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CONTENT

LAW

THE FREEDOM OF EXPRESSION VS. THE AUTHORITY OF THE COURT UNDER THE FIRST AMENDMENT TO THE U.S. CONSTITUTION AND ITS IMPACT ON THE GEORGIAN LEGISLATION

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Abstract

The present paper examines the case law of the European Court of Human Rights in relation to criticism of the Court, and the compliance of the Georgian legislation and the case law with international standards (U.S. and the case law of the European Court of Human Rights).

The article deals with the scope of the court's criticism under the First Amendment to the U.S. Constitution and its impact on the Georgian legislation. The paper analyzes the United States model of freedom of expression and compares it with the standards of the European Court of Human Rights. The study found that, similar to the U.S. model, the Georgian model of freedom of expression is based on the primacy of a neutral restriction on freedom of expression, which indicates a high standard of protection of freedom of speech. The Georgian constitutional standard for restricting freedom of expression in order to administer the process of justice smoothly, properly and effectively for a legitimate purpose is influenced by the "three-element" test developed in the Brandenburg case, and shares its essence. According to the Georgian model of freedom of expression, the restriction of freedom of expression for the legitimate aim of ensuring the independence and impartiality of the judiciary, should only be applied to the smooth and proper administration of justice, using the "Clear and Present Danger Test", involving its high probability. In terms of the court criticism, the Georgian model offers a substantive and content-neutral regulation, and prevents the restriction of the subject of expression. According to the standard of the Constitutional Court of Georgia, expressing an opinion on the activities of a judge is considered a constitutional right and enjoys a high value status. In order to protect the authority of the court, according to the standards of both the International and the Constitutional Court of Georgia, "pushing speech into falling victim to justice" and unjustifiably exercising interference is found inadmissible.

Keywords: Court, Criticism, Scope, Assessment.

Introduction

According to the standard of the Constitutional Court of Georgia, expressing a critical opinion regarding the activities of a judge is considered a constitutional right[1], to which a judge, as a public figure, has an obligation to listen. The ongoing judiciary reforms and activities are a subject of increasing public interest, which might become a subject to criticism. The "marketplace of ideas" is the basis for the development of the individual and society, which is manifested in the pluralism of debating and dialogue. Therefore, it is important for judges to properly understand the merits of freedom of expression and its role in building a free society oriented on values.

[1] A ruling by the Constitutional Court of Georgia on the Case №2/482,483,487,502 "Political Union of the Citizens Movement for United Georgia", "Political Union of the Citizens Georgian Conservative Party", Citizens of Georgia Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers Association, Citizens Dachi Tsaguria and Jaba Jishkari, "Public Defender of Georgia v. Parliament of Georgia", April 18, 2011, Article 67.

The article mainly analyzes the scope of criticism of the court (judge), observing the U.S. model of freedom of expression and its impact on the Georgian legislation.

The case law of the European Court of Human Rights on criticism of the court, as well as the compliance of the Georgian legislation and the case law with international standards are also examined.

1. The "Clear and Present Danger Test" as a guarantee of freedom of expression

The First Amendment[2] to the United States Constitution is a supreme constitutional guarantee of protection of freedom of expression. The First Amendment to the Constitution stipulates in an imperative and absolute manner that the U.S. Congress is prohibited from passing legislation that restricts[3] freedom of speech or the press. Regarding the content of the First Amendment, two questions need to be clarified: first, whether the constitutional regulation of the First Amendment applies only to the U.S. Congress, and second, whether the First Amendment is a record of an absolute nature, as suggested by the literal definition of the rule.

While it may seem at first glance that the First Amendment only applies to the Congress, this is not the case. The U.S. Supreme Court has clarified in a number of cases that the Congress referred to for the purposes of the First Amendment includes not only the legislature but also the entire federal government[4]. As the rights enshrined in the First Amendment to the U.S. Constitution are one of the cornerstones[5] of the U.S. constitutional order, it is a binding constitutional rule for all branches of government. At the same time, although at first glance the First Amendment gives the impression of an absolute order and does not define the grounds for its restriction at the level of the Constitution, it is not of an absolute nature. Freedom of expression may be restricted in the public interest and in the face of clear and present dangers.

The doctrine of the First Amendment to the U.S. Constitution considers freedom of expression both as a goal and as a means. Freedom of expression is, on the one hand, the best means of personal development and, on the other hand, a precondition for the protection of other rights[6].

The U.S. model of freedom of expression is content-neutrally regulated, indicating a high standard of freedom of expression. The First Amendment to the U.S. Constitution, for example, unlike the European Convention on Human Rights, does not contain grounds for restricting freedom of expression. They are established by the precedents set by the U.S. Supreme Court. Given the peculiarities of the Anglo-Saxon (common law) system, the grounds for restricting freedom of expression are formed from the specific court decisions. For example, the European Convention on Human Rights uses[7] the "three-element test" to assess the restriction of freedom of expression. Pursuant to Article 10, Section 2 of the European Convention on Human Rights, a restriction on freedom of expression must meet the following preconditions: the restriction must be provided for by law; it must serve one of the legitimate aims enshrined in the Convention and the Constitution; Restriction must be necessary in a democratic society[8]. Since Section 2 of Article 10 of the European Convention on Human Rights comprehensively defines the grounds for restriction of freedom of expression, the European Court of Human Rights has no jurisdiction to extend the grounds for the restriction provided for in Article 10 of the Convention. Unlike the European Court model, in the U.S. the grounds for restricting the freedom of expression are fully

[2] First Amendment to the US Constitution, https://www.law.cornell.edu/constitution/first_amendment [l. s. 24.09.2021].
[3] Ibid.
[4] M. Okruashvili and I. Kotetishvili, 'Freedom of Expression', Volume I, Liberty Institute, 2005. p. 16.
[5] Ibid. 15
[6] A thesis by Eva Gotsiridze on "Freedom of Expression in the Context of a Fair Balance of Conflicting Values (in accordance with the jurisprudence of the European Convention on Human Rights and the Strasbourg Court)", International Law Institute - TSU, 2007, p. 398.
[7] Guide on Article 10 of the European Convention on Human Rights, Freedom of Expression, Updated – 31 August 2020, Council of Europe/European Court of Human Rights, 2021, pp.19-22.
[8] Ibid.

determined by the court[9]. The "three-element test" of restricting the freedom of expression is also used by the Constitutional Court of Georgia in the assessment of the restriction of Article 17 of the Constitution.

The U.S. model of freedom of expression distinguishes between high and low values of expression. Expressing high value has the function of contributing to the value development of the society and brings benefits to it. The expression of low value, on the other hand, is anti-social in nature and is devoid of values.

The content-neutral regulation of freedom of expression in the United States suggests that the criterion for restricting freedom of expression under the First Amendment to the United States Constitution is the "Clear and Present Danger Test"[10] developed by the Supreme Court of the United States. It is a content-neutral tool for restricting freedom of expression. The "Clear and Present Danger Test" is an important legal mechanism for balancing freedom of expression and the rights that are associated with it. The "Clear and Present Danger Test" was first used in the case *Schenck v. United States*[11]. The U.S. Supreme Court gave the Congress a wide range of considerations in interfering with freedom of expression in the Schenck case. According to former U.S. Supreme Court Justice Oliver Wendell Holmes, "the nature of any action depends on the circumstances under which the act was performed. Even the strictest protection of free speech will not justify a person who falsely shouts fire in a theatre and causes a panic"[12]. At the same time, "the key in any case is to determine whether the word used is uttered in circumstances that could create a clear and immediate threat, a threat to which protection falls within the authority of the Congress"[13]. The U.S. Supreme Court had for the first time established the doctrine of "Clear and Present Danger" in the Schenck case, which is still considered an important tool for interpreting the U.S. Constitution[14].The shortcoming of the "Schenck test" was that it empowered the Congress to restrict the expression of a "dangerous tendency", as has been seen in various cases before the Supreme Court[15]. The "Bad Tendency Test" reflected in the case *Abrams v. U.S.* revealed the difference between the views of the Supreme Court Justices Oliver Wendell Holms and William Brandeis, having led to becoming a guarantee of freedom of expression. According to Holmes, regardless of the nature of political expression, only the apparent and immediate threat of real harm posed a power to the Congress to impose restrictions on freedom of expression[16].In the case of *Abrams v. U.S.,* Judges Holmes and Brandeis set some important standards in their differing views: In assessing restrictions on freedom of expression, the focus should have been on content-neutral regulation and expression could be restricted if it crossed the line between freedom of expression and violence. In the given case, Judge Holmes' definitions were based on the doctrine of "marketplace of ideas" and the doctrine of pluralism of opinion as a measure of truth[17]. In the case of *Gitlow v. New York*, which called for anarchy and coup d'état, the U.S. Supreme Court discussed the "dangerous tendency" and "bad tendency" tests along with the "clear and present danger" one, highlighting the fact that in this case, there was a specific punishment during the state of war[18]. Using the "Clear and Present Danger" test, Judge Holmes did not consider Gitlow's expression to be a clear and present danger.

The "Clear and Present Danger" test had filtered and a new standard for assessing restrictions on freedom of expression established in the 1969 U.S. Supreme Court case *Brandenburg v. Ohio*[19], where it abolished the

[9] A thesis by Eva Gotsiridze on "Freedom of Expression in the Context of a Fair Balance of Conflicting Values (in accordance with the jurisprudence of the European Convention on Human Rights and the Strasbourg Court)", International Law Institute - TSU, 2007, pp. 404-405.
[10] A ruling by the Supreme Court of the United States on case No. 249 U.S. 47, Schenck v. United States, 1919. A ruling by the Supreme Court of the United States of America No. 395 U.S. 444 Brandenburg v. Ohio, 1969.
[11] A ruling by the Supreme Court of the United States on the Case No. 249 U.S. 47, Schenck v. United States, 1919.
[12] G. Tsulukidze, R. Kakabadze, V. Berekashvili, 'Freedom of Expression and Protection of Judicial Independence and Impartiality', Georgian Democratic Initiative (GDI) 2020, p.21.
[13] Ibid. 21.
[14] Case Law in the United States and Europe, Chapter II, Liberty Institute, 2005, p. 161.
[15] G. Tsulukidze, R. Kakabadze, V. Berekashvili, 'Freedom of Expression and Protection of Judicial Independence and Impartiality', Georgian Democratic Initiative (GDI) 2020, p.22.
[16] A ruling by the Supreme Court of the United States on the Case No. 250 U.S. 616 Abrams v. United States, 1919.
[17] Case Law in the United States and Europe, Chapter II, Liberty Institute, 2005, p. 32.
[18] A ruling by the Supreme Court of the United States on the Case No. 268 U.S. 652 Gitlow v. New York, 1925.
[19] A ruling by the Supreme Court of the United States on the Case No. 395 U.S. 444 Brandenburg v. Ohio, 1969.

criminal liability of a member of the Ku Klux Klan for syndicalism. According to the "Brandenburg Test", freedom of expression cannot be restricted unless it is intended to provoke a clear and immediate challenge to an illegal act, and there is a high probability that such an act will take place. In contrast to previous rulings by the U.S. Supreme Court, the Supreme Court developed a "three-element test" of restriction of freedom of expression in the Brandenburg case, thus providing a solid basis for assessing a substantively neutral restriction on freedom of expression. According to the "Brandenburg Test", in order for the expression to be banned, there must be a direct and unequivocal call for a violation of the law; the expression, in its essence, should call for an immediate violation of the law, and there should be a high probability that the call will lead to an immediate violation of the law[20]. According to the standard developed in the Brandenburg case[21], unless the above evidences are clear, even the preaching of violence and hatred is protected by the First Amendment to the U.S. Constitution. The introduction of the "Brandenburg Test" has expanded the scope of protection of freedom of expression and laid the groundwork for a substantially neutral model of U.S. restrictions on freedom of expression.

The threat of unjustified and arbitrary interference with freedom of expression is prevented by the third component of the "Brandenburg Test", regarding the high probability of the call to lead to an immediate violation of the law. This component of the "clear and present danger" obliges the person in authority to assert further evidence of the need to intervene in freedom of expression, thus reducing the risk of unjustified interference with the law and, on the other hand, diminishing the chances of encroachment of the content of expression[22]. It should be noted that the use of the "clear and present danger" criterion provides a greater precondition for better protection of freedom of expression than the European criterion of "necessary in a democratic society"[23], as the latter is a general rule allowing for wider interpretation and enables more interference into the content of freedom of expression.

The Georgian model of freedom of expression uses the doctrine of the "Clear and Present Danger" test at both levels of legislation and constitutional practice. The Law of Georgia on Freedom of Speech and Expression provides for the use of the "Clear and Present Danger" test in assessing the "call" itself. According to Article 4 of the law, "a call shall give rise to liability established by law only when a person commits an intentional act which creates a clear, direct and substantial threat of an unlawful result"[24]. The "Clear and Present Danger" test is provided by the Law of Georgia on Assemblies and Demonstrations. Article 11 of the law stipulates that "during the planning and holding of a rally or demonstration, a call for the overthrow or violent change of the constitutional order of Georgia, violation of the country's independence and territorial integrity, or a call for propaganda of war and violence; stirring national, religious or social strife, and posing a clear, direct and substantial threat to the activities found in this paragraph"[25].

The doctrine of "clear and present danger" was developed by the Constitutional Court of Georgia in its decision of 18 April 2011, explaining that the call for violence must pose a real threat, "an obvious, direct and substantial threat of an unlawful outcome"[26]. The Constitutional Court of Georgia points to a neutral Georgian model in

[20] Case Law in the United States and Europe, Chapter II, Liberty Institute, 2005, p. 80.
[21] Law of Georgia on Assemblies and Demonstrations, June 12, 1997.
[22] A thesis by Eva Gotsiridze on "Freedom of Expression in the Context of a Fair Balance of Conflicting Values (in accordance with the jurisprudence of the European Convention on Human Rights and the Strasbourg Court)", International Law Institute - TSU, 2007, pp. 407-408.
[23] A thesis by Eva Gotsiridze on "Freedom of Expression in the Context of a Fair Balance of Conflicting Values (in accordance with the jurisprudence of the European Convention on Human Rights and the Strasbourg Court)", International Law Institute - TSU, 2007, p. 405.
[24] Law of Georgia on Freedom of Speech and Expression. June 24, 2004.
[25] Law of Georgia on Assemblies and Demonstrations, June 12, 1997.
[26] A ruling by the Constitutional Court of Georgia on the Case №2/482,483,487,502 "Political Union of the Citizens Movement for United Georgia", "Political Union of the Citizens Georgian Conservative Party", Citizens of Georgia Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers Association, Citizens Dachi Tsaguria and Jaba Jishkari, "Public Defender of Georgia v. Parliament of Georgia", April 18, 2011, Article II.105; EMC criticism of Ioseb Jachvliani's Legislative Initiative for Insulting Religious Feelings, 2016, https://socialjustice.org.ge/ka/products/emc-s-kritika-religiuri-grdznobebis-sheuratskhqofis-sakitkhze-ioseb-jachvlianis-sakanonmdeblo-initsiativaze [L.s. 24.09.2021].

terms of freedom of expression in the case of *Giorgi Kipiani and Avtandil Ungiadze*. According to the court, "the inadmissibility of position, values, and ideas cannot be a ground for restricting freedom of expression. The state is obliged to protect objectively identifiable interests and not the subjective feelings"[27].

2. The scope of the court's criticism under the First Amendment to the U.S. Constitution

The U.S. model of freedom of expression defends criticism of the court and the individual judge to a high degree and ranks it as a protector of political expression[28]. According to the U.S. model of freedom of expression, judges are integrated into the notion of a "public figure" and have a duty to listen to criticism. On the case *Syllabus: New York Times Co. V. Sullivan,* The Supreme Court of the United States ruled that criminal liability for criticizing a judge to protect the authority and reputation of a court could not be justified unless there was an obvious and immediate threat to the proper administration of justice[29].

The U.S. Supreme Court stated on the *Landmark Communications* case that "law does not provide judges with greater immunity from criticism than other individuals and institutions. The activities of the courts and the legal conduct of judges are an important area of public interest"[30].

The first decision by the U.S. Supreme Court to be criticized was the case *McCulloch v. Maryland* [31]of 1819. In the ruling, the Supreme Court clarified that it was the U.S. Congress that was empowered to set up the national banking system. This decision of the Supreme Court faced wide criticism. According to former U.S. President Thomas Jefferson, the court was a "corps of unsuspecting miners and sappers" who "continually worked undercover to overthrow the Confederate enterprise"[32].

The Supreme Court of the United States uses the "Brandenburg Three-Element Test" to restrict freedom of expression on the grounds of contempt of court. Restricting freedom of expression through the practice of the U.S. Supreme Court requires a clear and real threat to the independence of the judiciary and the proper administration of justice[33].

The U.S. model of freedom of expression involves the protection of the freedom of the press of the highest standard, due to its special role in society.

Under the U.S. model of freedom of expression, imposing a sanction on the press is unacceptable for contempt of court unless there is a "clear and present danger" to the administration of justice[34].

On the case of *Bridge v. California,* the Supreme Court ruled that a restriction of freedom of expression in the media due to contempt of court should be assessed using the "Clear and Present Danger" test, when the proper administration of justice is in "clear and present danger"[35]. According to the standard developed in the Bridges case, the First Amendment to the U.S. Constitution protects insulting expressions against the judiciary and the judge, and sharp criticism of court decisions.

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[27] A ruling by the Constitutional Court of Georgia on the Case №1/3/ 421,422 "Citizens of Georgia Giorgi Kipiani and Avtandil Ungiadze v. Parliament of Georgia", November 10, 2009. Article II.7.
[28] Case Law in the United States and Europe, Chapter II, Liberty Institute, 2005, p. 23.
[29] A ruling by the Supreme Court of the United States on the Case of "New York Times v. Sullivan", 1963.
[30] A ruling by the Supreme Court of the United States on the Case No. 435 U.S. 829 Landmark Communications v. Virginia, 1978. Also, G. Tsulukidze, R. Kakabadze, V. Berekashvili, "Freedom of Expression and Protection of Judicial Independence and Impartiality", Georgian Democratic Initiative (GDI), 2020, 55.
[31] A ruling by the Supreme Court of the United States on the Case No. 316 316 "McCulloch v. Maryland", 1819.
[32] G. Tsulukidze, R. Kakabadze, V. Berekashvili, "Freedom of Expression and Protection of Judicial Independence and Impartiality", Georgian Democratic Initiative (GDI), 2020, p. 45.
[33] A ruling by the Supreme Court of the United States on the Case No. 376 U.S. 254 "New York Times v. Sullivan", 1963.
[34] Article 19" Background Paper on Freedom of Expression and Contempt of Court, International Seminar on Promoting Freedom of Expression With the Three Specialised International Mandates. 29-30 November , 2000 p.8.
[35] A ruling by the Supreme Court of the United States on the Case No. 314 US 252 "Bridge v. California", 1941.

The U.S. Supreme Court used the "Clear and Present Danger" test in assessing restrictions on freedom of expression through the case of *Pennekamp v. Florida*[36]. In the case cited, newspaper publishers criticized the court, saying the court rulings served the interests of criminal authorities and were beneficial to the gambling business.

The publishers of the newspaper were accused of violating the authority of the court holding such opinions. According to the Supreme Court in the case, the judiciary must be receptive to expressions that are critical and offensive to them, and that "weak individuals cannot be judges"[37]. According to the Supreme Court, when restricting freedom of expression, the content of the expression and the circumstances in which the expression took place must be taken into account.

In the case of *Craig v. Harney*, the Supreme Court clarified that "the law regulating harassment cannot be a refuge for judges, who are sensitive to the fierce public criticism"[38].

According to the U.S. model, restricting freedom of expression on the basis of ensuring the independence of the judiciary requires the fulfillment of two preconditions: posing a threat to the proper administration of justice and speaking out against the ongoing case and its judge[39].In order to restrict freedom of expression, it is important that "the malicious intent actually inflicted be extremely serious and that the likelihood of danger be high"[40]. The high standard of protection of freedom of expression in the United States is manifested in the fact that it is virtually impossible to access the content of expression, and basically, the restriction of freedom of expression can only apply to the form, time and place of expression. The U.S. model offers a substantively neutral regulation of restrictions on freedom of expression, indicating its high standard of protection. According to the manner developed by the U.S. Supreme Court regarding the First Amendment to the Constitution, restrictions on freedom of expression are almost impossible due to public insults and criticism[41].

U.S. federal court judges enjoy high protection guarantees. They are appointed on a permanent basis. The impeachment procedure against them is carried out in exceptional cases. The impeachment process requires the consent of both houses of Congress. Under conditions of high guarantees of independence, federal judges exercise strict judicial control over the exertion of the principle of separation of powers under the U.S. Constitution during their judicial terms, even if their decisions are met with harsh public criticism.[42]

Unlike the U.S. model of freedom of expression, Article 10 of the European Convention on Human Rights names a broadly interpreted basis for restricting freedom of expression - the authority of the judiciary and its protection due to its special role, status and public interest[43] as well as emphasizing the importance of maintaining trust in the judiciary throughout a democratic society[44]. The European Court of Human Rights narrowly defines the scope of admissible criticism of the court in contrast to the U.S. model, citing the judge's inability to respond to public criticism[45]. The European Court of Justice has ruled in the *Prager and Oberschlick* case that "the special role of the judiciary in society must be taken into account. As a guarantor of justice, the judiciary must enjoy the public trust in order to successfully carry out its duties. In this way, it

[36] A ruling by the Supreme Court of the United States on the Case No. 328 U.S. 331 Pennekamp v. Florida, 1946.
[37] Freedom of Expression in Georgia, GDI, 2020, 29.
[38] A ruling by the Supreme Court of the United States on case No. 331 US 367 "Craig v. Harn", 1947.
[39] A ruling by United States on case No. 314 US 252 "Bridge v. California", 1941. Decision by the Supreme Court of the United States on case no. 328 U.S. 331 "Penenkamp v. Florida", 1946. Decision by the Supreme Court of the United States on case No. 331 US 367 "Craig v. Harn", 1947. Decision by the Supreme Court of the United States om case No. 370 US 375, 1962.
[40] Background Paper on Freedom of Expression and Contempt of Court, for the International Seminar on Promoting Freedom of Expression. 29-30 November 2000, p.8.
[41] G. Beraia, The Problem of Restriction of Freedom of Expression in the Name of Protecting the Authority of the Judiciary: Theory and Practice of National Courts, European Court of Human Rights, Supreme Court of the United States, and UN Human Rights Committee, Review of Constitutional Law, XI, 2017, p.62.
[42] Hon. Marilyn L. Huff, The Effects of Public Criticism of the Judiciary on Judicial Independence, U.S. Federal Judges Association, 2018, p.2. https://www.federaljudgesassoc.org/egov/documents/1539117619_2837.pdf [l.s.24.09.2021].
[43] A ruling by the European Court of Human Rights on Case No. 51160/06 "Di Giovanni v. Italy", 9 July 2013. Paragraph 71.
[44] A ruling by the European Court of Human Rights on Case No. 73797/01 Kyprianou v. Cyprus, 15 December 2005. Paragraph 172.
[45] A ruling by the European Court of Human Rights on Case No. 29492/05 "Kudeshkina v. Russia", 26 February 2009. Paragraph 86.

may find it necessary to protect such confidence from unfounded and destructive attacks, especially in view of the fact that judges, who are criticized for their professional status, are prohibited from responding to such criticism"[46]. The "legitimate aim of ensuring judicial authority", under Article 10-22 of the European Convention on Human Rights, makes it possible to include freedom of expression in the context of the general, abstract and subjectively interpretable notion of "judicial authority". A substantial shift in the practice of the European Court of Human Rights in favor of freedom of expression took place in 2015, when the European Court of Human Rights ruled in two cases: *Morice v. France and Peruzzi v. Italy*. According to the European Court of Human Rights, the court, as a public institution, has a greater obligation to listen and "in the process of carrying out its activities, it may be subject to wider criticism than ordinary citizens".[47] The case of *Marian Maciejewski v. Poland* was about a journalist producing a critical article about people working in the justice system titled "Thieves in the Justice System". The journalist referred to those employed in the justice system as "mafia-like" judges and prosecutors. The journalist was fined for defamation. On this very case, the European Court of Human Rights found a violation of Article 10 of the Convention[48]. In this case, the European Court of Human Rights had ruled that it would assess the interference with the freedom of expression of the media with a rigorous test in cases, where a specific sanction would prevent media outlets from covering debates of high public interest. There is a high public interest in the ongoing processes and shortcomings in the judiciary, and the media in this case has a crucial role to play in verifying whether the actions of judges are in line with the principle of good faith[49].

3. The "Sub Judice"[50] Rule and the "Contempt of the Court" Doctrine[51]

The rule of restricting comment on the case under consideration stems from the English Doctrine of "Contempt of the Court"[52], which the U.S. model of freedom of expression is based on[53]. The "Contempt of the Court" doctrine prohibits the dissemination of information about the case under discussion in order to prevent pre-trial and pre-trial adjudication, public pressure on the court or parties, which may lead to human rights violations to a fair and impartial tribunal, as well as the violation of the procedural rights of the accused in criminal cases[54].

The U.S. model of freedom of expression is characterized by restrictions on freedom of expression in commenting on ongoing cases in court, which is "explained by the media's role in the prevention of parallel justice".[55] In commenting on ongoing cases, possible restrictions on freedom of expression are based on the view that no one should interfere in the actual court proceedings, restricting or questioning the right to a fair trial[56].

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[46] A ruling by the European Court of Human Rights on Case No. 15974/90 "Prager and Oberschlick v. Austria", 26 April 1995. Paragraph 34.
[47] A ruling by the European Court of Human Rights on Case no. 29369/10 "Moroce v. France", 23 April 2015. Decision by the European Court of Human Rights on Case No. 39294/09 "Peruzzi v. Italy", 30 June 2015.
[48] A ruling by the European Court of Human Rights on case No. 34447/05 "Marian Maciejewski v. Poland", judgment of January 13, 2015.
[49] Ibid.
[50] The term "Sub Judice" translates as "the Case is under Consideration".
[51] A common doctrine of common law countries, according to which, the courts have the power to impose legal liability on those who attempt to interfere with justice.
[52] Contempt of the Court.
[53] Background Paper on Freedom of Expression and Contempt of Court, for the International Seminar on Promoting Freedom of Expression. 29-30 November 2000, p.1.
[54] E. Gotsiridze, Restriction of Freedom of Expression to Protect the Authority and Impartiality of the Court (Review of the Jurisprudence of the Strasbourg Court) Law and the World, N13, 2019, 44.
[55] Article 19 "Background Paper on Freedom of Expression and Contempt of Court" 2000 p.5.
[56] G. Beraia, The Problem of Restriction of Freedom of Expression in the Name of Protecting the Authority of the Judiciary: Theory and Practice of National Courts, European Court of Human Rights, Supreme Court of the United States, and UN Human Rights Committee, Review of Constitutional Law, XI, 2017, p. 67.

On the case of *Attorney-General v Times Newspapers Ltd*[57], the English Court explained that "the right to a fair trial primarily means the unrestricted right of all citizens to apply to the court to assert their rights and duties. At the same time, this right also implies that citizens have a sense that the court is protected from all forms of bias and that decisions are made only on the basis of the arguments and evidence presented. The third component also implies that once the case has been accepted by the court, there is no other body and person capable of usurping the power of the court. Any action that violates the previous criteria will be considered an insult to the court"[58]. By the standard developed in the *Attorney-General v Times Newspapers Ltd* case, the core of the contempt of the court doctrine is to prevent the substantial risk of pre-trial review and pre-trial evaluation[59]. With proper court administration, the scope of protection of this doctrine is to protect witnesses from victimization and damaging criticism of the court in the press[60].

The U.S. Code of Judicial Ethics prohibits judges from making public comments on the substantive issues of a case under consideration or in waiting.[61]

In contrast to the U.S. model, the European Court of Human Rights sets a relatively low standard of protection of freedom of expression when commenting on a case under consideration. According to the case law of the European Court of Human Rights, in assessing the impact of a publication on the administration of justice in the ongoing case, the European Court takes into account at the time of publication, the content (the extent of provocativeness) and the status of the trial judge[62]. In determining the temporal aspect of publication, the European Court takes into account the critical timing of releasing publication, and commenting on the trial in order to uphold the presumption of innocence.[63] The European Court also takes into account the peculiarities of the trial and adjudication by the jury, the non-professional status of jurors and the possible influence of commentary on the administration of justice.[64] According to the standard of the European Convention on Human Rights, if jurors are influenced by a preconceived notion about a case, then the chances of a fair trial are greatly diminished[65]. In the case of *Seckerson and Times Newspapers Limited v. UK*[66], the head juror and the Times newspaper were found guilty of contempt of court and fined for revealing the secrets of the jury meeting, which was revealed in a Times article published, where the head juror expressed his concerns about the trial in which he was involved. The European Court of Human Rights has clarified that the rules that oblige the jury to maintain the confidentiality of the jury are important for ensuring the authority and impartiality of the court[67].

The European Court of Human Rights in the case of *Worm v. Austria*[68] clarified that "journalists should always remember to refrain from making statements that could call into question the will of an individual, whether intentionally or unintentionally, in a fair trial or in the public confidence in the role of the courts in a democratic society".[69]

[57] Attorney-General v Times Newspapers Ltd: HL 1973.
[58] G. Beraia, The Problem of Restriction of Freedom of Expression in the Name of Protecting the Authority of the Judiciary: Theory and Practice of National Courts, European Court of Human Rights, Supreme Court of the United States, and UN Human Rights Committee, Review of Constitutional Law, XI, 2017, pp. 67-68.
[59] E. Gotsiridze, Restriction of Freedom of Expression to Protect the Authority and Impartiality of the Court (Review of the Jurisprudence of the Strasbourg Court) Law and the World, N13, 2019, 44.
[60] Consultant Editor C.J. Miller and David Perry QC, Miller on Contempt of Court, fourth edition, 2018, 2-7.
[61] Code of Conduct for United States Judges Canon 3 (A) (6).
[62] Guide on Article 10 of the European Convention on Human Rights, Freedom of expression Updated – 31 August 2020, 82.
[63] A ruling by the European Court of Human Rights on Case No. 17107/05 "Campos Damaso v. Portugal", 24 April 2008. Paragraph 35.
[64] A ruling by the European Court of Human Rights on Case No. 53886/00 Turanshaw and Julie v. France, 24 November 2005. Paragraph 75.
[65] E. Gotsiridze, Restriction of Freedom of Expression to Protect the Authority and Impartiality of the Court (Review of the Jurisprudence of the Strasbourg Court) Law and the World, N13, 2019, 44.
[66] https://ukhumanrightsblog.com/2012/02/08/times-contempt-challenge-thrown-out-in-strasbourg/ [l.s.24.09.2021].
[67] F. Leach, Taking a Case to the European Court of Human Rights, Fourth Edition, Student Version, 2017, 490.
[68] A ruling by the European Court of Human Rights on Case No.22714 / 93 "Worm v. Austria", 29 August 1997. Paragraph 50.
[69] E. Gotsiridze, Restriction of Freedom of Expression to Protect the Authority and Impartiality of the Court (Review of the Jurisprudence of the Strasbourg Court) Law and the World, N13, 2019, 46.

4. The extent of lawyers' freedom of expression in relation to criticism of the justice system

In terms of freedom of expression for lawyers, the U.S. Supreme Court largely shares a similar standard to that of the European Court of Human Rights. The U.S. Supreme Court takes a tough approach to the scope of a lawyer's freedom of expression, given the important role a lawyer plays in administering justice. According to the U.S. Supreme Court standard, attorneys should refrain from criticizing the judiciary not to undermine public confidence in the justice system. According to the U.S. Supreme Court, a lawyer's freedom of expression is restricted in the face of judicial criticism if it threatens the proper administration of justice. In the *In re Sawyer* case, attorney Sawyer described the trial as "dangerous and shocking", and criticized the ongoing court hearings. In keeping with the U.S. Supreme Court, a lawyer has the right to criticize state law. Sawyer criticized the court hearings, however, while criticizing; he focused on the problem of legislation and did not mention the name of the judge hearing the case. According to the standard developed in the Sawyer case, a lawyer should not be criticized for violating the country's flawed legislation or professional ethics, unless the lawyer's statement "does not endanger the proper administration of justice"[70]. Later, the U.S. Supreme Court in the case of *Gentile v. The State Bar of Nevada* developed a standard of freedom of expression for lawyers and emphasized the doctrine of "real harm" posed either to the right or interest[71]. The U.S. Supreme Court in the case of *Sacher v. The United States,* justified the imposition of contempt of the court on five attorneys, who attempted to interfere with justice and obstruct the trial[72].

Accordingly, under the U.S. Standard on Freedom of Expression, professional and ethical discipline of attorneys may be exercised if they threaten the smooth administration of justice and the administration of the judiciary[73].

The standard of the European Court of Human Rights on the freedom of expression of the lawyer is based on an understanding of the special status and central role of the lawyer in the proper administration of justice, acting as a mediator between the public and the court. It is lawyers who play a crucial role in ensuring that public confidence in the courts is maintained[74]. In obedience to the standard of the European Court of Human Rights, within the framework of freedom of expression, a lawyer cannot be equated with a journalist due to their different role in the judicial process. Journalists have the right, as part of their official activities, to disseminate and express ideas on any matter of public interest, including issues related to the administration of justice. Lawyers, on the other hand, are supporters of the justice system, direct participants in ensuring its enforcement and upholding the interests of their clients[75].

The standard of the European Court of Human Rights should not be perceived in such a way that lawyers are generally deprived of the opportunity to exercise their freedom of expression. They have the right to comment on trials and justice issues. It is simply that their expression is to some extent within the framework of a lawyer's professional ethics, which is due to their special role in the justice process.

The European Court of Human Rights in the case of *Schöpfer v. Switzerland* clarified that lawyers have the right to comment on the judicial process; however, their expression should not contain language that is detrimental to the authority of the court[76].

According to the standard developed in the case of *Morice v. France*, "lawyers enjoy freedom of expression. This includes not only the essence of ideas and information, but also the form of their expression. Lawyers

[70] A ruling by the Supreme Court of the United States on the Case No. 124 U.S. 200 In Re Sawyer, June 29, 1959. on the Case of In re Sawyer.
[71] A ruling by the Supreme Court of the United States on the Case No. 501 U.S. 1030 Gentile v. Nevada, 27 June 1991.
[72] A ruling by the Supreme Court of the United States on the Case No. 343 U.S. 1 Sacher v. United States, 10 March 1952.
[73] The Connecticut Court of Appeal on the Case No. 17341. Notopoulos v. Statwaid Grevens, 24 September 2003.
[74] A ruling by the European Court of Human Rights on the Case No. 29369/10 ,, Morice v. France, 23 August 2015. Paragraphs 132-139; Decision by the European Court of Human Rights on the Case No. 31611/96 "Nicola v. Finland", 21 March 2002. Paragraph 45.
[75] Guide on Article 10 of the European Convention on Human Rights, Freedom of expression, Updated – 31 August 2020; p.78.
[76] A ruling by the European Court of Human Rights on the Case No.25405 / 94 "Driver v. Switzerland", 20 May 1998.

have the right to express their views publicly on the administration of justice, provided that criticism does not go beyond certain limits and that justice is protected from unwarranted attacks and that it is motivated only by a desire or strategy to have a debate on justice in the media. Lawyers' statements should be considered and evaluated in a general context, considering the extent to which lawyer' criticism of justice can be seen as a misleading or unjustified personal assault. It should also be checked whether their statements are related to the factual circumstances of the case".[77]

The 2018 decision of the European Court of Human Rights on the case of *Ottan v. France* was quite revolutionary, since France was found to be the violator of the freedom of expression of the lawyer. The case was about the lawyer's statement to the jury after the trial that the jurors who heard the case were all white and did not represent all groups in society. Accordingly, a verdict of acquittal was expected.[78] The lawyer was given a disciplinary sanction as a warning, since the French national courts found the lawyer's assessment to be made on racial grounds. The European Court did not share the national court's assessment of the lawyer's statement to be based on racial grounds, explaining that "the author's position could be counted as a widely held view that the impartiality of judges, whether professional or jurors, is a value that does not exist in abstract; rather, it is the result of significant efforts to eradicate even unconscious bias, which, in a particular case, may be geographical or social, and which may further instill in people a fear that they will be misunderstood".[79]

It follows from the rulings of the European Court of Human Rights that criticism of the court by a lawyer is not always inadmissible and should be assessed on the basis of cumulative factors.

5. Case law of the Constitutional Court of Georgia and common courts

In the area of restriction of freedom of expression on the basis of judicial independence and impartiality, the standard of the Constitutional Court of Georgia considers the legitimate aim of restricting freedom of expression to be only the administration of successful, prompt and effective justice and the maintenance of order in the court[80]. The Georgian model of freedom of expression is influenced by the U.S. model.

According to the standard of the Constitutional Court of Georgia, expressing an opinion regarding the activities of a judge is considered a constitutional right[81]. According to the Constitutional Court, "expressing an opinion on the activities of a judge is a constitutional right. As a public figure, a judge has indeed an obligation to listen, insofar as criticism of his/her works as well as discussion of his/her professional or personal qualities may be in the public interest"[82]. According to the court, overseeing the independence of the judge does not mean banning the professional activity of the judge or criticizing the court decision. "It is a constitutional human right to express one's attitude towards the work of the court, including through gatherings (demonstrations) in the vicinity of the court"[83].

The standard of the Supreme Court of Georgia shares the approach of the European Court of Human Rights to restricting the Freedom of Expression on the grounds of being disrespectful to court.

[77] A ruling by the European Court of Human Rights on the Case No. 29369/10 "Morice v. France", 23 April 2015. Paragraphs 132-139.
[78] G. Tsulukidze, R. Kakabadze, V. Berekashvili, Freedom of Expression and Protection of Judicial Independence and Impartiality, Georgian Democratic Initiative (GDI), 2020, pp.57-58.
[79] Ibid.
[80] A ruling by the Constitutional Court of Georgia on the Case №1/3/393,397 "Citizens of Georgia Vakhtang Masurashvili and Onise Mebonia v. Parliament of Georgia", 15 December 2006.
[81] A ruling by the Constitutional Court of Georgia on the Case №2/482,483,487,502 Citizens' Political Union "Movement for United Georgia", Citizens' Political Union "Conservative Party of Georgia", Citizens of Georgia Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers Association, Citizens Dachi Tsaguria and Jaba Jishkhar Defender v. Parliament of Georgia ", 18 April 2011. Paragraph 67.
[82] Ibid.
[83] Ibid. Paragraph 66

The Supreme Court of Georgia ruled[84] on April 16, 2019, that a critical expression of a judge by businessman Fadi Asli was a protected right to freedom of expression on a judge's corruption. The Supreme Court in its decision underlined the ongoing judicial reform in the country, its high public importance and the need for a public debate on the judicial system. According to the Supreme Court, "In a situation where the country is undergoing judicial reform and the judiciary is top in the public interest, restrictions on freedom of expression will be allowed only in the case of an exceptional, overt and negative attack on the judiciary/judge, aiming to weaken the role of the judiciary, to undermine the independence of the judiciary, and only the above should be the objective of the disseminator. Otherwise, interference with the freedom of expression by the state authority may harm the interests of the country, making it impossible for the public to express an opinion on the progress of the reform, which, naturally, negatively affects the interests of the country and the administration of effective justice. According to the case law, issues related to the functioning of the judiciary, which are an extremely important institution for a democratic society, are in the public interest. In this regard, it is necessary to consider the special role of the court in society"[85].

In its judgement of 16 April 2019, the Supreme Court drew a line between a statement made in a courtroom and a statement made outside the courtroom. According to the Supreme Court, "regarding the authority of the court, as well as the rights of individual judges, it should be noted that certain regulations have been established by the legislation of Georgia in order to take preventive measures to avoid danger. When misconduct or certain statements are made in a courtroom, procedural law (see, for example, Articles 211 and 212 of the CCOG) establishes the rule of liability for the offender and the possibility of imposing the relevant sanction. In order to avoid the negative consequences of information disseminated outside the courtroom, the person, against whom the information was disseminated, has the right under Article 18 4 4 of the Civil Code to publish retaliatory information in the same mass media, disseminating the statement"[86].

6. Article 366 of the Criminal Code of Georgia and its compliance with international standards

Article 366 of the Criminal Code of Georgia (contempt of court) is incompatible with international standards for the protection of freedom of expression.

According to the first part of Article 366 of the Criminal Code of Georgia, insulting a participant in a lawsuit is considered disrespectful to the court. According to the second part of the same article, insulting a court is the same as insulting a member of a Constitutional Court, a judge or a juror[87].Due to the ambiguity and unpredictability of the norm, any expression that is perceived as disrespectful to the court can be considered as an offensive act, for which Article 366 provides for criminal liability.

Article 366 of the Criminal Code does not define what is meant by "contempt of court" and "insult to the court", which allows for a vague and arbitrary interpretation of the norm. The U.S. Supreme Court in the case of *Roth v. The US* clarified that, "the law should issue a clear warning about what action is prohibited by law. The predictability of a language is assessed by everyone through the understanding of its content and its fulfilment in practice"[88].

The vagueness[89] of the Article 366 of the Criminal Code makes it difficult for an individual to distinguish between a constitutionally protected and an inadmissible expression. The ambiguity and unpredictability of Article 366 of the Criminal Code is also reflected in the fact that Article 366 of the Criminal Code allows for such a wide interpretation that it prohibits the essential part of freedom of expression protected by Article 17

[84] A ruling by the Supreme Court of Georgia on the Case No. AS-591-591-2018 "Vladimer Kajabadze vs. Fadi Asli", April 16, 2019.
[85] Ibid.
[86] A ruling by the Supreme Court of Georgia on the Case NAS-591-591-2018 "Vladimer Kajabadze v. Fadi Asli", April 16, 2019.
[87] Article 366 of the Criminal Code of Georgia, https://matsne.gov.ge/ka/document/view/16426?publication=235 [l.s.24.09.2021].
[88] A ruling by the Supreme Court of the United States on the Case No. 354 U.S. 476 Roth v. United States. 1957.
[89] The vagueness of the law related to freedom of expression involves that it is difficult for a person to distinguish between legally permissible and impermissible expression due to an ambiguous and unpredictable norm.

of the Constitution of Georgia (overbreadth doctrine)[90]. The U.S. Supreme Court on the case of *Bagett v. Bullitt* ruled that with an unpredictable and indefinite norm, a person also moves away from the area where freedom of expression is constitutionally protected and tries to refrain from expressing an area where an unforeseen prohibition under the law can operate[91]. Article 366 of the Criminal Code, due to its ambiguity, does not allow for a uniform reading of the norm, thus violating the constitutional principle of definiteness[92].

The ambiguity of Article 366 of the Criminal Code makes it possible to extend the scope of restrictions on freedom of expression so much that the government is given carte blanche to restrict only content that is politically or otherwise unacceptable to it. The vague wording of Article 366 of the Criminal Code does not allow "ordinary people to understand what the state forbids them to do"[93]. The unpredictability of Article 366 of the Criminal Code "poses a threat to the court to rewrite a vague rule of law and set a standard of its own, which may not have been the aim of the legislature"[94]. According to Article 366 of the Criminal Code, "the fate of the accused depends on the discretion and whims of the judge"[95], as was revealed in the case of Zviad Kuprava, found guilty of contempt of court by the judge, manifested in insulting the judge[96]. According to the Constitutional Court of Georgia, "the decision to declare an action punishable is the exclusive authority of the legislator. Accordingly, he/she must use this power in such a way that the offender is not allowed, on the basis of judicial practice, to form the composition of a criminal act"[97].

Such vague norms bear a "deterrent effect", forcing the public to refrain from critical expression in debates that contribute to public debate for fear of sanctions, and to limit themselves to the part of expression that is a constitutionally protected benefit. Under the conditions of the "deterrent effect", the society resorts to self-censorship and refrains from expressing it for fear of disproportionate sanctions[98].

Conclusion

Although freedom of expression is not an absolute right and can be restricted, in order to protect the authority of the court, by both international and Georgian standards, "making speech fall victim to justice" is inadmissible. The Georgian constitutional model of freedom of expression is influenced by the United States and protects the right to criticizing a judge to a high degree. Similar to the U.S. model, the Georgian model of freedom of expression is based on a primitive neutral restriction on freedom of expression, which indicates a high standard of protection of freedom of expression. The Georgian constitutional standard for restricting freedom of expression, in order to conduct the process of justice smoothly, properly, and effectively, is legitimately affected by the "Clear and Present Danger Test" in the Brandenburg case and shares the U.S. standard of freedom of expression. In the part of the court criticism, the Georgian model develops a content-neutral regulation and prevents the restriction of the subject of expression.

[90] Overbreadth doctrine: this doctrine is typical of the U.S. model of freedom of expression and implies that the norm on freedom of expression is interpreted so broadly that it prohibits both protected and inadmissible expression under the First Amendment to the Constitution.
[91] A ruling by the Supreme Court of the United States on the Case No. 377 U.S. 360 "Bagett v. Bullitt", 1964.
[92] A ruling by the Constitutional Court of Georgia on the Case №1/1/657 "Citizen of Georgia Giorgi Putkaradze v. Parliament of Georgia", June 2, 2017 Paragraph 15.
[93] A ruling by the Supreme Court of the United States on the Case No. "Kolender v. Lawson". 1983.
[94] A ruling by the Supreme Court of the United States on the Case No. 383 U.S. 463 Ginzburg v. United States 1965.
[95] Ibid.
[96] Freedom of Expression, GDI, 2020, p. 26-29.
[97] A ruling by the Constitutional Court of Georgia on the Case №2/2/516 "Citizens of Georgia; Alexandre Baramidze, Lasha Tugushi, Vakhtang Khmaladze and Vakhtang Maisaia v. Parliament of Georgia", 14 May 2014. Paragraph 37.
[98] A ruling by the European Court of Human Rights on the Case No. 33629/06 Vajnai v. Hungary, 8 October 2008. Paragraph 54. Decision by the European Court of Human Rights on the Case No. 33348/96 Cumpana and Mazare v. Romania, 17 December 2004. Paragraph 114.

BIBLIOGRAPHY

1. A ruling by the Constitutional Court of Georgia: Political Union of the Citizens "Movement for United Georgia", Political Union of the Citizens "Georgian Conservative Party", Georgian Citizens Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers Association, Citizens Dachi Tsaguria and Jaba Jishkariani, Public Defender of Georgia V. Parliament", 18.04.2011; https://matsne.gov.ge/ka/document/view/1309814?publication=0 [last seen 30.09.2021];
2. A ruling by the Constitutional Court of Georgia: "Citizens of Georgia Giorgi Kipiani and Avtandil Ungiadze v. Parliament of Georgia", 10.11.2009; https://constcourt.ge/ka/judicial-acts?legal=300 [last seen 30.09.2021];
3. A ruling by the Constitutional Court of Georgia: "Citizens of Georgia Vakhtang Masurashvili and Onise Mebonia v. Parliament of Georgia", 15.12.2006; https://constcourt.ge/ka/judicial-acts?legal=310 [last seen 22.09.2021];
4. A ruling by the Supreme Court of Georgia: "Vladimer Kadjabadze v. Fadi Asli", 16.04. 2019;
5. A ruling by the Constitutional Court of Georgia: "Citizen of Georgia Giorgi Putkaradze v. Parliament of Georgia", June 2, 2017; https://constcourt.ge/ka/judicial-acts?legal=899 [last seen 22.09.2021];
6. A ruling by the Constitutional Court of Georgia: "Citizens of Georgia: Alexander Baramidze, Lasha Tugushi, Vakhtang Khmaladze and Vakhtang Maisaia v. Parliament of Georgia", 14.05.2014; https://matsne.gov.ge/ka/document/view/1925761?publication=0 [last seen 15.09.2021];
7. A ruling by the Supreme Court of the United States of America: "Schenck v. United States of America", March 3, 1919; https://www.oyez.org/cases/1900-1940/249us47 [last seen 15.09.2021];
8. A ruling by the Supreme Court of the United States of America: "Brandenburg v. Ohio", June 9, 1969; https://www.oyez.org/cases/1968/492 [last seen 24. 09.2021];
9. A ruling by the Supreme Court of the United States of America: "Abrams v. United States of America", 10.11.1919; https://www.oyez.org/cases/1900-1940/250us616 [last seen 15.09.2021];
10. A ruling by the Supreme Court of the United States of America: "Gitlow v. New York", June 8, 1925; https://www.oyez.org/cases/1900-1940/268us652 [last seen 3.10.2021];
11. A ruling by the Supreme Court of the United States of America: "New York Times v. Sullivan", March 9, 1963; https://www.oyez.org/cases/1963/39 [last seen 3.10.2021];
12. A ruling by the Supreme Court of the United States of America: "Landmark Communications v. Virginia", 1.05.1978; https://supreme.justia.com/cases/federal/us/435/829/ [last seen 3.10.2021];
13. A ruling by the Supreme Court of the United States of America: "Mcculloch v. Maryland", 6.03.1819; https://www.oyez.org/cases/1789-1850/17us316 [last seen 3.10.2021];
14. A ruling by the Supreme Court of the United States: "Bridges v. California", 8.12.1941; https://www.oyez.org/cases/1940-1955/314us252 [last seen 16.10.2021];
15. A ruling by the Supreme Court of the United States of America: "Pennekamp v. Florida", 3.06.1946; https://supreme.justia.com/cases/federal/us/328/331/ [last seen 16.10.2021];
16. A ruling by the Supreme Court of the United States: "Craig v. Harney", 19.05.1947; https://supreme.justia.com/cases/federal/us/331/367/ [last seen 16.10.2021];
17. A ruling by the Supreme Court of the United States of America: In re Sawyer, June 29, 1959; https://supreme.justia.com/cases/federal/us/360/622/ [last seen 16.10.2021];
18. A ruling by the Supreme Court of the United States of America: "Gentile v. Nevada", 27.06.1991; https://supreme.justia.com/cases/federal/us/501/1030/ [last seen 14.10.2021];

19. A ruling by the Supreme Court of the United States of America: "Sacher v. United States of America", March 10, 1952; https://supreme.justia.com/cases/federal/us/343/1/ [last seen 14.10.2021];

20. A ruling by the Connecticut Court of Appeal: Notopoulos v. Statewide Grievance, 05.10.2004; https://caselaw.findlaw.com/ct-court-of-appeals/1057176.html[last seen 14.10.2021];

21. A ruling by the Supreme Court of the United States of America: "Roth v. United States of America", 24.06.1957; https://www.oyez.org/cases/1956/582[last seen 14.10.2021];

22. A ruling by the Supreme Court of the United States of America: "Baggett v. Bullitt", 1.06.1964; https://supreme.justia.com/cases/federal/us/377/360/ [last seen 14.10.2021];

23. A ruling by the Supreme Court of the United States of America: "Kolender v. Lawson", 2.05.1983; https://supreme.justia.com/cases/federal/us/461/352/ [last seen 14.10.2021];

24. A ruling by the Supreme Court of the United States of America: Ginzburg v. United States of America, 7.12.1965; https://www.oyez.org/cases/1965/42[last seen 14.10.2021];

25. A ruling by the European Court of Human Rights: "Di Giovanni v. Italy", 9.07.2013;

26. A ruling by the European Court of Human Rights: "Kyprianou v. Cyprus", 15.12.2005;

27. A ruling by the European Court of Human Rights: "Kudeshkina v. Russia", 26.02.2009;

28. A ruling by the European Court of Human Rights: "Prager and Oberschlick v. Austria", 26.04.1995;

29. A ruling by the European Court of Human Rights: "Perucci v. Italy", 30.06.2015;

30. A ruling by the European Court of Human Rights: "Marian Maciejewski v. Poland", 13.01.2015;

31. A ruling by the European Court of Human Rights: "Campos Damaso v. Portugal", 24.04.2008;

32. A ruling by the European Court of Human Rights: "Turanshau and Julie v. France", 24.11. 2005;

33. A ruling by the European Court of Human Rights: "Worm v. Austria", 29.08.1997;

34. A ruling by the European Court of Human Rights: "Nikula v. Finland", 21.03.2002;

35. A ruling by the European Court of Human Rights: "Schopfer v. Switzerland", 20.05.1998;

36. A ruling by the European Court of Human Rights: "Vajnai v. Hungary", 8.10.2008;

37. A ruling by the European Court of Human Rights: "Cumpana and Mazare against Romania", 17.12.2004;

38. A thesis by Eva Gotsiridze on "Freedom of Expression in the Context of a Fair Balance of Conflicting Values (according to the jurisprudence of the European Convention on Human Rights and the Court of Strasbourg)", International Law Institute - TSU 2007;

39. 39.Guide on Article 10 of the European Convention on Human Rights, Freedom of Expression, Updated om 31 August 2020, Council of Europe/European Court of Human Rights, 2021;

40. Gvantsa Tsulukidze, Rafiel Kakabadze, Veriko Berekashvili, "Freedom of Expression and Protection of Judicial Independence and Impartiality", Georgian Democratic Initiative (GDI) 2020;

41. Case law in the United States and Europe, Chapter II, Liberty Institute, 2005;

42. EMC Criticism of Ioseb Jachvliani's legislative initiative for "Insulting Religious Feelings", 2016, https://socialjustice.org.ge/ka/products/emc-s-kritika-religiuri-grdznobebis-sheuratskhqofis-sakitkhze-ioseb-jachvlianis-sakanonmdeblo-initsiativaze [last seen 24.09.2021;

43. Article 19 Background Paper on Freedom of Expression and Contempt of Court, International Seminar on Promoting Freedom of Expression With the Three Specialized International Mandates. 29-30 November, 2000;

44. Freedom of Expression in Georgia, GDI, 2020;

45. Giorgi Beraia, "The Issue of Restriction of Freedom of Expression in the Name of Protecting the Authority of the Judiciary: Theory and Practice of National Courts, the European Court of Human Rights, the Supreme Court of the United States, and the UN Human Rights Committee, Review of Constitutional Law", XI, 2017;

46. Hon. Marilyn L. Huff, The Effects of Public Criticism of the Judiciary on Judicial Independence, U.S. Federal Judges Association, 2018, p.2. https://www.federaljudgesassoc.org/egov/documents/1539117619_2837.pdf [last seen 24.09.2021];

47. Eva Gotsiridze, "Restriction of Freedom of Expression to Protect the Authority and Impartiality of the Court (Review of the Jurisprudence of the Strasbourg Court) Law and the World", N13, 2019;

48. Attorney-General v Times Newspapers Ltd: HL 1973;

49. Consultant Editor C.J. Miller and David Perry QC, Miller on Contempt of Court, fourth edition, 2018;

50. Leach, Taking a Case to the European Court of Human Rights, Fourth Edition, Student Version, 2017;

51. First Amendment to the US Constitution, https://www.law.cornell.edu/constitution/first_amendment [last seen 24.09.2021];

52. Law of Georgia on Freedom of Speech and Expression. June 24, 2004;

53. Law of Georgia on Assemblies and Demonstrations. June 12, 1997.

TO WHAT EXTENT DOES THE CURRENT EU REGULATORY FRAMEWORK FOR CIVILIAN DRONES ADDRESS PRIVACY ISSUES?

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"*Drones can be a highly effective way of dealing with high-priority targets, but they should not become the drug of choice for an administration that is afraid to use successful, legal and safe tactics of the past".*[1]

Abstract

Drone operation for civil purposes is a path-breaking innovation for all sectors of society. Drones, which were initially used for military purposes only, are currently widely applied for different civil purposes, such as recreational and commercial use, disaster relief, agriculture, construction management and other purposes. The drone industry is expected to employ more than 100,000 people and have an economic impact for more than €10 billion annually by 2025.[2] To achieve their full potential, it is vitally important to assess the potential risks drones might pose considering their characteristics and how this risk could be eliminated. It is also globally acknowledged that drones need to be integrated into non-segregated airspace, without compromising the achieved standards of civil aviation for manned aircraft in any way.

There are very important aspects linked to drone operation that are equally relevant to individuals both on the ground and in the air as well as to states and users of the airspace of interest for both manned and unmanned aircraft operation, among them is privacy. There are no direct instruments addressing privacy concerns related to drone operation. Therefore, existing treaties and regulations should be examined to determine whether these privacy issues are covered by national, regional and global regulatory frameworks of the EU. As stressed in the Riga Declaration: "Public acceptance is key to the growth of drone services". Therefore, addressing privacy issues sufficiently is a permanent force affecting the growth of the drone industry.

Key words: Drones, Civil Liability, Unmanned Aerial Systems, Privacy, Personal data protection.

Introduction

"Drones offer new services and applications going beyond traditional aviation and offer the promise to perform existing services in a more affordable and environmentally friendly way. They are a truly transformational technology."[3] The EU showed interest in drones and started a global discussion about them since the adoption of the Riga Declaration.[4] It was followed by several studies, soft law instruments and lately by two implementing and delegating regulations. The EU and its Member States are engaged in different projects through various platforms such as Concept of Operations for European UTM System (CORUS)[5] and Proving Operations of Drones with Initial UTM (PODIUM),[6] dedicated to the development of the drone industry. Modern drones have been used extensively for civil purposes such as agriculture, tourism, disaster relief, waste management and construction planning. It is anticipated that the drone industry will employ more

[1] J. A. Rodriguez, Jr. https://www.quoteload.com/quotes/authors/jose-a-rodriguez-jr/39352-drones-can-be-a-highly-effective-way-of-dealing-with-high-priority-targets-but-they-should-not-become-the-drug-of-choice-for-an-administration-that-is, [l. s. 08.10.2021].
[2] https://ec.europa.eu/growth/sectors/aeronautics/rpas_en, [L. s. 08.10.2021].
[3] See 2.
[4] Riga Declaration on Remotely Piloted Aircraft (drones) "Framing the Future of Aviation", Riga, 6 March, 2015.
[5] A set of easy-to-use rules for low-level airspace operations, https://www.sesarju.eu/projects/corus, [l. s. 11.10.2021].
[6] Putting U-space services to the test in operational scenarios, https://www.sesarju.eu/projects/podium, [l. s. 11.10.2021].

than 100,000 persons and have an economic impact of more than €10 billion annually by 2025.[7] Drones must be incorporated into non-segregated aviation in order to realize their full potential. Therefore, all stakeholders including private entities, international organizations such as EUROCONTROL and supranational organizations such as the EU are all cooperating to achieve this integration.

Along with the possibility of drones to be integrated into non-segregated airspace, they need to gain public acceptance, which is key to the growth of the drone industry. The general public is concerned about privacy, issues meaning that drones, considering the payload they carry and the capabilities they are equipped with, should not infringe on the privacy rights of the public; should not process information that will violate data protection rights;

This article aims to address this concern in the following manner. The first chapter tries to identify whether drones should be considered as aircraft, based on what should be considered as an aircraft. It is an important aspect to determine the aviation-related regulations applicable to them. Also, this chapter will briefly overview the history of its transition from military to non-military applications. There are different terms used to refer to drones, such as unmanned aircraft, autonomous aircraft, remotely piloted aircraft, etc.

The second chapter will explore the concept of the right to privacy: whether it is an absolute right or there are some limitations and under what circumstances is derogation permitted. Drones themselves do not pose a risk to the right to privacy, but a payload with the capacity to process data does. Accordingly, this chapter will enunciate where the legal boundary between collecting information for determined purposes and violation of privacy and personal data protection is to be found. Also, possible forms of breach of the above-mentioned rights will be elaborated, such as functional creep, voyeurism, infringement of bodily privacy and geo-localization. The regulatory framework for drones neither before the EC Regulation 2019/947 not afterwards does not directly address privacy issues; hence, the privacy and personal data rights found their legal safeguard under other legal instruments, such as the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the Charter of Fundamental Rights of the EU, the Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data9 and the General Data Protection Regulation. This chapter will assess whether the new Regulation has changed the existing situation, to what extent are privacy and personal data protection rights addressed in it and if this protection corresponds to the requirements set by legislative instruments particularly addressing privacy and personal data protection issues.

To answer the above-mentioned questions, qualitative research will be conducted. The existing literature does not sufficiently address these realms; therefore, for the research, along with the existing literature, international conventions, case law of the European Court of Human Rights (ECHR), EU Regulations, Directives, soft law instruments, different internet sources and other sources will be used to provide an answer to the following question: to what extend does the current EU regulatory framework for civilian drones address privacy issues?

1. History, definitions and taxonomy

1.1 Aircraft, vehicles or something else?

The Paris Convention 1919 Relating to the Regulation of Aerial Navigation was the first attempt to regulate civil aviation at the international level.[8] It did not include any specific articles concerning drones. However, the Protocol of 15 June 1929 incorporated a legal provision regarding pilotless aircraft in Article 15(2) stating the following: “No aircraft of a contracting State capable of being flown without a pilot shall, except by special authorization, fly without a pilot over the territory of another contracting State”.[9] The Paris Convention 1919

[7] See 4.
[8] B. I. Scott, A. Trimarchi, “Fundamentals of International Aviation Law and Policy”, “Routledge”, at 25, 2020.
[9] Article 8, Convention on International Civil Aviation, signed on 7 December 1944, in Chicago.

was replaced by the Chicago Convention on International Civil Aviation 1944 (hereinafter Chicago Convention).[10]

The US did not adhere to the Paris Convention as it considered the Convention to not sufficiently address the concept of freedom of commerce and transport. By the time WWII ended, commercial air transport had almost collapsed due to hostilities and the US initiated the establishment of a new regulatory framework.[11]The Chicago Convention aimed to develop international civil aviation in a safe and orderly manner, such that international air transport services would be established based on equality and opportunity and operated soundly and economically.[12]

ICAO has recognized the importance of drones and their future perspectives and to achieve the goals mentioned above, on 19 April 2007, the Unmanned Aircraft System Study Group was established. Subsequently, on 6 May 2014, the Remotely Piloted Aircraft System Panel was established. In 2011, the Unmanned Aircraft System Circular 328 was published,[13]and it was followed by the Manual on Remotely Piloted Aircraft Systems Doc 10019 and the process to develop a more sophisticated regulatory framework is ongoing. The EU has also kept up with global developments by regulating drones with an MTOM equal to or greater than 150 kg by the EASA Basic Regulation 216/2008[14] and currently by adopting Implementing Regulation 2019/947[15]and Delegated Regulation 2019/945.[16]

To understand whether or not the regulatory framework developed for civil aircraft operation applies to drones, firstly the legal status of the drones should be determined. Article 8 of the Chicago Convention incorporated the provision concerning pilotless aircraft adopted in Article 15(2) of the Paris Convention 1919 as amended by the Protocol of 15 June 1929.[17]However, neither Article 15(2) of the Paris Convention nor Article 8 of the Chicago Convention includes a precise definition of what is considered as a pilotless aircraft. Annex 7 to the Chicago Convention includes the definition of an aircraft, which states that "any machine that derives support in the atmosphere from the reactions of the air other than the reaction of the air against the earth's surface".[18] Article 8 does not specify any characteristics of a pilotless aircraft; it, however, does states that the following: "No aircraft capable of being flown without a pilot shall be flown without a pilot over the territory of a contracting State without special authorization by the State and in accordance with the terms of such authorization".[19] Accordingly, a "pilotless aircraft" can be interpreted simply as without pilot, thus including both unmanned aircraft flying autonomously and those operated remotely. This understanding was later confirmed by the Global Air Traffic Management Operational Concept.[20] Subsequently, the sixth amendment to Annex 7 included the definition of RPA – an unmanned aircraft, which is piloted from a remotely piloted station.[21] The ICAO approach once again confirms that both autonomous and remotely piloted aircraft shall be considered as pilotless aircraft for the purposes of Article 8 of the Chicago Convention, and therefore, relevant regulations shall be applicable.

[10] See 9.
[11] L. Weber, "The Chicago Convention", in P.S. Dempsey, R.S. Jakhu (ed.), "Routledge Handbook of Public Aviation Law", at 9, 2017.
[12] See 9, Preamble.
[13] ICAO, Unmanned Aircraft Systems (UAS), Cir 328 AN/190, 2011.
[14] Regulation (EC) No. 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No. 1592/2002 and Directive 2004/36/EC.
[15] Commission Implementing Regulation (EU) 2019/947 of 24 May 2019 on the rules and procedures for the operation of unmanned aircraft.
[16] Commission Delegated Regulation (EU) 2019/945 of 12 March 2019 on unmanned aircraft systems and on third-country operators of unmanned aircraft systems.
[17] The Protocol Concerning Amendments to Articles 3, 5, 7, 15, 34, 37, 41 and 42 and the final provisions of the Convention Relating to the Regulation of Aerial Navigation 13 October 1919, cited as the Protocol of June 15 1929 amending the Paris Convention 1919, entered into force on 17 May 1933.
[18] Annex 7 to the Convention on International Civil Aviation - Aircraft Nationality and Registration Marks, at Definitions.
[19] See 2, Article 8.
[20] ICAO, Global Air Traffic Management Operational Concept, Doc 9854 AN/458, at 82, 2005.
[21] A set of easy-to-use rules for low-level airspace operations, https://www.sesarju.eu/projects/corus [l. s. 08.10.2021].

Taking into account the fact that drones were in existence and used during WWI and WWII,[22]as per Article 31(1) of the Vienna Convention 1969, it can be assumed that parties to the Chicago Convention intended to consider them, and that interpreting Article 8 in "good faith" and "in the light of objects and purpose"[23]shall indeed include both autonomous and remotely piloted aircraft. Accordingly, all regulations concerning civil aircraft including safety and security requirements apply to drones, considering their particularities.

1.2. Short historical overview of non-military drones

One of the earliest known self-propelled unmanned aircraft systems was Archytas' Pigeon circa 425 BC, which was created to understand the mechanism of birds' flight.[24] Chinese culture also had an ancestor of the drone, the "Chinese top" – a stick with feathers at the end. Egyptian Saqqara Birds dating back to 200 BC was another attempt to understand the rules of aerodynamics.[25]

Even though more advanced ancestors of current drones have almost a century-long history, public awareness of drones has only grown in recent years. Previously used for military purposes, drones' civil use has become more and more common. In 1818, an airborne balloon was designed by a French 3 solider, which would hover over enemies and launch rockets down on top of them.[26] In 1894, Austrians used unmanned balloons with bombs to invade Venice.[27] In 1898, the US used unmanned kites equipped with cameras for aerial surveillance during the Spanish-American War. In the 1898 patent "Methods of and Apparatus for Controlling Mechanism of Moving Vessels or Vehicles", Tesla was the first who predicted the use of military unmanned vehicles.[28]The first unmanned aircraft was used during WWI, when in 1917 the Hewitt-Sperry Automatic Airplane performed its first flight. It was a remarkable achievement, as it represented a technological progression by incorporating a gyrostabilizer, thus preventing the aircraft from rolling. It was followed by the Ketting Bug in 1918 – a predecessor of modern cruise missiles,[29]then Larynx in 1927, Fairy Queen in 1931 and DH 82B, nicknamed as "Queen bee". The latter is considered to have laid the foundation for the term *drone*, which is the name for a male bee that chases the queen bee, as DH82B was intended to be chased by fighter aircraft.[30]

The first massively produced drone was OQ-2, which was used during WWII along with OQ-3.[31] The Vergeltungswaffe 1 (V1) was a German UAS operated during WWII, which was directed towards the target aimed to crash after a set time.[32]The MQM-57 Falconer was the first drone used for aerial inspection.[33]Ryan Firebee drones were used during the Vietnam War and Iraq invasion. MQ-1 was used in Afghanistan, Pakistan, Bosnia, Syria and Somalia. The heavier and more powerful version MQ-9 was used in Iraq in 2007, and it is still used in Afghanistan.[34]

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[22] The Secret History of World War II-Era Drones, https://www.wired.com/2015/12/the-secret-history-of-world-war-ii-era-drones/, [l.s. 08.10.2021].
[23] Article 31(1), Vienna Convention on the Law of Treaties Done at Vienna on 23 May 1969.
[24] K. Dalamagkidis et al., "On Integrating Unmanned Aircraft Systems into the National Airspace Systems", at 12, 2012.
[25] D. Hodgkinson, R. Johnston, Aviation Law and Drones – "Unmanned Aircraft and the Future of Aviation", "Routledge", at 4, 2018.
[26] Gregory K. James, Unmanned Aerial Vehicles and Special Operations: Future Directions (Postgraduate Thesis, Monterey California Naval Postgraduate School) at 5, 2000.
[27]The First Air Raid Happened When Austria Dropped Bombs on Venice from Pilotless Hot-Air Balloons (1849), http://www.findingdulcinea.com/news/on-this-day/July-August-08/On-this-Day--Austria-Rains-Balloon-Bombs-on-Venice.html, [l. s. 08.10.2021].
[28] The History of Drone Warfare, https://www.thoughtco.com/history-of-drones-4108018, [l. s. 08.10.2021].
[29] See 8, at 6.
[30] A. Masutti, F. Tomasello, International regulation of non-military drones, Edward Publishing Limited, at 4, 2018.
[31] B. A Whitmore, Evolution of Unmanned Aerial Warfare: A Historical Look at remote Airpower – A Case Study Innovation, A thesis presented to the Faculty of the U.S. Army Command and General Staff College in partial fulfillment of the requirements for the degree, at 16, 2016.
[32] B. I. Scott, Overview in B. I. Scott (ed.), The Law of Unmanned Aircraft Systems: An Introduction to the Current and Future Regulation under National, Regional and International Law, Wolters Kluwer, at 4, 2016.
[33] H. Gonzalez-Jorge, J. Martinez-Sanchez, M. Bueno, P. Arias, Unmanned Aerial Systems for Civil Applications: A Review, MDPI, at 1, 2017.
[34] See 8, at 8.

Because drones were mainly used for military purposes throughout history, they were associated mainly with military operations.[35] However, this viewpoint has changed and the trend of their civil application grew in the 1990s when NASA developed the solar-powered Helios and Pathfinder;[36] in the same period, Japan widely used drones for spraying crops with fertilizers and pesticides.[37] Drones were used to fly into the eye of Hurricane Noel.[38]The introduction of the Phantom by China-based Da-Jiang Innovations, considered to be the precursor to modern consumer drones, included a high-quality GoPro 4 Camera.[39]In 2013, BBC used a hexacopter to conduct its first drone-assisted reporting.[40] The popularity and application of drones are rapidly growing and seven million drones are expected to be sold in the US alone by 2020.[41]

1.3. Terminology to refer to drones and their differences

There are various terms used to refer to drones, but each has its particularities and the demarcation is very important to understand the drone's nature and operational characteristics and to apply relevant regulations. Drones are widely used in media and are well-known among the general public. This is also the reason why the term "drone" will be used throughout this thesis, excluding the parts where it will be necessary to refer to certain types of drones or regulations, which apply particular terms. The term drone was originally used in military operations; however, this has lately changed, although the term is not used in legislation.

Widely used are terms include Unmanned Aerial Vehicle (UAV) and Unmanned Aerial System (UAS). Regulation 2019/947 and Regulation 2019/945 use the term UAS, and so does the ICAO in its recent documents.

Another term used is Remotely Piloted Aircraft System (RPAS), which considers unmanned aerial systems that are remotely controlled by a pilot. This refers to the entire system, which may include a remotely piloted aircraft, the operator, communication and data links, satellites, remote pilot stations, additional staff, support systems and any other parts necessary for operation. This term underlines the existence of the pilot, which is not always mandatory, as some drones are programmed to operate autonomously. Regulation 2019/947 defined UAS as "an unmanned aircraft and the equipment to control it remotely".[42] Depending on the nature of the drone, terms such as unmanned aircraft and autonomous aircraft are also used, which tend to refer to autonomously operated drones without human interference. They do not require pilot intervention or act in a predetermined way; instead they act in a pragmatic manner by using the environment to make decisions.[43]They have been referred to as unmanned drones as well.[44]

[35] B. Custers, Drones Here, There and Everywhere: Introduction and Overview in B. Custers (ed.), The Future of Drone Use: Opportunities and Threats from Ethical and Legal Perspectives, at 11, 2016.
[36] NASA Armstrong Fact Sheet: Helios Prototype https://www.nasa.gov/centers/armstrong/news/FactSheets/FS-068-DFRC.html, [l. s. 08.10.2021].
[37] Japanese firm to use drone to force overtime staff to go home, https://www.thenational.ae/business/japan-uavs-take-the-back-breaking-labour-out-of-farming 1.221693, [l. s. 08.10.2021].
[38] NASA and NOAA Fly Unmanned Aircraft into Hurricane Noel, https://www.nasa.gov/centers/wallops/news/story105.html, [l. s. 08.10.2021].
[39] First Click: I, for one, welcome our Chinese drone overlords https://www.theverge.com/2016/1/20/10796844/Drones-rise-chinese-innovation, [l. s. 08.10.2021].
[40] BBC: A bird's eye view of breaking news, https://www.cbinsights.com/research/report/corporations-drone-technology/#bbc, [l. s. 08.10.2021].
[41] Euro vision: unravelling the new pan-European drone regulations, https://www.airport-technology.com/features/new-eu-drone-rules/, [l. s. 08.10.2021].
[42] See 13.
[43] ICAO, Manual on Remotely Piloted Aircraft Systems (RPAS), Doc 10019 AN/507, at Definitions.
[44] See 8, Article 2 (1).

2. Drone operation, privacy risks and data protection

2.1. Concept of privacy and its limitations

Concerns have grown in relation to drones and the payload they carry. Payload often considers filming, taking pictures, collecting and processing of personal data, processing biometric data, GPS systems processing the location of persons, tracking them, etc. Therefore, drone operation might pose serious risks to the right to privacy.[45]

Samuel D. Warren and Louis D. Brandeis developed the first concept of privacy and defined it as the "right to be left alone".[46] Already, more than a century ago, it was recognized that emerging technologies would pose a threat to privacy. The right to be left alone was later recognized by Article 12 of the Universal Declaration of Human Rights of 10 December 1948 stating that "no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks".[47]

Later, Article 8 of the European Convention on Human Rights (ECHR) also recognized the right to respect for private life. The right to respect for private life is also recognized under Article 7 of the Charter of Fundamental Rights of the EU. However, the right to respect for private life is not an absolute right, as derogations are permitted under limited circumstances, including in the interest of national security, public safety or protection of health.[48] The Convention for the protection of individuals with regard to automatic processing of personal data of 28 January 1981 (Privacy Convention), "recognizing that it is necessary to reconcile the fundamental values of the respect for privacy and the free flow of information between peoples", under Article 9 allows derogations for "(a) protecting State security, public safety, the monetary interests of the State or the suppression of criminal offenses; (b) protecting the data subject or the rights and freedoms of others".[49]

Article 15 of the Constitution of Georgia protects rights to personal and family privacy, personal space and privacy of communication, section two of this article defines those situations when the infringement of this right is legitimate: "These rights may be restricted only in accordance with law for ensuring national security or public safety, or for protecting the rights of others, insofar as is necessary in a democratic society, based on a court decision or without a court decision in cases of urgent necessity provided for by law. In cases of urgent necessity, a court shall be notified of the restriction of the right no later than 24 hours after the restriction, and the court shall approve the lawfulness of the restriction no later than 24 hours after the submi ssion of the notification." Georgia is also party to the most of the above-mentioned international instruments which are construed to protect right to privacy.

Regardless of the resistance from the ECHR to define privacy in order to avoid restriction of its applicability to possible privacy right violations, there are still four dimensions of privacy identified in literature – bodily privacy, privacy of personal behaviour including reasonable expectation of privacy right even in public places, privacy of personal communications and privacy of data.[50]

In the case of von Hannover v. Germany, the European Court of Human Rights reiterated that the right to respect for private life extends to protection of one's personal identity, including their photo, and that a person therefore has the right to control the use of their image.[51] The court emphasized that a person 9

[45] DG for Internal Policies – Policy Department Citizen's Rights and Constitutional Affairs, Privacy and Data Protection implications of the civil use of drones, at 23, 2015.
[46] S. D. Warren and L. D. Brandeis, 'The right to privacy', Harvard Law Review, 4 (5), 193 at 220, 1890.
[47] Article 12, The Universal Declaration of Human Rights, signed on 10 December 1948, Paris, General Assembly Resolution 217A.
[48] Article 8(2), Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.
[49] Article 9, Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, signed in Strasbourg on 28 January 1981.
[50] See 20, at 216.
[51] Von Hannover v. Germany, 40660/08 [2012] ECHR, para 95-96 (7 Feb. 2012).

may rely on a "legitimate expectation" of protection of and respect for private life, subject to circumstances such as their celebrity and the location in which the photograph was captured.[52]

The European Court of Human Rights in Uzun v. Germany also stressed that "GPS surveillance is by its very nature to be distinguished from other methods of visual or acoustical surveillance which are, as a rule, more susceptible of interfering with a person's right to respect for private life, because they disclose more information on a person's conduct, opinions or feelings".[53]

The EU Commission lists possible ways of privacy infringement, such as the chilling effect (individuals censoring their behaviour), freedom of expression, participation in activities out of fear,[54]dehumanization of the surveilled by collecting sensitive data about the person without the right to participation of the person surveilled,[55]voyeurism meaning spying on a person while he/she is engaged in a private activity,[56]function creep (use of vehicle or data acquired for purposes other than those intended),[57] bodily privacy infringement, and violation of privacy of location, space or association.[58]

Considering the capabilities of drones and their ongoing technological advancement, the wide scope of the right to privacy including all the case law developments in related realms, as well as the possible limitations of the privacy right.

2.2. To what extent does the EU regulatory framework for drones protect the right to privacy?

Several EU regulatory instruments concern privacy. The fundamental and bases for subsequent regulations are Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 7 of the Charter on Fundamental Right of the EU. They are generic by nature and do not give any rules on how to ensure a sufficient level of protection of the right to privacy; however, they do indicate that this right is not absolute and there might be cases where infringement is legal.[59]

There is no concrete instrument addressing privacy issues in terms of drone operation; however, Regulation 2019/947 and Regulation 2019/945 address privacy risks to some extent. Regulation 2019/947 recital 14 states that drone operator, whose activities might pose risk to privacy, personal data protection, security and the environment, should register his/her drone. Recital 18 also considers the possibility for Member States to additionally regulate the operation of drones to protect privacy and personal data. The Regulation also considers the obligation of UAS operators to be adequately informed about applicable EU and national rules related to safety, privacy, data protection and other relevant issues.[60] Regulation 2019/945 makes reference to Article 55 of Regulation 2018/1139,[61] with the latter referring to its Annex 9, which sets requirements for

[52] See 52, at para 51.
[53] Uzun v. Germany, 35623/05 [2010] ECHR, para 52 (2 Dec. 2010).
[54]Two sides of the same coin – the right to privacy and freedom of expression, https://privacyinternational.org/blog/1111/two-sides-same-coin-right-privacy-and-freedom-expression, [l. s. 11.10.2021].
[55] See 20, at 211.
[56] A. Mckenna, The Public Acceptance Challenge and Its Implications for the Developing Civil Drone Industry, in (ed.) B. Custers, The Future of Drone Use, Opportunities and Threats from Ethical and Legal Perspective, at 366, 2016.
[57] Opinion of the European Data Protection Supervisor on the amended proposal for a Regulation of the European Parliament and of the Council on the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of Regulation, at 7.
[58] European Commission, Study on privacy, data protection and ethical risks in civil Remotely Piloted Aircraft Systems operations – Summary for Industry, 7, 2014.
[59] From Retailers to Insurance Providers, Here Are 21 Corps Using Drone Tech Today, https://www.cbinsights.com/research/report/corporations-drone-technology/#bbc, [l. s. 08.10.2021].
[60] See 8, Article 2(17).
[61]Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No. 2111/2005, (EC) No. 1008/2008, (EU) No. 996/2010, (EU) No. 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No. 552/2004 and (EC) No. 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No. 3922/91, Article 55.

design, production, maintenance and operation of drones and stipulates almost the same narrative as Regulation 2019/947, that is, the operator and remote pilot should be aware of applicable union and national rules related to a number of issues, including privacy and data protection. This adds to the responsibility of the manufacturer to include features and functionalities while designing drones to take into account the principles of privacy and protection of personal data.[62] All references to privacy and data protection indicate the obligation of registration and ensuring compliance of drone operation to applicable EU and national rules regulating those issues; therefore, to identify how drones should be operated to avoid infringement of the right to privacy and data protection, relevant regulations should be referred to.

The Convention for the Protection of Individuals concerning Automatic Processing of Personal Data also recognizes the importance of the right to privacy and especially regulates automatic processing of personal data. The Convention sets requirements for automatically processed data that this data should be obtained and processed fairly and lawfully, stored for specified and legitimate purposes and not used in a way incompatible with those purposes, prohibiting automatic processing of data revealing racial origin, political opinion or religious or other beliefs, as well as concerning health and sexual life.[63]This requirement can be applied to drone operation, restricting the drone's ability to automatically process data that can reveal the above-mentioned information about a person.

According to the Common Aviation Area agreement between European union and its Member States and Georgia undertakes to take appropriate measures to bring its national legislation closer to that of the European Union.[64] For this reason Order #156 of the Director of Civil Aviation of Georgia of September 25, 2020 has been adopted to implement Regulation 945/2019 and Regulation 947/2019. As a result of the operation of drones against potential violations of the right to privacy, we have exactly the same situation as in the EU and we should be guided by the human rights instruments that provide for the protection of the right to privacy.

Directive 2002/58 also refers to privacy and its protection in the electronic communication sector. The Directive recognizes technological advancement and its application in public communications networks. It sets requirements for the processing of electronic communications including confidentiality, technical standardization and traffic data.[65] Considering that depending on the payload that drones carry, they might be performing different functions and be used for various purposes, in case they are applied for the electronic communications sector, they would become subject to the requirements of Directive 2002/58.

Conclusion

Drones offer new capabilities and applications that go beyond conventional aviation and deliver the promise of more efficient and environmentally friendly performance of existing services. They are a revolutionary tool. Drones should be integrated into non-segregated airspace, and at the same time, citizens' concerns related to privacy, safety and security should be adequately dealt with. Drones' potential is seen globally and regionally, including by the EU. The EU sees the drone industry as a creator of jobs and as a tool for economic development. Therefore, it is devoting its resources to research and develop drones and to establish different platforms of cooperation. The EU has adopted new Regulation 2019/947 and Regulation 2019/945 based on the experiences and expertise acquired so far.

Identification of a drone's legal status is vitally important, as it determines the array of rules applicable. Legal demarcation of drones from vehicles such as model aircraft and toy aircraft is also important, as drones, model aircraft and toy aircraft are each regulated separately and by different regulations. While identifying the

[62] See 61, Annex IX, Section 1.1.
[63] Article 6, Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, signed on January 28, 1981.
[64] Common Aviation Area agreement between European union and its Member States and Georgia, Article 21 (2).
[65] Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector.

applicable rules, the characteristics of drones, such as nature of use, size and technical features, should be considered, as the outcome in each case would differ.

It is essential to ensure respect for the fundamental rights of citizens, such as the right to privacy and the protection of personal data. Operation of drones has already raised numerous concerns including privacy and data protection issues considering the payload attached to drones. If the concerns of society are not sufficiently addressed, it will reduce public acceptance of drones and therefore adversely affect the development of the drone industry. Privacy and data protection rights are not absolute, and they can be limited for relevant purposes; however, when they are limited, the measures used should be in compliance with applicable regulations and proportionate to the goal to be achieved. The existing regulatory framework for privacy does not specifically concern drone operation and the threats posed; however, the existing rules can still be applied to drones and respecting them is obligatory according to Regulation 2019/947. Moreover, the application of privacy and data protection regulations should not be too restrictive, as this may hinder the development of the industry; instead a case-by-case approach should be taken to achieve the right balance.

While protecting the right to privacy and personal data protection and regulating drone operation, each case should be assessed individually. The right balance should be achieved between protection of the above-mentioned rights and avoiding adverse effects on the development of the drone industry by imprudently restricting it. All the shareholders – civil aviation authorities, manufacturers and drone operators – should cooperate to achieve the sufficient level of protection and growth of the industry cumulatively.

BIBLIOGRAPHY

1. Vienna Convention on the Law of Treaties Done at Vienna on 23 May 1969;
2. The Universal Declaration of Human Rights, signed on 10 December 1948, Paris, General Assembly Resolution 217A;
3. Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950;
4. Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, signed in Strasbourg on 28 January 1981;
5. Convention on International Civil Aviation, signed on 7 December 1944, in Chicago;
6. Annex 7 to the Convention on International Civil Aviation - Aircraft Nationality and Registration Marks;
7. Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No. 2111/2005, (EC) No. 1008/2008, (EU) No. 996/2010, (EU) No. 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No. 552/2004 and (EC) No. 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No. 3922/91;
8. Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector;
9. Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
10. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;
11. Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector;
12. Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No. 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws;
13. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/ EC;
14. Regulation (EC) No. 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No. 1592/2002 and Directive 2004/36/EC;
15. Commission Delegated Regulation (EU) 2019/945 of 12 March 2019 on unmanned aircraft systems and on third-country operators of unmanned aircraft systems;
16. The Protocol Concerning Amendments to Articles 3, 5, 7, 15, 34, 37, 41 and 42 and the final provisions of the Convention Relating to the Regulation of Aerial Navigation 13 October 1919, cited as the Protocol of June 15 1929 amending the Paris Convention 1919, entered into force on 17 May 1933;
17. Benjamyn. I. Scott, Andrea. Trimarchi, Fundamentals of International Aviation Law and Policy, Routledge, 2020.;

18. Ludwig Weber, The Chicago Convention, in Paul Stephen Dempsey, Ram Jakhu (ed.), Routledge Handbook of Public Aviation Law, 2017;

19. Konstantinos Dalamagkidis et al., On Integrating Unmanned Aircraft Systems into the National Airspace Systems, 2012;

20. David Hodgkinson, Rebecca Johnston, Aviation Law and Drones – Unmanned Aircraft and the Future of Aviation, Routledge, 2018;

21. Gregory K. James, Unmanned Aerial Vehicles and Special Operations: Future Directions (Postgraduate Thesis, Monterey California Naval Postgraduate School) 2000;

22. Anna Masutti, Filippo. Tomasello, *International regulation of non-military drones,* Edward Publishing Limited, at 4, 2018;

23. Bishane A. Whitmore, Evolution of Unmanned Aerial Warfare: A Historical Look at remote Airpower – A Case Study Innovation, A thesis presented to the Faculty of the U.S. Army Command and General Staff College in partial fulfillment of the requirements for the degree, 2016;

24. Benjamyn I. Scott, The Law of Unmanned Aircraft Systems: An Introduction to the Current and Future Regulation under National, Regional and International Law, Wolters Kluwer, 2016;

25. Bart Custers, The Future of Drone Use: Opportunities and Threats from Ethical and Legal Perspectives, 2016;

26. Higinio Gonzalez-Jorge, Joaquin Martinez-Sanchez, Martin Bueno, Pedor Arias, Unmanned Aerial Systems for Civil Applications: A Review, MDPI, 2017;

27. Samuel D. Warren, Louis D. Brandeis, The right to privacy', Harvard Law Review, 4 (5), 1890;

28. ICAO, Unmanned Aircraft Systems (UAS), Cir 328 AN/190, 2011;

29. ICAO, Global Air Traffic Management Operational Concept, Doc 9854 AN/458, at 82, 2005;

30. ICAO, Manual on Remotely Piloted Aircraft Systems (RPAS), Doc 10019 AN/507, at Definitions;

31. DG for Internal Policies – Policy Department Citizen's Rights and Constitutional Affairs, Privacy and Data Protection implications of the civil use of drones, at 23, 2015;

32. Riga Declaration on Remotely Piloted Aircraft (drones) "Framing the Future of Aviation", Riga, 6 March, 2015;

33. Opinion of the European Data Protection Supervisor on the amended proposal for a Regulation of the European Parliament and of the Council on the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of Regulation, at 7;

34. European Commission, Study on privacy, data protection and ethical risks in civil Remotely Piloted Aircraft Systems operations – Summary for Industry, 7, 2014;

35. Unmanned aircraft, https://ec.europa.eu/growth/sectors/aeronautics/rpas_en [Last seen: 08.10.2021];

36. A set of easy-to-use rules for low-level airspace operations, https://www.sesarju.eu/projects/corus. [Last seen: 08.10.2021];

37. Putting U-space services to the test in operational scenarios, https://www.sesarju.eu/projects/podium. [Last seen: 08.10.2021];

38. The Secret History of World War II-Era Drones, https://www.wired.com/2015/12/the-secret-history-of-world-war-ii-era-drones/. [Last seen: 08.10.2021];

39. The First Air Raid Happened When Austria Dropped Bombs on Venice from Pilotless Hot-Air Balloons (1849), http://www.findingdulcinea.com/news/on-this-day/July-August-08/On-this-Day--Austria-Rains-Balloon-Bombs-on-Venice.html. [Last seen: 08.10.2021];

40. The History of Drone Warfare, https://www.thoughtco.com/history-of-drones-4108018. [Last seen: 08.10.2021];

41. NASA Armstrong Fact Sheet: Helios Prototype, https://www.nasa.gov/centers/armstrong/news/FactSheets/FS-068-DFRC.html. [Last seen: 08.10.2021];

42. Japanese firm to use drone to force overtime staff to go home, https://www.thenational.ae/business/japan-uavs-take-the-back-breaking-labour-out-of-farming 1.221693. [Last seen: 08.10.2021];

43. NASA and NOAA Fly Unmanned Aircraft into Hurricane Noel, https://www.nasa.gov/centers/wallops/news/story105.html. [Last seen: 08.10.2021];

44. First Click: I, for one, welcome our Chinese drone overlords https://www.theverge.com/2016/1/20/10796844/Drones-rise-chinese-innovation. [Last seen: 08.10.2021];

45. From Retailers To Insurance Providers, Here Are 21 Corps Using Drone Tech Today, https://www.cbinsights.com/research/report/corporations-drone-technology/#bbc. [Last seen: 08.10.2021];

46. Euro vision: unravelling the new pan-European drone regulations, https://www.airport-technology.com/features/new-eu-drone-rules/. [Last seen: 08.10.2021];

47. Two sides of the same coin – the right to privacy and freedom of expression, https://privacyinternational.org/blog/1111/two-sides-same-coin-right-privacy-and-freedom-expression. [Last seen: 08.10.2021];

48. Judgment by European Court of Human Rights CASE: Von Hannover v. Germany, 40660/08 [2012] (7 Feb. 2012);

49. Judgment by European Court of Human Rights CASE: Uzun v. Germany, 35623/05 [2010] ECHR, (2 Dec. 2010).

THE PECULIARITIES OF OPENING THE REHABILITATION PROCESS IN THE CONTEXT OF GEORGIAN AND JAPANESE LAW

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Abstract

The article "Peculiarities of opening the Rehabilitation Process in the context of Georgian and Japanese Law" discusses the beginning of the rehabilitation process by a legal-comparative method, Georgian legislative novelty, and vague norms that need to be refined in the Georgian reality. Effective insolvency legislation is a key tool for maintaining economic stability, the government also has an important role and responsibility to create a legal framework that will help maintain the viability of the enterprise in times of financial difficulties.

It is clear that during the elaboration of the new law of Georgia "On Rehabilitation and Collective Satisfaction of Creditors" (enacted on April 1, 2021), significant research was carried out by the group. “Legislative Guide to Insolvency Law" by the UN Commission on International Trade Law (UNCITRAL) was studied, as well as International Principles on “Effective Insolvency and Protection of Debtor and Creditor Rights” developed by the World Bank. The new law clearly outlined the role of rehabilitation as a target and named the debtor's rehabilitation as the country's priority. Moreover, its purpose is to encourage timely appeal to the court. The enactment of the law has eliminated the shortcomings that, in many cases, significantly delay the process.

It should be noted that a lot of attention was paid to Japanese law during the drafting of the bill, as according to the World Bank, it is in the top three countries in Insolvency Law. Based on the court rulings, the article presents the obstacles to the rehabilitation process in theoretical and practical terms, discusses the vague norms of the new legislation of Georgia, and offers modern visions of regulation.

Keywords: „Civil RP“, “SLP”, “BP”, “RL”, regulated agreement, conversion, and more.

Introduction

In a democratic country, the economic core is based on the enterprises, whose function is not only to strengthen the social level but also to significantly increase the country's economic indicator. In order to ensure public welfare and stable economic turnover, the country aims to introduce mechanisms to support the enterprise which ensures their recovery from the financial crisis. The rehabilitation institute in modern law is gradually becoming more powerful. It is an auxiliary mechanism for the survival of the enterprise, and its effective management largely depends on the legislation. The timely start of the rehabilitation process will enable the legal entity to overcome the financial difficulties, move forward, and strengthen them. This is the reason for the beginning of the rehabilitation process, the main subject of which is the rehabilitation manager.

In 2015, at the request of the Ministry of Justice, the Georgian Insolvency System was assessed by the United States Agency for International Development (USAID) project "Governance for Development". According to the research, “Law of Georgia on Insolvency Proceedings” was not used for opening rehabilitation process, it was obvious, that only 10 court hearings were held and most of them ended with the bankruptcy of the debtors. The circle of eligible subjects was considered to be an obstacle to the rehabilitation process, this has changed in the current situation.

On April 1, 2021, the Law of Georgia on Rehabilitation and Collective Satisfaction of Creditors came into force, which changed the approach of the state to the process of insolvency and named the rehabilitation of the

enterprise as a priority. However, the focus should not be on rescuing the debtor alone. It is important that the purpose of rehabilitation is to satisfy creditors by rescuing the debtor and not just to rescue the debtor without taking into account the interests of the creditors.[66]

The article discusses the start of the rehabilitation process regulated by the new law of Georgia, discusses the Japanese insolvency law by a legal-comparative method, which clearly presents the problems of enforcement in practice, and also will help the Georgian legislator to develop the rehabilitation process.

Why Japan? In the framework of World Bank's project "Do Business", Japan was able to take the lead in Insolvency Law, it ranks as 3rd in the world and its rehabilitation act is the best fit for the needs of the enterprise. Moreover, Japanese insolvency law governs bankruptcy and rehabilitation through independent acts. The "Civil Rehabilitation Act" discussed in the article clearly outlines the effective mechanism of rehabilitation.

The article discusses the ambiguity of the legal basis for initiating rehabilitation and suggests mechanisms for resolving problematic issues for the legislature. Is there enough intervention to start the rehabilitation process and what happens if the rehabilitation plan is not approved?! Discussing these and other issues, to my opinion, will enable practicing lawyers, judges, companies and the rehabilitation manager to directly see the problems of opening the rehabilitation process, the proposed legal innovation and their compliance with the recognized standards.

1. The model of insolvency law in Japan

In Japan, legal proceedings for companies with financial difficulties are divided as follows: 1. The rehabilitation process, which in turn consists of A) Civil Rehabilitation proceedings and B) corporate reorganization proceedings; 2. The liquidation process which consists of A) bankruptcy proceedings and B) special liquidation proceedings.

The Civil Rehabilitation Act offers two alternative ways for a company to survive, first is the well-known scheme, Civil Rehabilitation Proceedings (so-called "Civil RP"), which are the procedures owned by the debtor, to meet the debtors needs through a rehabilitation plan

approved by the creditors' meeting and ensure the financial progress of the enterprise. The second important innovation is the corporate reorganization procedure, which differs from standard reorganization (hereinafter referred to as "RP"). Only stock/currency companies use these rehabilitation procedures, their main goal is to get rid of the company structures which only brings losses. Actually, by transferring the assets a new structure is created, with a clean past and financial prospect. The RL also ensures the protection of the creditor's certain rights. One of such defenses is administrative lawsuits and claims for the debtor's staff salaries, fees for the reorganization trustee, and the expenses incurred after the approval of the reorganizational plan.

You can pay for those requests at any time and without the reorganizational plan and it's completely different from the reorganizational claims which allow secured and unsecured creditors to conduct administrative proceedings only under the RL plan.[67]

Japanese law regulates bankruptcy proceedings as a separate act (so-called "BP"): Liquidation proceedings appointed by a court bankruptcy trustee are mainly formal in nature, the creditors' claims are fairly executed, and all assets owned by the company are sold in good faith. The Bankruptcy Act regulates special liquidation procedures ("SLP"); which deal with the liquidation of the stock company directly through the directors. The

[66] K. Meskhishvili "Rehabilitation deficiencies in accordance with the Law of Georgia on Insolvency Proceedings of 2007" 204", "Fundamentals of Insolvency Proceedings in accordance with the Law of Georgia on Rehabilitation and Collective Satisfaction of Creditors "© GIZ, 2021 Electronic version of the publication can be found at: lawlibrary.info/ge P. 112.
[67]Global Restructuring & Insolvency Guide, Baker McKenzie, <http://restructuring.bakermckenzie.com/wp-content/uploads/sites/23/2017/01/Global-Restructuring-Insolvency-Guide-New-Logo-Japan.pdf> pg. 3 [L.s. 13.05.2021].

directors of the company are its liquidators and they distribute the assets according to the agreement unless it is established otherwise by the charter or the shareholder's meeting.[68]

The rehabilitation manager is revealed directly during the rehabilitation process, his functions are stated in the "Civil Rehabilitation Act", therefore, the chapters below will be devoted to only its study. In order to visualize the manager's activities, it is interesting to consider what process he is involved in and what criteria the legislator offers to the enterprise entities.

2. The opening of the rehabilitation process (Japanese model)

2.1. Filing a petition

Article 21 of the Japanese "Civil Rehabilitation Act" regulates the basis for initiating the rehabilitation process. According to part 1 of article 21, when there exists actual indisputable circumstance, that it is possible to initiate bankruptcy proceedings against the debtor, the debtor can file a motion to initiate a rehabilitation case in court. This is a case when the debtor is unable to pay his debts without significant disruption to the development of the business.[69] On this ground, the creditors themselves can also apply to the court.

The types of creditors are not limited by the law, among them, even unsecured creditors are able to request the opening of the rehabilitation cases. The issue stated above emphasizes the simplicity of starting a rehabilitation procedure and flexible legislation.

When filing a reopening case for the rehabilitation process, the court usually issues a temporary injunction to prevent the debtor from making payments[70] In case there is an additional need, the court issues individual enforcement paper which includes the prohibition of sales, putting a mortgage on the debtor's property, suspension of enforcement, etc. against a rehabilitation claim, and if there are special circumstances, it will issue a complete ban suspending the claims and enforcement against all rehabilitation creditors.[71]

As mentioned above, the court will grant the motion if (1) there is a risk that the debtor will not be able to pay his debt, the debtor's liabilities exceed his assets, or (2) the debtor is unable to repay the already overdue debts so as not to pose a significant risk to the development of the business.

However, the motion will not be granted if the court will determine that the debtor is unlikely to prepare a rehabilitation plan, the mentioned plan has not been approved by the creditors, or there is a chance that the court will not approve it. The order for opening rehabilitation is usually issued within one week of filing. In addition, before issuing an order, the debtor usually holds an explanatory meeting with the creditors in order to explain how and why the motion and the content of civil rehabilitation proceedings were filed in court.[72]

2.2. The approval of the rehabilitation plan

According to article 165, part 1 of the Civil Rehabilitation Act, after the inspection of the evidence in court, the rehabilitation debtor is obliged to prepare the proposed rehabilitation plan and introduce it to the court.[73]

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[68] Published and reproduced with kind permission by Global Legal Group Ltd, London, ICLG TO: CORPORATE RECOVERY & INSOLVENCY 2017, pg.126https://www.nishimura.com/sites/default/files/tractate_pdf/en/47077.pdf [L.s.5.05.2021].
[69] Japan Civil Rehabilitation Act, Act No. 225 of December 22, 1999. Article 21.
[70] Ibid Article 30.
[71] A. Lizuka. "RESTRUCTURING SYSTEMS AND PROCEDURES IN JAPAN" International Insolvency Institute, TMI Associates Tokyo, 2016, p.5.
[72] SH. Miyazaki., SH. Fukuoka., Y. Yukawa., "An introduction to court procedures for insolvency in Japan", Nishimura & Asahi, 4/8/2011. P.4.
[73] Japan Civil Rehabilitation Act, Act No. 225 of December 22, 1999. Article 165.

The debtor prepares the civil rehabilitation plan, which provides the protection of the unsecured creditor's rights, the amount of payment, payment period, etc, whereas unsecured creditors determine whether to approve the proposed plan at the creditors' meeting. The rehabilitation plan will be approved if it will receive (1) the consent from the majority of voting creditors present at the creditor's meeting (including those who have voted in advance by filling out the required form) and (2) the consent from creditors who have the right to vote, which is not less than half of the total amount of the votes, and will take effect if the court approves the plan. After this process, the debtor reimburses the debt according to the plan and is released from the remaining debts.[74]

The court proceedings reveal that before approving the rehabilitation plan in court, the debtor must obtain the consent of the voting creditors, otherwise the court has the leverage not to approve the rehabilitation plan and a number of expenses that are connected with the opening procedure, those will be imposed on the debtor again.

It is interesting what happens if the creditors do not approve the rehabilitation plan?

In this case, if certain requirements are met, the court may convene the meeting of the creditors again and give the debtor/trustee the consent of the creditors. However, when the creditors finally reject the rehabilitation plan, the court will issue an order to terminate the civil rehabilitation case and these restructuring procedures are transferred to bankruptcy proceedings. Even after filing for bankruptcy, according to a court order in a civil rehabilitation or corporate reorganization case, administrative expenses that occurred based on the mentioned litigation will be paid in favor of other claims in the bankruptcy case.[75]

2.3. The Court order for opening the rehabilitation regime

Within one week from the date of filing a motion for civil rehabilitation, the court shall decide whether to open the rehabilitation process or to reject the motion.

Subsequently, the motion to initiate a civil rehabilitation case will not be granted if the court decides that, (Article 25, Civil Rehabilitation Act): A) The expenses of civil rehabilitation procedures are not prepaid. B) Bankruptcy proceedings or special liquidation cases are pending before the court and the enforcement of any case is in the common interest of the creditors. C) It is obvious that the preparation or approval of the proposed rehabilitation plan or even the confirmation of the plan probably is not possible. D) A petition for civil rehabilitation proceedings has been filed for an unjustified purpose or has not been compiled in good faith.[76]

The proposed rehabilitation plan will come into force after the court issues a final order granting the motion (Article 176, Civil Rehabilitation Act).[77] The accountability of the debtor is only limited to the rehabilitation plan mentioned above, the operation of the disputes stops.

The debtor has a maximum of 3 years after the court's decision to fulfill his obligations according to the rehabilitation plan. Otherwise, its bankruptcy proceedings will be initiated.

In the interim conclusion, the following circumstance became clear with the Japanese model, the country's priority is the rehabilitation process. The debtor must exhaust all legal means to start rehabilitation and only then is he entitled to move to bankruptcy regime. The Civil Rehabilitation Act clearly shows that if there is a danger that the debtor will not be able to fulfill its overdue obligations, or its fulfillment will result in a large

[74] An Introduction to Court Procedures for Insolvency in Japan https://www.nishimura.com/en/articles/article_10073.html#16>> [L.s. 6.04.2021].
[75] SH. Miyazaki., SH. Fukuoka., Y. Yukawa., "An introduction to court procedures for insolvency in Japan", Nishimura & Asahi, 4.8.2011. P.16.
[76]Reuters T. UK Practic law. <https://uk.practicallaw.thomsonreuters.com/6-607 8886?__lrTS=20210212114558179&transitionType=Default&contextData=(sc.Default)&firstPage=true#co_anchor_a501485> [L.s. 16.06.2021].
[77] A. Lizuka "RESTRUCTURING SYSTEMS AND PROCEDURES IN JAPAN" International Insolvency Institute, TMI Associates Tokyo, 2016, p.11.

financial loss to the enterprise, the debtor is obliged to start the rehabilitation process. The start of the rehabilitation process is largely related to the approval of the rehabilitation plan. Under the Japanese model, the debtor court begins negotiations with the creditors before the trial begins and, with their consent, submits the plan to the court for approval. But, what happens if the debtor fails to obtain the consent of the creditors, ultimately this is the basis for initiating the debtor bankruptcy regime. Let's see what procedures will be needed to start rehabilitation based on the example of Georgia.

3. The rehabilitation process - Georgia's legislative innovation

3.1. General overview

The law of Georgia on "Rehabilitation and collective satisfaction of creditors" revolutionized insolvency law, performed a complete reform that will in the long run change the economic picture of the country. It all stems from the purpose of the law, which says that "the purpose of this law is to collectively satisfy the demands of the creditors by achieving rehabilitation, and in case if the rehabilitation isn't possible to achieve - by distributing the funds received from the sale of the insolvency mass ".[78] The given regulation proves that the rehabilitation of the enterprise and the introduction of supporting mechanisms has become a priority for the country. However, it should be clarified that the greatest attention is paid to the interests of the creditors, whose satisfaction is ensured by the rehabilitation process.

The role of the government is to create such legislative mechanisms where we will see a balance between the interest of the enterprise and the creditor's rights. Therefore, it is crucial to correctly interpret the new normative act.

The stated law has simplified the commencement of insolvency proceedings by canceling the customs fee and the number of creditors' claims. In particular, if the amount of demand was limited in the previous legislation, e. g. to 50 000 GEL, in case of 2 creditors to 150 0000 GEL

and the enterprise was left with no choice but to go bankrupt, nowadays there is no such criterion.

The following have the right to file an insolvency application in court: A) Debtor - through a person authorized to manage and represent the enterprise; B) Creditor; C) The supervisor of the regulated agreement; D) Rehabilitation Manager - at the request of conversion, when the rehabilitation regime is open to the debtor; E) Liquidators – at the request of conversion when bankruptcy mode is open for the debtor.[79]

One of the most well-proven ways of effective rehabilitation is - debt management – when the existing management, which trustworthily carried out its activities, continues to manage and engages with supervisors in negotiations with creditors to successfully complete the rehabilitation regime.[80]

Most importantly, different cases of rehabilitation and bankruptcy were identified. In particular, insolvency proceedings may be executed: A) In rehabilitation mode; B) In bankruptcy mode.[81] The authorized entity decides for himself which process to request.

[78] The law of Georgia on "Rehabilitation and collective satisfaction of creditors", Date of acceptance: 18.09.2020, article. 1.
[79] The law of Georgia on "Rehabilitation and collective satisfaction of creditors", Date of acceptance: 18.09.2020, Source of publication, Date: Website, 25.09.2020, m. 43.
[80] K. Meskhishvili, "Rehabilitation Deficiencies on Insolvency Proceedings" by the Georgian Law of 204, the year 2007", "Fundamentals of Insolvency Proceedings on Rehabilitation and Collective Satisfaction of Lenders" by the Georgian Law, © GIZ, 2021 An electronic version of the publication can be found on the website lawlibrary.info/ge, page. 118.
[81] See footnote 13. article. 6.

According to the current legislation, the priority of the government - the rehabilitation process will have an important place in the enterprise's activities since the fiduciary obligation of the manager is to turn the enterprise into a profitable entity.

3.2. Petition for opening the rehabilitation process and authorized entities (Georgian model)

The law of Georgia on "Rehabilitation and collective satisfaction of creditors" establishes formal and material admissibility conditions for opening the rehabilitation process. The formal preconditions are set out in the A – V subsection of the 1st paragraph of Article 44, as for material or content admissibility, the debtor has to prove that he is an insolvent or expected insolvent entity and that by opening the rehabilitation regime there is a reasonable probability of achieving the goal of rehabilitation.[82] The burden of alleging this issue falls on the debtor.

The law allows both the debtor and the creditors to open the rehabilitation process, but imposes other obligations on them for the purpose of opening the process. For example: If the insolvency application is filed by the debtor in court, a rehabilitation plan must be submitted, which in one case must be approved and signed by the creditors, and in the other case must be presented in a fully completed form. The rehabilitation plan is established by the debtor in cooperation with the supervisor, however, the rehabilitation plan needs approval from the creditors. The rehabilitation plan must be approved by the creditors within 6 months after the publication of the verdict on the start of the rehabilitation regime. The stated period may be extended by no more than 3 months by the decision of the creditors' meeting. After the expiration of this period, the court will decide to liquidate the debtor.[83]

The request of the creditor to open the rehabilitation regime must be substantiated by the legal interest as to why he wants to open the rehabilitation process.[84] This legislative record makes it clear that the creditors' appeal to the court requesting the opening of the rehabilitation process will not be massive. For creditors, of course, it is more beneficial to meet their demands

in a short time more than a time-consuming process. Accordingly, the creditors' interest should be reflected in the rehabilitation plan.

The Law allows the possibility of rehabilitation regime to go into bankruptcy (conversion) if the rehabilitation plan has not been approved, or if the rehabilitation manager believes that there is no reasonable chance of achieving the rehabilitation goal.[85] Request for transition from a bankruptcy regime to possible rehabilitation mode, in which case the bankruptcy trustee shall additionally submit the information to the court: A) Detailed information on the current bankruptcy process; B) The bankruptcy trustee's identification and contact information; C) A copy of the court's decision on the assignment of the bankruptcy trustee.

We have a legislative innovation on our hands, in particular, the supervisor of the regulated agreement has the possibility of applying to the court and requesting the opening of the rehabilitation regime. According to the law, he is required to submit a regulated agreement to the court. The stated directive is the example case of a failed agreement, in particular, if the parties, the debtor, and the creditors are unable to reach an agreement on their own, the supervisor of the regulated agreement has the right to apply to the court.

In case of unsuccessful fulfillment or achievement of the regulated agreement, it is unacceptable to leave the debtor in the management at the beginning of further rehabilitation.[86]

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[82] See footnote 14. m. 44, subsection T of the 1st Article.
[83] See Footnote, page. 120.
[84] See Footnote 13., subsection A of the 4th Article.
[85] Explanatory note on "Rehabilitation and collective satisfaction of creditors", of Georgian law project, page 14-15.
[86] N. Amisulashvili. "Regulated Agreement" "Fundamentals of Insolvency Proceedings" on "Rehabilitation and Collective Satisfaction of Creditors" by the Georgian law, © GIZ, 2021 An electronic version of the publication can be found on the website lawlibrary.info/ge, page. 176.

3.3. The standard for substantiating a court decision

The court checks the formal admissibility of the application and then decides to open a rehabilitation regime. If the received application has a defect, the court issues a verdict and gives the applicant 5 days to correct it.

It is interesting in which case does the court refuse to open a rehabilitation process?

This issue is covered by Article 48 of the Law, in particular, "if the court finds that the debtor is not insolvent or is expected to be insolvent it shall issue a rejection to admit an insolvency application".[87] According to the given rule, we must see the qualification's criteria. Does the law include the definition of expected insolvency?

Paragraph 3 of Article 7 of the Law regulates the criterion of insolvency of the debtor, in particular, if the debtor has suspended the activity, or was entered in the debtors' register within 12 months before the application is submitted, or at least 30 days before filing a claim against the debtor, if the measure of securing the payment of the tax debt and other circumstances is valid, the debtor is considered insolvent. However, as for the notion of expected insolvency, "expected insolvency exists if there is an acceptable reason to believe that the debtor will become insolvent".[88] The given regulation is general and gives the court wide discretion to qualify the debtor in individual cases as an insolvent debtor.

Conclusion

The paper has discussed the peculiarities of opening the rehabilitation process in the Japanese and Georgian legislative acts. Noticeably, there is a separate law in Japan "Civil Rehabilitation Act", which in detail discusses the grounds for opening or rejecting the process. It should be noted that according to the Japanese model, the approval of the rehabilitation plan is the basis for opening the rehabilitation process. If the plan is not approved by the creditors, it will trigger bankruptcy. In the interest of the creditors, the debtor will be able to start the rehabilitation process without any problems by negotiating before the trial.

As for our legislative innovation, the independent litigation of the opening of the rehabilitation process, the simplification of the circle of authorized subjects, the possibility of conversion, and many other issues underline the priority of the rehabilitation regime. The paper showed us that the court will have to substantiate the grounds for the refusal and their role will be still relevant. In case of refusal, the court should be guided by international standards and its decisions should be in line with recognized principles.

A comparison of the Japanese and Georgian legal systems has revealed their similarities in certain respects, in particular, the introduction of a rehabilitation plan is mandatory for lenders in both cases. The simplicity of opening the process and the possibility of leaving the debtor in management will lead to the relevancy of the insolvency field.

The issue discussed in the article will contribute to the refinement of Georgia's current legislation and the development of this field.

[87] See footnote 13, 2nd section of the Article m. 48.
[88] See footnote 13, 2nd section of the Article m. 7.

Bibliography

1. Global Restructuring & Insolvency Guide, Baker Mckenzie, http://restructuring.bakermckenzie.com/wp-content/uploads/sites/23/2017/01/Global-Restructuring-Insolvency-Guide-New-Logo-Japan.pdf [Last seen 31.05.2021];
2. Published and reproduced with kind permission by Global Legal Group Ltd, London, ICLG TO: CORPORATE RECOVERY & INSOLVENCY 2017, https://www.nishimura.com/sites/default/files/tractate_pdf/en/47077.pdf [Last seen 5.31.2021];
3. Ataru Lizuka“ RESTRUCTURING SYSTEMS AND PROCEDURES IN JAPAN” International Insolvency Institute, TMI Associates Tokyo, 2016;
4. Shintaro Miyazaki Shinnosuke FukuokaYusuke Yukawa., “An introduction to court procedures for insolvency in Japan”, Nishimura & Asahi, 4.8.2011;
5. Japan Civil Rehabilitation Act, Act No. 225 of December 22, 1999 https://www.nishimura.com/en/articles/article_10073.html#16 [Last seen 6.04.2021];
6. Reuters TH. practice law https://uk.practicallaw.thomsonreuters.com/6-607 8886?lrTS=20210212114558179&transitionType=Default&contextData=(sc.Default)&firstPage=true#co_anchor_a501485 [Last seen 16.06.2021];
7. Ketevan Meskhishvili, “Rehabilitation Deficiencies on Insolvency Proceedings” by the Georgian Law of 204, the year 2007”, “Fundamentals of Insolvency Proceedings on Rehabilitation and Collective Satisfaction of Lenders" by the Georgian Law, © GIZ, 2021 An electronic version of the publication can be found on the website lawlibrary.info/ge;
8. The law of Georgia on “Rehabilitation and collective satisfaction of creditors”, Date of acceptance: 18.09.2020, Source of publication, Date: Website, 25.09.2020;
9. Explanatory note on “Rehabilitation and collective satisfaction of creditors”, of Georgian law project;
10. Nana Amisulashvili "Regulated Agreement" "Fundamentals of Insolvency Proceedings" on “Rehabilitation and Collective Satisfaction of Creditors” by the Georgian law, © GIZ, 2021 An electronic version of the publication can be found on the website lawlibrary.info/ge.

ECONOMICS

THE IMPORTANCE OF SOCIAL TOURISM DEVELOPMENT IN GEORGIA

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Abstract

Tourism is a global economic, social and cultural phenomenon of the modern world. Tourism meets human needs for cultural, physical, cognitive and spiritual development. Its key objectives are determined by specific social and cultural functions. In terms of the financial backing, tourism is divided into two types:

- Commercial (based on personal or corporate funding);
- Social (based on state or charity funding).

Commercial tourism is focused on making a profit by travel companies, vital to their further expansion and development. In the process of profit maximization, companies try to find the optimal ratio between costs and tourism product prices. The tourism services, they offer, are mainly focused on high and middle income individuals, who can afford to fully cover their travel expenses.

Social tourism is subsidized from the opportunities allocated to meet the social needs essential to creating travel opportunities for students, young people, retirees and veterans. This category of people, as the least able-bodied segment of the population, is provided with the appropriate opportunities by the state and non-governmental organizations, or charitable foundations. This position is reinforced by the Manila Declaration on World Tourism, which states that "social tourism is a goal that society should pursue in the interests of those citizens who are least privileged in exercising their right to leisure"[1].

The concept and types of social tourism are different in different countries. In some countries, civil servants, the military and other categories enjoy the opportunity to travel at the expense of the budget, while in others it is subsidized, for example, by trade union funds. Companies that arrange such tours receive subsidies from the state, which allows them not to raise prices during the holidays.

The paper discusses the positive experience of developed countries in implementing social tourism development programs, the classification of target population groups in social tourism, development prospects in this field of tourism and positive factors.

Keywords: Social Tourism, Subsidies, Social policy, Charitable Foundations, Legislative Regulation.

Introduction

Social tourism is defined as travel subsidized, with funds allocated by the state for social needs. The state provides certain categories of tourists with social benefits. The priority types of social tourism include:

- Tourism for children and youth;
- Amateur (sport and health);
- Health and well-being;
- Ecological, cultural and educational;

[1] World Tourism Organization (UNWTO) UNWTO Declarations | Manila Declaration on World Tourism (UNWTO), Madrid, Spain. p.5. https://www.univeur.org/cuebc/downloads/PDF%20carte/65.%20Manila.PDF [l. s. 30.09.2021].

- Family travel;
- Tourism for veterans;
- Tourism for people with disabilities;
- Tourist visits of foreign compatriots, international exchange in the field of social tourism.

In particular, some categories of the community are entitled to free sanitary-spa treatment. Ensuring access to tourist recreation for all, including large families, young people and the elderly, requires the development and implementation of a number of specific measures, as well as defining the social tourism policy by the state, creating social infrastructure, adopting legislative and normative acts, providing systems and mechanisms for assistance to the low-income segments of the population, upskilling the workers of the social tourism system.

The development of social tourism is important primarily to improve the quality of life of the country's population. Thanks to this sphere of tourism, not only the general cultural development of the poor segment of the population increases, but also its health, while the social level of tension in the society decreases.

Travel is a significant problem for this segment of the population. It is designed for low-income families, who have the right to travel but cannot fully exercise that right.

Social tourism, which focuses more on social aspects than economic factors, is able to facilitate the creation or replication of tourism destinations that meet the criteria of economic, social and environmental sustainability.

The problems of social tourism development in Georgia start with the fact that there are no regulatory documents in the tourism legislation, which determine which tourist, for which trip, where and when, will be able to receive budget funds. Based on the experience of foreign countries, the state should define a social tourism policy in this area, which includes the adoption of laws and regulations, the creation of social infrastructure, the provision of systems and mechanisms for assistance to low-income groups, upskilling of social tourism workers.

1. The essence, functions and objectives of social tourism

Tourism can have a huge impact on the health of the elderly and people with disabilities, and is an important factor in counteracting hypokinesia, which has a devastating impact on people's health and their psyche. Movement-related limitations significantly reduce life opportunities, leading to depression, despair, stress, and loss of self-confidence. Physical training and health are maintained through tourism, psychosomatic therapy and prevention. Tourism creates a full-fledged communication environment in which a person with problems interacts with different people, establishes social contacts, and has the opportunity to play a variety of social roles. Tourism eliminates feelings of loss of dignity, inferiority and unites socially vulnerable people, the elderly and the disabled in society.

Social tourism is any type of tourism that is paid for from the funds allocated for social needs. Social and economic tourism aims to create appropriate conditions for leisure and travel for the low-income segments of the population (young people, schoolchildren, people with disabilities, pensioners, large families, orphans, children of orphanages, and the disabled). Subsidies for this type of tourism can be allocated not only by the state, but also by various governmental and private, as well as various charitable organizations.

A distinctive feature of social policy is that it is human-centered, while economic policy is focused on economic growth and the expansion of material wealth. Social policy has a significant impact on the development of tourism. Social measures can regulate the demand for tourism services in the following ways:

- By regulating the right to rest, the state guarantees the employees of temporary regular dismissal. At the same time, setting vacation and holiday dates at different times promotes a balanced distribution of demand for tourism services;
- By distributing income in the society, the modern welfare state strives to achieve a high level of prosperity for the possible large number of citizens, for which it carries out the distribution of income through various means and incentives;
- By stimulating the development of social tourism.

The social functions of tourism are carried out in recreational activities aimed at maintaining and strengthening health, restoring vitality, promoting the harmonious development of the individual and its creative self-expression. Adaptation and integration of individuals in the social life of the community represents a key function of social tourism.

The concept of social tourism is based on three fundamental principles:

- Providing recreation for every member of the community with the involvement of low-income people in the field of tourism;
- Subsidizing low-income tourism;
- Active participation of state, municipal, public and commercial entities sin the development of tourism.

The field of social tourism is represented by free and preferential vouchers in sanatoriums, holiday homes, tourist centers, free and preferential travel, special transport tariffs, and tax and customs benefits. The development of social tourism facilitates the construction of tourism infrastructure for tourists with special needs. The most important tasks of social tourism can be identified as:

- Organizing affordable vacations to improve health for socially vulnerable groups of the population;
- Creating a barrier-free environment for people with disabilities.

The provision on social tourism is enshrined in the 1981 Manila Declaration on Tourism. This act emphasizes the inseparable link between tourism and the right of citizens to recreation, vacation and freedom of movement. The document pays special attention to social tourism, which is considered as a goal to which the society should strive to support youth tourism, tourism for the elderly and people with disabilities.

The objectives of social tourism are as follows:

- Development and implementation of excursion programs for senior citizens and people with disabilities as part of the stages of social tourism development;
- Meeting the needs of older citizens and people with disabilities in active recreation, boosting their interest in life, a sense of respect for oneself and society as a whole;
- Allocating some resources to ensure the promotion of certain tourist destinations;
- Overcoming social isolation;
- Initializing an interest in the history of the native land, getting acquainted with historical and architectural monuments;
- Holding cultural, entertaining and educational events;
- Prolongation of active life expectancy.

Social tourism can be implemented by any tourism organization, whose charter sets out the tasks of a social nature and aims not only to make a profit, but also to provide access to travel and tourism for the maximum number of people. For this purpose, the charter should provide:

- Unified solution of social, educational and cultural tasks;
- Defining a target audience regardless of racial, cultural, religious, political or social characteristics;
- Ensuring harmonious integration of social tourism with the local environment;
- Correspondence of tour product prices with the announced social prices.

- Fulfilment of social tourism objectives requires:
- Finding sources of funding as long as making a profit for social tourism organizations is not the goal;
- Creating a new tangible base for social tourism or adapting the existing base to modern requirements;
- Development of a proper legislative and normative framework;
- Compliance of social tourism services with rising standards;
- Finding material assistance for social tourism clients;
- Establishing a conscientious financial system for low-income individuals who are eligible for benefits.

Therefore, social tourism is a sector of the tourism market, which is intended for the recipients of the funds allocated by the state.

2. State regulation of social tourism development

For the development of social tourism it is necessary to outline a long-term social program in the field of tourism.

Funds for social tours are often allocated directly to the beneficiaries. Many countries have already solved the problem of access to travel for people with disabilities. For example, in most European cities, transport is equipped with special elevators, and on tourist routes it is possible to travel by wheelchair.

Small travel agencies cannot afford to buy ramps or special buses for social needs, which are normally much more expensive than usual, so subsidies, to buy special equipment, would not be superfluous for tourism companies that offer social tourism to customers.

It is clear that business alone will not be able to solve the problem of travel infrastructure for people with disabilities since it involves significant investment. To create an environment without barriers in cities, market participants should consider the possibility of government subsidizing the arrangement of hotel rooms, restaurants and toilets, etc. for people with disabilities.

As the experience of foreign countries shows, a full-fledged sector of social tourism can be created only through the joint efforts of society, business and government agencies.

The social tourism system is a combination of social and cultural facilities and participants, as well as principles, goals, means, including benefits, which allow low-income segments of the population to enjoy the opportunities of tourist recreation. In order to ensure access to tourist recreation, it is necessary to develop a state social tourism policy, which aims to:

- Provide a legal framework;
- Adopt relevant regulations,
- Develop appropriate social infrastructure;
- Upskill qualified staff to organize information work and assist various segments of the population.

The social tourism system also provides a certain category of population not only with preferential vouchers, but also a significant discount on hotel accommodation, meals, as well as the benefit of purchasing tickets for various types of transportation. So, all over the world, there is a well-functioning system of youth hostels (cheap hotels such as student hostels) that allow young people under 25 to get significant discounts on accommodation, meals and travel.

Social tourism can be informational, recreational, rural, ecological, etc. Today, the most relevant direction in this field is agricultural, or agritourism, which gives residents of large cities the opportunity to visit the countryside, to get acquainted with the provincial life, and that of peasant farms. Typically, activities such

as animation and masterclasses involve agritourism, which makes it possible to attractively present the traditions and customs of the region.

As mentioned, social tourism is funded by the state, foundations and social entrepreneurs.

As part of the state support, in Europe, the state provides subsidies. With this amount, social tour financing programs have been developed in the regions, for example, a solid amount of money is transferred to travel agencies every year and is distributed for social tours. The state regularly allocates grants for organizing social tours (usually aimed at organizing youth expeditions and children's tourism).

The foundations support programs in which non-budget funds and non-profit organizations as well as large enterprises create conditions for their employees to enjoy affordable rest. This also includes charitable programs and corporate social responsibility programs implemented in the field of tourism.

As for the social entrepreneurship, social entrepreneurs work to make tourism accessible to people with disabilities (students, orphanage graduates, large family members, low-income families) or for ones requiring special physical conditions and an accessible environment (people with disabilities). Social entrepreneurs increase access to travel services through an entrepreneurial approach and innovative solutions. Most social entrepreneurs participate in concessional loan and grant competitions at the same time to solve a business problem.

In this regard, the state policy in our country is under implementation and is still far from perfect. The problems of social tourism start with the fact of no regulatory documents in the tourism legislation to be in existence, specifying for certain tourists to enjoy budget funds for particular trips.

Currently, there is no law in Georgia on the implementation of a unified state policy on social tourism, offering the customers this very type of tourism. As for considering the needs of persons with disabilities, in this regard, there is the Law of Georgia on the Rights of Persons with Disabilities, which ensures the application of these and other powers provided by the Law of Georgia[2].To ensure full access for people with disabilities, the National Tourism Administration of Georgia committed itself to gradually adapting to the universal design of the infrastructure and services, and/or design its own ones until December 31, 2035.

"People with disabilities belong to one of the most excluded groups. They still face pervasive obstacles in almost every area of public life. They do not have the opportunity to enjoy the rights enshrined in the Constitution on an equal footing with others. However, practice shows that one of the most pressing problems for people with disabilities remains access to public spaces, buildings, health care or public facilities and vehicles, educational and state institutions. This indicates that the standards set by the technical regulations are not actually put in practice"[3].

The government has adopted the "Government Action Plan for Equal Opportunities for Persons with Disabilities 2018-2020". One of the directions of this Action Plan is the rights of persons with disabilities (Chapter 19). In this regard, the Action Plan for 2018-2020 envisages various measures, including ensuring equal participation of persons with disabilities in sports, cultural, recreational and entertainment activities[4]. Its content is fully in line with the principles of the UNCRPD Convention. This year, Tbilisi City Hall will provide voucher funding for hotel services at the resorts of Georgia for persons with disabilities aged 3 to 20 registered in the territory of Tbilisi Municipality in the previous year; the cost of the voucher amounts to 800 GEL; no less than 6 days are defined for rest; one voucher will be issued to the beneficiaries of the program for one year; the voucher can be used by a child or adolescent with a disability status of 3 to 20 years old, registered in the territory of Tbilisi Municipality. The beneficiary is entitled to choosing the hotel

[2] Law of Georgia on the Rights of Persons with Disabilities 28/07/2020https: //matsne.gov.ge/ka/document/view/4923984? Publication = 1 [l. s. 05.11.2021].
[3] 2018 Parliamentary Report on Human Rights and State of Protection of Rights and Freedoms in Georgia by the Public Defender of Georgia. p. 263. Tbilisi, 2019. Available: http://www.ombudsman.ge/res/docs/2019042620571319466.pdf [l. s. 09.12.2020].
[4] http://myrights.gov.ge/ka/discussion/1101-2018-2020-tslebis-samoqmedo-gegmis-proeqti [l.st checked on 12.10. 2021].

and service terms". "The budget of the "Resort Services Program for Persons with Disabilities" amounts to 826,000 GEL. 1180 children enjoyed the mentioned service in the previous year"[5].

The State Policy Document on the involvement of persons with disabilities into cultural, sporting, entertainment and recreational activities embraces the general approaches of the Convention; although, the indicators for the implementation of the planned actions and the budget are so general and vague that they do not allow effective implementation of the outlined activities[6].

As of January 2020, the number of beneficiaries, receiving various state benefits (social package, state compensation, household subsidy) based on the status of a person with disabilities in Georgia, was 129,753, including 27,889 beneficiaries of social assistance payments[7].

As of 2020, the share of the population below the absolute poverty line in Georgia is 21.3%, which means that every fifth citizen of the country lives in extreme poverty, in other words, roughly 800 000 individuals[8].

According to the Social Service Agency, in 2020, an average of 484 thousand people received benefits every month. As of March of this year, 151 000 families living in Georgia are receiving the allowance[9]. All this proves that a number of people urgently need social tourism programs.

3. Foreign experience in the development of social tourism

In European nations, the state regulates the social sector of tourism, directly through the Ministry of Tourism or National Tourism Organizations (NTOs), as well as indirectly by creating legal leverage, supporting social tourism infrastructure projects, etc. In many European countries, social tourism is organized by associations, cooperatives and trade unions with the aim of making travel available for as many people as possible, especially the least privileged. European projects have both international and national significance.

Calypso could be singled out as a successful example of good practice. There is an International Organization for Social Tourism (OITS) in Europe (Belgium). The following international organizations enjoy the OITS membership: International Federation of Social Tourism (headquartered in Paris), World Federation of Travel Agencies Associations (Milan), International Union for Conservation of Nature (Zurich), International Federation of Social Tourism Organizations (Brussels), International Tourism Alliance (Geneva) , International Federation of Camping and Caravanning (Lucerne), International Hotel Association (Brussels), International Union of Railways (Paris). OITS aims to promote the development of social tourism internationally. To this end, it is responsible for coordinating the tourism activities of its members, as well as informing them about all issues related to social tourism, including cultural aspects and economic and social consequences[10]. More specifically, OITS, as an international non-profit association, aims to assist young people, families, the elderly and people with disabilities in leisure and tourist travel. It helps various stakeholders with achieving the mentioned goal, in particular, states, social actors and tour operators, as well as holding various competitions such as "Promoting Social Tourism in Europe through the Development of a Demand-Supply Web-Based Platform". The winner of the competition was the International Organization of Social Tourism (project manager) and the following partners: Club "Joie et Vacances" asbl (Flora Club), Belgium; the European Network for Accessible

[5] Resort services for children and adolescents with disabilities https://tbilisi.gov.ge/ [l. s. 12.10. 2021].
[6] shezghuduli-shesadzleblobis-mkone-bavshvtapirta-spetsializebuli-datsesebulebebis-monitoringis-angarishi https://www.ombudsman.ge/geo/190308061623angarishebi/210916053235 [l. s. 22.09.21].
[7] Monitoring report of special institutions for children and persons with disabilities https://www.ombudsman.ge/geo/190308061623angarishebi/210916053235 [l. s. 22.09.21];
[8] https://www.geostat.ge/ka/modules/categories/192/tskhovrebis-done (subsistence minimum) [l. s. 30.09.2021].
[9] https://www.geostat.ge/ka/modules/categories/192/tskhovrebis-done (subsistence minimum) [l. s. 30.09.2021].
[10] ORGANISATION INTERNATIONALE DU TOURISME SOCIAL (OITS) https://www.unwto.org/affiliate-member-organization/41911[l. s. 30.09.2021].

Tourism (ENAT), Belgium; the Union Nationale des Associations de Tourisme (UNAT), France; the National League of Cooperatives (LEGACOOP), Italy; Consortium "Siena Hotels Promotion", Italy; the State Technological Innovation Management Company for Tourism (SEGITTUR), Spain. "Promoting Seasonal Tourist Exchanges in Europe and the Mobility of Retirees" could be found to be an example of a successful project.

The goal of the projects implemented by the International Organization for Social Tourism is to create and develop a virtual platform of "Calypso" as a mechanism to facilitate access to international tourism, especially during the low season for the various target groups listed in the Calypso project program. It also aims to increase the competitiveness of small and medium-sized businesses in tourism and to expand the business opportunities of agents acting on behalf of their customers[11].

Through this platform, the travel service provider can reach an agreement with hotels, restaurants and other travel businesses to create a comprehensive package offer. This package can be placed on the eCalypso platform and purchased there (the transaction is directly between the travel service provider and the buyer; the Calypso platform acts as an intermediary to facilitate contact between the two parties).

In Spain, there is a social tourism program that allows more than 1 million people of retirement age to take group trips each year. The Spanish government invests around € 75 million a year in the program, which has created 10,000 additional jobs in the country, together with another successful program of "Tourism for the Old Generation".

The British program "Family Vacation" aims to ensure the vacation of low-income families to be no different from the vacation of richer families. Switzerland operates a program titled "Free Vacation Week for Single Mothers and Fathers". It provides 1,200 families and single parents with 50,000 free beds per day. Austria has a family card system, enabling to relax in the neighboring provinces of the country. Every family that wishes to spend a holiday with children gets a discount on the holidays. Discount service is provided by 1400 companies and institutions. 150 000 people benefit from the project "Benefits for School Holidays and Weekends" each year. In Hungary, similar projects are aimed at improving the demographic situation as well as providing preferential recreational opportunities for expectant mothers. The Hungarian National Recreation Fund cooperates with 150 organizations and helps more than 100 000 people on vacation time every year. The Czech Republic operates a program "Travel without Barriers" for people with disabilities.

4. Measures to promote the development of social tourism

Social tourism projects in our country can be implemented jointly in the Caucasus region as a whole, even by promoting seasonal tourism exchanges and tourist mobility. Since almost all regions of our country have the most important tourist and recreational potential, including cultural, educational, ethnographic and health tourism categories along with active leisure opportunities, Georgia has all the characteristics to become a social tourism leader in the region.

In addition to traditional tourist centers, all regions could be included. A tourism and recreational type project with special economic zones can be developed and implemented provided that its support is agreed with enterprises and organizations of several regions of Georgia, their governments and private entities. The project can be initiated by creating a supply and demand information field and its configuration can be defined in the interaction process. To start the project, it is necessary to attract the relevant tourism organizations and create a group of experts to prepare an appropriate platform. We think it is necessary to create a project with the title of "Social Tourism in Georgia", the funding of which is derived from the following reasons:

- Existence of serious social changes and economic problems;

[11] https://issuu.com/turismosocial/docs/e-poster_isto [l. s. 30.09.2021].

- Decreased life expectancy, financial difficulties and constraints, employment problems, lack of additional leisure time (stressful situations), which significantly affects the neighboring areas of tourism;
- The problems imposed by the quarantine and isolation modes intended to prevent the spread of the virus on persons with disabilities and their families. Health complications for people with Covid-19 history throughout Georgia, who are in need of rehabilitation at a spa resort, especially when a large part of the country's population does not have the appropriate funds for recreation at various resorts.

It is advisable for the state to start outlining a preliminary project for the development of social tourism as a tool to achieve the following goals:

- Boosting employment;
- Extending season;
- Economic recovery at regional and local level.

The social tourism project should aim at recreation for the following categories of the population: the elderly, refugees, children, low-income families and people with disabilities. Many social tourism services should be provided in resorts, rural or mountainous areas. Social tourism exchanges can help combat seasonality, and developing regional and local economies.

Today travelers, especially young people, desire to get more complete information about the country, not only regarding the beautiful places but also about its people and their lifestyles. They wish to explore the country, share their culture, and while traveling, make a significant contribution to the economic development of the village, the region, with the money they spend on tourism services. Social tourism makes all this possible.

The state influences tourism in two ways: by managing demand and revenue, or by managing supply and prices. The state uses the following tools to manage demand: marketing, promotion, pricing, etc.

Social tourism promotion measures are an integral part of government marketing, and are designed to increase demand from potential customers. According to the WTO recommendations, all this is aimed at creating an image of the country based on its attractive symbolic characteristics. There are different ways to do this, such as organizing specialists' meetings with journalists, business trips abroad, TV and radio broadcastings, and free distribution of brochures, slides and video materials. Also, special support from the state can be given to the tourism enterprises that provide social tourism packages to participate in various exhibition and fairs; to help the representatives of the company in renting or arranging a stall.

There are various means by which the state can regulate the prices of tourism products, thus developing social tourism. This implies that, first of all, many sights in the country are in the sphere of influence of the public sector. For example, the ticket prices for the museums and museum-reserves, included in the structural unit of the National Agency for the Protection of Cultural Heritage of Georgia, have increased by almost 100% since January 1, 2020. However, free access is available to: IDPs, war veterans, orphans and Georgian citizens with socially vulnerable status. Payment of the fee will also not apply to persons with disabilities and their accompanying citizens.[12]

The state can indirectly influence the price by using economic means, for example, by using currency controls, which can lead to restrictions on currency exchange, forcing tourists to exchange currency at high prices, and thus, increasing the real cost of travel, etc.

The state, in addition to the above-mentioned means, can influence the quality of a tourism product, even controlling demand through licensing. This measure is especially often exercised in relation to the hotel business.

[12] National Agency for Cultural Heritage Preservation https://www.heritagesites.ge/ka [l. s.30.10.2021].

In order to regulate demand, some states are taking measures to restrict the entry of tourists, for example, reducing the number of visas, lessening the construction of hotels near natural attractions or closing the latter to protect the environment, etc.

Unlike demand management, which aims to select tourists and regulate prices, state regulation of supply management is related to the "impact" on the sellers of tourism services. In this regard, the state utilizes the following methods: market research and planning, market regulation, planning, land-use control mechanisms, housing regulation, taxes and investments. The state initiates market research, using statistical materials and monitors changes in tourism to determine tourism benefits and related costs.

The economic criterion that characterizes the optimal operation of the market is the consumer awareness about the alternatives offered to them. The state makes sure that consumers have a choice, are informed, and are insured against fraud by all types of sellers. The state is capable of regulating the market by imposing obligations on sellers in the form of legal norms, in the form of rules that apply to membership in various travel organizations. Ensuring a competitive environment and protecting the market from monopolization is made possible by the state through legal regulation of the market.

In many countries there are rules for the development of cities and regions, according to which land-use methods are changing and evolving. As a rule, state control is aimed at protecting unique tourist resources, protected areas, landscapes, etc. Land-use control is accompanied by construction regulation, and includes architectural supervision. Laws have been passed in many countries to protect historical and architectural monuments.

One of the main methods of influence of the state on tourism is to tax tourists. These are taxes imposed on tourists for accommodation in hotels, buying tickets at airports and casinos; however, the introduction of taxes may not always be favorable for the state, as tax collection, in turn, can reduce the demand for tourist services, and consequently, the revenue itself. For example, accommodation tax forces hotel owners to increase service prices, which can lead to a decrease in demand for hotel services, and consequently, the hotel revenue as well.

International investments in the tourism sector are provided by both international organizations and the private entities. The main foreign "donor" is the World Bank (International Bank for Reconstruction and Development IBRD). Its activities aim to ensure a normal standard of living in developing countries with particular emphasis on long-term funding for the development of infrastructure. Thus, in European countries, the state regulates the social tourism sector directly through the Ministry of Tourism or the National Tourism Organizations (NTOs), as well as indirectly through legal means, with the support of their infrastructure and international policies.

Conclusion

Social tourism is attached a great amount of importance in the modern, and it becomes the subject of attention and academic research. It possesses the ability to fulfil economic and humanitarian functions. In our country, social tourism services are not yet popular and available to all segments of the population. However, it is exactly the social tourism that is capable of providing everyone with good vacation opportunities, including people with disabilities.

Social tourism for the elderly is a new form of social service that aims to maintain health, organize proper and healthy recreation, expand the circle of communication, considering one's preferences and increase the robustness. Visiting interesting places or excursions produce vivid emotions and pleasant memories. Social tourism has become an important tool for overcoming the social loneliness of the elderly and people with disabilities; establishing, strengthening social ties and involving them in social activities.

Social tourism programs in different countries have already proven their relevance. Social tourism can make a huge contribution to human rights, health, rehabilitation, freedom of communication and movement.

Social tourism allows a person to be in harmony with oneself, makes people's lives brighter and more positive, dignified, perfect; meets the cultural and spiritual needs of citizens. Social tourism can have different directions of development and, thus, enabling wide prospects for the implementation of this method.

The development of social tourism requires a thrust from the state, as the initiation of social programs involves the allocation of funds, especially at the stage of pilot projects, such as socialization of elderly and disabled citizens; developing social tourism routes, organizing tourist trips to the regions introducing citizens to the study of the history of the home country, expanding the boundaries of citizens' information and leisure boundaries.

It is necessary to prepare the tourist infrastructure for the development of social tourism. For example, people with disabilities need special equipment at airports, stairs, elevators, dry-cleaning and laundry facilities, accommodation facilities and rest rooms. In addition to the locals, there are many foreigners with disabilities, wishing to visit our country under social programs to visit the sights or get medical help. But technically, we are not able to properly host them, since hotels, transportation, or catering facilities in majority of tourist destinations throughout Georgia fail to be adequately equipped.

The problems of social tourism in Georgia start with the fact of no regulatory documents in the tourism legislation specifying the tourist category, eligible for receiving budget funds for certain types of tourist services.

It is necessary for the state to define social tourism policy in this regard, including the creation of social infrastructure, the adoption of legislative and normative acts, the provision of systems and mechanisms for assistance to low-income groups, and coaching social tourism system workers.

Social tourism should be implemented by any tourism organization, which aims not only to make a profit but also to provide access to travel and tourism for the maximum number of people available. For this purpose, the following should be considered: jointly solving social, educational and cultural tasks; defining a target audience regardless of racial, cultural, religious, political or social characteristics; ensuring harmonious integration of social tourism with the local environment; relevance of tour product prices with announced social prices.

The practical implementation of the tasks of social tourism requires finding sources of funding, as long as making a profit for social tourism organizations is not the goal; creating a new material base for social tourism or adapting the existing base to modern requirements; elaborating proper legislative and normative base; compliance of social tourism services with growing European standards; creating a conscientious financial system for low-income individuals who are eligible for benefits; active involvement of state, municipal, public and commercial entities into the development of tourism.

BIBLIOGRAPHY

1. General condition of pensioners living below the poverty line, living alone. Research report. Tb. 2020. https://georgia.unfpa.org/ka/publications/covid-19-impact-on-lonely-older-people-Georgian. [Last seen 05.11.2021];
2. Social Service Agency (2020) Number of Social Package Recipients by Groups. http://ssa.gov.ge/index.php?lang_id=GEO&sec_id [Last seen 30.09.2021];
3. Law of Georgia on the Rights of Persons with Disabilities https://matsne.gov.ge/ka/document/view/4923984?publication=1 [Last seen 05.11.2021];
4. The 2018 Parliamentary Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia. P. 263. Tbilisi, 2019. http://www.ombudsman.ge/res/docs/20190426205713194 66.pdf [Last seen 07.09.2021];
5. http://myrights.gov.ge/ka/discussion/1101-2018-2020-tslebis-samoqmedo-gegmis-proeqti [Last seen 12.10. 2021];
6. Sub-program name: Resort Services for Children and Adolescents with Disabilities https://tbilisi.gov.ge/ [Last seen 05.11.2021];
7. Monitoring report of special institutions for children and persons with disabilities https://www.ombudsman.ge/geo/190308061623angarishebi/210916053235 [Last seen 22.09.21];
8. Subsistence minimum https://www.geostat.ge/ka/modules/categories/192/tskhovrebis-done [Last seen 30.09.2021];
9. Standard of living https://www.geostat.ge/ka/modules/categories/192/tskhovrebis-done [Last seen 30.09.2021];
10. ORGANISATION INTERNATIONALE DU TOURISME SOCIAL (OITS) https://www.unwto.org/affiliate-member-organization/41911 [Last seen 30.09.2021];
11. https://issuu.com/turismosocial/docs/e-poster_isto[Last seen 30.09.2021];
12. World Tourism Organization (UNWTO) UNWTO Declarations | Manila Declaration on World Tourism. (UNWTO), Madrid, Spain. 2221-6987; https://www.univeur.org/cuebc/downloads/PDF%20carte/65.%20Manila.PDF [Last seen 30.09.2021];
13. National Agency for Cultural Heritage Preservation. https://www.heritagesites.ge/ka. [Last seen 30.10.2021].

ECONOMIC AND SOCIAL EXCHANGE OF PERSONAL DATA AND THE RISKS OF THEIR PROTECTION

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Abstract

For the economic sector, new technology and communication have become real challenges. Personal data has become an important key to penetrate new markets and several firms are specialized in their collections and sales. Using customer profiles, marketing departments make it easier for them to predict customer behavior and beat competitors. The free movement of goods, payments and data are increasingly common among countries and the protection of personal data is increasingly called into question. Notably, the postmandemic period has significantly increased the distance relationships and data exchange rates. This situation has also contributed to social media addiction. It should be noted that in such a period it is important to increase the level of awareness of Internet users and to be especially careful when issuing data. An important step has been the introduction of a new regulation (GDPR) in the personal data protection system since 2018, which has revised and refined the existing rules and regulations. Especially noteworthy are the Right to be forgetten and the right to data portability.

Keywords: Data protection; Social networks; GDRP; General Data Protection Regulation; Digital culture; E commerce; Right to be forgotten.

Introduction

After the creation of the EU, the movement of people, goods, various public or private services and capital became evident. For the movement of people, personal data is transferred from one state to another either through customs or through the services where the person concerned travels or works. If workers in the information industry establish themselves in another country of the Community, the data is transferred in accordance with Article 43 of EC[13]

According to research by IDC, a company specializing in analyzing information on the Internet, the amount of data in circulation grows by 50% each year. And it's not just always very important information, but entirely new flows of little value. In our time, there are a large number of digital sensors installed on industrial equipment, electricity meters and automobiles. These sensors can measure and transmit information about location, movement, temperature, humidity and even chemicals in the air. By connecting this information to computers, we receive "the industrial Internet". It is also because it is easier to access information that the trend of data flooding continues.

In 2017 the IDC estimated that "the market for big data technologies and services will grow at a compound annual growth rate of 26.4% to reach $ 41.5 billion through 2018, or about six times the rate of growth of

[13] GAILLARD Emmanuel, Racine Jean-Baptiste « Liberté de l'establishment » ; Journal du droit international (Clunet), N3. 2009-07-01.

the global information technology market". [14] By 2021, global business investment in big data is expected to grow by more than 10% to $ 215.7 billion, IDC researchers believe.[15] Large retailers analyze sales, prices, even weather conditions as well as demographics to best tailor product selections by store and determine prices and promotion periods. Social networks, especially online dating sites, analyze lists of personal characteristics, reactions and comments, to attract large numbers of customers. Police departments in the United States analyze arrest histories, paydays, precipitation, and holidays in an attempt to predict crime and dispatch officers to these areas.

Research shows that economists find that companies that make decisions based on data analysis achieve 5-6% higher productivity than others. They assure us that Google queries have the capacity to know more than INSEE about France. The processing of data in general, including personal data, allows the control of certain markets which already transmit several information in certain fields by different electronic tools.

Online training is growing rapidly in several countries. IT gains much economic importance. IT will eventually revolutionize education and enable human resources to be mastered, but will face the issue of data protection. In general, a consumer visits websites without wanting to provide their personal data but to access certain parts of the websites, or the site administration may request personal data. The communication of this data is voluntary but if the consumer does not provide this data, he will not be able to benefit from the services offered by the sites: this is the case with the communication, the downloading of documents or the recruitment.

1. Social networks and Data protection problems

The issue of data protection on social networks is a matter of concern for all users. Social networks offer a possibility of communication which can threaten privacy. Personal data "images, videos, comments" become publicly available and can be examined by several services.

Sometimes it is difficult to extract information from the web once it has been published and this data often remains accessible through search engines. The practice of processing and marketing the data of users of social networks is developing. All the information that it is possible to have on an individual is retrieved.

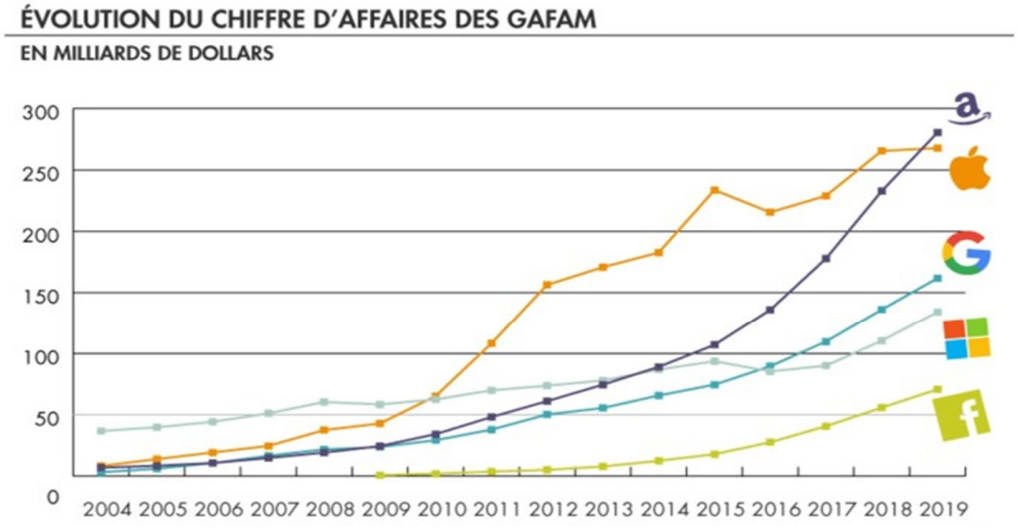
Facebook, for example, stores all of our data on their servers. More than 600 terabytes of data are thus stored every day. Worst of all, during the presidential elections in the United States in 2016, the company "Cambridge Analytica", dedicated to the profiling of voters, seized the data of 50 million Americans, without their consent. The data was collected using an app invented by a Cambridge University researcher. 270,000 Facebook users were paid to complete a personality questionnaire and agreed to have their data collected for academic use. But the application also collected data from the Facebook friends of all these users. Following the violation of the rights of its users, the Facebook network was forced to pay the largest fine ever imposed (5 billion dollars)[16]

[14] S. Findling, J. C. Pucciarelli, Michael Jennett. IDC FutureScape: Worldwide CIO Agenda 2018 Predictions. https://www.idc.com/getdoc.jsp?containerId=US43203417&pageType=PRINTFRIENDLY; [L. s. 27.11.2021].
[15] Big data et analytique : un marché promis à une croissance à deux chiffres 18.08. 2021 https://www.silicon.fr/big-data-analytique-croissance-414574.html#:~:text=Actualit%C3%A9s%20Big%20Data-,Big%20data%20et%20analytique%20%3A%20un%20march%C3%A9%20promis,une%20croissance%20%C3%A0%20deux%20chiffres&text=Selon%20les%20plus%20r%C3%A9centes%20pr%C3%A9visions,de%20dollars%20cette%20ann%C3%A9e%202021. [L. s. 27.11.2021].
[16] Facebook : une amende de 5 milliards de dollars et de nouveaux garde-fous, déjà contestés 24.07.2019 https://www.lemonde.fr/pixels/article/2019/07/24/donnees-personnelles-les-etats-unis-imposent-de-nouveaux-garde-fous-a-facebook-deja-contestes_5493017_4408996.html [L. s. 28.11.2021].

The operators of social networks draw up personalities according to their tastes, habits, hobbies. Technologies manage analyzed data and track the various activities of Internet users in order to guide their choices. Depending on the tastes and interests of social media subscribers, advertisers can further direct their advertising to consumers. All information relating to members of social networks makes it possible to offer personalized, that is to say, targeted advertising. In France and in Europe, several people are victims of identity theft. According to the definition of the penal code, the theft of data is the act of making use via electronic information, of the data of a third party which is personal to him, with a view to undermining his honor and disturbing his life.[17]

We can distinguish personal identity from digital identity. In this regard, we raise another question. When you create a person on social networks, how can you talk about their rights and their personal identity? Another interesting question: is an individual's "wall" private or public? Several cases studied at the Court concerned insults uttered by employees against their boss. There is no clear concept to define the character of network walls, but according to the court's cases, the wall was considered a private place under certain conditions.

Social networks with a non-European origin, for the most part, were subject to the principles of the Safe Harbor. Social networks have an obligation to underline, in their contract, the various rights registered with their services. Networks have an obligation to determine who owns the data. This notion of property will condition the rights granted to users. It is constant that the power of the CNIL in France and its counterparts in Europe is not sufficient to push back the network giants. (GAFAM) companies are sometimes barely 20 years old (Facebook was created in 2004 and Google in 1998) and yet the capitalization of each of them, with the exception of Facebook, exceeds $ 1,000 billion.

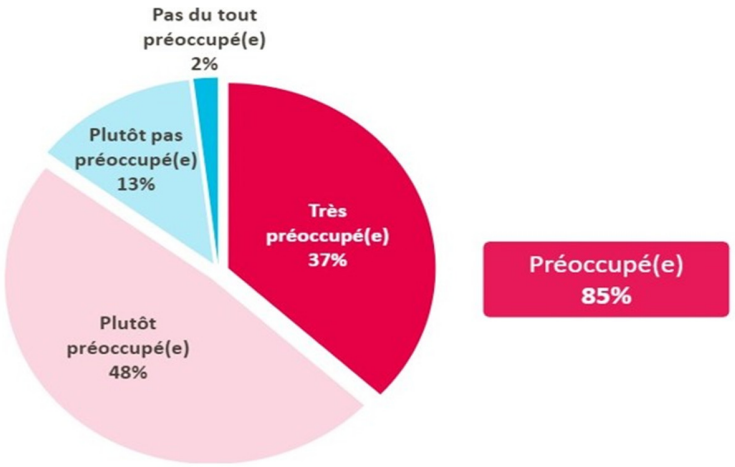


Source : lafinancepourtous, d'après Statista

It is indisputable that new rights are created to cover the new needs. It is about giving anyone the power to decide the extent to which information about them can be processed, communicated, and stored. On social

[17] Usurpation d'identité numérique: L'article 226-4-1 du Code pénal.

networks, this right would allow any user to be able to delete all information concerning him, the right to digital oblivion is a new claim because information on the net is difficult to remove. According to research conducted by the CSA for Orange, 85% of French people say they are concerned about the protection of their data on the internet and 42% think that the situation has deteriorated in recent years[18]



Source : Etudes de l'institut du CSA pour ORANGE ; 2014

2. Right to be forgotten

The right to digital oblivion responds to the concern of Internet users to control their online reputation, which is coupled with concerns around the protection of personal data. When a person logs onto a website, they leave several types of traces. Identification data, geolocation, then data intended for a circle of close friends ... These data are likely to be processed by economic players to provide an online service, distribute and generate traffic.

Beyond the certain benefits, several risks affect privacy: processing of personal data without the user's consent, an unlimited data retention period, loss of control. It is in this area that the right to digital oblivion must intervene.

At first, Google had refused to comply with the "right to be forgotten" imposed by the CNIL, "arguing that the French body was not competent" to control "the information accessible throughout the world[19]

After contesting the ruling, Google was forced to accept the judgment and launched an online form accessible to Europeans, allowing them to request removal of search results. A day after this decision, Google received more than 12,000 requests from European Internet users to be deleted from its search services The right to digital oblivion has thus appeared at European Union level since 2014 in the Conzales case. The Court of Justice of the European Union (CJEU) defines this right as the obligation, for a search

[18] Les Français et la protection des données personnelles, études de l'Institut du CSA pour Orange, 2014.

[19] Droit à l'oubli : la Cnil dit non au recours de Google, La Tribune, 21/09/2015 https://www.latribune.fr/technos-medias/internet/droit-a-l-oubli-la-cnil-dit-non-au-recours-de-google-506908.html, [L. s.29.11.2021].

engine, to “remove from the list of results displayed following a search carried out using the name of a person, links to web pages, published by third parties.[20]

The right to be forgotten does not allow a user to ask a web host to delete pages, but gives the possibility to request the removal of links. The pages still exist, but are no longer referenced when searching for the person's name. We thus speak of “de-referencing”. Since May 25, 2018 and the entry into force of the GDPR, the countries of the European Union have had a legal basis on the right to be forgotten and erased. (Article 17)"The data subject has the right to obtain from the controller the erasure, as soon as possible, of personal data concerning him and the controller has the obligation to erase such personal data as soon as possible. time limits, when one of the following reasons applies”[21]

- Personal data are no longer necessary for the purposes;
- There is no legitimate reason for the processing; [22]
- Personal data have been processed unlawfully;

At the social level, the right to be forgotten is a gesture of rehabilitation in society. The “right to forget” collectively imposes silence on the faults and penalties of citizens, in certain circumstances, to guarantee peace and social cohesion.

3. Particularity of Digital culture

Internet users' behavior is linked to the benefits they have received after sharing certain information in the past. The country's culture and business experiences influence the minds of consumers. If we look at the results from different countries, we will see that behaviors vary according to age, social culture and brand sectors. Thus, sectors play an important role in the perception of data that can be collected and shared. The attitudes of young customers with social media accounts differ from the attitudes of 60-year-old consumers who have never had such accounts. American consumers believe that companies use their data for business purposes and expect benefits in return. China has one of the lowest sharing deficit of the three countries studied (France, United States, China)[23] the French oppose the greatest resistance to data sharing, emphasizing the need to maintain control. Only 23% of French internet users say they are ready to share, compared to 61% in China and 45% in the United States.

Milad Doueihi describes digital technology as a process of emerging social norms marked by both freedom of expression and surveillance. According to the author, “the religious dimension of digital culture has the effect of leveling out differences and reducing local factors to mere superficial variations of a universal and homogeneous technological culture and its digital environment. "[24]

Culture can be considered as the set of distinctive features, spiritual, material, intellectual, which characterize a society. It encompasses the arts and sciences, lifestyles, laws, value systems, and beliefs. It is believed that digital culture is understood in the global dimension where the national culture, history and politics of each nation intersect. In the early days of digital history, the goal of progress was computation and decryption. The Internet was born out of an imperative to resist a nuclear attack. Researchers and engineers were mobilized and funded for the creation of the network which will become “Advanced

[20], Arrête Google Spain c/ AEPD et Costeja Conzales, 13/05/2014. Demande de décision préjudicielle, introduite par l'Audiencia Nacional.
[21] GDPR ; Droit à l'effacement "droit à l'oubli, Article17, https://www.gdpr-expert.eu/article.html?id=17#textesofficiels [L. s.29.11.2021].
[22] GDPR Right to object, Art. 21 https://gdpr-info.eu/art-21-gdpr/ [L. s.29.11.2021].
[23] F. Hanna, Etude « Value Me » de Microsoft Advertising sur la valorisation des données personnelles 20.07.2015.
[24] Digital Cultures, M. Doueihi, (2011a). En traduction française, La grande conversion numérique (2008, pp. 25, 26).

Research Projects Agency Network. Since then, we cannot imagine our life without the internet and without connected objects. Digital culture is becoming a very delicate subject which encompasses the features of general culture and that of digital. As Cardon says: "it is important to have a variety of knowledge to live there with agility and prudence, because if we make digital, digital also makes us".[25]

4. E-commerce and Data

Data collection can be carried out simultaneously with the purchase or service process. With the procedure of the identification for the purchase or internet service one can collect the information concerning the customers which will be stored according to the interests of the merchant. Communication between computers over the internet is only possible through the use of specific protocols. The TCP / IP protocol gives the possibility of transporting information on the web and their unification at the recipient. The recipient is identified by IP. TCP / IP is the set of communication rules and is based on the concept of IP addressing. Protocols TCP / IP was created for military purpose and it meets the following criteria:

- Use of address systems
- Routing, Data flow
- Control of data transmission errors

The use of these protocols shows the transmission of various information such as IP and the language used by the program, type of use, date and time of the connection, the possible request. This information is likely to be recorded by the navigation program and by the servers. The specialists will process this data to offer potential customers other products. The representative of e-commerce, are interested in becoming a provider of personal data in our current world. Commercial internet sales sites are subject to distance selling regulations (VPC), including declarative obligations (consumer protection,) and mandatory information. The merchant must comply with the following conditions:

- Informing customers about their right to access, modify and delete the information collected;
- Have adequate information systems security;
- Indicate a data retention period;

Responsible for the online sales site which collects personal information and constitutes customer files, must make a declaration to the CNIL. (In France) The Council of Europe adopted in 2001 the Convention on Cybercrime which is often encountered in electronic commerce. It concerns not only the Member States but also Japan and the United States.

At European Union level, the legislation relating to E-Commerce is as follows:

- Directive 1999/93 on electronic signatures of December 13, 1999;
- Directive 2000/31 / EC on electronic commerce of 2000 guaranteeing legal certainty for businesses and consumers;

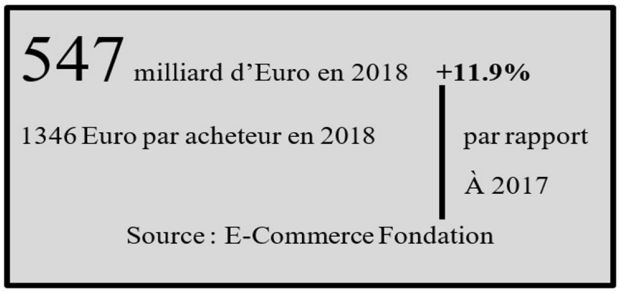
In French law, two laws concern electronic commerce:

- Law on electronic proof of 3 March 2000;[26]
- Law for confidence in the digital economy;[27]

[25] P. Cavallar, La culture numérique selon Dominique Cardon, Culture numérique, Presses de Sciences Po, 2019.
[26] Loi n° 2000-230 du 13 mars 2000 portant adaptation du droit de la preuve aux technologies de l'information et relative à la signature électronique
[27] Loi n° 2004-575 du 21 juin 2004 pour la confiance dans l'économie numérique

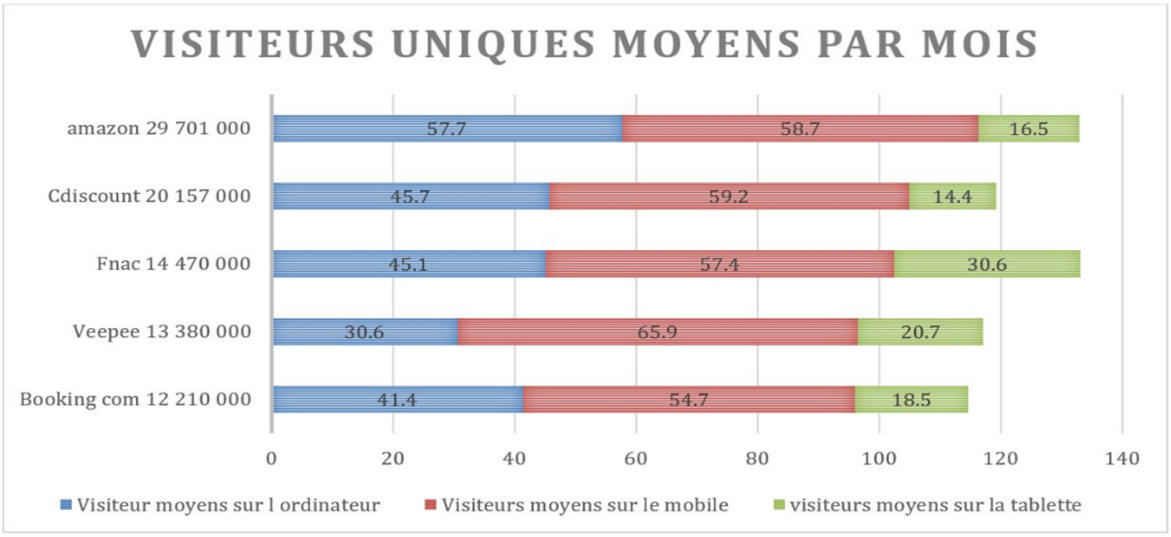
After the 90s, each consumer will be differentiated and no longer be identified as a common group. Before buying the product, he compares and thinks, his demands are increasing, he becomes independent. The companies decide to bring an offer adapted to the consumer. One-to-one marketing is individualized marketing, which should allow companies to have a personalized relationship with customers. This type of marketing represents 4 phases: Identify, differentiate, interact and personalize. CRM, a "one to one" marketing tool, is made concrete with the Internet. This tool helps to establish the database file for customer loyalty. Thus we manage to create the customer's profile by processing and using this data. The Law provides for the recognition of a right of opposition of the data subject. The commercial interest of a company is sufficient to legitimize the collection and processing of non-sensitive data relating to its current or potential customers for a marketing purpose.

The transfer of data to third parties contains a risk of potential loss of personal control over the data. The customer does not know to whom this data will be communicated and for what purpose it will be served. There will always be risks that the third party does not comply with data protection laws. despite the risks, online shopping is increasing. France is the second largest e-commerce market in Europe after the United Kingdom. [28]



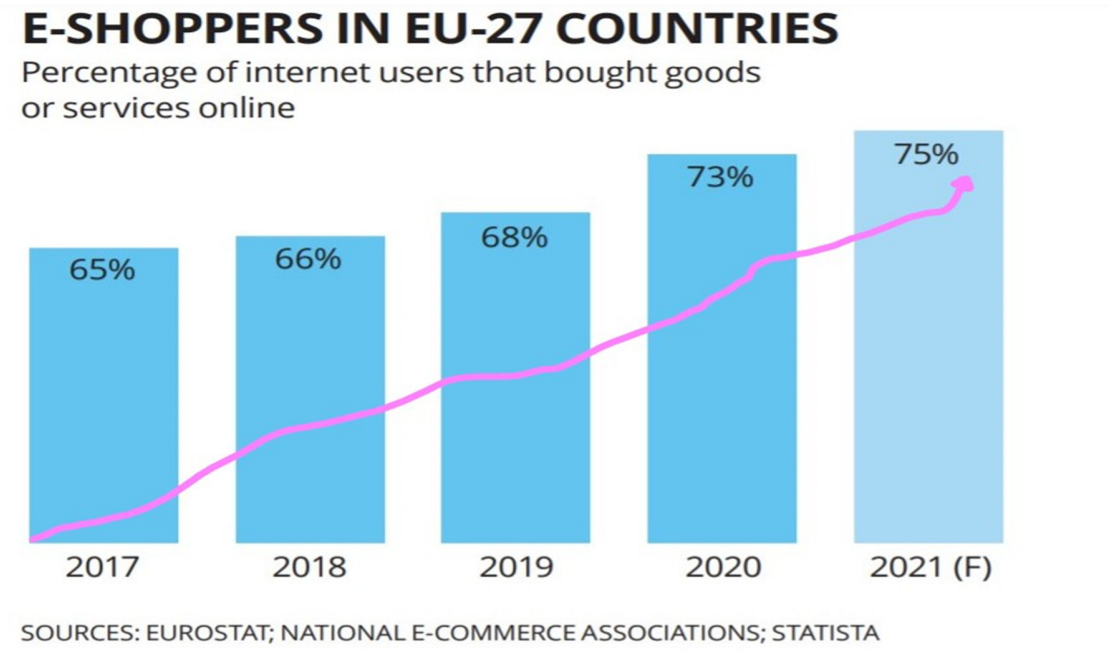
Chiffre d'affres e-commerce en 2018 en milliards d'euro; Source: Ecommerce Fondation

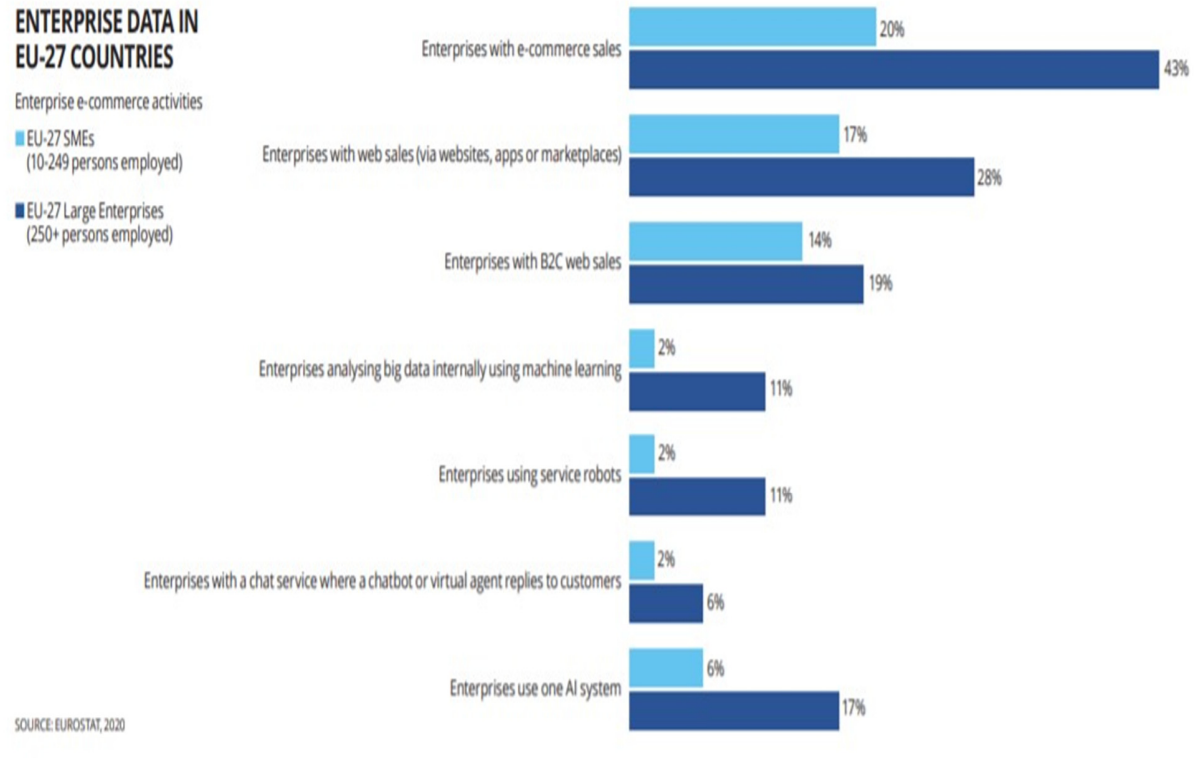
The most visited sites in France



Source Médiamétrie//Net ratings Moyenne – T1 2019 France - Audience internet

[28] LES CHIFFRES CLÉS 2019 FÉDÉRATION E-COMMERCE ET VENTE À DISTANC https://www.fevad.com/wp-content/uploads/2019/06/Chiffres-Cles-2019_BasDef-1.pdf [Last seen 29.11.2021].


E-SHOPPERS IN EU-27 COUNTRIES
Percentage of internet users that bought goods or services online
65%
66%
68%
73%
75%
2017
2018
2019
2020
2021 (F)
SOURCES: EUROSTAT; NATIONAL E-COMMERCE ASSOCIATIONS; STATISTA


ENTERPRISE DATA IN EU-27 COUNTRIES
Enterprise e-commerce activities
EU-27 SMEs (10-249 persons employed)
EU-27 Large Enterprises (250+ persons employed)
Enterprises with e-commerce sales
20%
43%
Enterprises with web sales (via websites, apps or marketplaces)
17%
28%
Enterprises with B2C web sales
14%
19%
Enterprises analysing big data internally using machine learning
2%
11%
Enterprises using service robots
2%
11%
Enterprises with a chat service where a chatbot or virtual agent replies to customers
2%
6%
Enterprises use one AI system
6%
17%
SOURCE: EUROSTAT, 2020

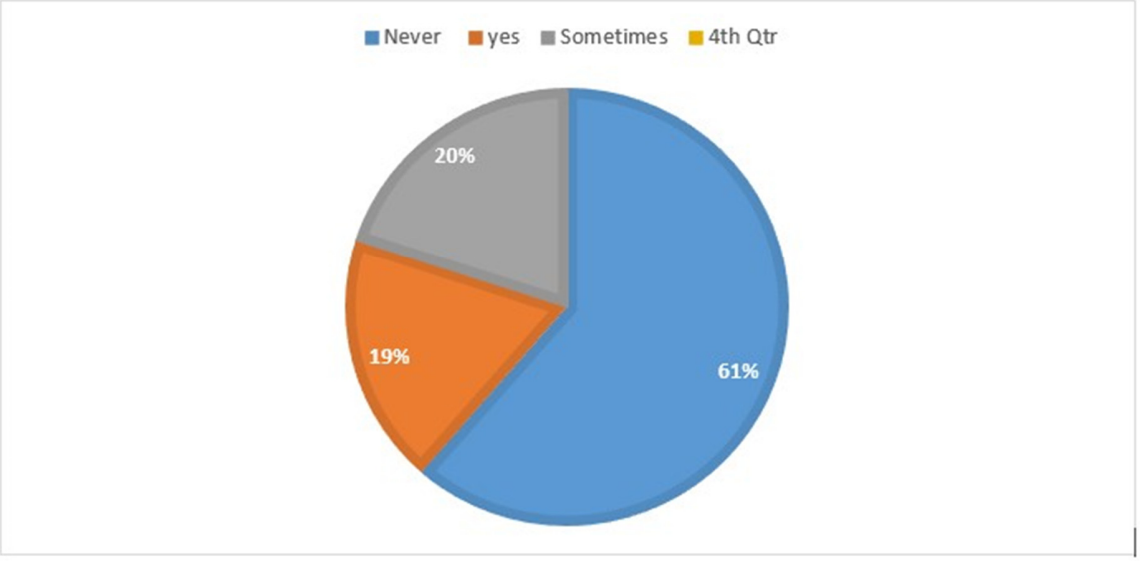
5. Researches

We organized a study with French (Sorbonne; Paris1; Master SIC/MIKS) and Georgian universities (GRUNI; TSU, SEU, SANGU, OPENUNI) in the years 2018-2021. Object of research was to discover the level of attitudes towards personal data protection at universities. In the Focus group there were students and professors of the institution. Age group of 20-68. Studies were about quantitative and deductive methods. Dichotomous questions were used as well as the Likert scale method to measure the range of some answers. The number of respondents was 230. The responses were analyzed using Google's automatic summation method. We propose extract from this research in this article.

Questions

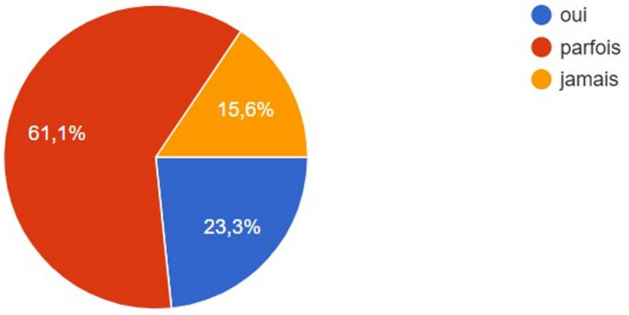
- Have you ever regretted disclosure of personal information?
- if you changed your attitude towards social networks after Facebook was fined a record $ 5 billion for improper storage of user data?
- In case of improper processing of your personal data, do you intend to apply to the relevant authority for protection?
- The right to be forgotten is one of the most important points in the general regulation of personal data protection in 2018, which was used by thousands of Internet users. What is your opinion on this issue?
- Have you heard about GDPR regulation?
- In France, since 2018, there is an information system on orientation in higher education "système d'information sur l'orientation dans le supérieur". According to the creators, this system helps to see the existing problems and interests in order to improve them in the future. Complete information about each pupil and student is gathered from school to the University period. Do you think it is justified to have a similar system and use the same practice in Georgia?

Have you ever regretted disclosure of personal information?



avez vous jamais regretté d'avoir délivré vos informations?

90 réponses



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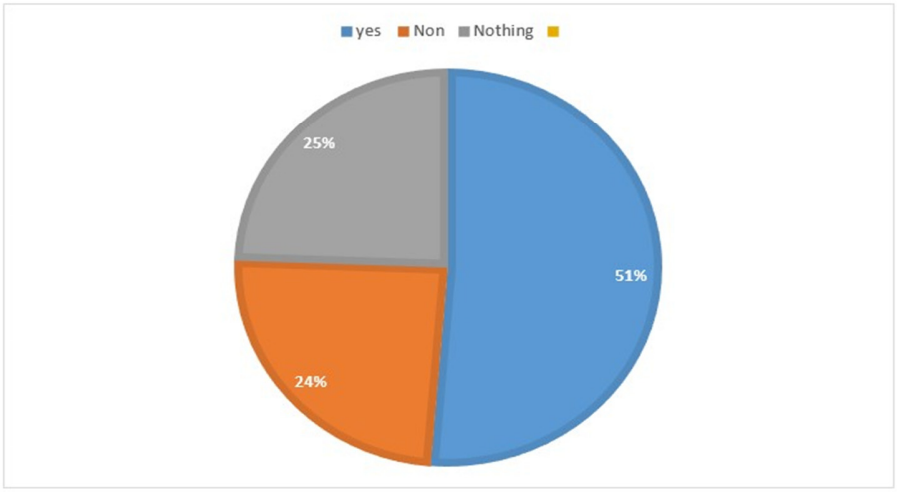
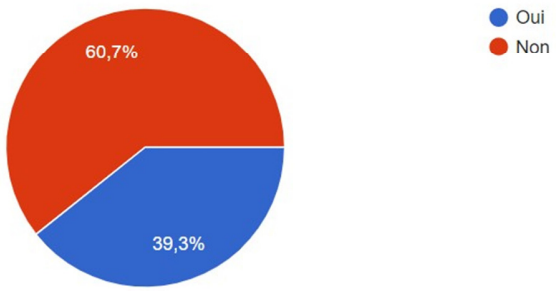


Avez vous modifié votre attitude envers les réseaux sociaux après la sanction de Facebook de 5 milliard d' euros https://www.france24.com/fr/20190724-facebook-accepte-amende-milliards-dollars-ftc-record-critiques

89 réponses



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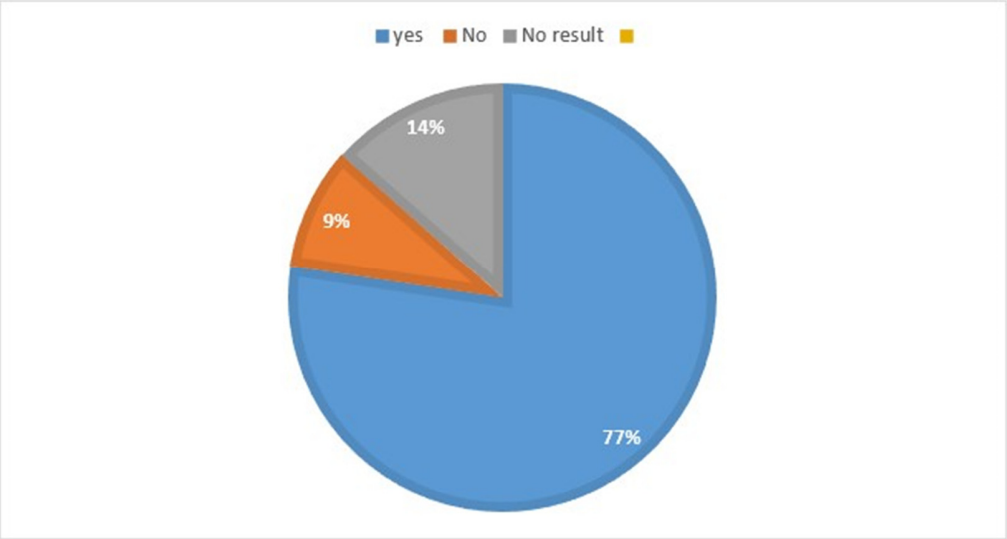
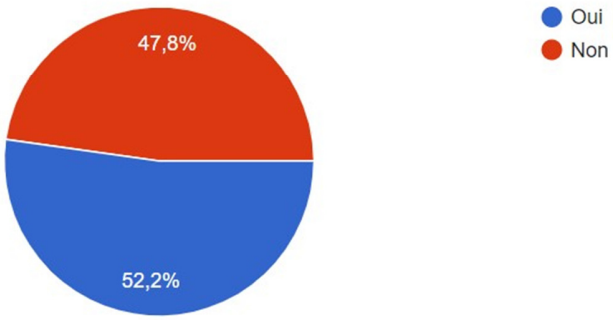


Vous adresserez vous aux organisations compétentes pour la défense de vos droits au cas de l'abus ?

90 réponses



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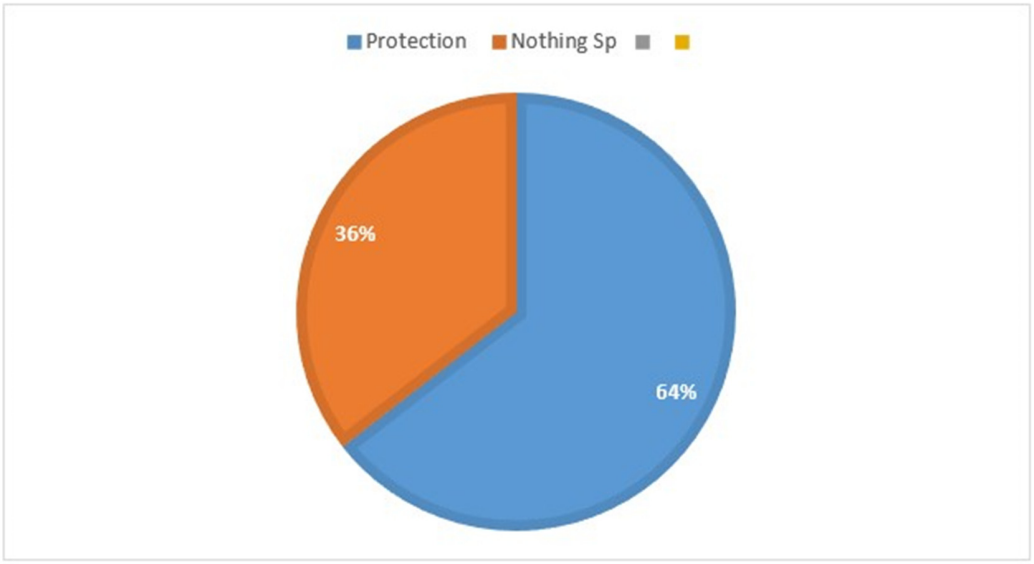
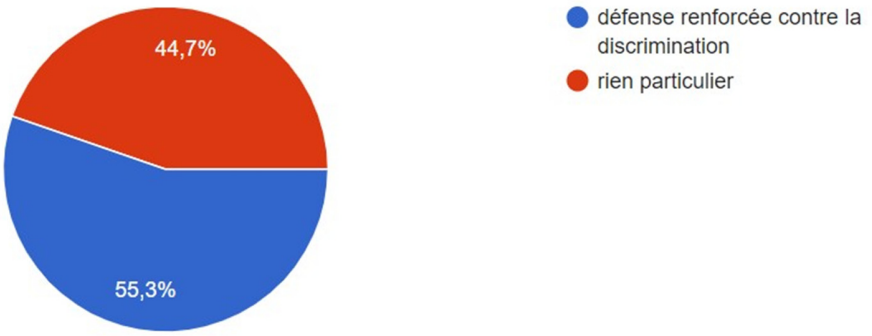
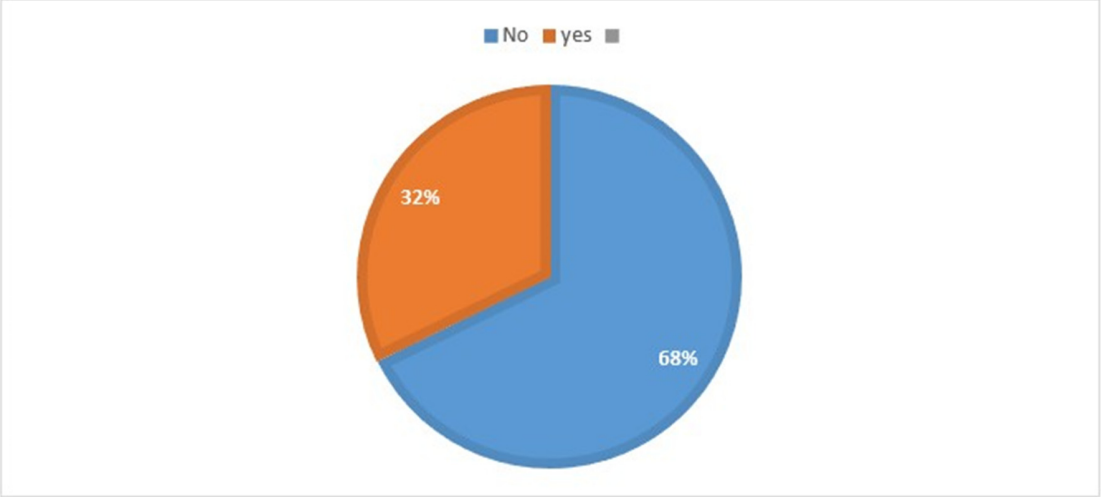


Quel est pour vous le droit à l'oublie

85 réponses

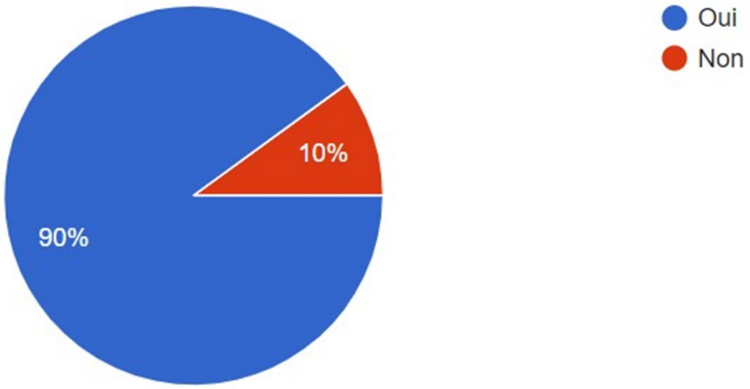


Have you heard about GDPR regulation?



Connaissez vous le RGPD

90 réponses



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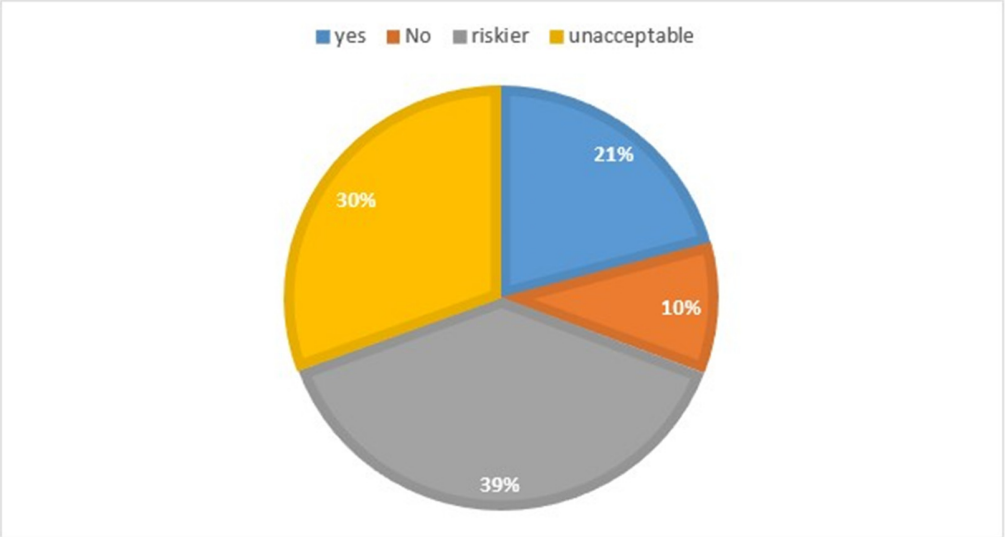

Arrêté du 23 novembre 2018 portant création d'un traitement automatisé de données à caractère personnel dénommé « Système d'information sur l'orientation dans le supérieur » (ORISUP) Qu' es ce que c' est pour vous ?

86 réponses

Results of the research

The research outcomes suggest that both Georgian and French respondents are often concerned about their own voluntary disclosure of personal information. The colossal fines imposed on social networks have caused sharp distrust among users following the famous scandal. The “right to be forgotten” is perceived by consumers as a sharp mechanism to stop discriminatory treatment. Georgian students are skeptical about the introduction of such a system in higher education (0RISUP) and believe that in the reality of our country, a similar idea in terms of personal data protection will be more risky. As for the case of improper processing of data, 77.1% of Georgian respondents in this paragraph think that they apply to the appropriate authorities to protect their rights, while only 52.2% of French students surveyed intend to fight for their rights.

Conclusion

In the 1990s, companies were satisfied with gathering information related to the market (market shares, customer characteristics, etc.). Currently, they target specific data for each consumer, his characteristics, his consumption preferences. At the time, collection was done face to face or by phone, or by mail. Today, new technology has completely changed the situation. Data collection, storage and transmission are carried out at high speed across the world. On the one hand, technology has evolved, but on the other hand it has raised the issue of privacy protection. For businesses, collecting and processing data is a strategic matter that must be addressed on the one hand by law and on the other hand by personal ethics. When studying the protection of personal data, we quickly notice that several sciences are interested in this subject. These include the interest of "marketologists" in collecting customer data. Equally great is the interest and opinions of sociologists, psychologists and computer scientists on this subject.

In sociology, we talk about a social contract, a form of exchange in which individuals engage in return for economic or social benefits. The notion of "social contract" implies understanding that individuals are willing to provide personal information if they find a suitable consideration. In psychology, it has been found that giving out information about one's personality is a phenomenon linked to the development of intimacy. Private life would be a base on which privacy can be built.

The variety of responses to this topic raises the question of what privacy consists, and where the line lies between personal data and commercial and security interests. There are several books on self-disclosure which is defined as the process by which one gives personal information to others. The individual lives in society and has regular exchanges with other individuals, members of this group.

We can distinguish two types of exchanges in our societies:

• Economic exchange (when “goods” can be exchanged for their monetary equivalent);

• Social exchange, which can be defined as an exchange in which one of the two partners can engage without knowing exactly the consideration that will be offered to him.[29]

Business satisfaction can be influenced by different factors, an individual's geographic origin or the tastes of individuals. According to a French sociologist, every individual is a „homo oeconomicus“ who optimizes his profits without necessarily seeking symbolic or psychological retribution.[30]

[29] P. Blau, Exchange and Power in Social Life, eBook Published25 October 2017.
[30] Pierre Demeulenaer « Homo oeconomicus », Presse Universitaires de France, 2003.

BIBLIOGRAPHY

1. Facebook : une amende de 5 milliards de dollars et de nouveaux garde-fous, déjà contestés 24.072019 https://www.lemonde.fr/pixels/article/2019/07/24/donnees-personnelles-les-etats-unis-imposent-de-nouveaux-garde-fous-a-facebook-deja-contestes_5493017_4408996.html [Last seen 28.11.2021];
2. Liberté de l'establishment, Journal du droit international (Clunet), N3. 2009-07-01. GAILLARD Emmanuel, Racine Jean-Baptiste;
3. Serge Findling, Joseph C. Pucciarelli, Michael Jennett; IDC FutureScape: Worldwide CIO Agenda 2018 Predictions 2017 https://www.idc.com/getdoc.jsp?containerId=US43203417&pageType=PRINTFRIENDLY [Last seen 27.11.2021];
4. Big data et analytique : un marché promis à une croissance à deux chiffres 18.07.2021 https://www.silicon.fr/big-data-analytique-croissance-414574.html#:~:text=Actualit%C3%A9s%20Big%20Data-,Big%20data%20et%20analytique%20%3A%20un%20march%C3%A9%20promis,une%20croissance%20%C3%A0%20deux%20chiffres&text=Selon%20les%20plus%20r%C3%A9centes%20pr%C3%A9visions,de%20dollars%20cette%20ann%C3%A9e%202021. [Last seen 27.11.2021];
5. E-learning – Chiffres et tendances du marché 8.04.2020 https://www.callimedia.fr/e-learning-chiffres-et-tendances-du-marche/ [Last seen 28.11.2021];
6. BAROMÈTREE-LEARNING2020"6.02.2020://www.afinef.net/wp-content/uploads/2020/07/Barometre-AFINEF-Digital-Learning-2020-Presse.pdf [Last seen 29.11.2021];
7. L'article 226-4-1 du Code pénal;
8. GAFA,GAFAM ou NATU: les nouveaux maîtres du monde 29.07.2021 https://www.lafinancepourtous.com/decryptages/finance-et-societe/nouvelles-economies/gafa-gafam-ou-natu-les-nouveaux-maitres-du-monde/ [Last seen 29.11.2021];
9. Les Français et la protection des données personnelles », études de l'Institut du CSA pour Orange, 2014;
10. Droit à l'oubli : la Cnil dit non au recours de Google, La Tribune. 21.09.2015 https://www.latribune.fr/technos-medias/internet/droit-a-l-oubli-la-cnil-dit-non-au-recours-de-google-506908.html [Last seen 29.11.2021];
11. Arrête Google Spain c/ AEPD et Costeja Conzales, 13/05/2014. Demande de décision préjudicielle, introduite par l'Audiencia Nacional.
12. GDPR; Droitàl'effacement "droitàl'oubli" Article17, https://www.gdpr-expert.eu/article.html?id=17#textesofficiels [Last seen 29.11.2021];
13. GDPR Right to object, Art. 21 https://gdpr-info.eu/art-21-gdpr/ [Last seen 29.11.2021];
14. Fabien Hanna, Etude «Value Me» de Microsoft Advertising sur la valorisation des données personnelles. 20.07.2015 [Last seen 29.11.2021];
15. Milad Doueihi, Digital Cultures, (2011a). En traduction française, La grande conversion numérique 2008;
16. Peppe Cavallar, La culture numérique selon Dominique Cardon, Culture numérique, Presses de Sciences Po, 2019;
17. Explanatory Report to the Convention on Cybercrime Budapest. 23.11.2001 https://rm.coe.int/16800cce5b [Last seem 29.11.2021];
18. Loi n° 2000-230 du 13 mars 2000 portant adaptation du droit de la preuve aux technologies de l'information et relative à la signature électronique;
19. Loi n° 2004-575 du 21 juin 2004 pour la confiance dans l'économie numérique;
20. LESCHIFFRESCLÉS2019FÉDÉRATION E-COMMERCE ET VENTE À DISTANC https://www.fevad.com/wp-content/uploads/2019/06/Chiffres-Cles-2019_BasDef-1.pdf [Last seen 29.11.2021];
21. Key figures on Europe 2021 https://ec.europa.eu/eurostat/documents/3217494/13394938/KS-EI-21-001-EN-N.pdf/ad9053c2-debd-68c0-2167-f2646efeaec1 [Last seen 30.11.2021];
22. P. Blau, Exchange and Power in Social Life, eBook Published25 October 2017;
23. Pierre Demeulenaer „Homo oeconomicus", Presse Universitaires de France, 2003.

PSYCHOLOGY

THE COVID-19 PANDEMIC AND THE MENTAL HEALTH OF STUDENTS

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Abstract

The disease COVID-19, caused by the new coronavirus (SARS-CoV-2), was first detected in Wuhan, China in late December 2019, and, due to its high degree of virulence, it has spread rapidly around the world ever since. On March 11, 2020, the World Health Organization descried the situation as a pandemic, and in March 2020, a state of emergency was declared in Georgia. To limit the spread of the virus "lockdown" was ordered and, except in emergencies, the population was restricted from leaving home, the learning process in educational institutions was suspended, and all sorts of gatherings and public transport were put off. In these circumstances, as well as the risks associated with deteriorating health and economic problems, students also found themselves in a difficult situation in terms of getting access to education, caused by the transition to distance learning.

The social category of students is characterized by an active lifestyle, a wide range of relationships and contacts. In consequence of the social distancing policies and measures implemented across the country to slow the spread of the virus, the reduction in contacts has given rise to feelings of loneliness and depression. The entire situation is likely to negatively affect the psychological well-being of students. It has been proven that high levels of stress among students are associated with low mental wellness, which in turn, may lead to poor academic performance and the emergence of social and psychological problems[1]. Based on the above-stated, the aim of the present paper was to establish a link between the indicators of loneliness, depression and psychological well-being with students in the context of constraints caused by the COVID pandemic. Patient Health Questionnaire (PHQ-4), Loneliness Scale (UCLA) and Psychological Well-Being Scale (PWBS) were used for the purpose. Analysis of the results revealed that depression, anxiety and loneliness have a negative bearing on psychological well-being. The differences were analyzed in obedience to demographic characteristics.

Keywords: Mental Health, Loneliness, Depression, Psychological well-being.

[1] S. Akhter, "Psychological Well-Being in Student of Gender Difference". The International Journal of Indian Psychology Volume 2, Issue 4,2015.
T. Munir, S. Shafiq, Z. Ahmad, S. Khan, "Impact of Loneliness and Academic Stress on Psychological Well Being among College Students". Academic Research International Vol. 6(2) March 2015.

Introduction

With respect to the COVID pandemic, the issues related to psychological well-being are principally relevant for the modern world. In the changed realities, the problems created by the pandemic lead to an increase in the rates of stress, anxiety and depression in society, which may become the determinant of pessimistic attitudes towards life, reduced self-confidence, losing optimism, as well as changing life goals and values.

Interest in psychological well-being and spiritual health peaked in the period from the late 1950s to the 1970s. Psychological well-being refers to the feeling of happiness, life satisfaction and successful coping with stressful situations by a person[2].

Psychological well-being can be viewed from a cognitive and emotional point of view, which implies a positive assessment of one's own social life, condition and relationships. Cognitive assessment refers to the degree to which a person is satisfied with their life conditions. The affective aspect is primarily based on feelings and reflects on how often a person experiences happiness and sadness. This assessment is based on the assumption that people attach great importance to good and bad, and hence, they also value their own lives either as good or bad.[3]

It should be noted that in addition to social life satisfaction, demographic and life aspects may also have an impact on psychological well-being even if it is driven by the achievement of one's own goal.

For the past two decades, the Ryff Scales have been used in empirical studies. Studies included issues related to work, mobility, personality, well-being, and the ability of gifted students to realize their potential. In addition, the Ryff's Model was used to study the degree of depression, value system, and perfectionism among college students[4].

Student psychological well-being is a central concern of research. Under the conditions of social isolation and prohibitions, along with psychosocial problems, the change in the format of teaching in the educational system (switching to distance learning) and the restriction of social relations also proved to be painful for students. Continuing to study at the university for a young person involves the search for his/her individuality, accomplishment, new and interesting social relationships, and self-sustenance.

In social isolation driven by the pandemic circumstances, limited emotional and social support can trigger feelings of loneliness and depression. It is well known that students, experiencing loneliness, suffer from an inferiority complex and low self-efficacy. Low levels of self-esteem include negative assessments of one's own health, appearance, behavior, and functioning. The student's depressed mood hinders his/her academic achievement, as it causes difficulty concentrating, low self-esteem, and a decrease in the feeling of pleasure in doing something that once used to be fun for him/her[5].

Loneliness is a condition that affects people of all ages. It is a subjectively perceived negative feeling associated with a lack of social relationships. The feeling of loneliness is related to the assessment of a person's overall level of social interaction. Its rate indicates how much the real quality and quantity of social relations lags behind the desired. The feeling of loneliness can be a reaction to the lack of social relationships that are important to a person, the low quality of social relationships, or the lack of sincere and emotional relationships.

[2] R. K. Bhagchandani, Effect of Loneliness on the Psychological Well-Being of College Students, International Journal of Social Science and Humanity, Vol. 7, No. 1, January 2017.
[3] S. Akhter, Psychological Well-Being in Student of Gender Difference. The International Journal of Indian Psychology Volume 2, Issue 4,2015.
[4] See footnote 3.
[5] A. Rahman, A. Bairagi, B. Kumar Dey & L. Nahar. "Loneliness and depression of university students". The Chittagong University J. of Biological Science, vol-7 (1&2), 2012, 175-189.

Interacting with the social environment is vital for a person. The isolation imposed during a pandemic gives rise to and exacerbates feelings of loneliness.[6]

According to the most common definition of loneliness, it is the feeling caused by the difference between ideal and real social relationships. Definitions of the feeling of loneliness describe it as a state of loneliness or being alone. The feeling of loneliness is, in essence, a mentality. Owning to it, a person feels spiritually empty, lonely, and unwanted by others. Individuals who are lonely often feel the need to make contact with other people, prevented by their mentality. Loneliness has always been considered a widespread problem for older people, but, today, high levels of loneliness are also observed among youngsters as well. Loneliness is a subjective experience, connoting that if a person thinks he/she is alone, he/she also feels lonely likewise. It should be noted that not everyone who is alone will necessarily experience loneliness.[7]

Loneliness and social isolation can catalyze many mental problems, including severe stress disorders, irritability, insomnia, emotional disorders, mood swings, depressive symptoms, fear and panic, anxiety, frustration, loneliness, self-harm, suicide, and drug addiction. Some people enjoy being alone. According to Tillich (Tillich, 1959), "being alone reflects the beauty of solitude, while loneliness reflects the pain of feeling alone". Larson (Larson, 1997), in describing the difference between being alone and loneliness, explained that "feeling lonely" should be easily distinguished from other concepts, and "being alone" means that a person independently made such a choice[8].

1. Method

Aim of the study: To establish a link between the rates of loneliness, depression and psychological well-being among students in relation to the COVID-19 pandemic-induced restrictions. Patient Health Questionnaire (PHQ-4), Loneliness Scale (UCLA) and Psychological Well-Being Scale (PWB) were used for the purpose. The survey participants rated the provisions by scoring on the scales. SPSS 20 was used for data processing.

Target group: Students.

Selection: Non-random sampling methods were used: available selection and focus groups.

1.1. Participants

462 students (87.7% female and 12.3% male) of Georgian National University SEU participated in the survey. 90% of the survey participants were single, 9.6% were married and 0.4% was divorced. 89.6% of respondents lived with family, 6.3% lived alone, and -4.1% lived with relatives. According to 69.8% of the students surveyed, they did not have their own income, while 30.2% showed the opposite results. 88.3% of the students surveyed rate their family's economic situation as average, 9.1% as low, and 2.6% as high. 49.9% of the surveyed students were freshman students, 29.8% were sophomores, 10.9% were juniors, and 9.4% were senior students. 20.6% of the surveyed students evaluated their academic success with 70 points, 19.5% with 50 points, 16.2% with 80 points, 14.8% with 60 points, 10.8% with 90 points, 6.6% with 40 points, 4.2% with 100 points, 2.9% with 30 points, 2.2% with 10 points, 1.8% with 20 points, and 0.4% with 0 points.

[6] R. K. Bhagchandani, „ Effect of Loneliness on the Psychological Well-Being of College Students", International Journal of Social Science and Humanity, Vol. 7, No. 1, January 2017.
[7] See footnote 6.
[8] R.K. Bhagchandani, "Effect of Loneliness on the Psychological Well-Being of College Students, International Journal of Social Science and Humanity", Vol. 7, No. 1, January 2017.

1.2. Data Collection Procedure

Using the Google Drive platform, it has become possible to extract survey data. Respondents participated in the survey voluntarily. Anonymity was maintained. In order to get complete information, answering all the questions was mandatory.

1.3. Research Limitation

The main drawback of the survey is the limitation related to the selection of respondents. It would be better if the students of other HEIs in Georgia were also involved in the research. The restriction is also related to the violation of gender balance, according to which the vast majority of respondents were female.

2. Tools

2.1. Patient Health Questionnaire

The Patient Health Questionnaire (PHQ-4)[9] consists of 4 provisions and is evaluated by scoring points for the provisions on the four-point Likert scale (1- hardly any; 2- a few days; 3- for most days; 4 - almost daily). The instrument allows to be used to measure depression (PHQ-2) and anxiety (GAD-2) on a two-point scale. The evaluation is determined by the total number of points assigned to all four provisions. Scores are rated as normal (0-2), light (3-5), medium (6-8), and severe (9-12). If the first two questions score a total of ≥3 points, it indicates an anxiety rate, and if the second two questions score a total of ≥3 points, depression is likely. It should be noted that the scale is an abbreviated version of problem identification that is not used to diagnose depression and anxiety.

2.2. Psychological Well-Being Scale

The Psychological Well-Being Scale (PWB)[10] consists of 8 provisions and describes important aspects of an individual's functioning, including healthy social relationships, a sense of competence and the key meaning of life and goals. Each provision is rated on a seven-point scale (1 = strongly disagree; 2 = disagree; 3 = partially disagree; 4 = agree to disagree; 5 = partially agree; 6 = agree; 7 = strongly agree). All provisions reflect a positive attitude. Points can range from 8 points (I strongly disagree with any of the provisions) to 56 points (I strongly agree with all the provisions). The high score obtained indicates the positive attitudes of the respondents towards different areas of functioning. Although this tool does not explore individual aspects of psychological well-being individually, the focus is on relationships about positive functioning in different areas.

2.3. Loneliness Scale (University of California, Los Angeles)

Loneliness Scale (University of California, Los Angeles UCLA) is a three-provision scale, and each provision is evaluated on a three-provision scale: (1 = rarely; 2 = occasionally; 3 = frequent). The instrument measures

[9] K. Kroenke, R. L Spitzer, J. T BW Williams, L. B. Löwe. "An ultra-brief screening scale for anxiety and depression: the PHQ-4". Psychosomatics 2009; 50:613–621.
Occupational Medicine, "Patient Health Questionnaire-4", QUESTIONNAIRE REVIEW. 2016.
[10] Ed Diener, D. Wirtz, R. Biswas-Diener, W. Tov, Chu Kim-Prieto, Dong-won Choi, and S. Oishi, "New measures of well-being: Flourishing and Positive and Negative Feelings". C Springer Science+Business Media B.V. 2009.

three aspects: social relationships, relationships, and self-reported relationships. If the total number of points on the scale for the regulations is high, it indicates a high rate of loneliness, while a low score indicates a low rate of loneliness.

3. Description of Results

For the purpose of the research, respondents' rates of depression and anxiety were to be assessed on a patient health survey scale. A two-dimensional analysis revealed that 31.8% of respondents had a normal rate of depression and anxiety, 37.9% had a mild rate, 17.7% had a moderate rate, and 12.6% had a severe rate. Differences on this scale were identified according to gender characteristics, namely, 28% of females and 25% of males experience depression and anxiety. In married respondents, the rate of depression and anxiety is higher (27%) than in married (26%) and divorced (22%) students.

Statistically significant differences were found in line with the economic status of the family, according to which, based on one-dimensional analysis, it was found that the lower the economic status of the family, the higher the rate of depression and anxiety ($P = 0.000 < 0.05$). In those respondents with low family economic situation, the rate of anxiety and depression is high (36%). Depression is manifested in 26% of respondents who rate the economic situation of the family as average and 30% who rate it as high. The analysis of the results revealed that 27% of students living with family, 32% of students living alone and 32% of students living with relatives have depression and anxiety. Depression is manifested in 30% of students who have their own income and in 26% of those with no their own income.

The processing of the results revealed that the differences identified in keeping with the level of learning on the Patient Health Scale were statistically reliable. In particular, with the increase in the level of learning, there is a growing trend of depression among students. Depression and anxiety were reported in 23% of freshmen, 32% of sophomores, 31% of juniors, and 31% of seniors. The relationship between academic achievement and depression rate was found to be statistically significant, with the higher the depression rate, the lower the students' own success rate (50%), and the lower the depression rate, the higher the students' own academic success rate (12%). , $P = 0.000 < 0.05$.

A two-dimensional analysis was used to process the data obtained on the Loneliness Study Scale, which showed that 52.8% of the respondents had a low, 30.3% average, and 16.9% high on the Loneliness Study Scale. Scale differences were also identified by gender, with 27% of female respondents and 24% of male respondents experiencing loneliness. According to marital status, 33% of divorced respondents, 28% of married respondents and 19% of married respondents experience loneliness.

Based on the data processing, differences were found on the Loneliness Study Scale according to the economic status of the family, according to which the lower the students assess the economic status of the family, the higher the feeling of loneliness among them and vice versa. In particular, 33% of students, who rate their family economic status as low, experience loneliness. 26% of students, who rate family economic status as average experience, loneliness and 21% of students experience loneliness who rate family economic status as high. 30% of students who have their own income experience loneliness, while 25% of students who state that they do not have their own income indicate loneliness.

Statistically significant differences were found on the loneliness scale according to the learning level $P = 0.000 < 0.05$. The lower the level of the student, the less he/she experiences loneliness, namely, 24% of freshmen experience loneliness, 31% of sophomores, 28% of juniors and 29% of seniors. Students living alone (26%) are less likely to experience loneliness than students living with family (30%) or relatives (32%). Differences were found between students' assessment of their own academic success and feelings of loneliness. The higher

the feeling of loneliness, the lower the students' assessment of their own success (61%), while the lower the loneliness rate, the higher the students' assessment of their own academic success (16%).

Processing the data obtained from the study and two-dimensional analysis revealed that 2.2% of the surveyed students have low psychological well-being, 48.1% of them indicate average and 49.8% show high rates.

Based on one-dimensional analysis, it was found that the rate of psychological well-being was higher in female respondents (63%) than in male respondents (60%). 68% of married respondents experience more psychological well-being than single (62%) and divorced respondents (57%). Interesting results are revealed in agreement with the level of learning on this scale, according to which statistically significant differences in psychological well-being were not revealed among the respondents of all four levels of education (freshmen - 63%, sophomores - 63%, juniors - 63%, seniors - 62%).

Psychological well-being rates are lower for students who rated their family economic status as low (60%) than for those students who rated it as average (63%) and high (67%). 62% of students with income indicate psychological well-being, in contrast to students who do not have their own income (63%). Psychological well-being is higher for students living with family (63%) and relatives (63%), as opposed to students living alone (59%).

Statistically significant differences in the Psychological Well-Being Scale were found in terms of academic achievement, with students who rated their academic achievement with low scores, experiencing lower psychological well-being (55%) and students who rated their own academic achievement with high scores as well as high-achieving psychological rate (70%).

Diagram N1: Differences in the Scale of Patient Health, Loneliness, and Psychological Well-Being by Demographic Characteristics.

	N	**Depression / Anxiety**			**Loneliness**			**Psychological Well-Being**	
	462	M	SD	P	M	SD	P	M P	SD
Sex n(%)									
Female	405	,28	,18	,35	,27	,20	,32	,63 ,11	,12
Male	57	,25	,21		,24	,20		,60	,14
Age M(SD)									
Marital status n(%)									
Married	44	,26	,20	,86	,19	,19	,03	,68	,11
Unmarried	416	,27	,18		,28	,20		,01 ,62	,12

	2	,22	,22		,33	,31			
Divorced								,57	,18
Family economic status									
Low	42	,36	,16		,33	,20		,60	,13
				,00			,08		
Medium	408	,26	,18		,26	,20		,18 ,63	,12
High	12	,30	,24		,21	,22		,67	,17
Level of higher education									
First year of study		,23	,17		,24	,19		,63	, 12
				,00			,00		
Second year of study	230	,32	,19		,31	,21		,98 ,63	,13
Third year of study	137	,31	,19		,28	,19		,63	,10
	51	,31	,19		,29	,23		,62	,12
Fourth year of study	44								
Personal income									
Yes	139	,30	,20		,30	,21		,62	,13
				,05			,02		
No	323	,26	,18		,25	,20		,69 ,63	,12
Residence									
Living with family		,27	,18		,26	,20		,63	,12
	414			,18			,37		
Living alone	29	,32	,20		,30	,23		,21 ,59	,12
Living with relatives	19	,32	,20		,32	,18		,63	,10
Academic success									

0-point	2	,50	,18		,61	,08		,55	0,00
10 - points	10	34	,17		,31	,21		,56	,12
20 - points	8	,32	,21		,29	,23		,57	,12
30 - points	13	,34	,19		,32	,17		,57	,11
40 - points	30	,26	,17		,26	,21		,60	,11
50 - points	88	,28	,19	0,00	,27	,20	0,11	,61	,12
60 - points	67	,32	,17		,31	,20		0,00	
70 - points	99	,26	,18		,27	,21		,60	,13
80 - points	77	,23	,17		,25	,20		,65	,10
90 - points	49	,28	,20		,26	,21		,65	,13
100 - points	19	,12	,12		,16	,17		,65	,13
								,70	,10

3.1. Regression Analysis

Regression analysis revealed that the Patient Health Scale explains 29.1% of the data variability (R^2, 085; R^2 Adj =, 0,69; B =, 473; ST =, 177; T = 4,438; P =, 000). The most important predictors on the study scale of patient health (depression and anxiety) were the economic status of the family, the presence of different levels of education and the assessment of their own academic success by the students. The Loneliness Scale reveals 26.8% of the data variability (R^2, 072, R^2 Adj =, 055 B =, 486; ST =, 199; T = 4,073; P =, 000); having one's own income on the loneliness research scale, family economic status, marital status, being at different levels of education, and evaluating one's own academic success were revealed as statistically significant predictors. The Psychological Well-Being Scale explains 29% of the data variability (R^2, 084, R^2 Adj =, 068; B =, 518; ST =, 117; T = 7,368; P =, 000), where marital status and evaluation of one's own academic success are important predictors.

Diagram N2. Regression Analysis

	Patient Health Questionnaire (Depression / Anxiety)					**Loneliness**					**Psychological Well-Being**				
	B	**SE**	**β**	**T**	**P**	**B**	**SE**	**β**	**T**	**P**	**B**	**SE**	**β**	**T**	**P**
- Sex	-,022	,025	-,040	-,872	,383	-,034	,029	-,055	-1.198	,231	-,024	,017	-,064	-1,407	,160
- Age	-,003	,004	-,041	-,726	,468	-,008	,005	-,091	-1,604	,109	,001	,003	,021	,372	,710
- Marital status n(%)	,033	,029	,054	1,128	,260	,086	,033	,126	2,612	,009	-,052	,019	-,129	-2,695	,007

Family economic status	-,052	,025	-,095	-2,107	0,36	-,053	,028	-,086	-1,896	,059	,020	,016	,055	1,210	,227
-Level of higher education	,039	,010	,206	3,721	,000	,035	,012	,167	2,994	,003	-,008	,007	-,061	-1,109	,268
Personal income	,24	,019	,061	1,287	,199	,043	,021	,096	2,025	,043	-,004	,012	-,015	-,323	,747
Residence	-0,33	,027	-,055	-1,212	,226	-,024	,031	-,035	-,770	,231	,012	,0,18	,029	,640	,522
- Academic success	-,015	,004	-,165	-3,633	,000	-,012	,005	-,122	-2,655	,008	,014	,003	,234	5,130	,000

3.2. Correlation

Based on the data correlation analysis (Pearson Correlation Coefficient) it was found that the links between the patient's overall health indicators (depression / anxiety), loneliness and psychological well-being are significant (see Diagram N3).

- There is a strong positive correlation between depression / anxiety and loneliness ($r = 0.54$, $p < .01$)

- Negative correlation between depression / anxiety and psychological well-being ($r = -0.35$, $p < .01$)

- Negative correlation between loneliness and psychological well-being ($r = -0.39$, $p < .01$)

Diagram N3. Correlation between Patient Health (Depression / Anxiety), Loneliness and Psychological Well-Being

	Depression	Loneliness	Psychological Well-Being
Depression	1	,545	-,358
Loneliness	,545	1	-,390
Psychological well-being	-,358	-,390	1

** $p \leq .01$; * $p \leq .05$; *** $p \leq .001$

In order to check the reliability of the scales used in the study, the internal agreement coefficient - Cronbach's alpha coefficient was calculated for each scale. The strongest internal agreement was found on the patient health scale (depression / anxiety) (α =, 80). Also, the scales of psychological well-being (α =, 79) and loneliness (α =, 78) have high internal consistency. (See Diagram N4)

Diagram N4. Internal Agreement of Scales and Descriptive Statistics

	α	N	M	SD
Depression	,80	462	,272	,184
Loneliness	,78	462	,268	,204
Psychological well-being	,79	462	,627	,121

3.3. Review of the Results

In order to test the reliability of the scales used in the research, the internal agreement scores were calculated, according to which it was found that the agreement scores for each scale are high. It should be noted that based on the correlation analysis of the data, it was revealed that the connections between the scales used in the study are significant. Regression analysis revealed that the Patient Health Scale unfolds 29.1% of the data variability, the Loneliness Scale reveals 26.8% of the data variability, and the Psychological Well-Being Scale reveals 29% of the data variability.

After processing and analyzing the data, it was found that one third of the respondents in the study showed depression and anxiety on the Patient Health Scale. Differences on the scale were also revealed by demographic characteristics, according to which married students have a higher rate of depression and anxiety than married and divorced students. Impacts of depression and anxiety have also been shown by residence; in particular, students who live alone or with relatives are more likely to experience depression and anxiety than students who live with families. Statistically significant differences were also found on the Patient Health Scale according to family economic status, which showed, based on a one-dimensional analysis, that the lower the family economic status, the higher the rates of depression and anxiety among students. It is noteworthy that students with their own income have higher rates of depression and anxiety compared to students with no income of their own. Statistically significant differences were also identified with the year of study on the Patient Health Scale. In particular, the higher level a student is at, the higher his or her rates of depression and anxiety. Statistically significant was the association of academic achievement with the depression rate, according to which the higher the depression rate among students, the lower their self-assessment of success, and the lower the depression rate, the higher the students' self-assessment of their academic success.

Based on a two-dimensional analysis of the Loneliness Study Scale, it was found that almost half of the respondents had moderate to high rates of loneliness on the Loneliness Study Scale. Differences were also identified in terms of gender; in particular, female respondents were more likely to experience loneliness than males. It was found that divorced respondents experience more loneliness than single and married respondents. Students living with relatives are more likely to experience loneliness compared to students living alone or with students living alone. Differences on the Loneliness Study Scale were also revealed by family economic status, according to which the lower the students' assessment of the family's economic status, the higher their sense of loneliness, and conversely, the higher their income status, the lower their students' sense of loneliness. Also, loneliness is higher with students having their own income. Statistically significant differences were identified according to the level of learning on the loneliness scale. In particular, the lower a level the student is at, the less loneliness he or she experiences, and the higher a level the student is at, the more loneliness he or she experiences. Differences were also found between students' assessment of their own academic success

and feelings of loneliness: the higher the feeling of loneliness, the lower the students' own assessment of their own success, and the lower the loneliness, the higher the students' assessment of their own academic success.

Based on the processing of the data obtained from the study, it was found that almost half of the students have an average rate on the Psychological Well-Being Scale, while half have a high rate. The rate of psychological well-being among female respondents is higher compared to male respondents. Also, married respondents have a higher rate on the psychological well-being scale compared to married and divorced respondents. Students, who live with family or relatives, have a higher rate of psychological well-being as opposed to students living alone. The rate of psychological well-being is lower for students who rated their family's economic status as low-income, as opposed to students who rated their family's economic status as average or high. It is also interesting to note that students with no income of their own have a higher rate of psychological well-being than those of students who have proven their own income. As for the level of learning, no statistically significant differences were found in the study. It is noteworthy, however, that statistically significant differences were found on this scale in terms of academic achievement, according to which students who rated their own academic achievement with low scores experienced lower psychological well-being, and students who rated their own academic achievement with high scores had higher psychological well-being rates.

Conclusion

In the context of the constraints induced by the COVID pandemic, the aim of the study was to establish a link between students' rates of loneliness, depression, and psychological well-being. Based on the processing of the obtained data, it was revealed that:

- Internal agreement rates are high for each scale;
- The connections between the scales used in the study are significant;
- One third of respondents have moderate to severe rates of depression and anxiety on the Patient Health Scale;
- Depression and anxiety rates are higher for students who live alone or with relatives, are at a higher level of education, value their own academic achievement with low scores, have a personal income; however, rate their family economic status as low-income one;
- Almost half of the respondents have average and high rates of loneliness on the Loneliness Survey Scale;
- Loneliness is higher with students who are divorced, living with relatives, assessing the economic situation of the family as low-income, having their own income, are the fourth-year students, and scoring their academic achievement with low points;
- Half of the students on the Psychological Well-Being Scale have high and almost half have average scores;
- Psychological well-being is high with students who are married, living with family and relatives, have no income of their own, and value the economic situation of the family as high-income.

BIBLIOGRAPHY

1. Aaron Jarden, Positive Psychological Assessment: A practical introduction to empirically validated research tools for measuring wellbeing, "Jarden", 2011;

2. Abdur Rahman, Arunavo Bairagi, Biplob Kumar Dey & Lailun Nahar. Loneliness and depression of university students. The Chittagong University J. of Biological Science, vol-7 (1&2), 2012;

3. E. C Chang, Perfectionism and dimensions of psychological well-being in a college student sample: A test of a stress-mediation model. Journal of Social & Clinical Psychology, 25(9) 2006;

4. Ed Diener, Derrick Wirtz, Robert Biswas-Diener, William Tov, Chu Kim-Prieto, Dong-won Choi, and Shigehiro Oishi, New measures of well-being: Flourishing and Positive and Negative Feelings., "Springer Science+Business Media B.V". 2009;

5. Federica Cielo, Randi Ulberg and Dina Di Giacomo. Psychological Impact of the COVID-19 Outbreak on Mental Health Outcomes among Youth: A Rapid Narrative Review. International Journal of Environmental Research and Public Health, 2021;

6. Helen Landmann and Anette Rohmann, when loneliness dimensions drift apart: Emotional, social and physical loneliness during the COVID-19 lockdown and its associations with age, personality, stress and well-being. International Journal of Psychology, 2021;

7. Hughes Mary Elizabeth, Waite Linda J, Hawkley Louise C, Cacioppo John T. A Short Scale for Measuring Loneliness in Large Surveys. "Res Aging", 2004, 26;

8. Kurt Kroenke, Robert L. Spitzer, Janet B.W. Williams, D.S.W., Bernd Lo¨we. An Ultra-Brief Screening Scale for Anxiety and Depression: The PHQ–4.; Psychosomatics, 50:613– 621, 2009;

9. Occupational Medicine, Patient Health Questionnaire-4, QUESTIONNAIRE REVIEW. 2016;

10. Revati K. Bhagchandani, Effect of Loneliness on the Psychological Well-Being of College Students, International Journal of Social Science and Humanity, Vol. 7, No. 1, January 2017;

11. Robert Sanders, Covid-19, social isolation and loneliness. Iriss, ESSS, 2020;

12. Sana Akhter, Psychological Well-Being in Student of Gender Difference. The International Journal of Indian Psychology Volume 2, Issue 4,2015;

13. Sheela Sundarasen, Karuthan Chinna, Kamilah Kamaludin, Mohammad Nurunnabi, Gul Mohammad Baloch, Heba Bakr Khoshaim, Syed Far Abid Hossain and Areej Sukayt. Psychological Impact of COVID-19 and Lockdown among University Students in Malaysia: Implications and Policy Recommendations. International Journal of Environmental Research and Public Health. 2020;

14. Tahira Munir, Sameera Shafiq, Zahoor Ahmad, Sarfaraz Khan, Impact of Loneliness and Academic Stress on Psychological Well Being among College Students. Academic Research International Vol. 6(2) March 2015;

15. Valeria Negovan. Dimensions of students' psychosocial well-being and their measurement: Validation of a students' Psychosocial Well Being Inventory. Europe's Journal of Psychology 2/2010;

16. Vincenza Capone, Daniela Caso, Anna Rosa Donizzetti and Fortuna Procentese. University Student Mental Well-Being during COVID-19 Outbreak: What Are the Relationships between Information Seeking, Perceived Risk and Personal Resources Related to the Academic Context? "SustainabiliTy, MDPI", 2020.

EVALUATION OF PSYCHO-SOCIAL FACTORS OF FEAR

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Abstract

Fear is part of the life and existence of any culture or individual. Over the years, the object of fear in a society and the strategies to combat it may change, but the expectation that people can be completely free from fear is simply an utopia. Different branches of psychology always tried to find distinguished explanations for the methods of originating and overcoming fear, although the fact is one, fear arises where there is a lack of individual's personal maturity. When a person avoids every new life experience and does not try to move to a new stage of growth, it all accumulates in him/her in the form of fear and the individual experiences developmental fixation.

It is also interesting to talk about the differences that exist between fear and anxiety, as these two emotions are often interrelated. If we refer to Barlow, fear differs from anxiety in that, fear is present-oriented and relatively certain, rather than future-oriented and relatively uncertain. Uncertainty not only increases anxiety levels, but is also responsible for a person's various mental disorders.

That is why, in the current situation in the world, when the Covid-19 pandemic affected the life of each individual, it is important to focus on the fear of the unknown situation caused by uncertainty. Usually, people want to control the present because with this they also want to take control over the future. In order to know what we are afraid of; it is necessary for a person to have insight by approaching the problem with consciousness and asking the questions to himself/herself. People in general have tendency to imagine a harsh scenario of the expected consequences of the future, which in many cases is completely far from the reality. It is fact that in case of having „apocalyptic" thoughts it becomes impossible to deal with fear. In the end, those who fearlessly „approach" this mentioned unpleasant emotion win the battle of overcoming fear.

Keywords: Fear, Anxiety, Fear of the Unknown Situation, Pandemic, Covid-19.

Introduction

The article below forms a systematic representation of fear, its expressive emotion, and the cognitive processes that are permanently ongoing in the human mind at the conscious or subconscious level. From many types of fear, the factor of uncertainty plays an increasingly important role today. Accelerating the rhythm of life, globalization, the growing flow of different content and non-systemic, including negative information, put a serious test on human psychological resilience. Therefore, establishing the correlation of events and processes associated with fear with people's reactions, with the processes going on in their consciousness, is the main goal of the article.

Even in ancient time, the subject of fear was a field of interest for philosophers, although by this time their explanation of fear was more general in nature and did not really help individuals personally.

For the last century, fear has been considered as „Newcomer" for empirical psychology. Despite his „pioneer" status, psychoanalysis[1] with its profound psychological approaches, behaviorism with its stimulus-response

[1]S. Freud, „Über die Berechtigung, von der Neurasthenie einen bestimmten Symptomkomplex als „Angstneurose" abzutrennen", Studienausgabe Frankfurt/M.: S. Fischer 1971, S.27-47.

analysis, as well as cognitive psychology,[2] which played an important role in psychology in the late 1960s, pay great attention to the topic of fear. It is also important cognitive transactional theory of Richard Lazarus, which has gained considerable popularity in recent decades. According to this theory, emotions arise as a result of a cognitive assessment process. Not the critical situation itself originates the feeling but the subjective interpretation of the fact. According to this theory, fear is a specific, cognitively transmitted emotion during a stress episode.

Modern research of fear is focused on answering questions such as the impact of fear on people's health, the role of fear in treatment of mental disorders, in originating of aggressive behavior, and more.

Krohne[3] describes fear as „an affective state of the body when there is a feeling of tension, danger, and anxiety due to increased activity of the autonomic nervous system and self-absorption caused by excitement."

Fear is generally a part of human life that accompanies a person from birth to death. The history of mankind invents new methods to overcome or avoid fear, however it would be illusion if we believe that a human being can live without fear. Fear is part of an individual's existence and we can only develop defense mechanisms against it: Courage, confidence, power, hope, faith and love are those things that help us in this. The methods that promise complete relief from fear should be viewed with skepticism because they do not take into the consideration the reality of being human and create illusory expectations.

Fear exists regardless of the culture and level of development of the community. It means that as time goes by, epochs change but the feeling of the mentioned emotion in a person remains unchanged. The only thing that can be changed is the object of fear, against which different measures and means are used. Today we are no longer afraid of lightning and thunderstorm, solar and lunar eclipses, because we know that this is not the end of the world. However, we have fears that early cultures did not know about, such as the fear of bacteria and new diseases.

As for the methods of overcoming fear, if in the past people asked for help to those who would cast a spell on them in order to cure them, now there are medicines that assist a person to overcome the emotion. Nowadays one of the most effective methods of dealing with fear is also psychotherapy.

Fear affects different people distinguishably and therefore the reaction of a frightened person can also be different. In one case the individual defense mechanism may become more active after the fear and start taking active action to overcome or avoid it, while in the other case the experienced fear may cause the complete inability of the person and freeze him/her in one place.

1. Freud's two theories of fear

There are cases when fear arises situationally, which Freud refers to as signal fear. Signal fear as an alarm signal has a protective reaction in dangerous situations such as escape or defense. If there would not exist such emotion, people would not have avoided various dangerous situations and their lives would often have been in danger.

Fear in general is a signal and warning of any danger and a specific impulse is needed to overcome it. How a person copes with fear shows the level of his development, and each overcome fear contributes to the inner maturity of a person. If an individual is unable to cope with fear, he experiences stagnation, which prevents him from moving to the next stage of his personal development.

Fear arises in the place from which a person has not yet grown up. Any development, the stage of maturity is related to fear, because it leads to something new, to the hitherto unknown, to internal and external situations in which we have never been before, which we have never experienced. Every age consists of maturity stage

[2] M. Eysenck, „Cognitive functioning and anxiety", Psychological Research, 1987, pp. 189–195.
[3] H. Krohne, „Repressive emotional discreteness after failure", Journal of Personality and Social Psychology,1996, pp.1318–1326.

and certain fears associated with it. To pass any stage of development successfully, it is necessary to overcome the fears connected with this stage.

If we think about the small steps a child tries to independently take when he or she first time lets go his or her mother's hand, he or she will have fear to walk independently, which must be overcome. Fear accompanies first time entering school, starting a family, getting old, thinking about death, and so on. All these fears are an integral part of our lives. Each such step is like crossing the border and requires from us giving up the familiar situation and take a step towards something new, unknown.

According to Freud, if a person tries to suppress and expel fear, it can also become a major cause of neurosis. The particular interest to the founder of psychoanalysis was the fear that comes from the taboo of incest and the Oedipus complex. This fear arises, as he describes in „Totem und Taboo"[4], from the foundations of cultural development and its society.

In this paper, Freud proposed a new theory of the origin of human society. He expressed the view that members of one tribe worshiped plants and things as a common totem, united by a common kind of religion. Life in this society is limited by the Taboo, which he explained by the prohibition of killing a father. In his later work, Freud developed a definition of classical fear. All schools have since contributed to the understanding of fear, its origins, manifestation and elaboration.

In the literature there are separated Freud's two theories of fear. They can be formally called the „first and second fear" theory. The first is the theory of neuropsychological fear and the second is the theory of psychological fear.

In the first theory of fear, Freud concentrates on the neurosis of fear. According to him the cause of fear neurosis is the blocking of sexual tension. For him, the fear neurosis is formed by a sequence of certain processes: 1. There is a sexual impulse; 2. Sexual impulse is blocked. 3. Excitement intensity increases 5. Accumulated excitement is released in the form of a fear reaction.

According to Freud, fear is an affective state with psychological, behavioral-motor and subjective components, which arises when an individual feels incapable of coping with specific tasks with appropriate reactions.

More than 30 years after the first theory of fear was formulated, the psychoanalytic concept has changed dramatically, concentrating on expulsion as a determinant of behavior becomes less important, and it has been replaced by the central concept of mental conflict. Behind the term „conflict" there are meant mental forces that oppose each other. Such forces are able to awaken the „unconscious" fantasies of childhood.

To explain this conflict, Freud proposed the idea of mental structure in terms of three "mental instances" which he called „Id", „Ego" and „Superego".

The second theory of fear is often referred to as the „Signal Theory ". In this case Fear is defined as a signal of danger for Ego. Which means the cognitive (behavioral) signal of a person, through which danger can be avoided.

Fear of reality arises when the „Ego "realizes everything that is happening in the environment and expects to be harmed. A signal involves taking adequate action, such as fleeing or attacking.

Neurotic fear arises when the needs of the „Ego" come from the needs of the „Id", the fulfillment of which may put in danger the „Ego".

The fears of moral or „Superego" arise when actions or thoughts do not coincide to the permissible norms of the „Superego" (established by the norms of parents, caregivers, or society). Such danger cannot be avoided by a person by fleeing, but he must bring his thoughts and actions in line with the norms allowed by „Superego"

[4] S. Freud, „Totem and Taboo" (1912-1913), The Standard Edition of the Complete Psychological Works of Sigmund Freud, London: Hogarth Press, Volume XIII.

2. Fear and anxiety

The ancient Greeks had words such as mania, melancholy, hysteria, and paranoia (these Greek words are still used today), but they did not have a word for anxiety in their vocabulary. In modern Greek we find the word „anesuchia", the main meaning of which is „not quiet" or „not calm". The Romans in Ciciero times used the word „anxietas", which meant a state of prolonged fear, and it was different from the word „angor", which was used to describe a momentary state of strong fear.

In the Middle Ages and during the Renaissance, anxiety was associated with melancholy.

In ancient China it was suggested that there was some connection between human organs and emotions; For example, excessive anger was thought to be harmful to the liver, excessive happiness was associated with the heart. Fear damaged the kidneys, and boredom damaged the lungs.

In the early 18th century, the term anxiety was used in medical literature to refer to mental illness.

In the early 19th century, the focus shifted from mental health to somatic causes or possible psychological causes of mental illness.

In the beginning of 20th century, it was thought that the etiological factors of anxiety were hereditary or biological.

Later on, Carl Jasper spoke about the different nature of fear and anxiety. The various forms of anxiety that were rejected many years ago have once again become interesting what we now call social phobia.

According to Barlow, fear differs from anxiety in that fear is present-oriented and relatively certain rather than future-oriented and relatively uncertain.[5]

Anxiety in general is a complex emotional response that is similar to fear. Both are products of similar processes in the brain and cause similar psychological and behavioral reactions. However, fear and anxiety differ from each other in that fear is associated with a clear, existing, and identified threat, whereas anxiety is not related to an existing threat. In other words, we are scared when we are actually in danger and we experience anxiety when we feel some discomfort but at a particular moment we are not actually in danger.

Fear formation is influenced by various environmental factors, such as:

• A social environment, where traumatic moments provoke specific fears that a person may have for a lifetime;

• Observational learning, when observing another person takes place in a traumatic social environment. The person sees that another person has been injured in a particular situation and is afraid the same thing might happen to him or her;

• Transmitting information when, for example, frightened and socially anxious parents provide their children with information about the dangers of social situations;

• Upbringing, which is also important in shaping fears.

3. Fear of the unknown situation

Nowadays, when the whole world is involved in the fight against the Covid-19 pandemic, it is important to focus on the types of fears such as the fear of the unknown.

[5] D. Barlow, „Unraveling the mysteries of anxiety and its disorders from the perspective of emotion theory", American Psychologist, 2000, pp.1247–1263.

The first written source of fear of the unknown as a fundamental fear is found with Lovecraft in 1927: Fear is the oldest and most powerful emotion of mankind, and from a wide range of fears the fear of the unknown is special and distinctive. While all other fears require learning, realizing reality, or recalling information, fear of the unknown situation does not require prior study, on the contrary the reason for its origin is lack of information.[6]

Consequently, people's behaviors change depending on how they deal with different types of fears. There are individuals who are not disturbed by uncertainty and act risky. Such behavior may be due to their maturity and life experience. However, there are also other categories of individuals who respond to any new things with fear and anxiety.

If a person is afraid of spiders or snakes, this fear is natural because people learn that these species can harm their lives, although not all fears are based on such specific information. Some fears are based on what we do not know. Fear of the unknown situation is part of many other fears, anxieties and phobias. When a person does not have enough information to predict the future, it often becomes a cause of fear and anxiety.

In 2016, scientists studied the fear reflex of 160 adults related to sudden sounds and shocks. They found that individuals with social anxiety disorders and specific phobias were more likely to blink their eyes more often and sharply when they expected something foreign, unpleasant. Based on this, the scientists concluded that these individuals were more sensitive to the unknown situation.[7]

Also depressed people are more likely to experience anxiety than those who are not depressed.[8]

4. Impact of the pandemic on the formation of fear

The new Corona virus-2019 (Covid-19) can be said to have contributed to the formation of various fears of individuals. The pandemic caused by this virus has completely changed the daily life of people, which was caused by the quarantine imposed by governments and the demand for protection of social distance. It could be said that Covid-19 caused collective trauma because this event had a negative impact on the mental state of individuals. According to the results of one of the studies conducted with those infected with Covid-19, respondents showed strong emotional and behavioral reactions, such as fear, boredom, insomnia, anger. [9]

Also, according to a social study conducted after the outbreak of the respiratory virus „SARS", more than half of the participants in the study were diagnosed with a mental disorder.

It is noteworthy that during epidemics, individuals may exhibit poorly adaptive (maladaptive) behaviors if there are people around them who are considered to be a potential risk group. For example, according to one study, during the Ebola epidemic, which main area of distribution was Africa, individuals who did not live in Africa but in their neighborhood lived a foreigner from African descent, were exposed to Ebola-related anxiety. Outbreaks may also increase the risk of suicide. Uncertain situations and bad expectations can put a person of any age at risk.[10] Older people, for example, may feel that in case of illness they could become burden for the family and this emotional state can lead them to suicide.

[6] N. Carleton, „The intolerance of uncertainty construct in the context of anxiety disorders: Theoretical and practical perspectives". Expert Review of Neurotherapeutics, 2012, pp.937-947.
[7] S. Gorka, L. Lieberman, S. Shankman, K. Phan, „Startle Potentiation to Uncertain Threat as a Psychophysiological Indicator of Fear-based Psychopathology: An Examination across Multiple Internalizing Disorders". https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5215951/ [l. s. 27.09.2021].
[8] D. Jensen, J. Cohen, D. Mennin, D. Fresco, R. Heimberg, „Clarifying the Unique Associations among Intolerance of Uncertainty, Anxiety, and Depression". https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5045801/pdf/nihms-812743.pdf/ [l. s. 27.09.2021].
[9] C. Wang, R. Pan, X. Wan, Y. Tan, L. Xu, „Immediate psychological responses and associated factors during the initial stage of the 2019 coronavirus disease epidemic among the general population in China", Public Health, 2020 Mar 6.
[10] YT. Xiang, Y. Yang, W. Li, L. Zhang, Q. Zhang, T. Cheung, „Timely mental health care for the 2019 novel coronavirus outbreak is urgently needed", Lancet Psychiatry, 2020.

Like other epidemics, the Covid-19 pandemic is associated with global anxiety and increased stress levels. The fear caused by the pandemic in the early stages of virus begin was so severe in some individuals that people committed suicide simply because they thought they were infected with Covid-19, although the autopsy showed that they were healthy. In general, the number of people at risk of mental health during epidemics exceeds the number of people actually infected.[11]

As for the Covid-19 fear, it can be divided into four main parts: body-related fear, fear related with loved ones, uncertainty, and action /inaction. This high level of uncertainty has led to radical changes in the daily lives of individuals. Most people do not want to know about the negative events that may occur in the future. Gigerenzer and Garcia-Retamero call this phenomenon the regret of knowledge. Individuals do not want to feel the threat of the future now, in the present, however they want to fully understand the current dangerous situation in order to take control over that situation. The current uncertain situation can therefore be considered as a significant risk factor for mental well-being. Unacceptability of an uncertain situation even leads to anxiety disorder, which ultimately has a negative impact on a person's well-being.

One of the leading roles in shaping public fears is also played by the media. Pandemic reports today are often overly intense, harsh, depressing, and toxic and fear of danger remains constantly relevant in the population.

What is needed to keep people mentally healthy? One of the main necessary conditions for this is the existence of social relations.

One of the social surveys conducted by University College in London, on March 21, 2020, referred to the mental health of individuals after Covid-19 lockdown in the UK. 70,000 respondents were involved in this study. They took part in a 10-minute online survey each week where they talked about their experiences with social distance events. In addition, telephone interviews were held.

It is noteworthy that the worst data on fear, depression, death thinking or self-harm and life satisfaction were shown by young people, as well as those below the average family income (less than 30,000 pounds) and those who said they had mental health problems. 8.5% of respondents often felt lonely before „Lockdown", after „Lockdown" this figure was 18.5%. Young people between the ages of 18 and 29, single people and low-income people were particularly lonely. [12]

5. Fear coping techniques

Fear is the conscious perception of an excited state that is painfully experienced. Because of this, people try to end this situation as soon as possible. Fear is therefore closely related to overcoming fear. In this regard, it is important to distinguish two approaches: One refers to the coping model of stress (Lazarus, 1966). According to this model there are distinguished: a) Appraisal-focused coping, b) Problem-focused coping, c) Emotion-focused coping.

Appraisal-focused coping involves logical analysis and a fresh assessment of the perceived source of fear. In problem-focused assessment, it is important to take active action to deal with the threat (for example, finding information on a social network and thus protecting oneself). Emotion-focused coping involves all attempts to reduce the fear response by managing emotion (breathing exercises, crying, and so on).

The second approach concerns Byrne's concept, which states that the style of coping with fear in all people fits into the personal dimension of the individual, which he called extrempole „repression" on one side and „sensitivity" on the other. The repressor tries to avoid dangerous information, while the sensitive ones prefer to use dangerous information. The one-dimensional model proposed by Byrne and the repression-sensitization-scale developed from it cause a variety of empirical and conceptual problems.

[11] S. Reardon, „Ebola's mental-health wounds linger in Africa", Nature, 2015.
[12] F. Klein, „Psychological health during lockdown ", https://link.springer.com/article/10.1007/s15005-020-1433-z/ [l. s. 27.09.2021].

That is why nowadays the multidimensional model is often used in relation to overcome fear. The Krohn's model is particularly interesting in this respect. It distinguishes between two different strategies for overcoming fear: vigilance and cognitive avoidance. Individuals who have a high level of alertness in a dangerous situation try to choose a more cognitive and behavioral strategy aimed at finding information and controlling the situation. Individuals who do not address cognition about emotions, show a high degree of confusion and fear for threatening situations, which manifests itself in disorganized behavior.

Conclusion

In summary, fear is part of human existence. As long as a person is alive, he has to deal with different fears, this could be related to both developmental and different life fears. However, in case of successful overcoming of this emotion, the individual grows personally, becomes stronger, more self-confident and easily manages to adapt to different environments. There is no place on earth where a person feels completely protected. Every comfort zone has the potential to become uncomfortable in the future if the individual is not focused on action, development, overcoming his/her own fears. Eventually, those who begin to inspect themselves inwardly and realize what they are afraid of will be able to overcome their fears more effectively.

Fear in general is a universal phenomenon of human feeling. To overcome it, it is important for a person to use various psychological techniques that will help the individual to consciously overcome this mentioned emotion. Effective strategies to combat fear could be the following:

• First of all, the individual must admit to himself that he is afraid; When a person does not admit that his personality is overwhelmed with fear, that kind of attitude increases his fear and tension even more;

• It is necessary for a person to check in himself whether he perceives the danger excessively. People tend to paint a more horrible scenario of the future than this scenario might actually happen. A good way to check the situation is Byron Katie's „The Work“, the technique of it is the following-in case one has fear, he/she should ask himself/herself four simple questions:

1. What I think, is true?

2. Can I absolutely be sure that this is true?

3. How do I react when this thought bothers me?

4. Who would I be without this thought?

• Relaxation exercises also help the individual to overcome fear. In this case the person should focus on his breath. This helps to stop concentrating on bad thoughts and reduces the symptoms of body tension.

• In addition, it is important that one develops a strategy against his/her fear. A person first must put in mind a plan how to overcome fear, and then try to implement it in reality.

BIBLIOGRAPHY

1. Daniel Kwasi Ahorsu, Chung-Ying Lin, Vida Imani, Mohsen Saffari, Mark D. Griffiths, Amir H. Pakpour, „The Fear of COVID-19 Scale: development and initial validation". International Journal of Mental Health and Addiction 2020;
2. David H. Barlow, „Anxiety and its disorders: The nature and treatment of anxiety and panic" (2nd ed.). New York, NY: Guilford Press. 2002;
3. Harold Basowitz, Harold Persky, Sheldon J. Korchin, Grinker, R. Roy, Anxiety and stress. New York: McGraw-Hill. 1955;
4. Howard Berenbaum, Keith Bredemeier, Renee J. Thompson, „Intolerance of uncertainty: Exploring its dimensionality and associations with need for cognitive closure, psychopathology, and personality". Journal of Anxiety Disorders, 2008;
5. Paul A. Boelen, „Intolerance of uncertainty in adolescents: correlations with worry, social anxiety, and depression". Journal of Nervous and Mental Disease, 2010;
6. Thomas D. Borkovec, „Worry: Thought suppression of emotional processing". In H. W. Krohne (Ed.). Attention and avoidance, Strategies in coping with aversiveness. Seattle, Toronto: Hogrefe & Huber, 1993;
7. Nicholas R. Carleton, „The intolerance of uncertainty construct in the context of anxiety disorders: Theoretical and practical perspectives". Expert Review of Neurotherapeutics, 2012;
8. Nicholas R. Carleton. Gorden J. G. Asmundson, „Fearing the unknown: A short version of the Intolerance of Uncertainty Scale". Journal of Anxiety Disorders, 21(1), 2007;
9. Michael W. Eysenck, Colin MacLeod, Andrew Mathews, „Cognitive functioning and anxiety". Psychological Research, 1987;
10. Siegmund Freud, „Über die Berechtigung, von der Neurasthenie einen bestimmten Symptomkomplex als „Angstneurose" abzutrennen". In A. Mitscherlich, A. Richards & J. Strachey (Hrsg.), Sigmund Freud: Studienausgabe, Frankfurt/M.: S. Fischer. (Erstveröffentlichung 1895), 1971;
11. Thomas Fergus, „Cyberchondria and Intolerance of Uncertainty: Examining When Individuals Experience Health Anxiety in Response to Internet Searches for Medical Information". Cyberpsychology Behavior and Social Networking, 2013;
12. Jürgen Hoyer, Szlvia Helbig, Jürgen Margraf, „Diagnostik der Angststörungen". Göttingen: Hogrefe, 2005;
13. Jürgen Hoyer, Jürgen Margraf, „Angstdiagnostik − Grundlagen und Testverfahren". Berlin: Springer, 2003;
14. Caroll E. Izard, „The psychology of emotions". New York: Plenum, 1991;
15. Heinz Walter Krohne, „Vigilance and cognitive avoidance as concepts in coping research". In H. W, 1993;
16. Heinz Walter Krohne, „Coping with stress: Dispositions, strategies, and the problem of measurement". In M. H. Appley & R. Trumbull (Eds.), Dynamics of stress. Physiological and social perspectives, New York: Plenum, 1986;
17. Heinz Walter Krohne, „Attention and avoidance: Strategies in coping with aversiveness", Seattle: Hogrefe & Huber;
18. Peter J. Lang, „The cognitive psychophysiology of emotion: Fear and anxiety". In A. H. Tuma &J. Maser (Eds.), Anxiety and the anxiety disorders. Hillsdale: Erlbaum, 1985;

19. Richard S. Lazarus, „Emotion and adaptation". London: Oxford University Press, 1991;

20. Burrhus F. Skinner, „Science and human behavior". Oxford, England: Macmillan, 1953;

21. David Watson, Ronald Friend, „Measurement of social-evaluative anxiety". Journal of Consulting and Clinical Psychology, 1969;

22. Yo-Tao Xiang, Yuan Yang, Wen Li, Ling Zhang, Qinge Zhang, Teris Cheung, „Timely mental health care for the 2019 novel coronavirus outbreak is urgently needed". Lancet Psychiatry, 2000.

JOURNALISM

METHODS AND TOOLS OF INFORMATION DISSEMINATION ON A DAILY BASIS IN THE ANCIENT WORLD - FROM AGORA TO ACTA DIURNA

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Abstract

Together with the development of civilization in world history, the need to disseminate information individually as well as collectively had progressively increased. Accordingly, each civilization tried to find a newer, faster and more efficient way of recording and transmitting information. The most important steps in this regard were taken in the ancient world. Antiquity had come a long way from sharing a piece of information on the Agora to developing an idea of writing news stories on a daily basis. Public meetings and trials on the Agora, as well as performances at special dramatic festivals, drew fairly large audiences.

In the ancient world, various signaling mechanisms and the system of messengers were also used quite effectively to convey information, but the principle of disseminating everyday recorded information, reminiscent of modern media, played an important role in informing the public, preceded by the Annals and the Fasti in particular.

The Annals conveyed the important events of the year, taken place in Rome, in a current-affairs style. The same practice of recording the information was also applied by the historians of the Ancient Near East, but the Romans are credited for coining the term “annals” to the very style of dispatching the historical events.

The Fasti, on the other hand, were a kind of calendar and marked chronological or diachronic records of material, all kinds of interesting information from both religious or secular life.

As we have already mentioned, the most effective means of rapid and mass dissemination of written information was the Acta Diurna, introduced by Julius Caesar in 59 BC, the very first year of his consulship. It was fundamentally different from the Annals and the Fasti. The Fasti were more of a calendar nature, the Annals conveyed only important information, while the Acta Diurna contained relatively insignificant news as well.

Based on the arguments suggested in the current paper, we came to the conclusion that the idea of today’s newspaper was formed in antiquity, developed and implemented in the form of daily written news, which formed the basis of the epoch-making aspiration for freedom of speech. Accordingly, it can be assumed that in the paper, for the first time in classical philology, we have illustrated the way of logical development that ultimately led the ancient world to moving from the Agora type of democratic sharing of information to the practice of creating and disseminating daily news.

Keywords: Information Dissemination, Agora, Annals, Fasti, Acta Diurna.

Introduction

Throughout the world history, special attention had always been paid to obtaining, recording and disseminating information. The fate of each war, victory or defeat, the development of the economy and commerce, the introduction and implementation of innovations, the rise or fall of culture; in essence, the progress, stagnation or regression of entire peoples and the civilizations depended on it. This was well understood by the developed society and therefore, in the footsteps of the technical means at their disposal, they tried to find a quicker and more effective way of transmitting information both individually or collectively, orally or in writing. In this regard, quite important steps were taken in the ancient world, which unfolded a variety of means of disseminating information, from the Agora up to the Acta Diurna.

The aim of the present paper is to explore the extent to which the ancient world had advanced in terms of disseminating and gaining access to daily information. It is widely believed that the idea of a daily newspaper and its establishment first occurred in France in 1609. In contrast, we will try our best to illustrate that this very idea was already quite successfully implemented in ancient Rome, and that the daily actum diurnum contained information of a nature that is characteristic to the news we know today.

In our research, we have employed a complex method known in classical philology based on the multiplex use of philological, historical, culturological and archaeological data. While in the study of Homer's epic we mainly use the method of philological and historical analysis, in the case of Acta diurnal, on the other hand, we mainly rely on the results of cultural and archaeological research data.

1. The Agora

Homer, the first Greek poet to come down to us, perfectly illustrates the ways of conveying information during the Trojan War, utilized by the Achaeans and Trojans. As he points out, the Agora played a special role in performing this function.

The term "ἀγορή" is widely mentioned by Homer. Its etymology is related to the verb "ἀγείρω" translated as an "assembly". However, the verb pattern also suggests similarities with the pre-Greek linguistic world.[239] There is speculation that the term may be a derivative of the verb "ἀγοράομαι", meaning "I speak in public". Homer extensively uses almost all the basic derivatives containing this root: "ἀγοράομαι" - "I speak in public", "ἀγορεύω" - "I speak at a meeting", "ἀγορητής" - "speaker", "orator", and "ἀγορητύς" - "oratory". This, in turn, indicates that, according to Homer, the Agora and all related concepts were already gaining a foothold in Greek public life. The above-mentioned term is not confirmed in Mycenaean sources and the exemplification of its function, as we have mentioned, must have started from the epic of Homer.

Homer mentions "ἀγορή" thirty-eight times in his *Iliad* and twenty-eight times in his *Odyssey*. The Agora is multifunctional in the epic by Homer. It can be a place to discuss urgent issues, debate over strategic plans or litigate. Most importantly, the Agora implies the ability to express an opinion and freedom of speech.

The *Iliad* opens with the following episode: the Achaean priest is angry with Agamemnon and asks Apollo to punish the Achaeans. The god hears his request and causes trouble for the Achaean army. The arrows of Apollo keep annihilating the warriors for nine days. On the tenth day, Agamemnon orders the army to assemble at the Agora to come to a common agreement of what can be done to get out of the situation: "Atrides ordered his messengers, the loud ones, to summon the curly Achaeans to the Agora".[240] The

[239] For review, compare Robert S. P. Beekes, Lucien van Beek, "Ethymological Dictionary of Greek". Vol.I, Brill, Leiden-Boston, 2010, p.14.
[240] The Iliad by Homer, II, 50-51.

Achaeans, in their turn, also gather quickly: "a stream of people from tents and ships was marching along the shore to Agora…"[241] At the meeting, soothsayer Calchas delivers a speech to the public, underpinning the main motif of the poem - the anger of Achilles.

The essence of the Agora and its function are most perfectly described by the *Iliad* on the shield of Achilles. The shield depicts the scene of a trial, taking place on the Agora of the city to determine the fate of the offender for the crime committed. The scene of the trial involves all the attributes, including the messengers, regulating the proceedings; the judges sitting on the hewn stones around the Agora listening to the arguments of the accused and the accuser. Then each of them removes the wand from the messenger and announces the verdict of their own. The judge who presents the fairest ruling will be rewarded with two talents, being a pretty high salary.

In the Book 16 of the *Iliad*, Homer cites the furious Zeus over the people for their allegedly unjust ruling made on the Agora.[242]

As it can be seen, the Agora functioned in compliance to the following scheme of the transmitter "Aedes", being a politician or an ordinary warrior and the receiver, or the people. The goal of public awareness manifests itself in all directions, such as in the field of politics, civil affairs or communication. The Agora is turning into a gathering place, allowing people to exchange their ideas. It is a kind of communication center, a fast way of receiving and disseminating information, almost in the same manner as the media functions today. This was exactly the place, where people came to get information, or to pass it on to someone else. Solon (c. 640 - c. 560 BCE), a poet and a politician, addresses his fellow citizens in an elegiac style, saying: "I myself came from Salamis as a messenger, and instead of uttering a word on Agora, I dedicate a song to you".

If we consider the different contexts of "ἀγορά/ ἀγορή", mentioned in different forms in the Homeric epic, it can be said that this is a kind of space available for people to gather for important public debates on urgent issues. The poleis also possessed Agoras, including the Trojan and Achaean military camps.

The Agora is a gathering place for people to speak in public. The purpose of the information transmitter is publicity, intending to get as many people as possible to reach the spoken word and cover the disseminated information as much as possible.

With Homer, the Agora is represented in both the Achaean camp and Troy. Pulidamas advises Hector to bring troops into the city and spend the night on the Agora.[243]

In the Homeric epic, the Agora, allowing information to be disseminated, viewpoints to be exchanged, public opinion to be formed, and law to be enforced, offers clear signs of civilization. When Odysseus tells the Phaeacians about his own journey, describing the country of the Cyclops as emphasizing their savagery, he says that they have neither agoras nor laws: "the ones who have neither an agora nor a council".[244]

Following Homer, the Agora became one of the main features of Greek culture, which later developed into the Roman Forum. The Roman Forum established itself as the center of daily life. Various important events were held here, such as speakers delivering their speeches, elections, trials, and gladiatorial contests as well. It was exactly on the Forum where the monuments to prominent figures of the empire and important state buildings were erected.

[241] Ibid. II, 91-93.
[242] Ibid. XVI, 387.
[243] Ibid. XVIII, 274.
[244] The Odyssey by Homer, IX, 112.

Over time, the Agora was becoming more and more universal, where citizens of the polis could get information on different issues of public concern. In addition, a very important function was assigned to different types of messengers, who brought oral or written information from one place to another.

2. Other means of disseminating information in ancient Greece

The information was also widely disseminated at public meetings and trials with the active participation of the population of the polis. Also, the dramatic festivals should be mentioned separately, being one of the unique and universal ways of transmitting information.

Importantly, in the societies of the ancient era, the method of transmitting information over long distances through various signaling techniques was quite common. For example, we can cite the tragedy "Agamemnon", a component of the Aeschylus trilogy, which begins with the monologue by the guard. He tells us that for a year now he has been patiently waiting for a sign that will release him this drudgery. The guard must see the inbound ship and the lighted torch from the roof of the Atride, which will be a sign of the fall of Troy. And here, after a year of waiting, he sees the fire and his joy knows no bounds:

"My call will penetrate to Agamemnon's wife

so that roused from her bed in the house with all speed

she may raise the fair song of rejoicing to greet

this beacon, if, in fact, Troy has been taken at last,

as this signal blaze must clearly proclaim".[245]

Different ways of transmitting information were used in the Hellenistic era, when Alexander the Great's expeditions made the Hellenistic world stretch across the huge territory, and this task became not only more important but also more difficult to accomplish.

3. Means of disseminating information in Ancient Rome

New needs for the dissemination of information arose in ancient Rome, where the need for daily information of the population came to light especially in the Republican era and then in the Principate era, following the emergence of the Roman Empire. In this regard, the decision of Julius Caesar to establish a principle of daily information, reminiscent of modern everyday non-electronic media, was very important. The Acta Diurna, founded by Caesar, was preceded by several important forms of information dissemination.

3.1. The Annals

Several means of written public information about the events in Rome were formed. Among them were the Annals that offered a timeline style of important events of the year. This principle of recording the information was still known to the ancient world before Herodotus, and to some extent it was also applied by the historians of the Ancient Near East, but the Romans are credited for coining the term "annals" to the very style of dispatching the historical events. "Annus" translates from Latin as a "year" and the "Annals" means the collection of annual records of events or news. A classic example of this genre is the *Annals* by Tacitus. It covers the events related to the life of the city, district or country. This name still retains its meaning and is often used to denote periodicals in various fields.

[245] The Oresteia of Aeschylus - Agamemnon, pp. 26-30.

Annual reports in Rome were compiled under the name of Annales by Quintus Fabius Pictor (second half of the 3rd century BC), Quintus Ennius (2nd century BC), Gaius Licinius Macer Calvus (1st century BC), Valerius Antias (1st century BC), Quintus Claudius Quadrigarius (1st century BC), Aulus Cremutius Cordus (1st century AD) and Virius Nicomachus Flavianus (334 - 394 AD).

The "*Annals*" by Publius Cornelius Tacitus (c. 53 - 116 BC) were created after his own "history", detailing the period of Roman History of 69-96 AD. The "*Annals*" consisted of 16 or 18 Books, out of which only the Books I-IV, the beginning of the Book V, the Book VI without the beginning and the Books XI-XVI with gaps came down to us. It reflects the period from the death of Augustus from 14 AD to 66 AD. Possibly, the narration was in progress even before 68 AD.

In order to clarify the type of information the Annals were focused on, we will cite two fragments of completely different content from the Book 16 of the *Annals* by Tacitus. The first of the quotations presented here conveys such details of the personal life of Nero, one of the central figures of Rome at the time, that we may even doubt their authenticity. It can be said that this section of the *Annals* is the predecessor of the so-called "yellow journalism". And, the second quote tells us about seemingly less important news from one of the provinces of the empire. However, in both cases the historian tells the story with the same rigor and diligence, and describes each of them in the smallest detail in plain but impressive language:

14.1.1: "In the years of the consulship of Gaius Vipstanus and Gaius Fontius, Nero no longer postponed his long-planned crime, as the long period of his tenure as an emperor gave him courage, and the flames of his love towards Poppaea only grew stronger day by day. Poppaea did not believe that Nero would divorce Octavia and marry her while Agrippina was alive. The woman filled him with frequent rebukes and sometimes even cursed him, calling him a "puppet dependent on the orders of others, who was neither the lord of the empire nor himself. Why has my wedding been delayed? Perhaps neither my status nor my grandparents, with their victories are adequate to please you. Maybe, my sincerity is troublesome. No! You are afraid that as a wife, I will expose the wickedness of the fathers at every meeting, and how angry the nation is with the pride and greed of your mother! But, if Agrippina fails to get used to a daughter-in-law who will not be her son's enemy, then let me keep my marriage with Otho. I would rather go to any corner of the earth where I hear the emperor's folly than watch him engulfed with threats". Nero offered no resistance to such and similar attacks, intensified by tears and the passionate art of love. "All men wish to overthrow the mother's power, but no man could have imagined that hatred of the son could lead to the murder of the mother".[246]

14.27.1: "In the same year, Laodicea, one of the most famous cities in Asia, was destroyed by an earthquake, but was rebuilt on its own, without our help. In Italy, the ancient city of Puteol received the rights and title of colony from Nero. The veterans were called to Tarentum and Antium, but still failed to stop the process of depopulation of the region. Most returned to the provinces where they had served many years. And, since they had no habit of getting married and starting a family, the houses they left behind were childless and heirless. A great amount of time has passed since the whole legions, including tribunes, centurions and privates in their hundreds were sent in such a manner that with their unanimity and camaraderie a small community was formed. The settlers were now strangers among the strangers: men from completely different units; without a commander; indifferent to each other; it is as if they were not soldiers, but people gathered in one place to form a group and not a settlement"[247]

[246] The Annals by Tacitus, Book 14.1.1.
[247] The Annals by Tacitus, Book 14.27.1.

3.2. The Fasti

The Fasti were also published in ancient Rome, which was, in fact, a kind of calendar. The Fasti included certain periodical-type of information about holidays, religious rituals, historical news, or astrological events. It also covered the activities of officials, priests and others. It can be said that the Fasti spread all sorts of interesting information in religious or secular life.

"Fasti" is etymologically derived from the Latin word "Fas", translated as "acceptable", "permissible", or "what is permissible". To put it more precisely, this is what is legitimate in the eyes of the gods.

Compiling such a calendar was the responsibility of the priests and was done annually on a monthly basis, accommodating the lists of priests and civil servants.

The so-called "Fasti triumphales", or the calendar recording of Rome's triumphant victories, from Romulus onwards until the moment of the formation of the Fatsi, are noteworthy. Information on major constructions and infrastructure projects was also posted there.

The Fasti were so popular that they even began a poetic elaboration of the Roman holiday calendar, and thus, a new literary form of the same name emerged. The *Fasti* by Ovidius Naso offers astronomical, mythological and etiological information on a monthly basis by mixing some interesting stories.[248]

It was a fragment of the Fasti found in Ostia in 1958 that informs us about the visit of Pharasmanes II of Iberia (Pharasmanes the Valiant or the Brave, according to the Georgian tradition) and his family as honorary guests of Caesar Antoninus Pius in Rome, which is also confirmed by Roman historians.[249] According to the narration of Cassius Dio, unlike the previous rulers of Rome, the policy of Caesar Antoninus Pius[250] was much more successful in relation to Iberia, about which the historian tells us in great detail. Pharasmanes II accepted the invitation of Caesar and arrived in Rome with a large entourage, including his wife and son. As Cassius points out, this must have been the result of Rome's concessive policy towards Iberia's territorial claims. In Rome, before Pharasmanes II, Caesar recognized the new, expanded borders of Iberia. The Iberian king was also allowed to offer sacrifices at the Capitol, which was a great honor to the guest. A statue of the equestrian Pharasmanes II was even erected in Rome.[251] The significance of this visit is highlighted by a fragment of the Fasti found in Ostia, which mentions the visit of Pharasmanes II, his wife, and son to the empire at the top of the important stories that took place in Rome.[252]

There were also Fasti consulares, containing the lists of consuls and official chronicles and the events that occurred during their consular period. This type of Fasti was discovered in the 16th century on Capitol Hill and was called "Fasti capitolini".

Some of the Fasti indicated different types of days. The Dies fasti covered everyday public and state affairs. As it turned out, attention was paid to the so-called "lucky and unlucky days". There were days when the affairs could be resolved successfully, for example, Dies comitielis, which marked assembly days, while the Dies nefasti were considered unsuccessful days. Following 304 BC, these Fasti were published by

[248] P. Ovidius Naso. "Ovid's Fasti", Ed. By Sir James George Frazer. London; Cambridge, MA. William Heinemann Ltd.; Harvard University Press. 1933.
[249] For more on Pharasmanes II's visit to Rome, see 11. "Iberia", Encyclopedia "Caucasus Anticus", Ed. Rismag Gordeziani, Vol. II, Logos, 2016, 212.
[250] Antoninus Pius, Roman emperor 138-161 AD.
[251] C. Dio, "Roman History", Loeb Classical Library edition, 1925, vol. VIII, Epistome of book LXIX, 15, 3.
[252] H. Nesselhauf, "Ein neu esFragment der Fasten von Ostia", Athenaeum 16, 1958, 219-28.

Gnaeus Flavius BC, who also made them public, unlike the period when they were only available to patricians.

The official chronicles of Rome called the "Fasti Magistrales", were particularly oriented on the emperors and magistrates, the days set in their honor, and the feasts and ceremonies dedicated to them. This type of Fasti was called "Magni" to distinguish it from the usual calendar of "Fasti Diurni", or daily news.

Thus, the Fasti began to be used to mark annals and historical records. The records of the early stages of the Fasti gave impetus to the establishment of historical texts, which were first formed in the fashion of chronological annals, and later influenced the development of Roman historiography.

3.3. Acta Diurna

Acta Diurna, introduced by Julius Caesar, was probably the most influential in terms of rapid and mass dissemination of information, founded in the first year of his consulship in 59 AD. The Acta Diurna was fundamentally different from the Annals. The Annals told us only important information, while the Acta Diurna also contained relatively insignificant news. Unfortunately, the exact pieces have not reached us, but based on other sources, it can be said that the stories of prominent statesmen were recorded there, together with ones about the emperors and members of his entire family during the imperial times. The Acta diurna published orders of the emperor, decrees of the government, decisions of the senate, and even an argument which was allowed to be made public. The daily news also informed the public about the progress and outcome of trials. It told about the chronicles and interesting events of Roman life, including the facts of construction, reconstruction or demolition of important buildings, natural disasters, fires and even the urban rumors.

The novelty introduced by Julius Caesar gained great popularity in Rome. Daily news was also called "Acta diurnal", "Acta urbana", "Acta populi", "Acta publica". It was published in Rome, but they were also read in the provinces and in the army. The most important political, legal and, in general, interesting news were written in these publications. It was written on plates made of different materials. It could have been stone, metal or wood. The plates were presented in public places such as the Roman Forum.

In order to form an opinion on the content of information disseminated through the Acta diurna, or the effectiveness of the media outlet of the time, ancient sources quite successfully hint at the existed mechanism to disseminate the Acta diurna, as well as the level of its demand in society.

According to Suetonius, Julius Caesar "was the first to order the compilation and publication of the daily reports of both the Senate and the people's assemblies".[253]

Cicero writes in his letters to Atticus to be in possession of the Acta urbana of March 7, presumably found to be interesting by him.[254]

In the *Satyricon* by Petronius, the daily news chronicle is referred to as "Acta Urbis". In one of the episodes, the clerk enters and, as the author notes, "kind of tells the story of the city", saying that at a particular point in that time, thirty boys and forty girls were born; five hundred thousand modii of wheat were stored in the barn from the threshing floor; 500 bulls were placed under a yoke; also, the slave Mithridates was crucified for disrespectful reference of Gaius; on the same day, ten million sestertii were returned to the treasury, not knowing what to do with. The clerk finally adds that a fire broke out in Pompeius's bar. It seems that such

[253] Divus Julius by Suetonius, 20,1.
[254] Letters to Atticus by Cicero, VI, 2.

diverse, completely different information could be found in the city news. It covered almost everything, starting from the birth rate and the treasury income to agricultural resources and important daily events.[255]

Tacitus mentions "Acta diurnal" or "Acta urbana" three times in different contexts in his *Annals*. First, he mentions that the Greek-language writers of Roman history referred him as "τὰ ὑπομνήματα", "τὰ δημόσια ὑπομνήματα", "τὰ δημόσια γράμματα", and "τὰ κοινὰ ὑπομνήματα".

Tacitus tells us that Tiberius and Augustus did not appear in public at the Germania's burial. They either thought that by expressing sorrow in front of everyone they would diminish their own majesty, or they were just afraid that their hypocrisy would be noticed by so many eyes drawn at them. Tacitus notes that he failed to find any information neither with historians nor in daily news that the Germania's mother took part in the burial ritual, while all other relatives, not to mention Agrippina, Drusus and Claudius, were mentioned by name.[256] It is clear from this passage in the *Annals* that the historian had hoped to find such detailed information about famous people in the actas, or the daily news being similar to today's yellow press.

In another section of the text, Tacitus already specifically indicates what the difference was between the annals and the daily news. He says that the period of consulship of Nero and Lucius Piso was not full of remarkable news: "It is well known that the majesty of the Roman people is so revered to include only the most important news in the Annals and all the rest to be covered by the news of Rome".[257]

For the third time, the historian recalls the news in the context that "it was read with special interest in the provinces or in the army to understand what Trazevs had done". This quote already proves that the actas were widely used in geographical terms as well accessibility to all social groupings; they were sent to distant provinces and were read by everyone, including ordinary soldiers as well.[258]

Conclusion

In conclusion, it can be assumed that in terms of methods and tools for the dissemination of written information, the ancient world came quite a long time before it moved from the principle of sharing some information on the Agora to the idea of the Acta diurna, a kind of daily media. Such phenomenon is based on the longing for free expression and dissemination of information characteristic to the antiquity.

Memorizing, processing and transmitting information had become one of the basic principles of identity for man of antiquity. Virtually all genres of literature, including historiography, epics, rhetoric, philosophy, etc. served this purpose.

We can conclude that the desire for gaining information and the development of political life experienced by antiquity, from the Minoan-Mycenaean period to the Roman Empire, naturally led the society to such a more effective method of daily written information as the Acta diurna, a widely available daily medium. Significant relations with it are made first by the culture[259] of newspaper publications in France from the beginning of the 17th century to current media. Thus, it can be said that for the first time in classical philology we have tried to show the way of logical development that led the ancient world from the Agora - the means of democratic dissemination of information - to the practice of creating daily news.

[255] The Satyricon by Petronius, 53c.
[256] The Annals by Tacitus, III, 3.
[257] Ibid. XIII, 31.
[258] Ibid. XVI, 22.
[259] The first newspaper ever was published in France, specifically in Strasbourg in 1609.

Bibliography

1. Homer, “Iliad“, Homeri Opera, T. I-II, Ed. D. B. Monro, Th. W. Allen, Oxford 1920;

2. Homer, “Oddysey“, Homeri Opera, T. III-IV, Ed. D. B. Monro, Th. W. Allen, Oxford 1917;

3. Publius Cornelius Tacitus, “Annales ab excessu divi Augusti“. Ed. By Charles Dennis Fisher. Clarendon Press. Oxford. 1906;

4. Publius Ovidius Naso, “Ovid's Fasti”. Ed. By Sir James George Frazer, London; Cambridge, MA. William Heinemann Ltd.; Harvard University Press. 1933;

5. Cassius Dio, „Roman History“, Loeb Classical Library edition, 1925, vol. VIII, Epistome of book LXIX, 15, 3;

6. Herbert Nesselhauf, “Ein neues Fragment der Fasten von Ostia”, Athenaeum 16, 1958, 219-28;

7. Robert S. P. Beekes, Lucien van Beek, „Ethymological Dictionary of Greek“. Vol.I, Brill, Leiden-Boston, 2010;

8. Der New Pauly, „Agora“, Bd. 1, hrsg. von Hubert Cancik und Helmuth Schneider, Verlag J. B. Metzler Stuttgart, Weimar, 1996;

9. Brills New Pauly, “Annales”, “Encyclopaedia of the Ancient world, Leiden”, Boston, 2002, vol. I;

10. Brills New Pauly, “Acta diurna”, “Encyclopaedia of the Ancient world”, Leiden, Boston, 2002, vol. I;

11. „Iberia”, Encyclopedia “Caucasus Anticus”, Ed. Rismag Gordeziani, Vol. II, Logos, 2016, 212.