symbiotic relationship with the bioluminescent bacteria *Photorhabdus luminescens* (Figure 2) which lives in the nematode gut [Ehlers, 2001]. Once the nematode and its symbiont bacteria are inside the insect host's hemocoel, *P. luminescens* allows the nematode to survive inside the insect host's body by secreting toxins and antimicrobials directly into the haemocoel [Gulley et al., 2015]. This is done to prevent an immune response against *H. bacteriophora* as well



as preventing invasion of the host by other bacteria. *Photobacterium luminescens* also produces enzymes that break down the carcass of the host in order to provide nutrients for both partners' consumption during reproduction [Gerdes et al., 2015; Patterson et al., 2015]. Each partner of this symbiotic relationship can live without the other in a laboratory setting proving that the relationship is not an obligatory relationship. However, *Heterorhabditis bacteriophora* can only form this type of symbiotic relationship with the bacterium *Photobacterium luminescens* [Kooliyottil et al., 2013].



**Figure 2.** Cadavers of the wax moth expressing bioluminescence after infection by *H. bacteriophora* 2 days previous [Poinar and Grewal, 2012].

### ***Heterorhabditis bacteriophora* as a Biological Control Agent**

The use of EPNs as biological control agents is not a new idea. In fact, *Heterorhabditis bacteriophora* strains have been known as biological control agents since the 17<sup>th</sup> century [Smart, 1995]. However, their use was not taken seriously until the 1930s. EPNs have been used to protect a variety of different plants [Upadhyay et al., 2013] such as, citrus [Abd-Elgawad, 2013], turf [Johnigk et al., 2004], Cotton [Shapiro-Ilan et al., 2002], mushrooms [Georgis et al., 2006], Apples, Pears, and Nuts [Lacey and Shapiro-Ilan, 2003] because they are pathogenic towards more than 200 insect host species [Shapiro-Ilan et al., 2002] from different orders such as, Diptera, Coleoptera, and Lepidoptera [Pilz et al., 2014]. Animal grazing lands and field crops such as coffee, sugarcane, wheat, as well as orchard crops, generally receive chemical, organic pesticides. The percentage of crops currently treated with biocontrol agents is at about 55% [Thakore, 2006]. This is significant because the total amount of organic crops is estimated to be 4.2% of the world's farm land. In 2004, the United States had the fourth largest amount of organic farm land (Table 1) with 950,000 hectares. This represents 0.23% of the world-wide total farm lands. Organic

farming has been shown to allow greater crop growth, better soil health, as well as more natural nutrients and minerals for plant growth [Thakore, 2006]. This means that farmers will be able to grow healthy crops for many more years than farmers using conventional chemical pesticides [Smart, 1995]. The public's increasing awareness of the health risks and the harmful effects of chemical synthetic pesticides is a factor encouraging farmers to switch to biocontrol agents. Examples of the harmful effects of chemical pesticides are the development of resistance and the possibility of meat and milk contamination [Georgis, 2006]. The Food Quality and Protection Act of 1996 has pressed for the regulation of chemical pesticides and has encouraged growers to start to look towards organic biological control agents [Shapiro-Ilan et al., 2002]. The use of biopesticides has risen since the early 2000s in which they were at 1.7% in 2003, 2.5% in 2006 and 4.2% in 2010 [Thakore, 2006]. If growers were to cease the use of synthetic pesticides, then crop yields would increase [Thakore, 2006].

Region	Percent of Global Organic Farmland	Number of Hectares (millions)
Oceania	40%	17.5
Europe	27%	11.5
Latin America	15%	6.6
Asia	8%	3.4
North America	7%	3.1
Africa	3%	1.2

**Table 1.** The total organic farming land on each continent in 2013 [White, 2015].

### **Safety of *Heterorhabditis bacteriophora* as a Biological Control Agent**

*Heterorhabditis bacteriophora* has been shown to have no effects towards humans, non-target insects, the environment, or the fauna [Smart, 1995]. It has also been shown to be sustainable and environmentally safe [Susurluk and Ehlers, 2008]. However, it has been suggested that the use of *Heterorhabditis bacteriophora* as biocontrol agents could allow for the nematodes to become too aggressive of a pesticide causing them to wipe out beneficial insects [Lord, 2005]. An argument countering this reasoning is the *H. bacteriophora* nematodes are effective against many different insects in laboratory trials [Hazir et al., 2003], however, in field trials, they possess a much more narrow range of insects which would prevent them from moving on to kill beneficial insects. Once the host insects are no longer present, the nematodes will die off [Susurluk and Ehlers, 2008]. Ideally, nematodes will recycle in the soil after the initial application for years afterwards. However, factors such as low efficacy under bad conditions, timing of initial application, temperatures, and insect availability affect the number of nematodes present [Smart, 1995].

### **Modified *Heterorhabditis bacteriophora* Nematodes**

The use of transgenic nematodes with heat tolerance genes as biological control agents could potentially allow nematodes to infect and survive in mammals due to their ability to tolerate the warmer temperature. It has been shown that transgenic nematodes would not pose any extra threats to the environment when applied to fields in wide-scale trials [Wilson et al., 1999]. In a study comparing heat tolerance and desiccation tolerance, strains with heat tolerance genes caused slightly higher levels of virulence and expressed a better ability for host penetration and reproduction compared to strains with desiccation tolerance [Mukuka et al., 2010]. The use of inbred lines has also been shown to possess beneficial traits that are superior to those of their parent cells [Bai et al., 2005].

### **Commercial Production**

There are a few things that must occur before the wide spread acceptance and use of EPNs as biological control agents will happen. First, it is important to increase virulence and performance under conditions that are not ideal. The species must be able to tolerate variation in the environment. Second, increased profit for production companies and lower retail costs for grower. Third, ease of application as well as greater persistence and shelf life [Lacey et al., 2001]. A method to allow infected juvenile nematodes to survive longer in temperatures greater than 35 degrees Celsius will allow nematodes to be transported easier as well as increase their shelf life. Currently, this is a major obstacle currently facing the wide spread acceptance of EPNs [Mukuka et al., 2010]. Short term exposure to temperatures higher than 35 degrees Celsius can lower infected juvenile reproduction ability, activity, and viability [Mukuka et al., 2010]. This could be extremely costly to producers because the product is no longer effective against insect pests. Other than temperature sensitivity, other major disadvantages of nematodes are specificity (the range of insects susceptible), time needed to kill the host, and the cost compared to chemical pesticides [Lacey et al., 2001]. Application methods of the nematodes must be considered. These must either be overcome or alleviated by the advantages in order to be an economically viable solution to the pesticide problem.

EPNs are mass produced in liquid media [Johnigk et al., 2004] using bioreactors [Inman et al, 2012]. These bioreactors are extremely costly and for smaller companies, may not be feasible. For that reason, many companies pull their nematode products off the shelves and quit production shortly after they begin. However, the developments in the equipment and technologies may allow for faster production which would allow for profits to be higher and more attractive in the eyes of producers [Hazir et al., 2003].

### **Issues with *Heterorhabditis bacteriophora* Use**

Ploughing fields is a normal part of farming field crops, however, it causes an immediate decrease in the number of nematodes present in fields (Figure 3). It has been shown that the use of a harrow to till land had a much less dramatic effect of the nematodes [Susurluk and Ehlers, 2008].

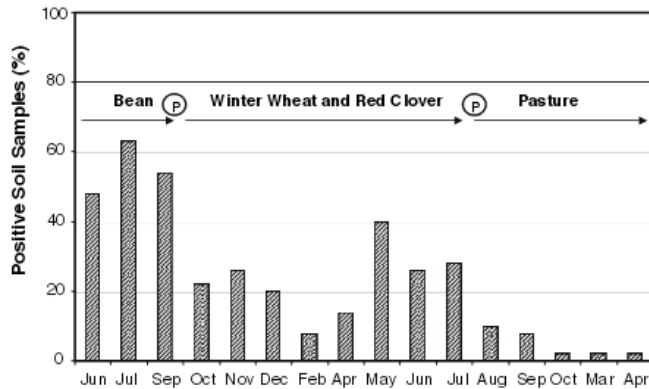
*Heterorhabditis bacteriophora* strains are known for having low tolerances to both heat and desiccation. Because of that, it has been suggested that these strains be genetically modified to tolerate a higher temperature, desiccation, or a combination of both [Segal and Glazer, 2000]. One *Heterorhabditis bacteriophora* strain, KKMH1, has been found to be heat tolerant [Seenivasan and Sivakumar, 2014]. KKMH1 was isolated from dry regions and is more tolerant towards desiccation than other strains. However, other reports indicated that *H. bacteriophora* strain KKMH1 possessed no tolerance towards rapid desiccation [Seenivasan and Sivakumar, 2014]. *Heterorhabditis bacteriophora* was shown to be very tolerant to heat when compared to *H. indica*, and *H. megidis* [Mukuka et al., 2010].

Storage is also a potential issue with *Heterorhabditis bacteriophora* due to their inability to survive in temperatures above 35 degrees Celsius. This makes transportation difficult as well as significantly limits the shelf life of the product. In turn, this can limit the use of EPNs as biological control agents [Smart, 1995].

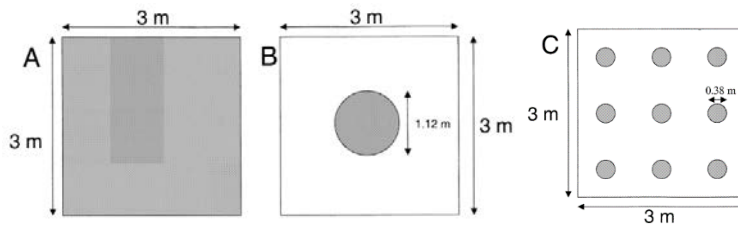
The cost of treating crops with nematodes can be expensive. The effectiveness of an application of EPNs relies heavily on conditions such as temperature, rainfall, and soil conditions [Pilz et al., 2014]. Due to this, repeated applications might be required to maintain the level of control over the pests. This is expensive and work intensive. As strains of nematodes become more hardy, more growers will invest in them [Smart, 1995].

Nematodes can be applied to soil by many different methods, including foliar applications and surface applications [Lacey and Geogis, 2012]. Foliar application of EPNs has been shown to be the least effective due to intolerance to desiccation. It is possible that the engineering of a desiccation tolerance gene could be added to make foliar applications more feasible, but as of this writing, it has not been accomplished. Surface applications are when nematodes are applied directly onto the soil. It is normally paired with irrigation to sustain the nematodes until they can migrate into the soil. Surface applications have been recorded as being the most successful method [Lacey and Geogis, 2012]. Since nematodes in the infected juvenile stage (IJs) are capable of tolerating higher pressures, they can be applied using conventional methods. EPN water suspensions are sprayed directly onto the soil allowing them to infect the insect pest while they are moving over or through the soil [Lacey and Geogis, 2012]. One

study suggested that the use of a one-patch application (applying the nematodes in only one portion of the field) was ineffective and did not reduce the grub population. However they discovered that the use of a uniform application method as well as a nine patch method (applying nematodes in 9 evenly spaced areas) was effective in reducing the grub population after a year [Wilson et al., 2003]. The application patterns are shown in Figure 4.



**Figure 3.** The percentage of soil samples from a field of beans followed by wheat and red clover and then a pasture containing *Heterorhabditis bacteriophora*. Samples were taken over a period of two years beginning in July 2002 and ending in August 2004. After April 2003 no nematodes were recovered. “P” indicates when ploughing occurred [Susurluk and Ehlers, 2008].



**Figure 4.** Application pattern of three nematode application strategies to 3 by 3 meter plots: (A) uniform application, (B) one patch application, (C) nine patch application [Wilson et al., 2003].

### Effectiveness of *Heterorhabditis bacteriophora*

Entomopathogenic nematodes are cruisers which makes them more effective against insect hosts which are less mobile below the soil surface [Shapiro-Ilan et al., 2002]. Due to this, nematodes are more effective in fine textured soils which retain moisture in the upper layers of the soil where most insects reside [Shapiro-Ilan et al., 2002]. Soils with low moisture levels reduce nematodes mobility which greatly hinders their host-finding success [Ebssa et al., 2001]. EPNs can generally only survive in dry soils for a maximum of 2-3 weeks [Pilz et al., 2014] making it difficult to use them as

biological control agents in arid regions. *Heterorhabditis bacteriophora* and other EPNs have been tested for suppression against the Black vine weevil, Japanese beetle, White grubs, and Chafers. The results are shown in Table 2. It was shown that *H. bacteriophora* is an excellent agent against the Japanese beetle. It works well against the Black vine weevil and White grubs, and a fair match against Chafers [Shapiro-Ilan et al., 2002]. Another study showed that White grubs could sustain a *Heterorhabditis bacteriophora* population for years after the initial application in undisturbed areas such as golf courses and turf [Pilz et al., 2014]. This shows that, in theory, the use of EPNs as biological control agents is highly effective. However, in reality, there are other forces acting against nematodes in the soil. Such forces include natural predators such as mites and other nematodes [Rosenhein et al., 1995].

Pest	Nematode Species	Host Suitability (% Suppression)	Number of References in Analysis
Black vine weevil ( <i>Otiorynchus sulcatus</i> )	<i>Heterorhabditis bacteriophora</i>	Good (71)	7
	<i>Steinernema feltiae</i>	Good (75)	3
	<i>S. carpocapsae</i>	Fair (58)	5
Colorado potato beetle ( <i>Leptinotarsa decemlineata</i> )	<i>S. carpocapsae</i>	Fair (57)	3
Corn rootworms ( <i>Diabrotica</i> spp.)	<i>S. carpocapsae</i>	Good (61)	7
Japanese beetle ( <i>Popillia japonica</i> )	<i>H. bacteriophora</i>	Excellent (80)	7
	<i>S. carpocapsae</i>	Fair (47)	6
	<i>S. glaseri</i>	Good (63)	3
White grubs ( <i>Phyllophaga</i> spp.)	<i>H. bacteriophora</i>	Good (72)	3
Chafers ( <i>Cyclocephala</i> spp.)	<i>H. bacteriophora</i>	Fair (59)	3
Sciaridae ( <i>Lycoriella</i> spp. and <i>Bradysia</i> spp.)	<i>S. feltiae</i>	Excellent (89)	5
Leafminer ( <i>Liriomyza trifolii</i> )	<i>S. carpocapsae</i>	Good (66)	3
Black cutworm ( <i>Agrotis ipsilon</i> )	<i>S. carpocapsae</i>	Excellent (86)	5
Diamondback moth ( <i>Plutella xylostella</i> )	<i>S. carpocapsae</i>	Fair (56)	3
Corn earworm ( <i>Helicoverpa zea</i> )	<i>S. riobrave</i>	Excellent (90)	4
Borers ( <i>Synanthedon</i> spp.)	<i>S. feltiae</i>	Excellent (86)	4
<i>Spodoptera</i> spp.	<i>S. carpocapsae</i>	Poor (27)	3
Imported fire ant ( <i>Solenopsis invicta</i> )	<i>S. carpocapsae</i>	Poor (25)	3

**Table 2.** An analysis of various insect hosts for suitability for EPNs [Shapiro-Ilan et al., 2002].

### ***Heterorhabditis bacteriophora* and Chemical Pesticides**

There is concern about whether or not EPNs can safely be used with conventional chemical pesticides or best used on a rotational basis. Agricultural researchers have suggested that high exposure to inorganic fertilizers can inhibit the ability of nematodes to infect insect hosts. However, short exposures actually increased the nematodes ability to infect insect hosts [Stuart et al., 2006]. This suggests that chemical fertilizers may cause the nematode populations to die off, but the use of chemical fertilizers in rotation might also increase nematodes effectiveness [Denoth, 2002].

### **Conclusion**

The notion of using the entomopathogenic nematode *Heterorhabditis bacteriophora* as a biological control agent against insect pests has been around for years but it is only recently starting to gain popularity with growers. As the movement for healthier foods and environmentally friendly pesticides are being called to replace chemical pesticides, the popularity of EPNs has grown. The benefits of using biological control agents are safety to humans, plants, wildlife, and the environment. Also better nematodes mass production technologies are being developed. These aspects will allow the use of *Heterorhabditis bacteriophora* to become a widely accepted, economical environmentally friendly alternative to conventional chemical pesticides currently being employed by growers.

### **Acknowledgments**

Financial support was provided in-part, by: Farm Bureau of Robeson County, North Carolina; University of North Carolina at Pembroke (UNCP) Office of the Provost and Academic Affairs; UNCP Department of Chemistry and Physics and UNCP Thomas Family Center.

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## Remarks on Mortgage Certificate Institute

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### Abstract

The presented article deals with the importance of mortgage certificate and the circumstances hindering its use in practice that very often occur in private law relations. Namely this determines topicality of the given issue. In 2007 amendments were made in the civil legislation of Georgia to simplify procedures of assignment of mortgage ensured claim. In particular, legal norms regulating the mortgage certificate were established. However, the mortgage certificate institute could not manage to find its niche in the private law relations. As a result, the norms regulating the mortgage certificate in legislative acts carry only informative character. Comparative-legal analysis of the abovementioned legal norms enables us to determine the reasons why establishment of Legal norms regulating mortgage certificate failed in 2007. Alongside with this, it is anticipated that there will be interpretations of legislative changes necessary for putting mortgage certificate into practice. It will also clarify goals and results of simultaneous existence of mortgage certificate and registry extract, possibility of replacement mortgage certificates with registry extracts.

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**Keywords:** Mortgage certificate, securities, registry extract

### Introduction

On May 29, 2007, in the civil legislation of Georgia amendments necessary for simplifying the procedure of assignment of mortgage secured claim were made. In particular, mortgage certificate regulatory legal norms were introduced.

The importance of the issue is determined by the fact that since 2007, the institute of mortgage certificate cannot be established in private law relations. As a result, regulations in legislation have only informative character.

Minding all this, the subject of the research is to determine the place and importance of mortgage certificate in private legal relations, study hindering circumstances of using a mortgage certificate. The main objective is to explore and analyze the reasons that cause similar results.

The article will discuss the possibility of using mortgage certificate in practice by detailed studies of national legislation and practice. We also intend to compare regulatory norms of mortgage certificate with legal standards of other countries. It can be said that we very often face the facts of replacing mortgage certificates with registry extracts which confirm that mortgage certificate regulatory norms only formally fill the legislative text. Ignoring mortgage certificate by the society indicates to the necessity of legislative changes and underlines the importance of the issue.

The process of mortgage origination consists of several stages. Firstly, it is necessary that the owner of the immovable property and the mortgagee sign a notarized contract. Legal interpretation of these words is the following: They need to have a notarized document stating that they reached the agreement and that the agreement ensures provision of basic relations.

However, it is also possible that certificate of indebtedness stating mortgage obligation be notarized (8, 68).

To avoid fraud in registration, it is necessary that the notarized documents indicate the owner immovable property, mortgagee, the third party debtor, as well as the amount of the secured claim, benefits, and terms of performance; secured obligatory relations can also be indicated (4, 331).

Legal doctrine generally considers three historical systems of claim assignment: the assignment of claim within contractual relations, assignment of mortgage claim by public register and assignment of claim through the mortgage act (6, 146).

From the explanatory note enclosed to the legislative draft of the Civil Code of Georgia in 2007 it becomes clear that the legislature intended to introduce a mortgage certificate with the following contents:

After the registration of the mortgage, in response to the creditor's requirement, the debtor shall issue a mortgage certificate i.e. negotiable and indorsed securities which, in turn, is a document that proves a principal and accessory right. The legal regime for securities established by the active legislation applies to the document.

The latter is a simple way to confirm the civil-legal relations that it contains. It also determines the possibility of its pledge. Mortgage program is registered in the public register. Revocation of the mortgage certificate is related to the requirements that the mortgage certificate contains or to the voluntary transmission of the mortgage certificate to the owner.

In German private law the mortgage certificate (Hypothekenbrief) is issued by the body providing the Estate Book if the parties did not rule out issuing it on the basis of a special agreement. In such cases mortgage is registered without issuing a certificate and it is so-called the Estate Book mortgage (Buchhypothek) (7).

Georgian private law evaluated introducing of mortgage certificate as an institution that is characteristic for common law, though it is familiar for a lot of countries with European legislation. In the given article I will discuss some issues of German civil law.

As for the Georgian private law, it considers the mortgage certificate as a kind of "card" mortgage, the alternative for "the book" Mortgage. It provides excessive turnover capacity of mortgage rights (9).

Although mortgage certificate was thought to simplify the process of determining and transferring mortgage rights, we can say that it could not manage to free itself from legislative requirements established for Estate Book mortgage, which is why it could not compete with a document such as the extract issued by the public registry.

According to the Georgian legislation issuing a mortgage certificate is preceded by the process of mortgage origination. Origination of mortgage rights depends on registering mortgage right in the public registry and not on issuance of mortgage certificate (7).

According to the paragraph 2 of the Article 289 of Civil Code of Georgia, on the basis of the parties' agreement and the creditor's request mortgage certificate is issued by Public Registry. Mortgage certificate is registered in the public register. It should be noted that "parties" in this case refers to the estate owner and the mortgagee.

According to the German Civil Code, mortgage right shall arise from the moment of registration. As the Article 1116 of the German Civil Code states, mortgage certificate is issued after the registration. To rule out issuing a mortgage certificate, it is necessary that the parties – owner and mortgagee agree and register mortgage at the estate registry (9).

In contrast with Georgian Civil Code, legislator of German Civil Code imperatively sets "issuance of mortgage certificate", though it allows exceptions in case agreement between parties is achieved. As for the Civil Code of Georgia, it does not imperatively demand issuing a mortgage certificate and it only considers issuing a mortgage certificate by a regulatory authority in case of agreement between parties and the creditor's request.

According to the Article 289, part 3 of the Civil Code of Georgia, the type of transaction on the basis of which a mortgage certificate shall be issued, namely, mortgage agreement, must be notarized. Considering the mortgage agreement all legal actions which require notarizing must be certified by the same notary who notarized the mortgage agreement (7). I believe that this legal requirement restricts the simple process of notarizing the agreement which contains the mortgage rights.

In Private legal relations a mortgage certificate is loaded with two meanings. The legislator explains that "the mortgage certificate is a security which confirms the right of its legal owner":

1. Demand fulfillment of the obligations under the mortgage contract;
2. In case of failure to fulfill the obligations, satisfy the requirement by the subject of mortgage (1).

However, the legislator did not specify to whom the primary mortgage certificate is issued, to the owner or the mortgagee.

Unlike the Georgian Civil Code, the German Civil Code considers issuing a mortgage certificate to an owner by the regulatory authority, in exceptional cases, to a creditor. According to the paragraph 3 of the Article 1117 of the German Civil Code, the creditor gains mortgage which is confirmed by the certificate by achieving agreement with the owner.

German Civil Code considers cases when a creditor receives a mortgage certificate from an owner on the basis of agreement between the parties. The creditor is given an opportunity to obtain a certificate from the regulatory body which will speed up receiving the mortgage attested by the certificate. According to German legislation a creditor can obtain mortgage if there is a corresponding record and a valid claim, in particular, "If the creditor holds a certificate, then it is assumed that the transaction has already been made"(9).

The fact that the mortgage certificate is drawn up in a single copy means that despite the content of the claim and multitude collateral subjects, the mortgage certificate is issued only as one document. Legislator considered issuing one copy of mortgage certificate on a general mortgage. However, attention should be paid to the fact that the German legislation considers it permissible to issue several "mortgage certificates", particularly, in case of partition of the claim to issue "partial mortgage certificate" for each part "which replaces the part of the original certificate it is related to.

Mortgage certificate has double legal nature which is given as one whole. It means that the document gives the property right and at the same time determines the obligations (6, 149).

The Article 289<sup>2</sup> of the Civil Code of Georgia determines the content of mortgage certificate and its requisites.

The requisite of security is its content and the content of the document – property right. Some scholars consider that the content of the document refers to the technical side of its provision, and the information given in the requisites differentiates securities from each other (5, 31).

According to the Article 289<sup>2</sup> of the Civil Code of Georgia, mortgage certificate should contain the following information: "mortgage certificate" as a title, mortgagee's name and address, debtor's name and address, immovable property owner's name and address, mortgaged property registration code and the address of the collateral subject, information about registration of mortgage certificate in the public registry indicating appropriate requisites, information whether the subject of mortgage or its

part is loaded with other mortgage or property or obligatory right, date and time of drawing up mortgage contract, terms of obligation fulfillment, date of issuing mortgage certificate.

Mortgage certificate gives information about one kind of right, public registry extract gives the full legal information about the property. It states property rights, obligations and the facts of public restrictions, particularly, the following information: “extract from the public registry” as a title, the unique cadastral code of the estate, date and time of preparing a registry extract, ground for preparing and extract, requisites of the application, address of the estate, type and function of the immovable property, the owner’s name, last name and ID, requisites of the ownership document, mortgagee’s name and address, requisites of the mortgage agreement, requisites of the mortgage agreement registration, information about tax lien, information about other obligations: seizure/injunction, information about debtors’ registration in the registry.

While exercising registering procedures, public registry creates and updates each registry extract on the basis of registration requirements. Extract as a single document, gives information on the legal status of the object of registration (3). Functions, which the legislator linked to a mortgage certificate, are successfully fulfilled by the document issued as an extract. The exception is a mortgage opportunity. Obviously, only transaction of the mortgage certificate to a new creditor cannot clarify the type of legal load that the collateral subject carries.

The legislator did not consider setting restrictions on the following: If a mortgage certificate is issued on the property, all further origination of a mortgage should be based on a transaction of a mortgage certificate and the previous mortgagees should be legally guaranteed.

It is important that according to the paragraph 2 of the Article 289<sup>2</sup> of the Civil Code of Georgia, authenticity of mortgage certificate is proved by a seal of the Public Registry. And this happens when the seal as the requisite of authenticity of the document issued by the Public Registry, is removed from the registration circulation. Obviously, the seal cannot be granted force of compulsoriness exceptionally for a mortgage certificate (3).

All this indicates that amendments in legislation of the Civil Code of Georgia regarding the authenticity of the mortgage certificate are necessary.

## **Conclusion**

According to the considerations, it is available to point out some important thesis.

First of all, it should be noted that in practice of regulatory norms usage of mortgage certificate is related to some problems that requires appropriate actions from legislator.



I believe that the current legal form of a mortgage certificate does not ensure its exercising in practice and requires necessary legislative amendments. Mortgage certificate could not manage to establish itself in private law relations. It is conditioned by the fact that the Civil Code of Georgia does not state how mandatory it is to issue mortgage certificate after its registration. I believe that the legislator has to set its compulsoriness and the paragraph 2 of the Article 289 of the Civil Code of Georgia formulated as follows: “Arising of mortgage should be attested by a mortgage certificate. Issuance of a mortgage certificate should be ruled out in case of the agreement between the parties”.

I suppose that the Civil Code of Georgia should consider that one mortgage certificate be issued per item of property what will make it possible to issue a mortgage certificate in compliance with multiplicity of collateral subjects.

I consider it is expedient to abolish the paragraph 2 of the Article 289<sup>1</sup> of the Civil Code of Georgian which states that the mortgage certificate should be issued in a single copy. Based on this, amendments should be entered in the paragraph 4 of the Article 289 of the Civil Code of Georgia and formulated as follows: "If the claim is secured by a mortgage on several items of real property, a partial mortgage certificate is issued for each item”.

The conducted research gives us the opportunity to say that mortgage certificate regulatory norms in the legislative acts carry only informative character. It is necessary to make legislative amendments in the norms which will establish usage of mortgage certificate in private legal relations. While mortgage certificate and registry extract competition their simultaneous existence should be justified

Otherwise it would be better if the Civil Code does not contain stagnant norms and the regulatory norms of mortgage certificate be abolished and mortgage certificate be replaced by registry extract at the legislative level.

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# Measuring the Efficiency of the State Administration Through the Key Performance Indicators

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## Abstract

Efficiency has long played a central role in the contested terrain of public administration values. The theoretical part of this paper explains the role and importance of organizational theory at the micro and macro level. The new public management movement was only the latest demand that public organizations promote efficiency by adopting business methods. This paper analyzes the existing business processes and explores how to determine the optimal model of business processes in the Tax Administration. The goal of this model of business is to increase business efficiency and reflecting on all users of the Tax Administration.

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**Keywords:** Public administration, efficiency, business process, key performance indicators

## Introduction

In any attempt to make improvements to processes, it must be possible to measure performance, otherwise there is no way of knowing whether, or proving that, there has been an improvement. During the research, a number of possible key performance indicators were identified. Key performance indicators are measures by which the performances of organizations, business units, and their divisions, departments and employees can be periodically assessed, compared and benchmarked.

At the organization level, key performance indicators can be used for reviewing and will be useful for tracking, in the future, the effectiveness of any proposed changes to the business processes in the Croatian Tax Administration. Key performance indicators are defined as part of a hierarchical functioning and decision-making process.

The main part of the paper deals with explaining the benefits of the proposed changes which can help the Croatian Tax Administration to improve its effectiveness and efficiency and achieve its goals and strategy.

The changes have been divided into two groups, firstly those which have been the result of the reengineering process, and secondly those which have been suggested based on international best practice and the tax experts experience. Not all the changes involve changes to the processes themselves. The changes proposed from the reengineering process have been divided into four different domains: Croatian Tax Administration organizational changes, legislative changes, workflow changes and general changes.

### **Definition and characteristics of efficiency and public administration**

The basic question of every organization including the public administration is a matter of efficiency. In the public service efficiency means that the taxes paid by citizens and other entities, as efficiently as possible, converted to high-quality public services. (Public services, 2003)

Public administration is not profit-oriented organizations. This restriction implies that employees have no incentive to provide the maximum in performance of their duties. The management of the public administration has a number of limitations related to the ability to motivate employees. Thus comes to a grinding achieving productivity of public administration. The absence of a standard system of indicators and methods of problem analysis in assessing the efficiency and effectiveness of the public sector.

The state administration must adapt in order to provide answers to the major challenges that stand in front of it: (Flynn, N., 1995).

- pressures on public spending caused by cyclical trends in national economies,
- seeking a higher quality of public services ,
- competitive pressures that strengthens influenced ideas about the efficiency and management of the services that come from the private sector.

Understand the basic difference between management solutions and organization are one of the main contributions to the theory of organization (Daft, R. L., Steers, R. M., 1986).

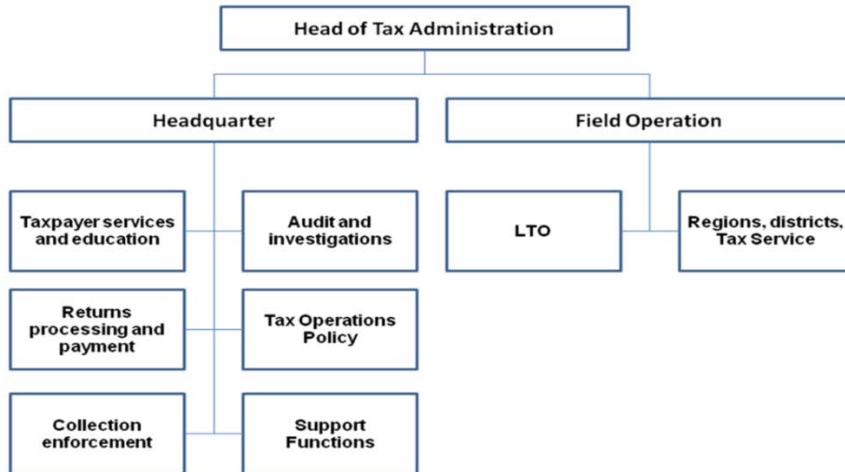


Figure 1: Typical tax administration function-based organization model

Several common tax administration activities emerge in a function-based model:

- **taxpayer services and education**—strategies, materials and channels for delivery of education and services targeted at specific taxpayer segments;
- **returns processing and payment**—timely processing of all tax payments and returns, electronic commerce, and all related accounting systems;
- **audit and investigations**—national audit strategy, procedures for all types of audit, including single issues audits, audit standards, coverage rates, etc.;
- **collections enforcement**—collection procedures and legal issues; and
- **tax operations policy**—appeals, rulings and operational policy for all tax types, legislative review, international activities and double taxation agreements; and other residual issues.

There are also a number of **support functions** useful to have present in the headquarters organization that provides service to the entire tax administration. These include:

- **human resources**—to manage the human resources function for the entire administration, including staffing and recruitment, compensation, employee relations (all set within the broader government context managing the employment relationship)
- **finance and budgeting**—managing and overseeing the budget allocated to the tax administration and its further allocation to headquarters and field units

- corporate planning—preparing a regularly updated strategic plan and overseeing the development of operational and work plans by individual units
- information technology—managing the tax administration’s IT platform (including both its hardware and software)
- internal audit and internal investigations—reporting directly to the head of the administration, undertaking internal audits and internal investigations of staff as needed.

In case of Croatian Tax Administration, the HQ support functions could be grouped together into one cluster that reports to the head of the tax administration. HQ support functions provide functional direction to field units in the same manner as described for tax administration functions.

### **Objectives of tax administration in Croatia**

Improving revenue performance is one of the most important objectives. To be able to achieve this objective possible options and priorities for tax administration improvement need to be clear. The necessary processes to prepare changes in tax legislation need to be pre-determined. Business process management allows you to start small changes in one or several business processes, as well as the expansion of optimization in a way that suits the organization (Lusk, S., Paley, S., Spanyol, A, 2003).

The developed tax administration strategy needs to have clear indication of priorities and limits. Six essential elements required for executable tax administration improvement are:

- An explicit and sustained political commitment;
- A team of capable, officials dedicated full-time to tax administration improvement;
- A well-defined and appropriate strategy;
- Relevant training for all involved staff;
- Appropriate (if necessary additional) resources for the tax administration;
- Changes in “incentives” for both taxpayers and tax administrators.

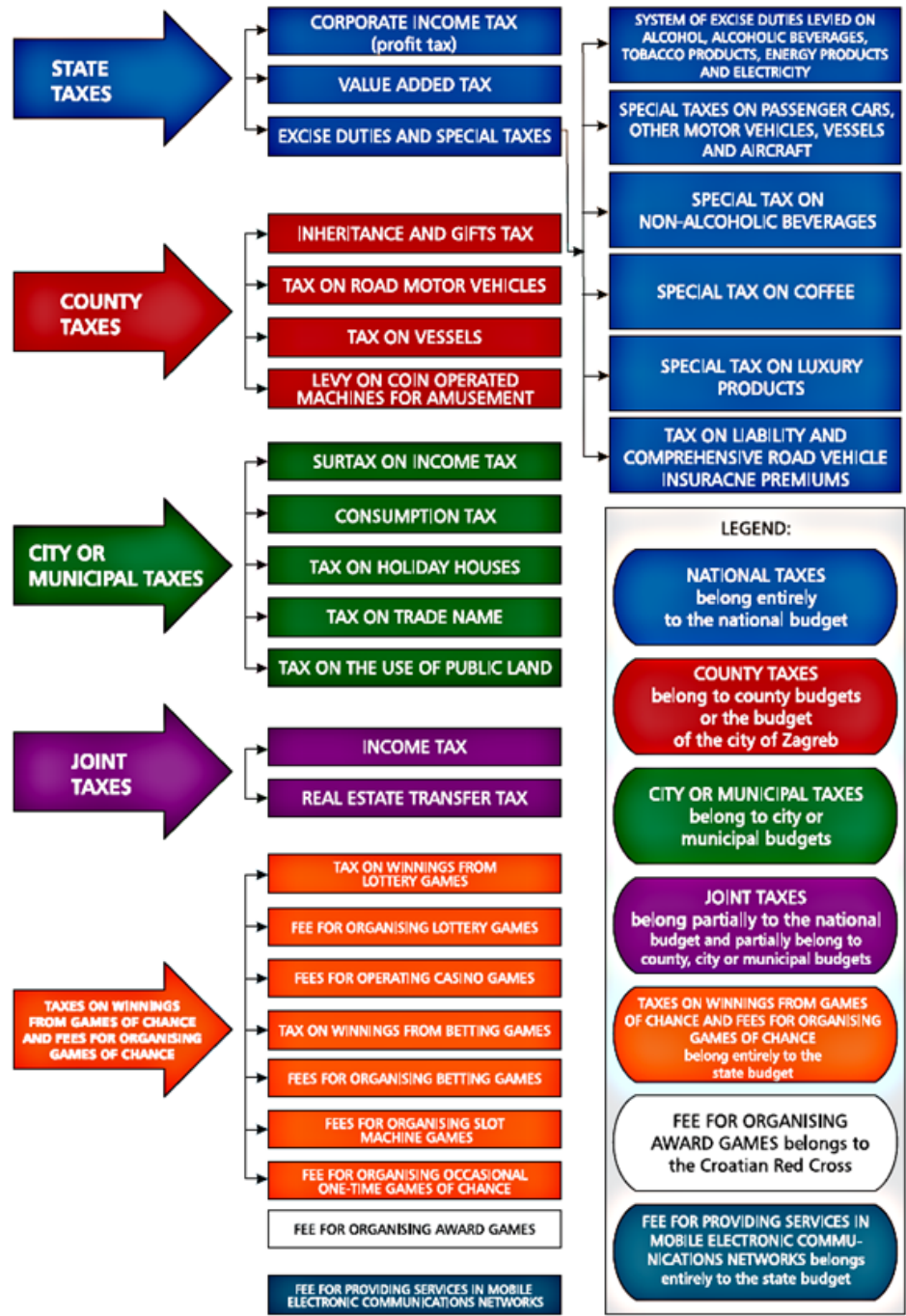


Figure 2: Tax system in Republic of Croatia

Improving tax administration requires an understanding of its problems. Strategic (political) level and execution (tax factory) level must be clearly separated. The most critical deficiencies in the functioning of a tax

administration and the most important priorities in the “reengineering” process to create modern and effective revenue authority must be clearly defined. The changes should be aimed at developing the capacity through which individuals, institutions and companies empower decision-making and self-formation of the direction of development. (Lopes, C., Theisohn, T., 2003)

Tax administration processes are interdependent. Selective reform efforts in one area will show limited results in a tax administration with generally weak performance. Tax administration processes are interdependent. Selective reform efforts in one area will show limited results in a tax administration with generally weak performance. Process orientation helps businesses in considering how their activities and jobs are added or subtracted value for consumers and adds a new dimension to the organizational structures of complexity. (McCormack, K.P., Johnson, W.C., 2001)

An improvement in the audit selection process, e.g., will have limited impact on tax revenues, if the collection function of the tax administration is not performing; and the establishment of a Large Taxpayer Unit will not be effective, if due to a lack of training qualified tax inspectors are not available to staff the unit. A comprehensive reform approach therefore is compelling to improve the efficiency and effectiveness of highly ineffective tax administrations.

### **Research role of key performance indicators in Croatian tax administration**

Key performance indicators (KPIs) are measures by which the performances of organizations, business units, and their divisions, departments and employees can be periodically assessed, compared and benchmarked.

At the organization level, key performance indicators can be used for reviewing and will be useful for tracking, in the future, the effectiveness of any proposed changes to the business processes in the Croatian tax administration (CTA). Key performance indicators are defined as part of a hierarchical functioning and decision-making process. The hierarchy of business process components is described in the chart below. The performance indication is possible at each level of the process hierarchy. The higher level key performance indicators could be calculated based on lower level ones.

The possible procedure of implementation and utilization of KPIs is briefly outlined below.

- The strategy of the organization is first formulated including the definition of business, managerial and operational tasks.

- Objectives are defined for each strategy aspect.
- KPIs are determined for each objective.
  1. KPIs should be acceptable, understood, meaningful and measurable.
  2. If necessary, actual values of KPIs that are required for comparison with target values during periodic performance review must be available.
  3. KPIs should be meaningful so that the fulfilment of their targets actively contributes to organizational improvement. The change in the value of the KPIs should clearly show the result of the reengineering.
- The necessary inter-dependencies between strategies. For example, the strategies of the taxpayer perspective are aligned with the strategies of the Ministry of Finance (MoF) and the CTA staff.
- The KPIs must have a hierarchy. Measures (KPIs) selected for each objective must have a well-defined relationship with the measures of the “higher” objectives, and this fact must be kept firmly in mind while defining them.
- Usually numerical targets are set for each KPI. These may be in terms of: single value, upper limit, lower limit, range of values, percentage of a specific quantity/value, etc.

Another view of KPIs can be the view from different stakeholders. The next three tables show the possible KPIs from the perspectives of taxpayers, “management” and “tax clerks” in Croatian tax administration.

Taxpayers' view

Indicator classes	Indicators	Measures
Quality delivered to Customer	Complaints	Number of complaints in a year
	Information on case status	provided/not provided
	Contentious cases	Number of contentious cases
	Bureaucratic language simplification	Clearness in the presentation to a generic user
	Information availability	Time required to get updated about the case status
	Easiness of finding information	Qualitative scale (e.g. number of clicks)
	Easiness of filling cases	Qualitative scale (e.g. number of fields)
Time and Service to Customer	Easiness of finding regulations corresponding to a case	Qualitative scale (e.g. number of clicks)
	Response time	Time from submission to issue (days)
	Punctuality	cases late / total cases
Cost of Customer	Rate of worked request	Worked request / total request
	Customer cost	Product/service cost/fee (Kuna)
	Customer time	(Time for information on case) + (time for following the case status) + (time for receiving the service)
	Information Access Cost	Time spent in asking for information about case and service (in days) Cost of information on service
	Cost for the customer service use	Time spent in asking for information



## “Management” view

Indicator classes	Indicators	Measures
Process cost and revenues	Unit cost	Headcount / case-services (Year)
	Time usage	Duration (day)
	Collected tax	Kuna
Process Time and Service level	Process duration	Number of process activities supported by IT / Total Number of process activities
Process quality	Incorrect documentation	Incorrect-missing cases / total cases
	Re-working rate	Cases reworked / complaints
	Rate of special cases	Special cases / cases

## “Tax clerks” view

Indicator classes	Indicators	Measures
Services quality delivered	Capability to prevent task/service errors	Task/service error rate
	Capability to prevent "syntactic" (law) errors	Syntactic (law) error late
	Flexibility	Capability to manage anomalies (not technical) present/not present
	Integration Capability	Capability to integrate different information, present/not present
IT Support	Rate of process activities supported by IT	Number of process activities supported by IT / Total Number of process activities
	Rate of process activities replaced supported by IT	Number of process activities replaced by IT / Total Number of process activities
Cost and time of operation	Complexity of the services	Number of elementary activities to complete the services
	Time for training on the procedures (of services)	Measured in hours
	Information access time	Seconds
	Time to accomplish an activity	Measured in minutes
	Information sharing cost	Time for system data entry + time for system delivery output

Tax return processing is one of the major issues in Tax Administration. All (paper and internet based) channels of it must be managed as well defined processes. The central issue of a tax return management is the tax form “lifecycle” management. The quality of assessment depends on a holistic and well managed set of tax forms. The centralized and unified document management system for controlling all document flows (used in all kind of channels) is a highly prioritized requirement.

### Suggested changes in the Croatian Tax Administration

As a result of the work done during the business process analysis, the authors has identified a number of possible areas where the CTA could

effectively improve their way of working. These suggested changes can be observe like **General changes in CTA**

Below we give an overview of each of the proposed changes:

- 1. Establish a new set of the IT-based solutions to connect the data bases of the CTA and other bodies** of the state and public administration which would enable controlled and secure data access to the ISTA (Information System of Tax Administration) system of the CTA, without the intervention of CTA employees
- 2. Implement IT connectivity with other state and public administration bodies** which would enable CTA employees controlled and secure data access to the other bodies' databases, without the need for involvement of the other bodies' staff. Standardize CTA clerks' workplaces (according to their roles) and plan to equip them with an appropriate IT tools. **Obtain adequate IT equipment** at all levels of CTA (Local, Regional, Central) including desktop computers, laptop computers, servers, network equipment, printers, scanners, mobile Internet connection devices etc. that are prerequisites for executing the task of CTA at the expected level of quality.
- 3. Establish the adequate processes regarding the maintenance and setting up of obtained IT equipment** (e.g. internet access rules, repairing printers, speed of internet connection, etc.) to support CTA staff business tasks
- 4. Ensure adequate facilities (e.g. rooms, warehouses, halls etc)** for executing all CTA business procedures at the desired quality level.
- 5. Establish processes necessary for the planned and permanent (ongoing) professional development (i.e. education)** for all CTA staff (e.g. inspectors, lawyers, clerks etc.), at all CTA levels (Local, Regional, Central), including the execution of activities related to the elaboration of standardized training curricula for the various functions within the Tax Administration. (Beneficiary should check if the existing RAMP project component (i.e. Component II. Knowledge and Professional Upgrading of Tax Officials and Stakeholders) has already addressed this issue.)
- 6. By establishing internal and external communications strategy / policy** and by establishing appropriate systems improve horizontal communication (e.g. sharing knowledge, experience and good practice between the CTA staff) and vertical communication (e.g., enabling control of subordinate organization units, enabling sending of feedback information to the superior organization units etc.) within the tax administration, for example by modernizing the existing Intranet site of the Tax Administration through new designs and higher volumes of information Plan, obtain and implement adequate **Document Management System** to increase the level of working with unstructured data within the CTA

7. It is recommended that during first visits to the taxpayers adequate customer service related information and support be given: information on rights and obligations and support for the taxpayer in finding pertaining information/instructions/documents/forms.

8. Improving and adding new services to available e-Tax solution (according to the existing Croatian e-government strategy<sup>46</sup>) will increase the number of tax payers that currently use e-Tax services. Also, it will further relieve CTA resources that are used for manual data entry and processing of tax returns that have not yet been implemented by e-Tax services. Furthermore, to increase the number of e-Tax users it is recommended to:

- all mandatory tax forms must be available via e-Tax services
- tax registration via e-Tax services must be mandatory for legal persons
- additional methods for authentication of users must be considered, such as “user name/password” type of authentication used by most European tax administrations
- Marketing campaigns should be considered to promote usage of the e-Tax services

9. Publish, in a timely manner, an Excel version of the Income Tax Return form on the CTA web page, so that filling the tax return will be simpler for taxpayers, until there is an available e-Tax form for income tax. Furthermore, that solution requires development of the Tax return “metadata” system to collect, validate and process data from the submitted Excel forms.

10. Analyze possibility of establishing a **Tax Return Data Warehouse** to enable easy Tax return processing in the CTA and to increase the quality and transparency of tax assessment and management of taxpayers’ accounts.

11. In the future, **electronic payment** features could be enhanced. Although the e-payment function in Croatia has already been developed to a certain extent and taxpayers have some electronic options for paying their tax obligations, the e-payment function of the CTA still needs further analysis to enable taxpayers easier, safer and more secure paying of tax obligations to the CTA.

### **Conclusion:**

The effects of public administration have expressed negativity and limitations. In the first place to the height of expenditure, lack of funds for financing, spending of funds and recruitment, efficient human resource management policies and inefficiencies in public administration . The

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<sup>46</sup> Electronic government strategy of the Republic of Croatia for the period from 2009 to 2012”, The Government of the Republic of Croatia

effective and efficient functioning of the Tax Administration requires good key performance indicators. Good Key performance indicators are measures by which the performances of organizations, business units, and their divisions, departments and employees can be periodically assessed, compared and benchmarked. It is possible to conclude that Key performance indicators allow management best control of the organization and increased efficient of organizations.

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# **Problematic Questions Related to Lawsuit Enforcement in the Georgian Jurisdiction System**

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## **Abstract**

In the given article we will discuss lawsuit enforcement questions and methods which have acutely arisen and made contentious the problem of its necessity and its usage in jurisdiction in the recent period. Accordingly, it became necessary to research and study lawful nature of lawsuit enforcement measures as an important institute of the Public Procedural Law. In our opinion, courts have to install a unanimous practice in regard to lawsuit enforcement methods. Although, we must observe that it was not our aim to give general characteristics of the suit enforcement as an institute or to discuss its various methods. In this article we will try to characterize the criteria of the lawfulness of the lawsuit enforcement measures and also problems of its usage, abstaining from it and of its change as based on the Georgian jurisdiction and the existing law practice in Georgia

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**Keywords:** Public, lawsuit, enforcement, measures

## **Introduction**

In 2006, amendments were made in the Georgian Civil Procedural Code according to which, it seemed that suit enforcement measures became complete; though, this action did not give any advance as there still were a lot of problematic issues; particularly, the following issues are still disputable: criteria used about suit enforcement measures, basis proving supposition about suit enforcement demands, issues related to cancellation of satisfied suit enforcement court ruling.

Foreseeing all above mentioned, subject of our research with given issue is presented by the act received by the court which lays claims to other party for satisfaction of suit enforcement measures. Within the frames of research on different levels, the most frequent reasons of these results and their legitimate basis are discussed.

## **Urgency of the topic**

The topic is urgent as usage of suit enforcement measures has great place in court procedure and accordingly, its correct usage is important for execution of decisions made by the court.

Today, issues related to suit enforcement measures are seen differently by the court; there is no one united practice, there are not defined and concretely established kinds of suit enforcement measures and accordingly, there are lots of problems related to this issue.

## **Materials and methods**

Basic material for previous research is Georgian Civil Procedural Code received on 14<sup>th</sup> of November, 1997 (with additions and amendments, latest version) and court acts (court ruling). To define problems correctly related to this issue, it is important to use court practice which, considering today's reality, defines how frequently the demand about suit enforcement measures is satisfied or not satisfied; also, how courts of the second instance react to this act (court ruling).

Court practice indicates the problems related to this issue, which is not homogeneous. Thus, it is important to analyze lacunas related to this issue and establish of one united practice.

Suit enforcement measures - its definition according to the juridical dictionary: (1) Suit enforcement is a previous decision of the court aim of which is fulfillment of the measures that should afterwards enforce execution of the decision made by the court. Prerequisite of suit enforcement is a person's individual demand; in other words, suit enforcement measure is a temporary measure used by the court, that important mechanism which gives us the opportunity to prevent procrastination of execution of decisions made by the court. This is the only legal resistance for immediate execution of decisions made by the court in the benefit of a suer. Accordingly, suit enforcement with its content is directly connected with the execution of a decision.

In case of demand of suit enforcement measures, the Civil Procedural Code obliges a suer to ground factual circumstances due to which, demand of using suit enforcement measures will make it difficult or impossible to execute a decision and point contently what kind of suit enforcement measures are necessary to be used. According to today's court practice, courts often do not satisfy suit enforcement measures motivated on that suer whose real evidence cannot prove necessity of the demand of using suit enforcement measures. For example: (3): In the first instance court suer demanded usage of suit enforcement measures for defense in future execution of decision made in benefit of himself/herself. He / she motivated that a defendant's acts harmed him/her; particularly, his/her living home was

damaged which was proved by resolution of experts; accordingly, suer demanded for prevention procrastination of execution of decision to seize the property which was on the name of a defendant. This demand was partially satisfied by the first instance court, particularly before the final decision about this dispute; a defendant was banned to alienate property which was in his/her ownership. Defendant having appealed first instance court ruling motivated on that, by the given enforcement measures he/she will be harmed. The Court of Appeal satisfied demand of a defendant and abolished used suit enforcement measures by the first instance based on that, the court of appeal considers (4) that the necessity of usage of suit enforcement measures was not proved by a suer's real evidence and also the amount of damage was not established which would be adequate to enforcement measures. In fact, based on the court of appeal ruling, the suer stayed without enforcement measures.

I think that such understanding of the norm that a person demanding enforcement measures usage is obliged by presenting real evidence to prove necessity of suit enforcement measures usage, does not follow either of the given or suit enforcement measures institute's regulation norms. For convincing court it is enough supposition of circumstance with high probability on which is based a suer's demand about usage of suit enforcement measures; otherwise, probability of circumstance existence should overweight supposition about its non-existence. In this case, existence of such circumstance, coming out from a defendant's acts, will overweight supposition about its non-existence and also it will not be necessary to define the amount of damage for using suit enforcement measures.

In the given case subject of dispute is paying money instead of damage; this kind of suit is executive suit which means that in case of suit satisfaction, the result established by the legal decision will be depended not only on coming into force of decision ( how it is in case of recognition suits) but also on a defendant's will. He/she should act about paying money. In case of not existence of such will, the result established by the legal decision will be depended on the forced execution. Accordingly, if in the moment of coming into force of decision, there will not be meanings for suer's satisfaction, for example realization of property, due to ordering finances, decision will become not executed decision. Naturally, there is question how a suer in future will be able to execute the decision in the benefit of himself/herself when the second instance court abolished suit enforcement measures and there is no legal means that a suer will have a chance to appeal in higher court ruling received by the court of appeal about abolishment of enforcement measures. In fact, a suer stays without any resistance defended by the law for execution of the decision in his/her benefit in future.

Accordingly, the court is obliged not only to decide dispute between the parties correctly and objectively, but also to ensure the party for

execution of decisions in future and not leave it without suit enforcement measures.

It should be noted that (2) coming out from suit enforcement institute aims and its operativeness, a legislator for satisfaction of declaration, while noting factual circumstances, takes into consideration high standards. This approach is seen in different ruling of Georgian Supreme Court (5) according to which, the court has the right based on the party's demand to use suit enforcement measures which will obstruct execution of the decision made by the court in future. Notable, within the frames of the burden of evidence, the party is obliged to convince the court to make suit enforcement measures, supposition as it concerns future events that, unlike the cases in the past, can be proved by presenting a particular evidence.

This approach is also seen in scientific literature; the court can use suit enforcement measures based on that fact which has character of supposition and that there is no necessity to present the evidence for proving this facts. Thus, the basis of suit enforcement measures does not answer the question what kind of evidence and on what level should the party present.

Accordingly, based on the analysis of the legislation record, court practice and scientific literature, we can make conclusion that a suer is obliged to use suit enforcement measures only by pointing those circumstances which will give a suer proved supposition that non-use of suit enforcement measures will negatively influence the court decision execution in future. So, it is not correct when the court refuses the party to use suit enforcement measures, motivated that he/she with real evidence was not able to prove necessity of using suit enforcement measures. In the given case, not real evidence is obligatory but high quality of probability which gives proved doubt to court that non-use of suit enforcement measures will obstruct execution of the decision in favor of the party.

## **Conclusion**

In conclusion it can be said that courts should create similar practice related to the usage of suit enforcement measures, encourage court to execute decisions. Though, the process of execution is not competence of the court; the court should be interested that decisions made by them would be executed and not only given on paper.

The second instance court should also take into consideration factual circumstance; if it abolishes usage of suit enforcement measures satisfied by the first instance court, the party will stay without suit enforcement measures which will make problems to execute decisions made by the court in his/her favor in future. Accordingly, the second instance court should be more legally obliged with this issue and should not leave the party without suit enforcement measures, without that legal resistance with protects a suer from



non-execution of decisions in future. It is unacceptable that the court could refuse satisfaction of demand about suit enforcement measures, based on that suit demand is not counterweight of using adequate suit enforcement measures.

Suit enforcement measures are means of prevention any obstacles related to the execution of the decision. It is guaranty of protection rights on property of physical and juridical people and serves for restoration of abolished rights. Meaning of suit enforcement measures is expressed in the following was: it defends legal interests of a suer. If the right is not implemented, there is no sense in recognizing rights. That is execution of the decision made by the court, suit enforcement is one of the real guaranty of its fulfillment.

Thus, we can conclude that courts should collaborate with each other and establish one practice which will help them to decide these issues legally correctly and to reduce deficiency which is in the legislation related to these issues.

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## **Influence of Prospective and Situational Sets on the Correctness of Probabilistic Judgments**

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### **Abstract**

Investigation of psychical mechanisms of probabilistic thinking revealed its limited rationality, reflecting specificity of subjective comprehension of one on other problem by people. The concepts satisfying the theory of probabilistic thinking are impersonal, and determined by psychic mechanisms are personal. In case of personal rationality cognitive activity of people serves to satisfaction of different needs people have. Besides, when making decision they reveal purposive playing an important role in assessment of alternatives out of multiple possible choices. Considering the main principles of the set theory, we assume that functioning of probabilistic judgments is determined by relevant set formed in the process of purposive activity of human. As to temporary parameter, two forms of the set can be defined: prospective (orientation on the result of future event) and situational (orientation of the result of current event). In the conducted experiment the influence of the above mentioned sets on probabilistic judgments and confidence in correctness of the choice taking into feedback factor (mark of the fulfilled task) was studied.

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**Keywords:** Prospective sets, situational sets, set theory, probabilistic judgment

### **Introduction**

For a long time being under the influence of philosophy of logical analysis the investigators of cognitive processes identified everyday thinking with logical reasoning. However, modern psychological research directed to the detection of the peculiarities of reasoning in different life situations, evidenced the irregularity of the above identity. The whole direction was formed. It was the so-called investigation of social cognition meaning the empiric study of the peculiarities of comprehension, consciousness and interpreting, concerning the own behavior of a human and actions of the other people (1). In our case, we are interested in the problem of social probabilistic judgment performed by a human under the conditions of

uncertainty. The main assumption we are keeping to consist in the fact that probabilistic judgment as evaluation of probable results is determined by the corresponding set, formed in the process of targeted activity of a human.

In general psychological theory of the set together with unconscious processes the property of reasonability is underlined, i.e. in determination of molar behavior, the decisive role is derived from consciousness. Considering the issue concerning the definition of functioning of the set, Dimitri Uznadze comes to the following conclusion: “thus, specific peculiarity of human vitally differentiating him from animal is that consciousness plays the leading role in his/her life. He/she is aware of his/her own behavior ahead and any action he/she does with the account of what he/she can get in a result of such consciousness” (2, 91). Knowledge acquisition by students in higher institutions is an evident example of the task-oriented behavior. This process means a student’s oriented comprehension of the specificity of a future profession, acquisition of professional skills, which should be achieved on the basis of application of multisided educational methods. Learning the educational courses by the students is performed on the basis of task-oriented behavior. They have one common goal: to finish the study and get corresponding certificate. Besides, achievement of this final goal is possible only with the help of the so-called achievement of intermediate goals (for instance, number of weekly seminars, monthly tests indexes and total examination marks on different subjects for definite periods of time). It is clear, that this process requires task-oriented behavior from students meaning adequate consciousness of instrumental significance of intermediate goals for achieving common expected results. Taking into account temporal parameter, two forms of the set can be indicated: prospective (orientation on result of future event) and situational (orientation on the result of current event). Thus, task-oriented behavior is the process, in which by means of situational and prospective sets in views, step by step achievement of preliminary results short and longtime occurs (that is instrumental meaning), which at least provides achievement of the final result. Besides, being the sets oriented on the solution of one and the same problem, they also are of international character.

Theoretical and experimental investigations of peculiarities of task-oriented actions, in particular, in the process of thinking, were conducted by Georgian psychologists. The subject of investigations were such essential properties of thinking as the process of generalization, subjective comprehension and corresponding denomination. The obtained results are important for detection and description of psychic mechanisms, determining formation and functioning of everyday concepts. The above mentioned works mainly concerned the detection of psychological peculiarities of different forms of judgment. It should be mentioned that for quite a definite

time little attention was paid to thinking processes. However, the situation gradually changed for better. The evidence for this are analytical and empiric investigations, in which the following questions were studied: influence of different emotional states on formal logical conclusions, intuitional comprehension of the quantitative material, in evaluative judgment, such as difference-likeness, existence of asymmetry phenomenon, the problem of generalization in modern conceptions of forming the concepts. Earlier and further investigations in fact did not take into account the most important property of the inductive thinking, i.e. specificity of probabilistic judgment (for instance, assessment of probability of successful achievement in business, expected results of surgical operation, probability of success in sport events, etc.).

Having studied the peculiarities of formal logical and psycho-logical judgments the investigators defined impersonal and personal rationality (3). Under impersonal rationality is meant cognitive activity of the human, based on normative rules worked out in formal logics and the theory of probabilities. Detection of the second form of rationality is conditioned by the following: multitude of experimental investigations concerning psychic determinants of functioning of probabilistic judgments revealed vividly the expressed tendency of ignoring the people of those logical (normative) demands which should provide optimal decision of targeted vital problems. Due to that subject in experimental conditions usually accept "illogical" decisions. Generally speaking, people in real vital situations do definite conclusions basing on their own needs, beliefs, value attitudes and aims.

Probabilistic judgments appear in the conditions of uncertainty, i.e., in the situations in which there are no strict normative limitations in possible choice. In formal logical reasoning criterion of objective truth has decisive meaning, and in case of probabilistic conclusion from psychological point of view the degree of subjective confidence of a human in validity of his choice is essential. On the basis of multitude psychological investigations concerning probabilistic judgments, a general conclusion can be formulated: when predicting, people do not use principles of theory probabilities, but they use cognitive heuristic rules. Heuristics are simple and often quite approximate strategies for solution of that or other problem [4].

These strategies are less accurate than principles of theory of probabilities, and their application does not always make a good choice. However, they have one advantage: they are simple and do not require great mental consumption. The investigations show that the use of heuristic strategies often leads to specific erroneous decisions. The examples of such decisions can be the effects of representativeness, psychological accessibility and word framing alternatives. Using the rule of representativeness, people doing their choice ascertain level of comparison between events, sampling

and population in which it is kept. The event is more representative, the more it remembered population. Besides, often the reason of erroneous decision is misunderstanding of the fact that combination of two events (conjunctive judgment) cannot have bigger probability than each event separately. When solving this or other problem, people often are oriented by strategy of psychological accessibility according to which, the event is more probabilistic and it is easier and faster stamped in the memory. The application by people of the given heuristic strategy explains why evident and bright descriptions of the events are more convincing for people than real statistic data; such tendency is mainly explained due to their rules of disagreement with ordinary knowledge an intuition of human. An important factor which influences effectiveness of choice is the formulation of the problem. The erroneous choice in this case is determined by the fact that people reveal the tendency of giving different responses on differently formulated, but logical identical problems. This effect well explains the so called “conception of perspective” according to which, people usually reveal the tendency of risk avoidance. Consequently, while adopting the decision they consider any possible loses as more unacceptable than equivalent profit they would like to get (5).

### **Experimental investigation**

Basing on the above mentioned theoretical assumption and considering the existing empiric data, we conducted the investigation the aim of which consisted of comparative study of impact of prospective and situational sets on probabilistic judgments taking into account the feedback factor. In the given case indicated forms of sets are independent variables. The correctness of choice (judgment) and subjective confidence are dependence variables.

### **Procedure of the investigation**

The participants of the experimental study were 144 students of one private university in Tbilisi. During one semester (the course “Organizational Psychology”) two questionnaires were conducted with two-month intervals. Respondents were divided into one control and two experimental groups. On the first stage of investigation, the respondents of one of the experimental groups were told that some questions in every week questionnaire were given as “problems-exercises” and their understanding and given responses would by all means contribute to learning teaching materials. Besides, it was underlined that special attention in the teaching program itself is given to fulfillment of this task for the final mark on the studied subject (formation prospective set). The respondents of other experimental group were told that the responses on the given questions reflected quick wittedness and skills to

solve particular problems (formation of situational set). The probabilistic judgments of the participants of the control group were tested twice: the first and second questionnaires.

### **The material used in experimental groups**

The material used in the first and second questionnaires consisted of similar heuristic effects. Here we give some examples (in each questionnaire every respondent received 45 of topical different items). (1): X worker at the plant is 40 years old. He is a devoted family man highly appreciating friendship. He was an active participant of the movement for human rights, took part in the demonstrations against discrimination laws. The question: what is the probability of that a) X engineer at the plant; b) X engineer at plant and active member for human rights movements? (Effect of representativeness). (2): Where are more people living: in Italy or Australia? (Effect of psychological accessibility). (3): The respondent is given the description of the following situation: a man must decide to do or not to do surgical operation and he address to two doctors for help. One of them in the process of examination informs him that only 10% of people die during such an operation. The other doctor informs him that 90% patients survive after this operation. The respondent must determine which variant of two arguments will influence more the agreement of the patient to do the operation (effect of word formulation of alternatives).

### **The obtained empirical results**

1. Let us address to data of primary indexes taking into account the data of three groups tested in the experiment. General result indicates that most of the participants of the experiment had cognitive mistakes. At the same time, the data of secondary questionnaire indicates that respondents with prospective set due to significant decrease of the quantity cognitive mistakes and really improved quality of their probabilistic judgment. For instance, the difference between control and the group of prospective set was statistically reliable, 32% ( $P < 0.01$ ). Significant difference between indexes of experimental groups which is 19 % ( $P < 0.02$ ) is worth paying attention to.

2. According to the obtained indexes of confidence respondents in probabilistic judgments statistically significant differences between prospective and situational set groups in both inquiries are equal to 0.54 ( $P < 0.01$ ) and 0.48 ( $P < 0.01$ ). Fulfilling the same task, respondents of experimental groups evaluated dignity in correctness of their decisions differently. Oriented on the situation respondents revealed more dignity in their decisions than oriented on the future. For instance, participants of the group in their probabilistic judgments reflecting the effect of heuristic representativeness based on clearness of the perceived information without

“any critics.” The other tendency is observed in participants of prospective set group. They are less confident in their own decisions, cautious and are not tempted to straight adoption of decision.

## **Conclusion**

Most of the participants of the experiment in probabilistic judgments revealed tendentiousness relevant to heuristics of representativeness, psychological accessibility and forming of the chosen alternatives. The indicated forms of tendentiousness compared to respondents having situational sets were relevant to the respondents with prospective sets in less degree.

Significant differences between indexes of dignity in experimental groups was detected: oriented on situation respondents compared to oriented on future revealed more dignity in correctness of their decisions. This indicates really underserved self-dignity of the respondents of the first group and more realistic assessment of the attempts of the participants of the second group.

The obtained data show that probabilistic judgments in everyday and nonstandard (of course, and in experimental conditions) are far from strictly logical construction. However, it does not exclude its possibility of improvement of their quality as the construction of conditions contributing to reconstruction of conditions contributing to construction of erroneous cognitive activity can give positive result. The following should be taken into account: in the conditions of uncertainty of intentional evaluation of social personal phenomena, as, for instance, the possibility of breaking of the wear, profitable investment to that or other events, repentance of criminal, are meant. There are no objective assessment criteria in this cases. The most important is that probabilistic judgment determines targeted behavior and the process of decision making. That is why investigation of the efficiency of probabilistic judgment stays acute problem even in the future.

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## Mixed Type Procedure Model or Adversarial Law?

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### Abstract

By introducing the Criminal Procedure Code, amendments were made in the criminal legislation of Georgia and the mixed type model of the Criminal Procedure Law was transformed into the Anglo-American model of the Criminal Procedure Law. It turned out that this transformation was not properly analyzed. As a result the adversarial criminal procedure law was developed which was grounded on the Anglo-American procedure rules and does not recognize any exceptions. In the modern world majority of highly cultured countries which stay within the scope of the international criminal law choose mixed type model of criminal procedure law and stand apart from inquisitorial and adversarial process. Accordingly, modernization of the Criminal Procedure Code is high on agenda for Georgian legislators. I hope that the presented article will prove the necessity of the measures that should be taken to improve the abovementioned.

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**Keywords:** Human rights protection, conversion, criminal procedural law

Twenty-five years passed after the restoration of the state independence in Georgia, though the situation regarding human rights is far from desirable. It is clear that expectation for restoration of justice and demand on improvements of human rights still stays in the center of public attention. To solve the existing legal and practical problems the Parliament of Georgia adopted the National Strategy for the Protection of Human Rights for the years of 2014-2020. The document was elaborated by participation of the government bodies and international organizations.

The aforementioned policy document embraces almost all directions of public life. It is welcoming that achievements regarding human rights became tangible in such a short period of time. The achieved success made it obvious that our country is really aspiring to the standards of protection of human rights and freedoms of the civilized world.

However, for successful implementation of this strategy it is necessary to work out a mechanism which will be adjusted to the Georgian reality. For creating such a mechanism, it is very important to carry out



comparative analysis of the experience of other countries and international organizations. The importance of using comparative analysis as a universal method is undoubtful as it allows a researcher or a legislator to get aware of the reality in foreign countries and helps see the usefulness of the chosen approaches.

This article does not seek to analyze the situation regarding human rights in Georgia; its goal is to briefly review peculiarities of conversion of the Georgian Criminal Procedural Law from Continental-European system to Anglo-American legal space. It discusses positive and negative sides of adversarial proceedings and inquisitorial proceedings; exposes and analyzes the competitiveness of approaches of the national model of adversarial principle, compares them with the provisions and approaches of the International Criminal Code. The question occurs - why exactly International Criminal Law has been chosen for comparison? The only right answer is: International Criminal Law is primarily based on the legal systems of continental Europe and Anglo-American knowledge and experience. Paramount factor is that international criminal justice practice is formed by mutual collaboration and understanding of the judges who represent different legal systems.

### **Stages of development of International Criminal Law**

The origin of International Criminal Law and Court is the result of evolution of the civilization of society. Development of information systems conditioned enhancement of the integration processes of different countries and states. The world wars and armed clashes between different countries revealed the necessity of peace and international order.

International criminal responsibility became topical after the First World War. After the war the Treaty of Versailles was signed; the winner countries agreed German Emperor Wilhelm II to appear before the international Tribunal together with other high-ranking German officers. At that time, this agreement could not be realized because Germany and Holland refused to extradite criminals to the Tribunal and instead gave them political asylum. Though, the idea of establishing international Tribunal and expression of common will was of paramount importance.

The agreement on establishing international military Tribunal signed in London after the Second World War appeared to be a fact of historic value that contributed to development of international criminal law. On the basis of this agreement, for committing Holocaust and other grievous crimes fascist regime leaders and criminals were tried in Nuremberg during ten months. It is noteworthy that the Nuremberg process was the first case of imposing criminal responsibility on the accused having committed international crimes.

The decision made by the UN (United Nations) Security Council in 1933 on establishing the International Court was based on former Yugoslavia affairs. A year later, the same type of court called Rwanda Tribunal was established.

These courts were created for special occasions and they do not imply permanent work (these courts are often called as ad-hoc tribunals), though, a number of cases on very important international issues have been proceeded there.

A brief overview of the formation and development of international criminal law clearly reveals that all its stages were related to world wars and hostilities. This happened after the first and second World Wars. The same happened in case of establishing former Yugoslavia and Rwanda Tribunals. The aforementioned ad hoc tribunals were created only for special purposes. But interest of the restoration of justice, punishment of the accused and prevention of wars imposed the need to establish a permanent International Criminal Court.

For this purpose, under the auspices of the United Nations in June of 1998, an international conference was held in Rome where representatives of 160 countries were invited. The aim of the conference was to draw up an international court statute. The process was completed in July of the same year and 120 countries signed the document. The court was established in 2003; it is located in the Hague and its statute is defined as Rome Statute.

I must say that the idea of establishing an international court had opponents. A number of states who participated in the Rome conference demanded<sup>47</sup> that the UN Security Council establish political control on the prosecution service. This idea was not shared by the majority as ICC prosecutor would fall under the subordination of the 5 permanent members the three out of which (the United States, Russia and China) were not the participants of the Rome Statute. Thus, international prosecution service was established as a politically and legally independent body. The International Criminal Court's independence is reflected in the 4<sup>th</sup> Article of the Rome Statute which states that the International Criminal Court is the subject of international law. Each State that accedes to it recognizes its statute. Its competence extends over Georgia as well.

### **Brief Description of the Continental European and Anglo-American Legal Systems**

Before discussing the issues regarding conversion of the Georgian Criminal Procedural Law from continental-European system to Anglo-American legal space, I think it is appropriate to review continental-

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<sup>47</sup> M. Turava. Collection of Articles. P. 81.

European and Anglo-American Criminal systems. The first is characterized by an adversarial principle - a process that implies oral and public dispute between two equal parties. During adversarial proceedings judges cannot expose their initiatives. They rely only on the evidences and perform as neutral arbitrators.

As for the inquisitorial system, which is based on the investigation, i.e. on the principle of the official investigation led by judges, gives judges much wider powers than they have during the adversarial proceedings.

During the last decades approximation of these two different legal systems became vivid. As a result, submitting evidences to the main court hearing and dispute between parties is no longer typical only for the Anglo-American legal system; it is also used in continental Europe and in many other countries. Most of these countries formed not the American model of the procedural system but a mixed type models.

Asian countries such as Japan and Taiwan use such types of procedural models. Italy, Spain and Russia, where the pretrial investigation is inquisitorial, the hearing is proceeded according to the adversarial principle. For example, Spain uses the adversarial principle of the criminal process. In addition, the court has the right to conduct further investigation which is reflected in the Criminal Procedure Law of Spain, Articles 728 - 729.

Criminal Procedure Law of Italy, Articles 496- 498 consider the right of initial interrogation of the witness by the party who invited the witness. In Russian Federation, on the basis of the Articles 273, 275, 278 of the Criminal Procedure Code, the judge, for the purposes of establishing the truth, is authorized to provide extra interrogation. I feel appropriate to briefly describe how they view the truth in Anglo-American and Continental European systems as this was the issue that distinguished these two legal systems. The issues of establishing the truth cause even more approximation of these systems. In the recent past, supporters of the Anglo-American system considered that only Continental European countries searched for the truth and Anglo-American model focused on winning a case rather than assisting the court in establishing the facts.

There were other considerations opposite to this approach. For instance, one of the outstanding representatives of Yale Law School, Professor Damška believed that if the trial judge considered that his absence at the trial (abiding his ideal role) may cause irreparable harm to the public interest, he can be actively involved in the process. Professor Damška considers this admissible because of the flaw of the adversarial system. He

believes that that such deviation is permitted in the interests of an adversarial system.<sup>48</sup>

Nowadays, it can be stated without any exaggeration that the Anglo-American system is also interested in establishing the truth but only within the scope of legal procedural truth. It is considered that the truth shall be established in full compliance with the rules.

Because of the active ongoing process of proximation of the mentioned legal systems, it can be stated without any exaggeration that the selection of legal approaches and positions is being carried out in reality. This is due to the fact that Anglo-American and Continental European systems have positive and negative sides. Scientists and practitioner lawyers consider that the advantage of the adversarial process is obtaining and presenting evidences as the parties participating in the process become more motivated to obtain evidences themselves and present them in the court. Inquisitorial procedural model is entirely based on the trial judge's obligation to obtain all the necessary evidences that are essential to establish the truth. The advantage of the Anglo-American legal system is considered the approach according to which, the Court's judgment should rely only on the evidence presented at the main court session and which was the result of direct and cross hearing.

The flaw of the Anglo-American system is that a defendant's right of defense is directly proportional to his/her solvency. This prevents a defendant from obtaining and presenting evidences in the court. Inquisitorial system of justice has different approach. It allows a judge to conduct to a full judicial investigation, unlike a neutral judge who does not have such a right.

A lot of examples can be taken to characterize these two different legal systems; but as mentioned above, more important is proximation of their positions and approaches that was reflected as mixed type legal models in the national legislations of the world's leading states.

The international criminal procedure proves the advantage of the mixed type model which evolved in this direction. The Rome "statute" and the work of the Hague International Court clearly confirmed the progressive nature of the model.

### **For the modernization of the Criminal Procedure Code**

A lot of questions arise towards the Criminal Procedure Code of Georgia enacted on October 9, 1999. The new code did not accept the mixed type procedure code and the adversarial type model was introduced. Professor Merab Turava in his work on convergence of different legal

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<sup>48</sup> Mirjan R. Damaska. Structures of Authority and Comparative Criminal Procedure, 1975.

systems in international criminal procedure says that even Anglo-American procedure rules are not as adversarial as the Criminal Procedure Code of Georgia.

The Article 25, paragraph 2 of the **Criminal Procedure Code** of Georgia does not give grounds to cast doubt on the rightness of this conclusion. The article indicates that the court is prohibited to obtain evidences supporting prosecution or defense; even more, the court is not authorized to put direct questions except cases when questions are previously agreed with the parties and contribute to ensure fair trial.

It is well known that the adversarial court understands the essence of truth differently and accepts only its procedural-legal meaning. At international criminal proceedings a judge is allowed to ask questions and, if necessary, obtain evidences, i.e. a judge, unlike Georgian judges, is not a passive spectator of the process and has the full right to contribute to the process of determining the truth and ensuring a fair trial. Development of International Justice shows that the introduction of adversarial court, may, because of its procedural costs, create serious problems for the accused. If the defense lawyers cannot present necessary evidence on time, an innocent person can be considered guilty.

To follow the interest of development of fair Justice in Georgia we consider that it is necessary to change such a strict norm and allow judges to question parties before or after the interrogation of the parties as it is described in the international criminal rules.

Georgian procedural law does not accept the initiative of the court to obtain and present evidences. Such approach is characteristic only for strict adversarial proceedings and is preserved in jury trials in some states in the US. I think that such an approach to the mentioned issue is completely unjustifiable and does not match the interest of justice. The abolished Criminal Procedure Code was the mixed model and considered the independent right of the court to obtain and present evidences. International Rules of Criminal Procedure, unlike the Georgian rules, provides the possibility (Article 64 of the Rome Statute, paragraphs 4-9) of obtaining and presenting additional evidences by the judge if he/she considers it necessary.

Based on the above, we believe that the approach of the Rome Statute should become an example for our legislation and amendments to the Article 25, part 2 of the Criminal Procedure Code should be made. The Amendments should provide possibility of obtaining and presenting additional evidences by the judge in exceptional cases. It is noteworthy to admit that a completely passive judge in today's court is not even considered by the procedural rules of the countries whose legislation served as the grounds for establishing the adversarial procedural rules.

Although one article is not enough to discuss the issues related to the improvements of our country's criminal procedure law, I think that some of the topics still need to be emphasized. This especially applies to the prosecutor's full monopoly while proceeding investigation, absence of the state control, strengthening cooperation between the participants of the process for the purposes of establishing the truth, perfection of the procedural agreement institution, issues related to the lack of rights of the injured parties.

I want to put special emphases to the issue of jury trial. True, this is not new for the History of Georgian legislation but its establishment is linked to the introduction of the new procedure code which, on its turn, brought much uncertainty to the Georgian procedural law. It will not be surprising if I say that its introduction and establishment is legal anachronism and backwardness.

In England and America, countries considered as the cradle of this institution, jurists do not know how to say no to it, and only the respect of traditions make them keep jury trial. None of the courts out of all courts within the scope of international law uses this institution. It is ambiguous why, for what reasons was Jury trial envisaged in the current Criminal Procedure Code. However, this probably will not be surprising if we mind the fact that during Saakashvili's presidency, even the so-called "sentencing guidelines" were copied from the American legislation and introduced to the Georgian legislation. Though, exactly these sentencing guidelines were deemed inappropriate to the American Constitution by the United States Supreme Court decision of January 13, 2005.

## **Conclusion**

We can conclude that by introducing the Criminal Procedure Code, the Georgian Criminal Law became adversarial and stricter than the Anglo-American procedural rules. I think that adoption of the Criminal Procedure Code in this form is conditioned by the power-hungry President Saakashvili's political desire to weaken judicial power and strengthen the prosecutor's office in order the dictatorship oriented government to have proper conditions for achieving this goal.

Although the new government has not carried out the modernization of the Criminal Procedure Code, a number of measures were taken to improve the legislation. I think this is just the beginning and there are all suitable conditions for future improvement.

I have tried to briefly review the problems of Georgian Procedure Law initially grounded on the Continental European legal system and later transformed into Anglo-American legal system; expose the experience of

leading countries within the scope of international law. Thus, my intention was to contribute to further perfection of the Georgian Procedure Law.

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## **2012 and 2016 Parliamentary Elections in Georgia: Parallels, Challenges and Outcomes**

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### **Abstract**

The paper provides an overview on the political and electoral aspects of the pre-election campaigns of the 2012 and 2016 parliamentary elections in Georgia. The author compares the pre-election atmospheres and draws a parallels between the pre-election campaigns for the 2012 and 2016 parliamentary elections.

Author provides a critical analyses of the legislative amendments made in 2012. He argues that these amendments mostly stipulated political situation and the pre-election environment even tenser and inflicted serious harm to free and competitive pre-election environment in 2012. In this regards, the paper refers in particular to the examples of these particular amendments. The author analyses the nature of the 2016 election campaign and argues that it was held in a peaceful environment, was competitive and largely calm and in comparison with the 2012 elections, the trend towards improvement is obvious. In this context, he provides the international observer organizations' reports and statements about the 2016 elections. In the conclusion, the author provides some recommendations on how the pre-election environment and the election legislation might be improved and harmonized in accordance with international standards.

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**Keywords:** Pre-election campaign, elections, legislations, amendments

### **Introduction**

It is an obvious assertion that government obtains its legitimacy through the elections. Therefore, great importance is attached to whether elections are held in a fair and competitive environment in the country or not.

Normally, a country is considered to be democratic if at least two of political parties compete regularly and a sound competition among political parties is fully guaranteed and stipulated by government in general.

The elections of October 1, 2012, marked an important page in the modern political history of Georgia, and it's justly considered a turning point on the country's extremely difficult path to democratic development.



Through these elections, the first peaceful transfer of power in Georgia's statehood recent history happened.

As for the 8 October 2016 elections, they have created a more solid basis for the way toward democracy and has defined inconvertible grounds for the development of the country.

Before going through my statements, we shall agree on the point, that any assessment is necessarily relative. However, if we draw a parallel between the pre-election campaign for 2016 parliamentary election and the 2012 pre-election environment, we will see a substantial difference.

Let us review the pre-election environment for both elections.

In spite of the fact, that the government change was smooth and peaceful after the 2012 elections, in general terms, we cannot really define the pre-election period as peaceful in 2012. In comparison with 2016 elections, it was characterized by considerable political tension, rough violence, altercation and even physical confrontation. Unfortunately, these incidents have become some sort of synonym for the 2012 election.

It should be mentioned separately, that the legislative amendments that were adopted unilaterally, made the political situation and the pre-election environment even tenser in 2012. Unfortunately, instead of improving the election environment, the aforementioned amendments were mostly directed against the new political coalition - "Georgian Dream" and its leader, Bidzina Ivanishvili, and, due to this, they were obviously politically motivated.

What I mean by this statement. Several months before the 2012 elections, the ruling party/united national movement introduced strict mechanisms of control on political party funding. For instance, important amendments were made to the Organic Law of Georgia on Political Unions of Citizens, which changed the rules of financing, financial reporting, and transparency of political parties in an essential manner. The amendments provided for a ban on donations by organizations and established various restrictions on donations by physical persons. What is most important, the need for such initiatives was devoid of arguments and legally unsubstantiated. Therefore, the society, media, and political parties have linked together an adoption of the abovementioned legislative package and a new political leader, Bidzina Ivanishvili's appearance into politics. Presumably, such a decision was taken to deprive a multi-millionaire - Bidzina Ivanishvili of the opportunity to fund political parties.

In addition, the legal side of amendments to the Chamber of Control of Georgia, should be mentioned separately. The amendments gave the Chamber of Control of Georgia previously non-existent functions regarding the monitoring of donations and issues of funding of political party in general. For this reason, the Chamber of Control was soon transformed into

the State Audit Office which, in addition to monitor the legality and transparency of the financial activities of parties, was supposed to regulate a number of other issues related to donations in pre-election campaign. What is most important, it was given the authority to apply relevant sanctions (in the form of a fine) against political parties for the violation of the requirements.

A clear evidence of this is the fine in the amount of GEL 2.86 million imposed on the member parties of the „Georgian Dream coalition” which inflicted serious damage to the financial interests of the opposition coalition and, by doing so, to the principle of equality of political actors in elections.

All this, last analysis, inflicted serious harm to free and competitive pre-election environment in 2012.

Now, let me draw your attention to the pre-election campaign of 2016 Parliamentary election.

It should be noted that the 2016 pre-election atmosphere substantively differed from the one in 2012. The election campaign, instead of bipolar electoral environment, as it was in 2012, was held in a multi-party configuration. For instance, twenty-five parties and blocs were registered for the proportional ballot and 816 candidates in majoritarian contests.

It should be noted that in 2012 parliamentary election, the competition practically was between two political bodies - the ruling party – “National Movement” and the opposition coalition “Georgian Dream”.

The 2016 elections presented a large spectrum of political parties. All political parties had an opportunity to conduct the campaign in orderly manner and send their political messages to voters. The campaign showed that fundamental rights were generally respected during a competitive campaign. Mostly, it was conducted in the media and through billboards, posters, door-to-door canvassing. The overall pluralism of the media landscape has also improved.

It should be noted, that amendments in 2013, 2014 and 2016 to legislation regulating campaign finances introduced new provisions that lowered sanctions for violations, adjusted the types of permitted donations, allocated public funds to cover TV advertising expenses for qualified contestants and added regulations related to independent candidates. In comparison with the 2012 elections, these amendments improved the regulations of the election campaign and of the donations as well.

In general, there is no country, where the campaign is not accompanied by tensions, by the competition among political positions and programs. In this regard, it's necessary to have a high political culture in order not go beyond the format of the election campaign and not move into violations and illegal activities.

Notwithstanding isolated cases, including the bombing Of an MP's vehicle, we can say that 2016 election campaign was held in a peaceful

environment, was competitive and largely calm and in comparison with the previous elections, the trend towards improvement is obvious.

This is not only my point of view about the pre-election campaign, but also, the local and international observer organizations' opinion, including Observation Mission of the OSCE parliamentary Assembly.

As stated by the International election observation mission of OSCE parliamentary assembly, the 8 October elections:

- Were competitive, well - administered and fundamental freedoms were generally respected. The calm and open campaign atmosphere was, however, impacted by allegations of unlawful campaigning and some incidents of violence.
- The election administration and the management of voter lists enjoyed confidence.
- The media is pluralistic, but some monitored broadcasters lacked balance in their campaign coverage. Debates offered a useful platform for contestants to present their views.
- Voting proceeded in an orderly manner, but counting was assessed more negatively due to procedural problems and increased tensions.

Let's now see, what does the Council of Europe's statement says: the 8 October parliamentary elections in Georgia were competitive, well-administered and fundamental freedoms were generally respected. The otherwise calm and open campaign atmosphere was, however, impacted by allegations of unlawful campaigning and some incidents of violence. Election Day, generally, proceeded in an orderly manner, but tensions increased during the day and several violent altercations took place near and in polling stations, the observers of the Council of Europe said.

Foreign observers' delegations of the National Democratic Institute (NDI) and International Republican Institute (IRI) actively observed Georgia's October 8 parliamentary elections throughout the country and made their assessments. They said the whole process was mainly calm, but also highlighted some major and minor violations.

For instance, NDI stated that, following a vibrant and competitive campaign, citizens were able to cast their votes freely and, in most places, counting proceeded in a calm and orderly manner. In some electoral precincts, however, counting was disrupted or terminated by unruly and, in some cases, violent crowds.

IRI also noted that, in general, the elections were carried out in a peaceful environment and reflected the will of the Georgian voters.

On behalf of EC, the High Representative/Vice-President Federica Mogherini and Commissioner Johannes Hahn made statement on the parliamentary elections in Georgia. Their statement was based on the preliminary conclusions of the OSCE/ODIHR Election Observation Mission,

which says that the elections were competitive, well-administered and fundamental freedoms were generally respected. The calm and open campaign atmosphere was, however, impacted by allegations of unlawful campaigning and some incidents of violence.

They stressed, that the EU has been closely following the process, including the results of the preliminary official vote count. For the second round of the elections and in the period before this, all parties and candidates should refrain from confrontation and violence and respect democratic principles and the will of the Georgian people. It will be important that all representatives elected to the new Parliament work together in the interest of Georgia.

“Georgia has reaffirmed its status as the leader of democratic transformation in this region,” said Paolo Alli, Head of the NATO PA delegation. “The conduct of this election is greatly encouraging for all those who support Georgia on its path towards Euro-Atlantic integration.”

As you see, all international observer organizations made similar statements about the 2016 Parliamentary election.

At the same time, Georgian government's decision to invite international organizations, including short-term and long-term observers, to observe the pre- election process, we consider it as a very positive decision for the transparency of the election campaign in Georgia. Thus, in my opinion, the level of trust from international organizations' side toward Georgian government has significantly increased.

What Georgian government should do more in order to improve the pre-election environment and further harmonize the election legislation in accordance with international standards?

## **Conclusion**

We believe that further steps should and can be made to address remaining challenges, both in the laws and in practice. I will bring here only some of the recommendations, particularly:

- Proper amendments should be made in the elections code to further harmonize the election legislation. The code establishes a timely dispute resolution process for appeals of election commission decisions, but limits voters' right to appeal. In general, complaints are reviewed transparently by commissions and courts in open sessions, but the lack of an expedited deadline for taking administrative action in the case of electoral offenses and insufficient resources for investigations limit the effectiveness of this remedy.
- In addition to this, the role of political parties and the behavior of their candidates or supporters is also important to allow for the election campaign to be held in calm and fair environment. First of all, the

leaderships of the political parties have to reach an agreement with each other about the Code of Conduct on the election campaign. Political Leaders should explain to their activists and candidates how much important is to protect Code of conduct. We need political leaders will be able to condemn any act of violence by supporters and cooperate with authorities within the investigation, in case, if such incidents occur.

- In order to avoid any kind of violations and using of administrative resources from public officials, the Ministry of Justice should set up an inter-agency commission. To ensure the transparency of the commission session, the local and international observer organizations should be actively invited to attend it periodically. This is another step to insure transparency during the pre-election campaign.

- Prime Minister's initiative to sign a memorandum of understanding among political parties during the elections, seems very interesting. It should be noted that the validity period of the memorandum covers the pre-election period and ballot day, including, approval of the summary protocols. As far as I know, the text was sent to the political parties, but unfortunately, only a few parties have responded to the initiative.

We believe that to implement some of above-mentioned recommendations will improve and normalize the pre-election situation. It can be argued that government together with the political parties should be interested in the creation of the peaceful pre-election environment. Otherwise, to achieve a calm and fair pre-election atmosphere will be impossible.

In conclusion, we hope that, independent commission would be set up with the involvement of political parties, civil sector, experts, and scholars which will start working seriously with the aim of making changes to the election legislation and, at the same time, cooperate actively with international organizations, so that to adopt an election code based on the strong compromises among the political parties and fully corresponding to the international standards as well.

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# Legal Regulation of Surrogacy in Georgia

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## Abstract

The present article reviews the legislation related to surrogacy in Georgia. It refers to the shortcomings provided in the legal regulations governing these issues and offer the recommendations for their elimination. Besides, the judgment made by the Tbilisi City Court Civil Panel on July 23, 2015 is considered which may be said to be of precedent character.

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**Keywords:** Surrogacy; Altruistic surrogacy; Commercial surrogacy

## Introduction

Modern reproductive medical technologies, findings and practice gives couples an opportunity to solve the infertility problem through surrogacy (in vitro fertilization). First baby - Louise Brown was born in the Cambridge University Clinic as a result of surrogacy in 1978<sup>49</sup>.

Surrogacy is the process under which the surrogate mother gets pregnant through artificial or in vitro fertilization, and gives birth in exchange for payment (commercial surrogacy) or without payment (altruistic surrogacy) for another couple or a person. Commercial surrogacy involves a transaction when a surrogate mother receives a reasonable compensation for the services rendered in addition to medical and other expenses. Surrogacy is altruistic when the surrogate mother is compensated or not compensated for medical and other reasonable expenses.

The present article reviews the legislation related to surrogacy in Georgia, it is about the shortcomings provided in the legal regulations governing these issues and offer the recommendations for their elimination. Besides, the judgment made by the Tbilisi City Court Civil Panel on July 23, 2015 is considered, which may be said to be of precedent character.

## Concept and Types of Surrogacy

There are two types of surrogacy in the medical field: traditional and gestational. In case of heterogeneous couples, we are facing the example of the traditional surrogacy, when ovum of the surrogate mother is fertilized

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<sup>49</sup> I. Gelashvili: The legal status of the fetus, Tbilisi, 2012, p. 47.

with the husband's sperm. In this case, the surrogate mother is both genetic and gestational mother of the child.

Surrogacy is gestational, when ovum of a third person - a donor is fertilized with the husband's sperm and embryo is placed in womb of the surrogate mother (i.e. ovum donor and surrogate mother are not one and the same person). In such a case, the ovum donor is the genetic mother and surrogate mother is the gestational mother of the child (partial surrogacy).

Ovum of the wife is fertilized with her husband's sperm and embryo is placed in the surrogate mother's womb. In this case, the ovum donor is the genetic mother and the surrogate mother is the gestational mother (full surrogacy).

Ovum of the wife is fertilized with the donor's sperm and the embryo is placed in the surrogate mother's womb. In such a case, the ovum donor is the genetic mother and the surrogate mother is the gestational mother (partial surrogacy).

### **Surrogacy according to the Legislation of Georgia**

The Legislation of Georgia regulates the issues related to surrogacy in diffusive manner. According to the Paragraph first, Article 143 of the Law of Georgia "On Health", in vitro fertilization shall be allowed: a) to treat infertility, as well as if there is a risk of transmitting a genetic disease from the wife or the husband to the child, using the gametes or embryo of the couple or a donor, if a written consent of the couple has been obtained; b) if a woman does not have an uterus, by transferring the embryo obtained as a result of fertilization to the uterus of another women ("surrogate mother") and growing it there; obtaining a written consent of the couple shall be obligatory. It is important to note, that if a child is born, the couple shall be deemed as parents, with the responsibilities and authorities proceeding from this fact. The donor or the "surrogate mother" shall not have the right to be recognised as a parent of the born child. According to the Article 144 of the above Law, it shall be possible to use male and female gametes or embryos that have been conserved by freezing for the purpose of artificial fertilization. The time of conservation shall be determined according to the couple's will, under the established procedure. Accordingly, the Legislation of Georgia regulates the birth registration rules of the child born as a result of in vitro fertilization<sup>50</sup>. In addition, the Legislation governs the rules of exit of a child born as a result of in vitro fertilization (surrogacy) from Georgia<sup>51</sup>.

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<sup>50</sup> Article 30 of the Law of Georgia "On Civil Acts".

<sup>51</sup> Joint Order №133–№144 of the Minister of Justice of Georgia and the Minister of Internal Affairs of Georgia "On approval of the Rule of exist of a child born as a result of in vitro fertilization (surrogacy) from Georgia", dated April 11, 2016 and April 5, 2016.



It should be noted that the legislation of Georgia permits both altruistic and commercial surrogacy. Georgia belongs to the category of the states where in vitro fertilization is allowed for a profit. Signing of a surrogacy contract means expression of the will by the parties - a couple and a surrogate, agreement on the essential terms in a complicated written form. It is not contested that surrogacy is a service contract. Surrogacy contract has specific characteristics and features, which are characterized by the specific object of the contract.

Embryo does not belong to the property within the classic sense of the word, however, the indisputable fact is that it is the value protected by law<sup>52</sup>. Consideration of an embryo in the special category is due to the unique feature, that distinguishes it from the things, in particular - the ability to become a human after implantation and gestation. Embryo is not an item in the classic sense of the term and its involvement into turnover should be inadmissible, however, in the terms of existing legal regime, when the embryo existing outside of the body is transferred to the others (donation) or is conserved (conservation) on the basis of the agreement of the parties in exchange of payment or free of charge, it must be considered a specific quasi property to which property-related provisions are applied in certain cases<sup>53</sup>.

Woman is believed to be the owner of the embryo. However, when the embryo is placed in a test tube or is frozen, then it is a co-ownership<sup>54</sup>.

### **Certain Legal and Moral-Ethical Problems related to Surrogacy**

Although the institute of surrogacy is an effective solution to infertility, it is linked to a variety of problematic issues in the legal and moral-ethical terms. Of course, discussion of all the disputed issue in this format is impossible. Therefore, following issues will be focused: 1. Either after the death of one of the parents a child born as a result of conservation surrogacy shall be considered as a legal successor of the deceased parent; 2. Or an embryo shall be destroyed in case if after signing the contract on surrogacy service and prior to implantation of a fertilized embryo in the womb of a surrogate mother, disagreements arise between the couple.

According to the Article 118 of the Civil Law of Georgia and Paragraph 2, Article 26 of the Law of Georgia "On Civil Acts", "In the event of the death of the father, a child shall be deemed to have been born to the married parents if he/she is born no later than ten months from the death of the father." Besides, according to the paragraph 2, Article 19 of the Order No.18 of the Minister of Justice of Georgia "On Approval of the Rule of Civil Acts Registration", dated January 31, 2012, the parents of a

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<sup>52</sup> I. Gelashvili: The legal status of the fetus, Tbilisi, 2012, page 60.

<sup>53</sup> Ibid, pp. 61-62.

<sup>54</sup> Ibid, p. 97.

child born as a result of in vitro fertilization shall be the genetic parents, a genetic parent and a person and a couple to be written in the birth act record as the parent. Therefore, on the basis of systematic analysis of the above regulations it should be noted, that a child born as a result of conservation surrogacy in 10 months after death of one of the parents shall be considered as a legitimate successor of the deceased parent, as a deceased person will be indicated as a parent. In addition, it is worth noting, that the Article 144 of the Law of Georgia "On Health" allows the couple to agree on conservation of gametes or embryo, including the fate of the conserved material after the death of any person. Despite the fact that the legislation of Georgia regulates this issue, it is recommended to specify more clearly the issue related to recognition of the child born as a result of conservation surrogacy in 10 months after death of one of the parents as legal successor of the deceased parent in the corresponding acts as follows: "*A child born as a result of conservation surrogacy in 10 months after death of one of the parents shall be considered as a legitimate successor.*" In addition, it is better to determine the maximum term of storage of the conservation material on the legislative level. It should be noted that the child born as a result of conservation surrogacy has the right to get inheritance through the legal representative.

On July 23, 2015, the Tbilisi City Court Civil Panel considered the case, which is important for further development of the institute of surrogacy. According to the background of the case, the couple agreed on birth of the child, using the surrogacy instrument, material was fertilized, but prior to implantation in the surrogate mother's womb, disagreement arose between the couple. Father refused to birth of the child through surrogacy; however the genetic mother desired to give birth to a child in this way. It is important to say that due to the mother's health status, surrogacy was the only way to become a parent for her.

According to the court, in vitro fertilization and subsequent transfer of embryo in the womb of a surrogate mother shall be carried out through couple's agreement. However, the law does not regulate the issue, how to solve the dispute between the parties in case of disagreement, and what should happen to the fertilized ovum - the embryo. The court notes that this dispute is highly sensitive and involves not only legal but also ethical and moral dilemma. According to it, in this case two diametrically different rights are facing each other - the right to become a parent and the right not to become a parent. According to the court, the parties' interests are completely incompatible in this case, since if use of the embryo is allowed, the defendant will be forced to become a father, otherwise - the plaintiff will be deprived of the opportunity to become the genetic mother. Accordingly, the court evaluated the context when making the option, for which there rights

are competing. The court was focused on analyzing the rights of the parties, the opposite interests and, *inter alia*, the need to protect a fair balance and found that the mother's right - to become a parent in this case prevails the father's right - not to become a parent due to the fact that the mother does not have the opportunity to have a genetic child in any other way.

The court's approach to this case should be shared, given the fact that the interests of both parties were taken into account, although through consideration of the mother's situation, her right was prevailed. However, it is important that in the cases of such dispute, the case should be considered individually and specifically, in order to ensure a fair balance between the interfering legal benefits.

### **Conclusion**

In conclusion, it should be said that for more effective, clear regulation of the institute of surrogacy, unification on the diffusively available regulations related to this area and their formation in a single legislative act shall be reasonable in the Legislation of Georgia. Such method will regulate the issues related to the rights of children born as a result of surrogacy, recognition of fact of birth, essential cumulative conditions and termination of the contract, rights of parents and the surrogate mother, etc.

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# **Certain Issues Related to Annulment of Final Court Decisions According to the Civil Procedure Legislation**

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## **Abstract**

The Civil Procedure Code of Georgia is a codified normative act which meticulously defines the general principles of the legal procedure, the court's departmental subordination and judgment, the parties participating in process, their legal capacity, proceedings at all instances of the court, appeals of court decisions, etc. Generally, norms of procedural law are of imperative character. Participants (parties) of these legal relations do not have right to transform or change them. In other words, participants (parties) of formal relations are equipped with only those rights and obligations that are imposed on them only by the legislation or the court practice. Thus, exactly the procedural law determines the degree of democracy and freedom of the state legal system. It does not matter how broad an individual's rights are; these rights lose sense if they are not protected and realized by the state enforcement mechanisms. That is why, when disputes concerning infringement of the Article 6 of the European Convention on Human Rights arise, the European Court of Human Rights always examines whether the applicant's formal procedural rights are protected and how the rights recognized by the national legislation are in line with the standards of human rights.

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**Keywords:** Annulment, final decision, time limit

## **Introduction**

Right to fair trial is a common European fundamental element of the constitutional state.

The Article 42 of the Constitution of Georgia is a key norm regulating the right to fair trial that comprises state-legal procedural guarantees<sup>55</sup>.

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<sup>55</sup> Comment on the Constitution of Georgia. Chapter 2. Citizenship of Georgia. Basic Human Rights and Freedoms. Tbilisi: LTD Petiti, 2013. Pp. 513-523.

The Article 2 of the Constitution of Georgia also determines one of the most important fundamental principles of the procedural legislation of Georgia – protection of a person’s rights in the court.

According to the constitutional court of Georgia, the right to fair trial implies not only the possibility to appeal to a court (register a claim), but also ensures a human’s legal protection. The right to appeal to a court also implies the right to claim against the decision made by a court.

Though the Civil Procedure Code meticulously defines the certain issues of the legal procedure, among them the rules of appeal to a court for restoring violated rights, after adopting this law it has to be found out how effective the procedural norm is, whether it requires amendments and additions. The section XI of the Civil Procedure Code is on issues and rules of reopening the proceedings terminated by a final judgment or decision.

The presented paper aims to analyze the norms referring to the terms of application for annulment of the final decision; it also aims at forming the viewpoint in order to protect the rights of an individual applying for annulment.

### **The object of reopening proceedings based on annulment**

The Civil Procedure Law considers the special rule of annulling final decisions by reopening proceedings.

According to the paragraph 1 of the Article 421 of the Civil Procedure Code, Proceedings terminated by a final judgment or decision may be reopened when there are prerequisites for an action for annulment (Article 422) or for an action for retrial of the case due to newly discovered circumstances (Article 423).

Thus, the object of reopening proceedings (restitution of proceedings) can be only the case proceedings of which were completed and the court’s decision or judgment on terminating proceedings or dismissing an appeal is final.

The same can be said about cases completed by decisions and judgments made by courts of appeal. It refers to the appeal and cassation court decisions by which impugned decisions were annulled and new decisions were made. Thus, proceedings and not appeal (cassation) proceedings were terminated.

The object of reopening cannot be separate procedural actions which were completed and court decisions were final<sup>56</sup>.

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<sup>56</sup> T. Liluashvili. Civil Procedure Law. Tbilisi, 2005. P. 539.

## **Reopening of proceedings on the basis of the appeal for annulment of decision**

The court decision, in its sense, is an act of justice administered in the name and on behalf of the state and its main purpose is to provide law and order determined by the act.

The court decision, considering the objective and subjective limits, after entering into force, deprives the parties of the right to apply again to a court with the same claim on the same grounds and dispute the facts and legal results determined by the court decision (Article 266, Civil Procedure Code of Georgia).

The only exceptional case when the completed proceedings may be reopened by annulling a final decision is considered by the section 11 and, due to its purpose, is not just a possibility of appealing against the final decisions or other legal acts; it is directed to the party's right to demand reopening of the proceedings according to the procedural rules and cases strictly determined by law, inobservance of which will have unfavorable results for the party.

Reopening of the proceedings is not the next step of appealing against court and accordingly, it is not a procedural mechanism of examining legality of the decision.

The proceedings which were followed by the final decisions may be reopened only in exceptional cases when there are preconditions strictly determined by law.

As it was already mentioned, the Civil Procedure Code of Georgia provides two types of reopening of proceedings:

- 1) Annulment of the court decision
- 2) Reopening of the case due to newly discovered circumstances

Article 422 of the Civil Procedure Code of Georgia depicts grounds for reopening the proceedings when there is a demand of annulling the court decision.

According to the mentioned norm a final decision can be annulled on the basis of an action filed by an interested person appeal if:

- a) A judge who was involved in decision-making did not have right to participate in decision-making according to the law;
- b) One of the parties or its legal representative (if such a representative is needed) was not invited to the hearing;
- c) A person, whose rights and legal interests are directly related to the decision, was not invited to the hearing.

d) These grounds may not be used for annulling a decision if it was possible for the party to declare those grounds during the hearing to the court of the first instance, the court of appeals or the court of cassation<sup>57</sup>.

To determine the grounds necessary for annulment of the final decision (judgment), violation of the rules given in the Articles 70-78 of the Civil Procedure Code of Georgia while inviting a party to the hearing shall be proved.

Hearing held in absence of one of the parties (or a legal representative) who was not notified according to the rules established by law creates absolute grounds for reversing a decision by means of appeal (cassation) procedures (Article 394, Civil Procedure Code of Georgia). But if a decision entered into force, and it cannot be appealed, the question of its annulment arises (article 422, part 1, subparagraph b).

Thus, a notification shall be delivered according to the rules established by law (Articles 70-78 of the Civil Procedure Code of Georgia). If the notification is delivered in the abovementioned way, absence of one of the parties cannot impede the hearing and cannot serve as grounds for annulment of the final decision<sup>58</sup>.

### **Time limits for filing an action for annulment of a decision**

An action for annulment or an action for retrial due to newly discovered circumstances shall be filed within one month and this period cannot be extended (Article 426, Civil Procedure Code of Georgia).

The period shall commence on the day when the party becomes aware of the grounds for annulment or retrial due to newly discovered circumstances.

If an action for annulment of a decision is based on Article , part 1, subparagraph “b”, the time limit for filing the application shall commence on the day when the party, or its legal representative if the party is legally incompetent, were notified of the decision.

An action for annulment or an action for retrial due to newly discovered circumstances may not be filed after five years have elapsed after the decision entered into force, except for cases under Article 422, part 1, subparagraph “g” and Article 423, part 1, subparagraphs “z” and “t” of the Civil Procedure Code.

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<sup>57</sup> Decision of October 2, 2009 of the Chamber of Civil Cases of Kutaisi Court of Appeal on the civil case № 2/ბ-539-2009; Judgment of the Chamber of Civil Cases of the Supreme Court of Georgia. Case N სბ-418-396-2012. 23.04.2012.

<sup>58</sup> Cf: Liluashvili T., Khrustali V. Comment on the Civil Procedure Code of Georgia. Tbilisi, 2007. P. 747.

According to the indicated norms, a legislator determines special time limits that commences after the decision enters into force.

Another approach shall be taken when the party learned about the grounds for annulment of the decision before the decision entered into force and this happened when he/she still had the opportunity to file an action to the appeal or cassation court. In such cases, the court shall refuse to accept and proceed the application due to the violation of time limits.

Reopening of proceedings is possible only in cases when the appeal against the decision is not admitted<sup>59</sup>.

Besides determining a one-month deadline for filing actions, procedural law (Article 426, part 4) also determines the maximum time limit - 5 years - after the enforcement of a decision. If this period of time is exhausted, reopening of proceedings is impossible even in cases when the ground for annulment of a decision is evident.

Time limitation determined by the indicated norm became a subject of dispute at the constitutional court of Georgia several times.

According to the decision made by the constitutional court of Georgia (April 30, 2003) the application on retrial of the decision after 5 years of its enforcement is not admissible and it does not contradict the Article 42 of the Constitution.

The aforementioned decision indicates that revising decisions for a long time threatens interests of the third parties' who acquired this right on the basis of the court decision.

It is inadmissible to keep a final court decision constantly in doubt, otherwise the credibility of the court will become suspicious<sup>60</sup>.

On November 5, 2013 the Constitutional Court of Georgia, upheld the constitutional claim №531 of the Israeli citizens - Tamaz Janashvili, Nana Janashvili and Irma Janashvili against the Parliament of Georgia and according to the Article 42, part 1, declared the normative content of the Article 426, part 4 unconstitutional. i.e. the provisions of the Article 426(4) under which the persons provided in Article 422(1)(c) of the Civil Procedure Code of Georgia are not allowed to file an action for annulment once five years have elapsed after the decision has become final, has been declared invalid.

The Constitutional Court explained that the persons provided in Article 422(1)(c) of the Civil Procedure Code of Georgia should be able to file an action for annulment of a decision made in favor of the state. They may submit circumstances/evidences that could have changed a final

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<sup>59</sup> Liluashvili T., Khrustali V. Comment on the Civil Procedure Code of Georgia. Tbilisi, 2007. Pp. 754-755.

<sup>60</sup> Decision №1/3/161 of April 30, 2003 of the First Board of the Constitutional Court of Georgia.



decision in their favour if they had been submitted to the court during the hearing of the case. Demanding annulment of a final decision is vital for protecting and restoring the rights of these people.

Interested parties should be given an opportunity to protect their rights and file an action for annulment a final decision regardless of a 5-year limitation period.

Restriction on retrial of the case shall be admissible only when the court is practically unable to correctly solve the dispute and avoid violation of particular persons' rights<sup>61</sup>.

In certain cases, restriction of the person's right to apply to the court is admissible according to the European Human Rights Court. Restriction is in line with the Article 6 of the first part if it depicts a legitimate aim and there is a reasonable correlation between the use of this means and a legitimate aim<sup>62</sup>.

### **Legislative Problems related to Annulment of a Final Decision**

In order to determine if the case can be proceeded under the Article 422(1)(b) of the Civil Procedure Code of Georgia, it should be clarified if a party was notified by a judicial summons according to the rules established by the articles 70-78 of the Civil Procedure Code of Georgia.

There are strictly defined rules for notifying judicial summons to a party. Particularly, a party or its representative shall be notified by a judicial summons of the date and location of a hearing. The summons shall be deemed served on a party or its representative if it has been served on either of them (under Article 70.1 of the Civil Procedure Code of Georgia).

If the location of a party is unknown or it is impossible to serve judicial summons in any other way, the court may, by its judgment, approve service by publication (Article 70.1 of the Civil Procedure Code of Georgia).

If the location of a party is unknown or it is impossible to serve judicial summons in any other way, the court may, by its judgment, approve service by publication. Service by publication shall be implemented by hanging notification on a prominent place in the court building concerned or by placing it on a web-site, or at the request of an interested party, by publishing, at the party's expense, in the newspaper widely circulated in the administrative-territorial unit where the party resides, or by publishing in other media.

In the cases specified in the first paragraph of this article, judicial summons shall be deemed served on the party on the seventh day after the

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<sup>61</sup> Decision №3/1/531 of November 5, 2013 of the Constitutional Court of Georgia.

<sup>62</sup> Decision of November 30, 2005 of the European Court of Human Rights on the case - Iedemski and Iedemska against Poland.

summons are placed at a prominent place in the court building concerned, or on a website, or published in a newspaper or other media.

Analysis and judicial practice of the indicated rules (the Articles 70-78 of the Code) shows that public judicial summons causes problems.

The Article 78 stipulates that "public notification" is based on juridical fiction, since there is no doubt that publications (including the summons) are not directly delivered to the parties but in order to administrate justice, the court assumes that the parties received them. The content of the norm considers judicial summons delivered.

At the same time, it is obvious that it is not reasonable to suppose that parties who were delivered summons by publication will know about it, especially, when the claim is proceeded under the Article 15, part 2 of the Civil Code of Georgia which considers that who were the subject of the public notice of these messages will be introduced. If defendant's location is unknown, then a claim may be filed according to his/her last place of residence.

Thus, by the time of filing a claim and hearing a defendant may have changed his/her last place of residence (especially, when a defendant's location is unknown), what excludes sending judicial summons to a party about an action filed against a defendant and possibility of filing an action within time limits established by the Civil Procedure Code.

For this reason, a 5-year time limit for annulment of the decision may not be enough for a party to realize the right to a fair trial. The purpose of civil litigation is to make timely, lawful and fair decision while proceeding a dispute. If a party is not notified about the proceedings according to the established rules, the decision made against the party shall not be fair. Therefore, such a party shall not be restricted by a 5-year time limit on filing an action for annulment of the decision.

It is noteworthy that this view is in line with the decision of the Constitutional Court of November 5, 3013 as well as with legislations of other democratic countries. For instance, under the Article 586.1 of the Civil Procedure Code of Germany, reviewing of the enforced decision is inadmissible after a 5-year time limit expires. Though, under the Article 586.3, this decision time limit does not apply to annulment of the decision when a party was presented by an unauthorized representative (the Article 579.4) or when a dispute concerns a suit on establishment of paternity and appointment of a trustee (the Article 641.4)<sup>63</sup>.

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<sup>63</sup> Thomas/putzo, ZPO, Kommentar 28. Auflage, Verlag C.H.BeckMunchen. 2007. S.771-781.

## **Conclusion**

Under the Article 422, part 1, subparagraph “b” of the Civil Procedure Code of Georgia, a party has a right to file an action for annulment of the decision if a party or its legal representative (if the party needs such a representative) has not been invited to the hearing. Though, submitting such an application is admissible within 5 years after the decision enters into force. Even if a claim is well-grounded, the application cannot be submitted after the time limit expires.

To protect the right granted by the Article 42 of the Constitution of Georgia and the Article 2 of the Civil Procedure Code, the party shall be given the opportunity submit an application for annulment of the final decision even after a 5-year time limit expires if a party is not informed about the court trial against him/her or the party was sent public notification to the hearing.

To sum up, amendments in the Procedure Legislation regarding the discussed issue will greatly contribute to realization of the right to a fair trial.

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# **Criminal Characterization of Appropriation and Embezzlement and Their Separation**

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## **Abstract**

During the implementation of the study we will review the definition set forth following the amendments and additions made by the Parliament of Georgia on October 23, 2008 in the Article 182 (appropriation or embezzlement) of the Criminal Code of Georgia. After the amendments in legal literature and judicial practice, there are critical remarks with regard to the norm disposition. In the above study I will refer to the qualification issues of appropriation or embezzlement in terms of both similarity and separation. We aim to examine and highlight the main problems that can be created in the activities of investigative and judicial bodies unless the Parliament of Georgia includes relevant amendments and additions in the Article 182 of the Criminal Code of Georgia. I will provide hypothetical cases and comparison examples and try to justify the legal qualification with regard to the Article for discussion. I will try to highlight the main issues that, during the application of the norm, will rise a problem in judicial practice due to the vagueness of the norm. In the last part of the paper, I will provide the similarities and differences of appropriation and embezzlement. As well as the analysis of the issues that create the problem during the qualification of the action.

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**Keywords:** Criminal Code, appropriation, embezzlement, other's property, property rights, legal ownership or governance

## **Introduction**

The goal of the above study is to provide a short description of the Article 182 (appropriation or embezzlement) of the Criminal Code of Georgia and their separation with the analysis of the objective as well as subjective side of the action. Considering the recent events in the country, some regulatory aspects of the given Article have become controversial. The vagueness of the norm, with respect to the implementation of the action, rises variety of opinions. With the analysis of the circumstances, the

qualification of the action becomes controversial which, in turn, gives rise to the incorrect interpretation of the norm and mistakes in judicial practice.

The subject of the study is how to give the right qualification to the appropriation and embezzlement. We should evaluate what is meant in the elements of the norm disposition. We should separate the main structures, appropriation and embezzlement, of the Article 182 of the Criminal Code of Georgia. Regarding the issue, an action was brought in the Constitutional Court of Georgia because of the case of “Cables” about which the decision has not been made.

### **Materials and Research Methodology**

While writing this article I analyzed the cases in my practice of law. I also studied judicial practice, got introduced to the Public Defender’s opinion as a friend of the court about the action brought in the Constitutional Court of Georgia with regard to the Article of appropriation and embezzlement. As for the research methodology, while working on the article, I used analysis, synthesis, comparison, generalization and concretization.

Pursuant to the Article 182 of the Criminal Code of Georgia, there is considered criminal responsibility for appropriation or embezzlement. The disposition of the Article, before the amendments were implemented on October 23, 2008, was as follows: “illegal appropriation or embezzlement of other’s movable property if this property was under the legal ownership or governance of the appropriator or embezzler”. After the implementation of the amendments, the disposition of the norm was read as follows: “illegal appropriation or embezzlement of other’s property or property rights if this property or property rights were under the legal ownership or governance of the appropriator or embezzler” i.e. the word “movable” was removed and were added the words “property right”. The necessity of making amendments, according to the explanatory note of the author of the Bill is provided in accordance with the Article 17 of the United Nations Convention “against corruption” in order to increase efficiency of use of the Article 182 of the Criminal Code of Georgia, the definition has been specified”.

The Article 182 of the Criminal Code of Georgia consists of 3 paragraphs. The first part of the Article 182 represents less serious crime. The second paragraph contains the following qualifying factors: a) by a group’s conspiracy; b) repeatedly; c) that has caused a substantial damage; d) by using one’s official position; 2nd part belongs to the category of serious crimes. The action referred to in Paragraph 1 or 2 of this Article, perpetrated: a) by an organized group; b) in large quantities; c) by the one who has been twice or more than twice convicted of illegal appropriation or embezzlement of other’s movable objects. Let us consider some of the qualifying

circumstances. In the Criminal Code of Georgia, in the Article 182, paragraph 2, the point "a" envisages the action committed by the prior agreement of a group. According to the paragraph 2 of the Article 27 of the Criminal Code of Georgia "The crime shall be committed by a group with aforethought if the participants therein previously came in cahoots to commit the crime." The group's prior agreement to commit the crime implies co-perpetration and in such cases complicity cannot establish illegal appropriation or embezzlement committed by a group with aforethought. Worth mentioning the definition given in the point "c" of the paragraph 3 of the Article 182: c) by the one who has been twice or more than twice convicted of illegal appropriation or embezzlement of other's movable objects. First of all the definition which refers to illegal appropriation or embezzlement is noteworthy. This definition does not mention the "property rights", which was given in the Article 182 after the amendments and additions in the disposition of the article. On October 23, 2008 the change was argued by the Parliament on the grounds that the law specifies the definition of the composition and the following definitions and terminology are introduced in the Articles 180 (forgery) and 181 (extortion). In the point "c" the concept is vague: by the one who has been twice or more than twice convicted of illegal appropriation or embezzlement of other's movable objects. Misappropriation is a crime against property of the subjective rating of "the goal of appropriation." For example, if a person twice or more times was convicted for fraudulently illegal appropriation of property rights (for forgery), if the norm of the point "c", paragraph 3 of the Article 182 should be extended "for illegal appropriation" is what I believe is the legislative shortcoming. I think the court cannot use the qualifying circumstances of this case. Definition of the law contrary to its literal meaning is forbidden in the criminal law, because it is against the principle of legality. The Court does not clarify the law so that regulations adopted by the Parliament to change according to private capacity. It violates the principle of separation of powers. It violates the principle of separation of powers. Since the change in the law or amendment right in the Constitution of Georgia is awarded to only the legislature body.

This action requires a special entity. In the legal literature there is indicated that the executor of the action considered by the Article 182 of the Criminal Code is special. "Misappropriation and embezzlement are characterized by the fact that the offender is entitled to own the property under legal ownership or governance" (1, 389); appropriation will be finished when the appropriator is allowed to manage the property or property rights.

Embezzlement is committed by a special subject and implies the sale, donation or otherwise, alienation of the property under the legal ownership

or governance of an embezzler during which the income will not be transferred to the owner and moves to the illegal use of the embezzler. Embezzlement is over from the moment of illegal disposal of other's property or property rights.

Legal ownership on the property will be created in the form of a Contract, duties or special assignment. Based on the specifics of the job, if a person has access to other's property and possesses the property secretly, this action will be qualified as theft. For example, a craftsman who does repairs in another person's flat and secretly possesses flat owner's personal property, this action will be qualified not as appropriation but as theft.

Appropriation or embezzlement are directly intended. The motive of the crime is mercenary. According to the opinion expressed in legal literature: a person "understands that due to his/her actions, he/she harms the property owner and even wants to harm them. This time he/she acts with a mercenary motive and aims to get illegal income at the expense of others" (1,390).

The part of the disposition of the Article 182 of the Criminal Code which refers to the issue of "governance" of the property or property rights is controversial because it is vague. Concept of "governance" gives the possibility of its broad definition. In practice there may be such a case that the property is under the governance of "A" but it can be disposed by other person who has the right of it. The question is: Should the disposal of the property or property right by other person be imputed to "A" as embezzlement or not for the legal governance of the property or property right? In this case, yes, "A" does not have the mercenary motive. I think that in the above case the action of "A" should not be classified as embezzlement.

The difference between appropriation and embezzlement lies in its objective side. For examples, the seller took the TV from the store and hid it in his house. The cashier took the amount of money from the cash box and deposited it to his personal bank account. And in the case of embezzlement the offender disposes of the property under his legal ownership. Professor Nona Todua believes that "embezzlement" cannot be further criminal activity of appropriation. For example, the warehouse manager misappropriated the property being in the warehouse and then sold it, this action should be qualified as appropriation not as embezzlement" (2,165).

## **Conclusion**

Based on the analysis of these circumstances we can say that the presence of the given "property" and "property rights" in the disposition of the Article 182 of the Criminal Code of Georgia under legal ownership or governance creates vagueness with regard to the definition of the norm. Thus, ownership can be measured individually in every particular case and

“governance” is a general term which allows its broad interpretation and the attitude towards it is ambiguous. Normative content of the concept of “governance” is vague. We believe that the Parliament of Georgia should amend the part 1 of the Article 182 of the Criminal Code of Georgia and remove the words “or under governance” from the disposition of the norm. I also consider that the point "c" of the paragraph 3 of the Article 182 should be amended and supplemented by the words of another person's property "or property rights" of illegal appropriation.

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## Historical Review of Robbery

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### Abstract

The subject of the research topic is of a serious criminal offense such as robbery. The present paper investigates robbery as one of the most dangerous forms of seizure of other's property accompanied by using violence or threat of violence which endangers life or health. The research studies whether robbery is properly attributed to property crimes when robbery is directly related to life or health-threatening violence. The major subject of the research is to make fundamental criminal analysis of robbery as one of the most severe and frequently committed crime; also, to identify its place in the Criminal Code on the basis of comparing it with premeditated murder motivated by self-interest. The research gives historical review of robbery considering the European practice and aims to contribute to improvement of the legislation of Georgia.

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**Keywords:** Robbery, theft, violence, threat, legislation

### Introduction

The presented work discusses the historical stages of robbery as a crime given in the ancient and current sources of Georgian law; how the gravity of the committed crime was perceived and what sanctions were provided for criminal action in different periods in Georgian legislation, what criteria were used to determine its place in the Criminal Code.

To analyze the concept of robbery comparative research method is used in the work. The examples of different countries' criminal legislation help to better understand the essence of robbery. It clearly demonstrates advantages and flaws of the current Georgian legislation.

History of Georgian law originates from ancient times and its study shows that criminal dispositions described in Georgian legal documents preceded the time when they were drafted and the committed acts were properly qualified.

Based on historical resources, Ivane Javakhishvili stated in his works that criminals who robbed and captured innocent people for self-interest were qualified as "plunderers" and "brigands" and the act of commitment of

these crimes – as “to plunder” and “to maraud”; a victim was called “an affected party”. It is worth mentioning that the author discusses these acts in the chapter dedicated to crimes against human life. It is noteworthy to admit that in Giorgi Brtskinvale’s “Dzeglisdeba” (a book of Georgian law, XIV c.) the terms “mobarva” (theft) and “samekobro saqme” (plundering) were the same and they broader meaning than the word “theft”.

In patrimonial society of old Georgia, plundering, theft and raid were considered shameful and disgraceful when committed only within the same patrimonial community. If the same crimes (including murdering) were committed against other patrimonial community, it was regarded as deeds of valor. In some cases people even praised such “bravery” in their poems. Later, when the patrimonial system collapsed, such acts were already called “felony”, though the same action directed to dwellers of neighboring countries was not considered as a crime. Modern educated nations condemned the remnants of this wildness and “heroes” became “anti-heroes”.

Strict criminal policy carried out by Georgian kings had positive outcomes. Public life in XII century Georgia was quiet as there practically was no theft and banditry. King Tamar’s historian notes that in that time there were no victims or plunderers and thieves. It was the result of strict penalties established by King Giorgi III at the legislative assembly. It should be noted that while King Tamar’s reign penalty for all kinds of crime was reduced and only plunderers were judged with harsh penalty.

The legislative reform was conducted in the 20s of XX century; as a result the first two codes of the Soviet era (1922 and 1928) were drawn up. According to the Article 191 of the Criminal Code of 1922, robbery was assaulting a person publicly for the purpose of encroaching on property that was accompanied by violence which posed a threat to a victim's injury or death. According to the Article 181 of the Criminal Code of 1928, robbery was assaulting a person publicly for the purpose of encroaching on property that was accompanied by the act of violence threatening a victim’s life and health or resulting in a victim’s death;

- The same act if it is committed for the first or second time and resulted in death or heavy injury;
- Armed robbery.

In the Criminal Code of the Republic of Georgia of 1960 two kinds of robbery were considered: 1) Robbery committed for the purpose of seizing state or public property which is accompanied by using violence or threat of violence which endangers life or health and which is given in the chapter dedicated to crimes committed against state and public property (the Article 96). 2) Robbery committed for the purpose of seizing citizens’ property which is accompanied by a life or health-threatening violence or

threat of use of such violence and which is given in the chapter dedicated to crimes committed against private property (the Article 152).

Considering that the Criminal Code was drawn up according to the values of primarily protectable issues related to citizens' welfare, the Criminal Code of the Republic of Georgia of 1960 clearly depicts the priorities of the system of the time: state or public property protection was more important than a person's life, health, freedom and dignity. Protection of citizens' political and labor rights was more important than protection of their private property.

According to the current Criminal Code of Georgia (enforced on July 22, 1999), robbery is stated among economic crimes and is given in the chapter dedicated to crimes committed against property. Under the Article of the Criminal Code robbery is an assault for unlawfully appropriating another person's movable property using violence or threat of violence which endangers life or health.

The analysis of legislations of different counties is also interesting regarding the issue of robbery. For instance, in the United States of America, "The Uniform Crime Reports" defines robbery as "seizure of property that is under supervision, custody or control of an individual or individuals or intention of unlawful appropriation of something valuable using violence or threat of violence or/and intimidation of a victim". In the report of "Bureau of Justice Statistic" (1992), robbery is defined as "unlawful appropriation of something valuable using violence or threat of violence".

According to the paragraph 211 of California Criminal Code, robbery is seizure of other's property using violence or intimidation of victim in his/her presence and against his/her will.

According to Louisiana law on aggravated robbery, robbery is unlawful appropriation of other's property or something valuable inflicting bodily injury (serious bodily injury). According to the same law, "serious bodily injury" is when an injury causes extreme physical pain, obvious body distortion, loss of function of any organ or a real risk of life.

According to Kentucky Criminal Code, there are two categories of robbery: I. (1) A person shall be deemed guilty of committing a robbery of the first category if he/she used violence or threats of physical violence while committing a crime - robbery (misappropriation of property) and: (a) he/she caused physical injury of any person who did not participate in the crime; (b) he/she was armed with a life-threatening weapon; or (c) he/she used or threatened to use a life-threatening weapon against a person who did not participate in the crime. II. The second category of crime: (1) A person shall be deemed guilty of committing a robbery of the second category if he/she used violence or threats of physical violence while committing a robbery.

The German Criminal Code is generally familiar of robbery (Raub) category which includes robbery, aggravated robbery, robbery with deadly consequences, armed robbery, armed extortion etc. The Article 249 of the German Criminal Code states - "those who use violence or threat of violence for the purpose of appropriation of others' property or for the purpose of disposal of property to others are sentenced to no less than one year of imprisonment. The size of penalty increases according to the aggravating circumstances".

In some of the states of the US, robbery that is committed in an unwatchful manner and unintentionally results in deadly consequences belongs to the category of crimes against life and can be considered as a murder.

"Armed robbery" is a case when a perpetrator uses violence against the person or threatens him/her with death in order to maintain the stolen property.

According to the Criminal Code of Germany, crime is qualified as extortion when it is committed by a person who violates or threatens to violate another person to commit a crime and this person unconditionally agrees to perform or not to perform any action which leads to infliction of physical or property damage to a victim or any other person for the purpose of personal benefit. Armed extortion is an action when a person uses violence or threat of violence and the action results in immediate death of a victim.

Analysis of the norms mentioned above shows that the category of robbery in the German legislation is more narrowly defined than in the American legislation. Robbery implies active actions from the side of a perpetrator. If the disposal of property takes place under the threat of a loaded gun held to the head of a victim, the crime is classified as "armed extortion". In the United States all cases of "armed extortion" are considered as robbery.

Some of the articles depicting crimes against property in the Criminal Code of Germany indicate that attempt of misappropriation (appropriation) of other people's property is worth of punishment, though the article does not define the size of punishment. Thus, unlike the Georgian legislation Criminal code of Germany does not exclude punishment for an attempt of misappropriation (appropriation) of other people's property.

## **Conclusion**

Analyzing robbery as statistically one of the most severe and frequent crimes from ancient times up to the present, gives us a chance to make necessary decisions for the further improvement of the Georgian legislation. The value of the work increases when it comes to identifying the place of

robbery in the Criminal Code of Georgia. Considering contemporary values, the work gives important cues that will help to place robbery in the chapter depicting crimes against human life and not in the chapter depicting crimes against property. Minding disposition of robbery and priority of human life safety, the study cannot be considered insignificant. Any kind of research starts with analysis of the history exactly what was done in this case.

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## **The Party's Explanations in the Civil Court Proceedings**

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### **Abstract**

According to the Georgian Civil Procedural Code, evidence is information received in legal way, based on which parties protect their rights and legal interests. Physical and juridical persons protect their civil rights in the court. They establish their suit demands on facts which can be proved by means of evidence. So, evidence has great role in the civil process. There are a lot of cases when a party has significant advantage against an opponent, foreseeing material law norms, though his/her suit demand is possible not to be satisfied in the discussion of the case, reasoning not having enough and real evidence, as civil legislation imperatively defines, that each party should prove circumstances on which he/she establishes their demands counterclaim, parties themselves define which facts should be based on their demands or by which evidences these facts should be proved. In the given case, the aim of our research is to study the evidence the party's explanation, as an evidence in the court practice, is evaluated in the court, how homogeneous the court practice is in relation to this issue and what kind of flaws we have in this aspect.

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**Keywords:** Civil, explanation, evidence, evaluation, decision

### **Introduction**

The Civil Procedural Code adopted on November 14, 1007 defines that in the court none of the evidences has in advance established power. The court evaluates evidences by its internal belief, which should be based on its complete and objective discussion in the court session, after which it makes conclusion about existence or non-existence of important circumstances related to the case. It is obligatory that the court's internal belief related to the evidence be reflected in the final decision, otherwise we will receive groundless decision. It should be taken into consideration that the number of evidences is not crucial for determining important circumstances for the case. In this case the decisive factor is its content and convincingness.

Accordingly, the court's decision can be based on even one convincing evidence.

The court cannot decide any case without determining factual circumstances and for determining them it uses evidences. Aim of the court is to protect rights and interests foreseen by law. To protect these rights, the court has to determine if the right which a suer demands to be protected really exists or not and if the corresponding obligation is imposed on a defendant and how it is expressed. Rights and obligations are not formed themselves. Law relates the existence, changes and termination of rights and obligations to certain juridical facts. The court can base its decision only on those factual circumstances which are presented by the parties on the court trial and are strengthened by proper evidences. To decide the particular case properly, the court has to determine in advance the fact having great importance for making decision. The process of determining facts is rather meticulously regulated by the civil procedural legislation. Legislation defines area of the means of evidence, which can be used by the court for determining factual circumstances, possibility and destination of this evidence, distribution of evidential burden among parties, which party has to prove which circumstance, the rule of researching of evidence, general rule of evidence's evaluation and so on.

In the civil process evidences are means of proof defined by the law, by using of which the court can establish factual circumstances for deciding the case correctly. Law exhaustively defines kinds of evidence. These are: explanations of parties (the third person), testimony evidence of witness, written and material evidences, experts' opinion and materials giving statements of facts.

According to the procedural code, the court is obliged to analyze evidences. At the court session, the judge has to listen to the explanations of the participants of the case, testimony evidence of witness, experts' opinion; the judge has to learn the written evidence, look through the material evidence and materials giving statements of facts. Thus, violation of immediacy rule and deviation from it in the court practice is qualified as a mistake with all legislative consequences (2). It is true that united rules are used for collection, analyze and evaluation of the evidence, but each means of evidence has its own specifics from the point of view of its content and procedural form of usage.

### **Materials and Methods**

Basic material of previous research is Georgian Civil Procedural Code and Court Acts (decisions) adopted on November 14, 1997. To give legally correct definition to the problems related to this issue, it is important to use the court practice which depicts today's reality. Namely the court

practice specifies the problematic character of this issue. Thus, it is important to analyze flaws which exist in the court practice and establish the united practice related to these issues.

In the civil process is established the principle of free evaluation of evidence by the court. It is obvious, that internal belief does not mean to act willfully. Court's willfulness is a groundless, unjustified position which is based on the court's own sympathy and wishes. Court's internal belief is a subject of evaluation, subjective criterion which must always be based on some objective facts. Evaluation of evidence, as all other evaluations, is a mental process and in case of such evaluation, the court should guide with the laws of logic that teach us to think correctly. Evaluation of evidence by the court means individual as well as united evaluation. Court is obliged to evaluate evidences in terms of their content and juridical convincingness. Court in its decision should emphasize the opinion due to which it found out some evidences real and some unreliable. It should be reflected in the decision why in the particular this or that evidence was evaluated this way and not in another way. Such exigency of law has different meaning, but one of the most important meanings is that the higher court has to examine factual ground of the decision; this will be impossible if the reason why the court accepted or denied this or that evidence is not indicated in the decision.

In the comments on the Article 127 of the Civil Procedure Code of Georgia, the authors write that "a party is a person who is participant of a legislative dispute; so, he/she should be well aware of circumstances that are to the case. The legislator follows this point of view when he/she considers parties' explanations as independent and important source of the evidence. We have to differ from each other that part of the explanation which forms and specifies a claim and that part of the explanation which concerns circumstances of the case. Evidence is the part of parties' explanations which proves existence and non-existence of circumstances that are important for solving the case correctly. Regardless how parties' explanation is presented – orally or in a written form, only that part of the explanation has the evidentiary value which includes the indication about facts" (3). Consequently, the practice spread in the court, according to which the explanation about the case's factual circumstance is given not by the party himself/herself, but by his/her contractual representative, for example lawyer, does not correspondent to the law and its imperative demand. According to this: "The process of establishing the circumstances that are essential to the case shall start by examining the parties (third parties, joined parties, legal representatives): The parties shall provide explanations on the circumstances of which they are aware and that are essential to the case" (the first part of the Article 127 of the Civil Procedure Code of Georgia). Contractual representative has wide procedural rights. He/she can analyze



the case materials, expresses ideas about authenticity of evidence provided in the case, also about the fact which law should be used and what kind of decision should be made, etc.; but he/she cannot use the function of a party as source of the evidence, also cannot use the function of a witness or an expert (1).

The Supreme Court of Georgian, in its judgment which was done on the case #სს-217-543-09(4), explains that the Court of Appeal evaluated evidences existing in the case neglecting demands of the second part of the Article 105 of the Civil Procedure Code 105 according to which a court shall evaluate evidence according to its inner conviction based on comprehensive, full and impartial examination of the evidence, as a result of which it shall rule on the existence or absence of the circumstances that are essential to the case. Particularly, the Chamber of Cassation in the mentioned judgment states that as one of the defendants recognized the suit, this represented basis for satisfaction of the suit at least in the part of the defendant. The court left this fact without attention what caused incorrect decision. Also the Chamber of Cassation noted that the first instance court did not listen to the explanations of this defendant. Party's explanation is an important evidence, even from the point of view of the regulations given in the Article 131 of Civil Procedure Code. According to this norm, the court can consider the confirmation of existence or non-existence of circumstances by one side on which the second side establishes his/her claim or counterclaim as an enough evidence and base its decision on it. The defendant with the given explanations in the court of appeal proved the circumstance noted by the suit, i.e. the fact of capturing inheritance by a suer but the court of appeal did not discuss this explanation fully and thoroughly. By recognizing this circumstance stated in the explanation, according to the Article 131 of the Civil Procedure Code, the court can make a decision and satisfy a claim. Otherwise, it should be justified why the court refused the party's explanation. From the above mentioned we can say that the Chamber of Cassation considered that the judgment of the court of appeal, by which the suit was not satisfied was incompletely justified, due to which the judgment of the court of appeal was abolished and the case for re-discussion was returned back to the same court.

## **Conclusion**

Considering the above mentioned, it can be said, that justice is a complicated process of research. Unlike other researches, where there is freedom of expression and making conclusions, the final decision of the court should be based on evidences corresponding with each other. When we speak about just and objective court, first of all we should take into consideration justification of decisions made by the judge, how it comes out

from evidences given at the process. If the decision of the court has to be objective, then the information and the facts which are given in the case as evidence should be reliable and authenticity of evidence is determined by the court while discussing the case and comparing evidences. This should be fully formulated in the decision.

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# **Lefal Aspects of Labor Migration and Human Trafficking**

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## **Abstract**

The paper deals with the legal aspects of the problems of labor migration and human trafficking, its causes and factors, the trafficking scale. When considering economic causes, we refer to the demand for low-cost labor, as a characteristic factor of globalization which, in turn, greatly effects the international labor migration and is one of the root causes of human trafficking. In the analysis of the social causes, the focus is mainly made on the low-pay employment or lack of working conditions.

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**Keywords:** Labor migration, trafficking, violence

## **Introduction**

Labor migration is an employment in a foreign country for a certain period. Globalization has triggered the largest floods of migrant workers. The processes that have developed worldwide show that by the end of 2016 the number of persons legally employed abroad will reach 150 million. The amount of money sent by migrant workers to the countries of their citizenship will exceed 500 billion US dollars.

In the last decades, the number of migrant workers has especially increased. The twentieth century has witnessed the unprecedented mobility of population.<sup>64</sup> The number of people living outside their homeland exceeded 180 million or more than 3 percent of the world's population in 2006, from which 86 million were migrant workers. In 2007 the number of international migrants exceeded 200 million. Now there are about 300 million international migrants worldwide, where 84 percent are the citizens of developing countries of Asia, the Pacific, Africa, Latin America and the Caribbean as well as the Commonwealth of Independent States and South-East Europe. Compared with other continents the level of migration from Europe is low.

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<sup>64</sup> Bilsborrow, R.E.; Graeme, Hugo; Oberai, A.S.; Zlotnik, Hania. "International Migration Statistics", UNDF 1997.

Labor migration is linked to the factors such as social protection<sup>65</sup> and economic development dynamics, labor standards and employment policy, the demographic situation, trafficking and labor exploitation.

Labor migration between the sending and host countries should be based on the fair and legal principles, in order to promote decent employment, reduction of unemployment rate and overcoming the qualified workforce deficit. During the last quarter-century the rate of labor migration has been extremely high.

On October 13, 2010 under the decree N 314 of the Cabinet of Ministers of Georgia the Migration State Commission was established, on the basis of drafted document of which the Cabinet of Ministers of Georgia adopted the Decree N59 “On the Approval of Migration Strategy” on the March 15, 2013. In accordance with this Decree the Government in 2013-2015 carried out the migration strategy.

The issue drew attention of the country’s highest legislative body as well. The Parliament of Georgia has ratified the provisions of all fifteen paragraphs of the labor migration related to the Part II of the Article 19 of the European Social Charter. It also has ratified the UN International Labor Organization Convention No. 88 “Employment Service Organization” and Convention No. 181 “Private Employment Agencies”, but the country’s highest legislative body has not still ratified the ILO’s core conventions regulating the labor migration. The country adopted the Labor Migration Law as well as the Law of Georgia “On the Legal Status of Foreigners and Stateless Persons”, which provide that the employment of foreigners in Georgia is regulated by the legislation.

The UN International Labor Organization has adopted a number of documents related to the labor migration and migrant workers, such as Migration for Employment Convention No. 97 of 1949, Migrant Workers Convention No. 143 of 1975, and the additional recommendations to the latter were adopted in the same year. These are the conventions which have not been ratified by the Parliament of Georgia.

The UN International Labor Organization’s 1998 Declaration on Fundamental Principles and Rights at Work highlights that the dignity and rights of migrant workers should be firmly protected with others. The same is served by the UN International Convention on the Rights of All Migrant Workers and Members of Their Families adopted as early as on December 18, 1990. The day of eighteenth of December is appointed by the UN as the International Migrants Day.

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<sup>65</sup> International Labor Office, ILO Action against Trafficking In Human Beings, ILO Publication. 2008.

The international migration qualification stipulates the following kinds and forms of the migration: permanent, long-term, temporary, transit, involuntary, voluntary, legal, illegal, illicit, labor, educational, medical.<sup>66</sup> Labor migration is often explained as a rational choice, when labor migrants know the movement costs and the potential profit from it. It is considered the most affordable means of remuneration.

Movement of people across international borders for trade, protection and work is the same ancient phenomenon as the existence of the borders. At present, many humans move between the continents, partly as tourists, partly in the form of the workforce who migrate against the wishes leaving unfavorable conditions in their own countries. The reasons that trigger many people to apply for labor migration are enormous in number. Such reasons affect the integrity at the individual, family and socio-economic levels. Mostly migrant workers are moving seeking better working conditions and employment. As far as labor migration and displacement issues are related to the border crossing it is the international phenomenon. Thus it is the reason of many of the conventions and agreements and the subject to the international regulation. The labor migration is one of the important segments of the labor relations regulation and employment policy with the overwhelming threats. Therefore, great efforts are directed towards the protection of the rights of migrant workers. However, the risks and losses still accompany the labor migration process.

The process of movement for labor migration and employment is linked to the factors such as the socio-economic situation of the country of citizenship, the efficiency of job creation and employment policies, demographic aspects, anti-trafficking issues and other.

The global illegal labor migration is growing; the number of illegal labor migrants is increasing, but in recent years the rights of illegal labor migrants expands at the international and regional levels along with the growth of their number. Migrant workers are admitted by foreign countries to implement a certain economic activity only for a certain period, which can be extended or renewed after the expiry of this period.

### **Legal aspects of the labor migration regulation in Georgia**

Georgia has ratified the European Social Charter, also other conventions, which are to some extent related to labor migration: ILO Private Employment Agencies Convention (No. 181), ILO Employment Service Organization Convention (No. 88), the Discrimination (Employment and Occupation) Convention (ILO Convention No. 111), also the conventions that regulate trafficking issues.

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<sup>66</sup> N. Chelidze, Labor Emigration in Post-Soviet Georgia, Tbilisi, 2006.

In the context of bilateral relations the cooperation in labor migration regulations between Georgia and the EU is very important. Under the Decree N59 of March 2013 the Government of Georgia adopted the migration strategy for 2013-2015, which covered the area of labor migration. The government of Georgia has set a goal to develop a legal framework to secure the positive effect of the legal, temporary and labor migration, as well as protection of migrant workers' rights and security.

The Law of Georgia "On the Procedure of Exit of Citizens of Georgia from Georgia and Entrance to Georgia" does not directly regulate the legal aspects of labor migration; it generally regulates the emigration permit issuance, refusal of issue or revocation of the permit, emigration of minors and other issues.

Under the law of Georgia "On the Legal Status of Foreigners and Stateless Persons", the foreigner's labor activity shall be defined by the Georgian legislation. However, so far, there is no such normative act. The law provides the general rules and procedures which are applied in labor migration issues. The law declares the universally recognized principles and values. The entrance to, presence in and exit from Georgia by a foreigner is based on the principle of family unity. Discrimination is prohibited. The alien has the same rights and freedoms as those of citizens and undertakes the same obligations as a citizen of Georgia.

### **Aspects of illegal migration from Georgia**

In Georgia there is no accurate data of the illegal migration because of the nature of this phenomenon. The International Organization for Migration has conducted the survey to make its approximate picture that creates prerequisites for development of the mechanisms to combat illegal migration.

The majority of illegal migrants and victims of human trafficking avoid to make public their troubles. There are many reasons for this, specifically; they care for the family traditions. This creates good conditions for the people, for whom traditional values are not common and who illicitly enrich themselves due to the public's attitude toward illegal immigration and trafficking in human beings. IOM has managed to interview 270 illegal repatriated migrants, of which 264 persons are citizens of Georgia. Some respondents, 72 percent had traveled abroad in 1996-1999, 17 percent - in 2000-2001. A large part of illegal migrants, 69 percent, are women, 86 percent of them became victims of the human trafficking, while in men the figure is 13 percent.

The age of victims of human trafficking is mainly 21 to 30 years and about 50 percent is single and 25 percent – divorced. Almost without exception, the participants in illegal migration had left Georgia seeking job.

90 percent of respondents admitted this as the main motive for illegal migration. 13 percent of victims of trafficking noted that the extreme social and economic problems had forced them to temporarily leave for a foreign country in search of bread and butter.

Trafficking in respect of illegal migrants means cheating, intimidation and brutality and is used for the forced adaptation of migrants to local conditions. The majority of victims of human trafficking were not able to receive their salary in full amount.

Almost all victims of trafficking, 92 percent, who have returned to Georgia, stated that they had had big problems to return to a normal rhythm of life. 62 percent of the illegal migrants stated about the same, 38 percent had had no problems in this aspect. Some of them stated that the money accrued abroad, helped them to improve their living conditions in the homeland.

### **General characteristics of trafficking in human beings**

The gravity of human trafficking offense, infringement<sup>67</sup> of honor and dignity, physical or mental health disorder makes the trade in people (human trafficking) a gross violation of fundamental human rights and freedoms: its threats human physical and mental health, as the trafficking characteristics in most cases are expressed in the physical and psychological violence such as deprivation of liberty, coercion, slavery etc.

The next factor is the scale of this crime. According to the US annual reports, every year about 800 000 people become victims of trade in people (human trafficking), 80 percent of which are women<sup>68</sup> and girls, of which 50 percent are youngsters. Also, an important factor is the profits gained from this crime. After arms and drug trafficking, the illegal business of the trade (trafficking) in human beings brings to the criminal world bosses about \$ 7 billion in revenues every year.

Trafficking causes can be grouped according to different criteria, such as: economic, social, political and technological.

Out of economic reasons one of the main is the demand for cheap workforce. The globalization feature is the market integration beyond the borders. In spite of the laws adopted to regulate the labor force migration in order to preserve the principle of the respect for the state sovereignty, the globalization, however, has had a significant effect on international labor migration. Labor migration is caused by many factors, including socio-economic and political crisis. One of the contributing factors is the employers' demand for cheap manpower in the destination (host) countries,

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<sup>67</sup> International Agreement for the Suppression of the White Slave Traffic, League of Nations Treaty Series, Paris, 1904.

<sup>68</sup> Hua, J. (2011). Trafficking women's human rights. University of Minnesota Press.

occupying the jobs undesirable for local workers or less remuneration paid to the illegal workers or foreign labor.

Given the above, it is necessary to draw the attention of the governments to the criminalization of trafficking, the availability of appropriate legislative framework and the scale of steps to be taken by the government for the implementation of the legislation.

The first definition of trade<sup>69</sup> in people (trafficking in human beings) was provided in the United Nations Convention against Transnational Organized Crime<sup>70</sup>, adopted by General Assembly resolution 55/25 of 15 November 2000, and the Protocols thereto to prevent, suppress and punish trafficking in persons, especially women and children. However, in the last century, the world community tried a variety of ways to create a legal framework for human trafficking prohibition that is evidenced by a number of international legal acts which concern slavery, ban of forced labor and the human trafficking.

After the establishment of the League of Nations, the 1921 International Convention for the Suppression of the Traffic in Women and Children adopted in the frames of the League of Nations had further expanded the list of countries across Europe, but the United States had not joined this Convention.

Next international document that directly related to the prohibition of slavery was adopted in 1926. The Convention had been preceded by a certain work, in particular, in 1924 the League of Nations aiming prevention of the African slave trade, created an ad hoc commission, which had been entrusted to make a report thereof. In 1926, the League of Nations adopted the Convention on slavery, which came into force in 1927.

In 1956, the United Nations adopted the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, in the Preamble of which there was stated that slavery, the slave trade and institutions and practices similar to slavery have not yet been eliminated in all parts of the world as laid down in the 1926 Convention. The provision is notable in the sense that the elements listed in it have been recognized in the laws of many countries, including Georgia, as the elements of trafficking in human beings.<sup>71</sup>

This convention is remarkable as it has declared debt bondage, forced marriage and some forms of child labor unlawful. According to the first

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<sup>69</sup> Krieg S.H. Trafficking in Human Beings: The EU Approach between Border Control Law Enforcement and Human Rights, *European Law Journal Review*, vol. 15, Blackwell publishing. 2009.

<sup>70</sup> United Nations Convention against Transnational Organized Crime and the Protocols Thereto

<sup>71</sup> Note to the Article 143' of the Criminal Code of Georgia



Article of the Convention, “each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices”.

Another important document is the International Criminal Court Statute, which was opened for signature on July 18, 1998 in Rome. Due to the fact that the ICC Statute was opened for signature as a result of the conference held in Rome, it is also called the Rome Statute. The Rome Statute determines the following issues assigned to the jurisdiction of the Court: the crime of genocide, crimes against humanity, war crimes and crime of aggression. The Article 7 of the Rome Statute lists the crimes against humanity, including “enslavement” which is defined as the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.

The modern definition of slavery<sup>72</sup> means using a human as an item, which can be engaged in forced labor and sex industry, legal or illegal business activity, components of military conflicts.

The Article 3 of the UN TIP Protocol to the Palermo Convention, is extremely important, since the elements provided by its definition provides are shared in the legislation of many countries: “Trafficking in persons” shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

In addition to the Palermo Convention and its protocols, in terms of combating human trafficking the struggle against trafficking of minors is very important as well. Trafficking in minors is gradually expanding and gaining such forms, as organized prostitution, pornography, sex tourism and other. Exploitation of a minor is expressed mainly in the following forms: commercial sexual exploitation, trafficking in organs (forced donation), and engagement in criminal or other antisocial actions. Before adoption of special laws against trafficking in human beings the states shall apply the criminal law for prosecution and punishment in order to punish slavery,

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<sup>72</sup> Human Trafficking: the Facts (UNODC, 2009).

practices similar to slavery, forced labor or prostitution exploitation, unlawful restraint and other similar actions.

We can generalize main kinds and forms of human trafficking as follows:

1. Human trafficking for the purpose of labor exploitation, the victims of which are men, women and children, means the labor in the informal and shadow economy, household conditions as well as the use of forced labor of prisoners and military personnel.
2. Human trafficking for the purpose of sexual exploitation, the victims of which are mostly women and children, including: enforced prostitution, sex tourism, including the children's sex tourism, pornography.
3. Human trafficking for the purpose of forced beggary, the victims of which are children, people with disabilities and the elderly.

### **Trafficking in the Georgian legislation**

In 2003, the Criminal Code of Georgian was added two Articles - 143<sup>1</sup> and 143<sup>2</sup> which provide criminalization of trade (trafficking) in human beings.

In the crimes provided by the Article 143<sup>1</sup> of the Criminal Code of Georgia the object of legal protection is the human personal rights and freedoms recognized by the Constitution. In particular, the right to free movement throughout the country, inviolability of human freedom, the right to choose a place of residence and work, integrity of his dignity. An optional object of this crime is human life and health.

The objective aspect of this crime can be divided into several groups:

- a) capture, purchase of human trafficking victims, other illegal transactions, winning over;
- b) their recruitment - concealment, hiring;
- c) their handover - transfer, transportation.

Objectively this crime may be committed mostly by an action. However, it is possible to commit this crime by an omission, for example, to hide such fact. The crime is over upon the commitment of any of the actions listed in the disposition and not necessarily upon the occurrence of any serious outcome. So it is a formal offense.

The subject of the crime of trafficking is a person who has attained the age of 14 years. Subjectively human trafficking is a deliberate crime committed with the direct intent. The motive of the crime provided by this article may be envy, covetousness and other, but for the qualification of this crime the motive is not significant, it can be considered during the punishment.

In the crimes provided in the Article 143<sup>2</sup> the object of legal protection is the minor's personal rights and freedoms. In particular, the

integrity of his/her personality, his right to grow up with his/her parents, honor and dignity, which is recognized in the Constitution of Georgia as well as in the international acts.

The Convention on the Rights of the Child recognizes the child's right to be protected from economic exploitation and from performing any work that could pose a threat to the child, or to interfere with the education of, or inflict harm to the child's health or physical, mental, moral, spiritual and social development. Optional object is the minor's life and health.

A victim of the crime is a minor, i.e. a person under the age of 18.

Objectively this crime resembles a crime provided for in the Article 143<sup>1</sup>, but with the difference that the trade in minors does not always require coercion, blackmail or deception, or other methods referred to in paragraph 1 of the Article 143<sup>1</sup>. Recruitment, transfer or suppression of a minor can be performed by encouraging, admonishing, convincing a minor, because his/her psyche is not yet formed, and the influence on it causes sorrowful effect.

A perpetrator of the crime is a person of full capacity who has attained to the age of 14 years. Subjectively the trafficking in minors is a directly intentional crime, the offender is aware that he or she carries out trade in a minor and wants it, at the same time, in a number of cases of recruitment, transportation, hiding or reception he or she should pursue a special purpose of exploitation. According to the definition of the term "exploitation", the purpose of exploitation is placing a human in the modern conditions of the human slavery that is defined in the Georgian legislation, as "depriving him/her of IDs, restricting the right of free movement, prohibiting contacts with the family, including correspondence and phone calls, cultural isolation, forcing into working under inhuman or degrading conditions or without any or with inadequate compensation".

In the criminal theory in respect of a crime of human trafficking, they separate restriction on the right to free movement and restriction of freedom. In case of illegal restriction of freedom, a victim is deprived of the right to move freely throughout the country, does not have the physical ability to move across the area defined by the offender, he or she is closed in the apartment or elsewhere. In case of restriction of the right to free movement, the victim with the consent of the offender is given the opportunity to go beyond the limited area and go on the streets, but is not able to move around there and shrinks from meeting with the police. In addition, he or she has no money, which would give the opportunity to travel, and he or she does not speak a foreign language, and so forth.

Using deception in case of trafficking deprives the victims of the opportunity to realize that he or she is exploited; he or she thinks that he or

she will get a lump compensation and therefore a restriction of the right to free movement takes place by this method.

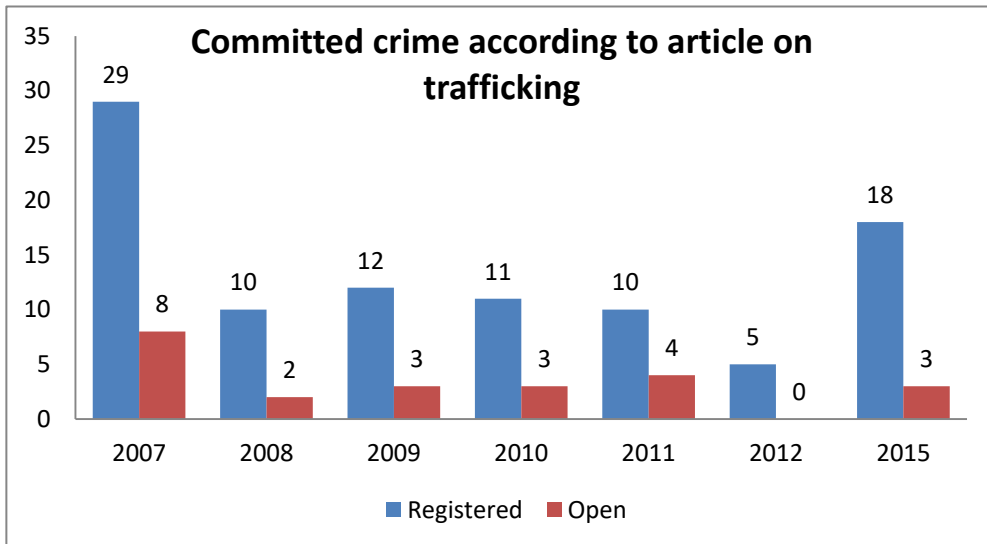
**Conclusion**

Trafficking is a violation of fundamental human rights and together with other rights one of the main rights - the right to freedom from slavery, is violated. Trafficking poses a threat to Georgia due to the country’s geopolitical location and the difficult economic situation, which is why Georgia is considered as a state of the origin and transit of victims of trafficking. The situation is exacerbated by the fact that a large part of the population of our country has left the homeland looking for a job abroad, and the majority of them stay in foreign countries illegally.

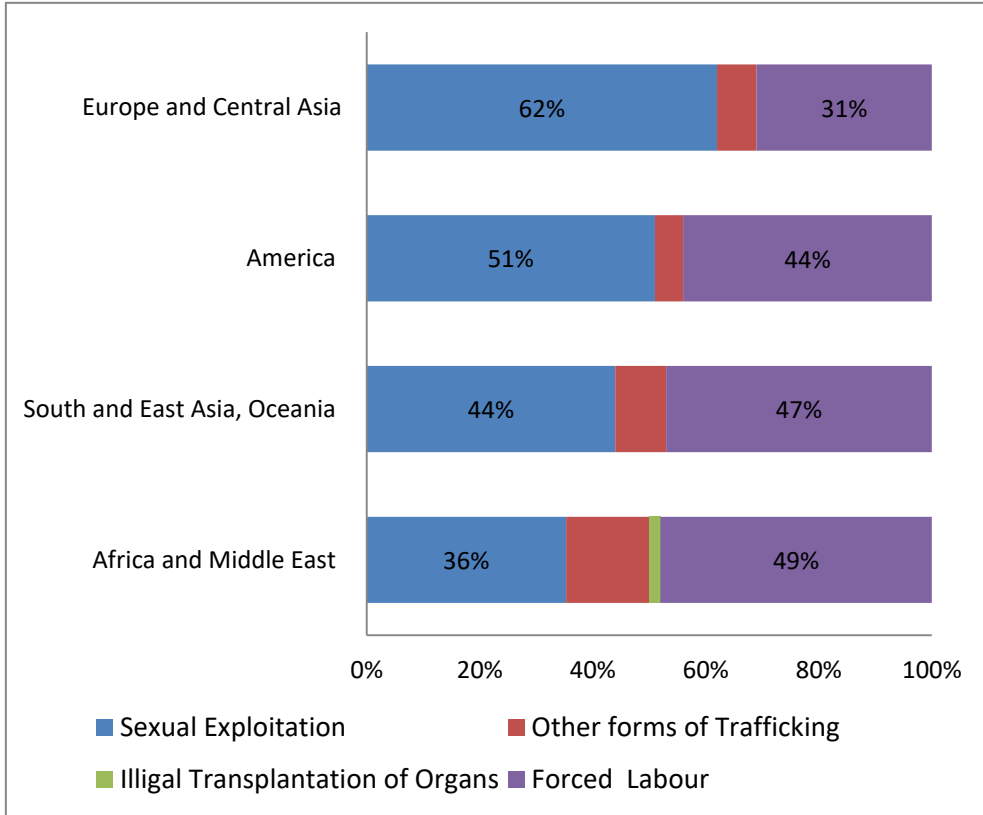
In recent years Georgia has made significant steps against trafficking in human beings, has ratified the relevant UN Conventions, protocols, regulations, shared human trafficking laws in Europe.

However, there is still much to be done to counter the threat of trafficking for the Georgian population. The availability of appropriate shelter shall be guaranteed for the persons; in case of the victims of trafficking in minors, it is necessary to strengthen the relevant departments of social services and their active involvement in the protection of minors and the implementation of the assistance and aid measures. The social service shall play the leading role and implement the coordinated and reasonable actions.

**Crimes committed as trafficking in human beings, unit<sup>73</sup>**



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# Sacralization of Politics in the Context of Modern Georgia

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## Abstract

Sacralization of politics characterizes tyrannies and democracies alike, functioning as strengthening power bases and maintaining continuity of collective identity. The goal of the study was to register these two directional processes in the modern political context of Georgia. The political landscape of Georgia after gaining independence is characterized by oscillation of voters between charismatic and rational leaders. Inauguration speeches of the presidents were subjected to thematic analysis to reveal religious allusions. All of them although to a different degree referred to five main themes: Holy path and trial, hierarchies and Gods, rituals, national religious consciousness and anti secularism. Analysis proved the resemblance between the first and the third presidents, both being charismatic, emotional leaders, most often referring to holy path and trial, and religious national consciousness in contrast to the second president, who was steered more by rationality than emotion, referring to hierarchies and Gods, and rituals. Estimations of young voters of the leaders pointed to the preference to the first president – Gamsakhurdia. The idealization of the leaders occurred more in regard to charismatic leaders by those who proved to be less tolerant of ambiguity and hence, more striving to sustain black and white worldview. This result with some precautions can be taken as an indicator of the need to sacralize the leader and thus to maintain continuity and stability of collective identity.

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**Keywords:** Sacralization of politics, thematic analysis, leaders, voters' preferences

## Introduction

Political landscape of Georgia, a country nested between Turkey and Russia, has drastically changed after the dissolution of the Soviet Union,

constituent part of which it was. The struggle for independence activated in late eighties of the last century was steered by national idea and return to the God's province, as embodied by Georgian Orthodox Church. The declaration of independence in 1991 marked the transition of the country from the Soviet rule to democratic governance.

With little experience of independent statehood the ideological vacuum created by the transition was tried to be partially filled by asserting authority of traditional religion. The church attendance became massive, religious authorities gaining unprecedented social power.

On such a background it is more than natural that political leaders tried to legitimize their power through religious appeals. Sacralization of politics is not a new phenomenon. Since ancient times leaders were trying to ally themselves to deities, to point to the holy nature of their mission and thus to grant their power legitimacy. In different societies and times, in diverse geographical locations communities directly or indirectly revealed the need in faith, in sacred power, desire to be led by mission to alleviate over mundane realities. These two directional processes, of the need from below and the attempt from above, resulted in construction of politics as religion. The religious dimension in politics is revealed in both totalitarian and democratic regimes as sacralization of politics functions both as an instrument for obedience of masses to the leader and its ideology as well as a means for ensuring coherence and continuation of collective identity (Gentile, 2006).

Sacralization of politics is understood as a feature of modernity and secularization. The process is built on a religious nature and breeds a new sets of beliefs, myth and rituals taking on the characteristics and functions of traditional religion and creating a pseudo-religion. Political religion either tries to extinguish traditional religious institutions or to coexist with them symbiotically, assuming that they will be incorporated in the belief system and the myths of political religion and granting them only assisting role (Gentile, 2005).

Secular religion is an umbrella term for political religion and civil religion often used interchangeably. It became an object of systematic studies in the sixtieths of XX century after publication of "Civil religion in America" by Bellah (1967).

In the discourse on civil religion the functional approach advocated by Emil Durkheim prevails. Civil religion is seen as a factor of legitimation and consensus in pluralistic society. Religious belief reflects unity and identity of a collectivity with rituals, actions and myths serving to evoke and maintain it. Political religion in contrast to traditional religion is transient, although, the sources of their evolvment are far from short-lived (Gentile, 2006).

Since independence Georgia was ruled by three democratically elected presidents. In 2012, due to the change of Constitution, the supreme power in the country was transferred to the elected by the Parliament Prime-Minister. Political scene in Georgia is characterized by idolization of the leader followed by disillusionment resulting in his replacement. So far the country had three Presidents and three Prime-Ministers; all three Prime-Ministers being elected by the parliament in one electoral period that is since 2012 Parliamentary elections. The succession of leaders acquired systematic cyclic character, namely young, emotional, charismatic visionary with a vast power of mobilization of people is succeeded by a more rational, emotionally balanced leader, setting much more modest goals, but in his turn he is succeeded again by charismatic leader, and then again by a more rational one.

### **Research question**

The viability of political religion rests on the need of a leader to legitimize own power through alluding to religion and the need of populace to see in the leader God's choice. The goal of the study was to register these two directional processes in the modern political context of Georgia. More specifically, the research question concerns as to what degree presidents were engaged in religious appeals for maintaining and strengthening their power and to what degree the voters were giving them credit through idealization of their personality characteristics.

To this end, two exploratory studies were carried out. In the first one, the inauguration speeches of the presidents were analyzed for revealing their religious content, while in the second one the young voters were surveyed for assessing the ideal characteristics of the leader, as well as characteristics of the three presidents and the first Prime-Minister who created the coalition that won 2012 Parliamentary elections and who after a year office left the office on his own will.

### **Study 1**

*Aim:* the study aimed at revealing the religious nature of inauguration speeches of the three Presidents – Zviad Gamsakhurdia, Edward Shevardnadze and Mikhail Saakashvili.

*Methodology:* The five speeches, 1991 inaugural speech of Gamsakhurdia, 1995 and 2000 speeches of Shevardnadze and 2004 and 2008 speeches of Saakashvili (Matsaberidze, 2007) were subjected to narrative analysis. Narrative is defined as a “sensible organization of thought through language, internalized or externalized, which serves to create a sense of personal coherence and collective solidarity and to legitimize collective beliefs, emotions and actions”. (Hammack & Pilecki, 2012. p.78). The



narrative links individual to a social reality. Political leaders use narratives to increase the ranks of followers and to create a common aim and meaning through providing own interpretation of the past events and future objectives. Narratives of political leaders are typically studied through their political speeches (Reicher & Hopkins, 1996).

Five speeches were analyzed by thematic analyses of narratives. Thematic analysis is a method for “identifying, analyzing and reporting patterns (themes) within data” (Braun & Clarke, 2006 p.79).

*Results:* In presidential speeches five main religious themes were identified. The themes with examples are presented below:

1. Holly path and trial

*“I prayed to God and promised him that we will return to His realm, we will try to wash out stains of blood of the past, we’ll try to expiate the crimes committed by our and older generations against the God and the nation during decades”* (E. Shevardnadze, 2000).

*“Period after October, 28 was the tough trial of people and elected by them government, as the road to freedom is hard and thorny”* (Z. Gamsakhurdia, 1991).

2. Hierarchies and Gods

*“We have to revive the army traditions of David the Builder, King Giorgi and our heroes - 300 Aragvians and many more others”* (M. Saakashvili, 2004).

*“We made possible the impossible, but man cannot do impossible, cannot overcome insurmountable barriers, if not the God’s will”* (E. Shevardnadze, 2000).

3. Rituals

*“It’s not a coincidence that we raised the flag of Europe. This flag is the flag of Georgia as well, as it reflects the essence of our civilization, culture and history and our view of future”* (M. Saakashvili).

4. National religious consciousness

*“Contemporary movement by its inner essence is the national-religious movement, as it assumes not only the realization of national-political aims, but first of all targets at moral revival based on Christian faith and consciousness”* (Z.Gamsakhurdia, 1991).

5. Anti secularism

*“With the restoration of Independence orthodox faith should become state religion”* (Z.Gamsakhurdia, 1991).

All three presidents used these themes but to a different degree. The comparative analysis is presented in the Table 1.

Table 1  
The percentage of themes in presidents' speeches

President	Holly path and trial %	Hierarchies and Gods %	Rituals %	National religious consciousness %	Anti secularism %
Z. Gamsakhurdia	<u>24.4</u>	17,7	17,7	<u>26.6</u>	13,3
E. Shevardnadze	13,8	<u>36.1</u>	<u>30.5</u>	13,8	5,5
M. Saakashvili	<u>47.3</u>	15,7	15,7	<u>21.0</u>	0

The similar pattern can be easily traced in contents of the first and the third Presidents, both considered as charismatic leaders. Holly Path and Trail together with National Religious Consciousness was the most often mentioned by them. Different is the content of speeches of the second president who was renowned by his cunning and manipulative abilities. He in underlines Hierarchies and Gods and Rituals his speeches.

The election of the presidents and the content of their speeches were obviously determined by political context and popular demands. The leaders demonstrating features in need which eventually were supported and perpetuated by popular idealization.

The first president, Zviad Gamsakhurdia was a dissident in the Soviet period and was sentenced for his political activities by the regime. His vision of Georgia was as an independent country, free from communist ideology. He mobilized protest movements around the national idea which was saturated with religious connotations. The leading theme of his inauguration speech is Holly path and trail, national religious consciousness.

*“Our history, the way of life, fight for the faith, national independence is a path of martyrdom, Christian path of kindness and love (Gamsakhurdia, 1991).*

*“Worriers for freedom and democracy, society striving for the revival of religious and national worldviews is our present and the result of our fight (Gamsakhurdia, 1991).*

Edward Shevardnadze came to power after Gamsakhurdia was ousted by the opposing him military and paramilitary forces. The period that ensued was characterized by the chaos and criminality, lack of personal security and enforcement of justice. Shevardnadze's leading idea was establishing the order and ending the existing in the country chaos. He had a vast experience of leadership, in the Soviet period being the First Secretary of the Georgian Communist Party and then Foreign Minister of the Soviet Union. The great part of the population considered him as a wise leader able to bring in security and build the country. Shevardnadze was well aware that

in current situation his main culprit was his communist past and commitment to the ideology which was unacceptable almost exclusively. So, immediately after his airplane from Moscow landed in Georgia, he went straight to church. Soon he baptized and did not miss any chance to demonstrate his reverence and proximity to the head of the Georgian Church, who since independence, according to all the polls, consistently remains as the most revered leader. Shevardnadze's inauguration speech as well as the selection of the location for his follow up of speech - the main Cathedral of Georgia, and the date of inauguration which coincided with the Easter, all aimed to prove the change of his ideology.

*In the beginning of the nineties we did not have a state. Independence and sovereignty were declared only on the paper. The civil war and chaos were reigning. We established the order and rule of law (Shevardnadze, 2000).*

*It is symbolic that inauguration of newly selected President is carried on Rustaveli avenue, where in the communist past we all defended Georgian language as a state language together. Here, on Rustaveli Avenue, on 9<sup>th</sup> of April, the sacred blood of fighters for independence was shed. Here, their dream declaration of independence was realized (Shevardnadze, 2000).*

Shevardnadze's rule served as a background for the political appearance of Mikhail Saakashvili. He fit Gamsakhurdia's stance even in naming his party as United National Movement, changing only the shade – using foreign word for nationality instead of Georgian one. Although the Minister of Justice in Shevardnadze's government, he built his leadership in fierce and energetic opposition to Shevardnadze's rule, blaming him for communist legacy and covering up corruption. Young and energetic Saakashvili managed to mobilize the masses and unite opposition parties. His attempts succeeded and resulted in Shevardnadze's resignation. Saakashvili soon abandoned his allegations to national idea and proclaimed the state building as his mission. Although in speeches proclaiming adherence to Western values, his deeds showed the human's rights violations what he partially admitted, but considered as legitimate for achieving in his understanding a higher order value of state building. His religion allegations were less common than of previous two presidents, but instead he much more than they referred to historical figures for legitimization of his deeds.

*“Great difficulties are ahead on the way for achieving our aims, Georgia has to overcome great obstacles. We should revive our*

*country together, we should build the country according to our and our ancestors' dreams" (Saakashvili, 2000).*

*"I want to address all, who has gathered here, on very important for me day: here today with us is the spirit of the Georgia's greatest leader, of the most revered Georgian's – David Agmashenebeli's spirit. I want to tell him and, all the heroes who sacrificed their life to Georgia, that..." (Saakashvili, 2000).*

Thus, we can see that all three presidents abundantly use religious themes for legitimization of their power and enforcing their impact on masses.

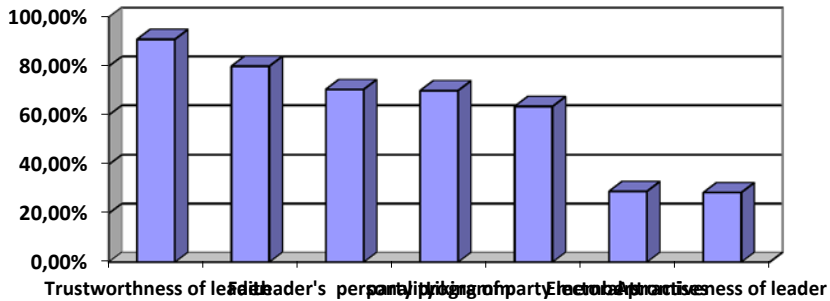
## **Study 2**

*Aim:* The study aimed to examine the other side of political stage – the voters, their perceptions of characteristics of an ideal political leader and the personality features of the country's four leaders, three Presidents and the Prime-Minister Bidzina Ivanishvili. The hypothesis was formulated according to which, the idealization would be more pronounced in regard to charismatic leaders and more by those with high scores on intolerance of ambiguity. The concept of intolerance of ambiguity was introduced in 1948 by Frenkel-Brunswik and since then stimulated multitude of research. It is considered as a personality variable describing among other things a person's inability to see possession of good and bad traits in the same person and rigid view of life. It is linked with authoritarianism (Furnham & Marks, 2013).

*Methodology:* The questionnaire was constructed for the study. Next to the designed for the study questions the instrument contained 16 items Tolerance of Ambiguity Scale (Budner, 1962).

*Results:* 200 young persons (55% female and 45% male) were interviewed in May-June of 2016. The age of the respondents varied from 18 to 35, 18-25 years olds constituted 55%, 26-30 years olds - 26% and 31-35 years olds - 19%. 96% of them had either University education or was a student.

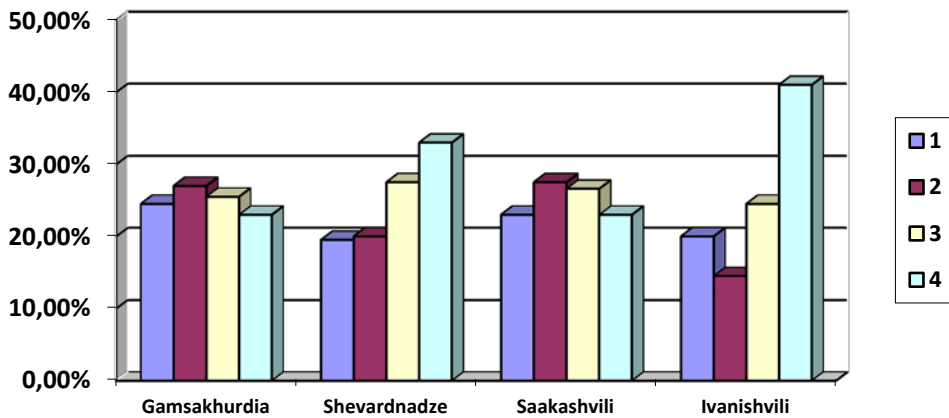
Respondents were requested to mark any issue from the listed 7 if applicable. Leader's personality proved to be of paramount importance for the decision to vote, being more important than his program. Three items checked by the biggest number of respondents were trustworthiness of the leader (91%), "doing what one preached" (80%) and leader's personality (70.5%).



Graph 1.

### Reasons for the decision to vote

Respondents were requested to give overall evaluation of political leaders – three presidents of Georgia and the Prime-Minister by rating them on a 4-point scale with 1 the most and 4 the least liked.



Graph 2.

### Ratings of political leaders

As can be seen from Graph 2, the most liked was Zviad Gamsakhurdia, narrowly followed by Mikhail Saakashvili, then Bidzina Ivanishvili. The least liked was Edward Shevardnadze.

The ratings of the personality features of the leaders reflect the same regularity, only with one exception as Shevardnadze is rated higher than Ivanishvili. The instrument listed 18 features, on each respondent had to rate leaders on a 5 point rating scale with 1 the least and 5 the most pronounced in the leader feature. Before rating leaders respondents were asked to rate desirability of each feature in a leader by the same instrument. All of the

features were positive; this enabled us to sum them up for comparison of ideal and factual leaders.

Table 2  
Sum of the scores of features of ideal and factual leaders

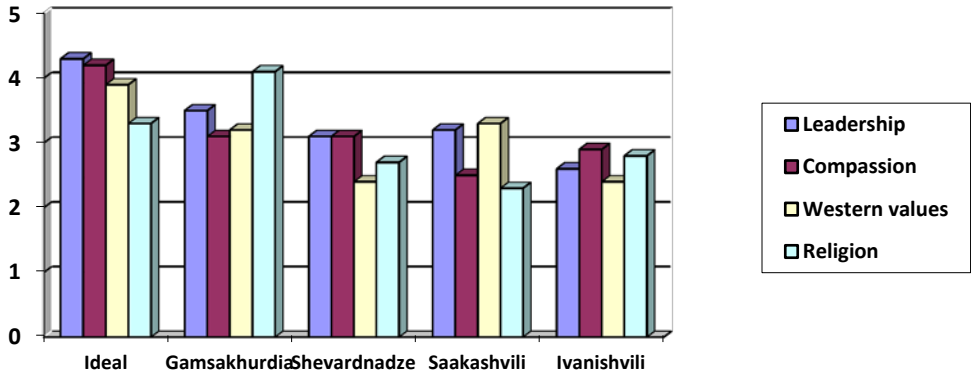
Rank	Leader	M	SD
	Ideal leader	74.3	9.4
1	Zviad Gamsakhurdia	62.1	9.7
2	Mikahail Saakashvili	54.9	11.6
3	Edward Shewardnadze	53.5	10.5
4	Bidzina Ivanishvili	47.6	14.9

For the ease of the analyses the ratings of ideal leader were factor analyzed. The analysis resulted in 4 components presented in the Table 3.

Table 3 Results of Factor analysis of the ratings of Ideal leader

	Factors			
	1	2	3	4
Abile to grasp reality	.597	.084	.491	.056
Able to plan	.692	.336	.122	-.082
Able to lead	.843	.226	.074	.045
Able to unify the country	.615	.271	.101	.121
Being moderate	.531	.462	.139	.156
Sticking to principles	.694	.068	.143	.149
Being just	.706	.188	.136	.187
Putting interests of the country before own interests	.704	.084	.139	.158
Being loyal to democracy building	.375	.133	.795	.114
Being intelligent	.574	.438	.240	.096
Able to give a good public speech	.498	.259	.152	.299
Able to make decisions quickly	.523	.276	.209	.232
Protecting traditions and national values	.255	.121	.156	.823
Being religious	.078	.184	.027	.867
Being loyal to Western values	.085	.211	.854	.087
Being competent in economic and social issues	.144	.823	.200	.006
Being compassionate	.283	.724	.049	.276
Being in control	.315	.752	.139	.251

We called the first factor with the highest loading on the items: “Able to lead”, “Being just” and “Putting interests of the country before own interests”, as Ability to Lead. The second factor with highest loadings on: “Being competent in economic and social issues”, “Being in control” and “Being compassionate” was called Compassion. The third factor with items: “Being loyal to Western values” and “Being loyal to democracy building” we called Western Values. The last factor with items: “Being religious” and “Protecting traditions and national values” was called Religion.



Graph 3

### Scores of an ideal and four factual leaders on factors

As can be seen from the Graph 3, the most desired are the qualities comprising “Ability to Lead” factor, followed by “Compassion”, then by “Western values” and “Religion”. Closest to ideal on all factors except “Western Values” is Zviad Gamsakhurdia. He considerably exceeds the mean rating of ideal leader on “Religion”. On “Western Values” factor Saakashvili is the leader, while he has the lowest ratings on “Compassion” and “Religion”. Among the four, Ivanishvili has the lowest rating on leading qualities.

To test the hypotheses on the link of leader’s idealization with Tolerance of Ambiguity the scores of the respondents on the scale were computed. The mean score for the Tolerance of Ambiguity was 72.9 (*Sd*=7.1). The respondents were grouped into those with low scores, ranging from 56 to 68, with medium scores, ranging from 69-74 and with high scores, ranging from 75 to 101) and compared ratings of these three groups on ideal and four factual leaders. The results confirmed our hypotheses – the persons exhibiting low Tolerance of Ambiguity more positively rated charismatic leaders than those with higher scores in the scale.

Table 4

Results of ANOVA on Tolerance for Ambiguity Scale with mean scores on presidents’ characteristics

Presidents	Low Tolerance M and SD	Medium Tolerance M and SD	High Tolerance M and SD	F, df, p
Zviad Gamsakhurdia	64.6 9.9	60.4 8.4	61.6 10.4	F=3.2; df=2; p<.05
Eduard Shevardnadze	54.5 10.8	54.1 10.9	52.1 9.3	n.s.
Mikheil Saakashvili	57.6 11.2	51.3 9.9	55.9 12.6	F=5.2; df=2; p<.05
Bidzina Ivanishvili	48.8 14.9	49.0 13.7	45.3 15.7	n.s.

Results of the study pointed on the tendency of the idealization of charismatic leaders by those who scored low on Tolerance of Ambiguity.

## Conclusions

Thematic analysis of presidents' speeches clearly demonstrated the presence of religious allusions aimed at strengthening legitimacy of the power. The identified by thematic analysis five main themes: Holy path and trial, hierarchies and Gods, rituals, national religious consciousness and anti-secularism were exploited in speeches of all three presidents although to a different degree. Analysis proved the resemblance between the first and the third presidents, both being charismatic, emotional leaders who most often referred to the themes of holly path and trial, and religious national consciousness in contrast to the second president, who was steered more by rationality than emotion and who most often referred to the themes of hierarchies and Gods, and rituals.

Estimations of young voters of the four leaders of the modern Georgia, three presidents and the prime minister pointed to the preference to the first president – Gamsakhurdia. The idealization of the leaders occurred more in regard of charismatic leaders by those who proved to be less tolerant of ambiguity and hence more striving to sustain black and white worldview. This result with some precautions can be taken as an indicator of the need to sacralize the leader and this way to maintain continuity and stability of collective identity.

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# **Surrogacy and its Legal Consequences According to the Legislation of Georgia**

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## **Abstract**

The present article overviews surrogacy and its legal consequences according to the Georgian legislation, compares surrogacy legislation of common-law and continental countries and Georgian Legislation. Differences in legislation regulating surrogacy field in Georgia, EU countries and United States are emphasized. The main purpose of the present article is to introduce the main legal problems that we face in Georgian legislation regarding the surrogacy issue. For example, how Georgian legislation ignores the rights of a surrogate mother and a child's interests; besides, how currently in forced Georgian legislation promotes commercial surrogacy in Georgia, and a child becomes an object of trade in exchange for certain remuneration, while a surrogate mother or a gestational mother is only a device, a vessel for an embryo development and maintenance. I believe that such kind of articles will facilitate creation and development of the legislation that will defend equal human rights and will secure not only "client parents" rights, but also the rights of a surrogate mother and a child and will interfere to establish surrogacy as "cheap and profitable business" in Georgia.

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**Keywords:** Surrogacy and its legal consequences according to the legislation of Georgia

## **Introduction**

### **Concept of surrogacy**

Surrogacy means relocation of a fetus into another woman's body for the purpose of its further nurture and transfer to other persons. Surrogacy can be done by artificial or natural fertilization, or through embryo transplantation, and a baby is transferred to the "client couple" after the birth.

A surrogate mother is an "incubator" bearing an artificially fertilized embryo for nine months who had declared her consent before the pregnancy according to which, a baby will be given to this couple after the birth.

## **Types of surrogacy**

There are two basic types of surrogacy: partial surrogacy and full surrogacy. In the case of partial surrogacy, a surrogate mother is also the genetic mother at the same time. In such cases, the egg is fertilized by artificial insemination, while a full surrogacy embryo is a bearer of the client couple's genetics, and the embryo gets relocated into the mother's womb after artificial insemination.

In case a person wishing to become a mother fails to produce an egg, she receives a donor mother's invitro fertilized egg implanted, and in this case the person wishing to become a mother is also the birthmother, while the egg donor is the genetic mother.

In some cases, surrogacy is performed free of charge, i.e. a surrogate mother agrees to donate a child after the birth to a childless couple (the so-called altruistic surrogacy), but in most cases, a surrogate mother transfers a child after the birth to a couple in exchange for a pre-agreed remuneration (the so-called commercial surrogacy).

The legislation of Georgia, in particular the Law "on Healthcare", recognizes surrogacy. In accordance with the Article 143 of the mentioned law:

### **1. Extracorporeal fertilization is allowed:**

A) for the purpose of treatment of infertility, as well as in cases when there is a risk of transmission of a genetic disease on the part of the husband or wife; it (extracorporeal fertilization) uses the couple's or a donor's gametes or embryos, if the couple's written consent has been received;

B) if a woman has no uterus - for the purpose of relocation and nurture of an embryo, received as a result of fertilization, into another woman's ("surrogate mother") uterus; the couple's written consent is required.

2. In case a child is born, the couple is deemed to be parents with consequent responsibilities and authorities; the donor or "surrogate mother" has no right to be recognized as a parent of the child born.

Based on the analysis of the abovementioned Article, it is obvious that a donor is considered to be the genetic mother, while a person wishing to become a mother – as the mother, because the Article contains an imperative clause according to which, a donor - surrogate mother - does not have the right to be recognized as a parent. Accordingly, "client parents" wishing to have a child are deemed to be legally recognized parents, irrespective of whether a full or partial surrogacy was carried out. Legal relations between a mother and a child arise on the basis of the child's birth, rather than based on genetics. Even if a donor mother is the surrogate mother at the same time, according to the abovementioned Regulation, she is initially deprived of the right to recognition as a parent.

The said statutory provision directly promotes commercial surrogacy in Georgia, against the background where there are frequent cases of financial destitution, and a child becomes an object of trade in exchange for certain remuneration, while a surrogate mother or a gestational mother is only a device, a vessel for an embryo development and maintenance.

### **Comparative legal analysis of surrogacy according to legislation of common-law and continental countries**

Regulations of the common-law countries are more humane than the Georgian legislation according to which, a woman who gave the birth to a child is regarded as his/her mother, rather than the client even if she was the genetic mother.

According to the legislation of the UK (“Law on Human Fertilization and Embryology”), surrogacy is permitted under the following restrictions: surrogacy shall be free of charge and merely the compensation of expenses shall be permitted. Surrogacy shall be carried out in a licensed facility. After the child’s birth, the surrogate mother shall not be deprived of her right to keep the child; on the contrary – she has the right to remain the child’s mother; and the client couple may receive parental rights by adopting the child or obtaining a parental order based on the court decision. At the same time, when making such a decision, the court shall clarify the following circumstances: whether or not the egg or the sperm, or both of these, belong to the client couple, whether or not those persons are in a registered marriage, or whether or not they have an actual coexistence. In addition, the child shall live with the client couple, and the surrogate mother shall declare her consent to issuing the parental order. It is also important that the client couple is at least 18 years of age, and the request for their recognition as parents is declared no later than 6 months after the birth of the child. The surrogate mother’s consent is not deemed to be valid if it was issued earlier than 6 weeks before the child’s birth, which is due to the desire to protect the surrogate mother’s interests based on the mental and emotional status of a woman who has given birth to a child.

In the United States, the current legal regulation is partly based on the case law and partly on the developed legislation, and deems any forms of surrogacy, including the commercial one, to be unacceptable.

Only altruistic surrogacy is allowed in some States (such States are: Washington, Nevada, Florida, Louisiana, etc.), and some of the States consider surrogacy as a wrongful act committed against public order and completely prohibit it. For example: New York, Michigan, Indiana.

German law is radical with regard to surrogacy; according to its Civil Code, mother is a woman who gave birth to a child. At the same time, the German law establishes a concept of legal and genetic motherhood. In

addition, special legislative acts prohibit surrogate motherhood and the German Civil Code considers a surrogate motherhood agreement as an illegal and immoral transaction.

Also the Swiss law considers surrogate motherhood inadmissible, and any form of surrogacy is strictly forbidden in France. It is prohibited also in Spain and the Czech Republic, while in Italy it used to be allowed by the court, although recently it has been completely banned by a legislative act.

An exception is made by the approach of Greece, where surrogate motherhood is permitted by a prior permission of the court, given the donor's informed consent and placement of a fertilized egg into the woman's body.

### **Registration of birth of a child born as a result of surrogacy**

The Article 30 of the Law of Georgia "on Civil Acts" defines the registration procedure for children born as a result of extracorporeal fertilization. In particular, it is established that the birth registration of a child born as a result of extracorporeal fertilization shall be carried out in accordance with this Law, the Law of Georgia "on Healthcare", and the procedure established by a decree of the Minister of Justice of Georgia.

The paragraph 2 of the Article 143 of the Law of Georgia "on Healthcare" establishes that in case of birth of a child, the couple shall be considered to be parents, with the consequent responsibilities and authorities; a donor or a "surrogate mother" has no right to be recognized as a parent of the child born; the Article 19 of the civil acts registration procedure approved by the Decree №18 of the Minister of Justice of Georgia dated January 31, 2012 provides the following rule of registration of birth of a child born as a result of extracorporeal fertilization: in order to register the birth of a child born as a result of extracorporeal fertilization, along with the documents envisaged by the Georgian legislation, the following shall be submitted to the civil acts registration entity: A) a document certifying the extracorporeal fertilization, issued by the medical center directly upon the embryo implantation; B) an agreement concluded and notarially certified prior to the extracorporeal fertilization: B.a) between the woman who has born the child and the genetic parents, or; B.b) between the woman who has born the child, the genetic parents, the person to be registered as the child's parent in the birth act records (who is not the child's genetic parent) and the donor, or B.c) between the woman who has born the child, the couple and the donors. According to paragraph 2 of the same Article, the following persons shall be considered parents of a child born as a result of extracorporeal fertilization: A) the genetic parents; B) the genetic parent and the person to be registered as the child's parent in the birth act records based on the agreement; C) the couple. And paragraph 3 establishes that it is inadmissible to refer to the

donor or the “surrogate mother” as to the child’s parent in the civil birth record.

Thus, the Law “on Civil Acts”, as well as the by-law “Registration Procedure of Civil Acts” and the Law of Georgia “on Healthcare” (the Article 143) are fully consistent with each other and unambiguously prohibit referring to a surrogate mother as to the parent during the birth registration of a child born as a result of extracorporeal fertilization.

There is an interesting precedent in the judicial practice of Georgia related to disputes arising in connection with the birth act record of a child born by surrogacy (case #3/4101-14, 29.04.2015, Tbilisi City Court); in particular, the plaintiff, who considered herself a surrogate mother, was demanding to delete the data on her motherhood in the birth act record of a child born by her.

The mentioned suit was dismissed because the court did not consider the evidences presented by the plaintiff as sufficiently reliable to prove the fact of surrogacy; the court found that neither during the child’s birth registration, nor in the administrative entity or in the court had the plaintiff presented the documents provided by the legislation, which could definitely confirm the fact of transferring the embryo into another woman’s uterus; in addition, since the certificate issued by the medical institution did not specify whose embryos were transplanted into the plaintiff’s uterus, the court did not consider the said certificate as a document proving the surrogacy, and explained that according to the birth registration procedure of a child born as a result of extracorporeal fertilization, approved by the Decree №18 of the Minister of Justice of Georgia dated January 31, 2012, a medical institution shall issue a certificate directly upon an embryo implantation which had not taken place in that disputable case; dismissal of the suite based on the court’s reference was also largely due to the fact that the plaintiff had not presented the client couple’s written consent which is an imperative clause of the first paragraph of the Article 143 of the Law of Georgia “on Healthcare”; the abovementioned decision was upheld by the Court of Appeal; currently the dispute continues in the court of cassation.

### **Agreement on surrogate motherhood**

The Law of Georgia “on Healthcare” allows surrogacy, provided there is a written consent of couples which, in turn, is a civil legal transaction. At the same time, no concept of a surrogate motherhood agreement is provided in the private part of the obligational law of the Civil Code of Georgia.

However, judging from the nature and legal results of the me agreement, it may be considered a kind of legal service. And, given the fact that a party wishes to achieve a specific goal as a result of surrogacy (birth of

a healthy child), the essential condition for concluding the agreement is the state of the contractor's physical and mental health. Also, the specifics of a surrogacy agreement lie in the fact that the by-law, the public law established that such an agreement should be concluded notarially (Decree №18 of the Minister of Justice of Georgia "on the Approval of the Procedure of Civil Acts Registration" dated January 31, 2012), which means allowing for public legal elements in private legal relationships.

The Law of Georgia "on Healthcare" considers surrogacy permeable only in favor of a client couple which means that a single woman or a single man does not have the right to have a child through surrogacy which, to a certain extent, is a legally allowed discrimination. At the same time, in the Georgian legislative space, where marriage is considered only a voluntary union of a man and a woman, a "couple" implies a couple consisting of a man and a woman, which is consistent with the principles of the Council of Europe.

Proceeding from the fact that in the Georgian legislative space a surrogacy agreement is considered a standard type of agreement, the principle of proper and conscientious fulfillment of the obligation established by the Civil Code applies to it. Accordingly, if a client couple has violated the agreement and has not paid the contractually agreed fee for the surrogacy, in accordance with the general civil law principles and common rules of the liability law, it may withdraw from the contract which, by a common procedure, shall be followed by a bilateral restitution and restoration of the initial status quo which is impossible due to the specifics of surrogacy. It turns out that a surrogate mother is not able to make use of general guarantees of full restoration of her rights as a result of non-compliance with the obligation. There is nothing left to her but the right to demand only the damage compensation. However, the legislation does not include any definition regarding constituents of a damage caused to a surrogate mother. The direct damage cannot be estimated based on the surrogacy agreement and the mother may demand financial compensation for the breach of the obligation by the counterparties.

The Georgian legislation does not provide for any restoration arrangements with regard to a client couple's parental rights, even in the case of violation of obligations by the surrogate mother. For example, if an unhealthy child is born due to the surrogate mother's culpable actions, the client couple may claim damages. The question arises: in what form is the damage to be compensated?

It is even more problematic when client parents refuse to be recognized as the parents of an unhealthy child born as a result of surrogacy and such a child is left without parental care. It is noteworthy that using general norms of the obligational law, client parents manage to restore their

right in case if the surrogate mother has violated her obligation to transfer the child. In such cases, the legal basis for the child transfer is shaped by the Article 361 of the Civil Code and the Article 143 of the Law on Healthcare.

Thus, it is completely incomprehensible and even alarming that there are no arrangements in the Georgian legislative space for restoring and protecting the rights of a surrogate mother and preference is given to client parents' interests. Especially since the Georgian legislation does not provide any protection norms at all for the rights and interests of children born as a result of surrogacy and they are rejected due to the state of health or other reasons both by the client parents and the surrogate mother (who, according to the Law of Georgia "on Healthcare", has initially no right to be recognized as a parent).

### **Conclusion**

The contradictoriness of the Georgian legislation and its inconsistency with the regulations of the Council of Europe is due to the fact that from the very beginning, the Georgian legislation deprives a surrogate mother parental rights. Meanwhile, according to the 15<sup>th</sup> Principle of the Council of Europe, no doctor or institution shall have the right to use artificial impregnation for fertilization of a surrogate mother. At the same time, national states may allow surrogacy in exceptional cases with the proviso that the agreement between the surrogate mother and the couple is voluntary, free of charge and not profit-oriented, and the surrogate mother shall have the right to choose whether to keep the baby or give it to the client parents.

Given the fact that in case of surrogacy, the Georgian legislation does not provide for any of such matters, such an obvious contradiction to the principles of the Council of Europe is detrimental in terms of European integration.

Thus, it is unambiguous that the continental Europe and common-law countries do not recognize surrogacy as a possibility of obtaining parental rights by a couple - unlike Georgia. It emphasizes the unethical and inhuman approach of the Georgian legislation towards this issue. It is obvious that the Georgian legislation should regulate surrogacy issues more thoroughly based on the European standards and principles of international law; the vague legislative definitions enabling the interested parties to transform surrogacy into a legal source of income need to be eliminated.

When developing legislation, the rights of a surrogate mother, the child's interests, and certain psychological factors should be taken into account, and I believe that surrogacy should be performed under maintenance of a surrogate mother's parental rights. In case of a dispute between a surrogate mother and client parents, the surrogate mother should

also have the opportunity to obtain the right of recognition as a parent and protect her motherhood rights in the court.

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## Historical Basis Confirming Signs of the Existence of “Meokhi”-Lawyer in Feudal Georgia

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### Abstract

The article discusses historical basis confirming signs of existence “Meokhi” (intercessor, advocate, protector) in feudal Georgia that certainly, has its reasons. History of advocacy is an important integral part of any country’s legal culture. “Meokhi” that stands for intercessor in Georgian or the words of foreign origin – Arabic “vekili” or Latin advocate were used to denote a “defender” in Georgian legislation. Lawyer’s profession counts several thousand years. Presumably, there were layers of the society bearing this profession in feudal Georgia which is directly or indirectly confirmed by Georgian literary sources and the fundamental researches. Advocacy originated in the ancient era. Lawyer’s profession was considered as a free and honorable profession in ancient Rome. It is a well-known fact that in the Roman Empire qualified lawyers were selected to make explanations at the court.<sup>74</sup> It is noteworthy that in the period of unification of Georgia, in the 11-12 centuries, law specialists were “scholars of the assembly”, who were invited to the court and there is a high probability that they participated in the processes.<sup>75</sup> We want to prove that in the united Georgia there was a layer of the society which had the function of “meokhi” – representatives of parties who actually provided defense. We believe that all this, as a historical reality, will be interesting for individuals who work in this profession, lawyers, and generally, for the whole society.

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**Keywords:** Meokhi, vekili, representatives in the IX century Georgia

### Introduction

#### Historical Basis Confirming Signs of Meokhi-Lawyer’s Existence in Feudal Georgia

The term “meokhoba” is explained in Sul Khan-Saba dictionary as “giving help”. According to David Chubinashvili “meokhi” is intercessor,

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<sup>74</sup>I. Surguladze. Opiza Deed.

<sup>75</sup> I. Surguladze. State and Legal Issues in “The Knight in the Panther’s Skin”. 1977. P. 219.

helper.<sup>76</sup> It is similarly explained by Niko Chubinishvili: intercessor, helper, protector. According to Georgian Explanatory Dictionary, “meokhi” is a protector, helper and “meokhoba” is to help, protect, to do favour.<sup>77</sup> “Komagi”, as David Chubinashvili defines, is a defender, intercessor, supporter and “sarcheli” is a dispute, claim.<sup>78</sup>

Sulkhan-Saba clarified that the term “mosarchle” meant the one who accompanies or represents a plaintiff,<sup>79</sup> and “sarcheli” means arguing the case with the judge.

“Vekili” (Arab. Vakil) meant a trustee, protector, defender in feudal Georgia. According to Sulkhan-Saba, “vakili” is a co-litigant” whose job is compensated. The term “vakili” also meant an advocate.<sup>80</sup>

“Advokati” (Lat: advocatus) is one who defends the accused or runs the case in the court, a lawyer.<sup>81</sup>

The main field of action for a lawyer was and is a court.

Court proceedings, judicial authorities and institutions, competence of judges, court staff, criminal trial proceedings and existence of “meokhi-advocates” in Kartli was thoroughly studied by a great Georgian scientist and academician Ivane Javakhishvili. In particular, in Georgian law history, as Ivane Javakhishvili indicates, “the criminal trial proceedings are not clearly described, though some deeds (documents) which describe punishment for those who committed crimes, and heavenly blessings for those who did not might be the reflections of the real trial proceedings of those days and not of heavenly judgment. So, these documents let us imagine the approximate picture of the court proceedings of the time”.

In 1123, David the Builder wrote in his will: “O, Saint Father Shio, when Christ sits to judge all tribes and deeds, ask Him to make a judgment against those who profane and those who dare to violate my will and monastery rights”.

While trial proceedings, the accused had a right to be present at the trial, litigate and prove their righteousness, thus, they could “take revenge”.

Certainly, culprits could, if they had something to say, justify themselves. Such justification speeches were called “sitkvisgebai”. In the translated versions this word stands for the Greek word “apologia”.<sup>82</sup>

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<sup>76</sup> David Chubinishvili. Georgian-Russian Dictionary. 1887.

<sup>77</sup> Niko Chubinishvili. Georgian Dictionary. 1961.

<sup>78</sup> David Chubinishvili. Georgian-Russian Dictionary. 1887.

<sup>79</sup> Sulkhan-Saba Orbeliani. Georgian Dictionary. Editors: I. Kipshidze, A. Shanidze. 1928.

<sup>80</sup> Soviet Georgian Encyclopedia. Vol. 4, 1979. P. 387.

<sup>81</sup> Mikheil Chabashvili. Dictionary of Foreign Words. Tbilisi, 1964.

<sup>82</sup> Apologia (Greek) – defense, justification speech. “Dictionary of Foreign Words”. Tbilisi, 1964.

The same studies “sigeltamcodneoba” (Eng. diplomatics, critical analysis of documents) makes us think that offenders at the court had defenders who drew up documents which proved their innocence or mitigated the sentence. Such a defender was called a “meokhi”; E.g. Grigol Eristavi, a nobleman in Kartli, wrote in his will: “Shio Mgvimeli was introduced as a meokhi-advocate to defend him before the judge and God”.

Thus, during the trial, “meokhi” made a justification speech, “sityvisgeba”, which was made before the seat allocated to a Judge.

It seems that presence of a culprit and “meokhi” at the trial was compulsory.

Who were these “meokhis”, was “meokhoba” (advocacy) legal, was this same as “advocatus” who defended all accused people, or did they defend only noblemen? These are the questions that cannot be answered yet because of lack of evidences.<sup>83</sup>

Professor Ir. Surguladze in his monograph “State and Legal Issues in “The Night in Panther’s Skin” points out that we can study the state and the judicial system of that period according to the poem and draw parallels, compare it with Georgian reality and prove the relevance of details given in the poem to reality.

I. Surguladze discusses the concepts regarding to “vekiloba” (advocacy) in a separate chapter. He gives citations from the stanza 201 and 3<sup>rd</sup> and 4<sup>th</sup> lines from the stanza 554. In the stanza 201 we read the following:

“We three brothers shamed the archers with us, so we three vied still one with another: 'I kill best, I am better than thou,' thus each pushed his claim with words; we could not manifest the truth, we wrangled, we strove with one another (none wanted to be last)”.

In the given stanza we meet rather interesting words and phrases: vied, pushed his claim with words, manifest the truth, wrangled.

It is noteworthy that dispute took place at the court and namely the concepts characteristic of court are used in “The Knight in the Panther’s Skin”. In this case it seems that they proceeded a trial in the court and a dispute took place. In old Georgian “tsiloba” means dispute between parties that was judged by a judge. In the given stanza the subject of dispute is to reveal a winner in the fighting competition and the competition was judged by “vekili” (an advocate). That is why Professor I. Surguladze states: “We can consider that the term “vavakilenit” (advocating) coincides with reality. It means that at that time, advocacy was a part of a trial showing real life processes”.<sup>84</sup>

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<sup>83</sup> Iv. Javakhishvili. History of Georgian Law. Vol. 7, book 2. Pp. 354-355.

<sup>84</sup> I. Surguladze. State and Legal Issues in “The Knight in the Panther’s Skin”. Tbilisi, 1977. Pp. 211-213.

The 3rd and 4th lines of the stanza 554 from “The Knight in the Panther’s Skin” are rather interesting for understanding the term “vakili” (an advocate). The idea of this stanza is as follows: How can I defend you? How can I justify you? How can I become your advocate? The aforesaid implies that “vekili’s” (advocate’s) function is to defend and intercede a culprit. Thus, we can suppose that the advocacy institution existed in feudal Georgia. It is surprising that the documents proving this fact are not preserved in the sources.<sup>85</sup>

As it seems from the poem, at that time a lawyer was called “vekili”. This term entered from Arabic and maintains the same meaning in the Georgian word stock.<sup>86</sup>

In 1958, the work of the candidate of historical sciences Ap. Rogava “On the Advocacy Institution in Old Georgia” was published in the Journal “The Society Law” (N 4). The scholar indicates that the manuscripts of David Batonishvili’s work on overview of Georgian law and jurisprudence and other historical sources indisputably prove existence of advocacy institution in Old Georgia.

Ap. Rogava emphasizes the Articles 750 and 753 of David Batonishvili’s work on overview of Georgian law and jurisprudence and thinks that the text is written in a way that only a real legislator could write. He is sure that David Batonishvili did not use any legal document as a manual. After analyzing the articles saying that an intercessor could lose his honorarium and professional worthiness if he showed carelessness toward his client, Ap. Rogava raised a question: “Who could deprive an intercessor of professional worthiness for violating the laws given in the Articles 750 and 753?” He himself had an answer to this question: “Certainly, lawyers’ corporation, intercessors’ guild... It can be assumed that intercessors’ guild existed in the kingdom of Erekle and Giorgi... It is obvious that intercessors’ institution could not have been established at a time during the reign of Erekle and Giorgi. It might have passed certain stages of development as it happened in other countries... Thus, the organization preceding the intercessors’ institution of the epoch of Erekle and Giorgi might have existed in Georgia of David Aghmashenebeli and Tamar”.

Ap. Rogava assumes that advocacy institution existed in old Georgia not only in the 18<sup>th</sup> century but also in the 11<sup>th</sup> century. To prove this he points to the words used in the 11<sup>th</sup> century literature: advocate, co-litigant, and intercessor.

To prove the existence of the advocacy institution in old Georgia, Ap. Rogava discusses the works of Eprem Mtsire, a great scientist, philologist,

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<sup>85</sup> Ibid, p.213.

<sup>86</sup> Ibid, p.211.

philosopher and translator of the second half of the 11<sup>th</sup> century. Particularly, he focuses on the words which mean advocate: People of Meskhety (the Meskhy) called an advocate “varkiri” i.e. the one who worked to defend a culprit and received honorarium. There was another word used in the 11<sup>th</sup> century Meskhety – “svinogorosi” - from Greek meaning the same. This word was used as a juridical term in Byzantine in the 11<sup>th</sup> century. So, according to Eprem Mtsire, the Meskhy used the word “varkiri” for an advocate and in the other parts of Georgia the words which meant litigant, co-litigant, plaintiff and intercessor were used with the same meaning.<sup>87</sup>

Thus, as Ap. Rogava assumes that the word “vekili” (advocate) is used in the Georgian language from at least the 11<sup>th</sup> century, more exactly, from the period when Eprem Mtsire lived and worked.

Ap. Rogava develops the idea that in the 10<sup>th</sup>-11<sup>th</sup> centuries in Georgia, according to the deed issued by King Bagrat IV – “Opiza Deed”, there were “Scholars of the Assembly” who were professionals in the field of civil law. There also existed the institution of scholars (judges) in the field of ecclesiastical or canonical law. “Opiza Deed” issued by King Bagrat IV (1027-1072) is, in its essence, a court decision which refers to the dispute on the estates between the two monasteries. The parties at the court were the famous monasteries in the valley of the rivers Opiza and Mijnadziri. It can be said that the trial was very important as the King himself led the process.<sup>88</sup>

Ap. Rogava believes that ancient advocacy institution in Georgia might have been established at least in the 4<sup>th</sup> century. At that time the philological-rhetorical school existed near Poti and a lot of its students gained fame at festive meetings for their eloquence.

It is impossible to think that in highly-cultured old Georgia outstanding Georgians were not well aware of Roman advocacy institution. That is why it can be considered that the similar institution of professional advocates was established in Georgia not later than in the 4<sup>th</sup> century. Intensive political and economic relations with ancient Greece and Rome created the best grounds for founding such an institution.<sup>89</sup>

Ap. Rogava thinks that outstanding Colchi orators Aeetes and Partaz can be regarded as the best professionals in the field of advocacy in the 4<sup>th</sup>-6<sup>th</sup> centuries. Aeetes was a famous political figure, orator, nobleman in the 6<sup>th</sup> century Georgia. At the Egrisi public assembly held to discuss the assassination of Gubaz II - King of Lazica by Byzantines, he addressed people to support his pro-Iranian orientation. Partazi was a Lazi nobleman,

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<sup>87</sup> Ap. Rogava. On the Advocacy Institution in Old Georgia. Journal: The Soviet Law. N 4. 1958.

<sup>88</sup> I. Surguladze. Essay on the History of Georgian State and Law; Opiaza Deed. Tbilisi, 1963.

<sup>89</sup> Ap. Rogava, *ibid.* P. 36.

political figure in the 6<sup>th</sup> century Georgia. At the aforementioned public assembly he demanded from the Emperor Justinian I to severely punish assassins of King Gubaz II and addressed people to support his pro-Byzantine orientation. Ap. Rogava assumes that Aete's and Partazi's speeches made on the Egresi public assembly in 554 prove their high professionalism in the field of advocacy.

In the notes of the Egrisi assembly recorded by Roman statesmen we read how Agathias Scholasticus (Byzantine poet and historian – 536-582) describes political experience and public consciousness of the governing circles of Lazica kingdom as well as the high level of their jurisdiction. The notes recorded by the foreign officials prove that there was a high level of jurisprudence in Georgia.

More convincing seems the role of the “meokhi”- intercessor at King Gubaz assassination trial held by Romans. The case took place in Colchis and was led by the judge, Senator Anastasius, who was sent by Emperor Justinian I (483-565). This happened after the public assembly when the Colchis Ambassadors filed an action against the court decision.

The Colchian scholars who defended King Gubaz introduced themselves to the Roman court and made justification speeches in a special way which revealed the rules of behavior at the court in old Georgia.

As Agathias Scholasticus says, “Staid Colchians who speak the Hellenic language well seem highly qualified in jurisprudence”.

Ap. Rogava says that Georgian prosecutors had to behave according to the Roman court rules when they demanded to read the Emperor's letter, read the indictment and twice participated in the disputes. Minding these circumstances, it is impossible to think that there were no professionals among “meokhi”-intercessors. On the contrary, it makes us believe that several well educated, Hellenic speaker “meokhi”-intercessors participated in turns while disputing. After the hearings, the Roman judge Athanasius understood and investigated everything that was necessary to make a decision.

As Ap. Rogava concludes, if we consider the abovementioned facts and also Agathias Scholasticus' historical notes convincing, it will be clear that “meokhi”-intercessor institution existed in Georgia from the ancient times, more exactly, from the establishment of Poti Academy in the 4<sup>th</sup> century. We can also suppose that based on a centuries-old experience it could take even more developed form in the 11<sup>th</sup> – 18<sup>th</sup> centuries but here, we choose a careful approach and consider the existence of “meokhi”-intercessors institution in the 6<sup>th</sup> – 11<sup>th</sup> centuries as a hypothesis.

Proving the existence of “meokhi”-intercessors institution in the 6<sup>th</sup> – 11<sup>th</sup> centuries requires more investigations, finding more historical evidences. This should be done in the future. We cannot take it as a fact only on the

basis of Agathias Scholasticus' historical notes and the arguments discussed above, and now we can only state that the existence of "meokhi"-intercessors institution in the 11<sup>th</sup> – 18<sup>th</sup> centuries is indisputable.<sup>90</sup>

I. Surguladze discusses Ap. Rogava's work "On Advocacy Institution in Old Georgia" where Ap. Rogava speaks about David Batonishvili's "Overview of Law", namely, about the Articles 750 and 753 which give information about intercessors. According to David Batonishvili, intercessors were paid for the proceedings at the court. He writes: "If a man hires someone to claim at the court instead of him, the hired man is a real plaintiff".<sup>91</sup> At the end of the 18<sup>th</sup> century in the "samokalako sjulvileba"-Civil Law we still meet the word "vekili".<sup>92</sup>

I. Surguladze believes that Ap. Rogava's error lies in the fact that he does not distinguish institutions of intercessors and advocates from each other. While analyzing the legal document of the 11<sup>th</sup> century - "Opiza Deed", Surguladze came to the conclusion: "It seems impossible not to have more reliable documents confirming the existence of advocacy institution in feudal Georgia if it really existed".

Representatives, in general and particularly, at the court were common in old Georgia. In most cases the representatives were the closest relatives: fathers, brothers, nephews, etc. They represented people who were sick or had other reasons for the absence at the court. Sometimes representatives were guardians of orphans, juveniles, mental patients and others. As a rule, parties themselves had to be present at the court. That is why, in the "Book of Law" and "Book of Deals" by King Vakhtang, which discusses the court organization and trials, nothing is said about "vekili"-advocate.<sup>93</sup>

While analyzing "Opiza Deed", I. Surguladze emphasizes that the 11<sup>th</sup> century Georgian feudal law recognizes representatives at the court... The draftsman is well aware of the fact that monasteries are parties which protect their rights through representatives. All this is the result of well-developed juridical consciousness.

According to the document, "scholars of the assembly" meaning law specialists, scholars, lawyers of that time were invited to the court. The fact that lawyers were invited to the court for proceeding important and

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<sup>90</sup> Ap. Rogava. On the Advocacy Institution in Old Georgia. Journal: The Soviet Law. N 4. 1958. P. 38.

<sup>91</sup> I. Surguladze. State and Legal Issues in "The Knight in the Panther's Skin". Tbilisi, 1977. Pp. 215.

<sup>92</sup> Ibid. P. 216.

<sup>93</sup> Ibid. P. 218-219.

complicated trails proved that lawyers were considered as important and honourable figures.<sup>94</sup>

### **Conclusion**

Thus, based on the legal and literary sources that have been obtained so far, we can assume that in the 11<sup>th</sup> – 18<sup>th</sup> centuries Georgian legislation the words: “Meokhi” (intercessor, advocate, protector), “Vekili” (trustee, protector, defender), “mosarchle” (plaintiff), “monatsvle” (representative) were used in the court of feudal Georgia.

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## Concept of Decision in Absentia and its Adjudication Principles

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### Abstract

Decision in absentia is the decision passed against an absent party. Such decision is based on the supposition that at the main judicial sitting the plaintiff denied the suit, and the defendant has notified it. Every person has the right to go to law in order to defend his rights or liberty. According to the 1<sup>st</sup> part of the 2<sup>nd</sup> paragraph of the Civil Procedure Code, the juridical protection is enforceable for every person. The court will start trying a case with the application of that person who applies for it in order to defend the interests, legally provided. The main point of this principle should be divided into two parts and explained. Hence, in the first case, the plaintiff is pondered who has a demand towards the defendant; he thinks that the defendant has outraged the rights and the interests protected by law and he wants these rights to be urgently rehabilitated. For this he has saved some money, time, and work, to be present at the legal trial and to give the judge the chance to rehabilitate his rights. On the stage of preliminary preparation of the case the argument is not solved essentially. Only the procedural actions, foreseen by the law are held. On the preparatory stage may be held preparation session, but in this case, the supposition of suit confession by the defendant, or the sides' agreement, defendant denial of suit may not be justified. That is why, in case of absence of any side at the main trial, as the argument decision has turned to be impossible; it is not possible to pass the absent decision. The absent decision is the presumption for the side, which has lost the case with substantive point of view because of being absent. A decision in absentia is a supposition that the plaintiff refuses the suit in case he is absent, or the defendant has confessed the action, while his absence. As this supposition was not justified at the preparation trial, it is not possible to pass the decision at this stage and the essential discussion of the case should be set at the main trial.

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**Keywords:** The principle of disposition, decision in absentia, absence of a party

## **Introduction**

Decision in absentia is the decision passed against an absent side. Such decision is based on the supposition that at the main judicial sitting the plaintiff denied the suit and the defendant notified it. Every person has a right to go to law in order to defend his rights or freedom. According to the 1<sup>st</sup> part of the 2<sup>nd</sup> paragraph of the Civil Procedure Code, the juridical protection is enforceable for every person. The court will start trying a case with the application of that person, who applies for it in order to defend the interests, legally provided.

The main point of this principle should be divided into two parts and explained. Hence, in the first case, the plaintiff is pondered, who has a demand towards the defendant, he thinks, that the defendant has outraged the rights and the interests protected by law and he wants these rights to be urgently rehabilitated. For this he has saved some money, time, and work, to be present at the legal trial and to give the judge the chance to rehabilitate his rights.

On the stage of preliminary preparation of the case the argument is not solved essentially. Only the procedural actions, foreseen by the law are held. On the preparatory stage may be held preparation session, but in this case, the supposition of suit confession by the defendant, or the sides agreement, defendant denial of suit may not be justified. That is why, in case of absence of any side at the main trial, as the argument decision has turned to be impossible; it is not possible to pass the absent decision. The absent decision is the presumption for the side, which has lost the case with substantive point of view because of being absent. That is why the legislator indicates, that if the side, which was sent the message with the statute-established law, and he did not come at the preliminary and main trial, with the mediation of present side, the absent decision will be passed.

A decision in absentia is a supposition that the plaintiff refuses the suit in case he is absent, or the defendant has confessed the action, while his absence. As this supposition was not justified at the preparation trial, it is not possible to pass the decision at this stage and the essential discussion of the case should be set at the main trial.

## **A notion of decision in absentia**

Decision in absentia is the decision, passed against absent side. Such decision is based on the supposition that at the main judicial sitting the plaintiff denied the suit, and the defendant notified it. Every person has a right to go to law in order to defend his rights or liberty. According to the 1<sup>st</sup> part of the 2<sup>nd</sup> paragraph of the Civil Procedure Code, the juridical protection is enforceable for every person. The court will start to try a case with the

application of that person, who applies for it in order to defend the interests, legally provided.

“A right – this is legally provided possible rules of conduct. It means that a person, who has this or that right, is able to use this one, to enjoy this right, but he is not able to use it. The essence of civil rights consists in the fact that this right is in his full order” (15.78).

“And in case of an ordinal decision, a decision in absentia is a procedural act, with the help of which a disposition decision happens. Herewith, a decision in absentia is the result of a case treatment and decision during the absence of one side” (33.145).

As T. Liluashvili explains, “A plaintiff, as an institution of the Civil Procedural Law is an application of a person towards the court about rights defense, to discuss the demand against the defendant and to pass his judgment” (16.271).

According to Sh. Kurdadze, “A suit is a procedural means of rights defense in case there is a substantive argument between the sides, i. e. when the right is infringed or it is deniable or it is a danger of its infringement” (28.425-426).

Kleimann differentiates two types of a suit: substantive and adjective ones (13.147).

M. Gurvish considers a suit to be an adjective institution which is connected to the material regulations (8.149). According to A. Davtyan’s implication, a suit is a mediation of suer of its legal protection (5.130).

In the Soviet Juridical literature the suit was differentiated according to substantive and adjective points of view [32.106]. “The parties start prosecuting a case under the law regularities on the basis of suit and demands. They determine the subject of litigation and if it is not legally specified differently, the parties are able to finish prosecution with an agreement; they can already use demand in refusal and confession way” (9.247-248).

“The principle of disposition gives the freedom to the parties in disposition of their material and procedural rights. The particular revealing of the principle of disposition is a plaintiff’s right – a rejection on his suit, the right of a defendant – to conclude a case with an agreement in the court and so on” (10.259-260).

“The notion of disposition comes from the Latin word “Disposition” which means the written order to the troops to start the struggle. In the Civil Procedure, this principle means that the court can discuss the case if the suit or application is registered, i.e. only after the court is applied in writing (14.52-54).

“The content of disposition principle contains legal powers which are connected to the material rights of the parties and the allodia of procedural means of protecting these rights” (29.90).

“The opportunity of a decision in absentia is an expression of disposition principle, as the parties themselves have chosen to rule the self-government of their will” (7.42).

“During the ruling condition of pleading principle the judge studies not the true materials of the case, but pays special attention to the factual situation – absence (31.42).

“A decision in absentia is a decision taken only on the basis of absence foundation, when the attention to factual conditions of the case is not attracted, and the party, who did not use the chance to rule his material and procedural rights, and to solve his claim himself” (11.42).

“The institution of a decision in absentia is an indivisible part of the Civil Procedural Law. Its utilization is based on some principles. For example, the first principle is to protect the interests and duties of the party that is conscientiously present at the legal procedures” (17).

On the preparation stage, it is possible to hold preparation session if the written materials give the judge the assumption that the parties may finish the case with agreement, the defendant confesses the suit, or denies it; also, if to the judge’s supposes that the interests of proper preparation of a case demand it.

According to T. Liluashvili, “We should expediently notify the change of improper party into the proper one on the preliminary preparation stage of the case” (18.121).

On the stage of preliminary preparation of the case, the argument is not solved essentially. Only the procedural actions foreseen by the law are held. The preparation session may be held on the preparatory stage, but in this case the supposition of suit confession by the defendant or the party’s agreement defendant’s denial of suit may not be justified. That is why in case of absence of any party at the main trial, the argument decision has turned out to be impossible; it is not possible to pass the absent decision.

“Participation of some persons in plaintiff’s side, defendant’s side, or in both sides in one case is called the procedural participation, or the subjective unification of actions. The participators on plaintiff’s side are called co-plaintiffs, and the defendant’s ones are called co-defendants” (19.136-137).

The suit may be presented by several plaintiffs or against several defendants. If the essence of the suit is a common right, the plaintiff’s claims implicate from the same basis or the claims are congenerous despite the basis and essence are congenerous or not. Participation of some persons in plaintiff’s side, defendant’s side, or in both sides in one case is called the

procedural participation, or the subjective unification of actions. The participation may be obligatory, or optional.

“The participation is compulsory if it is impossible to discuss the case without the participation of all subjects of this relationship according to the substantive correlation. The participation is admissible. If one of the co-participants came to the trial, for example, the plaintiff, the court should pass not absent, but an ordinary decision according to the case materials” (20.139-140).

“We deal with the compulsory co-participation when, for example, the argument deals with share impartation from the common property. During the compulsory co-participation, presence of one of the co-participants means presence of all co-participants of the claim. So, in this case, the court should pass not absent, but an ordinary decision according to the case materials” (21.163-164).

We have an optional co-participation in case, for example, some workers have demanded a salary from the administration. During this co-participation, in Professor T. Liluashvili’s point of view “if none of the co-participants of one party is present, then the court can pass an absent decision against all absent parties” (22.125). Shalva Kurdadze has the same opinion about this issue (30.850-851).

“In the practices there is a question raised whether the court is able to pass a decision in absentia during the optional (non-obligatory) co-participation if none of the participants is present or some of them are present. During this type of co-participation, if none of the co-participants is absent, the court can pass a decision in absentia against all absent sides” (23.142).

It is not accepted when the circumstances stated by the plaintiff partially prove its claim juridical. According Professor Liluashvili, at this time the court should pass the “decision – absent decision” (24.401-402).

The same opinion has the chairman of the Civil Case Chamber of Hans Supreme Court of Bremen, Doctor Hain Bioling. In the article “Basic Principles Processes, related to a Decision in Absentia Passed against the Defendant” which was published in Bremen in May 2008, dedicated to the memory of Tengiz Liluashvili (2).

In case the circumstances stated into the suit are partially proved, we consider that “a decision - a decision in absentia” pass is wrong, as according to the first part of the Article 182 of the Civil Procedural Code, “The plaintiff can unify some claims towards the same defendant, despite different basis or not”. Therefore, we have one suit. According to the Article 232<sup>1</sup> of the Civil Procedural Code, despite the reconcilable has inadequate reason, if the factual circumstances do not prove the plaintiff’s claim juridical, the court passes not a decision in absentia, but it designates the main session

about which the parties will be informed with the stated rule of the Articles 70-78 of this Code.

“A decision in absentia is passed temporarily”. This means that on the basis of the claim of the party who was absent at the trial and a decision in absentia was passed against him, the process can be prolonged (3).

The basis of passing of a decision in absentia is the supposition that the plaintiff refuses the claim in case he is absent, or the defendant confesses the factual circumstances stated in the suit with his absence. So, their coming to the trial with a delay scatters this supposition. Here, the party wanted to express his consideration against another party, but because of some facts he was late for the trial.

The late coming to the main trial has scattered the supposition about the factual circumstance on suit refusal. According to the second sentence of “B” paragraph of the first part of the Article 233 of the Civil Procedural Code, in case the party’s absence, it is impermissible to pass a decision in absentia if there were cases which could obstruct the party to come to the trial on time. So, in case of gravamen of the party who came late, the court should cancel a decision in absentia according to the “B” paragraph of the first part of the Article 233 and the Article 241 of Civil the Procedural Code and renew the case administration.

In the juridical literature and the court practice, the discretion is settled according to which, a decision in absentia is a penalty for the absent party on the trial session.

In T. Liluashvili’s opinion, “a decision in absentia is far from perfection, but it is useful because it is the only one efficient tool with which it is possible to fight against unconscionable side which tries to drawl the case. With a distinct point of view, it is a penalty for the unconscientiousness and an encouragement – for the conscientiousness” (25.393-394).

“The Civil Procedure Code considers the sanction to the absent party according to the Chapter “Default Judgment”. In particular, the first part of the Article 229 of the Civil Procedure Code deals with the possible outcomes of the case when the plaintiff fails to appear at the trial; while the first part of the Article 230 deals with the possible outcomes of the case when the defendant fails to appear without a reasonable excuse” (12.45).

The Supreme Court of Georgia also considers a decision in absentia as a sanction for the party who is absent at the trial. At the same time, it does not deny that the hearing on the defendant defaulted allows us to believe that he has lost interest in the counter suit against him (6).

Default judgment is derived directly from the disposition and adversariality principles. The optional principle lies in the fact that the party decides to lodge a complaint about the case could end in a settlement or reject the claim. Therefore, the plaintiff’s failure to appear at the main

hearing is not disrespect to the court, but the rejection of the assumption. His absence at the trial is never directed to procrastination of the case as he is interested in restoring rights to sue. That is why it is presumed a waiver claim by the plaintiff during his absence.

"The optional principle of the process, which is one of the fundamental civil substantive law principles - full reflection of the will of autonomy, means the freedom of the parties to dispose their own material as well as procedural rights" (26.84-85).

Adversarial principle lies in the fact that the defendant cannot deny or rebut the plaintiff's demands, suggestions and evidences. Besides, according to the disposition principle, the defendant has the right to confess the claim. Therefore, while failing to submit the counterclaim without a reasonable excuse, if the claim is legally justified by the facts of the case, the court makes a decision in absentia to satisfy the claim.

If the defendant does not appear on the main session, the factual circumstances indicated in the complaint are deemed approved. The provision is based on the assumption of the defendant as he could refute the plaintiff's requirement, consideration or assertion in accordance to the adversarial principle, but did not use this right. Accordingly, at this stage, disrespect towards the court as well as delay of the case is impossible as in case of legal justification of the claim, the court makes a decision in absentia on satisfying the claim.

According to the Article 201 of the Civil Procedure Code of Georgia, the defendant shall file a counterclaim. "Parties to civil proceedings have imposed legal obligations either before the court or each other. They are not obliged to appear in the court, deny the opposing party's statements and opinions, to recognize the facts of the requirements, submit petitions, etc." (1.145). "The parties shall bear no legal responsibility in the process as the procedural legislation does not consider the possibility of using state coercive measures for violating such a duty" ( 4.231).

"The right and obligation are inseparably linked with each other. The right is always in balance with the obligation: there is no right without duties and vice versa. This means that if someone does not fulfill his/her duties, he/she violates someone's rights. If we discuss procedural duties in this regard, we can conclude that there is no such duty in really, because when a party (whether it be the plaintiff or defendant) does not comply with procedural obligations, he/she does not violate anyone's right. Therefore, there is no legal mechanism which could ensure fulfillment of procedural duties by using the state coercive measure" (27.175-179).

In case the appeal is not submitted at the preliminary hearing or the defendant does not appear on the main court session, the defendant is not published but the claim is satisfied. Making decision in absentia is not

allowed if the party notifies the court shall notify that the case be discussed without his/her participation.

An appeal must include an indication whether the applicant wants to discuss the case to without oral hearing. The same should be indicated also in the appeal of the opposing party. Therefore, it is not allowed to make a decision in absentia in the Appellate Court. In the mentioned cases, the court should make a conventional decision according to the case materials.

## **Conclusion**

Decision in absentia is the decision made against the absent party. Such decision is based on the supposition that the plaintiff who did not appear on the main court session denied the suit, and the defendant confessed the suit.

On the stage of preliminary preparation of the case the dispute is not solved essentially. Only the procedural actions, foreseen by the law are held. On the preparatory stage the preparation session may be held, but in this session, the supposition on the defendant's denial of the claim or confession of the claim by the defendant or the parties' agreement may not be justified. That is why, in case of absence of any party on the main trial, as it is impossible to solve the dispute essentially, it is not possible to make the decision in absentia.

Decision in absentia is the presumption for the party who lost the case because of being absent. That is why the legislator indicates that if the party who was sent the notification established by the law did not appear on the preliminary and main trials, the decision in absentia can be made on the basis of the solicitation of the present party.

Decision in absentia is a supposition that the plaintiff refuses the suit in case of his/her absence, or the defendant has confessed the claim while his/her absence. As this supposition was not justified at the preparation trial, it is not possible to make the decision in absentia at this stage and the essential discussion of the case should be set at the main trial.

Decision in absentia is a supposition (presumption) that the plaintiff refuses the suit in case he/she is absent or the defendant has confessed the factual circumstances given in the claim during his/her absence. In the very case, the claim will be satisfied only if the factual circumstances indicated in the claim juridically justify the plaintiff's claim. Otherwise, the court will refuse the plaintiff to satisfy him/her with a conventional decision.

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## Unilateral Contracts <sup>95</sup>

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### Abstract

Origin of the relations deriving from the law of obligations is grouped primarily according to the voluntary and involuntary grounds. Agreements and unilateral contracts are among the obligations emerged on the basis of demonstration of the will (intent). It is very difficult to find materials on unilateral contracts in the Georgian legal literature; however, analysis of the Georgian judicial practice proves that currently this is a challenging issue and it is important to conduct studies on it. The concept of unilateral contract does not imply the necessary fulfilment of the intent demonstrated by one person. It is necessary this unilaterally demonstrated intent be accepted by the other party. The phrase ‘unilateral contract’ and ‘unilateral demonstration of intent’ do not have identical meanings and therefore, it is a mistake to use them as synonyms. Unilateral agreements in the French law are the so called incomplete bilateral agreements where their bilaterality is hindered by the lack of the elements of bilateral agreements at the moment of concluding such an agreement – and specificity of such agreements should be taken into account during legal proceedings. The existence of nonhomogeneous judicial practice regarding unilateral contracts and agreements clearly proves that it is necessary to conduct further research in this field and also to ensure detailed simplification of legislative norms as well.

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**Keywords:** Obligations; unilateral contracts; unilateral agreements

### Introduction

Origin of the relations deriving from the law of obligations is grouped primarily according to the voluntary and involuntary grounds. Agreements<sup>96</sup> and unilateral contracts are among the obligations emerged on the basis of demonstration of the will (intent).

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<sup>95</sup> In the English Translation of the Civil Code of Georgia, this term is referred as "unilateral transaction".

<sup>96</sup> A contract is a specific and private legal agreement. Study of the French legal doctrine makes it clear that the term “contract” as it is established in the Georgian language,

It is very difficult to find materials on unilateral contracts in the Georgian legal literature; however, the analysis of the Georgian judicial practice proves that currently this is a challenging issue and it is important to conduct studies on it.

We will try to offer a small essay on unilateral contracts and highlight key problems predominantly based on the comparative analysis of Georgian and French laws.

Unilateral contract is one of the specific grounds for the relations deriving from the law on obligations<sup>97</sup>. Perhaps, due to this specificity there are many different attitudes on recognizing the unilateral contract as source of obligation. Hence, for instance, the German, Italian and Swiss codes as well as the Georgian civil legislation recognizes the unilateral contract as a source of obligation. The French doctrine is nonhomogeneous – some scholars support Potie’s opinion that the parties make promises in the agreement and impose obligations on themselves, as far as only the promises and agreements which are given based on prior intent give rise to legal obligation to fulfill them, and this is how the agreement is executed. However, there are other promises that should be kept in good faith, and as far as they derive from the intent of one party, without making an agreement, they do not generate legal obligations. Therefore, Potie rules out recognizing the unilateral contracts as a source of obligation, because the unilateral contract lacks the element of agreement between the parties, and the unilateral contract is an obligation which has emerged on the grounds of sole action of the debtor. We encounter the concept of a unilateral contract later. In the French doctrine of the 19<sup>th</sup> century it is considered as “a legal act which generates obligation of a person only with the willingness of this person.”<sup>98</sup> However, there is also an opinion that “the French positive law is not interested in unfamiliar concepts. It seems it is not going to accept it yet, because the French law is based on the principle of agreeing the intents.”<sup>99</sup>

As for the Civil Code of Georgia, it recognizes the unilateral contract as the grounds for emerging the obligation.<sup>100</sup> The most recent comment to the Civil Code of Georgia clearly defines the legal rule based on which there

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corresponds to the French term ‘convention’, although the term ‘contract’, with its meaning, is more than the agreement.

<sup>97</sup> While working on the French Civil Code, the editors did not recognize unilateral contract as a source of obligation. However, the attitude changed in the twelfth century “the modern jurisprudence should recognize the unilateral contract as a source of obligation.” See J. Mesre, *Revue Trimestrielle droit civil*, 1996 observation, page 143

<sup>98</sup> Najjar, *Le droit d’option, contcibution a’ l’ étude du droit potestatif et de l’acte unilatéral*, LGDJ, 1967

<sup>99</sup> H. et L.Mazeaud, J.Mazeaud, F.Chabas « *Lecons de droit civil, T II, V I, obligation, 9e ed* Montchrestien,1998

<sup>100</sup> See the Article 50 and Article 51 of the Civil Code of Georgia

have been and still are many legal disputes brought to court.<sup>101</sup> The comment to the provision on unilateral contracts reads: “as far as the legal consequence depends only on the willingness of one person, which may jeopardize the legal stability, the law stipulates a detailed regulation for unilateral contracts and preconditions for their application. The legal consequence caused by demonstrating the intent from one party may have to deal only with the person demonstrating the intent, or the third person [...] Although the third person’s consent is not necessary for occurring the legal consequence anticipated by the unilateral contract, still, s/he should at least learn about the intent<sup>102</sup> of the authorized person [...] the moment of acceptance of the third party’s intent (the contract’s counteragent) has a constitutional significance [...] this is why such contracts are valid from the moment when the recipient becomes aware of the demonstration of the intent.”<sup>103</sup>

Indeed, only after the recipient learns about the intent, it becomes possible, based on the decedent’s will, to transfer the assets to heirs according of the will and to receive the estate. It is noteworthy that such unilateral contracts are most often encountered in court judgments.<sup>104</sup>

We should also point out that the will is a dispositional unilateral contract, unlike making public promise on reward, which is a binding contract.

We also come across with the following content in the Georgian court judgments: agreement on the acknowledgment of the existence of a debt is a unilateral contract<sup>105</sup>; acknowledging the existence of a debt is a unilateral contract, i.e. one-sided demonstration of intent<sup>106</sup>; in accordance with the Article 341 of the Civil Code of Georgia, acknowledgement of the existence of a debt represents a unilateral, abstract contract; thus, the debt acknowledgment is characterized with all the features of a unilateral and abstract contract, considering the peculiarity which is given in the concerned provision“.<sup>107</sup>

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<sup>101</sup> See the Civil Code of Georgia, comment to the Article 50, [http://www.gccc.ge/wp-content/uploads/2015/06/152312\\_Artikel-50.pdf](http://www.gccc.ge/wp-content/uploads/2015/06/152312_Artikel-50.pdf)

<sup>102</sup> See the judgment of the Supreme Court of Georgia №ს-514-898-06; <http://www.supremecourt.ge/files/upload-file/pdf/samoq2007-1-uni.pdf>

<sup>103</sup> *ibid*, page 4; [http://www.gccc.ge/wp-content/uploads/2015/06/152312\\_Artikel-50.pdf](http://www.gccc.ge/wp-content/uploads/2015/06/152312_Artikel-50.pdf)

<sup>104</sup> Judgment of the Supreme Court of Georgia - case №ს-745-707-2013; №: სს- 203-190-2014; case №ს-405-382-2014; №: სს-1698-1592-2012, etc. See <http://www.supremecourt.ge/court-decisions/civil-cases/>

<sup>105</sup> Judgment of the Supreme Court of Georgia №ს-81-779-03;

<sup>106</sup> Judgment of the Supreme Court of Georgia №სს 346-637-04

<sup>107</sup> Judgments of the Supreme Court of Georgia №სს-1621-1522-2012; №სს-699-658-2011; №სს-286-543-08;

There are several inaccuracies in these wordings. First and foremost, a contract cannot be unilateral from its classical understanding<sup>108</sup>, as far as a contract is usually an agreement between two or more people on their involvement in binding relations and one-sided demonstration of the intent, which brings about the legal consequence, is a unilateral contract. This is why there is a famous saying – all the agreements are contracts, but not all the contracts are agreements. However, one of the court judgments – on pardoning the debt, provides a quite correct definition of the respective provision, and there is a conclusion deriving from the Article 448 of the Civil Code of Georgia – “Forgiveness of a debt by agreement between the parties terminates the obligation.”<sup>109</sup> There is a circumstance here that we should take into account: it is necessary that the recipient learns about the intent demonstrated unilaterally by the other party.

It is also arguable whether it is right to prove the unilaterality of agreements on making gifts and loan agreements in the judicial practice.<sup>110</sup>

One of the court judgments reads: “making a gift is a unilateral contract. The offeror demonstrated the will of making a gift, which the offeree accepted. Thus, not speaking a language by the offeree cannot affect<sup>111</sup> the validity of the intent demonstrated by the offeror.”<sup>112</sup>,

Undoubtedly, there will be more disputes about the opinion that the loan agreement is a unilateral contract. Legal theories on agreements are confronted with the opinion on unilaterality of any type of contract in general, not only on unilaterality of a loan agreement<sup>113</sup> in particular;

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<sup>108</sup> There is a term in the legal literature ‘incomplete bilateral agreement’, which is concluded as a unilateral one, but there may emerge such obligations during its fulfillment, which imposes liability on the party, which used to be only a creditor in this agreement. These agreements are referred to unilateral agreements in the French law, as far as they do not bear the signs of bilateral agreements when they are first concluded. - J. GAUDEMET, Arch. phil. droit 44 , p. 24

<sup>109</sup> Judgment of the Supreme Court of Georgia № 33-199-2000

<sup>110</sup> Although an agreement is a bilateral contract, from its side, the agreement can itself be a unilateral and bilateral. A unilateral agreement is the one, which imposes obligation, or grants the right to one party only, e.g. making a gift. See *ibid*, [http://www.gccc.ge/wp-content/uploads/2015/06/152312\\_Artikel-50.pdf](http://www.gccc.ge/wp-content/uploads/2015/06/152312_Artikel-50.pdf)

<sup>111</sup> The offer and the acceptance both represent a demonstration of the will, but taken separately they do not result in any legal consequence. This is why neither the offer nor the acceptance are regarded as unilateral contracts. Simultaneous occurrence of the offer and the acceptance – the consensus – ensures the occurrence of a legal consequence. If there is difference between them, then no agreement will be concluded. See *ibid* [http://www.gccc.ge/wp-content/uploads/2015/06/152312\\_Artikel-50.pdf](http://www.gccc.ge/wp-content/uploads/2015/06/152312_Artikel-50.pdf)

<sup>112</sup> Judgment of the Supreme Court of Georgia № 36-139-132-10

<sup>113</sup> Loan agreement – a unilateral contract or a synallagmatic agreement? There is a dissertation thesis aimed at studying the legal nature of this problem - Attard J., *Le prêt d'argent: contrat unilatéral ou contrat synallagmatique ?*, thèse Aix Marseille III, 1998.

correspondingly, when the court judgment reads – “loan agreement is a unilateral and valid agreement, where only one of the parties undertakes to carry out a certain act. This is the repayment of borrowed money. The other one, however, has a respective right, i.e. the lender is authorized to request the return of borrowed money from the borrower.”<sup>114</sup> Besides, we need to specify that if we consider the gradual fulfillment, any other agreements may turn out to be unilateral at a certain moment which does not necessarily mean that it is not bilateral or multilateral; if the lender has the right to request the return of the money given to the borrower, when the due time comes for fulfillment of this obligation, then the borrower has the right, at the moment when the obligation enters into force, to request from the lender a thing without defects of right or clear title to it, i.e. both parties have their share of rights and obligations, and none of them has only the right or only the obligation. This opinion is also exercised in the judicial practice, which is proved by the court decision, which reads – “in case of bilateral relations deriving from the law of obligations, the participants in the relation are creditors and debtors at the same time. In this case we are facing the bilateral binding relation, and each party is a creditor and the debtor at the same time.”<sup>115</sup>

## Conclusion

- The concept of unilateral contract does not imply the necessary fulfilment of the intent demonstrated by one person. It is necessary, at least, that this unilaterally demonstrated intent be accepted by the other party.
- The phrases ‘unilateral contract’ and ‘unilateral demonstration of intent’ do not have identical meanings, and therefore, it is a mistake to use them as synonyms.<sup>116</sup>
- Unilateral agreements in the French law are the so called incomplete bilateral agreements, where their bilaterality is hindered by the lack of the elements of bilateral agreements at the moment of concluding such an agreement – and specificity of such agreements should be taken into account during legal proceedings.
- The existence of nonhomogeneous judicial practice regarding unilateral contracts and agreements clearly proves that it is necessary to

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<sup>114</sup> Judgment of the Supreme Court of Georgia № სს-394-367-2010 ; case №: სს-212-204-2013

<sup>115</sup> Judgment of the Supreme Court of Georgia № სს-1610-1604-2011

<sup>116</sup> Jean Carbonnier, *Droit civil*, vol. 2 : Les biens. Les obligations, Paris, 2004 “An intent is not the only element; an agreement is a more global act. An agreement is also about joining, it is reasonable act of trust and it cannot be perceived as something separated for each party, under which there is an intent for everyone”.

conduct further research in this field and also to ensure detailed simplification of legislative norms as well.

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# Current Controversies and Solutions Related to Adoption in Georgia

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## Abstract

Adoption in Georgia is a matter of Family Law. The institute, in its essence, has always been one of the most sensitive matters which was getting more and more actual as the centuries passed and is still faced as one of the most important issues of the modern era, which needs a new approach and deep analysis.

This article aims to review the current issues related to the adoption and suggest the recommendations on improvement of the institute.

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**Keywords:** Adoption, adoptive parent, control, psychologist, confidentiality

## Introduction

Adoption is regulated by the constitution of Georgia, international treaties and agreements, the Civil Code of Georgia, the law of Georgia on "Adoption and Foster Care" and other legal acts. [8, 6] However, nowadays, the institute of adoption in Georgia isn't well-organized and needs to be improved and adapted to innovations, which should mostly be determined by the protection of child's best interests.

Government's primary task is to look after the children left without warmth and parental care and to bring them up in favorable conditions and it has responsibility to create a loving, healthy family environment for each child and ensure a happy childhood for them.

The fact is that the adoption has always been a complex process and the potential adoptive parents had to wait for years to adopt a child with the help of official agency.

That's why the majority of people wishing to adopt a child chose a way to make it in an informal way, by private agreements and to buy a child illegally. Although there were changes in a new law on "Adoption and Foster Care", which made it easier to adopt a child, still the problem remained unsolved. Problems can be grouped in the following aspects:



## **Illegal adoption**

The first thing that should be noted is associated with illegal adoption. Despite the fact, that abovementioned actions are not rumored in the society, which can be explained by the hidden actions in many cases and is difficult to understand whether the private agreement took place between the adoptive parent(s) and the biological parent(s) or not, at least we believe that system of police and prosecutor's office should be improved and involved more seriously in the process of adoption and the use of dominant right in adoption process will help to prevent illegal adoption and to give a proven and reliable information to the Social Service Agency about the action of adoptive and biological parents. [7]

We believe that the social workers must operate more rapidly as it is mentioned in The Hague Convention on "the Protection of Children and Cooperation in Respect of Intercountry Adoption", which obliges the states to act quickly during the process of adoption and this will help to eliminate the problem.

The social workers need constant trainings and professional development for the effectiveness of adoption procedure. Certain trainings must be conducted for them, so that they could share international standards and learn from the experience of other countries and use it in their own practice.

## **Assessing Adoptive Parents**

The second issue which is worth paying attention to is the assessment institute of adoptive parents.

According to the current law of Georgia there are a few number of requirements for assessing adoptive parent. One can often read the following assessment in the conclusion of social workers: "they have a flat, space X square-meters, secure living conditions, satisfactory sanitary hygiene, with some furniture and home appliances, continuous electricity etc. Living space and conditions, appliances and furniture, utilities: electricity, gas and water". But it isn't determined what kind of financial indicator a potential parent should have, for considering whether a child will be ensured in given family or not, what level of education is satisfactory and there is no indication as well about what kind of personal features and social status in society corresponds to the standards. The social workers often assess adoptive parents by following words: "family has open borders to actively interact with the environment systems, they have a strong social support network."

It's obvious that while assessing adoptive parent, the social worker, who is in charge of the case, is responsible for taking into consideration every concrete situation about the environment in which a child is going to

be brought up and make a conclusion whether his/her future will be secured in that family or not.

As it is known the law of Georgia on “Adoption and Foster Care” Article 15 [2] concerns the registration of adoptive families/parents. Article is about the list of documents the adoptive parent is obliged to submit. We believe, that this list must be expanded and the education certificate (high school diploma) , if divorced – the court’s decision on legal divorce or a valid copy of the divorce document, if a widow – her husband’s death certificate should be added. Therefore the abovementioned Article 15 needs to be changed and formed in a new way:

Article 15. Registration of adoptive families/parents

2) When the adoptive parent agrees to adopt the child offered by the local guardianship and curatorship authority, the one is obliged to submit the local guardianship and curatorship authority the following documents:

a) The spouse’s consent, if the child is being adopted by one of the spouses;

b) Copy of the ID document (personal ID, passport, residence ID);

c) Copy of the marriage certificate (if applicable);

d) In case of divorce – the Court’s decision on legal divorce or a valid copy of the divorce document, if a widow – her husband’s death certificate;

e) Education certificate (high school diploma);

f) Reference sheet on health condition;

g) Reference sheet of the medical-narcological inspection;

h) Reference sheet on the criminal record.

As it is known, the order N50/N of the Minister of Labor Health and Social Affairs of Georgia, proposed on February 26, 2010, about “Establishing the Procedures and Forms of the Adoption” Article 15 is about the conclusion on adoption. [5]

Paragraph 5 of the abovementioned Article implies the facts that should be included in conclusion on adoption.

Article 15. Conclusion on adoption

5. Conclusion on adoption includes the following:

a) Biographic data, personal characteristics, social and health conditions of the adoptive parent, the motive for adopting a child;

b) Biographic data, personal characteristics, social and health conditions of the child to be adopted.

In our opinion, given paragraph doesn’t push social workers to study personal characteristics or social and health condition of adoptive parent more deeply, which contributes to superficial approach towards a matter of adoption. We believe that it’s necessary to concrete the criteria of the assessment of personal and family conditions of the adoptive parent and

determine the validity of the conclusion – a period of 2 years. In particular, in case of obtaining a positive conclusion for child adoption, the consent will be valid during the period of 2 years.

Assessment of adoptive parent, carried out by the social worker, consists of no more than three pages, where the condition of adoptive parent and family is briefly noted, when the same type of conclusion prepared abroad may consist of 20-30 pages. Therefore we consider that Article 15, paragraph 5 must be amended as follows:

5. Conclusion on adoption includes:

a.a. Biographic data of adoptive parents (their history, childhood, youth, school years, education certificate);

a.b. Personal characteristics (habits and interests, information about the membership of any club or association, leisure time, hobby); adoptive parent(s)'s ability to deal with stress; adoptive parent(s)'s parenting skills; relationship with their parents and siblings ( if there exist ones);

a.c. Adoptive parent(s)'s economic condition and financial management skills;

a.d. Social status of adoptive parent(s) – living conditions;

a.e. Health conditions;

a.f. Emotional condition (mental condition) and stability – the psychologist's conclusion should be presented;

a.g. Criminal record of adoptive parent(s);

a.h. Information about friends and relatives;

a.i. The motive for adopting a child, the parent(s)'s opinion about the fact of revealing origin of the child;

b) Biographic data, personal characteristics, social and health conditions of the child to be adopted.

In case of obtaining positive conclusion for child adoption for child adoption, the consent will be valid during the period of two years.

### **Confidentiality of Adoption**

The third issue related to adoption is to keep adoption secret. As we know, the Civil Code of Georgia, Article 1263 prohibits the publication of information about the adoption, which means that the collection and disclosure of information regarding the adoption without consent of the adoptive parent is prohibited, until the adopted child turns 18. Also, the collection and disclosure of information regarding the adoption is prohibited without consent of the adoptee, if he/she has already turned 18, even if there isn't consent of the biological parent, the collection and disclosure of information regarding the adoption is prohibited. [1]

That's why the legislator establishes a high standard to keep adoption secret and any person who discloses the fact of adoption shall be held

accountable according to the rules prescribed by law of Georgia on "Adoption and Foster Care".

Despite this fact, there are numbers of "well-wishers" who reveal the fact of adoption and make a harmful effect upon the child. Partly, "accidentally" understood truth can be difficult for a child to accept, as he/she wasn't told the truth by parents when it was time.

That's why, it's necessary for adoptive parent, to timely analyse the results that could happen in case the child is told the truth by another person and together with psychologist they should gradually inform the child about adoption.

The fact is that there are many cases when adoptive parents are in difficult situations for not telling the truth on time to the child they adopted.

We believe that the Civil Code of Georgia, Article 1263 should be changed and the following sentence should be added: "taking into consideration the child's psycho-physiological state, the adoptive parent should be allowed to tell the adoptee about the fact of adoption", and it should be formed as follows: [6, 102]

#### Article 1263. Disclosure of Information on Adoption Not Allowed

1. The collection and disclosure of information regarding an adoption without the consent of the adoptive parent is prohibited, until the child turns 18.
2. The collection and disclosure of information regarding an adoption without the consent of the adopted child is prohibited, if he/she has already turned 18.
3. The collection and disclosure of information about the biological parent(s) is prohibited without their consent.
4. Taking into consideration the child's psycho-physiological state, the adoptive parent should be allowed to tell the adoptee about the fact of adoption.
5. A person who discloses the fact of adoption shall be held accountable according to the rules prescribed by law.

Despite the fact, that according to the Criminal Code of Georgia Article 175 disclosure of adoption secret without the adoptive parent's wish is punishable, we believe that the punishments aren't so strict, as compared to the sufferings the adoptive parent and adopted child go through, and they need to be tightened. The period of corrective labour should be increased from 6 months to one year, and the same action, by the one who is obliged to keep the fact of adoption as official and professional secret, that has given rise to any grave consequence, - shall be punishable by the restriction of freedom from three to five years or by imprisonment similar in length, by deprivation of right to occupy a position or pursue a particular activity from three to five years in length. [4]

We believe, that the change should be done in a mentioned Article and it should be formed as follows:

1. Disclosure of adoption secret without the adoptive parent's wish, - shall be punishable by fine or corrective labour for up to one year in length.
2. The same action:
  - a) the same action, by the one who is obliged to keep the fact of adoption as official and professional secret;
  - b) that has given rise to any grave consequence, - shall be punishable by the restriction of freedom from three to five years or by imprisonment similar in length, by deprivation of right to occupy a position or pursue a particular activity from three to five years in length.

In order to raise awareness in the community and increase the amount of such kind of victims who apply to the Interior Ministry in order to make sure that a person who committed a crime doesn't remain unpunished, the following measures must be taken:

- A) Social advertisements should be shown on TV and social networks in order to inform the population. Provide them with the information about what would happen if anyone dares to disclose the secret of adoption;
- B) Make informational brochures where there will be the results of disclosure of adoption secrets.

### **Institute of psychologist**

The fourth issue worth mentioning is to introduce the institute of psychologist and increase the involvement in the adoption proceedings. Institute of psychologist is not provided in legal acts regulating the adoption process.

We think that as far as the process of adoption is a very specific matter, the psychologist's involvement is necessary from the beginning to the end of the process, in particular, in the assessment of adoptive parents and preparation of the conclusion about the readiness of them to adopt a child and compatibility of the child to be adopted.

### **Improvement of Court System on adoption proceedings**

We believe, that the fifth issue worth considering is the improvement of court system, which makes final decision on adoption. In particular, the system of court isn't well-motivated in the child adoption proceedings. It only relies on the conclusion of Social Service Agency, which may consist of 1-3 pages and provide the information about the study of adoptive parents and family. The judge isn't aware of studying the case in-depth during court hearing and determine what's best for a child. Such kind of hearings may not last more than 10 minutes. In such a short period of time, we think that it's impossible to determine the child's best interests. That's why, changes

should be made in the law on “Adoption and Foster Care” and the “Civil Procedure Code” and the court should gain a right to include the psychologist as an independent expert in the specific case.

### **The basis of reversal and nullification of court decision on adoption**

If we study the law of Georgia on “Adoption and Foster care”[2], we will see that the basis of reversal and nullification of court decision on adoption are not separated from each other, the latter is regulated by general standards of the legislation of Georgia. As far as the adoption is a very specific matter, it needs to be concretized and it’s necessary to merge the basis of reversal and nullification of court decision from each other, without proceedings from general standards. In particular, the law on "Adoption and Foster Care”, Article 27, sixth paragraph states that the court decision on adoption can be declared null and void in compliance with the rule for nullification of court decisions, established by the law of Georgia. We think, that the basis of nullification of court decision should be specified and the reasons by which the court decision on adoption can be declared null should be provided in an exact way.[10,365]

### **Social benefits**

One of the biggest problems in our country in reality, is the adoption of children with disabilities by adoptive parents living in Georgia, their mentality and attitude, that they all want a “healthy child”.

It would be good if government introduces encouraging measures for adoptive parents and prove those measures by legislation.

Changes should be made in the Tax Code of Georgia, in order to simplify the adoption process and improve approaches for regulation of adoption of children with disabilities.

Taxable income should not be the subject to the tax exemption during the calendar year after adoption, as it is mentioned in the Tax Code of Georgia, Article 82 a.d. sub-paragraph of the second paragraph. But we believe, that this period should continue until adulthood of the adoptee. In addition, there is nothing mentioned about a person who adopts the child with disabilities or a child with apparent or strongly apparent disabilities. We think that only tax exemption isn’t enough for them and they should be given the amount of 700 Lari as the government assistance until the adopted child becomes an adult. [11, 176-177]

That’s why the second paragraph of Article 82 from the Tax Code of Georgia, needs to be changed in a following way:

2) The following types of individuals should be exempt from paying taxes:

A) taxable income of the following individuals up to 3 000 Lari received during the calendar year.

a.a) the citizens of Georgia that participated in World War II and the battles for territorial integrity of Georgia;

a.b.) a person who has been assigned an honorary title of “Kartlis Deda” (“Mother of Georgia”);

a.c) a single mother;

a.d) a person who has adopted a child (after the adoption until the adulthood);

a.e) a person who has taken a child under foster care;

a.f) taxable income received during a calendar year by an individual with many children residing in a highly mountainous region (who has three or more dependent children under age 18) from the activity in the above-mentioned region, and the income tax payable for up to 3,000 Lari of taxable income received during a calendar year by an individual with one or two children (who has one or two depended children under age 18) residing in a high mountainous region from activity in the above- mentioned region shall be reduced by 50 percent.

B) taxable income up to 6000 Lari received during a calendar year by a person with disability since childhood, as well as the person with apparent or strongly apparent disabilities.

B.1) a person who adopted a child with disability since childhood or a child apparent or strongly apparent disabilities should make a profit by tax credit and should be given 700 Lari annually until the child becomes adult;

B.2) the citizens of Georgia that participated in “Peacekeeping Military Operations” or in other activities for maintenance and restoration of international peace and security, and were badly injured during the operation, should get a taxable income up to 6000 Lari during the calendar year.

C) an individual residing in a highly mountainous region, from the activity in the abovementioned region should receive a taxable income up to 6000 Lari during the calendar year, besides the salary income from budget organization.

If we look through the practice of other countries, we will see, that the adoptive parent living there is given a social assistance after adoption. For example, on December 8, 2010 a law was enacted by Kurgansky district, law N81 - “ To support adoptive parents who adopt unaccompanied children and minors”, which is still valid nowadays, as one-time financial encouragement of parents who adopt a child : 20000 Ruble – after the court decision about the adoption of orphan child enters into force; 120000 Ruble – in case of adopting a minor with special needs, or disabilities, or 10 years of age, or orphan child together with his/her brothers and sisters; 200000 Ruble – for adoption of child under the age of 3.

100000 Ruble for adoption of 10-year-old minor; 250000 ruble – in case of adoption after acceptance of primary education (and 150000 Ruble – after finishing the boarding school).

In addition the ladies will get the monetary compensation (материнский капитал) if they: 1) adopt a second child; 2) adopt a third or subsequent child if in the meantime they didn't use the financial assistance like that. The lonely men are also given opportunity to get the monetary compensation in case they adopt a second, third or subsequent child if in the meantime they also didn't use the financial assistance like that.

Financial assistance (материнский капитал) is annually reviewed by authorities because of changes in Inflation, which is reflected in the federal budget and is regulated by federal law. On January 1, 2014 the amount of financial assistance was 429 408 Ruble. [15]

It's also interesting, that in contrast to Russian legislation which provide a one-time assistance, for adoptive parents after adoption, from the local budget, the amount of which could reach 300000 Ruble and in some regions the adoptive parents may also be given a residence document, completely different regulations are in the United States. Adoptive parents do not receive social assistance from the states, but on the contrary, they pay out tens of thousands of dollars during the procedures of adoption (however, they have tax benefits after the adoption. For example, in 2012 the amount of tax benefit made up \$12650). [13]

Ukrainian legislation preserves the right on social assistance as well. In particular, the adoptee preserves the right on pension and other social payments, Survivor's benefit as well.

The state is trying to help the adoptive parents, that's why the legislation provides state assistance for them and the adoptive parents may also use their vacation time. The Cabinet of Ministers of Ukraine made a resolution on December 27, Article N1751(Revised ) about "Approval of the Procedure for Appointment and Payment of the Government Assistance to Families with Children". In case of adopting a minor (whose parents have been deprived of parental rights) or an orphan, adoptive parent, a citizen permanently residing in the territory of Ukraine, gets the right to take government assistance. Support will also be given to each adopted child after the court decision on adoption enters into force.

It should be noted, that in order to get the assistance, an individual should apply to the appropriate authority within 12 calendar months of the year, after the court decision enters into force, because, after mentioned period adoptive parent is deprived of right to receive assistance. [14]

Study of the laws of foreign countries helped to demonstrated the important aspects needed for effective transaction of the process of adoption.



## **Post-adoption control**

A very important problem is that there doesn't exist any post-adoption controls inside the country, which would have made us sure whether the adoption corresponds to the best interests of the child or not. The law of Georgia on "Adoption and Foster Care" doesn't say anything about such approaches.

For making sure that the baby is growing up in a healthy environment and the adoption corresponds to its original purpose, it's necessary to create the controlling mechanism, in order to enable the state to take care of the child after adoption and establish control on adoptive parents and family.

We believe, that such kind of institute should be created within the Ministry of Labor, Health and Social Affairs for controlling the adoptive parent(s) or family during certain period of time, for example, within 2 years after the court decision enters into force. [10, 364]

We think, that post-adoption control standards should be reflected in the law on "Adoption and Foster Care", [2] where there should be made some changes in the Article 26 first paragraph and it should be formed as follows:

Article 26. Post-adoption control

1. In case of domestic adoption the guardianship and curatorship authority has to control adoptive family regularly in their place of residence, during the period of 2 years after the court decision on adoption enters into force.
2. During international adoption, the central body is obliged to request, based on the special Agreement, from the central body of the adoptive country (in case of non-existence of such body – with the licensed or/and accredited relevant authorized organization) to annually submit information about the health and social condition of the child adopted from Georgia, in compliance with the special form, until the adopted child becomes 18 years old.
3. The Ministry approves the special form for submitting information about the health and social condition of the child adopted from Georgia.

If we look through the examples of other countries, we will see that some foreign countries impose control during a certain period of time after adoption. For example, in Bulgaria the state organizations are charged to monitor the family who has adopted the child, during at least two years after adoption. [12] In addition, Cabinet of Ministers of the Republic of Latvia submitted the regulation N111 on the "Procedures of Adoption", according to which, during the period of two years, after the Orphan's court ( According to second paragraph of regulating law Orphan's court is a guardianship and trusteeship institution established in some district, city or by local parish authority) makes final decision on adoption, adoptive families are controlled regularly (in their place of residence).

## Conclusion

According to the research analysis and findings included in this work, we may conclude, that the legal acts regulating the process of adoption need to be improved and refined, in order to simplify the adoption process and to ensure the encouragements for adoptive parents in the country.

1. The system of police and prosecutor's office should be improved and involved more seriously in the child adoption proceedings and the use of dominant right in adoption process will help to prevent illegal adoption and to give a proven and reliable information to the Social Service Agency about the action of adoptive and biological parents.

2. The social workers need constant trainings and professional development for the effectiveness of adoption procedures.

3. The list of needed documentations related to candidates' request to adopt a child should be specified in detail in the law of Georgia on "Adoption and Foster Care".

4. It's also necessary to specify the criteria for the assessment of personal and family conditions of the adoptive parent and to determine the validity of positive conclusion prepared by the Social Service Agency – during a period of two years.

5. A record should be included in the Civil Code of Georgia Article 1263 about confidentiality of adoption, according to which the adoptive parent will be given the right to inform a child about the fact of adoption, by taking into consideration his/her psycho-physiological condition.

6. The institute of psychologist should be activated. A psychologist should be involved in the case of adoption from the very beginning to the end.

7. Court system should be improved while handling adoption cases. Changes should be made in the law on "Adoption and Foster Care" and the "Civil Procedure Code" and the court should gain a right to include the psychologist as an independent expert in the specific case.

8. We think, that the basis of nullification of court decision should be specified and the reasons by which the court decision on adoption can be declared null should be determined by certain paragraphs in an exact way.

9. It would be good if government introduces encouraging measures for adoptive parents and improve approaches for regulation of adoption of children with disabilities. Taxable income should not be the subject to the tax exemption during the calendar year after adoption, as it is mentioned in the Article 82 a.d. sub-paragraph of the second paragraph. But we believe, that the record should be added to the Tax Code of Georgia and this period should be extended until adulthood of the adoptee. In addition, there is nothing said about the person who adopts a child with disabilities or a child with apparent or strongly apparent disabilities. We think that only tax

exemption isn't enough for them and they should be given the amount of 700 Lari as the government assistance until the adopted child becomes an adult.

10. The creation of controlling mechanism is necessary as well, to enable the state to take care of the child after adoption and establish control on adoptive parents and family during certain period of time. Such kind of institute should be created within the Ministry of Labor, Health and Social Affairs for controlling the adoptive parent(s) or family during 2 years after the court decision on adoption enters into force.

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# Non-Apophantic Logos as Model Ontology

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## Abstract

In recent years Giorgio Agamben within his “Homo Sacer” project has elaborated the theory of “two ontologies”, in which his challenging and crucial assumption was the juxtaposition of the ontology of ἐστὶ (to be or is) to the ontology of ἔστω (ought). At first glance, this central claim of Agamben can be seen as innocent and neutral for any kind of philosophical discourse. However, His archeological investigation of the concepts of duty and commandment turns out to be the mere preliminary stage for his explosive hypothesis, according to which ontological machine and entire philosophical tradition of the west oppressed and ignored the so called modal ontology of commandment. The main aim of this article is to ascertain the meaning, field and function of non-apophantic discourse, which can be placed beyond propositional truth and falsity. We are going to analyze three forms of non-apophantic discourse, namely, prayer, commandment and oath which according to their essence, is linked to the modal ontology. Another purpose is to demonstrate that in modern structurally differentiated and secularized societies, non-apophantic logos is a concealed form and source of power.

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**Keywords:** Agamben, non-apophantic logos, commandment, ontology, power

## Introduction

In the winter semester of 1929-1930 Martin Heidegger delivered a lectures which bears the title: “Die Grundbegriffe der Metaphysik: Weltendlichkeit-einsamkeit” and in the paragraph of 72 he referred to apophantic-logos and to its relation to prayer. This section of the book then will become the matter of reflection for Jacques Derrida in his seminars entitled “Beast and Sovereign”, in which he tried to deconstruct Giorgio Agamben’s distinction of Zoe and Bios, and the connection of bare life to the sovereign decision. Heidegger making the distinction between man and animal in that particular text by declaring that animals are essentially “zoion alogon” had to use Aristotelian distinction of apophantic and non-apophantic

utterances. Derrida analyzing this passage from Heidegger writes, “Prayer, for its part, a human thing, is a logos semantikos but not apophantikos, it speaks but could neither lie nor tell the truth. A prayer says nothing that could mislead. It cannot and could not be shown to be false. . . . The logos apophantikos, for its part, is also human discourse, but one that can always mislead and lie. The logos apophantikos can speak the truth and make the truth only by withdrawing from deceit, lying and retreat, or even from error as such” (J. Derrida 2009: 230).

Heidegger did not refer to non-apophantic logos, which for Derrida is quite crucial, which means that for him logos apophantikos is determined by non-apophantic logos. According to Michael Naas “Heidegger seems to have forgotten, says Derrida in an aside, that “even the enunciative proposition, insofar as it is addressed to someone, indicates some prayer, a ‘listen to me, I say to you’” (BS 2 217/304). Hence, Derrida can suggest contra Heidegger, or contra this Heidegger, that a certain prayer, a certain performative of prayer, is at the origin of all discourse, constative as well as performative. And all this, recall, will have been motivated in large part by Heidegger’s attempt to distinguish the beast from the sovereign, to show that “the animal is alogon . . . it can neither speak, nor pray, nor lie” (M. Naas 2015: 118).

### **Archeology of non-apophantic logos and commandment:**

Once Giorgio Agamben noticed, that philosophical archeology as a methodological tool is the shadow directed from the present to past. In case of Foucault, this shadow lasted to 17th and 18th centuries. For Agamben this shadow is longer and goes back to medieval and ancient intellectual history.<sup>117</sup>

In recent years Giorgio Agamben within his “Homo Sacer” project has elaborated the theory of “two ontologies”, in which his challenging and crucial assumption was the juxtaposition of the ontology of εἶναι (to be or is) to the ontology of ἔστω (ought). At first glance, this central claim of Agamben can be seen as innocent and neutral for any kind of philosophical discourse. However, His archeological investigation of the concepts of duty and commandment turns out to be the mere preliminary stage for his explosive hypothesis, according to which ontological machine and entire philosophical tradition of the west oppressed and ignored the so called modal ontology of commandment.

Agamben assumes that despite the concealment of this ontology of commandment, it has been functioning as latent form of political power. By unveiling the structure of imperative and identifying it with the source of

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<sup>117</sup> See: Giorgio Agamben: *IL Regno e La Gloria: Per una genealogia teologica dell’economia e del governo*, Neri Pozza Editore, 2007.

power, Agamben evokes and brought back to philosophical reasoning Aristotle's notion concerning non-apophantic discourse, which he developed in "De Interpretatione" and which can be also easily compared to speech acts theory. According to Aristotle, "Every sentence is significant, but not every sentence is a statement-making sentence, but only those in which there is truth or falsity. There is not truth or falsity in all sentences: a prayer (εὐχὴ) is a sentence but is neither true nor false" (Arist; De Interpr. 16b33.) Non-apophantic discourse does not reveals, shows or demonstrates something which can be true or false, rather it is a singular self-manifestation, which is neutral and indifferent to binary opposition of logic and can be placed beyond propositional truth or falsity.

There are several forms of singular expressions, which structurally are very similar to performative utterances such as an oath, prayer, curse, advice, suggestion and of course imperative or commandment. Imperative does not refer to objective world, it lacks the force of denotation and the description. Agamben stated, "One understands, from this perspective, why juridical-religious formulas (of which the oath, command and prayer are eminent examples) have a performative character; if the performative, by the single fact of being uttered actualizes its own meaning, this is because it does not refer to being but to having-to-be. It presupposes an ontology of *esto* and not of *esti*" (G. Agamben 2013: 119).

What connects one of the most significant concept of the western metaphysical thought "beginning" (ἀρχή) to the commandment? In old Greek language ἀρχή designated both, commandment and the beginning respectively. According to Giorgio Agamben, the verb ἄρχω expresses the commencement of something by someone, ἄρχων designated the person who gave the order (commandment), and by doing this, something new had been started. This identification of commandment and the beginning gives to Agamben a chance to make a radical claims and theoretical assumptions, which is typical for him. According to Agamben commandment was always linked to the beginning. "In the beginning (ἐν ἀρχῇ) God created the heavens and the earth" [Exodus. 1:1]. An act of creation is intertwined with the will, as well as with commandment, because God said "Let there be light! (γενηθήτω φῶς) and there was light [Exodus. 1:3]. Moreover, Agamben takes much more radical step further by assuming the possibility of different translation and understanding of the opening words of John's Gospel. It is clear, that Agamben plays here and makes an anti-dogmatic decision in order to pave the way for his own discourse. "In the beginning was the Word (ἐν ἀρχῇ ἦν ὁ Λόγος), and the Word was with God" [John 1.1], can be understood in a different way. If we assume that instead of the "beginning" was "commandment", it turns out to be that "in the commandment was the word".

According to Agamben, in the western philosophical tradition in contrast to the phenomenon of obedience, systematic and intentional reflection on the commandment never took place. He named the work of La Bouasie “De Discours de la Servitude Volontaire“, in which the reflection on commandment was absolutely missed. However, it would be hard to agree with the critique of Agamben, because “voluntary slavery” does not imply by necessity the notion of commandment.

Commandment belongs to the category of non-apophantic discourse and nothing in an objective world corresponds to it. An imperative act does not disclose truth or falsity; rather it is a type of elocutionary utterance, which is well known by Austin’s theory of speech acts. If an imperative “go” or “walk” does not tell us something on the subject and therefore is out of the binary system of truth and falsity, its only function and purpose is the force of utterance itself and resulted consequences, which are produced by this event. If we substitute an imperative with the third personal indicative, we will have an example of Aristotle’s apophantic discourse. “X is going” could be true (if this person is really going) or false (if he is not walking). Apophantic discourse refers to the state of things, to the world on which something could be said. It reveals the condition and nature of that particular subject. An imperative “walk” is non-descriptive utterance, which does not refer to being and its different regions.

“The order, for instance, given by an officer to his soldiers, is accomplished, is perfect, by the mere act of its utterance. The fact that the soldiers obey or disobey does not put in question the validity of the commandment. The commandment is perfect in its mere utterance. We must therefore admit that the commandment does not refer to something existing. Nothing in the world as it is could respond to the imperative. And this is why people say that the imperative does not imply, does not refer to an “is”, but rather to an “ought”...”

“Power is not defined only by its capacity to be obeyed but, first of all, by its capacity to give orders and commandments, even if those orders are not totally obeyed. A power does not fall when it is no more obeyed or completely obeyed, but when it ceases to give orders. A power, [which] continues to give order [s], will always find someone, perhaps a few persons that will obey. But if a power ceases, if it is unable to give orders, this the only moment when a power [will] collapse” (G. Agamben 2013: 31-32).

This quoted passage is problematic. Is it possible to imagine or conceive of an imperative independently, without obedience and completeness of an action? How legitimate is to consider as a holder of power Strategos or officer whose orders are no longer in force, no one obeys his commandments and nobody wants to fulfil an ordered task? Is he the real officer or not? Agamben thinks that power is no longer the power; it ceases



to be a power as such, when it rejects to issue a new orders or commandments. However, this thought is problematic, because if being rejected and refuted, power still maintains its force, what consequences we will face in case of general non-violent strike? In that non-violent general strike imperatives, orders and legal regulatory system of norms are temporally suspended and do not have a force in order to exert an influence due to the unwillingness of those, who are no longer obeys. If we assume that power, will reproduce itself and will find out the ways of its realization we will inevitably obtain the paradoxical result. Unfortunately, Agamben does not refers to the general strike and civil disobedience; it would be interesting how efficacious will be the relation of power and commandment in the condition of its absolute neutralization. However, Agamben is oriented on the investigation of the modality and semantic meaning of the commandment and following the steps of Aristotle, he places this singular commandment under the category of non-apophantic logos. What is an intention of Agamben will become clear by analyzing the modal dimension of an imperative.

As we have already noticed imperative does not have any descriptive function. For the description of something, it should refer to the present temporal mode and to the state of things. However, it does not imply something, which is said by the verb “to be”; rather it is directed towards the future to come and its modality. Imperative aims not at the actual presence, but at the coming modal future. In order to determine and ascertain the meaning and essence of an imperative, Agamben evokes the works of Emile Benveniste and Antoine Meillet. According to Meillet, there exists a morphological similarity between the verb in indicative form and imperative. Due to this Meillet assumes that imperative could be the primitive and primordial form of the verb.<sup>118</sup> According to Benveniste “imperative is non-denotative and the purposes of it is not the expression of content. Rather it has pragmatic character and its aim is to exert the influence on the listener” (G. Agamben 2013: 42). Agamben is real archeologist, who excavated and discovered many conceptual artefacts, which were abandoned and forgotten. He found out very interesting definition of the imperative in Benveniste. According to Benveniste imperative is the “nude semanteme” (le sémantème nu) which expresses the pure ontological relation between world and language.<sup>119</sup> Therefore, imperative which describes nothing guides as into the field of non-apophantic logos. In which it represents itself as self-manifested phenomenon. Imperative transmits and shows only itself. Which kind of ontological relation means Agamben? If imperative does not refer to

<sup>118</sup> See: Giorgio Agamben. *Opus Dei: An Archeology of Duty*, Stanford University Press, 2013, page 118.

<sup>119</sup> See: Giorgio Agamben. *What Is to Rule? GRUNDRISSE*, 2013, 42.

something, which “is”, on what type of ontology are we speaking about? “Imperative does not describe the relation of language and the world; rather it governs and reign over them”. (G. Agamben 2013: 44). It refers to the modal verb “must”, or to the expression “let it be”, which founds or gives birth to something. According to its structure imperative has performative character and it possess the perlocutionary force of utterance. Agamben, by doing his archeological investigations gradually get closer to his aim, that is to say to the disclosure of the secret source of power and take glimpse on the functioning of entire western political apparatus.

Risky and provocative hypothesis of Agamben refers to the status and determination of ontology. According to him, western cultural and philosophical tradition knows two different ontologies, which paradoxically intertwines with each other. Agamben calls first ontology as apophantic ontology, which is by its nature indicative. The second is an ontology of commandment, which is imperative. Binary system of ontology is constituted by indicative and imperative. To the first ontology corresponds Greek „ἔστι“, and to the second „ἔστω“. According to Agamben, an ontology of “to be” functions in the philosophic and scientific discourse, whereas imperative ontology of “esto” acquires its power and meaning in the field of morality and religion and governs them. What then Agamben does may seem to be the concrete manifestation of theoretical violence over the foundational formula of western metaphysical tradition. However, his main aim is not the distortion of something but the representation of an ambivalent machine of the western ontology. As we have already noticed, western culture entirely abandoned the ontology of commandment, which according to Agamben’s assumption have been remaining latent and governing structure of philosophical and political paradigm of the west. Agamben has altered one word from Parmenides’s poem and obtains different meaning. Parmenides’s formula „ἔστι γὰρ εἶναι“ has been changed by “there is indeed being” “let there be being”.

“That in our contemporary societies the ontology of commandment is not only eroding the primacy of the ontology of the ἔστι but also slowly overcoming and replacing it. This means that, in a sort of returning of the repressed, religion, magic and law [and all] the domain of non-apophantic logos, which has been neglected and pushed in the background, are secretly beginning to govern the function of our secularized society. In our so-called democratic societies commandment[s] are given usually in the form of advice, suggestion, invitation, advertising, or you’re asked by reason of

security to co-operate, and people do not realize that these are just commandments disguised in the form of suggestion, advice..."<sup>120</sup>

Genealogical and archeological investigations of Agamben eventually links with each other the phenomenon of the commandment and non-apophantic logos.

### **The Oath as non-apophantic logos**

An oath is another form of non-apophantic logos, which was one of the central problems for the construction of the speech acts theory. Oath was politically laden phenomena, for example according to Lycurgus "The power that holds together [to synechon] our democracy is the oath" (G. Agamben: 2011, 2) and according to the neoplatonic philosopher Hierocles "We have previously shown that the law [nomos] is the always uniform operation by means of which God eternally and immutably leads everything to existence. Now we call oath [horkos] that which, following this law, conserves [diaterousan] all things in the same state and renders them stable in such a way that, as they are held in the guarantee of the oath and maintain the order of the law, the immutable stability of the order of creation is the completion of the creating law" (G. Agamben. 2011: 3). Both quoted passages concerning the essence and the function of the oath are very similar with each other. In both cases the oath does not have constitutional power, it does not creates something. "The oath does not create anything, does not bring anything into being, but keeps united [synecho] and conserves [diatereo] what something else (in Hierocles, the law; in Lycurgus, the citizens or the legislator) has brought into being" (G. Agamben, 2011: 3). An oath does not refer to the semiotic and cognitive functions of the proposition; rather it just provides effectuality of utterance and its claims on truth. Philo of Alexandria in his "allegorical interpretations" which was cited by Agamben wrote that, "Now men have recourse to oaths to win belief, when others deem them untrustworthy [apistoumenoi, lacking in pistis, that is, in credibility]". (G. Agamben 2011: 4). It is clear from that passage that the oath has been using due to the enhancing the credibility of assertion, because it does not refer to the state of affairs therefore it could not be considered as criterion for truth and falsity. It is another problem. If in the moment of swearing one is not going to fulfil his self-imposed obligations.

Maybe an intention of one who swears is not the keeping of promise at all. Anyway, its main force is the produced effect, or effectuality as such. Let my quote another passage from allegorical interpretation "You mark that

<sup>120</sup>

<https://waltendegewalt.wordpress.com/2011/04/01/giorgio-agamben-what-is-a-commandment->

God swears not by some other thing, for nothing is higher than He, but by Himself, who is best of all things. Some have said, that it was inappropriate for Him to swear; for an oath is added to assist faith [pisteos eneka] and only God ... is faithful [pistos]. ... Moreover, the very words of God are oaths [hoi logoi tou theou eisin horkoz]... No, we may be content if we are able to swear by his name, which means (as we have seen) the interpreting word [tou ermeneos logou]" (G. Agamben 2011: 20). According Philo, there is no interval between God's saying and creating, he writes "God spoke and it was done, with no interval between the two rho theos legon ama epoiei,) the oath of men is thus the attempt to conform human language to this divine model, making it, as much as possible, pistos, credible." (G. Agamben 2011: 21). Philo in this context seems to be the something like an ancestor of speech acts theory, despite the fact that he was operating in the field of exegetical theology. Therefore, an oath is non-apophantic logos, moreover non-apophantic also implies that it has some performative character, it refers to something, which should be. Here there is not divergence or split between ontology and praxis, between ousia and oikonomia, which emerged in the writings of the church fathers. "The economy through which God governs the world is, as a matter of fact, entirely different from his being, and cannot be inferred from it. It is possible to analyze the notion of God on the ontological level, listing his attributes or negating, one by one--as in apophatic theology--all his predicates to reach the idea of a pure being whose essence coincides with existence. But this •will not rigorously say anything about his relation to the world or the way in which he has decided to govern the course of human history" (G. Agamben 2007: 70).

"[The oath] is a particular modality of assertion, which supports, guarantees, and demonstrates, but does not found anything. Individual or collective, the oath exists only by virtue of that which it reinforces and renders solemn: a pact, an agreement, a declaration. It prepares for or concludes a speech act which alone possesses meaningful content, but it expresses nothing by itself It is in truth an oral rite, often completed by a manual rite whose form is variable. Its function consists not in the affirmation that it produces, but in the relation that it institutes between the word pronounced and the potency invoked" (G. Agamben 2011: 81-82).

## Conclusion

By investigating the function and meaning of non-apophantic logos and identifying its three significant components, we draw the conclusion that singular and self-manifested utterances can be pushed and articulated in the field of modal ontology. Commandment, prayer or oath according to their structure have imperative character and are contradictory to the indicative. In addition, we can say that in analytic philosophical tradition, in the context of

speech acts theory, modal ontology has swallowed indicative ontology of presence. However, Agamben's intention is absolutely different and bringing back into the current philosophical reflection Aristotelian non-apophantic logos, we want to disclose hidden operative machine of political power, which is disguised by the mask of non-apophantic discourse.

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# The Verbal Character of Advertisement Discourse and its of Impact Methods

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## Abstract

Nowadays, the advertisement discourse has shown increasing appeal and is broadly analyzed by both information facilities and world-wide scientific circles. The advertisement discourse, as a linguistic research phenomena, represents complicated and intertwined sign system which aims to exert certain impact on people. It is represented as a lingual and semiotic unity aimed at the addressee the analysis of which acquired established psycholinguistic form.

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**Keywords:** Discourse, advertisement, psycholinguistic, verbal and non-verbal aspects, text

## Introduction

The last decade of the XX century witnessed the advertisement having been converted into integral part of our daily life by communicational and modern technologies. Through direct assistance of discourse methodology the author tries to exert certain influence on target addressee and equip them with certain consciousness related direction.

Another circumstance needs to be considered that modern society is characterized by poignant need for political and informational communication which is caused by establishment of democratic ideology in social and political circles among various states.

Today, various situations and problems are being publicly considered; furthermore, the solutions are directly proportional to the audience, in our case, the target addressee – specifically interpretations and views of country citizens.

Last years, concerning the discourse in general and more specifically advertisement discourse aspects, these are broadly analyzed by both information technologies and among scientific circles. However, when studying aspects of political and advertisement discourse, one notices unsolved problems finding solutions for which, based on their cognitive character, represents a subject of still a nascent science – psycholinguistics.

Hence, the science has not yet established the complex form encompassing all features of political and advertisement discourse.

Advertisement technologies have gone through the broad evolution – from mass function they have grown into influence related means to be exerted on consumer target groups. This strong nucleus of the modern science is modified towards pursuit of the most appropriate addressee groups. The multifaceted form of ad creation and supply caused increasing interest among scientific groups. Today, it is studied by PR tech specialists, sociologists, linguists and other scholars of various fields.

According to vocabulary definition, advertisement (Latin *reclamo* – shouting out) means info dissipation through any means. It is aimed at invoking interest and drawing attention.

According to alternative definition, advertisement is one way paid communication which comprises a sponsor, whereas information itself is of manageable character. In ancient Greece and Rome advertisements already existed. For example, in England printed advertisement was issued in 1473 and in 1611, the first ever advertisement agency was created in London.

Nowadays, advertisement is considered as one of the most important marketing related component. For example, in economics advertisement plays the role of information-propagandistic and appropriate activities related system which springs upon needs of the target population. Advertisement based information is explained as informative one for potential buyers concerning destination and features of certain goods. It provides us with information related to the areas of sales and conditions under which certain goods are sold; besides, gives more info about services offered. Advertisement provides wide info dissemination of the subjects it covers. According to the traditional definition, general principles of advertisement is reasonability and normativity.

From thematic point, foreign scholars differentiate several types of advertisement:

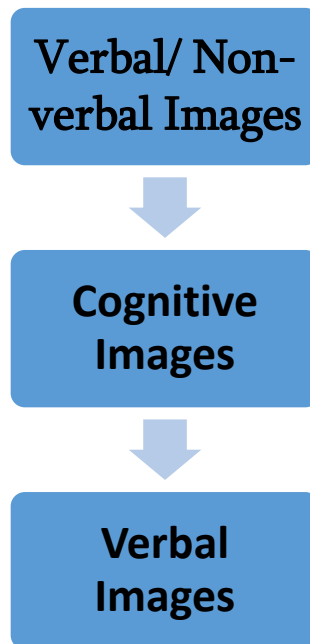
- Branding
- Retail advertisement
- Political advertisement
- Corporate (instructional) advertisement
- Social advertisement
- Interactive advertisement

Despite contextual differences, all kinds of these advertisements use same techniques for goods popularization among which advertisement discourse occupies an important place. According to the Russian poet, philologist A. Kibrik (and his followers), “discourse is far wider a meaning than text; it coincidentally encompasses both process and result, whereas text

itself is none the less but ensuing result”. Beside this definition, there are others in linguistic science who do not imply the mentioned phenomenon strictly in its verbal character, but rather highlight the fact that the art of discourse implies multiple non-verbal methods and techniques to influence the perceptions of target addressees.

To my mind, manipulations met in texts reveal themselves “between the lines”, through the ideas they portray, whereas advertisement aside from built-in suggestions, influences addressees through various spectacular means such as color, sound, gestures and many other semiotic elements. However, one needs to agree that all non-verbal aspects can be converted into verbal ones. Based on this very quality, the advertisement discourse became one of the study aspects of modern linguistics and specifically psycholinguistics.

According to the mentioned above, the advertisement text should be considered as a specific type which, first of all, implies both verbal and non-verbal messages. Verbal side is necessary for advertisement discourse, even in little part. As a text title, it conveys the lead role for the addressee. Non-verbal methods are boiled down first to cognitive and then verbal representations. The processes which go on in addresses’ perception can be presented by the following scheme:





The necessity for slogan existence can be attributed to the specific characterization of advertisement discourse. It urges the addressee towards a certain action. One of the most prevalent slogans of this kind might be considered those often heard in our daily life: “Be the first”, “Call now”, etc. For better analysis of advertisement discourse we can bring up two most powerful advertisements of recent time, more specifically, anti-advertisement for certain actions:

Plastic bags kill



39. If you smoke, statistically your story will end 15% before it should



In case of both photo collages, both verbal and cognitive images messages take lead which highlight the truthfulness and exactitude of information to be ingrained in an addressee’s mind.

Therefore, one should say that advertisement through its multifaceted character is solely based on the art of discourse.

### **Conclusion**

We have tried to see the discourse as a technique oriented at an addressee. Advertisement discourse, as a linguistic phenomenon under study, represents a complex, intertwined system of signs which aims at exerting influence on certain target group. It is presented through the unity of linguistic and semiotic signs appealed to an addressee, the analysis of which through psycholinguistic angle acquires the established form.

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## Women's Sexual Freedom in Marital Relations

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### Abstract

Family relationships with its moral, social and legal nature, is a rather complex phenomenon. The circle of obligations imposed on a family is wide – it is a part of a big mechanism. The family should provide basis of morality, spirituality, tolerance which, in its turn, will guarantee the stabilization of society and minimize social problems. The family, which manifests itself in violence, especially when men violate their spouses' sexual freedom predestined to conflict and destruction. In homes where there are similar problems, chronic irritability, stress, lack of trust and mutual respect are frequently met. Wives – victims of sexual abuse have to adapt to severe physical and mental consequences. Unfortunately, the reasons of violence very often is hidden in mental views of a particular state. In traditional countries women's obedience is a norm. Accordingly, the fear of public censure does not allow women to defend their sexual freedom and put an end to sexual abuse committed by their spouses. In many cases, wives who follow traditions and customs, consider intimate relations with their husbands as their duty, do not perceive it as violence and adapt to bullying. Overcoming the mentioned problem is even more difficult when traditional norms are deeply implemented in a particular state's legislation and sexual relation with husbands is recognized as statutory duty. The aim of this report is to find out how the traditional society of Georgia views the recognition of women's sexual freedom within the framework of marital relations and what normative approaches the state has.

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**Keywords:** Marital immunity, woman, family, sexual abuse

### Introduction

After the long, strained marital relationship on September 18, 1990, S.W.'s wife said that she wanted to divorce. That same evening, the man had violent sexual intercourse with the woman. His trial began on April 16, 1991. One month earlier, in the case of a similar category, particularly, on the trial against R.v.R the court took into account the amendments in marital relations and the husband was found guilty of raping his wife.

It is remarkable that before taking a decision on RvR-'s case, the English law had the so called concept of „marital immunity“ which, in 1736, was first announced by the Judge Matthew Heily and which meant that the husband could not be regarded as a sex offender to his wife, as according to the marriage agreement, a wife was completely submitted to her husband and did not have the right to reject any further.

This approach was condemned on hearings of S.W. and R.v.R cases by England's first instance court as well as the appellate court. The court of Britain found S.W. guilty of rape, assault and attempted murder on October 23, 1991.

SW-'s advocate by individual application applied to the European Human Rights Court on March 29, 1992. The motif for the application was violation of his client's rights according to „Human rights and fundamental freedoms of the European Convention“ Article 7 which states that: a person cannot be justified according to the provision which was not active by the time the action was committed. The lawyer explained that on March 14, 1991, the R.v.R- case created a precedent when a husband who committed sexual abuse was imposed responsibility for rape, while in S.W.-'s case a sexual intercourse with his wife took place earlier, on September 18, 1990. Exactly because of this, the Court of England should not have granted retroactive effect to the precedential provision, which imposes liability for the actions. Even more, the court should not have used the provision which did not exist by the time the act was committed. On November 22, 1995, the European Court of Human Rights declared a decision, which stated that there the Article 7 of the Convention was not violated.

Although SW-'s action was preceded by the creation of a precedent, he was rightly found guilty of rape, sexual assault because sexual violation towards a wife is not only condemnation of civilized concept of marriage, but also breaching the human rights and security of fundamental freedoms of the European Convention, which in the first article recognizes human liberty and the principles of respect to inviolability (1).

It may be said that even in England which has rich legal history, until 1991, intimate relations between married couple was considered as obligation and if a man-abuser raped his wife, so called „marital immunity“ defended him. As a result of the righteous legal practice established by the European Court of Human Rights, the Western states, society and particularly women began to realize that the family is the voluntary union that should be united by love and respect.

Intimate relation of spouses is not an obligation, but a right and if this right is violated, it is necessary to use all protection means guaranteed by the law. Yet in some countries, it is still hard for society to admit the fact that a woman has the right to get rid of sexual exploitation committed by her

husband; moreover, she believes in the myth that an intimate relation between a husband and a wife cannot bear a violent character and women can be victims of rape committed only by other men. This wrongness of this position is proved by many scientific papers, such as for example, the most important research “Sexual Abuse of Wives” conducted Finkelhor and Yllo in 1985 (2) according to which, 10-14% of married women were victims of sexually abuse at least once. Keeping this in mind, the article aims to find out whether Georgia - the country which follows traditions and customs, also is a signatory of the European Convention for the Protection of Human Rights and Fundamental Freedoms and other international acts, is among the countries fighting against sexual abuse committed by husbands; whether Georgian society and legislation share the concept of “marital immunity”.

Purity of family relations, case and respect of family members is the historical characteristic feature of the Georgian nation. However, the traditions of our country collide with the international principles of human rights depicted in the Georgian legislation. One of such traditions is an unconditional obedience of a woman to her husband, including intimate aspects. The fact that old customs are still alive in people's consciousness is proved by the survey carried out by us. A rather delicate issue of women's sexual freedom in marriage was to be discussed; hence, to ensure the sincerity of the respondents the survey was carried out via the social network (6). 100 citizens filled out the questionnaire anonymously who besides recording socio-demographic data, answered to two major questions. As a result:

- 97% of respondents expressed the idea that men and women enjoy equal rights in family relations;
- 2% of the respondents (divorced women living in the capital city and married men living in the city) – said that the most important is men's position and women should always have to obey them;
- Only 1% of respondents (city residents, single men) stated that women' position regarding all matters is very important.

It should be noted that the responses indicate that the majority of the society supports men's and women's equal rights relations. But analysis of the subsequent question casts doubt on the seemingly unambiguous approach of the society.

Question – is the married woman's right or her obligation to have intimate relations with her husband?

- 75% of respondents admitted that it is a woman's right, 10% consider it as obligation;
- 12% of respondents found it hard to answer;
- 3% of respondents did not want to talk about it.

Simply focus on the interpretation - 75% of the respondents considers the mentioned as a right; 25% - do not. It may seem surprising that 22% out of 25% of respondents stated that husband and wife have the same rights and women do not have to necessarily obey their husbands will.

Based on the above mentioned, the fact that 10% of the respondents consider intimate relation with their spouses as duty, a part of the respondents did not want to speak about the issue, and some found it hard to answer, suggests that a woman's marital obedience to tradition is still too deeply rooted in the consciousness of the society and it is difficult for them to recognize sexual freedom of a married woman.

If citizens are asked about the equality of marriage partners' rights, all respondents simply state that marriage partners' rights are equal. But a particular question on a wife's sexual freedom clarifies their gender-based attitude and the impact of traditions on them.

It should be noted that the respondents' answers were unstable. Besides, another unexpected aspect was revealed. As 83% were female and 17% male, stereotypically we could have thought that the vast majority of men would not consider women's intimate relations with their spouses as their right, though, 17 out of 25 respondents were women. 17 women out of hundred people who do not recognize a wife's sexual freedom as a right and consider it as a duty or do not have a clear approach to the issue may seem to us as a small number; but this number may increase if the survey is carried out throughout the whole country. (According to the data of the last 5 years (5), the population of Georgia is approximately 4 millions). Thus, if a woman does not understand that she has a sexual freedom in marriage, she will not even try to defend herself in case her right is violated. And if the society recognizes the concept of "marital immunity", fear of public criticism will make women lose a desire to escape from the violence of their spouses. It should be noted that the inter-national approach to the above-mentioned practice is uniquely different. In particular, the Civil Code of Georgia regulates family law provisions that determine the personal and property rights and responsibilities of spouses. In the so-called list of responsibilities we have obligations for reciprocal respect and financial support, bringing up children together, making joint solutions on other family related issues, free choice of business activities, profession, and place of residence (3).

The abovementioned list does not include the statutory provision the content of which states that intimate relation with a spouse is an obligation. Accordingly, if a woman does not want to have intimate relation with her husband and the husband forcibly reaches the goal, it means that a husband violated his wife's right of sexual freedom. It must be admitted that sexual freedom of a person is the right that is guaranteed and protected by the

Constitution and the Criminal Code of Georgia. Furthermore, since May 2012, the Article 11<sup>1</sup> of the Criminal Code of Georgia was amended and is determined as “responsibility for the domestic crime” which means that domestic violence was criminalized (4):

*Domestic crime is a crime determined by the Articles .....137-141..... of the Criminal Code of Georgia which is committed by one family member against other family members...*

*Responsibility for Domestic criminal offense is defined in the relevant article of the Criminal Code of Georgia with reference to this article.*

*Note: According to this Article family members are: spouse, mother, father, grandfather, grandmother, child (children), stepchild, adoptive child, adoptive parent, spouse of adoptive parent, foster family (mother, father), guardian, grandchildren, siblings, spouse's parents, son in law, daughter in law, ex-wife, as well as persons who are or were engaged in common household activities."*

It can be said that if a man has taken action which contains the signs of the crime determined in the Article 137 of the Criminal Code (rape) and / or in the Article 138 (sexual abuse), the legal mechanisms of crime suppression against him will come into force. In particular, Article 11<sup>1</sup> shall precede the Article 137 of the Criminal Code and the responsibility imposed to a man for raping his wife shall be determined.

It should be noted that the Criminal Code of Georgia considers as punishable violence committed not only against married women but also against cohabitantes who jointly manage the household, which in turn, reflects the legislature's desire to protect citizens' personal rights despite the legal status of their relations. Foregoing is confirmed by the fact that the law protects married women's sexual freedom and does not recognize „marital immunity" concept, which frees men from the responsibility for committing violence.

## **Conclusion**

Women who became victims of sexual violence committed by aliens, have to live with it and deal with feelings and memories, and the wives who experienced the same from their husbands have to cohabit with the abusers which is a strong physical and moral suffering.

Fortunately, in Georgia family related problems, sexual abuse among them gradually becomes adjustable at the legislative level. Hopefully, in the future there will be no taboos in society regarding this issue. Increasing society awareness of legal defending mechanisms for prevention of violence, study programmes, trainings, and meetings will make it possible to eliminate from the public consciousness traditions that violate women's rights, especially in marital relations.

It is necessary to note that we are planning a thorough exploration of the issue within the framework of the dissertation research. It will be very interesting to find out to what extent the law enforcement bodies and the courts use the legislative norms which defend women's sexual freedom in practice. How often become Articles 137/138 11<sup>1</sup> the basis for starting investigation, criminal prosecution and conviction.

In this regard, we plan to carry out detailed studies of the statistics and practice of the Ministry of Internal Affairs and the General Court what will help us to devise strategies for preventing domestic violence, particularly, for preventing sexual abuse committed by spouses.

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# **Osh Problems and Improving Suggestions in Metal Sector of Turkey Within the Perspective of Employees**

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## **Abstract**

Metal sector in Turkey is the sector that has the highest work-accident rate. The aim of the paper is to acquire feedback in two issues from employees in metal sector so that improvements required for high priority fields could be detected and work-accident rate could be reduced to a certain level as well. While the first issue, consists of factors which employees thought for that negatively affects Occupational Health and Safety (OHS) in the workplace environment, the second issue is their suggestions for changes in the improvements of OHS in the workplace. the research is conducted with 325 employees and 27 workplaces. In the first group, 427 views are taken out of 321 employees and in the second group 94 employees gave 97 answers. In this research, “content analysis” is used as the assessment method. According to results, factors that negatively affect OHS in Metal Sector are gathered in 13 basic group and suggestions for improvements are gathered in 8 basic groups.

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**Keywords:** Occupational Health and Safety, Metal Sector

## **Introduction**

The concept of work accident has many definitions. According to one definition work accident can be defined as unplanned events that stem from unsafe motion and conditions that risk employee’s life’s and causes injuries and damages machines and equipment and leads to production delay (Ceylan, 2011:19). But it needs another definition for the compensation of the cost of an employee who has an accident. Work accidents that are reported in Turkey, are firstly technically inspected by social security. If the accident is in accordance with the “Social Insurances and Universal Health Insurance Law” with article 5510 and paragraph 13, some assistance is given from social security system.

Work accident is the incident which occurs;

- a) when the insurance holder is at the workplace,
- b) due to the work carried out by the employer or by the insurance holder if he/she is working on behalf of own name and account,
- c) for an insurance holder working under an employer, at times when he/she is not carrying out his/her main work due to the reason that he/she is sent on duty to another place out of the workplace,
- d) for a nursing female insurance holder under item (a) of paragraph one of Article 4 of this Law, at times allocated for nursing her child as per labor legislation,
- e) during insurance holder's going to or coming from the place, where the work is carried out, on a vehicle provided by the employer, and which causes, immediate or delayed, physical or mental handicap in the insurance holder.

The metal sector is in the manufacturing sector and with its large activities field it contains spectrum of widely subsectors because of its nature. It functions in variety of production fields ranging from automobile sector to electrical equipment, from work machines to heavy industry products (Bingöl, 2010:16), from steel and iron to non-metals like copper and aluminum and it operates from consumer electronics, telecommunication equipments, military electronics, and other professional and industrial machines, computer machines, the electrical machine production to electric and electronic industry (The Ministry of Science, Industry and Technology, 2013:9; Alp, 2010:45) and ministry of industry and technology. Although in sector activities, technology intensive production takes place heavily, labor concentration is also significant (ÇSGB, 2011:13).

The work place and the number of employees data is obtained from collection of SGK data between the years 2010-2013 for the purpose of comparing workplace and employees in all sectors.

Table 1. The Comparison of the Numbers in Workplaces and Employees between Metal Sector and Other Sectors (Turkey Scale)

Year	Workplace/Employees Numbers	Metal Sector	All Sectors	All Sectors Rates	The Number of Employees Per Workplace
2013	Workplace Numbers	86.375	1.611.292	5,36%	13,11
	Employees Numbers	1.132.449	12.484.113	9,07%	
2012	Workplace Numbers	85.565	1.538.006	5,56%	12,76
	Employees Numbers	1.092.250	11.939.620	9,15%	
2011	Workplace Numbers	84.368	1.435.879	5,88%	12,67
	Employees Numbers	1.068.837	11.030.939	9,69%	
2010	Workplace Numbers	82.545	1.325.749	6,23%	11,77

	Employees Numbers	971.372	10.030.810	9,68%	
2009	Workplace Numbers	81.584	1.216.308	6,71%	10,71
	Employees Numbers	874.346	9.030.202	9,68%	

Source: It is collected from yearly statistics of Social Security Institution (SSO) ([www.sgk.gov.tr](http://www.sgk.gov.tr)).

According to 2013 data, while %5.36 of all workplaces belongs to the metal sector, of all the insured employees % 9.07 of them work in the metal sector. In the last five year, in spite of the increase in the number of workplace and the number of employees, the proportion of insurance holder in workplaces in the metal sector is decreasing. The reduction in workplace rate is small as compare to reduction in the number of employees. This shows that small scale enterprises in metal sector are evolved to large scale ones. While the number of employees per workplace is 10.71 in 2009, this rate is 13.11 in 2013 as a parallel to other sectors, the number of workplace and the insurance holder is on the increase. When comparing this increase with other sectors, it is possible to say that metal sector narrowed little in all sectors.

### Work Accidents in Metal Sector

According to 2012 data %25 of work accidents in all sectors happened in the metal sector in Turkey (SSO Yearly Statistics, [www.sgk.gov.tr](http://www.sgk.gov.tr)). It is seen in Table 2.

Table 2.

The Number of Work Accident in Metal Sector

Total number of accidents in metal sector	19.289
Total number of accidents in all sectors	74.871
Accident rate in metal sector	% 25,763

Source: It is collected from yearly statistics of SSO ([www.sgk.gov.tr](http://www.sgk.gov.tr)).

Since the machine and equipment used in metal sector are harsh, cutting and many enterprises in this sector are small and medium scale enterprises that employs uninsured workers, unable to take protective measures efficiently, in addition to this the existence of untrained employers and employees and their unconscious attitudes; are problems that jeopardize employees (Demir, 2009:13). MESS (Turkish Employers' Association Of Metal Industries) made a Work Accident and Occupational Diseases research in 174 member workplaces in 2012. The research of MESS 2012 results shows that; 6215 people had an accident out of 135011 people (MESS, 2012). %4.6 sector workers had an accident rate in the member workplaces of MESS. This rate is highly lower than the data of metal sector's work accident frequency in the statistics of SSI. The research of MESS results shows work accident frequency is low degree in unionized large scale

enterprises and increasing unionization diminishes Work Accident and Occupational Diseases.

### **The Research Methodology**

Metal sector in Turkey has the highest frequency work accident rate in Turkey. The aim of this paper is to acquire feedback in two issues from employees so that reduction in work accident rate could be reduced to certain level and improve the high priority fields as well.

In this research two questions are asked to 325 people from 27 enterprises in metal sector in Denizli Province. These questions are:

- In your opinion, what are the factors with negative effect on occupational health and safety at your workplace?
- **In your opinion, what sorts of changes are necessary to improve safety at your work place?**

In this research answers, that are obtained is analyzed by content analysis.

### **Analysis of Respondents' Opinions Considered as A Negative Effect on the Occupational Health and Safety (OHS)**

In this section, content analysis was conducted on answers of respondents, given to the 2 open-ended questions in the safety culture survey in terms of both generally and of workplace. Within this scope, answers were coded for digitization.

During analysis of respondents' answers, it was determined some respondents expressed multiple opinions. Even these opinions were considered as positive, negative and neutral. During analysis, all opinions were evaluated within the relevant category and this situation was resulted in multiple opinion record for some respondents. Therefore, total number of opinion/evaluation could exceed number of respondent. In Table 3, general evaluation results regarding answers of respondents were displayed.

Table 3.

Factors Effective on Occupational Health and Safety at Workplace - General Evaluation

IN YOUR OPINION, WHAT ARE THE FACTORS WITH NEGATIVE EFFECT ON OCCUPATIONAL HEALTH AND SAFETY AT YOUR WORKPLACE?		
Total number of respondent		854
Number of respondent who made evaluation		321
Number of invalid evaluation		6
Total number of respondent included in evaluation		315
NUMBER OF POSITIVE OPINION	NUMBER OF SUGGESTION	NUMBER OF NEGATIVE OPINION
8	10	409

The question requiring respondents to indicate factors negatively effective on occupational health and safety was answered by 321 respondents; and 315 answers were found appropriate for including in the analysis. Of the received answers, there were 8 positive opinions, 10 suggestions and 310 negative opinions.

### **Positive Opinions**

Positive opinions expressed in feedbacks of respondents revealed that all precautions concerning with the OHS were taken; employee were provided necessary equipment; and no any negative situation concerning the OHS occurred at the work places.

1 Respondent: *“In my opinion, there is nothing with negative effect on the OHS, adequate OHS is ensured; excessive efforts prevent regular operations”*.

1 Respondent: *“Employees are supplied necessary equipment; but employees were inclined not to conform to the rules.”*

1 Respondent: *“Along the last couple of years, there have been advancements in my workplace in terms of the OHS. However, more is needed for resolution of the OHS problems.”*

1 Respondent: *“Safety precautions at the workplace are sufficient; we just need to be careful while we are working.”*

### **Suggestions**

Employees' suggestions are relevant with the OHS specialist, communication, participation, processes relevant with auditing and improvement of work processes and workplace.

1 Respondent: *“Communication among employees must be strengthened.”*

1 Respondent: *“A meeting must be held with employees once a month for general consulting”*.

1 Respondent: *“Participation of employees must be ensured with the decisions concerning safety.”*

1 Respondent: *“Dust and smoke in the work environment must be evacuated; it is necessary to listen to employees, too”*.

2 Respondents: *“Everything was done about the OHS; however, employees do not fulfill their commitments; employees need to be more careful”*.

1 Respondent: *“OHS auditing must be conducted by independent specialists. Success could not be achieved by specialty employed under the employer”*.

1 Respondent: *“Room of the OHS specialist must be located in the facility. Controls must be maintained on continuous based. Employees*

*displaying negative behaviors must be warned. They are conducted partly; but, they must be conducted more frequently along different shift”.*

2 Respondents: *“The division operating with grinding wheel is required to be separated from the work environment; material handling and shipment stages must be improved”.*

### Negative Opinions

Negative opinions obtained from respondents were classified under 13 titles. Data on categories and divisions regarding these opinions was exhibited in Table 4.

Table 4.  
Categorical Classification and Proportions of Negative Opinions

Q.No	Negative Opinion – Category	Number	Rate
1	Problems in Work Environment	164	40.1
2	Problems Caused by Employees	54	13.20
3	Problems Caused by Employer	39	9.54
4	PPE and Other Equipment-Material Problems	33	8.07
5	Psychological Problems	30	7.33
6	Problems with Machineries	23	5.62
7	Problems Directly Related with Health and Safety	22	5.38
8	Problems Related with Training and Information Sharing	10	2.44
9	Long Shifts	9	2.2
10	Problems Related with Supervisor	7	1.71
11	Wage Problems	7	1.71
12	Communication Problems	6	1.47
13	Auditing Problems	5	1.22
	TOTAL	409	100

Based on the study findings, 40.1% of negative opinions expressed by respondents are related with their work environment. Whereas 13.2% of respondents complained about that their coworkers were not paying attention to the OHS adequately, 8.7% stated the problems with the equipment used in the Personal Protective Equipment (PPE) other tools. Proportion of the respondents expressed psychological problems such as disappointments, low motivation and stress caused by various factors was determined as 7.33%. Whereas rate of the negative opinions relevant with machineries such as maintenance and repair activities was determined as 5.62%, the one relevant with working under direct and continuous risk/hazard and ignorance of this situation was 5.38%. Other negative opinion categories expressed by respondents were training and information sharing problems (2.44%), long shifts (2.2%), supervisor (1.71%), low wages (1.71%), communication (1.22%), auditing problems (1.22%). Problems related with these groups were examined under following titles/tables.

## Problems in Work Environment

Problems in work environment are oriented in five groups: confined work area, disorganized work area, thermal discomfort, ventilation and other. Distributions regarding these problems were exhibited below Table 5.

Table 5.  
General View of Problems in Work Environment

Q.No	Problems Related with Work Environment	Number	Rate
1	Poor Ventilation	71	43.29
2	Confined Work Area	33	20.12
3	Thermal Discomfort	31	18.9
4	Other	15	9.15
5	Disorganized Work Area	14	8.54
TOTAL		164	100

Problems caused by work area mostly arise because of poor ventilation at large-scale work areas (43.29%). Some of the respondents' opinions concerning this subject were summarized below. Respondents' opinions classified in the thermal discomfort are mostly result of improper air conditioning of the work area, related with ventilation problems.

1 Respondent: *"Since flection and multi-wire machineries are located in the same area of the wire drawing building, smoke/vapor exhausted by the multi-wire machineries are released into the room air while doors and ventilating channels are not used appropriately due to adverse weather conditions. We need to breath in this smoke/vapor. When we enter the wire drawing building, this foggy view of air is already remarkable. I consider this situation as a negative factor for our health"*.

1 Respondent: *"We are working under risk all the time ambient air is dusty; and highly noisy and we work with machines. Safety precautions certainly are not adequate"*.

1 Respondent: *"There is poor ventilation; iron dusts pose great risk for our health"*.

1 Respondent: *"Ventilation system of the facility is insufficient. I am working at the grinding division. There is too much dust; it is hard to breath!"*

1 Respondent: *"Safety at work is not only consisted of wearing ear protectors or goggles. We cannot breathe because of poor ambiance air!"*

1 Respondent: *"Uniforms and shoes are not distributed on time. There is no sufficient glove distributed to workers. Smoke exhaustion of multi-wire machineries is not adequate. We stay in a bluish smoke in the building. We breathe in poison!"*

1 Respondent: *"In my opinion, safety at work is only show-off. Our ears were burned because of ear protectors during summer. They were worn"*

*just perfunctory. Smoke coming from multi-wire machine dispersed across the facility; we breathe in poison. Working conditions are rather heavy...*"

1 Respondent: *"Gases and solvent smells in the work environment are disturbing. Ventilation is insufficient."*

1 Respondent: *"There is disturbing dust in the work environment. This situation must be resolved."*

Some of the negative opinions regarding problem of confined work area were exhibited below.

1 Respondent: *"Working area of the facility is quite limited and insufficient. There is almost no free space to walk in the work area."*

1 Respondent: *"Confined space and disorganized structure of the work environment elevate risk of work accident"*.

1 Respondent: *"Working area and inventory areas for manufactured goods are quite limited"*.

1 Respondent: *"Storage of raw materials within the factory causes problem. Machineries are one in another; they are closely spaced"*.

Some of the negative opinions regarding disorganized structure of the work area were exhibited below:

1 Respondent: *"Disarrangement within factory regarding materials is significant cause of accident. All personnel need to work carefully and in an order"*.

1 Respondent: *"Work environment must be clean and organized"*.

1 Respondent: *"Omission of displacement of broken materials results in fall of other materials while they are being handled"*.

1 Respondent: *"Disorganized layout of machineries, confined free-movement areas and leaking roof are problems experienced in the facility."*

1 Respondent: *"Layout is not organized properly and the administration makes decision without considering the OHS quickly."*

Some of the negative opinions regarding the thermal comfort problems were explained below:

3 Respondents: *"The environment is unaired; there is dust, smoke and dirty air in the environment while it is hot in summer and cold in the winter."*

1 Respondent: *"Wire drawing division is highly noisy and it is extremely hot in the summer. It is adversely effective on both employees' health and manufacturing"*.

1 Respondent: *"Tower area is excessively hot; and it is rather difficult to handling material with the tower because of its height. Carrying heavy materials up and down at the tower is both difficult and risky"*.

1 Respondent: *"My working environment is quite cold in the winter. However, other divisions are quite hot. I wish I could be in other divisions"*.



1 Respondent: *“Because of the heat in the working environment, helmet and goggle cause extreme sweat. Furthermore, helmet cause headache when it is worn in the hot weather. Therefore, risk of work accident increases. If I wear goggle to long, I feel the rush in my eyes because of heat. Either thermal comfort conditions in the working environment must be improved or obligation for wearing helmet near the vertical machineries must be removed.”*

Other problems related with working environment are about poor and slippery ground, working on the wet surface, smoking in the work area, material handling area and shipment areas. Some of the negative opinions regarding this subject were exhibited below:

1 Respondent: *“Waist wader must be supplied for washing operation in tanks; I want appropriate work gear and shoes as they are obliged by the standards”.*

1 Respondent: *“We work in water; this negatively affects me; I want this to be fixed.”*

6 Respondents: *“The factory area is highly confined; there is no smooth ground; our uniforms and pallet truck are insufficient”.*

1 Respondent: *“The smoke that occurs during ventilation given to the bullion under process has negative impact on our breathing although we use mask; this issue must be fixed...”*

### **Problems Caused by Employees**

Problems caused by employees include the ones among the safety culture factors: safety awareness of employees and behaviors. In this group, the opinions regarding the subjects on employees' disorderly, careless and irresponsible working habits, paying no attention to their work, having undisciplined attitude and behavior toward the job, ignorance towards safety at work on purpose, misuse of equipment, ignorance of security precautions and omission of rules. Furthermore, it was emphasized that using the PPE and wearing helmet, goggle and etc. in excessively hot-cold and/or with poor ventilation would result in excessive sweating, headache and other health problems and probability of work accident. Some of these opinions were summarized below:

1 Respondent: *“Employees working in manufacturing facility do not pay attention to safety at work.”*

1 Respondent: *“Insensitivity and ignorance among employees have negative impact on OHS at work place. There is no any activity which could influence employees emotionally regarding the OHS”.*

1 Respondent: *“Employees do not use their protective gear all the time. They must get used to wear them while they are at work”*

1 Respondent: *“Although all OHS equipment is procured, employees do not pay attention to equipment”.*

1 Respondent: *“Because of heat of the work environment, helmet and goggle cause excessive sweating. Additionally, helmet causes headache when it is worn in excessively hot environment. Therefore, risk of accident increases. If I wear goggle continuously, rashes occur in my eyes when it is too hot...”*

### **Problems Caused by Employer**

In general, problems caused by employer were oriented on more and faster production. According to the perceptions of employees, it was expressed that safety is put in secondary place in order to accelerate production; continuous high work pace and request for completion of the assigned work under heavy working conditions, business decisions are taken without considering the OHS codes, precautions are taken after an incident happen, pressures are made on employees regarding fulfilling the OHS rules and discrimination is made between white and blue collar employees. 61.54% of negative suggestions were concerning fast-paced manufacturing subject (24 expressions). Some of the opinions regarding this group were summarized below:

1 Respondent: *“Lack of qualified employee, insufficient education, insensitive employer who aims to make more money and unfavorable working conditions are negatively influent on safety at work.”*

1 Respondent: *“Works should not be done hastily so as to prevent careless performance.”*

1 Respondent: *“Time factor is the most important obstacle. Since products are required to be completed in certain time, the risk increases at this point”.*

1 Respondent: *“In my work place, production is important instead of human life. We are expected to be fast and hasty while we are performing our task”.*

3 Respondents: *“There is no appropriate working environment, working conditions are quite heavy; our performance is exceeding our capacity; we are trying to do too much work with less people.”*

2 Respondents: *“The most important factor effective on the OHS is discrimination between the white and blue collar employees. There is unjust wage policy; discrimination between white and blue collar is disturbing; and there is double standard. For instance, “... although it is forbidden to talk within the facility; they could talk! In case no any discrimination is made among employees and there is fare wage policy, everyone could copy with safety precautions more effectively”.*

## **PPE and Other Equipment-Material Problems**

Negative opinions in this group are concerning about procurement of the PPE-material-equipment (tool), appropriate shoes, uniform, gloves, low quality of the PPE -material-equipment or they prevent employees to practice their work, demand for light-weight and useful PPE gear and inappropriate usage of the PPE gear. Some of these opinions were summarized as follows:

1 Respondent: *“It is necessary that our masks must be replaced with the new ones in larger size and safer. Additionally, other OHS equipment must be fully available”*.

2 Respondents: *“Goggles that wear during the grinding operation are inadequate. It will be safer to have greater mask.”*

1 Respondent: *“Since ambiance is rather noisy, ear protector remains insufficient to repress the noise. There is poor ventilation; and too much pressure on employees. There is no effort to motivate employees”*.

1 Respondent: *“Utilized protective materials need to be lighter and handy”*.

4 Respondents: *“Since tools and equipment are sufficient to perform the work, we use other materials. Tools and equipment that we need during our operation must be fully ready”*.

1 Respondent: *“We should be provided waist wader to use while we are washing tanks; uniforms and shoes which conform to standards could be supplied to us.”*

2 Respondents: *“Our summer shoes are torn apart; so our feet freeze at night shift. If we get sick and take a sick day, we are blamed about this. (Nevertheless, winter is always expected to arrive, they must be ordered beforehand; isn't this more logical?)”*

6 Respondents: *“Since there is no rechargeable forklift at inflexion and multi-wire group, especially in places working with 800-iron reel, we, operators, turn reels manually. This is serious issue with safety at work”*.

1 Respondent: *“While I am doing my job, I need to use power handy lift. But it is hard to find, since there is no sufficient”*.

## **Psychological Problems**

In general, most of the suggestions in this section emphasize disappointment, stress and low motivation (at 60% rate) (18 respondents). It is reported that intensive work, low wage and spoilt working relationships result in fatigue, inattentiveness and sleep disorders.

1 Respondent: *“Everyone is down at this work place; employees are mistreated; and questions are answered in a negative tone”*.

1 Respondent: *“It is not appropriate to place a supervisor next to each employee for higher production; it must be ensured that workers feel relaxed.”*

4 Respondents: *“Wages are low; workmanship is cheap; these cause inattentiveness.”*

1 Respondent: *“Psychology of employees must be taken into consideration!”*

### **Problems with Machineries**

Suggestions in this group are usually oriented on omission of timely and appropriate machine maintenance, lack of emergency stopping buttons (at necessary locations), insufficient machinery equipment and low performance of machineries. Some of these opinions were summarized below:

1 Respondent: *“Using grinding machines without protectors, inefficient operation of cranes, missing protector bars at lathe constitute problem.”*

1 Respondent: *“Complete emergency stop buttons must be placed on rectification machines”.*

4 Respondents: *“Machine maintenance must be implemented on time; especially lifting equipment must be checked frequently”.*

1 Respondent: *“Protector lids must be placed on machines”.*

1 Respondent: *“Working with old machines and materials. Using machines under heavy-duty conditions apart from their essential purpose; and omission of emergency stop buttons where they should be”.*

1 Respondent: *“Machines are maintenance-free and very old. Periodical maintenance of machines should be completed on time.”*

### **Problems Directly Related with Health and Safety**

Suggestions in this group are essentially gathered under poor OHS measures in spite of a job with high level of danger/risk, omission of high risk factors in usage of the PPE, failure in taking necessary measures about chemicals, dusts and gasses in the work place. Some these opinions were summarized below:

1 Respondent: *“I need cable of the welding machine hanging in the air because when it is on the floor, forklift runs over it, reel rolls over, this is very dangerous situation!”*

1 Respondent: *“...against the explosion risk that may occur during the casting process, an emergency exit door must be built for the evacuation of the employees behind the molds.”*

2 Respondents: *“At this point, there is a situation something like hungry people could not be understood by rich; heavy works of blue collars*

*are somehow made. So many workers quit from job, or take sick days, there are so many work accidents; 90% of blue collars have herniated disc problem. But, you have not succeeded going beyond ear protector or gloves. I hope you consider this survey carefully and interpret the answers accurately..."*

1 Respondent: *"1-Reels are rolled from distance by wire-drawing operators without noticing others and this could result in work accident when it hits somewhere or someone. 2-feet of scrap pots are on feet of scrap machines which cause a space elevating one side. This inclination causes the scrap machine to remain slack and it might fall down on our foot."*

1 Respondent: *"Safety at work could not be ensured by only wearing ear protector. There are numbers of job not implemented because of associated risk. The OHS remains only as a document instead of practice; when raining rain water leaks through the roof over machines! We cover the transformer with plastics."*

### **Problems Related with Training and Information Sharing**

Opinions expressed in this section are related with providing insufficient training on the OHS for employees and their coworkers and about the PPEs. Some of these opinions were summarized below:

1 Respondent: *"There is lack of harmony among employees; supervisors do not give sufficient information."*

1 Respondent: *"Employees lack information about the OHS, they need to be informed more about the OHS."*

4 Respondents: *"Employees are not sufficiently knowledgeable and trained about the OHS."*

### **Long Shifts**

In this section, employees mentioned about Long Shifts and frequency and length of exhausting shifts. Some of these statements were given below:

7 Respondents: *"Shifts are rather long. If shifts are shortened and excessive work hours are trimmed, risk of accidents is minimized."*

2 Respondents: *"Excessive work causes fatigue!"*

### **Problems Related with Supervisor**

In this group, it is usually mentioned about poor information share by supervisors, discontentedness of workers as a result of intervention of supervisors into their business, their insulting attitude, discourse and behavior, supervisors' omission of necessary safety measures. Some of these were summarized below:

2 Respondents: *"Our supervisors intervene into everything."*

1 Respondent: *“A chief must be put next to each employee to increase production...”*

1 Respondent: *“Behaviors and language of our master and other supervisors towards us are quite insulting and disturbing.”*

1 Respondent: *“Immediate supervisor and department chiefs do not fulfill necessary safety conditions and not encourage employees to do so.”*

1 Respondent: *“Medium level supervisors have not realized significance of the OHS subject...”*

### **Wage Problems**

Opinions in this section are related with disadvantaged wages of employees or unfair distribution of wage.

4 Respondents: *“Employees worries about their survival. Any increment in their wage will make them satisfied; and they would perform their work more intact and safe.”*

### **Communication Problems**

It was understood that all of the contents of opinions in this group were put in word along the content of opinions classified in other groups. Mentioned opinions include negative impact on the OHS due to miscommunication among departments, independent action of employees because of poor communication among employees, loss of harmony among employees, lack of discussion among employees about safety issues, ensuring participation of employees into decision making process concerning safety and omission of taking suggestions of employees concerning the OHS.

### **Auditing Problems**

Opinions concerning auditing are related both internal and external auditing. Employees are of the opinion that more intensive auditing must be conducted on the OHS and ÇSGB auditing activities must be conducted more frequently. Proximity of the room of the OHS specialist to the operation area, conducting the OHS controls more frequently and conducting these controls along the shifts time to time are the expectation of this group. An opinion of a worker regarding external auditing was exhibited below:

1 Respondent: *“...We roll the reels through manpower; during auditing all implemented by means of forklift. The value assigned is determined.”*

### **Changes Requested by the Employees for Improvement of the OHS**

In the work places where survey was applied, general analysis results obtained based on the feedback received from employees regarding development/improvement of the OHS were exhibited in Table 6.

Table 6.

General Analysis Results of Amendment Suggestions Regarding Improvement of the OHS

<b>IN YOUR OPINION, WHAT SORTS OF CHANGES ARE NECESSARY TO IMPROVE SAFETY AT YOUR WORK PLACE?</b>		
Evaluation Criterion	Number	Percentage
Number of Total Respondent	854	100
Total Number of Evaluating / Participant Respondent	94	11
Total Response	101	-
Valid Response	97	96
CATEGORICAL CLASSIFICATION	Number	Percentage
Training and Notification	27	27.84
Supervisors and Managers	34	35.1
Maintenance-Repair	5	5.1
Equipment	10	10.3
Work Conditions	6	6.2
Warning Signs	4	4.1
Other	9	9.27
Auditing	2	2.06
TOTAL	97	100

### **Suggestions for Improvement Regarding Supervisors and Managers**

In suggestions related with improvement associated with supervisors and managers, improvements regarding equality among employees, sensitivity towards the OHS, consulting opinions of employees and expectation regarding practice of opinions, avoiding pressure of faster manufacture, placing greater emphasis on employees, awarding persons following rules and improvement of thermal comfort conditions. Some of these suggestions were summarized below:

1 Respondent: *“Supervisors must be knowledgeable and experienced; everybody must be treated fair. The job we do must be performed with the professionals.”*

1 Respondent: *“Management understanding must be with more determined, more persistent attitude towards the OHS.”*

4 Respondents: *“Management must exchange opinion with employees, decisions must be taken and applied according to their suggestions.”*

2 Respondents: *“If we want to improve safety at work, we need to maintain our dialogue with employers; their needs must be fulfilled; they need to be consulted; information could be received from them.”*

1 Respondent: *“Essential emphasis must be place on human life instead of job.”*

1 Respondent: *“What employees say about the OHS must be listened.”*

2 Respondents: *“5S application should be put in practice in a certain discipline on continuous based.”*

1 Respondent: *“Just attach little bit importance to worker...”*

1 Respondent: *“If a meeting could be organized together; problems and their solutions could be documented and minimized. Additionally, our suggestions are not taken into consideration; they say either costly or impossible. Is it more important to make a tiny improvement than the human life?”*

2 Respondents: *“It is necessary that the OHS specialists should pay attention in the field instead of from the office.”*

1 Respondent: *“If it could be understood what the department operators complain about most frequently, safety at work and workers’ health could somehow be ensured.”*

1 Respondent: *“Instead of solving problems on your own, they mediate among employees to resolve problems together...”*

1 Respondent: *“When a problem arises concerning safety at work, this problem is required to be checked at that moment and immediate precautions should be taken.”*

2 Respondents: *“Individuals who obey the rules must be rewarded.”*

1 Respondent: *“I would like a panel wall to be built between departments against noise and odor. Odor, ventilation and thermal comfort problems must be resolved.”*

### **Suggestions for Improvement in Training and Notification**

In the suggestions concerning the training, it was emphasized that number and quality of trainings must be increased; be implemented more visually and practically; and information sharing activities must be organized with certain intervals. Some of these suggestions were summarized below:

22 Respondents: *“Trainings must be given more frequently and regularly.”*

4 Respondents: *“Regular information meeting must be held about the OHS.”*

2 Respondent: *“OHS Trainings must be implemented more intensively, visual and practical so that we could sense what would happen to us beforehand. Training activities must be conducted more actively and frequently by ensuring participation.”*

### **Suggestions for Improvement Regarding Equipment**

Suggestions in this section are related with the PPEs, uniforms and equipment utilized in manufacturing and closely related with the OHS. Relevant suggestions were summarized below:



1 Respondent: *“...PPEs must not be provided only based on request of the worker. Management must distribute to employees regularly.”*

1 Respondent: *“It is necessary to make more equipment available in the work place.”*

1 Respondent: *“We get cold with our uniform in the winter. We must wear thicker winter uniform or sweater.”*

1 Respondent: *“The company could by purchase rechargeable trans-pallets once again or broken ones could be repaired; in my opinion, the most significant safety problem at work is herniated disc; herniated disc is seen among majority of coworkers aged 24-45...”*

2 Respondents: *“There must be numbers of power trans-pallet so that operator does not roll them manually. Ventilation aspirators must be placed on multi-wire machine areas so that exhausted smoke does not spread across the facility. Uniform and especially boots must be delivered on timely manner! We used winter boots until the middle of summer; now it is middle of winter but there is no winter boot yet!”*

2 Respondents: *“It is necessary that materials should be highly quality and useful; they must conform to the standards. The materials given to us both do not protect us and it is torture to wear them! For instance, shoes are torn from their lateral sections because of continuous wearing; we get sick because of the cold we catch in rainy weather and when it is cold but we use them since their steel toes could protect our feet.”*

### **Suggestions for Improvement Regarding Work Conditions**

Suggestions in this section are related with wage, shift periods, shift schedule and length. These suggestions were evaluated for each person:

1 Respondent: *“Wages must be improved; it is not fare...”*

1 Respondent: *“Work periods must be reduced.”*

2 Respondents: *“Work conditions must be improved.”*

1 Respondent: *“First of all, night shift must be avoided because employees at the night shift are more absent-minded in comparison with day time employees; they might act behaviors unconsciously. The most important reason of this is that day-time sleep is not effective as much as night-time sleep...”*

### **Suggestions for Improvement Regarding Maintenance-Repair**

Improvement suggestions concerning maintenance-repair include hazardous operation of machines, implementing activities by avoiding work accidents and ensuring implementation of periodical maintenance regularly. These suggestions were explained below on the basis of individuals:

3 Respondents: *“Maintenance must be conducted on machines regularly.”*

1 Respondent: *“Machines do not work reliably. A work accident could happen any time. In order to avoid broken cable danger, protector is needed.”*

### **Suggestions for Improvement Regarding Warning Signs**

Improvement suggestions in this subject are related with usage of sufficient and adequate warning signs in necessary areas at the work place and making them notable. Suggestions on this regulation were explained below on the basis of individuals:

3 Respondents: *“There must be more warning plates and signs.”*

1 Respondent: *“Some safety signs and plates at the workplace are not notable much; when a worker passes through that area those signs must directly be seen. For instance, “Attention! Beware of Forklift” next to the Multi-wire machines with 456 no. It is almost not possible to see.”*

### **Suggestions Regarding Auditing**

Suggestions in this section are related with intensification of internal and external auditing activities; and with conducting immediate external auditing without giving notification to the work place. Relevant suggestions were exhibited below:

1 Respondent: *“Auditing activities must be conducted more frequently; and they must be conducted immediately without any prior notice.”*

1 Respondent: *“If auditing is maintained in a work place on continuous based, this situation could emerge deterrence.”*

### **Other Suggestions**

Suggestions outside the categorical classification are related with raising awareness among employees regarding the OHS, attaching more importance to the subject, and making work place safer. These suggestions were explained below:

1 Respondent: *“Safety at work must be attached more importance.”*

2 Respondents: *“It must be ensured that employees must act consciously.”*

1 Respondent: *“The OHS is applied adequately at my work place. It is necessary that employees must act more carefully to avoid from accidents.”*

1 Respondent: *“... Sanctions must be imposed on workers who do not conform to rules.”*

1 Respondent: *“We might lower the temperature in the work place.”*

1 Respondent: *“Staring all over again, safer and more organized work environment must be prepared.”*

## Conclusion

The metal sector in Turkey is one of the highest work accident rate frequency. Employees claim that these accidents are result of some factors that are mentioned below:

- Problems in Work Environment
- Problems Caused by Employees
- Problems Caused by Employer
- PPE and Other Equipment-Material Problems
- Psychological Problems
- Problems with Machineries
- Problems Directly Related with Health and Safety
- Problems Related with Training and Information Sharing
- Long Shifts
- Problems Related with Supervisor
- Wage Problems
- Communication Problems
- Auditing Problems

To improve safety at work in metal sector in Turkey, employees give some suggestions. These suggestions are seen below:

- Training and Notification
- Supervisors and Managers
- Maintenance-Repair
- Equipment
- Work Conditions
- Warning Signs
- Other
- Auditing

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# **Do Customers Tell Us the Truth? The Bias in Measurement Caused by Anchoring Heuristics**

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## **Abstract**

This article introduces a behavioural economics approach towards decision-making and uses empirical data to indicate how anchoring heuristics might bias measurement results in marketing research. The purpose of the designed research is to decide whether the first piece of information presented to a respondent during an interview might have an influence on their answers. The conclusion that can be drawn from the analysis is that the bias of anchoring heuristics on the households' saving patterns is very significant. The primary structure of the question order has a considerable effect on further decisions. The analysed case shows that behavioural economics can contribute a lot to understanding customer behaviour and could indeed drive more accurate measurement.

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**Keywords:** consumer behaviour, anchoring, questionnaire bias, economic psychology, behavioural economics

## **Introduction**

A major part of our knowledge on consumers is derived from marketing research where respondents declare their specific behaviours. Researchers are aware that drawing conclusions on the basis of the results of declarative studies is encumbered with error. When a study is properly conducted one can assume that declarations are congruent with what a respondent really thinks, but does such a statement actually end the discussion related to the interpretation of results?<sup>121</sup> The results of empirical studies conducted by Fishbein and Ajzen regarding the conformity of declarations and behaviours demonstrate that between the measurement of

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<sup>121</sup> The results of empirical studies conducted by Fishbein and Ajzen indicate that between the measurement of behaviour intention and actual behaviour one may obtain correlations of approximately 0.8 – 0.9. A detailed discussion may be found in: FISHBEIN, M. *Predicting and changing behavior : the reasoned action approach*, New York :, Psychology Press.

behaviour intention and actual behaviour high correlations may be obtained, these will never be functional dependencies though. [Fishbein i Ajzen 2010]

Bringing together psychological knowledge and economics, results in a new focus on many issues which are vital from the point of view of economics, this also concerns market and social research. Researchers are currently aware that even if the textbook situation of perfect co-operation with a respondent is assumed, one more factor needs to be taken into consideration. A consumer unable to go through the whole decision-making process for each decision, relies on certain simplifications (heuristics), which may lead to erroneous decisions. In the case of conducting research, significant concern is that a respondent might pursue decision path declaring future behaviour while displaying a different one in reality. This might result from the structure of the research tool, even though a questionnaire had been constructed in accordance with the appropriate principles.

### **Algorithms and heuristics in the decision-making process**

It is worth bringing two views on decision making closer. The first approach, which assumes the rationality of a consumer's decision is closer to the assumptions of the applied standard decision algorithms. An algorithm is a certain repeatable procedure which guarantees the obtaining of a correct, unambiguous solution provided such a solution exists. The repeatability of a procedure guarantees an identical result using identical input variables. [Piech 2003] On such assumptions and with specified input conditions a consumer's decisions are predictable.

The other approach takes into account the achievements of economic psychology, basing on the shortcuts in decisions (mainly rules of thumb).[Belsky i Gilovich 1999] Main of these shortcuts are called heuristics and are defined as intuitive, rapid and automatic system reducing the complex decisions [Shiloh i in. 2002] or as disproportionate influence on decision makers to make judgments that are biased toward an initially presented value.[Kahneman i Tversky 1979] The most important heuristics which have an influence on consumer decisions are: availability heuristic – causing a change in the judgment of an events' probability on the basis of similar events in memory; representativeness heuristic – distorting judgment on the basis of how easy it is to imagine certain events; anchoring heuristic – assuming the influence of previously possessed information on future decisions, even though the previous information has no influence on a given phenomenon in any way or is untrue.

### **Anchoring heuristic and the determinants of susceptibility to it**

As has been mentioned, in case of anchoring heuristic the consumer relates the whole decision-making process to any available piece of

information on a given topic (where no such pieces of information or associations are available, he/she might use an external suggestion) and based on that information the consumer creates a representation of the value of particular choice variants. [Kahneman i Tversky 1979] From the point of view of a researcher, the knowledge of heuristics helps in designing research tools in a better way (so that the declarations are as close to actual behaviours as possible) and in interpreting the results. Another step in the direction of inclusion of knowledge within the scope of economic psychology to market research is the knowledge of heterogeneity of susceptibility to heuristics and familiarity with determinants of this susceptibility.

### **Previous studies**

The anchoring heuristic was introduced and popularized in seminal work of Kahnemann and Tversky [1974] but it was also mentioned previously by Brown in 1953 [Chapman i Johnson 1994] and by Slovic.[1967] As well as the aforementioned pioneering work of Kahneman and Tversky anchoring effect has been corroborated in many empirical studies. Davis studied married couples asking one person to predict the other person's consumer choices. [Davis et al. 1986] The fivefold repeated study demonstrated strong anchoring of forecasts in preferences of the surveyed individuals. Anchoring effect was also confirmed in the studies of decisions taken in organisations[Bromiley 1987], and what is interesting, this heuristic is also present even in the estimates of real estate experts [Kristensen i Gärling 2000] and in the decisions of financial analysts. [Northcraft i Neale 1987]

The anchoring effect has also been translated into business practice. On the basis of Wansink's research results [Wansink i in. 1998] one may conclude that information at the point of sale may indeed influence the number of purchased goods.

Other publications corroborating the effect of the anchoring heuristic constitute a ten-year-old cycle of experiments concerning the estimating of salaries by R. Kopelman and A. Davis [Kopelman i Davis 2004], bidding prices at online auctions [Hao i Gwebu 2007], comparison of the heuristic's impact force on estimating time and money [Monga i Saini 2008] decision making by investors [Dagher 2009] or decisions of horse-race bettors. [Johnson et al. 2009]

It is worth highlighting the studies demonstrating the limits of the anchoring heuristic. According to the studies of Chapman and Johnson [1994] an effect is reduced and even disappears when an anchor value is wildly distant from real values. In the same article, scale consistency is indicated as a limit on the effect. According to the authors the anchoring

effect is only possible when an anchor and an estimated value are of the same dimension. On such an assumption, an anchor expressed as the length of a section should not influence an estimated value expressed as e.g. time. Also Brewer and Chapman [2002] indicated that the separation of scale on which an anchor occurs and a scale with an estimated value destroys the mentioned effect (in this case a number was the anchor – a dimensionless quantity).

However, several years later it was proven that the anchoring effect occurs when dimensions are mixed, although it is relatively weaker. This type of anchoring was named „basic anchoring“.

In a study by Oppenheimer [Oppenheimer et al. 2007] the participants of an experiment were asked to draw lines and then to estimate some quantities. It turned out that the participants which drew relatively longer lines were more inclined to make higher numerical estimates. Also Critcher and Gilovich [2008] corroborated the existence of “basic anchoring”.

In research of anchoring heuristic’s impact force, a relatively long impact of the anchor effect was also supported. In studies conducted by Mussweiler [2001] it was demonstrated that even a week may elapse between anchoring and the consumer’s judgment without any noticeable diminishing of the effect.

According to the literature review some relations have been proven. The higher the ambiguity, the lower the familiarity and personal involvement with the problem, the stronger the anchoring effects [Exel et al. 2007]. But on the other hand many authors shows the mitigation of this effect [Galinsky i Mussweiler 2001];[LeBoeuf i Shafir 2009]. The abovementioned papers are only part of a the discussion about the anchoring heuristic. More detailed review of the research about the topic may be found in [Furnham i Boo 2011].

From the point of view of market research practice, the question as to whether the anchoring heuristic may influence study results and whether the possible influences on the differences related to the course of thinking process and decision making may be determined by social-demographic features, seems to be much more interesting. In order to identify this scope a study was designed, in which the following hypotheses were tested:

H1: Identical questions about preferences in the interviewer questionnaire may generate various results depending on an established “anchor” (preliminary information provided which theoretically does not influence subsequent questions)

H2: The social-demographic features of respondents differentiate the impact of respondents’ cognitive inclinations related to an anchoring heuristic.



### **Study purpose and methodology**

For the purpose of the study two versions of a questionnaire were prepared. They contained the same questions which were presented in a different order in one thematic section. These questions related to preferences in the allocation of funds.<sup>122</sup> The respondents were asked to decide how they would allocate three specific sums of money (1000 PLN, 10,000 PLN and 100,000 PLN). Ways of response were selected by taking into account the behavioural life-cycle theory as well as Keynesian saving motives where preventative and saving motives were combined.[Lindqvist 1981]

One group (A) was first asked to allocate 1000 PLN, then 10,000 PLN and finally 100,000 PLN. The second group (B) did the same in reverse order. A discussed block of questions was placed in the middle part of the questionnaire with the questions asked five minutes after the beginning of the interview. The questions were placed in the questionnaire in such a way so that a respondent answering the first question was unaware that he/she will be asked about his/her preferences twice more (the first question was placed at the bottom of the page, the subsequent question was placed on the next page).

According to an approach differentiating levels of money management it is expected that the structure will change as the a sum of money grows (the more a given sum can be categorised as a property, the smaller the temptation to spend this sum instantly, however, the more a given sum can be categorised as ready cash, the greater the temptation to spend it instantly).

However, assuming that an anchoring heuristic will not influence the results, the response structures should be similar in both respondent groups irrespective of the order of the questions. On the assumption of the correctness of the anchoring heuristic's influence on the choices, the differences between the two groups should be visible. To make it possible to verify the second hypothesis, at the end of the questionnaire there was also a set of questions characterizing respondents with respect to demographic and economic features. For the purpose of identifying statistical significance of differences obtained in two groups a test of means was employed.

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<sup>122</sup> The study was conducted on a representative sample of 400 households in the Wielkopolska region, Poland. The technique employed was a face-to-face interview. Groups selected for the studies with particular versions of the questionnaire did not vary in relation to basic socio-economic features (sex, age, education, income).

## Results

The following analysis regards the two most characteristic variants: the allocation of funds to current expenses (treating money as cash) and funds' allocation to an increase in property.

Group A, which started with the question about 1000 PLN would allocate the major part of this sum to current expenses (85%). As the amount increased the share of current expenses decreased (29% for the amount of 10,000 PLN and 11% for the sum of 100,000 PLN). The option „saving in order to increase property” reached 5% for the question about 1000 PLN, for the question about 10,000 PLN - 30%, and for the question about 100,000 PLN - 44%. Chart 1 presents the results for the first group.

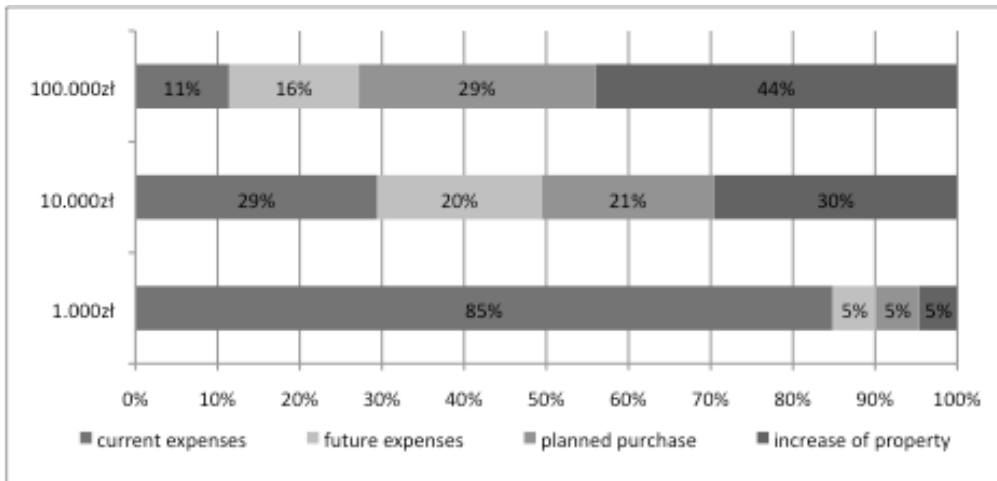


Chart 1. Structure of sums' allocation for group A

Source: own research

In group B, which started with the question about 100,000 PLN the share for current expenses was considerably lower (4%). As the value of the sum to be allocated decreased that share increased reaching 12% for 10,000 PLN and 36% for 1000 PLN. „Saving in order to increase property”, on the other hand, initially obtained a relatively large share – 57%. That share decreases as the amount decreased, down to 36% at 10,000 PLN and 16% at 1000 PLN. Results for the second group are shown in chart 2.

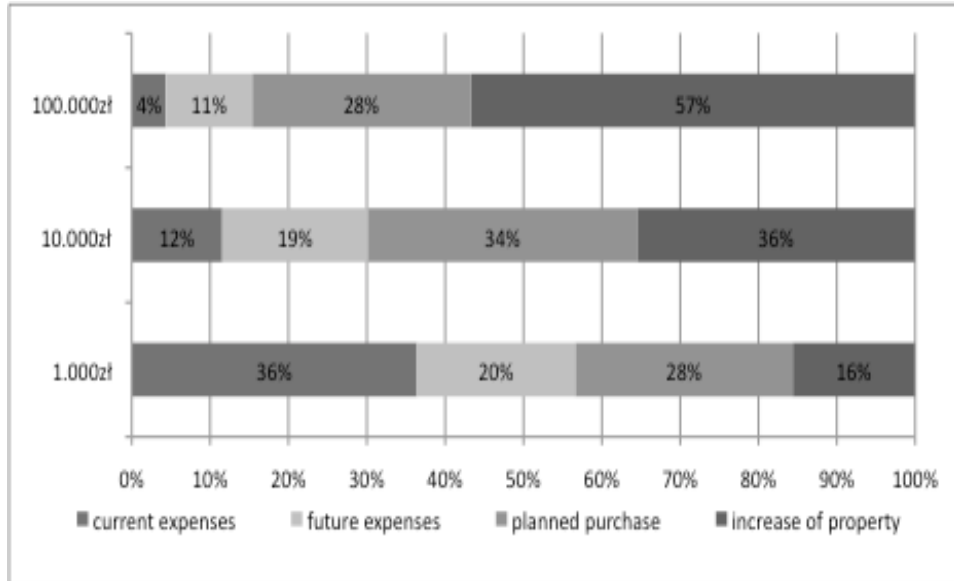


Chart 2. Structure of sums' allocation for group B

Source: own research

The anchoring of group A on the sum of 1000 PLN and the first allocation resulted in an almost a threefold increase of funds allocated to current expenses for the sum of 100,000 PLN (group A – 11%, in group B, where it constituted the first allocation with no bias from the previous question - 4%).

Similarly, group B was anchored on the sum of 100,000 PLN and the first allocation exerted some influence on successive decisions which resulted in a more than a threefold increase in funds allocated to the increase of property for the sum of 1000 PLN (16% in group B, whereas only 5% in group A). The originally established structure of allocation had a considerable effect on further decisions. Similar results are likely to be obtained in other research areas (not related to saving).

The average difference in the structure of the allocation of 1000 PLN to current expenses is 491 PLN and it is statistically reliable at a level of 0.05. The study results allow for the positive verification of the first hypothesis and makes it possible to state that the impact of anchoring heuristic on households' saving decisions is very strong.

For the analysis of the impact of demographic and economic variables, six variables which are very often used in marketing research for segmentation, were selected:

- sex;

- age (studies at relative measurement level, for the purposes of the analysis re-coded to five age groups: up to 30 years of age, 31-39 years of age, 40-49 years of age, 50-59 years of age, over 60 years of age);
- education – three groups: primary + vocational, secondary general, higher;
- life cycle stage (single person, living with parents, single person, living apart, a person living with a partner, without children, a person living with a partner and children, the youngest child is less than 7 years old, a person living with a partner and children, the youngest child is 7 years old or more, (all) children have become independent, (I) we live apart);
- income (up to 2000 PLN, 2001-3600 PLN, 3601-6000 PLN, over 6000 PLN);
- optimism (measurement on the basis of four questions regarding present condition and four predictive questions, responses aggregated to a continuous scale enabled the distinguishing of three groups: pessimists, neutral, optimists).

In the left part of table 1, the basic information on the results obtained for particular segmentation variables is presented, in the right part the most important information relating to means testing is provided. With respect to the same scale, the study was conducted using actual values expressed in the Polish zloty. The table contains actual values, in order to simplify interpretation in the subsequent part, the text values are converted into structures and differences are given in percentage points.

Table 1. Means test for selected segmentation variables

Variable	Variable value	Study version	N	Mean	The standard error of the mean	t	Significance (bilateral)	Difference between means
Cumulative monthly income in a household	up to 2000	A	57	374.6	53.6	-4.46	.000	-407.6
		B	28	782.1	71.7			
	2001-3600	A	62	412.9	50.6	-6.50	.000	-431.5
		B	63	844.4	43.1			
	3601-6000	A	50	349.0	59.0	-5.30	.000	-417.7
		B	57	766.7	52.5			
	over 6000	A	29	305.2	81.3	-5.26	.000	-509.0
		B	43	814.2	57.6			
Sex	female	A	101	334.2	40.3	-8.10	.000	-457.1
		B	91	791.2	39.2			
	male	A	156	377.6	32.8	-9.64	.000	-447.3
		B	121	824.9	32.8			

Age	up to 30 years of age	A	39	344.9	64.0	-3.74	.000	-396.8
		B	24	741.7	86.2			
	31-39 years of age	A	52	405.8	59.4	-4.96	.000	-412.7
		B	38	818.4	58.3			
	40-49 years of age	A	57	421.1	56.0	-5.64	.000	-399.8
		B	67	820.9	43.4			
	50-59 years of age	A	78	350.6	45.5	-7.45	.000	-474.1
		B	65	824.8	44.5			
	over 60 years of age	A	31	217.7	62.6	-5.53	.000	-587.5
		B	19	805.3	89.3			
Education	primary+vocational	A	52	403.9	58.0	-5.30	.000	-417.8
		B	46	821.7	53.5			
	secondary general	A	108	376.9	38.4	-8.00	.000	-439.6
		B	85	816.5	39.4			
	higher	A	96	313.5	41.9	-7.96	.000	-479.0
		B	79	792.5	42.6			
Optimism	pessimists	A	45	404.4	65.2	-3.80	.000	-381.8
		B	29	786.2	73.4			
	neutral ones	A	47	426.6	59.6	-6.310	.000	-459.4
		B	50	886.0	41.9			
	optimists	A	164	325.6	30.9	-10.43	.000	-472.2
		B	131	797.8	32.7			

Source: own calculations based on the studies conducted

For particular categories of identified segmentation variables the differences studied assume values ranging from 17 to 59 percentage points. All analyzed differences are statistically reliable at a level of 0.05 which makes it possible to positively verify the hypothesis H2 which was put forward earlier. Individuals most susceptible to an anchoring heuristic are as follows: individuals from the so called „empty nest II“ – whose children have become independent and live apart (the difference amounts to 59 percentage points), the oldest individuals (also 59 percentage points) and individuals with the highest income (51 percentage points). On the other hand, the most consistent responses were given by individuals who have children up to 7 years old (37 percentage points) and individuals with the lowest income (40 percentage points).

Among the investigated variables, susceptibility is most varied in such variables as: life cycle stage, age, household income. On the other hand, susceptibility is least diversified within the scope of sex and (contrary to expectations) optimism.

## **Conclusion**

As the study results indicate when designing a questionnaire, heuristics' impact must be borne in mind. The results cited also reveal that when interpreting results, heuristics should also be taken into account. Knowledge of their impact's force and diversity within the scope of respondents' features studied, as standard, may help in the interpretation of some issues. It relates to the studies in which we pose questions about declarations, especially within the scope of a the financial market (decisions regarding insurance, saving, taking out loans).

It is worth noticing that the use of heuristics, even though they sometimes lead to erroneous judgments and decisions, is not, from the point of view of the efficiency of a consumer's action, a worse solution than the use of algorithms. Heuristics may obviously be unreliable and more risky. They also do not guarantee that a task will be solved. The subsequent use of a heuristic in similar input conditions may lead to a completely different result, and sometimes may even turn out to be completely ineffective. However, heuristics have an edge in the cases of problems that cannot be unambiguously and comprehensively defined, or are too complex for the use of an algorithm. From the point of view of efficiency, labour input where thinking could be done by means of an algorithm, could consume inefficient amounts of time. In such cases the application of simple decision-making heuristics leading to an acceptable result is much faster. The advantages resulting from their use i.e. time and cognitive effort saving are in general greater than the costs related to the risk of a potentially erroneous decision.

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# **Mythodrama Group Psychotherapy Method, its Basic Principles and Practical Use with Children and Adolescents**

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## **Abstract**

The article describes a Group Psychotherapy method – Mythodrama, its theoretical background, basics principles and practical use with children and adolescent.

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**Keywords:** Mythodrama, Psychodrama, Analytical Psychology, Personal Unconscious, Collective Unconscious, Archetypes, Group Psychotherapy, Transference, Counter Transference

## **Introduction**

Mythodrama is a short-term group psychotherapy method. Mythodrama was created in 1993 by Swiss psychologist and psychotherapist Allan Guggenbühl, who works in the sphere of juvenile psychology in Zürich, Bern, Kyoto and Stockholm. Mythodrama is a conflict resolution methodology which is based upon Jacob L. Moreno's Psychodrama and C.G. Jung's Analytical Psychology. Mythodrama is an approach in which stories and drama are used in order to assist children and adolescents to deal with conflicts. Mythodrama intervention and prevention program has been successfully performed in Swiss schools during the last 23 years and a couple of years ago in Sweden and Japan. 7-step Mythodramatic Intervention Program has been evaluated in 11 problematic schools in Switzerland and in 10 schools in Sweden.

## **Theoretical background**

In order to better understand the method of Mythodrama, the authors make a short overview of J. L. Moreno's Psychodrama and C. G. Jung's Analytical Psychology.

### **Psychodrama – J. L. Moreno**

Jacob Levy Moreno was an Austrian-American psychiatrist and psychologist, the founder of Psychodrama and one of the pioneers of group psychotherapy.

Psychodrama was founded in the early 1920s as a theatrical experiment; observing professional actors Moreno noticed therapeutic potentials and social implications of a spontaneous theatre – when there is no written script and no separation between actors and audience. Moreno's ideas were brought from the Greek theatre where, according to Greek philosophers, namely Aristotle, theatrical performance has cathartic, healing influence on spectators. Therefore Moreno came to a conclusion to use the potential of theatrical process with patients. Thus, Psychodrama turned from the experimental theatre to a group psychotherapy method. During Psychodrama, patients are encouraged to act, play roles and present themselves through drama. Scenes, memories, dreams, fantasies, unfinished and future risk-taking situations and other events are enacted *here and now*. Different roles of the real persons from patient's life are taken by other group members or inanimate objects (Kellermann, 1992).

### **Carl Gustav Jung and his theory of archetypes**

Carl Gustav Jung was a Swiss psychiatrist and psychotherapist and a founder of Analytical Psychology.

According to Jung, the unconscious mind consists not only of the *Personal Unconscious* which is a reservoir of repressed material, painful memories and ideas that have the capacity to become conscious, but also of the *Collective Unconscious*. As Jung states, the Collective Unconscious: “[...] is detached from anything personal and is common to all men, since its contents can be found everywhere, which is naturally not the case with the personal contents.” At the same time, the Collective Unconscious is a container of “primordial” images, patterns, forces, which are produced not from the personal memory, but from the secret chambers of the mankind's mental history. In every individual, beside his/her personal contents, there are the above-mentioned inherited primordial images present, which have repetitive character and are revealed through dreams, myths, legends, old texts etc. The collective layer of the psyche holds pre-infantile memories, experiences, rests, images transferred to a person from ancestors. These images are only forms – not filled-out, as they are collective, not yet personally experienced. But when psychic energy regresses, these mythological, ancestral images are awakened. Jung called these images/motifs *Archetypes*.

During an analytical work, the archetypal, collective images should be individually shaped and expressed. These images, which originate from

the life, from the pleasant and painful experiences of ancestors, strive to return to life on experiential level as well as in deed. But as they oppose the conscious mind, it is impossible to transmit them directly into the conscious world; so, there should be found a way, a bridge between these two worlds – between conscious and unconscious realities. During a Mythodrama session, the role of this bridge may be taken by stories, drawings and drama created by children.

### **Power of stories**

According to Gottschall J. & Wilson D.S. (2005), man is a literally animal who develops a story for self-understanding. People create narratives for understanding the world around them and in them. According to Allan Guggenbühl, “the capability to create, quote and invent stories is a basic trait of us humans. Through story telling we distance ourselves from life, transfer ourselves into other realities. Animals don’t tell stories. Through stories we connect.” Stories in the group must be understood as myths that reflect the archetypal structure of the community. Mythodrama is based on the power of stories and uses drama and art in order to help children and adolescents to identify their stories, in order to overcome anxieties, traumatic events and regain confidence in their personal life.

According to Mythodrama, our attitudes and motivations are influenced by Myths. Myths are defined as distinct stories, which emerge in societies in order to explain mysteries, problems fears and threats. Myths often emerge in conflict situations. We lean on myths, when we are existentially challenged and in need for answers to problems and fears or conflicts. Stories are: motivators of our actions, mirrors of the relations we experienced, mobilizers of unconscious, helpers for making decisions and developing visions and coping with personal and professional problems; they are more than rational explanation, but symbolize parts of soul.

During a Mythodrama session, a story is chosen which depicts the myth of the group. The story is especially selected by psychologists after interviews, observations and talks with teachers, children and parents. The psychologists, who are in charge of Mythodrama session, have to pick or create a story, which reflects the challenges and complexes of the group members. The story should reflect the issues of the group. The story needs to have distinct quality. It should not have: moral, didactical or educational message; it should not be: neat, pacifying, politically correct; in opposite it should: stir group members up and cause in them fear, anger, irritation and bewilderment; help members to leave their common tracks of thinking and react psychologically on a deeper level.

Children are open to fairy tales, hence psychologist might tell them stories about Cinderella, dwarfs, trolls, princes and princesses; attention of

older children and adolescents can be caught by relating mythological themes (Greek, Celtic, Indian, Georgian).

### **Structure of the tale**

Problem, obstacle or difficulty reveals in the second part of a story. In the third part of a story appears an attempt to solve the problem, overcome difficulties and bring to the end the fight with a victory. For example, unusual figures may occur in this phase or the main actor may be captured by the complicated circumstances. At the end, in the fourth part a story reaches its peak. In these difficult circumstances the node is bounding and situation becomes dangerous. Mythodrama storytelling is stopped at this moment and the listeners are given arena (stage) to complete it.

### **Mythodrama session**

As mentioned above, group members never hear the stories to the end. Before a possible climax the psychologists stop storytelling and invite the students to imagine how the story might develop. Lying on their backs the members imagine how the story might continue. Afterwards they work with their endings – they might draw their conclusion on the paper or do a short drama in subgroups. Their drawings are then discussed interpreted and linked with their personal challenges and situations. When group members chose to dramatize their endings, their performances are analysed and connected to their specific problems and challenges. The drama and drawings are read on a symbolic level; Psychologists act as interpreters who try to make members aware of the unconscious messages and mythic patterns, which are revealed in their dramas and drawings. For example, what myth are they rehearsing, when they imagine of blowing up the school. By imagining a blow up they are relating an archetypal story. The restricted, highly coded environment of their school breeds a liberation myth. They imagine themselves as heroes, scarifying themselves for freedom or fighters against evil oppressors. The blow up scene shows that they are full of aggression.

Group work should be less structured and semi-chaotic in a form of game. Group work is radically different from a lesson at school. The main goal of group work is to enable children to increase their openness and boldly express their problems and needs in the unconstrained environment. Group process is a focal point in Mythodrama. Which roles should be selected by the children, what processes are significant are very important. Communication between the child and groups leader is on the second place. Group leaders have to assist children to involve in a group work and hinder themselves to determine children's actions.

## Storytelling

Storytelling is central in a Mythodrama meeting. The following issues have to be considered in storytelling: Free style storytelling (only key points of narration can be written on the paper); Concentration on inner images in storytelling; Imagining the scene of the story, for example: *"Imagine the room where the main character is moving or a landscape where this story is played"*; Creation of tension through the details: events should be presented in details. The best way to create tension is not to challenge events but the expectations. For example: *"When someone enters the room, hears a strange noise and sees the drops of blood"*, and not like this: *"When he entered the room he was afraid that something would be happened"*. Stories should contain typical figures. The figures should be easily identified with their particular traits and forms of behaviour. The figures may be presented as clichés or archetypes as well: a swindler, mentor, hero, mother, charming woman, fighter, scholar, etc.

There are several techniques of storytelling: 1. Repetition of events and sentences: small children enjoy when a phrase or event in the story is repeated. Someone continually itches the head or says the same things (e.g., *"Who hasn't a head, has the legs"*). This could be a simple phrase. However, it should correspond to the character or a story. 2. All modalities of perceptions have to be included: five factors such as sight, hearing, touch, taste and smell should be considered during narration. It is necessary to use one of them by a storyteller (e.g.: the character enters the room where is a strange smell of sulphur, heart pounding shouting, noise of crunching shoes or running water, etc.). 3. Imagination Phase: the group members never hear the stories to the end, it is recommended to stop in the middle of storytelling and then ask children to end this story, request to decide continuation of a story, e.g.: *"the king's daughter lives in a wonderful palace, how does this house look?.."* and children will imagine what type of house is it. Utilization of such agents to induce fantasy is significant. 4. Mental movers: Stories may also include Mental Movers. This notion implies small pointless scenes, details, events and things that somehow oppose to the main tale and seem to be absurd. The main actor wears red shoes, dog in a small puppies dress will appear in the street or there is an inscription on a house: *Freddie has hidden a cow*. Mental Movers should provoke cognitive dissonance. It is impossible to understand the context through the ordinary way. 5. The main actor and other prominent figures should be characterized with specific traits, particular appearance, may have their own style or obsession.

## Seven Steps of Mythodrama Intervention

1. The first step of Mythodrama intervention is a *Teachers Talk*. Therapists visit the chosen school/institution and meet the

teachers/caregivers. The talk follows a standard routine – therapists ask teachers to inform them about problematic incidents, students personalities etc. Then they inform the teachers of their specific approach and of the Mythodrama method. With help of the teachers there are children chosen, who will be involved in the sessions and the time-frame for sessions is set. 2. *Meeting with parents*: With the help of teachers therapists get consent of parents at a special meeting. Parents declare that they endorse the intervention and are ready to engage themselves actively. Parents sign a consent that their children will be involved in the Mythodrama Intervention and promise to encourage their sons or daughters to participate. Finally, therapists promise to organize a second meeting at the end of the intervention. The cooperation with teachers and parents is essential to tackle the problem of violence among children and adolescents. In this case interventions are more likely to succeed (Guggenbühl, 2003). 3. *Visit to the school* and observing learning process/learning methods: The visit gives possibility to get an impression of the school culture and atmosphere in the class. Therapists gain some insights on teaching styles, the setup of the class, the general mood among students etc. 4. *Conducting Mythodrama with children*: once candidates are chosen, conducting of Mythodrama sessions start – one session per week. One group involves 10-12 children/adolescents. One session lasts 2-2,5 h. Each group of specialists consists of three Mythodrama Psychotherapists (one main and two co-therapists); therapists divide function between each other, e.g., one is a storyteller, other two observe the process – this increases possibility to catch as much information as possible; each cycle of Mythodrama intervention includes 12-15 sessions. 5. *Meetings with teachers* (periodically). 6. *Follow up* during three months period; 7. At the end of the process therapists *meet teachers, parents* again. At the meeting the changed situation in school is discussed and contrasted with original problems.

### **Transference and Counter transference**

Transference and Counter transference and their interpretations are considered as very important therapeutic tools during the Mythodrama session; Leaders of a group fulfil the role of a projection vessel of children's past experiences and relationships. Groups have their own history and myths. Group itself becomes projection target of emotions, imagination and fantasies about the future. Group Transference must be fixed, discussed and worked out. Some children associate group with a circle of friends; the others see anarchic group; somebody feels superior to others and considers them as lowborn. Reactions, feelings and behaviour of children always have to be considered in relation to the group. Childish perception and discoveries should not be considered at the level of facts. They have to be examined

from their psychological contribution to the group. Disclosure of psychological world, complex and history of children and adolescents depends on how the children perceive the group.

### **Benefits of Mythodrama Method**

Mythodrama method is economical and practical, as in group psychotherapy there can be more people involved, than in individual therapy. Group enables children to feel at home. It creates holding environment by allowing members to fantasize; one gets a clearer picture of the complexes, myths and group dynamics in their families and schools. Mythodrama creates a vessel for imagination. On the basis of group members' fantasies and endings new solutions can be sought and concrete changes implemented. Mythodrama helps to develop imagination.

### **Georgian Project**

Since 2009, 18 psychologists and psychotherapists (among them – professors and students from the Ilia State University) have been working with a team from Switzerland – Prof. Allan Guggenbühl, Lela Schmid-Ksovrelashvili, David Schmid and their colleagues in the frames of the project “Nergi”. In 2015 16 new professionals were involved in Mythodrama project in Georgia. 7-Step Mythodramatic Intervention Program was implemented in schools, orphan's houses, with IDPs etc. in Tbilisi, Georgia.

### ***A case***<sup>123</sup>

The presented case is about “George”, 11 years old boy. When entering Mythodrama group, *George* was shy, passive, had problem with expressing emotions (namely, anger), which was caused by family situation – a powerful, over-protective, controlling mother and an absent father. These problems remained unconscious and hindered expressing his active potentials. Sessions of Mythodrama proved the existence of this dynamics and helped to reveal and enact these complexes.

The case demonstrates transformation achieved through stages of group dynamic. Stages of group dynamic during Mythodrama Intervention coincide with the well-known stages of group dynamic proposed by Bruce Tuckman (1965): Forming, Storming, Norming, Performing, Adjourning.

During the whole cycle of Mythodrama intervention a cat figure appeared in George's endings and paintings of the stories as a main self-expression tool. It is worth mentioning, that a cat was never mentioned in the stories told to the group by the therapists. It was brought up by George

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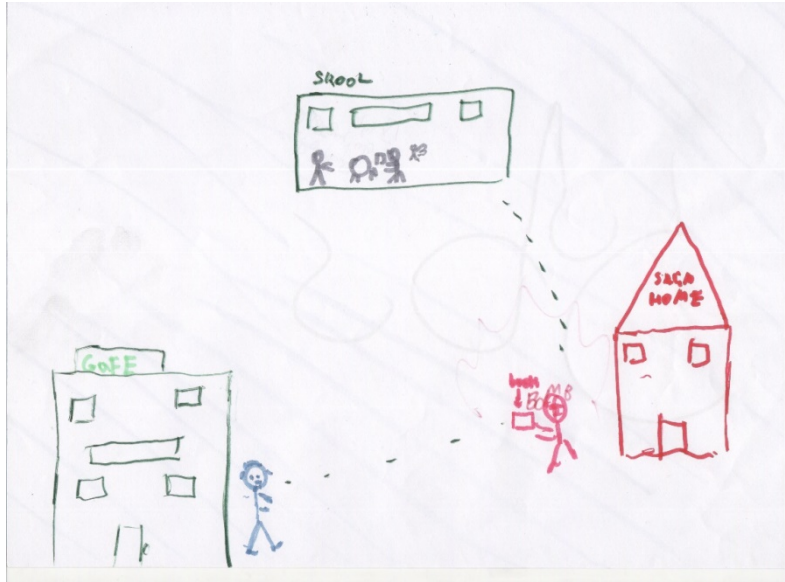
<sup>123</sup> The cycle of Mythodrama, from which the case is taken, was conducted together with Manana Malaghuradze, MA.

himself. These kinds of figures usually appear in Mythodrama sessions and are considered as supportive figures, which help to strengthen the Ego of the person. As said above, for George a cat was a tool of self-expression, adaptation in the group and tool of communication. On the Forming stage, on first session (Topic of the story: rejecting mother, abandonment) a cat figure appeared for the first time; it was still not defined – lacking colours and function. During first session figure of cat did not play any role.

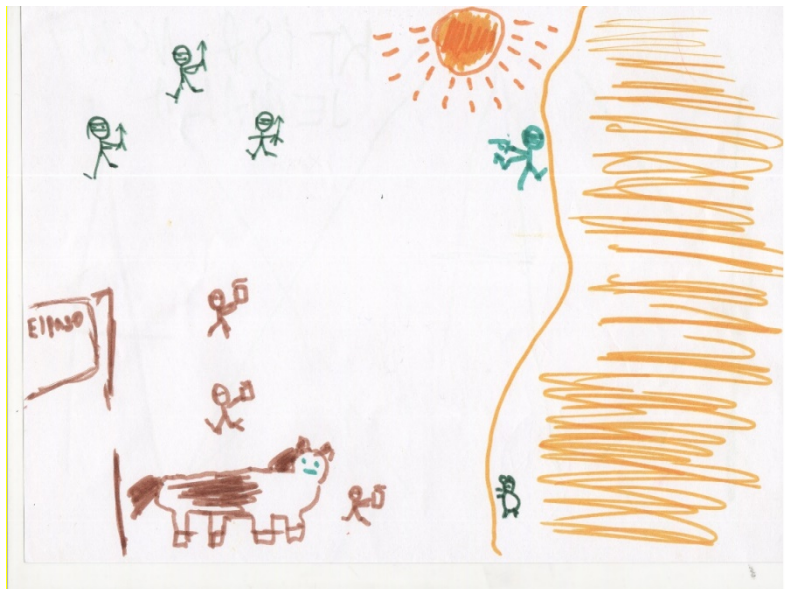


At the storming stage – session IV (Topic: dumbness, lack of voice and communication), when there was a story told about a dumb man, George drew a cat, which swallowed a bomb and saved the world (as mentioned above, George's core problem was shyness and lack of expressing emotions, namely anger). As if through the cat figure it was expressed, that George was “swallowing” emotions and situation at “Home”, lacking expression of emotions and speaking out.





On the Norming stage (Topic: friendship, collaboration), on session 7, when there was a story told about friendship, George drew a cat, which blew up the universe with bombs. George's "swallowed" aggression was revealed and expressed in his ending. On the Performing stage, session 10, a story was told about Zorro, a hero archetype, which is a symbol of strengthening the Ego. Here the cat figure was presented as a supporting figure in the process of fighting with enemies. It was already well-formed, huge like a giant, different from the forming stage, where it was still colourless and had no role or function.



This stage can be considered as strengthening of the Ego. At the end of the Mythodrama cycle, main achievements with George were: expressing emotions, showing initiative, activation of creativity and spontaneity.

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## **Difficulties and Challenges in Implementation Process of EU Projects in Croatia**

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### **Abstract**

After the process of application to different funds, and upon the approval of the project, many institutions and organizations encounter unexpected situations of implementation difficulties. Starting with the fact that those institutions and organizations are full of ideas for implementing their goals and objectives, and the only factor standing between them and their results is the lack of funds, gain of those funds seems as a full green light for accomplishing what they imagined and worked on. But after the notice of approved funding, they are stepping into a complicated web of problems they often do not expect and face situations which make it impossible to implement their planned activities. Even though the funds are approved, beneficiaries will soon begin to realize that the access to those funds is far from reach. Most of activities will again depend of the financial resources of the organization on its own, which will put enormous risk on the implementation itself. Financial difficulties are the ones that are always felt the most, but other problems that will appear suddenly during the preparation of activities will show to be also very hard to manage, such as institutional, legislation and project problems. Each group of problems will demand full attention of the manager and participation and cooperation of a wider group of subjects connected to the implementation process depending on the nature of the problem. Article will categorize the problematics and explore the experiences of Croatian project managers coping with problems in their work according to statistical results gathered through an on-line survey. The research was performed in June and July 2016 and reached a span of 50 Croatian project managers.

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**Keywords:** Implementation problematics, EU projects, Croatia, project management

## **Introduction**

European funds are a great resource and support element for both urban and rural development through projects. Even though Croatia is growing its number of funds provided for projects from the European Union, we often neglect the story behind the projects implementation, giving our full focus to the numbers and monetary weight of a project. While our application qualities are improving from one programme to another, giving us more experienced future beneficiaries each day, project managers are experiencing troubles in implementation which source from the very foundation of our European integration. Implementation management is often put aside and shadowed by the process of applying for funds. When those funds are provided the focus automatically falls from the project as if it was already successfully finished. Those funds are yet to be used and directed towards their objective, and their value and efficiency will be approved only and exclusively by the evaluation of the accomplished project result. Project managers will during the implementation period come across many problems, starting with their own institutional procedure and spreading on to every entity that will in any way be included by the project. A great deal of problems will only depend of the managers capabilities and his strategy and risk control, but some of them are a general issue on a national level and demand serious corrections from the bodies uncharged. In order to define that segment of problematic, a research was conducted to provide division and definition of those problems. The results of the research showed that project managers in Croatia often encounter same issues, and also, the most effecting issues on the result of the project will show to be out of their management influence.

## **Division of implementation problematic according to project management experiences**

Strategy and tactics are both essential for successful project implementation, but differently so at various stages in the project life cycle. Strategic issues are most important at the beginning of the project.

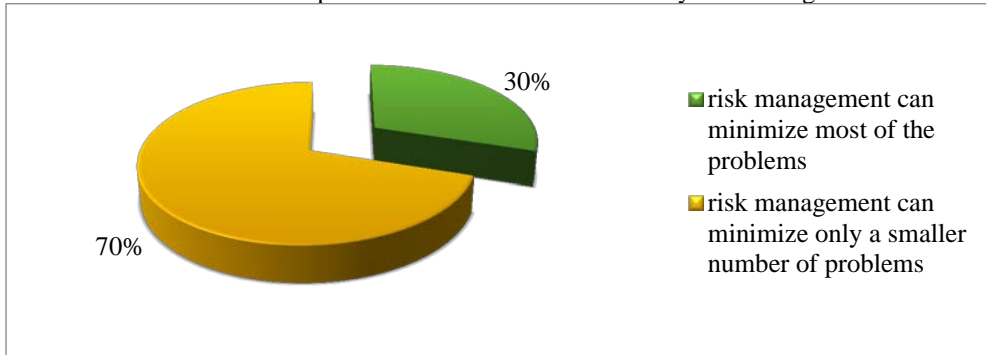
Tactical issues become more important towards the end. Strategy is not static and often changes in the dynamic corporation, making continuous monitoring essential. Nevertheless, a successful project manager must be able to transition between strategic and tactical considerations as the project moves forward. The successful manager must be versatile and able to adapt to these changing circumstances.<sup>124</sup>

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<sup>124</sup> Pinto, J. K. and Slevin, D. P.; Critical Success Factors in Effective Project Implementation, p.186-187

With good tactics and quality strategy for approaching risks, the manager can tackle a lot of problems that will appear during the implementation. Some of them he will successfully solve, but some will also be out of his influence zone and will require involvement of higher channels to be solved.

Chart 1 - Ratio of problems that can be influenced by risk management



Source: research by the authors

According to the research of implementation problematics done in June and July of 2016, through questioning 50 project managers in Croatia, the number of problems that can be influenced by good risk management is not high, 70% of managers consider that risk management can minimize only a smaller number of problems (chart 1).

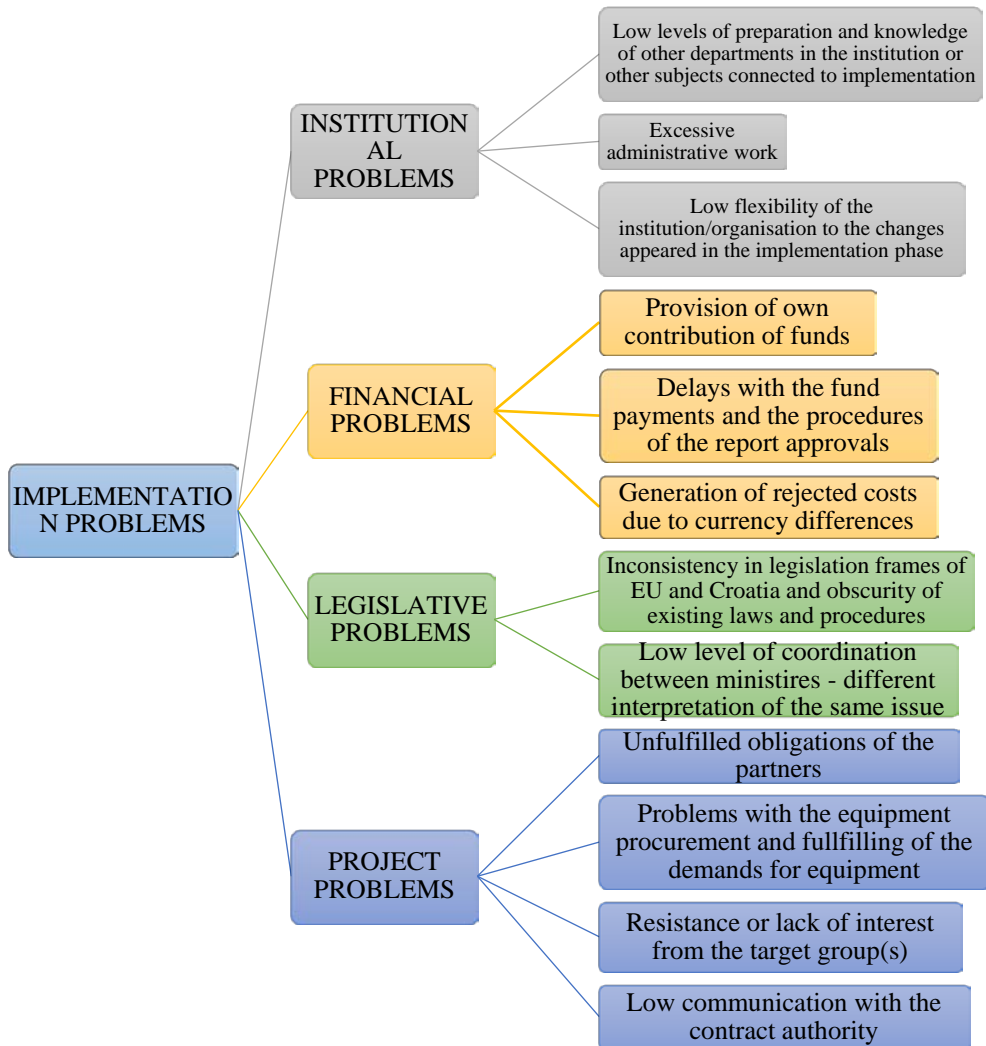
This information points out that a large number of problems during implementation will be completely out of control of the manager. The imposing risk of that affects the entire process of implementation and puts under question the project in its foundation causing time and money loss that not all institutions or organizations will be able to handle with. Also, when we speak of projects, we often speak of national and European sources of funding. Import difference between these two groups will be procedures asked from the beneficiary. While national funded projects will mostly demand national rules, EU will be specific in its unification of procedures and synchronization with the EU procedures. Croatia, being still a young member, has a disadvantage in that synchronization process. While adapted significantly to the EU demands, a lot of blind spots were left behind for implementation managers to stumble upon. The problematic of this is visible from the analysis of the research where 80% of questioned managers defined EU projects as more problematic than national ones.

In whatever way funding is managed, all of the EU investments must be managed according to a very specific set of guidelines. These guidelines are commonly referred to as 'PRAG'<sup>125</sup> and it is crucial that beneficiaries

<sup>125</sup> Practical Guide to Contract Procedures for EU External Actions

have an understanding of the basic principles on which the guidelines are based and know how to use them as a reference source.<sup>126</sup> Procedures of the EU are still not infused into our procedures and this discrepancy causes problems on several levels. The levels of problematics can be divided into four segments of problematic in implementation, institutional ones, financial, legislative and project problems (Figure 1). Each of the groups has its own domino effect and even though many problems will somehow eventually be solved, its effect will shape following activities and by that also the result. This domino effect was also recognized by 92% of the managers that participated in the survey.

Figure 1 - Division of implementation problematics

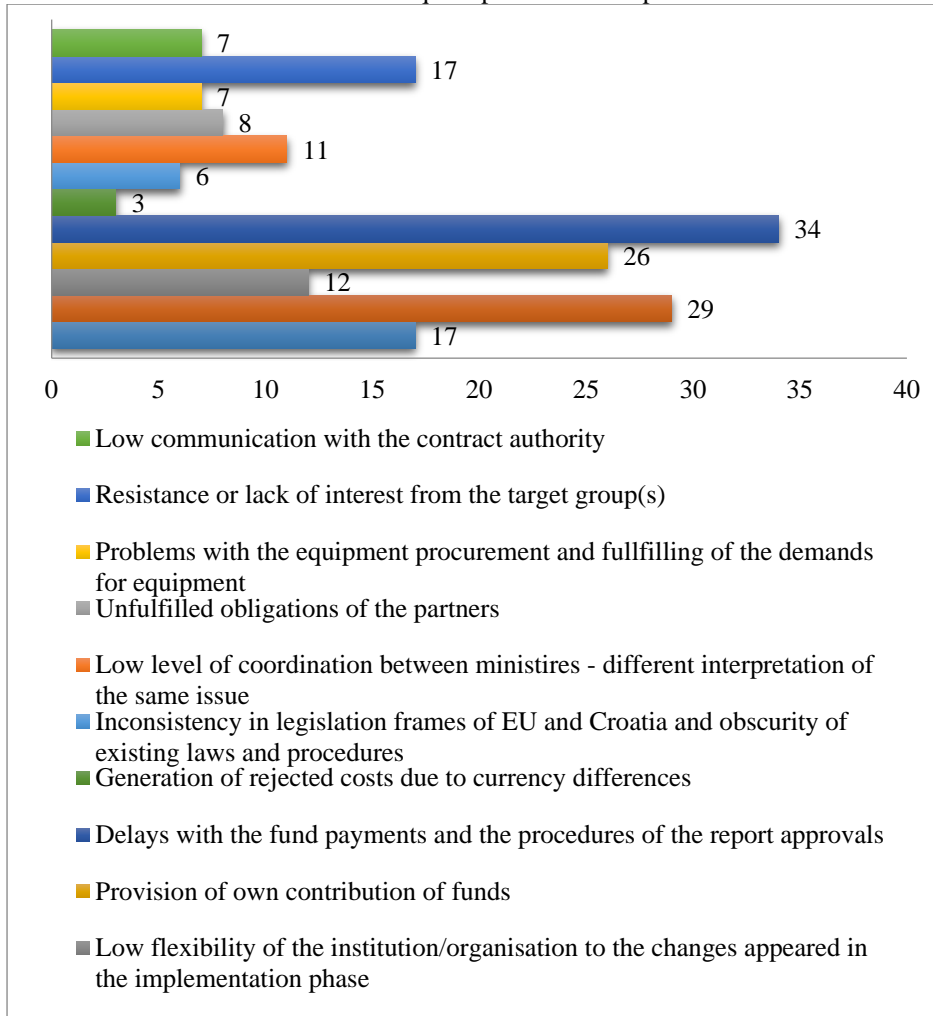


Source: illustration by the authors

<sup>126</sup> TACSO; Developing and Managing EU-Funded Projects, p.17

Each problem will have its own sector or area where it will be encountered more than elsewhere. In the survey, the managers were asked to point out 4 of the most frequent problems they have encountered during implementation of projects. The result of the research shows that managers most often have issues with delays of the fund payments and procedures of the report approvals (34 out of 50 managers, 68%), excessive administrative work (29 out of 50 managers, 58%) and provision of own contribution of funds (26 out of 50 managers, 52%).

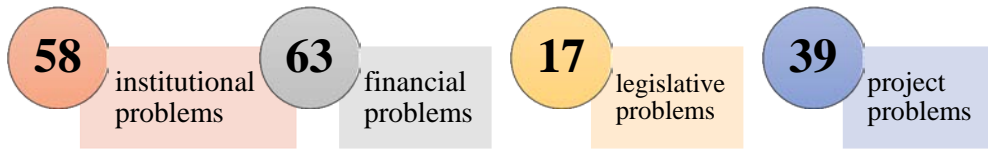
Chart 2 - Most frequent problems in implementation



Source: research by the authors

If we sum all the votes on the problems in implementation, and assign the votes to their group by division in figure 1, we can observe the problematics by its source:

Figure 2 - Problems by groups



Source: research by the authors

As it can be seen from Figure 2, the most votes were given by project managers for financial problems, followed by institutional problems, while project and legislative problems had fewer votes. This result points out the flaws and inconsistencies of the both sides of the process in the implementation, while financial problems are caused by contract authorities, the institutional ones show the lack of preparation from the side of the beneficiaries. Both high problematics groups are the ones that can influence and damage the implementation process and the results the most.

### **Institutional problems**

Depending of the type of the institution or organization, every beneficiary will encounter specific problems evolving from the operational function of the institution itself. Governmental bodies will often be faced with problems due to their division into separate departments. In this structure, implementation process will be spread over a range of departments, each covering its field of action, such as finances, law, PR etc. Even though it may seem that division of work will be faster and put less pressure on the manager, it is not quite true. The manager will in this case be forced to learn and process all of the procedures of the institutions which are often wide and into unnecessary depth that the project itself does not demand. An ambitious level of integration is concerned with creating a culture of learning, stakeholder participation and continuous improvement of performance in order to realize external benefits and to contribute to development. To realize this ambition, focus of the management system has to be on the synergy between customer-based quality, product oriented environmental management as well as corporate social responsibility.<sup>127</sup>

Manager will also be at risk of entirely losing control and overview of the documentation and the way it was processed, and again, some procedures normal for the institution will be completely unacceptable to the project contract authority which will have demand of their own according to

<sup>127</sup> Jørgensen, T.H.; Towards more sustainable management systems: through life cycle management and integration, p.1072



European laws and procedures. What will happen is that the administration over one document will duplicate so all the procedures would be satisfied, and exactly that effect is why the research showed that managers consider excessive administrative work 2<sup>nd</sup> most common problem.

Another problem connected to this structure is the need that appears for every subject working on the project documentation and procedures to be familiar with the EU laws and procedures, which is rarely the case. In governmental bodies, departments are obligated to follow their own practice, and are not familiar or educated for implementation of EU demanded procedure. The financial process in EU projects is very specific and has strict rules for approval of costs, procurement procedure, administration and document filing. These procedures point out a need for not only the manager to be educated and experienced with those procedures, but that all the department who will eventually be involved into the process to also have knowledge of it too. This problem will also occur with the suppliers, partners etc. Their low understanding and knowledge of these procedures can easily endanger the implementation and the approval of costs connected to it. Governmental bodies system is also not flexible or adaptable to EU processes. While the institution has to follow its own budget through the year, including in it the project budget that will change from activity to activity and from report to report, the adaptation and synchronization of those two budgets is nearly impossible taking into consideration that both approval of reallocations in quartal reports and the rebalances and changes of the institution's yearly budget have their own separate deadlines, fluctuations and rules.

### **Financial problems**

Ensuring that adequate time and resources are committed to project identification and formulation is critical to supporting the design and effective implementation of relevant and feasible projects.<sup>128</sup> The main problem of every beneficiary for the European funds is the percentage of own contribution of funds. Listed as number 3 on our table of votes from the manager's survey, this problem will be not only encountered in implementation, but also during application for the funds. It is often that within a project it is obligatory from the beneficiary to prepare, plan and later spend minimum 20% of the project value from their own funds. For non-profit, or public body institution or organization, these 20% can be determine if the project will be applied at all. Ensuring that kind of fund for spending is a problem on its own, having no profit to cumulate the money from, and when we take in consideration, that most beneficiaries' of project funding

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<sup>128</sup> European Commission; Project Cycle Management Guidelines, p.24

will apply in a year 5 to even 50 projects, not knowing if any or most of them will be approved, the money reserved for all of them to be financed by partial own contribution starts to become an extremely large amount. Planning and ensuring own contribution fund is a reason why many good ideas will not even be applied for.

Another financial problem in implementation of projects is often the delay in the payment of approved funding. This difficulty appears because the implementation period begins by signing of the funding contract, which also marks the beginning of the activities. But, the pre-initial funding that is needed to start the implementation is not received for a certain period of time. This means that the beneficiary will either wait to receive the funds and be in delay with activities from the start, or will try to cover the costs of implementation from its own resources, which are often very low, which logically created the need for funding itself. Not only the initial funding is problematic, but also, the procedure of approval of reports, which is mandatory for reclaim of funds, is often in delay. The managers burdened with such situation often implement their projects blindly, not knowing if their previous costs or reallocations proposed have been approved at all. The new system of project funding is also changing. While in programme periods before 2016 the system applied a payment of pre-funding, now the payments are being done specifically according to the first report claim amount. This means that project needs to be implemented from beneficiaries' own contributions in order for them to be refunded after the implementation period for report. This kind of system demand a sort of a beginners investment for the beneficiary, which is often very hard to ensure, especially for the non-profit organizations and governmental bodies who have no profit to put aside for this "investment" for the implementation.

Financial problems in EU project also have another costs imposed to the beneficiaries expenditure list, the currency difference. Many times it happens that the currency set by the contract cannot be applied throughout the duration of the project. The employment of the staff connected to the project as well as some starting costs such as promotion are often mandatory to do before the currency is set by the authority. On each payment another currency is set, which cannot be foreseen which signing certain contracts within the project, such as rents, work contracts etc. This cumulates additional cost for the beneficiary because those generated differences of currency will not be accepted in reports. For projects that last for 20 months and more, that currency difference that maybe at first glance does not seem harmful can over such long period of time, or under high influences of the monetary changes create a problematic and unnecessary cost for the beneficiary, again harming the organizations with no profit to cover such unexpected costs the most.

## **Legislation problems**

Even though Croatia is now a member of the European Union, with adapted laws and legislation system, we have to admit that many of the laws will again or still need to be questioned and transformed in order to meet the requirements set up by the project implementation. The system operates, yes. But the question we come across as managers behind expenses to make, activities to implement, and all that in accordance to EU implementation package we get by signing the contract is how good does it operate? The answer is of course, not good enough. Maybe in everyday life, the country will have no problem with its laws; maybe the system will flow normally. But in implementation, we will encounter lines within our law which cannot be applied for EU procedures within projects. We will find that the labor procedures of our law have nothing to say for the fact that project manager cannot use vacation days when the laws says so, because he will not like most employees be able to leave the project unattended for weeks, but will have to use his days when activities and his Gantt diagram allows him to. Also, that manager will sign a contract with the expiration date same as on the project. After the project ends, the manager will most often work outside of his contract to finish the activities and submit the final report, and the contract authority will expect him to do so. Travels, accommodations, per diems and daily allowances, will be the nightmare of every manager working on a EU project. The national law will have one name for those expenses, and EU another, the state will have taxes on those costs, and EU project will say nothing of it. The databases will have no forms for travel order of a person who is not an employee of the beneficiary, and still, the institution is sending that person to a trip within the project. A participant of the project is an unknown term in our systems, a mystery within our laws and a problem within our implementation. As long as we do not adapt our legislation to this we will stumble upon every step trying to define something that in our system still does not exist.

The Croatian ministries reflect the same discrepancy in double interpretation of our laws. If consulted, one ministry will interpret a certain part of the law in a way that correspond its field of coverage. That same part of the law, if consulted with another ministry will be differently defined by it. If we question the interpretation of a law, according to the specific issue, we cannot call that law well defined or applicable. Its obscurity and nebulosity will cause serious violation due to misunderstanding and will put in question all the work done behind it.

## **Project problems**

Problems caused by implementation itself are maybe the most specific group of all. In this field the manager will encounter various

difficulties, starting from the surroundings he will work with. First of all, those will sometimes be partners. 16% of managers state the unfulfilled obligations of the partner as one of the main problems. It often happens that beneficiaries with lack of experience get included as partners in projects leaving all the responsibility and hard work to their leading partner. This even though, a well designed strategy to cumulate new beneficiaries and users of funds and good principle for spread of knowledge, will also often burden the leading manager into doing all the crucial work. The partnership is supposed to be well distributed and with a strong leader, but the problems appear when partners do not perform their part of the contract. Especially in cases where partnerships are dislocated, even international, this will cause a significant problem. The manager has to keep control and take care of the flow of activities, but he cannot be in several places in the same time, and also cannot implement activities on his own. It is very important that the partners can lean on him and get feedback and instructions on certain matters, but also, it is important that the implementation does not fall on one person because the result cannot be fulfilled in such manner.

Other than the partners, another resistance can come from the target group or groups itself. Soft project mostly aim to raising awareness of specific groups. Even though the entire concept of the project will be in their favor it often happens that people just do not recognize their benefits within the activities. Such lack of interest can lead to unfulfilling of the result itself. If we cannot attract participants into the project we will have no one to implement activities for. The objective will fail and the entire process can be meaningless and waste of time. Approach to the target group is often very important, and also, managers with experience always recommend to do research on interest prior to the application of the project itself.

Connected to all problems stated above, but also many others, communication with the contract authority can easily be a helping hand for all of them, but vice versa also a problem on its own. In implementation it is always important to contact authority and seek for guidance. We rely on our authority project managers to point us in the right direction, or just to advise where to seek for information. The problem appears when we sometimes discover that our contact in authority is not very helpful. It often happens that on our specific question we will get in return nothing more than a fragment of our contract. This will draw a line between contract authority and implementation body and later cause inconsistencies due to nothing more than just pointing the guilt on someone else. When a mistake is made, no one wants to be the person that approver or performed the wrong doing action. But many of mistakes could have and can be prevented with simple communication. There are small letters in every contract and changes within the channels where the project manager cannot easily acquire information.

This is where his contact in contract authority takes his place. That person can and should inform the manager of as much information possible in order to synchronize the actions and documentation in order for both sides to be clear and performed well. The lack of that guidance will always be obvious in a project and its flaws will affect the implementation.

During implementation, a large number of activities of the project manager and the partner will include procurements. EU public procurement policy is a key instrument in establishing the single market and in achieving smart, sustainable and inclusive growth, according to the Europe 2020 strategy, while at the same time ensuring the most efficient use of public funds. Improving the efficiency of public spending and achieving value for money are central objectives for government. Rules have been set up at various levels of government to ensure the best possible use of public funds where public purchasing takes place.<sup>129</sup>

For the 2007-2013 programming period, 349 billion euro was allocated in the area of cohesion policy through the European Regional Development Fund (ERDF), the Cohesion Fund (CF) and the European Social Fund (ESF). A significant part of this money, particularly for the ERDF and the CF, is spent through public procurement. Almost half of all projects in relation to these three funds audited by the Court over the 2009-2013 period involved one or several tenders. Failure to comply with public procurement rules has been a perennial and significant source of error. Serious errors resulted in a lack, or complete absence, of fair competition and/or in the award of contracts to those who were not the best bidders. The audit found that the Commission and Member States have started to address the problem, but there is still a long way to go in terms of analyzing the problem and implementing actions. The Commission has begun to put a range of actions in place since 2010. Legislative actions included the revision of the public procurement directives and the inclusion in partnership agreements of specific conditions for public procurement systems that must be fulfilled by Member States by the end of 2016 at the latest. The Commission also established, in 2013, an internal technical working group and drew up an internal action plan. However, most of the actions in the plan have not yet been fully implemented. Member States only started recently to take comprehensive actions to prevent errors from occurring.<sup>130</sup>

Among other things, EU public procurement rules aim to ensure that the principles and fundamental freedoms in the Treaty on the Functioning of the European Union (TFEU) are observed. This would, in turn, increase competition and cross-border trading, resulting in better value for money for

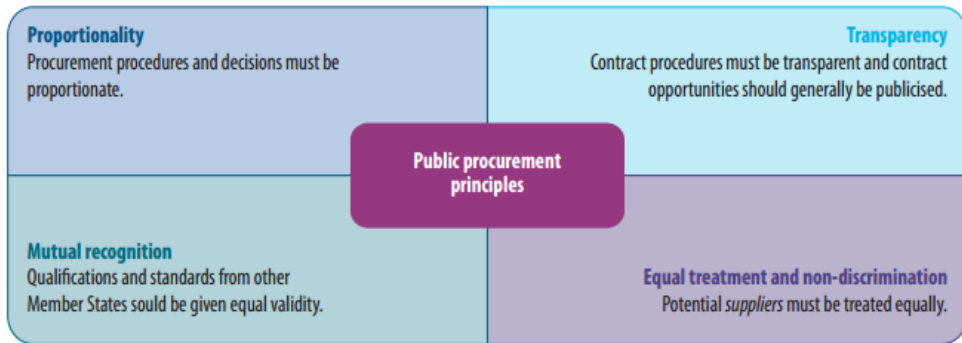
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<sup>129</sup> EUROPE 2020; A strategy for smart, sustainable and inclusive growth

<sup>130</sup> European Court of Auditors; Efforts to address problems with public procurement in EU cohesion expenditure should be intensified, p.8

public authorities, while increasing productivity in the supply industries and improving participation in and access to such markets by SMEs. In short, the rules exist to support the single market, encourage competition and promote value for money.

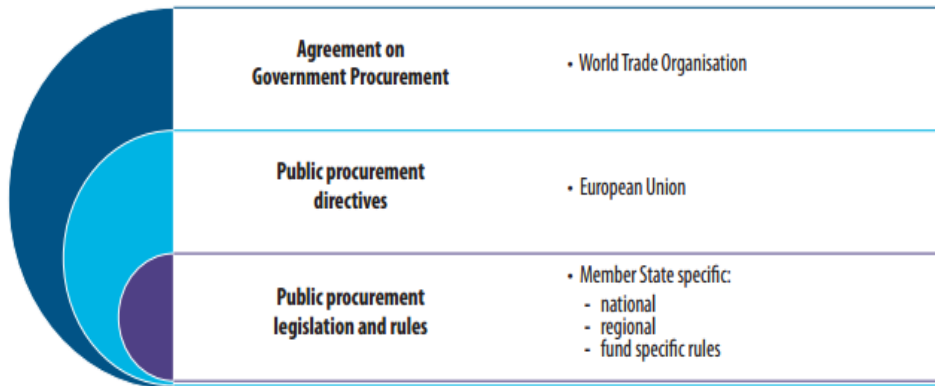
Figure 3 - Principles of public procurement



Source: European Court of Auditors; Efforts to address problems with public procurement in EU cohesion expenditure should be intensified, Special report no.10, Luxembourg, 2015, p.11

According to the special report of the European Court of Auditors, an error occurs when EU and/or national public procurement rules were not complied with. Experiences in Croatia will say that, implementing projects, the problem with procurement is very often to encounter due to legislative problems. The procurement laws and procedures in Croatia are not adapted to those of the European Union, and while they all follow the same objective, the amounts that separate one type of procurement from the other are significantly different. Another problem appears when we take in consideration that public sector has its own rule books and procedures based on the Croatian law, but still, always specific depending of the institution itself. As we can see on figure 2, Governance of public procurement is consisted out of three levels. The problems in project implementation that we mentioned above appear in two places. First of all, in consistency between the bottom two levels, EU and national law, and second of all, within the third level, where we find different procedure specifications in national, regional and specific institutional requirements.

Figure 4 - Governance of public procurement



Source: European Court of Auditors; Efforts to address problems with public procurement in EU cohesion expenditure should be intensified, Special report no.10, Luxembourg, 2015, p.12

Procurement process on its own will during implementation challenge the manager in another way aside from the legislation, and that is through the origin of equipment. The EU projects always demand that all equipment procured from the financial sources of the project have EU origin. The preparation level of Croatian supplier for this rule is still not properly adapted. The manager will during his procurement meet suppliers who are completely unfamiliar with this type of procurement. Their stock are often in lack of European made products, or do not issue statements of origin and other necessary documentation that the manager will request with his equipment. Very often that equipment will be crucial for implementation of certain activities in the project, and when the procurement procedure is either unsuccessful with finding the equipment that fills the term, or prolonged the implementation will also suffer, being either disabled or in delay.

Comprehensive analysis at both Member State level and Commission level has been precluded by a lack of coherent data. There are signs, however, that data on public procurement errors are starting to be collected, or are planned to be collected, in a systematic way. However, analysis of errors is still limited. The Commission has not yet developed a robust, comprehensive database of all irregularities, including those arising in public procurement.

## Conclusion

European funds are a resource of development possibilities. But we often forget that development is not a process founded on monetary value, but quality element. Even though development is almost impossible to accomplish without investments in financial terms, its successfulness will

mostly depend of other elements, attention to detail and adaption to needs of the specific area and its citizens, long-term value and sustainability. In order to develop through our projects, we need to constantly take effect on the problematic that we encountered along the way and what is most important, cooperate. A problem of an individual can become a lesson for the entire group of beneficiaries in such way making a chain of exchange of good practices and eliminating as well as minimizing many problems and supporting the outreach of the risk management. Programmes of 'smart cities' have already recognized the value and possibility in the experiences and partnerships for common objectives. In order to define and solve each problem it is important to also identify its path, from the surfacing of the problem to its escalation. That way, we give each other the possibility to predict difficulty and affect it before it affects the result of the project. Forming official data and analysis the problematic can help in sourcing and pointing out the problem to the body that is able to control it and make necessary step to address the problem. Concerning that according to the research, 76% of project managers considers that project implementing problematic is not being monitored or addressed, it is clear that new steps need to be made to act on problematics in implementation in Croatia.

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# **Preserving Indigenous Culture or Spreading Multiculturalism Across Europe? – Challenges of EU Migration Policy**

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## **Abstract**

One of the main consequences of the globalization process is migration flows. As the world globalizes intensively and borders become open easily the issue of migration raises. Migration has become the defining issue of the 21<sup>st</sup> century. Migration or more appropriately, human mobility is vital for global prosperity. Migrants make contributions not only for their countries of destination but for the country of origin as well, but it still remains to be the controversial issue. Sometimes this process is perceived as a positive and beneficial for the countries, but it might be transformed in a problem as well. It depends on the type of this process. Thorough analyze should be done to investigate how the migrants are treated by each country and deep analyze should be done to see what is the link between the policies and aptitudes of the migrants. It's very interesting to decipher what is the correlation between the existing migration policy of the European Union and the status quo of the migrants, more precisely how effective is the current policy. Particularly, to conclude how paper based regulations/restrictions work in practice and how effective are they. How does the European Union stipulation for the idea "Unity in Diversity", work in practice? Borders themselves may just be lines, but crossing them changes many things. For example, you may find yourself in a totally different cultural surrounding with different religion, food, language or money. Being born one meter to the right or to the left of this artificial line determines us. It is so bizarre to think that one kilometer can change all of your life.

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**Keywords:** Migration policy, cultural diversity, globalization

## **Introduction**

Migration as a phenomenon always existed, however in the recent period it has become tightly linked to the process of globalization and its effects. Approximately 175 million people, including 10.4 million refugees, reside outside their home country, or put another way, one out of every 35

persons in the world is a migrant. There is no longer a single state that can claim to be untouched by human mobility.<sup>131</sup> The migration has always existed as a process but in the recent period it has changed its pattern and has been transformed in a crisis.

The forces driving migration are many and complex, but moreover people change their locations in order to improve their economic prospects, to ensure a more secure living environment, to re-unite with their family members or to avoid persecution in their country of origin. Relocation of the people is one of the results of the process of globalization. The process of globalization not only means free mobility of capital and goods, but it also means movement of the people. As boundaries become open through the process of globalization substantial international flows of people move from one country into another.

Migration policies have been created in order to restrict migration on some level. Simultaneously, worldwide the legislation towards migration is being liberalized or toughened. It's the choice of the countries. Many countries are tightening their migration policies to separate desirable and not desirable migrants. Countries realize that on the one hand, they should open boundaries in order to have investments, that it's fruitful for their economic growth, that but on the other hand, they have to protect borders, not to have illegal migrants, not to have population imbalance or trafficking. It's out of question that migrants contribute to the economic growth of the recipient country, but it could create a problem and become a threat for the domestic workforce. The authorities realize that they should cooperate with each other and with international organizations in order to manage the process of migration properly, otherwise it would be very hard to control the flows. Noteworthy to mention that, many people are moving but even more people have desire to go abroad. Moreover, migration is not seen as a negative process, but it should be reasonably controlled by the authorities. Sometimes migration policies fail when they are based on a short-term view of the migratory.

Globalization somehow transformed the character and type of migration. In the previous decades, people moved mainly with the intention of permanent settlement. Recently this trend has been changed and now circular movement is characteristic. Previously, the policies towards migration have become tight, but now the countries as well as international organizations realize that the only restrictions are not the outcome and they should investigate the reasons, causes of migration.

Boundaries have never stopped changing through the centuries. Borders have never been static and are changing even now. Do borders

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<sup>131</sup> Eighty-sixth Session of the IOM Council: "Migration in a Globalized World".

matter? Old frontiers disappear, new appear. They vanish and come into sight, they are drawn or redrawn. The negotiation of identify difference has become a challenge to democracies nowadays, therefore preserving humans cultural and cognitive boundaries are the precious values. Integration via migration processes is necessary for the development of the countries, for creating cultural diversity. However, prudent steps should be taken these processes not to become threat to the national identity. Borders should have been managed in order to facilitate the movement of people, they are needed to reduce the risks connected to increased mobility. Borders should be managed so properly to achieve endeavor for creating this process of migration beneficial for all the countries.

Let's try to figure out how current European Union policy on migration works to ensure to serve the above mentioned purpose without difficulties. It's interesting to analyze why and in what aspects current EU migration policy fails and what changes are already announced by member states to take place. Some of the announced possible ways of solvency couldn't have been imagined while initiating the common migration policy. It is interesting to analyze if it is this the case when reality obliges and stipulate officials for change. Nowadays there is an ongoing debate that EU has to rethink its migration policy and asylum policy as well. The tragic facts became so common in recent period that it made officials and the nations to rethink how the EU migration policy works. One of the questions arising is why states come with initiatives individually to tackle mass influxes of migrants and if this means that common policy fails in this direction.

Membership of EU means equal coexistence, collective decision making and the balance of power. Which are predominant and foundational principles of the European Union. When the states try to sophisticate or improve common policy it's a different fact, but in this case when states individually try to stipulate for global change it means that the existing common policy fails.

Based on the above mentioned the hypothesis can't be developed that whenever states start to tackle mass influx of the migrants individually via different initiatives it means that common policy fails.

In many cases in international relations and politics in general the answer of a country's behaviors lies not on the surface and therefore we have to decipher existing signs in order to fully apprehend concrete intentions and real implications of their behavior. In the following research we will try to investigate facts which are hidden.

Content and speech analysis of politicians and official persons, who are involved in the decision-making process indicate on the above mentioned trend also. Official announcements and speeches made in mass media or printed media will be carefully analyzed. Also quantitative empirical

analyzes statistical data reveal general tendencies of increase of the mass influx of the migrants. The numbers are important when it comes to the migration management.

The reports and surveys of the international organizations for migration International organization for Migration (IOM), United National High Commissioner for Refugees (UNHCR), International Center for Migration Policy Development (ICMPD) to represent how common became the tragic facts in the recent period. Numerical data and statistics represent increased rates and mass influx of the migrants. Inclusion of publications of international European institutions, such as the European Commission, the European Council, Global Commission for International Migration, COMPAS, etc. emphasize that also. This is not a fact that only happens once, unfortunately we can generalize this issue and can speak about the increased scope of the issue when bearing in mind the other tragic facts like: At least 1,500 people drowned or went missing while attempting to reach Europe via the Mediterranean in 2011, according to the UN. From 1998 till 2013, 623,118 migrants have been found to reach the sea shores of the EU irregularly, representing an average of almost 40,000 persons a year. According to IOM Mediterranean update in 2015 there have been 704, 227 arrivals by sea in 2015 among them 3, 257 missing or dead. In October 2013 within a period of only ten days, almost 400 refugees drowned in the Mediterranean Sea on their way to the European Union. The European Union has come under pressure to revamp its immigration policies in the wake of the Lampedusa tragedy<sup>132</sup> that led to the deaths of almost 400 people in Italian waters. Mediterranean became a "watery graveyard". Countries started to offence each other in the recent period. The magnitude of the disasters around Mediterranean and the awareness it raised about the unacceptable risk faced by migrants smuggled by sea to Europe triggered unprecedented reactions. Offending each other won't lead to problem solving, it's important countries member states of EU to have common approach to tackle the mass influx of migration. This is an issue of solidarity. Even though the EU has abolished border controls between most of its 28 member countries have a common migration policy nowadays they have started to rethink on the other ways of solutions. The current focus of documentation, thus will lie on news releases, official announcements, policy briefs and working papers, web, electronic resources, online publications and online libraries regarding migration policies at the European level.

Most of the literature comprises the themes: causes developments and impacts of migration, asylum and refugee policies, irregular migration and

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<sup>132</sup> <http://www.spiegel.de/international/europe/lampedusa-tragedy-prompts-calls-for-eu-to-amend-asylum-agreement-a-926453.html>

human smuggling and trafficking. In order to prove my hypothesis the data on the initiatives by states to tackle mass influxes of migrants individually looks as follows. Some of the examples are stated below:

➤ In the end of 2014 Austrian Chancellor Werner Faymann signaled an openness to an overhaul of the current system. He announced that EU should put together a system of quotas for the allocation of refugees across member states, he said. Extra financial aid to countries at the EU's external borders was just a temporary solution.<sup>133</sup>

➤ In September 2015 both German Chancellor Angela Merkel and French President Francois Hollande, vocal supporters of a refugee redistribution program<sup>134</sup>, called on their fellow European nations to help shoulder the responsibility for the unprecedented amount of refugees arriving in the European Union. Fresh tragedy in the Mediterranean, after at least 13 refugees - six of them children - drowned off the coast of Turkey.

➤ Unity eludes EU for Relocation – The migrants crisis also touched the Belgium According to the last quota –in 2015 according scheme Belgium expected to 4, 500 migrants.<sup>135</sup> Expectations were very close to reality.

➤ On October 25 2015 the leaders of EU have met in order to have discussed sharp division on the migrant crisis in Balkans. The content of this urgent meeting was to call countries to stop waving migrants without agreements to their neighbors.<sup>136</sup>

➤ On 2015 12 November it has become declared that because of the migration crisis Sweden would have made border control. It was declared by Minister of Internal Affairs by Anders Igeman. In Sweden the number of migrants has reached its record which becomes threat to the well-being of the whole society. According to the Deutsche Welle in Sweden starting from the beginning of the September the country has received more than 80 000 migrants.<sup>137</sup>

➤ “What the Paris Attacks Mean for Europe's Free Borders”, Border Europe”, “Europe’s Open Borders are Dying” the articles and blogs with these titles became very common within the recent days. After several devastating terror attacks hit Paris on 13 November 2015<sup>138</sup> French President Francois Hollande closed country's borders. It seemed like a drastic step for a country that is part of the Schengen zone in Europe and has not had

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<sup>133</sup> <http://www.wsj.com/articles/SB10001424052702304069604579157073289778850>

<sup>134</sup> <http://www.dw.com/en/merkel-and-hollande-call-for-refugee-distribution-quotas-in-europe/a-18692857>

<sup>135</sup> <http://www.internationalpolicydigest.org/2015/09/17/the-migrant-crisis-comes-to-belgium/>

<sup>136</sup> <http://www.bbc.com/news/world-europe-34631365>

<sup>137</sup> <http://www.newsjs.com/ng/sweden-implements-temporary-border-checks/>

<sup>138</sup> [http://live.reuters.com/Event/Paris\\_attacks\\_2?Page=0](http://live.reuters.com/Event/Paris_attacks_2?Page=0)

systematic border checkpoints in years. France has not closed its borders, but rather reimposed border controls. This is normal security protocol, but also a worrying sign for the future of a free Europe. European Commission President Jean-Claude Juncker has described free movement as “a unique symbol of European integration.” He has also said that Europe needs an overhaul to its disparate immigration policies if it is going to preserve freedoms such as open internal borders. The deadly mass killings in Paris will not help matters: Italy has already reintroduced border controls since the attacks, with the heaviest security falling along its border with France. Belgium and Holland also imposed restrictions.<sup>139</sup>

➤ The horror story of the 2016 was terrorist attacks in Belgium, Brussels. On 22 March 2016, three coordinated nail bombings occurred in Belgium: two at Brussels Airport in Zaventem, and one at Maalbeek metro station in Brussels. In these attacks, 32 victims and three perpetrators were killed, and over 300 people were injured. Another bomb was found during a search of the airport. Islamic State of Iraq and the Levant (ISIL) claimed responsibility for the attacks. The bombings were the deadliest act of terrorism in Belgium's history. The Belgian government declared three days of national mourning. These terrorist attacks once more indicated the need security measures to have been increased.

There is auxiliary material on the issue of migration mostly we have analyzed recent publications, among them are while preparing my research topic are the following:

“Theories of International Migration” by Douglas S. Massey, Joaquin Arango, Graeme Hugo, Ali Kouaouci, Adela Pellegrino, J. Edward Taylor Source in which are explained the theories and essence of international migration itself.

The publication of International Migration Institute particularly the article by Haas it is useful in order to perceive the process and pattern of migration as a whole. It is useful to analyze “The experimental Approaches in Migration Studies” by David MacKenzie in order to deepen knowledge how to make research more comprehensive.

IMISCOE textbook “An introduction to International Migration European Perspective” by Martiniello Marco, Rath Jan is also beneficial. In the book mainly is enshrined idea of European experience considering historical, empirical and theoretical perspectives. From IMISCOE report

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<sup>139</sup><http://www.independent.co.uk/news/world/europe/paris-attack-france-may-have-closed-its-borders-but-in-reality-its-unable-to-control-them-a6735211.html>  
<http://www.citylab.com/crime/2015/11/what-the-paris-attacks-mean-for-europes-free-borders/416010/>

series “The Local dimension of Migration Policymaking” by Borker Maren, Caponio Tiziana will be carefully analyzed.

We accessed European Migration Network (EMN) for the annual country reports and statistics. The aim of the reports is to outline most significant political and legislative development in the EU member states. The recent publication of November of International Migration Institute “Rethinking Emigration: Turning Challenges into opportunities” by Demetrious G. Papademetriou will be accessed. The publication by Migration Policy center “The EU needs a new narrative on migration. Will the European Agenda on Migration meet the challenge?” by Fillipe Fargue will be also analyzed.

### **Conclusion**

We tried to analyze correlation between the official statements and the real aptitudes of the politicians towards this issues and tried to decipher the reasons why states have started to deal with the migration crisis individually with their own initiatives, whereas having one common and shared policy for all the members of EU.

We came to the conclusion that European Union stipulates for the idea “Unity in Diversity”, but how this motto works in practice. Which means that disappearing and vanishing frontiers leads to the integration. Of course the identities of the nations are preserved, no radical transformations exist in cultural or social aspects but to maintain the uniqueness and “self” becomes more and more difficult and a challenge. But on the other hand merging created diversity and enriches the original cultures as well as social patterns.

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# Postgraduate Student Throughput at the University of Ghana

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## Abstract

A common thread in contemporary research on student throughput trends at higher education institutions refers to the ways in which the various stakeholders at institution of higher learning institutions take important decisions to ensure a better completion rate (throughput) among postgraduate students. To promote further appreciation of throughput among postgraduate students, this paper, based on an empirical study among a number of postgraduate students at the University of Ghana, reviews some trends and possible factors that might play a role in postgraduate student throughput at this university. The outcomes of this study show that student throughput at this institution has decreased over time due to financial difficulties; personal challenges; less opportunity for students to get study leave from their employers; and so forth. The paper concludes with recommendations to improve student throughput at postgraduate level. Among these recommendations is that they go for academic counselling before enrolling for postgraduate studies; and that a postgraduate fund be established to assist them financially.

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**Keywords:** Postgraduate. Throughput. Ghana

## Introduction

There is a growing concern at institutions of higher learning worldwide about issues such as the quality of postgraduate training; the length of time it takes for postgraduate students to complete their studies; the success rate of postgraduate students; and the high percentage of postgraduate students who terminate their studies and drop out of the system before graduation. In view of these and other similar trends throughout the world, studies on the duration of postgraduate studies and concerns about shortening the time students take to complete their postgraduate studies have become matters of utmost importance, not only to students and managers of higher education institutions, but also to governments, funders of postgraduate studies and other stakeholders in higher education. Several of



these studies expressed concerns about problems with postgraduate education and specifically about the time students take to complete their studies (cf. Holdaway et al 1995, Sayed et al. 1998, Lessing and Schultze 2012, Amehoe 2014).

A number of studies have been conducted into enrolment and student throughput at higher education institutions in Africa, by the World Bank; the South African Department of Education; the Association of African Universities; the United States Partnership for Higher Education in Africa (PHEA) and the Centre for Higher Education and Transformation (CHET) to mention but a few. In addition, the Higher Education Research and Advocacy Network in Africa (HERANA) with its' project on higher education and development, has been involved in research on the status of postgraduate enrolment and throughput at higher education institutions and the impact it has on world economies (Luescher-Mamashela 2015).

All these studies confirm that both student-related factors and institutional factors have an impact on low student throughput and students who take long to complete their postgraduate studies, or do not complete their studies at all ( Latona and Brown 2001, Carey 2004, Manathunga 2005, Shushok and Hulme 2006, Lovitts 2012, Amehoe 2014, Luescher-Mamashela 2015). But what is student throughput and how can it be conceptualised?

### **Conceptualising student throughput in postgraduate education**

The earliest studies of postgraduate throughput and retention in postgraduate higher education occurred in the United States in the 1930s and focused on what was at that time referred to as student mortality: *The failure of students to graduate* (Berger and Lyon 2015: 16). Historically higher education research always focused on solving students' problems regarding mortality (Shushok and Hulme 2006). To this end, much more research exists on why students fail to persist as opposed to why they succeed. By focussing on what students are doing right instead of what they are doing wrong, might illuminate new aspects of successful student experiences which can be applied to support all students (Amehoe 2014).

Researchers and scholars' comprehension of the meaning of the concept 'throughput' depends on various situations; and, for this reason, various terms have been developed over time to describe the different throughput situations. The use of the term 'throughput' may be traced back to attempts by quasi-academics and politicians to equate the success or completion rates of students at higher education institutions to the input and output concept in industry. This is similar to the conveyer belt syndrome of a factory, the success rate of which is determined by the quantum of output released through a revolving door (Clifford 2014). With this perception in

mind, MacMillan (2007: 237) defines throughput as *the amount of work, people, or things that a system deals with in a particular period of time*. Some other definitions of throughput go beyond the input and output production concept of industry which appears to be limited to goods or products and consequently involves the number of people a system deals with in a particular period of time. Horne and Naude (2007) defined the throughput rate at institutions of higher learning as the percentage of students who registered for a module or course and passed the prescribed examination. Authors such as Craincross (1999), Latief and Blignant (2008), Hauser and Koenig (2011) and Amehoe (2014) concluded that the most simple description of student throughput is the number of years a student takes to complete the prescribed examinations.

The concepts that underpin student retention and departure have been illustrated by scholars in various models of which Tinto and Durkheim's models are the most well-known (Draper 2008). The publication of Tinto's 1975 landmark student integration model demarks the start of the current international dialogue on student retention and student throughput (Tinto 1997).

This model theorises that students who socially integrate into the campus community increase their commitment to the institution and are more likely to graduate (Tinto 1975). While Tinto's model has been supported, attacked and revised over the last 30 years, it has significantly influenced how researchers and practitioners view postgraduate student retention and graduation (Swail 2014). Tinto's seminal theory created a base from which thousands of studies have followed, making postgraduate student retention one of the most widely studied areas in higher education today (Berger and Lyon 2015). Tinto's 1975 model was followed in 1993 by a second model of him, this time on student departure (Tinto 2007). This model states that to persist with their studies, students need integration into formal and informal academic systems as well as into formal and informal social systems (Draper 2008, Demetroiu and Sciborski 2012).

Tinto's 1975 student integration model has changed over the course of the 35 years from when it was originally introduced. Most notably, its more recent versions have included motivational variables including goal commitment. Over the last decade motivational theories from multiple fields of study, including educational psychology and social psychology, have been applied to practice, theoretical developments and the study of postgraduate retention. In particular, the attribution theory of motivation has been notable in practice and in the retention literature. Additionally, expectancy theory, goal setting theory, self-efficacy beliefs, academic self-concept, motivational orientations and optimism have been used to gain understanding into

postgraduate student persistence and retention (Habley and McClanahan 2014).

This model explains in no uncertain terms the reasons behind student retentions and student departures at institutions of higher learning by identifying and explaining three major sources of student departure from the system, namely academic difficulties; inability of individuals to resolve their educational and occupational goals; and students' failure to become or remain incorporated in the intellectual and social life of the institution. The central idea of the model is that of 'integration'; it claims that whether a student persists or drops out is quite strongly predicted by their degree of academic integration (personal development, enjoying the subject, academic self-esteem and identification with academic norms and values) and social integration (how many friends they have, personal contact with academics and their enjoyment of study).

Holistic approaches to student retention include all stakeholders carried over from the late 1990s to the early 2000s. Retention literature from this time stresses cross-departmental institutional responsibility for retention via wide-range programming (cf. Kadar 2001, Lehr 2004, Salinitri 2005, Walters 2004, White 2005). These studies emphasised that all programmes and initiatives designed to support postgraduate retention should deal with formal and informal student experiences inside and outside the classroom. Habley and McClanahan (2014) reiterated that the interactions students have with concerned individuals on campus (faculty, staff, advisors, peers, administrators) have a direct impact on postgraduate retention.

To this end, Tinto (2010) suggested that to improve postgraduate retention, all higher education institutions must offer easily accessible academic, personal and social support services. The interactions students have on campus with individuals at academic, personal and support service centres can influence their sense of connection to the institution and their ability to navigate the campus culture; meet expectations and finally graduate. An institution that holds high expectations and actively involves students in its learning creates an environment where students are more likely to succeed (Demetroiu and Sciborski 2012).

In conclusion, throughput is all about making adequate provision in the academic environment to help students complete their studies on schedule; to improve their success rates in the various programmes; and prevent them from dropping out of system. This involves certain strategies geared towards retaining students and making their experience fulfilling on a sustainable basis.

### **Factors related to student throughput**

The conceptualisation above reveals the significance of throughput studies in higher education. Among the important institutional strategies that can correct negative consequences associated with low throughput rates at an institution are to increase success rates and reduce dropout rates. A low throughput rate results in time spent by lecturers on students who do not complete their courses in time; negative perceptions of the image of the institution; and a loss of money time and lower self-esteem on the part of the student (Bischoff 2005, Visser and Hansio 2005).

Governments have always embraced investment in higher education because they recognise that there is a close link between research and economic development and they are therefore interested in funding postgraduate programmes, especially doctoral programmes. Such funding takes the form of grants allocated either to institutions or directly to students; and such grants are catered for in national annual budgets. In Australia, Canada and the Nordic states, doctoral education is free; the fees are sponsored by a number of stakeholders. In other countries, such as Thailand and Japan, loans are available to students on postgraduate level. Such stakeholders are, therefore, concerned about throughput and attrition trends. Attrition and completion rates of postgraduate students are becoming statistics of vital concern to governments and funding agencies because they tend to rely on a performance-driven model to make informed judgments about higher degree research (Eggins 2008, Lessing and Schultze 2012, Amehoe 2014).

Studies by Jiranek (2010), Wamala et al. (2012) and Amehoe (2014) revealed factors such as field of study; attendance mode (part-time or full time); scholarships; and technical difficulties experienced in the course of research all have an influence on the time research master's and doctoral students take to complete their studies. Several other most often cited variables in student throughput also include academic and social integration and engagement, financial independency and demographic factors. These factors have been found to directly or indirectly influence students' ability or desire to graduate. In addition, the quality of a student's prior instruction and his/her preparedness for postgraduate level work can significantly influence whether or not he/she will succeed at an institution of higher education (Habley and McClanahan 2014). Jiranek (2010) divides these factors into the following two broad categories:

- **student qualities and personal situations** (referring to academic ability, financial situation, language skills, interpersonal skills and persistence)
- **resources and facilities available to students** (referring to materials, equipment and expertise).

Nevill and Chen (2007) singled out financial support as the main factor contributing to students' ability to complete doctoral degrees; and established that many postgraduate students in the USA are unable to balance work, family and educational responsibilities simultaneously. But what is the situation in an African country such as Ghana as far as student throughput is concerned?

### **Objectives with the study**

The ultimate goal of any study on throughput is not only to contribute towards ensuring that students complete their studies on time, but also to ensure that the number of students who complete their studies within accepted time limits keeps rising steadily. Studies on throughput therefore seek to identify and understand the reasons why students take long to complete their studies or fail to complete their studies (student dropout situations). Apart from identifying and understanding the reasons, throughput studies also seek to recommend solutions to ensure improved completion rates and that dropout rates are kept very low at the same time maintaining or increasing the success rate. The aim of this study is therefore to investigate the possible causes of delayed completion and non-completion among research postgraduate students at the University of Ghana; and to recommend ways in which these situations can be improved. The research question for this study can be phrased as follows: **Which specific factors influence throughput rates at the University of Ghana?**

### **Methodology**

This study represents a case study at the University of Ghana in Accra. The population for this study consisted of research masters' and doctoral candidates who completed their theses between 2010 and 2014, but not in the prescribed time (extended candidatures) and their supervisors. The former postgraduate students were purposefully selected from the graduation classes of this period because the cohort of students belonged to the period prior to institutional interventions towards improving postgraduate delivery at the University of Ghana.

Purposive sampling was appropriate for this study because the study sought to investigate a phenomenon within a specific time frame (Twumasi 2001). The sample used for this study was ten former master's students (coded MS) and 10 former doctoral students (coded DS) who completed their postgraduate studies during the period mentioned above, although not in the prescribed period, and five supervisors (coded S) who supervised the sampled students. Face-to-face interviews were conducted with the participants.

There was no voice recording of responses which enabled the respondents to speak freely on the issues raised. Issues related to confidentiality and accuracy of note-taking was taken seriously during the research. Structured interview schedules were used with adequate space provided after each open-ended item to facilitate responses. Thereafter, follow-up interviews were conducted to obtain further clarification on some responses. The respondents were reminded on a weekly basis to complete interview schedules by means of electronic mail, telephone calls and personal visits by research assistants. The services of record offers were sought to retrieve the files of the students selected for review from the archives of the School of Graduate Studies at the university. Each file was thoroughly read from the first to the last document. In this process noted relevant data of issues such as date of first registration; appointment of supervisors; thesis topics; the date on which the thesis were submitted; the date on which the oral examination or defence was held; and the date of graduation.

The structured interview schedules for both students and supervisors were pre-coded. By coding the items, it was possible to count frequency of responses in terms of ideas, themes and words. It also made it possible to categorise items; identify patterns and variables; and synthesise various accounts into coherent evidence from the responses. Written responses to some of the interview questions and responses to open-ended questions in the questionnaire were analysed qualitatively by keeping track of the responses given and teasing out the meaning of ideas expressed by the respondents into coherent themes. It was possible for the researcher to distinguish between dominant views and minority views and themes that emerged from the responses, since the structured interviews and open-ended interviews were coded. Some responses to the structured interviews were reproduced verbatim in order to support specific characteristics that emerged from the accounts.

Through document analysis, very useful data were obtained from the selected case files. These records provided documentary evidence of the experiences of student respondents and a clearer understanding of the situations described by the respondents. Themes were derived from the summarised data on each of the case files for analysis and discussion.

Reliability is assured when the same results would be obtained if the research were repeated and validity when research measures what is intended to measure (Bovee and Thill 2011). Interviews allow the researcher to follow up on misunderstood items and inadequate responses, which generally promotes validity. In light of the above information, all the interview schedules were self-administered which offered the opportunity to pose follow-up questions to the respondents personally. Another way of

ensuring instrument reliability and validity was to carefully construct interview schedules to ensure that each question is related to the research topic; and to adequately cover all aspects of the research topic in the research questions. The use of interviews and document analysis for data collection ensured triangulation, which further underscores the reliability of the research.

Patton (2002) proposed a simplified model of seeking the consent of respondents and interviewees in qualitative surveys, suggesting that opening statements should be designed in a manner that would provide answers to questions such as: What is the purpose of collecting the information? How will it be used? What questions will be asked in the interview? The consent of all potential respondents was sought beforehand by emailing consent letters to them. This was done to introduce the researcher and explain the reasons for seeking the respondents' views in the subject area so that they would feel free to express their views.

To disabuse respondents' minds of any doubts concerning the research, the purpose of the research was indicated in the prior consent notices and on the questionnaire. Tape recorders were avoided; and the interviews were held without the presence of other people. The prior consent of all interviewees was sought in writing; therefore establishing a good rapport before, during and after the interviews. Confidentiality was also ensured by re-assuring the respondents at the beginning of the interview that their responses are strictly confidential and would only be used for the purpose of the research. Finally, the respondents were also given the opportunity to ask questions to clarify any doubts in their minds about the study.

### **Findings and discussion**

The interviews revealed a number of reasons or causes of extended candidature among postgraduate students at the University of Ghana. The interview responses and open-ended statements pointed to specific causes which were analysed and grouped into four main themes for ease of reference, understanding and relevance to the objectives of the study, namely time, personal circumstances, distance from campus/supervisor and finances.

### **Problems with time**

Most postgraduate students who combined studying with work were not able to devote adequate time to their studies. The qualitatively data and student case files of extended completion students clearly indicated that the students had full time jobs at the time they enrolled for their studies. The challenge of managing time for work and study rested with the students. One doctoral student (DS1) replied in this regard: *I was combining my job with*

*numerous other commitments, this was not easy, I which I could have done it another way, One of the master's students (MS3) stated as follows: My problem was time, if I had enough time I would have completed in the prescribed period.*

As with other postgraduate students worldwide, their job demands clearly made it difficult for them to complete their studies in the designated time frame. A doctoral student (DS5) explained: *Although I was officially on part-time study leave I didn't have free time assigned to do the thesis, so I combined full-time work and periodically did the work on part-time.* Another participant, a master's student (MS7), commented that: *most graduate students work to provide for themselves and their dependents, this makes it difficult from them to concentrate on their academic work.* One of the supervisors (S1) added that *the main problem was with students not working hard enough on their theses because they were working elsewhere.*

Evidence in two student case files (DS4 and MS2) showed that the students did not complete their studies on time due to time constraints. They had to juggle their studies and work and could therefore not make progress. One supervisor (S5) commented in this regard: *Students couldn't complete data collection because they were working; sometimes students get employed in their thesis year and drop out. Others simply lacked focus or didn't set the right priorities.* Another supervisor (S3) shared her opinion: *one of my students in my department was incapable pursuing a PHD even though she had sufficient background qualifications, while another one (S1) added: My one student was simply not focused and consistently expended his energies on other things (moonlighting) instead of completing his research.*

It is evident from the personal confessions of students and their supervisors that this obstacle of a lack of time resulted in a challenge for them and therefore prevented them from completing their research works and submitting their thesis on time, with the consequence of delayed or extended completion.

### **Personal circumstances**

In addition to time constraints, personal circumstances were cited as another main and contributing obstacle to successful completion of studies. Evidence in three student case files (DS10; DS5 and MS2) indicated unexplained circumstances and inability on the part of students to communicate their challenges which resulted in lapsed candidature or non-completion of their studies. When these three respondents were questioned about the issue, two were prepared to elaborate. One of the doctoral students (DS5) stated the following: *I had problems with my marriage, therefore I could not focus on my study, I had to save my marriage, this was more important at that time.* A master's student (MS2) added the following: *I had*



*health problems for two years, this has made it very difficult for me to focus on my postgraduate studies; I had to take extension due to ill health, I had surgery.*

Personal challenges such as family constraints or misplaced priorities like to become involved in more lucrative ventures (moonlighting); employers' inability to grant student study leave; and poor performance at the course work stage in the instance of master's students were also cited as reasons why they did not complete their studies on time. The inability of some students to communicate the difficulties they encountered during their studies also contributed to non-completion or dropping out of the system. One student (DS10) explained as follows: *I did not know where to go; I had personal problems and issues that I could not discuss with my supervisor or other students; I did not have any support structure.*

### **Distance from campus/supervisor**

Besides these personal challenges such as family demands (especially from students who were married) and health issues, qualitative data from student responses also revealed other issues such as the lack of access to libraries and internet services due to the distance between their residences and institution of study as reasons for slow throughput. One student (DS2) commented in this regard: *I was stationed in a very deprived area where I had difficulty in accessing good libraries and internet services, while another one (MS5) stated: I just wish my supervisor was closer to me; it was such an issue to visit or even contact him; he was so far.*

### **Finances**

Most postgraduate students were unable to get financial support for their studies due to inadequate sponsorship opportunities or sources of funding to meet the high costs of research, especially in the sciences. One student (MS4) commented: *I had to ask for extension due to lack of funds to conduct field research in good time, and this results in the late return of results for samples sent abroad for analysis.* Another student (DS7) added: *I could not complete on time because I had to start working in the factory when my father had a fatal accident and could no longer assist me.* A supervisor (S2) replied: *Students with financial problems were engaged in full time or part time employment, and it appears some students wanted to guarantee themselves reasonable job security on completion of the program.*

Another issue cited by respondents was the high fees charged for postgraduate studies at universities. One student (DS4) stated the following: *We are charged way too much. Government should force our public universities to charge realistic fees.* One supervisor (S4) with supervision experience in other countries added: *The model in countries which allowed*

*its universities to charge full fees for certain market driven and highly sought degrees and afterwards returns such full fees to assist the needy or sustain the less subscribed disciplines, may be considered for Ghanaian public universities.* In this regard it is worth noting that some private institutions of higher learning in Ghana are already making great strides in this direction.

The lesson to be learned from these discussions is that all students interviewed encountered personal and other problems during their candidature. The challenge is how they should handle these issues so that they do not escalate into more serious problems with adverse consequences like their ability to complete their studies on time.

### **Conclusion**

A historical look at postgraduate retention revealed that empirical study of this phenomenon had grown considerably over the last 50 years. Researchers are concerned about the variables related to student persistence on post graduate level and identified best practices to encourage degree attainment. Tinto's theory of student retention remains a seminal theory important to the field; however, applications of motivational theories to postgraduate retention over the last decade had brought many new and interesting perspectives to retention study and practice. Specifically, practitioners such as academic advisors have been interested in attribution theory.

Additionally, recent retention research used theories of expectancy, goal setting, self-efficacy, academic self-concept, motivational orientations and optimism. Research on optimism and individual strengths and focus of the positive psychology movement, had been a notable addition to the study of student success in postgraduate studies.

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## **The Effect of Global Warming on Tea Production. Case Study of PTPN XYZ in Indonesia**

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### **Abstract**

National consumption for tea in Indonesia is about 145 thousand (tonnes) annually with an increasing rate of 1.57 percent per year. Although the consumption rate has increased, national tea production has steadily declined over the last 10 years. Increasing temperatures due to climate change have been put forward as a contributing factor to the decline of tea production. In addition, the area of land used for tea production has decreased to make way for both housing development projects and other forms of cash crops. The conversion of land used for tea into other crops is in turn linked to increasing temperature and unstable weather conditions that aggravate tea production. Thus increases the cost of tea production and motivates tea plantations to switch to palm oil production or horticulture which produces higher profits. In this paper, PTPN XYZ of West Java, Indonesia is used as a case study to show the transition from tea production to alternative cash crops as a result of unsuitable weather conditions and its impact on decreasing national tea production.

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**Keywords:** Tea, production, Indonesia, Global warming

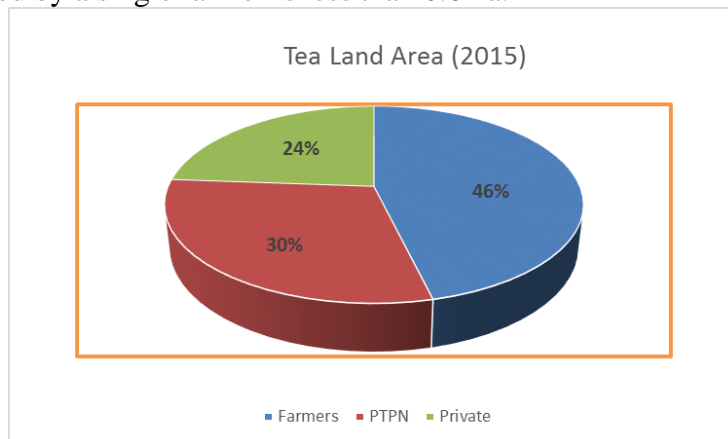
### **Introduction**

Although tea in Indonesia was first introduced the by the Portuguese in the 16<sup>th</sup> century, it was the Dutch that built the first tea plantation in 1684. The Dutch continued to establish numerous tea plantations throughout the Dutch East Indies, primarily for trade. After Indonesia's independence from the Dutch, tea production continued to thrive as an export product and in the 1980s, Indonesia was ranked as one of the top five countries tea producers worldwide.

The rise of tea production has also been boosted by internal, domestic tea consumption. On average, local demand for tea increases by around 1.57 % per year (Department of Agriculture, 2015) and with a population of nearly 250 million, Indonesia has maintained its status as one of the highest

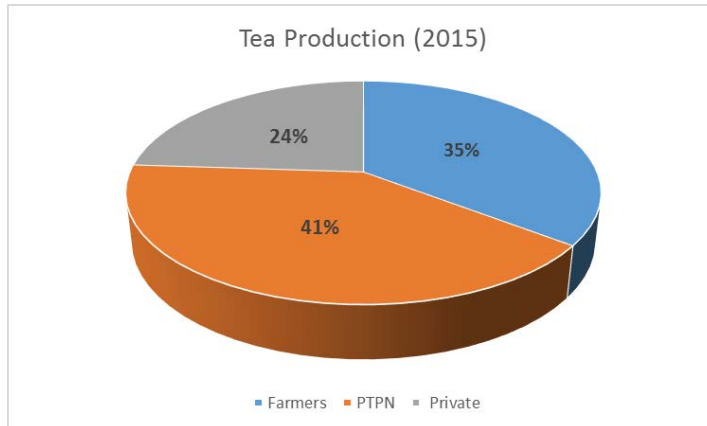
markets for tea consumption. About 145,613 tones of tea are consumed domestically, and it is predicted to grow at a steady rate. However, contrary to the increasing demand for tea, national tea production in has declined 1.44 % through the years (Department of Agriculture, 2015).

In Indonesia, tea producers are divided into three types of producers: government owned companies (PTPN), small holders (farmers) and private estate companies. Figure 1 shows that in terms of individual parcels of land for tea production, 46% of tea production estates are owned by farmers, 30% by PTPN and 24% by private companies. It must be noted however, that although farmers own 46% of tea producing estates, the average amount of land owned by a single farmer is less than 0.6 ha.



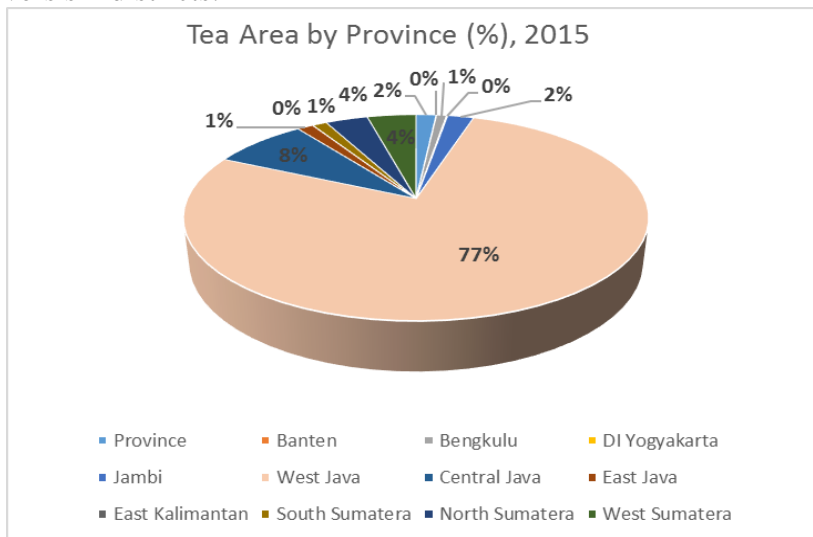
**Figure 1.** Distribution of tea land area based on type of producers in percentage (Department of Agriculture, 2015)

In 2015, the total number of tea producing land owned by farmers amounted to 55,176 Ha. At first glance, this figure outnumbers the total amount of tea producing land owned by PTPN at 35,738 Ha and the total of private companies at 28,447 Ha. Figure 2 however, shows that 41% of tea is produced by PTPN, 35 % by private companies, and only 24 % by farmers. This is due to the fact that farmers' use of simple techniques to cultivate their tea plantations as compared to the advanced techniques and machineries used by the large-scale, production techniques of PTPN and even to the private companies.



**Figure 2.** Distribution of tea production based on types of producers in percentage (Department of Agriculture, 2015)

Figure 3 below shows the distribution of tea land area based on province. The area in West Java has the largest tea area in Indonesia (77%) compared to the other areas in Indonesia. PTPN XYZ is a government-owned tea company located in Bandung, West Java that produces 80% of tea in West Java. The company alone has 24 tea plantations over 25,905.3 Ha and covers six districts.



**Figure 3.** Distribution of tea area based on province in percentage (2015).

Tea cultivation requires fertile volcano soil, should ideally situated between 800-2.000 meters above sea level with temperatures ranging from 13° to 25° C. In addition, tea plants require an evenly distributed annual rainfall of at least 2.000 mm, but no more than two months of 60 mm (Department of Agriculture, 2015).



Figure 4 below shows how temperature fluctuates during the months in 2015 in West Java. This table shows that the highest temperature was close to 30° C in September of 2015 (Bureau of Statistics-BPS, 2016). This is highly significant since as stated above, the best temperature for tea should not exceed 25°C (Department of Agriculture, 2015).

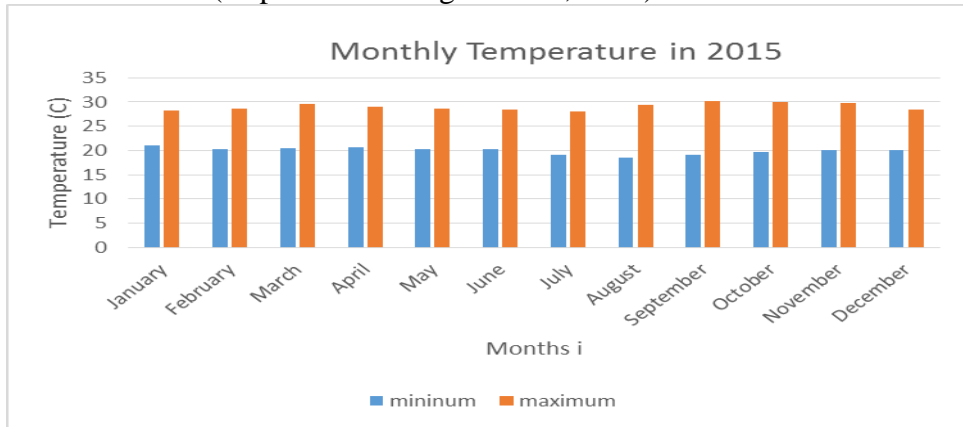


Figure 4. Monthly Temperature (°C) in West Java in 2015 (BPS, 2016)

Average temperature and precipitation are two main factors determining a region’s climate and its effect on people; and the changes in temperature and climate conditions have been linked to global warming IPCC (Intergovernmental Panel Climate Change) on reports that temperature has been steadily increasing over the years and that temperatures increased by  $0.74 \pm 0.18^\circ\text{C}$  or  $1.33 \pm 0.32^\circ$  during the 20<sup>th</sup> Century. IPCC has also predicted that there will be further rise in temperature from  $1.1^\circ$  to  $6.4^\circ\text{C}$  in the next century. (Anju, 2011).

Figure 5 shows the direct measurements from thermometers since 1860 (IPCC in Withgott and Scott, 2009). This paper will try to determine factors causing the decline in tea production, especially for PTPN XYZ.

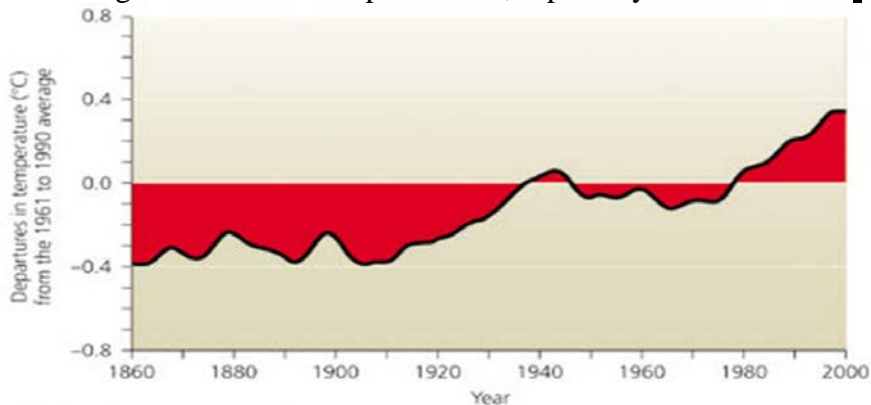


Figure 5. Graph showing average change of temperature worldwide from 1860-2000 (IPCC in Withgott and Scott, 2009)

## **Research Methods**

This research is based on primary data collected through interviews and secondary data. Primary interviews were conducted with the Chairperson of the Indonesia Tea Committee (ITC), former Ministers of the Indonesian Agricultural Department, former Chairperson of the Indonesian Agronomists Association (PERAGI), former Chairperson of Indonesian Agriculture Meteorology Association (PERHIMPI) and the Head of PTPN XYZ. Secondary data consisted of statistical data, tables and graphs were also collected from Bureau Statistic of Indonesia (BPS), Statistics Data from the Indonesia Tea Organization, Bureau Statistics of West Java, Tree Crop Estate Statistics of Indonesia, Statistical tests such as regression models were used to analyze the data before presenting the results in graphs and tables.

## **Findings and Discussions**

The results show that tea production has been declining continuously as much as 1.43 % annually (Department of Agriculture, 2015). On average, it can be seen that the average production of PTPN are the largest (50%) compare to farmers (27%) or the private companies (23%). Figure 6 shows tea productions through the years, where tea production declines for private company and for PTPN. Small holders have a slightly increase in production. Cost of tea production is half to 60% of the market price (ITC, 2016). Due to the high cost of tea production and the long duration time to harvest tea leaves (6-8 years since planted), farmers switch to short duration crops such as vegetables and fruits to meet their daily life expenditures (Rehman *et al.*, 2015). Furthermore, farmers will abandoned their tea trees in order to generate more money by working elsewhere (ITC, 2016). Similar to this case, in Sri Lanka, cultivation tea is a supplementary source of income rather than the main source of income (Perera, 2014). Farmers also grow tea in marginal lands (Rehman *et al.*, 2015) which are worsen by farmer's inability to maintain the tea trees with fertilization, weeding or irrigations. Lack of capital, modern machines, lower market value, lower yield per hectare are also causes farmers' inability to produce quality tea (Nasir and Shamsuddoha, 2011). Although the Indonesian government has subsidized the farmers with quality seeds and fertilizers, this action is not continual (ITC, 2016). Thus, because of the production of the low quality of tea, the price they earn (Rp 1,700-1,800/kg) are lower compared to price earned by the large companies (Rp 3,600/kg) (PTPN XYZ report, 2015).

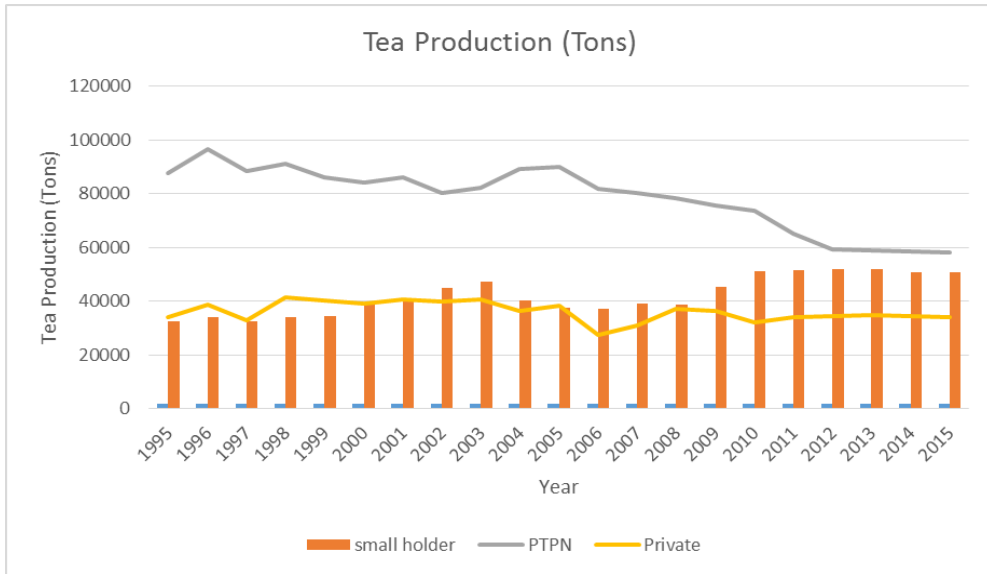


Figure 6. Tea Production (tons) throughout the years (Department of Agriculture, 2015)

Other factor causing the decline in tea production is land conversion. Tea land area has been declining as much as 1.4 % annually where land conversion from tea is either to real estate use or to conversion of tea to other plants. Thus, farmers consider tea not as economically interesting compared to other crops.

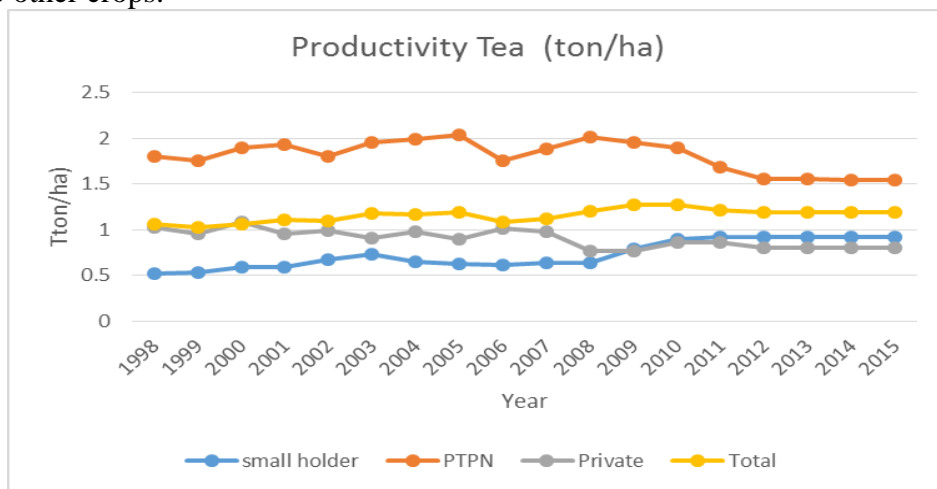


Figure 7. The Condition of Tea Productivity in Indonesia (Department of Agriculture, 2015)

Productivity of PTPN and private companies decline throughout the years, however productivity of smallholder farmers were increasing with a lower tea quality. In the past farmers harvest the tea selectively based on quality, but recently, tea leaves were picked based on numbers (quantity). As

a result, the price received by smallholder farmers, are much lower than price received by large companies.

Many PTPN also convert tea land to other crops such as palm oil, which is considered to be more economically profitable. Every decrease of tea price of 1% per kg generates land conversion from tea to pam oil crops as much as 0.613% (Purba, 2010). The other reason for the declining tea production is related to the increase of temperature which causes less and unsuitable climate for tea cultivation.

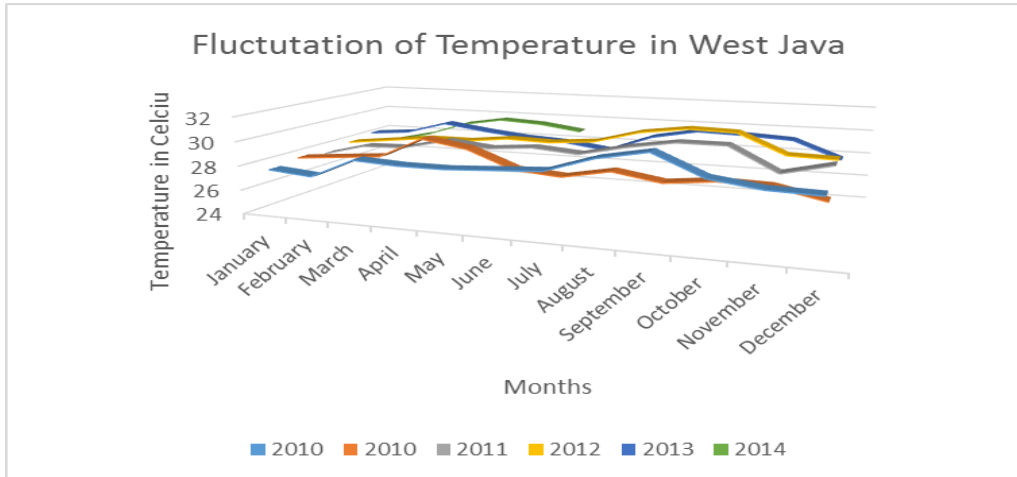


Figure 8. Fluctuation of Temperature in West Java for the Last Five Years (BPS, 2015)

From the figure above (Figure 8), temperature has been fluctuating through the years. According to Houghton *et al* (2001), world temperature will continue to increase which is caused by further emissions of greenhouse gasses. In just three years since 2010, the temperature in West Java had increased an average of 1°C.

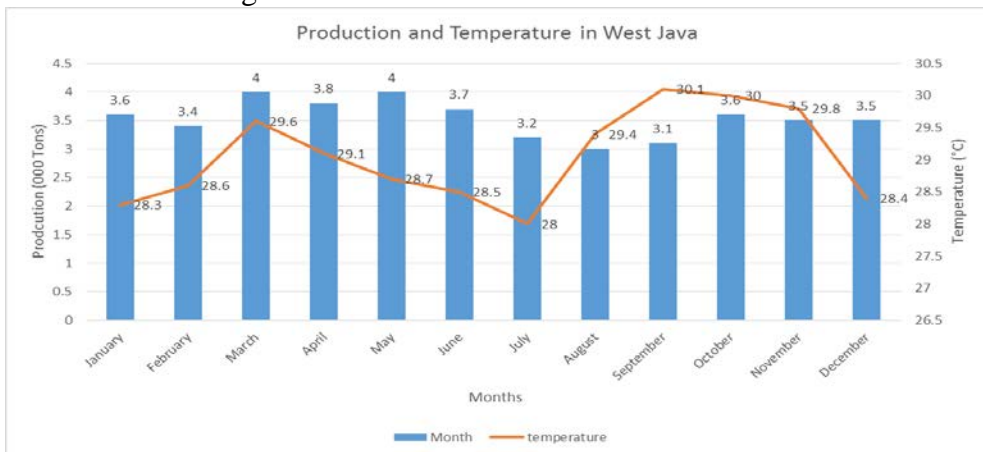


Figure 9. Distribution of Tea Production (000 tons), Months in 2015 and Temperature in West Java (BPS, 2015)

From the figure above, it can be seen that tea production is low in the month of August (3,000 tons) and September 2015 (3,100 tons) while temperature in the West Java area are highest during that year (30°C) (BPS, 2015). The ideal temperature to grow tea is between 13-25°C (Department of Agriculture, 2015). Therefore, the high temperature becomes less suitable to grow tea crops.

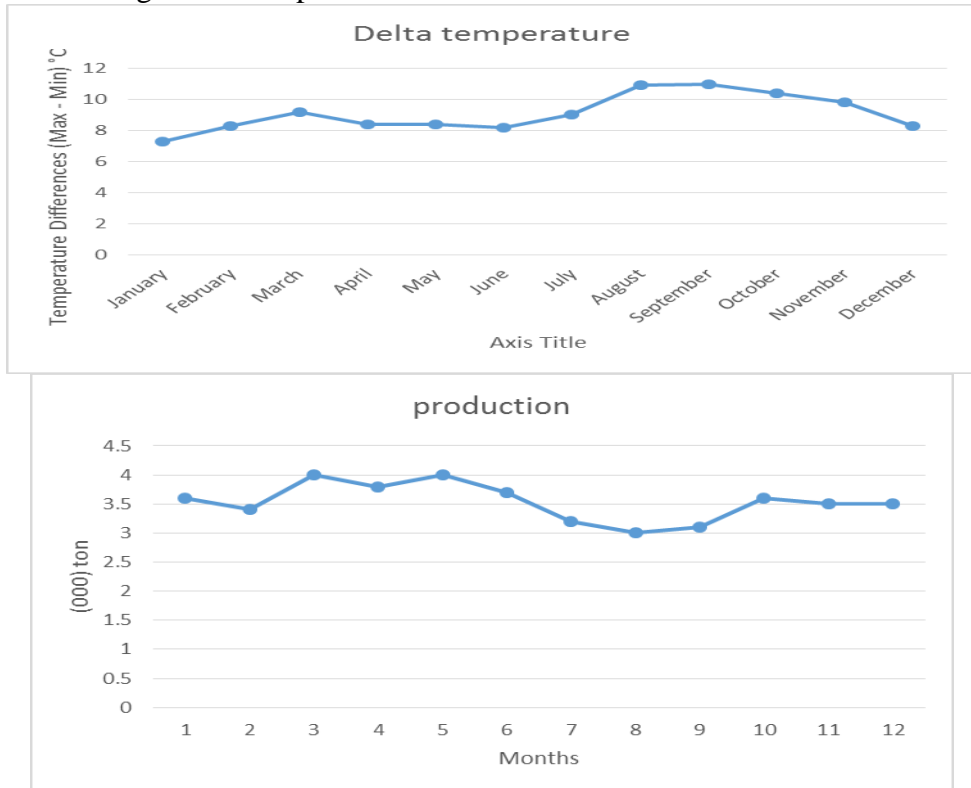


Figure 10. The Illustration of Temperature Differences and Tea Production in West Java

From Figure 10, we can see that the large the difference of temperature between maximum and minimum, the lower the tea production, Global warming cause the differences between maximum and minimum temperature to be more larger. Furthermore, an increase of 1°C in temperature will cause a decline in tea production of 5%. Therefore many tea areas area are being converted to other type of crops that are more suitable for this conditions.

The tea plantations that are being converted are usually the area with the lowest elevations. Unfortunately many of these tea land area are owned by the PTPN, where the temperatures are at the maximum range to plant tea. Peng *et al* in Marjuki *et al* (2016) found that paddy field yield decline by 10% for every increase of 1.8°C during growing season. The high nighttime temperature results in a high respiration rate, which reduces net dry-weight

gains. Agricultural production will be affected by global warming through changes in yields and market prices (Kobayashi, 2009).

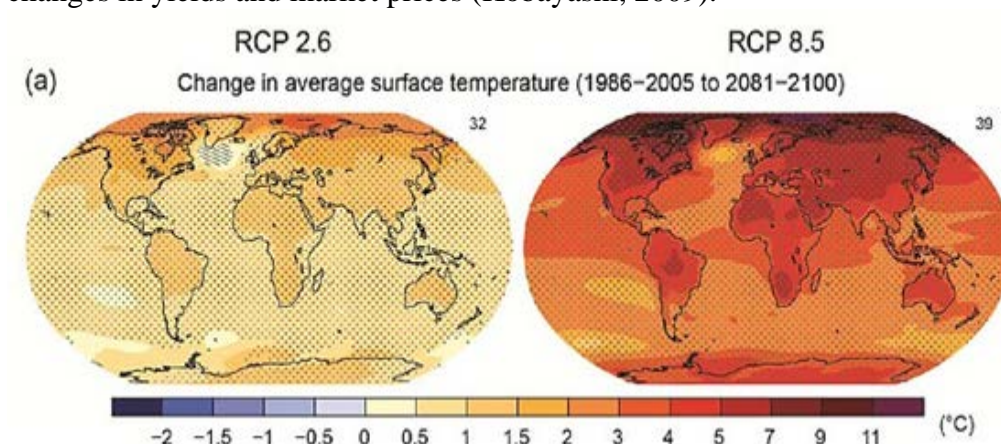


Figure 11. Change in Average World Surface Temperature (1986-2005 to 2081-2100) (Mora et al, 2013).

Figure 11 shows how world temperature has increased since 1986 and the prediction to year 2100 (Mora et al, 2013). The figure above illustrates the increase in world global temperature in the future. If an increase of 1°C will reduce tea production by 5%, with a steady increase of 0.74°C annually will cause the next 10 years tea productivity to fall by 37%.

### Conclusion:

Tea production has been declining despite an increase rate of tea consumption. Factors causing the decline in tea production are declining tea area and productivity. Shrinkage of tea area and productivity are caused by land conversion to other crops, real estates and the increasing temperature especially in the lower elevation.

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## **Beka Akhalaia – A Metamodernist Georgian Poet**

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### **Abstract**

A very intelligent and story like poetry by Beka Akhalaia amuses and saddens at the same time, but always charms its readers with its authenticity, naivety and vividness. Three verses are chosen by their likeness of composition and stylistic devices: “After January”, “There was one and there is no main Avenue” and “A dream” represents the insight of a poet, whose style of writing with symbols and enigmas, leads us into the sphere of Metamodernist poetry.

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**Keywords:** Postmodernism, metamodernist, naivety, penchant, earnestness, enigmas

### **Introduction**

Metamodernism is an old term by which a number of people describe what comes after postmodernism. It is mostly connected with the Internet Age and means that postmodernism rose to cultural philosophy. It describes our sense of ourselves in connection with the others. I seek some changes in our world.

The metamodern tendency in Georgia as in Europe, oscillates between postmodernism and metamodernism, including a desire for unity and wholeness and transcends the theory-oriented conception (characteristic of postmodernism) and associates with the novelties of the Internet Age.

Beka Akhalaia enters Metamodernist epoch, keeps with mythology and legend type sayings, typical of Georgian culture.

Bellow is given my translation of the poet’s three verses. As they are specific, I give them in full form.

### **Beka Akhalaia**

#### **After January**

As they say it’ll get warmer after January,  
grandpa Tom never remembers the kind of winter,  
though, the cold won’t harm the two stately gentlemen,  
nobody was ever frozen in front of the mantle.



(As they say, it'll get warmer after January).  
A small debt, still (oh, yes!) is a debt,  
though the usurer won't harm the two stately gentlemen,  
nobody had ever died from a usurer's bullet yet.

(As they say, it'll get warmer after January),  
they have to do something to while the time,  
though, Scotch won't harm the two stately gentlemen,  
fancy, they drink so much every time.

(As they say, it'll get warmer after January),  
before hard drinking a taste of earth is left on the tongue rear,  
though the death won't harm the two stately gentlemen,  
they only fear if their wives hear.  
As they say, it'll get warmer after January.

**There was one and now there is no main Avenue**  
*(A ballad on the fire)*

Last night I flew a red rooster up,  
nobody expected, it looked like a flash of anger  
(yesterday I flew a red rooster up)  
into the clear eyes. As to the seers,  
the fire instantly caught the houses.

Last night I flew a red rooster up,  
now what is the debris – only the tons of gravel,  
(last night I flew a red rooster up)  
exactly- the charcoal is left,  
much time is needed to remove that all.

Last night I flew a red rooster up,  
sent my people to the biggest building first-  
(last night I flew a red rooster up)  
the hotel we set on fire,  
and then – the Town Hall.

Last night I flew a red rooster up,  
the Town Hall was followed by the palace  
(last night I flew a red rooster up)  
of Mr. Sheriff, the lightly dressed Sheriff's wife  
rushed out. The sheriff was out.

(Last night I flew a red rooster up)  
then other houses were caught by the fire  
a once flown up red rooster,  
and in all this chaos,  
and in all this squeal,  
and in all this scream,  
(you don't say so, I have poisoned neither my half-brother  
nor killed my mother,  
nor this town is Rome and...),  
it has just come to my mind  
to recite a rhyme  
by a simple poet,  
an unknown one.

### **A Dream**

(from "the Variations on Folklore Themes")

Last night I dreamt a strange dream,  
what was it, Mum?

Last night I dreamt a strange dream:  
our Lombardy poplar had fallen down.

- That is your body, my boy, sure, it is,  
oh, grief to your mother!

That is your body, my boy, sure, it is.  
Omnipotent God, save us!

- Last night I dreamt a strange dream,  
What was it, Mum?

Last night I dreamt a strange dream:  
The poplar had all its branches broken...

- These are your arms, my boy, what did you say?  
Oh, grief to your mother!

It is a fire like story to my heart.

- Last night I dreamt a strange dream,  
what was it, Mum?

Last night I dreamt a strange dream:  
our vine was losing leaves...

- That is your topknot, my boy, sure it is,  
they may summon you from the next world...

- Last night I dreamt a strange dream,  
what was it, Mum?

Last night I dreamt a strange dream:  
water had been floating a chest.



The plot develops. It is solved in description of January night (possibly) in front of the mantelpiece firelight, with Scotch drinking, with a taste of earth on the back of the tongue, after some discussions about weather, debts to the usurer and fear of wives.

### **Stylistically...**

Repetition of starting phrase (as they say, it will get warmer after January...) gives a melodic effect to the utterance; the enumeration of existing problems gives a prosaic effect.

### **The climax**

The danger coming from their wives (if they hear about their hard drinking).

### **There was one and now there is no main Avenue**

What does the author mean by a red rooster? The aggressiveness? The opposed action? Fire? Yet, it is a willful self-expression, solution of something that shows the poet's performatism. The plot develops instantly. After a red rooster being flown, the fire spread and the main Avenue disappeared.

### **Stylistically...**

The author uses repetitions of a phrase "last night I flew a red rooster up". It enriches the verse melodically. Besides it represents the speech of the author, who highlights the happenings in the city. The verse is rhythmical, intimidating and enjoying at the same time.

### **The climax**

After all the squealings, screamings and chaos the poet modestly adds that he only wanted "to recite a rhyme."

### **The Dream**

The verse represents variation of folklore. Mother and her son's dialogue reminds me of a legend about Surami Castle, where Mother questions her son who is getting built in the wall of the Castle, up to what point he is built in.

### **The plot**

A young man dreamt a strange dream: his family poplar had fallen down; it had broken its branches; the vine had lost its leaves; the water had been floating a chest; in the forest a deer had been bellowing and on the

pasture a cow was mooing. He asked his mother to explain the meaning. The explanation was shocking.

### **Syntactically...**

Beka is penchant for repetitions and represented speeches: “last night I dreamt a strange dream, what was it, Mum?” The dialogue is very sad, an impending danger and the voice of destiny threatens by a mooing cow and a bellowing deer. Coffin is **the climax**. As well the climax is Mother’s confession: she was unable to” give him immortality milk to suck”.

Two opposed parties, the asker and the answerer, make one whole and this unit represents conceptual philosophy of Georgian folk culture.

### **Conclusion**

Beka Akhalaia has entered a new poetical tendency, stepped in Metamodernist auditorium with his peaceful nature, kind and emotional disposition towards his surroundings. All his lines are loaded with pearls of poetical literature, though sometimes unfortunate, but a mélange of discourse modes, emphasizing personal and impersonal data. He by and large maintains all traditional Georgian writing forms, as opposed to those found in transported poetry. That purity is explicitly felt in his poetry as his art is inextricable from life and fantasy.

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European Scientific Journal December 2013 /SPECIAL/ edition vol.2.

ISSN: 1857 – 7881 (Print) e - ISSN 1857- 7431.

# **Wine Tourism as a Great Opportunity for Georgia**

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## **Abstract**

In a region with such an extensive wine history and culture, wine and food will be an important component of tourism. As more ventures get off the ground, Georgia will develop a critical mass of wine tourism offerings. Georgia's traditional winemaking method of fermenting grapes in earthenware, egg-shaped vessels has been added to the world heritage list of UNESCO. Georgia's ancient wine culture has seen a revival in recent years. Winemakers have realized that their traditional method of qvevri winemaking is one of their most valuable assets. In the last decade, wine tourism has become a key component of gastronomy tourism and a pillar in the strategies of diversification of many destinations. The quality, styles, and value of Georgian wine available internationally will stimulate interest in Georgian wine tourism, more so than vice versa.

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**Keywords:** Wine; Qvevri wine; Wine tourism; Georgia

## **Introduction**

Nobody knows when and how exactly the first grapevine was cultivated in Georgia, but earliest archeological evidence of viniculture that was discovered in Georgia dates back to 6,000 B.C.

The statue of bronze man (height 7.5 cm) was found in Vani region (Georgia) excavation. It is a man sitting in the arm-chair with a drinking-horn in his right hand. One has the impression that he is proposing a toast. The period of this statue's origin is considered to be VII-VI centuries BC.

History of winemaking is tightly intertwined with history of Georgia, and our country is almost unanimously considered to be the birthplace of wine as such. In this country, tending to vineries, harvesting grapes and making wine is a tradition as old as the country itself. For centuries, it was passed from one generation to another. Georgia also proudly boasts over 400 grape varieties, more than any other country in the world.

In Georgia, the grape harvest is called rtveli. It begins in autumn, by the end of September, and lasts for several weeks. In some regions of Georgia, harvested grapes are still crushed using a wooden basin called

satsnakheli. This method is centuries old, and used to have a ritualistic meaning back in the day.

Georgia's traditional winemaking method of fermenting grapes in earthenware, egg-shaped vessels has been added to the world heritage list of the United Nations educational, scientific and cultural organization (UNESCO).

The large earthenware vessels traditionally used to ferment grapes in Georgia are called qvevri and archaeological evidence of their use goes back to 8,000 years. They are typically buried in the floor of the cellar or Marani, a semi-sacred place to most Georgians and found in almost every house.

There are three main technologies of wine production in Georgia: European, Kakhetian and Imeretian.

When grapes are pressed together with seeds and branches, the outcome hick mass is poured in special crocks called qvevri, and qvevris then are dug into the ground for 3-4 months. This is the Kakhetian technique. After the liquid had been fermented in kvevri, they decant the juice out of it. Taste of this wine is tart and full. Kakhetian wines have higher percentage of antioxidant-polyphenols.

Imeretian way of winemaking combines both, European and Kakhetian approaches. Grapes are not cleaned from skin and seeds, but twigs are removed. The liquid mass is not fermented too long as in Kakhetian technology, only 2-3 months. Such wines are of higher acidity, slightly tart and have a smooth taste.

Georgia's ancient wine culture has seen a revival in recent years. Winemakers have realized that their traditional method of qvevri winemaking is one of their most valuable assets. Both viticulture and wine tourism hold great potential to help the country and inject much-needed growth into the economy.

Georgia's enotourism potential lies in showcasing what it has to offer the wine world. Georgia has much to offer that is very different from what you will find elsewhere. This includes (1) an extensive wine history, (2) a qvevri wine making tradition, (2) the celebration of wine and food through Georgian feasts or supras, and (3) Georgian wines made from indigenous grapes.

Tourism is one way that we experience and understand other nations, peoples, and cultures. It creates jobs, of course, but it also has the potential to increase understanding. International tourism has been one of the global growth industries of the last 30 years; so, it is not unreasonable that the UN pay attention to this economic and cultural exchange vector.

The Sustainable Development Goals (SDGs), approved by the United Nations General Assembly in 2015, includes tourism as a tool for sustainable economic development. "By 2030," the document specifies, the UN should

“devise and implement policies to promote sustainable tourism that creates jobs and promotes local culture and products”.

Table 1. Georgia’s wine tourism source markets

	Source market	USD per person	Remarks
1.	North America	25 – 55	The expenses for wine tastings, drinking wine during meals & buying wine as a souvenir.
2.	Georgia	5 - 15	The majority drinks & buys bulk wines.
3.	Japan	25 - 45	The expenses for wine tastings, drinking wine during meals & buying wine as a souvenir.
4.	UK	25 - 55	The expenses for wine tastings, drinking wine during meals & buying wine as a souvenir.
5.	EU	25 - 50	The expenses for wine tastings, drinking wine during meals & buying wine as a souvenir.
6.	Israel	20 - 40	The expenses for wine tastings, drinking wine during meals & buying wine as a souvenir.
7.	Baltic Countries	15 - 50	The expenses for wine tastings, drinking wine during meals & buying wine as a souvenir.
8.	CIS countries (Ukraine, Russia, Kazakhstan, etc.)	25 - 60	The expenses for wine tastings, drinking wine during meals & buying wine as a souvenir.
9.	Azerbaijan	10 - 25	The expenses for wine tastings, drinking wine during meals & buying wine as a souvenir.
10.	Armenia	15 - 35	The expenses for wine tastings, drinking wine during meals & buying wine as a souvenir.

**Source:** Economic prosperity Initiative (EPI) Georgian Wine Association and Georgian Incoming Tour Operators’ Association – Promotional Plan for Georgia’s Wine Tourism Sector, 2012.

The UNWTO had previously identified gastro-tourism as being an important element of its sustainable tourism development program. Wine tourism, as a crucial component of gastronomy tourism, has evolved into a key element for both emerging and mature tourism destinations in which tourists can experience the culture and lifestyle of destinations while fostering sustainable tourism development.

The link between wine tourism and culture, history and lifestyle and the contribution of this segment to the development of the sector was widely discussed during the 1st UNWTO Global Conference on Wine Tourism held in the Kakheti region in Georgia. During two days (7-9 September) the event convened over 200 participants including policy makers and tourism experts from nearly 50 countries.

The event was a unique opportunity to discover the richness of local Georgian culture and to exchange innovative ideas to promote wine tourism between destinations already experienced in wine tourism with others with a high potential in that segment. Ministries, Destination Management Organizations (DMOS) and National Tourism Organizations



(NTOs), universities, tour operators and wine professionals were among the participants.

“Wine tourism is intimately related to the identity of destinations and comprises cultural, economic and historical values. Furthermore, it constitutes a major driver in diversification strategies helping destinations to enrich the touristic offer and to attract different publics. This Conference tries not only to emphasize everything this, but also to promote exchanges and to build cooperation among destinations with a potential in this field,” said UNWTO Secretary-General Taleb Rifai at the opening of the Conference.

As an outcome of the Conference, the Georgia Declaration on Wine Tourism identifies a number of recommendations to facilitate the development of wine tourism that would help destinations to implement key actions. Items for fostering sustainable tourism development through intangible cultural heritage:

1. Wine tourism is a fundamental part of Gastronomy Tourism;
2. Wine tourism can contribute to fostering sustainable tourism by promoting both the tangible and intangible heritage of the destination;
3. Wine tourism is capable of generating substantial economic and social benefits for key players of each destination, in addition to playing an important role in terms of cultural and natural resource preservation;
4. Wine tourism facilitates the linking of destinations around the common goal of providing unique and innovative tourism products, whereby maximizing synergies in tourism development, surpassing traditional tourism subsectors;
5. Wine tourism provides an opportunity for underdeveloped tourism destinations, in most cases rural areas, to mature alongside established destinations and enhance the economic and social impact of tourism on a local community;
6. Wine tourism provides an innovative way to experience a destination's culture and lifestyle, responding to consumers' evolving needs and expectations;
7. Wine tourism's potential will be heightened if implemented appropriately through a public-private collaboration strategy, promoted through an effective communication across different sectors and involving the local community.

The tourist that travels to Georgia will be looking for “something different” to what they get in other destinations. Therefore, it is important that the Georgian tourism industry focus on answering the questions “why in the world would anyone want to travel to Georgia over all the other places that they can choose from?”

Several elements need to be in place to be successful at wine tourism and it seems that those involved in have a grasp of these elements and recognize that there is much work to do. There need to be more and better hotels and restaurants in the wine country. Other tourist attractions are desirable and fortunately, Tbilisi and the surrounding wine regions are also home to a treasure trove of archeological wonders. Multilingual guides are necessity. There need to be well-marked roads and wine trails. Customer service and hospitality are not universally understood; so, training hospitality staff is essential.

### **Conclusion**

Fringed by the Black Sea and the Caucasus Mountains, wine-makers in this small but stunningly beautiful country hope the trend will continue.

Not many things produced in Georgia are so exclusive and special that they can compete in the luxury segment of the market. Wine is one of these products, and that is for good reasons, as both domestic and foreign experts agree that Georgian viticulture is unique in the world. Academic research has shown that wine tourists enjoy not only tasting wine, but gaining knowledge about winegrowing processes and having fun.

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## **Mystics as a Product of Cultural Tourism (On the Example of Georgia's Archeology)**

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### **Abstract**

Tourism is one of the biggest industries in the world the growth of which in a certain country is strongly stipulated by the internal stability, safe environment and an acceptable level of economic development. Orientation on the promotion of tourism requires the implementation of activities ensuring protection of historical, religious and archeological monuments; care of local folklore, traditions and customs and preservation of art and cuisine. Many countries of the world have started offering intangible resources such as myths, legends and mystics in general as tourist products. Using myths and legends as intangible tourist resources to promote tourism in Georgia has great prospects since according to the world experience and researches in psychology; it increases the interest level and motivation to visit a certain destination on both international and domestic levels. Alongside its cultural and historical resources Georgia is notably rich in myths, legends and mystical diversity enabling cultural-mystical tourism to be pushed forward. Georgia is distinguished with its variety of mystical sights. One can often witness a bunch of tourists gathered around local elderly striving to find out weird stories about a travel destination notwithstanding a language barrier; thus proving that tourists need memorable bizarre stories to connect to the destination site/s emotionally. The article focuses on three archeological monuments of Georgia (Mount Khvamli, Grakliani Hill and Vani Settlements) considered to be a treasure of the world cultural heritage in terms of architecture, history of writing, models of community life, crafts or unique samples of folklore; and concentrates on the significance of the mystics related to each discovery on the monuments as the means to promote cultural tourism in Georgia.

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**Keywords:** Legends, myths, mystics, cultural tourism, touristic product, Mount Khvamli, Grakliani Hill, Vani Settlements, Georgia's archeology

## **Introduction**

Tourism is one of the biggest industries in the world the growth of which in a certain country is strongly stipulated by the internal stability, safe environment and an acceptable level of economic development. Tourism industry can foster the strengthening of peace and progress in developed countries through creating work places, increasing revenues, diversifying economy, preserving environment and bringing different cultures together. Elaboration of a national strategy and inculcation of sensible legislation by the state in this direction stimulates the enhancement of tourism considerably. The latter insures some privileges: namely, it enables the states having no raw resources but basing their competitive advantage on culture, historical monuments, archeology, game preserves and natural conditions to flourish.

Orientation on the promotion of tourism requires the implementation of activities ensuring protection of historical, religious and archeological monuments; care of local folklore, traditions and customs and preservation of art and cuisine.

Many countries of the world have started offering intangible resources such as myths, legends and mystics in general as tourist products. Examples would be: Loch Ness Lake in Scotland being a popular destination because of the legend about a Loch Ness Monster making visitors spend about 50 million pounds a year for tourist services; Stonehenge in England with its legend of frozen giants dancing to worship the idle of the sun thus being inline in a circle attracting around million tourists a year bringing the site a 10-million-dollar profit in average annually; Palace of Dracula in Transylvania with its mystical story as well as a Bridge of Lies in a small town of Sibiu, Romania which will make noise and “punish” a “liar” if a lie is being uttered while standing on it; Schwartzwald “Black forest” in Germany (the color refers to dark coniferous trees) with its highest Triberg and Holy waterfalls and outdoor museum exhibiting the life of the XVI-XVII century Schwartzwald dwellers; Europe’s oldest city Knossos on Crete which was considered to be a home for Minotaur – a creature with the head of a bull and the body of a man dwelling at the center of the labyrinth under the king’s palace. Even though the city is in ruins visitors still perceive its beauty being carried away into the distant past.

Using myths and legends as intangible tourist resources to promote tourism in Georgia has great prospects since according to the world experience and researches in psychology; it increases the interest level and motivation to visit a certain destination on both international and domestic levels. Alongside its cultural and historical resources Georgia is notably rich in myths, legends and mystical diversity enabling cultural-mystical tourism to be pushed forward.

Georgia is distinguished with its variety of myths and legends. One can often witness a bunch of tourists gathered around local elderly striving to find out weird stories about a travel destination notwithstanding a language barrier; thus proving that tourists need memorable bizarre stories to connect to the destination site/s emotionally.

According to the legend our Lord, having created the world, on his way home stumbled at the Caucasus Mountain Range and accidentally scattered all the beauty he was holding in hands that consequently made Georgia the wonder of nature and indeed if you once have visited the country you cannot ignore the roots of the legend and Mount Khvamli, Grakliani Hill and Vani are among such wonders. Various mystical narrations are related to Mount Khvamli. It is said to be the oldest treasuries of kings; the Argonauts Trip and name of Prometheus are also linked with Mount Khvamli. Locals determine the weather by the mount and respect it as the dwelling place of the god of weather and thunderstorm; from it the Black Sea and the Caucasus Range are both vividly seen in clear weather.

Mount Khvamli is one of the inexplicable places keeping many secrets. It has been trailed by travelers to uncover those buried secrets but inaccessible cliffs and caves would safely guard the treasures of kings being the site of interest, observation and research for scientists. Local population make the past preserved in memory come to life again with various narratives.

Based on many historical antique sources Khvamli the same Khomli was believed to be a mystical place of journeys of Greek mythical legendary heroes Argonauts and Heracles; the mount on which Prometheus/Amirani was chained by the order of Zeus. Besides, according to the Greek myth or legend Heracles delegated by Io had to walk up the left side of Pazisi (the contemporary Rioni River), reach the cave from where the water was streamed, get rid of the water, get inside the cave and save Prometheus from many years of suffering.

Supposedly an underground unseen city is there remaining pristine up-to-date; also, there is a tremendous amount of small stones scattered around that are not simple at all having imprints of shells and fins on them counting billions of years starting from the times when the place was a water surface. Who knows?! It might be Atlanta or the city of Aratta of Sumerians.

The way to Khvamli is paved with castles. Their old layers and lower coverings are archaic. The structure of the castle points to the period of construction which is rather prior to Feudal times. Consequently a question is posed: what mystery does the mount hold?

Now a few words about the links of Khvamli with astronomy: it is widely known that priests in ancient Egypt were the holders of Astronomy knowledge keeping it in secret sharing only with the few chosen. They

would relate everything happening on the earth to be reflected in the sky. If we take a constellation of Hydra on the atlas by a XVII century Polish astronomer Johanness Hevelius we can draw a curious parallel with Mount Khomli. A stretched serpent holds a bowel on its back while a raven is sitting at the end of the tail; below Hydra there is a constellation of Argo and of Centaur (or the same rider) aside. We can assume the bowel is a Holy Grail or the Golden Fleece or the sacred knowledge the Greeks aspired to be initiated with and the raven (eagle) is the one eating the (heart and) liver of Prometheus chained to a rock. During the expedition to Mount Khvamli some pictograms were discovered on the walls of the castle-cave with the images of zodiac signs: “Aquarius”, “Capricorn” Mercury on a horse and Venus the same Isis and Osiris or “Archer”, a small horse and a warrior with a spear or the same Mars, the symbol of the Sun and the key drawn in a square resembling Ankh or the key of the Nile (breath of life). The plan of the drawings of the older layers and coverings of the chapel on the top of Mount Khvamli, its layout towards the lightening and stars make us presume there was an ancient observatory there.

The scientists and explorers from the expedition exploited a special astronomical program and restored the image of stars on the sky of 5604 BC when the organization of Mercury, Venus, Mars and Archer precisely coincide with the scheme of the Khvamli cave pictogram. The noted year also matches with the last flood occurred on the Earth and the start-off of Sumerians and Georgians until up-to-date or the birth of Christ. The fact generated an assumption that the image on the wall depicts a new astronomical picture of the period after the flood. The documentary filmed by the expedition reveals and asserts to confirm the noted fact.

During the World War II in 1942 the government of Germany implemented an unjustified maneuver and landed troops in the Caucasus Mountains. The elite division waved the Third Reich Flag on Elbrus. Later the division was destroyed by a Georgian military unit on Marukhi Pass. Even today nobody knows precisely what was behind the German move. One version claims they were searching for secret relics in the mountains. If we consider Hitler’s attitude towards mystical venues the opinion will seem appropriate. Based on an unofficial report in 1939 delegated by Stalin a famous mountain climber Aliosha Japaridze headed to survey the Khvamli cave accompanied by 2 workers but it is unknown what he saw there. Presumably not much since the first official expedition again with the same Aliosha Japaridze as a head together with a team of 11 people was implemented in 1945. The team comprised of a writer Levan Gotua who described the hike in details and of a famous archeologist Gogi Lomtadze. The expedition spent several days in the cave and concluded that the treasure had been taken away and left a letter which was later recovered by

the next (second) expedition in 1984 guided by Revaz Shalibashvili. They made the footage of the cave and brought a letter had left by the previous expedition.

The next expedition to Khvamli, headed by Guram Gabidzashvili from the village Derchi in Lechkhumi and whose unexpected death at the age of 50 is also connected to some mystery, started in 2007. The outcomes of the exploration turned out to be significant but the research had been over by the year 2011. In the final year the ruins of the oldest settlements were uncovered in the bottom of the rock. It is inevitable to carry out excavations enabling Mount Khvamli to be enlisted next to the discoveries of the old world history such as Troy, Jericho, Göbekli Tepe.

The process of exploration of Grakliani archeological monument revealed a new discovery – a temple of the second century BC dedicated to the god of fertility, two altars and a one line inscription of the language unknown so far on the altar pedestal. Some scientists consider the Grakliani discovery to be unique and concentrate on its national significance. They reckon a new artifact discovered in the region of Kaspi will alter a certain stage of not only Georgia's but the world's history of writing and will have no analogy on the planet.

Prof. Vakhtang Licheli, a head of the archeological expedition assumes the unknown inscription on Grakliani altar is the earliest and proves the 2700-year-old history of using writing in Georgia. Prof. Licheli also asserts that the discovery enrolls Georgia into the elite of huge civilizations having their own writing throughout millennia.

Grakliani archeological monument is located in the region of Shida Kartli on the territory of the villages Goeti and Samtavisi of Kaspi Municipality, on the hill situated on the right bank of the river Lekhura. Overall, the artifacts uncovered on the site are one of a kind and confirm the history of continuous enhancement of Grakliani. The materials related to the issue are released in the world's leading scientific publications of France, Holland, England, Italy, Germany and Spain.

As for other grand discoveries of Grakliani, important exhibits are the Gold Plate (dated by the IV millennium BC) the only analogy of which exists in Iran, in the city of Suza; the seal (dated by the IV millennium BC) with the analogy existing in South Mesopotamia in the city of Uruk and the bakery oven the sizes of which change according to the capacity of building and which is ornamented with decorative elements.

The hill of Grakliani itself is a multi-layer archeological monument conveying three-hundred- thousand-year unceasing progress of social life from the period of the Stone Age including the Roman one. Dwellers' houses, agricultural buildings, temples and shrines belonging to the IV

millennium BC and I millennium AD are settled on the terraces of Grakliani Hill.

The historical significance of Grakliani is even more intensified by the unique architectural remain exposed on the third terrace. This is a 25 meter- wide and a 6-meter long temple complex of the years 400-350 BC. The 2-meter long walls of the temple plastered with thin layers of clay and embellished with décor, the ritual ovens and alters are still preserved in the temple complex.

Before we point out the value of Grakliani discovery, we should underline that the manuscripts of the ancient Georgian writing accomplished in Asomtavruli script were discovered since I century BC and Asomtavruli had been regarded to be the only Georgian script up until then. The earliest models written in Asomtavruli is a Stella of Davati (367) discovered in Dusheti municipality in the village Davati; a 433-year-old inscription of Palestine; a construction inscription of the year 493 of Bolnisi's Sioni; Palimpsest manuscripts of the V-VI centuries; inscriptions of the cross of Mtskheta of the VI-VII centuries, etc.

According to the linguist Avtandil Arabuli the unique discovery of Grakliani is sensational and beyond the sphere of fantasy, therefore he restrains himself from commenting on it. He declares his colleagues have not seen the inscription yet and will be able to make any judgment or discuss its uniqueness only after seeing it. The scientist wonders about the type of the inscription, whether it is Asomtavruli or its variation, how well it is read, what its date is, etc. A. Arabuli claims: "it would be more realistic..." for him if the inscription was dated by the period of the king Parnavaz or later, or by the brink of the new millennium. "There was a big fuss at a time about inscriptions of Nekrisi as well and they are still not dated properly". The scientist supposes Nekrisi inscriptions are older than Christian captions. Academician Levan Chilashvili would date them by the III-IV centuries. "When we date the inscription of Bolnisi's Sioni for example, we can be precise since the caption mentions the bishop of the time. In case of Nekrisi, we do not have anything of the sort. But Nekrisi inscriptions are discovered on the place where Pagan fire-worshipping temple was sighted. The temple is in ruins now and there is no sign of Christianity on Nekrisi inscriptions. Therefore, the scientist Levan Chilashvili reckoned it preceded Christianity, but other scientists are skeptical about the conclusions and are doubtful about one thing. Inscriptions may not contain any Christian signs and belong to a bit later period since Christianity was not spread over the territory of Georgia at once and simultaneously" - remarks A. Arabuli. He casts no doubt in the professionalism of Vakhtang Licheli and is sure the latter would not spread any information on the Grakliani discovery if he were not quite certain about it. However, the circle of scientists needs to get sure that the indication of the



century is correct. Even if a single word had been discovered on Grakliani it would have been priceless for us, let alone the whole inscription. The date is not the most substantial here, but what matters more is whether Georgian writing existed before Christianity” – states A. Aabuli.

The researchers Ivane Javakhishvili, Ramaz Pataridze and others assume Georgian Asomtavruli script stems from Phoenician and not from Greek. And if it is true, if in the historical past Phoenician served as the root for Georgian and Georgians had their own writing before Christianity, then Grakliani inscription can be freely regarded as the oldest. Thus, the discovery will firstly prove that Georgian Asomtavruli script comes from Phoenician and Ivane Javakhishvili’s assumption will be justified, but all these is only a supposition by for now” – asserts A. Arabuli.

Historian Farnaoz Lomashvili also regards Georgians were supposed to have writing earlier than the accepted truth. For instance, Ivane Javakhishvili assumed Georgian script existed in the VIII-VII centuries BC before we moved from Cappadocia. However, Simon Janashia and other scientists rejected the idea and claimed we came earlier, in the III millennium. F. Lomashvili considers the scientific world needs more information about the Grakliani discovery. He finds some contradictions like “if we, Georgians, came in the third millennium, at a time only Sumerians had their writing system, so we would not have been able to bring it. If we created the script here how come we did not meet any other patters somewhere else?! Or which is the earliest temple on Grakliani hill whilst there is not a single house or a village on Trialeti surroundings?! It is hard to believe we had temples and castles by then. Thus, the historian needs more proof that we were able to build temples, since you have to know how to build and then make inscriptions on them, it cannot be backwards”. He claims he knows the only Pre-Christian inscription and it is Armazi bilingua – a bilingual epitaph, gained by the archeological excavations in Mtskheta, one text of which is written in Greek and the other one in Aramaic. He adds ”if there is anything new discovered on Grakliani, we should only embrace the fact and consider every single version, even the one that Grakliani inscription might be Sumerian but we cannot state anything confidently by for now”.

Promotion of Grakliani is a main priority of the Ministry of Culture and Monument Protection of Georgia and the National Agency of Cultural Heritage Protection of Georgia. Archeological exploration works and arrangement of touristic infrastructure are currently being processed on the monument. This is an unrecoverable process to provide open roadside museum space and modern conditions to expose the ancient culture. Everything is being done in order to decipher the discovered inscription on a

highly professional stage so that the achievement of Georgian scientists is confirmed and proved on an international scientific level.

The head of Grakliani expedition Vakhtang Licheli is preparing an express publication and a report to present to the National Agency of Cultural Heritage Protection of Georgia. The materials will be sent to international organizations of cultural heritage sphere.

Nationally significant Grakliani Hill clearly expresses the policy of the state in the field of monument protection. This archeological monument exposed in the process of building Tbilisi-Senaki-Leselidze road promises to reveal some more interesting discoveries as specialists predict. The budget of 2016 counts 400 000 GEL to be spent on the protection and saving of cultural heritage within the frames of the program 2016 according to the plan. The sum will be used to continue the large-scale exploration of Grakliani and to organize touristic infrastructure.

One of the relevant cities of Old Colchis, which flourished in the III century BC, was situated on the territory of Vani in the Era of Antiquity. Consistent systematic excavations have been held in Vani since 1947. A city like settlement was progressed in the landmark on the basis of the ancient ruins lavishly fixed on the nearby territories (Kechinara, Sulori Castle, Gora, Bagineti, Inashauri, Dzulukhi, Bughnari, Bzvani) and on its East (Persati, Zekari, Baghdadi). The earliest so far gained archeological material about Vani Settlements is dated by the VIII-VI centuries BC and is revealed by fragments. The settlement had two substantial time phases of being a true city: VI-IV centuries BC and the beginning of the III century BC; and the mid of the I<sup>st</sup> century BC.

The first phase is represented with wooden cult and residential buildings; altars for sacrifice curved in the rock; cultural layers containing various ceramic material and luxurious burials (diadems decorated with forged images, dewed earrings and temple rings of tremendously various kinds, bracelets with sculptural images of animals, bowl, heraldic images, necklaces, etc.); silver jewelry; bronze and clay pottery.

The pottery of imported clay (black figured, red figured and black stained) and steel pottery (patera/phiale, oinichoia, kylixes, aryballos) confirm extensive commercial-economic and cultural relations with the Greek world. By the time (VI-IV cc, BC) Vani was the center of one of the political-administrative units of Colchis and the residence of the ruling class. The III century BC starts a new era/phase in the history of the old city of Vani which becomes a great Templar center. The defensive wall, the architectural complex of the gate, the building with counter-forces, a round temple, a seven-staged altar, sanctuaries and other cult and social buildings with monumental lion statues, pillars decorated with divinity images, bronze miniature sculptures, masks and Greek ceramics found in the archeological

excavations belong to the III century BC. The ancient city was destroyed in the mid of the I<sup>st</sup> century BC. Subsequently, Vani declined to a village and was officially granted a status of a town only in 1981.

The majority of the material discovered during Archeological excavations and expeditions in Vani (since 1985) are preserved in the Archeological Museum opened on September 25, 1985. The currently functioning museum started a unique golden fund in 1987 storing one of-a-kind patterns of ancient goldsmiths from the remnants of Vani along with other unique pieces of the ancient Colchis exhibited in the museum.

Vani is also related to the myth about Argonauts. There is an assumption that the kingdom of powerful Aeetes was located on the territory of Vani and Jason sailed away with the king's daughter oracle Medea exactly from this particular place. A 20<sup>th</sup>-century British explorer, historian and writer Timothy (Tim) Severin during his Jason Voyage, while identifying the landmarks visited by Jason, dropped his anchor and erected the mock-up model of the ship Argo precisely in Vani.

## **Conclusion**

Based on the information about provided monuments (Mount Khvamli, Grakliani Hill and Vani), Georgia's archeology is considered to be a treasure of the world cultural heritage in terms of architectural monuments, models of community life, crafts or unique samples of folklore. Therefore they can be regarded as the sphere of sustainable tourism. Its diverse natural resources enable the development of adventurous tourism for climbers, hikers, cliffhangers. Rafting is also possible on the rivers as well as camping, hunting, fishing. The routes and itineraries need to be processed, hiking tours to be organized and hotels and other accommodation means need to be constructed in order to provide tourists with adequate shelters according to the level of comfort and their personal desire. We think development of mystical-cultural, sustainable or adventurous tourism will foster the rational utilization of natural resources, will increase the employment range, growth of revenues and bring new investments as soon as all these resources are entirely assimilated and implemented.

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# The Role Arts Management in Modern World

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## Abstract

The presented article aims to show new approaches in the arts management. Also here are given those circumstances that make impact on arts organizations, why arts management was allocated as separate discipline?! The article defines the most important role of arts management in modern art world, skills which arts managers have to use and its difficult everyday work. Before you develop and organize to execute your plans, you need to assess the larger issues facing the arts organization. It is necessary to analyze the potential impact of key environments that any business must consider when trying to realize its mission. Here will be reviewed the sources for information that can assist the arts manager in his quest for knowledge.

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**Keywords:** Art, art manager, arts management, environment

## Introduction

Arts management after its emergence in 1960s, became more complex term than it seems at the first glance. If the original attention was often focused on supporting outstanding not-for-profit art organizations in receipt of public subsidy, now it includes complementary commercial organizations operating in the creative industry. The goal of art organizations is transferred to business corporations.

Arts management, as formalized within higher education, is an outgrowth of the experiences of arts organizations in the United States during the 1960s.

Defining arts management: it is application of five traditional management functions –planning, organizing, suffering, supervising and controlling – to the facilitation of the production of the performing or visual arts and the presentation of artists' work to audiences. The administration an facilitation of the creative process and its communication to an audience is common to both public, nonprofit arts organizations (e.g. nonprofit theatres, symphony orchestras, opera companies, dance companies, museums, public broadcasting, and performing arts centers) and private commercial, for-profit

artistic entities (e.g. commercial theatres private galleries, film, television and video). (Encyclopedia of Public Policy and Administration, by Dan Martin in Shafritz 1998:128).<sup>140</sup>

Arts management is a field where creative people are engaged. An art manager works namely in this field; namely an art manager enables art to happen on a certain level. Arts management combines different directions of management, including: planning, marketing, finance, economics, organization, staffing and group dynamics.

Arts management combines many tasks like leading, financing, planning, organizing, distributing and marketing cultural services and goods. So, it is not management's narrow direction; it is a comprehensive sphere.

Why arts management was allocated as a separate discipline? The answer is simple: because, many countries discovered that art became business and many people can find some money in art business. Also it was clear that art organizations had its specific management system and it was necessary to create new management approaches for art.

What is art?! It is one of the forms of public awareness, artistic reflection of reality and exchange of spiritual information. Art is creativity; it creates new links, new compositions. Does these activities have any purpose, or is it a just enjoyment caused from creating new and sometimes strange artistic images?! Some people think that art is a free game. As art is creativity, certainly, there are elements of play and sense of freedom.

Chart 1. Structure of creating work in art<sup>141</sup>

<b>Art</b>	<b>Composition</b>	<b>Instrument</b>	<b>Creator</b>
Music	Chord	Musical instruments	Pianist
Poetry	Word	Pen	Poet
Painting	Paints, canvas	Paper	Artist
Sculpture	Stone, clay	Hammer	Sculptor
Theatre	Human	Human	Actor-Human

From this chart we can define that the human has a primary role in the art organizations. Art is formed by people especially in theatre.

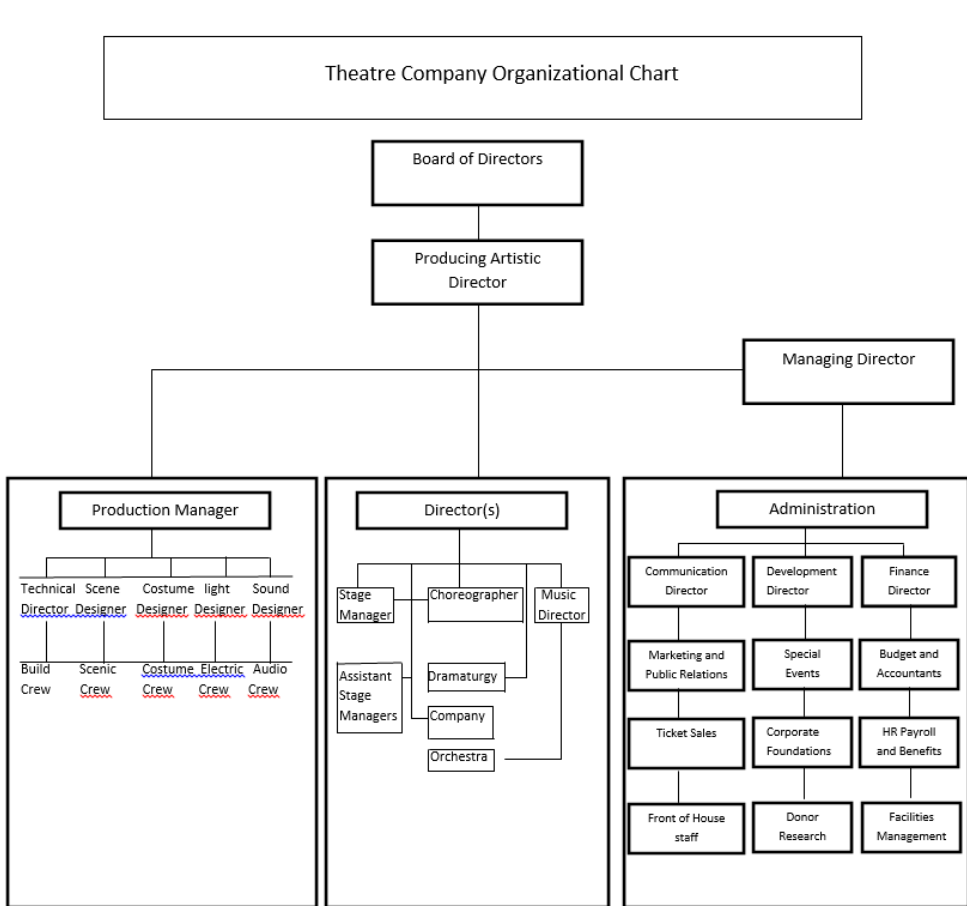
It is clear that art is based on human senses and these senses need to be managed. It is also a fact that there are many art organizations on the art market. The development of social networks revealed new artists, increased competition in art space. For that reason arts management became important direction in the modern world. Popular music, opera, theatre, dance companies, festivals, television, media companies, fashion industry, film and recording industry need managers to help fulfill primary purpose of business.

<sup>140</sup> Derrick Chong. "Arts Management". Second edition. NY, 2010. (p. 5).

<sup>141</sup> Tumanishvili M. "Tumanishvili thinks". Tbilisi (p 27).

When many countries became independent, they developed various systems of management. If in previous century the government was guaranty of financial stability, today art organizations and art groups have to take care of themselves. Different organizations have their own management principles and charts. One example of organizational chart of Theatre Company:

**Figure 1.** Theater company organizational chart. <sup>142</sup>



It should necessarily be taken into consideration that to be an effective manager one needs skills and abilities to plan, organize, lead and monitor the work of the organization.

Current situation shows that, after increasing the competitive environment in the art, management has created new trends. It was necessary to use marketing and PR technologies in art. In this situation, art managers began their active work in art business. Since then, namely art managers

<sup>142</sup> William J. Byrnes. “Management and the Art”. 2015 (p.199).

have conditioned success or failure of any art organization. They had to adapt to the changing environment. These environments are: economic, political and legal, cultural and social, demographic, technological, media impact.

Art manager has to study, research and make decisions how to act if any of these environments makes bad impact on the organization. Every art organization and art manager must be able to adapt quickly and make changes in the organization's internal agenda and use external circumstances for their benefit.

Arts managers have to know as much as possible about the people who expend the effort to go to a show or an exhibition, or who give the organization their financial support.

### **Conclusion**

Today, we can say that people have unstable interests in art. For instance, in Georgia many art projects, art events do not provoke much interest in society. This has many causes: bad economic situation, peoples' internet addiction, competitive environment, etc. In these case, development of arts management is of vital significance. Nowadays, arts managers have to accomplish difficult mission; they have to bring art and audiences together. Effective managers needs to have as much information about external environments as possible. In the modern world, gathering information is easy though, managers are not fully aware how to use it properly.

The artistic-manager is a well-established name in art, but arts manager's job function is recent addition. This management function has not changed during the last years, but the requirements on these individuals have changed. The first example of performance management was the public assemblies associated with religious rites in early societies. These performances were "managed" by the priest and were enmeshed in the fabric of the society. Theatrical trappings of costumes, dramatic settings, music, movement, etc. all supported and heightened the impact of the event.

So the art management's role was revealed even in the early period and after developing new systems of management made impact on art organizations. It is impossible to manage any organization without any governing structure. In order organizations to establish their niche in the society, they need to properly distribute human and material resources, make art market research, adapt to a changing environment, implement healthy internal environment and develop certain management system which creates art organizations. A strong art organization shows development and identity of the state, society and nation.



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# **Assessments of Collection Security Management in Academic Libraries: A Case Study of Central University Library**

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## **Abstract**

Librarians and libraries across the world are faced with the issues of security of their collection. The issue of collection security in libraries in the developing countries is worsened by low funding for libraries. In Ghana, the issue of collection security management often poses a tremendous problem to many libraries particularly academic libraries due to the lack of properly documented collection security policy.

There is a compelling need for librarians to put in place measures that would effectively monitor crime, mutilation and abuses on library staff and collection, or else academic libraries will soon be empty. This study was conducted to determine the operationalization of collection security management procedures at the library of Central University

The university was conveniently selected for the study, with students' population totalling 8000 and library staff of 33 both professional and para-professional. A statistical table was used to determine the sample frame and size for the students' population resulting with a sample size of 370 for students with a confidence level of 95%. A structured questionnaire was administered to the participants. Twenty (20.8%) of the users surveyed admitted that stealing and mutilation were common phenomena among library users. Limited copies of library books, cumbersome borrowing procedure, and high cost of photocopying and frequent breakdown of copiers were some of the causes of library materials theft and mutilation.

The study revealed that Central University library suffered adversely from security issues and other anti-social menace and that the introduction of security policy, library surveillance and devices (CCTV) would drastically improve the situation. The study recommended further that theft mutilation of books and other security breaches can be checked by staff being vigilant and also carrying out "security patrols".

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**Keywords:** Security management, academia, academic libraries

## **1.0 Background of the Study**

Academic libraries have long been recognized as the ‘hearts’ of the institution to which they are attached. To fulfill their mission of supporting the educational objectives of their parent bodies, which include teaching, learning, research and cultural development, the libraries develop and maintain standard books, journals and audio-visual collections and services, (Ogunsola, 2006). The provision of up-to-date and effective library collections in academic libraries is considered as a significant function for supporting teaching, learning and research. They constitute the bedrock for services provided to the academic community. Hence, libraries are still valued by their collection size (Payne, 2005).

Libraries are institutions set up to cater for the educational, cultural, research, recreational and information needs of its users. Libraries have the main objectives of being entrusted with the selection, acquisition, organisation, storage and dissemination of information to their patrons (Matthew, 2004).

Jama’a, (1984) observed that academic libraries in particular assume a focal point where users of diversified age groups, socio-political, economic backgrounds and cultural interests have to converge to utilize all the available resources that are relevant to their individual needs. Any academic library that aims to satisfy the information needs of academics and researchers must take great care with the development and management of its collection.

The collection is an important component of the library as it is the base upon which a library adds value and provides essential services to its users. Since time immemorial, libraries have been defined by their collections. For a long time, the usefulness of a library rested chiefly with the size and quality of its collection. Most of the works that libraries do are tied to their collections, (Choy, 2007). Protecting library collections will have a great impact on the library survival.

## **1.2 Statement of the problem**

The preliminary investigations by the researcher, revealed that the Central University library like all academic libraries faces theft of collection, abuse such as mutilation, defacing of documents, verbal assault on staff, overdue and occasionally equipment failure.

The researcher also observed from interaction with a cross section of library staff that it appears there is a lack of proper collection policy and procedures formulated by academic libraries to support the security of the

library collection and the activities involved in the management of security issues in libraries of which Central University is not an exception.

Many academic libraries fail to recognize the vulnerability and security of their collections to loss. Collections can be threatened not just by theft and vandalism, but also by disasters (e.g., fire or flood) and damage from careless handling or poor environmental conditions. The issue of collection security is of growing concern to all types of libraries and librarians. Many researchers have indicated that, the threat to intellectual property through theft, mutilation and other related crimes has continued to pose a tremendous challenge to library collections worldwide. As a consequence, there is a vast literature on a range of problems concerning collection security in libraries, however, few literature exist on the aspect of collection security management in the academic and university libraries in particular.

The problems of high cost of collection, average rate of increase over the years and high cost of subscription to online data bases and electronic resources has continued to pose serious challenges to the libraries. Alemna (1998) indicated that, with escalating prices of information materials worldwide, it is not surprising that all kinds of libraries are facing serious problems in collection development and maintenance. In many libraries therefore, funding level cannot keep pace with the basic requirements for books, journals and equipment necessary for library operation due to declining budget and increase demands of users. Consequently, many libraries are finding it difficult to acquire both primary and secondary publications to meet the enormous demands of users, Ugah (2007). Many publications as further indicated by Ugah, (2007) have been priced out of reach of individual subscribers and many libraries, with only large libraries able to afford them. Because of this high cost, collections are the most important asset in the library and therefore securing them becomes important.

It is for these reasons, that the researcher conducted the study to look into the governance practice on collection security management in the Central University Library.

#### **1.4 Objectives of the Study**

The objectives of the study are:

1. Find out which materials are most vulnerable to security breaches.
2. Find out user's perceived security breaches and their effect on their academic work
3. Assess the effectiveness of security systems in academic library under study

4. Determine the extent of commitment of management to collection security issues
5. Determine the level of staff and user awareness and the extent of training received by staff and users with regard to security issues in the library.

#### **1.4.1 Research Questions**

The research questions that will guide the research are as follows:

1. Which materials are most vulnerable to security breaches?
2. What are the measures used to reduce and address security breaches in the library?
3. How effective is the security system in the academic library under study?
4. To what extent is management committed to security issues in the library?
5. What is the level of staff and user awareness and the extent of training received by staff and users with regard to security issues in the library?

#### **1.5 Scope and limitation**

The study is limited to only Central University library and as such findings are true to academic libraries in Ghana and other parts of the world. The study is limited to collection security issues in academic libraries, University libraries in particular. Other types of libraries therefore, do not form part of the scope of the study. The study also covered only Level 300 and 400 students since the researcher believed that they are familiar with the library security and procedures.

#### **1.6 Significance of the Study**

- This study would bring to the limelight the strength and deficiencies in the collection security management policy in academic libraries to serve as a guide for managers of libraries in maintaining their collection.
- The study is expected to close the widening gap in literature related to collection security management in the world in general and Ghana in particular.
- It is also envisaged that the study would help enhance teaching and research activities in the information field while recommendations are offered towards improving collection security management of Central University and academic libraries in general.

- It is to provide a useful framework of reference and serve as conceptual bridge or springboard for new strategies for collection security management in academic libraries.
- It will also provide a policy framework for policy makers.

## 1.7 Methodology

### 1.7.1 Research Design

The cross-sectional survey approach was employed in this study to assess collection security management at Central University library. The cross-sectional survey approach proves useful in its ability to provide a snapshot of collection security management in the academia library under study. The university was conveniently selected for the study, with students' population totalling 8000 and library staff of 33 both professional and para-professional. A statistical table was used to determine the sample frame and size for the students' population resulting with a sample size of 370 for students with a confidence level of 95%.

Purposive sampling was employed in the selection of respondents until the last respondent was reached based on Brink (1996) assertion that purposive sampling relies on the judgment of the researcher regarding subjects who are representative of the phenomenon or topic being studied, or who are especially knowledgeable about the question at issue. Self-administered questionnaires were distributed to the respondents. The questionnaire consisted of open and closed-ended questions outlined under four sections. Data collected through the use of the questionnaire was analysed using the Statistical Package for Social Sciences (SPSS) version 20 from which descriptive and inferential statistics were computed.

## 2.0 Discussion of the findings

This section presents a discussion of the findings of the study as identified in the objectives. The analysis of the questionnaires revealed major findings. The discussion was grouped under the following:

- i. Vulnerable materials to security breaches and effect.
- ii. Effectiveness of security systems in academic library
- iii. Management to collection security issues
- iv. Level of staff and user awareness and the training

### Vulnerable materials to security breaches

The study revealed a number of issues relating to materials that were vulnerable to security breaches. Higher proportions (53.3%) of the students were of the view that reference books are more vulnerable than textbooks. 93.3% of the respondents affirmed also that there is no documented security policy in the library, and even if there is, it was ineffective.

The findings of Holt (2007) identified several of such security incidents, theft of physical materials; theft or alteration of data; and theft of money as major security crime in libraries.

According to Ajegbomogun (2004) library security is a strategically designed system to protect library collections such as books and non-books against unauthorized removals and involves safety of users and books against fire outbreak, insects, flood and protection of the premises against intruders.

In addition, Lorenzen (1996) asserted that many libraries acknowledging the threats of security are noted to have policies concerning collection security management which stress the importance of vigilance against theft or attack or inform staff of the steps to take to ensure their own safety and the safety of the resources.

Other studies focus on security breaches like purposive misshelving of items, especially reference books (Alao et al. 2007), disruptive behaviour as a result of drunkenness and drug addiction (Lorenzen, 1996; Arndt, 1997; Momodu, 2002; Ajegbomogun, 2004), natural and man-made disaster (Evans et al. 1999; Shuman, 1999; Aziagba and Edet, 2008) and demand outstripping supply, which may give rise to delinquent behaviour such as stealing, mutilating or using another user's borrowing tickets (Bello, 1998). All of which may subsequently remain a serious threat to the security of the library and its collection. The effect of this was highlighted by Alemna (1998) as, "with escalating prices of information materials worldwide, it is not surprising that all kinds of libraries are facing serious problems in collection development and maintenance". This shows that financial constraint has been a hindrance to library collection in Ghana and specifically Central University.

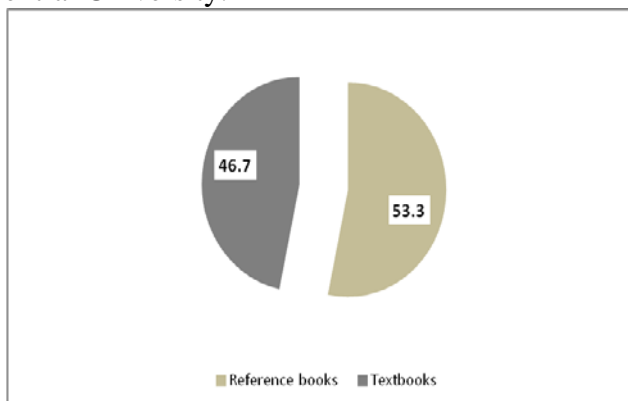


Figure 1: VULNERABLE MATERIALS TO SECURITY BREACHES AND EFFECT.

### **Effectiveness of security systems in academic library**

The study revealed that close circuit television (CCTV) should be included in the security system, use of electronic sensors and electronic surveillance systems to monitor movement of users and books and finally, the need to adopt well trained and permanent security personnel in the library.

The Association of College and Research Libraries (2006) proposed a guideline for the security of rare books, manuscripts and special collections. The guidelines proposed the establishment of proper governance by hiring library security officers who plan and administer security programmes, prepare and spearhead written policies. The library is also advised to closely monitor the entrances and exits of special collection reading areas, making staff aware of collection security problems, providing training in security measures, monitoring users in the stacks, reading and reference areas, keeping adequate accession records, and aiding access through proper cataloguing records and finding aids. The importance of good and supportive governance with clear policies and procedures in order to maintain an acceptable level of collection security in libraries is therefore necessary.

In terms of the implementation of the security systems in academic library, the libraries identified close to completion status while only one library is at the partial implementation stage. The result of the findings show that, all the libraries of the four universities demonstrated close to completion level of implementation security for the acquisition and circulation processes. Therefore, Jordan (1999) proposed that to ensure continued access and longevity of collections a proper framework involving the establishment of a repair and binding unit, preservation and duplication unit (for microforms, digital materials and photo duplicating) should be considered.

To Boss (1984), librarians commonly respond to losses in a reactive, rather than a proactive manner. A common reaction to headlines about thefts else-where or evidence of local losses is to purchase an electronic theft detection system; the reaction to vandalism is to secure vulnerable doors and windows, and install burglar alarms and smoke detectors. Electronic theft detection in libraries has become a growth industry. Are the collections protected by such systems truly secure from theft, or do the librarians have a false sense of security? Libraries have recently begun to install burglar alarms and smoke/fire detectors, but is there any evidence that this has deterred theft and vandalism. While of value in controlling losses, theft detection systems can instill a false sense of security because they protect only the entrances at which they are placed.



### **Management to collection security issues**

The study through the respondents found out that the library management was aware of the factors hindering security system, yet placed less effort in curbing the situation. That management is putting in only a little effort; more importantly, the respondents confirmed that the library security was not a priority of management and that management do not bother about the security problems of the library. That is why training among staff has not been implemented in the library.

Traditionally, security has been a matter of devising safeguards in reaction to specific losses. That is to say, when a loss occurs a new safeguard is introduced to protect against recurrence of that type of loss in the future. Libraries cannot afford the luxury of continuing such an approach; security must be viewed in the broadest possible sense and librarians should engage in anticipatory planning (Boss, 1984).

To curb the situation, Boss, (1984) suggested that the library administrators (management) should define the collection security needs broadly, encompassing in the review the security of materials from theft, fire, flood, and vandalism. Included in the definition should be protection of materials against removal from the inventory by modifying machine-readable bibliographic records. This is the area which has been most widely ignored. Librarians have apparently assumed that their computers function in benign environments. The major concerns appear to have been accidental losses of records from errors, omissions and natural disasters. The experience of the business community suggests that security planning should also encompass the protection of computer records against deliberate alteration.

### **Level of staff and user awareness and the training**

Most of the respondents (80%) stated that there has not been any form of training arrangements for staff regarding security issues of the Methodist University library. The staff however indicated that the frequency of the training per academic year should be encouraged and continuous. More so, users of the study (students) stressed that they were aware of the security procedures and became aware through orientation and the notice boards. Library bulletin and the lecture halls were also identified as means of knowing about security issues.

Lowry and Goetsch (2001) agreed with the findings in the study that there is a need of creating shared culture of mutual responsibility for security and safety of library collections. This involves making clear to users and staff about the safety and security policies and guidelines in libraries, especially those regarding food consumption in the library, theft, mutilation, and disruptive behaviour. They also emphasized on policies regarding training of staff to create an

awareness culture. The people aspect of library security issues, include staff's nonchalant attitudes to users' needs and ignorance about security issues (Ives, 1996).

There are instances which indicate that library staff entrusted to protect the integrity, accessibility and confidentiality of library materials were often the source of collection security problems (Ajegbomogun, 2004). These studies indicate that the people aspect and security culture are important factors when assessing collection security in libraries is most critical.

Contrarily to the findings of the study, it has been found that some people who deface books may not be aware of the adverse effect of their actions, and raising readers' awareness of the consequences, in terms of the cost and difficulty in replacing items, can also sometimes be effective in reducing the incidence of damage (Ewing, 1994). He therefore noted that equipment should be positioned in such a way that it is in view of staff to deter thieves and vandals. Here again the value of good library layout can be understood. Where possible, items should be secured, and in the case of expensive machines such as computers, electronic alarms can be fitted.

Equipment should be kept in good working order to deter "tactical vandalism". Staff rooms and storage rooms containing valuable household items should be kept locked when not in use and, as a final precaution against theft, parts of equipment, especially IT, should be indelibly marked for identification purposes.

On joining the library, borrowers should provide proper means of identification and preferably more than one source. This is to ensure that they are who they claim to be, and that they are not giving a false address in order to steal books. In addition, if a librarian feels suspicious of a person on library premises, the patron should be able to produce a library card proving that they are legitimate users.

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# **The Impact of the Petroleum Price Reductions on the Economies of the Central Asian Turkish Communities**

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## **Abstract**

The prices of Petroleum as the inevitable natural source of energy for all economies all over the World for years have been highly effecting those economies being in a serious fluctuation within the last 15 years. While its price was about per barell USD.20.- as of 2002, it had a pick at the level of USD.147.- during July 2008 by a rapid rise but it fell down again to level of 2009 at USD.35.- following the global crisis of 2008. However, between the years of 2011-2014 the prices, by gathering, had fluctuated in between the coridor of USD. 80-126. At the end of 2015, the price of WTI ( Teksas Petroleum) seriously decreased at the level of February 2009, down to USD.35,47 per barell. In parallel to WTI price, The Brent Oil price decreased down to USD.38,15 as well. Thereupon, as per these price fluctuations, most of the countries of which income sources mostly bound to these energy products have been facing vital economic problems. One of these countries is CIS (Russia). As CIS had been negatively effected by these oil price fluctuations, its sister countries which have historical and strict political and business relations were dragged to economic impasse. Not only, the position of CIS economy, but also the dramatic and ongoing price decreases related with the main income sources of the Central-Asian Turkish Communities forwarded their economies in problems by direct effects. Finally, the said economies have still been suffering from this problematic situation and have been trying to recover and to get rid of it. Through out this study, based on the OECD datas, it was found out that the Central-Asian Turkish Countries are urgently in need of new income sources other than the recent ones. If they couldn't manage to find a way or the oil and natural gas prices couldn't recover and reach to 2011-2014 period levels permanently, the collapses in those economies will be the inevitable fate in accordance with the general projections.

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**Keywords:** Petrolium Prices, Energy, Middle -Asian Turkish Countries, Economic Impact, OECD Datas



## **Introduction**

The prices of Petroleum as the inevitable natural source of energy for all economies all over the World for years have been highly effecting those economies as being in a serious fluctuation within the last 15 years. While its price was about per barell USD.20.- as of 2002, it had a pick at the level of USD.147.- during July 2008 by a rapid rise but it fell down again to level of 2009 at USD.35.- following the global crisis of 2008. However, between the years of 2011-2014 the prices, by gathering, had fluctuated in between the coridor of USD. 80-126. At the end of 2015, the price of WTI ( Teksas Petroleum) seriously decreased at the level of February 2009, down to USD.35,47 per barell. In parallel to WTI price, The Brent Oil price decreased down to USD.38,15 as well.<sup>143</sup> Thereupon, as per these price fluctuations, most of the countries of which income sources mostly bound to these energy products have been facing vital economic problems. One of these countries is CIS (Russia). As CIS had been negatively effected by these oil price fluctuations, its sister countries which have historical and strict political and business relations were dragged to economic impasse. Not only the position of CIS economy but also the dramatic and ongoing price decreases related with the main income sources of the Central-Asian Turkish Communities forwarded their economies in problems by direct effects.

## **The Importance Of Petroleum**

As it is well known, the energy is one of the most significant inputs of industry and transportation. Especially, the industrialization process directly depends on energy consumption and the close relation between demand for energy and standard of living is considered to need appropriate planning and requires close attention of countries. Petroleum, also named as 'black gold', is one of the main sources needed to acquire energy and has been used as the most preferred one of them for 150 years in the world.

Petroleum can easily be stored and is somehow cleaner energy source and produces much more energy with the cost advantage in comparison with its' alternatives. Besides, it is one of the cheapest energy sources today and it has less problems related with pollution and political conflicts. Thus, it has become a strategic raw material in the twentieth century.<sup>144</sup>

For a long time, Petroleum products have been the most important sources of energy and highly preferred agianst their closer competitor one, namely, coal. Although the coal has been continuing to preserve its importance due to the spread of steam engines since the acceleration of industrial revolution, the extraction, the use, and the transportation of those

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<sup>143</sup> <http://www.eia.gov/forecasts/ieo/world.cfm>

<sup>144</sup> Bağimsız Türk Cumhuriyetlerinin enerji potansiyelleri ve önemi, iportal oca26 2012 (<http://www.uiportal.net/uiportal/makaleler/bolgeler/orta-asya/page/2>)

products give some advantages to their consumers. Thereby, after first World War, the usage of the Petroleum products have continuously been increasing as being a mostly preferred energy source together with the Natural Gases.

Although, the coal is evenly distributed in the world, the Petroleum and Natural Gas production is restricted to certain regions and make this energy source more strategic.<sup>145</sup> As of its this said strategic position, it has great impact on important fields such as economy, industry, daily life and national security.<sup>146</sup>

What causes energy sources more strategic is its scarcity, its production that is restricted to certain geographical regions, its increasing economic value and its reserves that could have an effect on the world trade and prices in a large extent.

Today, Petroleum is used in manufacturing a wide variety of materials, and it is estimated that the world consumes about 95 million barrels each day.<sup>147</sup> About 90 percent of vehicular fuel needs are met by oil. Petroleum also makes up 40 percent of total energy consumption in the United States, but is responsible for only 1 percent of electricity generation. Petroleum's worth as a portable, dense energy source powering the vast majority of vehicles and as the base of many industrial chemicals makes it one of the world's most important commodities.<sup>148</sup> Viability of the oil commodity is controlled by several key parameters such as the number of vehicles in the world competing for fuel and the quantity of oil exported to the world market. Political stability of oil exporting nations and their ability to defend is so important.

### **Natural Gas Versus Petroleum**

Due to its cheapness and easily and rapidly use, the consumption of natural gas has been rapidly increasing. When environmental matters taken into consideration, it is understood that advanced industrialized countries have been meeting their greater proportion of energy needs from natural gas.<sup>149</sup> Since natural gas is the substitute for Petroleum, natural gas consumption is encouraged by government policies. It is only realized under certain conditions like high investment costs involving natural gas transportation system and special equipments. On the other hand, it has several advantages. Natural gas purchase agreements are generally accomplished not on the free market but through bilateral agreements

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<sup>145</sup> <http://www.bilgiustam.com/petrolun-olusumu-tarihcesi-ve-kullanim-alanlari/>

<sup>146</sup> Bağımsız Türk Cumhuriyetlerinin enerji potansiyelleri ve önemi, iportal oca26 2012 (<http://www.uiportal.net/uiportal/makaleler/bolgeler/orta-asya/page/2>)

<sup>147</sup> [https://en.wikipedia.org/wiki/Petroleum\\_industry](https://en.wikipedia.org/wiki/Petroleum_industry)

<sup>148</sup> [https://en.wikipedia.org/wiki/Petroleum\\_industry](https://en.wikipedia.org/wiki/Petroleum_industry)

<sup>149</sup> <http://burnanenergyjournal.com/petroleum-natural-gas-and-coal/>

between countries.<sup>150</sup> The characteristic of these agreements prevent the natural gas price from fluctuating. Since natural gas reserve has longer life compared to petroleum reserves, it can compete with Petroleum. In spite of this, Petroleum still maintains its value. By the year 2030, natural gas and Petroleum will share the first two places in total energy consumption.

### **The Main Types Of Petroleum**

Petroleum is a naturally occurring, yellow-to-black liquid found in geological formations beneath the Earth's surface. It is commonly refined into various types of fuels. Components of petroleum are separated using a technique called fractional distillation.<sup>151</sup> It is used into a large number of consumer products, from gasoline to asphalt and chemical reagents used to make plastics and pharmaceuticals.<sup>152</sup> The petroleum industry generally classifies crude oil by the geographic location it is produced in:

- 1-West Texas Intermediate,
- 2-Brent, or
- 3-Oman

Accordingly, its API gravity (an oil industry measure of density), and its sulfur content are also other criteria. Crude oil may be considered light if it has low density or heavy if it has high density; It may be referred to as sweet if it contains relatively little sulfur or sour if it contains substantial amounts of sulfur.<sup>153</sup>

The geographic location is important because it affects transportation costs to the refinery. Light crude oil is more desirable than heavy oil since it produces a higher yield of gasoline. Sweet oil commands a higher price than sour oil because it has fewer environmental problems and requires less refining to meet sulfur standards imposed on fuels in consuming countries.

Barrels from an area in which the crude oil's molecular characteristics have been determined and the oil has been classified are used as pricing references throughout the world. Common crudes are:

1-West Texas Intermediate (WTI), a very high-quality, sweet, light oil delivered at Cushing, Oklahoma for North American oil

2-Brent Blend, consisting of 15 oils from fields in the Brent and Ninian systems in the East Shetland Basin of the North Sea. The oil is landed at Sullom Voe terminal in Shetland. Oil production from Europe, Africa and Middle Eastern oil flowing West tends to be priced off this oil, which forms a benchmark

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<sup>150</sup> <http://burnanenergyjournal.com/petroleum-natural-gas-and-coal/>

<sup>151</sup> [https://en.wikipedia.org/wiki/Petroleum\\_industry](https://en.wikipedia.org/wiki/Petroleum_industry)

<sup>152</sup> <https://en.wikipedia.org/wiki/Petroleum>

<sup>153</sup> [https://en.wikipedia.org/wiki/Petroleum\\_industry](https://en.wikipedia.org/wiki/Petroleum_industry)

3-Dubai-Oman, used as benchmark for Middle East sour crude oil flowing to the Asia-Pacific region

4-Tapis (from Malaysia, used as a reference for light Far East oil)

5-Minas (from Indonesia, used as a reference for heavy Far East oil)

6-The OPEC Reference Basket, a weighted average of oil blends from various OPEC (The Organization of the Petroleum Exporting Countries) countries

7-Midway Sunset Heavy, by which heavy oil in California is priced

8-Western Canadian Select the benchmark crude oil for emerging heavy, high TAN (acidic) crudes.<sup>154</sup>

There are declining amounts of these benchmark oils being produced each year, so other oils are more commonly what is actually delivered. While the reference price may be for West Texas Intermediate delivered at Cushing, the actual oil being traded may be a discounted Canadian heavy oil -Western Canadian Select- delivered at Hardisty, Alberta, and for a Brent Blend delivered at Shetland, it may be a discounted Russian Export Blend delivered at the port of Primorsk.

#### **IV-The Countries Which Have Power Relating The Fuel & Natural Gas Energy**

Petroleum and Natural Gas are not evenly distributed in the world regions as they are only produced in some certain regions. Middle East, America, Venezuela are the well known oil exporting regions. The Caspian Sea is no exception and it has gaining importance.

The countries around Caspian Sea, Azerbaijan, Kazakhstan and Turkmenistan have rich Petroleum and Natural Gas reserves that will affect the world economy deeply in the recent century. A potential reserve that is waiting to be discovered is considered to be great in addition to proved energy potential. According to International Energy Report, proved petroleum reserves of this region is 28 billion barrel whereas natural gas reserves is 8 trillion cubic meter.

The top three oil producing countries are Russia, Saudi Arabia and the United States. About 80 percent of the world's readily accessible reserves are located in the Middle East and, besides 62.5 percent of them is from the Arab 5:<sup>155</sup>

1-Saudi Arabia,

2-UAE,

3-Iraq,

4-Qatar and

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<sup>154</sup> <https://en.wikipedia.org/wiki/Petroleum>

<sup>155</sup> [https://en.wikipedia.org/wiki/List\\_of\\_countries\\_by\\_oil\\_production](https://en.wikipedia.org/wiki/List_of_countries_by_oil_production)

## 5-Kuwait.

A large portion of the world's total oil exists as unconventional sources such as bitumen in Canada and extra heavy oil in Venezuela. While significant volumes of oil are extracted from oil sands, particularly in Canada, logistical and technical hurdles remain, as oil extraction requires large amounts of heat and water by making its net energy content quite low relative to conventional crude oil. Thus, Canada's oil sands are not expected to provide more than a few million barrels per day in the foreseeable future.

### **In this respect The Importance Of Central Asia by means of Petroleum&Natural Gas;**

Central Asia is at the center of a super-continent whose strategic importance is many fold: it is a continent that is home to three of the world's most sophisticated and advanced economic regions.<sup>156</sup> Seventy-five percent of the world's population lives in Eurasia and, as Zbigniew Brzezinski notes, "three-fourths of the world's energy resources" are there as well. Eurasia is also the world's most dynamic continent, as it is the location of six of the largest economies as well as six big military spenders.<sup>157</sup>

The location of Central Asia has made it a "strategic pivot." The interconnectedness and high degree of economic interaction among great powers makes it unlikely that a strategic player (China or Russia) could use Central Asia as a staging ground for an invasion. However, it should be "America's primary interest to help ensure that no single power comes to control this geopolitical space" [Zbigniew Brzezinski] because any strategic player dominating Eurasia would likely seek to control other parts of the world.<sup>158</sup> Central Asian countries, especially Kazakhstan, can be a conduit of stability, as their natural resources can satisfy some of the energy demands of the People's Republic of China. Central Asian countries are rich in oil, natural gas, and other resources, and therefore, it makes sense for the Chinese to extend their economic muscle to that part of the world.<sup>159</sup>

### **The main 5 Central Asian Countries regarding Petroleum & Natural Gas:**

- 1-Tajikistan,
- 2-Uzbekistan,
- 3-Turkmenistan,

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<sup>156</sup> Bağımsız Türk Cumhuriyetlerinin enerji potansiyelleri ve önemi, iportal oca26 2012 (<http://www.uiportal.net/uiportal/makaleler/bolgeler/orta-asya/page/2>)

<sup>157</sup> Korkmaz, S (1992); "Natural Resources of the new Turkish States", Geological Engineering, n. 405 20-24, 1992

<sup>158</sup> Rober V. Baryiski, "Russia the West and the Caspian Energy Mub", Middle East Journal, Cilt 49, No:2, Spring 1995, s.224

<sup>159</sup> <http://thediplomat.com/2016/08/central-asias-oil-and-gas-now-flows-to-the-east/>

#### 4-Kyrgyzstan, and

5-Kazakhstan are endowed with an immense amount of natural resources and are located in the center of Eurasia.<sup>160</sup>

The collapse of the Soviet Union made it possible for these Central Asian states to develop independent relations with the rest of the World and now they run their economies by themselves.<sup>161</sup> The emerging economic and geopolitical significance of these five republics to China is currently defining the international relations of these republics. Kazakhstan in particular has attracted the interest of the Chinese government. With the steady growth of the Chinese economy and its energy demands, Kazakhstan together with other central Asian states— has become one of the key sources for China's energy supply.<sup>162</sup> In terms of absolute amounts, oil from Kazakhstan still only accounts for a small portion of China's total oil imports: in 2004, China imported 1.19 million tons (8.3 million barrels) of crude oil from Kazakhstan, compared with the country's total imports of 91million tons (636.8 million barrels), about 1.31 percent.

Since The Caspian Sea is between the Middle east and Caucasia; when assessing the geopolitics importance of it, it could be analyzed by integrating with these two regions. In Caspian Region, there is a Caucasian country; Azerbaijan and there exist two middle eastern countries (Kazakhstan and Turkmenistan).<sup>163</sup> Having had significant portion of these resources of Caspian by Turkish countries from their economy point of view, these energy resources have a vital importance.<sup>164</sup> Especially Land countries like Azerbaijan, Kazakhstan and Turkmenistan which have large oil and natural gas reserves have no access to the sea, it is difficult for them to carry their energy products to international markets. The remoteness of the region away from international markets, make transportation via one or more than one neighboring country costly. Azerbaijan, Kazakhstan, Turkmenistan endowed with rich energy sources have some advantages over Russia and

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<sup>160</sup> Bağımsız Türk Cumhuriyetlerinin enerji potansiyelleri ve önemi, ıportal oca26 2012 (<http://www.uiportal.net/uiportal/makaleler/bolgeler/orta-asya/page/2>)

<sup>161</sup> Yalçınkaya, A(1998); "Türk Cumhuriyetlerinin Siyasi Gelişimi", Türk Cumhuriyetleri ve Petrol Boru Hatları, (der. Alaeddin Yalçınkaya), İstanbul, Bağlam Yayınları, 1998, s. 268

<sup>162</sup> <http://oilprice.com/Latest-Energy-News/World-News/Turkmenistan-Diversifies-Its-Gas-Exports-To-Reduce-Reliance-On-China.html>Turkmenistan Diversifies Its Gas Exports To Reduce Reliance On China

<sup>163</sup> Nesibli, N (2000); " Azerbaycan Jeopolitiği ve Petrol", Bakü, Hazar Üniversitesi Yayını, 2000, s 29-30

<sup>164</sup> Yüce, Ç. K. (2010); "Bağımsız Türk Cumhuriyetleri'nin Enerji Potansiyelleri ve Önemi", Turan-sam Turan Stratejik Araştırmalar Merkezi, 14/09/2010, <http://www.turansam.org/makale.php?id=1896>

Iran. Although Russia and Iran have rich resources, their oil and natural gas resources in Hazar region as compared to Turkish countries is negligible.<sup>165</sup>

### **V-The Diminishing Petroleum Prices' Influence On Economic Bottleneck In The Turkish Originated Middle (Central) Asian Countries**

The prices of Petroleum as the inevitable natural source of energy for all economies all over the World for years have been highly effecting those economies as being in a serious fluctuation within the last 15 years. While its price was about per barell USD.20.- as of 2002, it had a pick at the level of USD.147.- during July 2008 by a rapid rise but it fell down again to level of 2009 at USD.35.- following the global crisis of 2008. However, between the years of 2011-2014 the prices, by gathering, had fluctuated in between the coridor of USD. 80-126. At the end of 2015, the price of WTI ( Teksas Petroleum) seriously decreased at the level of February 2009, down to USD.35,47 per barell.<sup>166</sup> In parallel to WTI price, The Brent Oil price decreased down to USD.38,15 as well as the three-fourths of the world's energy resources" are there in Central Asia, all price issues directly effect the economies of those Turkish originated countries located there.<sup>167</sup>

Therefore,

1-Azerbaijan,

2-Kazakhstan,

3-Turkmenistan and

4-Uzbekistan are the main countries and their economies influenced by the price fluctuations of energy all over the World.

As per the price fluctuations, most of the countries of which income sources mostly bound to these energy products have been facing vital economic problems. One of these countries is CIS (Russia). As CIS had been negatively effected by these oil price fluctuations, its sister countries which have historical and strict political and business relations were dragged to economic impasse. Not only the position of CIS economy, but also the dramatic and ongoing price decreases related with the main income sources of the Middle -Asian Turkish Communities forwarded their economies in problems by direct effects.<sup>168</sup>

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<sup>165</sup> Hasgüler, M& Uludağ, M,B (2009); " Russia and the Central Asia on the way to the Third World", İ.Ü. Siyasal Bilgiler Fakültesi Dergisi No:41 (Ekim 2009)

<sup>166</sup> Özbuğday, F. C. (2014); "Petrol Fiyatlarındaki Değişim: Nedenleri ve Etkileri", Tenva Enerji Vakfı, <http://www.tenva.org/petrol-fiyatlarindaki-degisim-nedenleri-ve-etkileri/>

<sup>167</sup> Özdemir, L (2015); "2008 Küresel Krizi ve Seçilmiş Avrasya Ekonomilerine Etkileri:Azerbaycan ve Kazakistan Örneği", Yönetim Bilimleri Dergisi Cilt: 13, Sayı: 26, ss. 41-62, 2015

<sup>168</sup> Özdemir, L (2015); "2008 Küresel Krizi ve Seçilmiş Avrasya Ekonomilerine Etkileri:Azerbaycan ve Kazakistan Örneği", Yönetim Bilimleri Dergisi Cilt: 13, Sayı: 26, ss. 41-62, 2015

## **The Global Political Influence On This Territory (CIS, USA, EU, OECD Factors )**

Geographically, Kazakhstan shares a border with China's western province, Xinjiang. China, unlike the United States and European powers, and registers no objections to the Kazakh government's human rights abuses. This makes China's political and economic transactions with the Kazakh government much easier. Nevertheless, a bilateral strategic partnership underpinned by energy cooperation is believed to fit the fundamental interest of both nations. China's thirst for oil and natural gas has stimulated the Chinese to invest heavily in the markets of Central Asia. Thus, Kazakhstan will continue to be a particular target for that investment. Janet Liao describes Chinese economic interest in Kazakhstan: Of course, China is not the only country eyeing the natural resources of Central Asia. Western Europe, Russia, India, and the United States are interested as well. Thus, it is no surprise that Central Asia in recent years has become the center of world attention.<sup>169</sup>

It is claimed with great certainty that known resources will increase as it was in the past and the same thing necessarily will happen in the future both with the use of new extraction technologies and increasing energy prices. When it is evaluated with newly discovered reserves, Caspian Region has some great economic potential.<sup>170</sup> Increase in energy price would influence the future of high cost hazar petroleum for the producers and consumers, on the other hand, decrease in prices will lower the speed of big projects that aim to develop high search and production cost for Caspian resources and their transportation to the international market.<sup>171</sup> Price fluctuations does not only affect Caspian region but also affects the whole world. For example, several explanations can be made to account for price decrease in petroleum in international markets.<sup>172</sup> It can be result of stone gas revolution and investment after that natural gas and petroleum started to be produced. In OECD countries stagnation and low growth rate might be

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<sup>169</sup> Şenel, İ (2014); "Dünya Enerji Piyasaları ve Orta Asya ve Kafkas Ülkeleri", 12-13 Haziran 2014 Uluslararası Ekonomi, Finans ve Enerji Kongresinin (EFE'2014) (<http://ayu.edu.tr/eng/index.php/9-guncel/53-uluslararasi-ekonomi-finans-ve-enerji-kongresi-almati>)

<sup>170</sup> Yüce, Ç. K. (2010); "Bağımsız Türk Cumhuriyetleri'nin Enerji Potansiyelleri ve Önemi", Turan-sam Turan Stratejik Araştırmalar Merkezi, 14/09/2010, <http://www.turansam.org/makale.php?id=1896>

<sup>171</sup> Kalichki, Jan H. (2001), "Caspian Energy at the Crossroads", Foreign Affairs, September/October.2001

<sup>172</sup> Aslanoğlu, E (2014); "Petrol fiyatlarındaki düşüşün etkileri: Kim kazanıyor, kim kaybediyor?" <http://www.aljazeera.com.tr/gorus/petrol-fiyatlarindaki-dususun-etkileri-kim-kazaniyor-kim-kaybediyor>



possible explanations for decrease in price.<sup>173</sup> Chinese economy that have had high growth rates recently could not sustain this trend and growth rate dropped as it is before. Thus, there has been continuous increase in energy demand slightly. In this case, the occurrence of slow growth in advanced countries and their inadequacy to reach expected level of growth energy demand stayed constant and at most indicated moderate increase. In situations like being unable to function the joint decision making in OPEC, the prominent role of Saudi Arabia as the biggest producer on decision making strengthens. This is the indication that weakens the role of OPEC on prices. The oil supply is higher than the oil demand in the market. Especially, Saudi Arabia hasn't supported restrictions on production. Oil producing countries other than OPEC countries have supplied petroleum to the market and they continue to supply in spite of the decreasing prices. Decreasing prices brings oil exporting countries to worst economic conditions. Their foreign reserves and asset funds melt down.

The decrease in raw petroleum prices naturally has a negative impact on search facilities of oil and natural gas. When data corresponding price fluctuations is analyzed, we reach these following conclusions. Between the years 1996-1998 oil consumption decreased due to the warm weather in winter and Southeast Asia crisis with the accumulation of OPEC stocks, oil price decreased by more than half. According to Kohl factors that place oil demand below oil supply is because of Southeast Asia crisis in which devaluations in these countries make dollar based borrowing difficult.

In order to support its financial needs, Russia increased its oil export by 600-800 thousand barrel in the last three months in 1998 and to stabilize its currency China restricted its oil imports lately in 1998. According to Marse and Richard, the reaction against Venezuela that does not obey OPEC rules and oil price wars to dominate the market are the basic reasons for this price decrease. After oil producing countries had restricted on oil prices, demand increased with economic recovery and this caused prices to increase again.<sup>174</sup>

What causes oil price decrease is the reduction in oil demand as a result of economic stagnation Although especially Asian countries have had high growth rates in recent years, when confronted with high prices, they

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<sup>173</sup> Özkaya, Ş. "Petrol Fiyatlarının Ekonomilere Etkisi", (<http://www.mfa.gov.tr/petrol-fiyatlarinin-ekonomilere-etkisi.tr.mfa>)

<sup>174</sup> Özdemir, L (2015); "2008 Küresel Krizi ve Seçilmiş Avrasya Ekonomilerine Etkileri: Azerbaycan ve Kazakistan Örneği", *Yönetim Bilimleri Dergisi* Cilt: 13, Sayı: 26, ss. 41-62, 2015

could not save their positions.<sup>175</sup> Until the beginning of 2002, this reduction continued and OPEC member countries jointly decided on restrictions of their oil production except Iraq. In 2003, although these countries increased their production, oil prices went on increasing. One reason for this is the continuing decrease in oil reserves in OECD countries. In 2003 since the tension in Iraq war is below the expected level, the increasing trend of oil prices decreased; OPEC and especially Saudi Arabia increased their production in great proportions against supply crisis in return and this precaution reduced this increase in price.<sup>176</sup> In 2010 demand for raw oil increased by 2.84 million barrel and this resulted in increase in oil prices. In 2011, the political and social tension in Middle east resulted in causing rapid increase in oil prices, ended with % 1 value loss.<sup>177</sup>

The economic development of Turkish countries depend on operation of these resources rationally and transportation of them to western markets. For these reasons, Turkish authorities make an investment deal with international energy companies and world countries and try to attract foreign direct investment.<sup>178</sup> But they need legal arrangements to do this. After their independence, they want to use their reserves immediately to provide necessary resources directed to make changes in their economies, and smoothen their problems. For these three countries, these resources are inevitable. In Public revenue, income obtained from energy sector out of total income, the greatest proportion belongs to energy resources. Energy sources is important to attract foreign direct investment. The difficulties in the use of energy sources is explained as the problem of transporting energy resources to the market, the statue of Caspian Sea, the monopoly of Russian federation in the region and the lack of national capital with insufficient technology.<sup>179</sup>

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<sup>175</sup> Aslanoğlu, E (2014); “Petrol fiyatlarındaki düşüşün etkileri: Kim kazanıyor, kim kaybediyor?” <http://www.aljazeera.com.tr/gorus/petrol-fiyatlarindaki-dususun-etkileri-kim-kazaniyor-kim-kaybediyor>

<sup>176</sup> Kazakoğlu, C, (2016)Düşen petrol fiyatları hangi ülkeyi nasıl etkiliyor? [http://www.bbc.com/turkce/haberler/2016/01/160111\\_petrol\\_fiyatlari\\_dusus\\_analiz](http://www.bbc.com/turkce/haberler/2016/01/160111_petrol_fiyatlari_dusus_analiz)

<sup>177</sup> Aslanoğlu, E (2014); “Petrol fiyatlarındaki düşüşün etkileri: Kim kazanıyor, kim kaybediyor?” <http://www.aljazeera.com.tr/gorus/petrol-fiyatlarindaki-dususun-etkileri-kim-kazaniyor-kim-kaybediyor>

<sup>178</sup> Özkaya, Ş. “Petrol Fiyatlarının Ekonomilere Etkisi”, (<http://www.mfa.gov.tr/petrol-fiyatlarinin-ekonomilere-etkisi.tr.mfa>)

<sup>179</sup> <http://oilprice.com/Latest-Energy-News/World-News/Turkmenistan-Diversifies-Its-Gas-Exports-To-Reduce-Reliance-On-China.html>Turkmenistan Diversifies Its Gas Exports To Reduce Reliance On China

## **What Will Be The Economic Fate Of The Central Asian Turkish Originated Countries**

Especially, the economies of Azerbaijan, Turkmenistan and Uzbekistan that are the Central Asian Turkish originated countries are directly dependent on the natural energy revenues. All their industrial investments, the credits achieved from abroad are all motivated by this potential income sources. Besides, it is inevitable that they have to gain much more for their future by these energy resources. The energy pipeline facilities are to be wisely managed on the basis of reel international politics by them and they have to easily reach the world markets by being the price maker acting together with the help of CIS. Otherwise, their recent situation would be problematic in the future as of the diminishing price levels and the economies of these countries of which income sources mostly bound to the said energy products. Moreover, they will have been facing vital economic problems.

### **Conlusion & recommendations**

As during the last two years, the diminishing prices of oil and natural gas had negative effects on the economies of Turkish originated countries where they are the main source of income. This means less investment, less income, lower standart of living, and less employment for these countries.<sup>180</sup> Thus, the effects of the decreased prices have occured by causing their balance of payment and foreign trade accounts with a high deterioration although the prices are expected to rise again.<sup>181</sup> Finally, the said economies have still been suffering from this problematic situation and have been trying to recover and to get rid of it. Throughout this study, based on the OECD datas, it was found out that the Central-Asian Turkish Countries are urgently in need of new income sources other than the recent ones. If they couldn't manage to find a way or the oil and natural gas prices couldn't recover and reach to 2011-2014 period levels permanently, the collapses in those economies will be the inevitable fate in accordance with the general projections. One of these countries is CIS (Russia). As CIS had been negatively effected by these oil price fluctuations, its sister countries which have historical and strict political and business relations were dragged to economic impasse.

Not only the position of CIS economy but also the dramatic and ongoing price decreases related with the main income sources of the Central-

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<sup>180</sup> Özkaya, Ş. "Petrol Fiyatlarının Ekonomilere Etkisi", (<http://www.mfa.gov.tr/petrol-fiyatlarinin-ekonomilere-etkisi.tr.mfa>)

<sup>181</sup> Özkaya, Ş. "Petrol Fiyatlarının Ekonomilere Etkisi", (<http://www.mfa.gov.tr/petrol-fiyatlarinin-ekonomilere-etkisi.tr.mfa>)

Asian Turkish Communities forwarded their economies in problems by direct effects.

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# Termination of Life on Request and Assisted Suicide

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## Abstract

The right to life in Georgia is guaranteed by the constitution which clearly states that everyone has the inviolable right to life and this right is protected by the law (6). In Georgian jurisdiction, euthanasia as the term is defined as follows: "Euthanasia - intentional termination of life on request of the patient who suffers from the terminal illness when the death is unavoidable" (7). The word "euthanasia" comes from the Greek words and means "good, easy death"(1). It consists of two parts - "eu" meaning "good" and "thanatos" meaning - "death". It means a deliberate hastening of a person's death or ending a life of the patient who is terminally ill and has incurable illness in order to relieve intractable suffering. Euthanasia is not a strange phenomenon in the modern world, though one can say that for certain categories of countries it really is. Society is diverse. Accordingly, each person has different opinion on different matters. It is logical that the diversity of opinions and plenty of controversies about the abovementioned issue is caused by its topical nature and scale. Topicality of the problem creates the base of searching preventive mechanisms of the ways of its solution. I would like to emphasize that it would be better to prevent the crime in advance, rather than thinking of a punishment after its commitment. A number of topical issues are discussed in sequence in the article, such as the modern scientific approach on the given issue, areas of the legislative base in Georgia and in the rest of the world, preventive measures, examples, discussion of the issue in the context of religion and what changes should be made in the field of crime prevention in Georgian preventive policy in the nearest future.

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**Keywords:** Murder, suicide, victim, termination of life on request

## Introduction

Alongside with the development of medicine to some theories, in the 20<sup>th</sup> century civilized European countries came into existence the so-called - "Easy death" which had taken a particular direction towards incurable diseases. The idea of a legalizing Euthanasia was forming long ago. It is still

referred to in "Utopia" by Thomas More. Understanding the concept of euthanasia itself as the death of terminally ill patients - to relieve the suffering [3] takes place from the 16<sup>th</sup> century. Euthanasia is being discussed in medical science; in particular, broadly it would include:

- Annihilating any person's life (unsound mind, mentally handicapped);
- Hastening annihilation of those ill patients who are in the last stages of the disease;
- Decreasing the rate of suffering before death without hastening death (2).

### **Historical review**

Euthanasia is mentioned in Hippocratic Oath which was written about 400-300 BC. Hippocrates wrote in his oath: "I will prescribe deadly medicine to nobody or will not give him/her advice leading to death for relieving their conditions" (4).

Despite this, ancient Greeks and Romans did not believe that life should have been preserved with any effort. Therefore, they were tolerant towards suicide in the cases when the heavy condition of the patient could not be relieved or in an exception – when a person did not care about his/her life. Since 1300 until the middle of last century, according to the English Common Law, suicide was a culpable action and still today helping others in suicide is considered as an illegal act. According to the Roman law, a person's consent and desire to die excluded the illegitimacy of his/her action. In the middle ages, strengthening of social order, the variation of events and the role of the church had a certain influence on society. In this period, the beliefs were being formed about the right style to living. According to this, a person does not have the right to rule his/her life. The direct desire and agreement of the person about devastating life is considered as a crime and its legal analysis often requires the qualification of murder. Later in 17- 18<sup>th</sup> century, views appear that Euthanasia, e.g. the case given above, when a doctor appeals to an annihilation of death, despite the desire and will of sick people, have to be considered as independent and different form of crime. In the 18<sup>th</sup> century, the view was formed and according to this "Will murder" facts to depart from the deliberate killing sphere and at this time should be used relatively light crime. Though, this opinion was not shared by either Europe or by Anglo Saxon law. So, such kind of Euthanasia practice was not inculcated and in many countries cases like these were qualified as crimes of murder line.

Nowadays, Euthanasia is not a novelty for the world. It was first admitted in 1996 in the southern region of Australia. Since April 2002, it was legalized in the Netherlands and in 1997 in the US State - Oregon. In the



Netherlands one can call the brigade of doctors who undergo euthanasia to the patient without leaving home. There is also the Church of Euthanasia which was founded by Chris Korda. She proves that the life on earth is in danger because of the people who are in "the second dimension". "Save the planet" kill yourself, so has euthanasia church emerged.

Nowadays, the right of euthanasia is a subject of discussion as it is one of the most arguable medical, religious, political and ethical issues. Euthanasia is widely implemented in Nordic Countries and it is encouraged by the states; however, it is banned in some countries and in some places generally exists no regulation issue of legislative database (5).

We can give an example of various forms of Euthanasia from the close history: in Germany, dictator's so called "Euthanasia Program" "Mad Plan" was legitimated on July 14, 1939. Racial hygiene and forced Euthanasia process was followed by the legislation of "Mad Plan". The cleaning of the state from the people who are only "Economic Burden" and proceeding from the physical-mental imperfection were not able to fill the higher ranks of nation. After defeating Fascists, the whole world community condemned awful practices of forced euthanasia and sharply negative attitude towards this issue was settled. In 1828, in the state of New York the first law of anti-euthanasia was issued. It was followed by the same acts in many other places and states.

### **Classification**

There are active and passive kinds of euthanasia. The form of "Active Euthanasia" means applying such drugs towards incurably infected patient that will hasten death. The form of "Passive Euthanasia" means quitting additional therapy to incurably infected human being that also causes his/her death as a result. Euthanasia is a sort of choice among life and death that is executed by the third person according to a patient's request. There is also a voluntary, non-voluntary and involuntary form of euthanasia. The question – why do people wish euthanasia -often arises. Most of the people thinking that unbearable pain is the primary reason of euthanasia. However, the studies conducted in the US and the Netherlands clarified that only less than one third of euthanasia requests was caused by the unbearable pain.

### **Topicality**

The issue is topical as there are radically different positions and approaches among the various branches of society. Euthanasia is a disputable issue not only because many different moral dilemmas are associated with it, but because of its definition itself. It should be noted that in Georgia the act of euthanasia is prohibited and punishable. Implementing euthanasia

causes criminal liability and equals to the Article 110 from the "Criminal Procedure Code of Georgia" according to which: "Murdering victim according to his/her persistent begging and according to his/her real wish to relieve from deathly physical pain, is being punished by preventing freedom from two to five years" (8). It is emphasized in the Georgian legislation that "Medical Personnel as well as any other person is prohibited to perform the act of euthanasia as well as to take part in the process of performing it" (2). As for the arguments of people supporting euthanasia: Firstly, living is right and not duty. Therefore, it means having the right of death itself. Every person has the right to make choice between living and death. Secondly, we cannot make a person suffer from unbearable pain. It is a greater sin to watch him/her suffering than to release him/her from it. The euthanasia supporters say that: a person has the right of making choice. If he/she is tired of living, then the doctors should "help" him/her in smooth death. They consider that it should be proved by the legislation. Voluntary euthanasia supporters focus on the fact that the choice is the fundamental principle of liberal democracies and free market systems. The pain and suffering that the patient deals with while being ill is not vivid for people who have not experienced it themselves.

As for the positions and arguments of the foregoing opponents, there are number of arguments based on practical issues. According to some humans' view, in case euthanasia is morally justified, it must not be legalized. It will be misused for hiding murdering facts. Discussing the issue in case of religion, euthanasia is the fact of suicide, more correctly, it is contributing, and suicide is the greatest sin. Human has the right of living and the life itself and enacting it is not his/her right. Only God has the right to grant and take away the life."

## **Conclusion**

We should consider euthanasia not only in legal or in any other setting. It requires a thorough analysis of the moral-legal and medical terms. The only similarity between them is the fact that there is no consensus on the issue. As for the moral aspect, there is a dispute between law and medical scientists. In case of science, doctors have not come up with general consensus. They are reluctant or afraid of simply saying - "too much responsibilities". In case of law, national legislatures and international legal principles could not reach a consensus in terms of legislature. More importantly, the issue of euthanasia is at the international level - a confrontation between the right to life and prohibition of torture. It is also clear that the international community is reluctant to unambiguous statements, fearing not to revise a dispute between national legislation and

some international principles. In particular, according to the Article 110 of the "Criminal Procedure Code of Georgia" – for giving right qualifications of the murder subjective composition are taken into consideration - murders are held at direct intent, however, is based on the request of the dying, and the motive of the crime is regret towards victim. Admitting euthanasia is unacceptable for European Court– the Court of Strasbourg admitted euthanasia as the attempt upon life.

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Georgian constitution is available at:  
<http://www.parliament.ge/ge/kanonmdebloba/constitution-of-georgia-68>  
Georgian "Health Care Law".  
Georgian "Criminal Procedure Code of Georgia".

# The Right of Inheritance and Modern Reproductive Technologies

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## Abstract

The article deals with the issues related to the right of inheritance of a child born with the help of modern reproductive technologies. The paper discusses appropriate legislative amendments in the Civil Code and in the decree of the Minister of Justice on “Approval of the Registration of Civil Acts” enforcement of which will facilitate to define the rights and obligations of a child born by surrogacy and a donor’s participation.

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**Keywords:** Surrogacy, extracorporeal fertilization, embryo donation

## Introduction

Worldwide recognition of property and inheritance rights by the Constitution of Georgia made us see the origin of property and inheritance rights and their interrelation in a new way (1.3). According to the paragraph 1 of the Article 21 of the chapter 2 of the Constitution of Georgia, property and inheritance rights are recognized and inviolable. The right of ownership, acquisition, alienation and inheritance cannot be abolished.

As the Articles 16 and 20 of the Constitution empower a person's free development and the privacy rights in Georgia, they should be considered as the constitutional-legal ground for reproduction.

Traditionally, inheritance law is one of the main fields of private law. Accordingly, advances in modern medicine in the field of artificial insemination caused a lot of problems which, on its turn, were unfamiliar and unexpected for inheritance law.

Assisted medical reproduction is available in many countries. In accordance with the **Article 136 of the Law of Georgia on "Health Care"**, every citizen has the right to independently determine the number of children and the time of their birth. The state ensures human rights in the field of reproduction as defined in the legislation. The same law implies **fertilization with a donor's sperm** and **extracorporeal fertilization** for treatment of infertility as well as the risk of transmission of genetic diseases.

According to the same law, **female and male gametes or embryos conserved with the freezing method** can be used for the purpose of artificial insemination. Conservation time is determined minding the couple's will under the established procedure.

**Embryo donation** for the purpose of a child's birth is also possible. Embryo donation is the process when gamete providers reject an embryo created in the test-tube and give it to genetically unrelated person. (Gametes are female and male reproductive cells, eggs and sperm, which form the zygote - fertilized egg by merging (9)). There are two kinds of donation: direct - when a recipient and a donor are familiar with each other and anonymous donation - when a recipient childless woman is unknown to a donor. Embryo donation is prohibited in many countries. Law of Georgia on Health Care does not directly recognize the donation of an embryo (embryo donation is the process when gamete providers reject an embryo created in the test-tube and give it to a genetically unrelated person (5-117)). However, Part 1 of the Article 143 **considers the possibility of extracorporeal fertilization using a donor's gametes or embryos** to overcome infertility; according to the Article 144, **the use of the embryo conserved with the freezing method is permitted**. There is no direct indication in any regulations whether the embryo should be transferred directly to the genetic mother or it can be transferred to another person for artificial insemination (5,123). According to the Part 2 of the Article 11 of the Civil Code of Georgia, **inheritance right starts from the moment of conception**; however, its exercising depends on a child's birth. According to the paragraph "a" of the Article 1307 of the Civil Code of Georgia, heirs can be: in the event of hereditary succession – the persons who survived the decedent as of the moment of his death, as well as the decedent's children **born alive after his death**. According to the paragraph "b" of the same Article heirs can be: in the event of inheritance by will – the persons who survived the decedent as of the moment of his/her death, as well as **those conceived during the decedent's lifetime and born after his death**, regardless of their filiation with the decedent, and also legal persons.

Recognition of a human as a natural person and the ability to have rights is related to only one circumstance – his/her life (2.100). According to the part 1 of the Article 11 of the Civil Code of Georgia, like civil-legal systems of other constitutional European States, the starting point of the legal capacity is related to a child's birth. Under "birth" is implied complete separation of an alive child from the mother's body. According to the Civil Code of Georgia, arising the legal capacity have no additional preconditions (2.102). An embryo has a special legal status. Despite not being born yet, it still has certain rights. The elements of having rights precede the moment of birth (3. 133).

An embryo has limited legal capacity (right on inheritance) and conditional legal capacity (depended on birth) (2.105). In the Roman Law, according to Justinian's Digesta "those who are distant relatives of the decedent, than those in the mother's uterus, were not called heirs until it was clear whether the child was born or not" (4.126).

**The status of artificially inseminated embryo is different. According to the active legislation of Georgia, a test-tube embryo falls within the category of a special law which applies to the rules that regulate property (8-137).**

According to the Article 1336 of the Civil Code of Georgia, in the event of inheritance by law, the following persons shall be deemed to be heirs entitled to inherit in equal shares: In the first case – the decedent's children, a child of the decedent born after his death, the decedent's spouse, and his parents (including adoptive parents).

According to the Civil Code of Georgia, the basic pillars of the legal relationship between parents and children are: **birth of a child in the registered marriage and blood ties**. To determine rights and obligations between mother and child and prove blood kinship the **fact of giving birth to a child** is enough. Whether or not mother was in registered marriage with a partner from whom the child was born does not matter. As for the origin of the relationship between father and a child, it is mostly related to the registration of marriage as well as blood kinship, except the cases when a person voluntarily recognizes his fatherhood towards a child born in unregistered marriage and of his paternity is determined by the court. Thus, **the reciprocal rights and duties of parents and their children shall arise from the filiation of the children, proved in accordance with the procedure prescribed by law (6.123)** (Article 1187. Grounds Giving Rise to the Rights and Duties of Parents and Children).

According to the Article 30 of **Law of Georgia on Civil Status Acts**, birth registration of children born as a result of extracorporeal fertilization shall be conducted under the procedure determined by this Law, the Law of Georgia on "Health Care" and an order of the Minister of Justice of Georgia.

In case of extracorporeal fertilization (donation), situations can arise when the interest of people legally registered as parents will not be considered in the child's birth record.

According to the part II of the Article 143 of the Law of Georgia on Health Care, based on the written consent of the couple, it is allowed to move the embryo created through artificial insemination to another woman's - surrogate mother's uterus. In such a case, a surrogate mother does not have the right to demand recognition of motherhood.

It seems that **for recognition of motherhood genetic relationship is crucial**; however, as specified in part I of the same Article, egg donation is permitted and **the ordering woman is considered to be mother and not the donor - genetic parent. Consequently, while assisted reproduction, written consent and not genetic ties or child birth is considered to be the legal ground in the process of recognition of motherhood** (7.134).

In today's Georgia, according to the active legislation, it is permissible to make a deal with one person concerning egg donation and achieve agreement with the other (surrogate mother) to grow the embryo. As a result of these procedures, mother of the born child is the ordering woman. Eventually, all three women can claim to motherhood, each having the equal right. This is a case when a woman is deprived of genetic motherhood as well as the ability of child bearing.

**According to the part 2 of the Article 1190 (Proof of Filiation Between a Child and Unwed Parents) of the Civil Code of Georgia, one of the grounds for proving paternity is the application of the child himself or herself, having attained the age of majority. According to the part 3 of the same Article, the court determines paternity according to the results of a biological (genetic) or anthropological tests conducted for determining the paternity of a child. If the abovementioned does not provide the possibility to determine the paternity of a child, the court considers other evidences or/and circumstances that clearly proves the paternity of the claimant. It means that any kind of evidence can be presented at the court: consent on cryopreservation, contract on gamete donation, the donor's medical records, examination report, etc. Once the fact of kinship is determined, inheritance relationships enter into force.**

**According to the Criminal Code of Georgia, rights and obligations of parents and children arise from the moment children are born that is confirmed by the rules established by law. When a child is born with extracorporeal fertilization (surrogacy), the established rules consider that the application on requiring registration of the civil birth record is presented the agency on behalf of the people to be indicated in the civil birth record. In case a "client", biological parents of a child die before a child's birth, they cannot be registered as parents in the birth record. Consequently, legal relations and inheritance right cannot arise.**

Surrogacy as well as donor involvement in the birth process arises rights of several parties. One of the most important rights is the child's right to know his/her origin. Most families prefer to hide the fact of surrogacy / donation not only from children, but also from close friends and relatives. They believe that it will help to maintain normal relations between children and parents, to avoid stress, but the non-disclosure, on its turn, heightens tension in the family. Minding the medical

and ethical considerations, sometimes it becomes necessary to disclose the truth to the child (8).

The Article 19 of the Decree N18 of the Minister of Justice of Georgia of January 31, 2012 on “Approval of Civil Registration Procedure” considers the registration rule of a child born by means of extracorporeal fertilization, which obliges all participants in the agreement to present the contract, though what kind of personal data it should contain, is not given.

According to Article 18<sup>1</sup> of the Civil Code, a person is entitled to have access to the personal data and records relating to its financial / economic status or other private matters, and obtain copies of this information, except the cases defined by the legislation.

A person can not be denied access to the information which includes personal data or records about him.

Any person shall hand over the personal data and records to another person upon the written request, if this person submits a written consent of the person whose personal data contains the relevant information. In such a case, the person is required to keep the data and information in secret.

Considering exigency of the mentioned Article, it is desirable the subparagraph “b” of the first paragraph of the Article 19 of the Decree N18 of the Minister of Justice of Georgia of January 31, 2012 on “Approval of Civil Registration Procedure” to be formulated in a way that the agreement of the parties participating in extracorporeal fertilization (surrogate mother, donor entity) contain detailed personal data to identify individuals. Thus, according to the Article 18<sup>1</sup> of the Civil Code, children born by means of extracorporeal fertilization will have the opportunity to acquire exact information about their origin and genetic data.

Serious legal problems can arise in the process of determining the inheritance rights of a child born by means of embryo preservation (freezing). According to the Law on Health Care, Article 144 conservation time shall be determined minding the couple's will under the established procedure. In Yekaterinburg the baby was born by means of frozen sperm, whose father died long before the child was conceived; the client was the father's mother (6).

The problem stems from the time of artificial insemination, can a child be his/her father's successor, if the father dies before the formation of the embryo and its implantation in the mother's uterus. Some believe that from the moment of the merge of egg and sperm, embryo should be equalized with fetus and its limited capacity should be recognized. Others believe that equalization of embryo and fetus is possible only after embryo is implanted in a woman's uterus (3,136).



## Conclusion

On the basis of the aforementioned can be concluded that inheritance law can consider advances of reproductive technologies.

The current Civil Code does not consider any kind of special regulation related to the origin of a child born by a surrogate mother or/and a donor's participation. The Code considers determining the origin of a child born to married or unwed parents. Thus, it is necessary to add to the Civil Code the Article 1190<sup>1</sup> which will imperatively determine that mutual obligations do not arise among a surrogate mother, a donor and a child (children) born by a surrogate mother or/and a donor's participation.

In case "client" biological parents die before a child is born, to solve the problem that arises while determining the inheritance right, **it would be reasonable to consider a child as a legitimate heir of the deceased parents on the grounds of surrogate motherhood agreement. In this case, the child's interests to determine inheritance can be presented in court by the Guardianship and Curatorship Agency. Thus, the court will recognize the child's inheritance rights. Based on the aforementioned, it is reasonable to add to the Civil Code of Georgia the Article 1340<sup>1</sup> which would state the following:**

**If a child is born to a surrogate mother after the spouses who gave a written consent to implant embryo in another woman's (surrogate mother) uterus died, the child's origin can be determined by the court on the grounds of the declaration made by representatives of Guardianship and Curatorship Agency.**

This amendment on its turn will require new wording of the first part of the **Article 1275** of the Civil Code which would state the following:

Guardianship and curatorship shall be established for the protection of the personal and property rights and interests of a minor child left without parental care because of the death of the parents, the deprivation of parental rights from his/her parents, recognition of parents' missing without trace or recognition of child's abandonment. **Also, guardianship and curatorship shall be established for the protection of the personal and property rights and interests of a minor child born to a surrogate mother whose biological "client" parents died before the child was born.**

It would be reasonable to announce father of children born by assisted reproductive technologies as a successor when the donor father dies before the formation of the embryo and its implantation in the mother's uterus minding that interests of a testator, a successor born with this method and other heirs are balanced.

This goal can be achieved **after opening the inheritance by setting restrictions on time of using assisted reproductive technologies, e.g. for 6 months.** The proposed time is in compliance with the terms of getting

inheritance and will make it possible to exclude situations when it will be necessary to re-divide the inheritance. In addition, it will be necessary that decedent expresses his will on possibility/impossibility of using assisted reproductive technologies after his death. The will can be expressed by informative voluntary consent on the relevant technologies.

As the norm stated in the paragraph “a” of the article 1307 of the Civil Code of Georgia is not complete and does not respond to the demands of public relations, it would be appropriate to form the above mentioned norm as follows:

Heirs can be:

In the event of hereditary succession – persons who survived the decedent as of the moment of his death, as well as the decedent’s children who will be born alive after his death;

**Persons born by assisted reproductive technologies can be heirs if the decedent expressed the will his gametes to be used after his death and conception took place within the set terms of getting inheritance.**

**The article 1188 should also be amended and formed as follows:** In the event of the death of the father, a child shall be deemed to have been born of the married parents, if he is born not later than ten months following the death of the father; **except the children**, as stated in the Article 1307, **who were born by using assisted reproductive technologies.**

Juridical fictional recognition of fetus’ inheritance right implies fictional imposing certain duties on fetus as according to the Article 1328 of Civil Code of Georgia, inheritance property includes the aggregate of both property rights (assets of the estate) and liabilities (liabilities of the estate) of a decedent as of the moment of his death. Consequently, if born alive, a child bears the same property responsibilities as the decedent had in his life but did not fulfill.

**In order to satisfy a decedent’s creditors** before the birth of a child conceived by the abovementioned method, we suggest adding the paragraph 3 to the Article 1456 (Right of conceived heirs in the partitioning of the estate). We think that the paragraph 3 should be formulated as follows:

**“3. If the decedent, when alive, legally expressed the will on conservation-freezing of his embryo and its use after his death, then before the child conceived by assisted reproductive technologies is born, other successors have the right, on mutually agreed terms, to partition the property and allocate a share to yet unborn child. The other heirs have the right to manage the unborn child’s property according to the entrustment agreement issued by the court and get benefit from it. The property will cover the decedent’s debts pro rata to his share. In the event of a liveborn child, the court’s decision on property management is abolished and the successor does not have a right to claim on benefit.”**

### **Legislative acts**

Constitution of Georgia

Civil Code of Georgia

Law of Georgia on Health Care

Law of Georgia on Civil Acts

Decree N18 of the Minister of Justice of Georgia of January 31, 2012 on “Approval of Civil Registration Procedure”

Joint Decree №133–№144 of the Minister of Justice of Georgia and the Minister of Internal Affairs of Georgia of April 11, 2016 and April 5, 2016 on Approval of Regulations for Withdrawal of Surrogate Children from Georgia

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<http://www.nplg.gov.ge/> Explanatory Dictionary of Medical Terms.

## Aspects of Contemporary Dental Practice

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### Abstract

Contemporary dentistry is a high-tech field that constantly improves treatment and prevention practices of dental problems. Dentistry is one of the most prestigious, demanded and highly paid specializations in the field of medicine. However, the evidence increasingly suggests that dental practitioners are exposed to sustainable occupational stress and often suffer from burnout syndrome. These negative aspects are closely related to the nature of the work itself – introduction of new technologies, long-term contact with a high number of patients and lack of patient-physician time. Lack of high standards of professional health lead to worsening of health status (mental and physical). Many of the existing problems physicians are facing are related to patients, while issues that patients are having are related to their subjective perception of health care. Therefore, in the binary doctor-patient relationship both parties should adapt to each other: physician as his/her profession requires and patient – as he/she has a problem treatable by the physician.

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**Keywords:** Dentist, patient, communication, occupational health

### Introduction

The profession of a medical doctor is one of the most human, dignified and essential professions in the world requiring highest sense of reasonability as doctors are responsible for saving people. Dentistry is among the most prestigious, demanded and highly paid specializations in the field of medicine. Technological advancements touch every field of medicine and dentistry is not an exception. Contemporary dentistry is a high-tech field that constantly improves treatment and prevention practices of dental problems.

In recent years, sustainable occupation stress and burnout syndrome have been documented among doctors. Emotional burnout syndrome (EBS) is defined as physical, emotional and mental burnout, including development negative self-esteem, negative attitude towards work, diminishing the

capacity to understand and feel compassion towards patients. In the initial stages of EBS, an individual exhibits long-term emotional distress and increased anxiety. At a later stage, a person starts to have an inadequate emotional reaction and his/her capacity to perform professional duties diminishes and then, his/her energy levels drop. These negative aspects are closely related to the nature of the work itself – introduction of new technologies, long-term contact with a high number of patients and lack of patient-physician time. In recent years, sustainable occupational stress and burnout syndrome have been documented among dentists (4). According to the American Association of Dentists, average life expectancy of dentists is lower than average of the general population in the USA. Morbidity with neurological disorders among dentists is 2.5 higher than among physicians in general. In addition, dentists are more likely to have depression and doctors of other professions. More the half of pediatric dentists have symptoms of professional stress.

Many of existing problems physicians are facing are related to patients, while issues that patients are having are related to their subjective perception of health care (13). Many patients are afraid of dental care since childhood. Tooth pain and visits to a dentist for those patients is a stressful experience. Those patients, while in pain, do not understand the severity of their condition and therefore, as they wait for their appointment, they experience growing feeling of anxiety, uncertainty, and fear. This is determined by the unpleasant memories of previous visits to a dentist. Patients experience not only emotional changes, but physiological changes as well such as: increased levels of adrenaline, changes in blood circulatory systems, etc. Mental health professionals name this condition as “dental phobia”. Different dental equipment and tests that are necessary for effective treatment impose a gap between a patient and a physician. Furthermore, means of mass communication also play an important role. Potential patients form their attitudes towards doctors of different professions based on this information. Very rarely do media portray positively dentists.

The relationship between a dentist and a patient is further stressed by the increased legislative knowledge of the patient. Therefore, work of dentists is associated with significant professional risks that are mostly due to emotional stress (3). Professional Associations worldwide evaluate the issues of patient-doctor relationship and try to mitigate worrying statistical data and prevent professional risks. First of all, stereotypes, expectations, and attitudes that patients seeking dental care hold should be altered. Since relationship “dentists-patient” has an impact on the effectiveness and the outcome of the treatment, the nature of this relationship is very important for a doctor who has his/her own practice or works for a commercial organization (11). Therefore, it is essential that the doctor has skills to

converse with the patient and provide effective treatment without diminishing patient's hopes and expectations in this process. Unfortunately, dentist training programs do not include topics related to stress management, behavioral skills, and conflict management skills (2). Modern day patient is not satisfied with the traditional passive role and he/she wants to be an active party in a patient-doctor relationship – wants to be heard and understood. If a clinician demonstrates that he/she understands a patient, level and anxiety of the patient drop. Studies in effective communication skills among clinicians demonstrate that level of emotional stress in the patient lowers if doctors give an empathic response to the patient's emotional reactions, provides the patient with understandable and clear information (15, 16). Review of randomized studies shows that if communication between a doctor and a patient is positive, the patient's attitude towards the decisions made in the process of treatment is also positive (17). Building design where a clinic is located also plays important role in formation of patient's attitudes and can support communication between a patient and a doctor. Color and finishing of walls play an important role (desirable, walls should be in light color), as well as decorative imitations of nature. Medical furniture and dental equipment should be convenient and should be in the same color as the doctor's room. Therapeutic qualities of music should not be forgotten. Music should be selected individually.

It should be noted that in the binary doctor-patient relationship both parties should adapt to each other: physician as his/her profession requires and patient – as he/she has a problem treatable by the physician (8). Patients who are satisfied with a physician's attitudes exhibit higher levels of mental well-being, have fewer complaints and are more realistic in evaluating their health condition and proposed methods of treatment. When a patient addresses the doctor, he/she has to describe related health complaints in details and share this information. One of the defining aspects of modern day medicine is that patients are increasingly willing to take an active and decisive role in decision-making related to their health, and this includes the selection of treatment options as well (10). Patients are confused by the medical terminology, some patients who are more prone to suspicious can actually interpret the lack of communication with the doctor as the sign that some of their health information is being withheld (9). Generally, this communication should have the following pattern: doctor asks the questions, patients provides the answer and a question for clarification to a doctor.

Stuart and his colleagues demonstrated that individualized relationship of a physician to a patient, detailed explanation of the cause, course and outcomes of the condition significantly lowers patient's anxiety and improve mental health of patients with chronic conditions (18). Result-oriented communication with the patient requires that patient is addressed by

his/her name and with a welcoming smile, a physician should be patient, a careful listener and encouraging. The doctor should convey all necessary information to a patient about his/her health, choice of options for treatment, potential risks of treatment and chances of recovery [11, 13]. In order to assist the patients to understand his/her condition and focus his/her attention on the necessary option of the treatment, the physician should employ not only verbal communication skills but also non-verbal communication skills and those are the inseparable part of the professional dialogue. Body language and facial expressions play a crucial role as they trigger desirable positive emotions from the patient and establish general positive attitude in through the course of treatment.

Higher morbidity among dentists then among physicians of different specialties (18) is linked to more stressful work schedule, monotonic nature of the work and emotional and intellectual workload (higher responsibility the results of his/her work and safety of the patient), complexity of working process (attention to the signs and their evaluation in the short time-frame). It should be noted that dentists spend over 50% of working time in a constraint work position. Visionary tension also plays an important role. It has a negative impact on health and other physical factors (local vibration, noise level, artificial lighting) (1, 3), potential allergic reactions (as a result of exposure to high level of chemicals) and risk of infection (in the process of treatment). Deficiency in occupational health safety standards result in negative outcomes and worsening of physical and mental well-being [6, 7]. Artificial working pose results in problems with a skeleton-muscular system and problems with muscles, nervous system, joints, spinal cord, etc. Some of the most common health problems include arthritis, scoliosis, others. Many dentists experience worsening of vision during their career. Working in a standing position also causes problems in a circulatory system including veins and others. Working with the drill machine causes vibratory diseases that are linked with the changes in a central nervous system. Similar cardiovascular conditions, such as cardiac failure, hypertension, and others are very common. Allergies are also very common, including dermal conditions in hands. Dentists are more prone to certain blood-borne infections due to exposure to cuts and blood and other bodily fluids and they are part of their occupational health hazard. Those include hepatitis B and C (20), which has been a cause of closure of 20 dental clinics in Georgia due to HCV risk (21).

## Conclusion

In order to mitigate those multiple occupational health hazards for dentists, it is important to develop prevention measures to create an optimal working environment and avoid development of those diseases. Occupational stress related to dentistry requires dentists to learn methods of stress management and mitigation. In order to maintain occupational health, working schedule should be amended. Complex preventive measures for occupational health hazards for dentist should include the development of rational work schedule and allocation of time for rest, strict adherence to occupational health standards, active lifestyle, massage, vision training and an overall reduction in mental and physical stress.

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# Legal Regulations of Healthcare Right in Georgia

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## Abstract

The right to health care is one of the fundamental human rights recognized and protected by the Constitution of Georgia, as well as the international treaties and other national legislative instruments. The right to health care has the meaning of social right and is enshrined in the Article 37 of the Constitution of Georgia. The above-mentioned article is one of the articles with a wide scope and content, covering two most important areas of public life: health care and natural environment. On the one hand, it obliges the State to provide access to medical services and environment protection, and, on the other hand, entitles an individual to benefit from medical insurance and aid, to live in a healthy environment, to obtain full and objective information as to the state of environment, as well as obliges everyone to care for the natural and cultural environment. This right / obligation shall apply to the citizens of Georgia, as well as to foreign citizens and stateless persons. Provision of the right to health care is depended upon the activity of the State, in particular, implementation of the obligations stipulated by the state medical programs in the health care sector, which should be provided by the country's health care system.

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**Keywords:** Health care, human rights, health care system

## Introduction

The right to health care is enshrined in the Article 37 of the Constitution of Georgia which is based on the Article 25 of the Universal Declaration of Human Rights (1948) – “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family” (15). For realization of this right, both national legislation, as well as central and local health care programs are available in the country. However, implementation of the right to health care to full extent is related to certain problems. Significant shortcomings are often observed in the terms of the practical application of the rights to health care, due to the level of the country's economic development and political situation, as well as the lack of thorough study and analysis of the legal framework governing this right.

At present, one of the priorities of the State is creation of the proper health care system. Therefore, it is necessary to study how the Article 37 of the Constitution of Georgia guarantees the right to health care, how far the current reality and the approach of the State complies with implementation of the right to health care enshrined in the applicable legislation.

The article hereof aims at determining and analyzing the State's role in implementation of the right to health care guaranteed in the Article 37 of the Constitution of Georgia, general overview of the laws of Georgia governing the right to health care, as well as analysis and impact of the international treaties to the applicable Legislation of Georgia, ratified by the Parliament of Georgia and being legally binding, which could become a certain landmark in the terms of improvement of legislation and practice on the rights to health care in the country.

Since XVII-XVIII centuries the idea of the social state has taken hold in the legal dogmatism, which should be enshrined by the legislation. The State began to consider the recognition of social rights, set strengthening of the rights to labor, health and education as the main goal (5).

The social state must always care for introduction of the social security system in the country. The social is the state, where the government's top priority is to raise the social level of the population, to care for the social rights of people, which should be expressed in implementation of the effective measures by the state and commitment to realization of these rights should not bear only declarative nature.

In one of its decisions, the Constitutional Court of Georgia explains that the goal of the social state is to establish a just social order, to maintain the overall economic balance, to provide sustainable conditions for the population as far as possible, to create maximum equal opportunities for life throughout the country. These goals, due to objective circumstances, are not fully achievable, and therefore are the subject of the constant task and concern for the state. The state has a broad scope of action to this direction (10).

The Constitutional Court also declares that "the state shall be obliged to apply the maximum efforts for protection of the social rights of the population within the scope of the available resources, in order to ensure at least the minimum necessary level for protection of these rights. Otherwise, international - legal commitments of the states lose the sense, which means that the state's actions to this direction should have stable and evolutionary nature and should be distinguished with positive dynamics (11).

In Georgia, the social state's ideas were expressed still in the Constitution of 1921, where a separate chapter was dedicated to the socio-economic rights – "Socio-Economic Rights". According to the Constitution,

one of the most important functions of the state was to care for a decent existence of its citizens (13).

The will of the Georgian nation concerning establishment of the social state is provided for in the preamble of the Constitution of Georgia, which obliges the state to support its citizens in attainment of development of the social rights. Therefore, the Constitution of Georgia strengthens the principle of the social state, as one of the cornerstones of the constitutional order. It includes such important aspects of the legal relations, as social justice, social equality, social security, social protection, etc. (1).

The Article 31 of the applicable Constitution of Georgia defines the general principles of the social state, according to which the state shall take care for equal socio-economic development of the entire territory of the country. This article points out the important mission of the state - to ensure implementation of the socio-economic programs for its own territorial units and the citizens living there. What is meant by the areas of social security? What actions should the Government take to minimize social problems of the citizens? According to the Convention №102 “On Minimum Standards for Social Security” of 1952, primarily the areas of social security include medical care, illness allowance, assistance during unemployment, pension in case of old-age and vocational injury, assistance during childbirth, disability and loss of the breadwinner (9). The social security system enshrined by the Convention may be added with other rights, which belong to the social sector and are no less concerned by the majority of the population. For provision of these areas, first of all, the state should have the special financial resources and the appropriate program, in order to avoid only declarative nature of the Article 31 of the Constitution of Georgia. The part of the authors (8) believes that citizens cannot be dependent on the state only and should not wait for the Government’s assistance idly in order to meet their own subjective needs. They should use their efforts to ensure social stability. Such opinion of the author is quite justified, because the individual must take responsibility himself, first of all, while the Government will need to ensure equal conditions for socio-economic development.

The Constitutional Court of Georgia finds that the subjective rights, need for certain social regulation and specific responsibilities are not provided from separate principle of the social state for the legislator. That is why the first sentence of the Article 31 is aimed at creation of equal conditions of life for the entire population of the country concerning the less pretentious state. Here we are talking about “care” by the state and not about “obligation”, which is imposed to the state. Accordingly, the first sentence of the Article 31 is the standard establishing the goal of the state, which is not the obligation; however, at the same time it is not only declarative and program provision. Accordingly, the first sentence of the Article 31 of the

Constitution of Georgia does not establish the basic rights, their content and scope. Here we are talking about the future actions of the state, rather than actually existing, recognized and guaranteed fundamental rights (10). We cannot agree with the above definition of the Constitutional Court, since the state's primary commitment should be creation of equal social conditions in the entire territory of the country and it should continuously take care for development of socio-economic level of the population.

Social rights are one of the most important branches of the fundamental human right, among which the right to health care is on the fundamental place.

The most widely used and comprehensive definition of the right to health care is provided for in the International Covenant of Economic, Social and Cultural Rights. The Article 12 of the Covenant provides that "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" (19).

The General Comment №14 of the UN Committee on Economic, Social and Cultural Rights states that "the right to health care embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life and extends to the underlying determinants of health".

Many countries lay out the right to health care in the basic law - the Constitution, as well as for realization of this right, they have ratified an international treaty or convention, have taken internal national legal acts, which are directly governing the issues related to right to health care.

The right to health care in Georgia is enshrined in the Article 37 of the Constitution of Georgia. This Article is closely linked to the Article 15 of the Constitution, according to which life is inviolable human right and imposes an obligation to the state to create such conditions in which human life and health will not be endangered.

Realization of the right to health as one of the main branches of the social rights, are highly dependent on the state, primary commitment of which should be care for development of socio-economic level of the country and the population.

The Article 37 of the Constitution of Georgia establishes the commitment of the state to make the medical services affordable and to ensure protection of the environment, on the one hand, and to give the right to an individual to benefit from medical insurance and aid, to live in a healthy environment, to obtain full and objective information about the state of environment, on the other hand, also binds everyone to protect the natural and cultural environment. Above right / obligation shall apply to the citizens of Georgia, as well as foreign citizens and stateless persons. In the

Constitution such categories of subjects are mentioned as: “Everyone has the right”. According to the Article 37 of the Constitution, everyone has the right to health insurance, to live in a healthy environment. The principle of the social state obliges the state, even in the terms of the highest moral ideals, the render medical aid to individuals who are not citizens of Georgia, but are temporarily or permanently residing in Georgia (8).

For realization of the right to health care, the Constitution of Georgia determines two important elements of medical aid: health insurance and free medical aid in the conditions determined by the law. In the legal instruments governing health care, the term “medical aid” is rarely used; “medical service” is used mainly. The part of the authors [8] considers that the aid is a one-time action, rather than a service. “Service” more adequately reflects the medicine targets, according to which, a medical facility or a physician is required to not only assist, but also to render qualified service to the patient and talks about amendment to the first paragraph of the Article 37 of the Constitution of Georgia, through which “service” will be recorded instead of “aid”. Such an argument of the author is somehow convincing, because the patient is any person who, regardless of his/her state of health, benefits needs or intends to apply to the healthcare system services (23). Service is carried out in return for a certain fee, i.e. the independent physician will receive appropriate compensation for service rendered, which can be paid by an individual, or the insurance company and/or the state. Aid, based on its nature, is perceived as a gratuitous, one-time action.

In addition to analyzing the constitutional content of the right to health care, it is necessary to define the term – “health”. The Constitution of Georgia does not define the concept of health. It is not explained in other legislative instruments as well. It should be noted that there is no unequivocal definition of the term. Definition of the World Health Organization is used mainly, according to which “health is a complete physical, mental and social well-being, and not just absence of disease and incapability” (7). The part of the authors believe [8], that above definition of the concept of health is consistent with the Article 37 of the Constitution of Georgia and explanatory analysis of this provision shows that health care requires a lot of the actions from the state. Such care is necessary not only when a person has some problems with regard to health status, but also even when he/she is healthy. The Article 37 of the Constitution provides for the preventive measures, such as health insurance, medical aid, drug control, living in healthy environment, the rational use of natural resources. Through implementation of these actions, the state will achieve full physical, mental and social well-being of human. The part of the authors believe that “such a definition of the concept of health care cannot be considered as complete, in so far as it is almost impossible to find a person who may be considered as

healthy according to the available definition, if we say nothing about a group of people or the entire population. Therefore, we should probably accept the available formulation of the concept of health as definition of the ideal model, to which any society should strive” (3.17).

Analysis of the definition of health care by the World Health Organization clearly shows that being healthy means the highest possible standard of physical, mental and social conditions, which, in turn, depends upon the state’s discretion. The legislative base of Georgia gives the possibility that the relevant legal provisions applicable in the country conform to the above definition, however, realization of the right to health care requires from the state not only strengthening of the legal standards, but also implementation of certain effective measures.

The first subparagraph of the Article 37 of the Constitution of Georgia refers to “affordable medical aid”, which implies three different components. These are:

- Information availability - the state should provide access to all information about medical aid for the patient (posting of information on visible place in the medical institutions, provision of information through the media, allocation of explanatory booklets, posters and other visual means on visible places, etc.).

- Geographic availability – means placement of ambulatory medical institutions within a certain radius in order to allow the citizens to receive medical aid in timely manner.

- Financial availability - means provision of health care for all citizens from the state, through universal and equal access to the state medical programs, as well as medical insurance (7).

Equal access to medical service in Georgia is carried out through the state medical programs. The main goal of the health care system is to raise the level of health of the population. The efficient health care system must provide quality medical services to the population in every possible way. The state medical programs serve the principle of affordability (7).

Implementation of all three components is very much depended upon the health care system, which aims to raise the level of health of the population. Efficient health care system must provide the population with quality medical services. In addition, the state shall provide access to medical services. Equal access to medical services is provided through the state medical programs, which means that the patient will receive the service identified by the state, within the scope of the respective programs. In some cases the state may finance medical services fully, while in other cases, co-payment by the patient may be required (6).

Despite of the commitment declared in the Constitution, free medical service in Georgia has not fully been implemented. Since 2009, the program

funding of certain groups of people has began. The government has provided development / implementation of the state programs of “medical insurance of population below poverty line”, “health insurance of public artists, public painters and winners of Rustaveli Prize”, “medical insurance of internally displaced persons in compact settlements”, “medical insurance of homeless children” (20).

By the initiative of the Government of Georgia, since 2012, the state has carried out medical insurance of children of 0-5 years of age (inclusive), women of 60 years of age and above and men of 65 years of age and above (population of retirement age), students, children with disabilities and people with evident disabilities within the scope of the state health insurance programs (21).

In determination of the priorities of further reforms in the health care system, special focus should be made on definition of social, medical and economic efficiency of the expected results, priority shall be given to selection of the strategies, realization of which will concern not only the individual groups, but the entire population of the country.

From February 21, 2013, the Decree №36 of the Government of Georgia “On Certain Measures to be taken for Movement to Universal Health Care“ came into legal force (22). The above Decree approved the state universal healthcare program, which was aimed at increase of geographic and financial affordability of the population to primary health care, outpatient, emergency and scheduled hospital services, provision of financial accessibility of health care services. In 2014, the people with the state health insurance program were incorporated in the state universal health care program. It was assumed that implementation of this program would worsen the actual situation of the appropriate users provided for by the Decree №165 of the Government of Georgia, dated May 7, 2012 and Decree №218 of the Government of Georgia, dated December 9, 2009. In 2014, through the amendments made to the Decree №36 of the Government of Georgia, the conditions of medical service would be reserved for the beneficiaries enjoying various state medical programs, which they used within the scope of the state insurance program (12).

In terms of increase of access to health care, the most important achievement in 2013 was introduction of the universal health care program, which has provided the basic package of medical services to all citizens of Georgia. In 2014, according to the survey carried out by the United States Agency for International Development (USAID), 80.3% of the interviewed beneficiaries were satisfied with the outpatient services obtained through universal health care program, while 96.4% expressed satisfaction with the emergency medical services obtained on the level of hospital. At the same time, according to the survey data, the population indicates that



implementation of the universal health care program increased their financial access to outpatient (77% of respondents) and stationary (88% of respondents) services (23).

The part of the society considers the universal health care program as successful, as there is the highest rate of satisfaction to this program in the population, while the others believe that the universal health care program is ineffective, which has significantly increased the state costs, put the citizens belonging to different social strata in the even position and created a number of problems for the private insurance sector, which is losing the clients.

Despite of the difference of opinion, this program might be seen as the guarantor of the Article 37 of the Constitution of Georgia, however it is also important that both the state and individuals personally care for human health. The state should encourage the development of the insurance system, and the humans should take more responsibility for their own health and should not be dependent only on the state.

An important challenge in the health care sector is the Decree №724 of the Government of Georgia, dated December 26, 2014, which approved the state concept of the health care system of Georgia of 2014-2020, "Universal health care and quality control for protection of patients' rights". This document presents a vision of development of the health care system, which includes the fundamentals for development of the sector according to the principles and values of international and national level. The document also stipulates the main aspects of the strategic reforms and action plans to be taken in the terms of efficient prevention and management of the main characteristics of the healthcare sector and priority disease (29).

Despite of the fact, that the country has a solid legal base concerning the human rights in the health care area and the Government is implementing various important programs, a number of problems still exists for full realization of this right, including low public awareness, financially inaccessibility of the population to medicines, high prices of medicines, incomplete package of medical service, etc. For elimination of this problem, it is necessary to provide information to the population through media and to post such information on a visible place, to develop appropriate program for medical treatment, as well as it would be recommended for the state to regulate prices of the medicines, which can be regulated through the state procurement, to review the existing programs for effectiveness and to develop the programs more focused on interests of the population.

The right to health care is closely linked to and dependent upon the realization of other human rights. This includes the rights to life, human dignity and honor, education, non-discrimination, equality, prohibition against torture, access to information and freedom of assembly, association

and freedom of movement, which are integral components of the right to health care.

The majority of the articles provided for in the Chapter II of the Constitution of Georgia protect the individual's health. According to the Article 15, life is inviolable human right and is protected by the law; the Article 17 says that a person's dignity and honor are inviolable. Torture, inhuman, cruel or degrading treatment or punishment is inadmissible. Physical or mental coercion of a person detained or otherwise deprived of freedom is inadmissible (14).

The human right to health care is recognized by many international treaties.

The right to health care and liability of the state to health care is concentrated in the international legislation in a variety of ways. The right to the highest attainable standard of health is differently interpreted in most of the international instruments. The right to health care can be included in other rights and directly or indirectly refer to it.

According to the Act on Restoration of State Independence of the Republic of Georgia, dated April 9, 1991, priority of the provision of the international legislation towards the laws of the Republic of Georgia and direct effect of its provisions in the territory of Georgia was declared as one of the core principles of the Republic of Georgia. Georgia has joined a number of human rights treaties and has taken the commitment of alignment of the national law with the provisions of the international law (2). The applicable Constitution of Georgia (Article 6, paragraph 2) recognizes the primacy of the internationally recognized provisions and principles over the applicable Legislation of Georgia.

The basic instruments of the international law, declaring the right to health care - include the Universal Declaration of Human Rights, to which Georgia joined in 1991 and the International Covenant on Economic, Social and Cultural Rights. However, it should be noted that some provisions of the International Covenant on Civil and Political Rights are linked to the right to health care to some extent, in the terms of indivisibility and unity of the rights. In particular, the Articles 6 and 7 of the Covenant are directly related to the right to health care. This Covenant is in force in Georgia since 1994. The right to health care is protected by the Article 25 of the Universal Declaration of Human Rights (1948), the Article 11 of the European Social Charter (1961), the Article 12 of the International Covenant on Economic, Social and Cultural Rights (1966), the Article 12 of the Convention on the Elimination of all Forms of Discrimination against Women (1979), the Article 24 of the Convention for Protection of the Rights of the Child (1989). The provisions provided for in the above international instruments indicate not only to the right to human health, but also to such preconditions of

health, as safe water, proper nutrition and health provided by environment protection.

It should be noted that the process of implementation of the European Social Charter began by the Decree №1876 of the Parliament of Georgia, dated July 1, 2005. Georgia recognizes only the certain articles from this Charter as binding, including the Article 11, which for effective realization of the right to health care, imposes the obligation to the parties through cooperation with the state or private organizations, to take measures aimed at: maximum elimination of the causes of illness; provision of advisory and educational means for strengthening of health and establishment of individual liability in the health care issues, as well as to eliminate epidemic, endemic and other diseases, also accidents on maximum level (17).

The Article 12 of the International Covenant on Economic, Social and Cultural Rights contains the important recognition of the right to health care which relates not only to the right in general, but also to the steps that must be taken for implementation of this right. This article obliges the States Parties of the Covenant to take such measures which are necessary for reduction of stillbirth and child mortality and provision of healthy development; for improvement of all aspects of environmental and industrial labour hygiene; prevention and combat against epidemic, endemic, occupational and other diseases (18). Georgia joined this important instrument in 1994.

Since 1994, Georgia joined the Convention “On Rights of the Child”, according to the Article 24 of which, the States Parties recognize the right of the child to enjoy the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health. This Article covers the measures to be taken, *inter alia* to reduce infant and child mortality, to ensure the provision of necessary medical aid and health care for all children with emphasis on the development of primary health care, to combat disease and malnutrition, to ensure appropriate pre-natal and post-natal health care for mothers, to ensure that all segments of society are informed about child health, nutrition and advantage of breastfeeding, to develop preventive health care and to abolish traditional practices prejudicial to the health of children (19).

According to the Article 7 of the Constitution of Georgia, “the State shall recognize and protect universally recognized human rights and freedoms as eternal and supreme human values. While exercising authority, the people and the state shall be bound by these rights and freedoms as directly applicable law”, correspondingly, the human rights and freedoms provided for in the Chapter two of the Constitution of Georgia are mainly derived from the principles of universally recognized human rights and freedoms.

According to the content of the Article 39 of the Constitution of Georgia, “The Constitution of Georgia does not deny other universally recognized rights, freedoms and guarantees of an individual and a citizen, which are not referred to herein, but stem inherently from the principles of the Constitution” (13). This mainly applies to the universally recognized provisions of international-legal customary law (principles). As for international treaties, they do not fall in the above formula and their action in the territory of the country is excluded without a special instrument (1). Therefore, the international-legal instruments enter into force in case of their ratification by Georgia, after which it becomes the state participating in relevant international instrument, which is obliged to review the national legislation in order to align it with the international acts and to facilitate its implementation.

The national courts rarely use the international-legal provisions in practice because of their general nature. The courts basically apply these standards in the cases, when they are already reflected in the national legislation (1). Such an opinion of the author is correct, as the international-legal acts are seldom used in the judicial system of Georgia, however, it should be noted that in Georgia the legal instruments regulating the right to health care are adopted after the ratification of the international-legal instruments by the state, therefore, it is assumed that the basic principles provided for in them are in line with the rights protected under the international instruments.

Existence of various special laws in the national legislation may be considered as a direct impact of international instruments, including the content of the Article 12 of the International Covenant on Economic, Cultural and Social Rights. For example, the Laws of Georgia “On Psychiatric Care”, “On HIV/AIDS” and “On TB Control” regulate the legal status of the marginalized / vulnerable groups with above diseases, and the Law of Georgia “On Health Care” contains the declarative provisions for overall and equal access of the population to medical aid, however this Law does not adequately protect the rights of the marginalized / vulnerable groups, despite of the fact that there is more danger of violation of their rights. Since the Law of Georgia “On Health Care” is the basic legal instrument regulating the right to health care, it would be appropriate to include the standards governing the protection of rights of marginalized groups in the law.

Convention on the Rights of the Child is one of the important documents among the international legal instruments, and it is considered to be one of the most widely recognized documents, to which Georgia is joined as the State Party. Georgia joined this document in 1994, which means that the country has taken responsibility for implementation of the commitments

provided for in the Convention. However, there is no law on protection of the rights of children in Georgia yet, as it is in other countries, while plenty of facts of violation of the children's rights are observed in the daily life. It is recommended to adopt a law, which will specify the rights of children, including in the health sector, in details.

## **Conclusion**

As the present analysis reveals, the right to health care is one of the fundamental human rights and its full realization depends upon the effort of the state.

Subjective protection of the human right to health care is closely linked to the institutional guarantee, by which the Constitution obliges the state to create the proper structure for health care, as an institution. Modern constitutional law reviews the human right to health care together with the objective guarantees provided by the state. That is why the Article 37 of the Constitution is considered in two dimensions. First, it obliges the state to create the health care system, as an institution, and the other, the state is obliged to ensure the individual's subjective right to health care.

In recent years, Georgia's health care system was significantly reformed. The main priority of the state became health care and implementation of such policy, which is focused on the geographic and financial affordability of health services for the population.

The country has a solid legal base about human rights in the health care sector, which is mainly due to those international treaties and conventions to which Georgia has joined as the State Party. The government is implementing various important programs. However, a number of problems are still observed for full realization of this right, including low population awareness, financial inaccessibility of the population to medicines, the high prices of medicines, incomplete package of medical services, etc. For elimination of these problems it is recommended for the government to care for both the right to health care guarantees, as well as completion of the citizens' information mechanisms, in particular, to provide the society with information through media and to post information on a visible place, to develop the relevant program for drug therapy. It is also important for the government to regulate the price of medicines, which can be regulated through the state procurement, to review the existing programs for effectiveness and to develop the programs more focused on the interests of the population.

The citizens' responsibility for their own health still represents the significant issue, which should be expressed by health insurance. The state should encourage the development of private insurance system.

Along with rapid development of the medicine, disputes and complaints of citizens were abruptly increased in the area. Therefore, it is recommended for the state to ensure detection of the facts of violation of human rights and determination the ways of combat against such violations. Constitutional recognition of the right to health care will not automatically provide its practical and effective protection. Realization of the right depends upon the political will, level of economic development of the country, effectiveness of the judiciary and efforts of the various civil societies.

The Law of Georgia “On Health Care” contains declarative provisions for universal and equal access to medical aid for the population; however the rights of marginalized / vulnerable groups are not properly protected in the law. Inclusion of the regulatory provisions for protection of the rights of marginalized groups to the law would be recommended.

Georgia is the State Party of the Convention on the Rights of the Child since 1994. The country has taken responsibility for implementation of the commitments provided for in the Convention. However, there is no law on protection of the rights of children in Georgia yet. It is recommended to adopt a relevant legislative instrument, which will specify the rights of children, including in the health sector, in details.

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# Investigation of the Role of *Helicobacter Pylori* in the Etiopathogenesis of Current Aphthous Stomatitis

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## Abstract

Nowadays, etiopathogenesis of recurrent aphthous stomatitis is not fully understood. Chronic gastritis, gastric and duodenal ulcers, diseases associated with *H. Pylori*, often attend this oral pathology. It is acknowledged, that *H. Pylori* is a conditional-pathogenic microbe which is included in normal mucosal flora of the gastrointestinal tract and oral cavity. Oral cavity appears to be a secondary reservoir for the microorganisms and also a source of gastric reinfection after the eradication treatment in case of gastroduodenal pathologies. *H. Pylori* has got ability to enhance aggressive factors and considerably reduce mucous membrane protective factors. In order to carry out further investigations on this issue, we have initiated observation on the patients with recurrent aphthous stomatitis. The aim of the study was to determine whether there is a correlation between *Helicobacter Pylori* infection and recurrent aphthous stomatitis. The results of the given investigation show there is a higher possibility that the role of *Helicobacter Pylori* in the etiopathogenesis of recurrent oral ulcers (aphthae) is significant.

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**Keywords:** Recurrent aphthous stomatitis, *H. Pylori*, chronic gastritis, gastric and duodenal ulcers

## Introduction

Recurrent aphthous stomatitis (K-12.0), recurrent oral ulcers (aphthae), is common both in children and adults, primarily in women. Although its Etiopathogenesis is not fully understood, there still exist several theories:

- **Genetic predisposition** - Genetic predisposition was first ascertained in 60ies in Jordan where a survey was conducted (6). According to the survey among the patients 66.4% cases with family history of aphthous stomatitis was revealed.

- **Allergic disposition, nature** - Immunological aspects of the disease encourage us to assume its allergic genesis. Bacteria, viruses, food, and medications can cause cellular and humoral immunity response, accompanied by the damage of oral mucosal epithelium (12).

- **The role of bacteria and viruses** - According to the existing literature, some scientists do not exclude that bacteria and viruses, such as Streptococcus, Citomegalovirus, Varicella Zoster, Herpes Simplex may play etiological role (13, 14).

- **Vitamin and mineral deficiency** - According to Barnadas' findings, in 26,2% of patients iron deficiency, folic acid deficiency and vitamin B-12 deficiency has been revealed (2).

- **Stress** - Greek and Indian scientists say that in the pathogenesis of the recurrent aphthous stomatitis an important role plays cortisol levels in blood and saliva (7).

- **Gastrointestinal diseases** - In recent decades, investigations on the role of H. Pylori in the etiopathogenesis of recurrent aphthous stomatitis has been appearing. (8, 10) Chronic gastritis, gastric and duodenal ulcers, diseases associated with H. Pylori, often attend this oral pathology.

Helicobacter Pylori appears to be one of the most prevalent infections in the world. The highest levels of the infection are observed in developing countries. But the level of the infection is quite high even in developed countries. According to Marshall's data 20% of the population above 40 and 50% of the population above 60 are infected with H. Pylori in developed countries. Infection levels are higher in children, rather than in adults, both in developing and developed countries.

Diseases associated with H. Pylori are as follows: chronic gastritis, gastric and duodenal ulcers.

The fact, that gastrointestinal tract disorders affect the mouth, can be explained by the morphofunctional similarity of the oral cavity and gastrointestinal tract mucosa (3). Besides, as we know, oral cavity mucosa has got a broad field of receptors, which may be reflectively affected by any internal organ dysfunctions (11).

Ways of H. Pylori infection transmission: fecal-oral route, oral-oral route and iatrogenic transmission (5). The gate for the infection is the mouth. It should be noted that there exist occupational risk factors among various professionals, but H. Pylori is most prevalent in dentists. Most likely it is transmitted via bacterial aerosol cloud, which is formed in the process of dental procedures.

H. Pylori has got ability to enhance aggressive factors and considerably reduce mucous membrane protective factors.

About 2/3 of H. Pylori strains manufacture, the so called vacuolating cytotoxins, which cause the death of a cell. The manufactured active

enzymes, such as ureases, phospholipases, catalases, oxidases, hemolysins, proteases and so on not only destroy the wholeness, integrity of epithelial cells, but they also reduce protective functions of the mucous membrane. In addition, vascular endothelium is damaged and tissue trophism is destroyed (15).

Nowadays, it is acknowledged that *H. Pylori* may be a conditional-pathogenic microbe which is included in normal mucosal flora of the gastrointestinal tract and oral cavity (4). Oral cavity appears to be a secondary reservoir for the microorganisms and also a source of gastric reinfection after the eradication treatment in case of gastroduodenal pathologies.

*H. Pylori* may be found in saliva, gingival fluid, soft plaque, periodontal pocket contents, tongue and cheek mucosa and prosthetic constructions (dentures) (9). Oral colonization mechanism of these microorganisms has not been studied adequately yet and there is no data about the correlation between microbe persistence and dental status in the oral cavity, and the role of *H. Pylori* in the etiopathogenesis of recurrent aphthous stomatitis has not been proven as well.

In recent decades, investigations on the role of *H. Pylori* in the etiopathogenesis of recurrent aphthous stomatitis has been appearing. According to the data of the survey conducted in 2015, *H. Pylori* infection was detected in 65% of patients with gastrointestinal pathologies, and they had recurrent aphthous stomatitis simultaneously (1). After efficient eradication therapy the number of the aphthae had been reduced considerably and vitamin B<sub>12</sub> level had been increased in the blood.

In order to carry out further investigations on this issue, we have initiated observation on the patients with recurrent aphthous stomatitis complaints at Gr. Robakidze University Dental Clinic “Alma Dental Studio” since February, 2016.

**The aim of the study** was to determine whether there is a correlation between *Helicobacter Pylori* infection and recurrent aphthous stomatitis.

## **Materials and Methods**

19 patients aged 6-39 (6 children, 9 females and 4 males) were included in the study. None of the patients had had a diagnosis of gastroduodenal pathology before. All of the patients were investigated for *Helicobacter Pylori* infection. To ensure the presence of bacteria, a noninvasive “rapid urease test” (RUT) was used in all the nineteen patients. The test results appeared to be positive in all the nineteen cases. The patients were referred to the gastroenterologist to get a consultation and further examination. From 19 only 16 patients visited gastroenterologist.

## **The results and review of the research**

According to endoscopic findings, only 5 of the patients appeared not to have any kind of gastroduodenal disorders, 3 of them were diagnosed with duodenal ulcer, 8 of them had chronic form of erosive gastroduodenitis.

All the 16 patients underwent a helicobacter eradication therapy. Simultaneously the patients were treated with local symptomatic treatment of recurrent aphthous stomatitis (treating mucous membrane with antiseptics, applying proteolytic enzymes to aphthae, administering medications stimulating epithelization, administering antihistamine medications Per os and local immunity stimulators). On the 5-th/7-th day of the treatment all the patients had marked improvement of the oral cavity mucous membrane and reduction of the aphtae in size, epithelization signs were also present.

After 4 weeks of treatment no complaints or clinical manifestations have occurred in these patients. All the patients have been under outpatient observation. Since then until August, 2016 no aphthous stomatitis recurrence had been detected except for one case (a male aged 32 with duodenal ulcer).

The results of the given study show there is a higher possibility that the role of Helicobacter Pylori in the etiopathogenesis of recurrent aphthous stomatitis is significant. Therefore, in order to study the issue more deeply, further complex investigation of the issue is being planned at the University Clinic. As the ascertainment of the role of Helicobacter Pylori in the etiopathogenesis of recurrent aphthous stomatitis is of great importance, not only in the sense of this certain oral pathology treatment, but also in the sense of preventing formation of ulcers in the gastrointestinal tract, the study will include different methods in diagnosing Helicobacter Pylori infection: "Urease Rapid Test", serologic studies (to reveal antibodies), and investigation of the tissue sample (bioptate) taken from the damaged area of the oral mucous membrane.

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## **Professions and Professionalism in a Hosting Setting of Georgia**

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### **Abstract**

The trust that society places in the professional is rooted in the professed commitment made by the professional, and it takes life in the service that is provided. That service is in the care provided to the patient, a care rooted in the expertise acquired by years of study and experience. But the increasing complexity of medical care, the variety of tools available for diagnosis, the wide range of specialties in care, the diminished expectations of the times when a physician is available makes it clear that medical care is a team effort that the service of the medical professions is provided by a variety of interdependent practitioners. This increasing complexity requires that professional autonomy cannot exist in isolation, and suggests that we must look a bit more carefully at what we mean by service.

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**Keywords:** Ethic, hospital, professionalism, social prestige

### **Introduction**

Ideally, a hospital is a community of professionals and non-professionals who come together with a shared purpose. That purpose, of course, is caring for patients, and while not everyone has direct responsibility for the health care of patients, all employees and staff of a hospital contribute to the success of its purpose. Thus, everyone at the hospital also shares, either directly or indirectly, the tasks of a health care professional.

Physicians and nurses are the most visible examples of professionals, yet the entire staff of the hospital must exhibit what can be called professionalism. To successfully operate as a community within the hospital, it is useful to recognize both the difference between being a professional and

acting with professionalism, and the interdependence between professionals and staff that is made possible by the professionalism of both groups.

The reality of being a professional has been strained lately. The traditional ideal is the selfless physician or nurse, putting care of the patient ahead of all other concerns, and receiving unstinting social support in that task, an ideal that has long since been hollowed out by concerns of compensation, employment, insurance coverage and reimbursement, malpractice and other legal impositions, and the sheer variety of human commitment to patient care. This strain on the meaning of the professions has also placed in question the nature of any cooperation between professionals and the staff that supports them, and even the public that benefits from the professions.

### **Results and discussion**

Nevertheless, the social prestige of holding the title of a professional remains strong. Thus, while its meaning seems unclear, the term professional is used all the time, by increasingly unusual occupations. Traditionally, the term professional was used to describe medical doctors, nurses, and other people you find around hospitals, also lawyers, teachers and clergy.

In the traditional view, a professional is an individual who has gone through a lengthy training and education, has been licensed to practice his/her profession, and is a member of professional associations. Professionals have a continuing responsibility to maintain their competence and the integrity of the professional itself (i.e. there is a responsibility to other professionals and a duty to society); hence, they are judged by their peers. Their competence is not limited to the techniques of their specialty. Rather, their commitment is to provide a service to their patients and society, a service which has as its core the health and well-being of the local community and branches out into a commitment to their specialty and to the others whose cooperation is necessary to provide the patients and community with health care. Our lives and the health depend upon the commitment professionals have made to serve their patients, the hospital and the community. In return, the community allows the profession to exercise a great deal of autonomy; the profession trains, admits, disciplines and expels its own members.

But this autonomy is not accomplished in isolation. When you join a profession, you “profess”, you commit yourself to serving others; at least, that is where the word comes from (1). Both ideas, to profess or to commit, and service, are worth thinking about. When you “profess” something, you are publicly obligating yourself to a set of values; you are saying that you will abide by those values and that others may expect you to stick to that commitment. This is the basis for the idea that a professional has a fiduciary

relationship with her patient. The patient can trust the professional, because the patient has profound assurances that the professional will behave or perform in certain ways. For the professional to fail to act according to this commitment is both a personal and public failure. Personal because the individual has failed to act as he said he would; and public because the individual claimed worthiness of public trust, was given that trust, and turned his back on it.

The main trends of growth in the number of physicians in Europe (per 100000 population)

	1980	1990	2000	2010	2011	2012	2013
Georgia			378.83	407.84	409.64	406.06	407.34
Armenia	...	...	256.9	251.13	252.38	276.28	278.36
Austria	222.32	300.83	385.33	479.66	484.4	489.75	499.01
Azerbaijan	336.01	391.62	360.72	365.4	342.75	347.85	344.43
Belarus	236.6	289.36	326.36	351.14	379.34	388.39	393.84
Belgium	230.94	326.53	282.88	293.5	292.55	292.92	295.2
Turkey	61.19	91.87	132.67	168.78	169.8	172.62	175.89
Turkmenistan	...	361.37	278.27	229.47	231.74	228.25	226.58
Ukraine	...	...	300.44	349.08	349.14	349.42	349.96
United Kingdom	131.74	161.75	195.83	271.76	276.04	275.11	277.09

The trust that society places in the professional, is rooted in the professed commitment made by the professional, and it takes life in the service that is provided. That service is in the care provided to the patient, a care rooted in the expertise acquired by years of study and experience. But the increasing complexity of medical care, the variety of tools available for diagnosis, the wide range of specialties in care, the diminished expectations of the times when a physician is available, makes it clear that medical care is a team effort that the service of the medical professions is provided by a variety of interdependent practitioners. This increasing complexity requires that professional autonomy cannot exist in isolation, and suggests that we must look a bit more carefully at what we mean by service.

Service is commonly thought to mean work done or duty performed for another or others; at least, **my dictionary** has it that way (2). But, interestingly, that is the only sixth definition **my dictionary** offers. The first is “the occupation or condition of a servant.” Of course, there are enough gripes about the insurance system, the role of the government, lawyers, fickle patients, and even the hospital as an employer to know that it is not hard to feel like a servant in health care today. But is that feeling inappropriate? To whom might today’s health care professional be a servant? A servant is one who works for another. For whom do we work in the health care field? Obviously the patient. But how do we work for the patient? Together. No



one alone provides care for a patient, especially in a hospital. Medical care requires working together, serving one another, in order to serve the patient; now more than ever before a professional is a member of a team (3), a group of people with different specialties, a variety of expertise and experience, coming together to accomplish the purpose of medical care. In order to serve our goal, we serve one another. We are servants and lords. Nurses and physicians could not accomplish their work without the cooperation and contribution of many others. All those who share in the service provided to patients and the local community are drawn into the work of professionals and share those professional commitments. While technically many are not professionals, they all share in many of those professional obligations and the challenges that go with them. As members of the same service community, members of a hospital staff, and indeed all who work with medical professionals in support of patient care, should all treat each other as accomplished individuals, each with an expertise and a set of responsibilities. Respect for each other as persons and trust for each other as capable team members are basic to the success of their efforts. In addition to these primary concerns of respect and trust, peer evaluation, due process, and continuing education are necessary elements of life at the hospital. All of these elements of cooperative action should be complemented by a concern for the patient, regarding both medical well-being and ethical well-being.

It is this mutual serving of one another I would identify as the basis for professionalism. In their mutual obligation to the patient, professionals and the staff that support them must demand and expect from each other certain patterns of behavior, certain virtues, or habits of excellence, that enable the entire group to function as a team. These virtues are certainly important for the physician, but a larger and more important point is that they are virtues for everyone who works in a professional setting. They are the virtues of professionalism, insofar as they describe; namely this is the expression of respect and cooperation in a service community.

## **Conclusion**

These virtues are fundamental to the operation of a team or institution devoted to service and with which a community or patient has a fiduciary relationship. They should govern the character of each of the members of the institution and they should form the bedrock of the internal relationships of that institution. If this is the case, the institution's relations with its patients and with its external community will also reflect this character. The point to remember is that everyone in a hospital has an important, shared responsibility for the care of patients and the local community, and everyone, therefore, owes each other the deepest respect and cooperation in their day-to-day work at the hospital, as expressed in these virtues. This is the essence

of professionalism, and the glue that ties together in service the professions and the staff that works with them.

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