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Policies in the Fight against Fiscal Evasion in Albania

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Abstract

The transition process in Albania has revealed numerous problems uniformly spread having versatile impact. Such referring point is quality and effectiveness of fiscal policy in order to establish a sustainable connection among its goals and instruments being used. As a country that operates under conditions of market economy, Albania deems it necessary to increase the level of revenues in order to stabilize problems of economic balance and balance of payments. The analyses have shown that authority of fiscal policy has played primary role in the economic progress of the country. For that purpose, the behavior of contributors and their opportunity for evasion is taken into account as an important factor in the drafting of fiscal policies. The large business and VIP business conceal revenues; manipulate balances and the number of employees. Therefore they avoid tax liabilities. Roughly 45 % of economy in the country is informal, an informal market, an informal business and so on. Even nowadays, when a series of measures and amendments to the law have taken place, we still remain inside the transition train toward the station of a country with European standards. That is why the goal of this work is to analyze the offense of fiscal evasion and evasion of tax liabilities, the instruments in the prevention of this offense and the bodies rendering assistance in the fight against fiscal evasion. Arising questions are as following: What is the meaning of fiscal evasion?; What are the forms of fiscal evasion?; What are the established structures in the fight against tax informality?; What are the strategies used in the fight against fiscal evasion?; What are the solutions that can be offered?

Keywords: fiscal evasion, informality, instrument, prevention, strategy

Introduction

Fight against fiscal evasion in Albania

1.1 Fight against informality and issues caused by illegitimacy in Albania

The large business and VIP business conceal revenues; manipulate balances and the number of employees. Therefore they avoid tax liabilities. **Roughly 45 per cent of economy in the country is informal. Amendments taking place on daily basis by Parliamentary Law Commission appear to eradicate the gangrene caused by informality.**

If tax on tobacco is collected and you sell less tobacco, that constitutes tax evasion. If you fail to report the sales of tobacco directly to the government, then it is fiscal evasion. The tax evasion is not a new issue even though in the recent years the tax evasion has attracted particular attention of the wide public.[1]

Not only recently but for many years in turn we have heard about the fight against informality. Informal market, informal business and so on. Even nowadays, when a series of measures and amendments to the law have taken place, we still remain inside the transition train toward the station of a country with European standards.

We live in a free market economy reliant on free and fair competition where there exists a regulator, which imposes rules and laws. The arising question is who wins? What weapons do they use, how do they defend themselves? The truth is that every day we face problems that are as familiar as they are new as a chain reaction. The concealment of revenues from businesses, from the smallest to the largest ones is not new but concealement patterns are new. The declarations regarding tax on profit only to justify the level of expenditures are the most

[1] E VAN GAMEREN, The internal economics of firm An investigation into the labour mobility within firms

common cases we encounter. For instance, according to INSTAT public data only in 2014 there should be cashed four billion dollars from the value added tax in the state budget. If we subtract 4 per cent of this value, given that they belong to that part exempted from the tax we would again produce a very good figure. But the truth is that expectancy for the current year is merely 1.2 billion dollars. That is because only 8.5 per cent of this tax is collected, accordingly less than half of what should be in reality[1].

In this fight the government plays the important role of the arbitrator. By means of rules and laws it imposes, it enables well-functioning for each actor in his workplace. Are these rules and laws appropriate for implementation in various time segments, how are these rules implemented, what are the penalties, is the "actor" sensitized that their implementation will increase the welfare index? All these answers deserve to have a reply. The non-compliance with these rules and laws from individuals, businesses and companies has already led to the phenomenon of informality of economy or "shadow economy" as they say which is eroding economy. Our economy has long been affected by that disease that is becoming chronic. We must do out utmost that employers and employees not be participants in violations and concealments. The big truth is that tax inspectors themselves are inspiring this phenomenon. As long as tax inspectors are frequently replaced and fail to offer high level of professionalism, moreover becoming participants in the non-compliance with the laws we shall continue to have such problems.

The common patterns of informality discovered by foreign audits:

All actors must implement imposed laws and rules, but we notice businesses that exercise unregistered activities, therefore concealing their revenues, other businesses that lack documentation for their economic activities and some others that present fictious documentation. We are all aware of the existence of two balances. Moreover, both balances "are legitimate" given that they declare only the level of expenditures. The use of the cash register constitutes a step forward, but we often encounter its closure and its registration as to only the value of expenditures and very few profits. Therefore the tax on profit is concealed. The banks would render a huge contribution if they would conduct necessary inspections before approved credits.[2]

The fact they accept any kind of submitted balance-sheets of a very high performance without conducting verifications of departments or tax authorities has enabled abusers to submit ready-made balances in exchange for money. How responsible are banking institutions on the granting of credits as to acceptance of these fictious balances?! It is merely this fraud, this informality that has triggered the existence of a market, of financial capitals, non-activation of the stock exchange, the non-listing of companies in the market and malfunctioning of this market that would activate many capitals of the economy of this country and would serve as oxygen for economy. That would be made possible in order that Albanian businessmen would not just remain content to the extent of being "shopkeepers", content only with cash, but in order that they could use financial policies of the European world where we wish to be.

The audit of authorized experts has the right to check all those businesses with an annual turnover above ALL 30 million with personnel of over 30 employees, therefore the large business. It is concerning because you observe it in concealments, concealment of revenues or concealment of the number of employees even in those companies that are very powerful with satisfactory marketing campaigns. We also call them VIP companies. The middle-sized and small-sized businesses can be audited through balances they prepare and submit. It occurs often that according to balances they submit, they appear as businesses with losses for more than two years. These are very strong signals to be taken into consideration and to be investigated by tax inspectors for tax evasion.

The problem of the labor market is another source of informality of economy. The formal labor contracts, undeclared employment or as we call it illegal work, declaration of non-real revenues, all these actions among employers and employees who conceal revenues that would be addressed to the development of the economy bring about the opposite effect. These kind of activities enrinch not only individuals, but they risk and increase insecurity of an employee who can lose his job for any kind of reason. I bring to your attention the sensitization of individuals capable to work who enter a labor relationship, the importance of what is called labor contract. Assessing it is based on the labor code prior to the start of a work in order to be self-protected in the first place. The government policies on employment, the opening of employment

[1]Data on state budget INSTAT, 2014
[2] Data from External Audit Inspectorate Tirana ,May 2016

offices, the existence of private employment centers is a positive step to render the labor market mostely functional that operates according to request and offer on various professions.

"The illegal work" along with the informal work is part of the so-called "uncontrolled economy" The decision to conceal an activity can stem from many factors:

The activity is held under conditions of fiscal evasion (VAT, taxes etc)

The activity avoids social insurance contributions, avoids legal normatives or fails to comply with norms on work schedule, minimum salary etc.

The activity lacks necessary administrative authorizations to be held.

The illegal economy is a complex of production activities, service activities and use of productions and services, which avoids openly statistic registrations. This category includes the so-called illegal work such as unpaid work of unemployed people, retired people, households, students, second undeclared employment.

A particular kind of illegal concealed economy is also *criminal economy,* which includes all kinds of illegal activities such as: smuggling, prostitution, gambling, sale of drugs, organized thefts. The concealed economy and illegal work create a system, a deformity in statistics directly proportional to its relative size, which render the analysis of real economic situation less accurate. The Albanian labor market has suffered big changes after 1991; the economic transformation has caused essential changes in the structure of production and employment sectors.

The development of private sector runs parallel to informalization of economy in general and illegal work in particular. The hidden economy has existed since the approval of the law that regulates labor relations. All transition societies pass through this phenomenon of labor market where in certain period relations between legal economy and illegal economy change.

The economic activity of informal sector cohabits with structured sector where it competes successfully in several cases. There are evident cases when informal sector supplies producing activities with raw material and furnishes with ready products in the market. The transition period lived by the Albanian state has created spaces for the flourishing of informal market, which amounts to considerable values in other Southeastern European countries as well. In general the social partnets have assesses consequences of illegal work market in the economic, fiscal and social regard, whereas these consequences bear in themselves the deficit in the state budgert, decrease of revenues in social insurance contributions, fiscal evasion with regard to tax on profits as well as establishment of an unprotected social class.

The sectors of economy where illegal employment faces relatively higher levels are as following:

-The sector of construction

-The small-sized and middle-sized production

-The sector of services

-The transport

-The trade

-The private fishing activity etc

The labor state administration tackles with preparation, administration, audit and review of national labor policy.

Within the framework of this administration the Labor State Inspectorate as its constituent part must play an important role in the minimization of the illegal work.

Efforts to minimize illegal work are accomplished in three regards:

Registration of economic subjects accompanied with declaration of evarage work power.

Permanent inspections of subjects in order to provide continous implementation of labor legislation

Organization of joint national actions on audit of labor market in various sectors of economy renders priority to construction sector for the mere nature of its labor.

Organization of audits brings about concrete results in the finding of:

-Unlicensed self-employed merchants

-Illegal economic activities

-Legal economic activities

-Economic activities with non-renovated fiscal documentation

-Undeclared economic activities to Health Insurance Institute

-Illegal employment rate

-Self-employed people in the free market

One of the sectors where non-implemenattion of legislation is more tangible is the construction sector and production of construction material. This sector is assessed as following:

An activity that can be exercised anywhere without conditioned geographic limitations.

A profitable activity under the conditions of today's market economy with premises for fiscal evasion related to fictious declarations of revenues on employment and failure to cash insurance contributions.

One of the most endangered sectors prone to accidents at work. Attention is mainly focused on the following:

Highlighting licensed subjects and discovery of illegal activities in construction and production of construction material.

Highlighting measures taken to the implementation of labor legislation on protection and safety at work as well as social protection.

Control on labor market and distribution of labor force according to districts and important activities in the economy of the country.

The construction sector and production of construction material as one of the most important sectors of economy and national production plays an important role in the increase of revenues per capita of the population, given that it involves an important active labor force that is why it is work priority not only during the year but also in national actions engaging a substantial number of employees.

Despite the large number of small-sized enterpreneurships in construction that render it difficult to control this labor market, we must take into account that organization of trade unions in this sector is relatively low.

The responsibility on huge proportions of illegal work in the construction sector is joint:

-The government does not provide in appropriate fashion the implementation of legislation related to requirements of liabilities from employers or businesses in this sector.

-Employers also bear a huge responsibility given that they fail to declare, they fail to submit necessary data on construction sector and to the detriment of employees and the government they conceal revenues generated from labor in this sector. In the event of requests made by employers they abuse with social problems of the country threatening employees with discharge from work

-Despite these difficulties employees must increase their requests in order to be organized in trade unions.

This improper functioning as to organization of trade unions in this sector makes it difficult to control the labor market.

Why does this market fail to function and how helpful are penalties and punishments in the market system?!

As every disease is treated, the doctor or the regulator STATE must deal with the finding of cases and their fighting in order that the desease not pass in the epidemic status and not deal only with the treatment of consequences, but also with punishments. The more measures are tightened, the more corruption among those persons requesting implementation of the law and therefore this disease only advances.

1.2 Fiscal evasion in Albanian legislation

What does the Criminal Code provide:

Article 180

Concealment of revenues

The concealment of revenues[1] or avoidance of the payment of tax liabilities through non-submission of documents or non-declaration of necessary data according to legislation in force, the submission of forged documents, fake declarations or information with the purpose of material profit for oneself or for others by means of inaccurate calculation of the amount of taxes or contribution constitutes a criminal offense and is punishable with penalty or imprisonment up to three years.

When this offense is committed with the purpose of concealment or avoidance from the payment of a tax liability with a "higher" value than ALL 5 million it is punishable with two up to five years imprisonment.

When this offense is committed with the purpose of concealement or avoidance from the payment of a tax liability with a higher value than ALL 8 million it is punishable with four up to eight years imprisonment.

Article 181

Non-payment of taxes and tariffs

The non-payment of taxes and tariffs within the specified deadline despite the ability to pay them by the person against whom the administrative measure has been taken previously for this purpose is punishable with penalty or imprisonment up to three years.[2]

Article 181/a

Non-accomplishent of duties by tax bodies

The failure to accomplish duties related to collection within the specified legal deadline of taxes and tariffs by employees of the tax bodies and other official persons in charge of these duties, when done due to their fault and costs the government a damage in the value lower than ALL 1 million is punishable with penalty up to ALL 2 million; when the value is higher than ALL 1 million is punishable with 3 up to 10 years imprisonment.

Article 182

Alteration in measuring devices

The alteration or intervention in measuring devices and cash registers that issue vouchers or the use of altered devices and cash registers or allowance of use by others of irregular devices and cash registers in order to avoid full payment of taxes constitutes a criminal offense and is punishable with penalty or with imprisonment up to two years.[3]

Article 182/a

The damage of blocking signs or suspension of commercial activity

[1]Concealment of revenues, Criminal Code (Article 180)
[2]Non-payment of taxes, Criminal Code (Article 181)
[3]Alteration in measuring devices, Criminal Code (Article 182)

The deliberate damage of distinctive signs placed by the tax administration on blocking or suspension of commercial activity or the exercise of commercial activity after the notification of decision of tax administration on its blocking or suspension, constitutes criminal offense and is punishable with penalty or imprisonment up to one year.[1]

What is stipulated by the tax legislation:

Law No. 9920 "On tax procedures in the Republic of Albania ", as amended

Article 116

"Tax evasion"

The concealment or avoidance from payment of tax liabilities through non-submission of documents or non-declaration of necessary data according to legislation in force, the submission of forged documents or fake declarations or information that leads to inaccurate calculation of the amount of taxes or contribution constitute tax evasion and is punishable with penalty equal to 100 per cent of the difference of the calculated amount from the one that should be in fact.

Pursuant to item 1, of this article, we consider also those taxpayers who commit tax evasion by means of concealing revenues with the purpose of concealment or avoidance from payment of tax liabilities, who are found to have committed these offenses and against whom administrative sentences have been applied in accordance with:

item 1, of article 119, of this law,

item 3, article 121, of this law;

item 1, letter "a" e "b", of article 122, of this law".

1.2.1 Structures assigned by law to fight fiscal evasion:

1- Structures of the Investigation Department of Economic Crime at the State Police (Sectors of Investigation of Economic and Financial CVrime at the Investigation Department of Economic and Financial Crime and Local Police Departments).[2]

2-Strutures of General Directorate of Taxation

Structures of Tax Investigation Department,

Structures of Tax Audit Department,

Structures of Internal Investigation Deparment, Anticorruption.

3- Structures of General Prosecution Office.

Department of Task Force at the General Prosecution Office.

Sectors of Task Force of prosecution offices at first instance courts.

Cooperation among these structures, enhancement of quality and professionalism of human capital employeed in these institutions constitutes also the key in the fight against fiscal evasion.

Recommendations

Concrete measures in the fight against informality and fiscal evasion

The fight against fiscal evasion remains yet a fight to be won by state bodies and fair businesses, mainly in these regards:

Reduction of payments in cash in the private and public sector and their channelling in the banking system since 2008

Improvement of fiscal legislation and reduction of tax instances considered as promoters of formalization

[1]Damage of blocking signs or suspension of commercial activity, Criminal Code (Article 182/a)
[2]Law 9920 "On Tax Procedures in the Republic of Albania"

Enhancement of effectiveness of administration through implementation of ethics and transparence of the actions of administration

Installation of electronic services for taxpayers from the moment of registration until the declaration of activity reducing time and enhancing transparence

Enhancement of providing information mainly through creation of information and service portals with effects in the reduction of time and cost of service as well as increasing transparence and limiting corruption in these services

Announcement of fiscal amnesty with the main purpose of uncovering informality throughout the Albanian economy within the country and revenues abroad

Improvement of acting agents in the labor market and capital

The state policies related to tax laws and taxes that actors must pay the government must be such as to encourage applicability and be welcome.

What I mean by this is the facilitation of the opening of a business activity, elimination of bureaucracy, imposement of affordable taxes and tariffs to businesses as well as application of understandable and acceptable penalties to businesses.

Another regard of the administration of work in the fight against fiscal evasion is the very important aspect in the formalization of labor force and real report of salaries received by private sector employees.

Likewise, culture and ethics on implementation of law renders great importance. Sensitization is the most important step in this fight, which requires little effort and produces many outcomes.

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Approval and Disapproval Expressions in English and Arabic: A Contrastive Study

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Abstract

Any language in the world wide has different expressions and terms that convey approval or disapproval that language speakers may use in their daily life. English language for instance, is full of such expressions and can be found in any situation needs to. The present research studies approval and disapproval in English with their counterparts in Arabic as a contrastive study. It tries to search for those terms or sentences that are used to express approval and disapproval in English with their counterparts in Arabic. It aims to highlight the points of similarities and differences between those expressions that are used to state approval and disapproval in the two languages. Also the study includes a contrastive analysis to the expressions of approval and disapproval in English with their equivalents in Arabic in order to come up with the conclusions. It concluded that the approval and disapproval expressions in English language are similar to their counterparts in Arabic language but differ in two points. Firstly in Arabic language main verbs are used to convey approval and disapproval whereas in English are not. Secondly, in English language the exclamatory style is used to express approval in contrast, Arabic language is not. Researchers, teachers, translators and any who cares about English language and linguistics can get benefit from this study, precisely because it includes a comparison between two languages, English language and Arabic, with several types of expressions and terms that are being actually used to express approval and disapproval.

Keywords: approval and disapproval expressions in English and Arabic

Introduction

Problem Statement

Within everyday speeches and writings diverse types of words or expressions can be noticed that refer to what is meant by approval or disapproval of the speaker or the hearer. These words or expressions may come in the forms of verbs, nouns, adjectives, adverbs, exclamations, prepositions, or even phrases and sentences. They eventually carry either the approval or disapproval of either the sender or the recipient of the message . Approval means a message expressing a favourable opinion and, a feeling of liking something or someone good, whereas, disapproval means a feeling of disliking something or what someone is doing, and the belief that someone or something is bad or wrong. On the other hand, approval in Arabic language means acceptance and permission for doing a specific action and showing full agreement with the speaker. Whereas disapproval, refers to the refusal and not acceptance of doing an action and showing disagreement with the speaker. These expressions may cause problems or confusion in much of the situations in which they are mentioned to either the addresser or the addressee. Sometimes, the way of stating approval or disapproval cause ambiguity of what is meant precisely to the hearer. In addition, ambiguity rises from multiple meaning words that are being used to express approval and disapproval within the addresses or speeches.

1.2 Hypotheses: This study is based on the following hypotheses:

There is a great similarity between the approval and disapproval

expressions in English .

Points of differences between the approval and disapproval expressions in English with their equivalent in Arabic are few.

1.3 Aims of the Study: The present study aims at Investigating the approval and disapproval expressions in English determining a possible correspondence between them and their Arabic equivalents .

Shedding light on the points of similarities and differences of approval and disapproval expressions in the two languages English and Arabic .

1.4 The Procedures of the Study: The procedures to be adopted in this study are as follows:

Giving a general concept about approval and disapproval expressions in English and their counterparts in Arabic .

Investigating the approval and disapproval in English with their equivalent in Arabic.

Carrying out a contrastive analysis between approval and disapproval expressions in the two languages and get the results.

Highlighting points of differences and similarities of approval and disapproval expressions in the two languages.

Drawing conclusions from the findings of the study.

1.5 Limits of the Study: The study is limited to:

1 .Standard English and standard Arabic. 2.Syntactic, and pragmatic analysis to the approval and disapproval expressions in both languages English and Arabic .

1.6 Value of the Study:

The present study is valuable to students, researchers and teachers of both English and Arabic. It is also valuable as a contrastive study because it sheds light on the similarities and differences between the two languages and this contributes to researchers investigating the existence of language universals.

2.1 Approval and Disapproval:

The speech act of disapproval occurs when a speaker directly or indirectly says no to a request or invitation. Refusal or disapproval is a face-threatening act to the listener/requestor/inviter, because it contradicts his or her expectations, and is often realized through indirect strategies. Thus, it requires a high level of pragmatic competence (Chen, 1996). Three major types of indirect refusals are identified, including: excuses/reason, request for information or clarification, and suggesting alternatives. (Beebe et al, 1990) Direct disapprovals refer to phrases such as "No, won't" or "I refuse". Indirect disapprovals are indirect strategies speakers use to minimize the offense to the hearer and they can include, for example, statements of excuses, regrets, some other alternatives, or postponement. (ibid) On the other hand, approval, in which the refuser expresses his/her consent before actually making the refusal itself (e.g. "Yes, but …"); and (solidarity or empathy, in which the refuser demands the solidarity of the requester by asking for his/her sympathy (e.g. I realise you are in a difficult situation, but …"). By uttering, "I accept" or using equivalent words, an offeree becomes committed to the terms of the offer. Approval as a show of support from one speaker for a belief or proposition expressed by another. Disapproval suggests that there are frequent, normative patterns associated with each action (Sacks, 1987). Whereas approvals are usually produced quickly and unambiguously, disapproval is frequently delayed, and often prefaced with an element of agreement, such as in the case of the ubiquitous 'yes, but'. Moreover, adjuncts refer to those expressions that accompany disapprovals but do not constitute disapprovals by themselves. They include five subtypes: i) positive opinion, in which the refuser expresses that the request is a good idea but he/she cannot comply it (e.g. This is a great idea, but …); ii) willingness, in which the refuser expresses that he/she would be willing to perform the request but he/she cannot e.g. I'd love to help, but …); iii) gratitude, in which the refuser softens his/her refusal by thanking his/her interlocutor (e.g. "Thanks a lot, but). (ibid)

2.2. Asking for Approval

Sometimes we are not sure if it's a good idea to do something. So we need useful expressions for asking if other people agree with an idea or intended action. Here are ten phrases. (Boander, 2013:23-25)

Ten Expressions to Use in Speaking and Writing

Do you think it's all right to do it?

What do you think about (me doing that?)

Do you think / reckon I ought to (do it?)

What would you say if I (did it?)

Would you approve of (doing something?)

What is your attitude to the idea of...

Are you in favour of (me doing something?)

You are in favour of ... aren't you?)

Do you think anyone would mind if I...

Do you think it would be really awful if I….

2.3. Expressing Approval:

These are some of the expressions that are used to express approval in spoken and written English:

Good! Excellent! Right

That's fine.

That's nice.

Well done

Perfect

It looks / sounds pretty good

I approve of (them / you)

What a success

Go ahead.

Let's do it.

I'm all for it

You couldn't have done better.

I hope so.

I would like that. (ibid: 30-35)

2.4 Disapproving of an action

Sometimes we hear about an action that somebody else has done and we feel very negative about it. Here are ten phrases that English people use to show their disapproval. (Leech, 2014: 50-55)

Ten Expressions to use in Speaking and Writing

1. I don't think much of that.

2. How appalling / dreadful!

3. I'm utterly appalled / disgusted.

4. I'm dead against people doing...

5. It shouldn't be allowed!

6. What a rotten / mean thing to do

7. I take a very dim view of people doing.

8. Who do they think they are?

9. How can people do things like that?

10. Whatever next? (Malcolm, 1990: 44-49)

When expressing disapproval, you should try to avoid strong terms. For this reason a negative expression is often preferable.

It/ That isn't/ wasn't a very good idea.

It/ That isn't/ wasn't a very nice thing to say/ do

It/ That isn't/ wasn't so interesting as we had expected.

Disapproval may also be expressed by using too.

To make such statements less abrupt and final, we may begin them with Well, personally I think…, or Don't you think…? (ibid)

3.1 Approval and Disapproval in Arabic:

Arabic language awards the speakers with diverse means to express one's position and the language is more accurate in selecting the most appropriate methods to express his opinion or his position. Between acceptance and rejection a great distance, and both have different degrees, each mode of Arabic language reveals the degree of acceptance or rejection at the speaker.There are several styles in Arabic to express approval and disapproval, depending on the terms the speakers use the way they use them. Styles of approval involve the style of command, style of wishing and hope, style of praising, style of awakening of a desire, whereas styles of disapproval involve prohibition, dispraising and interrogation. (الاوسي, 1980, 60-55)

3.2 Approval Styles in Arabic:

3.2.1 Command Style:

Expressing approval in Arabic the speaker may use the command style to get the approval of the listener using the form "لتفعل" for example: لتذهب يا زيد and (ابن جني) "فبذلك فليفرحوا" . This form is used as a way of expressing approval to do something from the addressee but in a polite way. (الزبيدي، 1965: 43-47)

3.2.2 Praising style:

Speakers may use praising as a way of expressing their psychological approval, using the verb "نِعْمَ", like "نِعمَ العبدُ إنه اواب" and "نعم الرجل عبدالله" and the verb "حبذا" as in "" حبذا لو تنصت للقرآن. They tend to use this style to urge the listener to do things willingly.(هادي نهر، 1978: 77-80)

The Arab tend to use this style as a way of asking others' approval to do things politely. They use "ليت" as in " ليت الاستاذ يعيد شرح الدرس" and "لو" as in "لوتحضر الحفل غداً" اتمنى and "لعل" as in "لعل احمد يأتي مبكرا اليوم", and "عسى" like " عسى زيد ان ينطلق". (طاهر سلمان، 1983: 66-69)

3.3 Disapproval Styles in Arabic

Arab speakers have several styles to express disapproval. They may use prohibition and dispraise or even interrogative terms to state their refusal. The following are the common styles that are used to express disapproval.

3.3.1 Prohibition Style

This style is used by the speaker to express his or her refusal of a thing or action. To express disapproval " لا الناهية" in the form "لا تفعل" is being used, for example: " لا يسخر قومُ من قومٍ" and "لا تُنْفِق". Also the verbs "اجتنبْ" "ذ رْ" and "كفْ" are used to indicate refusal as in "اجتنبوا كثيراً من الظن" "ذروا البيع" and "كُفُوا ايديكم". (المرادي، 1973: 89-92)

3.3.2 Dispraising Style:

Arab sometimes tend to use dispraise terms and verbs to express their psychological disapproval of things and deeds. The most common verbs are being used to indicate refusal is "بئس" , e.g. "لبئس ما كانوا يصنعون" and "ساء", e.g. " ساء ما كانوا يعملون". (الميالي، 2006: 802)

3.3.3 Interrogative Style:

This style is the most absolutely important way in communication. It is an inclusive way of expressing not only disapproval but also other meanings, like persuasion, denial and exclamation. Interrogatory expressions and clauses are used to indicate the refusal by the speaker as in "هل يستويان مثلا" and " مال هذا الرسول يأكل الطعام ويمشي في الاسواق " and " اهذا الذي بعث الله رسولا " and "أفَبِعذابنا يستعجلون" and "يا ابتِ لمَ تعبدُ ما لا يسمعُ ولا يبصِر ولا يُغني عنك شيئاً". (704: 538 الزمخشري،) So, the context in which the interrogative clauses and expressions occur helps the speaker in indicating what does he or she means specifically.

4. Contrastive Analysis:

After a comprehensive study to approval and disapproval in English with their counterparts in Arabic, a contrastive analysis to both terms and expressions can be carried out. Firstly the approval in English is expressed using praising, interrogative and exclamatory styles. Within **praising** the speaker uses expressions like **excellent, great, that's fine** and so on. In Arabic the same style is being used to express approval as in "جيد، رائع" , " يَعْمَ الاقتراح" and so on. The other style is **command** by which the speaker ask the approval of the listener using expressions may be understood as commands, as in **let's leave** and **go ahead**.

In Arabic the same happens like " لترحل يا زيد" using the form "لتفعل" to get the approval of the addressee. Then comes **whishing style** to express approval by using hope and would and wish in expressions e.g. **I would, I hope so, I wish to do it**. The Arab speakers use wishing style in approval as in"ليتك تحضر مبكرا"، "لعل الفرج قريب " - "لعل، ليت" Moreover in English speakers tend to use interrogatory style to show approval like **would you approve of?** / **Do you think?** Besides, English speakers use the exclamatory style to show approval as in **what a success**! On the other hand, there is the disapproval. To express refusal in English there is **dispraise style** as in **how dreadful / that isn't good / I am disgusted**. In Arabic addressers show their disapproval using the same style e.g ."بئس العمل هذا" .Then we have prohibition style to show refusal in English it is not used but only in Arabic like:."لا تتكلم بصوتٍ عال", "اجتنب العمل مع هذا الرجل" **.** In addition, there is the **interrogatory style** which is used in both languages to state the disapproval. English addressers use it as in: **who do you think they are? , what a mean thing to do? , don't you think that** ...? Arabic users show refusal by interrogative expressions in this wa." "أهذا الذي تريده؟" "هل يستويان ؟".

Accordingly, the approval and disapproval expressions in the two languages contain the first person addressing the second one in the active voice. In addition, these expressions are in the present tense with different structures. Also, the expressions included the indicative, (including the interrogatives), imperative, and subjunctive mood. Furthermore, English and Arabic approval and disapproval expressions are phrases, clauses and rarely a full sentence. Sometimes, the addresser uses a single word to express approval or disapproval, e.g. **"ok" ,"yes", "no" ,** "موافق"، "نعم"، "كلا" **.** Adjectives are used in expressing approval, like: "right", "great" "رائع، جميل" and disapproval like: "dreadful, disgusted". In Arabic, main verbs are used in this case like:"ساء", "بئس".

Conclusion:

This section is specified for the conclusions that the current study has come up with. At the end of the detailed survey of the approval and disapproval expressions in English with their counterparts in Arabic, several points have emerged and they are as follows:

Points of Similarities:

Expressions of approval in English are similar to their equivalents in Arabic in time and tense and structure.

Disapproval expressions in English are similar to their equivalents in Arabic in time and tense and structure.

Approval and disapproval in the two languages contain all types of mood.

The two languages use praising, wishing and command as a style of expressing approval.

Both of English language and Arabic language use dispraising, prohibition, and interrogation as a style of expressing disapproval.

Single words are being used to express approval and disapproval in English language and Arabic one.

All of approval and disapproval expressions in the two languages are in the active voice with a first person addresser.

Points of Differences:

The exclamatory style is being used in English language to express approval, whereas in Arabic this is not so.

Arabic language differs from English language in using main verbs to express both approval and disapproval.

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Anglophone, Civilian, and Islamic Legal Cultures: Three Views of Human Trust in the Age of Technology and Globalization

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The Global Conversation

Abstract:

The project to construct a global regimen of law raises questions about whether human relations of personal trust continue to be relevant—especially, in a technologically mediated reality of atomized social connections. Some answers may be found by comparing the role of trust in the fundamental premise of each of the three historic legal cultures, Anglophone, Civilian, and Islamic. In fact, the understanding of human trust works differently in each of those legal regimes. One has a pejorative view of human nature, trusting its tendency to reprobation. Another trusts the faculty of human reason, its potential for growth and development, but mistrusts human subjectivity. The third is based on confidence in the natural human capacities, including bonds of personal trust. These differences began with the historical origin of each tradition. One, born as a system of legal commerce, was based on collegiality. One, produced by scholars and philosophers, was based on ideals and principles. One universalized its sacred teachings by combining them with patterns of reciprocity and accord that had existed earlier among tribes and peoples. Their different assumptions about human nature resulted in different conceptions of what law is, the method it should employ, and the purpose it can serve. Each tradition operates within its population on a different principle. In contrast with one another, they represent, respectively, faith and obedience, reason and order, justice and conciliation. As technology penetrates national borders, transcending barriers of topography and distance, it has brought these three traditions together. The conflict arising from that encounter raises profound questions about what form of legal culture will eventually predominate, what conception of human nature will prevail, and what level of human trust will define the global age.

Keywords: Anglophone, Civilian, Islamic, law, technology, globalization

Introduction

1. Law and Trust

A. The project to construct a global regimen of law in the twenty-first century raises many human, ethical, and cultural questions. A legal authority applicable to all persons in all regions of the world, acting through an immersive atmosphere of electronically transmitted sound and image, presents challenges that have never before been encountered. Such new methods of governance call into question patterns of human behavior that in the past seemed so natural as to be taken for granted. Among the questions now confronted is whether relations of human trust will continue to be relevant in the global age—especially, in a technologically mediated reality of individuated persons and atomized social connections. (Kennedy 2016)

The matter of human trust involves elements of predictability and capacity. It has to do not only with questions of honesty, integrity, and intent, but also with ability and circumstance. It entails a weighing of probabilities and certainties. In a larger way, questions of human trust become part of a discussion about human nature generally, about inherent human tendencies and innate patterns of behavior. Traditionally and historically, relations of trust have been essential to the foundation upon which communities and peoples have maintained a basis of conciliation and harmony.

Viewed on a broader scale, the matter of trust has involved agreements and alliances between nations and across cultures, connecting all regions of the earth. Such patterns, whatever their level or scale, may indicate that some instinctive

commonality is shared by all humans. It may indicate that a sense of justice or fairness, of reciprocation, is basic to human rationality. There is reason to believe that an inborn code of behavior, an ethic, operates in the human mind regardless of custom or ethnicity. However, that which is understood as trust may also be interpreted as merely a calculative or mechanical prediction based on reasoned probability and self-interest.

B. In fact, all such discussion may need to be framed in a different way with the unfolding advances in technology and in the work to construct a uniform stratum of governance and authority around the globe. The natural topography of human life is being supplanted by a virtual kind of reality as the atmosphere in which daily human existence takes place. Even the role of human cognition is being reconsidered for purposes of global governance, especially its adaptation within an immersive flow of electronically transmitted sound and image. These developments raise questions that have never been asked before as the jurisprudents and theorists who orchestrate these developments face an unknown fraught with both hazard and opportunity. (Giddens 1991)

However, from a legal perspective, there are sources which provide at least suggestive, if not definitive, answers to such questions. After all, matters of human trust are also addressed at least implicitly as part of the fundamental premise of each of the three great historic legal cultures, Anglophone, Civilian, and Islamic. Although no explicit doctrine may have been fully elaborated in any one of them, certain general assumptions may be inferred from each of them. In particular, the three legal cultures represent three understandings of human nature, and those understandings would have, by implication, a great deal to do with questions of human trust.

Thus, to engage the question of human trust within the atmosphere of a global legal culture, it may be useful to first identify the conception of human nature that provides a basis for each mode of law. That is, attempt to understand what ideas are held about human moral or ethical capacity, about autonomy and volition inherent to human composition. In fact, from a legal perspective there are many ways to address the question of human nature, its makeup, its innate tendencies, its potential for development and reform. In the approach that follows, there will be an attempt to identify the role of trust in each of the three legal cultures, and the meanings it might have for constructing a way of life on a global scale. (Lambropoulos 1993)

C. However, in the analysis set forth below no attempt will be made to directly interrogate or examine these three legal cultures as they exist today. There will be no attempt to precisely see them in their modern incarnations, with many embellishments and accretions, including borrowings, over time, from one another. Nor in the approach taken here, will each one necessarily be viewed as it is defined and understood by its proponents, or as it is experienced by persons living within its influence. Instead, the approach will be less direct, and will begin by looking into the distant past.

The purpose here will be to examine and compare them by identifying what is basic to the nature of each. That is, to determine what elements are essential to their makeup, and without which, they would neither be characteristically Anglophone, Civilian, nor Islamic. By that means it may be possible to understand their underlying conceptions of human nature and to isolate the significance of trust in each tradition. The approach will begin by examining each of the three in their nascent and rudimentary forms, at the time of inception, when their distinctive characteristics can be most easily seen and identified. From that beginning place, there will be an attempt to follow the narrow theme of human trust as it can be inferred within each of these three legal methods and as each has evolved over time.

Yet, because the ultimate purpose here is to view these legal differences in a twenty-first century age of technology, one more dimension of study will be introduced. There will not only be an attempt to identify elements that are fundamental to each, there will also be an attempt to examine over long centuries of development, the sometimes dramatic effect of technical advance on the substance and method of each tradition. It goes without saying that technology is having a profound impact on the realm of law in the global age. Reviewing the effects of technological change in the historic past might be useful in understanding conditions in the present—including its influence on relations of trust between human beings.

2. Origins and Natures

A. Each of the three historic legal cultures was founded during a two thousand year period when the level of technical advance was generally stable around the entire world. The Islamic beginnings of the seventh century as well as the inception of both the Civilian and Anglophone traditions in the eleventh century occurred in this era of technical continuity. During that period land transportation relied on the horse, camel, or ox, just as warfare was centered on the horse mounted

soldier. Weaponry consisted primarily of bow and arrow, sword and lance. Trade was conducted mostly by caravan and by small ship that navigated close to the shoreline. Commercial transactions were conducted by barter and metallic coin. The production of books and documents was carried out by a laborious and expensive process of replicating by scribal hand, using ink brush and parchment.

Islam had its origin in the teachings of Mohammed, which after his death, were compiled into what is known as the Quran. But its development as a legal tradition came from many sources following on and adding to that original source. Actually, the teachings of The Prophet contained very little of what in modern terms would be considered law. Instead, like the founding works of all great traditions, its teachings were mainly comprised of general principles and exhortations. In fact, viewed a certain way, the origin of Islam was as an act of resistance against a Roman Empire that had become increasingly repressive in its methods. Widespread conflict had erupted as Rome attempted to impose its tandem instruments of rule: a new imperial religion and a newly propounded imperial law. On the periphery of that empire the Islamic movement developed independently of this imposed religious and civil authority. (Hallaq 2010)

Looking back to the time of The Prophet it would be easy to dismiss the Arabs as a backward tribal people, remote from the main events of history. But, in fact, they comprised one of the oldest continuously existing enclaves of human life in the entire world. From 3000 BC their land and sea routes connected the great kingdoms of India, Mesopotamia, and Egypt. Not only material goods travelled across the deserts and along the coastal waters of their native land, but ideas were carried as well. The Arabs not only became wealthy, they also became sophisticated in the ways of the world. Equally important, because of the forbidding topography of their homeland, they were never successfully invaded and conquered, and were thus able to preserve their unique customary tradition over the centuries.

In fact, the Arabs, like virtually all traditional peoples of any era, operated on communal methods of informal mediation to resolve disputes and maintain harmony among themselves. In terms of law, the influence of Mohammed had the effect of universalizing a myriad of localized tribal practices into one expansive fabric of tradition. Islamic law is often said to combine the Revelation of God with the Reason of Man, combining the three elements of conciliation, sacredness, and practicality. It asserted a confidence in the human potential for good, and sought to build relations of peace and harmony across the world. Its great unifying influence was made possible by the technology of the book—beginning with the Quran, inscribed in the single language of Arabic. Widely circulated and memorized, the teachings of Mohammed gave rise to a corpus of legal practice which rested equally on the principles of justice and mercy. Deeply imbued, it became part of the identity of a vast multitude of followers as it provided an atmosphere of trust from which an entire way of life developed. (Hallaq 2003)

Historians mark the beginning of a distinctive Anglophone legal culture with the events of the Norman Conquest of England, in the year 1066. Bringing order to its rebellious native population required establishing a highly centralized form of monarchy. From the Continent its absentee kings appointed administrators to impose a strict rule. Closely administering that realm on behalf of the Norman kings were three Royal Courts of Justice located in London. Originally those courts were presided over by jurists trained in law. The jurists were assisted in their labors by a retinue of messengers, scribes, sentinels, and orderlies who carried out the mundane procedures of litigation. These men, in the custom of the time, organized themselves into guilds of trade, their members bound together by collegial interest, including the need to exclude unwanted competition. (Baker 2002)

As it happened, following a dispute with King Henry II in 1166, the learned jurists were expelled. The conduct of legal affairs was removed from the jurists and turned over to the guildsmen, who were granted a monopoly of trade to conduct legal affairs within the Kingdom. This arrangement worked well for the king, because the fraternal lawmen were self-sufficient, collecting fees and gratuities they extracted from the litigants. At the same time forfeitures, fines, and bails flowed into the royal treasury. By this means, what came to be called the Common law was founded as a system of trade in the law courts of medieval England.

The guild fellows were presided over by the judges who acted as oracles of law, each as a kind of sovereign authority within his courtroom. Their procedures were conducted in an antiquated dialect that came to provide the internal basis of their trade. As functionaries operating within a closely ruled island kingdom, the Common lawyers had no particular philosophical or theological outlook larger than their own practical considerations of trade carried out according to the will of the king. In a servile kingdom ruled by foreign monarchs, their primary concern was simply to maintain order within the realm, and to maximize the flow of revenue. They were bound together in this work by professing a fraternal oath of strict conformity and common interest.

C. What came to be called the Civilian or Continental tradition of law was born simultaneously with its English counterpart. However, its origins were very different, and the two legal methods developed in virtual isolation from one another. The beginnings of Civil law are usually marked from the founding of the University at Bologna in 1088. That institution, the first of a long tradition of European universities, was originally established as a place for the study and teaching of law. In particular, its scholars worked to adapt the sophisticated elements of an ancient Roman Code of Justinian to the rather backward agrarian conditions of medieval European life. The result was a universal form of law called the *jus commune*, the common law of the Christian world. (Bellomo 1995)

During this period of the *jus commune* elements of jurisprudence and theology were inseparably connected to one another. As this Latin language law developed and as the role of the university evolved, the study of jurisprudence came to be integrated into a heritage of ancient Greek and Roman learning, as well as the theological and philosophical doctrines studied at the time. Thus, the discipline of law soon became assimilated to all the other areas of learning, ancient and modern. Moreover, the knowledge of those men who were instructed at the university descended down to every people and locality within Christendom. The assumptions and values that underlay the law were the same as those that underlay life in manor and village. (Radding 1988)

In the religious atmosphere of the time the God of Heaven was looked upon as an infinite and incomprehensible being. He had established an order for human life descending from heaven to earth, from Emperor and Pope, to bishop and king, and to priest and peasant. However, with limited and primitive tools of governance, the channels of authority were weak. Communication and transportation across distances was very difficult, to the extent that each region was virtually autonomous. The actual way of life amounted to a large organic whole. This simple agrarian mode of living was held together most of all by familial ties and bonds of local custom. From one perspective it would be said to have operated on the basis of human trust.

3. Invention and Modernity

A. The onset of what came to be known as the modern period was tied closely to an advance in technical development beginning around 1500. Although there were many mechanical and scientific advances at the time, what were called the Three Great Inventions came to be of particular importance. These included the maritime compass, gunpowder weapons, and the printing press. Ironically, each of these innovations came to Christendom by way of the Islamic world where they had first been introduced. Yet, the impact of these devices had been very different in that realm.

In the Moslem world, although the new inventions were widely employed, their use did not fundamentally change the way of life. The widespread human foundations of Islam generally continued undisturbed as its organic nature was able to absorb the effects of technical change. But the impact of these innovations on the Christian realm would be fundamental and profound. This was especially true because the Three Great Inventions became the means of ascent for two factions that eventually combined to overthrow the aged medieval order of life. Those factions were a rising and affluent merchant class, together with a powerful and unified legal class. Both groups had become impatient with the doctrines and restraints of an old ecclesia and nobility that had long presided over the unified realm of Christendom.

With the introduction of the Three Great Inventions both Europe and England began to undergo a prolonged and painful transformation. The maritime compass brought improved navigation, an increase of foreign trade, the rise of a new and powerful mercantile faction, and social upheaval. Gunpowder weapons brought the advent of mass armies and a new kind of total war, unparalleled in its destructiveness. The printed book brought literacy and learning, but also differences in understanding and belief. When all these disruptive influences converged, the Christian world was plunged into a century of civil and religious warfare, called by historians, The Reformation. It was one of the most deadly and destructive episodes in all of human history. (Lesaffer 2009)

B. Out of that conflict and desolation a new way of life emerged, with new concentrations of monetary wealth and military power, and new forms of centralized rule. With moveable type, the printing press could now publish books in any language, simply by changing the order of characters. Hence, each separate kingdom or republic could have its own national code of law, national religion, and its own Bible, published in the national language. Continental Europe was broken into numerous independent and sovereign nation-states. Universal Christendom reached its symbolic end at the Peace of Westphalia in 1648. With that treaty Europe was no longer a unified whole, it had become a composite of sovereign polities, a pattern it would largely retain into the twenty-first century.

The nation-state was one of the singular contributions of the Civil law tradition, and became the standard mode of governance throughout the modern world. In fact, the law and the state were assimilated to one another to the extent that the structure of the state came to equal the tangible manifestation of the Civil law. As printed publication became more commonplace and as literacy became more widespread, the new governing mechanism of the state became established in explicit form and according to a fixed structure set forth, usually in a founding document or constitution and a published legal code. During the seventeenth century the oath of office became the unifying basis of stability upon which the state was founded. Even so, in a time of shattered families, villages, and traditions, much of the natural cohesiveness between persons had disintegrated. Often, on the Continent, only the coercive power of the state could insure the basis of public order. (Misa 2011)

C. The effects of the developing religious and civil dislocations in England were equally dramatic, but they resolved themselves in a very different way. First of all, the law guildsmen were able to adapt to changing circumstance and to align themselves with the rising merchant class, which in turn, was assimilated into, and reconstituted as nobility. The legal environment of the country became centered in an all-competent High Court of Parliament comprised of Lords and Commons. The fraternity of medieval law was enlarged to administer not only the criminal and property relations of a medieval type, but also the new transactions of monetary wealth, eventually including the affairs of a maritime empire.

Just as Westphalia in 1648 was the turning point for Europe, the Glorious Revolution of 1689 was the turning point for England. Although the monarchy retained its outward shape, it was reestablished according to a famously unwritten constitution—with the authority of the king closely circumscribed. The method of rule was organic and personal in its makeup, combining the hereditary nobility with a fraternal class of gentry. Finally, and importantly, the Common lawyers became more than mere functionaries; instead their courts and guilds became integral to the new structure of monarchy. The two levels of a highly cultivated ruling class, noble and gentle, ensured their own supremacy by a strictly imposed policy of enforced illiteracy among the laboring multitude, the simple.

At the same time, the attitude of Common law jurists toward the Continental innovation of the state remained one of ambivalence. Within the Kingdom and the imperial realm the structure of the corporation, rather than the state, became the preferred instrument of governance—as exemplified by the fabulously lucrative East India and Royal African Companies. Nonetheless, where either state or corporation was employed, it was presided over by a legal stratum based on the combination of hereditary descent and fraternal pledge. Just as on the Continent, however, the English experienced a long period of upheaval and violence with a breakdown of family and tradition. But while the European public turned to reason, to secular ideals, and the aim of human perfectibility, the British public was turned to faith in religious doctrines to fulfill the need for human redemption. (Maitland 2003)

4. Humanism and Calvinism

A. Every legal culture is comprised of two aspects. They can be understood as the adjudicative and educative or as the coercive and persuasive. In any legal culture the method of ordering human life must correlate with a means of shaping human thought. It is possible for a legal regime to impose itself by sheer brute force, *in terrorim*, over the short term. But in order to establish stability and continuity the public must come to understand the structure of law in terms of the benefit it confers. There must be instilled in the population a habit of compliance. The three historic legal cultures balanced this tandem of law and learning in different ways and for different purposes.

During the sixteenth and seventeenth centuries, the period when Christendom was being transformed by the use of new technological instruments, the Islamic world stayed anchored to its underlying basis of humanity and sacredness, its fundamental elements were unchanged. For the Christian world, however, the new technical basis of life required a new way of thinking, and the process of discovering that workable basis took time. The transition also required new programs of instruction that, with the advent of printing, could now be widely promulgated. In fact, beginning after the year 1500, two strands of learning, the Humanist and the Calvinist, became especially influential.

B. The *Studia Humanitas* was the ancient training in manner and speech passed down from the Roman period through the writings of Cicero and Quintilian. However, the *Studia* was concerned with much more than merely fine oratory and an impressive demeanor. It sought to raise from childhood a man of wide learning and sophisticated understanding, not a pedant or a scholar, but the ideal of the amateur generalist. On a deeper level, this New Man would also be instilled with a high sense of civic obligation and purpose. During the sixteenth and seventeenth century, a period of unprecedented

upheaval and destruction, this new type of personage came to replace the old warrior nobility in court and council across the entire Christian realm. (Kennedy 1999) (Kallendorf 2002)

The tradition of the *Studia* was inherently skeptical in matters of religion; it instead asserted a confidence that *Man*, unaided by supernatural intervention, could successfully manage affairs of the world. In fact, because it had no religious basis and was morally agnostic, the attributes it instilled could be employed not only to elevate and construct, but also for duplicity and intrigue. These different possibilities came to be reflected in two versions of the tradition, sometimes called the Machiavellian and the Erasmian. The two strands of the *Studia* might also be thought of as the Realistic versus the Idealistic in outlook. In a general way, and over time, the Erasmian came to prevail on the Continent and the Machiavellian came to predominate in England. (Pocock 2003) (Viroli 2016; 1998)

C. The other widespread teaching that influenced the transformation of Christendom was the doctrine of John Calvin. Although commonly thought of as a religious figure, Calvin lived at a time when the two realms, law and religion, were thought to be inseparably connected. In the new era, he opposed the system of rule based on the Roman Church, the nobility, and Empire inherited from the past, as he also rejected any polity based on ancient Greek and Roman models. Instead, he advocated an alternative form of rule, the *Respublica Hebraeorum*, based on the legalistic pattern of Rabbinic judaism. The fundamental premise of his proposed method of governance was the subordination of naturally malevolent and depraved humankind, to the authority of a *Chosen Elect*. That upper stratum would, by punitive means, bring order to the world while carrying out the Divine Plan of human Redemption. (Nelson 2010)

The story of Calvinism in the sixteenth and seventeenth century is fraught with wars of annihilation as well as widespread episodes of judicial torture and execution for the crimes of heresy and witchcraft. In fact, over time, on the Continent there came to be a reaction against not only the bitter divisiveness of Calvinism, but against the use of any religion, as the educative instrument of governance. Already, by the beginning of the eighteenth century, beginning with the writings of Descartes, Spinoza, and Leibnitz, highly developed secular philosophies and scientific principles were being set forth on which government could be based—and especially to provide a means of legal order with a more Optimistic view of human nature. (Lesaffer 2009)

But in the meantime the teachings of Calvin had reached England, where they had taken a deeper and more permanent root. Calvinism, in the form of Puritanism, came to dominate events in the Island Kingdom in the decades leading up to the eighteenth century. Moreover, its harsh religious doctrines arrived at the same time as the Machiavellian *Studia* spread among the ruling classes. Hence, the entitlement of those who held authority came to be founded on a view of human nature as being essentially corrupt and depraved. It was a convergence of ideas reflected in the writings of Thomas Hobbes who set forth a method of rule, religious and civil, that portrayed the life of common men as being essentially nasty and brutish. At the same time the Continental *philosophes* were preaching Enlightenment ideals, a doctrine of human corruption was being combined with cultivated speech and manner to indelibly color the future development of British legal methods. (Rosenblatt 2006)

5. Culture and Freedom

A. In the early centuries of the modern period the Islamic world remained fundamentally grounded in its organic way of life, a form of existence that was inherently capable of dynamic adaptation to changing technology and circumstance. With its combination of the Reason of Man and the Revelation of God its methods were in a constant state of incremental development. The strength of Islam was built from the ground up, as it were, on the whole of human attributes--objective reason, subjectivity, and intuition--with no dichotomy of secular and religious. Even though it developed an empirical science, a highly elaborated philosophical tradition, and a sophisticated jurisprudence, its legal foundation rested on the widest possible dissemination of a common teaching, a common custom, and a common language. (Black 2001)

In fact, Islam, as a way of life, could only work if the general population in its familial, ancestral, and tribal networks was deeply imbued with its values and attached to its customs. Like all traditional societies it was based on harmony by the balance of candor against conciliation. Viewed a different way, Islam was comprised of two dimensions. It was organic in that its basis was human. But it was also abstract and universal in the sense that the teachings of Mohammed were thought to be adaptable to all persons and localities. They amounted to a program of personal cultivation in thought, word, and deed. Its operation required relatively few judicial figures and no partisan advocates, or lawyers, because every Moslem, being trained in the law, was capable of representing himself or herself in a Sharia court. (Hallaq 2010)

B. But in traumatized Europe and England, both of which had once been part of a unified Christian Empire, the new premise of rule required a new way of shaping human thought to match the new way of ordering human life. Moreover, the adjudicative mechanism had advanced much more rapidly than the educative method, and a replacement was required to fill the void left by the destruction of its single universal religion. By the eighteenth century, during what historians call The Enlightenment, however, the savants of Europe arrived at a new premise, which in certain ways, matched the approach of Islam. It did so in the sense that it had a positive view of human nature, rejecting Calvinist teachings. It also came to be founded on what were held to be universal principles, principles thought to be applicable to all persons of every rank and status. It began with three general assumptions: all persons were equal in the essential elements that made them human; all persons had the potential to grow and develop; all persons had the faculty of reason.

In fact, during the eighteenth century, Continental legal development became deeply imbued with a philosophical view that followed on the ancient Roman Stoic idea of *Sensus Communis*. It asserted that if members of the common population were given sufficient opportunity for cultivation and learning, they could substantially govern themselves. They would enjoy a prosperous and peaceful existence without the need of close legal oversight. These teachings came to be expressed during the eighteenth century Age of Reason as the Optimism of Leibnitz and Wolff, the Common Sense of Shaftesbury, Reid, and Thomas Paine, the General Will of Rousseau, and the *Sensus Communis* of Kant. This assertion of confidence in an innate human potential was centrally important in a way of life intended to be based on an enlightened citizenry. (Paine 2000)

With such respect toward humankind, modern Europe came to exemplify a high level of culture, that is, culture in the sense of cultivation in thought, word, and deed, with a special emphasis on personal demeanor and training of the mind. Because of this, Europeans generally gained a reputation for refinement and intellect. At the same time, because of the underlying importance of the ideological or scientific basis of its society, the philosopher became the key person for its operation, displacing the medieval theologian. In the environment of Europe the philosopher, like the artist and poet, might become a widely known and revered public figure. As a method of social order, however, the European approach was unlike Islam in that it was purely secular, purely rational in its outlook. Its method of governance negated the subjective, the intuitive, or religious element of human composition.

C. By contrast, developments in the Anglophone world had taken a different turn. In that environment, the strength of public order did not depend on the level of cultivation prevailing among members of the common population. Order was, instead, centered in a tightly unified hierarchical structure of rule. Rather than culture and learning among the common populace, it emphasized the personal freedom enjoyed by each legal subject—but it was freedom of a certain specific type. The private person was free from any requirements and standards in mannerism and speech, or any particular ethos of thought, word, and deed. In the English view, a wide latitude of behavior, even idiosyncrasy, was permitted among the common population so long as an individual did not exceed the limits set down by law. (Dewey 1998)

Although cultivated speech and deportment among those who ruled was crucial, the personal affect of individual subjects under their authority was of relatively minor importance. After all, operation of the system as a whole, rested exclusively with an elevated stratum, rather than the public at large. Most important was the general understanding that a retributive authority was always present for those who thought to violate the law. Not only an unbridgeable gap of class separated the two levels of the population, but in a legal sense they lived in two completely different realms: the upper based on hereditary entitlement, fraternal oath, social superiority, and legal privilege, the lower comprised of dispersed families, individuation, social inferiority, and life defined by legal rights. There remained, however, a single source of unity between the two strata: the realm of religiosity. Whereas the more philosophical approach on the Continent was rationally self-existent, as a complete system of thought, the transcendent Anglophone approach relied on a supernatural imprimatur. A particular understanding of the Judeo-Christian tradition provided the theological basis for its legitimacy. (Cannadine 1994) (Bellah 2006)

6. Progress and Apocalypes

A. The technology of ink brush and parchment had made possible the legal cultures of Islam, Medieval Christendom, and the guild law of England. Beginning in the modern period, technologies of navigation, warfare, and publication had made possible a new way of life. It had been based on the foundation of concentrated monetary wealth and concentrated military power, as well as mechanical print in the separate languages that opened the way to nationally unified educational and legal regimes. However, in the nineteenth century another period of innovation would bring another dramatic wave of

change. Once again there were many scientific and mechanical inventions during that period, but for purposes of governance they can be reduced to three of special importance: the steamship, railroad, and telegraphic communication. (Stern 2011)

These innovations did not have the profound consequences of what had occurred in the sixteenth century. But they came to be equally important in that they enabled the Western nations to not only extend their methods of finance and trade, but also their forms of governance over all parts of the world. The nineteenth century saw a race to conquer or colonize the last remaining unclaimed territories of the earth. It also marked the rise of modern empires, the advent of geopolitics, and the possibility of worldwide war. What had previously been lax and casually formed imperial networks could now become closely governed systems. Where there had been three different legal cultures--Anglophone, Civilian, and Islamic--separated by topography and distance, there now began to be confrontation and encroachment upon one another and a struggle for legal supremacy.

Around the world the patterns of legal development took different forms in different regions. Japan, for example, was quick to adopt its own version of the nation-state as well as an imperial structure administered on the Continental model. During the same period America became an imperial power, following the English example. As distant peoples became colonized by European Powers they would very often have the structure of the state imposed upon them. But rather than the nation-state the Anglophone Powers favored another legal construct for wielding control over foreign lands and exploiting their resources: the extraterritorial corporation. In fact, the corporate way of manifesting legal authority was much more agile than the state, and had the advantage of being insulated from public scrutiny and political controversy. From an imperial perspective it also provided a form of transnational intervention under the benign pretext of finance and trade. (Lesaffer 2009) (Williams 2013)

B. For the first time, because of their technical superiority, the Western powers were able to penetrate and control large parts of the Moslem world. In fact, by the early twentieth century much of Islam lay helpless before the armaments of the rising Western Powers. Ironically, where the world of Islam had once been seen mostly as an inconvenient barrier between Europe and England and their rich colonies in Asia, by the early twentieth century it had become a source of oil and an important geopolitical region itself. Under Civilian legal influence the law-based territorial state came widely to be imposed over deeply rooted Islamic populations. However, its structure of secular authority based on abstract principles only crudely fit with the organic workings of Sharia law. (Piscatori 1986)

Although both Civil and Islamic laws were established on universal principles, and they shared some of the optimistic teachings of human potential, they were not wholly compatible. When the state structure was imposed upon it the larger dimensions of Islamic law often became a disfigured caricature of its former presence. More than that, with the concentrated power of the state came the rise of repressive regimes that attempted to justify their policies by distorted combinations of Islamic and Civilian legal principle. The general result was often catastrophic for the legal tradition of Islam, except in matters, for example, of family and marriage, where its existence was irrelevant to the stability of a ruling regime. (Kingston 1996)

By contrast, Anglophone imperial influence came to be widely imposed on the Moslem world through the combination of the corporation and the sponsored tribal dynasty. In particular, the English policy attempted to replicate its monarchical and hereditary methods through the instrument of royal houses and servile kingdoms. Anglophone rule, after all, was based on a transcendent law and on the assumed superiority of an elevated ruling class. The methods of instruction in manner and speech, of rank and entitlement, were extended to scions of selected dynastic families. At the same time, the law that gave substance to the extraterritorial corporation worked on a transnational level, elevated above the modes of governance that ordered day to day life among the population generally. (Piscatori 2005) (Stern 2011)

C. The twentieth century, however, would bring an entirely new wave of seemingly miraculous innovations: the automobile, airplane, cinema, and radio. Far removed from scribal hand, and printed book, the advent of cinema and radio allowed government leaders in each individual nation-state to create an atmosphere of uniform understanding; it was also possible to mobilize vast populations for production and warfare. This was demonstrated during the second worldwide war of the twentieth century, as virtually the entire population of each belligerent country was united in martial fervor. However, this combination of technical innovation, geopolitics, and nationalism resulted in an enormous human catastrophe.

Following the widespread carnage and desolation of worldwide war, the Anglophone nations emerged with their infrastructures and resources virtually intact. Their combined advantage allowed them to easily dominate international economic and political affairs—but not in the realm of law, where its practices focused narrowly on issues of commercial contract and incorporation. Instead, the cataclysmic potential of the new military innovations urgently demanded a logical structure of order among nations with clearly intelligible methods of arbitration between them. Because of its explicit, universal, and rational principles, Civilian rather than the Anglophone tradition was drawn upon to provide the foundation for international order.

However, technical developments of the past would prove to be merely a prelude to what would come next. As the end of the twentieth century approached the entire world was being transformed by a technological explosion. The consequences were obvious on many levels, but in terms of law and governance it had an especial importance. The old international world of independent and sovereign nation-states was becoming overlain by an enveloping architecture of corporate finance and trade. Moreover, every human being, in whatever remote part of the world, was now coming under the influence of an electronically mediated reality that directly shaped each individual human life.

In particular, the combination of television, computer, and communication networks began to reshape the possibilities of global oversight and public understanding. The ties of investment and production, the extended reach of corporate intervention began to supersede the network of nation-states as the primary force in world affairs. As technology came to dissolve national borders, transcending barriers of topography and distance, it brought the three traditions of law even closer together. The conflicts arising from that encounter raised profound questions about what form of legal culture would eventually predominate, what conception of human nature would prevail, and what level of human trust would define the global age. (Giddens 1991) (Habermas 1996)

7. Universal and Transcendent

A. If the twentieth century had marked the effectual demise of Islamic law as a cohesive force, the twenty-first century brought a movement to finally eradicate its remaining vestiges, even in matters of family and marriage. The Conflict of Laws in the global age narrowed to questions of competition and compatibility between the two remaining methods of global order, Civilian and Anglophone. But because of the nature of the two legal regimes, the advantage in the changing technological environment undoubtedly favored the Anglophone regimen. Not only was the Civil law married to the historical nation-state, an institution being fatally weakened by technical advance, but that law was also inhibited by the framework of principles and ideals through which it dispensed justice. Its metaphysical assumptions and optimistic assessment of human nature seemed no longer relevant in a legal atmosphere determined more and more by the impersonal dictate of algorithms, Big Data, and Deep Learning. (Murphy 2012) (Fuller 2010)

By contrast, Anglophone law appeared to be entering an era of unprecedented expansiveness. Less restrained by set doctrines and principles, pragmatic in its operation, its fellowship of law could easily adapt to changing technical and political circumstance. Independent of the nation-state it could rely on its favored instrument of oversight, the corporation. Moreover, because the English language had become, in effect, the global language, it was becoming possible for that law to extend a mono-phone authority across all lands and peoples. Most of all, Anglophone law had the advantage of transcendence, as it presided from an elevated realm of status and knowledge existing beyond the awareness of those within its jurisdictions. (Breyer 2015) (Kennedy 2016)

B. A thousand years in the past the simple tools of the scribe had made each of the three legal traditions possible. Five hundred years in the past technical advance, especially the printed book, gave impetus to the modern Continental and English structures of law. It made centralized nation-based legal regimes possible by setting forth a fixed and uniform basis of publication and communication. In the twenty-first century the new tools of electronic sound and image were providing an even more effective educative half of a globalized Anglophone legal culture. The method of instruction no longer depended on permanently instilled knowledge to shape the public mind. Instead, it produced a cognitive atmosphere filled with the continuous flow of information. For purposes of governance, this not only rendered obsolete the laborious methods of rote learning, but it fit well the basic Anglophone division of knowledge between those who wielded legal authority and the absence of knowledge among those who comprised a compliant global population. (Luhmann 2000)

In the Anglophone approach, in fact, cultivation and learning among the public had never been of crucial importance. Unlike the Civilian tradition, it had never relied on the promulgation of universal principles among all levels of status and rank as

its basis of order. Instead, it had relied historically on the instrument of belief in a Christian or Judeo-Christian religiosity to underlay its method. In fact, the stated purpose of the English law was very different from the object of its Continental opposite. English legality did not look toward a peaceful and prosperous society for all, a future world based on humanist principles, the traditional goal of the Civil law. Instead, the often stated purpose of Anglophone jurisprudence was more straightforward and concrete: imposing legal order upon an obedient public, the fellowship would confer the benefits of its own Rule of Law. (Slaughter 2004)

C. In fact, central to the operation of this Anglophone regimen of global legality was the element of human trust—but it would be a particular understanding of trust and its role in human affairs. First of all, patterns of human trust, or relations of trust among the public generally, were of only secondary consideration. After all, based on Puritan assumptions about human nature, the innate human tendencies could be trusted with absolute certainty, because they invariably descended to turpitude, malevolence, and chaos. But this was not of crucial importance, because the structure of authority would not be anchored in the attitudes and habits of the multitude of persons.

Instead, the element of personal trust would be of fundamental importance in the composition of its transcendent body of legal authority. In the specific case of Anglophone law, that importance was also related to the Puritan Calvinist view toward human nature as being essentially depraved and corrupt—but to a different purpose. After all, this generalized view of human malignancy was not limited to members of the public; it included members of the legal fellowship as well. Especially, the traits of avarice and contentiousness as well as an impulse to dominion over others, were of crucial importance among the ruling fellowship. (Breyer 2015)

Because of what might be called its theological premise, Anglophone law since the seventeenth century, did not lament the corrupt nature of human beings, nor did it expect to change that nature. Rather, it attempted to harness those impulses, to foster them, and to make the drive for power and gain the unfailing foundation of its collegial method of rule. In the case of a fellowship founded in the commerce of law it was only necessary that its members be bound together in their collective enterprise to wield authority and to gain emolument in the process. Their adverse assessment of human predictability—as having an innate and ineradicable gravity, descending to malice and rapacity--had provided the foundation of a stable and continuous legal order for a thousand years. It could be trusted in the twenty-first century to provide the central element in a Rule of Law for the global age.

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Arts, Virtue and Character: Perspectives from Philosophy and Psychology

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Abstract:

In today's world, the tendency to live constantly connected to a virtual digital space makes it difficult to have an ambiance that fosters paused reflections. Often times, one needs to make a conscious effort to stop and think if one recognises the importance of reflections for making the deliberated choices needed for self-development. For many people, a break from the frenzy of activities is facilitated by arts, such as narratives and music. Interestingly, more than just means of entertainment, the arts can be important catalysts for learning processes. Ancient philosophers affirmed that music is helpful in education to virtue as it tempers the emotions of a child to raise it towards the good. However, such high regards for art and music in character formation is often forgotten today.From the perspective of contemporary narrative philosophy, each action or choice which builds up into the habit is best understood as part of a continuous narrative. One understands the self better when considering it as the protagonist of a narrative moving from a beginning towards an end, guided by chosen goals which are good for the acting subject. Additionally contemporary psychologists acknowledge the role of the arts in character formation. This conceptual paper brings together ideas from psychology and philosophy in order to explore the role of some forms of art in character development. The appreciation of the on-going construction of the plot of one's life-story guided by the intrinsic goods that promote human flourishing (including aesthetic experiences), may serve as a foundation for understanding the importance of coherence and unity of life for building character.

Keywords: narratives, music, character development, self-understanding, psychology, philosophy.

Introduction

In today's world, the ease of having paused rational reflections seems to decrease as the tendency to live continuously connected to a virtual digital space increases. Often, one needs to make a conscious effort to stop and think if one recognises the importance of paused intellectual reflections for making deliberated choices needed for self-development. Indeed, the desire to direct one's life purposefully towards identified goods requires a deep self-understanding and an understanding of those goods. For many people, such a break from the frenzy of activities is facilitated by listening to music or learning to play a musical instrument. Many fields of enquiry point to the role of music in calming one's nerves or as a source of relaxation and as such a preparation for other intense activity requiring other skills. Philosophy and psychology are only two of these. This attribute of music in preparing the individual for other tasks has been observed along the ages.

Ancient philosophers affirm that music tempers the soul, calms our troubles and gives rest. Music calms the passions making their subject more open to the influence of reason. Such an influence facilitates conscious character formation. In fact, Plato affirmed that music is helpful in education to virtue as it tempers the emotions of a child to raise it towards the good. However, such high regards for art and music in character formation is often forgotten today. A re-awakening of the sensibility to the arts, which was central to holistic education in the past may be beneficial to contemporary life.

While examining the effect of music on our lives we may ask: How can music contribute to wellbeing of the individual? Can music help students to improve their study habits and increase their capacity reinforcement learned habits? Could classical music or natural sounds, or the appreciation of narratives be antidotes for bombardments from social media or a means to facilitate the peace of mind that one needs for study, for calmness, or for the serenity that is required for reasoning and making sound judgements? Could the aesthetic experience contribute to the psychological preparations for learning as it rests the mind? One may also ask for the role of other narrativity in self-understanding and development. Can one see the

different experiences in life as part of a coherent narrative? Can meaning making, even with the temporal dispersion of one's actions and the complexity and diversity of daily activities, be enhanced by a narrative self-understanding?

This paper explores some ways in which some arts aid character formation and the acquisition of virtues. Through the lens of narrative philosophy, it shows the nexus between musical appreciation and the acquisition of virtues that comes when musical training is connected to various aspects of human life. While this is a philosophical paper, it uses insights from contemporary psychology to reinforce the discussion of the topic.

Ancient Wisdom

The explanation of the role of the arts including music and drama in preparing the soul for ordered choices and intentional orientation towards the good is a topic in ancient philosophy. Aristotle's description of art, especially tragedies, and the role of our imitation of nature in artistic representations compares human lives within classic literature with philosophy[1] (Aristotle). Narrative philosophy may be linked to the lives of characters in dramas. For Aristotle, *Poetics* (as a broad term corresponding to what is contemporarily known as arts, drama, narratives, poems with its rhythm and musical structure etc.) is natural to humans and indeed distinguishes us from animals (Kenny & Amadio, 2018). As will be seen further on, the presence of narrative structure in human life has been developed in contemporary philosophy. Alasdair MacIntyre is perhaps the most influential contemporary theorist of narrative philosophy developed within an Aristotelian-Thomistic framework and this paper will refer to his work.

Plato is often quoted when talking specifically about music in human life. Even though many quotes about music which were attributed to Plato are not traceable to him, his well-known book which includes a discussion on the character of people in the society, *Republic*, emphasizes the role of music in the development of the society.

Music calms the passions and thus can make the listening subject more open to the influence of reason. Such an influence would facilitate conscious character formation. If the passions are made more open to the influence of reason, the capacity to identify one's true good and to follow it can be enhanced. One can infer that the possibility of knowing which actions are truly good, in as much as it is a task of discernment attributed to the intellect, may be helped by the calming effect of music. When such good actions are chosen and repeated by the subject, they develop habits which move them towards their ultimate end. Those good habits are virtues. In fact, Plato affirmed that music is helpful in education to virtue as it tempers the emotions of a child to raise it towards the good.

Tempering the soul is needed today, as many young minds are steeped in habits which make it difficult for them to be open to change or to understand abstract thought and systematic logical analysis. Even more difficult for today's youth is the discernment of helpful principles as many common expressions and slogans for their daily activity are often general notions picked up while overhearing erroneous and baseless arguments among others around them, and not conclusions made after calm reflections. If music tempers the soul, as Plato affirms, one may infer that it could help preparing one for deeper reflections on the good for human life and thus facilitate the process of directing oneself towards what one sees as good.

In order to maintain activity leading to acquiring internal goods such as virtues and character strengths, individuals may need to reflect on its value understand its implications for a good life and repeatedly make choices in conformity with their life's goals. Each choice can then become a step towards achieving one's objectives. Music may contribute to mental preparation and thus prepare the subject for making pondered decisions.

The many choices which one makes, with regard to learning music or appreciating its beauty, are spread out over a period. Developing an ear for music or increasing one's capacity to appreciate beauty requires repeated efforts at improving one's of grasp of the richness of melody and rhythm. Like other actions, the learning process is affected by temporal condition and the spread of various actions over time. Within the process of self-development, there is often the dilemma of how to understand the integration of temporally dispersed choices and actions into the framework of one's efforts to reach a specific goal (Ogunyemi, 2017). Having to carry out activity in sequences (as opposed to a simultaneous eternity) makes it challenging to purposefully unite them. The human being's temporal experience brings with it the challenges in self-

[1] Philosophers who are well known for writings related to the narrative self include, Alasdair MacIntyre, Paul Ricoeur, Charles Taylor, and David Carr. Many of these authors, as well as Dan P. McAdams (a contemporary psychologist carrying out ongoing research on the narrative study of human lives) base their analysis of narratives on the Aristotelian concept of narratives and arts especially noticeable in the book Poetics.

understanding and meaning making over time. Contemporary philosophy identifies Narrative self-understanding as a tool for the development of virtues in a sustainable way.

Contemporary philosophy

In MacIntyre's works and especially in *After Virtue*, he presents the human being as the protagonist of a personal narrative which is intertwined with narratives of other people in society and also with the history and tradition of that community. The narrative approach to understanding the human being in relation to his end gives a global perspective of humans which helps to deepen our understanding of ourselves.

MacIntyre's views on the intelligibility of human action within a narrative are a prominent theme in the book *After virtue* and *Ethics in the Conflicts of Modernity*. For MacIntyre, narrativity is a central element in any attempt to understand the meaning of any individual actions. The way in which actions are given meaning within the particular contexts is by their being fitted into stories and narratives which necessarily extend beyond specific action settings to include the whole of the individual's life, the stories of one-on-one relationships within families, society and traditions of thought and enquiry. In its basic sense, a narrative is a meaningful account of actions and their circumstances which are ordered according to a particular intention or set of intentions. Each action, even though situated in a different temporal point from others, within an apparent simple sequence is actually linked to others through a narrative structure inherent in human life.

Human beings, in the process of self-improvement and development, often set specific goals which take them towards bigger goals. This hierarchy of goods in seen both in Aristotelian-Thomistic tradition. The journey towards the greatest good or *telos* involves many steps which are fuelled by the desire for that ultimate good. In that sense, the *telos* connects all these varied steps, and narrative self-understanding throws more light on that nexus. One can say that the ultimate end (*telos*) of the person connects all the individual's actions while he or she weaves his more or less coherent life's narrative around it with each of his individual actions.

The quest for the *telos* involves many actions and those actions which move one towards that end are good for the acting person while those that move them away from the desirable end are bad for them. Many of these actions will need to be repeated and may become a habit or second nature to the acting person. These repeated good actions forming good habits are the virtues. Virtue here is seen as a stable character disposition and is acquired with time with repeated actions. Acquiring good habits often requires self-control and discipline. According to MacIntyre, "the virtues are precisely those qualities the possession of which will enable an individual to achieve *Eudaimonia*, and the lack of which frustrate his movement toward the *telos*." (MacIntyre, 2013, p. 148). Interestingly, these virtues are not limited to only one sphere of life as a virtuous person exhibits the virtues in all aspects of life. The virtues that one strives to acquire in the musical aspects of one's life form part of the life story. MacIntyre taking up the Aristotelian concept of a virtue affirms that a virtue is lived in diverse situations, and "the unity of virtue in someone's life is intelligible only as a characteristic of a unitary life, a life that can be conceived and evaluated as a whole." (MacIntyre, 2013, p. 52). Thus, his concept of selfhood calls for a self whose unity resides in the unity of a narrative which links birth to life to death, as a narrative from beginning to middle to end (MacIntyre, 1990).

Considering the importance of the *telos* for self-understanding, for the identification and acquisition for virtues, one may then ask: how can one identify the *telos* for the human being? In relation to that question, MacIntyre speaks about the difference between "man-as-he-happens-to-be" and "man-as-he-could-be-if-he-realised-his-essential-nature". Thus MacIntyre refers to the human being's essential nature as a guide for constructing one's personal narrative. Thus, human nature and the laws inscribed in it forms the coordinates and guides to what a successful personal narrative should be.

The transition from the former state to the latter pre-supposes some metaphysical concepts: potentiality and act, some account of the essence of a human being as a rational animal and above all some account of the human *telos* (MacIntyre, 2013). MacIntyre's approach to ethics, as is often seen within the Aristotelian-Thomistic Tradition, is characteristically teleological, in that it interprets individual actions in terms of their ultimate end (*telos*); for him, that which is the good thing to do is that which is virtuous, and that which is virtuous is nothing else than that which will effectively lead to human fulfilment, specifically *Eudaimonia*.[1] In all, virtues are built with different individual actions all linked together by the *telos*

[1] MacIntyre's interest in Eudaimonia is Aristotelian. Aristotle regards human life as consisting of aims and ends and describes the end at which all men ought to aim. He describes this end as Eudaimonia and this word is usually translated as 'happiness'. Interpreters of

and best understood through the narrative structure inherent in life. One may infer that the preparation of the mind for understanding and calm reflection, a role ascribed to music could foster a deeper understanding of the essence of reality, including that one's own personhood and even one's own *telos* under appropriate circumstances. Thus the aesthetic experience and appreciation of beauty are part of the thread that each protagonist of a personal myth weaves together with other events.

Insights from Positive Psychology

Along the centuries, from its inception as an empirical field of enquiry separate from philosophy, psychology studied the human mind with emphasis on disease states. Recently, psychologists lay great emphasis on the psychology of normal individuals and propose theories of normal psychology, happiness and well-being. For example, Martin Seligman[1] made a strategic shift from studying pathology to health, resilience, and high performance, creating a more positive psychology. These points of psychology can be interpreted in the light of the philosophical quest for understanding human fulfilment. The concept of narrative or of the development of personal identity through constructing life stories is one such recently explored topic which is of notable importance in contemporary psychology. An increasing number of psychologists argue that people give meaning to their lives by constructing and internalizing self-defining stories (Josselson, Lieblich, & McAdams, 2006).

Interestingly, contemporary psychologists acknowledge the importance of arts for understanding human happiness and character strengths that lead to happiness and wellbeing. Positive psychologists, Peterson and Seligman, list the "appreciation of wonder" as one of the signature strengths that lead to human satisfaction in life. They describe appreciation of beauty and excellence [awe, wonder, elevation] as noticing and appreciating beauty, excellence, and/or skilled performance in all domains of life, from nature to art to mathematics to science to everyday experience. Such appreciation, although it covers many fields, would apply to music and narratives as common forms of art through which humans can see beauty and excellence in everyday life. One may ask: Could this "appreciation for wonder" be a counterpart of the aesthetic experience which philosophers describe as an intrinsic good, a part of human fulfilment? Appreciation of music would then be an element that contributes to fulfilment. Music can be a catalyst for self-understanding. It can calm the passions and thus can foster development of the human mind.

From another perspective within positive psychology, Csikszentmihalyi while describing flow, the psychology of optimal experiences, relies on the example of satisfaction and engagement that people can attain with musical activities. His description of flow presents this psychological state as the closest to happiness which individuals feel. Attaining flow is a pointer towards satisfaction with life and music is one of the common examples of activities that can lead to flow (Csikszentmihalyi, 1991).

Music and Character

We will approach the discussion on the possible contribution of music to character formation from two perspectives. First, the role of music as a preparatory activity for noble activities by the soul, secondly music as a booster for cognitive capacities and thirdly the connections between the virtues acquired in music and the other aspects of personal development and character building.

When it comes to discussing the effects of musical training on personality development, one sees that a training in music requires discipline. The professional musician needs to develop some habits that are essential for dexterity and having high standards in their profession. Such training usually requires many hours of dedicated practice. In striving to achieve these habits, the musician can also inadvertently gain self-discipline and self-mastery among other virtues. If one were to consider the unity of the human being, one can infer that these acquired virtues are not necessarily applicable to musical performances but can be linked to other aspects of life.

Aristotle generally find this translation unsatisfactory as happiness in common language describes a feeling whereas Aristotle's Eudaimonia means a certain kind of activity which is in accord with virtue.

[1] Commonly known as the founder of Positive Psychology, Martin E. P. Seligman is a leading authority in the fields of Positive Psychology, resilience, learned helplessness, depression, optimism and pessimism. He is also a recognized authority on interventions that prevent depression, build character strengths and promote well-being.

A specific example of a development in one's character is the ability to be constant in practising the playing of an instrument if one is to master that art. Being part of a choir and training one's voice may help one learn to persevere in the practice of actions which may be arduous and, in themselves, amount to little but which are essential for the mastery of one's art and excellence in performances.

An application of narrative philosophy to this example makes us infer that the self-mastery control necessary for developing in the chosen art could be applied to other areas of one's life which require such habits. Such habits are formed in one subject whose actions are interrelated through a continuity that takes the form of a narrative being lived. Thus, those temporally dispersed actions come together with the plot giving rise to a meaningful narrative.

Music is regarded as a booster for cognitive capacities. Scholars affirm that music education facilitates the human capacity for other intellectual activities, such as academic ability noticeable in the improved performances in cognitive tasks in students undergoing music education. Costa-Giomi (2004) examines the evidence to support the assertion that attending music lessons can produce significant increases in other cognitive areas. Many times music education will focus on developing skills at reading and writing music of different types, training the ears in the aesthetic appreciation of sounds by playing instruments. However, such training develops the cognitive areas and thus may improve the application of one's intellectual capacity to other cognitive tasks. The investigation of the effect of musical training on the application of one's intellectual capacities on tasks other than music could be an interesting topic for empirical evaluation. Scientists have established a positive correlation between language capacity and musical education. One could investigate further on the possibilities of association between other cognitive functions that are related to recognizing values, and music education.

There are studies which show significant correlation between music education and improved cognitive abilities related to academic performances. Even when the mechanisms of the correlation between music education and its impact of other aspects of cognitive functions are not clear, there is a positive relationship between learning music and academic achievement (dos Santos-Luiz, Mónico, Almeida, & Coimbra, 2016). The effects of music on cognitive capacities of students have been studied by other scientists and educators with similar results. In a study comprised of primary school children, the test scores on inhibition, planning and verbal intelligence increased significantly in the two music groups over time as compared to the visual art and no arts control groups (Jaschke, Honing, & Scherder, 2018). In fact, "after controlling for intelligence, socioeconomic status and motivation, music training is positively associated with academic achievement" (dos Santos-Luiz et al., 2016).

Considering a narrative integration of different aspects of life into one purposeful unit, a virtue acquired in one domain can be practiced in various different situations that call for the practice of that virtue. The implications of such positive impact of music on learning and cognitive functions could have consequences that go beyond education in musical skills. Given the proven benefits of music to the development of cognitive capacities in adolescents, musical training could be a step towards preparing the mind for learning truths. These truths are not limited to those for practical everyday living or scientific discoveries; they may extend to capturing the essence of reality. An understanding of the nature of reality may help one's relationship with it. For example, if one is better equipped to understand the importance of a balanced ecosystem, and one is better able to recognise the effects of responsible care of the environment on ecological balance, it may be easier to accept injunctions or directions aimed at protecting the environment. In fact, such a deep understanding of the features or aspect of nature and the necessity for working for equilibrium among the inhabitants of the same earthly space may already motivate responsible ecological behaviours. The insight produced from this knowledge can fuel a desire for what others will perceive as ethical behaviour, it will, however, stem from a love for nature. That love for nature is sustainable because it will be a rational conclusion from understanding the goods at stake in the quest for ecological balance. In this example, love is taken in the Aristotelian-Thomistic sense as a desire for possessing a known good.

Conclusions

Music tempers the spirit prepares it for learning-philosophy and music education research. If music improves cognition, it may enhance a knowledge of the good, and facilitate a motivation to direct one's life towards the good. Looking at MacIntyre, man as he is man as he would be if he knew what his true good is, a logical correlation exists between the possibilities of living a good life and knowing what a good life really means. Knowing that which is one's true good (the ultimate good qua human being), increases one's chances of acting according to it. The decision to act according to that known good requires the practice of virtues, and the effort to repeat good acts and form habits is central to character formation.

The unity of the person and narrative coherence would explain that virtues acquired through music education (enjoyable ones that can lead to flow) are applicable to other aspects of life. They can influence character if the learning subject see the abilities developed in music as a channel to order their natural tendencies to producing goods of the mind and body.

From all the above observations from psychology, philosophy, education in music, etc., one can infer that a training in music, as it forms people in virtues and cognition (and understanding), can aid character formation. However, such a help from music to proper character formation is not automatic as one can acquire bad habits and be tenacious to them. One can be diligent and consistent in doing things that are harmful to the self or to others. Note that, as discussed earlier, one often does these harmful things because one erroneously perceives them to be good. It follows that, for music training to be helpful, it would have to be concomitant with teaching positive values and helping students to harness their natural character traits thus strengthening them and building up their character and personality.

From the perspective of narrative philosophy, each action or choice which builds up into the habit is best understood as part of a continuous narrative. One understands the self better when considering it as the protagonist of a narrative moving from a beginning towards an end, guided by chosen goals which are good for the acting subject. I propose that the appreciation of the on-going construction of the plot of one's life-story guided by the intrinsic goods that promote human flourishing (including aesthetic experiences), may serve as a foundation for understanding the importance of coherence and unity of life for character formation and value education.

From the discussion on the effects of music on character, one sees that music can contribute to wellbeing of the individuals by preparing them for calm reflection and possibly improving their chances of making choices that move them towards what they are able to understand as truly good for them. Music may help students to improve their study habits and other aspects of their character as the virtues associated with musical training may reflect in other aspects of their lives.

Although this is yet to be tested, introducing the aesthetic experience into college education could promote a habit of self-reflection or examination and also help students grow in virtue. It seems that the aesthetic experience contributes to the psychological preparations for learning as it rests the mind. Concomitant education in virtues (for example through activities that stimulate living specific virtues) could potentiate the capacity of education in arts as both music and narrative self-evaluation could facilitate character formation. In addition, the dedication necessary to produce a musical masterpiece could train the mind to have the strength to do what contributes to one's true good even when that good is difficult to attain.

Another possible topic for empirical verification could be the evaluation of classical music or natural sounds as antidotes to agitation and stress which people may get from a frenzied lifestyle and from bombardments from social media or as a means to facilitate the peace of mind that one needs for study, for calmness, or for the serenity that is required for reasoning and making sound judgements. Such empirical evaluation may confirm a positive role of music and narrative arts in character formation.

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The Aspects of National Branding: Conceptual and Theoretical Framework

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Abstract

The concept of countries as brands has been increasingly recognized in the post-modern global world. The terms "national brand" or "country brand" define a symbolic construct, which emphasizes the attractive, unique and sustainable qualities of a nation. This paper argues that the national brand and its competitiveness, based on the new approaches of nation branding using sociological and economic theories and concepts, can establish and communicate a specific image of national identity. This paper presents some empirical findings of a study that investigate Croatian national brand. Nation branding might be obtained by a sustained dialog between government, decision makers, business, cultural and civil community, leaders, and individuals in the society. A country brand, therefore, consists of an identity and image, as a system of signs and codes, where nation branding applies widely used marketing concepts for promoting the country's image and attractiveness. Finally, the paper argues that "national brand" or "country brand"is not just a function individually performed by governments or companies, but an integrated and concerted effort on behalf of all interested stakeholders.

Keywords: country brand, national brand, image, marketing, Croatia.

Introduction

Every nation has a certain image, be it favorable or unfavorable. These perceptions determine the development of the country, most commonly with respect to foreign direct investments, national sport´s achievements or tourism. A brand takes the form of a symbolic construct although this definition does not emphasis enough the abstract dimensions of the brand. It is clear that a brand is differentiated from the simple idea of a product through a set of values that go beyond mere functional performance.[1] Combining both, producers and consumers, branding generally brings advantages to both and customers are always a fundamental entity in branding decisions, either at the starting point, or as final arbiters.[2] Developing a sustainable and successful brand is a complex image management issue. The paper also considers developing a debate on the challenges encountered by the "national identity concept" in different social fields, and try to incorporate "branding strategy type" in a larger multidisciplinary perspective of social identity, considered by the fields of sociology and marketing. The scientific disciplines as sociology, psychology, economy tackle elements regarding the image. The study of the image takes place in a fragmented way, within several independent scientific fields, each dealing with a specific category of the image according to the discipline within which the notion of "image" is addressed. The term "image" has different connotations, to suit the context in which it is used. Nowadays the importance of country image and country brand in the market, but also in the public diplomacy is growing rapidly. Nation branding is also a part of public diplomacy and is considered an instrument although nation branding and public diplomacy have different goals, strategies According to Szondi G. there are five different views that can be identified concerning these relationship.[3] The first one relies on the concept that these two areas do not share any common grounds. The second one, which is the most popular amongst scholars is that public diplomacy presents some advantages in the direction of making public diplomacy more strategic, as such, is a part of nation branding. According to a third approach nation branding is, not only a part of public diplomacy, but an instrument of public diplomacy where nation branding could be used in international relations, as well as, in public diplomacy. In the fourth approach, public diplomacy and nation branding share some common grounds with some similarities between them. The final option argues that both nation branding and public diplomacy have a common goal of

[1] Ind, N., (1997), The Corporate Brand, Macmillan Press, London.
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creating positive nation image. Nation branding has a more European root and appeal of clear British dominance by Simon Anholt and Wally Olins, the two 'gurus' and strong advocates of nation branding who have largely contributed to its evolution and practice, whereas public diplomacy was paved by American scholars and practitioners, and it was described as a 'peculiarly American aberration'.[1]

Methodology - Brand Perception and Rankings

The research methodology is mainly summarized to all appropriate methods and techniques used for collecting and processing empirical data and information, respectively to observing, categorizing and analyzing data so that it can be founded the addressed theoretical elements. Nation Brands Index[2] takes the pulse of international public perception by polling individuals in 50 countries about their views of a target country's structure of governance, exports, tourism, people, culture, heritage, investment, and immigration. It measures the power and quality of each country's 'brand image' by combining the following six dimensions:

Source: The Anholt-GfK Nation Brands IndexSM (NBISM)

Simon Anholt writes in a report (2007) that "every responsible government in the global age, is duty bound to take steps in the management of their nation's reputation, since the only sort of government that can afford to ignore the impact of its national reputation is one which has no interest in participating in the global community, and no desire for its economy, its culture or its citizens to benefit from the rich influences and opportunities that the rest of the world offers them.".[3]

[1] Laqueur, W. (1994) 'Save Public Diplomacy – Broadcasting America's Message Matters' Foreign Affairs 73(5): 19-24., quoted in: Vaxevanidou, M., (2017), Nation Rebranding in A Period of Crisis and the Role of Public Diplomacy: The Case Study of Greece. Journal of Media Critiques, Vol. 3, No. 11., p. 59.
[2] The Anholt-GfK Nation Brands IndexSM (NBISM). < https://nation-brands.gfk.com/ >
[3] Anholt, S. (2007). Competitive identity: The new brand management for nations, cities, and regions. New York, NY: Palgrave Macmillan, p. 3.

Because of the continued increase of the importance of national branding numerous institutions around the world are trying to "measure" the strength of individual countries as brands. Such rankings can be used for additional promotion of individual countries as they are mostly based on extensive public opinion surveys.

Country image and country brand

Nowadays, there are many differences between country image and country brand. According to Kunczik, "the image of a nation is formed by a highly complex communication process involving diverse information sources. [...] Those who create the most powerful images are international TV and radio, newspapers and magazines, cultural exchange programs, commercials, books, news services. Add to this education and travelling, i.e. the degree of personal experience related to certain foreign cultures that also has an important role in building an image".[1] Brands have been understood as crucial devices for contemporary capitalism, in so far as they mediate and organize global flows of production and allow for the subsumption of the cognitive labor of consumers in mediated societies. Generally, we could agree that each country has its own image. Interpreting existing definitions in literature on the image of a country/nation, it is easy to see that some of these terms give a small, custom meaning, while others cover a wider area, describing the image as an umbrella concept.[2]

Figure 1 - Country image definitions[3]

Author(s)	Definition
Bannister – Saunders (1978, p. 562)	Country image is an overall image that is constituted by variables like peculiar products, economic and political development, historical events and relationships, traditions, level of industrialization and of technological development.
Martin – Eroglu (1993, p. 193)	Country image is the set of normative inferred and informational beliefs of individuals on a country.
Kotler et.al. (1993, p. 141)	Country image is the sum of people's beliefs, ideas and impressions about a certain country.
Szeles (1998, p. 96)	Country image is an internal and external framework of the opinions and beliefs on a people, nation and country and the simultaneously objective and subjective psychological contents of eterogeneous and generalized value judgment thereof.
Verlegh – Steenkamp (1999, p. 525)	A mental interpretation of a country's inhabitants, products, culture and national symbols.
Brijs et.al. (2011, p. 1260)	Country image represents all that a consumer attaches to a country and its inhabitants (and not to its products).

Relating to the literature in the field of marketing, an image is presented in a number of the following brand image definitions: [4]

[1] Kunczik M., (1997), Images of nations and international public relations, New Jersey: Lawrence Erlbaum Associate, Publishers; p. 41.
[2] Cotirlea, D. A., (2015), Country image vs. Country brand: differences and similarities, ECOFORUM, Vol. 4, Special Issue 1; p. 166.
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[4] Išoraitė, M., (2018) Brand Image Development, ECOFORUM, Vol. 7, Issue 1(14), p. 1-2.

Figure 2 - Country image definitions in the field of marketing[1]

Author	Definition
Malik , Naeem , Munawar (2012)	Brand image is an integral component of brand equity as it conveys the worth of the brand to the consumers.
Arora , Stoner (2009)	Brand image represents the emotional aspects that identify the brand of a company or its products, and has a powerful impact on consumer buying behavior.
Aaker (1992)	Brand image as a "set of associations, usually organized in some meaningful way".
Keller (1993)	Brand image as a"perceptions about a brand as reflected by the brand associations held in consumer memory".
Aaker (1997)	While Brand image represents all the emotional aspects that identify a brand, brand personality represents human characteristics that have been given to a brand.
Kalieva (2015)	"Brand" and "image"—are single, but not identical concepts. "Image" in relation to "brand" is perceived by the target audience as "a generalized portrait" of the branded object. The image-generating qualities are planned actions of the branded object, demonstrating them we can form public opinion.
Lee , James, Kim (2014)	Brand image forms the basis for making better strategic marketing decisions about targeting specific market segments and positioning a product.
Herzog (1963)	Brand image is the sum total of impressions the consumer receives from many sources.
Dichter (1985)	Brand image is the configuration of the whole field of the object, the advertising, and more important, the customer's disposition and the attitudinal screen through which he observes.
Chien-Hsiung (2011)	Brand image is indispensable for marketing where customers infer the quality of products by the brand image and are further stirred up the behavior of purchasing.
Ballantyne, Warren , Nobbs (2005)	Brand image as the material property associated with the brand, such as the product name and the packing, which could make profits or sense for customers and help or increase describing the characteristics.
Dobni (1990)	Brand image as the brand concept that customers held.
Robert , Patrick (2009)	Most brand image was subjectively perceived image, which was interpreted from the rationality or the sensitivity of customers.
Magid, Cox (2006)	Magid and Cox (2006) considered brand image as a set of assets and liabilities linked with brand name and sign that the assets and liabilities increased or reduced the value by the enterprise providing products or services for customers. Brand image included the customer responses to the brand name, sign or impression, and also represented the symbol of the product quality.

[1] Ibidem.

Porter (1997)	Porter (1997) measured brand image from two dimensions, namely the symbol and the function. With adjectives to measure the two dimensions, the measuring items mainly focused on the utility of the brand regarding the function, while words like symbolic, reputable, status symbol, and identifiable were contained in terms of symbolic image. Positive and negative adjectives, such as simple, romantic, successful, common, ordinary, obedient, calm, and elegant, were utilized to describe the characteristics of users.
Schiffman , Kanuk (2010)	A positive brand image will enable marketing program can be liked and be able to produce unique associations to the brand that always exist in customer retention.
Pujadi (2010)	Brand image is often referenced in the psychological aspects of the image or impression that is built into the subconscious of consumers through the expectations and experience of taking the brand over a product or service, thus forming a positive brand image is becoming increasingly important to be owned by the company.
Winarso (2012)	Brand image is also regarded as a description of the offer of the company which includes the symbolic meaning associated customers through specific attributes of the products or services.
Hawkins, Best, & Coney, (2004).	Brand image is a perception in the mind of the customers a good impression of a brand.

The above brand image definitions show that branding, consequently is not only the consequence of a center of action "the seller" which add the layer of the brand to its product, but can also be understood as the realization of an assemble of distributed actors in the form of a public. It is important to notice that, despite its original relation with markets, brand image do not pertain to firms alone. Moreover, the notion of image brand does not only refer to the "mark" or the "logo" through which a firm, a political party, or a state can be visually recognized. Image brands represent a shared imaginary, culture codes and sense of belonging.

Beyond Branding and Identity

Nation branding' incorporates political, economic, cultural, sociological and historical approaches. Nation branding can also be defined as the strategic self-presentation of a country. According to this, creating reputational capital through economic, political and social interest, nation branding can be examined as a part of public diplomacy and is considered an instrument of public diplomacy. In this case, the role of governments is crucial in influencing public perception, especially in protecting the country's reputation, correcting poor or negative images and stereotypes public, wherefore diplomacy becomes the vital function. According to Ham P., the modern world of geopolitics is being replaced by the postmodern world of images and influences.[1] Therefore the traditional diplomacy is disappearing and identity politics is becoming the main activity of politicians and states. There is a widespread consensus that if national brand can reflects the marketing efforts of brand management it needs to correspond to brand identity, branding strategies and brand management. These invisible and unwritten concepts of the business are undertaken by public diplomacy. In this context according to Olins W., whose book *Trading Identities: Why countries and companies are taking on each other's roles* established a linkage between state branding and companies, countries should act like companies. According to Olins W., countries have always branded themselves and it is just a new term for image management as the strategic self-presentation of a country with the aim of

[1] Ham, P. van, (2002) 'Branding Territory: Inside the Wonderful Worlds of PR and IR Theory', Millennium 31(2): 249–269.

creating reputational capital through economic, political and social. Therefore, there are six basic stages in building country image brand: [1]

Forming a work group with representatives of government, industry, the arts, education and media;

Establishing how the nation is perceived both internally and externally by means of qualitative and quantitative research tools;

Establishing the strengths and weaknesses of the country, and compare them with other similar research data, whether they originate within the country or outside;

Creation of a central idea, powerful and simple, on which the strategy is based and which captures the unique qualities of the nation;

Message coordination, especially with respect to tourism, inward investment and exports;

Formation of a liaison system, within the working party, to implement the programme and encourage supportive actions from appropriate organizations in commerce, industry, arts, media and so on.[2]

According to Anthony Smith the concept of national identity embodies a historic territory or homeland, common myths and historical memories, a common or mass culture and duties for all members, a common economy and increased territorial mobility for its members. [3] Benedict Anderson argues that the nation is to be imagined as a unique entity in terms of time and space and his concept of nation is understood in terms of "imagined community".[4] Within the imagined national community, new narratives can change people's perceptions of what constitutes their national identity Nowadays, the mythical edifice of national identity described by Anderson or Smith starts to be challenged by the emerging of other multiple complex structures and consequently, the idea of national identity, which represents the content of the branding nation strategy, has to be rigorously interrogated. Therefore, the concept of nation branding has an extended tradition in the economic field. That means that nation branding becomes a more recognized and a more familiar concept and it is important to note that the principles and basics for nation branding are not too distant from those applied to traditional brands.

World Cup 2018 – How Football can Brend the Entire Nation

Sport is one of the most profitable industries in the world. One of the specifics of sports is the fact that in sport, „small countries", as Croatia is, can often be greater than the „large countries". Promotion through sport is considered to be the purest and most positive type of promotion and nation branding, because all competitors in sports events have an equal chance to succeed.

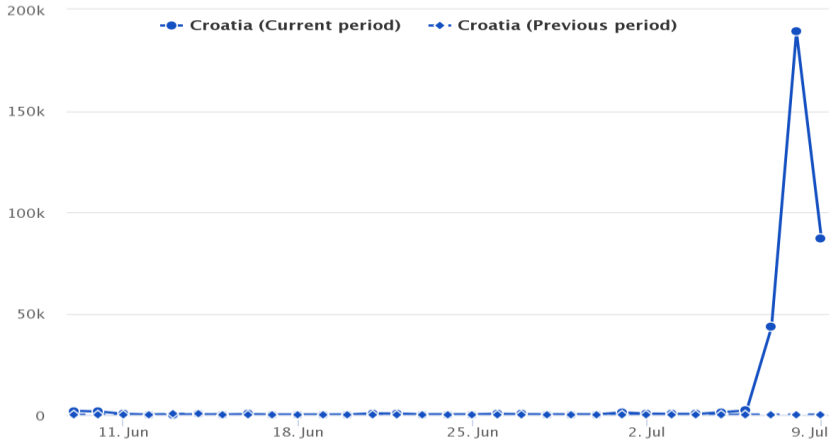
Croatia is primarly recognised as a tourism country. It is recognised as an attractive and safe European destination, as one of the ecologically most preserved countries of the EU, with a rich cultural and historical heritage.

Despite the fact that Croatia as a country is associated with tourism, culture and heritage, which give credit to Croatia as a brand name, Croatia was the ultimate surprise of the FIFA World Cup 2018 and showed how football can brand the entire nation. Croatia is so small people use Google to find out that we can talk about lack of brand recognizability. Nobody expected that a small nation of 4 million people will be taking home the silver medal.

During the FIFA World Cup 2018 agency *Mediatoolkit* measured how much exposure Croatia as a country got thanks to this sporting event and the corresponding impact it had on the country's recognizability.[5] When Croatia moved past Denmark to face off Russia in the quarterfinal, Croatia went from having approximately 100 daily mentions to more than 150,000 mentions after the match. Sudden media interest started with Croatia winning against Russia.

[1] Olins, W., (1999), "Trading Identities: Why Countries and Companies are Taking on Each Others Roles?", The Foreign Policy Center, London;
[2] Đorđević, Bojan (2009). Corporate Strategic Branding: How Country and Corporate Brands Come Together; Economic Annals, No.177; p. 11.
[3] Smith, Anthony D., National identity" 1991, Penguin books, Ch. 2.
[4] Anderson, Benedict, Imagined communities: reflections on the origin and spread of nationalism, 1991, Verso, London.
[5] Mediatoolkit. https://www.mediatoolkit.com/blog/croatia-world-cup-media-analysis/

Figure 3 - media interest: Croatia winning against Russia



Source: Mediatoolkit

When we thought the numbers couldn't get any bigger, Croatia beat England, -resulting in more than 300,000 articles in the aftermath of the game Croatia made it to the final of the World Cup.

More than a billion people tuned in to watch the match between France and Croatia and over 3,4 billion people watched at least one minute of one match.[1] More than 400,000 articles mentioning Croatia and over the course of the entire competition – more than a million. Between 7th and 15 July 2018 there has been a historical rise in the interest not only for the term Croatia, but also for the term "Visit Croatia". „Mediatoolkit" measured a total number of 60 billion impressions on global websites for the term Croatia during the World Cup which is something brands can only dream about. As the Croatian football team played in the final, there were a whopping 1,5 million (1 500 000) tweets about Croatia. It was the second most popular topic after the World Cup final.[2]

In the modern globalized world, a lot of space is opening for destinations which do not have a big population, but do have Luka Modrić, Goran Ivanišević, Janica and Ivica Kostelić, Croatian football, and many others frequently „dressed" in Croatian flag, talked proudly about our country during major sporting events. These "national brand actors" can gain a comparative advantage with their positive image in the eyes of the global public.

Conclusion

It could generally be argued that image promotion require a long-term and consistent communication strategy implemented by a well national strategy and public diplomacy. Many European countries in transition whose reality changed dramatically (e.g. due to the fall of Communism) started seeking ways to present their national potential in order to develop their image promotion for both, the domestic market and export. [3] Branding of nation presumes the definition of comprehensive strategy. Nation branding is concerned with image and promotion, and image promotion is identified as marketing communications techniques to promote the government as the initiator of branding. This definition takes into account that governments can not be branded *per se*, but governments and other public institutions can use the techniques of branding. The brand is meant to represent the nation's distinct and unique value among diverse international publics. Every country aims to drive some form of competitive advantage for their products through the country's brand image using tourism, culture and heritage, sport´s achievements etc. Nation branding applies widely used marketing concepts to countries in the interest of enhancing their reputation. Foreign policy can also be the subject of branding public diplomacy. A key dimension of the

[1] Mediatoolkit. https://www.mediatoolkit.com/blog/croatia-world-cup-media-analysis/
[2] Ibidem.
[3] Hall, D. (2004). Branding and national identity: the case of Central and Eastern Europe, in: Morgan, N.; Pritchard A. and Pride, R. (Eds.). Destination Branding: Creating the Unique Destination Proposition. Oxford: Elsevier ButterworthHeinemann. 111-127.

nation branding process is to assemble, in the early stages, a number of different groups of business and government parties. In order to be effective, the brand must be the conceptual product of all of its "owners" or "stakeholders". Politicians, states, companies, football, basketball, handball players, all these entities have an image and they are continually trying to shape brand image and trying to improve it, according to the vision of their identity to the global audience, which may be favourable or unfavourable.

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Innovated water-reuse through redistribution schema, benefits and challenges

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Abstract

The drought regarding a climate forecast Albanian departments have marked the past three months were the result of winter rainfall that was insufficient for replenishing water tables this year and before . We often say that water shortages are not a threat for our country due to plenty water sources . It's possible to think this when we compare our situation to that in other countries. Still , in some regions the availability of water resources is becoming an urgent problem, even more so if we link this to the different scenarios tied to climate change. Each basin has specificities, but some general evolutions should be planned for ,increase in water demand due to the rise in temperatures , causing an increase in the price of water and usage conflicts , change in the amount of the available water resources , changes in the flow of waterways and the aquifer recharge ,decrease in water quality (meaning a concentration of pollutants and a weakening in self-purification capacities) rise in nitrates in waterways and in aquifers may occur, as well as increased salinity levels ,increase in the vulnerability of certain ecosystems due to the rise in the risk of erosion, flooding and salting. This paper aims to introduce the benefits and challenges of applying at homes or communal buildings of an **Eco-innovation** , through developing a new inside distribution of wastewater so that it concludes into **sustainable development** of inside communal water distribution , therefore recycling inside the house . The main objective of the study is to make evident the cost-efficiency importance of these re-distribution systems , and how they affect improvement in water needs sector , highlighting the deficiencies that cause their not fully-efficient re-use of grey inside water and the positive impact on the potable water saving .

Keywords: reclaimed water , sustainable development , eco-innovation , technological change .

JEL Classification: O30, O31,O32,O33 .

Introduction

1.1 Eco-innovation Concept

The idea of eco-innovation [1] is fairly recent. One of the first appearances of the concept of eco-innovation in the literature is in the book by Claude Fussler and Peter James. In a subsequent article, Peter James defines eco-innovation as "new products and processes which provide customer and business value but significantly decrease environmental impacts". Klaus Rennings introduces the term eco-innovation addressing explicitly three kinds of changes towards sustainable development: technological, social and institutional innovation.

As a technological term

Many industries have been developing innovative technologies in order to work towards sustainability .

As a social process

Eco-innovations should also bring greater social and cultural acceptance. In this view, this "social pillar" added to James's[2] definition is necessary because it determines learning and the effectiveness of eco-innovations.

Diffusion

Literature in the field of eco-innovations often focuses on policy, regulations, technology, market and firm specific factors rather than diffusion. However, understanding of diffusion of eco-innovation recently has gained more importance given the fact that some eco-innovations are already at a mature stage.[3]

Outline of the EU water framework Directive .

The increasing demand by citizens and environmental organizations for cleaner rivers and lakes, groundwater and coastal beaches has been evident for considerable time.

Whilst EU actions of the past such as the Drinking Water Directive and the Urban Waste Water Directive can duly be considered milestones, European Water Policy [4] has to address the increasing awareness of citizens and other involved parties for their water. At the same time water policy and water management are to address problems in a coherent way. This is why the new European Water Policy was developed in an open consultation process involving all interested parties.

1.3 International Water Association water politics .

The IWA Principles [5] for Water-Wise Cities assist leaders to develop and implement their vision for sustainable urban water, beyond equitable universal access to safe drinking water and sanitation . The ultimate goal of these Principles is to encourage collaborative action, underpinned by a shared vision, so that local governments, urban professionals, *and individuals actively engage in addressing and finding solutions for managing all waters of the city* [5] .

With increasing numbers of people living in metropolitan areas, water, energy and materials need to be used carefully, reused and renewed.

Water is essential for the well-being of citizens, their safety and social inclusion in cities.

Planning systems with increased modularity and reduced dependencies enable a better reactivity to unforeseen trends and events.

Governance and institutions provide the framework for urban stakeholders to work together, breaking silos to integrate water in all urban services at the building, neighborhood, metropolitan and catchment scales.

Implementing the sustainable urban water vision starts with the existing capacities and competencies of the different urban stakeholders.

Asset management, master plans or decision support systems are the means for urban stakeholders to initiate action.

Based on quality assurance, equity, transparency, accountability and sound financing, they provide a solid frame for stakeholders to invest in sustainable urban water. Financial tools, linked to rigorous asset management plans, enable long lasting improved service levels with a well maintained infrastructure.

Regenerative water services are underpinned by five principles. Embedding these principles in water and wastewater systems rehabilitation, extension or new development will ensure the resource is protected and not overused. It will create value from energy and resource recovery not only from water but also from other services, and will facilitate financing by generating new revenue whilst delivering broader economic, social and environmental benefits to the city:

Replenish water bodies and their ecosystems within the basin by taking from or discharging to them only what can be given or absorbed by the natural environment. Reduce water protect the quality of water sources from wastewater and urban run-off so that it is fit for ecosystems and for use with minimal treatment requirements.

Reduce the amount of water and energy used. Minimize the amount of water used in accordance with storage capacities.

Reuse and use diverse sources of water with treatment that matches the use, applying the “fit for purpose” water quality approach and Integrated Water Resources Management (IWRM5)

Recover energy from water whether through heat, organic energy or hydraulic energy and recognize the value of “up-cycled” materials , such as nutrients or organic matter;

Use a SYSTEMIC APPROACH [6] integrated with other urban services.

INCREASE THE MODULARITY [7]and ensure there are multiple resource, treatment, storage and conveyance options available throughout the system for ensuring service levels and resilience of urban water systems in the face of either gradual or sudden changes.

WATER SENSITIVE URBAN DESIGN seeks the integration of urban planning with the management, protection and conservation of the total urban water cycle to produce urban environments that are 'sensitive' to water sustainability .

Design domestic and industrial precincts and buildings in ways that enables regenerative water services.

WATER-WISE COMMUNITIES [7]The implementation of the previous three sets of Principles requires a holistic approach and strong partnerships.

Citizens involved in the sustainable urban water vision.

PROFESSIONALS WITH VARIOUS EXPERTISE (FINANCE, TECHNICAL, SOCIAL) [8]who understand the co-benefits across urban sectors so that they may plan and implement the best solutions for urban dwellers and businesses.

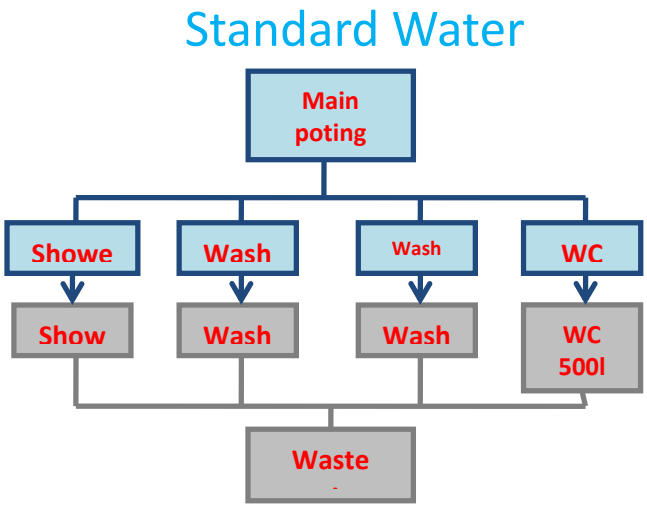
2 Introduction of my waste-water reuse Idea .

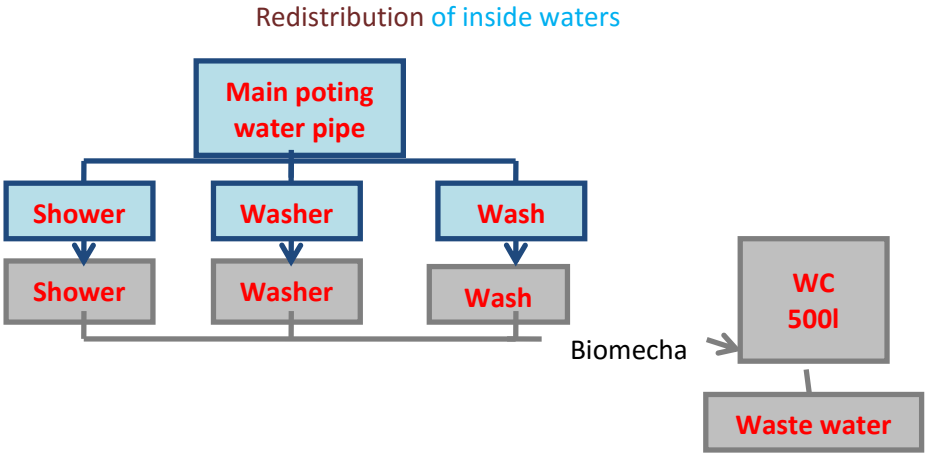
Water underpins every aspect of human and environmental existence. The severe water challenges facing the world today require an unprecedented global response. Innovative, solutions- and service- oriented, so many entities work across a range of areas that contribute to the progression of water management worldwide.

Most of their programs develop research and projects focused on solutions for water and wastewater management ; organizes world-class events that bring the latest science, technology and best practice to the water sector at large; works to place water on the global political agenda and to influence best practice in regulation and policy making .

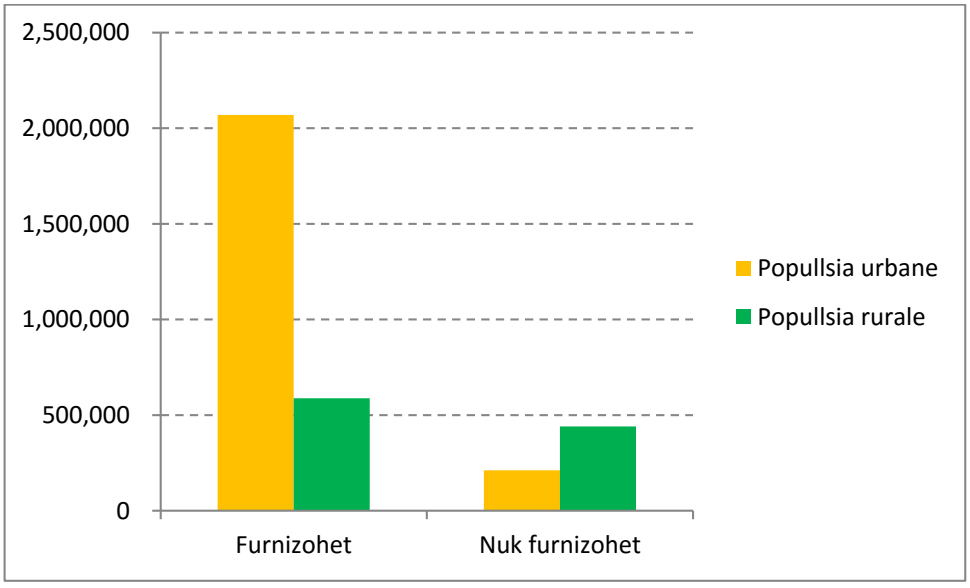
Water/wastewater reuse, as an alternative water source, can provide significant economic, social and environmental benefits, which are key motivators for implementing such reuse programs. Specifically, in agriculture, irrigation with wastewater may contribute to improve production yields, reduce the ecological footprint and promote socioeconomic benefits

Eco-innovation is the development of products and processes that contribute to sustainable development [2] , applying the commercial application of knowledge to elicit direct or indirect ecological improvements. My case includes an environmentally idea consisting at technological acceptable innovative paths towards sustainable redirection of communal wastewater .





My proposed redistribution scheme of water :



Drinking Water Indicators (Albania) [9]

Population living in the area of jurisdiction of all societies	3,307,937	3,307,937
The population actually supplied with water by societies	80.3%	2,656,267

Population that is not supplied	19.7%	651,670

Source: MPWTT, Processing and comments: ODA

2.1 A benefits of my WATER INSIDE REUSE SYSTEM .

This paper is offered as practical/experiential paper based on my individual experience at home during one month trying to measure how many times each person at my family daily uses the potable water discharging into the toilet . I thought , nature is working so long to prepare potable water and in 1 second without thinking twice about it , we let this glorious and unsavory action of nature became exhaustive scarcity .

Wade Miller, executive director of the Water Reuse Association California estimates that seven out of every 100 gallons [6] of U.S. wastewater gets recycled near its source, and said that number is growing about 5 percent annually, but the this is *not potable water* .

Comparing with above estimation , as you can see at the schema above (my proposed Idea) the percentage of return is 50% *potable water* , simply due to spare redirection inside wastewater .

In Albania as you can see at the table above , to 19.7 percent of population is not supplied

potable water by societies .

Let us call it the kick-start of more wastewater inside reuse in Elbasan city , I would say .

Water reuse can reduce the amount of freshwater diverted from sensitive ecosystems, as well as the amount of wastewater — and the pollution it carries — discharged to waterways. In the case of non potable reuse, it means avoiding the use of precious potable water where that level of quality is not required.

And, while wastewater reuse is energy intensive, it often yields an energy savings because pumping imported water (from outside sources) consumes so much energy itself.

While we'll always need that supply, it does take a lot of energy to do that. Reusing water inside takes less.

2.2 Challenges and hurdles

Water reuse, however principally , is not automatically right for every circumstance. There are a lot of places where the wastewater would have otherwise been important in returning to. By recycling waste water we're interrupting a while return of the water to the natural environment.

Water reuse is also expensive. Potable reuse systems require a high degree of treatment, and non potable systems require a separate piping system to distribute the water, which can add up to as much as, or more than, potable treatment. The really low-cost sources of water have pretty much already been developed. So this source of water's not inexpensive. New sources of water are even more expensive, by and large.

There are also challenges, particularly with non potable reuses such as irrigation, in dealing with seasonal fluctuations in demand.

The biggest hurdle, however, lies in gaining public acceptance. When people hear about "toilet to tap" technology, they get nervous — and grossed out [5]. That's why when municipalities look at reuse, the hardest part usually isn't figuring out the right technology or engineering the system; it's educating the public and involving them in the process in order to gain their approval.

3 Some eco-innovation experiences to be compared with my idea .

3.1 California case ; **Wastewater reuse innovation**

The more notable change, however, is that a growing number of municipalities are shifting toward or considering "potable reuse" — recycling wastewater into drinking water.

In 2008, Orange County started operating its now-celebrated Groundwater Replenishment System [3], which injects treated wastewater into the water supply of nearly 600,000 residents. The project, is taking water reuse to the next level. Instead of pouring it on the ground, in terms of landscape irrigation, they were turning it into drinking water."

It's on track to reach 100 million gallons per day by 2015. The system has attracted interest both nationally and internationally. They have recently hosted officials from Japan and the United Arab Emirates, and his team also has been working with England and even Singapore, which already has a potable reuse system supplying about 30 percent of its drinking water. (Reuse is also already established and growing in Australia and some European countries.)

The Orange County system, like most potable reuse projects today, practices "indirect" reuse, which means there's an environmental buffer — a groundwater basin, say, or a reservoir — between the wastewater process and the municipal water supply intake. In direct potable reuse, there's no environmental buffer; water is treated and sent directly back to the municipal water supply. It's something that more, primarily arid, places are starting to consider as a way to make the most of their increasingly scarce water resources.

Experts say reuse technologies have been proven, and treatment plants can get wastewater as clean as distilled water. The three-step process used in Orange County [3]— ***microfiltration***, ***reverse osmosis*** and a ***combination of ultraviolet treatment with hydrogen peroxide*** — is becoming the standard for potable reuse. Direct potable reuse is already practiced, largely as an answer to increasing drought, in Big Spring, Texas, and in the southern African nation of Namibia, which boasts the world's first major direct potable reuse system. Cloudcroft, N.M., expects to have a new direct potable reuse system up and running by next summer, and projects the system will provide 40,000 of the approximately 70,000 gallons used daily by the town [4]. Brownwood, Texas, has plans to start direct potable reuse — it's just waiting for city council approval — and San Diego is considering it as an alternative to scaling its existing million-gallon-a-day indirect reuse project to 15 million gallons.

4 CONCLUSIONS

Wave of the future

So we have found that as public understanding of water reuse grows, so does acceptance of its practice.

Water scarcity has become an economic issue, threatening industries as well as regions and ways of life. As such, corporate leaders should begin to realize they need to get involved in finding solutions.

The need to improve efficiency in companies water use, innovate around water reuse technology and enhance water education and outreach is more evident .

Addressing water scarcity through recycling and reuse: a menu for policymakers , which highlights how policymakers should best implement water reuse and recycling based on the community needs.

Beyond wastewater being reused and recycled to help combat water shortages , it also to mention the energy in wastewater so far , the Electricity makes up 25 to 40 percent of the operating budgets for wastewater utilities and nearly 80 percent of the budgets of drinking water processing and distribution plants [8].

With stricter regulatory and environmental constraints compounding these hurdles, our economic future may depend on how we, as entrepreneurs, manage water resources today.

The resulting water -statistics are a wake-up call: within 10 to 15 years we will not have enough available water to sustain our businesses and quality of life [6].

The economics of wastewater is about new revenue streams and monumental savings through water recycling.

The aging water delivery infrastructure is blamed for significant water loss and leakage. How big a challenge is this for Albanian Water?

We can do a better job at developing new techniques and technology to rehabilitate some of the infrastructure that we have in place.

What is my vision for the water industry ten years from now?

Recognizing the full lifecycle of water, valuing water closer to full cost, the Albanian society has the opportunity to make water the enabler of growth. If it doesn't, water will be the limiter of growth.

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Defamation Laws and Practice in the Age of Internet in Albania

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Abstract

The picture of recent legal developments concerning defamation in Albania is mixed. On the one hand, several criminal defamation and insult statuteshave been abolishedsince 2012, following strong lobbying of human rights organizations. On the other, the application of criminal defamation laws has not stopped, while government officials and other high profile persons have discovered the power of civil defamation claims. Faced with intense criticism, the government has tried to re-introduce the abolished criminal defamation laws and has faced the same strong opposition and international outcry. In the meantime, defamation claims or threats thereof are routinely being used against the media or against the political opponent for the only purposes of creating tension and diffusing the attention of the public. The vagueness of the laws and the inconsistencies of judicial interpretation, helped in no little measure by judicial corruption and the political control of the judiciary, have widened the gap between constitutional and international guarantees of the freedom of speech and the actual enforcement of those guarantees. This article will briefly expose the history of defamation laws in Albania, the difficulties of their application, and the status of affairs concerning defamation laws and claims. [1]

Keywords: *defamation, insult, media, journalist, criminal liability of journalists, Albania.*

Introduction

In 2015, a drug related investigation suggested that the personal car of the Minister of Interiors of Albania had been used to transport drugs between Albania, Greece, and Italy. The Minister claimed that he had sold the car to people he did not know, but the ownership had not been transferred because all of this assets had been frozen to guarantee the payment of a defamation claim, brought against him by the former Prime Minister's children. These latter were a frequent target of accusations by the opposing party and quite often had resorted to defamation claims. It is an anecdotal example of various interesting facts about defamation laws and practice in Albania: people that could not be investigated for drug trafficking could be sued for defamation; defamation claims are quite common, but the plaintiff is not really interested to clean its image or gain the money that comes with the compensation. These claims are rather just another move in the political battlefield.

Efforts to Reform Thedefamation Laws in Albania

The Civil Code of the Republic of Albania (CC)[2]adopted after the fall of communism allowed persons that have suffered harm to their honor or personality to request the compensation of non-pecuniary damages[3]. It also allows compensation for the insultof the deceased or of the 'memory of the dead.'[4]

[1] Defamation in the Albanian context presents a terminology challenge. There are two concepts in the Albanian legislation: 'fyerje' and 'shpifje'. Since there is no standard usage for the English-language terms 'defamation', 'libel', 'slander', 'insult', etc., in official and unofficial translations that we could find, we have translated them respectively as 'insult' and 'defamation'. The terms are defined by the national legislation or the judicial case law thereof. See also, Defamation and Insult Laws in the OSCE Region: A Comparative Study, Commissioned by the OSCE Representative on Freedom of the Media DunjaMijatović, March 2017, https://www.osce.org/fom/303181?download=true (last visited 9/11/2018).

[2] Adopted with Law no.7850, dated 7/29/1994.

[3] Article 625.

[4] A number of other countries in Europe maintain similar laws. See Supra at 1.

The Criminal Code of the Republic of Albania (CrC)[1]adopted after the fall of communism included eight provisions that fall under the definition of criminal defamation laws[2]. These included simple insult and defamation, as well as insult and defamation against various categories of public officials and the humiliation of the flag and the national anthem[3].In 2001, four of these provisions were amended to further criminalize actions that were considered insulting or defamatory[4]. In 2008, the crime of online insult for racist motives was introduced in the CrC[5]. All the eight offences were criminal misdemeanors[6], which means that they were considered less serious and the defendants had more procedural benefits[7]. Procedurally, simple insult and defamationwere prosecutable by the private prosecutor (the accusing victim)[8], in difference to other insult and defamation offences that used to be prosecutable *ex officio* by the prosecutor, but upon the criminal complaint of the injured party[9].

The Albanian legislation did not include separate blasphemy and religious insult provisions.

The laws of civil and criminal defamation are widely criticized[10]. The issues stemming from these laws are inherent in their nature as they try regulate a highly subjective element, such as speech. On the other hand, the concept of reputation is also very subjective and often difficult to compensate as a loss.

In Albania, more than in other countries, this general criticism has only been part of the picture. The formulation of the laws themselves has been seen as a problem, but more concerning has been the application of those laws by the courts of the country. Civil and criminal defamation trials have seriously infringed the freedom of media and harmed the free public debate. As stated by Human Rights Watch in a report about the freedom of speech[11], *the observed violations are a combined result of flawed–and possibly unconstitutional–defamation laws, and the ways in which the Albanian courts apply such laws'. [12]*

[1] Adopted with Law no. 7895, dated 1/27/1995.
[2] The criminalization of defamation continues the tradition of the previous communist regime. The Criminal Code of 1977 (Law no.5591, dated 6/15/1977) criminalized insult, defamation, and insult of public officials and persons conducting activities in the benefit of the society (Art. 185, 186, 120, and 206.)
[3]The list of defamation offences in the CrC of 1995 is as follows: simple insult (Art. 119), simple libel (Art. 120), insult of representatives of foreign countries (Art. 227), insult of public official because of their duty (Art. 239), insult of justice officials (Art. 318), simple libel (Art. 120), libel against public official because of their duty (Art. 240), libel against the President of the Republic (Art. 241), and public humiliation of the flag and national anthem (Art. 268/para. 2.)
[4] Law no.8733, dated 1/24/2001. Articles 119, 120, 239, and 240 were amended to add qualifiers for increased punishment. The sanctions provided for in Art. 239 were increased.
[5] Law no.10023, dated 11/27/2008. Article 119/b of the CrC.
[6] As opposed to crimes.
[7]For example, a person is not generally arrested for a misdemeanor or, if sentenced to prison, they can have the sentence converted to a fine.
[8]The Criminal Procedure Code, Article 59. There is no investigation; the prosecutor participates in the trial, but has no role as the prosecution. The burden of proof beyond any reasonable doubt lies with the accusing victim.
[9]The Criminal Procedure Code, Article 284. The complaint is necessary for the start of the investigation. The injured party can withdraw it at any time and the prosecutor is obliged to dismiss the proceedings.
[10]Defamation Law in the Internet Age, Consultation Paper, November, 2017, The Law Commission of Ontario, Canada.
[11]The Cost of Speech: Violations of Media Freedom in Albania, Human Rights Watch, 6/13/2002, https://www.hrw.org/report/2002/06/13/cost-speech-violations-media-freedom-albania (last visited on 9/11/2018).
[12] Id.

It was generally viewed that the civil defamation laws did not constitute a sufficient regime[1]. Defamation was not defined[2], a list of defenses against defamation claims was not provided[3], no exceptions were made for particular forms of expressions, and no guideline was provided as to the manner of determining the amount of compensation[4].

Criminal defamation statues were also not free from flaws. Initially, insult was not defined by the law, which allowed for definition to be made on a case by case basis. Even law textbooks included concerning definitions of what insult was[5]. Defamation was more defined, but it also included the concerning notions of 'honor' and 'dignity' that are not specific enough to be used as criteria for limiting the right to speech. More cause for concern was the existence of various criminal provisions that granted special protection from defamation to public officials, judges, the President of the Republic, etc. This was clearly in contradiction with ECHR established principle of less protection for public officials.

For all of these reasons, in 2004 various human rights organizations drafted and sponsored amendments to the civil and criminal defamation law[6]. The seven year saga of these proposed draftswould be a interesting example oflong-term efforts to find political support for a reform the politics does not want[7].

The amendments were finally approved in 2012[8]. The most noteworthy change was the abrogation of all five statutes that criminalized defamation against public officials, including foreign ones, and the humiliation of foreign symbols.Furthermore, the imprisonment sentence was removed from all remaining provisions[9], with the exception of insult of a judge that is still punishable with imprisonment.Also, changes made to the criminal defamation statutes clarified that the defendant should have acted with knowledge about the falsity of his statements. On the civil side, it was clarified that reputation is grounds for a civil compensation claim. A new Article added to the Civil Code established the criteria to be used in the determination of the amount of compensation. In general, the compensation should be proportional and able to remedy the damage caused, rather than punish the defendant[10].Moreover the statute of limitations for these claims was greatly shortened.

It is also interesting to mention that the Albanian Constitution[11], while providing for high state officials a broad immunity from criminal investigation and prosecution of any crime, limited the immunity from civil claims for defamation[12]. Therefore, persons with immunity could be sued for defamation, and in fact we will show below that defamation civil claims have been one of the tools employed in the political game. This element was spotted during the Constitutional amendments of 2012 and 2016 by various organizations, but was left out of the formal discussions. Therefore, parliamentarians in Albania do

[1]Article XIX Global Campaign for Free Expression, Memorandum per ligjinshqiptar per shpifjen, translated by OSCE Presence in Albania, London, 2004.

[2]Id.

[3] Such as the reasonable publication or the burden of proof on the plaintiff or protected statements, as established by the ECHR, for example, in The Sunday times v.The United Kingdom, ECHR (26 April 1979) or BladetTromso and Stensaas v. Norway, ECHR (20 May 1999) or Colombani and others v France, ECHR (25 June 2002). Some of these principles were also elaborated by Justice Brennan in New York Times v. Sullivan, 376 U.S. 254 (1964). In the same category of defenses, we would include the immunity that needs to be granted to internet service providers in their role as intermediaries, which was lacking in the Albanian law.

[4]This was a general feature of the Albanian civil law that did not provide for guidelines for determining the amount of civil compensation claims, leaving it up to each individual judge. Because of the way the court system is organized and the non-recognition of the precedent, the juridical case-law has not been able to establish unified criteria for the determination of damages.

[5] Courts have interpreted insult as something that includes 'humiliating, immoral or mocking words, images or actions, as well as satirical sketches', based on textbooks definitions. Such a broad interpretation is not in line with ECHR standards. See Supra at 15, that also quotes I. Elezi, Ligji Penal, Pjesë e Veçantë, Vëll.1, Tiranë: ShtëpiaBotueseLuarasi.

[6] The amendments were drafted and sponsored by the Albanian Media Instituteand the Open Society Justice Initiative (SOROS) for more than seven years, with the assistance of many other organizations, including media and civil society, as well as the European Commission, whose support of the amendments was instrumental. For a more detailed discussion, seeMonitorimpërzbatimin e ligjevepërshpifjendhefyerjen, The Albanian Media Institute, Tirana 2015.

[7] Darian Pavli, "Vrapimi i maratonës: përpjekjepërtëreformuarligjet e Shqipërisëpërshpifjen," prill 2013, http://institutemedia.org/Documents/PDF/D.Pavli%20shqip%20follow-up.pdf

[8]Adopted with law no.23/2012, for addenda and amendments to the Criminal Code, and with law no.17/2012,for addenda and amendments to the Civil Code.

[9] All of these misdemeanors are now punished with fines, albeit the fines were increased with the 2012 amendments.

[10] Civil Code, Article 647/a.

[11] Adopted with Law no. 8417, dated 10/21/1998 and approved in a referendum.

[12] Id., Article 73.

not have immunity from defamation claims for their statements in the Assembly.Thisis a serious obstacle for the free public debate and for the functions of the Parliament.

Defamation Laws in Other Countries and the Echr Case Law

English defamation law has traditionally been the model for common law jurisdictions. The threshold for establishing defamation as a tort is not high. It is not necessary to find fault and the words are presumed false and that they caused harm, if the plaintiff is able to establish three elements: 1) that the words refer to him; 2) that they were published by a third party, and 3) that they tend to lower the plaintiff's reputation among average people[1]. The United States takes a different approach from all other common law countries. The practice of defamation law in the US has to take into account the strong constitutional protection of free speech, while internet service providers have immunity from defamation claims in their role as intermediaries[2].

Defamation is not a crime in common law jurisdictions, because it was abolished by the respective Parliament[3] or because it was considered a nullity by the highest court in the country[4].

The criminalization of defamation is common in Europe[5], compared to common law jurisdictions. This reflects a more general tendency in the European Union to strike the balance between reputation and free expression closer to reputation and provides a useful counterpoint especially to the US heavy emphasis on freedom of expression[6].

The practice of defamation law in Europe developed as a competition between two competing rights in the European Convention of Human Rights (ECHR): Article 8, privacy rights and Article 10, freedom of expression[7]. Article 8 ECHR does not explicitly mention a right to honor or reputation, but Article 10 does refer to reputation. It does not do so by making reputation a right, but it rather speaks of the protection of reputation or rights of others as the limitations to the freedom of expression, or, to make it simpler, some of the ways in which it can be interfered with this freedom. In the first defamation case brought under Article 10[8], the European Court of Human Rights denied the Government's argument that the case concerned a conflict between Convention rights, holding that *'there is … no need in this instance to read Article 10 in the light of Article 8'*.However, the case law changed over the years with Article 8 and Article 10 cases[9], and reputation was recognized by the Court as a right that is granted protection under the ECHR[10].

In the past decade, a consensus has been established between European and international human rights organizations regarding the risks that criminal defamation laws bring and the suggestion to abolish such laws and, in case, to abolish

[1]See for example, the Defamation Act, 2013 (UK), c 26 [UKDA 2013] or the Libel and Slander Act, RSO 1990, c L 12 [LSA].
[2] Communications Decency Act, 47 US Code, art 230 [CDA (US)].
[3] Criminal libel in England and Wales was fully abolished by the Coroners and Justice Act 2009.
[4] In the United States, the landmark Supreme Court case was New York Times v. Sullivan, 376 U.S. 254 (1964). During the height of the civil rights movement, the New York Times ran a full page ad that suggested mistreatment of Rev. Martin Luther King, Jr. at the hands of Montgomery, Alabama Police. L.B. Sullivan, Montgomery's public safety commissioner, sued the New York Times for libel. After the Times was found liable in an Alabama court for $500,000, the Supreme Court ruled unanimously against Sullivan, finding that the First Amendment provided a safeguard for freedom of speech. Justice William Brennan defined the importance of free speech in the United States: "Debate on public issues should be uninhibited, robust, and wide-open, and it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials. …First Amendment protection does not turn upon the truth, popularity, or social utility of the ideas and beliefs which are offered." For a more detailed description of this and other US Supreme Court cases, see Criminal Libel in the Land of the First Amendment, Special Report for the International Press Institute, A. Jay Wagner and Anthony L. Fargo, October 2012 (revised and reissued September 2015).
[5] Defamation is a crime in Austria, Germany, Italy, France, etc.
[6] Defamation Law in the Internet Age, Consultation Paper, November, 2017, The Law Commission of Ontario, Canada, https://www.lco-cdo.org/en/our-current-projects/defamation-law-in-the-internet-age/ (last visited on 9/11/2018).
[7] Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, ETS 5 [ECHR].
[8]Lingens v. Austria, ECHR (8 July 1986).
[9]Chauvy and others v. France, ECHR (29 June 2004) or Pfeifer v. Austria, ECHR (15 November 2007).
[10] From Pfeifer: "a person's right to protection of his or her reputation is encompassed by Article 8 as being part of the right to respect for private life."

prison sanctions for these crimes[1]. This shared opinion is based on the potential for abuse with criminal defamation law, when those are in the hands of the state to be applied, as well as on the greater effects that criminal sanctions bring to media and the freedom of speech, in general[2].

The European Court of Human Rights has criticized the usage of criminal defamation laws, without explicitly requiring the abolition of all such laws. However, the Court has suggested that the imposition of imprisonment alone may be sufficient for the finding of a disproportionate remedy and, therefore, a violation of Article 10 (ECHR), regardless of whether the criminalization of defamation could be considered justified or not[3].

On the other hand, the European Court, international organizations and watch dogs, all agree on the idea that public officials must be moretolerant of criticism than private persons, therefore any increased protection for public figures must be removed from the legislation. The European Court stated in Lingens v. Austria: *'The limits of acceptable criticism are wider as regards public or political figures than as regards a private individual. In a democratic society, the government's actions must be subject to the close scrutiny not only of the legislative authorities but also of the press and public opinion'.*[4]

The Application of Defamation Lawsin Albania

The application of these laws has had chilling effects on the media. Defamation trials, both civil and criminal, against the media in the 1990s and 2000s, together with violence and threats against journalists and corruption in allocating state advertisements, undermined the development of a free, objective, and professional media in Albania[5]. These effects continue to plague the Albanian media to date[6].

An analysis of six defamation criminal trials against journalists in Albania, made by Human Rights Watch[7], exposed a number of violations of human rights.

One of these violations was the fact that defamation offenses against public officials were prosecutable *ex officio*, therefore the charges had to be proved by the prosecutor, while regular citizens had to prove the charges in a private prosecution setting[8]. Another very serious violation is the failure to properly apply the principle of burden of proof, which belongs to the accusing party. Very often, the journalists were convicted for failure to prove that their statements or (worse!) their opinions and judgements were true or in good faith[9].

A review of some of these cases shows that the conviction of journalists is based on court decisions that are not sufficiently justified or substantiated. The courts pay little to no attention to international standards and to the interpretation made by the European Court regarding the balance between the right to private life and the freedom of expression, especially when

[1] The UN Human Rights Committee has said that all states 'should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty'. See, 'General comment No. 34', U.N. Human Rights Committee, 102nd session, published 12 September 2011, http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf (last visited on 9/11/2018).
See also, the Tenth Anniversary Joint Declaration: Ten Key Challenges to Freedom Of Expression in the Next Decade (2010), http://www.oas.org/en/iachr/expression/showarticle.asp?artID=784&lID=1 (last visited on 9/11/2018).
[2]See Supra at 1.
[3] In Cumpănă and Mazăre v. Romania, ECHR (17 December 2004), the Court noted that 'the imposition of a prison sentence for a press offence will be compatible with journalists' freedom of expression … only in exceptional circumstances, notably where other fundamental rights have been seriously impaired as, for example, in the case of hate speech or incitement to violence.'
See also, Belpietro v. Italie, ECHR (2013), Mika c. Grèce, ECHR (2013), Mariapori v. Finland, ECHR (2013).
[4]See Supra at 36.
[5]See Supra at 15.
[6] See e.g., The Freedom House Report for Albania, 2018 in https://freedomhouse.org/report/freedom-world/2018/albania. "While the constitution guarantees freedom of expression, the intermingling of powerful business, political, and media interests inhibits the development of independent news outlets; most are seen as biased toward either the PS or the PD. Reporters have little job security and remain subject to lawsuits, intimidation, and occasional physical attacks by those facing media scrutiny".
[7]See Supra at 15.
[8]See Supra at 12, 13.
[9]See Supra at 15.

public officials are concerned. One cannot help but think about judicial corruption and the political capture of the judiciary[1]. Even the High Court has not been willing to uphold the ECHR principles, but has instead dismissed without discussion many appeals filed by the defendants[2], in spite of theserious rights violations committed by the lower courts.

The application of criminal defamation laws against politicians has followed a completely different route. A review of the cases handled by the High Court[3] shows that politicians have usually brought claims against one another, but also using family members when those were part of the alleged defamation. In those cases where private citizens have been the accusing party, those individuals have been known as affiliated with one party or the other through ideology or business ties. The first wave of criminal defamation claims in the High Court started in 2009- 2010[4]. In those times of great political tension, three criminal defamation claim were filed against the Prime Minister[5] and one against a member of the Assembly[6]. All four cases concerned statements made in the Assembly[7]. The party in power responded with a criminal referral for defamation because of duty that eventually made it to the High Court[8]. The game of defamation claims either with the High Court directly or with the prosecution intensified in 2011 and carried on the following years. However, the High Court rejected all of this claims. Some of them were rejected on procedural grounds, but the High Court argued international and ECHR standards regarding defamation, and stressed the importance of protecting the freedom of expression while adjudicating these cases. The High Court also clearly placed the burden of proof with the plaintiff, in complete contradiction to what was happening with journalists at the same time.

The first defamation convictions in the High Court came in 2015 and, in those cases, the High Court moved completely from its previous position and placed the burden of proof on the defendant[9]. This wave of convictions did not last and the High Court went back to its additional interpretation, with the exception of rare convictions here and there that ironically concerned the same defendants[10].

For a more recent picture, the Ministry of Justice reports that, during 2017, 126 criminal defamation cases were adjudicated in Albania[11]. These represent a 40% increase over the number of the same categories of cases in 2016[12]. However, this considerable number of cases resulted in only eight convictions in 2017[13], while the vast majority of cases was dismissed, most probably because of the withdrawal of the accusing victim. It is not possible to find reliable statistics of defamation civil claims, but it is fair to expect that those be on the rise too, because we are seeing a steep increase in civil claims for damages in general.

[1] For a discussion of the situation of the judiciary in Albania, see DokumentinAnalitik "Analizë e sistemittëdrejtësinëShqipëri" (Analysis of the justice system in Albania), drafted by the ad hoc Parliamentary Committee of Justice Reform, 2015. http://www.euralius.eu/index.php/en/library/albanian-legislation/category/103-justice-reform-collection-of-laws

[2] See Supra at 15.

[3] Based on the Constitution, Article, the High Court had initial jurisdiction for criminal charges against the highest officials in the country, including those crimes that were prosecuted by the accusing victim. This changed with the Constitutional amendments made in 2016.

[4] It is interesting to note that the High Court has rendered its first initial jurisdiction decision only in 2009 and that the vast majority of these cases is for insult and defamation charges. It is almost ironic that in a country with endemic and pervasive corruption there have been more cases of defamation than corruption against high officials.

[5] These claims were filed respectively by the mother of the head of opposition and two businesspersons alleged to be affiliated with him personally.

[6] This claim was filed by another MP.

[7] Decisions no.9, dated 5/24/2010, no.6, dated 5/31/2010, no.7, dated 6/7/2010, and no.8, dated 6/21/2010.

[8] Decision no.8, dated 7/1/2011 against an MP.

[9] Decisions no. 8 and 9, dated 6/5/2015. The claims was filed by the Prime Minister against two MPs of the opposing party. The High Court stated that 'the evidence presented in the trial by the defendant…do not establish a basis to believe in the accuracy or truthfulness of his allegations'.

[10] Decision no.13/1/1, dated 5/25/2017.

[11] Insult takes the majority of these cases: 85; 40 are cases of defamation, and one is a case of insult of a judge.

[12] For judicial statistics, see the annual court statistics (VjetariStatistikor) published by the Ministry of Justice www.drejtesia.gov.al/statistika.

[13] At least convictions in the first instance. It is not possible to know how many of these convictions were upheld in appeals. In Albania, the appellate court decision is the final one.

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Absolute Invalidity of Legal Actions and Trial of Relevant Lawsuits Pursuant to the Albanian Civil Procedural Legislation and Jurisprudence

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Abstract

Purpose of work: The Civil Code of the Republic of Albania provides no terms with regard to the validity of the legal action; however it sets forth the circumstances (legal facts) causing invalidity of legal actions. The purpose of this work is to analyze the essential elements of the legal action, which lack and ambiguity leads to action nullity. On the other hand, this work intends to present the interaction between material and procedural law and case-law with regard to the trial of those lawsuits dealing with absolute invalidity of legal actions. **Research method**: The methodology employed in this work relies on surveying and analyzing methods. Given its characteristics, this work is based on the qualitative methods to analyze the main elements of legal actions, which lack results in invalidity to nullity of such actions. The qualitative method includes the descriptive and interpretative method for trying lawsuits related to absolute invalidity of legal actions. **Results**: This work will give a clear picture of the concept of absolute invalidity of legal action and its trial pursuant to the Albanian procedural legislation and jurisprudence. **Conclusions**: Through this study we intend to make a deeper analysis on the absolute invalidity of legal actions, the causes of such invalidity and its trial pursuant to the procedural legislation and jurisprudence.

Keywords: legal action, absolute invalidity, effect, legislation, lawsuit, trial, jurisprudence.

Introduction

The structure of a legal transaction contains essential elements that are indispensable for such transaction to exist, and which lack of a single element only would render the legal transaction null and legally ineffective. Such elements are: subjects, expression of will, form of expression of will, object and legal cause.

In addition to such essential elements, a legal transaction may also contain other elements, which may be amendments established by the parties as provisions, without prejudice to the specific type of legal transaction, and which may restrict the normal content of the act.

Such elements are: condition, term, modus, penalty, etc.

These elements may exist or not in a legal transaction, but if they have been provided in its content, they will be considered as integral elements of the legal transaction. Missing or problematic essential elements of a legal transaction result in its absolute invalidity. Theoretically speaking, this kind of invalidity brings no legal effects from the moment the legal transaction has been carried out, which means that the parties engaged in such transaction cannot claim invalidity from the court, as it may be the court, on its own initiative, to rule for it. The parties may address to the court to regulate the effects arisen, and to achieve restitution, i.e. that the parties return to their previous state.

The absolute invalidity of the legal transaction in terms of its essential elements and the jurisprudence

Subjects. The legal transaction brings legal effects on the concerned subjects. So that the person, either natural or legal, may engage in legal transaction as a subject, and so that the legal transaction be legally valid and bring legal effects, it is

necessary that the person have **legal capacity** (which is gained as of the moment of conception and live birth) and **capacity to act (which is gained at 18 years of age and under the condition of mental capacity)**.

When a subject holds the power to express its will in carrying out a legal transaction and bring effects with regard to a specific situation, it is considered as a subject holding legitimacy. Referring to the legal situations, anperson may be allowed under the law to act in a legal relationship on behalf of another person so as to satisfy its own needs or those of third parties. When anperson acts on behalf of another person we refer to the representation, which may be legal – as it is the case of parents holding the legal representation of children – or voluntary representation, which is done through power of attorney.

Will: Article 79/1 of the civil code provides, "*The legal transaction is the legal expression of a natural or legal person's will, which intends to establish, amend or extinguish civil rights or obligations".* Referring to such provision in its material sense, the legal transaction is carried out through the wish or will of subjects. The element of will is expressively sanctioned in the provisions, which testifies the importance of such element in the commitment of legal transactions. The will is a dynamic element of the legal world; it is the essential element that gives life to the legal transaction. However, the will that is contained inside the subject brings no legal effects. Legal transactions require expression of the will and the external behavior of the person will technically be considered manifestation of its will.

The wish to commit the legal transaction represents the internal will of the person. It is a psychological phenomenon that may be perceived by the external behavior of the subject. Therefore, in the commitment of the legal transaction, the wish needs to be manifested in the external world so that the subjects of the civil-legal relation arising from the legal transaction be duly informed.

On the other side, the expression of the will must be lawful so that the transaction brings legal effects.

Legal transaction is carried out by the wish of a person, as well as by his free and full will. Often, legal transactions are determined as voluntary legal facts. However, the expression of the will brings no legal effects if it lack the due form and manner provided by the law. The expression of the will must be *true* and serious, the declaration must be presented seriously and directed toward the expressed goal, (for example a conversation between friends, although a declaration of will, brings no legal effects), otherwise, it may not be considered a lawful expression of a person's will, and consequently it may not bring legal effects. It is important that transactions of individuals are assessed by responsibility criteria, where each subject of the legal transaction is tied with the effects arising from the content of the transaction, always if such content results from conscious will. If we refer to the *supra* reasoning, according to which, the claim of the plaintiff against the defendant may extend up to the level of absolute invalidity in terms of the general principles on the vices of will, we say that legal transaction, among others, is considered absolutely invalid if the will of the parties is missing.

Form: Referring to article 79 of the Civil Code, so as to bring legal effects, the will needs to be expressed in a certain form. The general rule is the freedom of form: parties are free to express their will through the form they prefer. For example, the will may be expressed in tacit form, or through demonstrative means or ultimate transactions of the parties (e.g. the inheritor called to inheritance, although it has not been yet expressed its acceptance, acts as if it were the owner of the inheritance rights by selling an item of the inheritance or claiming the restitution of a loan). The will may be expressed in written words or signs. However, the principle of the freedom of form is not always applicable, as there are a number of legal transactions to be carried out in a certain form. Rules laying out requirements for the application of a certain form are often related to the seriousness of purpose. In solemn transactions (transactions that require the presence of the notary public), the form need to be *ad substantium.* In such cases, a specific form is required by law as an essential element of the legal transaction, as failure to abide by this specific form, would result in invalidity. For example, the sale and purchase of an immovable asset require that the written deed is made in the presence of the notary public. Article 83 of the civil code expressly provides, "*The legal transaction made for the transfer of ownership of immovable assets and of the real rights over them, must be notarized and registered, otherwise it is not valid. The legal transaction that is not made in the form expressly required by law is not valid. In other cases, the legal transaction is valid, but it cannot be proved by witnesses*".

In the everyday practice, the free and faultless will of the party in the legal transaction is thereby verified even by the fact that such transaction is made in the presence of the notary public through a notary deed, pursuant to the terms and conditions set forth in law no. 7829 dated 01 June 1995 "On Notaries", and the latter is a guarantor of the expression of the will pursuant to law.

Cause. Cause is the social-economic function aimed by the concerned subjects. Cause appears as an objective interest and indispensability for the existence of the legal transaction. Cause is not to be confused with purpose, the impulse that impels the subject to carry out a legal transaction, which qualification requires the existence of a substantial cause for its legal existence.

Cause qualifies a legal transaction as:

Typical, i.e. provided by law

Atypical, i.e. entirely depending on the will of the subjects or

Mix

However, it is important to point out the difference between lawful cause and unlawful cause. Illicit transaction brings no desirable legal effects, whereas unlawful transaction brings undesirable legal effects, from which it arises the right to remedy the damage caused. This situation differentiates absolute invalidity from relative invalidity of legal transactions.

Absolute invalidity of a legal transaction, as one of the most serious forms of breaching the law, may be ascertained by the court ex officio throughout the trial.

This is the approach taken by the Unified Colleges in their unifying decision no. 13 dated 09 March 2006, expressly reading, "*so that a legal transaction be considered absolutely invalid it is not necessary lodging any specific petition, either a lawsuit or a counter suit, given that this type of invalidity is ascertained independently of lodging a petition to the court. Absolute invalidity may be posed by any concerned party in the trial. The form it is posed may be even the counteraction, for the fact that an absolutely invalid legal transaction cannot be made valid with any successive transaction (Unifying decision no. 13/2006 of the Unified Colleges).*

The Unified Colleges has taken some valuable approaches in the case-law, among which it is the following, "*The legal transaction that is absolutely invalid brings no legal effects aimed by the parties; therefore, it has no legal power of a valid legal transaction. If, throughout the trial, the court ascertains that the legal transaction is absolutely invalid, it does not rule on declaring it invalid, but it only confirms its invalidity, and starting from this, it settles the dispute on the pertinent legal relationship. Absolute invalidity may be claimed by anyone concerned; it may be addressed to the other party of the legal transaction, as well as to any third party. Absolute invalidity may also be ascertained by the court ex officio, without being the concerned party to claim it, or against the wish of the concerned party. From the entirety of the provisions that regulate the institute of legal transactions' invalidity, it turns out that, when a legal transaction is absolutely invalid, even the legal transaction performed between one of the parties related to the invalid legal action and another person will be invalid, in the sense that it has no legal force" (Unifying decision no. 13/2006 of the Unified Colleges).*

With reference to the above, an absolutely invalid legal transaction cannot be remedied; it cannot be made valid either at a later time or with other successive transactions. Given that absolute invalidity is one of the most serious forms of invalidity, in such case, the legal transaction is deemed to have never existed, i.e. to have never been performed. Independently of this invalidity of legal transactions, the latter may bring legal effects on their subjects, which need to be settled by the court, which ascertains absolute invalidity either on the claims of the trial parties or ex officio. Absolute invalidity of legal transactions is claimed pursuant to article 92/a of the civil code. Precisely, if a plaintiff claims that certain invalid legal transactions are in compliant with the law, but it fails to provide arguments and evidences on the cause of such in compliance, than the court will not try such claim of the plaintiff, and the case will be dismissed. In this sense, if the lawsuit claims confirmation of absolute invalidity of legal transactions without presenting any claim on the concrete legitimate interest of real nature that has been breached to the plaintiff due to such legal transactions committed, the court cannot accept such lawsuit.

In the same line goes even the unifying decision no. 5 dated 30 October 2012 of the Unified Colleges of the Supreme Court, providing, "*One of the elements identifying the lawsuit and without which there can be no lawsuit, is its cause (causa petitionis). The cause of the lawsuit is the reason for claiming to the court, which contains the right and the fact opposing to such right. So that a lawsuit is tried by the court, it must contain not only the claim but also the cause. The claim for invalidity confirmation, without showing the right and the fact opposing to such right, is a lawsuit that, in the material sense, does not exist".*

Accordingly, referring to the reasoning of this decision, there can be no lawsuit without the cause. In such case, it is precisely the existence of: **1-the cause of the lawsuit, 2-the right and 3-the fact opposing to such right** that constitute the breach of the plaintiff's rights, and that motivate him/her to address to the court, (article 32/a/b of the civil procedure code).

So, the reason for claiming, on which the lawsuit is based, must contain the material right on which it is grounded, and according to which the petition (*petitium)* must be determined, and the fact opposing to such right.

If confirmation only of absolute invalidity of a legal transaction is claimed in the petition of the lawsuit, without claiming remedy of effect, than such petition is defective, and as such it must lead the parties and the court to how to claim remedy of effects.

The court cannot rule *extra petitionis* on the invalidity of the legal transaction, except for cases of basic trials, for the reason that it is up to the parties rather than the court ex officio choose the petition of the lawsuit. Therefore the lawsuit cannot be grounded only on the confirmation of legal transaction invalidity. The fact also refers to the unifying decision no. 5 dated 30 October 2012 of the Supreme Court, which, for the purpose of unifying case-law, concludes:

A legal transaction that is invalid may be ascertained by the court, even ex-officio, without being claimed by the concerned party, or even against the will (wish) of such party. So that a legal transaction be considered absolutely invalid it is not necessary lodging any specific petition, either a lawsuit or a countersuit, given that this type of invalidity is ascertained independently of lodging a petition to the court.

Conclusions:

Claims to ascertain absolute invalidity of a legal transaction cannot be lodged as a single claim; rather, they should be lodged during the basic trial of a case, or at leas as a claim associated with the remedy of effects produced from its enforcement. The effects produced from the enforcement (fulfillment) of an absolutely invalid legal transaction are settled on petition of the trail parties only, and if it is the court to ascertain ex officio the invalidity of a legal transaction, it settles only those effects that have been claimed with the lawsuit, without ruling on the effects not specifically claimed by the parties.

Moreover, it should be proven the existence of a real situation of breaching; in other words, a basic lawsuit should be lodged to defend the subjective right infringed, so that the absolute invalidity of legal transactions may be questioned during the trial, even though incidental.

So the petition of the plaintiff must contain what he/she is claiming to obtain from the rule of law, while an absolutely invalid legal transaction is null, being considered as never existing, and therefore it cannot be claimed merely its invalidity.

Literature

[1] Civil Code of the Republic of Albania 1994 (with relevant amendments); AlbJuris, Tirana 2017
[2] Civil Procedure Code of the Republic of Albania (with relevant amendments); AlbJuris, Tirana 2017
[3] Publication of Official Center for Publications, November 2009 "Summary of European Court of Human Rights judgments against Albania"
[4] Official Gazette no. extra 86, dated 28.02.2013 "Supreme Court case-law through civil, administrative, and criminal decisions", publication of Supreme Court, 2014
[5] Galgano Francesco. Private Law 1. Ownership, Tirana 2003
[6] Unifying Decision no. 13/2006 of the Unified Colleges
[7] Decision no. 27 dated 26.10.2010 of the Constitutional Court
[8] Unifying Decision no. 5/2012 of the Unified Colleges of the Supreme Court
[9] Unifying Decision no. 7/2012 of the Unified Colleges of the Supreme Court