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E-mail: universal505@ymail.com; gamomcemlobauniversali@gmail.com

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PUBLIC SCHOOL MANAGEMENT PRACTICE IN VIETNAM

Khatuna Nebieridze
Scientific supervisor, Mamuka Tavkhelidze
Grigol Robakidze University

Abstract

The purpose of this paper is to review empirical research on school management worldwide. The survey was conducted for Vietnam public schools, discussing a vision for governance style and leadership. The purpose of the current review is to identify the impact that school leadership and management style has on a contributing factor in strengthening leadership in Vietnam public (secondary) schools.

Methodology: As a result of the research review in this paper, papers were published in educational journals, various databases were analyzed, and literature reviews were written based on these papers.

Conclusions: The study found that Vietnam's management style differs from that of the rest of the world, which rejoices as follows: MOET (Ministry of Education) plays an important role in decision-making in Vietnam, and school leaders do not have full autonomy in decision-making.

Value Added: A review of the above literature aims to refine research into Vietnam High School's school leadership system, when research is limited this circumstance affects the school management style and its overall functioning.

Recommendations: This review is effective on the example of Vietnam in relation to schools in other parts of the world where school leaders do not have full autonomy, so all of this can affect the effectiveness of teachers and students in school. Therefore, it is important for leaders to be given some degree of autonomy.

Keywords: Vietnam, Vietnam Public Schools, School Management, Management Style, School Functioning (Activities)

Introduction

Leadership is a key factor that influences the performance of an organization. The management style of school principals in schools has a direct impact on teachers, while it is indirectly related to student outcomes and school functioning. A study by Sheila and Seville (2015) confirms the perception of the impact of different styles of school leaders on teacher work. Their level of motivation, organizational responsibilities, behavior in their work environment. It has been proven that a positive impact on students' academic performance will have a beneficial effect if they study with motivated teachers. Such teachers are considered to be good leaders. (Ho & Lin, 2015). The pedagogical quality of teachers plays an important role in raising the reputation of the school. According to Wood and Harrison (2014), school achievement depends largely on teacher qualifications. The leadership style of school leaders plays a crucial role in supporting and

motivating student work. (Wu, 2017). All this has a positive effect on the academic performance of students, which contributes to the reputation of the school and increases the demand for a particular school and increases the number of applicants. (Wood and Harrison, 2014).

Student performance is significantly influenced by the transformed leadership style of school leaders, which in turn contributes to students' high academic achievement (Shila & Sevilla, 2015). According to the research, it is clear that the teacher's work style has a direct impact on students' learning outcomes, which directly affects and enhances the school environment (Sun, 2015).

One of the factors that influences school selection by students is the qualifications of teachers in the school (Shah, Chanicher, & Bennett, 2013). Therefore, the teacher factor plays the most important role in students' academic performance and satisfaction level. In turn, the work, satisfaction, and level of motivation of managers depend on the effective leadership of school leaders, which creates a one-sided environment in the school.

This article specifically addresses the issue of leadership in schools in developing countries, particularly Vietnam. It is believed that a good leader can have a positive impact on the development of future leaders. Such leaders have a positive impact on the effective work of the school, which in turn will be beneficial in the future for raising the reputation of the school and the development of school life. Vietnam is a public system of public and private schools consisting of approximately 28,791 schools (Vietnam of General Stascs Office, 2017) and is divided into 5 school levels: preschool, elementary school, high school, high school and higher education. Of the total schools, 2,391 are Vietnam High Schools (Vietnam General Staff Office, 2017).

It is believed that leadership style can be a major source of motivation for teachers and students. The present article even echoes the school leadership style in Asia as a whole and specifically in the Vietnam context. The research focused on the emergence of school leaders and their influences, in contrast to school governance where leadership is positionally distributed between the manager and the informal leader (Spillane, 2012). The existing paper will even help Get information on the leadership of ten schools, especially in Southeast Asia and Vietnam.

A narrative systematic review of this study was conducted by identifying articles published in educational journals from 1997-2017 from various databases such as Scopus, Elsevier, Web of Science, Emerald, JSTOR, SAGE, Springer, Taylor & Francis, and Wiley. Keywords were school leadership, management styles, school functioning, educational leadership, high school. The search was conducted all over the world and not specific to any region. The purpose of the literature review was to combine different arguments for a broad overview of the history of the development of different theories of leadership and leadership, which provides an insight into how all of this affects the functioning of the school in general. The initial search yielded 42 papers, but only those papers related to educational leadership remained, and the final number was reduced to 9 articles. The review began with a review of studies conducted worldwide that were limited to Asia and eventually, further reduced specifically to Vietnam.

Leadership

There are different styles of management, they are used by leaders in different organizations. According to Denmark (1993), management styles can be divided into categories according to the characteristics of the leader. The autocratic management style is leadership-oriented, where the leader holds all the responsibilities and powers. The style of democratic governance is focused on subordinates, where the latter participate in decision-making, but the leader has the ultimate responsibility. Strategic leadership revolves around strategic thinking and here the leader can be

anyone and is not limited to top management people. Transformational leadership style is the transformation or initiation of change in an organization, within oneself, or in groups. Intercultural leadership style is best suited for focused, where the latter participate in decision-making, but the leader has the ultimate responsibility. Strategic Leadership Spins Strategic transactional management style focused on exchanging clear goals, sending goals from leader to subordinate, this time subordinates are given clear instructions on what to expect from them and receive regular feedback on their performance. Charismatic management style is based on the charisma of the leader, where the beliefs and values of the followers are governed by the influence of the leader.

Transformational leadership is the most common form in modern organizations. In the past, he was mostly of a practical nature and revolved around leaders who made their own decisions. In contrast, transformational management is based on working with a team (Jaji and Piccolo, 2004) and the leader focuses on making any changes in the organization by consulting with the team, rather than working alone and thus creating a positive environment (Yukl, 1999).

According to Konger (1989), the followers of a charismatic leader depend on the personality of the influential leader himself. Charismatic leaders are characterized by persuasiveness and personal qualities that give them the power to make changes in the organization, which is why some of them are referred to as transformational leaders. In the case of charismatic leaders, the focus is not on their leadership process or structure, but on their personality, thought, and ability to relate to the team (Yukl, 1999).

Visual leadership in an organization means creating an environment focused on the vision of the future. Visionary leaders have the characteristics of transformational and charismatic leaders, although the difference between them is the fact that transformational leaders work from the beginning to engage peers in the process of achieving common goals by understanding the vision of the future. Visual leaders focus on organized learning, creating learning opportunities to address challenges within the organization (Nanus, 1992).

In the past, theories were based solely on the characteristics of leaders, while today management theories focus on leadership, which includes leaders, like-minded people, and all people in the organization (Denmark, 1993). Moreover, challenges can be effectively addressed only if leadership develops across the organization and not through the work of a single leader (Hernez & Hughes, 2004). According to Bass (1996), in order to manage new rapid changes in organizations, the "old paradigm" model was transferred to the "new paradigm" model. The model of the new paradigm is discussed in the next section.

A new paradigm model has evolved in the ever-changing organization. A leader can continually improve the functioning of an organization. Modern leaders Theories such as transformational, charismatic, and visionary leadership have evolved in this new paradigm model (Day, 2012). Most often transactional theory was practical Lee among the old leadership theories. Here, leaders focused on teamwork, and the role of leaders was more like the characteristics of directors / vice-directors who cared more about day-to-day progress than just striving for a common future mission. (Bass, 1996).

The leadership development process is not limited to the development of leaders' capabilities, it is more focused on the development of a common vision, it involves the involvement of other members in the processes that are aimed at the development of a common vision. (Day, 2001). Thus, the goal of leadership development is focused on both the individual and organizational levels, as leadership development will bring positive outcomes that will affect the organization and all individuals (Black & Earnest, 2009). According to McGurk (2010), management-related

competencies are important because they force the leader to develop strategies within the organization, manage resources, increase employee motivation to enable them to work better, which in turn improves the performance of the organization as a whole.

In addition to the development of responsibilities and management-related competencies, leadership development is also associated with the ability to manage job stress in the leader (Lovelace, Manz, & Alves, 2007). Due to the recent competitive environment, leaders can experience stress. If a leader is able to manage stress well, this, in turn, will improve the overall performance of the organization and also increase the leader's job satisfaction (Lovelace, Manz, & Alves, 2007). The leadership development process helps the manager deal with problems and other emotional conditions within the organization, as well as by creating an active work environment on his / her part, the manager tries to increase the involvement of employees (Avolio, Avey, & Quisenberry, 2010). Therefore, the goal of the leadership development process is to assist the leader in developing an active work environment within the organization, resulting in maximum involvement of employees in the overall process and at the same time, maintaining their own positions (Avolio, Avey, & Quisenberry, 2010).

Leadership in schools

According to Northaus (2012), management is a process when, despite the many different perspectives on leadership, we can conclude that it is exercised between the leader and peers. At this time the process has the greatest impact directly on the supervisor. Leadership is always possible in groups and is not a one-sided event. Leadership aims at the effective work of the whole team and serves the achievement of common goals.

In top-level administrative positions, school leaders play an important role in how effectively teachers teach and how students work (Kurland, Peretz, & Hertz-Lazarowitz, 2010). In the past, the role of school leaders in school management was limited to administrative aspects, including teachers and school activities, but recently the school leadership role has shifted from manager to academic leader. More emphasis is placed on management style and impact on the school community (Karunayake, 2012). The school leadership role at this time is not limited to administrative management, but also includes the development of strategic plans to enhance school performance in the school community, increase teacher productivity, and play a central role (Draina, 2006). Studies have therefore shown that effective leadership of school leaders The effective leadership style of school leaders has a high degree of impact on teacher work, teacher organization commitment, and overall improvement in school performance, as evidenced by research. (Adhi, Hardienata, & Sunaryo, 2013; Eliophotou. -Menon and Ioanno, 2016; Sheila and Seville, 2015).

A study by Eslamieh and Hossein (2016) found that an effective leader plays an important role in further improving school productivity, although sometimes leader and leader pressure is one of the main reasons for dismissal of teachers. While an effective leader plays an important role in further improving teachers 'organizational responsibilities and school productivity (Eslamieh & Hossein, 2016).

The behavior of individuals is mainly associated with the school climate and culture, which has a positive impact on the school environment, leading to further delays in the teaching process, while in students it is characterized by high academic performance (Willms & Ma, 2004). According to past studies, a positive climate is associated with successes such as effective teaching-learning

practices or low rates of absenteeism (Caldarella et al., 2011). A study to determine the relationship between school leaders' management style and school climate showed the following: There is a positive relationship between school climate and management style. This is largely related to behavioral outcomes and academia With yur activities, which further include student achievement, the level of teacher motivation and students' attitudes toward school life increase according to the outcome obtained (Pepper & Hamilton, 2002). Thus, this part of the literature review indicates that teacher job satisfaction and motivation levels affect student performance and the creation of a positive school climate, while a positive school climate depends on the leadership style of leaders.

Effective school work affects all stakeholders in the school community, including leaders, teachers, students, and their parents, so this process is vital. According to Skallerud (2011), the effectiveness of a parent-based school is measured using four parameters. These are: safe environment, parental orientation, teacher qualifications and quality of learning. Qualified teachers were considered by parents as a parameter of school evaluation and were directly related to reliability. The retention of qualified teachers was provided by the school leader, as well as the creation of a safe learning environment. All of this is integrated into the school climate, which is influenced by leadership style and leadership management (Skallerud, 2011).

Educational Leadership in Asia

Both organizational and individual needs can influence leadership style. When individuals are motivated to work for a certain reward, or benefit, it is transactional leadership that is more focused on the desire of individuals. In contrast, transformed leadership focuses on organizational needs, where the leader and co-workers work together to achieve organizational goals and the leader understands the needs of employees. Studies have shown that transformational leadership has a more positive impact on the performance of an organization compared to a transactional leader (Witzel, 2016). Consequently, the leadership style of school leaders can be important in shaping the future of the school and they are seen as the central position of school management.

Leadership practice in Vietnam

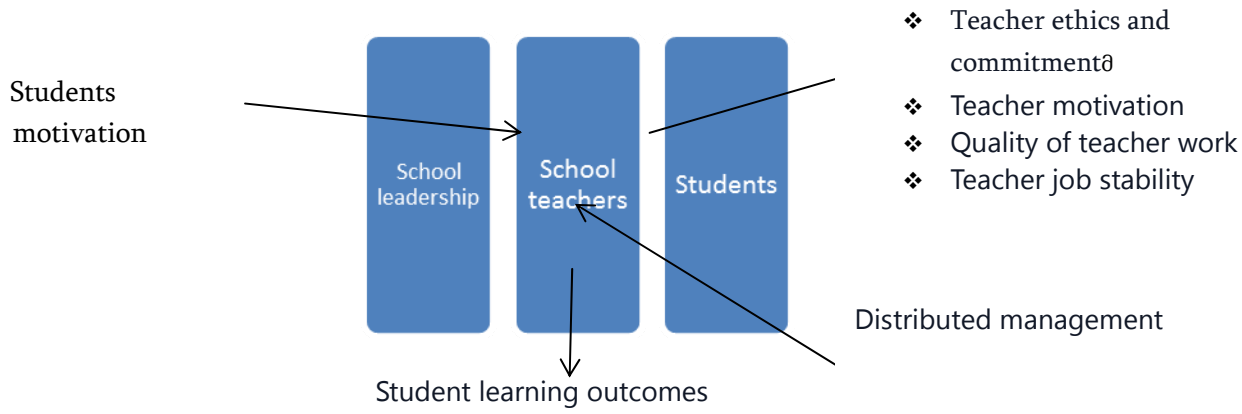
Leadership style Vietnamese managers attach great importance to, subordinates strictly control and attach less importance to collaborative leadership. Thus in the past, such a management style as - transactional, when the manager had more authority than others - was appropriate and appropriate in Vietnamese culture. But a study by Hoss (2013) suggests that employees who are in a transformational leadership position are more satisfied than a subordinate manager with a transactional leadership style. Consequently, Vietnam is changing management style, leadership practices and their impact on employees.

The education system in Vietnam consists of public and primary schools, run by the Ministry of Education and Training (MOET). Public schools that are state-run are monitored, while private schools are established with the permission of the state, and are run by individuals or groups (London, 2011). In addition to the existing schools in Vietnam, there are also many international schools that incorporate the curriculum of different countries, such as American, British, Singaporean and other models.

The education system of the former Soviet Union, which was created in the post-World War II period, had a great influence on the development of the instrumental context in Vietnam. Here the school leaders held the title of "Government Officer", which meant that the school representative was identified with both the school and the government representative. Vietnam School leaders have two lines of authority as opposed to Western countries; Bureaucratic authority and political authority. Bureaucratic authority is linked to the MOET, and political power is linked to political authority in the Communist Party. As for hiring a school leader, it was based more on political and cultural will than on individual knowledge and skills. (Hallinger et al., 2017). Truong (2013) noted in his study that Vietnamese culture has a strong influence on four functions of leadership: exercising power, building relationships, making decisions, and resolving conflicts. The results of the study showed that children in modern Vietnam were obedient to respect hierarchy and line of authority. A study by Walker and Trung (2015) expressed some concern about the relationship between national context and leadership practices, with school leaders facing different challenges than school leaders in other neighboring countries such as Thailand, Malaysia, Hong Kong, and Singapore.

Based on the above literature review, we can assume that leaders in Vietnam's education system, existing public schools, have no decision to make. Receiving individual authority and from other literature related to educational leadership also confirms, as discussed in the above study, that there may be a strong link between school leadership, teacher, and student work that may affect overall school performance. This study examined the relationship between school leadership, school teachers and students and offers the following framework given in Figure N1.

Figure 1. Conceptual framework



At the level of job satisfaction of teachers, school leaders can play
maintenance and their commitment to the school. Also, the teacher can influence the students' academic performance or their satisfaction in school. Leaders have both direct and indirect effects on student satisfaction and school performance in general. School performance can be measured by school achievement, in this regard numerous studies have been conducted in this area, particularly in thought, where student success is generally measured in school success. High pedagogical qualification of teachers, degree of leadership, appropriate development of the school Increases the number of new students in the school. (Lynch, 2015). The present paper aims to determine whether there is a gap in the existing literature on the subject.

Conclusion

The main aspects of the research focused on the process of teacher work, how the leadership of school leaders was affected. Also some research focuses on what impact teacher motivation has had on student performance. All of the above factors ultimately affect school performance. Therefore, this review article identifies a gap in the literature in the context of Asia and Vietnam where it would be interesting to see any indirect effects if seen between school life development and the leadership style of school leaders. Also mostly Vietnamese schools are run by the government and the subject of interest in this is how the school leaders contribute to the work of their own school, whether they can make decisions freely. Whether the level of teacher motivation, quality of work, and satisfaction are related to the management style of these schools, this article paves the way for further research so that scholars can address all of these shortcomings in future research.

Very limited research was conducted to determine the influence of school leaders on the overall work of the school. School performance and school environment can be assessed by many parameters, such as students' ability to enter high-level universities, high teacher retention rates, and increasing school enrollment rates. This article helps to identify those elements of research that have been lacking in intensive research so far. A conceptual framework has been developed for Vietnamese schools as part of the literature review that can be used for further research. The literature review provides a way for future interested researchers to look at school performance in an Asian context in terms of management effectiveness. When reflecting on teacher motivations, further research on school leadership may be helpful, where leaders will be given decision-making autonomy, as in the current school system in several Southeast Asian countries. The key issue in the education system in these countries is: the motivation of leaders to make decisions independently and the context of their relationship with leaders.

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A NEED FOR A GENERAL CLAUSE?

AN ANALYSIS OF THE LAW ON POLICE OF GEORGIA

Sopio Kiladze

Grigol Robakidze University

Abstract

The aim of the Article is to identify a legal gap regarding the absence of the General Clause authorizing police to undertake measures which are defined neither in special Laws nor in standard measures according to special Law on Police as well as to provide modest attempt to fill this gap. Its scope spreads only on the Law on Police of Georgia. For research four means of interpretation of Law is used: systemic, historical, analytical and logical analyses.

The article finds out, that the absence of the General Clause on the one hand violates the Rule of Law principle of the Constitution of Georgia. On the other hand, the police officer can omit its activity, if this activity does not fall under scope of authorizing norms prescribed by the law, which can cause concrete damage for public security and order.

The Article concludes, that there is a need to amend a Law on the Police through a General Clause in order to fulfill the constitutional obligation enshrined in the Rule of Law Principle. The Article provides concrete suggestion to add a new Article 17^1 to the Law on Police, as well as concrete formulation of the mentioned amendment.

Keywords: General Clause, Law on Police, Police Standard Measures, Rule of Law, Legal Certainty

Introduction[1]

The Law on Police of Georgia entered into force in 2013. At that time, the Law was a very important step forward towards creation of a modern institutionalized police with limited powers and sufficient control mechanisms for protection of humans from police arbitrariness as well as police officers from uncertainty. Therefor Georgia joined number of states, which changed paradigm and undertook steps to make danger prevention as main focus of the police work (about the paradigm change see Barthel, p. 17). According to the Law, as the main purpose of the police was determined prevention as well as the repression, and the police authorizing norms were defined in details (See Beraia et.al., 2015, pp.16-17). The law was elaborated due to a very inclusive process, with the involvement and discussions with civil society, international organizations and experts of the field (See International Transparency - Georgia et.al., 2014, p. 6; Radio Freedom, p. 1).

Amongst other novelties, the Law on Police includes special empowering norms for concrete standard actions[2] (about police preventive standard actions see Yurashvili, p. 24-27), which was

[1] The Author of the article while having a position as the Head of Division for International Legal Cooperation Division at the Ministry of Internal Affairs of Georgia (2012-2014), is the Co-Author of the Law on Police. Some of facts provided in the Article are based on her personal experience from the drafting process of the Law on Police.

one of the most important achievements compared to previous Law on Police (expired in 2013). The latter did not provide any clarity if and how a police officer should act. But these standard actions are *numerus clausus*, which can be only used in a limited number of cases as defined by the Law. (see Beraia et.al., 2015, pp.140-142) Also, there are numerous special Laws which empower police officer for concrete actions.[3] But the Police activities are so manifold, that it is impossible for legislator to foresee all possible constellations. The restriction of human rights as defined in the Constitution, demands legal ground (See Kirchhof, p.1; Mann, 2015, pp.110), as well as the Law on Police in Article 10 (4). If there is no legal ground for those actions, which cannot be subsumed under authorization standard norms, it means, actions undertaken by the police, which restrict human rights, violate the constitution of Georgia, in particular the rule of law principle.

The question is, whether there is a legal challenge in the case of human rights restricting actions of the police, which does not fall under the scope of special authorization standard norms and if it is so, how this dilemma can be addressed.

Different legal interpretation methods (See Savigny, 1840) are used in the article. For understanding a whole process, historical method is used to clarify, why the General Clause was rejected during the law drafting process. Systemic method clarifies the role of General Clause in the System in conjunction with standard police measures. Analytical and logical analysis methods are used to plead for the need of General Clause.

The aim of the article is to identify a need for General Clause for police authorization besides standard authorization norms and to find out appropriate solution. In the second part of the article the legal challenge for the police will be discussed, while the third part will focus on the proposal, how General Clause can be formulated for the Law on Police. The fourth part will conclude key findings of the article.

Legal Challenge for Georgian Police?

As mentioned above, there is no General Clause for police actions in the Law on Police of Georgia. This *status quo* should be taken into consideration in the light of the historical perspective. During the elaboration of the Draft Law on Police the issue of defining of a General Clause was raised in the Drafting Commission.[4] The proposal was rejected and the General Clause therefore was not included in the Draft.

The first argument of opponents was the violation of the principle of Legal Certainty[5], according to which the legal norm should not be equivocal and its legal consequences should be easily foreseeable. (See Degenhart, 2018, pp.145-146) To say in other words, the norm should be sufficient transparent also for courts to examine them on the bases of legal standard. (BverfG 113, 384,367 f.)

But the concerns about the violation of Rule of Law by General Clause are not persuasive. (Schenke, 2013, p.23) According to the decisions of the Constitutional Court of Georgia, generally, the legislator in order to define the content of the right in the framework of the Constitution,

[2] See Chapter IV of the Law on Police, available at <www.matsne.gov.ge>

[3] For example: Law on Demonstrations and Manifestations of Georgia; Law of Georgia on the Elimination of Violence against Woman and/or Domestic Violence and the Protection and Support of Victims of Such Violence. Both legislative acts are available at <www.matsne.gov.ge>

[4] It was raised by the Author of the article.

[5] See the Rule of Law Principle, Article 4 of the Constitution of Georgia.

should adopt exact, clear, certain norms, which comply with the legal certainty requirements. This circumstance is one of the most important criteria for the definition of the constitutionality of the norm. Such kind of obligation is enshrined in the rule of law principle. As the “law” can be considered only the product, which complies with the requirements of the law quality. The latter includes the compatibility with the principles of legal superiority and legal security. The legal accessibility and certainty have the practical and decisive importance for the real protection of mentioned principles. The legal quality demands, that the regulation is clear so, that a person whose right was violated, can understand the legal condition and manage his/her activities accordingly (Decision No. 1/3/407 of the Constitutional Court of Georgia dated December 26, 2007 in the case "Young Lawyers Association of Georgia and Georgian Citizen - Ekaterine Lomtatidze v. Parliament of Georgia", II-11; Decision No. 2/1/598 of the Constitutional Court of Georgia dated July 21, 2017 In the case "Citizen of Georgia Nugzar Kandelaki vs. Parliament of Georgia". II-30).

Legal Certainty includes recognizability of what was meant by the legislator in such way, that individuals understand it (see Schmidt §10, Rdn.5; Pierot, Schlink, Kniesel §7, Rdn.5), so they can orient their action according to the will of the legislator. (BVerfG 52,1,41) Defining of the General Clause, which should be interpreted, is in full compliance with this requirement (See BVerfG 21, 73, 79.), so far, the content, aim and extent are sufficiently defined (BVerfG 54, 143, 144 f.). The latter does not provide difficulty due to precising of the term during several decades in the case law, as well as legal scholarship. (Gusy, 2006, p.148) So, that the issue of uncertainty of general clause is today not an actual one (see Tetsch, Baldarelli p.249).

The second argument of opponents was, the General Clause would give police officers unrestricted powers and they can use it for activities beyond legal requirements. As counter argument should be underlined, that first of all, the General Claus is subsidiary norm according to the principle *lex specialis derogat legi generali*. (Gusy, 2006, p.148) It should be used only, if there is neither special law empowering police to concrete action nor is standard norm for police authorization according to the Law on Police available. Therefor it can be used only in very limited number of cases where no other rule can be relevant. Secondly, the Law on Police has several safeguards, which guarantees restriction mechanisms for police arbitrary actions in complexity of the system. And also, the General Clause should be defined in details as it is possible.

One of safeguards is e.g. the obligation of police to comply its action with principles defined in Chapter II of the Law on Police. It includes such important principles as, Respecting of Human Rights, Rule of Law, Proportionality, Non-Discrimination, Discretion, Political Neutrality, Transparency. The Principle of Proportionality according to Article 8 of the Law on Police in conjunction with the Article 12 is obligatory for police in all its actions, including General Clause in the case of its availability in the Law. According to it, the police measure shall aim to achieve legitimate objective and should be appropriate to reach it. It must be necessary and there should be no other means which would achieve the same result with less damage. Finally, proportionality requirement must be fulfilled, when the police measure does not exceed the good itself for the protection of which it is carried out. Principle of Discretion[6] requires police decision according to *if* and *how* of action (Schenke, 2013, p. 54), which should be performed by certain standards (See details regarding Discretion in ბერაია et.al., 2015, pp.68-82). Another example is the control of police activities according to Chapter IX of the Law on Police.

[6] Article 13 of the Law on Police.

The general Clause is a necessary means for elimination of illegal conditions the one side. On the other side it is an important mean for prevention of atypical and neu threats which can't be prescribed in advance by the law (Tetsch, Baldarelli, p.248)

There should be no gap of legal ground when the police perform its duties, especially if it restricts human rights guaranteed by the Constitution of Georgia. If there is a lack of some regulations, there can occur two types of threat. Firstly, the police can act beyond law if it sees necessity to handle and to avoid the threat for public security and order. Secondly, because of lack of legal authorization it can omit undertaking measures and therefor threat for public security and order can be realized in concrete damage. In both cases neither individuals and their rights, nor other public goods and even police officers are protected, which is not an aim for the Law of Police.

There is a legal challenge for Georgian Police for actions which does not fall under the scope of standard norms, but at the same time restrict human rights. For guaranteeing conformity with the Constitution of Georgia, in particular the Rule of Law Principle[7], the General Clause should be defined in the Law on Police through legislative amendment.

Formulation Proposal for the General Clause

The next question is how the General Clause should be formulated to fulfill the standard of the Constitution of Georgia.

The main terms for police prevention work are public security[8] and order[9], as well as definition of the threat[10]. All prevention standard measures of the police should be undertaken if there is a threat for public security and order.[11] These terms are milestone for police prevention work and are not defined by police officer, but rather by the Law itself. (Beraia et.al., 2015, pp.103) They include not only individual goods, but also public - existence and functioning of the state and the whole society. (Schenke, 2013, p.26) And if there is a threat for public security and order, the state (i.e. police officer in that case) has to act. If these terms are central for standardized police measures according to Article 18, it should be essential for General Clause as for much more general norm.

Notwithstanding the fact that the principle of proportionality as well as discretion are obligatory for all police measures, it would be essential to underline within the General Clause as terms, which should become integral parts of police general measures.

Important is also where to place the General Clause. If it is placed at the beginning of police standard measures, systematically it would underline, that the general measure is followed by standard measures and both are prescribed by the Law.

Therefor it is proposed to amend Law on Police through new 17^1 Article as followed:

[7] As subprinciple of the Rule of Law Principle.
[8] "inviolability of human rights, state sovereignty, territorial integrity and constitutional order, laws and other acts of Georgia", Article 2 (a) of the Law on Police of Georgia
[9] "a system of behavior and relations formed within society and regulated by the legislation of Geogia and by customs, traditions and moral norms, that do not contradict the legislation of Georgia", Article 2 (b) of the Law on Police of Georgia
[10] "a condition indicating reasonable grounds to believe that in case of an unobstructed course of expected developments there is a high probability, that the good protected by the police would be damaged", Article 2 (c) of the Law on Police of Georgia.
[11] See Article 18 of the Law on Police of Georgia.

"In the case of threat for public security and order the police should undertake all appropriate measures in the extent of its discretion and according to the principle of proportionality".

Conclusion

There is a gap in the Law on Police of Georgia for human rights restricting measures in the case of police prevention work, which fall under the scope neither of special laws authorizing police performing nor standard police actions according to the Chapter IV. This challenge can be addressed by amending the Law through a new Article 17^1 determining a General Clause as proposed above, which would fill the gap. The concerns regarding compliance with the Rule of Law Principle cannot be shared. The Law on Police of Georgia sufficiently include control mechanisms, as well as legal safeguards, in order to ensure protection of human rights and other goods by the police.

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Decision No. 1/3/407 of the Constitutional Court of Georgia dated December 26, 2007 in the case "Young Lawyers Association of Georgia and Georgian Citizen - Ekaterine Lomtatidze vs. Parliament of Georgia", II-11;

Decision N2/1/598 of the Constitutional Court of Georgia dated July 21, 2017 in the case "Georgian citizen Nugzar Kandelaki against the Parliament of Georgia". II-30

ANNULMENT OF THE DECISION AS A BASIS FOR THE RESUMPTION OF THE PROCEEDINGS

Zurab Morchadze

Grigol Robakidze University

Abstract

Civil procedural law is based on equality and adversarial proceedings. In civil law proceedings, these persons are presented with equal rights and responsibilities, hence the outcome depends on them, which should be in the form of a court decision. No matter how objective, a court decision imposes a strict or relatively light obligation on one of the parties. The said decision is binding on the parties unless the person intends to exercise the right to appeal the decision in higher instances. The rule of law presupposes the binding nature of this or that decision of a judge, and each party can guarantee the possibility of strict enforcement of the motion. In this regard, this paper is important insofar as a party can request the annulment of a one-time court decision, again due to a procedural defect admitted by the court an important element is the awareness of the party about the violation or non-application of these rules. A party can only appeal a decision or ruling once it has been informed about it. The Civil Procedure Code of Georgia lists several clauses according to which a party can file an application and request the annulment of a decision or ruling. Some of this list needs to be clarified to provide more complete and favorable information to civil law subjects. The research carried out will help the development of civil procedural law insofar as it is one of the novelties in terms of a scientific paper on this issue. Judicial decisions and the uniform practice of the Supreme Court are important, which provide the possibility of requesting the annulment of a decision within the correct legal framework, although certain circumstances are perceived as flawed in the Civil Procedure Code of Georgia. This issue is so important and useful in jurisprudence and case law that the parties often wanted to appeal that case. It has repeatedly been the subject of litigation by the European Court of Human Rights. Relevant recommendations and guidelines have been developed by the European Court, which is large to be considered and accepted, but it is never enough to perfect and idealize any issue, and each subsequent new advice or idea. At the same time, some changes were made to Article 422 of the Civil Procedure Code of Georgia, by which a new clause was added to it and as if and new data was created for the users of the Code of Civil Procedure. This study aims to analyze this innovation and draw a conclusion regarding all of the above. How new and useful it is in real practice and whether it is formal. Thus, this paper is aimed at expanding the issue, which needs additional research in terms of procedural-legal perfection and practical application.

Keywords: Annulment, decision, civil law process, resuming of proceedings, appeal, defendant’s response.

Introduction

The implementation of the judiciary as a specific state function in civil cases follows from the following to ensure the restoration of both the violated right and the disturbed balance based on the correct application of the law. Optimally perfect civil procedure legislation guarantees independent, solid, and objective decisions. By a decision rendered in favor or to the detriment of individuals or organizations, the court affirms the strength of common legal institutions, which is a necessary force for economic turnover and industrial development. Judicial protection is so important that any agreement between individuals and legal entities that the parties do not apply to the court in the event of a dispute has no force. Any person can always go to court. (16, 11) The court, by the Civil Procedure Code of Georgia, conducts the proceedings in compliance with the principles of adversarial proceedings and disposition.

The principle of equality of parties, which is one of the elements of the broader concept of a fair trial, requires each party to have a reasonable opportunity to present its case in such circumstances, which will not put him in a significantly unfavorable position concerning his opposing side. (13, 14) The principle of disposition of the parties implies the freedom to exercise the parties' procedural rights at any stage of the court, in a certain order. They have the right to go to court and defend their rights so as not to harm anyone else.

Any decision rendered by the court is subject to review under Articles 422 of the Code of Civil Procedure (application for annulment of a decision) and 423 (application for resumption of proceedings due to newly discovered circumstances. If a party disputes the correctness of a decision or ruling rendered by the rules of civil procedure, he may indicate that when the decision-making process took place, there was a breach of the procedural norm or was not exhaustively used all of the opportunity to achieve the purpose, to inform the party of the initiation of a lawsuit, or the progress of the process.

At the stage of resumption of the proceedings, the legality of the decision or ruling of the court that has entered into force is checked, given the grounds for annulment of this decision or the existence of newly discovered circumstances, which existed at the time of the hearing and were crucial to the resolution of the case, in terms of reaching a true outcome. (16, 727) Resumption of proceedings is one of the means of verifying the legality, in the context of reviewing court decisions. It is also one of the special cases in the civil procedure stage. Its uniqueness is due to the existence of special conditions for the annulment of a court decision, which are defined by Article 422 of the Civil Procedure Code. Widespread means of reviewing a decision are to appeal the decision to the Court of Appeals and the Supreme Court, while the same court that made that decision has the prerogative to check the legality of the decision. Although the case in both cases concerns a decision review, there is as much difference between review procedures as there is between these institutions. When appealing a decision to a higher instance, its competence is called into question by another highly qualified higher instance, and in reviewing the decision in terms of invalidity, the court should call into question its own procedural actions.

General grounds for annulment of the decision

Civil procedure law provides for a rule of annulment of the judgment entered into legal force and the annulment of the rulings, such as the resumption of proceedings. (16, 726) In particular, after the decision has been made, the losing party of the decision may focus on a circumstance which, if it had not been neglected by the court, the said result would not have arisen. What was established at the time of the decision, is therefore becoming illegal? In this reservation, the legislator implies that the resumption of the proceedings is not another stage in appealing the

court decision, but is allowed only in exceptional cases if there are preconditions clearly defined by law. (3)

A final judgment may be annulled by an action filed by an interested person if a) a judge was involved in the judgment without having the right to take part in the judgment; b) one of the parties or its legal representative (if the party needs such representative) has not been invited to the hearing; c) the person whose rights and lawful interests are directly affected by the judgment, has not been invited to the hearing. (2, 422).

The decision cannot be upheld, whose invalidity is substantiated by the statement following Article 422 of the Civil Procedure Code of Georgia. In particular, if a judge who did not have the right to participate in the hearing under the law is a person who heard the case in the court of the first instance and then in the court of the second or third instance, it is assumed that he did not have the right to hear the dispute in any of them. A judge hearing a case in one instance or hearing a case in another (superior or subordinate) court will be the basis for the annulment of the decision, although it can also be the basis for the annulment of the decision when there is any relationship between the judge and the party or other legal circumstances, which is directly provided by procedural law. (17, 727-728)

The basis for inviting the parties to the process is also important. The reason for the invalidity of the decision is not to invite one of the parties or the representative of that party to the process in compliance with the relevant procedural norms. This deprives a person of the right to protect his / her rights in the process and to carry out actions in his / her interests, following the rules established by law, participating in the hearing of the case, and carrying out other procedural actions. Also important is the circumstance, which provides for the summoning of a person to the trial, whose interests were particularly concerned with the proceedings and the consequent decision. If such a party has not been summoned to the proceedings, the decision may be annulled. An important detail is the court's awareness of this person. If the judge concludes after examining the case file that there is a person who may be substantially affected by the decision, he or she must be summoned to the trial in the prescribed manner. Otherwise, the resumption of the proceedings will not be allowed.

Cases of being invited to the process or not invited accordingly to a trial often become the subject of a statement requesting a party to cancel a decision entered into force or ruling. The contradiction of the evidence also arises in this aspect, when the party claims that he was not summoned to the trial in compliance with the norms of the civil procedure law, at this point, the court must also prove the opposite. The participation of both parties in the process is multifaceted and important including in the sense that it allows the court, by the principle of adversarial proceedings, to establish the factual circumstances of the case. (4) But, what should the court do when one of the parties is not announced at the hearing (who is informed about the time and place of the hearing by the law) and also did not inform the court about the reasons for not appearing? The hearing of a case and the administration of justice, in this case, should not depend on the will of one of the parties. Unlike the administrative law process, civil litigation is not characterized by the specifics of dispute resolution despite the absence of the parties. Therefore, in such a case, the case should be considered and decided without the participation of an unannounced party. Article 422 (1) (b) of the Civil Procedure Code of Georgia combines strict adherence to the norms of summoning a party or its legal representative to the proceedings. Since the representative is a defender of the party's procedural rights, he also plays an important role in establishing the conditions for notification and summons. The Cassation Chamber clarifies that the administration of speedy, economical, and effective justice is the responsibility of both the judiciary and the parties to the proceedings, and for that, it is necessary to use all legitimate

possibilities, which ensures equality of the parties at all stages of the proceedings and helps to avoid delays in the proceedings. Civil procedure law establishes the principle that parties (individuals or legal entities), can file a case in court both in person and through a representative. Judicial representation is the legally guaranteed possibility for a party to conduct a case through a representative in court. A court representative is a person who performs in the name of the trustee in court and his / her interests in all the procedural actions provided by law and the power of attorney issued by the trustee. Judicial representation is allowed in almost all cases that are subject to the court. (5)

A person whose rights have been affected by the court decision and who has not been summoned to the trial may apply for annulment of the court decision. In this case, we are talking about a person who was involved in the dispute process, and at a certain stage of the discussion (process), he was not invited. This section also refers to a person who was not originally summoned to the trial even though the judge was aware of the person's existence and probably knew that the decision was about his or her right. In this case, he is the subject of Article 422, Part 1, Subparagraph C of the Civil Procedure Code of Georgia. (17, 728-729) The summoning of a party and his / her representative to the trial is thus based on the principle of a fair trial. Accordingly, there should be no circumstance when he was not invited to the trial and was deprived of the opportunity to defend himself. If the person issuing the power of attorney will not be invited to the trial, this does not mean the exclusion of his representative. By the rules of procedure, the representative can pursue the interests of the trustee within the limits specified in the power of attorney.

Substantiation of the application for annulment of the decision and resumption of the proceedings during the hearing of the case with the illegal composition of the court

The court shall notify the admissibility of the application for resumption of proceedings by notifying the parties, after which it verifies the merits of this statement. The judicial summons is sent to the parties by Articles 70-78 of the Civil Procedure Code of Georgia. The court hearing of the case is mainly dedicated to one issue and it is procedural. The judge will examine whether there is a saturated argument provided by law for the evidence that the party has based on the claim for annulment of the decision and resumption of the proceedings. (18, 402)

Article 422, Part 1, Subparagraph A of the Civil Procedure Code of Georgia refers to the invalidity of a decision or ruling when a judge was present at the hearing and was not legally entitled to participate in the hearing. We are talking about cases when we face a conflict of interest in terms of avoiding a judge. A judge has no right to hear a case in the first instance if he/she participated in the hearing of the same case in a higher instance. Also, a judge has no right to resolve a dispute in which the parties are represented by his relatives or family members.

The mentioned norm, in the given part, considers the ground for annulment of the decision and directly indicates the high probability risk, which may lead to the satisfaction of the request. The case when an obviously true and correct decision has been made on the case needs to be clarified, notwithstanding the confirmation of the judge's formally illegal participation in the hearing. The whole paper focuses on the positive side of the existence of minimal cases of annulment of the decision, as it does not help the name and strength of the judiciary. Under this article, this paragraph may not become a ground for invalidity, if the decision made did not cause a big mistake. Illegal participation of a judge in a trial is a remedy to be eliminated by a more preventive action, than sanctionary.

German civil procedure law regulates the following issue: "If, due to an objective legal situation, the participation of a judge without the right to participate results due to erroneous application of the rules on the distribution of court cases, then, according to the case law of the Federal Supreme Court, only a grave error can help substantiate a claim for invalidity by paragraph number 1. (15, 1126)

Thus, it is the case that the action taken by the judicial staff involved in the proceedings should not always be perceived as a ground for annulment of the decision. There may be some mistakes in a particular case, however, if a satisfactory positive result is ultimately established, the annulment of the final decision is not favorable. Based on the above, the court to consider the claim arising in connection with the composition, generally requires that the violation be clearly presented, be serious, or "qualified", i.e based on an unacceptable legal view and thus, ultimately, objective arbitrariness. (15, 1126)

The request for resumption of the proceedings shall constitute minimum admissibility for the judge to annul his or her decision due to improper application of the present procedural grounds. The permissibility of such a statement will not be so well imprinted on the Georgian judicial system. The resumption of civil proceedings in Germany is clearly of less importance than in Georgia. The author remembers only the only resumption of the civil proceeding with which he had contact in the course of his professional activity. (15, 1123) In examining the absolute grounds for the admissibility of an application, the judge examines well the awareness of the party, and whether he had the opportunity to realize the grounds for the said invalidity before the court decision of any instance came into force. Here it is important to have an objective basis on the face and not a subjective one. (19, 748) The applicant must prove the grounds on which he asserted his lack of knowledge of the grounds which, if known at the stage of the proceedings, precluded such an outcome as was determined by a court decision. However, the role of the judge is also crucial in the process at this time, as he or she has all the reins to do what is right and to protect from making such substantiated statements by the parties in the future.

However, while there is a ground provided for in Article 422, Part 1, Subparagraph A of the Code of Civil Procedure, it can be separated from the other grounds. It is more likely that a similar type of statement will not be upheld, since it is quite possible, that the dispute is considered by an illegal court, to be a lawful and objective decision maker.

Service of a judicial summons following the Article 71(5) of the Civil Procedure Code of Georgia

For the claim and the attached materials to be handed over to the defendant and to enable the defendant to assert his rights at trial, the judicial assistant sends the said materials to the defendant using various means. If a document certifying the service of a summoned abroad has not been received, the said document shall be deemed to have been delivered if it was sent for the purposes of the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, all reasonable efforts have been made by the same Convention to submit it, provided that at least 6 months have elapsed from the date of the first sending of this Statute and that the trial judge deems it sufficient. (2, 71.5.) The Convention stipulates that the requested judicial authority shall send documents by the law of the country concerned. (20)

In these cases, there is the case law of the Supreme Court, when a person residing in one of the States Party to the Minsk Convention, except Georgia, is involved in the proceedings, then the Minsk Convention applies. The Supreme Court has ruled that in such a case, court documents must be sent by the procedure laid down in the Minsk Convention, rather than following the Code of

Criminal Procedure. (10; 15) Significant is the fact that, as the relevant case law of the Supreme Court of the Minsk Convention indicates (20, § 19), the judicial summoned must be properly handed Not because the procedure will be formally protected by national law, but because it should not disproportionately affect the defendant's right of access to a court.

It is important and noteworthy that the national government must ensure that the requirements of a "fair trial" are met in each case. The first paragraph of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention) does not provide for a specific rule on the service of documents, although the general concept of a fair trial enshrines the fundamental principle of adversarial proceedings. At the same time, a fair trial requires that all parties to a civil proceeding be informed and allowed to express an opinion on the findings and evidence presented, to influence the decisions of the court. First of all, this issue means that the person should be informed about the ongoing proceedings against him. If the court documents, including the judicial summoned, were not delivered to the party in person, then the applicant may be prevented from defending himself during the proceedings. Article 6 of the Convention requires and allows States to arrange their legal systems in such a way as to facilitate expeditious and efficient litigation However, this may not be done at the expense of other procedural guarantees, in particular the principles of equality of arms. (6)

The figure of the judge who applies the law is important in terms of the introduction and application of the law. Here arises the subjective moment of the beginning of the objective existence of law, which must also derive from its objective understanding, but the so-called. It is still not protected from subjective "ferumarili". The subjective moment, in this case, is the application of the law by the judge. (14, 85)

According to the new addition to Article 422 of the Civil Procedure Code of Georgia (Part 1, paragraph "d"), the judicial summoned is considered to have been handed over by Article 71, Part 5 of this Code. However, the undeclared defendant stated before the court that he had no information about the court and/or the court decision without fault, which is why he was not allowed to present the response and/or appeal the court decision. In this case, the defendant presents in his statement the first position Regarding the substantive circumstances of the case. (2, 422.1.d) At first glance, one paragraph was added to the first part of Article 422, however, any new circumstances that could lead to the annulment of the decision - such a thing has not been recorded. The judge usually takes all possible measures to inform the defendant about the lawsuit against him. About the issue of time limits, in particular, it is strictly stated that the indefinite continuation of proceedings to reveal the traces of the person involved in the case would be incompatible with the principle of legal certainty and proper administration of justice. (13, 14) The named procedural norm cannot be interpreted in such a way that the court should only formally follow the rules of sending the judicial summoned. Still, the court should dispose of all the procedural mechanisms that allow the person to be informed reasonably. The above list, as well as the provision of the norm, that the judicial summoned must be sent at least once more, indicates the obligation of the court to investigate the reason for the non-delivery of the first message and try to ensure that repeated notifications are more likely to summon a party to court. A re-attempt is related to the search for a new means and it should not be of a template nature. Under each of these provisions, Article 422 already provided for the obligation to notify and to exhaust all means.

The additional paragraph of this article refers to Article 71.5 of the Civil Procedure Code of Georgia and emphasizes the credibility of the result obtained through the implementation of this procedure. Under Article 71 of the Code of Procedure, it is even possible for an agency to be deemed to have been delivered if the reply has not even been returned by mail and the 6 months has been deemed sufficient by the judge. Thus, we go back to the formality, and the new addition

to Article 422 gives me nothing. Moreover, it raises a new ground for the annulment of the decision (judgment) and the feeling that another ground has arisen according to which a party may claim the annulment of the decision in the statement. The Court of Cassation reiterates that one of the fundamental aspects of the rule of law is the principle of legal certainty, according to which if a court terminates a case, its ruling should not be called into question. (7) In turn, this addition will lead to more demands with the relevant reasoning, which is undesirable for the already overcrowded judiciary.

Review of the decision (ruling) by the court

The legal status of the decision or ruling, which may be subject to review under Article 422 of the Civil Procedure Code, should be noted first. Such a decision must necessarily be entered into force. A decision that has not yet entered into force cannot be the basis for a review because it can already be reviewed by a higher instance and its truth reviewed from a procedural-legal as well as a material-legal point of view. (18, 395-396) It is not justified for a party to apply to the court with any argument and request the annulment of a decision that has not yet entered into force, while the legal basis for this is not ruled out by a higher instance. It does not matter if it is based on the principle of money savings or procedural time savings.

The annulment of the invalidity of a document declared invalid by a court is based on the following circumstances: the party failed to exercise its procedural right through its negligence or the court did not use all means to inform the party of the dispute that was pending against him. The Chamber of Cassation notes that there are always two parties with conflicting interests involved in the litigation - the plaintiff and the defendant. The active participation of these two parties in the proceedings is ensured by their interest: the plaintiff's interest is that the court upholds the claim, make a decision that is desirable to him, and the defendant's interest is the plaintiff's refusal to grant the claim. The parties have been granted appropriate procedural rights to exercise these interests. One of the peculiarities of civil proceedings is that the non-exercise of procedural rights may hurt the party who has not exercised that right. One of the procedural rights of a party is to participate in the hearing of the case. This right corresponds to the duty of the court to inform the party about the time and place of the hearing by Articles 70-78 of the Civil Procedure Code of Georgia. Hearing and decision of the case without informing the party should be qualified as hearing the case without the participation of the party, in his absence, which is the absolute basis for annulment of the decision (Article 394 of the Civil Procedure Code of Georgia), as well as grounds for resumption of proceedings. (8).

The decision of the Court of Cassation should be taken into account when it is considered by the court, based on the named decision of the Constitutional Court. when applying part 3 of Article 430 of the Civil Procedure Code of Georgia, it is important that during the substantive consideration of the application for annulment of the decision that has entered into force and resumption of the proceedings during the review of the court application, be guided by the initial provision to assess the extent to which the circumstance or evidence considered as the basis for the resumption of the proceedings will affect the legal outcome of the renewed case. If the court concludes that the legal picture of the case seeking resumption of proceedings will not change, it should refuse to grant the applicant the request and alone should not formally overturn the final decision. (9)

One of the most important and responsible moments of the actions taken by the court is to notify and summon the parties. The European Court of Human Rights has ruled in the case of Mirigall Escolano and Others v. Spain that when the matter relates to the principle of legal certainty (Legal

certainty), This is not simply a problem of interpretation of a legal norm, but rather there was an unreasonable construction of a procedural requirement that led to a violation of the right to an effective trial. The parties should be able to use their right of appeal when they can effectively assess the burden that a court decision imposes on them. The particularly strict interpretation of the Rules of Procedure by the national courts deprived the applicants of their right of access to a court to hear their complaints. (21). This reasoning helps the party to make a good statement based on which it may request the annulment of the decision or ruling, although the action to be taken by the court is another aspect. The ruling of the court, based on the principle of the rule of law, should not be called into question. (1)

The European Court of Human Rights states that the right to a fair trial under the first paragraph of Article 6 of the Convention must be interpreted in the context of the preamble to the Convention, according to which the rule of law is the common heritage of the High Contracting Parties. "The power to overturn a final decision must be exercised with extreme caution to maintain a fair balance between the various interests as far as possible. (22) One of the fundamental aspects of the rule of law is the principle of legal definiteness, if a final decision decides a matter, its ruling should not be called into question. This principle means that neither party should have the right to request a review of the final decision and the decision that has entered into force merely to reach a retrial and a new decision. The review of the case by the courts of higher instance should not become a masked appeal and the existence of two views on the issue does not constitute a basis for review of the case. Deviation from this principle is permissible only if the necessity of it is caused by the emergence of circumstances of a substantial and unavoidable nature. (23) In addition, the existence of an interest in the property, as evidenced by a binding and final judgment, constitutes the "property" of the beneficiary of the judgment within the meaning of Article 1 of Additional Protocol №1. The annulment of such a decision is equally to interfering with the use of the property (12, 14-15). The opinion of the parties is important and should be taken into account when criticizing any spectrum of the process, especially when it indicates its violated right and relevant arguments, however, the review of the decision or ruling and its invalidity requires careful action when it comes to Article 422 of the Civil Procedure Code of Georgia. In this episode, the judge has to devote more time to preventive actions than to other procedural actions. The above is possible by carefully carrying out the actions provided for in Articles 70-78 of the Code of Civil Procedure.

Conclusion

Based on the application of the party, it is possible to check the grounds for invalidity of the decision that has entered into legal force. In the presence of the above, the court shall render a decision on the annulment of the decision or ruling and shall resume the proceedings.

There are several grounds for the annulment of a decision listed in Article 422 of the Civil Procedure Code of Georgia, although this statement should not become an opportunity to appeal a decision of a party. Rather, given the possibility, the procedural norm should be a balancing mechanism for a purely procedural violation that would be a guarantee of a restorative right.

One of the grounds for the invalidity of a court decision is the participation of a judge in the hearing of a case who was not entitled by law to do so. It is understood that he was a judge hearing this case in another instance or has a relationship with either party to the dispute. If we are guided by the fact that the invalidity of the decision is not so well reflected in the judiciary and its image, the probability of the invalidity of the decision should be much less than it is. A civil proceeding entails the annulment of a decision when a judge, who was not legally entitled to do

so, participated in the dispute, it is better to specify in Article 422, Part 1, Subparagraph A of the Civil Procedure Code of Georgia and emphasize the grounds for the invalidity of the decision when a judge has participated in the dispute, who did not have the legal right to hear the case and "a biased decision was rendered in the case." Article 422, Part 1, Subparagraph B of the Code of Civil Procedure indicates the invalidity of a decision as a result of an improperly summoned party. This norm obliges the court to exhaust all means of procedural action, whether the summoned person is abroad or within the borders. The new addition, which was implemented in the mentioned norm and indicates the action taken by the fifth paragraph of Article 71 of the Civil Procedure Code of Georgia, which was considered successful, is meaningless. The judge was already guided by the Hague Convention, which determines the delivery of a notice abroad and within the border to a party. Accordingly, the addition of a new clause in the norm gives a reasonable basis for a new possibility of annulment of the decision or ruling, when in fact this amendment repeats those mentioned above (already existing content in the Code) part. In the light of the rule of law, however, a court decision should not be revisable and the party should not have the feeling that he can often write a statement requesting the annulment of the decision, on a new basis.

Thus, the review (revision) of a court decision or ruling belongs to several very cautious actions. The court must act in such a balanced and correct manner, in each of its procedural aspects, to have almost zero chance of satisfying such types of applications as the cases provided for in Article 422 of the Code of Civil Procedure. The application made by the party, in the main case may be intended to annul the decision that has entered into force for a certain period, although this result will be raised during the reconsideration of the case and the initiator will be informed about it in advance. The European Court of Human Rights makes an important explanation when it points out that a statement should not be a masked appeal against a decision on annulment, but it should aim to restore the circumstances that, if properly realized from the very beginning, would have had other consequences in the face. Excessive caution should always be exercised in the application of the Civil Procedure Code of Georgia in litigation, and if deficiencies of similar nature still cannot be avoided, even greater caution should be required in reviewing the decision. It is not justified to invalidate the decision when the substantive circumstances do not change and it is obvious to the judge from the very beginning. Otherwise, a norm that implies the annulment of a decision, that has entered into force and is in direct conflict with the rule of law, will become frequently usable, which is not conducive to justice.

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CREDIT RISK MODELING BY USING MACHINE LEARNING METHODS WITH SMALL DATA

Garnik Arakelyan
Armenian State University of Economics, Yerevan

Abstract

Credit risk is the main risk of credit organizations' activity, as it is related to the main process of the activities of these organizations. Like every activity, lending contains the risk of possible losses, the management of which occupies a unique place in the financial and banking system.
The current level of development in the world allows credit risk management to be carried out using machine learning methods. In this case, when the lending organization has a fairly large database, the process of machine learning becomes easier, but when the organization does not have a large amount of data, machine learning becomes almost impossible.

In the framework of this work, an algorithm was developed allowing the creation of a large volume of synthetic (fake) data based on small data, on the basis of which a machine learning model was worked out.
The work is based on real data on a small number of loans, but for reasons of confidentiality, the name of the financial institution in question is indicated as X.
During the research, logical connections between the real data and their interaction with each other were revealed. Then, based on the work done, a large amount of synthetic data was generated and a machine learning model was developed, the quality of which was checked using various tools.
The obtained results are practically applicable and show that every credit organization with a small amount of data can develop a machine learning model that will contribute to curbing credit risk and reducing costs.

Key words. Credit risk, machine learning, synthetic data.

Introduction

The economic situation of recent years has shown that some of the organizations that form part of the financial and banking system are quite vulnerable from the point of view of credit risk management, due to which these structures suffer significant losses. In addition, it is necessary to note that credit operations are one of the prerequisites for ensuring the normal functioning of the economy. History shows that credit risk management occupies a unique place in the financial and banking system.

Currently, new credit structures are often formed, which also need to manage their credit risk. However, those structures often face the problem of lack of large-scale data during the process of modeling and managing credit risk using machine learning methods, and the majority of these models can be applied only in the presence of a fairly large amount of data.

The aim of the work is to develop a methodology that will lead to the creation of synthetic large-scale data based on small data on loans, through which the machine learning decision tree model will be developed that is often used to solve the classification problem.

The implementation of the research objective can be applied in credit organizations, which will contribute to the optimal management of credit risk and cost reduction in these organizations.

The main part.

Synthetic data is annotated information that computer simulations or algorithms generate as an alternative to real-world data.

Put another way, synthetic data is created in digital worlds rather than collected from or measured in the real world.

It may be artificial, but synthetic data reflects real-world data, mathematically or statistically. Research demonstrates it can be as good or even better for training an AI model than data based on actual objects, events or people [1].

It is necessary to note that currently different mechanisms for obtaining synthetic data are available.

In the framework of this work, the algorithm mentioned below for the processing of synthetic data was developed.

1. It is necessary to analyze the real small volume of data, to group the data. You can choose not to group if you want to get accurate data. But it will be a hard task.
2. It is necessary to perform a correlation analysis, on the basis of which it is required to select those variables that strongly affect the dependent variable and which will be included in the model.
3. In real data, the predicted variable (Default - presence of overdue obligations for 90 days or more) should be divided into two groups: 1 – presence of default, 0 – absence of default. It is necessary to calculate the weight of each group in the total real data. We multiply each obtained value by the preferred amount of synthetic data, as a result of which we get the number of values of the default variable in the newly generated data. It is necessary to make the calculation according to the formula below:

   $$Q_j = \frac{N_j}{N} * Q,$$

   where: Q_j is the number of preferred synthetic data in group j;

   N_j is the number real data of group j;

   N is the number of real data;

   Q is the amount of preferred synthetic data;

   j is the groups of the predicted variable in real and synthetic data: presence of default and absence of default.
4. It is necessary to calculate the weights of each group of independent variables influencing the dependent variable in the real data separately in the groups of presence of default and absence of default. It is necessary to multiply the obtained weights to the new synthetic data groups obtained in point 3, respectively. Thus, the amounts of data in each group are obtained. Then, for each observation of the given variable, a value corresponding to the range of that group (if grouping of the variable was performed) is randomly assigned to each group. For example, in the real data, the salary variable is grouped as under 200,000 and over 200,000. In the case of credit default, the group weights are 90% and 10%, respectively. Therefore, in case of default in the new

synthetic data, 90% of the salary variable is randomly assigned a salary value up to 200,000 and the remaining 10% is randomly assigned a salary value greater than 200,000. It is necessary to make the calculation according to the formula below.

$$Q_{jxf} = \frac{N_{xfj}}{N_j} * Q_j ,$$

where: Q_j is the amount of preferred synthetic data in group j;
N_j is the number real data of group j;
N_{xfj} is the number real data of group f of variable x in group j of the variable to be predicted;

Q_{jxf} is the number of preferred synthetic data of group f of variable x in group j;
j is the groups of the predicted variable in real and synthetic data: presence of default and absence of default.

5. The next variable is calculated according to the logic mentioned in point 4, except that the obtained new weights need to be multiplied by the new synthetic data sets obtained in points 3 and 4, respectively. It is necessary to make the calculation according to the formula below.

$$Q_{jxfmf} = \frac{N_{jxfmf}}{N_{xfj}} * Q_{jxf} ,$$

where: Q_{jxf} is the number of preferred synthetic data of group f of variable x in group j;
N_{jxfmf} is the number real data of group f of variable x in group j;
N_{xfj} is the number real data of group f of variable x in group j of the variable to be predicted;

Q_{jxf} is the number of preferred synthetic data of group f of variable x in group j;
j is the groups of the predicted variable in real and synthetic data: presence of default and absence of default;
x and m are variables present in real and synthetic data;

f – are the groups present in the variables. Instead of groups, there can be values themselves.

6. In the same way, we perform the calculations for each of the remaining variables. It turns out that as the number of variables increases, the relevant calculations to generate synthetic data become more extensive. That problem can be solved by programming. When creating the synthetic data intended for machine learning, it is necessary to ensure the condition that certain statistical indicators of the received fake and real data are approximately equal. In order to understand whether the obtained synthetic data is of good quality or not, it is necessary to compare the correlation matrices of the variables in the real and synthetic data (this can be done after data grouping and standardization) and to perform the Kolmagorov-Smirnov test (variables included in the model should not vary much according to the test result, unless the variables can have a large effect on the quality of the model).

Consider the above algorithm with a simple example. There is currently a dataset consisting of variables X1, X2 and Y intended for prediction (after correlation analysis) and 6 observations (Tab. 1). It is necessary to generate a synthetic dataset based on these data, which will consist of 12 observations. In this example, no data groupping was performed and the quality of the resulting data was not checked.

Tab. 1. Real dataset

X_1	X_2	Y
10	20	1
10	23	0
15	20	0
17	17	1
15	6	1
15	10	1

Let's make the appropriate calculations.

1. According to the formula mentioned in point 3 of the above algorithm, j can be 0 or 1.

   $$Q_1 = \frac{4}{6} \approx 0.66 \;\&\; Q_2 = \frac{2}{6} \approx 0.33$$

   Therefore, 8 (12* Q_1) observations out of 12 synthetic data, Y should take a value of 1, and for 4 observations (12* Q_0) it should take a value of 0.
2. According to the formula mentioned in point 4 of the above algorithm, let's get the variable X2.

   $$Q_{1X2_{20}} = \frac{1}{4} * 8 = 2, Q_{1X2_{17}} = \frac{1}{4} * 8 = 2, Q_{1X2_6} = \frac{1}{4} * 8 = 2, Q_{1X2_{10}} = \frac{1}{4} * 8 = 2$$

   $$Q_{0X2_{23}} = \frac{1}{2} * 4 = 2, Q_{0X2_{20}} = \frac{1}{2} * 4 = 2$$
3. According to the formula mentioned in point 5 of the above algorithm, let's get the variable X1.

   $$Q_{1X2_{20}X1_{10}} = \frac{1}{1} * 2 = 2, Q_{1X2_{17}X1_{17}} = \frac{1}{1} * 2 = 2, Q_{1X2_6X1_{15}} = \frac{1}{1} * 2$$

   $$= 2, Q_{1X2_{10}X1_{15}} = \frac{1}{1} * 2 = 2,$$

   $$Q_{0X2_{23}X1_{10}} = \frac{1}{1} * 2 = 2, Q_{0X2_{20}X1_{15}} = \frac{1}{1} * 2 = 2$$

Through all calculations, we obtained the required synthetic dataset (Tab. 2).

Tab. 2. Synthetic dataset

X_1	X_2	Y
10	23	0
10	23	0
15	20	0
15	20	0
10	20	1
10	20	1
17	17	1
17	17	1

15	6	1
15	6	1
15	10	1
15	10	1

In this research, a synthetic dataset was built using the above-mentioned algorithm, on the basis of which the machine learning model was developed. The quality of the obtained model was verified by testing real small data. Data processing methods were used. In order to identify patterns in the data, the method of correlation analysis was used.

The work is based on real lending data, but due to confidentiality, the name of the given financial organization is indicated as X. There are 9 variables in this dataset: gender (Sex), borrower's age (Age), total income (Salary), availability of guarantee (Guarantee), loan term in months (Loan_term), value of pledge (Pledge_value), total debt service ratio (TDSR), monthly loan payment (MLP), default (Default). There are 468 observations in the dataset, based on which 2000 synthetic observations were developed.

In the obtained synthetic dataset, the data were grouped (Data binning) and standardized using the WOE (Weights Of Evidence) method, as it is widely used and understood.

Figure 1 below shows the real and synthetic data obtained using the Python programming language, which are grouped and standardized, and Figure 2 shows the correlation matrices of each of these datasets, from which it can be seen that the datasets have similar correlation matrices. The Kolmagorov-Smirnov test was performed in the Excel program, as a result of which 6 out of 9 variables of the real and synthetic dataset have no significant differences. As a result of the test for one of the variables included in the model, it was found that it differs in real and synthetic data. However, since that variable affects the predicted variable, it was decided to leave it in the model.

Figure 3 shows the machine learning decision tree model built in Python based on grouped and standardized synthetic data and its quality indicators. It is necessary to note that the training and testing of the model was performed only on the basis of synthetic data, after which a post-test was performed on 468 real observations.

Figure 1. Real and synthetic data

```
import pandas as pd
import matplotlib.pyplot as plt
import seaborn as sns
import numpy as np
%matplotlib inline
```

```
Synthetic=pd.read_csv('Synthetic_data.csv', sep=';')
Real=pd.read_csv("Real_data.csv", sep=';')
```

```
#Real dataset
Real
```

	W_Sex	W_Age	W_Salary	W_Guarantee	W_Loan_term	W_Pledge_value	W_TDSR	W_MLP	Default
0	0.128558	0.073587	0.572550	-1.169356	-0.329082	-0.677300	-0.477960	0.58073	0
1	-0.319257	-0.085492	0.000000	-1.169356	0.723739	-0.677300	-0.477960	0.00000	0
2	0.128558	-0.085492	0.572550	-1.169356	0.723739	-0.677300	-0.477960	0.51342	0
3	-0.319257	0.073587	0.572550	-1.169356	0.382923	1.082168	0.615419	0.58073	0
4	0.128558	0.073587	0.000000	-1.169356	-0.329082	-0.677300	-0.477960	0.00000	0
...	...	...	...	...	...	...	...	...	...
463	0.128558	-0.085492	0.756972	1.462889	0.723739	1.082168	0.615419	0.58073	0
464	-0.319257	0.073587	0.572550	-1.169356	-0.812145	-0.677300	-0.477960	0.51342	0
465	-0.319257	-0.085492	0.572550	-1.169356	0.723739	-0.677300	-0.477960	0.51342	0
466	-0.319257	0.073587	0.000000	-1.169356	0.723739	-0.677300	-0.477960	0.51342	0
467	0.128558	-0.085492	0.756972	-1.169356	0.723739	-0.677300	0.615419	0.51342	0

468 rows × 9 columns

```
#Synthetic dataset
Synthetic
```

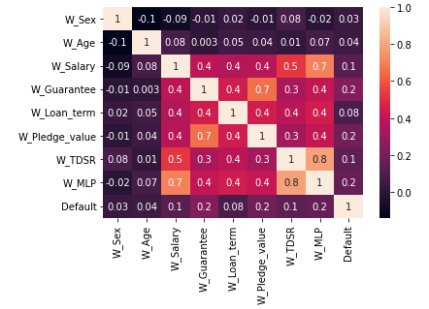
	W_Sex	W_Age	W_Salary	W_Guarantee	W_Loan_term	W_Pledge_value	W_TDSR	W_MLP	Default
0	-0.319257	-0.085492	0.000000	-1.169356	-0.329082	-0.677300	-0.477960	0.00000	0
1	-0.319257	-0.085492	0.000000	-1.169356	-0.329082	-0.677300	-0.477960	0.00000	0
2	-0.319257	-0.085492	0.000000	-1.169356	-0.329082	-0.677300	-0.477960	0.00000	0
3	-0.319257	-0.085492	0.000000	-1.169356	-0.329082	-0.677300	-0.477960	0.00000	0
4	-0.319257	-0.085492	0.000000	-1.169356	-0.329082	-0.677300	-0.477960	0.00000	0
...	...	...	...	...	...	...	...	...	...
1995	0.128558	0.073587	-0.564784	-1.169356	0.723739	-0.677300	-0.477960	0.51342	0
1996	0.128558	0.073587	-0.564784	1.462889	0.382923	1.082168	0.615419	0.51342	0
1997	0.128558	0.073587	-0.564784	1.462889	0.382923	1.082168	0.615419	0.51342	0
1998	0.128558	0.073587	-0.564784	1.462889	0.382923	1.082168	0.615419	0.51342	0
1999	0.128558	0.073587	-0.564784	1.462889	0.382923	1.082168	-0.477960	0.51342	0

2000 rows × 9 columns

Figure 2. Correlation matrices of real and synthetic data

```
# Correlation matrix of real data
sns.heatmap(Real.corr(), annot=True, fmt ='.0g')
```

```
<AxesSubplot:>
```




```
# Correlation matrix of synthetic data
sns.heatmap(Synthetic.corr(), annot=True, fmt ='.1g')
```

```
<AxesSubplot:>
```

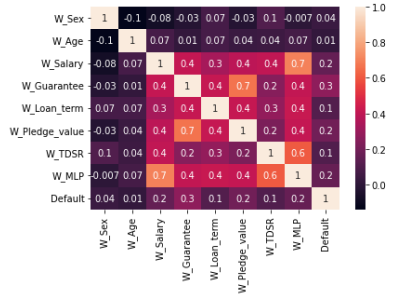


Figure 3. Machine learning model development

```
from sklearn import tree
from sklearn.model_selection import GridSearchCV
from sklearn.model_selection import train_test_split
from sklearn.metrics import precision_score
from sklearn.metrics import recall_score
from sklearn.metrics import roc_curve, auc
from sklearn.metrics import classification_report
from sklearn.metrics import confusion_matrix
from sklearn.datasets import make_classification
from sklearn.metrics import accuracy_score
```

```
#Creating a decision tree model
clf=tree.DecisionTreeClassifier()
parametrs={'criterion':['entropy'],'max_depth':range(1,100)}
grid_search_cv_clf=GridSearchCV(clf,parametrs,cv=3)
```

```
#Splitting synthetic data into training (80%) and test (20%) sets
x=Synthetic[['W_Guarantee','W_Pledge_value','W_MLP','W_Salary']]
y=Synthetic['Default']
x_train, x_test, y_train, y_test = train_test_split(x,y, test_size=0.2)
```

```
#Model training
grid_search_cv_clf.fit(x_train, y_train)
```

```
GridSearchCV(cv=3, estimator=DecisionTreeClassifier(),
             param_grid={'criterion': ['entropy'], 'max_depth': range(1, 100)})
```

```
#Determination of the best model parameters
grid_search_cv_clf.best_params_
```

```
{'criterion': 'entropy', 'max_depth': 4}
```

```
#Saving the created tree model
best_clf=grid_search_cv_clf.best_estimator_
```

```
#Prediction based on training sample
best_clf.score(x_train, y_train)
```

```
0.965625
```

```
#Prediction based on test sample
best_clf.score(x_test,y_test)
```

```
0.9725
```

```
#Prediction based on real dataset
x_real=Real[['W_Guarantee','W_Pledge_value','W_MLP','W_Salary']]
y_real=Real['Default']
best_clf.score(x_real,y_real)
```

```
0.967948717948718
```

The quality of the developed model can be assessed using ROC analysis.

A Receiver Operator Characteristic (ROC) curve is a graphical plot used to show the diagnostic ability of binary classifiers. It was first used in signal detection theory but is now used in many other areas such as medicine, radiology, natural hazards and machine learning. [2].

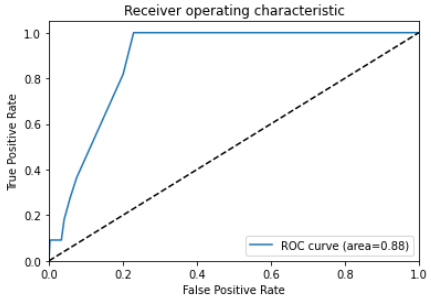
Quantitative interpretation of the ROC provides the AUC (Area Under Curve) indicator, the area bounded by the ROC curve and the axis of the proportion of false positive classifications. The higher the AUC index, the better the classifier, while a value of 0.5 indicates the inappropriateness

of the chosen classification method. A value less than 0.5 indicates that the classifier is doing just the opposite [3].
Figure 4 shows the ROC curve and AUC index characterizing the quality of the machine learning model, from which it can be seen that the quality of the model is quite high.

Figure 4. ROC curve

```
#ROC curve
fpr, tpr, thresholds=roc_curve(y_test,y_predicted_prob[:,1])
roc_auc=auc(fpr, tpr)
plt.figure()
plt.plot(fpr,tpr,label='ROC curve (area=%0.2f)' %(roc_auc))
plt.plot([0,1],[0,1],'k--')
plt.xlim([0.0,1.0])
plt.ylim([0.0,1.05])
plt.xlabel('False Positive Rate')
plt.ylabel('True Positive Rate')
plt.title('Receiver operating characteristic')
plt.legend(loc="lower right")
```

```
<matplotlib.legend.Legend at 0x1e4efcb28b0>
```



Results of the survey

Summarizing the work done, it can be mentioned that the aim of the research has been achieved and the algorithm developed by the author can be used for credit risk management.

Conclusion

Credit risk management occupies a unique place in the financial and banking system. In order to mitigate that risk, it is necessary to introduce a reasonable decision-making system. However, the large amount of data required to implement such systems is often missing. This problem can be solved by generating synthetic data, that is why the relevance of this research was determined.
In the work, a methodology that will allow creating synthetic large-scale data on the basis of real small volume data on loans was developed, through which a machine learning model can be created to solve the classification problem.

The present study used the decision tree model as an example.
From the findings of the research, it can be concluded that using synthetic data, machine learning models can be developed, resulting in a significant reduction of the impact of existing credit risks and the costs of organizations.

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CONSEQUENCES OF TURKISH LANGUAGE TEACHING IN GEORGIA

Mzia Gogiashvili, PhD student
Grigol Robakidze University, Georgia

Abstract

Georgia, like all democratic countries, strives to raise free-thinking citizens, to give them the best education to be used for the welfare of their homeland, and, at the same time, to be imbued with respect for world cultural and scientific values. The article gives a brief history of the development of Turkology in Georgia as an independent scientific discipline; Also, a list of the educational institutions and organizations operating in Georgia, where the Turkish language is taught in agreement with the Government of Georgia and the Ministry of Education. Here, there are the higher education institutions and public schools, as well as the institutions opened with the good will of the Republic of Turkey, which provide maximum support to the promotion and teaching of the Turkish language, culture and the formation of future Turkologists as professionals. The outcomes of the language policy adopted in cooperation between the governments of the two countries are highlighted in the paper. The article is written to provide recent information about such institutions.

Keywords: Orientalism, Turkology, Teaching Turkish as a foreign language, elective foreign language, Turkish, Yunus Emre Institute, “TIKA”.

Introduction

In Georgia, like in other democratic countries, teaching of foreign languages is of particular importance in terms of civic education and the formation of a positive attitude towards different cultural identities. Historical and contemporary close political and economic relations with the Middle Eastern countries make the fields of Oriental philology relevant and strategically important for our country.

On April 9, 1991, after the restoration of Georgia's independence, a new political and economic-cultural era began for our country. The first to recognize Georgia's independence was the neighboring country, the Republic of Turkey. The relationship between Georgia and Turkey was expressed as a sign of friendship, mutual assistance and respect. This obliges both countries to possess as much information as possible at the governmental and public cognition level. A lot of independent economic or educational centers operating in Georgia serve this problem.

On July 30, 1992, the Prime Minister of Turkey (later President 16.05.1993-16.05.2000) Suleyman Demirel visited Georgia. He stated that the reason for visiting Georgia was related to the discussion of broad cooperation on issues between neighboring countries, Turkey and Georgia.

For his part, the Chairman of the State Council of the Republic of Georgia, Eduard Shevardnadze, drew attention to the fact that after gaining independence, such a visit is very important for Georgia. He noted that Turkey is a great country with its intellectual potential and especially with

its great future. "We welcome Turkey's peace-loving foreign policy pursued by the Turkish government and authorities" (Republic of Georgia, 1992).

During the visit, the parties discussed important political, economic and cultural relations. On July 30, the Agreement on Friendship, Cooperation and Good Neighborly Relations between Georgia and the Republic of Turkey was signed, after which the relations between the two countries acquired a new content. The agreement on cooperation in the field of education, science, culture and sports provided for the development of common cultural values of the Georgian and Turkish peoples and broad cooperation in various fields (Demirağ, 2005, pp.127-128).

The geographical proximity of the two countries, ease of traffic, high level of higher and secondary education in Georgia, low tuition fees compared to European or American schools have formed a certain system of Georgian-Turkish educational ties. Primary, secondary and higher education institutions have been established in Georgia, where young people from Turkey study together with Georgian youth, including Turkish citizens of Georgian origin. Suleiman Demirel Private College was opened in Tbilisi on 01.02.1993 with the license No. 01-17-08 / 143 issued by the Ministry of Education of Georgia. This was followed by the opening of Turkish private schools in several cities of Georgia in a few months: in Batumi, Rustavi, Kutaisi, Gori, Marneuli, Poti. Turkish educational institutions have been actively functioning in Georgia for many years.

Turkish scientists, writers or public figures rarely visited Soviet Georgia, and representatives of Georgian science or art were rarely sent to Turkey (Imedashvili, 2002, p.34). Despite the rare contacts between the Georgian-Turkish cultures, there were still scientific and educational contacts. Oriental studies have a long tradition in Georgia. There has always been a great attention to the relations with the Eastern countries. Georgian orientalists, including Turcologists, were interested in studying the history, language and literature, culture, art, state-building, and religion of neighbouring Turkey. Founded at Tbilisi State University, the Faculty of Oriental Studies has become the center of the world-renowned Georgian Orientalist Scientific School. Due to the outstanding scientists that work there, the Faculty of Oriental Studies has always been and continues to be one of the most popular fields in Georgia.

The study of Georgian-Turkish multilateral relations, from a scientific point of view, began in the 19th century. The establishment of Turcology as an independent scientific discipline is connected with the establishment of Tbilisi State University. At the initiative of the great Georgian scientist Ivane Javakhishvili, Armenian, Arabic and Persian languages were taught at the Tbilisi State University. Teachers of Turkish (Ottoman) language were also periodically invited. In 1933, under the leadership of Arnold Chikobava, the United Department of Caucasian and Oriental Languages was established, which was later separated into the Departments of Semitology (Head G. Tsereteli), Iranian Studies (Head J. Abuladze) and Turcology (Head S. Jikia). The systematic course of Turkish language has been taught at TSU only since the end of 1936, before that it was a subsidiary subject at the Faculty of Philology. The Faculty of Oriental Studies was opened in 1945, followed by the creation of the Department of Middle Eastern History (Head V. Gabashvili). The School of Oriental Studies was formed in close connection with the university tradition and the educational process (Abuladze, 2009, p.18).

Academician Sergi Jikia (1898-1993) was the founder of the Georgian Turkological School. He was enrolled in the Tbilisi University in 1919, majoring in History at the Faculty of Philosophy, but continued his studies majoring in Linguistics. In 1927, under the initiative of Akaki Shanidze, he was sent to Istanbul University for two years to study Turkish language and literature. He attended lectures of Turkish scientists, such as Mehmet Fuad Koprulu, Ali Ekrem, and others. During his studies, S. Jikia worked on Ottoman chronicles and geographical works about Georgia (the

publication of these works began later in the 1940s as articles, which enriched our historiography with objective information to study the political, economic and social history of Georgia of the XVI-XVIII centuries). Mr. Sergi researched linguistic and historical sources, observed the speech of the Laz living in Istanbul, and wrote samples of their speech. After returning from Turkey, he traveled to Leningrad, where he was enrolled as a postgraduate student at the Institute of Language and Thought of the Union Academy of Sciences. He completed his postgraduate studies in 1932 and returned to Tbilisi in 1936. In the same year he was appointed as a head of the Department of Oriental Languages at the University, and from 1945 onwards. Mr. Sergi was one of the founders of the Faculty of Oriental Studies and its first Dean from 1945 to 1952.

In 1960, at the initiative of Academician Giorgi Tsereteli, the Institute of Oriental Studies was established (in 1973, this institute was named after him). From the day of the establishment of the institute until his death, S. Jikia headed the Department of Turcology **(**Republic of Georgia, 1993**).**

S.Jikia published over 200 scientific papers. Thanks to him, a lot of Ottoman archival materials and manuscripts are at the disposal of Georgian historiography, deciphered with filigree art, with a great deal of documentary, historical-literary and folklore material. S. Jikia gave an accurate translation with extensive comments. Comments are not limited to explanations of historical figures and events, toponyms and socio-economic terms. It provides a complete palaeographic and diplomatic analysis of the source, defining its linguistic features.

For years, S. Jikia developed and organised the Institute of Manuscripts of the Georgian Academy of Sciences (Department of Manuscripts of the former Georgian State Museum. Now, the National Center of Manuscripts) and Turkish documentary material preserved in the National Archives of Georgia. He described more than 700 Turkish-language documents of various forms, identified them, and compiled a catalog. He is the author of the first scientific publication of the firms, berats and buirultu (orders) issued by the Ottoman sultans and pashas. These documents are the best sources for studying the issues of the Ottoman military system, to determine the political-economic relations between Turkey and Georgia, to clarify the Iran-Ottoman relations and in the light of this relationship, to highlight the "Georgian issue" (Georgian National Academy of Sciences, 2018, p.22).

The fundamental work that earned S. Jikia the title of "Turkologist of the highest reputation" (M. Guboglu) internationally is the publication and scientific analysis of a document compiled by Ottoman officials in the 16th century for a fiscal purpose – „The Great Daftar of the Gurjistan Vilayet" (The Detailed Register of the Gurjistan Vilayet). The three books of “The Great Daftar of the Gurjistan Vilayet” became an important work in Ottoman studies. In the study of socio-economic and cultural-historical relations between Georgia and Turkey. It has been the basis for numerous papers in various fields of science. (Georgian National Academy of Sciences, 2018, p.22). As G. Tsereteli stated, "Such a study is very rare in the field of historical geography, and it can be placed next to V. Minorski's famous work Hudud-al-Alam (London, 1937).

Sergi Jikia's contribution to the compilation and publication of the textbook is also great. A Turkish chrestomathy compiled by him was published twice in Georgia, in 1965 and 1971. Georgian-Turkish and Turkish-Georgian short dictionaries were published twice under the editorship of S. Jikia. At his initiative Georgian Turcologists, particularly, the staff of the Department of Turcology of the Georgian Academy of Sciences, Academician Giorgi Tsereteli Institute of Oriental Studies, began to work on an extensive Turkish-Georgian dictionary. The dictionary was published in Istanbul, in 2001, with the support of Turkish friends. Lia Chlaidze, the editor of the book, and the Georgian Turcologists (Nunu Gurgenidze, Gaiane Tushmalishvili, Eter Mamulia, Luiza Rukhadze, Ketevan

Tomaradze, Marine Shonia, Lia Chlaidze, Aigul Tsalkalamanidze) put a huge effort work. The publication was dedicated to the memory of Academician S. Jikia (Janashia, 2002, p.31).

The merit of Academician S. Jikia in the field of youth education and training of scientific staff is immeasurable. His students continue the work of their teacher with dignity. S. Jikia's daughter - Marine (Marika) Jikia is also a Turcologist, continues the work of a worthy father, and his scientific and pedagogical efforts. Ms. Marika received the Turkish Writers and Artists Association Award in 1998 for outstanding contribution to the study of the Turkish world.

As Tsisana Abuladze, a prominent Tuckologist, specialist of Ottoman Studies, student of Mr. S. Jikia, points out, Turcology is a multifaceted complex science. Philologists Turologists work in 7 main directions in Georgia: 1) Georgian-Turkish linguistic contacts, 2) Dialectology - the speech of the Turkish-speaking people living in Georgia, the speech of the Georgians of Azerbaijan and Turkey, 3) the history of the Turkish language, 4) lexicology and lexicography, 5) the structure of Turkish, Azerbaijani and Uzbek languages, 6) Turkish and Azerbaijani literature, 7) Folklore of the peoples of Turkish origin. (Abuladze, 2009, p.21).

Georgian linguist and Turcologist, Professor Nodar Janashia (1925-2008) studied at the Faculty of Oriental Studies of Tbilisi State University, majoring in Turcology, in 1946-1951. While studying for a postgraduate degree, he became interested in the theoretical issues of the grammatical order of Turkish languages and devoted all his scientific work to this topic. In 1955, obtained his degree of Candidate of Philological Sciences for the work "Speech Peculiarities of the Turkish-speaking population of Upper Tsalka". In 1970 he obtained his doctoral degree for "Essays on the Morphology of the Turkish Verb". From 1973 to 2004, N. Janashia was the Head of the Turkish Language Department. He is the author of over 100 papers.

N. Janashia with his new ideas, newly conceived categories and methods of the Turkish verb has always aroused great interest in the field of Oriental studies. For almost half a century N. Janashia also worked as a teacher, he has a great contribution to the training of linguists at the academic level both in Georgia and in other republics of the former Soviet Union. There are numerous doctoral and scientific theses that have been completed and defended under his supervision. N. Janashia also worked effectively in the field of translation. He translated literary works by Turkish, Azerbaijani, Uzbek and French authors. (Kacharava, 2009, pp.37-39) His daughter, Mrs. Nana Janashia, also followed her father's footsteps, she worked at the department of Turcology from 1981 till 2006. At present she works as a translator and introduces Turkish authors to Georgian readers.

In terms of educational and scientific cooperation between Georgia and Turkey, further expansion of Georgian-Eastern relations, in 1994, the Decree of the State of Georgia on measures to improve the teaching of Oriental languages in Georgia was issued. Based on this plan, the teaching of oriental languages (Arabic, Persian, Turkish, Hebrew) as foreign languages was started in secondary schools and higher education institutions of the Republic: Georgian Technical University, Georgian Agrarian University. The Center for Coordination of Oriental Languages was established under the Ministry of Education, headed by Konstantine Tsereteli (1921-2004), a famous Georgian Orientalist, founder of Hebrew and Aramic language study school in Georgia. The Ministry of Education, together with the Ministry of Foreign Affairs, organized systematic events for internships and exchanges of pupils, students and teachers with Middle Eastern countries. Since then students, pupils and teachers are sent to Turkey every year to improve their knowledge of the language, the history of the country. They study and work in various schools, archives, etc. (Imedashvili, 2002, p.36).

The Ministry of Culture and Tourism of the Republic of Turkey, in order to develop relations between Turkey and other countries, to contribute to the enrichment of global knowledge, gives opportunity to citizens of Georgia and many countries (178 countries in 2021) to study in Turkey at all three levels of education (Bachelor's, Master's, Doctorate). The student is given a monthly stipend, provided with a dormitory, given health insurance, free Turkish language preparation courses, one-time round-trip ticket. It is possible to study in English or Turkish in different specialties. If you decide to study English, the scholarship holder is still required to take a one-year free preparatory course to study Turkish. The candidate fills in the Ministry's website electronically, then goes through an online interview. In order to obtain the scholarship, it is important to have a high academic performance and to explain at the interview how useful obtained knowledge will be in the future to deepen the friendship and good neighbourly relations between Georgia and Turkey. According to the Turkish Embassy, about 40 students benefit from Turkish scholarships every year (turkiyeburslari.gov.tr).

In order to popularize Turkish language, the Embassy of the Republic of Turkey in Tbilisi has been offering free Turkish language courses to Georgian citizens since 1994. The courses are led by Turkish teachers invited from Turkey, who come to Georgia for several years and are paid by the Turkish state. At the first stage, the lectures were held in the embassy building, and then Tbilisi State University allocated two auditoriums in the second building of the university, free of charge. Anyone, regardless of profession and age, can learn Turkish. The number of students is from 350 to 500 every year and the interest is not decreasing. Similar courses are held in Batumi under the patronage of the Consulate General of the Republic of Turkey.

For three years already, since 2019, under the patronage of the Turkish Embassy, a "competition for the translation of Turkish literature into Georgian" has been held. Students of Turkology and students of the Cultural Center take part in the competition. The jury consists by university lecturers and embassy staff. The winners are awarded. According to the Turkish Ambassador, Her Excellency, Fatma Jeren Yazgan, such activities promote building a language and culture bridge between Georgia and Turkey through Georgian youth (timeturk.com).

Organized by the Turkish Embassy, public school students and their teachers from Turkish language schools are taken to Turkey almost every year for about a week to celebrate and make friends on the occasion of " "National Sovereignty and Children's Day" on April 23. 23 April was declared "National Sovereignty Day" on May 2, 1921. Since 1927, the holiday has also been celebrated as a children's day. In 1981, the holiday was officially named "National Sovereignty and Children's Day" (trtworld.com).

On May 31, 2012, the Tbilisi Yunus Emre Institute was opened in Tbilisi with the aim of getting acquainted with Turkish culture, history, art and literature. The institute started operating in 2009, the first center was opened in Sarajevo and in 2022 it has had 62 branches of cultural center in 52 countries. Chairman of the Center Prof. Şeref Ateş stated that the Yunus Emre Institute, in collaboration with various institutions, promotes scientific and cultural work, shares its findings with the world community through various publications, and thus continues to build bridges between the world's

Tbilisi Yunus Emre Institute operates in the 5th building of Tbilisi State University and in the administrative building located on Shartava Street. Both Turkish and Georgian teachers teach Turkish at the center. The *Yedi İklim Türkçe* collection (six steps - A1; A2; B1; B2; C1; C2) developed by the Yunus Emre Institute in accordance with the Common Framework of European Languages is used as a course book. The institute supports the departments of Turkology in Georgian

universities and promotes the development of educational, cultural and social relations between the two countries.

A certain number of language learners of the center and students of the Faculty of Turkology from universities, are taken for one-month summer courses in different cities of Turkey to get acquainted better with the language and culture. The summer courses are financed by the Turkish side.

Since 2013, the Tbilisi Yunus Emre Institute has been implementing the project "Turkish is my choice", which provides public school students with the opportunity to learn Turkish as an optional foreign language and provides schools with Turkish textbooks. According to the Cultural Center, within the project, 489 students studied Turkish as an optional foreign language in 5 public schools of Tbilisi in the 2018-2019 academic year, and the number of applicants is growing every year. The Cultural Center organizes concerts, exhibitions, workshops, public lectures, science meetings, intellectual gatherings, and art courses for students of public schools. The center participates in national and international exhibitions, festivals and other similar events both in Tbilisi and other cities of Georgia. Zekeriya Gültekin, the director of the center, states that the center is working intensively to increase the number of schools where Turkish is taught (beyazgazete.com).

At present, Turkish language is taught in Georgia as a major specialty Turkology, elective or compulsory second foreign language, namely at:

1) Tbilisi Ivane Javakhishvili State University (Turkology, Bachelor, Master and Doctoral Programs);

2) Batumi Shota Rustaveli State University (Bachelor's Degree Programs in Turkish Studies and Turkish Philology);

3) Kutaisi Akaki Tsereteli State University (Turkology, Bachelor, Master and Doctoral Programs);

4) Sokhumi State University (Turkology);

5) Samtskhe-Javakheti State University (elective foreign language);

6) Caucasus University (elective foreign language);

7) Ilia State University (elective foreign language);

8) University of Georgia (elective foreign language);

9) Free University (elective foreign language);

10) Gori State Teaching University (elective foreign language);

A Turkish teacher invited by the Turkish Embassy teaches Turkish together with Georgian teachers in 5 universities. The salary of a Turkish teacher is provided by the Turkish state.

The situation in public schools at the moment is as follows:

Turkish language has been taught at Public School No 54 since 1977;

Turkish language has been taught at Public School No 31 since 1979;

The language is taught as an elective subject at Public Schools No 71 and No 178;

The pandemic forced the suspension of classes at schools No 152 and No 167.

A circle for Turkish language learners was opened at Public School No 55, where students of different ages learn Turkish. The teacher salary was provided by the Turkish side. This circle does not exist because of the pandemic.

Prior to the opening of the Cultural Center, textbooks were provided to schools by the Turkish Embassy, and after the opening of the Yunus Emre Institute, the Cultural Center supplied books to schools. These books have been changed over the years: “Haydi Türkçe Öğrenelim", “Yedi İklim Türkçe", “Yeni Hitit-Yabancılar için Türkçe“, “Hitit -Yabancılar için Türkçe“, “Türkçe Öğreniyoruz-Türkisch Aktiv“, also Reading Books in Turkish, which are important sources for support of the teachers.

In addition to the textbooks provided by the Turkish Embassy and the Institute, a number of other textbooks compiled by Georgian scholars and teachers, such as chrestomathy, reading books, Georgian-Turkish and Turkish-Georgian dictionaries, are used for teaching. Such as:

1. Turkish Chrestomathy, Sergi Jikia, 1965;
2. Turkish Chrestomathy, Sergi Jikia, 1971;
3. Georgian-Turkish and Turkish-Georgian Concise Dictionary: O.Gigineishvili's preface / Georgian Society of Cultural Union with Compatriots Residing Abroad. - Venera Jangidze, Sergi Jikia, 1973;
4. Georgian-Turkish and Turkish-Georgian Concise Dictionary: The 2nd Ed.- Venera Jangidze, Sergi Jikia, 1979;
5. Morphology in Turkish Verbs, Nodar Janashia, (in Russian), 1981;
6. Turkish language II grade, Irine Gotsiridze, 1983;
7. Turkish-Russian Dictionary: Neologisms, Giorgi Antelava, 1985;
8. Reading book in Turkish, Irine Gotsiridze, Edisher Sarishvili, 1986;
9. Turkish language. Grammatical diagrams, Nodar Janasha, (in Georgian and Turkish), 1987;
10. The verb in modern Turkish, Nodar Janashia, 1998;
11. Turkish Language Textbook, Elida Kvantaliani, Nana Janashia, 1999;
12. Collection of Turkish language exercises, Elida Kvantaliani, Meri Tsiklauri, 1999;
13. Semantics and grammar of the expression "being" and "having" in Turkish, Nana Janashia, 2000;
14. Turkish language textbook, Irina Gotsiridze, 2000;
15. Turkish-Georgian Dictionary in two volumes, editor Lia Chlaidze and others, 2001;
16. Turkish language IV grade, Irine Gotsiridze, 2002;
17. Turkish language textbook, Irine Gotsiridze, Giorgi Antelava, 2003;
18. Turkish Language Textbook: Elementary Course, Irine Gotsiridze, 2003;
19. A collection of exercises in Turkish, Elida Kvantaliani, 2003;
20. Turkish Chrestomathy with Dictionary, by Elida Kvantaliani, 2003;
21. Turkish-Georgian Phraseological Dictionary, Eter Mamulia, 2006;
22. Coursebook of Turkish Grammar, Elida Kvantaliani, Nana Janashia, 2009;
23. Georgian-Turkish Dictionary, Elida Kvantaliani, 2010;
24. Some practical features of Turkish spoken language 1 (A1-A2 level), Mzia Gogiashvili, 2011;
25. Some practical features of Turkish spoken language 1 (A1-A2 level), The 2nd Ed.-Mzia Gogiashvili, 2013;
26. Some practical features of Turkish spoken language 2 (B1 level), Mzia Gogiashvili, 2013;
27. A collection of Turkish language exercises: with a short grammar course, Elida Kvantaliani, 2014;
28. Turkish language textbook, Meri Tsiklauri, Asmat Japaridze, 2014;
29. Turkish language textbook (A1-A2 level), Teona Apkhazava, Elisabed Bjalava, 2014;
30. Collection of Exercises in Turkish I, Teona Apkhazava, 2015;
31. Collection of Exercises in Turkish II, Teona Apkhazava, 2016;
32. Georgian-Turkish Legal Dictionary, Giga Kamushadze, 2016
33. Turkish–Georgian Legal Dictionary, Giga Kamushadze, 2020.

The TIKA (Turkish Cooperation and Coordination Agency) operates in Georgia, which is an international technical assistance organization under the patronages of the Prime Minister of the Republic of Turkey. The main areas of activity of the organization are education, healthcare, agriculture, administrative and civic infrastructure.

Today, the Turkish Cooperation and Coordination Agency is engaged in various development cooperation activities in 150 countries through its 62 Programme Coordination Offices located in 60 countries across 5 continents.

TIKA's Tbilisi Program Coordination Office has implemented more than 600 large and small projects in Georgia since 1994, including in the educational institutions where Turkish language is taught: technical support of auditoriums, cabinets, libraries, both in public schools and universities (tika.gov.tr).

Conclusion:

Since 1992, Georgian-Turkish scientific and educational contacts have been developing successfully and covering a wide area, which is largely due to the two countries' aspirations to deepen stability and democracy in the region. The strong will of the citizens of Georgia is to establish democracy and ensure human rights not in isolation, but in the context of peaceful relations with other peoples. For me, as a citizen of Georgia, an orientalist and researcher, this fact is valuable both from the cultural and political points of view, because I believe that it will further deepen the new political, economic, scientific and cultural relations between the countries.

As a result of active cooperation between the governments of the two countries, the attitude of the Georgian population towards the neighboring country has changed for better over the years; also, the number of Turkish speakers has increased.

The following factors can also be positively assessed:

- All citizens of Georgia, regardless of profession and age, can learn Turkish. Free language courses are open for those interested in learning the language at the Turkish Embassy in Tbilisi and the Consulate in Batumi;
- The institutions where the Turkish language is taught will be provided with textbooks and reading books by the Yunus Emere Cultural Center;
- Institutions where Turkish language is taught are repaired and are provided with the necessary equipment by the Turkish Cooperation and Coordination Agency "TIKA ";
- Memoranda between the universities of the two countries allow students and administration members to participate in one / two-week winter / summer schools and international cultural programs organized by Turkish universities;
- Turkologists living in Georgia are given the opportunity to attend advanced training courses offered by the Yunus Emery Cultural Center;
- Translators are encouraged to translate the works of Turkish writers;
- Those who want to study in Turkey can get scholarships;
- In 2005, the Department of Georgian Language and Literature was opened at Kars University (later Ardahan, Rize and Duzce Universities). This is a great success for Georgian and Turkish diplomats, scientists, Georgian Turkologists and education workers. 10 years later, it became possible to study the Georgian language at schools. According to the decision of the Turkish Ministry of National Education of September 17, 2014, the teaching

of the Georgian language was allowed as an elective subject at Turkish secondary and religious schools. If parents wish, children can learn the Georgian language. This fact will help ethnic Georgians living in Turkey to preserve and not forget the Georgian language and traditions.

For Georgia, as an independent small country, it is important to pursue the right policies with both territorial disputes and strategic neighbors in good neighborliness. The multifaceted cooperation between Georgia and Turkey is important both for the two countries and for the region.

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GRIGOL ROBAKIDZE UNIVERSITY

Alex Taghiashvili
School of law, Doctorate
Mail: aleksi.tagiashvili20@gruni.edu.ge,
Tel: 591-92-99-92

Ethics in public structures

2022

Introduction

The Constitution of Georgia defines the legal bases of state governance and the main orientations of governance. The governance of the state must be based on the constitution and must be conducted in accordance with the constitution, so that "governance is focused on the practical implementation of state goals." According to the Constitution of Georgia, state power is exercised by the legislature, the executive and the judiciary. The executive body is the branch of the main government exercising public administration.

What do we need ethics for and why is it necessary to implement it in public service ? "Ethics ensures accountability between public administration and the public" Ethics defines how to plan and conduct action policy in such a way that the actions of the state do not create corruption risks, which in itself means that the public interest is taken into account. Only "written documents do not help to change behavior", it is necessary for each official to have an understanding and mastery of ethical standards and the obligation to comply with them. I would like to note here that a unified framework document regulating the general rules of ethics and conduct was adopted by the Government of Georgia in 2017.

1. The concept and essence of the general rules of ethics and behavior

The term "ethics" is synonymous with "morality", the meanings of both are equivalent, the first being of Greek and the second of Latin origin. This term refers to the impartial decision-making of people, defines the standards of right and wrong behavior and the values that should be given priority to personal, social or political decision-making Upon receipt.(2, 5) The term "morality" originated in the distant past, when the ancient Roman psychologist Marcus Tullius Cicero (106-43 BC) derived the Latin word "mos" (morality, custom) from the adjective "morality", which denotes human virtue, its capabilities. He was guided by the instructions of the mind in his behavior and built relationships harmoniously with other people. In the fourth century BCE, the ancient Greek philosopher Aristotle introduced the word ethics, trying to answer the question of what could be done to improve human activity. (4, 2).

Despite the universality of moral regulations, it does not preclude the existence of additional, professional ethics in society. Professional ethics is created, first of all, in those areas of activity

where relationships with people are an inevitable condition, e.g., politics, psychology, medicine, jurisprudence, etc. Professional ethics / morality, on the one hand, is an integral part of general morality, and on the other hand, has specific features and additional requirements that are presented to people in a particular profession. (4, 2). For example, artists value and their values are directed towards beauty, politicians towards power, military towards order, lawyers towards justice, etc.(18, 19) As for the public servant, the public servant and the public service stand above any other professional group and their values. This is based on the main goal of the state, which is to protect the interests of the public, therefore, the ethics and general rules of conduct of public servants should be aimed at protecting the interests of the public and the public.

2. Ethics and general rules of conduct in public service Georgia and international standards

Ethics in public service are defined as the fundamental values and rules of conduct that define the boundaries of general rules of conduct in the public service. (10, 218) The executors of these norms are those employed in public institutions, who must have a good understanding of their role in modern democracy, because it is precisely the degree of public responsibility of public servants that determines the stability of policy and adherence to the principles of a democratic society. (20). In the modern state, with its diverse and complex tasks, the effectiveness of which depends on the functioning of the socio-political system, the creation of conditions of minimum respect and dignity for the existence of individuals, separate strata of society, it becomes necessary to have a stable, loyal, committed to state and constitutional order. Existence of a corps of public servants.(8, 1)

The corps of public servants includes the following persons: the heads of the institution who hold the managerial position, the public servants who are the service providers and the simple support staff who contribute to the better functioning of the institution. From this category of public servants, the observance of ethical standards is most required of the middle circle, public servants, because they act in accordance with the public interest and are constantly subject to the wishes and requirements of the public, this link is aimed at the efficiency of public institutions.(24)

Establishment of special rules for public officials, despite the fact that the European Convention on Human Rights and the Constitution of Georgia It prohibits discrimination and says that "all people are equal before the law." The rules and standards for public servants are not discriminatory and such standards are justified for the existence of a democratic state, because public servants are the face of the state, in the form of which the state interest is exercised and exercised, their activities are related to all levels of government and their individual actions. Decisions can have a significant impact on the rights of citizens, if not simply on their lives. All public service employees enjoy high public trust, so their day-to-day activities should be related to legality and fairness. (23, 43)

The OEOED Document - Building Public Confidence: Ethical Measures in OEOED Member States sets out the eight core values that public officials must adhere to in their work, namely, impartiality, legitimacy, transparency, good faith, efficiency, equity, accountability and.(21)

Modern public administration attaches special importance to the qualifications of the employees of the organization(5, 103), That is why states try to legislate the existing and recognized principles in the public service and create codes of ethics. Codes of ethics, in turn, set the framework by which a public servant should act in specific cases, as the codes reflect the needs of the public as much as possible. Such provision of general rules of ethics and conduct will ultimately create a democratic state tailored to the interests and needs of society. The existence of codes of ethics underscores once again the fact that public servants enjoy a special status compared to other professions and that they are required to have more than those employed in other fields.(13, 4)

Government agencies and public servants need to gain public trust, so their activities must be objective and conscientious. In a democratic state, citizens should be involved as much as possible in the policy planning and implementation process, and they should be able to observe and monitor the activities of the officials elected by them. The American Society for Public Administration (ASPA) has developed three general principles that must be followed by codes of ethics in public service:

- An official should not use his / her official position for personal purposes;
- The official should protect the interests of the public institution and not enter into conflicts of interest;
- In case of misuse of resources, bribery and abuse of power, it is necessary to expose the official.

As for the EU member states, here the legal instruments regulating the general rules of ethics and conduct are very diverse, in particular, we find the norms regulating the general rules of ethics and conduct in the criminal codes as well as in the civil service laws and in the case of disciplinary misconduct laws.(11, 88)

When we talk about the existence of general rules of ethics and conduct in public service, it is necessary to touch on the fact that the ethical conduct of public servants, the introduction of general rules of ethics and conduct, have a great influence on the work environment and type of work. And they directly ask the officials to change the ethics of the activity and adapt to the new regulations as soon as the new rules of conduct are approved, and this is not easy for the current officials.(11, 88) As the American philosopher Mary Parker Folett points out, each servant has their own emotions, superstitions, beliefs, experiences, and so on. Which should be taken into account when creating general rules of conduct, as an officer may not be required to change his or her views with a single stroke of the hand. It is necessary for the creator of norms to be maximally focused on changing the culture of a public institution and not a public servant when creating general rules of ethics and behavior.(19, 65)

The general rules of ethics and conduct in Georgia are mainly regulated by three normative acts: the Law of Georgia on Public Service, the Law of Georgia on Conflict of Interest and Corruption in Public Institutions and the Resolution of the Government of Georgia on Defining General Rules of Ethics and Conduct in Public Institutions“.

The purpose of the resolution of the Government of Georgia is to regulate the behavior of the civil servant, to determine the appropriate standards of behavior for him and to establish a framework of values, which ensures the existence of an impartial, objective and collegial public service. The introduction of general rules of ethics and conduct in the public service establishes a framework of values shared by the public and aimed at the effective implementation of governance, which in turn contributes to increasing public confidence in the public service.(1, 8-9)

General rules of ethics and conduct apply to public servants employed in public institutions. For the purposes of the resolution of the Government of Georgia, it includes a wider circle of public servants than it is provided by the Law of Georgia on Civil Service. For the purposes of the General Code of Ethics and Conduct, the term "civil servant" means both a civil servant under the Law of Georgia on Public Service and an official under the Law of Georgia on Conflict of Interest and Corruption in a Public Institution. (1, 8-9) Thus, based on the above, we can determine that the general rules of ethics and conduct apply to professional public servants, persons employed in administrative and labor contracts, as well as to the officials defined by the Law of Georgia on Conflict of Interest and Corruption in Public Institutions.

In addition to the circle of the above persons, there is another circle of subjects to which we can apply the general rules of ethics and conduct. Civil Service Reserve under Civil Service Reform,(7) To which we can apply the same general rules of ethics and conduct as a public servant. It is important to apply general rules of ethics and conduct to a reserve officer because, despite their enlistment status, they retain the status of a professional civil servant while in reserve, they remain in the civil service system and in competitions announced within the system and In case of additional work, it is possible to return to the activities of a public servant at any time. In order to maintain an ethical public service system, it is advisable for persons enrolled in the reserve to remain within the framework of a unified public service system.

The circle of persons to whom the general rules of ethics and behavior in a public institution do not apply is state-political and political officials, see also judges. This exception stems from the high degree of political responsibility and high legitimacy of these individuals, so it is impossible for a government norm to set standards for their conduct Political and state political officials are held liable for committing unethical acts during elections, as well as the Criminal Code of Georgia provides for a number of official crimes, which means that political officials are responsible for committing serious crimes under the Criminal Code. As for judges, it should be noted that people in the listed professions have separate applicable judicial ethics and a code of ethics that restricts them during the exercise of their powers.(1, 8-9)

The Code of General Ethics and Conduct for Civil Servants is a new phenomenon in Eastern and Central European countries, as newly established democracies set the framework for general rules of conduct for public administration. In the countries of the former Soviet Union, the implementation of communist ideologies and activities is still observed, which is a challenge for the states, as it is difficult to establish a new ethical system and culture, while public servants already have well mastered and implemented other ethical standards.

With the process of EU enlargement, states are thinking more and more about the importance of ethics in a modern democracy. To prove this, we can use the following example: Estonia, Czech Republic, Latvia, Poland work on a separate code of general ethics and conduct, while in Croatia and Slovenia the rules of ethics are scattered in the basic laws of the country, Albania and Romania work on the same.(16)

Following the adoption of the Spanish Constitution, Spanish legal regulations scattered information containing general rules of ethics and conduct for public servants. The Constitution stipulates that high-ranking officials and employees of public institutions must carry out their activities in compliance with the requirements of the law, so that their activities were transparent, accountable and efficient. To ensure this, the Spanish government has developed an agreement sheet outlining the basic principles of ethics and general rules of conduct that must be obeyed and adhered to by both government and public officials. Interestingly, the agreement only applies to members of the government, chancellery, public administrations, and private institutions subordinated to public institutions and their employees. They are not subject to any specific regulations.(9)

3. Political and cultural impact on the public service environment

There are many internal and external factors that influence the development of general rules of ethics and conduct in public institutions. One of the most important and widespread factors is the political and cultural environment of the country.

"General rules of ethics and conduct are important values that must always be the background of the public service of any democratic and developed country. Their unwavering protection should

be reflected in the daily activities of the public institution and its employees. It is the incarnation of these values and the transference of their content into a habit that will change the culture of public servants and increase public confidence in public service“. (1, 6)

Public administrations are actively involved in policy-making and policy-making. It is clear that political regimes are actively influencing public sector ethics. It is noteworthy that in addition to political regimes, the ethics of the public institution is greatly influenced by politicians, because the general rules of ethics and behavior that automatically operate in the institution during the formation of the political environment fall within the framework set by a particular politician. (10, 219) In order to clearly see specifically what impact the political environment can have on the public service, we can consider specific examples. Political parties that come to power often "patronize" their enterprises and businesses, using state resources,(22, 30) In particular, the use of the public interest for personal or other special interests.

Governments and international organizations in different countries pay great attention to the development of general rules of ethics and conduct and the fight against corruption. The Organization for Economic Co-operation and Development (OECD) has identified eight key factors that affect public service ethics and what should be considered when implementing general rules of ethics and conduct in a country. It is noteworthy that one of such factors is the influence of the political situation on the public service.(18, 4)

When talking about the development of ethics in public service, it is necessary to touch on the cultural influence in public services. National culture has a significant impact on public administration management and internal organizational issues. Organizational culture will help to create an environment where public servants can easily adapt and adopt the general rules of conduct that are established in the institution. (14, 12)

The manager of the institution plays a big role in the formation of organizational culture. I wonder how an institution manager should create an organization with a conscientious and ethical culture, the answer is not simple. When the head of the institution starts to form an ethical culture, it is perceived as if the people working in the institution are unethical, however, for the manager, the latter is a challenge and it is his duty, before starting to change the organizational culture, to make the employees feel that they are important to the institution. And only for the existence of a better public service.(12, 21)

„When talking about organizational culture, it is necessary to touch on the circumstance when the culture of the organization and the public servant do not coincide with each other. In particular, when a public servant performs his / her official duties, he / she should act in accordance with the general rules of ethics and conduct in the public institution and not in accordance with his / her own values and views. General Rules of Ethics and Conduct In public service, a civil servant does not prohibit having his or her own views or ethical culture, but when a civil servant goes to work where he or she acts in the public interest and provides services, he or she should set aside his or her own ethical standards. From the moment of entering a public institution, the official is subject to recognized rules of ethics and conduct, and at home can act in accordance with his own ethics and morals.“ (12, 21)

The existence of codes of general rules of ethics and conduct is considered a necessary condition for the establishment of an ethical culture in public institutions. The advantages of having a code of ethics can be highlighted in several areas. First of all, codes of ethics help public servants to carry out their activities properly and avoid inconvenience. Second, the existence of a code of ethics contributes to the efficiency and effectiveness of the institution. Third, the code of ethics is not tailored and is not based on the moral views of just one person, it is a set of norms that is the

common standard for all persons operating in public institutions. With the help of the Code of Ethics, public servants have the opportunity to protect themselves from possible corrupt activities and to refrain from engaging in activities that have been ordered by their supervisor and are against the law. It is noteworthy that although the Code of Ethics protects officials, but at the same time imposes restrictions and provides for sanctions in case of violation of ethical norms.(25, 8-9) A code of ethics that recognizes unethical behavior as a disciplinary misconduct is the best way to succeed because the institution once again emphasizes the existence of an ethical public service and thus seeks to instill an ethical culture. The culture established by the Code of Ethics makes the public institution and the public servants employed in it more effective.(15, 4)

Conclusion

An important element of the institutional infrastructure of the state is the public government, which means that the performance of certain functions and competencies is only the prerogative of the state government. State-run organizations are public institutions staffed by a corps of public servants. The public service system and public service institutions largely contribute to the existence of a state governed by the rule of law and democracy.(5, 1)

One of the directions of the public administration reform in Georgia, which faced many challenges, was the implementation of general rules of ethics and conduct and raising the awareness of public servants. Regarding the reform of the civil service, many problematic issues were regulated by the 2015 Law of Georgia on Civil Service, by which the state undertook the professional development of professional public servants and continuous training.

An official enjoys a special status because he is not only a citizen, but he is also a functional unit of the state apparatus. There are two constitutional values in the personality of an official: the guarantee of protection of individual rights and an element of an important institutional arrangement for the functioning of the state(3, 195). With this in mind, we can apply a stricter approach to an official when he or she exercises public authority and is in the service of the people. Additionally, as expert Hans Rieger Notes the ethics of the officer is reflected in his professionalism. Promoting professionalism will increase public confidence in public service.(2, 74) In order to implement the general rules of ethics and conduct, it is necessary for the state to plan large-scale training in raising awareness, to constantly create practical manuals of general rules of ethics and conduct, videos and to actively campaign against anti-corruption policies, which in turn will lead to corruption.

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FEATURES OF CREDIT RISK MANAGEMENT IN THE REPUBLIC OF ARMENIA

Nonna Avagyan
Armenian State University of Economics

Abstract - The problem of risk in banking practice is very important, because the process of making managerial decisions in conditions of information uncertainty is strongly related to it.

The risk encountered in banking practice is the danger of the bank suffering tangible losses or the possibility of their occurrence in the event of the emergence of unpredictable, basically negative and sudden situations. Since the risk is combined with uncertainty, unpredictable situations, it can fundamentally disintegrate the given banking institution. In other words, banking risk is the uncertainty of ensuring the expected return of assets as a result of the bank's operations.

A credit risk occurs when borrowers do not pay the principal debt and the interest paid on it in accordance with the terms and conditions specified in the loan agreement. Moreover, credit risk is closely related to the quality of the credit portfolio.

Key words – credit risk, internal rating, value of risk (VAR), credit default swaps (CDS), risk management.

Credit risk is the risk of the bank's potential loss, which the bank may face if the borrower is unable to fully or partially fulfill its obligations.

The following factors affect the level of credit risk:

- ✓ The economic and political situation of the country or region, i.e. macro and microeconomic factors, the crisis situation of the transitional economy, the current state of the banking system formation, etc.
- ✓ The concentration of credit activity in individual branches and the level of sensitivity to changes in the economy.
- ✓ Borrower's creditworthiness, reputation and type of borrower by law form.
- ✓ Concentration of credit activities in understudied, new, non-traditional areas of lending (leasing, factoring, etc.).
- ✓ The share of new and recently engaged customers about whom the bank does not have sufficient information.
- ✓ Accepting illiquid or rapidly depreciating assets as collateral or inability to obtain adequate collateral for a loan
- ✓ Diversification of credit portfolio.
- ✓ A frequent or significant change in the bank's policy of granting loans and forming a loan and securities portfolio.
- ✓ Types, forms, amounts of loans granted and their security.

- ✓ The portion of loans and other bank contracts with customers experiencing certain financial difficulties.[12]

In RA, there is a standardized version of risk management, in which risk weights are set by the supervisor.

Claims against the bank are weighted in accordance with the bank's rating, but short-term claims against the same bank (with a maturity of up to 3 months) may receive one level lower (mild) risk weight at the supervisor's discretion. However, rating is a rather expensive pleasure, as a result of which not all banks can take advantage of it. Therefore, the weighting of claims against the bank can also be carried out by setting a (strict) risk weight one level higher than the country/government risk weight (mainly used when the loan term is more than 3 months).

The Basel II document takes into account new achievements in the field of credit risk management and measurement for banks that are guided by the creation of an internal rating system (IRB - Internal Rating Based Approach). The main purpose of internal rating is to assess the creditworthiness of the client. Creditworthiness is an assessment of the riskiness of a credit transaction, which is given by the bank before making a decision on granting a loan and allows to predict the timely return and effective use of the loan. The IRB model is the most advanced model and assumes the following:

1. Sensitivity of capital requirements to risks (comparability of capital reserves and risks),
2. Contribute to the improvement of risk assessment systems,
3. Take into account the banks' own risk assessment capabilities (the best bodies for their own risk assessment are the banks themselves).[13]

The basic approach to internal rating is based on the following provisions:

- ✓ Based on internal ratings
- ✓ Risk characteristics are calculated by banks
- ✓ Certain recognition of securities.

The in-depth approach to internal rating is based on the following provisions:

- ✓ Based on internal ratings
- ✓ Risk characteristics are calculated by banks
- ✓ Recognition of all types of security.

The credit risk assessment approach based on internal rating includes:

- ✓ Risk components
- ✓ A function of risk weights
- ✓ Minimum requirements.

Thus, there is no risk management system that will be effective for all financial institutions, countries and all times. Control systems are constantly being improved based on external factors.

[12] Макеев С.Р. Денежно-кредитная политика: теория и практика. М.: Экономистъ, 2007, page 85

[13] Руслан Черный, Мария Бабенко. Тесный круг // Коммерсант, "Финансы". Приложение №195, 29.11.2012 – page 19

Therefore, it is important to constantly analyze and improve credit risk management and evaluation systems, but not only should analyze and evaluate, but also take countermeasures to control credit risks. The Basel Committee also proposes various methods of curbing credit risk. Currently, in international practice, credit derivatives are used for the purpose of hedging credit risk. Depending on the type of risk to be hedged, there are credit default swaps (CDS, Basket default swap) and interest rate swaps.[14] The first is similar in nature to apo-writing. The buyer of the swap (collateral), who is the lender, pays interest to the swap seller for the amount of the settlement loan during the specified period, in return for which the latter undertakes to compensate the lender for the loan amount in case of default of the loan that is the subject of the swap and acquires the right to receive the loan later.

The risk quantification method proposed by the Basel Committee on Banking Supervision was named VAR (Value at Risk).[15] It is currently widely used in the banking systems of many countries around the world and is gradually being improved. According to this method, the losses are considered as a random variable, and the maximum possible value of these losses is determined with a reliable probability known in advance. Usually, the value of the reliable probability is taken in the range [0.95-0.99], that is, so large that losses greater than the determined VAR value cannot practically occur. Under these conditions, the numerical value of VAR is considered a risk estimate, that is, VAR is the maximum possible loss at risk in monetary terms. When this method was first proposed, it was assumed that losses were normally distributed random variables whose two numerical characteristics, the mathematical expectation and the mean square deviation, could be determined by processing historical statistical data on the value of a bank portfolio or the values of individual financial instruments. And if the distribution law is different from normal and statistical data are missing, then it is recommended to use the Monte-Carlo method[16] and obtain an array of random numbers distributed with an arbitrary law, which are the basis for determining the VAR.

Although the VAR method is accepted as a method of quantitative risk assessment, in fact it does not estimate the level of risk, but rather estimates the maximum possible value of losses (absolute value in monetary terms) in the case of a pre-acceptable risk level. This is a relatively passive approach. The most active, realistic and preferable approach is when the risk level of the given transaction is first assessed, and then only the absolute amount of losses corresponding to that risk is calculated, on the basis of which the managerial decision is made. In this case, on the basis of statistical data, the law of distribution of loss probabilities is first determined, which is the basis for obtaining quantitative risk estimates. The impact of external economic factors on expected loss probabilities is also implicitly taken into account. The maximum and minimum values of these losses and other indicators are also taken into account. Then, using the density function of the probability distribution, the probability of expected losses and expected profit or not receiving a part of it is estimated, which is considered as a measure of quantitative assessment of risk. To get it, it is necessary to perform the following sequential steps:

- ✓ Based on the processing of statistical data, determine the density functions of the probability distribution of possible losses and (or) not receiving profits.
- ✓ Based on the obtained functions, determine the amount of expected loss and (or) loss of profit in monetary terms for each specific transaction.

[14] *Edward Wyatt (20 December 2011). "Fed Proposes New Capital Rules for Banks". New York Times.* July 2012

[15] http://www.investopedia.com/terms/v/var.asp

[16] Fishman, George S. Monte Carlo : concepts, algorithms, and applications. — Springer, 1996

- ✓ Based on the results of the previous steps, calculate the risk as the probability of loss and (or) not getting the profit.[17]

The described approach has not yet been widely used in practice, but it can be considered a development of the VAR method.

It is obvious that when assessing banking risks, it is not possible to apply uniform approaches for all banks, because each bank has its own unique organizational structure, current and summary indicators, preferred financial policy, external economic, legal and political environment in which it operates. These and many other factors influence the choice of risk assessment methods and, therefore, the assessment results. According to the point of view most often encountered in the financial literature, probabilistic-statistical methods are the most prospective of the methods of quantitative assessment of banking risks.[18]

In the face of increasing competition, banks are often forced to take on and manage greater risks due to the need to generate adequate returns. From the point of view of effective management and ensuring the stability of each bank, it is very important that the managers of the bank can constantly measure and evaluate the risks taken, the losses incurred or expected as a result, in comparison with the received or expected revenues.

It is well known that the main objective of the management of any enterprise, as well as of a bank, is to maximize the value of the investment of the shareholders. In other words, the management of each bank should strive to ensure the maximum level of profitability by assuming the maximum level of risk acceptable to the shareholders.

In order to understand how well the management of the bank managed to achieve its goal, it is necessary to carry out an analysis of the risks assumed by the bank and the income received and try to find the optimal ratio between risks and income that will enable to ensure the maximum level of profitability. In the conditions of growing competition, banks are often forced to assume and manage greater risks due to the need to obtain adequate income. The perspective of effective management and ensuring the stability of each bank, it is very important that the managers of the bank can constantly measure and evaluate the risks taken, the losses incurred or expected as a result, in comparison with the received or expected revenues.

One of the main complications of bank management is choosing the right ratio between income and risk, which is unique to each bank. to increase returns, banks must also increase risks. It is natural that every bank manager would prefer to take on as little risk as possible, but ensure a high level of profitability. What is the most optimal amount of risk that will allow to increase the returns? To what extent the bank should assume each of the risks. These questions cannot be answered with absolute certainty. However, by performing the above-mentioned analyzes for several years of the bank's activity and comparing them with each other, certain conclusions can be reached. Having analyzed several years, it is necessary to define certain programmed (expected) coefficients and strive to achieve them. One can also calculate ratios for other similar banks and make comparisons.

According to this method, it is necessary not only to calculate the coefficients characterizing income and risk, such as, for example, the return on assets and capital, but also to take into account the maturity of income and prospective development paths and expected incomes. The riskiness of the income depends on the current and future expected size and time of receipt of

[17] See the same place

[18] Банковские риски. Под ред. Лаврушина О.И., Валенцевой Н.И. Учебное пособие. М., 2007, page 204

these incomes. Earnings can be increased by taking on greater financial and operational risks, while external environmental risks do not increase earnings, but are often the basis for making decisions about the return-risk trade-off.

Managers of publicly traded banks should use the market value of their bank's stock in assessing the return-risk trade-off. The market value of a bank should be equal to the product of that bank's earnings and a certain coefficient (β) connecting the capital market to earnings. This ratio is inversely related to the risks the bank has taken to earn its returns. Thus, the bank must take on additional risks if the market value of its shares increases so that the increase in earnings is neutralized by the small β factor due to the additional risks. And on the contrary, if the market value of the bank's shares decreases, then the bank should conduct a policy of reducing the assumed risks so that the decrease in income is neutralized by the increase in the β factor.

It should be noted that the bank's credit risk management process should be carried out at two levels: individual and portfolio or groups of similar borrowers and at the level of the entire portfolio.

Credit risk management at the individual level involves assessing the creditworthiness of individual borrowers, as well as determining the minimum required yield for each specific loan.

The following three groups of factors are used when assessing risk at the level of borrowers:

1. Credit history, including cases of overdues, refinancing, revisions,
2. Analysis of the borrower's current and expected financial situation: current and projected financial flows, intended use of funds, business history and prospects, borrower's rating, financial situation of related parties, etc.
3. Loan security.[19]

The choice of one or another criterion during the assessment depends on the size of the loan, the type of borrower, the type of product, the degree of standardization, etc. Depending on the type of borrower, other specific factors may also be taken into account, for example in the case of governments or financial institutions. In the past, the use of external ratings was quite common, but this system revealed serious problems during the crisis.

The development of the method of assessing the creditworthiness of an individual borrower is a key element in the bank's credit risk management system. Moreover, the creditworthiness index of an individual borrower is often defined as a linear combination of economic activity indicators

$$Y_i = X_{i1}a_1 + \cdots + X_{im}a_m,$$

where Y_i is the creditworthiness index of the i -th borrower,

X_{i1} , ... , is the vector of indicators of economic activity of i -th borrower

$a_1, \ldots, a_m$ is the vector of weighting coefficients.

The most important requirement of credit risk management at the portfolio level is the formation of the right combination of the credit portfolio - diversification of the credit portfolio. The bank's credit risk usually increases in accordance with the increase in the total volume of lending to a limited number of borrowers and the increase in the degree of concentration of loans. For this reason, in the presence of a constant volume of credit investments, banks prefer to provide loans

[19] Банковские риски. Под ред. Лаврушина О.И., Валенцевой Н.И. Учебное пособие. М., 2007, page 211

with smaller amounts to larger groups of clients independently of each other. In addition, for the purpose of diversification, grouping of loans takes place, that is, banks set floating lending limits, beyond which no loans are granted.

The following financial and non-financial criteria are used to assess the risk at the bank level:

1. The level of concentration of the portfolio according to:

- ✓ banking services (including the weight of unsecured loans),
- ✓ economic sectors,
- ✓ geographical regions,
- ✓ large customers,
- ✓ types of collateral (as well as organizations evaluating and insuring collateral), etc.

2. The quality of the portfolio: the proportion of classified, overdue, reviewed loans and trends in change,
3. Adequacy of the formed reserves to the bank's risks,
4. Trends in the growth of loans,
5. The existence of appropriate standards (the justification of the defined acceptable risk level), the actual application of the latter's requirements and the existence of control mechanisms over the application,
6. Effectiveness of credit administration, including credit analysis, collateral evaluation, monitoring and dealing with problem loans.
7. Availability of staff corresponding to the volume of loans, types and magnitude of problems.
8. Appropriate methods for identifying credit risks, their effectiveness.
9. Availability of timely, accurate and essential information for management, internal accountability.

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THE IMPORTANCE OF HEARSAY EVIDENCE IN WAR CRIME TRIALS

Nukri Matua

Grigol Robakidze University, PhD student

Abstract

The presented article "The importance of Hearsay evidence in war crime trials" discusses Hearsay as a secondary (produced) evidence and the criterion of its admissibility in war crime trials. The main risk of adopting hearsay as evidence is the possibility of increased distortion, as well as variations of different mediators. The author concentrates on the legal foundation for hearsay. In a comparative-legal framework, testimonies are categorized, and their forms, procedures of production, and standards are addressed. There are issues highlighted in terms of legal and legislative procedures, as well as possible solutions. The goal of this article is to analyze various Hearsay models, evaluate and generalize these legal features, and provide recommendations, develop more meaningfully relevant procedures, and research legal forms of hearsay to highlight the main mechanisms that can be received and adapted in war crime trials. The study highly depends on comparative-legal methodology, as well as analytical, descriptive, and other empirical procedures. In the practical field, the existing scientific literature, legal actions, and case law will be studied based on the methodology study. The European Court of Human Rights has a relatively flexible approach to the issue, setting a certain standard in one of the cases mentioned in the article. Regardless of the various techniques, most states aim to make indirect censorship more flexible and sophisticated so that the essential values necessary for the administration of criminal justice are not threatened, the parties' interests are maintained, and the situation is stabilized. Finally, the study covers the major challenges and issues surrounding indirect testimony in war crime cases. The author develops an opinion on the admission of indirect testimony as an exception based on his view on different approaches in different nations. The purpose of this article is to examine common indirect testimony models, review and generalize these legal aspects, develop better and more substantively appropriate methods, and research legal forms of indirect testimony in order to identify the main mechanisms that can be received and adapted in war crime trials. War is not a regular occurrence; therefore, war crimes are not ordinary crimes as defined by national laws. The route to justice necessitates adaptability and sensitivity to the perilous circumstances that surround a world in change. The general admissibility of hearsay evidence in war crimes prosecutions does not pose a significant threat to the rights of the accused. Ex amination of these war crimes trials indicate that, contrary to common la w perceptions, it is possible to allow typically inadmissible evidence and still preserve fairness.

Keywords: Hearsay, Hearsay Evidence, Produced Evidence, War crimes, Admissibility of Evidence, ICC.

Introduction

The goal of the article is to provide legal scholars, law researchers, and anyone else who is interested, with a review that is comprehensive, evaluative, and up to date about Hearsay as a secondary (produced) evidence and the criterion of its admissibility in war crime trials.

The legal aim of this research is to analyze various Hearsay models, evaluate and generalize these legal features, provide recommendations, develop more meaningfully relevant procedures, and research legal forms of hearsay to highlight the main mechanisms that can be received and adapted in war crime trials.

The object of research is the issue of Hearsay's admissibility, as well as the peculiarities of the prosecution's behavior, the rights of the accused etc. in the non-standard conditions during war crimes trials.

Who determines what is just and fair during a war? Fairness and justice are universal principles that should never change, but the ways to achieve them must be flexible and adapt to various situations. Judges are better equipped to handle the complicated balancing act of justice that occurs amid the commotion and animosity of war. The rights of the accused during war crimes trials are not significantly threatened by hearsay evidence's general admissibility. An examination of these war crimes trials reveals that, contrary to belief, it is possible to allow typically inadmissible evidence while still maintaining fairness.

The study highly depends on comparative-legal methodology, as well as analytical, descriptive, and other empirical procedures. In the practical field, the existing scientific literature, legal actions, and case law will be studied based on the methodology study. The European Court of Human Rights has a relatively flexible approach to the issue, setting a certain standard in one of the cases mentioned in the article. Regardless of the various techniques, most states aim to make indirect censorship more flexible and sophisticated so that the essential values necessary for the administration of criminal justice are not threatened, the parties' interests are maintained, and the situation is stabilized. Finally, the study covers the major challenges and issues surrounding indirect testimony in war crime cases. The author develops an opinion on the admission of indirect testimony as an exception based on his view on different approaches in different nations. The purpose of this article is to examine common indirect testimony models, review and generalize these legal aspects, develop better and more substantively appropriate methods, and research legal forms of indirect testimony to identify the main mechanisms that can be received and adapted in war crime trials. War is not a regular occurrence; therefore, war crimes are not ordinary crimes as defined by national laws. The route to justice necessitates adaptability and sensitivity to the perilous circumstances that surround a world of change. The general admissibility of hearsay evidence in war crimes prosecutions does not pose a significant threat to the rights of the accused. Ex amination of these war crimes trials indicates that, contrary to common law perceptions, it is possible to allow typically inadmissible evidence and still preserve fairness.

Hearsay is sometimes described as an out-of-court assertion offered to prove the truth of the matter claimed, with the classic example being a fact witness testifying to something said by someone else rather than what she heard. (2,246) Abraham Lincoln was addressing a crowd in Illinois when he famously said, “You can fool some of the people all of the time, and all of the people some of the time, but you can’t fool all of the people all of the time.” Lincoln’s pithy aphorism serves as a remarkably helpful summary of the logic and the limitations of Federal Rule of Evidence 803(21), which was written more than one hundred years later but says the exact same thing in completely different words. (1,143)

Consideration of hearsay in common law jurisdictions typically involves a somewhat complicated analysis of admissibility: does the statement even qualify as hearsay; does it fall within an exception; and even if not a traditional exception to the exclusionary rule, is the statement nevertheless sufficiently reliable to be admitted? In contrast, the international criminal tribunals' approach is deceptively simple. Hearsay is admissible, like any other proposed evidence, on a showing of relevance. (3,347-348)

The main risk of adopting hearsay as evidence is the possibility of increased distortion, as well as variations of different mediators. The author concentrates on the legal foundation for hearsay. In a comparative-legal framework, testimonies are categorized, and their forms, procedures of production, and standards are addressed. There are issues highlighted in terms of legal and legislative procedures, as well as possible solutions.

The Rule of Inadmissibility of "Hearsay rule" is often considered by theorists and practitioners as one of the most difficult and most confusing in the law of evidence in the United Kingdom and the United States. (4,15)

The admissibility of hearsay evidence is part of a delicate balancing act that takes place as judges in war crimes tribunals seek to uphold and preserve justice amidst chaos and hostility. (10, 126)

The jurist John Henry Wigmore calls the rule against derivative evidence "the rule that most characterizes Anglo-Saxon law of evidence, a rule that is assessed by scholars almost in the same way as jury trials, that is, as the greatest contribution not only to purely practical legal systems, but also to procedural means. recognized all over the world ". (5,774)

Hearsay is express or implied verbal or written statements tendered to prove the truth of its contents made by a declarant who cannot be contemporaneously cross-examined. (13,56-58)

The scope of hearsay is defined by two factors: the ability to contemporaneously cross-examine the declarant and the use of the statement to prove the truth of its contents. (14,238)

"Hearsay evidence in its legal sense is evidence given by a testifying witness of a statement made on some other occasion when it is intended as evidence of the truth of what was asserted. It is essential to appreciate that evidence is only hearsay when tendered to prove the truth of the facts asserted, not when tendered simply to show that the statement was made. Hearsay may be firsthand, when a witness says what he heard someone else say, or second hand (or even more distinct) when he relates to what he was told that someone else said. It may be oral or documentary, of fact or of opinion" (6,39)

Justice Pal disapproved of the practice of admitting hearsay "because the possible infirmities with respect to the observation, memory, narration and veracity of him who utters the offered words remain untested." (9, 46)

Hearsay, according to this description, includes written records that are not adduced by the author when testifying, as well as words or phrases uttered by someone other than the witness who reports them in court to create the dispute. Because of the possibility of inaccuracy and unreliability, hearsay is a tricky issue to discuss. Multiple regions prohibit hearsay testimony on the basis that it is often preferable to get the individual whose argument is relied upon into court for cross-examination in the pursuit of justice. When it comes to hearsay testimony, the ICC, on the other hand, has a low threshold. Hearsay is unquestionably accepted and given importance by the ICC.

Body of the Report

1. Hearsay in civil and common law

Under the name of the Hearsay Rule will here be understood that rule which prohibits the use of a person's assertion, as equivalent to testimony to the fact asserted, unless the assertor is brought to testify in court on the stand, where he may be probed and cross-examined as to the grounds of his assertion and of his qualifications to make it. The history of the Hearsay Rule, as a distinct and living idea, begins only in the I5oo's, and it does not gain a complete development and final precision until the early 1700's. Before tracing its history, however, from the time of what may be considered its legal birth, it will be necessary to examine a few salient features of the preceding century, in order to understand the conditions amid which it took its origin. (13,437)

Development of the Hearsay Rule is: (1,143) A period up to the middle 1500's, during which no objection is seen to the use by the jury of testimonial statements by persons not in court; (2,246) Then a period of less than two centuries, during which a sense arises of the impropriety of such sources of information, and the notion gradually but definitely shapes itself, in the course of hard experience, that the -reason of this impropriety is that all statements to be used as testimony should be made only where the person to be affected by them has an opportunity of probing their trustworthiness by means of cross-examination; (3,347-348) Finally, by the beginining of the I700's, a general and settled acceptance of this rule as a fuindamental part of the law. Such, in brief, seems to have been the course of development of that most characteristic rule of the Anglo-American law of evidence, a rule which may be esteemed, next to jury-trial, the greatest contribution of that eminently practical legal system to the world's jurisprudence of procedure. (7,458)

For today we can already discuss the difference between the hearsay rule’s historical rationale and current application. The hearsay rule’s historical rationale has three aspects: concern with the inherent reliability of hearsay evidence, concern with procedural reliability in admitting the evidence, and fairness in the adversarial process. Five factors underlie this rationale: the hearsay dangers, demeanour evidence, the lack of opportunity to cross-examine the declarant, the evidence is unsworn, and fairness in the adversarial process. The six major theories in the literature describe aspects of the same historical rationale. Methodological differences between the theories and deficiencies within them cause them to capture only a portion of the hearsay rule’s historical rationale. The only debate within the literature that cannot be attributed to methodological differences is disagreement over the purpose for which cross-examination is necessary.

The difference between the hearsay rule’s historical rationale and current application is measured through the five factors that gave rise to the hearsay rule. Since the five factors underpin the hearsay rule’s historical rationale, a change in the factors indicates a change in the application of the hearsay rule’s historical rationale.

There is a difference between the hearsay rule’s historical rationale and the practical application of the following exceptions to the hearsay rule: admissions, res gestae, dying declarations, the co-conspirator’s exception, and prior inconsistent statements. (8,114-115)

2. Confrontation guarantee and related problems

What is the problem with hearsay?

- Hearsay is inadmissible because the best evidence at trial will come from the original witness who can explain not only what they saw or heard, but can also answer any questions put to them about it.

We usually think of the hearsay rule as one certainly excluding any evidence falling within the definition, unless it fits an exception well recognized by existing decisions. This may be a convenient approach, because it is easier to classify and segregate the hearsay which has been admitted, than the indefinite mass of hearsay in general. It may be well to remember, however, that until comparatively modem times there was no general exclusion of hearsay. Some hearsay was excluded, and some was admitted. New problems resulted in new rulings of admission or exclusion. At any given time, the rule, i.e., some generalization, was correct onlys so far as it conformed to the decisions, and was not necessarily decisive of a new problem. Any rule must be subject to modification as new decisions multiply.(10,398)

While this is generally a valid reason for the exclusion of hearsay evidence in domestic courts, in an international war crime tribunal, such reasoning is outweighed by unique concerns that favor admissibility. (10, 112)

Excluding hearsay evidence provides no material benefit in these circumstances. Allowing hearsay evidence into the trial merely sheds light on the facts and circumstances and thus should be part of the weighing process. Unless the hearsay evidence in question provides the ultimate proof of guilt, there is no great harm to the rights of the accused so long as the professed standards of reliability are followed and so long as the judges are indeed capable of performing the judicial, inquisitorial, and fact-finding functions. (10, 119)

While there may be arguments for and against the use of discretion in admitting evidence, some amount of discretion will always lead to inconsistency in terms of when such evidence is to be admitted and when it should be rejected. Friedman Kaplan Seiler & Adelman, a U.S based law firm conducted extensive research that involved going through every decision of adhoc tribunals and the ICC to analyze the weight given by them to hearsay evidence. It isn’t surprising to know that their research showed that cases vary in the manner in which hearsay is evaluated and the degree of explanation accompanying its admission and consideration.(10,1-3)

The primary rationale for the hearsay rule has two main limitations. First, if the removal from trials of potentially unreliable evidence will decrease the risk of mistaken verdicts, it must be true that judicial fact finders will place more emphasis on hearsay than it deserves, relative to its actual probative value. Empirical research on how fact finders evaluate hearsay evidence, however, casts serious doubt on this premise. Second, although the empirical research to date casts doubt on the premise, it is actually very difficult to measure how laypeople respond to hearsay, which makes definitive statements regarding the role of the hearsay rule on the accuracy of verdicts difficult to support. The minority rationale—that the hearsay rule promotes litigants’ dignity interests and increases the legitimacy of the tribunal to the public—has the support of social psychological research and would add coherence to the hearsay doctrine, but it currently suffers from a lack of empirical data. No one has yet examined why laypeople appear to dislike hearsay evidence and why they believe the rule against hearsay is in place. (16,247)

Despite the wealth of research that attempts to add clarity to this increasingly complex doctrine, legal scholars and policymakers are at odds with respect to its rationale. Although the rationales put forth vary, they fall into two camps. The primary rationale put forth by scholars and rule makers is that the rule prohibiting hearsay evidence promotes decisional accuracy by barring unreliable evidence from the courtroom, Others say, however, that the hearsay rule promotes norms of procedural justice by disallowing evidence from accusers who will not, as the expression goes, “look the accused in the eye. (16,258-259)

Others say, however, that the hearsay rule promotes norms of procedural justice by disallowing evidence from accusers who will not, as the expression goes, “look the accused in the eye.(17,1339)

The hearsay rule, a complex doctrine that purports to bar secondhand evidence in court, has been characterized as a “spoiled child” by academic scholars because of the disproportionate attention that it has received compared to other principles of evidence.(18,238)

In sum, a hearsay statement, admissible under an exception, may contain several out-of-court statements. Theoretically, under the rule such a statement is admissible, provided each statement conforms to an exception or is offered for a non truth purpose, as the rule contains no limit. However, the trial court has the discretion to exclude an otherwise admissible statement with multiple out-of-court statements upon a determination that the statement with so many layers of other statements is unreliable, or gives rise to confusion, or is otherwise more prejudicial than probative. (19,1138)

3. Safeguards to ensure fairness

The International Criminal Court (“the ICC” or “the Court”) is a permanent international court established to investigate, prosecute and try individuals accused of committing the most serious crimes of concern to the international community as a whole, namely the crime of genocide, crimes against humanity, war crimes and the crime of aggression. (20,3)

While hearing the evidence from the original witness or seeing it on the

original document is always better evidence than hearing or reading it second hand, in the context of war, hearsay may be the best, if not the only, evidence available. The unique circumstances of war require unique trial procedures. Documents, even if not intentionally destroyed, may easily disappear, go missing, be destroyed by bombs or buried beneath rubble. First-hand witnesses may be dead or missing. Meanwhile, time is of the essence, and occasionally these trials take place even while the hostilities are ongoing. (10, 106)

The international scope with witnesses all over the world adds another level of difficulty in interrogating or even finding primary witnesses with the difficulty of travel and communication. Second, as noted previously, the person who uttered the words being offered may no longer be alive, may be too frightened to testify, and may be traumatized from the war, thus rendering his or her testimony unreliable. Finally, procedural efficiency is key in a post-war setting where the ultimate goal is reconciliation. Thus, the specific circumstances entailed by the war crime context require a flexible approach. This need for flexibility in hearsay rules is even already recognized at a domestic level. Both common and civil law systems have the basic principle that “all relevant evidence that has probative value is admissible unless affected by an exclusionary rule.” (9, 48)

The International Criminal Tribunal for the former Yugoslavia (ICTY) focused on assessing reliability before determining c through establishing a three-step approach of assessing relevance, probative value, and finally weighing any prejudicial effects. By investigating how the Nuremberg Tribunal, the Tokyo Tribunal, and the ICTY have applied evidentiary standards, particularly the admissibility of hearsay, one sees that flexibility was paramount in these tribunals in order to successfully balance the interests of justice and fairness. So long as the concepts behind the admissibility of the evidence—“relevance,” “probative value,” “reliability,” and “credibility” —are applied in a uniform and coherent way, fairness can still be preserved. From these tribunals we learn that it is possible to allow typically inadmissible evidence, including hearsay, and still maintain fairness so long as the evidence is determined to be otherwise reliable and given the proper weight. (10, 107)

Despite the vast documentary evidence, hearsay did nevertheless play a role in the trial. It is often argued, in attempting to exclude hearsay evidence, that hearsay is not the “best” evidence. Common law jurisdictions have a “best evidence” rule which requires parties to produce the best evidence available. To avoid giving a common law jury prejudicial and unreliable In fact, the Nuremberg tribunal did appear to follow the best evidence rule in determining whether and when to admit hearsay. During the course of the Nuremberg trials, the court did deny the prosecution’s request to enter an affidavit into evidence because the witness was nearby and available, upholding the principle of best and direct evidence.That is, “best” evidence meant “best available” evidence. (10, 110)

On 17 July 1998, a conference of 160 States established the first treaty-based permanent international criminal court. The treaty adopted during that conference is known as the Rome Statute of the International Criminal Court. Among other things, it sets out the crimes falling within the jurisdiction of the ICC, the rules of procedure and the mechanisms for States to cooperate with the ICC. The countries which have accepted these rules are known as States Parties and are represented in the Assembly of States Parties. The Assembly of States Parties, which meets at least once a year, sets the general policies for the administration of the Court and reviews its activities. During those meetings, the States Parties review the activities of the working groups established by the States and any other issues relevant to the ICC, discuss new projects and adopt the ICC’s annual budget. (20, 3)

The Rome Statute sets one standard for all – no one is below or above the law. As official capacity is irrelevant under the Rome Statute, all individuals can be brought to justice for grave international crimes.

“The ICC's approach to the admission of hearsay leaves the Rome Statute's guarantee of confrontation tenuous.” The jurisdiction of the ICC is nonretroactive. This means the ICC has no power to investigate events that took place before 1 July 2002. For States that ratify or accede after this date, the Court has jurisdiction for crimes committed only after the Rome Statute has entered into force in that State Party, unless that State declares otherwise. (21,1)

One of the strongest protections provided to a criminal defendant and embodied in the Sixth Amendment (Today, the Sixth Amendment guarantees the right to counsel to every person (adult and juvenile, at trial and on appeal) who faces potential time in jail. The Constitution also requires that an attorney be present for an indigent defendant at every critical stage of their case and that the attorney must provide effective representation) U.S. Supreme Court Case Law) is the right to confront the witnesses upon whose testimony the state relies for conviction. This provision assures a defendant that he or she may test through cross-examination a witness’s truthfulness. Furthermore, the confrontation clause allows a defendant to examine the accuracy of a witness, the witness’s memory, and the meaning and sincerity of the witness’s testimony. Without this protection, there lies a real and ever-present danger that an individual could be wrongfully convicted.

Within the ICC’s founding document rests an apparently similar provision to the Sixth Amendment. (22)

This provision indicates a defendant shall have minimum guarantees, including “[t]o examine, or have examined, the witnesses against him or her” While this subsection appears to be relatively straightforward, when one examines the decisions of the ICC, it is apparent that this protection is illusory at best. (25,104-105)

The ICC's approach to the admission of hearsay and its reliance on judges determining the probative value of hearsay evidence leaves the Rome Statute's guarantee of confrontation tenuous. The ICC has found first that the exclusion of hearsay evidence is not expressly provided by the Statute. Furthermore, in Katanga and Ngudjolo, the Pre-Trial Chamber determined that "any challenges to hearsay evidence may affect its probative value, but not its admissibility."(25,104-105)

The ICC also looks to the text of the Rome Statute and its own rules of evidence for its position that the Chamber can consider this type of evidence. (23)

If one examines Article 69 (3), the second sentence states: "The Court shall have the authority to request the submission of all evidence that it considers necessary for the determination of the truth." (24)

The ICC and other national jurisdictions have a strong reliance on appropriate judicial determination of probative value to obtain the truth, while in U.S. courts, the hearsay rule makes this determination unnecessary because trustworthiness of an out-of-court statement is found to be inherently lacking unless it falls within an 10 to the rule. In the U.S., every law student has drilled into him or her the importance of the confrontation clause and underlying reason for the hearsay rule. Instead, the ICC views this as a hindrance to the determination of the truth. The result of these conflicting views is apparent. In the U.S., a defendant has protection under our Constitution and the rules of evidence. At the ICC, in contrast, a defendant is at the mercy of a judge's determination of probative value without the safeguards of cross-examination and rules limiting the admission of evidence. (25,104-105)

Due to the lack of a formal rule on the acceptance of hearsay, the ICC has not explicitly dealt with its admission in many cases. Still, both the ICC and the ad hoc tribunals generally admit hearsay when it is corroborating other evidence that has a higher probative value. (26,15)

The Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and non-technical procedure and shall admit any evidence which it deems to be of probative value. (10,109)

To strengthen the probative value of digital evidence hearsay, prosecutors have presented live testimony from those who were involved in gathering the digital evidence, explaining their methods, as well as presenting a strong chain of custody. This testimony improves the reliability and credibility of the evidence. There does not seem to be a bar to admitting hearsay, as the ICC has already admitted anonymous hearsay. However, questions remain as to whether hearsay can be introduced for the truth of the matter. As well, it is not clear whether hearsay can be admitted without testimony regarding how it was obtained, and if testimony is necessary, 1) to what extent this testimony has to be from a party that was directly involved in gathering the evidence; and 2) how much testimony would be sufficient for the court to consider the evidence credible. (26,16)

Conclusion

Different countries regulate this concept in various ways. Despite this variability, most states try to make the application of this this rule's implementation as sophisticated and flexible as possible, with the same legal burden as direct evidence. None of the provisions of the European Convention on Human Rights indicates a restriction on the use of indirect testimony, although it should be noted that a high standard of credibility applies and its probative value depends primarily on both direct and indirect evidence of credibility.

Based on everything discussed, I consider it unequivocal, despite the misunderstandings and inaccuracies caused by indirect testimony, With the refinement of the institution ultimately, Hearsay Rule should exist as an exception, and the assessment of its veracity should not depend on the subjective perception of a particular judge or jury. The circumstances under which it will be possible and at what time not to use hearsay rule should be clearly defined.

War is not a normal circumstance and war crimes are not normal crimes as contemplated by domestic criminal laws. Consequently, war crimes trials cannot be considered under the same procedures as everyday domesticncriminal trials. The defendants in these trials are accused of genocide, violations of the laws of war, and grave crimes against humanity. That said, in the end, all human beings should be entitled to a fair system of justice. Fairness and justice are and should be universal constants; however, the paths to fairness and justice must be malleable and adapt to different circumstances. (10,103)

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SOME LEGAL ASPECTS OF MURDER COMMITTED WITH PARTICULAR CRUELTY

Ioseb Tsereteli
Grigol Robakidze University

Abstract

Premeditated murder committed with special cruelty belongs to the category of especially serious crimes, for which the Criminal Code of Georgia provides for life imprisonment. Thus, even a small mistake made during the qualification of this action can lead to severe legal consequences.

The paper will discuss some of the problematic issues in the process of premeditated murder committed with particular cruelty. The focus will be on the qualifications of the action in the case of the premeditated murder of an ex-spouse with particular cruelty. According to statistics, the facts of premeditated murder of an ex-spouse and / or persons in an unregistered marriage are quite high due to jealousy, which causes some difficulties during the qualification. In addition, the murder of a parent committed in front of a minor child will be considered. In discussing the above-mentioned problematic issues related to the qualification of an action, the judgments rendered in a particular case will be reviewed and some of the legal assessments contained in the judgment will be analyzed. The paper pays special attention to the statistics of premeditated murder and murder committed under aggravating circumstances. Attention will also be paid to the manner and means of the murder committed with particular cruelty. All of the above will contribute to the multifaceted study and research of the issue.

Keywords: culprit, victim, suffering.

Introduction

Intentional murder committed with special cruelty provided for in Article 109, Part 3, Subparagraph "b" of the Criminal Code of Georgia is one of the most serious forms of murder committed under aggravating circumstances, for which the law provides for the most severe form of punishment - life imprisonment.

This crime poses a special danger to the society, which is manifested in the circumstances of the act, in the manner in which the perpetrator committed the act, in inflicting particular physical or mental pain on the victim, as well as on his relatives.

According to statistics, the percentage of acquittals of people charged with premeditated murder and aggravated murder is quite high, which indicates certain problems in the investigation process. The article will focus on the element of objective and subjective composition of the action, which includes the manner, means, causal connection and intention of the action. An overview of these issues will help practitioners or theorists interested in the problem to fully explore the issue.

In addition to the above issues, the article will discuss and analyze case law, which will be one of the prerequisites for a qualified investigation of the action.

Recent Premeditated Murder Statistics.

We want to start discussing statistics from Tbilisi, the largest city in Georgia. During the investigation, the Tbilisi City Court requested quantitative data on the cases reviewed under Article 108 (premeditated murder) and Article 109 (premeditated murder under aggravated circumstances) of the Criminal Code of Georgia in 2015-2021 And specific convictions for murder committed with particular cruelty during the same period. According to the statistical data, Article 109, Part 3, Subparagraph B of the Criminal Code of Georgia (murder with special cruelty) deals with 16 criminal cases against 17 persons, out of which one criminal case is considered against one person with the participation of jurors. The number of cases reviewed by the Tbilisi City Court in 2015-2021 looks like this:

In 1-2015, a total of 5797 persons were convicted and 111 persons were acquitted. Of these, 21 persons were convicted under Article 108 and none were acquitted, while 12 persons were convicted under Article 109 and 1 person was acquitted;

In 2-2016, a total of 6362 persons were convicted and 101 persons were acquitted. Of these, 47 persons were convicted under Article 108 and 2 persons were acquitted, while 15 persons were convicted under Article 109 and none of them was acquitted;

In 3-2017, a total of 5789 persons were convicted and 123 persons were acquitted. Of these, 45 persons were convicted under Article 108 and 4 persons were acquitted, while 24 persons were convicted under Article 109 and 1 person was acquitted;

In 4-2018, a total of 6476 persons were convicted and 200 persons were acquitted. Of these, 27 persons were convicted under Article 108 and 3 persons were acquitted, while 18 persons were convicted under Article 109 and 6 persons were acquitted;

In 5-2019, a total of 6387 persons were convicted and 268 persons were acquitted. Of these, 28 persons were convicted under Article 108 and 3 persons were acquitted, while 28 persons were convicted under Article 109 and 3 persons were acquitted;

In 6-2020, a total of 4971 persons were convicted and 135 persons were acquitted. Of these, 35 persons were convicted under Article 108 and one person was acquitted, while 24 persons were convicted under Article 109 and one person was acquitted;

According to the data of January-September 7-2021, 3912 persons were convicted and 102 persons were acquitted. Of these, 14 persons were convicted under Article 108 and 2 persons were acquitted, while 11 persons were convicted under Article 109 and none of them was acquitted.

2015-2021, the number of cases reviewed under Article 108 of the Criminal Code of Georgia varies from 0.4% to 0.8% of the total number of cases reviewed, while the percentage of cases reviewed under Article 109 is from 0.2% to 0.4%. %-till.

Attention is also paid to the statistical data of acquitted persons, in particular, the number of acquitted persons in the cases considered under Article 108 of the Criminal Code by years is as follows:

in 2015-0%

In 2016 -4.3%;

In 2017 -8.9%;

In 2018 -11%;

In 2019 -10.8%;

in 2020-2.9%;

According to the data of 9 months of 2021 -14.1%.

The statistics of persons acquitted in the cases considered under Article 109 of the Criminal Code of Georgia are as follows:

In 2015 -8%;

in 2016-0%;

in 2017-4%;

In 2018 -33%

In 2019 -3.7%;

in 2020-4%;

According to the data of 9 months of 2021 -0%.

An effective fight against murder, and especially its prevention, depends a lot on the rate of opening cases. For example, according to statistics from the Ministry of Internal Affairs of Georgia, the homicide rate in 2007-2009 was 50-55 percent in Georgia. For comparison, according to statistics from the Federal Republic of Germany, the homicide rate is 95 percent.

One of the reasons for this difference may be the high level of German law enforcement officers and their technical-forensic equipment and the willingness of citizens to cooperate with the investigation.

Statistics on unsolved cases and acquittals indicate some problems with the qualification of action in the investigation and prosecution process. To resolve the issue, a comprehensive study of the composition of the action and the analysis of case law are needed.

3. Characterize some elements of the objective and subjective composition of the action

The combination of the composition of the action and the counterclaim, together with the charge, creates the notion of guilt. In this chapter we want to discuss some of the objective and subjective elements of murder composition.

In the case of a particularly brutal murder, the act must not only objectively constitute a particularly brutal murder, but the subject must also be aware that he is killing with particular cruelty and must want to commit such a murder or must allow it.

A special danger of crime is manifested in the manner of committing. In particular, the perpetrator commits an act with "special cruelty." We want to focus on this concept. The term "special cruelty" refers to two forms of cruelty murder: special cruelty to the victim and special cruelty to other persons. We would like to discuss some features of both types of this method and at the same time review specific cases from the case law of the Tbilisi City Court.

Intentional homicide committed with particular cruelty by means or means that inflict severe physical pain on the victim is considered an objective criterion in the legal literature. The objective criterion implies that the method or means used in the murder cause objectively strong suffering to the victim. An example of this type of murder can be considered the verdict of the Tbilisi City Court of January 15, 2015. The verdict established that on April 22, 2014, at approximately 2 p.m., F.M. In the vicinity of Vake Park in Tbilisi, armed with a sword, he attacked his ex-wife S. with the motive of jealousy and revenge. At the first flexion of the sword by F, S. fills a polyethylene balloon

with milk, whichWas cut and the sword was struck in the left foot. Fallen S. F. struck the sword in the head about 7 times, but S. did not lose consciousness.

During the shooting, he tried to defend himself with his hand, during which time both hands were injured. F. Did not stop and when s. Already unable to defend himself with his hands, F. once again had a sword in his head, he was able to move to his side, and a flexible sword cut off part of his cheek and ear. At that time, a security guard of Cor Standard Bank came to S's aid. F. He fled the scene to avoid responsibility. As a result of timely medical intervention, S's life was saved. The court found f. S. was found guilty of attempted murder with particular cruelty and sentenced to 17 years in prison.

We believe that in addition to the attempted murder of F. with particular cruelty. He should also have been found guilty under Article 111,19,109, Part 2, Subparagraph "f" of the Criminal Code of Georgia, in particular, for attempted premeditated murder of a family member, ex-spouse. Insofar as Article 111 of the Criminal Code, for the purposes of the Criminal Code, together with various persons, considers an ex-spouse as a member of the family.

In this regard, the judgment of the Tbilisi City Court of March 29, 2021 in the case of Sh.G. is interesting. Sh.G. was convicted of plotting to kill S.S., who was in a love affair with him, with special cruelty. For this purpose, on the night of June 30, 2020, the victim was taken out of the house and fraudulently taken to a nearby gas station, where he bought gasoline. Upon returning home, S. verbally and physically abused Sh, as well as S. verbally abusing S. After that, Sh. Intends to kill with special cruelty, by means of which he inflicted particularly severe pain, the gasoline placed in the pre-made tank he had purchased was poured on S's feet, as well as around him and in the yard, so that S could not escape. After that Sh. He passed a safe distance and lit a fire with gasoline, which ignited and set fire to S. Sh. The firefighter S. watched from a distance how Ali was hitting him on the body and how he was asking for help, though he did not help the victim. At the scream of the victim, people gathered on the spot, who managed to put out the fire on S.'s body, Sh. He even hid from the scene. As a result of the injuries, S. received first, second and third degree burns on both forearms, left forearms, both thighs, both knee joints, both legs, both ankle joints and both ankles, which is a life-threatening severe degree.

Sh.'s action was qualified by the court with particular cruelty for attempted premeditated murder. It was also found that Sh. And s. In February and April 2020, they lived together for two weeks, first in a rented apartment in Tbilisi, and then in S. Partartzeuli's brother's house. The court did not assess the two weeks of cohabitation in the rented apartment in Tbilisi as the fact that Sh and G. were in an unregistered marriage, and left the two-week period of their cohabitation in S. Patardzeuli without assessment in this regard. We think that the time and place of cohabitation indicate the circumstance that Sh and S were in a de facto unregistered marriage during the above period and jointly ran the farm.

In addition to inflicting special physical harm on a victim, special cruelty also means committing murder without inflicting special physical suffering in the event that the victim The encroachment of life takes place in front of his loved one. It should be noted that the law does not specify the circle of persons who can be considered close to the victim. In the legal literature, such individuals are considered by some to be family members and close relatives, while some believe that close friends, girlfriends, fiancés, and others who are important to the victim may be considered close.

In such a case, the murder of a child in the presence of the parents and other persons in close contact with the victim, who for some reason are deprived of the opportunity to find effective help for the victim, is considered murder committed with special cruelty. It should also be noted that the person close to the victim, in front of whom the victim's life is being violated, must be aware of

the significance of the murder. This issue is relevant in the case of the murder of a parent in front of a minor. For Magillite we want to consider the case of I.'s accusation. The court reclassified I.'s charge of attempted premeditated murder of a family member. This assessment was substantiated by the fact that it was not established how much the young T. was aware of and perceived the incident. To clarify this issue, first of all, a psychological-psychiatric examination of T. should have been conducted. We thus fully share the court's reasoning regarding the reclassification of the action. However, as in the previous example, in this case the court, as well as the prosecuting authority, left I.'s action against M. as a family member without a legal assessment.

An example of the murder in question is the 20-year-old shepherd, Malkhaz Kobauri, who was cut off with special cruelty by the Smith family with dual American and Georgian citizenship. This case has been one of the most resonant cases in recent years. The court found Kobauri guilty of rape and murder of exceptional cruelty and sentenced him to a maximum sentence of life imprisonment. A horrific tragedy struck on July 4, 2018, in the Khadi gorge of Georgia, over one of the villages 70 kilometers away from Dusheti. The Smiths, who were on holiday in Mtiuleti, met a shepherd on the way to the waterfalls in the Khadi Valley. Kobauri guided them. A shepherd armed with a shotgun, who was drunk, decided to rape Laura Smith on the way. To that end, Kobaur lured Ryan Smith and his young son to the waterfall. Kobauri first killed the father in front of his son, and then kicked the child to death. His body was hidden in an avalanche. Returning, he raped Laura Smith with particular cruelty and then strangled her in the river. This crime is also distinguished by the fact that in order to cover up the crime, the killer informed the villagers himself that he had found the woman's body and that it was as if an accident had taken place. Kobauri also took part in the Smith search operation for two days. In the case of murder with particular cruelty, a causal link must be established between the perpetrator's action and the death of the victim of particular suffering. According to scientist Jonathan Herring, it must be proven that the accused caused the death of the victim. The existence of a causal link in the murder is discussed by the scientist Adams, who considers it necessary in the context of the murder to establish that the accused, even slightly, but still hastened the death of the victim.

In practice, there is sometimes death of the victim as a result of torture or unlawful deprivation of liberty. How to act in such a case: torture, unlawful deprivation of liberty or premeditated murder with special cruelty? For the correct legal implications of an action, the focus must be on the intent of the offender, i.e. the subjective composition of the action.

To answer this question, we want to describe the intention in general and its forms. Intention consists of intellectual (knowledge) and voluntary (ignorance) elements. According to the popular opinion in the literature, the intellectual element is manifested in the actual knowledge of objective phenomena. As for the voluntary element, it has two terminological meanings: descriptive and evaluative. According to Article 9 of the Criminal Code of Georgia, there are two types of intent, direct and indirect intent.

In direct intent, the offender wants to have a criminal outcome or is convinced of the inevitability of that outcome. According to the attitude towards the result, direct intention is divided into direct intent of the first and second degree. In particular, in the case of first-degree direct intent, the offender wants a criminal result, while in the case of second-degree direct intent, the offender does not want the result, although he is convinced that a criminal result is inevitable. An example of first-degree murder of direct intent is when A wants to kill B and for this purpose a knife is stabbed in the heart. An example of Khayskha's direct intent is when A. poisoned food with the intent to kill B., knowing that this food would be taken with B. by G., whose murder A. did not want, but was convinced that G. Death would also inevitably ensue. Both died as a result of taking really poisonous food.

In indirect intent, the offender does not want the result, though he deliberately lets it go or is indifferent to its occurrence. E.g. After an argument with his wife, an offended A., who lived in the central part of the city, pulled out a window in the evening and threw the TV from the third floor, which fell on the back of a passer-by and killed him on the spot. B. did not want to kill a passerby, though he did not rule out such an outcome.

Thus premeditated murder can be committed with both direct and indirect intent.

In view of all the above, if the perpetrator, during the torture or deprivation of liberty of the victim, intended the death of the victim with particular pain or deliberately allowed such an outcome, his action would qualify as premeditated murder with particular cruelty. If the offender's death was ruled out during the torture or unlawful deprivation of liberty, but the result still arose, there would be torture or unlawful deprivation of liberty resulting in the negligent death of the victim.

Conclusion

The paper discusses the peculiarities of premeditated murder committed with particular cruelty and focuses on some elements of both the objective and subjective nature of this criminal act. The study focused on the statistics of opening and review of cases in this category in recent years, as well as the quantitative data of acquittals. A special place was given to the review of case law, which may provide some assistance to researchers and practitioners interested in this issue.

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CONSTITUTIONAL STANDARDS OF PROPORTIONALITY OF PUNISHMENT (according to Georgian and German constitutional justice)

Doctoral student: Giorgi Khazalia
Grigol Robakidze University, School of Law

Introduction

It is declared in lawful doctrine and practice that in general the parliament as a democratically legitimate institution is authorized itself to make principled decisions regarding the type and scale of the probable legal consequences of punishable act, taking into account the set of criminal-political aims and relevant challenges. It is actually that legislature as a constitutional body is empowered to formally complete and establish sentencing policy and this does not cause any disagreement. This is caused due to the fact that, in general, in a democratic and legal state, it is the field of activity of the parliament, as the highest representative body, that includes law-making activities and determining the main directions of public policy (including in the field of legal policy). The constitutional competence of the legislative body is also explicitly established by the Constitution of Georgia.

In addition, it should be mentioned that regardless of having formal authority, the parliament is also obliged to plan, develop and eventually implement the punishment policy in practice with the unwavering defence of the basic human rights and the objective order of human values enshrined in the Constitution. From this point of view, the constitution is the author of the framework limiting the freedom of action, thereby binding the legislator, as well as any other state or constitutional body.

The purpose of the article is to emphasize the constitutional standards that should be taken into account in the process of developing the punishment policy. From this point of view, the first part of the paper reviews the relevant practice of the Constitutional Court of Georgia. At the end of the paper, the reviewed issue will be summarized and specific conclusions will be drawn.

1. The practice of the Constitutional Court of Georgia in terms of proportionality of punishment

The Constitutional Court of Georgia has quite rich practice in terms of evaluating the constitutional standards of punishment, and the punishment policy in general, especially is we reckon recent years. The first case where the Constitutional Court had to assess the legal limit of a specific punishment was Beka Tsikarishvili against the Parliament of Georgia, where the subject of the dispute was the purchase and possession of a large quantity of marijuana (the plaintiff was charged with the purchase and possession of 69 grams of marijuana for personal use) provided for by the Criminal Code of Georgia The sentence, precisely the constitutionality of the words "shall be punished by imprisonment for a term of seven to fourteen years" in Article 260, Part 2 of the Code, with Article 17, Clause 2 of the Constitution valid until 2018. (Prohibition of the use of cruel, dishonorable punishment) (4,1).

In this case the court confirmed that the state has a wide margin of discretion in determining criminal law policy. "The rule of law ensures a person to be free and protected, in order to achieve this goal, it must be equipped with appropriate and sufficient, effective levers. From this point of view, powerful and important tool that is in the hands of the state is the fight against crime and, in

this way, the protection of public order, state welfare, other legitimate constitutional goals and, as a result, preservation of the human rights and prevent violation of liberty." Also is should be emphasized that the state must be very careful in this process because, on the one hand to not unreasonably limit people's freedom by prohibiting any action, and, on the other hand, the state's response to the commission of a prohibited action should not be excessive, disproportionate, because Such a response also restricts freedom .The state cannot intervene in human freedom (in his rights) in a greater dose than it is objectively vital, because as a result, the goal will be to limit a person, not to protect him (4, 38). In general, "it is the sphere of the state's policy which actions it will criminalize and how it will impose a punishment for committing a specific action, because the government must have an effective opportunity to fight against the dangers that is caused due to specific actions and criminalize them by taking into account their gravity, seriousness, and at the same time choose the measure of responsibility that will be sufficient and effective to combat the dangers. At this time, we should take into account the nature of the crime and the legal interests that is harmed by the specific action. In addition, the mentioned issues should be determined by the country's historical experience, culture, values and legal sentiments of the society in general. However, on the other hand, the scope of the state's consideration cannot be unlimited. No matter how serious the motivation of the state is and no matter how important the specific regulation is to protect the good-naturedness, it is not freed from the responsibility to act strictly within the limits established by the constitution and to be unconditionally bound by the fundamental human rights. In a democratic and legal state, there is no purpose, interest, including the main goal of protecting human rights, against which the state is equipped with a legitimate right to violate the right to freedom of even individual persons" (4, 36). Accordingly, this is the standard, the limit that the state should not cross, hence, the court is obliged to evaluate the punishment policy in the extreme case when its result is a violation of one or another human right.

In addition, from the analysis of the practice of Georgian constitutional justice, it is clear that the Constitutional Court does not allow itself the right to assess the issue of conformity of the punishment with human rights and the constitutional order in all cases. In the case - Beka Tsikarishvili against the Parliament of Georgia, the court directly pointed to that "the constitutional court could not potentially be capable of deliberating on the constitutionality of all punishments." Such an approach would disturb the balance between the competences of the court and the legislator, and creates a temptation for the judiciary to replace the legislator. However, the court's caution in entering this field will be unwarranted and misplaced, when the measure of punishment is manifestly unreasonable and disproportionate. The court is authorized and obliged to assess the constitutionality of those punishments, the level of inadequacy, disproportionality of which reaches a significant degree, the imbalance is clearly and sharply expressed. Because in this case, the punishment goes beyond its goals and unjustifiably restricts the constitutional rights" (4, 38). Based on this, the Constitutional Court, in dissimilar to the test which is used in the intervention in other legal spheres, introduced the standard of clearly disproportionality in the assessment of punishments. In particular, the disproportionality of the punishment can be argued if the punishment is more than just excessive in relation to the criminal act. It is actual, when the above-mentioned imbalance between the action and the sanction which is imposed for it cannot be determined unambiguously, but it depends on the specific case. However, one thing is certain, in order to be able to discuss the disproportionality of the punishment with respect to the right to dignity, the punishment must be more than "merely excessive" in relation to the criminal act. In particular, in this case, the assessment of the constitutionality of the punishment is based on the following circumstances: 1) there is a clear disproportionality between the severity of the crime and the punishment - the punishment imposed by the legislation for any action must be reasonable and proportional to the damage caused by the specific crime, which damages (may

damage) to individuals/society. The punishment will be considered clearly disproportionate and inhumane, cruel punishment, if its duration is clearly, harshly disproportionate to the degree of injustice of the act. (4, 38). Actually, it will be impossible to check the proportionality of the punishment, if the nature of the criminal act itself, its severity and the danger caused by the act have not been determined. In this regard, special importance is given to the measurement of the objective significance of the criminal act for law and order. The criminal cannot become the object of crime fighting by violating his constitutionally protected social place and rights to demand respect (5, 7).

Another recent practice, where the Constitutional Court discussed the constitutional standards for assessing the proportionality of the punishment, is the constitutional submissions of the Bolnisi District Court regarding the constitutionality of the normative content of the first part of Article 262 of the Criminal Code of Georgia, which provides for the possibility of using imprisonment as a punishment, narcotic drug - dried marijuana which is illegally imported (6.4 grams, 6.7 grams and 9.68 grams) into Georgia for personal use. In this case as well, the Constitutional Court found that "the legislator has a rather wide area of consideration in the field of punishment policy. From this point of view, the legislative body evaluates and predicts the risks that pose a threat to a person, society and, in general, the state, as well as normatively determines the specific type and size of the insurance liability for the same risks" (5, 5). In addition, since the implementation of criminal legal mechanisms and the application of punishment to a person is the most intensive form of interference in human rights, the legislator naturally cannot have absolute discretion in this field. It is bound by the subjective basic rights, as well as by the order of objective values, which is created by the constitution. According to the assessment of the Constitutional Court, "the view of the legislator in the field of determining the appropriate punishment in accordance with the challenges in the country is not unlimited.

The purpose of the Constitutional Court, as a constitutional control body, is to limit the space of free action of the legislator in this field. The Constitution of Georgia establishes the framework and minimum requirements that the punishment provided by the legislator must meet. It is necessary that the punishment adequately corresponds to the severity of the act involving public danger. In the conditions when the severity of the punishment clearly exceeds the degree of public danger of the committed act, the proportionality of the imposed punishment and its legitimate goals is questioned. harsh and unreasonable punishment is too far from the legitimate goals of punishment. Such type of punishments leads to viewing the person as an object and should be described as inhumane. This is where the space for the free implementation of punishment policy ends and the legislator interferes into the field that is absolutely prohibited by the constitution" (5, 6).

In the process of assessing the constitutionality of punishment, the principle of proportionality plays an important role in combination with subjective rights. This is especially clear considering that a *clearly disproportionate* (emphasis mine) norm/normative content violating the principle of proportionality cannot be considered as a part of the constitutional order. When determining the specific type of punishment as well as its size by criminal law, the constitutional requirement of proportionality should be reckoned, since it determines the material extent of the limitation of the right. On the other hand, the constitutional principle of proportionality gains importance from the point of view that the state should set its own goals in the process of developing the punishment policy and then implementing it in practice, in a proportional relationship with the potential addressees of the norm. Otherwise, the principle of proportionality, as a general constitutional condition, requires the correction of the legally-politically undesirable, inadmissible decision of the legislator.

2. The practice of the German Federal Constitutional Court in terms of the proportionality of punishment

It is clear from the practice of the German Constitutional Court that punishment, as the most severe form of state intervention in human rights, is subject to the principle of proportionality. In one of the cases related to bewitchment of a homosexual relationship, the Constitutional Court noted that "from the general principles of the Constitution, especially from the principle of the rule of law, it follows that the threat of punishment should be proportional to the severity and guilt of the action." The punishment cannot be disproportionate or severe to the type and severity of the act declared to be punished (6, 375). The following conclusion can be drawn from the quoted reasoning of the court, that in the context of the proportionality of the punishment, it is also important to assess the degree of the corresponding fault, since it has a constitutional rank in view of the German practice (7, 325). Throughout its many years of practice, the German Constitutional Court connected the requirement of proportionality of the punishment with the right to human dignity, as well as the principle of the rule of law and the general personal right, which derives from the German Basic Law.

The German Constitutional Court has noted in its decisions that the principle of proportionality applies when restricting basic rights, it becomes important from the point of view that the state should set its goals in a proportional relationship with its own citizens. So that, each state sanction must be checked in individual cases, whether is state necessary to achieve the task, whether the value and importance of the protected interests is proportional to the restriction of the right. The German Constitutional Court declared the principle of proportionality as important in relation to all sanctions (1, 252). From this point of view, the attitude of the German courts regarding the punishment of even short-term imprisonment for relatively low-risk offenses is noteworthy. Violation of the principle of proportionality was established in the following cases: three months imprisonment for possession of at least a small quantity of cannabis; Sentenced to four months in prison for theft of an item valued at 2.99 euros; One month imprisonment for possessing one pack of cigarettes in a supermarket; three months' imprisonment for illegal possession of a small quantity of drugs for personal use; sentenced two months' imprisonment for stealing a bar of chocolate worth 50 cents; Imprisonment for two months for stealing two pieces of nail polish (1, 252).

According to the position of the German Constitutional Court, the measure of any punishment must be properly correlated with the individual guilt. So that, the relative punishment for the offender should not exceed the degree of guilt to satisfy the constitutional requirement for the proportionality of the punishment (8, 155). From this point of view, two issues can be seen as particularly relevant. One, the proportional relationship between the degree of guilt and the size of the punishment in minor crimes, and the second is that the committed crime may indicate different degrees of guilt, which is why the imposed punishment, depending on its formulation, should in principle allow the possibility of taking individual cases into consideration (9, 157). The German Constitutional Court noted the constitutionality of one of the cases related to property punishment, that the state must properly take into account the principle of culpability, which is important for the rule of law, and allow the judge, with the appropriate wording of the sanction, to assign a fair and relevant punishment in individual cases (9, 157). Otherwise, from a German perspective, the imposition of a disproportionate sentence would generally undermine the sense of fairness and be contrary to the principle of justice. The second important factor that is taken into account, when assessing the proportionality of the punishment, is naturally the severity of the act and its potential to violate the interests of others, society or the state. First of all, attention should be focused on the scale of injustice that is caused by the result of the action. According to the German practice, it is established that the criminal law code violating the constitutional

principle of proportionality cannot be considered as part of the constitutional order. A law that restricts a basic human right in order to be considered proportionate, must be appropriate and necessary to achieve the intended goal. A law is appropriate when the goal can be achieved with its help. It is appropriate for the legislature to be able to choose a less restrictive means of the fundamental right. When assessing the suitability and necessity of the means that is chosen to achieve the set goal, as well as when assessing the danger to an individual or society, the legislator has a wide field of view (8, 155). This is a part of the criminal law policy, which is subject to constitutional evaluation from the German perspective within strictly limited limits.

To evaluate from the point of view of German practice, it is a separate issue to evaluate inhumane and cruel punishments in the light of basic rights and constitutional principles. In general, the basic law of the Federal Republic of Germany, unlike the Constitution of Georgia, does not ***expresis verbis*** arrangement that expressly prohibited the use of inhumane and cruel punishments. Nevertheless, the Federal Constitutional Court of Germany had to judge in several cases how much the right to human dignity affects the state in selecting the type and size of punishment. From the analysis of court practice, it is clearly seen that the fundamental right to dignity prohibits the use of a person as an object in the process of fighting against the crime. It is not allowed to use a punishment of such type and severity that fundamentally questions the recognition of a person as a subject. The constitutional requirement to prohibit inhumane, degrading and cruel punishments are based on this (10, 187). In addition, it should be mentioned that in the practice of German constitutional law there has not yet been a case when the court considered a specific punishment in terms of the form or size of its execution to be inhumane, cruel or degrading treatment. Among them, according to the opinion that is accepted in the German legal doctrine, the punishment with its duration can create a factual circumstance of cruel treatment (2, 146). In one of the cases related to the extradition of a foreign convicted person, the Federal Constitutional Court developed the following reasoning: the same right to dignity does not conflict with cases where the person is expected to be imprisoned for a length of time that may not be considered proportionate from a German perspective (11, 164). From this comes the conclusion that, similarly to the Georgian approach, in the German reality, the length of the sentence can create the actual situation of cruel and inhumane treatment not in all cases, but *when it is clearly disproportionate*. (emphasis mine).

Conclusion

In conclusion, it should be said that although the legislator, based on his constitutional function and authority, determines the punishment policy in the country, however, he is bound by the fundamental human rights and the principle of proportionality. In terms of monitoring the fulfillment of this obligation, constitutional justice plays the greatest role. The analysis of the practice of both the Georgian and German Constitutional Courts have showed that in this respect the courts choose the so-called “golden mean” position in order to not encroach deeply into the competence of the legislator on the one hand, and to protect human rights and constitutional order on the other hand. In this regard, the use of the standard of obvious disproportionality is justified, although it is desirable that its defining criteria be more clearly defined.

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Court decisions (German)

6. BverfGE 6, 389.

7. BverfGE 20, 323.

8. BverfGE 90, 145.

9. BverfGE 105, 135.

10. BVerfGE 45, 187.

11. BVerfGE 113, 154.

THE NUANCES OF THE ESSENCE AND GENERAL PRINCIPLES OF FREEDOM OF SPEECH AND EXPRESSION

Gia Berdzenidze
Scientific Supervisor Professor
Gia Dekanozishvili

Introduction

Since freedom of speech and expression is the basis of a democratic society, the media have every right to provide comprehensive information. The law also stipulates that every member of a democratic society, any civilian, has the right to protect his or her private life and his or her own human dignity. The coexistence of these two fundamental values raises the problem of their balance, which significantly determines the degree of democracy in any state.

A journalist, of course, is obliged to honestly perform his / her professional duties, but at the same time he / she should not violate personal human rights. Often in the interests of the investigation, the media and other officials or organizations holding the information should refrain from disclosing it, not only in its entirety, but specifically in the part where confidential information is prohibited for the investigation. Here is the main contradiction between complete freedom of speech and expression and its partial restriction, which determines the general nature of the report.

What does freedom of speech and expression mean and how is it reflected in Georgian legislation?

Freedom of speech and expression is an inalienable supreme human value. This means that thought can be expressed absolutely freely; Freedom of political speech and debate; Finding, creating, receiving, processing, storing and disseminating information and ideas in any form; Refusal of censorship, editorial pluralism and independence of the media, the right of the journalist to keep the source of information secret and to make editorial decisions at the dictation of his own conscience; Academic freedom of teaching, learning and research; Protection of whistleblowers, liberties and whistleblowers; The right to use speech and writing in any language; The right to charity; Finally, freedom of art, creativity and invention (1. Media Environment in Georgia, 1920).

According to the Supreme Court, freedom of expression is one of the fundamental foundations of a democratic society. Freedom of expression is a key condition for the development of society and the self-realization of the individual. Restrictions on freedom of expression in a democratic society can only rarely be necessary (2. Pridon Sakvarelidze, 12-18).

The essence and meaning of freedom of expression

On December 16, 2018, the new Constitution of Georgia entered into force. Freedom of expression is protected by Article 17 of the new constitution. More precisely, Article 17 1 1 of the new Constitution states: “Freedom of thought and expression is protected. "Freedom of expression is essential for a democratic state, moreover, it is a necessary precondition for the existence of a democratic society, for its full development, and has long been an integral and fundamental element of a democratic society." Regarding this right, the Constitutional Court of Georgia stated:

“Freedom of expression is the basis of a democratic society, without the proper provision of this right, it is practically impossible to fully realize other rights. The Constitutional Court of Georgia also stated in one of its decisions that "a free society consists of free individuals who live in a free information space, think freely, have independent views and participate in democratic processes, which means the exchange and exchange of views." "Since July 15, 2004, a special law" Law of Georgia on Freedom of Speech and Expression "has been in force in Georgia. Paragraph 1 of Article 3 of this law, like Article 24 1 1 of the Constitution of Georgia, strengthens the freedom of expression of individuals. In particular, according to the named article: “The state recognizes and protects freedom of speech and expression as inalienable and supreme human values. In the exercise of power, the people and the state are limited by these rights and freedoms as a directly applicable law. ”(3. Constitutional Law of the Republic of Georgia31-33).

Under Georgian law, expression is protected by absolute privilege, while vocation is protected by qualified privilege. A summons gives rise to liability established by law only when a person commits a deliberate act which creates a clear, direct and substantial threat to the occurrence of an unlawful result.

Freedom from coercion, to express his views on faith, creed, conscience and worldview, ethnic, cultural and social affiliation, origin, family, property and rank, as well as all the circumstances that may be grounds for the violation of his rights and freedoms.

The scope of such necessity is further reduced when it comes to freedom of the press, as freedom of the press is of great value in a democratic society and its restriction needs special justification. The Supreme Court points out that this is the case law of the European Court of Human Rights and Freedoms and that the Georgian Law on Freedom of Speech and Expression also complies with the standards established by this practice (4. Constitutional Law of the Republic of Georgia, 32).

According to the Supreme Court, a necessary condition for the definition of defamation is the separation of fact and opinion (opinion), since according to the Law on Freedom of Speech and Opinion, opinion is protected by absolute privilege and, therefore, evaluative reasoning can not be considered defamation.

According to the Supreme Court, when individuals work in various fields of public importance, and participate in the public discussion of issues through the press or other media, they are required to be more patient with criticism. Therefore, the use of abusive terms against a private person when participating in debates on issues of public interest cannot be considered as slander.

What about freedom of speech and expression?

Freedom of expression and the existence of an independent and diverse media are prerequisites for a true democracy. Thousands of European media outlets regularly publish a variety of information, including analysis and chronicles of events. These materials form the basis of political discussions, contribute to the formation or reflection of public opinion.

At the same time, freedom of expression can be threatened by pressure from governments and under the influence of certain economic trends - in particular, the monopolization of the media by large media companies.

In 1950, the Council of Europe reaffirmed the importance of freedom of expression and information and proclaimed it in Article 10 of the European Convention on Human Rights (5. European Convention on Human Rights, 10). Due to its importance for democracy, the Council of

Europe has developed standards and guidelines to help the media without external control and pressure (6. Resolution of the Parliament of Georgia, 6, 2002, 17, 01).

Conventions on cross-border television, copyright, the protection of national minorities, access to official documents and the use of the Internet have been adopted to ensure freedom of expression and information.

Freedom of expression and information is currently facing new challenges in the development of the information society around the world, the emergence of new media service providers (such as news portals, content aggregators, blogs and social networks) and the rise of terrorism (7. Eva-Maria Swenson, Andrew Kenyon, and Maria Edstrom, 2016, 7-9).

The overlap of the legal interests of the individual and society in general is one of the most important problematic issues in modern jurisprudence. Human rights are limited to the extent that they do not impede public development. Therefore, democracy itself implies certain frameworks regarding the restriction of rights. Consequently, a conflict of values arises, which can be resolved only through their reconciliation. Harmonization is achieved with proper balance of interests. Otherwise social disharmony is inevitable. This is the main task of the European Convention (8. Carrie Carpinen, 2016, 41-51.).

Controversy mainly concerns the restriction of individual rights in the public interest and vice versa in order not to restrict the rights of the individual by the state. Michelle's recent document and the European Balancing Policy Georgia has tested itself recently.

The principle of freedom of expression is based on the notion that the freedom of the individual and society is recognized, the expression of thoughts and ideas to the exclusion of all precautions, censorship, persecution by the state or law, fear and social pressure. Essentially it is more of a term synonymous with freedom of speech (expression), but its essence is broader and includes the reception and dissemination not only of speech, but of any information, idea or thought by any means.

Freedom of speech is the right to say what you like, what you want and when you want it. This explanation is not entirely correct. It is quite different to say that freedom of speech is the right to seek, receive and impart all kinds of information. Freedom of speech and the right to freedom of expression apply to all kinds of ideas, including those that can be very offensive. This has a responsibility and we believe it can be legitimately limited. Freedom of speech and expression may be restricted in certain circumstances. The government is obliged to ban hate speech and incitement. Restrictions are justified even if they protect a particular public interest or the rights and reputation of another.

Any restrictions on freedom of speech and expression must be set out in laws, which in turn must be clear and concise so that everyone can access them. Restrictors (be it the government, the employer or anyone else) must be able to show their need and maintain their proportionality. In addition, safeguards should be put in place to stop the abuse of these restrictions and a proper appeal process can take place. Restrictions that do not meet all of these conditions violate freedom of expression (9. Barrett Emerick, 2021, 17-19).

We believe that people incarcerated for the sole purpose of exercising their right to freedom of expression are prisoners of conscience.

Any restrictions must be as specific as possible. For example, it would be wrong to ban an entire website because of a single page issue.

National security and public order should be terminologically defined in the law so that they are not used under the pretext of excessive restrictions.

The moral sphere is a very subjective sphere, but any restrictions should not be based on one tradition or religion, and they should not be differentiated for individuals living in a particular country. This is due to the rights and reputation of others, which should be taken into account. Public officials should be more critical than private individuals. Thus, defamation laws that stop the legitimate criticism of a government or public official violate the right to freedom of expression.

Protecting abstract concepts, religious beliefs or other beliefs or protecting the feelings of those people does not constitute a restriction on freedom of speech (10. Semantic Anmerkungen, Dieter Witchen, 2010 - 85 (2): 261).

Journalists and bloggers are at particular risk because of their work. Countries therefore have a responsibility to protect the right to freedom of expression. Newspapers, televisions, etc. Restrictions may affect the right to freedom of expression.

The government should never prosecute a person who reveals information about a human rights violation. That is why whistleblowers need special protection from the state.

Freedom of expression and speech also has its historical precedents. They usually start with the ancient Greek civilization, in particular, the Athens BC. With the democracy and freedom of speech that originated in the VI-V centuries AD, followed by the principles of freedom of speech and religion of ancient Rome. At the end of the seventeenth century, the English Parliament legislated the constitutional right to freedom of speech, which still exists today. The French Revolution of the eighteenth century adopted the Declaration of the Rights of the Citizen, which recognized freedom of speech. The landmark of the twentieth century in this regard is Article 19 of the 1948 Universal Declaration of Human Rights. Nowadays, freedom of expression and speech is both flexible and limited, especially when it is opposed to other rights. Its limitation is inevitable at such times. For example, the right to freedom of expression during a fair trial may restrict the process of seeking information. Freedom of expression and speech especially applies to the mass media, whose main weapon is the word. However, it is argued that the press, as a form of property rights, is not free and suppresses speech (11. F. Debs, 1919, 211).

Speech limitations are manifested differently in legal systems. They are implemented through legal sanction or social discontent, or both. Can be used in the teaching process to restrict freedom of speech, etc.

The generalization of freedom of expression and speech is the posting of information on the Internet, however, this raises the issue of the right to privacy. This directly affects the right to privacy. Returning to the topic of the Internet, states, such as major totalitarian regimes, are financing the control of information on the Internet and the process of suppressing it. They are confronted by Reporters Without Borders who open the blocks.

There are two main reasons for the distortion of freedom of expression and speech. Suppressive (depressing) or misinformative. More effective than the former is the latter, which is considered to be the best means of disseminating misinformation. In particular, it is used to tarnish the reputation of the addressee, so that the public can change its mind about it (12. David Meskill, 2013, 86-106).

Freedom of speech and expression cannot be taken for granted. Where are the common limitations of his freedom? These are: pornography, obscenity, incitement, copyright infringement, insults, quarrelsome words, slander, secret information, secret agreement, ridicule, etc.

As expected, the establishment of democratic principles in the society was followed by a terminological disorder. Free expression of any idea was understood as "freedom of speech". It was mentioned above that it has some limitations. For example, it is put above the inviolability of personal life, which is fundamentally wrong. One of the first places in the list of restrictions is the restriction of privacy. Moreover, there are duties and responsibilities that define the legal and moral foundations, and its violation can shake the foundations of democracy (13. Gert van Eckert, 2017, 118-137).

What are the main challenges to freedom of expression?

Governments may have the temptation to control the media. This is especially true of state television and radio stations as a means of influencing public opinion. Often this happens (but not only) during crises, wars or terrorist attacks. Attempts to control the media can take many forms: threat of closure, censorship or self-censorship - when this is the only way to continue working.

Journalists are harassed by the police and unjustly deprived of their liberty. They even die. According to the International Institute for Press Safety, tens of thousands of journalists and other media workers have been killed in the line of duty in the last ten years.

Another threat is the concentration of media outlets in the hands of powerful media groups, which reduces the diversity of sources of information (14. Tao Jiang, 2012, 69-92).

How does the Council of Europe protect freedom of expression?

Article 10 of the European Convention on Human Rights states that "everyone has the right to freedom of expression." This right includes "freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." This freedom is not absolute. Article 10 -2 2 sets out certain restrictions on this right, “for the protection of national security, territorial integrity or public order, the prevention of disorder or crime, the protection of health and morals, the protection of reputation or the rights of others. Due to the confidential nature of the information, as well as to maintain the authority and impartiality of the judiciary. "

The Council of Europe has a special regulatory body - the Leading Committee on Media and New Communication Services (CDMC), composed of experts from 47 member countries. They will formulate key policy directions in this area and develop measures to protect media freedom.

What role does the European Court of Human Rights play in protecting freedom of expression?

His role is essential. Over the past thirty years, the court has made numerous decisions that uphold this fundamental right. In particular, it protected the right of journalists not to disclose the source of information. It was also pointed out that journalists must adhere to certain ethical standards: freedom of the media does not mean that they can ruthlessly intrude on their private lives or spread defamatory information without first checking their credibility.

As for media freedom in Europe today

Democracy, the rule of law and human rights are the values held by all member states of the Council of Europe. Freedom of speech and information is generally respected in most countries. At

the same time, in recent years the Parliamentary Assembly and the Secretary-General have expressed concern in member states (such as Azerbaijan, Armenia, Moldova and Russia) that, despite democratic progress, media freedom in many areas is not always protected. .

The case law of the European Court of Human Rights shows that in other countries, including some Western European democracies, opportunities for improvement have not been exhausted. Some governments still have the temptation to control the media.

If we observe, the restriction of privacy is the opposite of the restriction of freedom of speech. If we look at international standards, it stands above freedom of speech and is a more important right. If we compare them, the dichotomy between them will be removed, because freedom of speech and inviolability of personal life can not compete with each other and are not in harmony. They are independent units. But when we cross each other completely wrongly, even misunderstood, then we run into a moral deficit (15. Mark A. Graber, 1991).

It is safe to say that the terrorist attack on the editors of Charles Ebod by the Islamists, which is probably impossible to justify, was the result of a conflict of interest. To despise the faith, which has a huge following and is an object of oath to them, is an unheard of invasion of personal life and a step on the purest part of the soul, followed by an unprecedented punishment in front of the whole world, completely uncovered and created the basis for physical destruction of people.

What are the risks of media monopolization in Europe?

Mergers and acquisitions are now commonplace in Europe, and this is leading to a reduction in the number of corporations that own the media. Media monopolization has been a serious problem for the Council of Europe in recent years and has been the subject of many recommendations and statements (16. Nigel Warberton, 2000 - Routledge.).

In 2007, the Committee of Ministers warned member states of the dangers posed by media monopolization of democracy and democratic processes. He stressed the need for an effective and unequivocal distinction between media control and important decisions, the exercise of power from political influence, and noted the "need for legislative action" if their monopolization were to reach a dangerous level for democracy.

What is the position of the Council of Europe regarding the murder of journalists?

The murder of a journalist is a horrible crime, a violation of citizens and democracy itself. States that fail to protect journalists who engage in their professional activities, have not detected crimes and have not conducted effective investigations are liable under the European Convention on Human Rights.

Is the rise of terrorism a justification for restricting media freedom?

Terrorism can effectively combat full respect for freedom of speech and information. The free flow of information and ideas is one of the most effective means of strengthening mutual understanding and tolerance and will help prevent and combat terrorism.

In 2005, the Committee of Ministers adopted a statement on freedom of expression and information in the context of the fight against terrorism in the media, and in 2007 guidelines for the protection of freedom of expression in a crisis situation. They emphasize that Article 10 of the Convention and the relevant judgments of the European Court of Human Rights remain

fundamental principles of freedom of expression. Member States should enforce these norms in their legislation and, in practice, in particular, ensure the freedom of movement and access to information of media workers and protect their right not to publish the source of the information.

How is access to public information guaranteed?

A new Council of Europe Convention on Access to Official Documents was opened for signature in June 2009. This is the first legally binding international legal act recognizing the universal right of access to official government documents.

Restrictions on access to official documents are permitted only for the purpose of confidentiality, national security and defense. The Convention sets minimum standards for meeting the requirements for access to official documents (17. Richard McDonough, 61-84.).

What are the main activities of the Council of Europe in the field of television broadcasting?

The Council of Europe has been actively involved in the development of international legal instruments on television broadcasting. The European Convention on Transfrontier Television, which has been in force since 1993, provides for the establishment of an international mechanism for the distribution of television programs between its member states. It sets out provisions for the protection of the individual rights of citizens (for example, the freedom to receive television programs of their choice), the responsibility of broadcasters for the content of programs, advertising, teleshopping and sponsorship. The convention is currently under consideration due to the emergence of new audiovisual services and communication platforms.

What amendments have been made to the protection of freedom of expression and information on the Internet?

As an important means of communication, the Internet has become a catalyst for freedom of expression and information. According to several statements by the Committee of Ministers of the Council of Europe, the principles of the European Convention on Human Rights apply to the network. This means that access to information on the Internet should not be controlled, and measures should be taken to protect children and other vulnerable groups. The Committee of Ministers upholds the principle of self-regulation in the new environment of communication and the anonymity of consumers.

To address the challenges to freedom of expression on the Internet, the Council of Europe has adopted the Convention on Cybercrime, the first international legal instrument on criminal offenses committed on the Internet, and a special protocol on racist and xenophobic websites.

How does the Council of Europe help governments and media professionals?

The Council of Europe helps countries to develop laws and policies in line with Council of Europe standards through technical assistance and media cooperation programs. Seminars and conferences are held for the media on topics such as freedom of information for journalists, slander and defamation.

In addition, the Council of Europe significantly facilitates the use of the Internet for a number of activities involving various stakeholders. It also organizes a multi-stakeholder pan-European dialogue on Internet governance.

Conclusion

Against the background of freedom of speech and expression, the conflict of legal interests of the individual and society naturally arises, which is one of the important problems of modern jurisprudence, and not only. Human rights should not hinder public development. The solution to the conflict of values is a proper balance of interests that opposes social disharmony. The spirit of the European Convention is directed here.

Any restrictions on freedom of speech and expression must be enshrined in law and, above all, their proportionality must be protected.

Restriction of privacy is a counterweight to restrictions on freedom of speech. By international standards, it stands above freedom of speech itself. At the same time they do not stand on one plane and the intersection caused by their misunderstanding even indicates a lack of morale.

If we take into account the recent developments in Georgia, we can easily see that the representatives of the highest echelons of Europe have been pursuing a policy of balancing for months against the background of intra-party confrontation in our country. The conclusion is that both domestic and foreign policy of balancing is one of the main tools of today's European and world progressive policy.

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RUSSIAN PROPAGANDA CONSTRUCTS IN THE RUSSIA-UKRAINE WAR

Archil Gamzardia
Grigol Robakidze University

Abstract

We discuss the main features and characteristics of Russian propaganda in the context of general propaganda methods and the current war in the report "Russian Propaganda Constructs in the Russia-Ukraine War".I present both theoretical and practical constructs of information warfare and propaganda messages.

The reporting period covers the period from the start of the war to the end of April, approximately 60 days (end-February 2022-end of April-April 2022). The main content aspects of the Russian media during the war, news programs in the TV media, major political programs, materials presented in the Russian online media were analyzed. The main focus of my interest was analyzed in the context of the main results of the military analysis, as well as the economic, social aspects.

To analyze the propaganda context of events and coverage of talk shows, I used the views of various scholars, theorists, thematic analysis, views, including the constructs of Russian theorists who, in their literature, may have used pro-Russian in their literature. However, the Russian propaganda analyzed by their own theoretical constructs was explained by their own theoretical constructs. It is important to note that the propaganda aspect of the Russian war in Ukraine is also analyzed in comparison with the propaganda context of the wars waged by Russia against Georgia, and the report also mentions the propaganda context of the Russian war against Chechnya.

The topic is quite extensive, which in the context of a one-time report, obviously, is presented only in fragments. However, the present report tries to take on the main and fundamental emphases on which modern Russian political or military propaganda is built, both for internal consumption and for attempts at external realization.

Research and comparative analysis have shown that Russian propaganda essentially replicates both World War II-era propaganda structures and the basic methods of Soviet propaganda, which are discussed in more detail in the main part of the report.

An important finding is the fact that the capabilities of Russian propaganda have diminished substantially in recent decades that, on the one hand, is ahead of the indicators, attitudes and behavior of world leaders towards Russian power, on the other hand, it is the factor of political behaviors and consequences that influences the substantive accents of Russian propaganda.

The report presents a temporal, comparative, parallel analysis of Russian propaganda, as well as the basic principles, classifiers, basic constructions and substantive accents of the bases of this propaganda, formulas expressed in practical form, thus forming the concept of Russian propaganda messages.

I emphasize again that the observation covered the period of the Russia-Ukraine war from the beginning to the middle of April and during the elaboration of the report, the Russia-Ukraine war was in process, which may be changed to some extent by the time the report was submitted.

Keywords: Russia. Ukraine. Russia-Ukraine war. Media. Propaganda. Information war.

Introduction

The influence of the Russian Federation on part of the post-Soviet countries gradually weakened after the collapse of the Soviet Union. The so-called Following the "color revolutions", three important countries in Russia's "close neighborhood" - Ukraine, Georgia and Moldova - are moving towards the European and North Atlantic space.

The newspaper "Военно-промышленный курьер" published an article by Chief of the General Staff of the Russian Armed Forces Valery Gerasimov on the means of achieving the Kremlin's geopolitical goals on February 27, 2013. According to an article called the Gerasimov Doctrine, information and psychological warfare play a leading role in modern warfare (14).

The notion of information warfare is also central to the military doctrine of the Russian Federation, according to which the Kremlin applies the principles of information warfare when it seeks to pursue its own interests in any state (10).

Western states are slowly realizing the threat of information warfare and trying to respond appropriately to large-scale information operations against them. The realities and dangers of information warfare became particularly apparent in 2014, when the Russian Federation conducted large-scale intelligence operations in addition to open and covert military operations on Ukrainian territory (11).

Truth and falsehood, reality and illusion are intertwined in information warfare and it is impossible to draw the line; critical thinking is also weakened; society is deprived of the opportunity for rational thinking and analysis, whereas the answers and alternatives to the questions are constantly offered with pictures and emotional reality of military aggression and its dire consequences.

Interestingly, many methods were developed in Germany during World War II in terms of emotional mood and not too long before its onset.

Main part:

Psychologist Gordon Allport wrote that the essence, the basis of any language - is the definition and classification of the "continuous information" that we always encounter, it is this main function of language that gives it the power of conviction. When we name an object, we at the same time emphasize its specificity, not paying attention to other characteristics. In this way, objects are described in such a way that the recipient of the propaganda message receives the definition of situations in words (7).

For example, on March 9, the Russian TV station OPT aired a story about how Russian soldiers were helping a Ukrainian officer provide basic medical care. The story shows a person who is arrested and named as a "Ukrainian" fighter, he tells how Ukrainians were killing civilians, the journalist asks the question "Do you understand that you were killing civilians", which he agrees to, and so on.

The theoretical aspect and motive of a given effort is to create a context in which human thoughts go in the right direction. The fact statement is accompanied by the commentator's interpretations, which offer the viewer or reader several sensible options for explanation. It depends on the insight and skill of the commentator to create the necessary option more or less with the effect of approaching the truth (15).

After a few weeks of watching Russian news and political programs, we see one-variable media products, in which, it may be said, only names, personalities, different acts due to situational variables, and minor content concepts may change. On the whole, they are constantly showing the

cities in which the Russian military is carrying out a humanitarian mission together with the separatist "minister" of Donetsk, where people are happy and satisfied with the presence of the Russian military there. They show the dead Russian soldiers in a news program, who are told about their heroic life and are declared heroes.

Russian media show "documents" according to which the Russians encrypt secret materials, show that Ukraine intended to invade the Donbas in March for nationalist purposes, and so on.

To illustrate such points, I would like to cite the book Insider's View (1983) by Ladislav Bitman (later known as Lawrence Martin-Bitman), a former disinformation officer in the Czech intelligence service and a retired professor of disinformation at Boston University, which refers to the use of disinformation and information warfare by the KGB during the Soviet era. Ladislav Bitman noted that the main focus of Soviet active activities was the falsification of official documents and correspondence. He recalled that as part of his active activities, his main activity was to prepare forged documents. The information war of that time was mainly fueled by the sending of forged letters and their unverified use by the victim.And the next step was either to launch the next disinformation campaign within the forged document or to expose the forged and tarnish the victim's reputation (9).

With similar propaganda technology, in the Russia-Ukraine war, Russian propaganda referred to the Ukrainian authorities as the Kiev regime. Relevant media channels report that Russia averted a large-scale attack by Ukrainians on Donetsk. I note that similar constructs were used in terms of information messages during the Russian invasion of Georgia in the August 2008 war, where the Russian side claimed that Georgia was a so-called It invaded "South Ossetia" for nationalist purposes, which was financed by foreign funds, while Russia established a "forced peace" where the Ossetian people were "protected" from the Georgians, and so on.

Russian propaganda information campaigns similarly covered the events of August 8, 2008 in Georgia, where they described the Georgian side bombing Georgian villages where Ossetians lived, and so on. In relation to Ukraine, virtually similar propaganda messages were presented on the principle of variable change.

Using similar constructs to cover the Russia-Ukraine war, Russian media outlets show stations in their stories, where say that people who are being persecuted from Ukraine to Russia by the Ukrainian "Nazis", people of different nationalities, are creating a rhetoric that the Ukrainian "neo-Nazis" are persecuting everyone, including citizens of EU countries.

"Information must have an effect, the main thing is not to have a better argument. Information should intimidate people, buy loyalty, undermine, lead to disagreement. Information has no ideological or intellectual value. It can take and apply ideology, for example using neo-fascists, or Eurasians when needed, however, it is simply a means and in itself is useless ”(5), explains researcher, writer and journalist Peter Pomerantsev when discussing Russian propaganda in the post-Soviet space.

Typically, during a similar propaganda war, two methods are used, one according to which all these stories may be theatrical or staged, on the other hand, there may be realistic footage, only selectively, which is half-truth effect-oriented, which is a total lie.

It is interesting how they explained the unsuccessful Russian war effort in Russian propaganda, for example, the so-called Donetsk war. The president says that more than 50% of Ukrainian "gangs" have and the Russians are not achieving enough military success because the Ukrainians have sheltered the people as "living shields", while for the Russian military people's lives are precious

and do not attack. Thus was created the myth of Russian philanthropy and the explanation of failure.

Russian journalists report that the Russian military is creating humanitarian corridors for civilians from all over the city. However, they are being shot in the back by Ukrainian fighters because they consider people to be "war dirt", showing people in the scene declaring themselves refugees from these cities and confirming the same. Russian propaganda constructs are often built on unconfirmed, unverified information presented by Russian media outlets through interpretations, as if by a series, which are conveyed by respondents in their stories. This process is also called gossip in communication science.

We also see the blocking of information by the ruling structures, and then revealing it as a result of some "appropriate processing" in the propaganda process of the Russian government. As the public interest in this issue is very high, the information that is beneficial for the government is disseminated to the maximum. The theoretical construct of such efforts lies in the fact that it allows to provide a unified interpretation of the facts that have taken place and is substantively a means of mass zombies of people (15).

It is one of the most effective means of informational propaganda - the tireless repetition of the same evidence to get used to it and start accepting it not with the mind but with faith. A person always seems more confident in what he has memorized, even if it is remembered as a result of a purely mechanical repetition of a commercial and a song.

Ladislav Bitman describes - In order for the target audience to receive anonymous or unreliable information and consider it credible, the latter need to be adapted to their opinions, biases and beliefs (8, 56).

While during the information war, as I said, it is very difficult to distinguish between lies and truth, there is an opportunity to find a share of factual data in the information war as well, these are factual figures. For example, Ukrainian sources presented a video series of Russian soldiers recounting how their military units were destroyed, how the Ukrainians were treated moderately during their captivity, how each of them was deceived as if they had been brought to the border for training, and in fact went straight to the front that they were massacring civilians and asking family and friends to come out in Russia to protest.

Clearly, in theory, here too there is a risk that the one-sidedness of the information will not paint a complete picture, the rest is already in the context of political positions. For example, when we talk about the wars waged by Russia in Ukraine and Georgia, we are talking about data that is no longer controversial in the international community. It is the sovereign right of countries to choose their own partners and international organizations; Georgia and Ukraine are no longer considered spaces where Russia's "truth" can be found (which, for example, were still controversial in 2008).

During the active phase of the information war, experts distinguish several factors: it is the perfection of the **"enemy icon"** (such, in this case, could be NATO, Washington or their "puppet" local government). **Presenting the threat more than it actually exists and introducing a panicky fear of its consequences** (hence, the stage of arrogance enters: "If we still have to lose, is it worth the risk?" **Belief in the invincibility of the opponent**; when, despite the correct perception of evil, you still prefer to give up, because you always remember, you are poisoned by the invincibility of the enemy and the images of the consequences of the war are frightening (6).

"Manipulating a news event" - this is an artificially created information spectrum that is effective and well adapted to public weaknesses, which affects not the rational - but the irrational beginnings of people, so it is delivered to the viewer in different ways, so-called information, which

is calculated that the viewer is vulnerable on an irrational level, therefore the distorted information is provided not to his mind for judgment, but without judgment it fits into the viewer's brain ...

Modern media can often not only be considered as a means of reflecting an event, but it also exists as a means of creating public opinion. Not only news programs but also a complete software network take part here. It is a whole system of messages or messages that affect the ordinary viewer in various ways, including indirectly, and form public opinion (1).

Results of the research

As part of the results of the study, I should clarify that the observation covered the period of the Russian-Ukrainian war from the beginning to the middle of April. While processing the report, the Russia-Ukraine war is in progress, which may change with some data at the time of submitting the report. However, if we take into account the fact that the basic stylistics of Russian propaganda has not changed substantially since Soviet times, and Soviet propaganda, in many respects repeated the World War II-era Hebelsian or other instruments, and in the recent past, including the war against Georgia, the report does not substantially change the main aims and findings of this study.

In the Russo-Ukrainian War, by researching Russian news and political talk shows and by exposing propaganda methods, we can identify some of the principles by which Russian media outlets dictate what they do from the government space, creating key messages based on the following constructs:

“ Ukrainian government and fighters ..." (Options: neo-Nazis, alcoholics and drug addicts ... radicals with extremist views ... etc)

"Ukraine is financed by foreign services ..." (Options: foreign special services, international terrorist centers ...)

"The goals of the Ukrainian government are ..." (Options: war in the country, discrimination against the Russian-speaking population, creation of a neo-Nazi ideology, creation of a negative image of Russia in the world ...)

"Russia ..." (Options: liberate the Ukrainian population, the population of Donbas and Lugansk from the neo-Nazi regime offer dialogue to Ukraine, demonstrate readiness for constructive dialogue, do not receive ultimatums ...)

"Russian soldiers ..." (Options: fight relentlessly for the liberation of the Ukrainian population, act adequately to the situation, use appropriate force and means, disobey the population, help the peaceful people of Ukraine, bravely oppose the Ukrainian neo-Nazis ...)

Under the influence of these word constructions and means of communication, a person rarely manages to protect himself from the corresponding pressure. Proper construction is also used to create a proper character in the community.

Consumers of Russian propaganda were harassed this time and mostly targeted Russian citizens, in contrast to Russia's war against Chechnya, where Russian propaganda was able to turn Chechen fighters into terrorists in the eyes of the world, also in 2008 against Russia in Russia, where Russian propaganda was able to bring controversy and Georgia could not adequately defend its own truth. However, in the war waged by Russia on Ukraine in 2022, Russian propaganda became much more tangible to the world community, and the sphere of influence of Russian propaganda was narrowed only to its own citizens.

Conclusion:

Propaganda effects have changed in the components of the active phase of the information war in the Russian-Ukrainian war. Ukraine managed to weaken **its belief in the invincibility of the adversary**. Russian propaganda, especially in no post-Soviet country, has perfected the **"enemy icon"** for the European Union and NATO (Belarus is a special exception), however, in the retaliatory information war in Ukraine, this component increased against Russia, partly in Georgian societyThe Russian information war (perhaps with the experience of 2008) managed also **to present the threat more than it actually exists and to instill a panicked fear of its consequences**, towards Russia. However, the latter is also debatable in this case.

Russian information propaganda uses the same constructs against Ukraine as, for example, in the war against Georgia in August 2008. In a general comparative analysis, we see almost identical production formulas for propaganda messages, where variables are changed by specific details but not by substance.

Ukrainian sources refer to the factual data in the information war, while Russian sources - to interpretations and manipulations.

In general, in terms of the propaganda aspect of the information strategy in the context of the Russia-Ukraine war, it must be said that today, as in many eras, propaganda tools are used.

The concept of Russian propaganda essentially replicates the propaganda tools of World War II. However there is essential news here in technology, viral spread and video clips, myths and so on. In creativity, including humor information policy, which is distributed in the form of processed, edited videos and photos, and social networks are actively used as a space for coverage and information dynamics in addition to traditional media (television, radio, print and online media).

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SCOPE OF INTERNATIONAL COOPERATION AND ASSISTANCE IN FORENSIC BALLISTICS

Giorgi Dzindzibadze
Grigol Robakidze University

Introduction

The origins of forensic ballistics are related to the invention of firearms and their use not as military and hunting purposes, but as their use as a weapon of crime. According to one of the textbooks, forensic ballistics was originally developed in conjunction with forensic medicine, and it studied the injuries inflicted on the human body. (5, 171)

Forensic ballistics is an integral part of forensic science to uncover factual data on acts committed using firearms. The main task of the ballistic examination is the examination of firearms and ammunition and the events caused by the accompanying processes - shooting situation, circumstances, technical condition of the weapon, suitability for shooting, ammunition, identification of bullets and cartridge cases.

The achievements of technical science are used to study these objects and events, first of all such military-technical science as ballistics, as well as methods specially developed for forensic research. Modern methods of both physical and chemical research are widely used in forensic ballistics.

Ballistics - The science that studies the firing event, the movement of a bullet while firing from a firearm. Divided into internal, external and terminal ballistics. Internal ballistics studies the movement of a bullet in a barrel channel during firing and the processes that accompany the firing of a firearm. External ballistics studies the movement of a projectile in the air, terminal ballistics studies the movement of a projectile after impact on an object. The subject of forensic-ballistic examination is the condition and properties of firearms, ammunition, Identification of firearms by bullets and cartridge cases. (1, 5)

To conduct these researches, specific rules are set out, which are incorporated in the Procedures Manual. Manuals of procedures may differ not only for expert institutions in different countries, but also for expert institutions operating in the same country, but most importantly, they should be based on scientifically proven research methods and general principles developed on the basis of international consultations.

In modern times, the proper and procedural examination of these facilities is, in many cases, crucial to the proper conduct of the investigation. It is also important to exchange views on the methods and principles of modern research within the country or in the international arena, especially given that new weapons and ammunition are being produced on a daily basis, and comprehensive information about them is mandatory, otherwise full-scale research cannot be done.

Experts from different countries turn to each other for help, not only to improve the manual of procedures, but also for specific assistance related to a specific criminal case. There are general consultation issues as well as specific criminal cases on which international assistance can be provided, but there are cases when it is impossible to consult and help, directly, due to the physical absence of the object to be examined.

This report addresses the issues of when assistance and advice can be provided and when it is not possible, as well as the specific reasons for the lack of assistance and ways in which international mutual assistance in the field of ballistics can be better and more effective.

2. Forensic–Ballistics Examination Objects and International Cooperation and Assistance

Firearms

As mentioned above, forensic ballistics studies firearms, ammunition, bullets, and cartridge cases, among other things. It should be noted that forensic ballistics studies and research hand firearms, unlike to military ballistics, and ammunition designed for such weapons.

When examining a firearm, it must be determined whether the weapon is in good working order and whether it is suitable for firing. The issue of Inability may relate not to the weapon as a whole, but to its individual parts, in particular to the striking mechanism. According to the general methodology of conducting forensic examination, the expert examination of the weapon begins at the preliminary stage of conducting the examination. According to the parameters, the weapon is divided into two categories: short and long firearms. A short firearm with a barrel length of less than 30 cm or a total length of less than 60 cm, and a long firearm barrel length of more than 30 cm or a total length of 60 cm. Note: The length of the barrel of the weapon is measured from the rear position of the barrel chamber to the front of the barrel (without compensator, except stationary compensator), and the total length of the weapon is measured from the rear end of the construction (excluding butt) to the front of the barrel. (12, 28) A similar entry is made by the Council Directive of 18 June 1991 on the control of the acquisition and possession of weapons. According to which „short firearm“ means a firearm whose barrel does not exceed 30 centimeters or whose total length does not exceed 60 centimeters. (3, 51-58) In addition to weapon settings, the type of weapon must also be determined. The type of object to be examined, is a pistol, a revolver, a rifle, a carbine, a machine gun, is it smoothbore or rifled. All of this is of great importance, since under criminal law, in some cases, liability is determined by the type of weapon. The expert should investigate and determine the suitability for firing a firearm. The prescribed procedures are similar in almost all expert institutions.

Experts and scientists from different countries agree that firearms research is a complex process. First, the type of weapon must be determined, its individual details must be examined, the manner in which the firearm is made must be determined, the relevant ammunition must be determined, and the suitability for firing the weapon must be determined. (9), (11), (18) Only after this complicated process does the expert write a concrete conclusion. Therefore, the examination of firearms is a process when it is impossible to make a conclusion without the examination weapon itself.

Information on such issues can be exchanged with other experts only on the research methodology, different parameters, research sequence, and the conclusion should be made only by the expert who directly examines the weapon.

In the letter of March 18, 2021 we read: „The police would like to learn more from your organization experience regarding the identification of weapons from videos and photos. One of the challenges of forensics in recent years is the field in question. Social networks are flooded with media of all kinds that include documenting various offenses and using firearms. When the weapon is caught along with the digital media the Israeli forensic Division tend to compare the photo to the object. The Israeli forensic Division would like to learn how the forensic Division in your country tends to act when the object is not caught for comparison, when it comes to

weapons or cannabis inflorescences and Then the need arises to write a forensic review based solely on the photos. Therefore, we ask you to answer the following questions: In the cases described, is an expert opinion of a forensic expert written? What is his area of expertise? Do you use a hierarchy of conclusions? Do you know of any legal precedents in the world?“ (12) As mentioned above, firearms need a complex research. Using photo and video files, it is only possible to make some assumptions about what type of weapon is in the photo or video, but based only on the photo and video, we will not have a categorical conclusion. Nowadays, there are copies of many weapons that are very similar to their originals. Also, many blank weapons are made that are exact copies of the originals but are not firearms.

In the world today, the standard of evidence in court is high, therefore, only an approximate conclusion can not be used as evidence in court. It is possible for an object in a photo or video to look like a firearm, but, as mentioned above, a categorical conclusion cannot be written without a physical examination of such an object.

Unlike identification issues, international cooperation and sharing of experience on procedural issues is possible. When the Operational-Forensic Department of the Ministry of Internal Affairs of the Republic of Kazakhstan was considering the possibility of studying international experience and the development of ballistic records, many countries, including Georgia, have been asked to share this knowledge. In addition to various standards and methods, they were also interested in the principle of operation of automated comparative systems. (26) Of course, international relations and sharing of experiences on such issues is possible.

Therefore, as we have seen, there are issues in ballistics that can be discussed, resolved and consulted within the framework of international assistance. There are also issues that can not be remotely addressed without an object of research. Consequently, whether it is possible to provide assistance and consultation should be decided on the basis of a specific issue.

Ammunition

For forensics, ammunition for firearms (cartridges) is a multi-component, constructively single-action object with a projectile (projectiles) designed for mechanical damage to the target from a distance when fired from a firearm. (1, 57) Cartridges for modern firearms have the following basic elements: cartridge cases, primer, shooting elements and gunpowder. (19, 10) The shooting elements differ from each other in form, composition and purpose. (16, 6) For example, military cartridges with steel core can hit the target at a long distance and more effectively than conventional bullet cartridges. (20, 112-113)

The main purpose of the investigation is to determine the compatibility of the set of cartridges (ammunition) marks with the set of ammunition marks of a certain handgun - by type, caliber or their structural elements, also, to determine the suitability of cartridges for firearms.

Among many other issues that need to be resolved as a result of methodological research on ammunition, it is necessary to determine whether they are hunting, sport or other purpose cartridges - their intended purpose, (12, 14) whereas certain categories of ammunition are allowed in civilian turnover, while some are not. The list of permitted and prohibited ammunition is varying for different country, depending on their legislation.

In Firearms-Control Legislation & Policy, analyzing the approach of 18 countries, including the European Union, to the purchase and storage of firearms and ammunition and similar issues, the Council of Europe Directive is analyzed, which sets minimum standards for EU member states. All countries surveyed regulate the type and quantity of firearms and ammunition that can be

acquired or possessed by license holders. The European Union (EU) Directives, which lay down minimum standards for Member States, ban the sale and use of explosive military missiles and launchers; automatic firearms; firearms disguised as other objects; ammunition with penetrating, explosive, or incendiary projectiles; and pistol and revolver ammunition with expanding projectiles. (8, 13) The nature of the material with a penetrating core is defined by the Council Directive of 18 June 1991 on control of the acquisition and possession of weapons, namely, ammunition with a penetrating core means ammunition for military use, when the shell (bullet) has a jacket and a hard steel core. (3, 56)

When examining ammunition, it is necessary to determine the damaging power of the bullet. In the case of factory-made cartridges, it is not necessary to determine the damaging force, because, it is implied that they have this power, if they are not damaged. Unlike factory-made cartridges, it is necessary to determine the damaging force of handmade cartridges. It is essential that bullets of such cartridges have a damaging power of 0.5 joules per square millimeter. (12, 16)

Georgia is one of the countries, where firearms are removed from free civilian circulation (15, 589) and the purchase of certain categories of firearms, with the right of storage or carrying, is possible only on the basis of a special permit issued by the Service Agency of the Ministry of Internal Affairs. After registering the weapon, it is possible to purchase ammunition for this weapon. Therefore, there are frequent cases when citizens prepare firearms and ammunition. Firearms are mainly made by remaking other weapons, for example, from blank weapons. Ammunition is mainly made by reloading empty (starting) cartridges in a homemade way. It is therefore necessary to determine the damaging force of such ammunition.

On October 5, 2021, a letter arrived from Interpol of Malta stating: „Our criminal investigative units are investigating an altercation incident between two persons, during which at least a firearm was discharged. Further searches in several apartments revealed more items in relation with criminal activity. Scene of Crime officers were also on the scene to assess, document, preserve and collect any forensic evidence on the scene of the alleged altercation. As a result, two handgun cartridges were discovered, one discharged and another live. Preliminary ballistics examinations on the live cartridge revealed that this type of ammunition may be home manufactured, and modelled on the 9mmPA (blank) ammo cartridge, with the difference that it is loaded with a small steel BB at the tip instead of the usual green plastic cover found in blank ammunition. No headstamp is apparent on the base of the cartridge, which is the rimless type. Therefore, we kindly ask you to check with your relative databases/intelligence sources if at any point in time you have encountered similar ammunition, and also if you may provide some information regarding its possible source“. (22) Photos were also presented along with the letter.

This is exactly the case, when help is possible in international relations. In this case, the author of the question was consulted and we also indicated exactly how these objects were made, we also pointed out that according to our procedures it was necessary to determine the damaging force of this ammunition. This is the case when you can help an expert with consultation, but the final decision he has to make based on specific research.

There are also cases when consultation is sufficient and no research is necessary. For example, the letter from Interpol of Kiev dated October 7, 2021, when they were interested in what the inscriptions on the cartridges meant. (23) In this case, even without examining the cartridges, it is possible to determine the meanings of the factory markings on them, using special catalogs and reference data.

So, even in the case of ammunition examination, it is possible to provide some international advice and assistance, in some cases in full, without research objects.

Cartridge Cases and Bullets

Often the most serious crimes are committed with firearms, while in most cases firearm is not taken from crime scene, so comparing the bullets and cartridge cases presented in these cases with each other and the experimental bullets and cartridge cases obtained from weapons removed from other cases is often grounds for opening or merging different criminal cases.

As we can see, among other research objects, the investigation of bullets and cartridge cases is of great importance for crime investigation. Bullets and cartridge cases are examined by ballistic examination. Their research is peculiar, complex and time consuming. In order to save time, comparative systems based on modern technologies have been created, in which algorithms are integrated. Despite their imperfections, they still play a major role in modern ballistics.

The problem of identification involves, first and foremost, the observation and perception of data, as well as the proper evaluation of data. The expert should be able not only to identify relevant data, but also to analyze the significance of the characteristics in relation to identification. The process of identification is to identify similarities and differences. It has been established that there are differences in the marks left by a particular firearm and there are similarities in the marks left by different firearms, so the expert should identify both aspects. (10, 102)

Details of weapon, made of relatively durable material, affect the relatively soft metal of the cartridge case and bullet, such as firing pin impression on the primer, breech face marks on the primer and bottom of the cartridge case and etc., which makes it possible to identify the cartridge cases on the basis of individual marks. (18, 176) This micro-relief can also be developed by a defect of the tool used to make the weapon detail. (9, 36)

So, identifying cartridge cases and bullets requires quite complex procedures, which in turn depends on the knowledge and experience of the expert. The development of modern digital technologies has made it easier for experts to determine the probable search group of masses. Automated ballistic search software tells us the approximate answer, which are eventually checked by an expert. Similar programs are used in many countries around the world, also the Forensic-criminalistics Department in Georgia.

Ilker Kara writes about automatic comparative systems and notes, that examination of forensic ballistics evidence yielded by the conventional method continues despite practical difficulties. Firearm identification system is an extremely advantageous method in the examination of evidence and classification of compared incidents. (13, 775-781)

IBIN is a platform for the large-scale international sharing and comparing of ballistics data. In artnership with Ultra Electronics Forensic Technology, this network connects member countries or territories that use IBIS and enables the cross-border exchange of ballistics data, taking the IBIS system from a national to an international level. More specifically, IBIN enables INTERPOL member countries using IBIS technology to submit ballistics data to a centralized database for effective cross-border comparison enabling international „potential hits“ while providing maximum flexibility and security. When an IBIN user uploads ballistics data into the national IBIS system, a copy of the data is automatically sent to one of the IBIN servers unless the reporting officer indicates otherwise. Copied data are not automatically correlated into the system. A ballistics expert must manually request a search in IBIN and indicate which countries and/or regions to correlate the data against according to the investigative leads of the case. A ballistic expert only correlates against the entire database under rare circumstances, as doing so creates additional workload for the ballistics expert. (4, 9-10)

There are numerous ballistic comparison systems in the world today, for example: „Balscan“, „IBIS“, „Evofinder“, „Arsenal“ and etc. All of them have passport data, which gives instructions for using these programs and the features that they have. We read in „Balskan“ instructions that it has computer control, high quality devices and a camera, can scan objects in 2D and 3D format, auto Focus, an auto-search in the database, network function of work and etc. (2, 2) We read in „IBIS“ instructions that High-resolution 2D images and precise 3D topography offer remarkable viewing capabilities and useful alternatives when analyzing cartridge case and bullet markings. An extensive array of viewers and functions assist with the identification of similar candidates. High-level analysis of correlation results and visual comparisons allow rapid elimination of non-matches. Powerful visualization tools go beyond conventional comparison microscopes to ease the recognition of high-confidence matches. Indeed, matchpoint increases identification success rates while reducing efforts required for ultimate confirmations. It has network function of work and etc. (14) We read in „Evofinder“ instructions that this technology provides the best solutions for the routine daily tasks faced by ballistic examiners all over the world. The technology integrates all advantages of the both well-known technologies applied in ballistics – traditional 2D and popular 3D. To raise the effectiveness of computer ballistic expertise by amplifying the 2D technology with additional information about 3rd coordinates of specimen surface points, namely, to produce 3D object surface presentation on the monitor screen for manual comparison and improve correlation results. The technology is based on the Evofinder® “frame-fragment” method and inherited all its comprehensive facilities – magnificent quality of digital images for objects under ballistic examination, simplicity of operation and effective algorithms of auto searching procedure. (7) It is written on the official website of „Arsenal“: „Papillon offers the highly automated and comprehensive solution for investigation of firearm-related crimes. Consisting of our versatile ballistic scanner bundled with our state-of-the art software, it enables the acquisition, comparison, and automated identification of bullets and cartridge cases. Advanced visualization and analytic tools reduce time for ballistic examination and comparison process. Our proprietary software algorithms, based on advanced concepts in neural networks, image enhancement, data mining and massive parallel processing, enable our customers to cost-effectively achieve industry-leading accuracy rates and performance.“ (17)

The availability of this software is very important as one firearm can be used to commit a crime in several countries. In such cases, it is possible to exchange information on these crimes and international cooperation, It is possible to combine such crimes. Still, there is a very big problem. As studies confirm, IBIS and other ballistic comparator programs cannot work in one system. All of them have an individual algorithm and individual scanner, which scan objects in various formats. Accordingly, if all countries haven't to the same system, they will not be able to help each other and, it is impossible to compare objects with each other using photos. Nowadays, Interpol unites 194 countries, but most of them do not have an IBIS program. Such countries are Turkey, Russia, Germany, Czech Republic and others, including Georgia. Our country has a program „Arsenal“, consequently, we do not have access to the IBIS system and in this direction, we cannot cooperate with Interpol.

So, compatibility issues arise between systems due to the use of different file formats, which in turn render data sharing problematic. (6, 384-393)

It should be noted that these programs have improved capabilities for ballistic identification, but due to their incompatibility with each other, often different countries can not help each other. So, our expert body could not help experts from other countries, when they asked us to compare photos of bullets and cartridge cases to our automatic comparison system. (24) (25) It would be a great opportunity for international cooperation in ballistics, if different automated ballistic systems

were compatible with each other. It is also possible to create software that will make automated ballistic search systems compatible with each other, or a program that will format an image taken by a ballistic scanner into a compatible format with another program. It will all be a step forward for international cooperation and assistance in ballistics.

Conclusion

As mentioned above, forensic ballistics is an integral part of forensic science to uncover factual data on acts committed using firearms. The main task of the ballistic examination is the examination of firearms and ammunition and the events caused by the accompanying processes - shooting situation, circumstances, technical condition of the weapon, suitability for shooting, ammunition, identification of bullets and cartridge cases.

An expert in ballistics operates on the basis of universally scientifically proven methods, also on the basis of procedures in his country. In modern times, the proper and procedural examination of these facilities is, in many cases, crucial to the proper conduct of the investigation. It is also important to exchange views on the methods and principles of modern research within the country or in the international arena, especially given that new weapons and ammunition are being produced on a daily basis, and comprehensive information about them is mandatory, otherwise full-scale research cannot be done.

Experts from different countries turn to each other for help, not only to improve the manual of procedures, but also for specific assistance related to a specific criminal case. There are general consultation issues as well as specific criminal cases on which international assistance can be provided, but there are cases when it is impossible to consult and help, directly, due to the physical absence of the object to be examined. In this regard, we have discussed three areas, that deal with firearms, ammunition and cartridge cases and bullets.

In the field of firearms, we have seen that it is possible to provide international assistance on issues of a consultative nature, for example, such as types and principles of action of firearms, rules of manufacture, caliber, basic details, peculiarities of research of handmade weapons, general procedural rules. As for the specific weapon, it is impossible to write a conclusion without examining it directly, except for advisory and probable instructions.

As for the cartridges, as we saw above, in one case the author of the question was consulted and we also indicated exactly how these objects were made, we also pointed out that according to our procedures it was necessary to determine the damaging force of this ammunition. This is the case when you can help an expert with consultation, as in the case of firearmsbut, the final decision he has to make based on specific research. There are also cases when consultation is sufficient and no research is necessary. For example, when experts from another country were interested in what the inscriptions on the cartridges meant. In this case, even without examining the cartridges, it is possible to determine the meanings of the factory markings on them, using special catalogs and reference data.

As we have seen, the most fruitful international assistance in ballistics is possible by sharing information about bullets and cartridge cases taken from the scene, but it seems that this is not available for all countries, as different countries use different models of automated ballistic comparison systems, whose image formats are not compatible with each other.

So, as we have seen, there are issues in ballistics that can be discussed, resolved and consulted within the framework of international assistance. There are also issues that can not be remotely

addressed without an object of research. Consequently, whether it is possible to provide assistance and consultation should be decided on the basis of a specific issue.

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COVID-19 AND DISTANCE LEARNING - CHALLENGES AND DIFFICULTIES OF THE GEORGIAN EDUCATION SYSTEM

Nino Gorgiladze
Grigol Robakidze University.

Introduction

The Corona Virus (Covid-19) has been discovered at the end of 2019. (16) Because of the rapid spread and severity of the Covid-19, it was declared as a Pandemic in March of 2020. (30), (31)

Social distancing and quarantine appeared the best way to avoid or decrease disease spreading, (2) and most institutions worldwide, including the education facilities, were forced to continue their activities on the online platforms. (1)

Distance education is not novel and is widely used in different universities worldwide. Many highly developed countries have adapted distance learning for a long time. Accordingly, the system in those countries is much more improved and considerably effective. Some of the universities have complete remote educational programs. (20), (5) 81% of US universities offer at least one DE course to students, Turkey also has good experience in distance learning. (24), (8)

Unfortunately, Georgia has no experience in distance education. Before the pandemic, there was a single record about e-learning at the legislative level, which first appeared in 2016. (8) The pandemic crisis led to the necessity of a digital revolution, including a complete change of the teaching-learning method approaches. Consequently, "Distance education" as the new term has appeared in the Law on Higher Education. (11)

Before the COVID-19 pandemic, learning strategies mostly in all academic study programs of Georgian universities remained face-to-face in the classroom, using widely approved teaching methods where e-learning participated only in a limited way. The education system used e-learning mostly to transfer and receive learning materials and homework using different platforms. (11)

As the only recognized form of education was “face-to-face”, distance learning did not participate in the Georgian education system. Besides, there has been a widespread perception in society about the ineffectiveness of distance education. Accordingly, there was no demand for such a service, and most educational institutions focused on the Classroom method rather than distance education. (13)

The low mobility of the population is another reason distance learning did not play an influential part in the Georgian education system. High mobility creates a notable necessity for distance education. The greatest obstacle is the poor access to the Internet and computers, especially in rural areas. (22)

Closing all educational institutions was assumed a temporary measure for one - spring term of the 2019-2020 academic year. It seemed so, but after the new incidences dramatically increased, which happened near the start of the new academic year (2020-2021), the Georgian government extended the regulatory measures until the situation rectifies. (14) Return time to the classroom was supposed to be October 1st (10) but in vain. Now, from today's perspective - in the middle of the term, it seems endless.

Due to the urgency of the issue, the scientific paper aims to identify the challenges of the Georgian education system and estimate students' attitudes and perceptions regarding distance learning.

Keywords: Emergency remote education, Covid-19, Challenges of the education system

Background

Information technologies perform a significant role in humans' lives. They affect almost everything people do in everyday life, as well as influence the future of humanity. (6) Thus, technology has penetrated all the areas of human life. The education system is no exception.

Distance education (DE) is not a new phenomenon. The historical roots date back to the 1700s when delivering learning content of courses by email began. (4)

According to the dictionary, distance learning is the type of education when the learning process runs remotely, using digital technologies, where students and teachers do not meet face-to-face in the classroom. (30), (18)

The 1990s and 2000s were optimal for DE evolution. Herewith, distance education has regularly been viewed as a good alternative but not as a principal model that guarantees the steadiness of instructional activities. (1), (23)

There are various opportunities worldwide to apply and obtain a corresponding academic degree in different universities of the world. The conjunction of information and communication technologies brings new possibilities and benefits that allow students to study at work or a great distance and obtain desired knowledge. (7), (8), (20)

Around the world, educational facilities endeavor to implement information and communication technologies in the education process and digitalize it. Numerous new strategies fundamentally change traditional teaching methods and approaches that make the 21st-century education system super-modernized. Innovations and new teaching approaches made the teaching process relatively easy for both academic staff and students. (4)

In Georgian law on "Higher Education", e-learning is defined as "the study process or a part thereof that does not require the presence of a student and the personnel of a higher education institution simultaneously at a certain location, based on modern information and communication technologies and organized by a higher education institution for persons in the territory of Georgia to qualify based on the higher education programs accredited in Georgia. Appropriate approaches and methods for planning the curriculum and organizing and administering the study process are required for providing e-learning". (11)

After the global acceptance of the social distancing policy announced by WHO and the "lockdown" decree by governments in most countries, educational facilities appeared in front of unaccustomed conditions, where they had to close their doors and pass from face-to-face teaching methods to the remote one. (1), (25) For some institutions, the emergency transition into distance education was smooth, while others responded with a crisis-response migration process and appeared in front of the stressful condition. (1), (15)

Distance education in response to the emergency crisis differs from well-planned distance learning experiences. After discussing the terminology, the academic community agreed that "emergency remote teaching" (ERT) and "emergency remote education" (ERE) are relevant alternative terms to contrast them with the well-established online/distance education. (15), (29)

Before the COVID-19 pandemic, learning strategies mostly in all academic study programs of Georgian universities remained in-person, using widely approved studying methods, using the e-learning only in a narrow way for transferring and receiving learning materials and homework using the different platforms. (13)

After the COVID-19 pandemic orders, due to social distancing and the "stay home" command, the learning process stopped. (12), (9), (14) Afterwards, all courses using widely approved methods (CL, CBL, QBL, PBL) transformed into full Emergency remote teaching. Nearly all Teaching-Learning Methods (lecture, seminar, group discussion, case analyses) use several online platforms for assessments. In some universities, practical sessions and lab courses were replaced with video simulations and live presentations or postponed until the university is ready to return to classroom learning. (10), (8)

The Georgian law on education determined e-learning only for the first and second levels of higher academic education. Thus, the Covid-19 pandemic and following crisis changed everything, and now, all levels of high education are digitalized and covered by emergency remote teaching. (11)

To ensure the quality of learning in the state of emergency, the Georgian national center for quality development in education, elaborated numerous recommendations and urged high educational institutions to follow them: (19)

- Advice for institutions concerning quality assurance in e-learning; (27)
- Alternative evaluation methods in e-learning; (28)
- New educational reality – terminology, challenges, recommendations; (3)
- Considerations for quality assurance of e-learning provision. (17)

Research Methodology

Setting and Population

According to the National Statistics Office of Georgia, during the 2019-2020 academic years, the total number of enrolled students in different programs of high educational institutions was 148 803 (state- 95 535, private-53 268). Where the number of students assigned for Bachelor's programs is 111 869 (State-72 938, private-38 929) and for Master's programs - 33 925 (State-20026, private-13899). (21) Before the pandemic, the students enrolled in these programs had been acquiring their theoretical knowledge and practical skills with the traditional – classroom learning method.

Sampling procedures and participants

To obtain information on students' perspectives and academic needs, and to evaluate how distance learning has affected their academic performance due to the COVID-19, a sociological study was conducted.

Given the fact that not all the students and even academic staff were familiar with distance learning before the pandemics; also knowing that some students have trouble with Wi-Fi access and this learning method (emergency remote teaching) was new for them, the purpose of the study was to:

1) Identify the challenges students were facing with their study process as a result of COVID-19;

2) Estimate students' attitudes and perceptions regarding distance learning;

3) Identify the positive and negative aspects of distance learning caused by COVID-19.

The study took place in October 2020. Study participants were undergraduate and graduate students from different education programs of the Georgian universities.

The online questionnaire link was sent via social networks as well as by e-mail. There was strong encouragement for filling out the questionnaire, but their participation remained wholly voluntary. No name and other personal information were required from participants; the study was completely anonymous.

With an explanation announcement, participants were informed about the study aim and their freedom of choice of participation.

Questionnaire

The study questionnaire comprised 18 questions with multiple-choice and open-ended, formed into four domains: 1) General information, 2) Experience and Preference, 3) Effectiveness, and 4) Satisfaction.

Analysis

For the data analysis, the IBM SPSS 22 statistical software was used. Data was collected in Google forms, then cleaned and exported to SPSS for analysis. Univariate, bivariate, and multivariate analyses were conducted for quantitative data. All missing quantitative data were excluded from calculations.

Comments and outcomes of participants are also analyzed as qualitative data and presented in the paper.

Study results

General information

Overall, 391 students from 13 Georgian universities (9 - state, 4 - private) participated in the study, from where 33 were excluded as the missing quantitative data, and 358 forms were valid for the research. Of this number, 92,7 % were undergraduate students, 5,0 % of graduates, and 2.2 % do not answer the question. The majority of the students (68,7 %) identified themselves as females. [Table 1]

Table 1 – General Information

Statements	**Bachelor N (%)**	**Master N (%)**	**Missed N (%)**	**Total N (%)**	**Standard deviation**
Degree	332 (92,7)	18 (5,0)	8 (2,2)	358 (100)	**0,221**

Statements	**Female N (%)**	**Male N (%)**	**Total N (%)**	**Standard deviation**
Sex	246 (68,7)	112 (31,3)	358 (100)	**0,464**

Statements	1 N (%)	2 N (%)	3 N (%)	4 N (%)	5 N (%)	6 N (%)	Total N (%)	Standard deviation
Study year	34 (9,5)	52 (14,5)	86 (24,0)	100 (27,9)	38 (10,6)	48 (13,4)	358 (100)	**1,459**

Experience and Preferences

75,4 % of the students did not have a distance learning experience before the pandemic. The majority of the students (63,7 %) prefer the "traditional - classroom learning method", "distance learning method" is preferred by 7,3 %, and 29,1 % choose the "Hybrid method - a combination of classroom and distance learning methods". [Table 2]

In general discussion, we could say that distance education has such benefits as more free time and time flexibility, but the study results do not meet this statement.

The responses concerning "more free time" and "time flexibility" during distance learning are split almost equally: on the statement "distance learning provides more time for full preparation", 33 % of the respondents do not agree (Strongly disagree - 8,4 %, Disagree - 24,6 %), 34,6 % of them agree (Strongly agree - 7,8 %, agree - 26,8 %) and the left 32,4 % have no firm position (neither agree nor disagree). [Table 3]

A little more than half of the respondents (54,3 %) do not consider that the distance learning process provides the flexibility of time, where they can manage their timetable; Only 16,6 % of respondents showed a positive outcome, and 29,1 % have a neutral position (neither agree nor disagree). [Table 3]

The majority of the respondents (77,1 %) do not agree with the statement that “Communication with lecturers and fellow students becomes easier during distance learning” (Strongly disagree - 31,8 %, Disagree - 45,3 %). No matter how surprising it may be for the 21st-century generation, only 4,5 % of respondents indicate positive communication outcomes, and 18,4 % of them have a neutral position. [Table 3]

Table 2 – Experience and preferences

Experience

Statements	Yes N (%)	No N (%)	Partly N (%)	Total N (%)	Standard deviation
Experience of distance learning before the Pandemic	70 (19,6)	270 (75,4)	18 (5,0)	358 (100)	0,475

Statements	Classroom Learning N (%)	Distance Learning N (%)	Hybrid - A combination of CL and DL N (%)	Total N (%)	Standard deviation
Preferences for the learning method	228 (63,7)	26 (7,3)	104 (29,1)	358 (100)	**0,9**

Effectiveness and Student academic workload

Unfortunately, the results of the quality assessment of the learning process are not pleasant. Out of valid data, 70,9 % of the students consider that the education quality deteriorated, while 24,0 % think it has not changed. Only 5,0 % regard that quality has improved. [Table 4] Accordingly, students do not recognize distance learning as efficient as the traditional – classroom learning method (78,2 %), 16,2% have an indifferent attitude, and only 5,6 % of valid responses determine its effectiveness. [Table 3]

Respondents do not believe that the learning process became easier during distance learning (62 %). 75,4% of students have difficulties in studying practical disciplines, only 6,4 % have positive outcomes, and the other 18,4 % indicate a neutral position. By the way, 70,4 % of respondents do not consider the possibility of developing practical skills during distance learning. [Table 3]

According to the results, although respondents disapprove of the distance learning process, on the question about academic performance status, almost half of them (45,8 %) said that it has not changed, 23,5 % indicates that it became worse, 17,9 % think that their academic performance has improved after the distance learning and for the other 12,8 %, it is difficult to answer. [Table 4]

Satisfaction

41,4 % of the respondents indicate having difficulties with attendance and access to the learning materials (Strongly agree - 14,0 %, agree - 27,4 %), 29,6 % do not have such problems with it (Strongly disagree - 6,7 %; disagree - 22,9 %), the other 29,1 % have an indifferent attitude (Neither agree nor disagree). Consequently, it is not strange that 58,1% of the respondents agree and they indicate distance learning as "stressful"; 21,2 % of them do not agree, and 20,7 % have no firm position (Neither agree nor disagree). [Table 3]

The majority of the respondents (64,8 %) do not agree (27,9 % - strongly disagree, 36,9 % - disagree) with the statement that "The Georgian Education system was ready to transfer to the distance learning, and this simplified the learning process". A little more than one-fourth (28,5) do not have a defined view (Neither agree nor disagree), only 6,1% have a positive outcome (Strongly agree - 2,2 %, Agree - 3,9 %), the rest 0,6 % (2 respondents) abstain from the answer. [Table 3]

Table 4. Education Quality and Academic performance

Statements	Worse N (%)	Same N (%)	Improved N (%)	Cannot answer N (%)	Total N (%)	**Standard deviation**
Compared to classroom learning during distance learning, Education Quality is	254 (70,9)	86 (24,0)	18 (5,0)	-	358 (100)	**0,571**
During distance learning, my academic performance status	84 (23,5)	164 (45,8)	64 (17,9)	46 (12,8)	358 (100)	**0,943**

On the question, after the pandemic, if they want to continue distance learning on certain theoretical subjects, the answers distributed as follows: 59,8 % of the respondents do not approve of the idea (30,2 % - Strongly disagree, 29,6 % - disagree), 21,8 % want to proceed with the distance learning, the rest 18,4 % - have no definite opinion about it. [Table 3]

Results of qualitative data analyses

In response, students provided 255 qualitative replies, which have been grouped into five broad problematic domains:

1) Difficulties related to the internet connection and other technical deficiencies (90 responses).

The majority of the respondents state a poor internet connection. Other essential factors that hinder attendance and force students to skip classes are related to the irregular electricity supply and lack or absence of relevant gadgets. Instability and failures of educational platforms, software or applications, and other resources are among the significant obstructions of the study process.

2) The learning process (89 responses)

As it is known, distance education has not been natural for Georgian students and academic staff. The pandemic forced them to adjust to a new condition.

According to the responses, it is clear that the learning process is not thoroughly suitable for students' opportunities and requirements, and even after so long, it remains chaotic and somehow unorganized. Issues related to the learning process could be divided into subdomains: Computer skills, Communication, Teaching method, Duration, Quality, Seminars, and lab classes.

"tedious", "uninteresting", "impossible for discussion", "lack of information", "superficial", "vicious circle" etc. are metaphors students used for description for learning process.

It seems that readiness and adaption to the new teaching method from the side of academic staff are not sufficient as they should be. Several responses emphasize this problem as well as difficulties in communication with lecturers and other academic staff. Computer skills from both sides - students and lecturers lead to the failure of the demonstration;

The distance learning process affects their knowledge poorly. It is hard for students to understand the topic, and gain proper knowledge and almost essential practical skills within distance learning.

The majority of the responses relate to the complaints about the practice and lab classes. "Good understanding and gaining sufficient skills in technical subjects is practically impossible in distance learning", "Online lab class - it is a disaster", "Necessary practice went down to zero"– These are some of the answers the students give to the problem, that best describes the whole point.

The evaluation system also has its deficiencies, where some of the students mentioned it as "Unfair", "Superficial", "Pretentious", "Irrelevant", and "Inappropriate". Internet problems and technical malfunctions also intensify this problem.

The time of online classes is one of the difficulties mentioned by the respondents. Inflexible and constantly changing timetables, especially early classes without awareness of the audience, affect their attendance and, accordingly, the academic performance of the students. The other responses refer to the duration. Reduced time of the classes limits deep discussions and understanding of the subject.

Transformation into a new reality and unreadiness for distance education has an impact on the educational process and its quality. Students' assessment of the quality causes worry that directly indicates its decrease. All responses related to the quality have similar formulation - "Poor quality", "Quality decreased", "Impossible to receive quality knowledge" etc.

3) Learning materials (16 responses) - Some issues related to the learning material access are: some textbooks are not available in e-form, or some of them are poorly scanned. The E-library does not respond to demands.

4) Finances (10 responses) **-** One may well say that distance learning has led to some money-saving related to transportation or food costs. Still, the university fee remains the same even though students do not attend classes, and mobile internet charges are also added to their expenses. So, the unemployment caused by "lockdown" had its impact on the economics of the countries and, of course, on the solvency of the students or their families. In a word, it caused an additional economic burden for them.

Regarding financial difficulties, the students' opinions are nearly identical, and they consider it more appropriate that fees were postponed or reduced.

5) Health and other general issues (50 responses) - Lack of physical activity and regular use of gadgets has led to a variety of health-related issues, such as irritation of the eyes and headaches, constant stress, tiredness, and constant pain of the spine. Social distance also caused several psychological problems - depression and lack of motivation. Students worry about the inability of doing accustomed routines such as physical attendance to the classes and communication with friends in real life. Related responses to this issue - "Feeling hopeless", "I just miss university and miss my friends", "It is difficult to concentrate", "I miss real communication with my friends", and so on - cause great sadness and sympathy.

Table 3.

Statements	**responses**							
	Strongly disagree N (%)	**Disagree N (%)**	**Neither agree nor disagree. N (%)**	**Agree N (%)**	**Strongly agree N (%)**	**Missed N (%)**	**Total N (%)**	**Standard deviation**
Experience and Preference								
Distance learning provides more time for full preparation With distance learning, I have more time to prepare learning materials before the class	30 (8,4)	88 (24,6)	116 (32,4)	96 (26,8)	28 (7,8)	-	**358 (100)**	**1,079**
Distance learning provides time flexibility, and I can manage my timetable	78 (21,8)	112 (31,3)	102 (28,5)	44 (12,3)	14 (3,9)	**8 (2,2)**	**358 (100)**	**1,089**
Communication with lecturers and fellow students becomes easier with distance learning	114 (31,8)	162 (45,3)	66 (18,4)	16 (4,5)	0 (0)	-	**358 (100)**	**0,826**
Students' academic workload								
Distance learning is as effective as Classroom learning	132 (36,9)	148 (41,3)	58 (16,2)	20 (5,6)	0 (0)	-	**358 (100)**	**0,864**
The learning process became easier during distance learning	92 (25,7)	130 (36,3)	86 (24,0)	42 (11,7)	8 (2,2)	-	**358 (100)**	**1,044**
During distance learning, I do not find it difficult to study technical subjects/disciplines	114 (31,8)	156 (43,6)	66 (18,4)	16 (4,5)	6 (1,7)	-	**358 (100)**	**0,914**
During distance learning, is absolutely possible to develop practical skills	124 (34,6)	128 (35,8)	70 (19,6)	32 (8,9)	4 (1,1)	-	**358 (100)**	**1**

Satisfaction								
I suffer difficulties with attendance and access to the learning materials	24 (6,7)	82 (22,9)	104 (29,1)	98 (27,4)	50 (14,0)	-	**358 (100)**	**1,139**
I do not experience stress during distance learning	76 (21,2)	132 (36,9)	74 (20,7)	56 (15,6)	20 (5,6)	-	**358 (100)**	**1,151**
The Georgian Education system was ready for distance learning, and this simplified the learning process	100 (27,9)	132 (36,9)	102 (28,5)	14 (3,9)	8 (2,2)	**2 (0,6)**	**358 (100)**	**0,952**
Distance learning can be implemented in the next semester for some theoretical subjects	108 (30,2)	106 (29,6)	66 (18,4)	52 (14,5)	26 (7,3)	-	**358 (100)**	**1,254**

Discussion and conclusion

After the Covid-19 pandemic, the digitalization of the education system has become a priority. Thus, faced with a new challenge, the only way out for the education system was a transition into emergency remote teaching.

The transition process has created significant difficulties, and one of its main reason is the unrecognition of distance education in the pre-pandemic period.

According to the study results, it is worth mentioning that the students' opinions regarding the current process are not favorable. A new reality caused uncertainty in the study process and created several obstacles, such as unsuitable study programs and learning-teaching methods for distance education, lack of e-learning materials, the inability of leading practical lessons and lab classes, as wells as low digital competence of both students and academics, internet access issues and problems related to possession of computers and other gadgets.

A complete generalization of the study results on the whole population will not be relevant. However, it should be indicated that these current results clearly show the significant weaknesses and shortcomings of the Georgian education system - The system was not ready for such rapid changes.

The transition process eliminated some significant obstacles, legislative acts were revised, a new curriculum was developed, and the process has been modified, however, the education quality issue remains a significant problem in the system.

Solving current issues requires a complex and multilateral approach that primarily addresses shortcomings of technical character. Permanent training of academic staff, improving and refining curriculum and teaching-learning methods, sharing and implementation of best practices of distance learning, and so on are also necessary.

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Immigration Proceeding Issues and International Arbitration

Author: Erekle Papuashvili Supervisor: Valerian Khrustali

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Table of Contents

Abstract

This article will focus on the expansion of expectations of the arbitration process in the cognate fields of international law and immigration proceedings.

The Immigration is one of the biggest challenges for whole world. During many centuries people from different nations were migrating and creating their own ethno-national groups, unions and collective action. Even in the twenty-first century, we have already seen multiple migrations as a result of wars, natural disasters, or a variety of other factors that may have put someone's life in jeopardy. and even the most powerful countries were not prepared to meet all of the challenges. Determining whether to allow or refuse migrants entry into their nations, as well as dealing with their legal status and rights, led major institutions, including courts, to crash, overflowing process schedules and impacting legal rulings.

Due to a lack of institutional avenues for resolving these disagreements, many governments have become embroiled in financial troubles, which have gradually dragged other key components of a sovereign country under the Domino's principle. Arbitration, on the other hand, has the best chance of resolving the aforementioned issues. Arbitration is nearly universally accepted as a neutral mode of conflict resolution under the existing framework. The pacification of judicial hatred toward is clear, regardless of the cause.

This article suggests broadening the scope of immigration-related judicial proceedings to

include arbitration, which will free local governments of burdensome responsibility and provide required assistance to immigrant in a reasonable timeframe.

აბსტრაქტი:

სტატიაში ყურადღება გამახვილებულია საარბიტრაჟო პროცესის მოლოდინების გაფართოებაზე საერთაშორისო სამართლისა და საიმიგრაციო სამართალწარმოების სფეროებში.

იმიგრაცია ერთ-ერთი ყველაზე დიდი გამოწვევაა მთელი მსოფლიოსთვის. მრავალი საუკუნის განმავლობაში სხვადასხვა ეროვნების ხალხი მიგრირებდა და ქმნიდა საკუთარ ეთნონაციონალურ ჯგუფებს, გაერთიანებებს და კოლექტიურ მოქმედებებს. ოცდამეერთე საუკუნეშიც კი, ჩვენ შემსწრე გავხდით მიგრაციების, რომლებიც გამოწვეული იყო ომების, სტიქიური უბედურებების ან სხვადასხვა ფაქტორების შედეგად, რის გამოც შესაძლოა ადამიანის სიცოცხლეს საფრთხის ქვეშ იყოს. მოწინავე ძლიერი ქვეყნებიც კი ვერ აღმოჩნდნენ მზად ამ გამოწვევისთვის. მიგრანტების ქვეყნებში შესვლის ნების დართვა ან უარის თქმა, ისევე როგორც მათ სამართლებრივ სტატუსსა და უფლებებთან გამკლავებავ, გამოიწვია ძირითადი ინსტიტუტების, მათ შორის სასამართლოების, გადატვირთული განრიგი და გავლენა იქონია იურიდიულ გადაწყვეტილების მიღებაზე.

აღნიშნული გამოწვევების გასამკლავებლად ინსტიტუციური გზების არარსებობის გამო, ბევრი ხელისუფლება დადგა ფინანსურ პრობლემების წინაშე, რამაც თანდათან დომინოს პრინციპით, ჩაიყოლა სუვერენული ქვეყნის სხვა ძირითადი კომპონენტები. მეორე მხრივ, არბიტრაჟს აქვს ზემოაღნიშნული საკითხების გადაწყვეტის საუკეთესო უნარი. არბიტრაჟი თითქმის საყოველთაოდ არის მიღებული, როგორც კონფლიქტის მოგვარების ნეიტრალური მეთოდი არსებული ჩარჩოს მიხედვით.

ეს სტატია გვთავაზობს იმიგრაციასთან დაკავშირებული სასამართლო წარმოების ფარგლების გაფართოებას არბიტრაჟის მეშვეობით, რომელიც გაათავისუფლებს ადგილობრივ ხელისუფლებას მძიმე პასუხისმგებლობისგან და გონივრულ ვადებში ემიგრანტებს საჭირო დახმარებას გაუწევს.

Key Words: Immigration, International Arbitration, Litigation, Immigrant Workers.

Introduction

Our planet earth is 4.543 billion years as Scientists say and while our ancestors have been around for about six million years, the modern form of humans only evolved about 200,000 years ago. Civilization as we know it is only about 6,000 years old, and industrialization started in the earnest only in the 1800s. (1)

Many people migrated at this time for a variety of reasons, all of which were motivated by a desire for a better quality of life and more potential for personal growth and even if the legal aspect of arranging this procedure has advanced in the modern world, there are still significant legal gaps that include a number of key concerns with relation to the expeditious processing of immigrant statuses in various nations. They are all a result of bureaucracy and the sluggish processing of immigration law- related matters.

The growth of expectations for the arbitration process in the related disciplines of international law and immigration processes will be the main topic of this paper.

Many governments have experienced financial difficulties as a result of the absence of formal channels for resolving these conflicts, which has progressively brought other important elements of a sovereign country under the Domino's concept. On the other hand, arbitration offers the best potential for overcoming the aforementioned problems. Under the current system, arbitration is almost widely recognized as a fair method of resolving disputes. Regardless of the reason, it is obvious that judicial hate has been pacified.

This article advocates extending the use of arbitration in immigration-related court cases, which will relieve local governments of onerous duties and offer the necessary support to.

What is International Arbitration

The typical process for settling civil dispute issues is through civil court lawsuits and trials. The adoption of alternative dispute resolution (ADR) methods has expanded, nevertheless, as a result of worries about overcrowded courts and it’s delayed judgments, rising litigation expenses, and the detrimental psychological and emotional effects of litigation. One of the more popular ADR procedures is arbitration. It is crucial for anyone thinking about using arbitration to comprehend how the procedure functions in the context of their goals. (2)

The most formal alternative to court system is arbitration. The contesting parties in this process make their case to an impartial third party, who then makes a decision. Both the public and private sectors frequently use arbitration to settle conflicts.

Due to its speed, cost-effectiveness, and increased procedural flexibility, arbitration is typically seen as a more effective process than litigation case. The arbiter is frequently chosen by the parties, who also have authority over some other components of the arbitration process. Judges often lack greater experience in the particular area of the issue than do arbitrators. They might also be able to make decisions with more freedom.(3)

Parties engage in the arbitration procedure freely, under the conventional arbitration concept. Their participation may be mandated by an earlier clause in a contract or by an arrangement made after the disagreement has already occurred. Arbitration provides a binding solution to the dispute by way of an arbitral 'award'. The award can be enforced internationally through the provisions of the 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards. (4)

In general, arbitration agreements specify how the arbitrator or panel of arbitrators will be chosen, the format of the hearing, the applicable procedural and evidentiary procedures, and the applicable law. The parties may seek assistance from organizations that oversee arbitrations if these specifics are not covered under the contract.(5)

For more clarity, the disputes are often considered under a foreign applicable law and resolved under the arbitration rules of the International Chamber of Commerce (ICC), the International Centre for Dispute Resolution of the American Arbitration Association (ICDR), the London Court of International Arbitration (LCIA), The World Bank’s International Centre for Settlement of Investment Disputes (ICSID), or the United Nations Commission on International Trade Law (UNCITRAL). The nature of the dispute largely determines the relevance of each set of rules. Investor-state disputes, for example, are usually arbitrated under UNCITRAL or ICSID, while the LCIA and ICC rules are suitable for virtually all types of arbitration – though the latter is more

appropriate for commercial disputes. (6)

More than 150 nations, including the majority of large nations engaged in sizable international trade and economic activities, have ratified the New York Convention, which was created under the aegis of the United Nations. Subject to some restricted limitations, the New York Convention compels the states that have ratified it to accept and enforce foreign arbitration decisions issued in other contracting states as well as international arbitration agreements. With the help of these New York Convention clauses and the huge number of signatory nations, a global legal framework that strongly supports the enforcement of international arbitration agreements and decisions has been established. The Geneva Convention on the Execution of Foreign Arbitral Awards from 1927 came before it.(6)

Advantages and Disadvantages of Arbitration

As we mentioned above, Arbitration involves settling a legal dispute without going to trial. Going to court can be expensive and time-consuming, meaning arbitration can be advantageous to many people.

Arbitration has numerous benefits over the judicial system, it might be argued. In most cases, the matter will be handled significantly more quickly. A court trial date may take many years to get, but an arbitration date is typically doable within a few months. Additionally, trials must be arranged into court schedules, which are sometimes overloaded with hundreds or even thousands of cases. However, arbitration sessions can be easily planned based on the parties' and the arbitrator's availability. Arbitration is undoubtedly effective and adaptable.

Litigation always involves a protracted process of submitting documents and motions and appearing in court for proceedings like motion hearings. In arbitration processes, the rules of evidence may not be rigidly followed, which makes it much simpler to admit evidence. Arbitration may significantly cut down on discovery, the time-consuming and expensive process that entails taking and responding to interrogatories, depositions, and demands to provide documents. Instead, the arbitrator and parties communicate over the phone to resolve the majority of issues, such as who will be summoned as a witness and which documents must be submitted.

Arbitration, as opposed to a trial, results in a private settlement, allowing for the confidentiality of the details of the dispute and its resolution. Due to the total confidentiality of all testimony, declarations, and arguments, this may be appealing for well-known public personalities or clients in commercial disputes. The public might still have access to certain potentially sensitive company information in court, even if specific records are withheld.

The arbitrator is often chosen jointly by the parties to the dispute, ensuring that all sides have faith in their ability to be fair and impartial.

Arbitration typically, but not always, costs far less than courtroom litigation. Attorney expenses are decreased since arbitration hearings are frequently finished much more swiftly than court cases. Additionally, preparing for the arbitration is less expensive than preparing for a jury trial.

On the other hand, there are some disadvantages what should be taken into account. For most, having a jury is an important right that helps prevent biases and unfairness. Arbitration eliminates juries entirely, leaving matters in the hands of a single arbitrator, who acts as both judge and jury.

Even though the arbitrator must typically uphold the law, the requirements are unclear. Instead, of strictly adhering to the law, the arbitrators may take into account the "apparent fairness" of the views taken by the different parties. This is crucial, especially if a rigorous reading of the law would favor your side.

Hearings in arbitration are typically held in secret, which may be advantageous to some. However, it is possible that this lack of transparency makes the process more likely to be biased, which may be problematic because arbitration decisions are also infrequently reviewed by the courts.

As was previously said, a courtroom trial's formal standards of process and evidence are not always followed in an arbitration. A judge or jury may not be able to consider certain information due to rules of evidence, however arbitrators are not subject to this restriction. As a result, it is possible for an arbitrator to base their judgment on information that a judge or jury at a trial would not examine, which might be detrimental to your case. On the other hand, there is no chance to cross-examine a witness whose evidence is supported by papers that include specific information from that witness.

Overall, considering both pros and cons, arbitration can easily be considered as an effective and beneficial alternative dispute resolution based on facts and long history.

Arbitration as a Method of Problem Resolution

Every time parties engage into a contract, they should think about whether to include an arbitration clause or not. However, if the parties (or their assets) are in different countries or if there is a chance that a dispute may result in complicated technical challenges, it is especially crucial to provide for arbitration.

Typically, a party will submit the other side a formal demand for arbitration to start the arbitration procedure. The parties, the disagreement, and the kind of remedy requested are all frequently described in the demand. Usually, the opposing party replies in writing, stating if they think the disagreement can be resolved by arbitration. The parties then choose an arbitrator or panel of arbitrators if the issue may be resolved through arbitration.

The "advantages and drawbacks" of arbitration are frequently discussed by lawyers. However, a party's aims will always determine whether a particular arbitration characteristic is beneficial, detrimental, or irrelevant to them. Therefore, this guide has simply arranged the following list such that the elements that frequently prove decisive in the decision-making process are at the front.(7)

The format of arbitration is often the same as that of a trial. The parties present evidence, witnesses, and documents as well as their opening and closing arguments. However, the evidentiary standards are not relevant, and there are little chances for discovery and cross-examination.

Usually, one or three arbitrators—referred to collectively as the "tribunal"—conduct arbitrations. In a legal proceeding, the tribunal is the equivalent of a judge (or panel of judges). However, as the arbitrators are often chosen by the parties (directly or indirectly through a third party or institution), the parties still have some influence over who will decide their dispute. Arbitrators in international matters are frequently extremely seasoned attorneys and/or specialists in the subject matter of the conflict.(7)

In the United States, mandatory arbitration has become more prevalent, notably in cases involving medical malpractice, court-annexed programs, and employment conflicts in the public sector. As the last phase in negotiating the terms of their collective bargaining agreements, some states have passed laws mandating vital public employees including police, teachers, and firemen to participate in arbitration. Additionally, in a number of state and federal district courts, court-annexed arbitration is now required in certain types of civil matters.(8)

The classic arbitration model is distinct from court-annexed arbitration in a number of ways. It frequently mandates arbitration rather than allowing parties to choose to do so. If the parties are unsatisfied with the arbitrators' decision, they have the right to a trial. However, in some systems, the parties may be required to pay court costs or arbitrators' fees. (9)

Immigration as a 21st Century Dilemma

Since the beginning of the twenty-first century, the world has faced many challenges. Even in the age of information Technologiesies, Due to wars in Central Asia or Europe, pandemics, economic conditions and insufficient recognition of human rights, people have to leave their homeland and move to a better country.

While world is advancing to more developed lifestyle with all new gadgets, scientific achievements, investing money and time to the idea that one day human will live in different planet than earth, approximately 3.6 percent of the world's population, or 281 million individuals, presently reside outside of their place of birth, with many of these emigrations being marked by varied degrees of coercion.

For a variety of intricately interrelated factors, a rising number of migrants are compelled to leave their homeland. In addition to economic, social, and cultural rights like the right to health, housing, or education, denial of civil and political rights against migrants can also take the form of torture, arbitrary imprisonment, or the absence of due process. The denial of rights to migrants is frequently strongly related to discriminatory laws and ingrained xenophobic or prejudiced sentiments. (10)

For instance, the US Immigration System is plagued by a long range of issues. The present rate is low historically, with legal immigration to the United States accounting for 0.45% of the population annually on average since 1820, compared to 0.35 percent in 2017. Of the 50 nations with the greatest per capita GDP in the world, the United States ranks in the bottom third for both its proportion of people who were born abroad and its net immigration rate, both legal and illegal. The

birthrate in the United States is at its lowest point ever at a time when population growth is at its slowest pace since the Great Depression. (11)

Because of where they were born—literally, where they were born—Congress treats immigrants differently. They aren't even allowed to get around this system by obtaining citizenship in another nation. No "country" (i.e., its citizens or former citizens) is permitted to acquire more than 7% of the total green cards available in a category. The reason why some Indian immigrants sponsored by their employers may have to wait decades for a green card while other immigrants sponsored by their employers don't have to wait at all is due to these per-country restrictions. (11)

Long lines of immigrants are present. Nationals from some countries must wait a very long period to immigrate, which is a sign of the low quotas and uneven treatment for various nationalities.

Currently obtaining their green cards after a 20-year wait are siblings and adult offspring of U.S. citizens from Mexico and the Philippines. Due to the huge backlog of applications that has accumulated since 1998, many who are now applying for their green cards will pass away before they get to the front of the queue. Those who are currently applying will have to wait more than a century, compared to the ten-year delays experienced by Indian immigrant laborers. These wait times are not appropriate. (11)

Eighty-eight percent of immigrants who are sponsored for permanent residency by their employers already reside in the country. On H-1B temporary visas, the majority of them arrived as temporary laborers. Many of them were included in the 85,000 temporary H1B visa count when they entered. They now count towards the employer-sponsored green card limitations since they are in the country. It makes no sense to doubly count immigrants, once when they enter and once when they seek for permanent residency, if the purpose of quotas is to control population growth or quick changes in labor market competitiveness. (11)

International Arbitration Role with the Immigration System Issues

The law has an important role to play in protecting people on the move by establishing minimum safeguards and imposing duties to protect people's rights. At the same time, it can also be profoundly exclusionary and disempowering. By upholding the primacy of the sovereignty principle, for example, it can exclude those without formal citizenship status from basic protections.

Although the procedure of arbitration is similar to that of litigation, it gives the parties involved more control. The choice of who will render an authoritative judgment in a legal dispute remains with the parties concerned. They go through the same discovery procedures as they would in a regular case, but they have the option of limiting the scope of discovery to save costs and lengthen the process.

Choosing the arbitrator is one of the main advantages of employing arbitration. A former immigration judge or immigration attorney may be selected in immigration issues. Many businesses adopt arbitration provisions because they understand the advantages of being able to hire someone with subject matter knowledge, being able to restrict the concerns, and being able to get a quicker result. Arbitration may be utilized in cases when an employee disagreement concerns an immigration issue.

Immigration-related problems can occur in a variety of work-related situations. No-match letters might lead to the inappropriate treatment of the affected personnel. Employers could have a problem with a represented union member, and unions may have collective bargaining agreements in place that safeguard immigrant employees. To gain some immigration advantages, an employee can need their employer's help.

The accelerated pace of arbitration is partly due to the restricted scope of discovery. The fact that arbitration does not depend on needing to be listed on a court docket, which sometimes takes years in immigration court, is an additional explanation for this. This enables a quicker choice to be made, which is very important in situations concerning the connection between the employer and employee.

It is helpful to comprehend the procedures, scope, and basis of labor arbitration in order to address the problems and potential remedies accessible to illegal employees. The cornerstone of labor arbitration is the collective bargaining agreement, which specifies the rights and processes for resolving disagreements and grievances on behalf of both parties.

The arbitrator does not generally have the power to override agreements between parties with public legislation. Additionally, unless the arbitration of a particular grievance is outside the purview of the collective bargaining agreement, an order to arbitrate will not be rejected. According to the Steelworkers trilogy, courts may only review arbitration results if they were rendered on a matter outside the purview of the collective bargaining agreement or if their interpretation would be in violation of a clear-cut, widely accepted public policy. Collective bargaining agreements are negotiated by the union on behalf of the employees in labor arbitration. Unions have tremendous negotiating authority in the field of employee protection since these agreements are basic in nature.

When labor arbitration is effective, it is most beneficial. Success in arbitration is described as a quick and affordable procedure where both parties gain from the arbitrator's expertise in labor law and "common law of the shop." Unions must be aware of their obligations to all of their members in order to defend illegal employees under this plan. A violation of an employee's right to organize, negotiate, or take part in other collective actions for assistance or protection by the employer is prohibited by the National Labor Relations Act (NLRA). The union is tasked with representing the employees in any disputes in addition to negotiating the conditions of the collective bargaining agreement as the chosen representative of the members. (12)

Recommendations

In these dark times, when people's fears and divisions are exploited and manipulated, and basic instincts of compassion, solidarity and humanity are shattered and cast aside, it is vital that we insist on basic protections and reiterate the principles which bind us all. (13)

Migrants in irregular situations often fear detection and deportation, and are therefore reluctant to claim their fundamental rights unless there are measures in place ("firewalls") which allow them to interact freely with public servants such as the police, labor inspectors, social workers, school personnel and health care professionals, as well as courts, tribunals and National Human Rights Institutions. Migrants should be able to claim their rights, including by reporting discrimination, violence, hate crimes, and other abuse without fear of repercussions regarding their migration status, such as being identified, arrested, detained and deported. Far from interfering with a "whole-of-government" approach, such measures allow specific departments to carry out their duties effectively, and with the wider community in mind, such as allowing people to safely report crimes to police officers, and to seek medical treatment before health conditions become chronic.

The European Commission Against Racism and Intolerance (ECRI) published guidelines in May 2016 that urge European governments to "ensure that no public or private bodies providing services in the fields of education, health care, housing, social security and assistance, labor protection and justice are under reporting duties for immigration control and enforcement purposes".

In Sweden, confidentiality rules are the same for non-citizens as they are for citizens, both for access to health care and education. In practice this means that educators and health care workers are not allowed to disclose confidential information—including migration status—unless specifically requested by a court, prosecutor, police officer or tax authority.

We believe that immigration related decisions have to be made in a short time. Legal immigration should be made much simpler by Government.

At the beginning, as a first steps labor arbitration can play big relief role. It is helpful to

comprehend the procedures, scope, and basis of labor arbitration in order to address the problems and potential remedies accessible to illegal employees. The cornerstone of labor arbitration is the collective bargaining agreement, which specifies the rights and processes for resolving disagreements and grievances on behalf of both parties. In addition it will benefit country itself, as it will relieve the judicial system from overloaded cases.

Conclusion

In this paper we discussed what is international arbitration and what kind of issues the world is facing due lack of well-working to immigration system.

As we mentioned, nowadays, immigration is one of the world's major issue. There are many ways that different countries can establish the ways to deal with this issue. Hence, I believe international arbitration can be considered as one of the leading and successful way resolving immigration problem around the globe. As a result, many governments can overcome the financial difficulties that they experienced as an absence of formal resolving system. Not only that arbitration offers the best potential for overcoming the aforementioned problems also, under the current system, arbitration is almost widely recognized as a fair method of resolving disputes. Regardless of the reason, it is obvious that judicial hate has been pacified.

We discussed pros and cons of arbitration and agreed that immigration-related disputes will be decided faster by help of arbitration. The accelerated pace of arbitration is partly due to the restricted scope of discovery. The fact that arbitration does not depend on needing to be listed on a court docket, which sometimes takes years in immigration court, is an additional explanation for this. This enables a quicker choice to be made, which is very important in situations concerning the connection between the employer and employee.

We agree that, arbitration is a process that is similar to that of litigation but that puts more power in the hands of the participants. The reason for this is the advantages it has over state courts. It is widely believed that the arbitration court is a relatively quick and accessible process. Arbitration is less constrained by formal norms than a court. It is not burdened by other processes, so it can concentrate on a specific task. Today, there is a lot of talk about the features that make arbitration more attractive than litigation. Individuals involved in legal disputes retain the power to decide who will make a binding decision in their case. They go through the process of discovery like with a typical case, but they can choose to limit its extent in order to make the process more affordable and less time-consuming.

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THE IMPORTANCE OF THE RULE OF LAW IN A STATE GOVERNED BY THE RULE OF LAW AND DEMOCRACY

Giorgi Mumladze
Supervisor: Mikheil Gogatishvil

Abstract

In the modern world, where democratic values and law are closely intertwined, the study of the principles of the rule of law in a state governed by the rule of law and democracy has become increasingly relevant.

Governments need to have good laws, institutions and processes in place to ensure accountability, stability, equality and access to justice for all. This ultimately leads to respect for human rights and the environment. It also helps lower levels of corruption and instances of violent conflict. This concept is called “rule of law.” It affects everything about where people work and how they live. By having a strong rule of law, governments give business and society the stability of knowing that all rights are respected and protected.

This article analyzes the meaning of the concept of the rule of law in the light of its existence in a state governed by the rule of law and democracy.

Key words: Rule of law; Legal state; Democracy; Principles of the rule of law; The law; Democratic state.

Introduction

Urgency of the issue: Against the background of the challenges in the modern world, we can boldly state that democracy encompasses the rule of law, and that both principles give rise to one whole organism. There is no doubt that the rule of law is impossible without democracy. In view of the above, then both principles confirm the existence of one another. At present, the rule of law is no longer considered merely a matter of lawfulness or compliance with the law of executive activity. The rule of law is based on the values of justice. It undoubtedly includes the protection of human dignity and freedom. Fundamental rights are an integral part of the rule of law.

The urgency of the issue is underlined by the fact that the rule of law has become a universal ideal and a desirable goal. It is supported by people, governments and organizations around the world. The rule of law is seen as a pillar of national political and legal systems. It is also increasingly seen as a key component of international relations.

The importance of the issue is evidenced by the fact that today, the rule of law is not only a feature of the constitutional order of the state, it’s also a defining phenomenon at the international level, in particular, the legal framework of the European Union and the Council of Europe. In addition, the role of the rule of law is growing in sovereign states and even in the international community.

There is a big difference in the scale of the rule of law in relation to democratic relations. Opinions about how far the law should go in society vary. The so-called welfare-oriented states are more in favor of government regulation of social and economic relations, while the more economically liberal states attribute a relatively modest role to the government. At the same time, it should be

noted that the goal of the state can't be only to ensure "law and order". (8, 24) The fact that the rule of law is directly related to the protection of human rights indicates that the state must assume certain social functions. This implies that the rule of law requires states to legally regulate and regulate certain social relations, including in the economic sphere. It is clear, however, that the degree of regulation varies from country to country and depends in part on the degree of trust that the government enjoys among the population.

Research goals and objectives: The purpose of this article is to examine the importance of the principle of the rule of law in the wake of the existence of a democratic and legal state. Based on the set goals, the following tasks are defined:

- Study of the principles of the rule of law;
- Assessing the importance of a democratic and legal state;
- Analysis of the Rule of Law and the Interaction between the Rule of Law and the Democratic State.

Methodology: This article is descriptive. The theoretical methodological basis for the study of the issues raised is the works and articles of Georgian and foreign scholars on the rule of law and the existence of a democratic or legal state.

Existence of law and its basic norms

Law - this is a normative act adopted by the highest representative body of the state (Parliament), which regulates the most important public relations (2)

I wonder what characteristics the law should have. The famous German philosopher of the 18th century - Immanuel Kant believed that the rule of law is based and carries out its activities on the basis of law, which should have the following signs:

- The law is a general rule (norm), which implies that the sphere of freedom in which the interference of the state (executive power) is prohibited is equally defined for all and applies equally to all.

- The law was adopted by the legislature as a result of a public debate by the parliament, as the adoption of the law by the parliament as a manifestation of the citizen's political freedom ensures the adoption of the law as a result of public debate and its maximum rationality (14, 63-74)

Interestingly, a century later, the philosopher of law, Lon Fuller, described in more detail the characteristics of "true" law. In particular, in his view, laws should be general, they should be made public so that citizens know the standards they are required to comply with. Retroactive legislation and legislative activity should be kept to a minimum, laws should be understandable and should not be contradictory. Laws should not require conduct that exceeds the capabilities of the person addressing the law. They must be relatively constant over time and there must be a coincidence between the declared rules and their actual enforcement.

The essence and main aspects of the rule of law

The principles of modern democracy are based on the inalienable and supreme values of human rights, which are recognized by the international community of states and the protection and implementation of which is the duty of every democratic state. Domestic law is considered a democratic legal system only if every legal norm and, first of all, the Constitution reflect these requirements (6, 71)

The rule of law therefore means not the supremacy of all legal norms, but only those that reflect the universally recognized democratic principles at the present stage of human development. Only such laws have the highest legal force in the system of legal norms in force in the country. Various legal acts issued by state bodies must comply with the requirements of the law, not contradict them. The state is obliged to follow these norms, to follow the rule of law. The norms of law are as binding on state bodies as they are on citizens. State authorities operate within the limits established by law. State bodies are obliged to obey the norms of law without any exceptions. They have the right only to do what is prescribed by law. There should be effective mechanisms within the state to ensure the protection of the rights of all members of the population (citizens, foreigners, etc.). Ensuring effective rule of law is one of the key tasks of universal and regional international organizations (5, 44)

Modern international law imperatively requires each state to create all the conditions for the establishment and development of the rule of law in accordance with the universally recognized principles and norms of international law. First of all, in the field of protection of human rights and fundamental freedoms. According to the Constitution of Georgia, "Georgian legislation complies with the universally recognized principles and norms of international law" and by virtue of "the state recognizes and protects universally recognized human rights and freedoms as" inalienable and supreme human rights.“ In the exercise of power, the people and the State are restricted by these rights and freedoms, as in the case of directly applicable law." Three aspects in the rule of law can be distinguished:

First of all aspect is that the rule of law implies that laws are a set of rules that have a number of formal characteristics. These characteristics are called formal because they indicate nothing about the content or essence of the laws. Example of a formal characteristic: The entry into force of a law includes features that indicate that it is part of a piece of legislation published in a national legal journal, and the quality of its publication is such that those for whom the law is intended can read the law. It should therefore be noted that, the first key element is the quality of the law itself. A law that must be obeyed by all, citizens and governments alike, must be predictable, precise and clearly worded so that everyone can understand its content and people can bring their actions in line with the law. For example, if the law says "obscene acts are forbidden in public places" - this phrase will be vague for people, because what is considered "obscene act" is not and can not be fully defined by law. Consequently, a person can never know whether an action taken by him at a public gathering place will be considered obscene or not (1, 7-18)

The second aspect concerns the way in which the law is passed. In general two options can be considered. The law can be passed by the persons who have been elected and are therefore accountable to the people whom they have elected. Lawmaking can be done democratically or in a system that is not characterized by democracy. There is no doubt that the rule of law can only be fully enforced in a democratic political system. The second stage deals with the way in which the law is passed. In Georgia and most of the countries of democratic governance, the legislative function is performed by the Parliament. The starting point of the law-making process is its publicity. According to the current regulations in Georgia, the law is adopted on the basis of three

hearings, the first of which is dedicated to the discussion of the general principles of the draft law, the second to the substantive resolution, and the third to the editorial details (3, 208-211)

It should be noted, however, that not all laws in the country are passed by Parliament or any other elected body. Legislative authority may be delegated to other bodies, such as regional or local units. It should be noted, however, that in the case of some democracies, there may be representatives in parliament who are not elected. The main thing is that the persons who have been granted legislative powers are subject to the law and the relevant constitutional oversight. It would be wrong to deny that the implementation of formal characteristics of the rule of law is also to some extent found in some non-democratic political systems. In these systems, politicians have the power to exercise power within the law, although they are not usually subject to the law themselves. These systems are characterized not by the rule of law but by manipulation of the law (13, 27)

The third aspect concerns the content of the law. A critical element in this regard is the fact that the rule of law must respect human rights. This is especially true in the case of civil and political rights. That is why we should note that the third element of the rule of law is the principle of equality. The main goal of this element and the rule of law in general is equality before the law. All citizens, both citizens and the ruling power, obey the law equally. As the English law scholar and philosopher John Stuart Mill said as early as the nineteenth century, people realized that the king of predators would have no less inclination to hunt flocks than other small predators, so it was necessary to protect himself constantly from its snarl and claws. Essay, people realized that in addition to other states and peoples, they could also oppress their own government through coercion, so it was necessary to limit their own government by laws. In addition, people themselves are restricted by law and the rights of others (4, 49-51)

It is difficult to imagine, for example, how the rule of law can exist if there is no respect for freedom of speech and association. At the same time, other human rights, such as economic, social and cultural rights, come into play. One of the clearest expressions of disrespect for equality before the law is the words of Benito Mussolini: "Friends are everything, others are the law." (15, 106-124)

In summary, it should be noted that the principle of the rule of law implies the strict observance of existing domestic laws and norms of international law by the authorities and citizens.

Rule of law requirements at the national level

Constitutionalism - The basic requirement of the rule of law can be called constitutionalism. Essentially, this means that there must be a set of fundamental laws in the legal system that define the executive, legislative, and legal powers of the state. Fundamental laws should define the bodies that are responsible in the state for exercising this power both between these bodies and with respect to citizens and private entities. The most important thing is that the legislation in the general sense define the boundaries of the exercise of different types of powers. In other words, the constitution should provide the basic structure and rules of the legal system and indicate who is and to what extent authorized to exercise power. Without a basic legal framework of this type, it is impossible for a government to measure the degree of rule of law with acceptable accuracy. Basic laws are usually formulated in a formal written document, which is a brief summary document of the basic laws and is called the "constitution" (3, 14-19)

Publicity - It is clear that rules can only guide behavior if the people for whom such rules are created are aware of the existence of rules. That is why the laws should be published and made

public. Moreover, the laws need to be fairly clear because people will not be able to obey the laws if they do not understand these laws. It is also important that the operation of the law be of a prospective rather than retroactive nature. The non-retroactive aspect of law enforcement. Laws, and especially the Constitution, must be stable over time. Changes and additions should not be made to them too often. If laws change frequently, it becomes difficult to enforce them. Frequent change also leads to persistent uncertainties regarding the content of the law. However, it becomes impossible to take actions that require long-term planning. For example, if a person is planning to start a business, it is important for him to know that the laws related to taxes and tax irregularities, roughly speaking, will not change in the near future (2, 41)

Responsibility of the Legislature - Parliament has a special responsibility to uphold the principles discussed above. Parliament must ensure the openness, clarity and stability of laws. It even requires focus. Clarity is not limited to precisely selected words. To achieve clarity, there is also a need for consistency between new laws and existing provisions. No matter how clearly worded, new provisions can be confusing if we read them in conjunction with existing laws and regulations that contain the same words but these words are interpreted differently. Moreover, clarity can be harmed as a result of over-regulation or regulation by a number of laws, as such an approach easily confuses citizens and officials. Legislators must use adequate legislative techniques and skills to create such clear laws (4, 26-39).

Discretion - In order to achieve the rule of law, the powers of the government should be exercised as far as possible through laws that are of a general nature, have been familiarized in advance, and so on. But political power in all cases cannot be exercised through laws. Discretion and the use of power based on certain decrees are an inevitable element of governance. To meet the standards of the rule of law, the general rules must specify the authority to exercise such discretion or to issue ordinances. Important elements of such a balance are the acts that regulate access to information and how similar acts are being carried out or should be carried out (7).

There is usually no single correct answer to the question of how to comply with the requirements of the law. There are usually many different ways to do this. Legal systems whose rules contain significant variations in precise content and institutions may have met at least the same level of rule of law requirements. Thus, there is no legal system that can be used as a universally applicable model of the rule of law. There is no single universal solution to the problem of translating the general requirements of the rule of law into specific legal rules (16, 54)

The relationship between the rule of law and a democratic state

The principle of the rule of law is one of the key elements of modern democracies, which in a broad sense includes not only the establishment and management of the state by properly adopted laws, but also the fact that adopted laws must be rational and substantively relevant to the basic law of the country - the Constitution. The principle of the rule of law is closely linked to the rule of law. This principle guarantees that the state government will be bound by applicable laws and human rights and thus will not have the possibility of arbitrariness, unjustified interference in human rights (17, 64-68)

When studying the concept of a democratic state, it should be noted that democracy is a form of government in which all power belongs directly to the people or their representatives. The term, like the system of government itself, originated in ancient Greece. Most of the developed countries of the world today are democratic in order. Let us return to the beginning and consider what types of democracies the ancient Greeks distinguished and, most importantly, what were the main reasons for the emergence of these differences. In his work Politics, Aristotle discusses the essence

of democracy and its forms. According to him, the reason why democratic governments are different from each other is twofold: first and foremost, the difference between the people themselves. On the one hand there is the abundance of farmers, on the other hand there are craftsmen and hired workers. The number, influence and importance of these people also differ in different societies. They depend on the specific case and mainly echo the interests and challenges of the community living in a particular area. Their different combinations eventually lead to the adoption of different forms of democracy (10)

Democracy is a Greek word: „demos" means people, and „kratos" - power. Consequently, democracy is often defined as "the domination of the people." (19) It is a system where people set rules and obey them. Most peoples and countries in the modern world believe that the only functioning and viable system of government should be democracy (20). Therefore, an essential element of democracy is the supremacy of the will of the people. Democracy can be defined as a process and not a fixed system that never changes. These are the stages of development with defined goals and ideals. At the turn of the XXI century, legal scholars think that after the defeat of ideological regimes, in different countries of the world, the society recognizes the democratic principles of governance as the only legitimate system of political power. The number of blatantly anti-democratic governments is declining (11, 42)

It is noteworthy that, "State formation" will be considered democratic if any power is transferred by the people (people's sovereignty), if every citizen of the state participates in it (the right to vote), if the right of any citizen in this process is equal (equality of elections), if power (transferred by the people) is distributed. (Period of rule) is limited for a certain period of time." (13, 37) The above ideal type of democracy can not be found anywhere in the world, but the advantage of democracy, unlike other types of government, is that it creates a state of existence and development based on the distribution of power delegated by the people, in which the interests of certain subjects are realized.

Often, constitutionalism is equated with order, stability, and resilience. Without it, there can be no guarantee that democratic principles will be established. The establishment of constitutionalism and liberal values often requires profound cultural changes that require generational change, while holding elections with the participation of international observers is a one-time act. Establishing democratic governance also requires some effort. To establish it, it is not enough just to recognize the superiority of the basic principles of democracy over other principles of governance. In order to establish a true democracy, people, or political unity, need, on the one hand, the appropriate skills that are formed on the basis of certain social, economic, cultural, foreign-political conditions, and, on the other hand, the study of democratic governance in the process of gaining practical experience (12).

Conclusion

In conclusion, it should be noted that, The Rule of Law is closely linked with the ideals of democracy. A democratic state under the Rule of Law is a state where citizens elect their own leaders, and the government itself is bound by the law, while also helping to ensure that the law is respected among the citizens of the state. Democracy cannot exist without the Rule of Law, especially the rule that dictates who should occupy public office given the results of elections.

The rule of law is both simple and complex. It is simple because it can be stated simply: The rule of law ensures citizens are governed equally and fairly by the law and not by anyone or anything else. This means that even law-makers must obey fundamental laws, even while making other laws. On the other hand, the rule of law is complex because once you get beyond its simple premise, its

extent is not agreed upon. It has been the subject of much writing, debate, construction and application. Moreover, even as a simple phrase, it is too easily susceptible to being sloganized or weaponized for political purposes. But, at its heart, it is very straight-forward: The laws governing society must be known, with none in society (including law-makers) outside the law or favoured before it. In a democracy, officials are elected to create laws that govern the conduct of the people living in the country. Judges interpret laws and make decisions that are binding on the future application of law. The decisions of Parliament or a legislature are interpreted by judges to ensure that they conform to a standard of statutory interpretation, that the Parliament or legislature has jurisdiction to make them and that the laws conform to the constitution.

However, only supporting the Rule of Law during an election season is not enough. Democratic stability depends on a self-enforcing equilibrium. In other words, political officials must respect democracy's limits on their actions, particularly regarding the rights of citizens. Institutions that are self-perpetuating and do not operate based on individuality of single actors are powerful actors stabilizing that equilibrium. In a stable, self-perpetuating institution all conflicts are solved according to the institutional rules, and therefore, the Rule of Law stabilizes the democratic society. Rule of Law in a democratic institution allows governments to work their will through general legislation, and then to be subject to that legislation themselves.

Democratic stability depends on the self-enforcing equilibrium of the Rule of Law, which is often inherently vulnerable. The viability of the Rule of Law ultimately depends on the citizens: if they elect leaders who will violate the Rule of Law, the Rule of Law will decline rapidly. In fragile, conflict-affected societies, the Rule of Law is particularly fragile. Legislation and regulations for maintaining order do not have an immediate effect on behavior or security, and thus on democracy. Implementing sound Rule of Law principles in conflict-affected societies creates distinct challenges, because in addition to promoting the Rule of Law in judicial and legislative institutions, the security sector -including the military, police, and prisons - must also have a firm foundation in the Rule of Law. International Bridges to Justice promotes the Rule of Law around the globe by encouraging early access to the accused, cooperating with governments to create best practice legislation, creating awareness about basic rights and protections within a system, and training defenders to provide effective representation.

So, The rule of law, defended by an independent judiciary, plays a crucial function by ensuring that civil and political rights and civil liberties are safe and that the equality and dignity of all citizens are not at risk.

In conclusion, it should be noted that, building democracy and the rule of law may be mutually reinforcing processes. The rule of law is a critical factor for the advancement of democracy, rooted in equal rights and accountability. By strengthening the rule of law, we protect the rights of all people, advance inclusiveness, and limit the arbitrary exercise of power, which are the cornerstones of modern democracy.

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HUMAN CAPITAL OUTLOOK IN ARMENIA

Knarik Yedigaryan
Armenian State University of Economics

Abstract

Human capital (hereinafter: HC) is one of the essential elements of the new economy, which is the most important stimulus for the social and economic development of modern society. Modern human capital is an intensive, productive and social factor which is very important for human activity and development due to its intelligence, outlook, way of thinking and value system. Human capital is the stock of health, knowledge, skills and motivation accumulated through investment, which is used in the process of work, contributing to the increase of productivity and profit of the person. The urgency of this work is caused by nowadays unprecedented rapid development of the scientific and technical sphere, in which the role of human capital is huge, and without it, it is difficult to imagine a competitive economy. Therefore, each country should have an aim to develop HC. Republic of Armenia (RA) is no exception to this decision. Our goal is to explore the HC outlook of the RA and its gaps to study the country components of the HC separately, to compare it with other countries and to make certain conclusions and recommendations for its improvement.

As a result, it became clear that in order to understand the HC situation in a country, it is first necessary to define the measurement principle. For us, Human Development Index (hereinafter: HDI) and Human Capital Index (hereinafter: HCI) are more acceptable tools that cover more countries and are accepted by international structures.

According to the United Nations Development Programme, Armenian HDI ranks 81st out of 189 countries with a ratio of 0.776. And according to the HCI published by the World Bank, the RA ranks 82nd out of 174 countries.

The work includes research on selected HC components: probability to survive to age 5, fraction of children under 5 not stunded, survival rate from age 15-60, expected years of school, harmonized test scores, learning-adjusted years of school, as well as comparisons with different countries of the world on given components. The work separately touched upon the spheres of health, education and social protection of Armenia, raised problems and made recommendations for their solution.

Key words: Human capital, health, education, social protection

Introduction

The role of human capital in the world economy is gradually increasing, especially in the context of the unprecedented rapid development of modern science and technology. The research and analysis carried out by international organizations, the work of eminent theoretical economists prove that the developed counties of the world occupies a higher position in the human capital rankings and that this is often due to high levels of human development, huge investments in and benefits from human capital. The World Bank (hereinafter: WB), the World Economic Forum, the United Nations (hereinafter: UN) publishes the reports according to Human Capital for each country, which also shows of HC as an important economic category and the main driver of economic growth. The strong correlation between HC and the GDP of the country calls attention to

it as an economic category by which, in case of right policies pursued by the government, we will be able to increase the country's economic competitiveness in the international market, gain advantages, and improve the country's welfare.

In order to understand what policies should be adopted to accumulate human capital, it is first necessary to understand the situation in a given country and the problems that exist in this area. The goal of the article is to study prospects of human capital in the RA on individual components, to understand the place of the RA in terms of HC in the world economy, to give recommendations on solution of problems. The article can be useful for students conducting research in the field of HC, government bodies, in particular health, education and social protection institutions in the development of their policy, lecturers of economics and sociology for use in their lecture materials.

The main part: For many years, one of the problems of economic thinking has been the quantification of human capital. To date, there is no single acceptable methodology for measuring human capital among economists. In our view, the Human Capital Index presented by the World Bank and the Human Development Index presented by the United Nations are the best indicators revealing the quantitative trends of human capital, which are currently used by international organizations as a tool for calculating human capital. The UNDP report takes into account three main indicators in calculating the HDI:

- life expectancy at birth,
- educational level of the population
- Gross domestic product per capita (by purchasing power index)

HCI, represented by the WB, is in the range of 0 to 1. It can reach 1 only if the child born today is perfectly healthy (without stunting and survives to 60 years) and reaches its highest potential in formal education by 18 years (with 14 years of quality education).

2020 The top ten HDI rankings presented by the UN are as follows:

Table 1 (1, p. 241)

Human Development Index Ranking

RANKING	COUNTRY	HDI
1	Norway	0.957
2	Ireland	0.955
3	Switzerland	0.955
4	Hong Kong	0.949
5	Island	0.949
6	Germany	0.947
7	Sweden	0.945
8	Australia	0.944
9	Netherlands	0.944
10	Denmark	0.940

The Republic of Armenia ranks 81st among 189 countries with a ratio of 0.776 in this table. **(2)**:And according to the HCI published by the World Bank, the RA ranks 82nd.

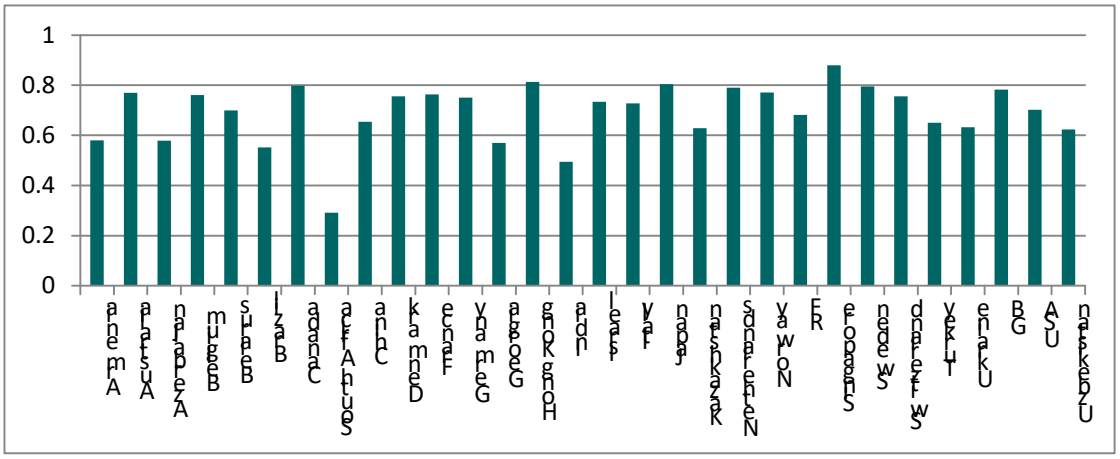

Figure 1: HCI in 30 countries in the world in 2020 according to the World Bank (3)

Now consider the HCI components in order.

HCI quantifies the life milestones of children born today and their implications for next-generation productivity in three main components.

Component 1: Probability to survive to age 5

This indicator is calculated by the World Bank on the basis of data published by the UN International Child Mortality Estimation Group.

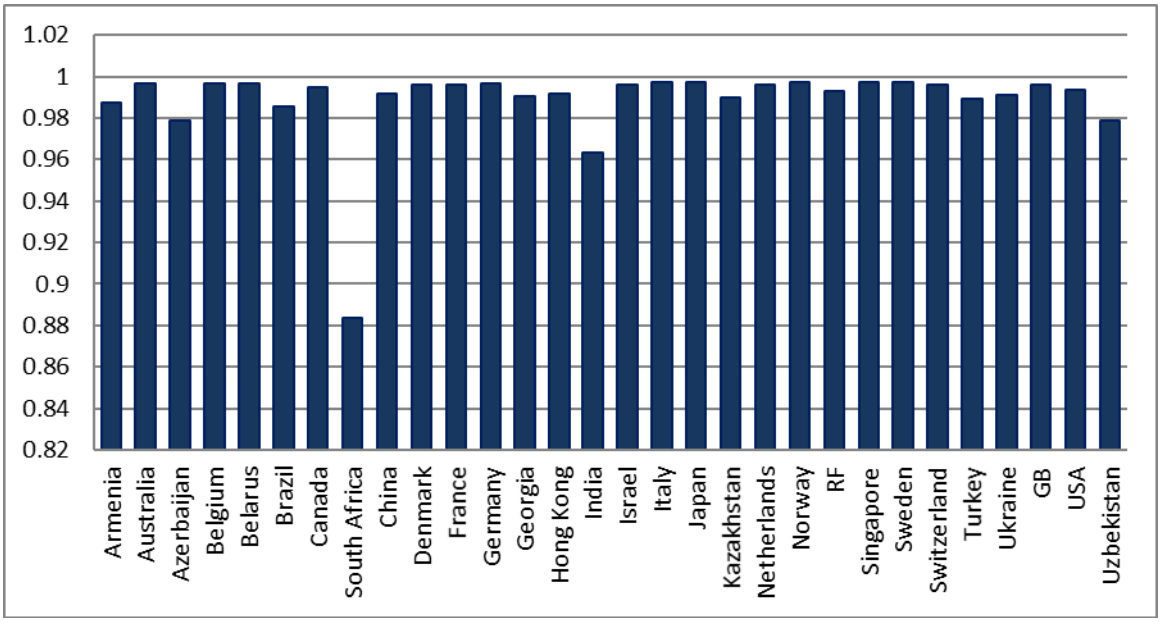

Figure 2: Probability to survive to age 5 2020 (3)

According to published data WB in 2020, 99 out of 100 children born in Armenia live to 5 years **(4):**

Component 2: Education This component combines quantitative and qualitative indicators of education.

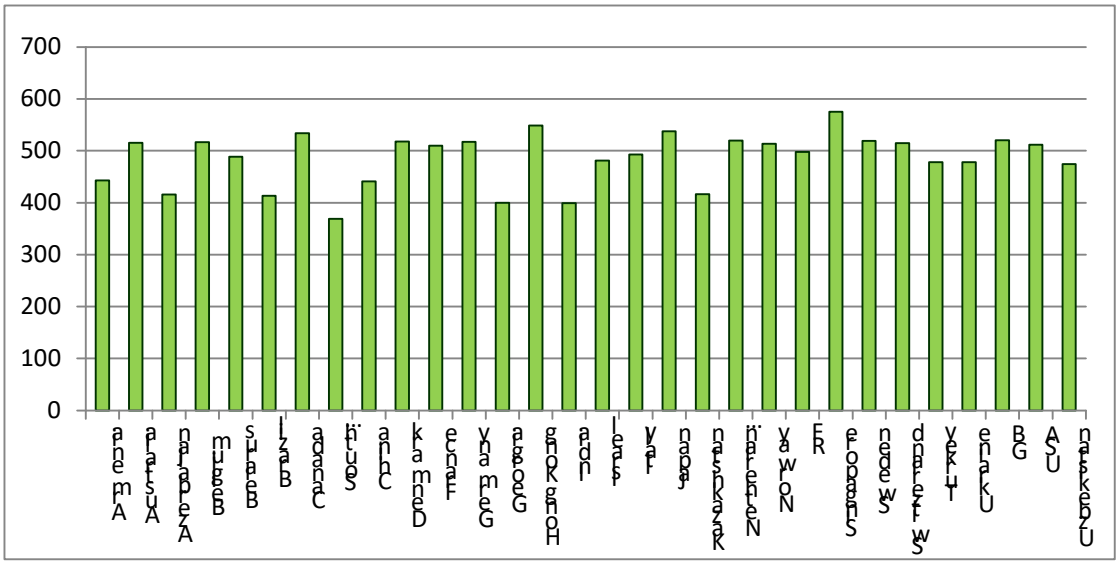

Figure 3: Expected years of school (3)

The expected years of education are the expected length of schooling in pre-school institutions and schools up to the age of 18. The maximum is 14 years.

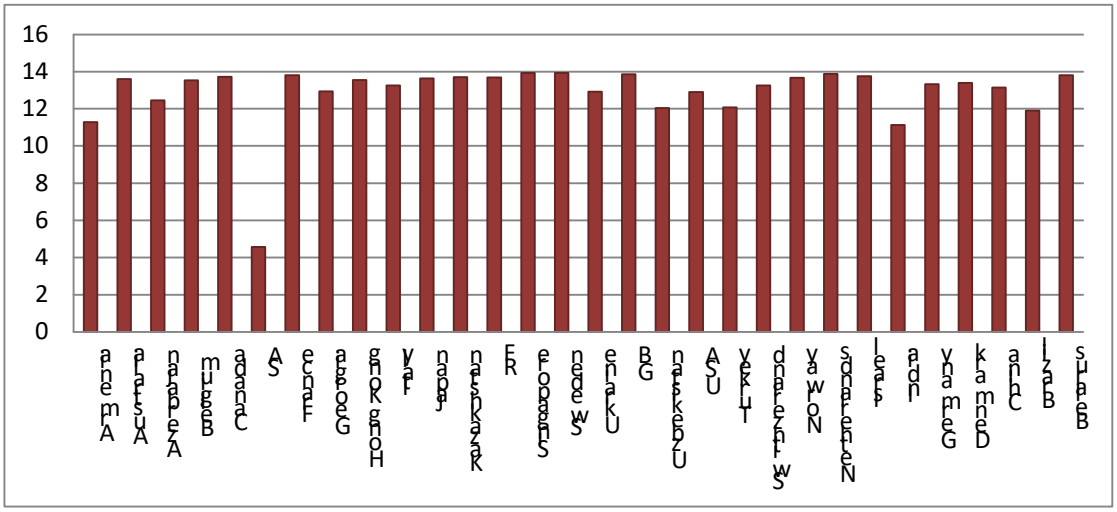

Figure 4: Harmonized test scores (3)

According to ranking WB published by in 2020, Armenian indicator is 11.3 years **(4)**.

The quality of education can be measured by the World Bank's common indicators of educational achievement, which are estimated at 300-625 points. **(5, p. 17)**:

According to WB published data 2020, Armenian students received 443 points **(4):**

The expected years of school is calculated on the basis of the enrolment rate in pre-school, primary, secondary and senior classes. **(6):**

According to the WB published data 2020, the expected length of education in the RA is only 8 years, adjusted for the quality of education.

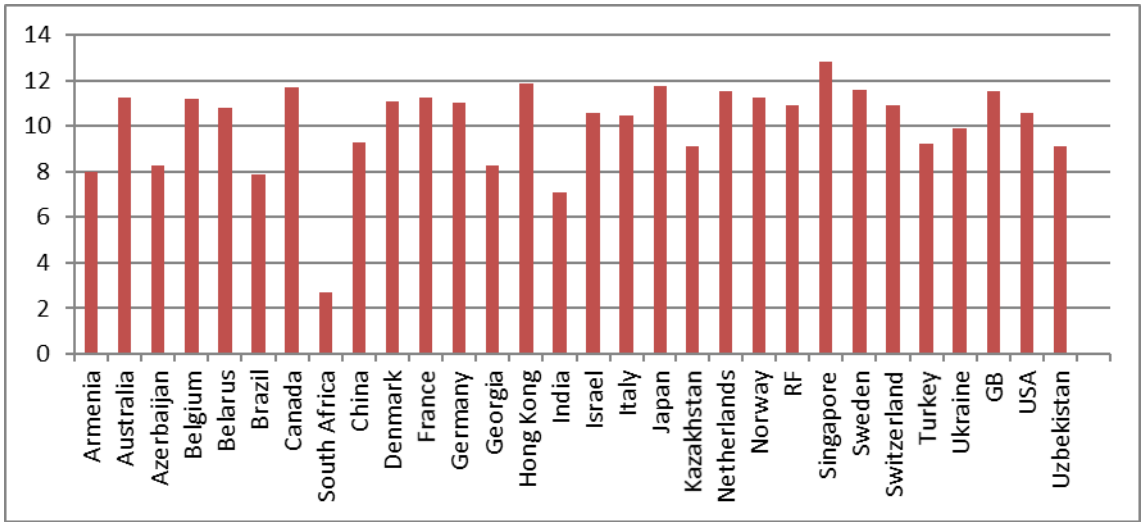

Figure 5: Learning-adjusted years of school (3)

Component 3: Health. Since there is no universal measure of health, the health system is assessed through two proxy indicators: 1. Survival rate from age 15-60 which is the proportion of 15-year-olds who survive to age 60 (89 % of 15-year-olds live to age 60 in the RA as a whole) **(4)**.

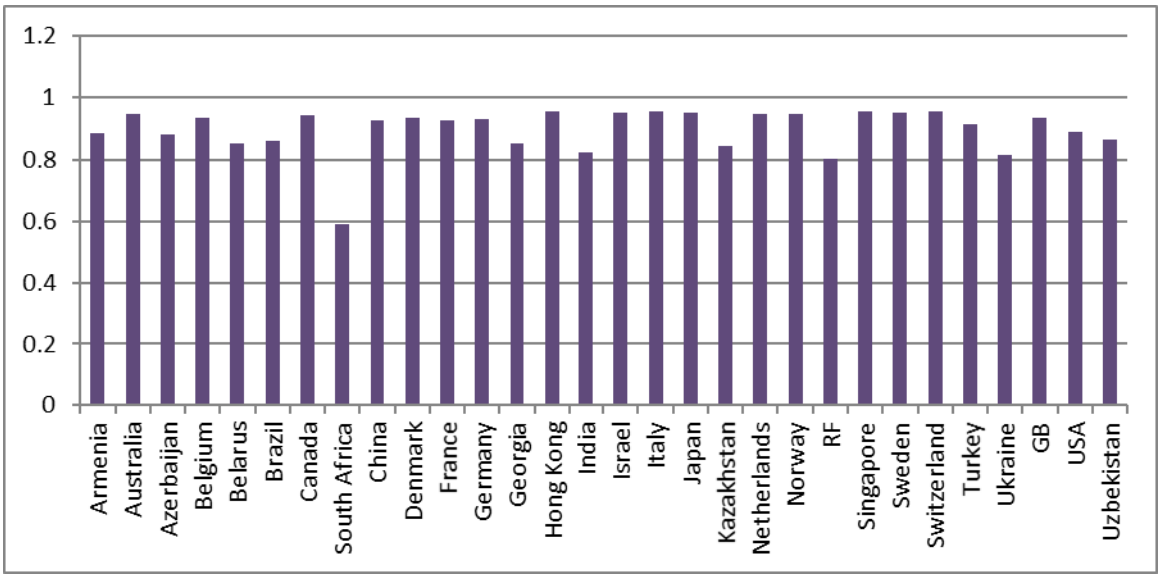

Figure 6: Survival rate from age 15-60 (3)

2. Fraction of children under 5 not stunded: This is measured by the stunting factor. It affects human health throughout the life course. In the RA, 91 out of 100 children are not stunted. 9 out of 100 children are stunted and therefore have cognitive and physical limitations that can have lifelong consequences **(4)**.

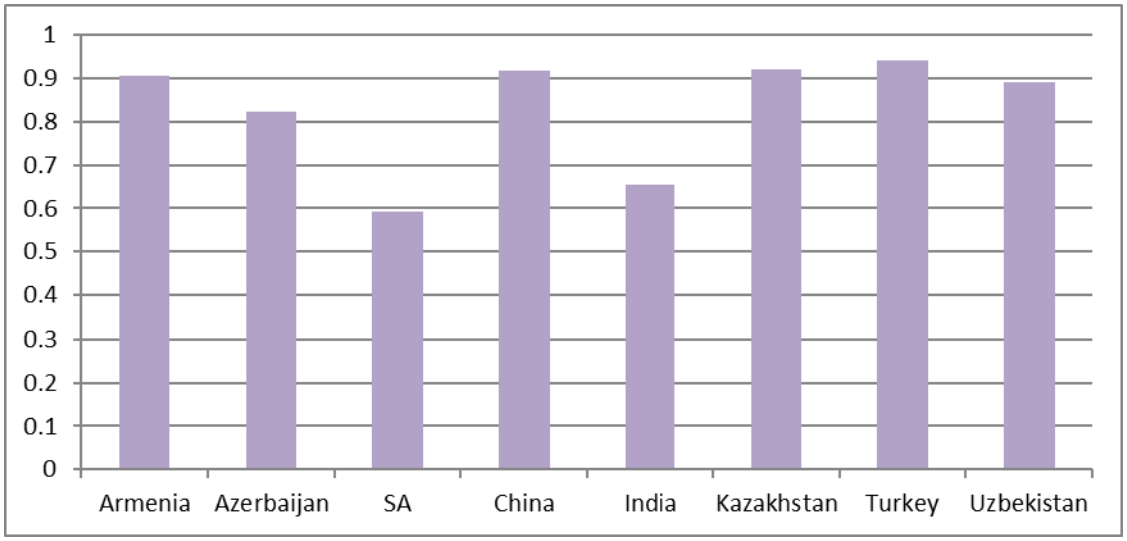

Figure 7: 2. Fraction of children under 5 not stunded (3)

Healthy growth is calculated on the basis of mortality in the 15-60 age group. This data is obtained from UNPD World Population Prospects **(7).** Since UNDP does not report these indicators for countries with populations of less than 90 000, data are obtained from the Global Problem of Disease **(8)** (GBD), the World Health Organization Health Indicators and Assessment Project. Healthy growth of children under 5 years of age is measured by stunting indicators from the Joint Assessment on Malnutrition (JME), UNICEF, WHO and WB.

WB HCI components for the RA include 2017, 2018, 2020. Since the HCI reports are published every 2 years, the next report will therefore be published in 2022. This is due to the fact that the indicators in the HCI change rather slowly and there is no need to report on them annually.

Let's see how these components have been in the RA in recent years. The table shows 2020. The Norway Index, as the leading country in the world in terms of HCI, shows how far the RA lags behind the developed world.

Table 2: Human Capital Index 2017-2020

	RA 2017	RA 2018	RA 2020	Norway 2020
HCI	0,572	0,581	0,578	0,771
probability to survive to age 5	0,9874	0,9869	0,9876	0,9974
fraction of children under 5 not stunded	0,906	0,906	0,906	0
survival rate from ahe 15-60	0,8815	0,8835	0,8858	0,9446
expected years of school	11,09	11,38	11,27	13,67
harmonized test scores	443	442,96	442,96	513,58
learning-adjusted years of school	7,86	8,07	7,99	11,23

In order to better understand a country's HC, it is necessary to examine the country's health, education and social security systems. Let's talk about them separately.

Healthcare: One of the strategic priorities of any country is the development and improvement of the health system. If by 2020 the Covid-19 pandemic could raise doubts in this idea, but now it is clear that without a «healthy» health system to achieve success in other areas is quite difficult. The Government of the RA constantly implements programs aimed at improving the health of the population, closely cooperates with international organizations, flexibly changing the strategic tasks assigned to it. The number of free health workers has increased significantly over the past three years. Reforms carried out in the sphere of health care of the Republic of Armenia in 2020-2021 aimed at modernizing the system and improving the health of the population, focusing on maternal and child health, reducing the rate of decline in the birth rate, accessibility and quality of rehabilitation of medical care for children with special needs and childrenwith disabilities, children and improved access to adolescent mental health services, to ensure equal access to health services for the population of the regions, to improve the quality of health care and services and to build infrastructure, as well as to assess the health needs of the population.

One of the existing problems of the demographic situation is the demographic ageing of the population, the process of which accelerated significantly in the Republic in the post-Soviet years. 2021 36805 births were registered in the RA, out of a total of 36353 live births and 452 stillbirths. In comparison with the previous year, the absolute number of live births increased by 0.9 % and the crude birth rate per 1000 inhabitants in the reporting period was 12.3 %, an increase of 0.1 per thousand points compared to the previous year. In 2020, 36170 deaths were recorded in the RA, and the crude death rate per 1000 inhabitants was 12.2 %. Of the total number of deaths recorded in 2020, 20031, or 55.4 %, were men and 16139, or 44.6 %, were women. The difference in mortality rates between men and women is also related to the war events of 2020 and the Covid 19 pandemic**(9).**

In 2020, life expectancy at birth was 73.5 years, a decrease of 3 years compared to 2019, and men's average life expectancy since birth was 68.4 years, 78.6 years of age for women. As a result of events in 2020, mortality and birth rates were equalized to 12.3 and 12,2.

The main risk factors for diseases in the RA are: smoking, alcohol consumption, obesity, hypodynamy.

The most comprehensive indicator of early childhood problems is the mortality rate of children under 5 years of age. According to the Statistical Committee of the RA, the mortality rate has also been steadily decreasing since 2010 (13.4%) to 2018 (8.7%). In Armenia both 0-1 year and under 5 years girls mortality rate is consistently lower than that of boys, which is consistent with normal inequality and indicates that there is no gender discrimination and that girls receive the same care as boys in Armenia.

Accidents and injuries play a major role in the death of children aged 0-5. According to the latest official statistics, if the death rate is only 0.4 % in the 0-1 age group and 5.7 % in the 0-5 age group, it is 31 % in the 1-5 age group (almost 1⁄3 of all deaths at this age). Accidents (injury, poisoning, burns, etc.) are the main cause of death for almost every third child who died between the ages of 1 and 5. All of them are preventable provided that appropriate policies implemented to ensure the safety of children.

Education: The Ministry of Education, Science, Sports and Culture of the Republic of Armenia carries out permanent programs to improve the quality of education in the RA. In the past decade, all schools have been equipped with computers and Internet access for students and teachers, as well as electronic materials. The quality of teaching staff has been improved through a five-year

evaluation programme, as well as by strengthening the pre-qualification and advanced training of teachers.

The establishment of the Assessment and Testing Centre has improved the ability to assess student performance and the transparency of the process. This is an important step for harmonizing test results in HCI.

A number of micro-programs of the Competition and Innovation Fund have improved the quality of higher education by improving the quality of teaching and increasing the relevance and efficiency.

Let's look at the indicators describing the quality of education in the RA. In 2012, we had 2257 pre-school public and departmental institutions. In 2020, there were 2695. This shows that pre-school education is in demand in Armenia and efforts are being made to increase its number. In general, there is no problem in the RA to organize pre-school education of a child both on a paid and free basis. In many countries, children are registered for pre-school education at the moment of birth, which is still not the case in Armenia.

In 2012-2019, the number of children in pre-school educational complexes increased by 19%, which is due to an increase in the birth rate of children aged 1-5, respectively, but in 2020 we see a significant decrease in the number of children, by 32%, due to the pandemic Covid-19.

Pre-school coverage in Armenia in 2020 was 24.3 %, which is still below the average of developed countries.

The enrolment rate in primary and middle classes in Armenia exceeded 90 %. Enrolment of girls and boys in primary and secondary education may be the same. Enrolment in primary and secondary education increased between 2012 and 2020. This increase in coverage has been accompanied by an increase in the number of schools and teaching staff, which has increased the ratio of pupils to teachers since 2009, and the number of pre-school educational institutions has increased by 19.4 %.

Despite these advances, there are disparities in enrolment rates, inequalities in access to education and shortcomings in the quality of education. The secondary school enrolment rate has decreased from 74.1 % in 2012 to 57.9 % in 2020. Instead, however, enrolmentin secondary education institutions increased from 11% in 2012 to 13.9 % in 2020. Boys are less likely to complete secondary education, and the primary school enrolment rate for girls increases by 0.16 % compared to boys. In rural areas, pre-school enrolment is on average three times lower than in urban areas. According to WB data in 2020. According to studies conducted in the RA, at the last stage of primary school age, about 35 % of children do not know how to read, and 30 % do not reach the minimum level of language proficiency at the end of primary school (**10**). The new Learning Poverty Index defines the percentage of 10-year-old children who cannot read and understand a simple story. The poverty situation in Armenia is 21.7 % points lower than the average for Europe and Central Asia. In addition, since 2003, the country has not improved in terms of standardized tests. It lags behind the average of the countries of the former Soviet Union and the countries of Europe and Central Asia.

The results of research in rural areas are inferior to those of urban areas. For example, according to the Evaluation and Testing Centre, students in the 12th grade living in large cities scored an average of 14.3 points in the mathematics examination and students in remote villages scored 11.924 points. Enrolment in Technology, Architecture and Mathematics (TAM) in professional and higher education is also low. These gaps in recruitment and training have a negative impact on Armenia's competitiveness. In 2018, Armenia ranked 85th out of 141 countries in the ease of finding skilled

workers, indicating that the country cannot provide its children with the necessary knowledge and skills to ensure their competitiveness in the labour market **(11).**

Only 41 % of rural settlements have a pre-school educational institution within one kilometre, which is considered the minimum allowable distance **(12).**

For this reason, the United Nations Children's Fund (UNICEF) has developed an alternative cost-effective early childhood education model for these communities. It is based on worldwide research, which proves that the number of years spent in pre-school education is much more important than the number of hours per day for successful learning outcomes.

An alternative model of pre-school education for rural and low-income communities is almost five times more effective than traditional education and has increased pre-school enrolment **(13).** By introducing an alternative model of pre-school education in the 201 communities that do not have a traditional kindergarten in Armenia, it is possible to increase the coverage of pre-school education in a cost-effective manner, as well as to effectively reduce the inequality of coverage. The assessment of skills of Armenian graduates in the field of information technologies and engineering, conducted by the Foundation «Incubator of enterprises», showed that 73% of respondents believe that the practical knowledge of these graduates is below expectations **(14)**.

Over the past 30 years, about 0.25 % of annual GDP has been devoted to research and development. By that measure, we are close to Uganda and Burundi. For example, Burkina Faso spends 0.7 % of its GDP, Iran 0.8 %, Singapore 1.9 % and Turkey 1%. Due to the lack of an appropriate environment, conditions and problems imposed by the Government, the number of scientists has been reduced by about 7 times, especially as a result of brain drain. If in the past Armenia was one of the leading countries in the world in the number of scientists per million inhabitants, today our indicator is half of the average of Europe.

In Armenia, 40% of researchers with academic degrees and 50% of senior employees are in pension-age.

The so-called industrial institutes of applied research and development, most of which were under the direct authority of State agencies outside the National Academy of Sciences, have almost disappeared.

The average basic salary of researchers is about 100000 drams, which is almost half the average wage in Armenia. 2⁄3 employees of the National Academy of Sciences receive the minimum wage.

Social sphere: At the beginning of the 2021, 63.5 % of the resident population of the RA was of working age (16-62), 21.4 % younger than working age (0-15), 15.1 % older than working age (63 years and over)**(15).**

There were 575 persons of disabled age (237 elderly and 338 children aged 0-15 years) per 1000 persons of working age in the Republic of Armenia.

The unstable economic, social and political situation in Armenia since the 1990s has also influenced the reproductive behaviour of the population. Total fertility rate in 2020 per 1000 inhabitants was 12.3‰, compared to 12.2‰ in 2019 **(16):**

In 2020, the number of deaths increased by 9984, or 38.1 % over the previous year due to the COVID-19 pandemic and the 44-day war. 2020 total mortality increased by 3.4 ‰ and now it is 12.2‰ per 1000. At the same time, the increase in mortality of the urban population is 47.2 % and 23.0 % in the countryside. About 42.1% (92.3 thousand people) of household members were

involved in migration processes in 2015-2020 until now were absent and were in another region of the RA, in Yerevan, in another settlement of this region or in another country. 41.6% (about 91000 people) returned from departure, and 16.3%(about 35,000 people) arrived for the first time in the settlement.

Consumer price index rose by 1.2% compared to 2019. In 2020, the poverty rate was estimated at 27 %, 0.6 percentage points higher than 26.4 % in the previous year (calculated on the median poverty line). The level of poverty in a given country is considered an important quantitative indicator of the well-being of the population and an assessment of living standards. Poverty takes many forms and affects many aspects of life: consumption, food security, health, education, rights, including the right to vote, security, dignity and decent work. Signs of immaterial poverty include poor health, low levels of education or illiteracy, social neglect or rejection, lack of protection, non-applicability of rights and freedom of speech, that is, the inability to talk about their problems in practice. The main way to overcome non-pecuniary poverty is to improve access to education, health and social services, that is, to improve the targeting of free services and to increase the availability of paid services.

Consolidated budget spending on social transfers increased by more than 20 % in 2020, reaching 9 % of GDP. This growth is largely the result of the efforts of the Armenian government to overcome the crisis caused by the Covid-19 pandemic and the problems of IDPs from Artsakh (Nagorno-Karabakh). Although social transfers contributed significantly to poverty reduction, almost half of Armenia's poor population was not included in any social assistance programme, and not all beneficiaries could overcome poverty through assistance. Estimates for 2020 show that if all types of social transfers (including pensions and social assistance) are stopped and households cannot compensate for losses from other sources, the overall poverty rate will almost double (from the current 27 % to 51 %). Pensions, as the largest component of social transfers, contribute to reducing poverty by 19 percentage points, and cash transfers of social assistance by 3 percentage points.

Results of the survey – In the course of this study we have found out what human capital is and why it is important for the economic development of the country. Human capital is no less important than other types of capital, which in the last century has particularly attracted the attention of economists in terms of measurability. We have found that there is no common formula among economists for measuring HC, and even different international organizations use different tools for measuring HC. The most acceptable to us are the HDI and HCI used by the UN and the World Bank, although they have some shortcomings and differences, nevertheless they give an idea of the HC of countries and include 189 and 174 countries. Therefore, it is possible to compare the indicators between countries and get an idea of HC in the RA, which is the purpose of this article. In the course of the study, we made diagrams and comparisons for individual HC components for Armenia and other countries. The countries included in the charts of articles are selected according to the following logic: the RA and the countries of our region, the EAEU countries, the developed countries of Europe and Asia, the USA, Australia, Brazil, India, SAR as countries of different parts of the world. We studied separately the sectors of health, education and social protection of the RA, reflecting on their advantages and disadvantages, on the basis of which recommendations were made.

Conclusion

Human capital is one of the pillars of the new economy, which is the most important stimulus for the social and economic development of modern society. In today's age of booming scientific and technological innovation, the role of human capital is becoming increasingly important and without it the development of countries becomes impossible.

In our view, the Human Capital Index presented by the World Bank and the Human Development Index presented by the United Nations are the best indicators revealing the quantitative trends of human capital, which are currently used as a tool for calculating human capital and comparing countries.

Accrording to the UN data in 2020, the RA ranks 81st among 189 countries with a ratio of 0.776.According to the HCI published by the World Bank in 2020, the RA ranks 82nd out of 174 countries. In the RA, the human development index is high and the human capital index is low. This is because the Human Development Index measures the number of years of schooling and accumulated human capital, while the Human Capital Index also takes into account the quality of education, including school education. This means that the human capital accumulated in the RA at some point «disappears», for example, emigrates. As a result, the productivity of our future generation is declining.

According to data published by the WB in 2020, 99 out of 100 children born in Armenia live to 5 years of age, with an expected length of education in Armenia of 11.3 years. By comparison, in Norway, one of the most developed countries in the world, it is 13.7 years.

Armenian schoolchildren received 443 points on standardized tests. The same indicator - 513 in Norway. In the RA, children with quality-adjusted education are expected to complete only 8 years of schooling and in Norway 11.23 years.

Ninety-one out of 100 children in Armenia are still tall. Nine out of every 100 children are stunted and thus subject to cognitive and physical limitations that can have lifelong consequences. For comparison, in Norway 0. The Norwegian example is chosen to understand what to look for.

One of the existing problems of the demographic situation is the demographic ageing of the population, the process of which accelerated significantly in the Republic in the post-Soviet years. The unstable economic, social and political situation in Armenia since the 1990s has also influenced the reproductive behaviour of the population. As a result of events in 2020, mortality and birth rates were equalized to 12.3 and 12.2.

In 2020, the number of deaths increased by 9984, or 38.1 % over the previous year due to the COVID-19 pandemic and the 44-day war. 2020 Total mortality increased by 3.4 ‰ and now it is 12.2‰ per 1000. At the same time, the increase in mortality of the urban population is 47.2 % and 23.0 % in the countryside. The reason is, first, in the low birth rate and, secondly, in emigration, which is reaching unprecedented levels, especially in the post-war environment, and the promotion of fertility and emigration should therefore be a priority for the government. From the point of view of the HC, we are faced with the task of stopping the emigration of, in particular, highly skilled labour.

The main risk factors for diseases in the RA are: smoking, alcohol consumption, obesity, hypodynamy. These should be the lines of struggle of the conscious sector.

The secondary school enrolment rate has decreased from 74.1 % in 2012 to 57.9 % in 2020. Instead, however, enrolmentin secondary education institutions increased from 11 % in 2012 to 13.9 % in 2020. Boys are less likely to complete secondary education, and the primary school enrolment rate for girls increases by 0.16 % compared to boys. One of the reasons is the recruitment mechanism for boys. In the past, boys had been given the opportunity to serve in the Armenian army after graduation, but now, regardless of education, boys were conscripted as soon as they turned 18. In 2022, the number of entrants to higher education is quite low. Most public universities have a huge number of not enrolled students. For example, there is only one student at the Armenian State Pedagogical University. The reason is the quality of education, lack of future employment, high tuition fees, which must be investigated by the government.

The enrolment of students in technology, architecture and mathematics (TAM) in vocational and higher education is also low. These gaps in recruitment and training have a negative impact on Armenia's competitiveness. Therefore it is necessary to take measures to improve schooling: to reduce the maximum number of pupils per class, to divide pupils into groups according to their abilities in teaching certain subjects (e.g., mathematics)to increase teachers' salaries in order to attract the best specialists. Only 41 % of rural settlements have a pre-school educational institution within one kilometre, which is considered the minimum allowable distance. It is therefore necessary to build schools in rural areas.

Over the past 30 years, about 0.25 % of annual GDP has been devoted to research and development. By that measure, we are close to Uganda and Burundi. This shows that the Government of the Republic of Armenia is not taking sufficient steps towards the development of scientific directions.

Due to the lack of an appropriate environment, conditions and problems imposed by the Government, the number of scientists has been reduced by about 7 times, especially as a result of brain drain. If in the past Armenia was one of the leading countries in the world in the number of scientists per million inhabitants, today our indicator is half of the average of Europe. In Armenia, 40% of researchers with academic degrees and 50% of senior are pension-age employees . The reason is that salaries and career prospects are so low that young people simply do not want to work in science. It was therefore necessary to develop an appropriate programme to motivate young people.

Industrial institutes of applied research and development, most of which were under the direct control of government agencies, have almost disappeared. The average basic salary of researchers is about 100000 drams, which is almost half the average wage in Armenia. 2⁄3 employees of the National Academy of Sciences receive the minimum wage.

Thus, there are certain problems in the Republic of Armenia in all components affecting HC, but most of all is concerned in the field of education in terms of quality, remuneration and creation of a competitive workforce. We call on the Government of the RA to pay more attention to the improvement of the educational sphere and the development of educational programs, which are fundamentally conducive to scientific and technological progress, because from Silicon Valley to Europe there are many innovations, the authors of which are Armenians, but their activities are not connected with the Republic. In the area of health, we have basically the same problems as those that exist in all countries of the world and are the focus of WHO.

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